

**Retrieving the Meaning of Accountability
in Financial Market Regulation**

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Abstract: Building on Raymond Williams' approach to analyzing "keywords," we seek to further explore the pervasive yet ambiguous concept of accountability through an examination of its use in discourses surrounding the recent global financial market crisis. We pay particular attention to the term's use as both "cause of" and "cure for" the current crisis, and relate this to the various strategies of reform that emerge from the ongoing rhetoric and analyses. In the process we develop some frameworks for future extension of this analysis.

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Introduction: Accountability as “Keyword”

In 1976, Raymond Williams published a book that reflected an interest he first developed upon returning to civilian life after World War II. His extended absence from the everyday discussions in academe had sensitized him to the general use of certain words and phrases, especially when the topic was related to his interests in “culture and society.” He began to think of these words and phrases as more than merely terms reflecting some “meaning” that can be defined through its complex and sometimes divergent etymological roots. They were meaningful in a broader and more contextualized sense. Williams collected relevant examples for the usage of a hundred or so words, and titled the volume *Keywords: A Vocabulary of Culture and Society*. The rationale for inclusion centered on the fact that each term “has at some time, in the course of some argument, virtually forced itself on my attention because the problems of its meanings seemed to me inextricably bound up with the problems it was used to discuss” (Williams 1985, p. 15).

For Williams, keywords have two major (and intertwined) functional characteristics. First, they are “significant, binding” terms that are “indicative” of the meanings and interpretations of the discourse; simultaneously these same words were “elements of the problems” the very discourse they addressed had generated (Williams 1985, p. 15-16). He observed that we typically become aware of keywords only after the discourse in which they played such a significant role had passed.¹ But what if we were to become more “aware” of the function and purpose of keywords in the creation and justification of ongoing discourse within society? That was Williams’ project

¹ He offered the example of the word “sentiment,” a phrase that played a central role in discussions of society and culture in the 18th century, but which now has a much less significant status in the discourse,

in *Keywords*, where he focused attention on some of those words which are at the heart of our contemporary discussion of culture and society; and in his two editions (the second was initially published in 1983) these included terms such as literature, unconscious, evolution, liberal, empirical, equality, etc.

Viewed through the lens of political science and related studies, Williams' list of "culture and society" keywords seem remarkably "politicized." It contained keywords that would certainly be core to our discipline's more narrowly defined discourse community, reflecting the fact that concepts such "democracy", "equality", "class", and "bureaucracy" play as much a role in our "everyday general discussions" about culture and society as about politics and governance in general. Were we to develop a more focused list used to discuss politics and governance today, we would no doubt find "accountability" has a prominent place.

Williams' "keyword" approach to the creation and legitimatization of everyday discourses has special meaning in the politics and governance arena. Words and phrases here do more than merely "represent" and/or "shape" meaningful discussions. In the politics and governance arena, words are linked to power relationships. As such they shape policy as well as conversations. They are part of what Foucault termed our "governmentality" -- that is, the rationality we apply to our lives that allows or facilitates our governing of ourselves and others (see Rose 2000; Rose and Miller 1992; Burchell et al. 1991). Moreover, the difficulties we face in divining an exact meaning for such keywords serves an exceptionally useful purpose within policy settings. Creative ambiguity not only masks divisions it also facilitates the transformation of the symbolic

into the substantive precisely because the term taps into an intellectual zeitgeist. Thus, in the discourse over regulatory theory and practice we have often moved progressively through solutions based on the practical and normative advantages of “governance”, “responsibility”, “accountability” and “integrity” without stopping to examine what these nebulous cluster concepts actually mean in practice. Indeed the promiscuity of meaning allows for rhetorical commitment to trump substantive meaning in a range of policy settings, most significantly in the regulation of capital markets.

The “keyword” stature of accountability has been most evident in the rhetoric surrounding debates about the recent collapse of global financial markets. Explanations for the crisis have ranged from the narrowly technical to the broadly systemic.² Much of the policy debate has focused on the role of “governance” as both the source of -- and solution to -- the market’s problems. It is in the context of that discussion that “accountability” plays a central role, and it is within the scholarly literature and political rhetoric that we will find the active meanings for this keyword. Uncovering the form and purpose of those active meanings requires that we overcome the iconic status of keywords as affective or emotional symbols -- words that are associated with pandering to a range of human reactions, from quiescence to arousal. This characteristic is significant in determining the power of “accountability.” It generates confidence in mechanisms of control that may, in fact, be illusory. The process of creative ambiguity referred to above reinforces both its power and its problematic nature, as the important roles that accountability

² See the recent collection of articles focused mainly on the causes of the 2008 crisis in the June 2009 issue of Critical Review, esp. Bhidé 2009; Acharya and Richardson 2009; Friedman 2009; Jablecki and Mateusz 2009; Stiglitz 2009; Wallison 2009b, 2009a; White 2009; also see Posner 2009 and the online and ongoing analyses by Paul Krugman, Simon Johnson and others.

plays in political and policy discourses is obfuscated. We attempt to offset that problem by offering a framework for pursuing our analysis of accountability-as-keyword.

