

Agency Accountability

Management of expectations or answerability to mandate?

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Abstract

European agencies are subject to many kinds of control mechanisms and analysts worry that they often suffer from an 'accountability overload'. This paper argues that such diagnoses are typically set without any explicit demarcation criterion for identifying accountability practices and separating them from mere instruments of political control. The paper argues that the concept of an accountability practice cannot be reduced to the 'management of expectations'. Rather, it should be restricted to procedures that track the mandate of the agency. This requires defence of the idea that there is such a thing as a coherent mandate as opposed to a mere heap of conflicting standards. The concept of a 'multi-directional mandate' is therefore introduced as a hermeneutical device for thinking about the coherence of different kinds of considerations. It is argued that neither account-givers nor account-holders can treat different aspects of the mandate in isolation; there is no accountability without sensitivity to the intertwinement of the different dimensions.

Keywords

Accountability – Multidirectional Mandates – Reputation Theory – Value Interpretation

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Introduction

The debate on the legitimacy of the agencies of the European Union is to a large extent focused on the concept of accountability. On the face of it, there is a tension between claims of accountability deficits and accountability overloads. On the one hand, the expertification of decision-making—the so-called ‘rise of the unelected’ (Vibert, 2007)—is problematic because without traditional democratic accountability it is unclear how arbitrary power can be publicly constrained. This has been raised as an acute worry with regards to transnational governance regimes: ‘it is doubtful whether accountability and accountability processes can operate outside the context of liberal democratic government’ (Fisher, 2004, p. 496). On the other hand, many are equally worried that agencies can become ‘too accountable’ (Kovacic & Hyman, 2012, p. 6); there is a critical focus on pathologies of ‘multiple accountability disorder’ (Koppell, 2005), ‘accountability overload’, ‘the accountability paradox’, ‘accountability paradox’, ‘accountability traps’, ‘accountability dilemmas’ and ‘accountability crisis’ (see Bovens, Schillemans, & Hart 2008, p. 228 for a concise review).

To some extent, there is no real contradiction here. The claim of ‘accountability overload’ is not really about an overload of accountability. It is a warning that many practices are ‘taking place in the name of accountability yet in fact running the risk of detracting from it’ (Busuioc, 2013, p. 254). That is, some practices—such as blunt and unreasonably laborious auditing mechanisms or obligatory reports without interested audiences—are commonly spoken of as accountability practices but may in fact disguise real deficits in terms of public transparency and answerability. This raises a question to which this paper seeks to answer: how can we differentiate between *genuine* accountability practices and practices that are about accountability *in name only*?

The question of how to define what counts as an accountability practice is not simply a matter of terminology; it is also a matter of taking a stand on the value of non-arbitrary governance. An overly expansive concept of accountability risks undermining its critical force regarding concerns about, for example, abuse of power or biased decision-making. Richard Mulgan gestured towards this point in his argument that accountability is about external scrutiny and should not be expanded to include the internal sanctions of conscience or ‘inward accountability’ (Mulgan, 2000, p. 560). However, the range of accountability pathologies diagnosed today indicates that it is not sufficient to demarcate accountability as the practice of ‘holding the powerful to account through political and legal channels of external scrutiny and sanctions’ (Mulgan, 2000, p. 571). Not every form of external scrutiny counts as a check on whether an agency is pursuing its mission in the right way.

This paper clarifies the conditions of accountability for independent agencies.¹ It has a critical and a constructive part. In the critical part, it seeks to show that influential

¹ The theory to be developed should be applicable to all types of agencies, ranging from full-blown regulatory agencies with decision-making powers to information and coordination agencies (see taxonomy in Craig, 2012, pp. 149-153). Delegation always involves a measure of normative discretion and the substantive powers of agencies appear as a spectrum of interpretive freedom (Hofmann, Rowe,

accountability studies lack a reasonable demarcation criterion for separating accountability practices from other kinds of external expectations. The tendency of equating accountability practices with the ‘management of expectations’ (going back to Romzek & Dubnick, 1987) has led to the inclusion of mechanisms and procedures that have no genuine relation to accountability as a matter of ‘explaining and justifying’ conduct (Bovens, 2007). This part of the paper focuses on the currently popular ‘reputational perspective’ that sees accountability as a matter of securing the esteem of the right audiences. However, critical engagement with reputation theory will also help deliver important tools for the constructive part. In particular, reputation theory helps us understand obstacles to accountability, and its concept of the ‘organisational image’ of agencies (Carpenter, 2010) sheds light on the kinds of considerations agencies need to be responsive to in order to be legitimate.

