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Introduction

POWER, WELFARE, INCENTIVES, VALUES

> A press conference is not enough to call it "democracy." I do not expect this illegitimate institution to hear my voice.
>
> —Josephine Witt protesting at the European Central Bank's April 15, 2015, press conference

> It is time to end regulation without representation and restore our faith in the people to make the best decisions for families and businesses.
>
> —US Senator Mike Rounds (R-South Dakota), *The Hill*, May 21, 2015

In the course of 2016, first the UK referendum on membership in the European Union (EU) and then the US presidential election, coming on top of popular discontent and protest in parts of Continental Europe, thrust into public debate issues of populism and technocracy. As models for government, they appear to stand at opposite ends of the spectrum, either embracing or distancing the people. Of course, it is not so clear-cut. Populist leaders typically claim a special alignment or accord with the interests of the People, understood as the True or Authentic members of a political community, allowing them to dispense with the messy business of actual public participation, debate, and disagreement.[1] Technocracy, meanwhile, at least in caricature, claims to have uncovered some kind of scientific method for figuring out what is in the public or common interest—provided, that is, that they, the unelected experts, are left to get on with it, checked only by another group of unelected power holders, the judges. In fact, our technocrats must consult and explain, but still that is not the same as political accountability.

[1]Muller, *What Is Populism?*

Nowhere in our major democracies does either of those systems of government actually exist, but their underlying ideas nevertheless confront each other today as rallying cries in the real world of politics. Those seeking the votes of people feeling let down by and fed up with government over the past quarter century or more find common cause in blaming distant and aloof experts as the enemy. Those on the other side, fearing that (what they see as) basic values or rights will be put aside, warn of the false allure of populist demagogues.

This contest, struggle even, undoubtedly reflects genuine changes in politics and government. The main parties on the Left and the Right are no longer the mass movements they were up until the 1970s, offering distinct *political* programs appealing, in part, to tribal identities.[2] And in government itself, delegation to more or less independent agencies, led by unelected technocrats, has ballooned over recent decades (and earlier in the US).

Those phenomena are related. If there exists sufficient consensus around the goals and the means of public policy that it can be delegated beyond the day-to-day reach of elected politicians, political parties offering rival visions of the good life and how it might be achieved lose some of their point. Protesting at this and, perhaps, a drift toward liberalism, a former deputy leader of Britain's Labour Party complained in 1997 that "Tony Blair is taking the politics out of politics."[3]

But recent socioeconomic disappointment puts the consensus around delegated governance in an uncomfortable light. Economic growth has been subdued since the Great Financial Crisis, and the gaps between the poor, the just-coping, and the rich have widened over recent decades. Hence, it is not complete fantasy to see our democracies as flirting with a peculiar cocktail of *hyper-depoliticized* technocracy and *hyper-politicized* populism, each fueling the other in attempts, respectively, to maintain effective government and to reestablish majoritarian sensibility.[4]

[2] Mair, *Ruling the Void*.

[3] Hattersley, "Pragmatism." Thanks to Jon Davis for alerting me to this.

[4] Flinders and Wood, "When Politics Fails." I use "hyper-depoliticization" to mean lots of it, not merely insulation from both elected branches as in Rubin, "Hyperdepoliticization."

This conjuncture of politics and economics might conceivably end up challenging the basic structures and values of liberal democracy, the dominant model of collective governance since the fall of the Berlin Wall in 1989. That system combines liberalism—broadly, constitutionally constrained government under the rule of law—with representative democracy via some form of free and fair elections. In the years following the demise of the Soviet Empire, there have been growing concerns about *illiberal democracies*, which elect their governments but pay no more than lip service to minority and individual freedoms. The current concerns in the West, by contrast, parse things the other way round: *undemocratic liberalism*, a system of government in which individual rights are entrenched but too little of government is decided by the ballot box or heeds the welfare of the people.

The current upsurge of debate about technocracy and populism can, therefore, make it seem as if we are approaching a point where choices between illiberal democracy and undemocratic liberalism will be hard to avoid.[5] In a way, the purpose of this book is to challenge that pessimism of absolutes. It explores whether it is possible to find a place for technocratic independent agencies in our system of government without jeopardizing democratic legitimacy. Nearly all the discussion will be dry, but in the background is the need to chart a way through a malaise of false choices about government and, thus, about who we are as political communities.

It is not as if unelected power is new. Democratic societies have long found ways of accommodating, and often honoring, the Military, the Judiciary, and, where it existed, an established Church. It is more that there has been a shift in the reach and techniques of unelected power, which now routinely involves writing legally binding rules and regulations. This is nowhere more apparent than in the world where I spent much of my professional life, central banking, which in many countries is today a new third pillar of unelected power alongside the judges and the generals.

[5] Mounk, "Illiberal Democracy."

CENTRAL BANKS AS THE EPITOME OF TECHNOCRATIC POWER

The high tide of central banking came in the mid-1920s—until now, that is. In the words of the League of Nations' prescriptions for economic reconstruction after the First World War: [6]

> [Central banking] should be free from political pressure, and should be conducted solely on lines of prudent finance. In countries where there is no central bank of issue, one should be established.

