

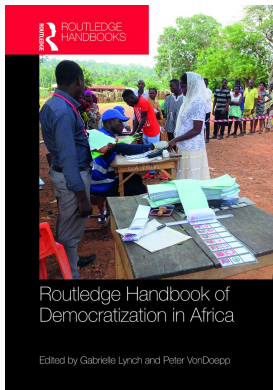
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8

EXECUTIVE POWER
AND HORIZONTAL
ACCOUNTABILITY¹*Landry Signé*

One of the most critical obstacles facing Africa's emerging democracies is the hyper-concentration of executive power. The accumulation of power in the hands of the executive weakens other government institutions, negatively affecting the quality of democracy. During the last quarter of the century, authoritarian reversals occurred in countries with hyper-centralized executive power and weak institutions of horizontal accountability, such as Mali, Niger, Burundi, and Central African Republic. This reminds us of the potential importance of horizontal accountability and its impact on democratic development in Africa.

This chapter presents an overview of the key themes that have emerged from the study of executive power and horizontal accountability, and presents the emerging insights from that research. The chapter begins with conceptual clarifications and defines how to study and measure horizontal accountability, and then narrows in on the horizontal oversight of the executive—the state actor that has historically enjoyed disproportionate powers across sub-Saharan Africa. The analysis then turns to variations in the level and quality of horizontal accountability as per the capacity of various state actors to hold the executive to account, and the impact of such varied levels of horizontal accountability on democratic consolidation. Four case studies, namely, of Benin, Ghana, Liberia, and Malawi, are used to illustrate this. Finally, the chapter highlights important areas for potential future research.

Horizontal accountability

When O'Donnell introduced the concept of horizontal accountability in 1999, he defined it as:

the existence of state agencies that are legally enabled and empowered, and factually willing and able, to take actions that span from routine oversight to criminal sanctions or impeachment in relation to actions or omissions by other agents or agencies of the state that may be qualified as unlawful.

(O'Donnell 1999, 38–9)

However, many scholars considered O'Donnell's definition to be too narrow. Some argued that an understanding of horizontal accountability should include both state and non-state actors, such as civil society organizations, as potential agents of accountability (Schmitter 1999;

Sklar 1999). Others suggested that the scope of O'Donnell's definition should be broadened to include moral rather than just legal transgressions (Mainwaring and Welna 2003). Scholars also debated whether agents of horizontal accountability must possess the ability to impose real sanctions in order to enjoy oversight over those in power (Mainwaring and Welna 2003).

Yet over the course of the previous fifteen years, scholars have more or less come to a consensus about the definition of horizontal accountability. In turn, this chapter adopts the widely accepted definition and understands horizontal accountability as the means by which different agencies of government hold other governmental actors answerable to the law and to the public interest (O'Donnell 2003; Diamond 2004). While O'Donnell (2003, 35) initially suggested that horizontal accountability functioned primarily through the courts, Diamond (2004, 233) demonstrates how a larger array of state actors exercises horizontal accountability over other state actors. These institutions include the executive, legislature, judiciary, electoral management body, anti-corruption commissions, and others (Signé and Korha 2016). The key is that these institutions are "firmly established and constitutionally embedded" with explicitly recognized legal mechanisms for constraining other actors within the state (Diamond 2008, 287). This chapter is especially concerned with state institutions that constrain and limit the executive as the state actor that has historically enjoyed disproportionate power. More specifically, and following Diamond, the analysis focuses on the processes that open rulers' "decisions and transactions to inspection" and "hold them accountable before the law, the constitution, and the public interest" (Diamond 2008, 300). In this sense, the chief task of horizontal accountability agents is to hold the executive to account.

For many scholars, horizontal accountability is considered important precisely because of its relationship with democratic consolidation. If a state is to remain accountable to its citizens and other state agencies, it must subject itself to restraints above and beyond those provided by regular elections, the key instrument of "vertical accountability" (Schedler 1999, 27; Fish 2006, 6). Strong instruments of horizontal accountability are essential for the successful consolidation of democracy, because they can limit abuses of authority and the aggrandizement of power in the hands of the executive. Stronger mechanisms of horizontal accountability in many African political systems have contributed to the relatively recent trend of democratic transition and constitutionalization on the continent, and, as this chapter demonstrates, horizontal accountability mechanisms have also aided processes of democratic consolidation.