Accountability: A Keyword in Two Dimensions

Figure 1 posits two critical dimensions accountability plays in the discourse surrounding the financial markets crisis. Each reflects significant but relatively obscure distinctions. Along one dimension, accountability is often noted as either the cause and/or cure for the market's problems. As a causal factor, it is the absence or failure of effective accountability that provides the focus of the discourse. In contrast, accountability is also central to many discussions about how to deal with specific failures,³ or as a counter to the overall conditions that caused the crisis.⁴

The second dimension highlights another, often overlooked, distinction within the general discourse in which accountability is referred to in either mechanistic or normative terms. In the former sense, being accountable means being subject to those mechanisms that are designed to impose some form of control or guidance. It means being answerable, liable, legally obligated, etc. Alternatively, accountability is also treated as a manifestation of the normative condition of "being accountable" -- as something an agent is or ought to be. Here we associate accountability with the concepts of integrity, trustworthiness, blameworthiness, etc. In Figure 1 we note this

³ For example, manifestations of malfeasance and misfeasance such as deceptive or misleading conduct, unethical conduct linked to defective internal corporate codes of conduct or governance arrangements and/or the operation of the external regulatory architecture.

⁴ E.g., an emphasis on how to respond to the danger posed by technical compliance within specific epistemic communities, such as lawyers, auditors, rating agency professionals, investment bankers or other groupings that play a gate-keeping function in contemporary markets (see Coffee 2007)

distinction as accountability-as-mechanism in contrast to accountability-as-[normative]-setting.

		Focus on:	
Perspective:	Cause	Cure	
Accountability-as-Mechanism (i.e., control)	Failure of instrument	Reform, replace, repair the instrument	
Accountability-as-Setting (i.e., normative infrastructure)	Absence or collapse of norms, mores, standards	Reestablishing, rebuilding moral community based on effective norms/standards	
Figure 1: Accountability’s Discursive Roles			

We can test the relevance of this framing of accountability’s “active meanings” by examining how that keyword has been applied in the discourse emerging out of the recent global financial crisis.

In the general “blame game” that has characterized much of the debate over the collapse of global financial markets considerable attention has been paid to the failure of accountability within specific firms or institutions. Implied in this analysis has been one of two assumptions: those who ought to have been in control were not, and those who should have known better did not. The first implies an accountability-as-mechanisms approach, albeit one in which the emphasis on culpability is both wide-ranging and dependent on the particular reform agenda proposed. At times these interpretations focus on the lack of internal controls that would have

prevented some of the most flagrant risk taking; at other times they focus on the failure of external control mechanisms (i.e., regulatory agents and agencies) to do their job.

The Obama administration's diagnosis, for example, combines both, citing the accountability deficit as a key common factor. Announcing a blueprint for more accountable regulatory reform (to be discussed in detail below), President Obama commented on 17 June of 2009: "The actions of many firms escaped scrutiny. In some cases, the dealings of these institutions were so complex and opaque that few inside or outside these companies understood what was happening. Where there were gaps in the rules, regulators lacked the authority to take action. Where there were overlaps, regulators lacked accountability for their inaction."

The European Commissioner for Internal Markets, Charlie McCreevy, by contrast, refers to the consequences of imbibing with abandon a toxic cocktail of "stupidity, ignorance and misplaced optimism" (O'Brien 2009, p. 33). For Commissioner McCreevy, the failure of internal risk management systems derives from the fact that senior corporate executives "of large financial institutions have admitted in their more candid moments that they did not understand many of the new products that their firms were designing, underwriting and trading" (O'Brien 2009, p. 33).

At practitioner level, bankers in both London and New York expressed regret for what has happened but deny personal responsibility. In the United Kingdom, bankers testifying before the influential Treasury Select Committee failed to provide a convincing explanation for their

failures. At Halifax Bank of Scotland (HBOS), both the former chairman and the chief executive had little banking experience. They testified that this was unnecessary because they were surrounded by people with broad experience, a defense undermined by evidence from the bank's former head of risk and compliance. The executive, Paul Moore, noted that "my personal experience of being on the inside as a risk and compliance manager has shown me is that, whatever the very specific, final and direct causes of the financial crisis, I strongly believe that the real underlying cause of all of the problems was simply this – a total failure of all key aspects of governance" (O'Brien 2009, p. 36). Similarly, in the United States, the multifaceted ethical problems besetting Citigroup are talismanic of corporate failure (for discussion, see O'Brien 2009, pp. 42-44).