Within a decade of that proclamation, the 1929 stock market crash, the unraveling of the gold standard, and the Great Depression were enough to see central banks stripped of responsibility, status, and power.

They did not regain preeminence until the 1990s, when the International Monetary Fund and World Bank began prescribing independent central banks and the framework for price stability known as *inflation targeting* to the emerging-market economies rising around the world. But, as though revisiting their past, the Great Moderation they presided over turned nasty, twisting itself into the Great Financial Crisis and years—not yet behind us—of below-par growth.

From Impotence to the Only Game in Town

For the central bankers themselves, however, history has not repeated itself. Indeed, the contrast with the aftermath of the banking crisis, monetary disorder, and economic slump of the 1920s and 1930s could hardly be greater. Then, governments quickly turned away from globalization and central bank–centered macroeconomic policies. Nationalism was the order of the day—autarky, propped up by barriers to trade, controls on capital flows, and financial repression.[7] When at the end of World War II the international economic order was reconstructed at Bretton Woods, New Hampshire, central banks were largely bystanders. In the aftermath, they became backroom advisers and agents as the West was rebuilt and the Cold War negotiated.

[6] Two conferences were convened by the League of Nations, in Brussels in 1920 and later in Genova in 1922. For contemporary commentary, see Hawtrey, "Genoa Resolutions."

[7] James, *End of Globalization*.

How different things are today. Notwithstanding financial disorder and economic stagnation on a grand scale, globalization has hardly been rolled back (as I write); and while the core program for reforming the monetary and financial system was once more forged in international gatherings, this time around central bankers were the leading players. Domestically, they generally emerged from the crisis with more, not fewer, responsibilities and powers. Internationally, recovery seemed to depend on them. They have been, in a popular but deeply troubling phrase, *the Only Game in Town* (chapter 24).

Numerous explanations for this extraordinary contrast with the fate of central banks in the 1930s suggest themselves. Their monetary innovations avoided a repeat of the Great Depression, which is quite a thing; the failure of non-central-bank regulators in the run up to the latest crisis was even more abject; and the central bank–academic economist axis has remained a potent force in shaping post-crisis reform debates. Whichever appeals most, the consolidation of power should make us ponder.

Preexisting Doubts

There were skeptics about monetary independence even before the crisis. For the libertarian Right, the existence of state-backed central banks is an anomalous encroachment on freedom, relieving citizens of the need to be prudent and, in consequence, putting our economies on an inevitable roller-coaster cycle of destructive boom and bust.[8] For parts of the radical Left, central banks are inevitably in cahoots with high finance, repeatedly bailing it out at the expense of taxpayers; and their very existence standing in the way of the emergence of powerful state banks that could be used to pursue wider, redistributive social justice.[9]

In between those political poles lie two broad camps of critics. One, on the social democratic Left, doubts that independent monetary authorities bring economic benefits;[10] fears that central banks are inherently "conservative," and thus unacceptably indifferent to employment and activity; and, even when granting the potential benefits of technocratic

[8] Paul, *End the Fed*.
[9] Epstein, "Central Banks."
[10] Forder, "Central Bank Independence."

expertise, cannot see how it can be squared with democratic legitimacy. They regard monetary independence as a false step, taken as part of an unwarranted crisis of confidence in democratic politics during the inflationary 1970s that followed Vietnam and Watergate and reflecting a wider turn toward delegating "discipline" to autonomous, depoliticized agencies. Driven and, in turn, underpinned by a shift toward international governance and away from domestic democratic control, monetary independence is seen by these critics as symptomatic of a triumphant neoliberalism.[11]

Meanwhile, leading neoliberal thinkers themselves would lament the extent to which today's central banks operate by discretion, echoing Chicago's Henry Simons in the 1930s:[12]

> Deleg[ation] to administrative authorities with substantial discretionary power . . . must be invoked sparingly . . . if democratic institutions are to be preserved; and it is utterly inappropriate in the money field.

More soberly, while the one group seeks to remedy a "democratic deficit," the other wishes to recover the "rule of law" (chapters 8 and 9).

While those critiques flourished at the margins of public policy debate in the years before the crisis, the question of whether our central banks are simply *too* powerful has now become more widespread. That is not surprising given the extraordinary exercise and accumulation of power by central banks since global markets broke down in the summer of 2007. Using their balance sheets like never before, they have intervened in almost every part of the bond and loan markets, initially in order to contain market disorder and later to stimulate economic recovery. Discomfort has been evident on many fronts: in legal challenges against the European Central Bank (ECB) in Europe's constitutional courts, in US litigation around the US bailout of AIG, and in political steps in Congress, from both sides of the aisle, to reform the Federal Reserve.

[11] Krippner, *Capitalizing on Crisis*; Roberts, *Logic of Discipline*; Mazower, *Governing the World*; McNamara, "Rational Fictions." Many papers in this genre pray in aid Stiglitz, "Central Banking."

[12] Simons, "Rules versus Authorities," pp. 2–3.

