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Government Evolving: Ensuring Accountability of Ministries and Agencies

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The Growing Complexity of Modern Government

Modern government is anything but monolithic. The proliferation of agencies has reduced the “readability” of the organisation of the state, and decisional processes have become more opaque for ordinary citizens who long for transparency. But complexity extends far beyond the fragmentation of government into multiple agencies. In a broader perspective, the state had to scale down its ambitions to control the society on the traditional pattern of a unidirectional hierarchy. In France, Germany and elsewhere on the European continent, the last two or three decades have brought a spectacular shift from the traditional “tutelary” state to partnership and contract relations, a phenomenon often epitomised as “governance”. Governance as a particular style of governing refers to the state collaborating with, and sustaining coherence among, a wide variety of actors with different purposes and objectives, such as political actors and institutions, private-sector firms, third-sector organisations, civil society, and transnational governments. This movement towards a “networking” type of government, often in a multi-level environment, is interpreted by many as an erosion of parliamentary influence and – implicitly – of the possibility of the electorate to hold the government accountable for its policies and actions. For the management of interdependence in societies that are both complex and democratic, the task of reconciling co-operative procedures with democracy is imperative yet problematic (Papadopoulos 2003:473). The point here is to note that the “agencification” process on which this paper focuses is but one element in a broader evolution of the modern state towards what pessimists interpret as its inexorable march into a legitimacy crisis and functional ungovernability and what optimists see as an invitation to learn how to manage public affairs more intelligently in a world of growing complexity and interdependence.

Ministries and Agencies

Constitutionally independent bodies (such as courts, audit courts and central banks) left aside, the apparatus of government may be seen to consist of two layers: the governmental core, i.e. the prime minister’s and/or president’s office and a number of ministries (often called departments) on the one hand, and a multitude of agencies on the other. A ministry is part of central or, in federally organised countries, state government (in Germany and Austria: *Länder* government). It is a vertically integrated organisation with a portfolio of responsibilities. The definition of the agency is less straightforward. Agencies come in various forms, with the only common element being that they are not ministries but “arm’s length” *government* organisations. The typical agency has a single or relatively narrow purpose, and each has substantial operating freedom, even if it is still housed in a ministry. Most agencies, however, are separate from a ministry, and some are free-standing units that have no formal links to ministries. The fact that they are considered part of government excludes by definition private firms and non-governmental organisations, even when they are mainly funded by government entities. Some definitions also exclude government companies and bodies resulting from administrative deconcentration or decentralisation, such as local authorities (OECD 2002:11). The last-mentioned exclusion appears too sweeping and needs to be differentiated. In a number of continental European countries, central or state government legislation has delegated a large array of state functions to the local government level. If the legislation provides for these

tasks to be carried out not as “own” functions of local self-government but as *state functions*, the relevant ministry has authority not only to supervise whether the task-fulfilment by local authorities is in compliance with the law but also whether it is appropriate and to take corrective action if it so chooses. In these cases the government undeniably uses that particular unit of the local authority as a state agency. By the way, the creation of agencies is not a monopoly of central or state governments. In many countries the larger local governments have set up their own agencies, often under private law. In France, the typical local government agency is the *association*, while in Germany it is the government-owned company.

The roster of agency functions includes regulation, policy advice, service delivery, tax collection, police work, technical assistance, research, and just about every activity found within government. Agencies differ in terms of size, function (from quasi-judicial to regulatory and commercial functions), rationale for their creation, funding, legal and organisational forms, internal governance structure, accountability mechanisms, and relationships to the reporting ministry. Their characteristics also vary widely. For example, they can be created by the executive branch of government or by the legislature; they might function under public law, private law or both; and their staff may be considered as part of the civil service or come under general common employment law. Organisationally, these bodies have usually been created by:

- isolating structures within ministerial departments and providing them with a quasi-contractual relationship with the top hierarchy of the ministry; or
- separating them institutionally from traditional, vertically integrated ministries; and/or
- providing them with a complete or partial legal identity separate from that of the state.

As a result of this organisational and/or legal “separateness” they are all characterised by some or all of the following features:

- a top governance structure differentiated from traditional, vertically organised ministries;
- a differentiated control environment – i.e. relaxed management, financial, and personnel rules;
- some management autonomy (OECD 2002:12).