The major alternative to the blame game approach has been to focus on "systemic" causes for the crisis. Here the ambiguity over the nature of accountability plays a secondary but still significant role in the framing of the debate. On the one hand, to see the cause of the collapse as systemic is to imply that there is no specific blame to be apportioned -- that no one agent or group of agents can really be held to account for institutional-level faults. This was indeed the defense offered at congressional and parliamentary hearings. On the other hand, systemic defects also reflect the fact that flaws embedded in the very structure of capitalism were reinforced. It is not so much that the crisis was a result of unbridled greed; rather, it resulted from structural changes to the operation of the market that lowered the material and reputational opportunity costs for engaging in risky practices that proved unsustainable and indefensible in the long run. In both cases accountability is brought into the narrative as part of the "system." In the former, accountability

is used as a defense (i.e. the crisis was the result of a confluence of factors in which none was immediately culpable). It is a perspective that allows those corporate and regulatory actors who face accusations of blameworthiness for the crisis to defend themselves on grounds that the acts they engaged in were not merely legal at the time, but also widely accepted and at times even rewarded. In the second, it serves an offensive function (i.e. the result of the degradation of embedded norms, values and standards, which as a consequence of compartmentalized views of responsibility were present only in symbolic terms).

Here Citigroup provides a telling example. Until his departure from the organization, Robert Rubin denied any responsibility for either the failings within the conglomerate or within the integrated banking model he helped create and sustain, as both a leading practitioner and as a policymaker, serving in the Clinton administration as treasury Secretary. In an interview with the *New York Times* in 2008 Rubin argued, “in hindsight there are a lot of things we’d do differently. But in the context of the facts as I knew them and my role [as Vice Chairman of Citigroup] I’m inclined to think probably not.”⁵

The issue is not that there is anything inherently unethical or illegal about securitization, rather the individual banks and regulatory authorities did little to stop the bubble inflating and in fact may have encouraged it (for discussions of the role of Fannie Mae and Freddie Mac, see O’Brien 2009, pp. 79-81; Shiller 2008, p. 53). Moreover, some senior chief executives blamed ex post

⁵ In this, Rubin is reprising a argument made in the aftermath of the conflicts of interest investigations that accompanied the accounting scandals at the turn of the millennium. In his autobiography, Rubin claimed “the great bull market masked many sins, or created powerful incentives not to dwell on problems when all seemed to be going well – a natural human inclination” (Rubin 2003, p. 337); for an opposing perspective from within the Clinton administration of the risks, see Stiglitz 2003, pp. 159-162).

facto government intervention as both an accelerant and as evidence that they should not be held responsible. In hindsight, most analysts now believe the decision to allow Lehman Brothers to fail turned the sub-prime housing scandal into a major global catastrophe. Belated recognition of market panic forced the US federal authorities into a series of immediate policy reversals. In such circumstances, it was not surprising that the Lehman CEO, Richard Fuld, would be unapologetic. In written testimony to the House Oversight and Government Reform Committee he maintained that Lehman Brothers, as the smallest investment bank, could not withstand a “financial tsunami” that had generated “a storm of fear” (US Congress 2008c).⁶ No one institution could be held responsible for the unintended consequences of belatedly recognized deleterious market and policy choices. Rather, Lehman was “overwhelmed, others were overwhelmed and still other institutions would have been overwhelmed had the government not stepped in to save them”(US Congress 2008c). Accordingly, Lehman was an innocent victim of a collective failure to foresee a once in the lifetime crisis.

This argument failed to impress the US House of Representatives Committee on Oversight and Government Reform. Representative Waxman, chair of that body, castigated Lehman Brothers as “a company in which there was no accountability for failure.” (US Congress 2008a). This was true, but it was also true that there was very little accountability within any major institutional actor on Wall Street and the City of London. The collapse of Lehman Brothers, the forced sale of Bear Stearns and Merrill Lynch and the calamitous failure of Royal Bank of Scotland and HBOS reflected grossly deficient internal risk management systems, cosmetic compliance, poor ethical

⁶This choice of metaphor was also deployed by Alan Greenspan to deflect responsibility two weeks later; see (US Congress 2008b).

training and exceptionally weak external oversight at both individual firm and wider systemic level.⁷ This failure destroyed not only the corporate reputation of many storied firms and individual financiers but also the trust on which a credible banking system is founded. It is important to emphasize that while there was undoubtedly criminal activity on the margins – such as Bernie Madoff’s Ponzi-style investment scam – the vast majority of the crisis can be traced to collective misjudgment as to the capacity of markets to price information effectively and self-correcting.