Even if those challenges come to nothing, they demonstrate a need to think through afresh the degrees of freedom central banks should be granted and, in particular, how far they should be able to venture into what has traditionally been regarded as the preserve of fiscal authorities. So when my friend and former colleague, Bundesbank director Andreas Dombret suggested in the autumn of 2016 that central bank independence is not debatable, my immediate thought was that these institutions are among the last on earth that need "safe spaces" to protect them from criticism or verbal attack.[13]

Central Banking and the Regulatory State: The Issues Become Larger and Deeper

Safe or not, the space they occupy has been enlarged. The earlier criticisms I recalled of central bank independence (CBI) concerned their role as an autonomous part of what I shall term the *fiscal state*, given their ability to change, even transform, the consolidated government's liabilities and assets, and so its risks and income streams (chapters 4 and 22). Now, however, they are more than that.

As the lender of last resort to the financial system—the economic equivalent of the US Cavalry—central banks invariably find themselves at the scene of financial disasters. If ever that was doubted, it has surely been put to rest since markets, firms, and whole economies began to crack in the summer of 2007. No less did those events underline the futility of attempting to insulate the supposedly high-minded pursuit of monetary stability in the interest of general economic prosperity from the altogether more prosaic (but vital) business of keeping the financial system afloat. After a generation during which those two facets of stability policy had drifted apart, even when housed within the same institution, as at the US Federal Reserve, they have once again been harnessed together (chapter 19). Banking supervision has been returned to the Bank of England and granted to the ECB; the Federal Reserve (or Fed) has been supervising nonbank financial groups judged to be systemically significant; and central banks in many jurisdictions have been granted "macroprudential" powers to mitigate threats from credit booms.

[13] Dombret, "Banking Sector."

In terms of the distribution of administrative power, the practical upshot of this reversion to and elaboration of past orthodoxy is that central banks no longer inhabit a rarefied zone in which experts exercise specialized powers in order to smooth macroeconomic fluctuations. In a massive development for modern governance, their newly fortified powers to oversee and set the terms of trade for banking and other parts of finance unambiguously make them part of the "regulatory state"—a distinctive part of the modern state apparatus that developed during the twentieth century, first in the United States and later in Europe, leaving public law playing catch-up (chapters 2, 3, 8, 13, and 15).

This transforms the debate. For the most fervent advocates of monetary independence, it risks taking central banks into more overtly political waters, jeopardizing hard-won achievements of the 1980s and 1990s. For those always uncomfortable with CBI, it increases their unease about a democratic deficit. Concretely, if central banks are to be independent, it must now be on two fronts: from the City of London and Wall Street (what used to be known as the "money interest"), as well as from electoral politics.

In consequence, deliberations on central banking can no longer be bracketed away from what have until now seemed to be largely parallel concerns about a regulatory state empowered to write and issue rules that are legally binding on citizens and businesses.[14] If we must lift our eyes to that broader context in order to meet the challenge of whether society risks central banks and their leaders becoming overmighty citizens, then we need to confront deeper, higher-level questions about the legitimacy of delegating power to unelected officials more generally. In our representative democracies, this places power two steps away from the people, who do not get a chance to vote on the technocratic elite governing much of their lives, and whose elected representatives have voluntarily surrendered much of the day-to-day control they traditionally exercised over the bureaucracy.

With the meteoric rise in the economic might of nondemocratic states in East Asia, this might be met with relief by those, such as politi-

[14] The academic literatures on central banking and the administrative state have long been segmented. Exceptions before the 2007–2009 crisis include Miller, "Independent Agencies," and Lastra, *International Financial*. Since the crisis, legal scholars have become interested in central banking despite the lack of case law that provides their standard raw material.

cal scientist Daniel Bell, who call upon Confucian traditions when advocating government via meritocratic technocracy—Plato's Guardians in modern garb.[15] For them, independent agencies might be in the vanguard of a return to the predemocratic governance of the eighteenth-century's commercial republics (chapter 8). For others, the very same agencies violate the deepest traditions of economic and political liberalism as it developed during the nineteenth and early twentieth centuries. Mirroring their unconscious alignment over central banking, the participatory Left and the constitutionalist Right find common cause in attacking unconstrained delegation.

LEGITIMACY FOR INDEPENDENT AGENCIES

In this book, I try to situate concerns about central banking power within a much broader debate about the role and *legitimacy of independent agencies* and, more generally, of the "administrative state" within our democracies. This is necessary to answer the following questions: Should central bankers be allowed, as regulators, to issue legally binding rules and regulations? Should they have statutory powers to authorize and close banks? Could any such powers decently extend to other parts of the financial system? Should they be free to decide when to provide liquidity assistance to distressed firms? Should monetary policy and other central banking functions be subject to different standards of judicial review? The answers cannot turn purely on what central bankers might be good at. For example, if only elected legislators should set legally binding rules, then central banks should not be regulators (as, for example, they are not in France). Similarly, if only judges should make adjudicatory decisions, as in some jurisdictions' competition policy regimes, then central banks should not make supervisory decisions but instead be restricted to making formal recommendations to the courts. And if, as some argue, combining the writing of regulations with adjudicatory powers violates the separation of powers at the heart of constitutional government, how much worse this becomes when combined with central banks' quasi-fiscal capabilities.