In the second part, the goal is to articulate an appropriate demarcation criterion. The suggestion here is that accountability is essentially about answerability to mandate. That is, for a practice to count as an accountability practice it must be reasonable to consider it as a good faith attempt track the demands of the mandate. To some extent, this is a common-sense view, yet making practical sense of it requires serious reconsideration of the concept of agency mandates. The idea of answerability to mandate is not very promising if mandates are composed of a *mere heap* of conflicting types of considerations. We need a concept of agency mandates that enables us to speak with some justification of a unified mission – a *space of public reasons* agencies can be held accountable to.² This is required not only to evaluate accountability practices but also in order to identify them in the first place. For this purpose, the paper offers the idea of the ‘multidirectional mandate’ according to which different kinds agency-relevant considerations belong to an overarching structure – as opposed to a set of independent and conflicting standards.

Two alleged puzzles of public accountability

This section provides some of the theoretical backdrop that explains why we need to recapture the concept of accountability. The focus here is on how the attempt to replace standard principal-agent theory with a reputational approach contributes to a further blurring of the demarcation criterion for accountability practices. In E. Madalina Busuioc and Martin Lodge’s account of ‘The Reputational Basis of Public Accountability’ (2016), two ‘puzzles’ of accountability are confronted. First, there is allegedly a misfit between traditional frameworks for talking about accountability and

& Turk, 2011, pp. 492-93). As Martin Shapiro notes with regard to the Interstate Commerce Commission that was introduced as a purely information-gathering and technical agency: ‘No one, however, was naïve enough to suppose that rate-setting had no policy dimension, that it did not somehow involve balancing the interests of carriers and shippers and of various parts of the country’ (Shapiro, 1997, p. 280).

² The two phrases in italics are references to philosophical inspirations for this paper. The expression ‘mere heap’ figures prominently in Christine Korsgaard’s (2009) account of practical reason (but originally it goes back to Aristotle’s *Metaphysics* (8.6 1045a10)). The phrase ‘space of reasons’ belongs to Wilfrid Sellars (1997) and this paper is inspired by the way Anders Molander (2016, p. 63) uses it to clarify the connection between discretion, justification and accountability.

empirical findings. Second, accountability has supposedly become an unqualified ‘Good Thing’ despite the detrimental effect of a range of accountability mechanisms. This section seeks to explain why the reputational approach does not solve these puzzles.

The ‘misfit’ puzzle

Busuioc and Lodge claim that there is a ‘misfit between the hegemonic political science framework for talking about accountability, namely, principal-agent based accounts, and empirical findings’ (Busuioc & Lodge, 2016, p. 247). Importantly, this ‘misfit’ concerns the core meaning of accountability; the puzzle is consistently discussed in terms of what accountability is ‘about’. While the principal-agent model sees accountability as a matter of ‘ensuring that those office holders vested with discretionary power are kept on a “leash”’, empirical studies reveal that the supervised bodies provide information beyond their strict duty and that the problems may lie with the account-holders (Busuioc & Lodge, 2016, p. 247). Given empirical findings on how interaction in accountability processes are structured by considerations of reputational standing, the authors suggest a radical revision of the notion of accountability:

Seen from a reputational perspective, accountability is not about reducing ‘information asymmetry’, moral duties, containing agency losses, or ensuring that agents stay committed to the original terms of their mandate. Instead, accountability – in terms of giving and holding – is about advancing one’s own reputation vis-à-vis different audiences, for account-givers and account-holders alike (Busuioc & Lodge, 2017, p. 92; see also 2016, p. 248).

There are two main problems with this way of dealing with the misfit between the principal-agent literature and empirical findings. First, the principal-agent perspective and the reputational perspective do not answer the same kinds of questions. Second, the reputational perspective fails to address the genuine shortcomings of the principal-agent perspective as a theory of accountability.

In what sense do principal-agent theory and the reputational perspective answer different questions? Let us consider what the principal-agent literature tries to establish. The explicit objective of the articles referred to by Busuioc and Lodge is *political control* over administrative action. Some of the articles provide an interpretation of how existing administrative law serves certain political interests (McCubbins, Noll, & Weingast, 1987; 1989). The logic of procedural design is tracked to the interests of elected politicians, who for example ‘stack the deck’ in order to make the agency’s political environment mirror the political forces that gave rise to it (McCubbins, Noll, & Weingast, 1987, p. 262). Another article considers the more general question of who controls the bureaucracy (Hammond & Knott, 1996). The goal is to provide a formal framework for explaining how multi-institutional policy-making requires that we see bureaucratic autonomy as a function of systemic interaction and not the preferences of any institution in isolation. The preferences and

possibilities of the Senate, House of Representatives and the president are interdependent and make bureaucratic autonomy a contingent matter.

Advocates of the reputational perspective may be right in claiming that the principal-agent literature does not capture the nature of public accountability, but this was clearly not the ambition of the articles they cite either. Political control must not be conflated with accountability.³ To some extent, the accountability of agency decisions depends on independence from the politics of majoritarian or partisan institutions (Vibert, 2007, ch. 6). The accountability of agencies is governed by a *fiduciary* relation: the agency is a trustee charged with a duty of care and loyalty to the public interest (Majone, 2001). Accountability is not about responsiveness to the will of a contingent political coalition but about providing public reasons for decisions. The extent to which these reasons should appeal to the will of political actors is a substantive question. The accountability-relevance of responsiveness to political institutions depends on the nature of the authority delegated to the agencies.

