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In Search of Lost Norms:
Is Accountability the solution to the legitimacy problems of the European Union?

Sonja Puntscher Riekmann

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Abstract

It is the aim of this paper to investigate the concept of accountability as one attempt to answer the question of legitimacy of European governance. The guiding thesis of the paper is that accountability is indeed one important function of legitimacy in democracies. The current rise of this norm in the European political discourse may be interpreted as an instance for the search of lost norms and forms in times of uncertainty. Feelings of uncertainty haunt the Union's citizens as a result of the diffusion of power in the wake of European integration leading to an ever growing amount of supranational decision-making. The rise of the term "diffuse democracy" is an interesting case in point relating to the erosion of past clear definitions while new ones remain elusive, thus perhaps enhancing in stead of reducing uncertainty. However, stressing accountability may also lead to an "explosion of audit" without necessarily solving the dilemmas of European democracy but rather inciting distrust. I will, by way of conclusion, advocate greater clarity through improved constitutionalisation of the Union.

Introduction: Accountability is old wine in new bottles

The creation of a novel polity by integrating a number of pre-existing polities inevitably entails the deconstruction of old norms and forms of rule and the construction of new ones. And as inevitable is the resistance against both (Puntscher Riekmann 1998). The European Union is no exception to this phenomenon, conflicts being exacerbated by the fact that in this case the large majority of the old polities are long standing nation states and full-fledged democracies. The resulting dilemmas are manifold: Between national and supranational rule, between national democratic government and supranational governance, between statehood and supra-state cooperation, between sovereignty and pooled sovereignty, between majoritarian and non-majoritarian decision-making, between different concepts of citizenship and of demos. Whenever we leave the apparently solid ground of the nation state and step into the European sphere norms and forms tend to become diffuse. They are diffuse as powers are diffused and the political system is neither the replica of the state nor of an international organisation but something in between, whereas the finalité of integration remains contested and suspended in the notion of a polity sui generis. While this formula is problematic as

it does little to define the institutional set-up of the Union and its evolution over time, it says even less about the substantive thrust of European governance.

From its inception, European integration was not only launched to maintain peace on the torn continent, but also and as importantly to (re)build free market economies and to improve the socio-economic conditions in the new community by focusing on the four freedoms which were to be realised mainly through regulatory interventions by supranational institutions and corresponding implementation by national authorities: "Ordo-liberal theory of the economic constitution was to answer at the same time the question about the legitimacy of European governance" (Joerges 2003, 189). It is, however, the technocratic core of this governance which thwarts the majoritarian rule of modern democracy. In the Union the tension between majoritarian and non-majoritarian politics has been alleviated by incremental parliamentarisation on the one hand and by advocating greater efficiency and thus better output through non-majoritarian decision-making on the other. Yet, the tension is to surface time and again when output does not meet expectations while the regulations resulting from non-majoritarian decision-making impinge upon those decided by majoritarian institutions: This is most conspicuously the case in European monetary policy which buttressed by the Stability and Growth Pact collides with national social policy. Monetary policy is decided by the non-majoritarian ECB, whereas social policies are the result of difficult majoritarian processes in national parliaments.[1] These tensions bring the legitimacy question back in and forces political elites to search for more satisfying answers.

Hence, discourses on European institutions, norms and procedures, while rotating around the perennial issues of politics produce ever new forms adumbrating but not exactly replicating the old ones. This is particularly striking in the renaissance of the notion of governance the use of which comes along with some new connotations. As the Union does not have a government proper while it does deploy its rule upon the member states and its citizens, this reality became enshrined in the notion of governance which according to the White Paper on Governance authored by the European Commission in 2001 "means rules, processes and behaviour that affect the way in which powers are exercised at the European level, particularly as regards openness, participation, accountability, effectiveness and coherence." (Commission 2001, 8)[2].

It is the aim of this paper to investigate the concept of accountability as one attempt to answer the question of legitimacy of European governance. As a matter of fact, the Commission's White Paper is conceived "to renew the European political process" as a response "to the disenchantment of many of the Union's citizens." (Commission, 2001, 3 and 32). At least since the 1990ies EU as

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[1] However, in some member states relatively independent central banks existed already beforehand, the German Bundesbank being the most prominent case in point.

