**Stephanie Reynolds and Mike Gordon: Mapping the Overarching Challenges for Constitutional Accountability – Blog Series Introduction**

The UKCLA conference ‘Contemporary Challenges for Constitutional Accountability’ held in September 2023 aimed to reinvigorate the debate relating to the nature and operation of accountability in the UK constitution. With a general election on the horizon in the UK, and after a sustained period of profound constitutional uncertainty, it seemed pertinent to pay fresh attention to this important constitutional concept. Despite the wide range of issues that currently give rise to accountability questions about, or in relation to, the UK’s constitutional actors, it is a concept that can be overlooked in our constitutional discourse (though an obvious exception is a recently published set of [essays](https://www.bloomsbury.com/uk/questions-of-accountability-9781509964222/) edited by Matthew Flinders and Chris Monaghan).

The conference brought together scholars (and others) working on different elements of constitutional accountability. This post introduces a series of blogs based on papers presented at the event. The individual posts will of course speak for themselves in identifying a variety of significant contemporary issues relating to diverse aspects of accountability. In this introductory post, we simply therefore seek to map out some issues of overarching relevance, especially since one of the aims of the event was to try to provide an overview of the current challenges in the practice and theory of accountability in the UK constitution.

In some ways, discussion at the conference confirmed a number of hypotheses in the conference call. There are important accountability challenges relating to the UK’s political culture and climate, as well as the changing size, shape and functioning of government. The UK’s constitutional framework has also had to grapple with what accountability means, and how it operates, in the contemporary context of administrative expansion, devolution and the increasing role of external constitutional players.

As the conference papers highlighted, the interactions between ‘accountability’ and these current issues raise appreciable questions, at the very least, about its constitutional function. At worst, they might suggest it is under considerable strain. Existing mechanisms in particular seem, at times, to be struggling: for example, some constitutional conventions have been openly ‘breached’; and much has happened against a backdrop of increasingly open and hostile inter-institutional conflict. Importantly, however, while the conference papers taken as a whole established that ‘accountability’ is under pressure, they also demonstrated that in order to unpack this claim, and therefore seek to address it, a range of additional questions must be considered.

The aim of our post, then, is not to try to resolve these issues. Instead, it is to illuminate some of the key questions for constitutional scholars and practitioners, which emerged from the conference (including for our own future research). Some of the challenges might be well established, others might be emerging, and they might affect our understanding of the idea and practice of constitutional accountability in different ways. Here, we simply ask: if the objective is to enhance accountability in the UK constitution, what tensions will need to be confronted in achieving that goal?

1. **What does, or should, accountability produce in terms of outcomes?**

The first challenge is to ask what it means to seek to hold constitutional actors to account. When evaluating the effectiveness of accountability mechanisms in relation to the actions of these players, do we seek input or output oriented results? Furthermore, by what measure do we assess the outcomes of accountability processes?

During the conference, the tension between accountability as a process and accountability as a substantive outcome lay beneath a number of our ‘contemporary challenges’ debates. There is of course an obvious temptation to focus on outcomes to determine whether accountability mechanisms have been effective. After all, that is when the operation of accountability is most evident as a constitutional practice. Yet if the focus is on ‘newsworthy accountability’ – such as the relatively frequent recent changes of Prime Minister – does this risk disregarding the importance of the day to day processes of accountability? The idea that the government or its policy must change is surely not a prerequisite for accountability to have occurred. In any case, views as to whether a particular outcome is ‘good’ or ‘bad’ will inevitably be shaped by different political standpoints.

Nevertheless, even if the success of accountability practices or processes cannot be entirely – or even primarily – determined by whether we get ‘good’ results, certain outcomes – or perhaps the lack of outcome – might still be a clear indicator that a process is failing. As one example, the fact that a decision to prorogue Parliament for five weeks could be taken in September 2019 might raise concerns about the process by which such decisions are made.

Perhaps, then, ‘accountability’ is always likely to have both input and output oriented components. At times, whatever our political persuasion, a concrete outcome will be an important example of accountability in action. At others, the lack of outcome might be clear evidence that ‘accountability’ is under strain. There will be some circumstances, however, when accountability mechanisms have not have secured our preferred outcome, and yet we might still have to accept that they have been sufficiently rigorous as regards *process,* with theconsequence that our constitutional actors have been satisfactorily held to account.

