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Authors	Bovens, M.A.P.
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Analysing and Assessing Accountability: A Conceptual Framework¹

Mark Bovens*

Abstract: *It has been argued that the EU suffers from serious accountability deficits. But how can we establish the existence of accountability deficits? This article tries to get to grips with the appealing but elusive concept of accountability by asking three types of questions. First a conceptual one: what exactly is meant by accountability? In this article the concept of accountability is used in a rather narrow sense: a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences. The second question is analytical: what types of accountability are involved? A series of dimensions of accountability are discerned that can be used to describe the various accountability relations and arrangements that can be found in the different domains of European governance. The third question is evaluative: how should we assess these accountability arrangements? The article provides three evaluative perspectives: a democratic, a constitutional and a learning perspective. Each of these perspectives may produce different types of accountability deficits.*

I Accountability and European Governance

There has long been a concern that the trend toward European policy making is not being matched by an equally forceful creation of appropriate accountability regimes.² Accountability deficits are said to exist and even grow, compromising the legitimacy of the European polity.³ But how can we make a more systematic assessment of the

¹ An earlier, much longer version of this article was published as EUROGOV paper C-06-01. It built to some extent on a chapter on public accountability which has been published in E. Ferlie, L. Lynne and C. Pollitt (eds), *The Oxford Handbook of Public Management* (Oxford University Press, 2005) and a Dutch paper which was published in W. Bakker and K. Yesilkagit (eds), *Publieke verantwoording* (Boom, 2005). Earlier versions have been presented at Connex team meetings in Leiden, Belfast and Mannheim. I thank Carol Harlow, Paul 't Hart, Peter Mair, Yannis Papadopoulos, Richard Rawlings, Helen Sullivan, Thomas Schillemans, Marianne van de Steeg and Sonja Puntsher-Riekmann for their valuable comments on previous versions of this article.

* Professor of Public Administration, Utrecht School of Governance, Utrecht University, The Netherlands.

² P. Schmitter, *How to Democratize the European Union . . . And Why Bother?* (Rowman and Littlefield, 2000).

³ T. Bergman and E. Damgaard (eds), *Delegation and Accountability in the European Union* (Frank Cass, 2000); C. Harlow, *Accountability in the European Union* (Oxford University Press, 2002); D. Curtin, *Mind the Gap: The Evolving European Union Executive and the Constitution*, Third Walter van Gerven Lecture

various accountabilities regarding the exercise of European governance, and establish whether and where accountability deficits do exist?

Accountability is one of those golden concepts that no one can be against. It is increasingly used in political discourse and policy documents because it conveys an image of transparency and trustworthiness. However, its evocative powers make it also a very elusive concept because it can mean many different things to different people, as anyone studying accountability will soon discover.

The aim of this article is first to develop a parsimonious analytical framework that can help to *establish* more systematically whether organisations or officials, exercising public authority, are subject to accountability at all. This is basically a mapping exercise—for example what are the accountabilities, formal and informal, of a particular European agency? For this purpose we need to establish when a certain practice or arrangement qualifies as a form of accountability at all. In order to give more colours to our map, we also want to be able to distinguish several, mutually exclusive, types of accountability. Second, and separately, this article aims to develop an evaluative framework that can be used to *assess* these accountability maps more systematically. For this purpose we need perspectives that can help us to evaluate these accountability arrangements: are the arrangements to hold the agency accountable adequate or not, sufficient or insufficient, effective or ineffective?

The article is organised on the basis of three different questions, which provide three types of building blocks for the analysis of accountability and European governance. First a conceptual question: what exactly is meant by accountability? Then an analytical one: what types of accountability are involved? The third question is an altogether different, evaluative question: how should we assess these accountability relations, arrangements and regimes?

II The Concept of Accountability

A From Accounting to Accountability

The word ‘accountability’ is Anglo-Norman, not Anglo-Saxon, in origin. Historically and semantically, it is closely related to accounting, in its literal sense of bookkeeping. According to Dubnick,⁴ the roots of the contemporary concept can be traced to the reign of William I, in the decades after the 1066 Norman conquest of England. In 1085 William required all the property holders in his realm to render *a count* of what they possessed. These possessions were assessed and listed by royal agents in the so-called Domesday Books. This census was not held for taxation purposes alone; it also served as a means to establish the foundations of royal governance. The Domesday Books listed what was in the king’s realm; moreover, the landowners were all required to swear oaths of fealty to the crown. By the early twelfth century, this had evolved into a highly centralised administrative kingship that was ruled through centralised auditing and semi-annual account giving.

In the centuries since the reign of William I of England, accountability has slowly wrestled free from its etymological bondage with accounting. In contemporary political

(Europe Law Publishing, 2004); W. van Gerven, *The European Union: A Polity of States and People* (Hart, 2005).

⁴ M. J. Dubnick, *Seeking Salvation for Accountability*, paper presented at the Annual Meeting of the American Political Science Association (2002), pp. 7–9.

discourse, 'accountability' and 'accountable' no longer convey a stuffy image of bookkeeping and financial administration, but they hold strong promises of fair and equitable governance. Moreover, the accounting relationship has almost completely reversed. 'Accountability' does not refer to sovereigns holding their subjects to account, but to the reverse: it is the authorities themselves who are being held accountable by their citizens.

Since the late twentieth century, the Anglo-Saxon world in particular has witnessed a transformation of the traditional bookkeeping function in public administration into a much broader form of public accountability.⁵ This broad shift from financial accounting to public accountability ran parallel to the introduction of New Public Management by the Thatcher Government in the UK and to the Reinventing Government reforms initiated by the Clinton-Gore Administration in the USA.⁶

The emancipation of 'accountability' from its bookkeeping origins is therefore originally an Anglo-American phenomenon—if only because other languages, such as French, Portuguese, Spanish, German, Dutch or Japanese, have no exact equivalent and do not (yet) distinguish semantically between 'responsibility' and 'accountability'.⁷

However, what started as an instrument to enhance the effectiveness and efficiency of public governance, has gradually become a goal in itself. Accountability has become an icon for good governance, first in the USA,⁸ but increasingly also in the EU. As a concept, however, 'accountability' is rather elusive. The term 'has come to stand as a general term for any mechanism that makes powerful institutions responsive to their particular publics'.⁹ It is one of those evocative political words that can be used to patch up a rambling argument, to evoke an image of trustworthiness, fidelity and justice, or to hold critics at bay. For anyone reflecting on accountability, it is impossible to disregard these strong evocative overtones. As an icon, the concept has become less useful for analytical purposes, and today resembles a dustbin filled with good intentions, loosely defined concepts and vague images of good governance. Nevertheless, we should heed the summons from Dubnick¹⁰ to save the concept from its advocates and friends, as he so succinctly puts it.

B Broad and Narrow Accountability

In contemporary political and scholarly discourse 'accountability' often serves as a conceptual umbrella that covers various other distinct concepts, such as transparency, equity, democracy, efficiency, responsiveness, responsibility and integrity.¹¹ Particularly in American scholarly and political discourse, 'accountability' often is used interchangeably with 'good governance' or virtuous behaviour. For O'Connell,¹² for

⁵ Harlow, *op. cit.* note 3 *supra*, p. 19.

⁶ C. Pollitt and G. Bouckaert, *Public Management Reform: A Comparative Analysis* (Oxford University Press, 2nd edn, 2005).