[2] For a critical assessment of the Commission's White Paper see Joerges 2002, who stresses the impasses resulting from flawed mechanisms of representation in European regulatory agencies and committees set up in the frame of comitology. In particular the praxis of the latter while based on the authority of rational deliberation rather than on political bargaining and logrolling is not apt to cure the democratic malaise of the Union.

well as member states' institutions facing the shocks of negative referenda on Treaty changes and declining enthusiasm about further deepening and widening of the Union repeatedly stressed the need for "re-connecting with the citizens". Better accountability surfaced as one central remedy to Europe's remoteness and opacity (Hummer/Obwexer 1999). Thus, under the Principles of Good Governance besides openness, participation, effectiveness and coherence the Commission in her White Paper lists also accountability and explicates: "Roles in the legislative and executive processes need to be clearer. Each of the EU institutions must explain and take responsibility for what it does in Europe. But there is also a need for greater clarity and responsibility from Member States and all those involved in developing and implementing EU policy at whatever level." (Commission, 2001, 10) Thus, clarity and responsibility are to be the core notions attributed to the accountability as conceived by the Commission. The term then recurs time and again throughout the whole paper, in particular as regards the organisation of expert advice collected by the Commission in the plethora of relevant committees as well as the EU regulatory agencies. However, is accountability indeed the appropriate device to tackle problems of legitimacy? The recent abundance of political and academic discourse on accountability may suggest so[3].

Interestingly though, with this strand of discourse comes another one reflecting on what accountability actually is and asking critical questions about pertaining concepts, Mark Philp's paper "Against democratic accountability" (2005) being a most provocative case in point. The insistence on accountability might appear as somewhat astounding given that in democracies power holders are by definition to be held accountable for their actions and to be sanctioned for eventual wrongdoing. What vary are procedures, not the principle. Mark Bovens (2006), as others (Mulgan 2000, Behn 2001), has delved into the meaning of the term accountability and drawn a highly convincing definition. I largely share this analytical approach and, in particular, the focus on a strict, sociological sense, whereby there should be clarity about who is accountable to whom and why as well as about the need for justification and the chance for debate and sanctions by the addressee.

However, before spelling out the traditional forms of accountability and their relevance for our modern liberal democracies changing through European integration, I will stress in greater detail a series of more general and normative questions: Is there at all and, if so, what is the relation between accountability and legitimacy in a political system? How far can the former foster the latter and where are the limits of this relation? What kind of accountability does serve the legitimacy of a polity and what kind is rather detrimental to it? Last but not least, what is the relation between accountability, representation and responsiveness? Only after exploring these questions in general will I turn to the political reality of the European level.

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[3] See for instance Mulgan (2000), Behn (2001) and Arnull/Wincott (eds) (2002); but also the contributions to the Special Issue on democratic control in the EU edited by Costa/Jabko/Lequesne/Magnette (2003) deal by and large with accountability. Howarth and Loedel (2005) in their book on the European Central Bank pose the question whether it is the new European Leviathan by discussing the problem of accountability. Jabko (2003) writing on the same topic describes the ECB's strategies to rebut criticisms regarding its independence by offering to be more accountable to the European Parliament. For a recent conceptual framework see Bovens (2006).

The guiding *thesis* of the paper is that accountability is indeed one important function of legitimacy in democracies. The current rise of this norm in the European political discourse may be interpreted as an instance for the search of lost norms and forms in times of uncertainty[4]. Feelings of uncertainty haunt the Union's citizens as a result of the diffusion of power in the wake of European integration leading to an ever growing amount of supranational decision-making. The rise of the term "diffuse democracy" (Magnette et.al., 2003) is an interesting case in point relating to the erosion of past (allegedly) clear definitions while new ones remain elusive, thus perhaps enhancing in stead of reducing uncertainty. Moreover, stressing accountability may lead to an "explosion of audit" (Bovens 2006, 16) without necessarily solving the dilemmas of European democracy but rather inciting distrust. I will, by way of conclusion, advocate greater clarity through improved constitutionalisation of the Union grounded on the normative assumption that "the criteria of liberal-democratic legitimacy are indeed appropriate for the EU level" (Betham and Lord 1998, 3).

Contesting the meaning of accountability: Does it lead to trust?

To function, a political system requires trust. As a matter of course a polity in the making cannot take trust for granted, but history tells us that even a long standing polity may for various reasons encounter severe mistrust capable to question its very existence. However, new institutions have generally to acquire trust by often cumbersome demonstrations that they deserve it, to endure contestation or even backlashes and to preserve the will as well as the capacity to start anew in case of crisis. Only time can tell whether the trust accumulated is robust enough to withstand fundamental doubts about the legitimacy of their decisions or even existence. Trust may even be greater at the beginning due to the enthusiasm of founding periods and decline later on when expectations and promises may turn out as exaggerated or unrealistic or redefined by new generations of actors. While changes in the political agenda are always prone to earn mistrust, they are utterly dangerous for a new system in particular if its evolution has largely occurred by stealth (Majone 2005). This is particularly true for the European Union which founded on international treaties gradually evolved into a polity superseding the political and legal order of its members. And still, the supremacy and direct effect of European law is not fully acknowledged by the ruled, let alone the maze of institutions and procedures by which the law is brought about.