From this perspective, the critical significance of the global financial crisis lies in the fact that the norms and values of the banking community disappeared or were insufficient (O’Brien 2009). As the Nobel Laureate Joseph Stiglitz put it in excoriating evidence to Congress, “securitization was based on the premise that a fool was born every minute. Globalizaion meant there was a global landscape on which they could search for these fools and they found them everywhere” (US Congress 2008d). These causal narratives were also mirrored in the calls for reform. In response to the idea that the industry’s norms and values did not foster appropriate behavior, there was a general call for reforms that would enhance accountable actions. This was most notably reflected in the political rhetoric of national leaders, but it reflects as well a long-standing view that markets are indeed civilizing institutions with moral foundations ((Hirschman 1982); cf (Fourcade and Healy 2007; Boltanski and Chiapello 2005)). Financial markets would

⁷ For wider problems and lack of oversight on Wall Street, see Morris 2008, Soros 2008; for lack of political oversight in the United States, more generally, see Milhaupt and Pistor 2008, pp. 47-66; also Galbraith 2008. For problems in the British banking sector, see UK Parliament 2009. Paul Moore, the author of that Memorandum, is former head of regulatory risk at HBOS. He argued (at section 4.3) that there was a need for more detailed policy guidance from the FSA on the form and content of ethics training within banking corporations. He says it is essential to introduce “a more detailed policy and rules which allows the FSA to test the cultural environment of organizations they are supervising e.g. tri-annual staff and customer survey. There is no doubt that you can have the best governance processes in the world but if they are carried out in a culture of greed, unethical behavior and indisposition to challenge, they will fail. I would now propose *mandatory* (emphasis in original) ethics training for all senior managers and a system of monitoring the ethical considerations of key policy and strategy decisions within the supervised firms.”

operate well, it is assumed, if only the trust and moral commitment to responsible action can be assured (see Stiglitz 2001). This, in turn, may require reforms that would promote more accountable behavior. Following this narrative path, President Obama in his Inaugural Address emphasized the need for the inculcation of a new “ethics of responsibility.” This echoes earlier calls by the British Prime Minister, Gordon Brown (2008), for moral restraint within financial centers (if only for instrumental reasons). Beyond London and New York, however, the extent to which the crisis metastasized with such ferocity has substantially strengthened calls for an integrated response to nullify what the Australian Prime Minister, Kevin Rudd (2008), has called “extreme capitalism.” Although many would disagree with the polemical framing (or its veracity in terms of the Australian political and economic marketplace), there can be no question that we have reached an inflection point for both the theory and practice of regulation, in particular what constitutes or should constitute accountable governance.

Thus, the rhetoric of reform seems focused on the need for changes in the normative infrastructure to enhance the responsibility, ethics and integrity in the governance of the financial markets. But when the specific proposals for reform are examined, there is little doubt that the approach is to establish or revitalize the mechanisms of accountability -- mainly regulatory -- that been at the heart of market reform agendas for decades. The reform of the US regulatory system is a case in point, On June 17, 2009 the White House officially launched its proposals for reforming the federal government's approach to reform oversight of the banking industry and financial markets (US Department of the Treasury 2009). It was billed as the most significant overhaul of any US regulatory system in nearly eighty years. It involved structural and

jurisdictional changes that (if passed and implemented) would, it was claimed, transform the way both government and the entire financial sector conducted business in the US and globally. Reflecting the strategic and politically pragmatic orientation of the Obama Administration, the concerns and/or displeasure of potential opponents from most quarters had been considered, and few if any of the main players complained that they had not been consulted or their ideas not given serious consideration. President Obama made clear that a normative dimension needed to be considered and rendered operational:

There's always been a tension between those who place their faith in the invisible hand of the marketplace and those who place more trust in the guiding hand of the government — and that tension isn't a bad thing. It gives rise to healthy debates and creates a dynamism that makes it possible for us to adapt and grow. For we know that markets are not an unalloyed force for either good or for ill. In many ways, our financial system reflects us. In the aggregate of countless independent decisions, we see the potential for creativity — and the potential for abuse. We see the capacity for innovations that make our economy stronger — and for innovations that exploit our economy's weaknesses. We are called upon to put in place those reforms that allow our best qualities to flourish — while keeping those worst traits in check. We're called upon to recognize that the free market is the most powerful generative force for our prosperity — but it is not a free license to ignore the consequences of our actions.

Although many of the specifics of the Obama plan for reform are likely to be modified as proposals wend their way through the policy-making process, few doubt or challenge the basic stated premise of the effort: the regulatory system focused on the financial sector in the US is broken to the extent that it requires major repairs. It demands a regulatory system overhaul that will prevent a recurrence of the global financial crisis and the impact of that on the operation of credit markets, which, in turn, converted an emerging recession into what many analysts term an economic depression.⁸ Despite the alteration of the US regulatory regime that might emerge from

⁸At the start of the crisis there was considerable debate about whether the US economy was technically in a “recession” -- a debate nurtured by the rather formal process put in place for declaring that condition. Once that hurdle was completed, the term “depression” was put into play by analysts and commentators. See The Economist 2009; also Posner 2009.

these proposals – arguably the reform suggested is less radical than that proposed by the Bush administration in a Treasury blueprint published in 2008 – there is little in the details that addresses the need for changes in the normative setting of corporate governance in the banking industry to accompany the soaring rhetoric.

