PREFACE TO THE PAPERBACK

The first question of politics [is] the question of order, and the
danger [is] that the solution may become part of the problem.
—Bernard Williams, In the Beginning Was the Deed

President Trump says, “The Fed has gone crazy.” Italian political leaders had heads roll at the Banca d’Italia after a series of bank rescues. The Reserve Bank of India’s governor resigns in the face of mounting policy demands from Prime Minister Modi’s government. Britain’s Brexiteer leadership labels Bank of England governor Mark Carney “a failed second tier politician.” All that in the few months since the hardback edition of this book was published in mid-2018. And all consistent with populism’s attacks on, as one commentator put it, “elite opponents [viewed] as self-serving and undemocratic.”

More soberly, the Swedish parliament and New Zealand finance ministry are formally reviewing their central bank laws; the European Union’s ombudsman concluded that the European Central Bank’s president should step down from a private sector organization (he didn’t); and profound challenges to the legality of the ECB’s quantitative easing and prudential powers continue to work their way through the German Constitutional Court.

In academia and beyond, books and pamphlets have recently been published from the political Left calling for central banks to play a greater role in fighting inequality and other injustices if they are “to serve the people”; from libertarians seeking salvation in crypto currencies; and from the conspiratorialist fringes putting monetary officials in league with supposed enemies of the people.

Meanwhile, in the wider arena of the regulatory state, members of the US judiciary are revisiting various canons of its administrative law; French and German ministers have called for a less rules-based EU

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1 Williams, In the Beginning, p.69.
mergers policy in the face of Chinese competition; and the UK has yet to confront the question of whether independent agencies or politicians will issue regulatory rules following Brexit, and what principles should drive the choice of lawmaker.

Unsurprisingly, then, I continue to believe that the problem *Unelected Power* confronts—how to find a properly constrained place for independent agencies in constitutional democracies—is as pressing as ever. When challenged on whether the distribution of governmental power really has changed as much as the book maintains, I have pointed to a striking feature of events held to mark the tenth anniversary of the 2008 financial crisis. The face most people associate with government’s response to the 1930s Great Depression is President Franklin D. Roosevelt. Nearly a century later, the faces of crisis management are Ben Bernanke, Hank Paulson, Tim Geithner, Jean-Claude Trichet, and Mario Draghi, none of whom has ever held elected office. Something really has changed, and not for the better, when elected politicians have not even taken on the responsibility of explaining to the general public the crisis-management measures taken in their name and for their sake.

Nonetheless, the response to my arguments from the technocratic center of politics, perhaps especially in the US, has tended to be along the lines of “What are you going on about, Paul? The politicians are the problem, not your tribe of expert technocrats.” Likewise, the reflex response of many (although not all) monetary economists is to continue to justify independence entirely through their profession’s seminal time-inconsistency papers (see chapter 5), without seeming to face up to the fact that, to work as commitment technology, insulated agencies need public support and scrutiny (see chapter 18)—and, moreover, without engaging with the need for the argument to be richer and deeper given the regulatory (i.e., lawmaking) powers exercised today by most of the major central banks. This brings to mind the wise words of philosopher Bernard Williams quoted above. Legitimation really does matter, and it’s important not to leave it until too late.

It has, therefore, been encouraging that some top judges, central bankers, and legislators take seriously the book’s themes and prescriptions. More relevant for the longer term, it is being debated among political theorists, legal scholars, political scientists, and economists
across the US, France, Germany, Italy, Scandinavia, and the UK. Cracks are appearing in the long-standing resistance of constitutional and political theorists to considering how independent agencies should fit into the institutional structure of democratic government. While, regrettably, many US legal scholars continue to shackle themselves with a framework that draws no distinction between agencies insulated day to day from both elected branches and those insulated from only one, younger political theorists are becoming interested in the design of independent agencies, and European constitutional scholars and actors can hardly avoid the issue given the casework of the Karlsruhe and Luxembourg courts.

Of course, the book’s concerns are not academic. The response of politicians will matter if, for example, central banks’ monetary instruments prove insufficient to generate recovery from the next recession; if regulators fail to prevent another banking (or shadow banking) crisis; or if the public loses patience with a technocratic antitrust policy that permits concentrations of private political power. But, rather than take the reins themselves, politicians might just as likely acquiesce in the monetary authorities moving further into the traditional domain of elected fiscal policymakers. Or they might seek change not via open, formal reform but through appointing allies to lead supposedly independent agencies and via less visible means of backseat driving, undermining the purpose of insulation from quotidian politics without having to own up to doing so.

Maybe we will get lucky: maybe public policy will enjoy years of success across all salient fields, leaving people satisfied with our current governance arrangements. But the lesson of history is to take care with the legitimacy of power. I stand by the book’s “Principles for Delegation,” emphasizing pursuit of a widely supported and monitorable objective by a committee of equal policymakers, as the right kind of approach to finding a proper place for independent agencies in legitimate but effective democratic government. More important, I hope legislators, courts, scholars, and citizens interested in government take up that challenge.