Despite the return to multiparty politics from the early 1990s, many African political systems remain particularly susceptible to the centralization of power—as is exemplified by the prevalence of the "Big Man" syndrome of many African rulers (Prempeh 2008; Fombad and Nwauche 2012). Big Man rulers rely on patronage and personal loyalty to retain their power, securing favors and offering benefits to voters "in exchange for political loyalty transferred into votes in democratic elections" (Lindberg 2003, 124). Beyond this, in states where Big Men rule, presidents use their dominance and power to control both the legislature and the judiciary. This both reflects and contributes to a lack of effective checks and balances; that is, the legal mechanisms for executive accountability (Prempeh 2008; Fombad and Nwauche 2012; Mkandawire 2015). The concentration of power in the executive has potentially deleterious consequences for democratic consolidation. As Kapstein and Converse find in their book, *The Fate of Young Democracies*, when institutional "constraints on the executive are weak, democracy is reversed just over 70 percent of the time," whereas "when constraints on the executive are strong, democracy is reversed only 40 percent of the time" (2008, 15).

However, agents of horizontal accountability have successfully exercised oversight both directly and indirectly over the executive. For example, in South Africa, the country's parliament pressured President Jacob Zuma to resign in 2018 following a series of corruption scandals,

legal battles, and a deteriorating economy, and thus held the executive directly accountable. Moreover, in Kenya, the Supreme Court annulled the August 2017 elections and ordered a rerun due to inconsistencies in the process. The Court therefore held the country's electoral commission to account but, in making a ruling that went directly against the interests of the incumbent president, also underscored (very publicly) the limitations of executive power and interference. These examples therefore highlight the critical role that horizontal accountability mechanisms play in facilitating the consolidation of democracy and counteracting the prevailing "Big Man syndrome" (Diamond 2008; Fish 2006; Signé and Korha 2016).

The operation of horizontal accountability depends on various factors. These include the existence of mechanisms to oversee the operations of state agencies; the level of openness and transparency in the actions of state actors; the level of independence of the various agents of horizontal accountability from the institutions they oversee; and the ability of the agents of horizontal accountability to enforce sanctions and other measures of oversight (Diamond 2008; Mainwaring and Welna 2003; Schedler 1999, 18–20). Many of these factors depend on the law, which is perhaps why Diamond (2008) argues that law is the first institution of accountability. Law sets the boundaries for what state agencies can accomplish. In addition to legal mechanisms, horizontal accountability requires government agencies to remain transparent about their actions. Without openness, it is impossible for agents of horizontal accountability to evaluate state actions, or their justifications for those actions. Third, agencies must retain independence from the other agencies they oversee, as this allows for their operation to be free from unjust interference. Finally, horizontal accountability requires oversight agents to be able to impose sanctions or punitive measures over agencies that exert undue influence over other agencies or otherwise disregard the law.

That said, the challenge of how to operationalize and measure horizontal accountability remains pressing. Measures of judicial oversight and independence are significant components of horizontal accountability and are widely available in historical data, such as the World Bank Governance Indicators. Other qualitative scholarship has broken down the concept into fifteen separate mechanisms and closely investigated their impact on overall accountability in more limited contexts (Schillemans 2011). More recently, the Varieties of Democracies (V-Dem) database has developed an "index of horizontal accountability" that includes measures of judicial independence, legislative constraints on the executive, and the power of independent state bodies such as ombudsman and comptroller generals (Lührmann, Marquardt, and Mechkova 2017). Given its comprehensive nature, the V-Dem dataset will likely set the standard for the empirical testing of horizontal accountability mechanisms going forward.

Greater attention to operationalizing and measuring horizontal accountability goes beyond academic concerns. Doing so can promote better understandings of how different institutional mechanisms negatively or positively affect the quality of democracy and survival of democracies throughout Africa, which might help to prevent future authoritarian reversals (Diamond 2008; Mainwaring and Welna 2003; Schedler 1999, 18–20; Signé and Korha 2016).

