

RATIONAL AVOIDANCE OF ACCOUNTABILITY

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Governments across Australia regularly present the public with new accountability mechanisms. They are often developed reluctantly but, when released, presented as proof of the government's bona fides as an honest and democratic institution. Nonetheless the public does not have a very high level of confidence in their political and executive institutions.¹ The reasons for this apparent inconsistency may be numerous but there is one immediate question that can be asked: Why does the public still distrust government even though the amount of accountability regimes is increasing? The simple answers may be that either the public is unaware of the good done by these regimes and/or the regimes do not work. This paper will present a logical argument to show that it is advantageous for governments to produce accountability mechanisms but disadvantageous for these mechanisms to function effectively.

Anthony Downs' public choice theory proposes that every rational person tries to meet their own desires in preference to those of others, and that such rational persons would attempt to obtain these desires in the most efficient manner possible. This paper will demonstrate that the application of this theory would mean that public servants and politicians would perform acts of corruption and maladministration in order to efficiently meet their desires. As such action is unavoidable, political parties must appear to meet the public demand for accountability systems, but must not make these systems viable lest they expose the corruption and maladministration that would threaten the government's chance or re-election. It is, therefore, logical for governments to display a commitment to accountability whilst simultaneously ensuring these same systems would not expose the government's flaws.²

This paper will begin by describing the nature of public trust, that is, the relationship between public officials and the voters on whose behalf they administer the government. It will then discuss the components of Downs' theory of public choice. The next section will synthesise the two notions to see how they interact. Finally, the paper

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¹ K Turner and M Hogan, 'Introduction: The Worth of Politics?' in K Turner and M Hogan (eds), *The Worldly Art of Politics* (The Federation Press, 2006) 3.

² For ease of reference, the term 'bureaucracy' will be used to refer to an organisation which administered the provision of those services usually identified with government. Likewise, the individuals employed within this sector will be generically referred to as 'public officials'. There will, however, be a differentiation between the titles of the various services: in the feudal period the bureaucracy is the monarch's 'household'; in the 18th and 19th centuries it will be called the 'civil service'; and it will be called the 'public service' after the introduction of full male, and later female, suffrage.

will demonstrate that this interaction necessarily leads to a dilemma for political parties in a democracy which requires that they delude the voters as to the integrity of their accountability systems.

I PUBLIC TRUST: THE BENEFICIARY-SERVANT RELATIONSHIP

As a consequence of voters placing their trust in public officials, these officials have a duty to serve the interests of the public. This section will explain this duty and the necessity for accountability. For the purposes of this paper the relationship will be described as one between beneficiaries and servants. Public officials, whether they are politicians, statutory officials or civil servants, provide services to a class of individuals who thereby become beneficiaries.

Historically, membership of the beneficiary class varied with the political system. For example, under an idealised monarchy the king or queen is the sole beneficiary, and in an ideal democracy all the enfranchised adult population are beneficiaries. In British and Australian history, from the late middle-ages the growth of Parliamentary representation increased the number of people who could claim beneficiary status. This tendency reflected a broadening of the distribution of power to the community away from concentration in the hereditary elite.

Generally, beneficiaries were those people in society who could influence the formation of policy. In British traditional governance, the power to make policy was mediated through the convention of responsible government. Enfranchisement provided a mechanism for a broader and broader class of persons to influence public policy through the collective power to determine who was authorised to make policy decisions. In the 19th century a very small proportion of the population was enfranchised. In Australia enfranchisement expanded with the extension of voting rights to European males, and later adult females, and progressively through the 20th century, non-European adults and in the 1960's adult Aboriginal and Torres Strait Islanders.

This argument does not mean that the non-enfranchised did not benefit. The British government always saw itself as serving the British people. However, this paper differentiates between beneficiaries and the rest of the population. The satisfaction of the formers' interests was the benchmark of the success of the kingdom/community. The latter had to rely on the beneficiaries' prosperity 'trickling down' in the form of more general community wealth, infrastructure, legal rights, and all other benefits of civilisation. Historically, the beneficiaries saw their own interests as being identical to British national interests. Thus meeting the beneficiaries' needs was equivalent to meeting Britain's needs. The broader class of British subjects' needs were met as an ancillary to the main project – the advancement of Britain in the community of nations.