Note that this claim does not rely on any particularly controversial idea of accountability. There are of course many specific conceptions of what accountability means, but it does have a broad overarching meaning. According to a review of various kinds of accountability research, there is a minimal conceptual consensus that 'accountability is about providing answers; is about answerability to others with a legitimate claim to demand an account' (Bovens, Schillemans, & Goodin, 2014, p. 6). Many of the mechanisms described in the principal-agent literature are neither about providing answers nor necessarily about legitimate instructions. For example, deck-stacking can involve creating cumbersome procedures to favour well-organised and well-financed interests (McCubbins, Noll, & Weingast, 1987, p. 262). Indeed, those who want to control the agency may want it to be less than fully accountable; political authorities can strategically insulate agencies of their own making in order to protect them from the uncertainties regarding future political coalitions (Moe, 1990, p. 227).

Therefore, the misfit is not between principal-agent *theory* and *empirical* studies of accountability behaviour. Rather, the real misfit is between the goal of understanding the logic of strategic manoeuvres of control (principal-agent theory's domain) and the ambition to explain what accountability is 'about' (reputational theory's aim). However, despite all attempts to distance themselves from principal-agent theory, advocates of the reputational perspectives are still playing the same game. The theory identifies 'reputation as a key variable in driving accountability behavior' (Busuioc & Lodge, 2016, p. 249). This inherits the strategic control-oriented focus of principal-agent theory – but now interpreted as part of an accountability practice.

³ Busuioc (2013, p. 49) and Vos (2014, p. 34) have suggested that accountability is one of three types of control, namely *ex post* as opposed to *ex ante* and ongoing controls. This 'temporal' conceptualisation conflates two distinct senses of the term control: steering and checking. Steering is about influencing a change (by formal or informal means) while checking is about making sure the change has come about. The proactive means of directing conduct that the authors identify as the *ex ante* dimension is about steering in the sense of creating a mandate, accountability is about checking fidelity to mandate.

The real strength of reputation theory is that it goes further than principal-agent theory in identifying *obstacles* to genuine accountability practices. In Daniel Carpenter's original rendition, reputation theory aimed at explaining 'the forging of bureaucratic autonomy' by revealing how agencies are 'shrewdly orchestrating' political energies to establish an independent power base (Carpenter, 2001, p. 367). The fact that agencies often go beyond their mandatory requirements in order to provide information does not mean that agencies are proactively seeking accountability. They may be seeking to compound their 'conceptual power'; that is, their ability to 'define basic terms of debate, essential concepts of thought, learning, and activity' (Carpenter, 2010, p. 32). To some extent, Busuioc and Lodge refer to this kind of behaviour when they speak of agencies focusing on checklists and other formalistic mechanisms that are hard to dispute in order to silence criticism and redefine parameters of blame (Busuioc & Lodge, 2016, p. 250). Such findings are helpful in order to understand impediments to checking fidelity to mandate, but taking such behaviour to be paradigmatic of accountability practices makes us lose sight of the concept.

The 'Good Thing' puzzle

The second puzzle that motivates the reputational approach to public accountability is that accountability has become an unqualified value despite empirical findings of detrimental effects of control regimes. How can accountability be considered a 'Good Thing, of which one cannot have enough' when it leads to 'gaming, cheating and slacking, and a decline in moral responsibility and/or intrinsic motivation?' (Busuioc & Lodge, 2016, p. 248). Again, this puzzle is construed by including all kinds of external demands in the category of accountability practices. The broad palette of management tools—from perfunctory paperwork procedures to mission-insensitive performance indicators—is subsumed under the accountability label. At this point, the reputational perspective becomes explicitly normative; it uses the negative effects of control practices to pose a direct challenge to the normative status of the concept of accountability.

For advocates of accountability, the most obvious response is to distinguish between control mechanisms that check fidelity to mandate and mechanisms that serve goals that are external to the mission of the agency. Accountability is about making agencies answerable to the terms of their mandate, with the implication that control regimes that blatantly distort the incentives to comply with the mandate should not be considered accountability practices. Importantly, this is neither more nor less normative than the reputational approach. Saying that all kinds of control mechanisms qualify as accountability practices is just as normative as saying that only those that track the mandate do. Both specifications have direct consequences for how we should decide the merits of accountability.