However, since more than a decade European citizens have begun to realize the implications of integration, they have started to ask questions and sometimes even to reject decisions when asked. They are, however, asked only in the exceptional case of treaty changes and even this question is

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[4] Uncertainty though seems to be a pervading feature of modern societies or of modernity and thus also of liberal democracies which by definition allow for change due to novel interests and interpretations of reality. Democratic procedures are genuine means for the deliberation of alternatives. In spite of path dependence the course of issues may be altered or modified. Thus the postwar reconstruction of the nation states in terms of embedded liberalism and social market economy has heralded the "trente glorieuses" (Fourastié) of growth and stability. Thereafter, geopolitical and global economic developments have deeply affected this order and fostered the Union's role as a player rather than as a mere locus for transnational cooperation. Hence, the Union is perceived by many of its citizens as a source of change and challenge to old certainties.

not posed to all peoples composing the Union, but only to some of them. Many highly important decisions though are taken between treaty changes in an institutional set-up difficult to understand and even more difficult to scrutinize. Mistrust is triggered and fuelled by the power exercised in the interstices of the multi-level game where it is often so unclear who decides on what and how, who has a legitimate mandate and how he or she is to be made responsible. Thus accountability has become a favourite tool to shed light on the "interstices of power" (Puntscher Riekmann 1998, 157). I hold that, while it will bring clarity being one precondition of legitimacy, it will not inevitably bring legitimacy itself. A better understanding of the Union may even be detrimental to the citizens' loyalty.

Democratic accountability is a sub-function of representation legitimised through elections. Because power is delegated to representatives for a given period of time and with a rather broad clear mandate, representatives must account for what they have done during that period, how they have fulfilled their duties and whether they met expectations. Democracy, in particular representative democracy is rooted in the human fabric made of two seemingly contradictory, but actually complementary attitudes, namely trust and distrust. By electing them we entrust candidates with the power to rule us, but at the same time our trust is never absolute. Yet, even if we trust, we wish to verify (Behn, 2001, 101). Hence, the citizens' desire of control. Accountability is a means for "operationalizing" control and thus for striking the difficult balance between trust and distrust the ruled generally bear towards the rulers and for keeping the latter from wrongdoing. For that matter we have invented accountability procedures applicable during the period of rule and at the end of it, one procedure of paramount importance being elections. The legitimacy of a democratic system to a degree, yet not exclusively, depends on the well-functioning of these procedures. As a matter of fact, one core element of modern constitutionalism is the theory about the checks and balances in the organisation of power. From Montesquieu's famous dictum "le pouvoir arrête le pouvoir" to the Federalist Papers stressing at length the problem of political actors being prone to the abuse of power and of how preventing them from actually abusing it, authors have laid the foundations of a theoretical discourse on legitimacy, control and accountability inspiring us until this very day. It is of special interest to modern theorists, that Madison in his famous Federalist Paper No 51 has already pointed to the need for complementing vertical by horizontal control[5].

Moreover, legitimacy and accountability do not relate to each other proportionally in the sense that the more accountable an institution the more legitimate it is. First, the two concepts do not figure at the same level, as accountability is a function of legitimacy. Second, accountability is not the same under all circumstances. In particular we should draw a line between accountability in business and

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[5] The Federalist No 51: „In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions." Madison pointed to the special problems which arise from the fact that the United States of America are not a unitary state, but a "compound republic" in which two levels of government (federal and state related) must control each other and themselves while providing "double security" to the citizens.

accountability in politics. In business it is a tool to verify the performance of a corporation on the basis of generally quantitative goals agreed upon by the executive and its board. The principle "Trust, but verify" in corporations relates to the rather simple, because largely standardised art of checking facts and figures (which does not mean that mistakes, mismanagement or even fraud do not occur even successfully; cf. Behn 2005, 106). In politics, especially in democratic politics the issue is more complicated: Accountability is a tool to minimize distrust, but it can hardly create trust on its own, if not embedded in a set of principles such as fundamental rights, participation, output, symbolic interaction, common narratives about the past and the future goals of a given community.

Analytically speaking, there is a need for distinctions not only between politics and business, but also within politics between several features of accountability, i.e. between political, legal and administrative accountability (Bovens 2006). These three types of accountability imply different procedures and fora to which those wielding power are accountable. They may be differentiated along the line of vertical versus horizontal accountability. Moreover, legal and administrative forms of accountability appear to be much more clearly rule-bound than political accountability. While normatively speaking the former two are as important as the latter, it is this one which is more directly important to the citizens and yet more difficult to grasp. Political accountability is much less determined, due to the variety of fora to which the actors have to render account to and due to the variety of interests represented in those fora.[6] To elaborate this point further: Political actors are accountable according to constitutional and rules of procedure governing the institutions they are elected or delegated to. They are first and foremost accountable in horizontal terms in the institutional triad of the legislative, the executive and the judiciary being the basic form of institutionalising the concept of checks and balances in modern democracies. Infringements of the formal rules governing each of the three branches and their relations can at least in principle be rather easily detected and sanctioned.