⁷ R. Mulgan, "'Accountability': An Ever Expanding Concept?" (2000) 78 *Public Administration* 555; Harlow, *op. cit.* note 3 *supra*, pp. 14–15; Dubnick, *op. cit.* note 4 *supra*.

⁸ Dubnick, *op. cit.* note 4 *supra*.

⁹ R. Mulgan, *Holding Power to Account: Accountability in Modern Democracies* (Pelgrave, 2003).

¹⁰ Dubnick, *op. cit.* note 4 *supra*.

¹¹ *Ibid*; Mulgan, *op. cit.* note 7 *supra*, at 555; R. D. Behn, *Rethinking Democratic Accountability* (Brookings Institution Press, 2001), pp. 3–6.

¹² L. O'Connell, 'Program Accountability as an Emergent Property: The Role of Stakeholders in a Program's Field', (2005) 65(1) *Public Administration Review* 86.

example, accountability is present when public services have a high quality, at a low cost and are performed in a courteous manner. Koppell¹³ distinguishes no less than five different dimensions of accountability—transparency, liability, controllability, responsibility, responsiveness—that are each icons and umbrella concepts themselves. Such very broad conceptualisations of the concept make it very difficult to establish empirically whether an official or organisation is subject to accountability, because each of the various elements needs extensive operationalisation itself and because the various elements cannot be measured along the same scale. Some dimensions, such as transparency, are instrumental for accountability, but not constitutive of accountability; others, such as responsiveness, are more evaluative instead of analytical dimensions.

Accountability in this very broad sense is basically an evaluative, not an analytical, concept. It is used to qualify positively a state of affairs or the performance of an actor. It comes close to ‘responsiveness’ and ‘a sense of responsibility’—a willingness to act in a transparent, fair and equitable way. Accountability in this broad sense is an essentially contested and contestable concept,¹⁴ because there is no general consensus about the standards for accountable behaviour, and because they differ from role to role, time to time, place to place and from speaker to speaker.¹⁵

In this article, I will not define the concept in such a broad, evaluative sense, but in a much more narrow, sociological sense. ‘Accountability’ is not just another political catchword; it also refers to concrete practices of account giving. The most concise description of accountability would be: ‘the obligation to explain and justify conduct’. This implies a relationship between an actor, the accountant, and a forum, the account-holder or accountee.¹⁶ I will therefore stay close to its etymological and historical roots and define accountability as a specific social relation.¹⁷ Accountability is *a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences*.

C Accountability as a Social Relation

This narrow definition of accountability contains a number of elements that need further explanation. The *actor* can be either an individual, in our case an official or civil servant, or an organisation, such as a public institution or an agency. The significant other, the *accountability forum*, can be a specific person, such as a superior, a minister or a journalist, or it can be an agency, such as parliament, a court or the audit office.

¹³ J. Koppell, ‘Pathologies of Accountability: ICANN and the Challenge of “Multiple Accountabilities Disorder”’, (2005) 65(1) *Public Administration Review* 94.

¹⁴ See W. B. Gallie, ‘Essentially Contested Concepts’, in M. Black (ed.), *The Importance of Language* (Ithaca, 1962), pp. 121–146.

¹⁵ See E. Fisher, ‘The European Union in the Age of Accountability’, (2004) 24(1) *Oxford Journal of Legal Studies* 495, at 510, for similar observations about the use of ‘accountability’ in the European context.

¹⁶ C. Pollitt, *The Essential Public Manager* (Open University Press/McGraw-Hill, 2003), p. 89.

¹⁷ Following, among others, P. Day and R. Klein, *Accountabilities: Five Public Services* (Tavistock, 1987), p. 5; B. S. Romzek and M. J. Dubnick, ‘Accountability’, in J. M. Shafritz (ed.), *International Encyclopedia of Public Policy and Administration*, Vol. 1: A–C (Westview Press, 1998), p. 6; J. S. Lerner and Ph. E. Tetlock, ‘Accounting for the Effects of Accountability’, (1999) 125 *Psychological Bulletin* 255; H. E. McCandless, *A Citizen’s Guide to Public Accountability: Changing the Relationship Between Citizens and Authorities* (Trafford, 2001), p. 22; C. Scott, ‘Accountability in the Regulatory State’, (2000) 27(1) *Journal of Law and Society* 40; Pollitt, *op. cit.* note 16 *supra*, p. 89; Mulgan, *op. cit.* note 9 *supra*, pp. 7–14.

The relationship between the forum and the actor can have the nature of a principal–agent relation—the forum being the principal, for example parliament, who has delegated authority to a minister, the agent, who is held to account himself regularly about his performance in office. This is often the case with political forms of accountability.¹⁸ However, as we will see, in many accountability relations, the forums are not principals of the actors, for example courts in cases of legal accountability or professional associations in cases of professional accountability.

The *obligation* that lies upon the actor can be formal or informal. Public officials often will be under a formal obligation to render account on a regular basis to specific forums, such as supervisory agencies, courts or auditors. In the wake of administrative deviance, policy failures or disasters, public officials can be forced to appear in administrative or penal courts or to testify before parliamentary committees. An example is former European commissioner Edith Cresson, who was brought before a Belgian penal court and the European Court of Justice after allegations of nepotism and corruption were made against her. But the obligation can also be informal, as in the case of press conferences and informal briefings, or even self-imposed, as in the case of voluntary audits.

The relationship between the actor and the forum, the actual account giving, usually consists of at least three elements or stages. First of all, it is crucial that the actor is obliged to *inform the forum about his or her conduct*, by providing various sorts of data about the performance of tasks, about outcomes or about procedures. Often, particularly in the case of failures or incidents, this also involves the provision of explanations and justifications. Account giving is more than mere propaganda, or the provision of information or instructions to the general public. The conduct that is to be explained and justified can vary enormously, from budgetary scrutiny in cases of financial accountability, to administrative fairness in cases of legal accountability, or even sexual propriety when it comes to the political accountability of Anglo-American public officials.

Second, there needs to be a possibility for the forum to interrogate the actor and to *question* the adequacy of the information or the legitimacy of the conduct—hence, the close semantic connection between ‘accountability’ and ‘answerability’.

Third, the forum may *pass judgement* on the conduct of the actor. It may approve of an annual account, denounce a policy, or publicly condemn the behaviour of an official or an agency. In passing a negative judgement, the forum frequently imposes sanctions of some kind on the actor.

It has been a point of discussion whether the possibility of *sanctions* is a constitutive element of accountability.¹⁹ Some would argue that a judgement by the forum, or even only the stages of reporting, justifying and debating, would be enough to qualify a relation as an accountability relation. I concur with Mulgan²⁰ and Strom²¹ that the possibility of sanctions of some kind is a constitutive element of narrow accountability and that it should be included in the definition. The *possibility* of sanctions—not the actual imposition of sanctions—makes the difference between non-committal provision of information and being held to account.

¹⁸ K. Strom, ‘Delegation and Accountability in Parliamentary Democracies’, (2000) 37 *European Journal of Political Research* 261; K. Strom, ‘Parliamentary Democracy and Delegation’, in K. Strom *et al.* (eds), *Delegation and Accountability in Parliamentary Democracies* (Oxford University Press, 2003), pp. 55–106.

¹⁹ Mulgan, *op. cit.* note 9 *supra*, pp. 9–11.

²⁰ *Ibid.*, p. 9.

²¹ Strom, ‘Parliamentary Democracy and Delegation’, *op. cit.* note 18 *supra*, p. 62.

