Constitutional Revision: Term Accountability

Section 1: The View
There is a new restaurant in town, so you go and give it a try. You sit down and wait as the chef prepares the meal. After eating and paying, as you walk to your car you reflect on whether you should eat there again. I have begun with this rather trivial story to highlight three claims: a) there are two roles, of stakeholder (you the customer) and expert-in-service (the chef); b) the two actors make independent decisions; and c) the chef should exclusively decide the *content* of the meal, and you as customer should exclusively decide the *status* of the meal. To reverse the two roles, i.e., having you prepare the meal and having the chef dictate whether you must return, would be both inefficient and a violation of accountability.¹

Curiously, the not so trivial practice of constitutional design violates this principle of “efficient accountability”.² Referring to electing a legislature, the two existing methods are to hold elections by the regular calendar, or upon the legislature’s own discretion.³ Efficient accountability appears to be satisfied because the citizens vote, not the officeholders. I argue however that both of these methods are inferior to a third option: citizens alone decide when the next election will be. Allowing the legislature to decide when they face the voters is the moral equivalent to allowing the chef to decide which persons must eat at this restaurant. The proposed electoral innovation will be referred to as “term accountability”.

Innovating a new way to elect a legislature qualifies as a constitutional revision. Our generation is familiar with contesting and morally perfecting constitutional practices as they pertain to citizen rights. Same-sex marriage is an example. Arguably however there is an

¹ Efficiency is to be understood as “not perverse” in addition to “economic”.
² My use of the concept of “efficient accountability” is not a rejection of “agent-principle” analysis. Efficient accountability is more specific to this presentation.
³ Literature on electoral systems abound; for example see, https://www.electoral-reform.org.uk/voting-systems/types-of-voting-system/
intellectual bias against even considering institutional revision. The last interesting example was the 17th Amendment in 1913 for directly electing Senators. This history supports a presumption that institutional revision is illegitimate, or perhaps analytically utopian. These presumptions are curious; section 4 will elaborate on their legitimacy.

To divorce the discussion that follows from familiar nations and history, the term accountability thought experiment should be read as applying to a counter-factual but normal constitutional democracy.

Finally, it may seem curious for a philosophy presentation to take up the practical matter of institutional design. Philosophy typically focuses on the more abstract matters of conceptual analysis and the arguments pertaining to principled evaluation. Applied philosophy however is permitted to evaluate actual practices and institutions. This paper can be read as the applied philosophy of applied philosophy. It is fitting to include philosophers, along with think-tanks, futurists and novelists among those obligated to imagine counter-factual practices that better satisfy justified standards of evaluation.

Section 2: Term Accountability

It is easy to imagine a possible world where the legislature is self-serving, unreflectively rhetorical, and perpetually gridlocked. One explanation of this, to be left aside, is that dysfunctional persons are attracted to the policymaking profession and the means by which to win office. The alternative explanation that interests us is poor institutional and constitutional design.\(^4\) Posit that poor design leads to poor policymaking, both in terms of process and content that sub-optimally reflects the electorate’s values. The normative claim is that there is an

obligation on citizens to respond to such pathology by revising the offending institution. As noted, efficient accountability is one standard for evaluating constitutional revisions.

Term accountability requires two electoral events: an “A-election” where citizens are asked whether a “B-election” is necessary or not; and if a B-election is called, that election challenges and fills legislative seats as normal.\(^5\) The A-elections could be held by the calendar, say annually, but B-elections must be held only upon citizen authorization.\(^6\)

In an A-election citizens ask themselves how their policymakers are doing:

- If they judge “poorly”, voters will call a B-election to possibly change the legislature
- If they judge “well”, voters will not call a B-election in order to preserve matters

A B-election is authorized only if enough “dissatisfied” votes are cast. This allows citizens to innocently not vote rather than having to actively cast a “satisfied” vote. There is no formal limit on the period of time between B-elections.

Legislators, fearing an election, or actually the risk of removal from office implied by an election, will be motivated to be (or appear to be) responsible and productive. The aim is to allow counter-productive legislative bickering and manipulation to lead to short terms in office, and productive teamwork to lead to long terms in office. “Productive” is defined as either preventing bad policy or creating good policy.\(^7\)

Term accountability can apply equally to proportional or to “first by the post” legislative electoral systems. Note however that term accountability is not parliamentary “no confidence”. Some legislatures are authorized to call their own B-elections. This design gets accountability

\(^5\) The blandly schematic A and B terms are an attempt to avoid unclear descriptive terms. A-elections could perhaps be called “authorization-elections” and B-elections could be called “selection-elections” or the like.