Yet, it is a quite different matter when it comes to the performance of a given actor according to expectations relating to the public good which is by definition a contested issue. With regard to this argument Arnull and Wincott (2002: 3) distinguish between formal and social accountability. If according to Oliver (1991: 26) accountability is about establishing a framework "within which public bodies are forced to seek to promote public interest and compelled to justify their actions on those terms or in other constitutionally acceptable terms (justice, humanity, equity); to modify policies if they should turn out not to have been well conceived; and to make amends if mistakes and errors of judgement have been made", the issue at stake is no longer about legal procedures alone. If we linger on this definition of accountability we might as well ask whether it does not subsume too much, in particular in times of highly complex and increasingly interdependent socio-economic conditions, in times, when between conceptualisation, decision, implementation and

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[6] Moreover, the variety of fora offer manifold options for shirking and blame shifting (Brehm and Gates 1997, Lupia and McCubbins 1998).

assessment of effects of a given policy may pass years, while the responsible actors may have left office[7]. Thus, I deem it necessary to choose a more sober approach to the question what accountability can indeed achieve in terms of legitimacy. To deconstruct the current enthusiasm about accountability as a tool to solve legitimacy problems it may be useful to recall pertinent debates of the late 1960ies and early 1970ies when Luhmann (1969) and Habermas (1973) theorised "legitimation through procedures" in an attempt to shun the old ideas of legitimacy-building focused on national identity, distinctions between friend and foe, myth-creation, arousing of irrational we-feelings which had been so detrimental to Europe in the first half of the 20th century. Not astonishingly, this discourse has been launched by two German thinkers. It has, however, hit its limits rather soon. Procedural correctness is important, but values such as liberty, voice, justice, security, even certainty are paramount as Habermas himself has stressed thereafter. Hence, the crucial question is whether the procedures of accountability allow for discerning who has decided on what also in terms of those values.

Thus, while it is reasonable to distinguish accountability from representation and responsiveness as cornerstones of legitimacy in modern democracies (Bovens 2006), I also hold that there is an intimate link between these aspects. It is this link which makes political accountability such a central feature of any democratic system, but, to complicate things further, it does not allow reducing accountability to be performed in a procedure ex post facto alone. In order to receive someone's account on his or her acts while being in office and to evaluate them presupposes at least some knowledge about what he or she had promised to do. Had those promises been in utter contradiction with my preferences I and presumably others would not have voted for him or her. Had, on the other hand, those promises met my expectations I wish in the end to sanction the elected person or party positively or negatively as I deem appropriate. Such an approach combines ex ante with ex post control. Trust may increase proportionally to satisfying output and logically decrease if output is disappointing. Hence, at least relative compatibility between promise and performance or, for that matter, between representation, responsiveness and accountability is important. I emphasize the term "relative" in this context as voters' preferences may be volatile and change under the influence of specific conditions.

We should, moreover, not shun another problem related to this, namely the potential link between political accountability and populism (Philp 2005), which might be enhanced not only by populist parties determined to seek votes by whatever discourse but also by the media taking up such discourse according to their own rationality of market shares as well as influence. In this respect time is a crucial variable too. Between promises, agenda-setting, elaboration of programmes, compromise-building among diverging stakeholders, implementation of relevant measures and visible effects in the socio-economic reality considerable time lags may occur. Such time lags work in two directions: On the one hand they may tempt political actors to make facile promises as these

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[7] On the complex relationship between formal implementation of political programmes as well as relating legislation and the effects on socio-economic reality resulting thereof see the seminal work written and edited by Mayntz (1983).

can easily count on the forgetfulness or the tiredness of the electorate; on the other, though, they may arouse ever greater impatience in the electorate which purposefully instigated by populist parties or media ignores the difficulties of policy-making.

Thus, the aforementioned normative statement about the relation of democracy and accountability meets a perplexing praxis in nation states and, as I will show, even more so at the Union's level. Democratic politics is moulded on the idea of the principal-agent-relation which is complex and dialectical. In the modern nation state a variety of institutions have been built to keep up this dialectical relation not only in the rather clear cut system of checks and balances between the legislative, the executive and the judiciary but also in form of social partnership hammering out material compromises, of political parties as *pouvoirs intermédiares*, of media as supplementary, though powerful instances of control as well as moderators of symbolic interactions, last but not least in form of an expanding system of independent regulatory agencies created in the name of better as supposedly "apoliticised" decision-making (Majone 1994). If to different degrees and in different manners, political accountability is an important topic regarding all of them. Yet, it becomes ever more difficult to assess who is accountable to whom and why by using one yardstick for all of them. Thus, from a scholarly standpoint differentiated approaches are needed in order to gain a realistic picture. However, given the complexities of modern politics unfolding in an ever growing national, supra- and international maze of institutions and procedures one may also raise the question, whether accountability can at all satisfy the principal. Who has, anyway, the time to care about the plethora of accounts? Does the principal have the will to listen to them all? (Lupia and McCubbins 1998)