However, this response faces a challenge that must be taken seriously. Restricting the concept of an accountability practice to mandate-tracking processes presupposes that agencies are bound to something that unifies their mission. But a key premise in many accountability studies is that agencies are subject to conflicting standards. The claim

is not simply the platitude that agencies are faced with conflicting *expectations*. Conflicting expectations do not by themselves establish that there is a conflictual mandate, because we have no reason to assume that all expectations are equally warranted. Rather, the serious challenge is raised by the claim that agencies face conflicting *standards*:

There are instances where accountability to one authority under one standard violates the expectations of legitimate sources of authority under another standard. Following rules often requires one to be unresponsive to a constituent's request for special treatment. At other times exercising one's professional judgment can conflict with rules (Romzek, 2000, p. 30).

The idea of conflicting standards is essential to what Julia Black calls 'legitimacy dilemmas': 'Actions that organizations need to take to render them legitimate for one legitimacy community can be in direct opposition to those they need to adopt to satisfy another' (Black, 2008, p. 158). This raises difficulties for anyone who thinks accountability requires some kind of coherent mandate. The claim of pervasive conflict seems to suggest what we can call a 'myth of the mandate' charge against the common-sense view of accountability. According to this charge, the notion of answerability to mandate relies on an ungrounded assumption of a unified mandate, when agencies are in fact tasked with a heap of incompatible standards.⁴ How can accountability as answerability to mandate be defended in light of this charge?

The rest of this paper aims to delineate an alternative to the claim that accountability is about the management of expectations grounded in conflicting standards. What we need is an account of agency mandates that is sufficiently sensitive to the variety of considerations agencies need respond to and yet able to distinguish between warranted and unwarranted expectations. The current section will explain how the *institutional* nature of agency mandates helps deliver a response to the alleged 'Good Thing' puzzle and thereby takes us a first step towards a demarcation criterion for accountability practices.

Mandates of agencies are institutional in the sense that their meaning and normative force depend on a complex process of collective enactment and recognition (Searle, 2005). The paradigmatic articulation of agency mandates are founding regulations that have been adopted and approved by a set of political authorities. This requires us to see the goals of agencies in context. Goals, as they typically figure in intentional action, are not adopted in isolation but are rather 'nested' in complex structures (Raz, 1986, p. 292). For example, the goal of having a plurality of stakeholders represented

⁴ Arguably, both Black and Romzek can reject that the 'myth of the mandate' charge is an implication of their view. Conflicting accountability standards may be the result of different forums trying to specify that abstract terms of the mandate. Because there will be reasonable disagreement about the meaning of terms, conflicting interpretations by different forums may be legitimate. On this view, it still makes sense for both account-givers and holders to approach the mandate as a coherent normative order. For a stronger (or at least more explicit) view of value conflict in public administration, see de Graaf, Huberts, & Smulders (2016). That paper openly relies on a theory of value conflict that needs further justification in light of the forceful criticism by Ronald Dworkin (2011).

at a meeting may be nested in the broader goal of realising a stakeholder engagement strategy, which may in turn be a response to the goal of unbiased decision-making. That last abstract goal that may be activated by a recognition that the professional expertise of an agency cannot be applied without appropriate sensitivity to reasonable disagreement about the key concepts, which seems to point to an even more abstract goal of 'good governance'. Here, goals are not adopted as finished dishes from a menu, but rather as ingredients that are applied with sensitivity to the larger purpose. As T.M. Scanlon (1998, p. 86) puts it, 'the intentions that constitute adopting the goal specify the kinds of occasions on which it is to be pursued, the ways it is to be pursued, and so on'. Adopting the goal to realise the stakeholder strategy may be conditioned both by concerns of efficiency and professional integrity, meaning that it has no freestanding meaning *qua* adopted goal independent of these further conditions.

This view of goals as intelligently adopted to fit into a larger purpose presents a direct challenge to the view of agency mandates as a heap of conflicting standards. We fail to explain the force of considerations of legality, politics and expertise if we cannot connect them to a broader mission. There is no inherent conflict in the mandate prior to attempts to specify the meaning the relevant terms. Institutional goal structures are typically ambiguous and seldom accessible without careful judgment (Olsen, 2017, p. 76). It counts against an interpretation of the terms of the mandate that it fails to make coherent sense of the mission. This means that both account-givers and account-holders are irresponsible if they evaluate the merits of decisions according to an interpretive method that approaches the various types of goals as isolated domains of reasoning. Claims of conflict within the mandate are made in an irresponsible way when the abstract terms are specified without sensitivity to their place in the overarching goal structure.

This takes us back to the 'Good Thing' puzzle, and let us in this regard consider a couple of general features of the context of European agencies. First, as Busuioc notes, agencies spend on average 30 per cent of their staff resources on administrative tasks – and some more than 50 per cent – due to extensive audit requirements:

Most agencies are subject to the same financial oversight and cumbersome procedures as the European Commission: internal audit by the IAS [Internal Audit Service of the European Commission] (often in parallel to an additional layer of internal audit, IAC [Internal Audit Capability]), external audit by the Court of Auditors and a complex discharge procedure before the European Parliament. (Busuioc, 2013, p. 189)

Second, the political oversight in the committees of the European Parliament is described as a process of 'cherry picking' and responsiveness to highly mediated issues, with a lack of interest in overall performance: 'By remaining confined only to certain aspects, accountability tends to be a bit patchy and not geared towards the "broad picture"' (Busuioc, 2013, p. 133). According to reputation theory, such features cast doubt on the value of accountability practices. Concerning the first, why do we need an abundance of auditing practices that perform overlapping functions and apply standardised procedures regardless of agency size or work? Concerning the

second, what is the value of political oversight that responds to isolated events out of concerns for publicity?