The difficulties here for the constitutional lawyer are two-fold: first, how do we determine whether the (lack of) a certain outcome is a clear sign of accountability problems for the constitution or merely one which is undesirable according to our political persuasion? Second, when a specific outcome is not secured, how do we ascertain whether the accountability process still produced improved decision-making or adequately ensured key constitutional players were kept in check, particularly when this more intangible form of accountability is more difficult to measure? In other words, if we accept that, regardless of outcome, ‘accountability’ is an inherent procedural good, the challenge becomes how to evaluate whether and how those procedures are working.

1. **How does accountability interact with other constitutional concepts?**

The second challenge is the potentially complex relationship between accountability and other constitutional principles and values. One advantage of accountability as a constitutional concept is the extent to which it can be a broad church – as in the contributions to this series, it can and will be used in different ways by different participants. Yet this is also arguably a weakness if the conceptual expansiveness of accountability means it become underspecified or drawn into competition with other values.

One source of tension might be between concepts of responsibility and accountability. If the former is understood to be a narrower concept, focused on specific decision-makers in the UK constitution (not least members of the government, in accordance with the doctrine of ministerial responsibility) then the difference between the two concepts becomes open to potential exploitation as a means of evading challenge: for example, the minister who might argue “I can be held to account for errors made within my department, but I am not responsible for them, and therefore will not resign…”.

Other conceptual overlaps might challenge us to consider whether certain constitutional values are inseparable, or at the very least prerequisites of each other: for example, what is the relationship between transparency and accountability, when the former is needed for accountability to be realised, but is also itself generated by accountability? There are also evident overlaps between transparency, accountability and trust, and therefore also legitimacy. In an ideal world, improved transparency (amongst other things) would create opportunities for greater accountability. This, in turn, would increase public trust and enhance the legitimacy of constitutional actors. Yet, in practice the impact of heightened transparency and accountability might produce a general distrust in power. The question is then whether the legitimacy of public actors was always merely a façade, reliant on the trust of a public who, unaware of the realities of behind-closed-doors decision-making, were less motivated to pursue calls for public figures to be held to account. Or, conversely, does growing emphasis on transparency, combined with an excessive culture of accountability *outcomes*, overlook the nuanced realities of policy-making, creating challenges for achieving legitimacy that are extremely hard to overcome?

Devolution and accountability might also interact in different ways. There is increased opportunity for accountability when decisions are devolved to democratic institutions that are closer to their respective populations. Devolved institutions can also contribute to the UK’s accountability framework as competitors to the central institutions. However, this also depends on the existence and effectiveness of accountability mechanisms that operate to insulate the devolved institutions from central interference. Yet, the Brexit process suggests that the relevant conventions and intergovernmental architecture that were thought to ensure this are perhaps lacking. Conversely, as some of the conference papers discussed, at times a lack of clarity about the appropriate locus of decision-making in this context can allow for accountability avoidance by both central and devolved in contentious policy areas.

1. **What is the relationship between external and internal accountability processes?**

In addition to the purpose and content of accountability, a third overarching challenge is to consider the range of mechanisms of accountability and which actors are appropriately equipped to operate them. One key theme of the conference was the difference between external and internal accountability processes, a distinction which itself raises a number of issues.

In relation to external processes, there are questions about how broadly constitutional accountability should be understood. As well as the role of classic constitutional institutions like Parliament and the courts which are in many ways ‘external’ to the government (or at least exercising functions which are institutionally distinct from the executive), how far are the roles of actors like the media, organised interest groups, or other stakeholders to be accommodated into constitutional analysis? Recent examples of external actors successfully exerting pressure on the government to re-consider its policy choices or revealing crucial departmental failings – for example [Marcus Rashford’s free school meals campaign](https://ukconstitutionallaw.org/2021/03/22/stephanie-reynolds-celebrities-social-media-and-new-sites-of-political-constitutional-accountability/) during the Covid-19 lockdowns or the Guardian’s exposure of the [Windrush scandal](https://www.theguardian.com/membership/2018/apr/20/amelia-gentleman-windrush-immigration) – might be taken as evidence of the growing role of external players in supplementing or even challenging the more traditional legal and political institutions in the UK’s accountability framework. As a consequence, we must ask how far these constitutional functions need to be incorporated into our understanding of the practice of accountability rather than treated as an add-on. This is vital not only because such external actors play a key constitutional role in holding traditional actors to account but because their own constitutional activity introduces questions about which accountability mechanisms should also apply to them.

Similarly, the significance of internalising accountability values or practices within decision-making or administrative structures were discussed at the conference. Given the scale and complexity of modern government, the need for effective internal accountability is clear – but how easily is this observed or assessed, compared to the paradigmatic, and usually quite public, constitutional processes of parliamentary scrutiny and judicial review? Moreover, how are values of accountability made relevant in a decision-making matrix inevitably incorporating other targets and performance indicators?