However, ‘sanction’ has a rather formal and legal connotation. It would exclude accountability forums, such as ombudsmen, who in many countries do not have the authority to sanction formally, but who can nevertheless be very effective in securing redress or reparation. Also, the term sanction would bias towards negative forms of scrutiny. Many accountability arrangements are not focused on finding fault with actors—forums will often judge positively about the conduct of actors and will even reward them. I therefore use a somewhat more neutral expression: the actor may *face consequences*.

These consequences can be highly formalised, such as fines, disciplinary measures, civil remedies or even penal sanctions, but they can also be based on unwritten rules, as in the case of the political accountability of a minister to parliament, where the consequence can comprise calling for the minister’s resignation. Sometimes the negative consequences will only be implicit or informal, such as the very fact of having to render account in front of television cameras, or, as was the case with Edith Cresson, the disintegration of public image and career as a result of the negative publicity generated by the process.²² The consequences can also consist of the use of veto powers by the forum. It can block or amend decisions made by the actor.²³

Also, the consequences are not necessarily brought upon the actor by the forum itself. Ombudsmen and many chambers of audit, for example, can scrutinise agencies, expose waste or mismanagement and suggest improvements, but they usually cannot enforce them. That is left to parliament that has the power to put pressure on the minister or the commissioner, who in turn can put pressure on the heads of the agencies involved.

D What is not Narrow Accountability?

Box 1 identifies seven constitutive elements of what I have called narrow accountability. To qualify a social relation as a practice of accountability for the purpose of this article, there should be an actor who provides information about his conduct to some forum; there should also be explanation and justification of conduct—and not propaganda, or the provision of information or instructions to the general public. The explanation should be directed at a specific forum—and not be given at random. The actor must feel obliged to come forward—instead of being at liberty to provide any account whatsoever. There must be a possibility for debate and judgement by the forum, and an optional imposition of (informal) sanctions or rewards—and not a monologue without engagement.

Box 1. Accountability as a Social Relation

A relationship qualifies as a case of accountability when:

1. there is a relationship between an actor and a forum
2. in which the actor is obliged
3. to explain and justify
4. his conduct;
5. the forum can pose questions;
6. pass judgement;
7. and the actor may face consequences.

²² J. G. March and J. P. Olsen, *Democratic Governance* (Free Press, 1995), p. 167.

²³ Strom, ‘Parliamentary Democracy and Delegation’, *op. cit.* note 18 *supra*, p. 62.

Transparency, which is often used as a synonym for accountability, is not enough to constitute accountability as defined here. Open government and freedom of information are very important prerequisites for accountability in the context of European governance, because they may provide accountability forums with the necessary information. However, transparency as such is not enough to qualify as a genuine form of accountability,²⁴ because transparency does not necessarily involve scrutiny by a specific forum.

Accountability should also be distinguished from responsiveness and participation.²⁵ The European commission, in its White Paper on European Governance and some of the documents following it, sometimes tends to blur accountability with issues of representative deliberation.²⁶ It calls for more openness and a better involvement and more participation of a broad range of stakeholders in the EU policy process²⁷ in order to enhance the EU's accountability. However, accountability, as defined here, is in nature retrospective. Actors are to account to a forum after the fact. Responsiveness to the needs and preferences of a broad range of stakeholders and new forms of consultation and participation may be very important to enhance the political legitimacy of the EU, but they do not constitute accountability. They provide proactive inputs into the policy process and should be classified and studied separately for what they are: forms of consultation and participation. They lack the element of justification, judgement and consequences.

The line between retrospective accounting and proactive policy making can be thin in practice. It is perfectly sensible to hold actors accountable for their participation in decision-making procedures: members of parliament may scrutinise ministers for their role in European councils; lobby and interest groups may have to account to their members or constituencies for their stand in deliberative processes. Moreover, accountability is not only about *ex post* scrutiny, it is also about prevention and anticipation. Norms are (re)produced, internalised and, where necessary, adjusted through accountability. The minister who is held to account by parliament for his conduct in the European Council may feel obliged to adjust his policy, or parliament can decide to amend his mandate. Many actors will anticipate the negative evaluations of forums and adjust their policies accordingly. Thus, *ex post facto* accountability can be an important input for *ex ante* policy making. Finally, actors, such as ministers on the eve of council meetings, may be obliged, for example by parliamentary commissions, to explain and justify their stances before going to Brussels and may be forced to adjust them if their account is not convincing.²⁸ However, for analytical purposes, policy making and accountability should be treated as distinctive concepts.

Similarly, there is a fine line between accountability and control. Some would equate accountability with controllability.²⁹ Lupia,³⁰ for example, adopts a control definition of accountability: 'An agent is accountable to a principal if the principal can exercise control over the agent'. Accountability mechanisms are indeed important ways of controlling the conduct of public organisations. However, 'control', used in the

²⁴ Compare Fisher, *op. cit.* note 15 *supra*, at 504.

²⁵ Mulgan, *op. cit.* note 9 *supra*, p. 21.

²⁶ Harlow, *op. cit.* note 3 *supra*, p. 185.

²⁷ European Commission, *Report from the Commission on European Governance* (2003), pp. 35–38, available at http://ec.europa.eu/governance/docs/comm_rapport_en.pdf.

²⁸ Compare the very active Danish parliamentary commission on European Affairs.

²⁹ C. Lord, *A Democratic Audit of the European Union* (Palgrave/MacMillan, 2004), pp. 136–159.

³⁰ A. Lupia, 'Delegation and its Perils', in Strom *et al.*, *op. cit.* note 18 *supra*, p. 35.

Anglo-Saxon sense,³¹ is broader than accountability and can include both *ex ante* and *ex post* mechanisms of directing behaviour.³² Control means ‘having power over’ and it can involve very proactive means of directing conduct, for example through straight orders, directives, financial incentives or laws and regulations. But these mechanisms are not mechanisms of accountability per se, because they do not in themselves operate through procedures in which actors are to explain and justify their conduct to forums.³³ Accountability is a form of control, but not all forms of control are accountability mechanisms.

III Types of Accountability

Public accountability comes in many guises. Public institutions are frequently required to account for their conduct to various forums in a variety of ways. Figure 1 illustrates the various elements contained within the concept of accountability.

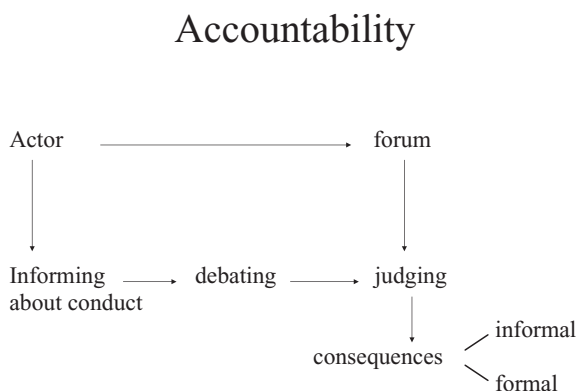


Figure 1.

There are four important questions to be asked in this connection. The first question in relation to accountability is always *to whom* is account to be rendered? This will yield a classification based on the type of *forum* to which the actor is required to render account.

A second, logical question is *who* should render account? Who is the *actor* required to appear before the forum? In ordinary social relationships amongst citizens, it is usually clear who the actor is who will render account. This is a far more complicated question to answer when it comes to public organisations.

The third question is *about what* is account to be rendered? This concerns the question of the aspect of the conduct about which information is to be provided. This can yield classifications on the basis of, for example, financial, procedural or programmatic accountability.³⁴

³¹ In French ‘contrôle’ has a much more restricted, reactive meaning. See A. Meijer, *De doorzichtige overheid: Parlementaire en juridische controle in het informatietijdperk* (Eburon, 2002), p. 3.