Moreover, one could also warn against too much insistence on accountability as it may fuel ever greater needs for scrutinizing power holders. As a matter of fact, one may also fear that an excess of accountability may enhance distrust rather than reducing it and thus hamper efficient governance. Are, therefore, the newly invented forms of horizontal accountability not an appropriate way out of the dilemma? And yet, if democracy is to be maintained or even enhanced as is the general attitude with regard to the European Union hierarchical forms of accountability are needed as well in order to relate the represented to their representatives. This is indeed the very substance of the parliamentarization of the Union in terms of increasing powers of the European Parliament as well as of the long-standing debate about a stronger involvement of national parliaments into the European decision-making process. However this process is far from being concluded[8], while the accountability of the Council and the European Council as that of other important actors such as the ECB is either precarious or even non-existent.

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[8] In particular the capacity of national parliaments to influence EU policy-making must be doubted in the majority of cases. For an important and critical case study on Austria where the parliament is in this respect granted considerable powers by constitutional law see Pollak and Slominski 2003.

Accountability in the European Union: Achievements and Lacunae

The Union is challenging the old "clear" world of the nation states, while the new world due to its multiple interdependencies with the old world appears as a "hazy maze" at least to the unprofessional observer due to her system of multiple levels interdependent with the old world. Two aspects dominate the process of European integration: first, the new world is created by actors from the old for specific purposes, one being peace, the other socio-economic modernization (by stealth); second, the old world, if it does by the majority approve of integration in principle, remains reluctant as to the degree and depth of Europeanization.

The history of critical moments in European integration shows one constant feature: the citizens' lack of knowledge about the Union's institutional design and procedures of policy-making. Ignorance does either lead to indifference or to utter mistrust and thus to a tendency of re-affirming the nation state, while those pleading for improved supranational democracy, perhaps even advocating direct participation in Union affairs, belong to an elitist minority. From the Treaty of Maastricht onwards the climate was marked by the end of the permissive consensus and recurrent negative votes on treaty revisions as well as by declining approval of the Union as a positive element in the citizens' life. In general these phenomena were politically and scholarly commented by discourses on good governance based on enhanced legitimacy, accountability, transparency, responsiveness. Generally, all these terms come in a row as benchmarks of good governance. However, they are quite different issues implying different hurdles when it comes to realization.

Being a polity in the making based on international treaties but no longer a classical international organisation and not yet (or perhaps never) a full-fledged federation, the Union as an in-between polity rests on vacillating legitimacy in terms of citizens' consent: Appearing quite solid at a certain moment in history, it might evaporate at another.[9] The often surprising pendulum swings (Wallace 2000; Trenz et al. 2003) in the public mood with regard to the Union is an impressive instance of its precarious legitimacy even after almost six decades of integration, whereas the lack of trust and the degree of mistrust can, as the referenda in France and the Netherlands have demonstrated, also destroy attempts to further democratise the Union. Neither the again increased powers of the European Parliament (Art. I-19), nor the new role of national parliaments (Protocol on the role of national parliaments in the European Union), nor even the introduction of a citizens' initiative (Art.I-46, para 4) could convince the French or Dutch majority to accept the Constitutional Treaty.

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[9] See for instance the fate of the Treaty establishing a Constitution of Europe oscillating between a high percentage of approval in principal and outright rejection in the referenda of France and the Netherlands in Spring 2005 (Puntscher Riekmann/Wessels 2006).

However, I hold that these problems are not so much rooted in a lack of formal, i.e. legal and administrative, accountability procedures as in a lack of what Offe has called the basic and uncontested "vertical consolidation" of the Union's constitutional order on the one hand, and in an excess of biased accounts by national executives about their role and impact in the European policy-making process on the other. As to the vertical consolidation of the Union's constitutional order it remains up to our times incomplete and contested. "Vertical consolidation characterizes the extent to which each actor's political participation is constrained by higher-order decision rules – that is, rules which are not at the disposition of the actor but to which the actor can refer as a license for, or legitimation of his own participation" (Offe 1998 quoted in Philp 2005: 14). Moreover, the standards set therein transcend and constrain the actor's possibility to act as a mere agent of the popular will. However, since the Single European Act the set of constitutional rules is so to speak almost permanently "under construction", evolving towards new horizons, the increase of policy fields ruled by majority voting and the shift towards double majorities as proposed in the Constitutional Treaty (Art. I-25) being perhaps the most incisive points in case. The supremacy and direct effect of European law, while being part and parcel of the Union's constitutional order since the seventies of the last century, they are still not firmly rooted in the citizens' consciousness. This may be less astounding as both elements have been created by the European Court of Justice (Burley and Mattli 1993) and not explicitly agreed upon by member states and enshrined in primary law. As to the supremacy of the law, it would now have been formalized by the Constitutional Treaty (Art. I-10, para 1). Thus, the constitutional bases are evolving due to the rulings of the ECJ as much as to treaty revisions and to interinstitutional agreements concluded either bilaterally or trilaterally between the three main organs of the Union, i.e. European Parliament, Council and Commission. Interinstitutional Agreements may to a degree increase the clout of the Parliament in certain policy fields, but they do not render the Council more accountable to the Parliament as may be expected (Puntscher Riekmann 2006). They are moreover an intricate system to which no political actor would refer to as a higher source of legitimacy in terms of vertical consolidation.