The stress on mechanistic “cures” to solve the accountability problem is also evident globally. There is recognition that reform requires much greater coordination and integration of accountability at the global level, if only for protection of national self-interest. The G-20 has begun to lay the foundations for a new international regulatory architecture covering all systemically important financial institutions and markets (including, significantly, hedge funds which, through judicious structuring, have to date been effectively unregulated) as well as systemically important financial instruments (such as securitization and credit derivatives). The European Union has proposed the establishment of the European Systemic Risk Council, headed by the president of the European Central Bank, and much greater coordination of securities market regulators through the formation of a European System of Financial Supervisors. The United Kingdom, which has gone further than most in proposing limitations to executive pay, have put a sunset clause in its operation, mainly because of fear that global cohesiveness will not gel. As Friedrich Hayek (1944, p. 177), the intellectual mentor of many who believe in the power of free markets, once commented, “we shall not grow wiser before we learn that much of what we have done was very foolish.” Financial regulation remains an exceptionally foolish arena.

The Underlying “Promises” and Strategies of Accountability

What accounts for this gap between the rhetoric and proposals for reform of the financial markets? We believe the answer is found in the treatment accountability receives as a keyword in our discourse on policy and governance. The discourse is framed by a powerful set of beliefs cultivated over decades in what can best be described as the “promises of accountability.” We stress the term “belief” advisedly, for there is a tendency to associate beliefs with unsubstantiated but firmly held opinions (i.e., “ideologies” in the worse sense of that term). The promises of accountability are beliefs in the sense of widely held assumptions that seem rooted in logic and empirical observation -- more like the “folk wisdom” of those concerned with reforming governance.

The promises that emerge from governance reforms have typically been of two general types: accountability as a means to some desirable ends (i.e. accountability valued for its instrumental functionality), and accountability as a “good” unto itself (i.e., intrinsically valued). Instrumentally, accountability promises to enhance control over resources (e.g., through accounting and reporting); to assure proper behavior and actions by agents (e.g., through hierarchical governance, standard operating procedures); and to promote and enhance improved performance (e.g., through evaluation, pay-for-performance contracts). Intrinsically, rendering an agent accountable promises to enhance their integrity (e.g, trustworthiness), while promoting the legitimacy of the process and the fairness and justness of the decisions generated by the agency, firm or market. This is a much more nuanced approach to corporate governance and regulatory design that it honored, primarily, in rhetorical rather substantive terms. The rhetoric creates the

illusion of substantive reform but the actual policy changes inhibit rather than embed the normative changes required. The strategic approaches associated with the pervasive use of accountability in dealing with the financial crisis provide still more insights into our subject. Most analyses of accountability-based policies have been confined to articulating answers to two questions: to whom is the accountee accountable, and for what? That perspective does not do justice to the wide spectrum of actions and issues related to accountability's role in governance today. It is essential to differentiate between warranted and unwarranted assumptions. The trajectory of corporate governance reform and capital market disclosure (usually in the aftermath of scandal) suggests the creation of ostensibly more stringent rules or more granular articulation of principles on their own will be sufficient in ensuring greater integrity. The passage of Sarbanes-Oxley in the United States and the various iterations of the Combined Code on corporate governance in the United Kingdom, based on "comply or explain" principles are indicative of the process.

While often a convenient approach, efforts to reduce accountability to the governance and policing of principal-agent relationships (through either prescriptive rules or agreed, if nebulous, principles) too narrowly defines both the functions and forms of accountability as it operates within real work governance systems. The discourse of reform involving accountability may, in very general terms, describe a principal-agent relationship, but more often proposals (and the debates associated with them) end up focused on two major issues: (1) how specific or detailed in the activity or behavior being subject to account-giving and (2) how much autonomy does the accountee have in the fulfillment of his or her required behavior (see Figure 2). In the financial

services market, for example, there are state, national and regional regulatory regimes where banks falling under certain jurisdictions are obligated to issue intermittent but time-specific (e.g., quarterly, annually) reports to oversight agencies or make public statements that are to include detailed information that is standardized by rule or agreement. As a strategic approach, this form of accountability integrates accountable governance with the very definition of “doing business,” and failure to perform the required account-giving frequently requires sanctions. We consider these “performative” strategies of accountable governance.

