PROBLEMS OF DEMOCRATIC ACCOUNTABILITY IN NETWORK AND MULTI-LEVEL GOVERNANCE

Yannis Papadopoulos
Institut d’Etudes Politiques et Internationales
University of Lausanne

joannis.papadopoulos@unil.ch

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“It’s great to be an accountability *holder*. It’s not so much fun to be an accountability *holdee*” (Behn 2001: 2).

INTRODUCTION

Several studies focusing on different policy sectors, in diverse national and local environments, find broad convergence toward a policy-making style dominated by cooperation among government levels and between public and non-public actors. "Governance" as a particular style of governing refers to "sustaining co-ordination and coherence among a wide variety of actors with different purposes and objectives such as political actors and institutions, corporate interests, civil society, and transnational governments" (Pierre 2000: 3-4). In its “multi-level” form, it involves «a large number of decision-making arenas (...) differentiated along both functional and territorial lines, and (...),interlinked in a non–hierarchical way » (Eberlein & Kerwer 2004: 128). It implies the formulation or the implementation of public policies by networks involving public actors (politicians and administrators) belonging to different decisional levels, together with non-public actors of different nature (economic agents, interest representatives and stakeholders, experts). Deliberation, bargaining, and compromise-seeking are the rule in governance arenas, which are characterised by cooperative relations between governmental units attached to different territorial levels (subnational, national, European, etc.), and by collaboration of these units with various non-public bodies (associations, third-sector organisations, firms, etc.) instead of top down policy-making. In this paper I try to expose the reasons why this, at first glance promising and in all likelihood necessary, shift to less “dirigist” forms of policy-making can generate problems with respect to the quality of our democracies. This is a largely neglected issue in a research field which is dominated by managerial concerns about governance performance: based on a survey of about 1’600 projects included in a “Connex” database on EU governance (GOVDATA), Beate Kohler-Koch (2006: 5) concludes that not more than 17% of them address questions of democracy or legitimacy.

Problems with respect to democracy are caused by a deficit of democratic accountability of governance structures. This deficit mainly stems from four properties of network governance: the weak presence of citizen representatives in networks, the lack of visibility and uncoupling from the democratic circuit, the multi-level aspect, and the prevalence of “peer” forms of accountability. After explaining the accountability problems generated by each of these properties, I conclude with a model for decision-making that would be likely to alleviate the accountability deficits. Accountability can be defined as “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 pose judgement, and the actor may face consequences “ (Bovens in this issue, ms. p. 6). Stated somewhat differently, “A is accountable to B when A is obliged to inform B about A’s (past or future) actions and decisions, to justify them, and to

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2 See the definition by C. Skelcher (2005: 90): «Networks engage mainstream state, federal, regional, and local governments in interactions with arm’s length public bodies including quasi-governmental agencies, single-purpose boards, public-private partnerships, and multi-organizational collaborations.»
suffer punishment in the case of eventual misconduct” (Schedler 1999: 17). One should note that this definition of accountability combines justification by A to B with the availability to B of sanctions vis-à-vis A. What is more, the constraint for justification depends on the availability of effective sanctions (not necessarily the utilisation of sanctions, but their “shadow”). Such a resource in the hands of the accountability holder means that the actions of the accountability holder does not remain without consequences for him or for her, and that the decision about the positive or negative character of these consequences is in the hands of the accountability holder. However the two dimensions do not need be simultaneously present: Courts for instance are compelled to provide reasons for their decisions, but they cannot be sanctioned for them, while MPs can be sanctioned without being (formally) obliged to justify their decisions.

Grant and Keohane (2004: 42) are right in claiming that “we should resist the temptation to narrow the issue of accountability to that of democratic control” and they mention several other forms of accountability (administrative, fiscal, legal, etc.). In addition, political accountability is not necessarily democratic. In 18th century England for instance, the parliament claimed that the ministers of the Crown should be accountable to it, even though it was not democratically elected. And even the European Parliament was not (directly) democratically elected until as late as 1979 (but it is true that its role as an accountability holder was weak). A thorough survey of accountability issues would require to scrutinise who is accountable to whom, for what, through which procedures, what kind of arguments and justifications are provided by the “agent” (accountability holder), and what kind of sanctions are available to her “principal” (accountability holder). Being exhaustive in that respect for complex forms of multi-level governance would go beyond the scope of this paper. The paper also disregards the rhetoric justifications used in the framework of accountability, and focuses on the (arguably limited) role of public and democratic forms of accountability to citizens and parliaments of actors involved in network governance. In other words, it scrutinises the democratic anchorage (Sørensen 2005) of network forms of governance, meaning by that the possibility for those affected by collectively binding decisions formulated in policy networks, and/or for those representing them, to hold participants of these networks accountable by sanctioning them. It is often argued that horizontal and cooperative decision-making procedures operate in the shadow of the hierarchy, meaning by this that the options taken by actors who cooperate are subject to state approval, which usually takes the form of parliamentary ratification. To what extent do actors participating in policy networks operate in the shadow of democratic control, and in case of limits to this control to what kind of factors are they attributable?