Insights on horizontal accountability

Even though scholars agree that horizontal accountability is a crucial element of democratic accountability, we know little about its overall impact on the democratic process. For example, Thomas Schillemans—through a careful study of horizontal accountability in the Dutch Republic—suggests it is only a partial solution to accountability deficits and primarily functions through enhancing institutional learning (2008, 2011). Other scholars suggest that increasing the number of independent oversight agencies can actually undermine overall accountability

by introducing coordination problems (Bouckaert, Peters, and Verhoest 2010; Willems and Van Dooren 2011). Moreover, much of the research on horizontal accountability has been based on countries with established democracies. In light of this, the cases outlined below add to our understanding about the relationship between executive power and horizontal accountability in new democracies, and the role that horizontal accountability mechanisms play in democratic transition and consolidation.

More specifically, this section briefly compares the mechanisms of horizontal accountability across four African countries—Benin, Ghana, Liberia, and Malawi—and assesses the effectiveness of the legislature, judiciary, and other constitutional institutions in exercising oversight over the executive. In each of these cases, the level of concentration of executive power remains comparatively strong, but significant variation exists regarding the quality and effectiveness of horizontal accountability mechanisms. In the case of Benin, for example, courts have helped to strengthen democracy over time, but other institutions of horizontal accountability are consistently weak. In Ghana and Liberia—while differing in the length and stability of their democracies—weak horizontal accountability institutions have undermined democracy. Finally, in Malawi, strong institutions of horizontal accountability have strengthened and helped to preserve democracy. These cases demonstrate how horizontal accountability mechanisms affect democratic processes: when mechanisms are relatively strong, horizontal accountability can aid democratic consolidation, but when they are relatively weak, countries may be particularly vulnerable to challenges to democracy.

Benin

Of the four countries considered here, Benin has been democratic the longest and has the most robust mechanisms of horizontal accountability. Like most countries in Africa, however, power in Benin is significantly concentrated in the hands of the executive (Bierschenk, Thiroléron, and Bako-Arifari 2003, 163). The Benin Constitution of 1990 mandates that the president shall be elected by popular vote for no more than two five-year terms and shall serve as:

the head of the State, head of the Government, supreme head of the Armies and guarantor of the independence of the Nation, of the integrity of the territory and of the respect of the Constitution, [and] of the treaties and international agreements.

(Hounkpe 2010)

The Beninese president also maintains important powers that infringe upon the agency and independence of the legislative and judicial realms (Adjolohoun 2013, 256). For example, each president has the right to appoint judges to the Constitutional Court and the Supreme Court, as well as various other senior officials within the administration. While courts are a central mechanism of horizontal accountability, the presidential power of appointment has the potential to undermine the ability of these institutions to oversee executive operations via their appointments (Bierschenk 2009, 350). Additionally, Article 68 of the constitution allows the Beninese president to “issue exceptional measures” with the approval of the president of the National Assembly and the president of the Constitutional Court when the “institutions of the Republic, the independence of the Nation, the integrity of the national territory or the execution of international commitments” are “threatened in a serious or immediate manner.” Beyond rather extraordinary circumstances, presidential powers have further increased in recent years, after the Constitutional Court ruled in 1994 that the executive’s powers under Article 68 are immune from parliamentary influence (Adjolohoun 2013).

The constitution of Benin gives legislative power to a unicameral chamber known as the National Assembly (Bierschenk 2009, 350). Ostensibly, the National Assembly serves as an agent of horizontal accountability over Benin's executive, but ineffective operations prevent it from undertaking actions that would successfully redistribute power from the executive. Although the National Assembly ostensibly operates under Rules of Procedure, they have historically demonstrated a failure to follow the same (Adjolohoun 2013, 259). For example, "on several occasions the requirement that parliamentary secretaries must be present during sessions of the Assembly has been either ignored or used to postpone discussions depending on the political interests at stake" (Adjolohoun 2013, 259). Furthermore, the Assembly has repeatedly referred cases to the Constitutional Court in an attempt to skirt difficult issues, even when the Assembly could easily resolve the cases by applying the Rules of Procedure (Adjolohoun 2013, 259).