Performative forms of accountability are common place in even the most mundane regulatory contexts (e.g., Bardach & Kagan 2002), but they also play major and more visible roles in broader markets as well. Crucially, it can be empirically demonstrated that the capacity of regulatory agencies to engage in performative exercises is usually time-limited to a period in the immediate aftermath of scandal, where political appetite for enforcement trumps concern that excessive regulation may curb innovation (O’Brien 2007). Consider, for example, the pervasive use of negotiated prosecutions in the aftermath of the Enron and related accounting scandals in which invasive and ongoing external monitoring of compliance programs was conceded by individual corporations in exchange for an agreement not to proceed with civil or criminal prosecution. These are examples of both the power and limitations of such a performative-based approach (O’Brien 2009), pp. 48-56). Its efficacy was contingent on acquiescence by all concerned to the legitimacy of the mechanism. Injudicious use and a changed business and

political climate demonstrated all too clearly the contingent and, therefore, sub-optimal nature of the mechanism.⁹

		Specificity of accountable activity	
		Low	High
Autonomy of accountable agent	High	<p>Constitutive Creation of “accountable space” of internalized norms and standards</p>	<p>Managerial Set “what” agent is accountable for (objective or standard), allow agent to determine “how”</p>
	Low	<p>Regulative Creation and externalized oversight of actions of agent within “accountable space”</p>	<p>Performative Set “what” agent is accountable for and “how” to proceed</p>

Figure 2: Accountable Strategies

The managerial approach involves an articulation of accountability that provides considerable discretion in meeting some standard of behavior set by oversight or regulatory bodies. Using a simple example drawn from city building codes, traditionally builders and landlords are held accountable for meeting standards that get to the detail of the type of wiring to be used or the placement of exits, and even the material composition (e.g., steel, oak) of doors. In some jurisdictions, however, those “performative” requirements are replaced with more a managerial approach based on general standards, and the burden falls to the accountee to demonstrate to the

⁹ It is instructive that negotiated prosecution, which was predicated on the assumption that the formal existence of a performative compliance program was in itself insufficient to address the risk of inappropriate behavior, was subject to an increasingly vocal and effective campaign of corporate and political vilification from 2004 onwards; precisely the same time as the expansion of securitization magnified the risk of defective risk management systems. Policymakers, such as the Treasury Secretary, Hank Paulson, along with influential academics advocated the expansion of a principles-based (i.e., managerial) regulatory regime, which transferred the exercise of discretionary power from the regulator to the regulated (Committee on Capital Market Regulation 2006); see also Paulson 2006.

building code authority that their plans and material meet or exceed the objectives of the code. In financial markets, the distinction between performative and managerial accountability is manifest in the debate between those advocating rules-based (i.e., performative) versus principles-based (managerial) regulation (Kaplow 1992; Ford 2008; Surowiecki 2008). Traditionally US regulatory regimes have tended to be rules-based, while in the UK and elsewhere the stress has been on principles-based regulation. The managerial approach has its benefits in allowing the accountee greater degrees of freedom to meet the demands of an accountant, but the strategy has proven problematic in practice. In its annual report for 2007-2008, for example, the UK's Financial Services Authority has admitted it failed in its oversight of the market but claimed this derived not from a flaw in the logic of principles based regulation, rather a failure to apply it: "We have demonstrated our willingness to examine ourselves critically and to learn lessons from our mistakes -- a quality we believe is central to giving the financial industry and consumers in the FSA. Like any thoughtful organization we cannot and do not claim infallibility" (FSA 2009), p. 42).

Problems also arose when the US Securities and Exchange Commission attempted to rely on a managerial approach in its short-lived experiment with regulating US-based global investment banks. In 2004, the SEC established a Consolidated Supervised Entity (CES) program to fill a regulatory gap in the US law regarding large investment bank holding companies such as Goldman Sachs, Lehman Brothers, Bear Stearns and others. The program was voluntary for those firms, but they opted into it once an understanding had been reached with EU banking regulators who were willing to accept the SEC (through the CES program) as a legitimate

“regulatory supervisor” in lieu of the more burdensome European options. This arrangement provided those US firms with a competitive advantage, not merely because it helped them avoid EU regulators, but also because of the managerial approach taken by the SEC. The CES was attractive to the investment banking firms precisely because “under [its] the alternative capital computation method, the broker-dealer will be allowed to compute certain market and credit risk capital charges using internal mathematical models” (SEC 2008). The decision to take this approach represented a transference of control over accountability to the firms themselves. SEC commissioners were not unaware of the risks involved in this approach. One commissioner at the time commented, “if anything goes wrong, its going to be an awfully big mess”; a second commented that he was “very happy to support it and I keep my fingers crossed for the future” (Labaton 2008, p. A1). As it turns out, the SEC was at best naïve in relying on the internal mathematical modeling provided by the investment banks. Moreover, an investigation by the inspector general for the agency revealed that responsibility for managing a combined \$5 trillion asset portfolio was delegated to a team comprising just seven staff, which had functioned without a director since March 2007. The SEC instead relied upon the market to provide an early warning system. The SEC abolished the initiative in September 2008 as a consequence¹⁰ of recognition from its then chairman, Christopher Cox, that “voluntary self-regulation does not work” (SEC 2008a).