Possible deficits in political accountability are not only the object of normative concerns, but can generate political problems too, leading to governability or legitimacy deficits. Such deficits are not only the objects of critical normative assessments, but also become the targets of anti-establishment political « entrepreneurs » (Papadopoulos 2002). Thus accountability of

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3 Note however that in some systems judges may not be reelected or are even subject to recall.
4 “Principal-agent” models are often used to describe accountability problems: for a recent overview see Bendor et al. (2003).
5 Goodin (2003: 364) distinguishes between different forms of arguments likely to be supplied by actors requested to account: on their actions, their intentions, their (sometimes unintended) results, etc.
decision-makers is not only a goal to be achieved by political systems claiming to be democratic, but also a means for their legitimisation in environments where democratic values prevail. The availability of effective accountability mechanisms forces policy-makers to anticipate the ex post control by policy-takers, and to act in the shadow of their sanction which produces a “deterrent” (or disciplining) effect (Behn 2001: 14-16). For accountability to be enforced in contemporary political systems where the institution of binding mandates is no longer au goût du jour (see E. Burke’s criticism as early as in the 18th century), both mechanisms are necessary. The “institutionalisation” (Schmitter 2004: 48) of retrospective control by the governed requires publicity in the actions of political elites and justification of these actions by them, in other words their “answerability” (Schedler 1999), which reduces informational asymmetries between “agents” and “principals” due to delegation. Answerability strongly induces rulers to anticipate the retrospective control by the governed (Koenig-Archipugi 2004: 237-238). The damoclean sword of control fosters responsiveness to the preferences of the public: the more decision-makers feel that they act in the shadow of possible sanctions, the more it will be rational for them to endogeneise the preferences of their “principal”. The idea that the citizenry should be the ultimate judge is central to democratic accountability, although in reality the mass public is not the only judge of governmental performance (think about the role of Constitutional courts, or of external agents such as the IMF for some countries). Also the “harder” (Bovens, 2005) accountability mechanisms are, the more effective we can expect them to be in ensuring responsiveness. In that sense genuine accountability mechanisms do not rest on a “logic of appropriateness” – rulers will behave in a responsive manner because they feel they have too -, but on a logic of “consequentiality”: rulers behave in a responsive manner because they anticipate the costs of unresponsive behaviour. It should finally be added that accountability and responsiveness must be conceptually distinguished (Bartolini: 1999): paternalistic dictators are responsive to the needs of their followers without being accountable, whereas behaving in a responsible manner and displaying “leadership” qualities require to make decisions that may well contradict the preferences of the electorate.

THE ACCOUNTABILITY PROBLEM IN NETWORK GOVERNANCE

It is expected from network forms of governance to lead to decisions enjoying a strong “output” legitimacy (Scharpf 1970), because their content is more appropriate, or because they are better accepted by target-groups. In other words, network governance is expected to

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6 As P.C. Schmitter (2004: 49) puts it, the most accountable leaders are those who have nothing to fear from accountability. Mansbridge (2003: 526) however correctly maintains that, notwithstanding its current diffusion, “anticipatory representation” based on “anticipated reactions” does not involve accountability in its classic form: “The representative acts only as entrepreneur, preparing to offer and offering a product to a future (emphasis added) buyer”. Anticipatory representation can only fit accountability in its classic form under the assumptions that voters remain the same and do not modify their preferences from one election to another.

7 An example of possibly powerful accountability mechanisms today is media scrutiny, and it is no accident that contemporary democracies have been defined by B. Manin (1997), a major theorist of representative democracy, as “audience democracies”. However if the incumbents fail to follow the recommendations formulated by the media this does not entail any automatic sanction, so that we should speak here of a “soft” accountability mechanism.
be conducive to technically more adequate and politically more realistic decisions. However, the consequences for democracy of network governance have long been neglected, as the literature originally stressed that more “horizontal” forms of policy-making are more responsive to the concerns of policy-takers, because in governance the latter are integrated into the policy-making process, and thus appear as “co-producers” of the collectively binding decisions that affect them. However, as suggested by Renate Mayntz (1997), cooperative governance is not conceived primarily in terms of its potential for democratisation of policymaking, but meant as a solution to functional problems, like the management of interdependence between various collective actors or concerns with compliance by policy-takers. As several recent works point out (Bache and Flinders 2004; Benz 1998; Benz and Papadopoulos, 2006; Papadopoulos 2003 and 2005), governance by policy networks generates in fact a number of problems with respect to democratic accountability. In this paper I identify four of them.

_The weak visibility and uncoupling of networks_

Lack of visibility impedes accountability in primarily two respects. Firstly, decisional procedures in policy networks are often informal and opaque, as this is deemed to facilitate the achievement of compromise, and networks dilute responsibility among a large number of actors (the same applies to various forms of public-private partnerships). This is the “problem of many hands” or “paradox of shared responsibility” (Bovens 1998: 45-52), that can be viewed as the negative facet of multicentric decision-making, at least as long as guidelines for “collaborative” accountability (Behn 2001: 72-74) remain “fuzzy” (Flinders 2005: 230). Secondly, even if the previous problem is attenuated through provisions for transparency and access to information, the latter are no substitute for traditional accountability mechanisms that should give the opportunity to principals to sanction delegates (Héritier 2003). Transparency lacks the element of sanction: it encourages to provide justifications for one’s action, but if these justifications are not considered satisfactory, the accountability holder has no possibility to impose any sanctions. Publicity is a necessary condition for democratic accountability but not a sufficient one: if exposure to media scrutiny for instance induces politicians to behave in a “responsive” (perhaps also populistic manner), this is only because negative reporting by the media can convince voters to sanction politicians in forthcoming elections.