\(^6\) Yearly is simply an illustration; the proposal is flexible concerning the best time period. It is also flexible concerning how much time there is between an A-election and the subsequent B-election.

\(^7\) We leave aside inquiry as to what justifiably qualifies as good and bad policy; the argument only requires that the actors are motivated by such aims and judgments.
exactly backwards in that citizens should decide how the officeholders are doing, not the officeholders themselves. Indeed, no confidence votes are purely electoral gambits on the part of the legislature’s present majority. As the polity’s “at service” experts, legislatures should rightfully monopolize policymaking. But as the best positioned experts on their own interests, citizens alone should judge whether an election for contesting seats is sufficiently urgent or not.

Term accountability is also not term limits. An institutions is captured when its officers serve their own interests at the expense of client’s interests. Term limits attempt to control legislative capture by fixing the length of time legislators may hold the office, irrespective of the wishes of the electorate. The paper’s claim is that it is normatively better to align legislator incentives with citizen direction than to bluntly increase officer turnover. Term accountability expands the opportunity for citizens to exercise voice; term limits constrain their voice.

Although Term Accountability is described and executed as organizing two electoral events, the design aim is to improve the motivations of both policymakers and citizens. In section 4 we will look at the objection that this assumption of improved motivations is naïve: term accountability simply gives the legislature a new tool by which to manipulate the electorate. Legislators are still in position to capture their institution by strategically managing appearances.

Section 3: Implications
Many democracies suffer overly disruptive informal protests because their constitution does not provide a formal means to protest more constructively. The claim is that the opportunity to have voice via an A-election is the right kind of protest. One reason is that the need to make this decision motivates a more public kind of discourse than does the need to plan informal and

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9 Examples abound: Ferguson and Venezuela. The claim is not that such protests would become illegitimate. Rather, by changing their political function term accountability would make protest less necessary.
uncoordinated protests. Additionally, a proper voice would make the legislature more stable. Once citizens have protested via their A-vote they would be less inclined to “second best” protest by removing officers via their B-vote. Term accountability would thereby uniquely promote political stability for the right reasons.10

Different kinds of citizen judgments are required for A-elections than for B-elections. The main consideration in authorizing or delaying a legislative election is to manage policymaker motives. The main consideration in the election that challenges and fills the seats is to manage candidate and officeholder values. Traditional electoral designs do not motivate the first set of considerations. The argument’s claim is that a constitution that enables both kinds of citizen judgments is more legitimate than a constitution that does not.11

There are two types of reasons for citizens to call a B-election: a) the legislature as a whole does not reflect the citizens’ values as well as it could; and b) even if it does, policymakers are not cooperating to produce effective policy. Legislators will intentionally not cooperate when it is to their own political advantage not to. For example, in traditional systems a legislative majority will not promulgate even a popular and necessary policy if doing so might work to the minority’s political benefit in the next election. And in too many cases strategic rhetoric and posturing can bear more political fruit than actual policy production. Term accountability functions to apply a political cost to such pathological motivations.

Aggregate citizen values can be modelled in many ways. Most familiar are the spectrum between liberal and conservative, and the value contests between the multiple parties of a

proportional representation system. The claim is that the more citizens judge a mismatch between their own present value-set and the value-set of the legislature, the more motivated voters will be to call a B-election. Crucially, when the legislature may call its own B-elections the opposite is the case. As such, term accountability better facilitates value alignment than do elections imposed by the calendar or by the legislature.

To speculate, there would likely be higher turnout for A-elections than for B-elections, at least in first-by-the-post election systems. In a B-election the odds of casting the deciding vote is so astronomically low that it is irrational to vote. The normative point is that it is morally innocent to defect on the obligation to vote. However, since the outcome of an A-election is based on reaching a threshold of votes, the status of choosing not vote may not be morally innocent. We might assume that because the motivations to call a B-election are non-trivial, the subsequent turnout of that election will be higher than when such elections are mandated by the calendar or by legislative strategy.

Term accountability has been illustrated as applying to the legislature. As a matter of constitutional design however any authority-wielding institution could also be held accountable, either by similar or different means. Consider unelected high level agency officers and senior staff who have just as much influence over policy as do elected legislators. The argument leaves aside the broader question of how a constitution can organize those officers to better satisfy efficient accountability. To provide but one example, term accountability could be nested by applying B-elections only to a lower legislative chamber, which in turn would be exclusively authorized to call the elections for the upper legislative chamber and the executive.

There are five apparent worries with Term Accountability, but each can be overstated.