[15] Bell, *China Model*.

For anyone in Europe who doubts these are real issues, they should be aware of pending US legislation making its way through Congress as I write. The REINS Act, which has passed the House of Representatives, would require any material agency regulation to be formally approved by the House and the Senate, meaning political *in*action in one chamber would kill regulatory initiatives in any field (a kind of veto-in-lassitude).[16] And the draft Regulatory Accountability Act (RAA) would, among other things, push agencies toward holding full adversarial-style hearings on proposed rulemakings, and shift the balance of interpretive authority from agencies to courts. More specifically for central banking, another proposal (in the Financial CHOICE Act), which in some versions has cleared the House, would subject the Federal Reserve to *annual* congressional budget approvals for its "nonmonetary policy" functions, removing its formal insulation from politics; narrow its role in emergencies; and require that monetary policy track a rule for the setting of interest rates.

Meanwhile, for any American who thinks these concerns are unique to them, they should be aware that some of the ECB's crisis innovations have been challenged in Europe's constitutional courts; and that debate continues about whether it is acceptable (constitutionally or politically decent) for the ECB to be the banking supervisor. And if anyone thinks the UK might be immune from these various currents, they should know that treasury ministers now have (constrained) powers to order the Bank of England to lend when it doesn't want to during a crisis.

In the course of laying the ground for addressing those issues, the book proposes, develops, defends, and applies a set of *Principles for Delegation* for independent-agency regimes, covering *whether* and *how* elected politicians should confer powers on unelected technocrats shielded from day-to-day politics.

This will require some fairly extensive ground clearing. Notwithstanding concerns about a problematic democratic deficit in the administrative state, rarely is much said about what it means or what democracy entails. To grapple with our problem, we need to look at the

[16] *Regulations from the Executive in Need of Scrutiny*, first tabled in 2009, passed in late 2011, and retabled in 2017.

values associated with the rule of law, separation of powers, and democracy (part II). And before going any further, we need to define two terms.

Independent Agencies

By "independent agency" (IA), I mean, broadly, a public agency that is free to set and deploy its instruments in pursuit of a public policy goal (or goals) insulated from short-term political considerations, influence, or direction. This means insulation from the day-to-day politics of *both* the executive branch and the legislature. Such policy agencies are *trustees*.

True independence in that sense, akin to that enjoyed by the high judiciary in mature democracies although not necessarily as entrenched, requires that policy makers have job security, control over their policy instruments, and some autonomy in determining their budgets (chapter 4).

That is a reasonable description of many modern central banks. But things are not quite so clean when their regulatory peers are examined. On that definition, some US agencies often described as independent, such as the Securities and Exchange Commission (SEC) and other "independent commissions," are not truly independent. By contrast, some of their overseas counterparties, including in the UK, are highly independent, at least de jure. Whether those differences matter depends, in part, on what purpose these agencies serve (chapters 4 and 7).

Legitimacy

By "legitimacy," I mean very broadly that the public—society as a whole—accepts the authority of institutions of the state, including IAs, and their right to deploy the state's powers. Whereas "authority" or "authoritative" are often used descriptively, "legitimacy" is always evaluative, corresponding to the right to govern. To have legitimacy is a good thing, and hence it is important in helping generate voluntary compliance with policies and laws even when people think the specific measures are not sensible or desirable.

As I discuss in part II, I do not mean anything as strong as the community feeling that it is—or, normatively, as its somehow objectively being—under a moral obligation to obey every law. Nor does legitimacy turn on the community *actively* supporting a particular governmental institution or set of policies. But legitimacy grounds and comprises the capacity of an agency to pursue its mandate as part of the broader state apparatus, without relying wholly on coercive power.

The Problem

On both sides of the Atlantic, there have long been vocal pockets of unease about the extent to which the people's elected representatives have handed power to independent agencies of various kinds. Many have vague objectives, with the legislature effectively surrendering high policy. Given that, sooner or later, things go badly wrong for a while in each and every field of government, increasingly handing the big jobs of domestic administration to high-profile technocrats could in slow motion add to already prevalent cynicism about democratic politics. If vast chunks of policy are outsourced, could elected politicians find themselves left with little more than tweeting and foreign policy?[17] Central banks might well be the current epitome of unelected power, but they are part of broader forces that have been reshaping the structure of modern governance. If, drawing inspiration from Britain's 1689 Bill of Rights, "no taxation without representation" was a rallying cry for eighteenth-century Americans, why has "no regulation without representation" not had similarly broad resonance in our own time?

Such are the interdependencies of today's globalized world that those same forces increasingly put agency leaders and staff on planes to all corners of the planet to attend meetings that generate common international policies in almost every imaginable field. Any solution to the domestic potency of technocratic power cannot be blind, therefore, to the coexistence of *international* policy making and *national* democracy. The peaks of the administrative state should not be held by some kind of transnational elite immune from domestic constraint and scrutiny.

[17] Words written well before the 2016 US election.