In several continental European countries, most existing agencies look back on a long history, and only a limited number have been added recently. In other countries, the majority of agencies developed in the 1980s and 1990s under the influence of the New Public Management (NPM) movement. The United Kingdom – with its Next Steps agencies – and New Zealand were the most noticeable reform arenas during this period. The NPM-inspired governments believed that operational autonomy of agencies, balanced with contract management and output-oriented budgeting and management, would increase efficiency, bring services closer to citizens and thus improve service quality, allow the involvement of citizens, private sector or civil society organisations in the management of agencies, and strengthen the state by separating policy-making from operations, thus allowing central ministries to concentrate on shaping policy and monitoring performance.

In western European countries, agencies account for more than 50% and sometimes more than 75% of public expenditure and public employment (OECD 2002:16). However, the intricate coexistence of a traditional vertically integrated ministerial core with an expanding periphery of agencies operating under different rules and sometimes playing a different game has only recently been recognised as a systemic problem of modern government.

Accountability

“Accountability” in government is basically a political concept, but it has an administrative consonance. It does not carry the moral or juridical undertones of “responsibility”, but both terms are often used synonymously. Accountability is *imposed* by the accountability “holder” (the person or persons to whom one is accountable) on the accountability “holdee” (the person who is accountable). This is why one can be held accountable for a decision or action for which one does not have to accept personal responsibility in a moral or juridical sense. However, both can appear in combination: a questionable decision for which a minister has to account politically may also be a criminal offence for which he/she may have to stand trial.

Ministerial Accountability

The principle of representative government means that the prime minister and the cabinet are directly accountable to the elected parliament and, ultimately, to the people. In the United Kingdom, where no written constitution exists, a resolution of both Houses of Parliament taken in 1997 indicates that “ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their Departments and Next Steps Agencies”. The principle of accountability could hardly be formulated more clearly. While it is generally agreed that a minister cannot be personally *responsible* for every mistake or blunder made in his/her department and its sometimes numerous agencies, he/she can perfectly be held politically *accountable*. Incidentally, only persons — not institutions — can be held to account, and the title of this paper is just a popular *façon de parler*.

Ministers are directly accountable to parliament for both their own policies and the actions of their departments. Perhaps the most direct way in which the government can be held to account by parliament is through the questioning of ministers. The German federal constitution (“basic law”) stipulates that “the *Bundestag* (federal parliament) and its committees may demand the presence of any member of the federal government”. The information a minister gives in parliament is expected to be accurate and objective. In the same vein, the above-quoted British parliamentary resolution goes on to say that “...Ministers should give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister”.

Public servants, including agency staff who in most cases remain civil servants working under civil service terms and conditions, are accountable to the responsible minister and through him to parliament. If asked by a parliamentary committee to give an account of government policies, or indeed of their own actions or recollections of particular events, they do so under the responsibility of their minister, contributing in this way to the central process of ministerial accountability; they are not to offer personal views or judgements on matters of political controversy. In the words of the parliamentary resolution of 1997, “Ministers should require civil servants who give evidence before Parliamentary Committees on their behalf and under their directions to be as helpful as possible in providing accurate, truthful and full information”. The relative operational autonomy given to many chief executive officers of agencies can become a source of tensions when it conflicts with ministerial accountability.

Agency chief executives should keep in mind that their managerial autonomy is subject to the important *caveat* of continuing ministerial accountability. This means that the minister has to be kept informed of matters that may affect him/her and of questions that may come up in parliament or in public. In a sense there is a need to “protect” the minister.

The dismissal of a minister is the ultimate sanction in the system of ministerial accountability. Many constitutions provide for the president (e.g. the German federal president or the French president of the republic) to appoint and dismiss ministers on the proposal of the prime minister. With major scandals or blunders individual ministers sometimes have to incur the blame. The removal of a minister in a crisis is always a delicate undertaking and can easily damage the prime minister and the government as a whole. What pushes a prime minister to demand the resignation of a minister is not always the criticised decision or action itself but the fact that it has made its way into the media and aroused intense public criticism. If the prime minister hesitates too long in removing a minister who has become the whipping boy of the opposition and the media, he/she may risk a public upsurge and a media campaign that might eventually destabilise his government. To redress the situation, the prime minister and his/her parliamentary party group will normally urge the minister to resign, demonstrating to the nation that the government is still firmly in control and able to act.