Likewise in Australia, the needs of women, non-Europeans and indigenous people were ancillary to the needs of the colonies, and later, the nation of Australia. Their needs would be met through the satisfaction of the political desires of the majority of male European voters. The priority of their needs of the disenfranchised depended on their importance in the lives of the enfranchised, thus colonists' female and juvenile family members were more important to their voting male relatives, and therefore better served, than indigenous Australians or non-European migrants.

Servants only have to provide benefits and serve the interests of the beneficiaries. Thus they only have an obligation to the voters and not the un-enfranchised. In a democracy, public servants are usually members of the beneficiary class. For example, in colonial Queensland the entry requirements for a position in the service, namely, a high level of education and a commitment to the colony, ensured that only enfranchised men could become employed. Likewise the salary levels provided by the service ensured that staff could meet the property requirements for enfranchisement.

A public official is in a position of trust that they will not place their own advantage ahead of the public good. In other words, in the course of their official duties, a public official will seek to maximise the benefits to the voters rather than give preference to the satisfaction of their own needs. This situation does not change simply because a servant is also a beneficiary. Public officials must ensure that their share in the benefits does not exceed that associated with their membership of the general class of beneficiaries.

Voters have placed their trust in public officials to serve the voters' interests. How do voters ensure that their trust is well placed? The benefiting voters need a means of ensuring that their public servants not only act in the voters' interest but also allow the voters to judge how well they are served. This knowledge allows voters to seek changes of policy or process and even decide to elect a different government. The various accountability mechanisms developed by governments theoretically provided that servants must account to the beneficiaries for the allocation of resources and fairness of decisions. Note that the government does not need to account to adolescents on the nature of policies or services provided. Rather they inform the voters who decide on behalf of the non-voting adolescents whether the service provided is sufficient. There is no obligation on the voters to give equivalent weight or make account to the unenfranchised for their determination of the sufficiency of the services provided.

In summary, servants must serve beneficiaries, and therefore cannot give preference to the satisfaction of their own needs over those of the beneficiaries. In a democracy the servants are usually also beneficiaries, but they still can only meet their own needs to the extent that they do not exceed the share determined by their membership of the beneficiary class. Non-beneficiaries have no direct claim on the actions of servants. Finally, the reliability of service is determined through mechanisms of accountability.

II PUBLIC CHOICE THEORY

In his seminal 1957 work *An Economic Theory of Democracy*,³ Anthony Downs proposed a rationality of political action based on public choice theory. Downs' Public Choice Theory postulated that rational persons are motivated primarily by self-interest; while people may be concerned about other people, they will give first priority to the satisfaction of their own interests and only satisfy the needs of others to the extent that such actions will not interfere with their own personal goals.

Downs' hypothesis has two parts. First, rational people follow a 'self-interest axiom' (the axiom). The axiom states that rational people will seek their own safety and

³ A Downs, *An Economic Theory of Democracy* (Harper Collins Sydney, 1957).

happiness even it requires depreciating the safety and happiness of others.⁴ However, many obvious examples seem to refute this premise, such as parents who sacrifice their own convenience for the benefit their children. Although Downs did not claim that a person would never choose to help a child rather than pursue their own self-interest, he simply characterised such behaviour as irrational. It can also be argued that not everyone acts the same and therefore Downs could not predict what action a person will take. However, Downs did not proscribe what action could be taken, but only provided that whatever action was chosen, it would only be rational if it were self-serving.

If the Downs self-interest axiom is applied to government it will be seen that rational beneficiary would always demand that their needs are met in preference to the servant's needs, the logic of the beneficiary-servant relationship outlined above. However, at first glance the application of the axiom to servants characterises their behaviour as irrational, as in complying they are placing the needs of others before their own. This is true, but servants can be regarded as rational if they are adequately compensated for suspending satisfaction of their own needs. Thus, servants are rational if their remuneration for service provides a greater benefit than they would receive had they acted in their own self-interest.