The good news, as already noted, is that the problem presented by the regulatory state is not novel at its root, only in its specificities. Reflection on two of the most ancient and elemental state functions, the military and the judiciary, suggests that, where society has the benefit of long experience, we have developed deeply embedded norms and conventions about what functions may be delegated and with what degrees of freedom from political oversight and control. In developing the Principles for Delegation to independent agencies, the book draws on both those walks of life (chapters 4, 5, 10, 23, 24, and Conclusion).

PRINCIPLES FOR LEGITIMATE DELEGATION

The Principles carry important lessons for the design of postcrisis central banks and other regulatory regimes. But they gain traction only if they are themselves consistent with sustaining the legitimacy of the democratic state.

While some argue that the legality of an agency's creation and operation is alone sufficient to confer legitimacy, it is thin ground on which to stand, silently assuming that our deepest convictions and norms about democratic politics cannot be violated or threatened by the substantive transfer of powers. Tyrants who seize control of the state have sometimes been careful to wrap themselves in the cloak of formal legality.

Other justifications seem as shaky. In what was uncomfortably close to a longing for Plato's Guardians to run the state, scholars argued for over fifty years, beginning with America's New Deal, that the case for delegation turned on specialist expertise. While that must surely be, alongside legality, a necessary condition—after all, we hardly want our technocratic policy makers to be soothsayers—this cannot be sufficient to warrant delegating policy in a democracy, as independent experts could, instead, publicly advise elected policy makers (chapter 5). That was, indeed, precisely the arrangement for UK monetary policy during most of the 1990s.

Broadly, I argue that the key driver of decisions to delegate should instead be a need for credible commitment, so that government sticks to the people's purposes rather than departing from them for short-term gain, electoral popularity, or sectional interest. For a quarter of a century, that justification has been commonplace among monetary economists when defending the independence of central banks and, in Europe, was seen as warranting the creation of independent utility regulators (chapters 5, 7, and 14).

Once again, however, it cannot be a sufficient condition. "Credible commitment" problems run through so many areas of government that it could warrant almost anything being delegated, as former Federal Reserve Vice Chairman Alan Blinder observed nearly twenty years ago. We know instinctively that would be a travesty. Principled limits on what can be delegated are needed.

At the least, the benefits of delegation should be material. More important, major distributional *choices* should remain in the hands of elected politicians, as only then are prospective losers represented at the decision-making table. Nor should we want unelected experts to have a decisive say in the way we live, as individuals or as members of a political community. In short, they should not be making important value judgments (chapters 5, 9, and 11).

Nevertheless, however tightly constrained, independent agencies are intended to make discretionary decisions *within* their delegated domains. There are no neat, externally given dichotomies separating politics from administration, ends from means, efficiency from equity, adjudication from administration. Societies must instead choose where to draw the lines and then oversee the effects of their choices.

Contrary to what is sometimes implied, then, "legal liberalism"—including wide public consultation on draft rules and challenge via the courts—cannot suffice. Judicial review of administrative action, a solution given priority by many US legal scholars, helps to keep agency regimes within the law (and, perhaps, within the rule of law) by guarding against the arbitrary use of powers. But it is limited to illegal *abuses*, rather than extending to the *misuses* of power that occur when commitments (promises on which people would like to rely) lack credibility. What's more, where oversight is left to the judiciary, the location of the democratic deficit merely shifts from one nonmajoritarian institution to another.

Finding a way through this demands attention to the values that run through democratic representation, participation, deliberation, and responsiveness, the last of which might present itself as the very antithesis of credible commitment (chapters 9 and 10). If delegation-with-insulation is to enjoy democratic legitimacy, the people have to be let in somehow. Where a regime is designed to bind the implementation of policy to the people's purposes, a necessary ingredient is that objectives are framed after public debate and with a high degree of support, over time, across the main political parties. Where the people's preferences are not settled or cannot be encapsulated in a clear and monitorable objective, it is better that policy remain under the control of elected politicians. Today, environmental policy might be just such an example; and, consistent with that, it is typically handled by agencies that bear a partisan stamp (chapters 5, 10, and 11).

In short, delegations need to be structured by the precepts of republican democracy as well as of liberalism. Where the people's representatives release a field from direct electoral accountability, the people themselves need to have a say. The response to "no regulation without representation" has to be for the people's elected representatives to fulfill their own role as higher-level trustees, setting clear objectives and constraints. Only then can independent-agency policy makers themselves be trustees for a delegated public good (chapter 11).

Once established, independent, unelected policy makers need to be deliberative and transparent, so that the people and their politicians can see and debate the results of their handiwork. And there must be accountability for their stewardship of the regime, informing decisions to sustain or amend it.

However tight the drafting of an agency's objective, powers, and constraints, two issues cannot be ducked. Agency policy makers must enunciate the operating principles that guide their exercise of discretion, so that policy is systematic and can be seen to be so. The debates in the US Congress over recent years about whether or not to legislate a "monetary policy rule" for the Federal Reserve are, in essence, about how to achieve that. But this design precept is no less relevant to other regulatory agencies, whose rules should not only be defensible one-by-one but comprise a coherent whole (chapters 6, 11, and 15). Independent agencies should embrace this, by acting as *legitimacy seekers*.