However, once we begin to take seriously the idea that it is essential for accountability practices to track the mandate, there is little in these findings to motivate a ‘Good Thing’ puzzle. Auditing practices that insist on using generic standards for every kind of public body – and even detracts from legitimate performance expectations by introducing overly laborious procedures – is hardly holding the agency accountable to a reasonable interpretation of the mandate. The same goes for political forums that ‘cherry pick’ isolated events without attention to the broad picture.

This does not mean that the institutions in question are not accountability forums in any respect; it simply means that the specific aspects Busuioc highlights fail to track the mandate. Nor is the goal here is to reject any specific kind of procedure or practice. In principle, what appears to be empty and perfunctory box-ticking routines for the oversight of one agency may be highly relevant for preventing arbitrariness or dereliction of duty in another. The point is simply that a demarcation criterion for something to count as an accountability practice is that it is interpretable as a good faith attempt to check fidelity to mandate. As presented by Busuioc, the identified features of the European control regime fail to satisfy this criterion.

It is important to highlight here that the demarcation criterion of accountability can be satisfied without practices being perfectly geared to the mandate (hence ‘good faith’). That is, even misguided practices can count as accountability practices. Nevertheless, practices that are badly disguised turf wars between auditing institutions or political techniques of pandering to constituency interests fail this threshold. Again, setting this threshold is not about making accountability theory more normative than it already is. Although answerability to mandate as a demarcation criterion may seem normatively demanding – because it requires analysis to take a stand on what a good faith attempt to track the mandate looks like – its demandingness stems from being more *explicit* about normative claims that are already made in the reputational approach.

For example, Busuioc and Lodge draw on findings that show how certain control practices negatively affect professional values, redirects attention and resources towards keeping up appearances, and skew the self-selection to professions (Busuioc & Lodge, 2016, p. 248). In light of this, they argue that it is ethically justified for account-givers to ‘evade (some) accountability obligations’ in order to move forward and get things done (Busuioc & Lodge, 2016, p. 255). These claims already presuppose some normative idea of which direction the public bodies in question should be going and what they should be doing.

What we need now is a framework that acknowledges the normative concerns without distorting the conceptual tools needed to address the problems in a coherent manner. In particular, instead of claiming that agencies can justifiably *evade* accountability obligations, we should develop a theory that explains why certain practices cannot ground accountability obligations to begin with. For this purpose, the

next part of this paper aims at giving a more systematic account of the nature of the mandates of agencies.

Answerability to mandate

The goal of this section is to provide the basic structure of an alternative theory of accountability for public agencies. The articulation of accountability as answerability proceeds in three stages. First, it is argued that we should see mandates as a space of public reasons. Next, the implications for accountability practices are illustrated by the contrasting the approaches of the European Court of Justice and the Ombudsman. Finally, a reconnection with reputational theory is sought by demonstrating how the concept of an ‘organisational image’—with its four dimensions—is fruitful for mapping the space of justificatory reasons.

The multidirectional mandate

There are several ways to conceptualise agency mandates at an abstract level.⁵ For example, an output-oriented reading will see mandates as (more or less concrete) *states of affairs* to be promoted or protected. This conceptualisation is expressed in claims like ‘The mandate of the central bank is price stability’. Alternatively, a procedural approach sees mandates as *systems of rules* that govern action. This is expressed in claims like ‘It is the mandate of the food safety regulator to follow the Codex Alimentarius’. Both of these conceptualisations certainly capture aspects of any agency mandate, but they presuppose some more fundamental notion. There may be legitimate reasons for targeted states of affairs not to have been reached (e.g., unforeseen crisis) and procedures not to have been followed (e.g., urgent need for new regulation). What ultimately matters is whether the decisions can be justified by appeal to public reasons, and it will often be a substantive question whether the considerations that count in favour of a decision are of an output-oriented or procedural kind.

What we need, then, is a model that shows what it means for agencies to be appropriately responsive to the different kinds of considerations that have bearing on their decisions. The task is to map their *space of public reasons*. The suggestion here is that we should think of the different aspects of mandates as directions of a unified space rather than as isolated standards. This imagery borrows from Kant, and as he noted in his ‘What is orientation in thinking’ (1991), to orient oneself, in the proper sense of the word, means using one direction to find the others (Kant, 1991, p. 238). Identifying north provides a sense of south, west, and east.