³² Scott, *op. cit.* note 17 *supra*, at 39.

³³ Mulgan, *op. cit.* note 9 *supra*, p. 19.

³⁴ P. Day and R. Klein, *Accountabilities: Five Public Services* (Tavistock, 1987), p. 26; A. Sinclair, ‘The Chameleon of Accountability: Forms and Discourses’, (1996) 20 *Accounting, Organisations and Society* 219; Behn, *op. cit.* note 11 *supra*, pp. 6–10.

The fourth question regards that of *why* the actor feels compelled to render account. This relates largely to the nature of the relationship between the actor and the forum, and in particular to the question of why the actor has an obligation to render account. This will subsequently lead to classifications based on the nature of the *obligation*, for example obligations arising from a hierarchical relationship, a contractual agreement or which have been voluntarily entered into.

A To Whom is Account to be Rendered: The Problem of Many Eyes

Public organisations and officials operating in a constitutional democracy find themselves confronting at least five different types of forums and hence at least five different kinds of accountability.³⁵ I have deliberately used the words ‘at least’, as this classification is not a limitative one.³⁶ These forums generally demand different kinds of information and apply different criteria as to what constitutes responsible conduct. They are therefore likely to pass different judgements on the conduct of the public organisation or the public official. Hence, public institutions are not infrequently faced with the *problem of many eyes*: they are accountable to a plethora of different forums, all of which apply a different set of criteria.

Political Accountability: Elected Representatives, Political Parties, Voters, Media

Political accountability is an extremely important type of accountability within democracies. Here, accountability is exercised along the chain of principal–agent relationships.³⁷ Voters delegate their sovereignty to popular representatives, who, in turn, at least in parliamentary democracies, delegate the majority of their authorities to a cabinet of ministers. The ministers subsequently delegate many of their authorities to their civil servants or to various, more or less independent, administrative bodies. The mechanism of political accountability operates precisely in the opposite direction to that of delegation. In parliamentary systems with ministerial accountability, such as the UK, the Netherlands and Germany, public servants and their organisations are accountable to their minister, who must render political account to parliament.³⁸ In some sense, the people’s representatives render account to the voters at election time. Thus viewed, each of the links in the chain is, in turn, not only principal and agent, but also forum and actor. It is only the two ends of the chain—the voters and the executive public servants—who do not exchange roles. In nations characterised by political cabinets and political appointments, such as the USA, France and Belgium, political parties and party barons often also function as important, informal political forums. In many countries, the media are fast gaining power as informal forums for political accountability.³⁹

³⁵ See Day and Klein, *op. cit.* note 17 *supra*; Romzek and Dubnick, *op. cit.* note 17 *supra*; B. S. Romzek, ‘Enhancing Accountability’, in J. L. Perry (ed.), *Handbook of Public Administration* (Jossey Bass, 2nd edn, 1996); Sinclair, *op. cit.* note 34 *supra*, at 219–237; Behn, *op. cit.* note 11 *supra*, p. 59; Pollitt, *op. cit.* note 16, *supra*, p. 93; and Mulgan, *op. cit.* note 9 *supra*, for similar taxonomies.

³⁶ For example, one can also think of personal accountability, in which an official is accountable to his or her personal conscience. See Sinclair, *op. cit.* note 34 *supra*, at 230.

³⁷ Strom, *op. cit.* note 18 *supra*.

³⁸ M. Flinders, *The Politics of Accountability in the Modern State* (Ashgate, 2001); Strom *et al.*, *op. cit.* note 18 *supra*.

³⁹ M. Elchardus, *De Dramademocratie* (Tielt, 2002); Raad voor Maatschappelijke Ontwikkeling (Council for Social Development), *Medialogica: Over het krachtenveld tussenburgers, media en politiek* (Sdu Uitgevers, 2003).

Legal Accountability: Courts

In most Western countries, legal accountability is of increasing importance to public institutions as a result of the growing formalisation of social relations,⁴⁰ or because of the greater trust which is placed in courts than in parliaments.⁴¹ These can be the 'ordinary' civil courts, as in Britain, or also specialised administrative courts, as in France, Belgium and the Netherlands.⁴² In some spectacular cases of administrative deviance, such as *l'affaire du sang contaminé* (the HIV contaminated blood products) in France or the *Tangentopoli* prosecutions in Italy, public officials have even been summoned before penal courts. For European public institutions and EU Member States, the Court of First Instance and the European Court of Justice are additional and increasingly important legal forums.⁴³ Legal accountability will usually be based on specific responsibilities, formally or legally conferred upon authorities. Therefore, legal accountability is the most unambiguous type of accountability, as the legal scrutiny will be based on detailed legal standards, prescribed by civil, penal or administrative statutes, or precedent.

Administrative Accountability: Auditors, Inspectors and Controllers

Next to the courts, a wide range of quasi-legal forums, exercising independent and external administrative and financial supervision and control, has been established in the past decades—some even speak of an 'audit explosion'.⁴⁴ These new administrative forums vary from European, national or local ombudsmen and audit offices, to independent supervisory authorities, inspector generals, anti-fraud offices and chartered accountants.⁴⁵ Also, the mandates of several national auditing offices have been broadened to secure not only the probity and legality of public spending, but also its efficiency and effectiveness.⁴⁶ These administrative forums exercise regular financial and administrative scrutiny, often on the basis of specific statutes and prescribed norms. This type of accountability arrangement can be very important for quangos and other executive public agencies.

Professional Accountability: Professional Peers

Many public managers are, apart from being general managers, professionals in a more technical sense. They have been trained as engineers, doctors, veterinarians, teachers or police officers.⁴⁷ This may imply accountability relationships with professional associations and disciplinary tribunals. Professional bodies lay down codes with standards for acceptable practice that are binding for all members. These standards are monitored and enforced by professional supervisory bodies on the basis of peer review.

⁴⁰ L. M. Friedman, *Total Justice* (Russel Sage, 1985); Behn, *op. cit.* note 11 *supra*, pp. 56–58.

⁴¹ Harlow, *op. cit.* note 3 *supra*, p. 18.

⁴² *Ibid.*, pp. 16–18.

⁴³ *Ibid.*, pp. 147–159.

⁴⁴ M. Power, *The Audit Explosion* (Demos, 1994).

⁴⁵ See for the rise of administrative accountability in the EU Harlow, *op. cit.* note 3 *supra*, pp. 108–143; P. Magnette, 'Between Parliamentary Control and the Rule of Law: The Political Role of the Ombudsman in the European Union', (2003) 10(5) *Journal of European Public Policy* 677; B. Laffan, 'Auditing and Accountability in the European Union', (2003) 10(5) *Journal of European Public Policy* 762; V. Pujas, 'The European Anti-Fraud Office (OLAF): A European Policy to Fight against Economic and Financial Fraud?', (2003) 10(5) *Journal of European Public Policy* 778.

⁴⁶ C. Pollitt and H. Summa, 'Reflexive Watchdogs? How Supreme Audit Institutions Account for Themselves', (1997) 75(2) *Public Administration* 313.

⁴⁷ A. Abbott, *The System of Professions: An Essay on the Division of Expert Labor* (University of Chicago Press, 1988); E. Freidson, *Professionalism: The Third Logic* (Polity Press, 2001).