Also, policy networks are often uncoupled from the official representative bodies, whose capacity to exert effective oversight over such parallel decisional circuits is questionable. In network governance the initiative and control functions of parliaments are in all likelihood

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8 See for instance the European Commission’s plea for "fostering participatory democracy": NGOs “are held in high esteem because it is assumed that they contribute to the formation of European public opinion, they provide feedback so the Commission can adjust its policy, they contribute to managing, monitoring and evaluating EU projects, and their involvement helps to win acceptance" (Kohler-Koch 2000: 525)

9 According to Wolf (2002: 40), “the primary normative guideline for governance is not democracy but legitimacy“.

10 The concept of a “post-parliamentary” governance has been coined to depict that phenomenon: see Andersen and Burns 1996.
weakened, with parliaments possibly confined to a role of ratifying bodies. True, parliaments have the formal right to overrule decisions made by policy networks (Voelzkow 2000: 273-276). The question, however, is to what extent they can be a credible menace. The capacity of representative bodies to nullify decisions prepared in networks can be questioned because some elected officials are close to the private interests represented in policy networks, or for sheer lack of expert knowledge.\footnote{This is clearly an empirical issue and of course institutional arrangements are of relevance too. On European matters, the competencies of the EP are not comparable today to the competencies of national parliaments on national matters, that depend in turn on the system of government and on parliamentary resources. Also oversight of EU legislation by national parliaments is subject to considerable cross-country variation (Benz 2004).} True, remoteness from parliaments and voters can be the object of deliberate institutional design (as in the case of autonomous bodies, courts, etc.), in order to make institutions less sensible and less responsive to short–term political concerns. Yet remoteness also produces – most probably unintended - cognitive limits to the capacity to correctly perceive what is indeed happening in policy arenas. MEPs for instance – for their part directly accountable to the electorate – demonstrate a lower accuracy in their perceptions of policy issues than members of national parliaments, including typically European issues such as the common currency or the abolition of national borders. As regards voters, 40 percent are not able to identify the policy positions of European transnational parties on unemployment policy, which is closely related to the familiar left-right divide, and the situation is worse for typically European issues (Andeweg 2005: 13-16), especially as regards “the everyday policy-making and implementation” (Olsson 2003: 285). In sum, remoteness aggravates informational asymmetries at the detriment of principals which cause prejudice to the exercise of accountability.

There is therefore a risk that decisions will be made by actors other than those regarded as legitimate decision-makers by ordinary citizens or by members of the affected communities. Peter Mair (2005) for instance considers that the EU exemplifies this trend by assigning a limited role to party democracy, and goes so far as to claim that through a socialisation (or habituation) effect this can result into citizens becoming more generally accustomed to the decline of the role of representative institutions in policy-making. It has also been argued that a sphere of (problem-solving oriented) „politique des problèmes“ – dominated by governance arrangements in “backstage” policy-making - is to a large extent disjointed now from the “frontstage” sphere of „politique d'opinion“, which is the traditional realm of party competition but seems to play merely a symbolic role (Leca 1996: 345-346).\footnote{The European Union is particularly emblematic in that respect: “politique d’opinion” on European matters is virtually absent, with the recent exception of referendums that are increasingly utilised on issues of European integration.} The relevant actors are not the same in the two spheres, and the goals and rules of the game tend to differ too. This can raise “coupling” problems between dissimilar logics: in his seminal work on Germany for instance Lehmbruch (2000) stressed the lack of compatibility between the competitive logic of party politics and emphasis on negotiation and cooperation within the federalist multi-level governance arena. In addition, when the sphere of “policies” is disjointed from the sphere of “politics”, the effectiveness of accountability procedures is undermined. The retrospective evaluation of office holders on the grounds of their policy achievements, and the prospective evaluation of candidates (incumbents and members of non
governmental parties) on the grounds of their pledges are hardly possible. The incumbent parties are held responsible for political decisions whose formulation in fact largely escapes their control. Of course, this is not new: ministerial responsibility implies for instance that ministers are considered responsible for problems of “maladministration” even though it is unrealistic to expect from them to be aware of all actions undertaken by their subordinates. However, network governance increases the number of actors who are involved in the policy process without being democratically authorised ex ante, and without being subject to democratic control ex post. It therefore amplifies the fictitious character of political responsibility. What is more, it may be argued that, in the more recent years, governing parties have increasingly been “punished” for their performance in office: electoral losses of incumbent parties are much higher that in the past (Strom et al. 2003). Thus elections are today at the same time a more drastic and a more symbolic accountability mechanism today, a symptom of the disjuncture between “politics” and “policy-making”.

The composition of policy networks

If one may criticise the fact that policy networks operate in insulation from democratic institutions (which is, after all, an empirical question), it may be objected to this criticism that most of their members are authorised by some “principal” to participate, and are thus subject to control regarding their actions. Also it appears that the role of politicians may not be as marginal as it could be feared, depending much on institutional configurations as shown by the empirical studies of Auel (2006) and Taiclet (2006). Yet even when politicians play a significant role in policy networks this is no guarantee for responsiveness, because they tend to instrumentalise them for their own strategic goals, or because of strong executive dominance over the parliament. For instance, according to a comparative study of three policy sectors in seven European democracies (Kriesi et al. 2006: 354), state actors remain the most powerful group in policy-making. If this strongly qualifies the idea that “governance” means a “hollowing out” of the state, this is not necessarily good news for accountability. Although it is not clear who these state actors are, their influence in the policy-making process is higher than the influence of political parties, which are the democratically legitimate actors for preference aggregation and policy formation.

Anyway, it should be considered that policy networks are largely composed of top level bureaucrats, policy experts, and interest representatives. Some of these actors are only indirectly accountable to the citizenry due to a long “chain of delegation” (administrators), or only to their peers (experts) or to limited constituencies (interest group negotiators). Therefore several actors taking part in policy networks are not necessarily mandate holders, are not constrained by any electoral pledges, and do not have to anticipate any electoral sanctions. With respect to accountability their presence raises however quite different problems: public administrators and leaders of interest groups are present by virtue of their representational properties (albeit remotely connected to electoral representation in the case of administrators, or thoroughly disconnected from it in the case of leaders of interest groups), while others’ presence is justified on quite different grounds (experts on the grounds of knowledge, private firms on the grounds of their blackmailing – i.e. “exit” - power). All but experts are collective actors in the sense that individual persons implicated in policy networks represent collective interests, be they those of the state, or of various societal segments and sectors (those who have a reputation to hold a blackmailing potential, or those – “stakeholders” – who have
argued convincingly that their preferences must be given weight because of their high intensity). They are delegates accountable to principals, but for none of them are citizens the direct principal.

