

THE RISE OF THE UNELECTED: DEMOCRACY AND THE NEW SEPARATION OF POWERS

Frank Vibert

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The Rise of the Unelected addresses the inverse correlation between the increasing prominence of specialized unelected bodies in modern democratic life and elected decision-makers; 'as the importance of the unelected rises, so the importance of the elected declines' (p. 2). Specifically, insights from democratic theory and public administration approaches are used to assess the dangers to democracy posed by the seemingly inexorable proliferation of non-majoritarian institutions (there are around 200 in the UK alone

and 250 in the USA; p. 5). The book's message is unexpectedly optimistic. Modern polities are not only enlightened by the unelected but democracies can actually be strengthened by what the book's author Frank Vibert terms the 'new separation of powers'. By untangling issues of legitimacy from those of accountability the separation of powers provides the blueprint to the challenge to democracy posed by unelected bodies. Following the founding fathers in the US, the legitimacy of this new 'fourth branch' rests on its independence from citizens and mutual respect for the core functions of the legislature, executive and judiciary. Dilemmas of accountability are approached similarly – as part of a system of checks and balances to be imposed on the unelected by the other branches. This traditional framework inspires a range of suggestions about how conventional democratic practices might be strengthened by and adapted to the rise of the unelected. These suggestions represent the focal point of the text and an overdue contribution to the literature on delegation and the politics of expertise.

The book's first chapter covers a review of the world of unelected institutions in which Vibert categorizes and lists the different types of prominent unelected agencies in the UK, USA, Australia and EU member states. Worked examples in the text are drawn from the UK. Despite their multitude and diversity, unelected bodies such as the Gangmasters Licensing Authority (GLA) and Bank of England are united by the technical nature of their work and reliance on information and involvement in communities of expertise that lie beyond government. The message is simple; the experts who are member of unelected bodies conceptualize themselves as part of a 'self-effacing class' (pp. 32–3) that sit apart from politics.

Chapters 2 and 3 expand on the distinction between the empirical components of public policies and value judgements about how evidence translates in normative and practical terms and its implication for strengthening democracy. A clear institutional demarcation between the empirical (as the preserve of the unelected) and value-driven interpretation of this evidence (as the responsibility of the elected) will help to promote public confidence in the empirical basis of policy and to enable citizens to target their concerns and criticisms more accurately. Of particular importance is the discussion in Chapter 3 concerning how in practical terms these two streams of judgement can actually be separated from one another in the first place (pp. 48–54). Vibert's argument is underpinned by the logic that decision makers will determine what is acceptable in a specific context. Little is said, however, about the extent to which this may have been pre-determined by the methods selected to drive empirical investigation. Given the centrality of this distinction for the new separation of powers thesis promoted by Vibert, further depth to empirical discussion of 'hard cases' would have been welcome.

Vibert goes on to discuss the limitations of political theory and public administration approaches to meet the challenges the delegation of authority to expert bodies poses to democratic practice. Chapter 4 discusses the limitations of mainstream democratic theories concerned with civic participation, deliberation, and the rule of law. The reduced role for mainstream political institutions, the limited extent of public engagement, and unclear constitutional status implied by the rise of unelected bodies neuter the analytical utility of these traditional approaches. Similarly, in Chapter 5, Vibert rejects principal-agent, constitutionalism and pragmatism on the basis that they seek to rationalize rather than reduce the increasing gap between citizens and information that is increased by the seepage of power away from elected bodies.

In Chapters 6 and 7, Vibert elaborates his new separation of powers thesis. In this, the institutional incentives operate to reduce the informational asymmetries that frustrate

collective action. Where unelected bodies enjoy sovereignty over knowledge creation, politicians are able to avoid the blame for unpopular information, and self-effacing unelected experts rest assured that their pronouncements will be untainted by non-empirical values and the fate of their professional reputations in their hands. One of the most intriguing aspects of Vibert's thesis is the change he predicts in the behaviour of the electorate. The interests of unelected agencies will be served best by engaging with citizens – greater public understanding of the information will boost the support of these agencies and protect them from political interference. This informed citizenry will destabilize the conventions of representative democracy and the unquestioning delegation of power to politicians. There is a radical dimension to the separation of powers; the rise of the unelected as problem-solvers and the increasing demands of informed citizens mean that traditional political institutions must take a lead in shaping the values that link evidence-gathering processes to the political. In his brief discussion of arenas and inquiries (pp. 107–12), however, Vibert offers only hints about the actual mechanisms through which traditional institutions can adapt.

Vibert returns to the unelected in Chapter 8 and the means through which these bodies can justify their powers. Following the separation of powers logic, non-majoritarian institutions must rest upon their own form of legitimacy rather than derive legitimacy from other government branches or public acceptability. Scientifically derived knowledge-based principles and procedures – for example, peer review and impact assessment – form the bedrock of the claims of these bodies to direct forms of legitimacy. While he uses an analogy with the judiciary to good effect, Vibert's dismissal of the argument that standards can always be disputed as subjective would have benefited from greater consideration and case study evidence from unelected bodies themselves.

Chapters 9 and 10 represent a distraction in an otherwise well-structured book as Vibert takes us beyond the national arena and discusses some of the challenges posed by the rise of the unelected in the EU and international organizations. The book concludes with an account of the avenues of accountability that should be opened to control the exercise of power by unelected bodies. Vibert envisages a traditional system of checks and balances to hold the unelected within the limits of their power and the provision of a limited range of political sanctions that discourage encroachment beyond the provision of empirical evidence. Even if we accept the view that it is philosophically and empirically possible to distinguish between empirical information and values in most of the issues addressed by unelected bodies, solid empirical examples are required of the practical measures that could be imposed on a transgressor.

This text has much to recommend itself to several audiences. Vibert provides an upbeat and accessible account of how the democratic dilemmas posed by the rise of the unelected might be addressed in practical terms. The book must be read with an awareness of its limitations however. In particular, the new separation of powers thesis requires fuller empirical investigation. One can only hope that among the many scholars interested in delegation some turn their attention to its implications for democratic practice and empirical appraisals will be produced to complement Vibert's valuable book.

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