Vitally, but controversially, it should also be clear what happens when an insulated agency reaches the boundaries of its mandate but could help contain a crisis by going into uncharted territory. The merits of systematic policy, on the one hand, and the need for flexibility in a crisis, on the other, can produce an awkward tension during emergencies and their aftermath. How can credible commitment be twinned with the inventiveness inherent in emergency actions? And how could we leave it to unelected officials to determine whether to set aside their statutory constraints? We answer that they should not; but the issue, which has caused no little hand wringing among political theorists, recurs throughout the book (chapters 11, 16, and 23).

Implications

Much of what I've said so far applies across many parts of the administrative state, running well beyond central banking. We will see, for example, that the objectives of competition policy have too often been in the hands of technocrats and judges, who twice in the second half of the twentieth century completely reconstructed high policy without any change in the governing legislation. However effective or grounded in economics, a democratic deficit more than looms here (chapters 3, 7, and 14).

More topically, following the Great Financial Crisis, if securities regulators are to be involved in preserving financial stability, as is almost unavoidable given the importance of capital markets, some of them need greater independence, including somewhat greater budgetary autonomy, so that they are not deterred from trying to contain politically popular but unsustainable booms. Alternatively, their mandates could be narrowed, concentrating on the imperative of ensuring good and honest conduct in financial markets, with jurisdiction over systemic safety and soundness transferred elsewhere (chapters 7 and 21).

RECONFIGURING THE POSTCRISIS MULTIPLE-MISSION CENTRAL BANKS: TRUSTEES, NOT GUARDIANS

The Principles for Delegation are especially important for central banks, which have emerged as institutions standing at the intersection of three crucial manifestations of the modern administrative state. Through balance-sheet operations (quantitative and credit easing) that alter the size and shape of the state's consolidated balance sheet, they are part of the *fiscal state*. Through their role as the lender of last resort, they are part of the *emergency state*. And, as we have seen, they are now unequivocally part of the *regulatory state*. Arguably, no other unelected policy makers occupy a similar position.

Each of their functions—monetary policy, stability policy, bank regulation, emergency liquidity provision—should be shaped and constrained by a regime of the kind already sketched. But, in addition, the regimes cannot be segmented, falling to organizational or cultural silos. And we need to be confident that central bank leaders and their staff take seriously every one of their various functions rather than prioritizing the area that is most salient with the public and politicians or that gives them the greatest personal reward in terms of professional prestige. If that risk were to crystallize, the incentives of ambitious staffers would be to get into the sexiest area, depleting the human capital available to the other functions, even in an emergency. That is, plausibly, what happened at some central banks in the run up to the 2007–2008 crisis, with monetary policy prioritized over regulatory responsibilities.

One part of the solution is to frame the purposes of central banking in a joined-up way, expressing them in terms of a broadly defined *monetary-system stability* that comprises both price stability and banking stability. Rather than anything more micro, such as the quality of services provided to consumers and customers, the primary objective of central banks' involvement in regulation thus becomes system stability, with the desired degree of resilience determined (or, perhaps more realistically, blessed) by elected representatives. That mission has to be part of a *Money-Credit Constitution* that incorporates constraints both on the banking system and on central banks themselves (chapter 20).

Organizationally, multiple responsibilities should be delegated to a single institution only if the agency operates with separate (but overlapping) policy committees. That makes it more likely that each area of responsibility will get the attention and effort it deserves (chapters 6, 11, and 20).

Few central banks would be left untouched by those various precepts. But even the Principles for Delegation cannot easily address the problem of central banks having become the *Only Game in Town*. There exists a strategic tension between central banks and fiscal policy makers, who face few constraints on their powers but carry equally few legal obligations. In consequence, when elected politicians weigh short-term political expediency against taking action themselves to contain a crisis or bring about economic recovery, they can sit on their hands safe in the knowledge that their central bank will be obliged under its mandate to try to provide a solution.

Here, then, is the grand dilemma of central banking. On the one hand, in the interest of democratic legitimacy or, more prosaically, in order to avoid accusations that they have overreached themselves, central bankers need clear regimes, with monitorable objectives for all of their functions. On the other hand, the articulation of such regimes risks exacerbating a perverse strategic interaction with the fiscal authorities, leaving them as the only game in town and thus as potentially overmighty citizens of whom too much is expected (chapter 24).

There is no off-the-shelf solution. A central bank regime for all seasons cannot be designed without a good fiscal constitution existing too: setting boundaries to the authority of central banks needs to take account of what is on the other side of the border. Solving that problem is likely to take a generation. In the meantime, the central bankers themselves need to resist pressures to encroach too far into fiscal territory. To that end, a more explicit *Fiscal Carve-Out,* determined or blessed by legislators, is needed as part of the Money-Credit Constitution that I recommend each advanced-economy democracy develop (chapter 22).

A FOURTH BRANCH OF GOVERNMENT?