High rank bureaucrats are accountable to their minister, but this is administrative, not political accountability, lacking the public dimension. Democratic control is much attenuated by the long chain of delegation. Bovens (2005) identifies in that respect a series of principal-agent relations: from citizens to parliamentarians, then to the cabinet, then to civil servants (and then may be to independent agencies too). In addition, NPM techniques en vogue leave more leverage to administrators, so that the democratic “answerability” of their decisions and activities is reduced, and democratic control through citizens’ “voice” is increasingly replaced by “customisation” (reliance on feedback by individuals as “clients” or “service users”; see also below). True, the problem of administrative discretion is not specific to governance networks but has been on the agenda for several decades, since the first influential studies of bureaucracies inspired by organisational sociology. It acquires however a new dimension in network governance, where administrators tightly cooperate with external experts. I do not intend to resuscitate the old and simplistic theories of technocratic power: the influence of experts depends on the receptivity of administrations (after all science and politics are functionally differentiated spheres), and experts seldom share the same views (even less on highly controversial issues). But an intriguing thing is that to claim credibility, experts have to convince about their independence. They should not appear as the vehicles of the preferences of any “forum” to which they would have to account. Experts are only widely credible if they can demonstrate the autonomy of science from politics, and have to persuade that their discourse rests on different premises than the discourse of politicians or interest groups. Experts are of course subject to “peer-review” within the scientific community, and risk loss of reputation. Control is here internalised by the profession, but again this soft and “horizontal” form of accountability is not political or public accountability. And if experts are in a sense also “authorised” to act (by virtue of their acknowledged intellectual capital), they are not delegated by any “principal” whom they would represent, but usually selected by the administration. Therefore there is no guarantee that those who are co-opted (perhaps the less critical) are also the most distinguished according to the self-referential criteria of the scientific system.

The requirement of expertise combined with independence is very similar to the requirement that increasingly leads national and European policy-makers to deliberately insulate some decisional spheres from the arena of partisan politics and electoral competition. The delegation of decisional power to various independent bodies and agencies (“agencification”) has indeed been justified by the need to ensure the credibility of those entrusted with decision-making, and this credibility is deemed to be primarily safeguarded through independence and expertise according to the “fiduciary” principle (Majone 2001 and 2002). In the EU system there are connections between IRAs and network governance: regulation by national agencies is influenced by mutual learning and the diffusion of recipes that takes place at European level in informal networks of national regulators (Eberlein & Grande 2005, Martens 2005).

13 This is complicated by the fact that experts’ independence is often unrealistic. Empirical studies tend to show that the most competent on a field are also those who are related to the interests in competition in this field (Barthe et al. 2005: 53).
Network governance also implies the cooperation of political power holders with non-public actors. One should distinguish between two sorts of them: interest groups and NGOs, or private firms. Although it is hard to disentangle the rationales behind these two forms of cooperation, partnerships with NGOs can be mostly attributed to a “community” orientation of policy-making, while partnerships with (and outsourcing of public tasks to) private actors can be attributed for their part to the influence of neo-liberal thought and new public management doctrines. Accountability problems differ: interest groups and NGOs are accountable to their members (“internal” accountability: Koenig-Archibugi 2004: 236-237), and sometimes also to donors. This is partial accountability, neither to the general public, nor to the populations affected by their actions (“external” accountability).\(^{14}\) It is also argued that these organisations do not escape problems of elitism (such as in the neo-corporatist model). This is no privilege of NGOs (the same was repeatedly said about parties: “iron law”, “cartel” parties), but interest representation is subject to stronger monopolistic or oligopolistic tendencies than partisan representation. The latter is regulated by electoral competition, while the monopolistic trend in interest representation is reinforced by the pressures from public authorities to deal with a small number of interlocutors representing encompassing social interests (Offe 1981). All this is indicative of the limits of the sometimes idealised “associative” forms of democracy (Hirst 1994, Wright 1995). Large private corporations for their part are primarily accountable to their shareholders, but even this form of capitalist accountability is not always well-developed in corporate governance. More fundamentally, this poses again the problem of partiality and lack of external accountability, as these firms are not accountable to those who can be subject to their externalities (workers, residents in neighbouring areas, etc.), apart through the market (NGOs for instance threaten with boycotts firms reluctant to apply social and environmental standards), but again this is not political accountability.

*The “multi-level” aspect of governance*

In addition, network governance can be “multi-level”, consisting of complex structures cutting across decisional levels. This is of course the case of policy-making in federal states, but in more centralised states too, because of two kinds of pressures. From “below” social differentiation renders policy implementation contingent on compliance by policy addressees, and from “above” internationalisation (think about WTO regulations) and europeanisation require multi-level cooperation. Accountability is further inhibited by this multi-level aspect of governance. In the effective operation of multi-level governance, the interdependence of levels requires their informal cooperation notwithstanding the formal division of competencies between them, and this cooperation often takes place in weakly visible decision-making structures. Further, as multi-level governance often rests on mechanisms operating along an intergovernmentalist logic and implicating sometimes multiparty executives, it can exacerbate problems of delegation and of dilution of responsibility.