It is possible that a rational public official see a career path in accommodating the needs of others. Theoretically, a servant could see greater personal success emanating from meeting the needs of others. Such a scenario requires a direct feedback mechanism from the other person to the servant in order to allow the rewards to pass between the two. For example, in a marketplace the customer can reward good service with repeat business. But there is no direct feedback mechanism in a large bureaucracy between public official and voter outside the ballot box. Legally, statutory officials and civil servants cannot receive rewards from the voters, the recipients of their service, other than their salary. The judgement of their success and the consequent reward is made by their superior. It is therefore more rational for a statutory official or civil servant to please their superior than to provide a better quality service to the public. While this proposition is feasible, it is not relevant to the current discussion.

The second element of Downs' hypothesis is that in pursuing the self-interest axiom, a rational person will allocate time and effort efficiently to produce the greatest benefit for the least expenditure. In this paper this premise will be referred to as 'self-interest efficiency'. Rational beneficiaries achieve their self-interest efficiency by inducing other persons to produce the service for them. In this way, if the financial cost of employing a servant is less than the value of the benefits obtained, the beneficiary gains more than they would otherwise be capable of achieving without the labour of servants. Thus it is efficient for the beneficiaries to participate in the relationship.

If Downs' hypothesis is applied to servants the result seems to conflict with the beneficiary-servant relationship. The servant's benefit is remuneration. Downsian logic presumes that a rational servant would allocate the least time and effort for their remuneration, thereby exercising the most efficient means of obtaining their goal. Consequently, a rational servant will seek to minimise compliance with the beneficiary's needs and maximise compensation.

⁴ Ibid 27.

If Downs is correct, a beneficiary's desires for the most benefit for the least expense will conflict with the servant's desire for the greatest compensation for the least time and effort. This conclusion characterises the recurring issue in bureaucratic ethics, namely, how does the beneficiary ensure that they obtain cheapest, best quality service in an efficient manner? The question appears to be one of supervision and accountability. However, the institutional bureaucratic need for servant to supervise other servants complicates this theory. Accordingly, this paper examines how Downs applies his theory to politics.

According to Downs, the major actors in politics are the political parties, which he saw as behaving just like individuals. How the parties will act in any given circumstance is a function of the axiom and self-interest efficiency. Political parties will try to achieve their self-interest goals in preference to helping anyone else, and will attempt to obtain their goals in the most efficient manner possible.

Downs wrote that political parties are teams of people unified in their goal to obtain public office through electoral success. They are distinct from the citizenry in so far as most citizens do not belong to such a team.⁵ Parties seek public office because it will bring income, power and prestige through the ruling party's ability to compel others to comply with its decisions, subject only to constitutional boundaries. Downs acknowledged that a particular individual, or even group, within the team may have a seemingly altruistic goal that can only be obtained through public office. But, he said, from the team's perspective this is a secondary goal for two reasons: first, not everyone in the team may share this secondary goal; and second, this goal is contingent on taking office. For example, a politician's personal altruistic goal may be the improvement of education for the disenfranchised, but he would recognise that he must join a political party to achieve this goal. Consequently, Downs said 'parties formulate policies in order to win elections, rather than win elections in order to formulate policies.'⁶

Having established that his two basic premises apply in representative democracy, Downs pointed out that realising the team's goal in a democracy, deductively requires some necessary conclusions. The most important of these for the purposes of this paper is as follows: the primary goal of every political party is re-election, non-extremists receive more votes, therefore parties seek the median ground.⁷

It does not seem logical that the voting public continually would elect people who were obviously shallow in their outlook. However, voters are also bound by the axiom and self-interest efficiency. Downs said voters have no incentive to follow politics closely. When it comes to politics, rational self-interest requires people to always choose the course of action which provides the most utility. When Downs applied the axiom and self-interest efficiency to the public, he concluded that the average person, who does not have a career dependent on politics, sees relatively little benefit in applying time to

⁵ Ibid 25-6.

⁶ Ibid 28.