This type of accountability relation will be particularly relevant for public managers who work in professional public organisations, such as hospitals, schools, psychiatric clinics, research institutes, police departments, fire brigades, or for some of the experts in the EU comitology.

Social Accountability: Interest Groups, Charities and Other Stakeholders

In reaction to a perceived lack of trust in government, there is an urge in many Western democracies for more direct and explicit accountability relations between public agencies, on the one hand, and clients, citizens and civil society, on the other hand.⁴⁸ Influenced by the debate on corporate social responsibility and corporate governance in business, more attention is being paid to the role of non-governmental organisations, interest groups and customers or clients as relevant 'stakeholders', not only in determining policy, but also in rendering account.⁴⁹ Agencies or individual public managers should feel obliged to account for their performance to the public at large or, at least, to civil interest groups, charities and associations of clients. A first step in this direction has been the institution of public reporting and the establishment of public panels. The rise of the internet has given a new dimension to this form of accountability. Increasingly, the results of inspections, assessments and benchmarks are put on the internet.⁵⁰ It remains an empirical question to what extent these groups and panels already are full accountability mechanisms, because the possibility of judgement and sanctioning often are lacking. Also, not all of these accountability relations involve clearly demarcated, coherent and authoritative forums that the actor reports to and could debate with.

B Who is the Actor: The Problem of Many Hands

Accountability forums often face similar problems, but then in reverse. They can be confronted with multiple potential actors. For outsiders, it is often particularly difficult to unravel who has contributed in what way to the conduct of an agency or to the implementation of a policy and who, and to what degree, can be brought to account for it. This is the *problem of many hands*.⁵¹ Policies pass through many hands before they are actually put into effect. Decrees and decisions are often made in committees and cross a number of desks before they (often at different stages and at different levels) are

⁴⁸ H. E. McCandless, *A Citizen's Guide to Public Accountability: Changing the Relationship Between Citizens and Authorities* (Trafford, 2001); C. Malena (with R. Forster and J. Singh), 'Social Accountability: An Introduction to the Concept and Emerging Practice', (2004) *Social Development Papers* 76.

⁴⁹ European Commission, *European Governance: A White paper* (2001), available at http://ec.europa.eu/governance/white_paper/index_en.htm.

⁵⁰ For example, in the Netherlands and in the UK, the National Board of School Inspectors makes its inspection reports on individual schools widely available on the internet. Parents, journalists and local councils can easily compare the results of a particular school with similar schools in the region, because quantitative and comparative benchmarks are provided for, but they also have access to the quite extensive qualitative reports. Even though there is little evidence, so far, that many parents exercise exit or voice on the basis of these qualitative reports, local principals increasingly do feel obliged to account publicly for themselves. Compare Pollitt, *op. cit.* note 16 *supra*, pp. 41–45; A. Meijer and T. Schillemans, *Fictitious Citizens and Real Effects: Accountability to Citizens in Competitive Markets*, paper presented at Accountable Governance: An International Research Colloquium, Queen's University Belfast, 20–22 October 2005.

⁵¹ D. F. Thompson, 'Moral Responsibility of Public Officials: The Problem of Many Hands', (1980) 74 *American Political Science Review* 905; M. Bovens, *The Quest for Responsibility: Accountability and Citizenship in Complex Organisations* (Cambridge University Press, 1998).

implemented. New members of committees, of administrative bodies and of departments conform to the traditions, rules and existing practices (or what they think are the traditions, rules and existing practices), and sometimes contribute ideas and rules of their own. However, they often leave before those ideas and rules can be put into practice, or before it becomes obvious that they did not work very well. Thus, the conduct of an organisation often is the result of the interplay between fatherless traditions and orphaned decisions.

Who, then, should be singled out for accountability, blame and punishment? With large public organisations, there are four accountability strategies for forums to overcome the problem of many hands. The first one focuses on the organisation as such, the other three on individual officials.

Corporate Accountability: The Organisation as Actor

Many public organisations are corporate bodies with an independent legal status. They can operate as unitary actors and can be held accountable accordingly. Most Western countries accept corporate liabilities in civil, administrative and even criminal law. Public organisations are usually included in these corporate liabilities, with the exception of criminal liability. Most European countries acknowledge penal immunities for all public bodies. Some, such as the UK, France and the Netherlands, accept criminal liabilities for local public bodies, but not for the organs of the state. Only Norway, Denmark and Ireland accept criminal liability of both central and local government.⁵² Legal and administrative forums often follow this corporate accountability strategy. They can, in this way, circumnavigate the troublesome issues of identification and verification of specific individual actors. In the event of organisational deviance, they can turn directly to the organisation and hold it to account for the collective outcome, without having to worry too much about which official has met what criteria for responsibility.

Hierarchical Accountability: One for All

Underlying hierarchical strategies of accountability is a pyramidal image of organisations. Processes of calling to account start at the top, with the highest official. The rank and file do not appear before external forums but hide behind the broad shoulders of the minister, the commissioner or the director of the agency, who, at least in dealings with the outside world, assumes complete responsibility and takes all the blame. However, the lower echelons can, in turn, be addressed by their superiors regarding questions of internal accountability. In the case of hierarchical schemes, processes of calling to account thus take place along the strict lines of the 'chain of command' and the middle managers are, in turn, both actor and forum. This is the official venue for accountability in most public organisations, and with regard to most types of accountability relationships, with the exception of professional accountability. It is particularly dominant in political accountability relations, for example in the Westminster system of ministerial responsibility.

Collective Accountability: All for One

Public organisations are collectives of individual officials. Theoretically, a forum could therefore also apply a collective strategy of accountability and pick any member of the

⁵² D. Roef, *Strafbare overheden: Een rechtsvergelijkende studie naar de strafrechtelijke aansprakelijkheid van overheden voor milieuverstoring* (Intersentia, 2001).

organisation and hold it personally accountable for the conduct of the organisation as a whole, by virtue of the fact that it is a member of the organisation. This makes quick work of the practical sides of the problem of many hands. In the case of organisational misconduct, every member of the organisation can be held accountable. The major difficulty with collective accountability lies with its moral appropriateness. Collective arrangements of personal accountability are barely reconcilable with legal and moral practices and intuitions current in modern Western democracies. They are not sophisticated enough to do justice to the many differences that are important in the imputation of guilt, shame and blame. It makes a substantial difference whether someone, for example in the case of the Eurostat frauds, is the director of Eurostat who ordered secret accounts to be opened, the head of the financial department who condoned the unofficial deposits, or a simple statistician who was just collecting and processing data. A collective accountability strategy will only be appropriate and effective in specific circumstances, for example with small, collegiate public bodies, such as cabinets in various countries and, in some instances, the European Commission.⁵³

Individual Accountability: Each for Himself

During the judgement phase, which can involve the imposition of sanctions, hierarchical and collective accountability strategies often run up against moral objections, as a proportional relation between crime and punishment is by no means always evident. An individual accountability, in which each individual official is held proportionately liable for his personal contribution to the infamous conduct of the organisation, is from a moral standpoint a far more adequate strategy. Under this approach, each individual is judged on the basis of his actual contribution instead of on the basis of his formal position. Individual officials will thus find it impossible to hide behind their organisation or minister, while those in charge are not required to shoulder all the blame. This approach is characteristic of professional accountability. In the case of medical errors, individual physicians are called to account by the disciplinary tribunal, which attempts to establish precisely the extent to which the physician's individual performance satisfied professional standards.