The National Assembly has several measures of horizontal accountability at its disposal. Article 68 of the constitution affords the president, in consultation with the president of the National Assembly and the president of the Constitutional Court, the ability to take exceptional measures against threats to the republic, its institutions, or the civil liberties of its citizens (*Constitution of the Republic of Benin* 1990). Along with the National Assembly president's active participation in creating these measures, Article 69 of the constitution also allows parliament to challenge presidential measures issued under Article 68 (Adjolohoun 2013, 260). Furthermore, parliament has the ability to challenge the executive in any circumstance via "interpellations, written questions, oral questions with or without debate followed with no [parliamentary] vote, and parliamentary commissions of inquiry," and through their powers of impeachment (Adjolohoun 2013, 260). And while the president does have the power to initiate "laws concurrently with the members of the National Assembly" as denoted in Article 57 of the constitution, the National Assembly retains the sole ability to make laws regarding a wide variety of civil and criminal matters, including "citizenship, civic rights, fundamental freedoms ... organization of the judiciary, taxes, currency, electoral law," and more. The autonomy of the parliament is further protected by Article 90, which states that members of parliament "may not be investigated, wanted, arrested, detained or prosecuted for opinions or vote issued in the discharge of their duties" (Adjolohoun 2013, 260). These measures allow the legislature to retain the ability to exercise horizontal accountability over the executive despite the executive's attempts at centralizing power (Adjolohoun 2013, 257).

While the National Assembly exercises only moderate horizontal accountability over the executive in practice, the judiciary is by far a stronger agent (Bertelsmann Stiftung 2016). Made up of the Constitutional Court, Supreme Court, and the High Court of Justice, the judicial branch works as the conservator of the constitution and exercises judicial review over both executive and legislative actions. Judges are appointed to the Constitutional Court for one five-year term and may be reappointed once. This allows the judges to be free from executive influence during their five-year terms. While the minimum experience required to sit on the Benin Supreme Court is fifteen years, the Constitutional Court must be composed of "three magistrates with a minimum of 15 years of experience, two legal experts, law professors, or legal practitioners with a minimum of 15 years experience, and two personalities of high professional reputation" (Adjolohoun 2013). As such, the president, while still able to appoint those suited to his political goals, must choose from a smaller body of applicants than he would be able to should the requirements for sitting in a superior court be less stringent.

The judicial appointment process is indicative of a larger trend in Benin, where different accountability mechanisms reinforce each other. As Magnusson and Clark (2005) suggest, Benin is a unique example where institutions constrain leaders from overstepping their power, and leaders place democratic standards over potential personal or political gains. These forms of

horizontal and personal accountability work in tandem with “diagonal” forms of accountability, wherein members of civil society and other external actors pressure, and therefore incentivize, the executive to uphold democratic principles and respect the rule of law (Gisselquist 2008). Furthermore, the constitution of Benin itself is difficult to amend, and the Constitutional Court often sides with the Beninese people in matters of constitutionality (Kohoun 2013, 74).

In many respects, Benin is at the forefront of African democracies in terms of mechanisms of horizontal accountability. The powers of parliament and the judiciary to question and even impeach the executive make government power in Benin more widely disbursed than in many African nations. However, the president’s ability to issue emergency decrees without prior parliamentary consultation and the inconsistent application of rules governing relations between the executive and the legislative have nevertheless served to make the Beninese executive the most capable and powerful of Benin’s three branches of government.

Ghana

Ghana, like Benin, is regarded as one of the most stable democracies in Africa. Although Ghana currently serves as one of the few constitutional democracies in Africa, independent oversight over the executive branch has been limited since Ghana’s formal transition to democratic rule in 1992. Even with a formal separation of branches of government, power remains concentrated in the executive and ruling party. Under the provisions of the 1992 constitution, executive authority in Ghana is vested in a president who serves as head of state and as commander-in-chief of the armed forces. The president of Ghana—whose responsibility extends to the execution of the constitution—has a cabinet to assist him in the execution of all laws made by the parliament under the constitution.

Historically, the Ghanaian parliament has been controlled by two political parties: the National Democratic Congress (NDC) and the New Patriotic Party (NPP) (Brierley 2012, 419). Since independence, Ghana’s executive has encouraged intense rivalry and polarization between the two major parties in order to consolidate executive control over other branches of government (Agyemang 2014, 5). In March 2001, for example, the Civil Service (Amendment) Act passed through parliament, which removed “the need for the executive to seek Parliamentary approval to create or collapse ministries.” The Act effectively eliminated all parliamentary power and oversight over executive ministerial actions, as well as diminished the potential growth of the Ghanaian parliament as its own political institution. Passing of the Civil Service Amendment Act in such a short time—in an uncharacteristic six days—also suggests certain members of parliament’s eagerness to curry favor with the Ghanaian executive (Brierley 2012, 427).