⁵ Surprisingly little effort has been directed at delineating how mandates can ground accountability relations. The concern with whether an actor complies with mandate is sometimes unfavourably associated with a naïve principal-agent theory that has no room for ambiguity (Olsen, 2017, p. 56). While some principal-agent theorists actually acknowledge that mandates are composed of various ‘detrimenti of the legislative process’ (McCubbins, Noll, & Weingast, 1987, p. 245), they make little or no attempt at clarifying how this ‘detrimenti’ becomes something more than a heap of more or less conflicting requirements.

Similarly, the different aspects of the mandate are not fully detachable and intelligible in isolation; identifying the authority of past legislative decisions involves recognising their guidance for conceptualising the goal to be pursued in a way bound by internal principles of expertise and respect for stakeholder input. The idea of a multidirectional mandate therefore suggests that account-givers and account-holders should see agency work as progressing forwards towards a goal that is partly defined by past legislative decisions, input from stakeholders in the surrounding political environment and the internal demands of professional integrity. Seeing any of these aspects as inherently isolated and in conflict with the others amounts to disorientation.

European Court of Justice v. the Ombudsman

We can begin to test the usefulness of this model by reflecting on how an accountability forum fails to hold an agency accountable when it perceives the agency mandate as partitioned into isolated domains. Joana Mendes (2016) has looked at how the doctrine of judicial review in the EU blocks out political considerations. The case law reveals a concern with the accuracy of technical assessments but not with how the agency has reasoned regarding public interests that pertain to the matter. On the one hand, this is not surprising given the continuing legal authority of the ‘*Meroni* doctrine’, which holds that only precisely delineated technical decisions may be delegated to EU agencies. Reviewing aspects of the mandate beyond commitment to principles of expertise would threaten to nullify the doctrine. On the other hand, an accountability deficiency arises when the standards of review do not track the *de facto* authority of agencies that reaches beyond mere technical decision-making.

Mendes uses the example of the ESMA Judgment, where the European Court of Justice rejected the United Kingdom’s claim that European Securities and Markets Authority (ESMA) was illegal according to EU law because the agency has to make political assessments. The Court decided that ESMA was legal because it was allegedly confined to strictly technical decisions. This obscures the political aspects of ESMA’s actual work. Imposing regulations in the name of market integrity and stability is inherently bound up with complex considerations of public interest. This case illustrates how a doctrine of review that ignores political assessments fails to hold the agency accountable to the mandate it has by any reasonable interpretation of the founding regulation.

Mendes contrasts the Court’s technically oriented practice of judicial review with the European Ombudsman’s more comprehensive mode of review. Mendes brings out how the Ombudsman inquires whether decisions have used the plurality of sources to achieve an overall balance (2016, p. 446) and rejects the dissociation of technical aspects from social and redistributive considerations (2016, p. 447). As I see it, the argument here is not that every accountability forum must take this broad view; forums that are more specialised can form an adequate accountability *regime* by a mutually sensitive division of labour. Rather, the point is that the Ombudsman displays a paradigmatic mode of requesting justificatory reasons that tracks the multidirectional mandate. As Mendes puts it, the Ombudsman promotes ‘the exercise of discretion in a way that stresses the intrinsic link between pursuing public interests

and making accurate and careful factual assessments' (Mendes, 2016, p. 451). This mode of review does not allow agencies to invest in a single dimension to the detriment of others; it holds them accountable to a mandate with distinct aspects that cannot be adequately pursued in isolation.

Mendes' argument concerning the standards of judicial review reflects more broadly on how we should think about the standards of accountability. In her account, the current standards of judicial review are not deficient in the sense of failing to capture a separate and isolated aspect (i.e., public interests). Rather, she sees the considerations to be tracked by accountability forums as belonging to 'a space of decision-making where complex technical assessment and policy choices meet and, arguably, become intertwined' (Mendes, 2016, p. 426). Here, there is no room for seeing agency reasoning as caught in an inherent conflict between politics and expertise. We do not properly understand the duty to public interests independently of the duty to technical accuracy. And vice versa; the appropriate standard of technical accuracy is not available without a grasp of the public interests that are to be safeguarded by this accuracy.

The cardinal directions of the mandate

We now have a rudimentary sense of what it means for the different kinds of considerations to fit together in a coherent goal structure. It is now time to take the idea of accountability to a multidirectional mandate seriously by giving a more systematic account of how the different considerations relate to agency action.

In this regard, it is useful to reconnect with reputation theory by drawing on its idea of an 'organisational image'. As Carpenter explains it, this image is constituted by the *performative, moral, technical, and legal-procedural* dimensions of an agency's public identity (Carpenter 2010, pp. 46-47). The aim of this section is to explain how the dimensions of the organisational image can be translated into the cardinal directions of the mandate. In the process of translation, we need to jettison a key tenet of reputation theory, namely that these dimensions cannot be brought into harmony. Carpenter asserts – as an a priori general claim – that they 'necessarily embed some conflict' (2010, p. 47). A central theoretical motivation for reputation theory is that agencies cannot 'preserve' all dimensions; they must make a choice and the theory predicts that they will invest in the dimensions that matter to key audiences (Carpenter & Krause, 2012, p. 27). It may be true that agencies will invest in a single dimension according to concerns of reputational standing, but it is questionable whether they can legitimately do this without preserving a minimal level of respect for *all* dimensions. The theory of accountability as answerability to mandate recasts these dimensions as cardinal directions of the space of justificatory reasons; they are interlinked points of orientation rather than competing standards.