\(^{14}\) The distinction between internal and external accountability partly overlaps with the distinction between what Gutmann and Thompson (2004: 39) call respectively “electoral” and “moral” constituents.
Multi-level governance is characterised by networks with horizontal, vertical, as well as diagonal relations. Horizontal relations are relations of public authorities with experts, organised interests and private firms (also in the framework of “public-private partnerships”) at national, regional or local level. Such relations can be considered as horizontal because public authorities do not control the totality of resources necessary for governance, so they must pool resources from other segments of society. There is a – sometimes formally required – obligation to cooperate, and many public-private partnerships are regularly subject to evaluation (the “reflexive state”). They are assessed by the public authorities that establish them, often on the basis of expert reports, and increasingly on the basis of surveys of “clients’” opinions. The influence of the citizenry through the vote as a mechanism of sanction declines again due to the long chain of delegation. Moreover, public authorities can shift the blame for poor performance to their private “partners” (the reverse is also true of course in situations where blame avoidance games that cause prejudice to accountability are possible: see Flinders 2005: 231). True, this lack of “internal” accountability to citizens as principals is offset by “external” accountability to “customers”, “service users”, or “stakeholders”. But the channels for their influence are often “soft” and informal, their “voice” is mediated by interest representatives or experts, and the utilisation of “exit” mechanisms (e.g. competition in service providing) which might exert pressure is often unrealistic: in reality much discretion is left to the administration. Above all, as pointed out by Behn (2001: 34), “government must be responsible not just to self-interested stakeholders – not just to fee-paying, survey-filling-out customers. Government must be accountable to the entire citizenry”.

Other horizontal relations are intergovernmental relations between the subunits of federal systems, and relations between national governments intergovernmental bodies. Here, the problem is that in principle accountable actors are only fictitiously accountable for this kind of relations because of lack of information on their positions and decisions, or because the accountability links are only indirect. The accountability problem has to do with the long “chain of delegation” making the policy processes visible only to those principals who are closer to network members (many intergovernmental negotiations are made by administrators who can enjoy considerable discretion), and with the problem of shared responsibility because decisions are taken by representatives of collective bodies in processes involving a multitude of them. In Switzerland for instance Schoni (2005) identified no less than 733 intercantonal agreements (“concordats”), about which it may reasonably be hypothesised that most voters (or even members of cantonal legislatures) are not well-informed, and therefore not in a position to evaluate their governments on the basis of their performances at this level. Also the governance of big conurbations at metropolitan level requires the cooperation of local governments or governmental agencies representing the different communes (Hooghe and Marks 2003, Kübler and Schwab forthcoming). Although each local government is individually accountable to its constituency, the frequent lack of transparency poses a problem of asymmetrical information inhibiting effective monitoring by the principals (how many citizens are aware of these forms of horizontal governance?). Further, there is a problem of

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16 On the influence of European and national bureaucracies upon the Council, see Curtin (forthcoming: 10).
lack of external accountability: the community of policy addressees includes here the inhabitants of the whole agglomeration, but the latter are not recognised as a collective body entitled to formulate mandates and to evaluate their achievement.

It may sound peculiar to speak about vertical relations in network forms of governance, but this is only to analytically identify cooperative (and thus de facto non hierarchic) relations between different levels of government, which are formally linked by vertical relations of subordination. Vertical relations are cooperative intergovernmental relations between subnational and national authorities, or between national and supranational organs: multi-level government. How can the “horizontality” and the cooperative style of policy networks affect formally vertical relations? In principle federal – or quasi-federal systems like the EU (for a recent discussion see Thorlakson 2006) – are characterised by a formal division of decisional competencies across levels, justified on the grounds of subsidiarity and “short distance democracy”. But problems of scale caused by the need to produce efficient decisions, or the fragmentation of power resources between actors in federalist systems – for instance policymaking is made at level A while funding is in the hands of level B - lead to a “competence mix” and to cooperation schemes even in pure systems of dual federalism (Thorlakson, 2003). This occurs either in the phase of policy formulation (see for instance the representation of European regional interests in Brussels), or in the phase of policy implementation when the latter comes to depend much on the resources of the constituent units (leading to negotiations between the Commission services, national and possibly also regional administrations). Formal verticality becomes thus “Politikverflechtung”, generating several accountability problems. Not only does the frequent lack of visibility of intergovernmental negotiations lead to the aforementioned problem of “many hands”, but multi-level negotiations tend to involve actors who are subject to administrative rather than democratic accountability, such as national and subnational bureaucracies. The problem is even more acute for the EU administration: the Commission is itself more weakly accountable than national governments, and individual Commissioners do not have the same hierarchical relation to the administration as national ministers: Verhey 2006: 19-20). Further, even actors who are directly subject to the control of their electorates are subject to a “two-level” accountability: they must account for their actions not only to their constituencies, but also to their negotiation partners. Usually “two-level” games have been perceived as opening strategic windows of opportunity for their participants. It is instead the constraints posed by such games that need to be emphasised here, participants having to satisfy in a sense multiple “principals”. And in a context of “deliberative supranationalism” (Jörges & Neyer 1997) they are constrained to a “two-level arguing” (Risse 2006) too. EU structural funds policy is illustrative of this multi-level network governance, where to cooperation of public actors across levels is added cooperation with non public actors in partnership forms. But “Comitology” committees in the EU are also a good exemplar of multi-level network governance, being composed of experts and of administrators attached to different levels.

17 Only in a sense because accounts must be given to negotiation partners even though the latter have not mandated those who must give account to them in order to retain their trust (see also above on professional, and below on “peer” accountability).