The treaties provide for procedures of accountability binding the Commission to the European Parliament, but not the Council or the European Council whose members could be held accountable by their national parliaments. Not all national parliaments though have established appropriate procedure to scrutinize their governments when acting at the European level. While some of them such as the Danish or the British have done so, others such as the Italian or French continue to leave their governments largely unchecked. Beside the presentation of the six months programme of European Council's presidency to the European Parliament and the debates following thereafter the presidency is not accountable in terms of evaluation and sanction. With regard to the Commission she also presents her policy programmes to the European Parliament, but she can be sanctioned for her actions only as a college and not on an individual basis. We could of course speculate whether Barroso's withdrawal of Rocco Buttiglione as a candidate for the Commission in the course of the European Parliament's hearing might be a first sign of an informal

erosion of this rule, yet the Constitutional Treaty reiterates the collegiate responsibility of the Commission. The Convention debates pertinent to the issue of individual responsibility had in the end come to nothing and the status quo was maintained.

Another salient issue in this context is the extraordinary independence of the European Central Bank which has been qualified as "the triumph of technocratic elitism over the idea of political democracy" (Dyson and Featherstone 1999: 801). The ECB though is the perfect incarnation of a long standing dilemma haunting modern democracies: the dilemma between politics and expertise (Jabko 2003: 712). In a Weberian reading the insistence of the ECB on its expertocracy is less astounding as bureaucracies derive their legitimacy precisely from their expertise and not from democratic deliberations and compromise-building. If asked the bank's officials hold that their task is "to set interest rates in order to provide for day-to-day credit allocation in the economy under non-inflationary conditions" (Jabko 2003: 713) and there are no possibilities for compromising on that. As a matter of fact, the Treaty remains largely silent about the modalities of the ECB's accountability as the relevant provisions (TEC Art 113 and Statute of the European Central Banks' System Art 15) stipulating reporting requirements are all but stringent. In spite of the fact that according to Article 105 TEC the ECB's main task of maintaining price stability is complemented by a secondary task of "contributing to the achievement of the objectives of the Community as laid down in the Article 2" the latter can be pursued only without prejudice to the first. Thus, objectives such as development, sustainable and non-inflationary growth, employment, social and economic cohesion and solidarity as stipulated in Article 2 must not affect the overall goal of maintaining price stability. Interestingly though, the European Parliament has fought quite consistently and partially also won the battle in the name of better accountability procedures regarding the ECB, whereas the latter gradually yielded to them in the name of a better image in the public. For that matter the European Parliament did not so much rely on the practice of member states' central banks as on the US-Federal Reserve and its duty to report to the Congress (Jabko 2003: 714). It is interesting to follow the evolution of the ECB from a largely technocratic and remote to a more open standpoint at least with regard to the EP. Only two years after the EP had decided on the so-called Randzio-Plath Report (European Parliament 1998: 9-10) in which the MEPs complained about their very restricted rights of control as compared to those of the US-Congress vis-à-vis the Federal Reserve, the ECB published its Annual Report 1999 (2000: 140) with a chapter on "public information and the accountability principle" in which we read that "in order to preserve its democratic legitimacy, an independent central bank must also be accountable". However, what does this mean in practice?

At a first glance the EP's achievement may be considered as disappointing: It neither succeeded in convincing the ECB to publish micro-economic forecasts and country-specific analyses nor did it obtain a catalogue of criteria along which the ECB takes its decisions so that MEPs in their ex post scrutiny could assess the appropriateness of its action (Jabko 2003: 724). Moreover, if the MEPs had hoped for the ECB to acknowledge the political and indeed distributional implications of the

decisions relating to price stability, those hopes were thwarted by the declarations of the then president Wim Duisenberg and other officials who time and again repeated that their primary task is to "preserve price stability", whereas "all other objectives are, so to speak, subservient to that primary objective." (quoted in Jabko 2003: 732). However, the future will show whether the rhetorical commitment of the ECB to the EP will lead to more substantive changes in norms and behaviour. For the time being the European Parliament must be content with the following statement in the ECBs Monthly Statement (October 2000: 54): "The European Parliament is the only institution made up with officials directly elected by the European citizens and, consequently, plays a crucial role - the ECB must be accountable to the Parliament for the conduct of monetary policy…In this sense, the relations between the ECB and the European Parliament must be considered as more than a simple statutory requirement." However, with regard to the relations of the ECB and the EP two issues are worth mentioning: First, the debates on monetary issues emerging from the hearings of the ECB officials in the EP Committee on Economic and Monetary Affairs have induced MEPs to converge on the primacy of price stability, and second, the ECB in 2000 has agreed "to start publication of an 'inflation projection' and promised to progressively reveal the entire macroeconomic model used by the ECB". (Jabko 2003: 724)