Consider first the claim that agencies are judged by their performance: 'Whatever the aim of the organisation, its *performative reputation* expresses its audiences' varying judgments of the quality of the entity's decision making and its capacity for effectively achieving its ends and announced objectives' (Carpenter, 2010, p. 46, emphasis

original). In terms of directions, the performative dimension concerns whether the agency is moving forwards in an appropriate manner. The multidirectional model requires us to differentiate between efficiency in an isolated sense and efficiency as an adopted part of a complex mandate. Only the latter matters for accountability. There is of course a straightforward sense of efficiency in which it simply means moving forwards and getting more things done without increasing resources, but the accountability-relevant sense concerns moving in the right direction and getting the appropriate things done. That is, agencies are answerable for efficiency insofar as it is a necessary part of their broader mission.

Nevertheless, it is the isolated concept of efficiency that has coloured discussions of agency dilemmas. This turns decision-making into a zero-sum game. For example, James Q. Wilson claims that 'adding constraints reduces the efficiency with which the main goal of an agency can be pursued but increases the chance that it will be pursued in a nonarbitrary manner' (Wilson 1989, p. 326). The multidirectional model suggests the contrary interpretation; insofar as constraints rein in *arbitrary* decisions, it increases the efficiency because it steers decisions towards a more appropriate conception of the agency task. If we see efficiency and procedural constraints as part of an adopted scheme (and thereby as nested goals in the sense described above, in 'the "Good Thing" puzzle') they do not compete in the way abstract and isolated principles do. In terms of accountability, the implication is that both account-givers and account-holders have a responsibility to seek a sensible reading of how the competition between isolated goals has been resolved in the adoption of the mandate. Efficiency may be considered a main rationale for agencification (European Commission, 2002, p. 5), but its status as a legitimate agency goal must reflect standards of non-arbitrary decision-making.

The second dimension concerns moral expectations: 'Audiences may ask: does this organisation have morally defensible means and ends?' (Carpenter, 2010, p. 46) Carpenter explains this dimension in terms of transparency, fidelity to public interests, compassion for those adversely affected, and responsiveness to human needs. The multidirectional mandate frames this as an outward-looking perspective, which captures the value of agency reasoning attuned to shared and politically justifiable understandings of political interests. Importantly, the moral expectations are no more suitable for isolated interpretation than the dimension of efficient performance. The fact that agencies have certain purposes to carry out sets limits to the requirements of transparency and responsiveness to the diversity of human needs.

The outward-looking aspect of the mandate warrants criticism of agencies that pursue idiosyncratic conceptions of the public interest due to lack of deliberative engagement with stakeholders or other institutions. This outward perspective is sometimes couched in terms of acting on 'society's consensus about that interest' (Seidenfeld, 1992, p. 1571). However, it will often be doubtful whether any real or meaningful society-wide consensus can be found concerning how to understand broad goals like market integrity or the provision of sound information for effective environmental policies. The conceptions of public interest involved in agency decisions will often be controversial but that does not mean that they are arbitrary or ineligible for review.

We value agencies because they serve certain substantive goals even though we may personally disagree with their conception of these goals. In this regard, holding agencies accountable to their mandate means demanding an answer for how their value interpretation is the reasonable outcome of fair and sufficiently inclusive procedures (cf. King, 2003, pp. 40-41).

The third dimension is the expectation of technical competence, which Carpenter (2010, p. 46) says ‘encompasses variables such as scientific accuracy, methodological prowess, and analytic capacity’. This is about exhibiting the necessary expertise and professional qualifications. The multidirectional mandate sees this as the inward-looking perspective, which summons professionals to be true to the principles that define their practice. However, fidelity to these principles becomes a vice if it is not intelligently attuned to expectations of performance and moral considerations. Applying rigorous scientific standards in a way that systematically prevents effective decisions or responsiveness to urgent needs amounts to undermining the agency’s legitimacy. In other words, the warrants of *expertise* are distinct from the warrants of science. Claims made in the name of expertise are governed by considerations of policy-relevance, applicability, and manageability in a way that scientific claims in the context of ordinary research are not (Gundersen, 2018, p. 7).