C Which Aspect of the Conduct: Financial, Procedural, Product, and So Forth

In accountability relationships the actor is obliged to explain and provide justification for his conduct. There are many aspects to this conduct, making it possible to distinguish a number of accountability relationships on the basis of the aspect that is most dominant.⁵⁴ This will often concur with the classification made according to type of forum. In the case of legal accountability, the legality of the actor's conduct will obviously be the dominant aspect, while professional accountability will be centred on the professionalism of the conduct. Political and administrative accountability frequently involve several aspects. An audit by the Chamber of Audit, for example, may be classified as financial accountability if the focus is on the financial propriety of the audit, as legal accountability if the legality of the conduct is at issue, or as administrative if the central concern is the efficiency of the policy of the organisation. Another

⁵³ See for the collective accountability of the Commission van Gerven, *op. cit.* note 3 *supra*, p. 83.

⁵⁴ Day and Klein, *op. cit.* note 17 *supra*, p. 26; Sinclair, *op. cit.* note 34 *supra*; Behn, *op. cit.* note 11 *supra*, pp. 6–10.

distinction found in the literature is that between accountability for the procedure or process and accountability for the product or content.⁵⁵

D The Nature of the Obligation: Vertical, Diagonal and Horizontal Accountability

Why would an actor render account to a forum? Very generally speaking, there are two possibilities: in the first place, because he is being forced to, or could be forced to, and, second, because he voluntarily does so. *Vertical* accountability refers to the situation where the forum formally wields power over the actor, perhaps due to the hierarchical relationship between actor and forum, as is the case of the executive organisation that is accountable to the minister or (over the head of the minister) to parliament. The majority of political accountability arrangements, which are based on the delegation from principles to agents,⁵⁶ are forms of vertical accountability. In most cases of legal accountability too, the forum has the formal authority to compel the actor to give account, although this is not based on a principal–agent relationship, but on laws and regulations. The same goes for disciplinary committees in the case of professional accountability.

At the complete other end of the spectrum is social accountability. Here, a hierarchical relationship is generally lacking between actor and forum, as are any formal obligations to render account. Giving account to various stakeholders in society occurs basically on a voluntary basis with no intervention on the part of a principal. The obligation felt by agencies to account for themselves to the general public is usually moral in nature (although in some cases there may be formal requirements as well in their charters). Such accountability could be termed *horizontal* accountability. Another form of horizontal accountability, which is mentioned in the literature, is mutual accountability between bodies standing on equal footing.⁵⁷

Administrative accountability relations are usually an intermediary form. Most ombudsmen, audit offices, inspectorates, supervisory authorities and accountants stand in no direct hierarchical relationship to public organisations and have few powers to enforce their compliance. However, the majority of these administrative forums ultimately report to the minister or to parliament and thus derive the requisite informal power from this. This indirect, two-step relation with a forum could be described as a *diagonal* accountability⁵⁸—accountability in the shadow of hierarchy.

E Mapping Accountability

In mapping accountability regimes, the first question is whether a social relation or practice is an accountability relationship at all. This is a dichotomous exercise that follows the logic of either/or.⁵⁹ The main question is: do the phenomena in my sample

⁵⁵ Day and Klein, *op. cit.* note 17 *supra*, p. 27.

⁵⁶ Lupia, *op. cit.* note 30 *supra*, pp. 34–35.

⁵⁷ Compare G. O'Donnell, 'Horizontal Accountability in New Democracies', in A. Schedler, L. Diamond and M. F. Plattner (eds), *The Self-Restraining State: Power and Accountability in New Democracies* (Lynne Rienner Publishers, 1999), pp. 29–51.

⁵⁸ Th. Schillemans and M. Bovens, 'Horizontale verantwoording bij zelfstandige bestuursorganen', in S. van Thiel (ed.), *Governance van uitvoeringsorganisaties: Nieuwe vraagstukken van sturing in het publieke domein* (Kadaster, 2004).

⁵⁹ G. Sartori, 'Concept Misformation in Comparative Politics', (1970) LXIV(4) *American Political Science Review* 1039.

qualify as full accountability or are they something else, such as participation, responsiveness or transparency? Next comes the question: what types of accountabilities are present? Box 2 gives an overview of the various dimensions of accountability that can be distinguished on the basis of the narrow definition of accountability that has been used in this article. These are distinctive, unrelated classification dimensions. Each accountability relation can be classified on each of the four dimensions separately.

Box 2. Types of Accountability

Based on the nature of the forum

- Political accountability
- Legal accountability
- Administrative accountability
- Professional accountability
- Social accountability

Based on the nature of the actor

- Corporate accountability
- Hierarchical accountability
- Collective accountability
- Individual accountability

Based on the nature of the conduct

- Financial accountability
- Procedural accountability
- Product accountability

Based on the nature of the obligation

- Vertical accountability
- Diagonal accountability
- Horizontal accountability

For example, one could classify the accountability of the president of the EU Commission to the European Parliament, based on Article 197 of the EC Treaty, as political accountability because the European Parliament is a political forum; as hierarchical accountability because the actor, the president, acts on behalf of the Commission as a whole and has been given more extensive powers in the Nice Treaty to guide and control the other commissioners;⁶⁰ as financial or procedural accountability when the propriety of financial management by the Commission is at stake; and as vertical accountability because the European Parliament acts as a political principal and has

⁶⁰ van Gerven, *op. cit.* note 3 *supra*, pp. 83–88.

the power to make its agent, the Commission, resign if the motion is carried by two-thirds of the votes cast, representing the majority of the members of the European Parliament.⁶¹

IV Assessing Accountability

A *The Effects of Accountability: Three Perspectives*

An altogether different exercise is the assessment of the adequacy of a particular accountability arrangement or of a complete accountability regime to which a particular agency or sector is subject. Here we leave the realm of empirical description and enter the world of evaluation and, ultimately, prescription. This is much more a matter of degree and these assessments follow the logic of more-or-less.⁶²

The key question is obviously what the actual effects are of the various types of accountability and how to judge these effects. At this level, inadequacies can either take the form of accountability deficits—a lack of accountability arrangements—or of accountability excesses—a dysfunctional accumulation of a range of accountability mechanisms. The former inadequacy can be hypothesised for various aspects of European governance;⁶³ the latter is increasingly reported by executive agencies and public managers.⁶⁴ The question remains however: how do we establish whether these different sorts of inadequacies do exist?

For an institutionalised ideal that is so broadly supported and applied, there are very few references to be found in the literature that could lead to such an evaluation being performed, let alone any reports on systematic comparative research conducted in this area.⁶⁵ So why is accountability important? What is the purpose of the various different forms distinguished in this article? In the academic literature and in policy publications about public accountability, three answers recur, albeit implicitly, time and again. Accountability is important to provide a democratic means to monitor and control government conduct, for preventing the development of concentrations of power, and to enhance the learning capacity and effectiveness of public administration.⁶⁶ Each of these three answers yields a separate theoretical perspective on the rationale behind accountability and a separate perspective for the assessment of accountability relations.

⁶¹ Article 201 EC, second paragraph.

⁶² Sartori, *op. cit.* note 59 *supra*.

⁶³ A. Arnall and D. Wincott, *Accountability and Legitimacy in the European Union* (Oxford University Press, 2000); Harlow, *op. cit.* note 3 *supra*; Fisher, *op. cit.* note 15 *supra*.