18 Diagonal relations in multi-level governance include for their part private-public interactions between units coming each from a different level: e.g public-private partnerships between local authorities and nationally based NGOs, or outsourcing of public services by a municipality to a
It should be added that the accountability problems of the European Union system are not limited to those related to intergovernmentalism or to multi-level governance. In the case of the more recent open method of coordination, there is a combination of multi-level governance with “soft law”. Unlike the classic community method, the OMC relies on processes of voluntary adjustment through mutual deliberation and learning between member-states to non-binding goals set at European level.\(^1\) This process that leaves more latitude to national governments aims at introducing flexibility and “legitimate diversity” (Scharpf 2002) in policy-making in order to cope with the heterogeneity of the EU in situations where the pressure to act is high, whereas resources (such as authority) for undertaking action at European level may be lacking. Learning is primarily expected to contribute to efficiency, so that accountability is not at the core of reforms in policy styles that seem primarily concerned with considerations of “output-legitimacy”. However, the OMC raises its own accountability problems too, which precisely derive from the combination of MLG and soft law. The core decisional work in the OMC is made in committees whose members (national civil servants and Commission officials) are not elected. The promises for substantial stakeholder involvement have not been kept, the EP is marginalised, there are no formal sanctions for non-compliance, and no accountability to the courts (Idema & Kelemen forthcoming). As the national discretion is larger, one might expect accountability to be at work at national level, which might be a function of domestic issue salience, polarisation, or the strength of opposition parties. However, as media coverage and public awareness of issues addressed through the OMC are low the goal of transparency is not achieved. By contrast, national governments have to account on their performance to experts, administrators, or to the European commission, all actors whose democratic legitimacy is fragile. OMC is thus particularly vulnerable to an inversion of accountability:\(^2\) instead of being accountable to their domestic constituencies for their options in the OMC national governments are primarily accountable to unaccountable actors. This is not without some similarity with processes at work at the transnational level, as in the IMF for instance where the governments that expect to “benefit” from IMF support are primarily accountable to this unaccountable agency.\(^3\)

“Peer” accountability in networks

\(^1\)A typical example is the European Employment Strategy (EES) that “includes a complex system of periodic reporting, indicators, and multilateral surveillance, as well as mechanisms for benchmarking, peer review, and exchange of best practices” (Trubek et al. 2005: 8). The Growth and Stability Pact combines in a hybrid manner measures of “hard” and “soft” law.

\(^2\)See the constraints of “two-level arguing” mentioned before in this paper.

\(^3\)The EU system also comprises bodies that are neither intergovernmental nor “multi-level”, such as the ECJ, the European ombudsman, or (increasingly) independent regulatory authorities at European level. This amplifies the problem of “many hands”, and it is of note that the accountability of some of these bodies is an issue (Verhey 2006: 14), while at the same time they are supposed to act as accountability “fora” (e.g. the ECJ). This accountability problem falls beyond the scope of this paper: see however for IRAs the recent debate between Eberlein & Grande (2005) and Randall (2006), with the former emphasising “informality” in the action of IRAs (see also Martens 2006), and the latter stressing the pressures for transparency.
Each of these kinds of relations generates different problems with respect to public accountability, depending on the status of the actors involved. However all forms of network governance are propitious to “peer” accountability (Benner et al. 2004: 199-200), i.e. a sort of accountability through embeddedness, typical according to Goodin (2003: 378) for third-sector organisations, but which may apply more in general to network forms of governance: “based on mutual monitoring of one another’s performance within a network of groups, public and private, sharing common concerns”. Participants are then deemed to be also (and perhaps primarily) accountable to their negotiation partners, usually in a “soft” sense (Bovens, 2005). Durable cooperative interactions between partners are expected to generate self-limitation, empathy, and mutual trust, according to a major assumption common to two distinct strands of research, strategic-oriented research on cooperation, and discourse oriented research on deliberation. Peer accountability is part of a more general trend where “principles of informal role/control have risen in importance in comparison to formal accountability (principles)” (Saward 2005: 13): the OMC is a good case in point. This form of accountability is sustained by mutual interdependence that derives in a sense (even though this may sound too cynical) above all from mutual blackmailing capabilities, also with respect to moral commitments. The sheer fear of “naming and shaming” is deemed to yield disciplining effects because “free riders” or unreliable actors risk loss of reputation on behalf of their partners, who will consider them as untrustworthy in the future and, in a sense, will no longer agree to “invest” on them. The standardising effects produced by the threat to lose credit present some similarities with the effects expected from “horizontal” accountability systems” of checks and balances. In parliamentary bicameralism for instance, institutional actors involved in “nested games” are induced to anticipate each others’ reactions, possibly to deliberate together, and thus reach agreement. Yet soft accountability mechanisms within networks are distinctive through the lack of formal sanctions, the focalisation of accountability on individuals, and the frequently missing democratic or even simply “bottom-up” legitimation of participants.

It can indeed be expected from policy networks to produce, through deliberation or bargaining and by virtue of peer accountability, Pareto-optimal outcomes. They can even prove to be more respectful of criteria of social justice than majoritarian decision-making (Papadopoulos 2003: 492-493). For peer accountability to function effectively however networks must be sufficiently representative and pluralist, i.e. not exclude weaker interests, or actors whose preferences do not coincide with the network’s “mainstream” orientation. Whether this is the rule seems questionable. And even if the network is pluralistic (as opposed to “iron triangles”) the diversity of perspectives does not guarantee that these perspectives are representative of the society at large. In order to be included in networks, actors much possess resources that

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22 This also presents similarities with mechanisms of “légitimation croisée” (cross-legitimisation) between representatives of the central state and local notables at the periphery that have been observed by works of the Centre de sociologie des organisations in France. For a theoretical synthesis of this research tradition see Crozier & Friedberg (1981).