For example, expert communication of the risk assessment of some chemical may be governed by standards of lay accessibility and political feasibility.⁶ These standards are presumably appropriate given the regulatory question at hand, but they may be inappropriate for answering a purely scientific question about the hazards of the chemical. The distinction between claims made in the name of scientific research and in the name of expertise is normatively significant given that they answer different kinds of questions. It is therefore misleading to claim that ‘Mandated science relies upon the ideal image of normal science as objective knowledge’ (Belousek, 2004, p. 9). The idea is that ordinary scientific standards are the ground of authority for the empirical assessments made by agencies. This framing leads to the allegation that agencies ‘compromise the norms of science’ (Belousek, 2004, p. 9). The multidirectional model allows us to see how these norms of ordinary scientific research did not apply in the first place and urges us to redirect our attention to the distinct norms of expertise.

The fourth and last dimension is about the legal-procedural pedigree of decisions: ‘Whatever the decision, audiences (particularly courts and some scientific audiences) may ask, did the organisation follow accepted procedures to come to its decision?’ (Carpenter, 2010, p. 47). Part of the authority of an agency’s decisions flows from its compliance with a publicly recognised framework for decision-making. The multidirectional mandate frames this as the backward-looking perspective; it is about fidelity to past judgments about how decisions should be reached and which goals should be pursued. These legal-procedural expectations cannot be adequately expressed without reference to the other dimensions. Standards for procedures will

⁶ Accessibility and feasibility are important themes in the European Commission’s ‘Better Regulation Toolbox’, see http://ec.europa.eu/smart-regulation/guidelines/docs/br_toolbox_en.pdf.

typically invoke terms like relevance, fairness, and proportionality. This means that an appreciation of whether procedures were complied with requires a grasp of whether they tracked the purpose of the agency in a morally defensible and professional manner.

This contrasts sharply with conceptions of the legal-procedural dimension as simply a matter of sticking to formal rules without concern for political and economic costs. A case in point is a paper devoted to a 'pragmatic' model of administrative decision-making. John R. Tennert (2006) uses the U.S. Supreme Court decision in *Matthews v. Eldridge* (1976) as a paradigmatic illustration of a decision that favours political consideration over legal-procedural principles. In the case, the Court decided that social security benefits could be terminated without prior evidentiary hearing. The Court emphasised that procedural requirements of prior evidentiary hearings would be detrimental to 'the Government's interests, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail' (*Matthews* quoted from Tennert, 2006, p. 1352).

Tennert celebrates this as the legitimate triumph of political reasons over legal-procedural principles: 'If this decision were to be decided on the principles of equity or fairness or justice, *Matthews* clearly prevails in his appeal of benefits termination' (Tennert, 2006, p. 1353). The supposed problem with treating legal-procedural principles as overriding would be that 'it is likely that agencies would have become far more selective and cautious with respect to who receives benefits, thus depriving a greater number of people of benefits over time' (Tennert, 2006, p. 1353). This account sees agencies as bound by two competing dimensions of administrative reasoning, where legal-procedural principles of 'fairness and accountability' conflict with political-economic concerns of 'efficiency and effectiveness' (Tennert, 2006, p. 1353). Here, due process means rigid rule-adherence disengaged from the broader mission. Such a concept of due process makes little sense within the multidirectional mandate, where fidelity to the relevant norms requires sensitivity to their point within an institution tasked with further goals.

None of what has been said denies that there will often be an initial tension between different kinds of considerations relevant to decision-making in agencies. The point of the multidirectional mandate is to recast this tension as a call for interpretive judgement and intelligent application of standards as opposed to the invitation to make a choice between isolated domains of the mandate. Accountability is about demanding answers that demonstrate how this kind of judgement has been exercised satisfactorily. Different forums may have conflicting views on what counts as satisfactory, which may lead to conflicting expectations. Nevertheless, what unites accountability practices is that their demands aim to track a sensible view of what the agency should be doing. No sensible view allows agencies to choose one dimension without preserving the others.

Conclusion

The idea that accountability is essentially about managing expectations and securing reputational standing fails to demarcate accountability practices from mere power struggles over political influence. Formalistic audit exercises and politicised hearings will often fail to track the mandate and therefore have little relation to the core sense of accountability as an obligation to explain and justify how goals have been pursued. A battery of misguided practices cannot amount to an ‘accountability overload’ or make agencies ‘too accountable.’ It may be true that practices with plainly detrimental effects on agency missions are continued for their reputational benefits, but that cannot generate a puzzle as to why *accountability* is considered a good thing. At least if accountability is about answerability to mandate.

However, the idea of answerability to mandate may sound naïve to those who emphasise the conflicting standards to which agencies are subjected. In light of an implicit ‘myth of the mandate’ charge, this paper has sought to defend accountability as answerability by providing a new model of agency mandates. The multidirectional model emphasises the interrelatedness of the different kinds of considerations that are relevant for decision-making. Accountability practices are about good faith attempts to track an intelligent application of standards. This does not reject the predictive force of reputation theory or similar approaches, but it requires us to rethink the conceptual and normative conclusions drawn from such analyses.

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