⁶⁴ F. Anechiarico and J. B. Jacobs, *The Pursuit of Absolute Integrity: How Corruption Control Makes Government Ineffective* (University of Chicago Press, 1996); M. Power, *The Audit Society: Rituals of Verification* (Oxford University Press, 1997); Behn, *op. cit.* note 11 *supra*, p. 30; A. Halachmi, 'Performance Measurement: A Look at Some Possible Dysfunctions', (2002) 51(5) *Work Study* 230.

⁶⁵ Authors such as Van Twist, Behn, Halachmi and Mulgan (M. van Twist, 'Versterking van de verantwoording: Redenen, risico's en dilemma's', (1999) 4 *Bestuurswetenschappen* 285; Behn, *op. cit.* note 11 *supra*; A. Halachmi, 'Performance Measurement, Accountability, and Improved Performance', (2002) 25(4) *Public Performance and Management Review* 370; Mulgan, *op. cit.* note 9 *supra*) offer discussions of the many dilemmas and design problems in the structure of accountability arrangements, but the underlying normative questions—what is the purpose of public accountability in a constitutional democratic state and what are the evaluation principles for accountability arrangements ensuing from this?—tend to be glossed over in these contributions.

⁶⁶ P. Auccoin and R. Heintzman, 'The Dialectics of Accountability for Performance in Public Management Reform', (2000) 66 *International Review of Administrative Sciences* 45.

The Democratic Perspective: Popular Control

Public accountability is extremely important from a democratic perspective, as it helps citizens to control those holding public office.⁶⁷ This is an approach that reaches back to the tenets of Rousseau and Weber, and has been theoretically defined using the principal–agent model. We saw that the modern representative democracy could be described as a concatenation of principal–agent relationships.⁶⁸ The people, who are the primary principals in a democracy, have transferred their sovereignty to popular representatives, who, in turn, have transferred the drafting and enforcement of laws and policy to the government. The ministers subsequently entrust the execution of their tasks to the many thousands of public servants at the ministries, who proceed to delegate part of their tasks to more or less independent bodies and institutions. In due course, the public organisations and the executive public servants and the end of the chain have the task of spending billions in taxpayers' money, using their discretionary powers to furnish licences and subsidies, impose fines and for jailing people.

Each principal in the chain of delegation seeks to monitor the execution of the delegated public tasks by calling the agent to account. At the end of the accountability chain are the citizens, who pass judgement on the conduct of the government and who indicate their displeasure by voting for other popular representatives. Hence public accountability is an essential condition for the democratic process, as it provides the people's representation and the voters with the information needed for judging the propriety and effectiveness of the conduct of the government.⁶⁹

The Constitutional Perspective: Prevention of Corruption and Abuse of Power

A classic benchmark in the thinking about accountability is found in the liberal tradition of Locke, Montesquieu and the American Federalists,⁷⁰ to name but a few. The main concern underlying this perspective is that of preventing the tyranny of absolute rulers, overly presumptuous, elected leaders or of an expansive and 'privatised' executive power. The remedy against an overbearing, improper or corrupt government is the organisation of 'checks and balances', of institutional countervailing powers. Other public institutions, such as an independent judicial power or a Chamber of Audit are put in place next to the voter, parliament and political officials, and given the power to request that account be rendered over particular aspects. Good governance arises from a dynamic equilibrium between the various powers of the state.⁷¹

The Learning Perspective: Enhancing Government Effectiveness

In the third learning perspective the chief purpose of accountability is entirely different again. Accountability is seen as a tool to make and keep governments, agencies and individual officials effective in delivering on their promises. The purpose of public accountability is to induce the executive branch to learn.⁷² The possibility of sanctions

⁶⁷ March and Olsen, *op. cit.* note 22 *supra*, pp. 141–181; Mulgan, *op. cit.* note 9 *supra*.

⁶⁸ Strom, 'Delegation and Accountability in Parliamentary Democracies', *op. cit.* note 18 *supra*; Strom, 'Parliamentary Democracy and Delegation', *op. cit.* note 18 *supra*; Lupia, *op. cit.* note 30 *supra*, pp. 33–54.

⁶⁹ A. Przeworski, S. C. Stokes and B. Manin (eds), *Democracy, Accountability, and Representation* (Cambridge University Press, 1999).

⁷⁰ O'Donnell, *op. cit.* note 57 *supra*.

⁷¹ W. J. Witteveen, *Evenwicht van machten* (Tjeenk Willink, 1991); Fisher, *op. cit.* note 15 *supra*.

⁷² J. Th. J. van den Berg, *Verantwoorden of vertrekken: Een essay over politieke verantwoordelijkheid* (VNG uitgeverij, 1999), p. 40; P. Aucoin and R. Heintzman, 'The Dialectics of Accountability for Performance in Public Management Reform', (2000) 66 *International Review of Administrative Sciences* 42.

from clients and other stakeholders in their environment in the event of errors and shortcomings motivates them to search for more intelligent ways of organising their business. Moreover, the public nature of the accountability process teaches others in similar positions what is expected of them, what works and what does not. Public performance reviews, for example, can induce many more administrators than those under scrutiny to rethink and adjust their policies. Accountability mechanisms induce openness and reflexivity in political and administrative systems that might otherwise be primarily inward looking. There is a longstanding tradition in political science and related fields with which this idea neatly fits.⁷³ In this context, Lindblom⁷⁴ referred to the 'intelligence of democracy': the superiority of the pluralist democracy to that of other political systems lies in the greater number of incentives it contains to encourage intelligence and learning in the process of policy making. Accountability is a crucial link in this approach, as it offers a regular mechanism to confront administrators with information about their own functioning and forces them to reflect on the successes and failures of their past policy.

Behind these three perspectives lurks a far bigger, more abstract concern of accountability. Accountability is indirectly of importance because, ultimately, it can help to ensure that the legitimacy of governance remains intact or is increased. This effect is partly the consequence of the other effects (democratic control, a power equilibrium and responsiveness enhance the legitimacy of the administration). Media, interest groups and citizens are all adopting an increasingly more critical attitude toward the government. Respect for authority is fast dwindling and the confidence in public institutions is under pressure in a number of Western countries.⁷⁵ Processes of accountability in which administrators are given the opportunity to explain and justify their intentions, and in which citizens and interest groups can pose questions and offer their opinion, can promote acceptance of government authority and the citizens' confidence in the government's administration.⁷⁶

In the incidental case of tragedies, fiascos and failures, processes of public account giving may also have an important ritual, purifying function—they can help to provide public *catharsis*. Public account giving can help to bring a tragic period to an end because it can offer a platform for the victims to voice their grievances, and for the real or reputed perpetrators to account for themselves and to justify or excuse their conduct. This can be an important secondary effect of parliamentary inquiries, official investigations or public hearings in cases of natural disasters, plane crashes or railroad accidents. The South African 'truth commissions', and various war crime tribunals, starting with the Tokyo and Nuremberg trials, the Eichmann trial, up to the Yugoslav tribunal, are at least partly meant to fulfil this function.⁷⁷ Public processes of calling to account create the opportunity for penitence, reparation and forgiveness, and can thus provide social or political closure.⁷⁸

⁷³ K. W. Deutsch, *The Nerves of Government* (Free Press, 1963); D. Easton, *A Systems Analysis of Political Life* (Wiley, 1965); N. Luhmann, *Theorie der Verwaltungswissenschaft: Bestandsaufnahme und Entwurf* (Köln-Berlin, 1966).

⁷⁴ C. E. Lindblom, *The Intelligence of Democracy* (Free Press, 1965).