The external/internal distinction also prompts questions about the interaction between them: how can we make sure internal accountability is attuned and responsive to external accountability processes? What ‘external’ institutions might be capable of shifting internal constitutional culture? As one example, could this be within [the remit of an Integrity and Ethics Commission](https://ukconstitutionallaw.org/2023/06/22/mike-gordon-creating-an-integrity-and-ethics-commission-in-the-uk-the-case-for-reform-and-challenges-for-implementation/) of the kind proposed by the Labour party? And would the work of such an institution depend more on its constitutional profile and status, or on its specific powers and functions?

**(iv) How do narratives of ‘safeguarding’ or ‘guardianship’ play out in the context of accountability?**

The idea that there is a need to ‘safeguard’ the constitution or to create (or further empower) ‘guardian’ institutions was raised in a number of different contexts during the conference. A fourth challenge is therefore to reflect how narratives of safeguarding or guardianship connect with the concept of constitutional accountability.

On the one hand it is perhaps unsurprising that these ideas should feature prominently in a period that many would regard as one in which various constitutional norms have been violated. How the constitution – especially an uncodified and unentrenched constitution like that of the UK – might further protect its fundamental norms and values from routine breaches through enhanced accountability mechanisms is likely to be an important line of inquiry in such circumstances. However, the risk of ‘guardianship’ narratives is that they implicitly establish a dynamic where the constitution is seen as fixed and abstractly working, but simply undermined by political actors. And those assumptions – concerning the nature and quality of the constitutional system, as well as the universal motives of all political actors – require further evaluation.

The further consequences of safeguarding narratives might be that they narrow the scope for debate about structural or systemic reform to the legal and political system. In one sense this could be by prejudging the virtues of existing constitutional norms. But even in a different sense, if guardianship narratives are developed into a full case for constitutional codification, a focus on adopting this new constitutional form might leave less space for debate about alternative institutional and democratic reforms.

A focus on guardianship also requires us to consider how democracy plays into this dynamic: how do we reconcile the positions of elected and unelected actors, given their different roles and responsibilities in accountability processes, and in recognition of the need for democratically elected officeholders to have space to pursue policy goals in exercise of their electoral mandates? This becomes a most pressing challenge if we assume that constitutional safeguarding is a task best suited to unelected actors, especially if the democratic selection and rejection of those who govern us is perhaps the foundational means of holding those in power to account.

**(v) What should our expectations be for constitutional accountability?**

A final overarching challenge concerns the future of constitutional accountability in the UK. The papers at the conference, and posts to follow in this series, highlighted numerous areas in which improvements in accountability are required. But what expectations might we have for change when enhancing accountability requires those political actors who would be subject to more demanding standards and processes to initiate that very reform? Does this suggest we need to be modest in relation to any aspirations for reform, or that we should be trying to map out more ambitious change?

Inevitably there are different approaches – in broad terms, there are advantages and disadvantages to principled aspiration as compared to more pragmatic gradualism. And in the present environment, where proposals for reform might struggle to gain traction, there is unlikely to be a universal template.

This also reveals the importance of the politics of constitutional accountability. For a political party to propose stronger mechanisms of accountability in opposition is an obvious and largely uninhibiting strategy. For incumbents, however, it is tempting to place emphasis on the barriers to change, due to the political and administrative incentives to resist greater accountability. Any discussion of how we might attempt to enhance the ideals of constitutional accountability will also need to confront this reality. Moreover, these complex incentives might provide a further reason why adopting a broader approach to accountability in the constitution has value.

**Conclusion**

Our main aim in sketching out these questions and challenges in broad terms is to set the scene for the posts that follow in this series. In different ways, the various posts will explore some of these issues and illustrate some of these themes in a range of contexts of contemporary significance. In this way, taken together, we hope the series will show the conceptual breadth of accountability within the UK constitution. Constitutional scholarship must seek to analyse ‘accountability’ in the diverse, specific contexts in which it is a ‘live’ topic, but also not lose sight of some of the overarching issues which we have sought to highlight in this introductory post. These questions which, at their core, seek to grapple both with how we understand and conceptualise constitutional accountability, and how we analyse its operation and effectiveness, are likely to remain live for some time yet.

*Stephanie Reynolds, Senior Lecturer in Law, and Mike Gordon, Professor of Constitutional Law, University of Liverpool.*