At the constitutional level, it is sometimes suggested that independent agencies, and especially central banks, comprise a fourth branch of government coequal with the legislature, elected executive, and high judiciary.[18] I conclude that this is largely a mistake. Even though insulated

[18] Throughout, the terms *elected executive* and *elected executive branch* are used for both presidential and parliamentary systems. Although the executive is not directly elected as such in parliamentary systems, executive government is clearly distinguishable from the legislature. What matters here is that in both systems the heads of the executive were elected by the people (either directly into office or into the legislature on a clear understanding that they would lead the government). That distinguishes them from the unelected leaders of independent agencies.

from day-to-day politics, they are typically subordinate to each of those branches. Agency actions can be challenged in the courts; their rules can be overridden by the legislature; an independence law can be reformed or repealed (chapters 8, 10, and 12).

Typically, that is. One central bank, the ECB, is something of an exception, its independence enshrined in a treaty that can be changed only with unanimity among the European Union's member states, and its balance sheet having been deployed in extremis to preserve the very existence of the currency area. Accusations of "autocratic hegemony," lodged at ECB president Mario Draghi's April 2015 press conference, and quoted at the chapter head, don't often get leveled at independent agencies in functioning democracies. For the moment, the ECB finds itself acting as a *guardian* of the EU project itself. Short of constitutional reform, part of the answer has to be for the European Parliament to do more to enhance the significance of its oversight hearings. Another would be for the ECB to be proactive in seeking broad support from euro-area heads of government when embarking upon truly novel innovations that lie within the legal bounds of its mandate and statutes but beyond familiar conceptions of central banking.

The ECB is sui generis since it serves an incomplete constitutional project. That cannot be said of a different type of agency for which the "fourth branch" label cannot easily be rejected: one directed to underpinning the *institutions of democracy itself*. Electoral commissions, which might, for example, set electoral-district boundaries addressing the gerrymandering problem or bar a prime minister from owning the media or set constraints on campaign finance, are harder to fit underneath the three-branch framework bequeathed by Montesquieu and Madison. They are more prevalent in new democracies than older ones, and bear a family resemblance to the "integrity branch" advocated by Dr. Sun Yat Sen in his model constitution for early-twentieth-century China. They too are, perhaps, better thought of as guardians rather than trustees. Debate about that kind of insulated-agency function has hardly begun in most countries and is no more than encouraged here (chapter 12).

In the meantime, there is much to be done. Whatever the local merits of "technocratic meritocracy" in the East, for us democratic legitimacy is a precious and vital touchstone as the state's structure evolves. The Principles for Delegation are designed to help maintain it. In spirit, they are *constitutionalist*, understood as meaning norms and conventions, sometimes entrenched in a basic law, sometimes deeply embedded in political culture, that set rules of the game for the establishment, structure, and operation of government (chapter 12).

An audit of agencies against the Principles (or something like them) would be no bad thing. The book attempts no more than an initial sketch of such an endeavor. Notwithstanding stark differences among the constitutional conventions and political norms of the major democracies and the contrasting incentives they create around whether and how to delegate, even a brief survey of the administrative state in the United States, Europe, and a handful of other democracies finds nearly all of them wanting to a greater or lesser extent. Either lacking coherence or risking the emergence of unchecked unelected power, words like "expedient" and "ad hoc" variously come to mind (chapter 7 and part III).

Over recent decades, economists have increasingly emphasized the importance of incentive compatibility in designing institutions. If there is a single high-level message in this book, it is that for governmental institutions to be durable, serving the needs of the people over time, their construction must also be *values-compatible*. Where the incentives inscribed into institutional design are at odds with a society's political values, the likely outcome is that in the short-to-medium run incentives dominate, but that in the medium-to-longer run corrosive cynicism and even distrust of government develops. The book is an exploration of what could be done to address the risks that flawed delegations might have been generating in the US, the UK, and parts of Continental Europe. A healthy, legitimate state is *incentives-values-compatible*.

THE RANGE AND STRUCTURE OF THE BOOK

Since the book ranges widely across public policy areas, geographies, and disciplines, it is worth saying that it is *not* about the legitimacy of specific agencies or the merits of their different styles of regulatory intervention. Nor, bigger picture, is it an exploration of whether the modern state is compromised by the way its tentacles reach into so many parts of our everyday lives and how that has gradually transformed who we are, individually and collectively. It does not remotely have the range, let alone ambition, of the work of the Continental European public intellectuals who have taken on that vast subject, perhaps most famously Michel Foucault and Juergen Habermas. Nor is it a broad examination of shortcomings in the modern democratic state of the kind recently pursued by Francis Fukuyama.[19] Rather, it looks at just one corner of the state apparatus and its position in democratic society—independent agencies—albeit one of great importance for understanding the role and legitimacy of the state more generally.