The typical mechanics of a ministerial resignation reveals that the public, the *demos*, makes a crucial difference. The mobilisation of public opinion actually makes the people the ultimate accountability holder. In closed political regimes, ministers who have fallen out of favour are removed surreptitiously, ensuring that the populace never gets a chance to discuss whether the punishment was justified or not. In contrast, an informed public and a large degree of transparency of government processes are the distinctive features of a democracy. Transparency is the first requisite of accountability.

Agency Accountability

Historically, ministries and agencies have been rival forms of organisation: ministries have multiple subdivisions and responsibilities; agencies have a single responsibility and a simple organisational structure. Departments promote integration, uniformity, rule-driven behaviour; agencies promote diversity, adaptability, and self-governance. Every national government has a portfolio of activities, some of which have no salient connection to one another, but some of which do. National defence and lower-level education are examples of the first situation; the provision of job training and unemployment benefits may be examples of the second case. There is no basis for placing defence and education within the same organisation; job training and unemployment services, however, may either be placed in separate agencies or integrated in a ministry that is responsible for other income support schemes. Having separate agencies encourages managers to give singular attention to their assigned responsibilities; integrating related activities in a ministry encourages managers to co-ordinate their work. Inasmuch as both a sharp focus on services and co-ordination are desirable, there is no permanent solution to this organisational issue (Schick 2002: 36). Over longer time periods, a pendulum-like movement between organisational integration and “agencification” can be observed. But this is a question of measure rather than of principle. In the modern state, a government with no agencies at all is just as unthinkable as a core-less government consisting solely of agencies.

Ensuring correct agency accountability (the accountability of the agency chief executive to the reporting minister) is no straightforward task. In general terms, the parent ministry wants the agency to function in lawful and efficient ways and in the public interest *within the authority conferred on it* by the founding law or framework document. Whether this can be ensured depends to a large extent on the control environment built around the agency and on its intelligent and co-operative handling by both the ministry and the agency. In blueprint, the relationship is supposed to work fluidly by having policy guidance and procedural rules flow downward and information on activities and services flow upward. Policy-makers would tell administrators what to do (and not to do) and would provide the financial and organisational resources to carry out assigned tasks, while managers would report on their work and on compliance with the policies and rules handed to them. Audits would verify the reliability of reported information, and evaluations would assess the effectiveness of policies (Schick 2002: 39). As there are enormous differences between agencies with respect to service output and political sensitivity, to name the most important factors, the relation between ministry and agency would need to be specifically tailored to come to grips with the “steering” problems of the individual agency. A statistical institute or a pension fund have little in common with prison services or an employment agency. The first-mentioned agencies are clearly less politically salient, and in normal times ministry involvement, as measured for example by the frequency of meetings between the agency chief executive and the minister or high ranking ministerial official, is limited or even non-existent. The relationship changes radically when a normally “harmless” public activity abruptly becomes a matter of heated public debate, involving the minister’s accountability and potentially even his/her political survival.

In practice, the relationship between policy-makers and administrators or advisers rarely conforms to the blueprint. It is usually characterised by more interdependence and less hierarchy. Managers make policy, and policy-makers often dictate how activities are to be managed. As there are no established rules about how to provide agencies with exactly the degree of management autonomy and the mix of controls that best fit their type of activity and political sensitivity, the process is usually dominated by political and administrative expediency and pragmatic choices among the components of a control environment. These components include: the top management structure of the agency, the conditions of appointment and termination of the chief executive officer and/or the board, the content of quasi-contracts (or full contracts if the ministry and the agency are separate legal entities) on the performance (output or outcome) expected of the agency, the details of financial management, the employment and remuneration rules, the reporting duties to the ministry and to the public, and the form of external audit the agency is subject to.