The ECB is not the only European institution whose legitimacy is conceived in terms of technical expertise. Concomitant with a more general development of modern democracies governance through independent agencies the Union has established a multitude of regulatory bodies focusing on specific issues. However, due to the restrictive interpretation of the Meroni doctrine professed even by the Commission they largely have only advisory functions and they report primarily to the organ which established them[10]. For the time being, they do not seem to constitute a central feature of our topic.

Thus, one real problem in terms of accountability and democratic legitimacy is posed by the underworld of "Comitology" in the wider sense of the term as used by Weiler (Weiler 1999). Governance by committees (Joerges and Vos 1999) has rather diverse implications for the policy process (from consultative to decision-making) and rests upon highly differentiated modes of bureaucratic and expert delegation. A systematic and comprehensive mapping of these modes and the forms of responsibility and accountability resulting thereof is still a research desideratum. However, the knowledge produced by numbers of scholars studying the "microphysics" of the phenomenon will suffice to state our problem: While the committees were invented by national governments to supervise the executive tasks of the European Commission and thus were long regarded as a tribute to intergovernmentalism, they gradually "evolved into fairly autonomous

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[10] 9/1956, Meroni, ECR 1957, 133. For an assessment of the doctrine as well as an analysis of the development national and European agencies see Geradin and Petit (2004) who acknowledge the problem of a lack of regulations obliging European agencies to regularly report to the European Parliament. Moreover, they stress an important difference to similar agencies in the USA as the European ones "are under no obligation to publish explanatory documents, issue regular reports or organize public consultations prior to decision-making." (55) While being in favour of expanding the number and power of agencies in the EU, Geradin and Petit hold that "independence and accountabilty can and must be combined" (52) and they deliver a series of reform proposal in order to improve transparency and widen participation.

creatures, whose decision-making style is largely consensual. While this evolution may be welcome from the standpoint of efficiency, it can also give rise to problems of its own: whom do committees represent and to whom are they accountable?" (Dehousse 2003: 799). Comitology: By this rather mysterious term we have come to define not only the practices of two intermingling bureaucratic levels, national and supranational, to bring about policy implementation, but also the primacy of "bureaucratic initiative" (Bach 1992: 18) in modern politics. This is not so much the result of a bureaucratic greed of power, but of a general desire of citizens for efficient and competent policy-making based on expertise as much as on interests. Moreover, the European Union as a novel polity emerging from a process of creating an "ever closer community" by continuously expanding goals and tasks is compelled to demonstrate its efficiency in order to legitimise its existence. Thus, output through good governance becomes an overarching issue. As at the same time the constitutional foundations remain contested, member states want to keep control of the supranational policy process. Last but not least and against all populist denigration of the European institutional set-up, the supranational bureaucracy is by far too small to rule an ever expanding Union. Without national administrations holding expertise and knowledge of the national reality, ruling Europe would be difficult, if not impossible. The new "centre" is highly dependent on the "periphery" (Puntscher Riekmann 1998: 85-111). It is the combination of these different needs which has ever since fostered the growth of committees and led to some 244 comitology committees counted in 2003 (Dehousse 2003: 800). It has, however, also led to a "benevolent diffusion of responsibility" (Scharpf 1996: 388). In the course of this development two venues of control have been envisaged, one being supervision by the European Parliament, the other one being procedural and judicial (Dehousse 2003: 803-809). While both are important, doubts remain with regard to a positive effect on European citizens who are to trust and thus legitimise the technocratic rule. Not even institutions such as the Ombudsman or OLAF could at least until now serve this purpose.

Citizens' trust will not easily come about as long as national governments will not stop to blame the institutions they themselves have set up. As aforementioned, there is an excess of biased account by national executives on their actions in the Union to their domestic public. These accounts may be disqualified as being too propagandistic in character and hence not to be assessed in terms of accountability proper. However, when evaluating political accountability it is rather difficult to neatly discern accountability from propaganda or, to be less severe, from a discourse pervaded by the interest of a government to depict its actions at the European level in a favourable light for ruling parties' discourse is and cannot be otherwise than prone to vote- and office-seeking.