23 C. Offe (1992) speaks about a “Gesetz des Wiedersehens”. “Naming and shaming” is also expected to be an efficient mechanism of mutual adjustment in “soft” law. However, as in the case of the GSP, the most powerful countries do not seem much embarrassed by that. As a matter of fact, we know with K.W. Deutsch (1963: 11) that power is "the ability to talk instead of listen, the ability to afford not to learn".
are unevenly distributed (expertise, blackmailing capacity, preferences considered as intense...). Further, interest selectivity is not only caused by inequalities, but also by imperatives of governability: the reluctance to include actors who are themselves not willing to „play the game“. Not only have deliberative modes of governance been criticised by radical theorists for requiring superior argumentative skills from their participants (Sanders 1997: 349; Young 2000: 37-40), but anecdotal evidence (from the study of Swiss drug policy) suggests that self-governing networks tend to reduce associative pluralism and intra-organisational diversity, either by imposing an official policy paradigm, or by failing to co-opt in networks actors who do not comply with it (Wälti and Kübler 2003). This is not only a loss of social pluralism but can undermine policy efficiency too. The lack of « requisite variety » in policy networks can lead to the formation of ‘group-think’ or to what Sunstein (2001) calls ‘enclave deliberation’. This impedes critical reflection, which is necessary to accountability. It is also detrimental to problem-solving because this kind of deliberation favours conformity with convictions that may rely on erroneous causal hypotheses. Worse, a lack of pluralism might also limit the optimality of resource allocation due to strategic behaviour on the part of ‘insiders’. Lord (2004: 114) stresses the danger ‘that instead of balancing and checking one another, networks or their members may collude to suspend competitiveness between themselves, to reduce prospects of challenge from the constituencies to which they are supposedly accountable and to freeze new entrants out of access to the benefits of engagement with the political system’. For instance, rational choice approaches inspired by the Olsonian paradigm, but also critical neo-marxist approaches of corporatism, tend to emphasise the risk of collusion and rent-seeking within weakly pluralist networks (“iron triangles”) at the expense of third parties. “There is too a very real risk that networks of mutual accountability will degenerate into a complacent ‘old boy network’, their accountability function blunted by mutual interest”, write Harlow and Rawlings in their contribution to this issue (p. 5 ms).

In addition, the requirements of mutual accountability within peer-groups can weaken public accountability. There may be a not so easily escapable trade-off, related to the presence of multiple “controllers” with different demands: peers on the one had, reference groups on the other. The “logic of influence” tending to prevail among elites involved in mutual deliberation and negotiation seldom coincides with the “logic of membership” consisting in mirroring the preferences of their constituencies (Schmitter and Streeck 1999). The narrowing of the preference gap between collective actors in “summit” negotiations and deliberations implies (at least if no learning processes occur) the widening of the preference gap between the leadership and the rank-and-file within the represented organisations. We also noticed that for “peer” monitoring to perform effectively some degree of intra-network variety is necessary. But on the other hand the more difficult it becomes then for external publics to identify who is at the origin of network outputs, especially when the latter are compromises. In addition, compromise-seeking and problem-solving may require « legitimate confidentiality » (Schedler 1999: 21), while democratic accountability may prevent solutions that cannot be « sold » with populist justifications. Moreover, increased accountability can

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24 This trade-off should be distinguished from “redundancy accountability” described by Scott (2000: 52). The latter refers to the tendency to extend traditional mechanisms of accountability by the horizontal mechanisms of the market, in which overlapping (and superfluous) accountability mechanisms reduce the centrality of any one of them (see Vos 2005: 14). Instead of a redundant extension we observe here a partial substitution of accountability mechanisms.
also lead to « subterfuge » as blame-avoidance behaviour. Marcinkowski (2000) for instance maintains that “informalisation” strategies can be decided in policy-making processes in order to avoid media scrutiny, Bovens (2005) stresses risk-avoiding behaviour from actors perceiving to be the objects of « excess accountability », and Philp (2005: 21) asserts that accountability often generates only an appearance of conformity. Self-presentation strategies utilised by politicians with the help of marketing consultants (“spin doctors”) point in this direction in a context of an increasingly “audience” democracy. Therefore there are good reasons – at least in policy makers’ minds – not to favour accountability in strongly mediatised public spaces.

CONCLUSION AND PROSPECTS FOR ACCOUNTABILITY

I claimed in this text that network forms of governance entail a number of accountability problems. “Shared responsibility” and lack of visibility are aggravated by the frequent “multi-level” aspect of these forms of governance. The relations between actors involved in such networks are weakly exposed to public scrutiny, and to the scrutiny of the legitimate, democratic, and representative bodies. This is not to say that actors involved in governance networks are not accountable at all. They are subject to “peer” or professional accountability, to reputational and market accountability, to fiscal/financial, administrative or legal accountability (Benner et al. 2004: 199-2000). There is no guarantee however that such “diffuse” or “composite” control mechanisms (Costa et al. 2003; Héritier 2003) can be effective, as they operate in a fragmentary and uncoordinated way without forming a coherent system. Also, the problem of political and democratic accountability remains: only some network actors are subject to it, and control over them can be merely indirect or partial. In sum, the following points should be stressed:

- in network and multi-level forms of governance direct democratic accountability of policy-makers is weakened
- on the other hand there is a “multiplication of control mechanisms” (Costa et al. 2003: 670)
- however these mechanisms do not form a coherent accountability system; they are dispersed and each of them is to a large extent self-referential, so that one should rather use the metaphor of a “patchwork”
- most of the accountability mechanisms at work are of the “light” or “soft” type (indirect, not institutionalised, through moral commitments and social pressure, exposure to the public sphere, etc.), with the risk of being “toothless” (Schedler 1999: 16-17)
- as a result the efficiency of a (syncretic) “marble cake” of accountability mechanisms including “many eyes” that operate in a “soft” manner is questionable
- finally, in network and multi-level forms of governance there may not only be a trade-off between democratic accountability and policy efficiency (the input-output dilemma), but a trade-off between democratic accountability and other “peer” forms of accountability too.