The constitution of Ghana also gives the executive immense control over the legislative agenda and MPs such that the executive actually has *de facto* power of lawmaking. The executive needs only a simple majority “in the house to curtail debate on the floor or limit the length of time committees consider bills” (Brierley 2012, 423). Even after the passage of a bill, the Ghanaian president still has the power of package or line-item veto, which allows him to selectively, or collectively, reject acts of a bill. Following a veto, the president’s actions can only be nullified through a two-thirds house vote against the executive (*Constitution of the Republic of Ghana* 1992, Article 106(8); Brierley 2012, 432). This means that the president is able to rely on legislative majorities to limit parliament’s few powers of oversight (Brierley 2012, 429). Such powers effectively give the executive in Ghana complete influence over the legislative agenda, resulting in a peculiarly powerful and centralized executive government. In fact, because of this immense executive authority, the first four terms of Ghana’s Fourth Republic saw all legislation formally credited as originating from within the executive branch (Brierley 2012, 426).

Furthermore, Ghana's executive has the power to exert immense influence over the legislature, given that it is prohibited from introducing legislation that would be costly to the state (*Constitution of the Republic of Ghana* 1992, Article 108; Brierley 2012, 431).

In addition to executive power over the parliament, Article 78 of the constitution of Ghana—known as the “hybridity clause”—requires that the president draw his ministers from parliament (Brierley 2012, 431). This selection process provides strong incentives for ruling-party members of parliament (MPs) to develop close relations with the executive and undermines allegiance to the legislature. Scholars argue that this hybridity limits horizontal accountability within the Ghanaian government, and prevents the legislature from exercising legitimate oversight over the executive (Brierley 2012, 423; Stapenhurst and Pelizzo 2012). Beyond hybridity, limited resources and high turnover plague the legislature, which has contributed to its limited independence and effectiveness (Lindberg and Zhou 2009, 148).

These problems are compounded by the fact that the constitution does not explicitly discuss the legislature in sufficient detail to vest significant power in it. This ambiguity inadvertently allocates lawmaking power in the executive, which blurs the distinction between formal legislative powers typically reserved for the parliament and informal legislative powers typically reserved for the president (Stapenhurst and Pelizzo 2012, 341). It is, therefore, the president—not parliament—who informally sets Ghana's legislative agenda, legally determines how long parliament has to consider various bills and amendments, and, through the power of the line-item veto, decides what kinds of legislation ultimately gets passed. Even if the legislature were to have power to make laws, the executive hold over the judiciary system means that the executive influences how laws are interpreted and that the legislature has few paths to exert true power (Stapenhurst and Pelizzo 2012, 341).

Limited judicial power also stems from the high centralization of power in the Ghanaian executive. The constitution gives the executive the power to appoint the chief justice and other superior court judges (Abdulai and Crawford 2010, 41). Within this framework, the president also has the power to appoint all judges in the Supreme Court, who then serve life terms in office (Agyemang 2014, 6). While the executive appointment of members of the judiciary requires the approval of parliament and must be made in consultation with the Council of State or the Judicial Council, the power of the executive is such that the members of both the Council of State and the Judicial Council are also appointed by the president (Abdulai and Crawford 2010, 41). The judicial appointment process restrains the independence of the judiciary in some regards but not in others. On the one hand, “by requiring presidential appointees to approve other presidential appointees, the approval functions of both the Council of State and the Judicial Council can be a mere formality” (Abdulai and Crawford 2010, 41). On the other hand, Supreme Court judges are appointed for life, so once they receive approval from the council, they could act independently and exercise oversight over the executive.

While Ghana has often been regarded as one of Africa's most dynamic democracies due to the regular and peaceful transfers of power through the ballot box, its mechanisms of horizontal accountability are weak. In turn, developing more robust mechanisms of horizontal accountability is among the greatest challenges faced by Ghana's emerging democracy.

Liberia

After decades of authoritarian rule and civil war, Liberia began its transition to democracy in 2003 and, in 2017, witnessed its first peaceful transition of presidential power—from the first democratically elected president, Ellen Johnson Sirleaf, to the next, George Weah. Although

Sirleaf was planning to step down in accordance with the 1986 constitutional limit on number of presidential terms, Weah's victory was a rare defeat of an incumbent party.