⁷⁵ M. Elchardus and W. Smits, *Anatomie en oorzaak van het wantrouwen* (VUB press, 2002); R. J. Dalton, *Democratic Challenges, Democratic Choices: The Erosion of Political Support in Advanced Industrial Democracies* (Oxford University Press, 2004).

⁷⁶ Aucoin and Heintzman, *op. cit.* note 72 *supra*, at 49–52.

⁷⁷ Dubnick, *op. cit.* note 4 *supra*, pp. 15–16.

⁷⁸ Harlow, *op. cit.* note 3 *supra*, p. 9.

*Box 3. The Importance of Accountability**Direct*

Democratic control
 Countervailing powers
 Improvement/learning

Indirect

Legitimacy
 Catharsis

B Evaluation Frameworks for Accountability

The three perspectives outlined above offer more systematic frameworks to evaluate the effects of accountability arrangements. (The two other indirect rationales for accountability will not be further discussed, as these concern meta-effects that are difficult to evaluate, or play a role in special cases only.)

The question central to the democratic perspective is whether the accountability arrangement adds to the possibilities open to voter, parliament or other representative bodies to control the executive power. The major issue in assessing accountability arrangements from this perspective is whether they help to overcome agency problems, such as moral hazard:⁷⁹ do these accountability arrangements help to provide political principals with sufficient information about the behaviour of their agents and do they offer enough incentives to agents to commit themselves to the agenda's of their democratically elected principals?

*Box 4. Democratic Perspective: Accountability and Popular Control**Central idea*

Accountability controls and legitimises government actions by linking them effectively to the 'democratic chain of delegation'.

Central evaluation criterion

The degree to which an accountability arrangement or regime enables democratically legitimised bodies to monitor and evaluate executive behaviour and to induce executive actors to modify that behaviour in accordance with their preferences.

From a constitutional perspective, the key question is whether the arrangement offers enough incentives for officials and agencies to refrain from abuse of authority. This requires that public accountability forums be visible, tangible and powerful, in order to be able to withstand both the inherent tendency of those in public office to dexterously evade control and the autonomous expansion of power of the all-encompassing bureaucracy. Does the accountability forum have enough inquisitive powers to reveal corruption or mismanagement; are the available sanctions strong enough to have preventive effects?

⁷⁹ Strom, 'Parliamentary Democracy and Delegation', *op. cit.* note 18 *supra*.

*Box 5. Constitutional Perspective: Accountability and Equilibrium of Power**Central idea*

Accountability is essential in order to withstand the ever-present tendency toward power concentration and abuse of powers in the executive power.

Central evaluation criterion

The extent to which an accountability arrangement curtails the abuse of executive power and privilege.

The learning perspective obviously focuses on the question of whether the arrangement enhances the learning capacity and effectiveness of the public administration. The crucial questions from this perspective are whether the accountability arrangements offer sufficient feedback, but also the right incentives, to officials and agencies to reflect upon their policies and procedures and to improve upon them.

*Box 6. Learning Perspective: Effective Governance**Central idea*

Accountability provides public office holders and agencies with feedback-based inducements to increase their effectiveness and efficiency.

Central evaluation criterion

The degree to which an accountability arrangement stimulates public executives and bodies to focus consistently on achieving desirable societal outcomes.

The existence of these various perspectives makes the evaluation of accountability arrangements a somewhat equivocal exercise. First of all, accountability arrangements may score well from one perspective, but not from others. For example, it can be argued that the accountability maps that are emerging around the various non-majoritarian European agencies are more up to standards from a constitutional than from a democratic perspective. Increasingly, the Court of Justice monitors the activities of these agencies and they have become subjected to scrutiny from the European Ombudsman and the Anti-Fraud Office (OLAF).⁸⁰ However, the link with forums that are democratically legitimised remains very indirect.

Moreover, these perspectives need not always point in the same direction. For example, judicial review of laws and regulations may be considered as an adequate form of accountability from a constitutional perspective, and at the same time as inappropriate from a democratic perspective, because it suffers from what Alexander Bickel⁸¹ has called 'the counter-majoritarian difficulty': it limits the exercise of popular sovereignty through the legislative branch. Similarly, overly rigorous democratic control may squeeze the entrepreneurship and creativity out of public managers and

⁸⁰ D. Curtin, 'Delegation to European Union Non-Majoritarian Agencies and Emerging Practices of Public Accountability', in D. Gerardin, R. Munoz and N. Petit (eds), *Regulation Through Agencies in the European Union: A New Paradigm of European Governance* (Edward Elgar, 2006), pp. 88–119.

⁸¹ A. Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* (Bobbs-Merrill, 1962).

may turn agencies into rule-obsessed bureaucracies.⁸² Too much emphasis on administrative integrity and corruption control, which would be considered beneficial from a constitutional perspective, could lead to a proceduralism that seriously hampers the reflexivity, and hence also the efficiency and effectiveness, of public organisations.⁸³

V Analysing and Assessing Accountability

This article has tried to get to grips with the appealing but elusive concept of accountability by asking three types of questions, thus providing three types of building blocks for the analysis and assessment of accountability deficits in European governance. First a conceptual one: what exactly is meant by accountability? Accountability is often used in a very broad sense as a synonym for a variety of evaluative, but essentially contested, concepts, such as responsiveness, responsibility and effectiveness. In this article, the concept of accountability was used in a more narrow sense: a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences. This implies that the focus is more on *ex post facto* processes in governance than on *ex ante* inputs. Most of the *ex ante* inputs in governance, however important for the legitimacy of the EU, should be studied separately for what they are: forms of deliberation, participation and control.

The second question was an analytical one: what types of accountability are involved? On the basis of the narrow definition of accountability, a series of dimensions of accountability have been discerned that can be used in the description of the various accountability relations and arrangements that can be found in the different domains of European governance. Taken together, these two building blocks provide a descriptive framework for more systematic mapping exercises: are the various institutions of the EU subjected to accountability relations at all, and, if so, how can we classify these accountability relations?

The third question was an altogether different, evaluative question: how should we assess these accountability relations, arrangements and regimes? Three perspectives have been provided for the assessment of accountability relations: a democratic, a constitutional and a learning perspective. Each of these three perspectives may produce different types of accountability deficits.

These building blocks cannot in themselves provide us with definite answers to the question whether there exist accountability deficits in European governance, because, ultimately, the evaluation of accountability arrangements in the EU, to cite Elisabeth Fisher,⁸⁴ 'cannot be disentangled from discussion about what is and should be the role and nature of European institutions'. Behind each assessment ultimately lies a theory, often implicit, about what constitutes sufficient democratic control, or adequate checks and balances, or satisfactory reflexivity. What, for example, is a sufficient level of democratic control of European agencies? What should be the yardstick: the level of control of independent agencies in the average Member State or should we develop an independent yardstick for European institutions?

In the end, the assessment of accountability cannot be separated from the vision one has about what constitutes adequate democratic governance in the context of

⁸² Behn, *op. cit.* note 11 *supra*, p. 30.

⁸³ Anechiarico and Jacobs, *op. cit.* note 64 *supra*.

⁸⁴ Fisher, *op. cit.* note 15 *supra*, at 495–515.

European integration—should we, for example, judge the European polity as any other Nation State, as a federal system, as an intergovernmental arena or as a *sui generis* case?

These, often implicit, visions ultimately determine whether one judges the glass of European accountability to be half full or half empty. However, these building blocks can structure the debates about accountability and ground them in empirical research—at the very least they can help to determine whether there is anything in the glass at all.

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