Political accountability of national governments with regard to their European policy-making is addressed to different publics: first to parliaments and their committees, then to regions, party organisations, interest groups and social partners, finally to the citizens at large. A government's account will differ according to these publics. Moreover they might be compelled to account for their actions vis-à-vis the parliaments by constitution or to interest groups by political culture. They

will be scrutinized by the media although the interest of the latter in European affairs is generally limited to issues particularly salient for a given national audience or to scandalous behaviour of representatives in Brussels. But then, Brussels has become a synonym for the Union and the connotations attributed to it are more often than not of a negative kind. This too is at least partly a consequence of the biased accounts by governments. First, national governments are quite successful in scape-goating Brussels for unpopular decisions while claiming all the credits when decisions are popular. This may also foster eurosceptic opposition parties who tend to exploit the vacuum of political accountability. Second, when reporting to national parliaments governments and their administrations enjoy a "supremacy of knowledge" which is difficult for national MPs to countervail although there are important differences between national parliaments. Sometimes, governments may not even need to hide anything from their eyes; they may on the contrary overwhelm them with information trusting their structural incapacity to cope with the material delivered. Where explanatory memoranda are distributed they are often restricted to their own party groups, thus heavily impinging upon the rights of information and scrutiny of the opposition. This problem is exacerbated when it comes to sub-national parliaments and often also to regional governments, except perhaps in well-functioning federations, where regions enjoy powerful representation at the national level as in Germany.

It has been said time and again that parliaments are the losers of Europeanization. The Constitutional Treaty would to a degree redress this predicament. Yet, while the Treaty faces a highly insecure future, the involvement of national parliaments in the implementation of the subsidiarity principle through the early-warning system as well as in the simplified procedures of future treaty revision stated therein would certainly need some time of "socialisation" of national MPs before becoming a fruitful practice apt to enhance the Union's legitimacy. However, both new provisions are more about participation than about accountability.

Conclusion: Legitimacy needs constitutional foundations

Formal rules for accountability exist in the European Union as in other democratic polities, as a matter of fact they have been strengthened time and again, and yet, they quite obviously do not suffice to satisfy the citizens (Arnull 2002: 4). They might be sometimes complicated and different from national rules, or unknown to the wider public, yet they exist and they bind institutions and individuals. National rules are often not less complicated or obscure. Yet, while rules of accountability are essential, they will be of little value in an institutional set up which is per se questioned. On the other hand, a polity in the making like the Union without clear finalité (constitutionally as well as territorially) and whose integration process occurs incrementally and to an extent experimentally, will necessarily rest on structures and procedures remaining piecemeal attempts to cope with fractured legitimacy. This is the Union's great dilemma which will persist until the very day on which European elites and demoi will know what kind of supranational polity they want to achieve and how the powers wielded therein are to be constitutionalised.

Accountability is a corollary of democratic representation and will be questioned together with the latter: i.e. if the model of democratic representation is not accepted, modes of accountability can do little to correct the legitimacy problem. Moreover, in a construction of colliding systems of representation, accountability even in its reduced sense of reporting might be doomed to fail by creating overload and confusion as well as by opening channels for scape-goating. Thus, in spite of the EP's and the Commission's relative transparency both institutions remain either largely ignored or heavily criticised even in times of utmost correctness. On the other hand, the considerable lack of unbiased accountability by the European Council or the Council vis-à-vis the EP as well as national parliaments seems to create much less problems, as national executives manage far better their role as unquestioned representatives of the member states and as vendors of the idea that in case of criticisms it is some anonymous and bureaucratic "Brussels" to be held accountable.

To ensure forms of accountability appropriate to democracy is becoming all the more difficult due to the rise of non-majoritarian expert-based agencies in which horizontal accountability is the dominant rule. While horizontal accountability is of great value in the self-referential world of agencies, its value for a democratic polity as a whole must be questioned, in particular if wrongdoing cannot be sanctioned. This issue does not affect the Union only, but also modern states alike, it does however add to the legitimacy problem of a polity in the making. Taking the assumption seriously that "the criteria of liberal-democratic legitimacy are indeed appropriate for the EU level" as well (Beetham and Lord 1998: 3), I do not endorse the idea that we have to invent new criteria to assess the democratic quality of the supranational polity.

If democracy is - in the most classic and reductionist definition - the possibility to throw the scoundrels out, accountability is of course an important means to assess who is a scoundrel and who is not. Yet, a legitimate democratic system is more than that, it is also about shaping a polity and a society through policy-making, it is about ideas and actions bringing about something new, about creating added value compared to the status quo ante, about promoting a vision and conceiving the means to realize the vision. For that matter, indeed more than formal accountability is needed. While essential for feedback and re-evaluation it is a feeble instrument for creating general and stable trust, on which it is parasitic (Philp 2005). Without a strong foundational trust in a political community, even the most impeccable forms of accountability cannot overcome the natural distrust of citizens focused on specific deeds of actors. It will always encompass the whole system.

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