Despite having three successful democratic elections, Liberia's institutions of horizontal accountability remain weak, which threatens further democratic consolidation (Signé and Korha 2016). In theory, the design of horizontal accountability institutions in Liberia allows institutions to exercise oversight over each other, by distributing power and oversight across legislative, judicial, and executive branches. In practice, the legislature has been plagued by corruption and the judiciary has been vulnerable to political influence, which has facilitated the consolidation of power in the executive (Jaye 2009; Sawyer 2005). Moreover, current and past presidents have intentionally used their authority to weaken institutions of horizontal accountability, in order to strengthen executive power (Sawyer 2005; International Crisis Group 2005).

In an attempt to resurrect Liberia's more democratic past, Liberia formed a National Constitution Committee to draft a new constitution in 1981. As part of these efforts, special attention was paid to constraining the powers of the executive, including reducing presidential term lengths and limits, as well as preventing future presidents from extending their terms or changing term limits once in office. Despite these efforts, power continues to be concentrated in the executive, a trend that predates the 1986 constitution (Sawyer 2013; Moran 2006; Guannu 1985). According to Articles 50–56 of the 1986 constitution, the president is head of government, head of state, and commander in chief. As part of these roles, the president has the power to sign or veto legislation, grant pardons, and appoint cabinet members, judges, and other public officials. Article 56, in particular, states that appointees serve “at the pleasure of the President,” which means that the president essentially has the power to remove government officials at will (Signé and Korha 2016). The power to both appoint and, more importantly, remove appointees particularly undermines the independence and oversight of the judiciary (Dolo 1996; Diamond 2008).

Judges in Liberia are appointed to the Supreme Court and to the lower courts by the president, but before taking their place on the bench, appointees must be confirmed by the senate (Article 54). This process functions as a way for the legislature to exercise oversight over the executive, but the process is undermined by the president's ability to also remove judges. Unlike political systems where judges are appointed for life and therefore insulated from executive influence, such as in Benin, the ability of the president to remove judges from the bench potentially forces judges to embrace political expediency in their decisions rather than uphold the law. This undermines the ability of the judiciary to exercise oversight vis-à-vis the executive.

One example of alleged political expediency by the judiciary is provided by the dispute that took place between the National Election Commission (NEC) and Supreme Court during the 2014 senatorial elections when the Supreme Court overturned a critical NEC decision. According to Section 2.9 of the New Elections Law of Liberia, the NEC is an independent commission tasked with protecting the integrity of public interests and guarding against potential conflicts of interest. In October 2014, the NEC denied a petition asking it to halt the special senatorial election amid public health concerns about the ongoing Ebola outbreak. In their decision, the NEC cited constitutional concerns about the need to hold the election before the end of the year when the senatorial terms expired. Shortly thereafter, the Supreme Court overturned the NEC's decision and ordered a stay on the elections until the country was declared Ebola-free. President Sirleaf supported the Court's decision, and declared a state of emergency, arguing that campaigning and election activities posed a public health risk. While this may well have been a sensible decision, some viewed the Supreme Court's ruling as politically motivated—since President Sirleaf's son was running in a contentious election against one of her rivals. However, even if the Supreme Court's ruling was not politically motivated,

its actions—together with those of the president—undermined the independence of the NEC, and by extension, challenged a central aspect of vertical accountability (free and fair elections). Another example of political expediency in judicial decisions was provided in 2017, when the Supreme Court signaled that it would not prioritize a high-profile corruption case against the Sable Mining Company, which involved several top government officials (Jackson 2018).

In addition to laws that provide for the creation of agencies such as the NEC, the constitution provides for the creation of institutions that ensure governmental transparency, including the Anti-Corruption Commission and the Freedom of Information Act. Established in 2008, the Liberia Anti-Corruption Commission (LACC) has the power to investigate acts of corruption and to cause the arrest, detention, and/or prosecution of any individuals being investigated for acts of corruption. That said, the anti-corruption units are under-resourced, and therefore, unable to function effectively (Myers 2017, 3). The Justice Ministry has also failed to prosecute many of the corruption cases exposed by the LACC because it too faces corruption, lack of qualified personnel, poor infrastructure, poor case-flow management, and insufficient funding (Myers 2017, 7). The Freedom of Information Act, on the other hand, allows everyday Liberians to obtain information on declassified activities of the state. But, similar to the inefficiency of the anti-corruption agency, the process to lodge requests and receive materials under the Freedom of Information Act remains difficult and inconsistent (Carter Center 2010).