⁷ For application to the Blair Labor Ministry, see M Kenny and M Smith '(Mis)understanding Blair' (1997) *Political Quarterly* 220, 224-5. This application has not been carried through to its logical ends. Specifically it ignores the fact that people are allowed to have altruistic ends, under Downs' theory, as long as they are not primary ends. The pursuit of unpopular policies by Blair is therefore covered by the theory as long as such activity does not interfere with the primary goal of re-election.

following politics. The benefits received from government, such as roads, education, safety and other services, are for the most part unaffected by which party is in office, and therefore they are taken for granted.

Downs said voters judge political parties based on our *Utility Income*; the aggregate of benefits, either known or unknown, that each of us receives from the government. A rational individual will vote for the party which provides them with the best perceived utility income in the future. It is important to remember when considering courses of action for government that the actual utility income is only relevant to the extent that the voter is aware of it. For example, voters with the personal goal of a safe and comfortable life for their family, who have good incomes and safe and healthy families, will regard their needs as met. These voters will see no benefit is spending time listening to parliamentary debates, reading Senate Committee Reports or following party policy contests to assess the party in power's performance.⁸

The combination of the rational self-interest positions of the political parties and the voters produces the following premises and conclusion: political parties seek re-election; most voters do not scrutinise their actions closely; therefore, political parties should spend more time trying to look good than being good.

Political parties can maintain themselves in office without exceptional performance so long as the voting public does not perceive that performance as inimical to future utility. Therefore, they do not need to aspire to exceptional performance to achieve their goal.

Recall that Downs was not saying that every politician or voter will act in this manner. He was simply saying that, all things being equal, rational actors will comply with the axiom and self-interest efficiency and that most people behave rationally most of the time. In line with Downs, this paper assumes that most people, regardless of their personal perception of motivation, will behave as Downs predicted.

Thus Downs said that under the axiom, rational individuals will try to fulfil their own desires in preference to, and even to the detriment of, the needs of others. Secondly, self-interest efficiency requires that a rational person will find the most efficient means to attain their goals. Consequently, servants will try to do the least work required to obtain their pay, which conflicts directly with the desire of beneficiaries that their servants maximise their productivity for the least cost.

The operation of the government is in the hands of a third category namely the political parties. Their goal is attainment of, or maintenance of, power. As with any other rational person or body they will seek this goal even to the detriment of others, and they will do so in the most efficient manner. Unfortunately the voting public do not see the analysis of politics as being in their interest and do not closely scrutinise the machinations of

⁸ Ian McAllister and Clive Bean's work on electoral voting in Australia demonstrates the reliance of voters on issues which directly affect their lives rather than those which demonstrate an injustice and danger to others. See I McAllister and C Bean, 'Leaders, the Economy or Iraq? Explaining Voting in the 2004 Australian Election' (2006) 25(4) *Australian Journal of Politics and History* 604; C Bean and I McAllister, 'Voting Behaviour: Not an Election of Interest (Rates)' in M Simms and J Warhurst (eds), *Mortgage Nation: The 2004 Australian Election* (Bentley, API Network, 2005) 319.

politics or executive government. Thus a political party only needs to appear to be meeting the voters' needs in order to retain office.

III RATIONAL CORRUPTION

Downs excluded corruption from his thesis because it complicated his argument.⁹ However, this paper argues that the axiom and self-interest efficiency can explain corruption. Circumstances will arise in which it is rational for some holders of public office to manifest this utility through corruption. Corruption is a probable outcome if a rational person is faced with an illegal opportunity to reach their goal more efficiently than through legal means, and the disutility of getting caught appears unlikely. Circumstances of greed, high marginal return and inadequate compliance enforcement increase the utility of this outcome.

Downs explained that the goal of a rational political party is to obtain and retain office. As the axiom states, they will seek to meet their goal in preference to meeting the needs of anyone else, including the electorate. Under the efficiency principle, they will also take the path of least resistance towards that goal. On this basis we can posit the following hypothetical scenario:

- Party A needs a certain marginal seat to win government;
- Person B, who has local influence, can guarantee a sufficient swing of votes to ensure Party A will win;
- B agrees that Party A will get the votes as long as he is appointed to a highly prestigious, well paid position on a government board;
- The press and public rarely scrutinise the appointment process to boards, thus there is little chance that the corrupt appointment will be uncovered;
- Even if it is exposed, the party in power is very unlikely to lose office because of making a cronyistic appointment;
- Person B is appointed to the position.