The regulative and constitutive strategies rely less on the specificity of actions to be held to account and more on the creation of a jurisdictional “accountable space” within which the

¹⁰ He was also under considerable pressure to do so from Treasury Secretary Paulson and Fed Chairman Bernanke as the looming financial crisis worsened and the need to impose more stringent controls on those banks became increasingly urgent.

accountable agent is expected to act in an “appropriate” or reasonable fashion. This space can be regarded as an arena in which trustworthiness is central feature, and where accountability is intended to foster integrity. What differentiates these two strategies is the “regulative” reliance on some external or independent oversight body that has as its prime mission the monitoring of what takes place in the accountable space. Here the classic examples are found in the broad and ambiguous legislative mandate originally given to many US regulatory commissions to assure that the enterprises under their purview (e.g., in transportation, power generation, communications, and other “utilities”) operated “in the public interest.” As demonstrated by several well known cases (e.g., the Interstate Commerce Commission, the Civil Aeronautics Board), three factors worked against this approach in practice: the ambiguity of what constitutes “the public interest”; the inclination of those agencies to rely on narrow performative and managerial approaches in pursuing their mission; and the inability of the oversight agencies to sustain their independence from those being held to account (i.e., agency capture).

To some degree, central banks were designed to act according to a regulative strategy. Typically they are provided with broad missions. The European Central Bank declares that its “main objective” is to “maintain price stability: safeguarding the value of the euro” (<http://www.ecb.int/press/html/mission.en.html>). Referring to its 1913 founding authorization, the US Federal Reserve System notes its mission to be “to provide the nation with a safer, more flexible, and more stable monetary and financial system” (<http://www.federalreserve.gov/aboutthefed/mission.htm>). The Central Bank of Indonesia notes its objective is to “achieve and maintain rupiah stability by maintaining monetary stability and by promoting financial system stability for Indonesia’s long

term sustainable development” (<http://www.bi.go.id/web/en/Tentang+BI/Fungsi+Bank+Indonesia/Misi+dan+Visi/>). These broad mission statements establish the “accountable space” within which those banks under their jurisdiction operate. To carry out those missions, these banks typically have significant discretion and/or autonomy,¹¹ and the actions they take in response to some problem or need will require them to rely in part on performative and managerial forms of accountability. A similar dynamic informs many of the functions and operations of securities regulators, such as the UK’s Financial Services Authority and the US Securities and Exchange Commission.

In the recent financial market crisis, a particular flaw in the logic of this regulative approach became evident. Those who sit in key positions in those agencies designed to make certain the accountable space is generating appropriate and accountable behavior, often do so with a bias. The choices they make in this regard are usually informed by an ideationally driven belief in the self-correcting power of the markets. There is perhaps no better case study of what can happen than the story of Alan Greenspan’s fall from grace.

“I found a flaw. That is precisely the reason I was shocked because I had been going for 40 years of more with very considerable evidence that it was working exceptionally well.”¹² This admission by Alan Greenspan marked the moment when the intellectual edifice governing financial capitalism crumbled. Greenspan’s testimony before an exceptionally hostile congressional committee last October was one of the most memorable moments in the drama

¹¹ See Acemoglu et al. 2008; Keefer and Stasavage 2003, 2000; Magnette 2000.

¹² The following draws from both personal observation by one of the authors as well as US Congress 2008b.

associated with the implosion of global capital markets. It was also one of the most significant from the perspective of political and regulatory theory. The sprightly eighty-two year old had entered the committee room just before ten. Ever the consummate professional, Greenspan immediately worked the room. He bounded up the steps, shook hands with the most senior politicians on the dais and nodded sagely to all present. Greenspan looked in command of his brief; apparently secure in the esteem in which he had previously been held.¹³ At first, he was listened to patiently. The five-minute limit for opening statements was waived as Greenspan sought to explain the causes and consequences of “a financial tsunami” that, he conceded, disturbed him greatly.