The legislature has little oversight of the executive in terms of expenditures and national security. Even though the legislature approves the budget, it does not have further oversight of the expenditures after the budget has been passed (Sawyer 2005; Jaye 2009). Moreover, the legislature suffers from high turnover—a problem common in new democracies—so newly elected officials are unable to draw from existing institutional knowledge and often fail to perform their duties in accordance with the law and the constitution (Jaye 2009). As a result, individual legislators are particularly susceptible to bribery and corruption, further weakening the ability of the legislature to exercise internal or external oversight.

Despite having strong institutions of vertical accountability, Liberia's institutions of horizontal accountability remain weak. The executive's power to appoint and to remove appointees, including judges, undermines the independence of the judiciary and engenders the possibility of judges pandering to political interests rather than upholding the law. Even though the legislature operates with significant independence from the executive, it is plagued by corruption and high turnover, preventing it from exercising meaningful oversight over the executive. Without strong mechanisms of horizontal accountability to constrain power of the executive, Liberia remains particularly vulnerable to the forces of neopatrimonial politics, and risks democratic backsliding.

Malawi

In the final case we examine Malawi, where horizontal accountability mechanisms have helped to prevent democratic backsliding, despite attempts from the executive to consolidate power (VonDoepp 2005). Similar to Benin's political system, the judiciary plays an important role in exercising oversight over the executive, but horizontal accountability mechanisms in Malawi are not limited to the judiciary. Several institutions play an important role, including the Malawi Electoral Commission and Malawi's Anti-Corruption Bureau.

The current constitution in Malawi was adopted in 1995 and outlines provisions for the three branches of government. The executive centers on the president, who is the head of state and government, as well as the commander-in-chief of the defense forces. As president, he may grant pardons, and appoint cabinet members (who can be from inside or outside the legislature),

a chief justice, and even a second vice-president, although he must be from a different political party. The 1995 constitution also provides for a two-branch legislature, although an amendment in 2001 established a unicameral legislature. As far as legislative power is concerned, the constitution specifically vests all legislative powers in the parliament, including the power to indict, convict, and/or impeach the president or vice-president.

Unlike in Ghana and Liberia, the president in Malawi does not have the power to veto legislation put forward by the National Assembly. When a bill is presented to the president to affirm, the president has the option to sign the bill or to “withhold assent” and return it to the National Assembly with specific concerns he would like addressed. If the Assembly is able to revise and pass the bill with a simple majority, the president is obliged to confirm the bill as outlined in Article 73 of the constitution. Beyond the lack of veto power, the president of Malawi does not set the legislative agenda, which contributes to its independence. In addition to its power of lawmaking, the legislature also exercises oversight over the relationship between the executive and judiciary, as the National Assembly is required to confirm one of the president’s most important appointees—the chief justice.

The president’s appointment for chief justice must be confirmed by the parliament with a two-thirds majority, and the president appoints additional judges to the High Court and Supreme Court of Appeal upon recommendation from the Judicial Service Commission where the chief justice serves as the chairman. Other members of the Commission include the chairman of the Civil Service Commission—appointed by the president and confirmed by the Public Appointments Committee—and a justice of appeals, appointed by the president in consultation with the chief justice. Recall the case of Ghana, where a committee whose members are appointed by the president also selects judges of lower courts. Likewise in Malawi, the judicial commission includes members appointed by the president, which threatens judicial independence. Moreover, the commission is infamous for its lack of transparency in the selection process, and for its role in politicizing the appointment process (Ellett 2014, 42). That said, judges have tenure until mandatory retirement at the age of seventy, and a judge can only be removed by a majority vote of the National Assembly, not the president.