25 Not to mention the propensity of « watchdogs » to focus sometimes on « scandals » rather than on « normal » behaviour.
Some would argue that, given the increased complexity of contemporary decision-making procedures, democratic accountability has become illusory. Regarding the issue of transparency in transnational private governance for instance, Scholte (2002: 292) critically concludes that „most people (including many democratically elected representatives) have not even heard of private sites of global governance“. However, there is no sufficient reason why actors and processes of multi-level network governance should not be accountable to democratic institutions at different levels, which should be able to exert effective oversight over their operation. It may be argued that there is a need for a “parliamentarisation” of multi-level governance systems.26 However, such a (in principle welcome) reform strategy also faces limits and should by no means be seen as a sufficient condition to enhance accountability. This is particularly true for the EU multi-level governance system: by contrast to national settings where governance can be conceived of as “government plus”, governance in the EU is best described as “government minus” (Sbragia 2002: 6). Even if the EP continues for instance to gain power and influence over EU policy-making, this will not automatically solve other problems that weaken the influence of party representatives in the exercise of their role as accountability holders (think about the relative weakness of European party federations), or that weaken their legitimacy to act in that respect (think about the “second-order” character of European elections). Considering these limits, I would like to suggest a three stages model to improve democratic accountability in multi-level systems, borrowed from our common work with Arthur Benz (Benz and Papadopoulos, 2006). This should be seen as a complement to better accountability to institutions like courts or ombudsmen that are described in C. Harlow’s and R. Rawling’s contribution.

We envisage a decisional pattern characterised by a functional separation of power between policy formulation in networks, and veto power dedicated to institutions which are authorised and accountable to citizens. Formally authorised institutions should first have a constituent function, by setting the “meta-governance” (Jessop, s.d.) procedural rules for fair participation and for accountability in network forms of governance. Such a design function would be innovative as usually network forms of governance are considered to be spontaneously self-organising.27 The same democratically authorised institutions should have the final say on outputs, by being an effective locus of final decisions on proposals formulated by governance networks, which have for their part the advantage of pooling expertise and of facilitating acceptance by ‘stakeholders’.28 This is no institutional innovation per se: formally things do work according to this pattern in national settings, and increasingly so at EU level too. Yet in order to effectively perform their constituent and veto functions democratically authorised institutions should acquire additional resources in terms of legal instruments, but also in terms of information, time, intelligence, professionalism, reflection, or organisation. In national,


27 Some scholars ((Sørensen 2005, Schmitter 2006) have reflected on principles for “chartering” governance arrangements that meet the requirement of “democratic anchorage”.

28 We leave aside here the issue of the implementation of decisions, which can again be delegated to policy networks, but also requires oversight by formally authorised bodies.
regional, international and multi-level governance, citizens (by referendum), national parliaments, or elected governments should fulfil the constituent and veto functions, even though delegation to governments would play a stronger role at the supra- and international level. Actors in networks should then have to convince in communicative processes the legitimised veto-players about their policy proposals, while veto-players would be forced to effectively supervise participation and policy-making in governance. It is indeed necessary to develop learning mechanisms that should prevent policy blockades by veto players: to give an example, parliamentary committees should base more frequently their proposals on (why not) public hearings of experts and interest representatives.

Such a pattern of decision-making can serve as a benchmark to be approximated for all network governance situations, in order to increase the chances for improving their democratic accountability, and thereby their legitimacy. It should replace the current uncoupling of network governance from legitimate representative structures not by a tight coupling, that might lead to vetoing and policy blockades, but by loose coupling creating interfaces that can be beneficial for mutual learning (Benz 1998). The creation of such interfaces would require institutional innovation. For instance, particularly in a context where representative politics are also increasingly delegitimised, it does not suffice to redress the imbalance between network and parliamentary governance. A further step is required, which is a closer familiarity of the citizenry with the realities of complex decision-making processes, and thereby an increase of its evaluative competence that would permit to reduce informational asymmetries. “Deliberative opinion polls” (Fishkin 1995) for instance on some major policy choices formulated by networks can be instrumental for such an empowerment, under the condition that they are not confined to the role of mere participatory experiments as it is the case today. They should be combined for instance with petition rights such as those foreseen in article I-47.4 of the Constitutional Treaty. In sum, models of decision-making should be proposed and discussed that allow to:

- redress the imbalance between network and parliamentary governance by making the former more accountable to the latter
- empower on complex issues not only representatives but also ordinary citizens
- avoid stalemates due to the lack of mechanisms of mutual learning between network members, political representatives, and voters.

As a matter of fact, introducing a higher dose of public, democratic and popular accountability without setting up at the same time mechanisms of mutual learning by the involved actors can yield unintended negative outcomes, such as a lack of policy efficiency, and therefore also problems of governability that may ultimately lead to a decrease of (output) legitimacy. Institutional design should therefore be cautiously carried out so as to avoid such “perverse” or “boomerang” effects.

29 Other forms of loose coupling can be found in the linkages between ‘governance councils’, administrative agencies, parliaments, and the judiciary in the framework of ‘democratic experimentalism’ (Dorf and Sabel 1998; see also Eberlein and Kerwer 2004: 132-133 for an application to the OMC in the EU).
30 See for instance Andersen and Hansen (forthcoming) on the Danish deliberative opinion poll on the Euro.
REFERENCES


Idema, T. and Kelemen, R.D. (forthcoming), New Modes of Governance, the Open Method of Coordination, and other Fashionable Red Herring, forthcoming in *Perspectives on European Politics and Society*.

Jessop, B. (s.d.), “Multilevel Governance and Multilevel Metagovernance. Changes in the EU as Integral Moments in the Transformation and Reorientation of Contemporary Statehood”, manuscript.