A Nobel Prize was awarded for the discovery of the pricing model that underpins much of the advance in derivatives markets. This modern risk management paradigm held sway for decades. The whole intellectual edifice, however, collapsed in the summer of last year because the data inputted into the risk management models generally covered only the past two decades, a period of euphoria. Had instead the models been fitted more appropriately to historic periods of stress, capital requirements would have been much higher and the financial world would be in far better shape today, in my judgment. (US Congress 2008b)

Over the course of four hours, Greenspan’s confidence waned. His age began to show. He saw his record mocked. Legislators repeatedly claimed that Greenspan was a slave to the market rather than its master, so enthralled by an ideological worldview that he failed in this primary

¹³ Greenspan was a recipient of the Presidential Medal of Freedom in 2005. The citation read, in part, ‘with prudence and wisdom, he has helped shepherd our economy through stock market crashes, global financial crises, recessions, and national disasters. During his nearly two decades of principled work at the Federal Reserve, he has become the standard by which central bankers are measured,’ see “Citation for 2005 Presidential Medal of Freedom” (White House 2005).

duty: to protect the country. The extent of government intervention required to stabilize financial markets across the world has temporarily transformed the conceptual and practical dynamics of capital market regulation. The power and influence of government has been augmented considerably. The unresolved question is what it will do with this power? In the short term, the Fed (and other US agencies) have turned to managerial and performative approaches to contend with the emergency conditions. The issue is whether that can return to the regulative approach that is inherent in their original mandate (see Mariani 2009).

The constitutive approach relies on the development of governance norms and standards within the “accountable space” and reflects a classic political economy approach most often (and mistakenly) associated with “free enterprise capitalism.” Here the emphasis is on the design and maintenance of institutional arrangements that foster accountable behavior without the monitoring and oversight of the regulative approach or the specificity of actions of the performative and managerial strategies. Perhaps the best examples come from the use of the legal system to structure (or restructure) a dysfunctional market. Markets already operate with established legal environments that set parameters and rules around behaviors. The influence of the legal context goes well beyond its having a direct impact on behavior. Legal scholars and economists have long been aware of the impact the “shadow of the law” has on individual and corporate behavior (Stevenson and Wolfers 2006; Jacob 1992; Cooter et al. 1982; Bagley 2008; Dixit 2004).

Several prominent analysts of the current economic crisis believe that financial markets can be made more accountable through institutional reforms rather than more explicit regulative, managerial or performative interventions (Shiller 2008). On the surface, advocates of this approach to reforming accountability seem to be engaged in an updated version of “deregulation.” The difference, however, is in the emphasis on purpose and intent, with the goal being to reconstitute markets so that institutional incentives and pressures will promote greater accountability.¹⁴ Consider, for example, the case of Sarbanes-Oxley. While it hardly stands as a model for effective regulation, the basic logic was an approach that would create the legal context in which specific corporate actors (CEOs and CFOs) were on notice that they could no longer hide behind the fiction of the corporate “person” and were now going to be held criminally accountable for their actions as corporate officers.

On a more abstract level, academics such as Oliver Williamson have been pursuing studies that can provide a coherent positive theory to support a more constitutive approach – one that views financial markets as dynamic arrangements of incomplete and imperfect contracts. Combining the logic of economics with the design imperatives of organization theory, Williamson has already addressed the possibility of reforming corporate governance (Williamson 2008). Constituting through laws and other devices a financial marketplace characterized by integrity and worthy of trust (i.e., an accountable market) requires a strategy based on design rather than deregulation. Accountability is, therefore a design question at both corporate and regulatory levels, which to be effective needs to be mutually reinforcing and address dynamically the

¹⁴ In a very real sense, all regulatory regimes are constitutive to the extent that the state acted as an autonomous actor in pursuing the redesign of the marketplace. See Vogel 1996.™

calculative, social and normative reasons for behaving in a more (or less) ethically responsible manner. Ironically, such an approach would be the fulfillment of Adam Smith's vision of the market place as a venue in which our all-too-human moral sentiments can be allowed to play themselves out.

Conclusion

Those engaged in the study of accountability have often been frustrated by the lack of some foundational conceptualization. We have often relied on some particular definition that had at least a "family resemblance" to the phenomena we generally associated with accountability. In this way accountability became the study of answerability or liability or transparency or representation or electoral responsiveness, etc. Attempts to deal with this lack of a core meaning have generated many insights but has not satisfied our need for a more coherent understanding that satisfies our "sense" that there is more to accountability than merely some synonymic icon. In this paper we have taken a different approach by accepting the fact that accountability is, in many respects, merely a word that plays a role in our daily discourses -- and (at first glance) nothing more. But it is also obvious from "listening in" to how participants view accountability that it is a special word -- what Roger Williams termed a "keyword" -- in the debates and discussions that revolve around our concern for problems of policy and governance. Perhaps the foundational notion of accountability cannot be found in any definition, but rather derive from its application in the political rhetoric and related discourses where it seems to thrive. Here we have focused on the discourse surrounding the recent financial crisis to uncover what we regard as a more nuanced view of accountability. What we find is a concept so intertwined with issues of

governance -- public and private, local and global -- that it seems central to the governing endeavor itself.

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