In the pursuit of their personal utility, some public officials will give less attention to the duties of their offices than reasonably necessary or appropriate. The most efficient means of satisfying their self interest would be to perform the minimum amount of work that they feasibly needed to still get paid. While seeking the most efficient path to their goal, they may determine that the remuneration for their position can be obtained without due care and attention to their work. Of course this poor standard could lead to mismanagement and negligent harm to others. The utility of following this path will not be determined by the effect on others, as the axiom states that the needs of others are secondary to the officials' own needs. The only impediment, therefore, to official negligence is the likelihood of the servant being caught and punished. A risk assessment will establish the point at which the likelihood of detection outweighs the profitability of poor performance. Following the axiom and self-interest efficiency principle, rational

⁹ Downs, above n 3, 22-3. In order to reduce the number of variables in the theory, Downs made the following, in his own words 'unrealistic', assumptions: 'The self-interest of each [party member] has at least two limits: (1) he will not perform illegal acts, such as taking bribes or using his power to violate the constitution, and (2) he will not try to benefit himself at the expense of any other member of his own party team' (Downs, above n 3, 30). This is unnecessary for the following paper and will not be discussed.

officials should reduce the amount of care and effort they put into their work to the lowest possible level above the breakeven point in this equation.

Consequently, if Downs is correct, corruption, negligence and mistakes will occur regularly. Unfortunately for the party in office if this tendency becomes public knowledge its re-election chances will be reduced. A party in power that performs a corrupt or incompetent action would reduce the individual voter's utility income as the benefits have either been diverted to private interests or wasted. However, the party in power can rely on rational voters to pay very little attention to politics. Since voters rely on perceived utility income rather than actual performance, corruption, negligence and mistakes only will impact on the individual voter who is made aware of the diversion/waste and injustice. Therefore, if the diversion or waste can be kept from public knowledge, the party in office will suffer no detriment in the pursuit of its goal of re-election.

Therefore, it is in the interest of an incumbent rational party to keep corrupt, negligent or incompetent incidents secret. Consequently, the public cannot rely on the party in power to either perform its role effectively or keep the public informed of the standards of performance. The electorate has two solutions: first, individual voters could pay more attention to politics. But we have already established that this course of action is irrational for most voters, most of the time. Second, they could demand the establishment of a system that will disclose corruption, negligence and incompetence without effort being expended by the individual voters. This system would require a new set of servants to watch the servants.

These watchdog servants would need to:

1. Set standards that require the servants to comply with the beneficiaries' goals;
2. Supervise the servants to ensure the maintenance of those standards;
3. Identify those who comply with, and those who breach, the standards; and
4. Adjust outcome values through punishment and reward.

It is worth noting that the original Westminster watchdog process was the separation of powers. Not only could the independence of the legislature, executive and judiciary remove the ability to obtain absolute power, but the legislature could supervise the performance of the executive. However, the Westminster, and Australian Westminster, systems allow the executive to control the legislature, thereby thwarting any ability of the latter to intervene to correct the behaviour of the former. Even Her Majesty's Opposition is not an effective mechanism to ensure accountability. Remember that the aim of the Opposition is to obtain and then retain government. While a good accountability mechanism would help them displace the government of the day, it would also hinder its own ability to retain the treasury benches. Therefore, it is rational for them to appear concerned about the lack of accountability but not take action to rectify the situation when in office.

These steps protect the perceived and actual future utility of the public but are not rational for the party in office. As many years of criminology have shown, it is impossible to eliminate crime. Assuming the same applies to greed and sloth, then

corruption, negligence and mistakes will still occur regardless of the system in place.¹⁰ Any party in power is faced with the following problem:

- A party has less chance of re-election if the public is aware of corruption, negligence and mistakes;
- Corruption, negligence and mistakes are unavoidable;
- Good accountability will expose corruption, negligence and mistakes;
- Therefore, a party has a better chance of re-election if it faces less accountability.