As will become apparent, for my taste too many discussions of the regulatory state, perhaps especially in Europe, are about "independence *versus* accountability" or about combining "accountability *and* control," often stretching the concept of accountability until those supposed antonyms can coexist.[20] To find our way through this, we have to think about what democratic legitimacy entails, but not about whether insulated agencies can help to prop up or restore the ailing authority of a state. So, to add to the earlier self-denials, the book does not engage with whether, for example, the Banca d'Italia, in providing two presidents, two prime ministers, four finance ministers, and a foreign minister for the Italian Republic during difficult periods in the twentieth and early twenty-first centuries, was conferring authority on the Italian state or vice versa. And I am not going to explore whether the transition to democracy in emerging-market and developing countries can depend on a technocratic elite, notably in the judiciary and the central bank. Our concern is whether the legitimacy of a *healthy* democratic state can somehow be bestowed on its central bank and other independent agencies, not whether they can act as some kind of deus ex machina for the state itself.

The book has four parts, covering welfare, values, incentives, and power. The first three parts are about independent agencies in general, illustrated by examples from a range of fields, not only central banking, whereas the fourth is specifically about the postcrisis central banks.

Part I opens with an account of how the general problem of the administrative state manifests itself on either side of the Atlantic, before

[19] Fukuyama, *Origins of Political Order* and *Political Decay*.

[20] For an attempt to puncture a European debate on reconciling independence with accountability, see Busuioc, "Accountability, Control and Independence."

going on to review its purposes, modes of operation, and structure. That provides background to the general design principles for *whether* and *how* to delegate power to "truly" independent agencies, the Principles for Delegation. In a sketch of how they might affect various parts of the administrative state, questions are raised about competition authorities and, in particular, securities market regulators. The style of part I is technocratic, drawing on the economics of market failure and government failure. It is about welfare.

Part II marks a shift in both style and substance. Partly an attempt to stimulate work by others, it explores whether the Principles stack up under different conceptions of our politics (broadly, liberal democracy). This necessitates some examination of the burden of legitimacy, exploring what is entailed by the values associated with the rule of law, constitutional government, the separation of powers, and democracy. The core of this part of the book is what I call a *robustness test* of the Principle*s*: different people place their own weights on our core values, and so expect different things of independent-agency regimes if they are to accept or tolerate them. The result is some elaboration of part I's statement of the Principles, of which probably the most important is the vital need for public debate on purposes and objectives. The discipline most relevant to part II is political theory. It is about values.

Part III takes the Principles back to the real world, looking at how they would or could fit with the different constitutional structures, legal systems, norms, and traditions of the US, the UK, the EU, France, and Germany. I was surprised, but not all readers will be, by the gap between values and incentives-driven reality in nearly all of those jurisdictions. One conclusion is that a jurisdiction should have no more IA regimes than its legislature is capable of overseeing. Part III draws on political science and public law. It is about incentives.

Part IV, which is about power, gets back to the central banks, addressing the big questions posed in this introduction. Has it become too easy for politicians to rely on the central banks to cure or ameliorate the global economy's problems? Led, as they are, by powerful, independent, and unelected policy makers, is their authority tainted by a democratic deficit? Are they, in short, *overmighty citizens,* and what is to be done if they are?

Earlier, in part II, I argue that, in a system of *fiat* money, monetary independence is (normatively) necessary given the separation of powers between executive government and legislature. But that rarely, if ever, explains why central banks were granted independence in practice, so I begin part IV with a brief account of some of the real-world forces behind independence. That leads to a discussion of how, up to the Great Financial Crisis, the desire of central bankers to build credibility through transparency fortuitously helped to underpin their legitimacy.

The ground having been laid, I then assess how practice in the four related spheres delegated to central banks in many jurisdictions—monetary policy, prudential policy, credit policy, and liquidity policy—measures up under the Principles, and what needs to be done. As it turns out, the answers are "not well" and, therefore, "quite a lot." The overall conclusion is that keeping central banks out of these areas is unrealistic, but that their roles should be constrained to go no wider than is necessary to preserve stability in the monetary system. Special care needs to be taken in framing their role in emergencies, given that they are technically capable of doing the job of elected governments but should not do so.

As the book approaches its close, it returns to the judiciary and the military, where our societies rely on virtues of self-restraint and reserve shaped by careful institutional design. We need similar values embedded in an ethic of central banking. If that were to become part of what is expected by peers and public, self-restraint could be self-serving, and so realistic, for unelected power holders seeking public esteem. The concluding chapter includes a summary of the book's proposals for IA regimes in general and central banks in particular.

The book climbs from the practical (part I) to the elevation of our values (part II) and then gradually descends through the jurisdictional comparisons of part III to the central banking specificity of part IV. Some readers might want to jump straight from part I to part IV, others focusing more on either part II or part III. I hope, however, that some will see how the whole fits together and builds, and why the more general questions about values and forms of government are practically relevant to ensuring the durability of some of our core institutions. To hold otherwise would, as I see it, be to put all of our eggs in incentive compatibility alone, trusting in our values—of the rule of law, constitutionalism, and democracy—to evolve and morph with the dictates of expedience. The emerging clash between populist-style politics and technocratic administration suggests that might be a mistake.

The core of the analysis is about domestic policy making in sovereign democratic nations. In fact, however, as already flagged, a good deal of modern policy making is international. I weave in some comments about this as we go, but a robust bridge from the Principles to the legitimacy of international policy making would require further elaboration.

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