While the judiciary is not free from executive influence, the relationship between the Supreme Court and the executive was put to the test in 2010 when President Bingu wa Mutharika attempted to “fire” the first vice-president, Joyce Banda, and push her out of the party, an action that was blocked by the court (Gabay 2014). When Mutharika died, Vice-President Joyce Banda was appointed to fill the vacancy of the president in accordance with Article 83 of the constitution, which states that “whenever there is a vacancy in the office of the President, the First Vice President shall assume that office for the remainder of the term.” The decision for Banda to fill the presidential vacancy thwarted a potential constitutional crisis and received widespread support from ex-President Bakili Muluzi, the Malawi Law Society, and Malawi security forces (Dionne and Dulani 2013; Singini et al. 2013). Nevertheless, when Banda ran for president in 2014 and the results revealed that she had lost, Banda sought to nullify the election results and ordered a rerun of the election. After some back and forth between Banda, the Malawi Electoral Commission, and the High Court, the Court declared Banda’s order unconstitutional and confirmed the election results. The results were also verified by the Malawi Electoral Support Network—a coalition of civil society organizations that monitored the election—which found results similar to those of the Malawi Electoral Commission. Through a combination of horizontal and diagonal accountability mechanisms, Malawi was thus able to avert a constitutional crisis and oversee a smooth transition of power.

Another example of horizontal accountability mechanisms working to exercise oversight over the executive is provided by anti-corruption efforts. Between 2009 and 2014, it has been

estimated that around US\$400 million–800 million was taken from the public coffers (Strasser 2016). Section 13 of Malawi's Constitution (1995) allows for the creation of entities such as the Anti-Corruption Bureau (ACB), stating the country is able to “introduce measures which will guarantee accountability, transparency, personal integrity and financial probity.” While the director general and deputy director general of the ACB are appointed by the president, the appointments must be approved by the National Assembly. After an independent investigation verified that money had gone missing, the ACB began an investigation. This scandal—so-called “Cashgate”—led to more than seventy arrests, including senior party officials, and to Banda replacing her entire cabinet (Strasser 2016). In Malawi, a strong independent judiciary combined with electoral and anti-corruption governmental agencies has worked to mitigate the possibility of power becoming concentrated in the executive branch. As a result, we can see how the quality of horizontal accountability mechanisms can help to promote democratic consolidation.

The way forward on executive power and horizontal accountability

As the case studies demonstrate, horizontal accountability mechanisms affect democratic processes. Relatively strong mechanisms can aid democratic consolidation, especially by restraining executive power. Yet when those mechanisms are weak, countries may be face vulnerabilities that can threaten democracy.

As the literature on horizontal accountability is still in its nascent stages, there exist numerous unanswered questions, under-researched topics, and opportunities for future scholarship to make important contributions. Now that there is a consensus on what horizontal accountability is and how to measure it, the two greatest needs are to develop more theory to better understand how horizontal accountability works, and for more applied research to understand under what conditions it is most effective and its relationship with other important political, economic, and social outcomes.

Future research on horizontal accountability would benefit from focusing on two principal areas. First, there is a need for further theory on how horizontal accountability works and the causal mechanisms that link it to outcomes such as improved governance, political stability, or popular satisfaction. One promising approach has drawn on general accountability studies to theorize horizontal accountability in terms of principal-agent theory (Schillemans 2011; Gailmard 2014). Other theoretical approaches that might yield further advances include game theory or institutional bargaining (e.g., Bueno de Mesquita et al. 2003). Game theory, in particular, may illuminate the path to stronger democratic institutions, as well as hinting to the potential for state actors to uphold or undermine balances of power. On the other hand, research on institutional bargaining within and through government branches may further explain how these branches interact and how they balance external actions with internal mechanisms.

Second, given the recent availability of robust data on horizontal accountability dating back to 1900, there are significant opportunities for empirical testing using the V-Dem database (Coppedge et al. 2018; Pemstein et al. 2018). How does horizontal accountability affect other components of democracy, such as the holding of regular elections or freedom of speech and assembly? Do institutions of horizontal accountability give political leaders less incentive to undermine the rule of law by cracking down on the political opposition? Are countries with high levels of horizontal accountability healthier, happier, and wealthier than countries that are not? These questions remain virtually unexplored, but it is not for the lack of available information.

The study of horizontal accountability has moved beyond the phase where scholars have debated the concept and questioned its analytical utility. Armed with a consensus on what

horizontal accountability is, its importance to democracy studies, and a richness of available data, an exciting new phase could be about to begin.

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