In summary, political parties will inevitably be faced with incidents of corruption which can seriously endanger their chance of retaining office. They need to ensure that the voters do not know about these indiscretions. The problem for a party in office is that the public wants accountability to ensure they receive the maximum utility income. This presents a paradox: the people who can re-elect a party want that party to implement the very systems the party rationally avoid to obtain re-election.

IV MANAGING PERCEPTION

At this point it is necessary to remember that voters react to perceived, rather than actual, utility income. Therefore, if the party in office can convince voters that accountability systems are in place, they will secure public support for their re-election. However, if the accountability systems are weak they will not effectively uncover embarrassing corruption, negligence and mistakes. But the public will not accept such a system and the party in office is still in danger of losing the election. Fortunately for the party in office the very accountability systems' weakness prevents the voters from knowing: one, that the system is weak; and, consequently, two, the true extent of corruption, negligence and mistakes.

The party in office can rely on the public sector to support, unwittingly, this plan because of the efficiency principle. Rational public officials seek to obtain their pay through the least amount of effort. Meeting ethical standards requires public officials to work harder for the same personal utility – so-called 'compliance costs'. Therefore rational public officials avoid compliance with accountability systems because the additional effort required makes it inefficient in obtaining personal utility. Poor compliance means insufficient information to discover the extent of corruption, negligence or inefficiency among public employees. Thus in the same manner as government inactivity disguises misconduct, public officials' failure to comply is the best method of concealing their own faults.

Thus it is clear that the self-interest axiom and efficiency principle operate to ensure our system of government will ensure accountability mechanisms that are intended to discover little but are sufficient to convince voters that the party in power is genuine in its determination to ensure the public sector acts in the public's best interests.

¹⁰ F Anechiarico and J Jacobs, *The Pursuit of Absolute Integrity: How Corruption Control Makes Government Ineffective* (University of Chicago Press, 1998).

V CONCLUSION

This paper has demonstrated that governments will endeavour to balance a public perception of being accountable with an actual unaccountable regime.

Governments are composed of servants, whether public officials or politicians, who must serve beneficiaries, namely, the voters. Even though they are also beneficiaries, as servants the officials and politicians cannot give preference to the satisfaction of their own needs over those of the voters. To ensure they meet this requirement the government must account to the voters on their actions and decisions.

Anthony Downs put forward a theory of public choice that said that rational people abided by two concepts. Firstly, Downs proposed an axiom that rational individuals will try to fulfil their own desires in preference to, and even to the detriment of, the needs of others. Secondly, Downs put forward a notion of self-interest efficiency that posited that a rational person will find the most efficient means to attain their goals. When we apply these two concepts to the previous notion of the beneficiary servant relationship we reach the following conclusions: 1) public servants will try to do the least work required to obtain their pay, and 2) beneficiaries want the servants to maximise their productivity for the least cost.

Political parties have a different goal that does not overlap with the interests of voters and public officials. A rational party in government wants to maintain power and will try to do so even to the detriment of others, and in the most efficient manner. Their goal is aided because voters do not see the analysis of politics or executive decision making as being in their interest. Thus a political party only needs to appear to be meeting the voters' needs in order to retain office.

However, rational individuals within the public service and the political party will inevitably see the efficiency of corrupt actions as a means of attaining their personal goals. If the public becomes aware of this misconduct the subsequent scandal can seriously undermine the political party in power. As the government cannot guarantee that it can prevent misconduct they must instead try to ensure that the voters do not know about these indiscretions. This alternative directly conflicts with the voters' desire for accountability. Fortunately for political parties, the lack of scrutiny applied to government by rational voters gives the government an opportunity to be deceptive. They can create accountability mechanisms that lack substance. These mechanisms allow the government to appear accountable without actually being so. Consequently, if a party in government wishes to maintain its political power it is logically obliged to follow this course of action.