

The false contradiction between autonomy and accountability

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why they seem to conflict

- accountability requires fidelity to rules—otherwise the agents who execute instructions actually determine the meaning of the instructions
- but except in the most stable conditions it is impossible to make rules that cover all circumstances
- making more rules creates more possibilities for rules to conflict, and more opportunities for front-line workers to exercise discretion in applying them.
- the familiar results is rule by street-level bureaucrats—the front-line workers at the bottom of the official hierarchy often make the de facto policy.
- the more uncertain and volatile circumstances get and the more often the rules have to be modified and adjusted to address them—think about person-centered care!— the worse the problem gets.
- Giving the front-line workers the authority to decide in these conditions might make the administration more responsive,.
- but free of rules, the decisions and the agents who make them are unaccountable.

Contracting for services doesn't help

- Contracts contain lists of (mutual) obligations, as do administrative rules. Those rules, and the determination of compliance with them, don't become easier simply because the list is included in contractual provisions rather than in statutory language or the rules and guidance implementing them.
- In fact the prevalence of guidance, and the frequent reliance of contracts for service provision on it—the contracts incorporate the guidance by reference, as conditions of acceptable performance—is a constant reminder of the similarity the two kinds of instruments for limiting discretion and assuring fidelity to the public purpose

Cutting the Gordian knot

- problem of reconciling accountability and autonomy can only be solved by recasting it.
- If accountability depends on rule following, it is impossible, for the reasons just noted, to achieve anything like full accountability
- and the forms of discretion that are encouraged by the effort are exercised informally, nearly in secret—and therefore unaccountably

the solution

- is to recognize that discretion can't be eliminated completely—and that in the changing world we face people at the coal-face of problems need to exercise their judgment to respond to the unforeseen circumstances they face.
- The problem is not to eliminate that discretion by more and more rules, but to render it accountable by making its exercise transparent and subject to review
- How can that be done?

Two ways to make discretion accountable

- the key, again, is to recognize that discretion is inevitable, and often invaluable. the problem is domesticating it in the sense of rendering it accountable
- within an administrative hierarchy the most direct way to do this is to recast rules as rebuttable presumptions: the rules are the rules UNLESS there is a compelling reason to deviate from them,
- This may sound exotic, but the conceptual transformation is well known, and commonly practiced, under the name of comply or explain, where explain means precisely the obligation to provide good reasons for not applying a rule, or applying an alternative.
- But keep in mind that comply and complain is often, in the settings you operate in, used in a more limited way: explain why you are not now complying with the rule, but soon will. This of course subverts the autonomy of the front-line worker, who is now asked to supply an excuse for tardy obedience, rather than a reason to question the existing rule, at least with regard to its application in a particular contest, and to supply an alternative.

some examples— but half measures

- An HQA inspector notes that an NGO service provider
 - is not complying with its obligation to keep a log of the complaints raised by service users against service-providing employees
 - and not complying with the obligation to present an annual report on the psychological state of the service users
- The NGO replied, successfully,
 - that deeply autistic service users can't engage in the usual complaint process, so complaints are immediately resolved by relocating the implicated service providers, respecting the rights of the latter but not creating a formal log entry
 - and that it surveys the psychological state of the service users weekly, so an annual report is superfluous.
- Note that these responses protect the autonomy of the NGO but are limited in that they do not trigger broader reconsideration by the supervising authority. How could that be done?

two things are missing from these examples

- The first is some systematic or institutionalized response on the part of the supervising agency (here HQA)
- In an uncertain, rapidly changing world—the one typical, again, of person-centric care—there kinds of issues will arise over and over again.
- in the examples under discussion the NGOs arrangements were approved by one inspector, but challenged by the succeeding one. Such disagreements are not indications of administrative sloppiness or pathology—they reveal ambiguities in the rules that should be resolved by deliberation among the involved parties, and registered in modified guidance. That is accountable autonomy

But the NGO as well as the agency comes up short in this story

- The NGO's practicers, though they deviated from the rules, were justifiable—and accepted, ultimately, as such
- But the NGO could have made things better for itself, the supervising agency, and peer organizations if it had developed a rationale for its practice, and begun to document its results, in advance of the finding of non-compliance by the (second) inspector.
- Just as the agency is obligated under a system of accountable autonomy to respond, by deliberative, stakeholder consultation, to good-faith challenges to the current rules, so the NGOs and service providers in general are under an obligation to explain departures from rules, motivate their choice of alternatives and document the effects of their choices.

taken together

- these obligations make the prevailing rules more corrigible in the light of experience. Difficulties with the application of rules in ground-level practice triggers reconsideration of them at higher levels.
- but the corresponding obligation of service providers to explain their use of discretion means that previously informal adjustments—sensible or not—are brought to general notice and evaluated against the backdrop of a review that takes local experience into account but is not limited to it. For example a local departure from a rule might be better than the routine, but not as good as an innovative practice development to respond to similar conditions elsewhere in the system.
- The cumulative effect is to make the organization both more responsive to changing conditions and more accountable in the sense the changes are made explicitly, and not simply buried in informal (discretionary) practices, not matter how well intentioned.

Contracting for innovation

- it is also possible to address the issue of acceptable autonomy in a new kind of contract, in wide use in collaboration among firms co-developing new products
- Contracts usually contain a list of each party's obligations, and penalties in case the terms are breached
- But increasingly it is impossible to foresee whether a project for joint innovation is feasible, without actually attempting to realize it.
- In this case the parties can't agree on the contribution of each to the eventual product, because that product can't be defined in advance.
- For these reasons the parties enter agreements where they set provisional goals or milestones, and meet to regularly exchange information on progress toward them. the information regime makes it possible for each party to determine, step by step, the feasibility of the project and the capacity and probity of the partner collaborating in its realization.
- Contracts of this general kind are creeping into service provider commissioning under the name of "relational" contracts—we can discuss if they are in common use.

big question, new horizon

- The old welfare state was built on the principle of equal treatment for persons in equal conditions. this accord with our idea of the rule of law
- the new person-centered welfare state is built on the principle that each person is due the services and support appropriate to her circumstances. The presumption is that individuals are unlikely to be in the same circumstances as others—that is why services have to be person centric to be effective. Under these conditions equity demands that the state be equally responsive to (different) needs of individuals. and the right is not to equal treatment but to responsive treatment.

New Zealand and the Netherlands as examples