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Section 4: Five Objections
Governing well requires making hard decisions, but institutionally enabling a regular electoral threat to policymakers suggests that good discipline will quickly collapse. Term accountability would facilitate a motivational “race to the bottom” for both citizens and policymakers. For example, much needed esoteric science research would be replaced by “free” Netflix accounts for all voters. The claim however is that term accountability would more powerfully facilitate a “race up” to better motivations. The institutionalized default of simply not calling a B-election rewards responsible legislative teamwork and productivity. This dynamic is counter-factual, and thus we as reader and writer lack evidence that better electoral design can (by default) cause better actor motivations.

To be charitable to the concern however, posit that the annual opportunity to call an election would be too sensitive, i.e., that far too many B-elections would be called relative to either sound public judgment or an objective standard. There are four design options to facilitate the proper “distance” between electorate and legislator motivations:

- Frequency: hold A-elections less frequently than annually.
- Threshold: increase the number of votes required for calling a B-election.
- Combination: lower the threshold only if an election was not called the year before.
- Adaptive: hold A-elections not by the calendar but only upon the success of a suitably difficult citizen initiative or petition. ¹⁴

It is possible however that our intuitive concerns are misguided and that more frequent elections are not problematic. Consider that the economy is a cacophony of many constant and rapid individual decisions concerning purchases, employment and investments. But the economy as a

¹⁴ Since our aim is not to examine all the design options other possibilities are left aside. For example, instead of awaiting a difficult public petition, by the calendar require a series of frequent panels of citizens chosen by lot to deliberate on when the next A-election should be held.
whole is (relatively) stable because the equilibrium points of these multiple decisions adjust in non-chaotic ways. Similarly, the stability of legislative function equilibria can be independent on the frequency of elections as discrete actions. For example, increasing the frequency of elections might decrease the incidence of officer turnover, and it is the rate of officer turnover that is relevant to good governance.

Second, independent of institutional conditions, it might be thought that voters as a group are congenitally poor judges of the hard art of policymaking and the dark art of strategic legislative posturing. The worry here is that term accountability would be motivationally impotent because the legislature will manipulate the foolish citizens into not calling an election even when one is objectively merited. Compared to setting elections by the calendar or by legislative no confidence votes, B-elections would be too infrequent.15

In reply, the more obvious this concern is the less likely citizens will overlook it in judging the merits of calling an election. Manifest legislative manipulation is a suitable reason for citizens to open the seats to challenge. It is easy to overstate the risk of timing elections poorly because this kind of judgment is not a regular feature of our own actual public discussion and judgment. The risk of poorly timed B-elections is not a reason to keep the legislature sub-optimally accountable. Constitutional practices (and the revisions to make them possible) should be evaluated by an ideal standard, but that does not infer that only ideal practices are legitimate. Rather, term accountability must be compared to the actual practices of elections being called by the legislature or by the calendar. Term accountability only reduces the costs of holding policymakers accountable; it does rescue citizens by making their judgment unnecessary.

15 The legislature is free to strategically appeal to citizens on whether to call a B-election or not. The claim is that these motivations would differ from when the legislature can directly call their own internal no confidence vote.
The fourth concern with term accountability observes that constitutional revision of this magnitude are politically very unrealistic. Because good theory must account for the limits of the possible, this supports the concern that term accountability is analytically utopian. The reply is that history shows that citizens do undertake constitutional politics when urgent problems merit it. We must be careful to not assume that just because a constitution is difficult to amend that persons are excused from taking this kind of responsibility as citizens. It is also difficult for example to take the battlefield, but that does not mean citizens should not do it. The rarity and difficulty of constitutional revision is due more to the almost universally poor design of the rules of revision than to an unforgiving ontological nature of political life.

But an argument can be given that the nature of political life does make revisions of this nature utopian. In a world where term accountability is installed, legislators as self-interested actors would simply develop new ways to capture the legislature. This makes capture logically zero-sum: attempted institutional repairs are simply strategic moves to be in turn strategically responded to. This zero-sum dynamic is independent of the good intentions of designers, citizens and officeholders. It is always irrational to take risks that cannot be compensated. Therefore term accountability is unjustified as a constitutional revision in all possible worlds.

The reply is that the zero-sum concern has force only in worst-case scenarios. Particular cars sometimes crash, but that does not mean that it is utopian to try to make roads and cars safer. That particular attempts to do so fail is also not good reason to stop trying; it is a reason to ceaselessly experiment in finding solutions. Of course history shows that constitutional revision is not utopian. Indeed it is the only politics that can institutionalize more just outcomes and motivate the next generation of public deliberation and philosophical imagination.

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16 My term “analytically utopian” refers to any theory that permits logically impossible possible worlds.