The handling of the control environment, be it well thought through or not, can come up against obstacles on both sides, commonly defined as the principal-agent problem. The concept is part of the panoply of “new institutional economics”, a field that also focuses on transaction costs, incomplete contracts, and other notions to explain why integrated organisations may be less efficient. Nominally, agencies are (as the word denotes) agents of the state; in fact, however, they often act in their own interest, and empowering

them with operational autonomy may give them license to pursue self-interest and rent-seeking, thereby generating negative externalities. Some agencies actually auto-pilot themselves. The gigantic German Federal Employment Agency was a case in point. The parent ministry was unable to control the agency, even though high-ranking officials of the labour administration sat on the agency's board — along with representatives of the industry and trade unions, which had formed a *de facto* coalition. The board hardly felt accountable to anyone other than this compact and the interests of the organisation itself. It took a public scandal — the gross inflation of job placement numbers in the official agency statistics — to shock and destabilise the institution. After a long public debate, the legislator merged the two tax-financed welfare systems addressed to persons who were able to work but had run out of unemployment benefits. One of these two systems had previously been financed and administered by local authorities. Only then was it possible to deflect the course of the institution from its emphasis on unemployment benefits and largely ineffective training programmes (where billions had purportedly been wasted) to a new focus on job placement activities, and to impose radical reorganisation and cultural change. The field offices of the federal agency now have to co-operate with the counties and the larger cities, harnessing their attachment to the local firms and labour market. The initial scandal turned out to be a window of opportunity.

Ministries often lack the political clout to control agencies. This happens when an agency enjoys popular support and/or has powerful stakeholders or some kind of blackmailing potential protecting it from being sanctioned or privatised. Not infrequently ministries also lack the technical knowledge to monitor an agency. The following is an excerpt of an interview Brian Hogwood and his colleagues conducted in a British agency (Hogwood *et al.* 1999:12):

“About 30 per cent of our business is commercial. In terms of accountability, this is a key issue. The department...[has] no idea....they have a simplistic way of adding up numbers and a general misunderstanding of the needs of business.... I feel that only 70 per cent of our accountability is understood by those who monitor our affairs....We, as an agency, carry quite a substantial EYF (end year flexibility) and we need approval to roll money over to the next financial year. Instead of that being accepted as ‘you’ve generated the money, you have good reasons for needing it in the following year’....each year we have to argue the same case with the department as to why we have this money. There is no chance of a learning curve with the department because they keep changing the staff.”

The handling of contract management is another problem. The central innovation in the “new” NPM-style agencies is their focus on agency output and its monitoring via performance targets laid down in a quasi-contract between ministry and agency. Having been given discretion, managers must openly account for what they have done and accomplished. The two sides of the bargain are supposed to be interdependent. In practice, however, it is often much easier to fulfil the first part of the bargain than the second. It is much easier to divest administrative controls than to enforce strong accountability (Schick 2002:41). Giving discretion without measuring agency performance against the expectations laid down in the contract seems to be widespread and could also be observed in German local authorities, which were the first to introduce NPM into German public administration.

The fact that ministries display typical weaknesses in the business of controlling their agencies stimulates the question whether all ministries are always *willing* to monitor their agencies effectively. It is striking to see that monitoring responsibilities are often entrusted to relatively junior civil servants who are no match for influential agency chief executives. This seems to be an international phenomenon. Ministries definitely care more about policy-making than about services. The jobs close to the minister where policy advice is given are the coveted ones because they carry career potential. Allen Schick puts it bluntly: “The British government was able to implement the Next Steps initiative without encountering opposition from Whitehall because the big departments didn’t care much about services and felt little loss when they were relocated to independent agencies. Why should they care more about services now that agencies have operational independence?...it is not enough for managers to be free. Their departments must actively guide and vigorously monitor what they do. To assess how well the agency model is working one must examine whether the parent department is living up to its responsibilities.” (Schick 2002:48)

These deficiencies have led to some disenchantment with the purported promise of NPM that agencies given more freedom to manage would quasi-automatically become more effective. This was a popular over-generalisation of the blessings of NPM and an underestimation of the difficulty of implementing its

elements. In reality an agency *may* become more effective *provided* it is monitored in a way which is not only consistent with government policies but also with the nature of its business and the needs and expectations of its clientele and staff. Sometimes these expectations have to be changed, and this takes time and effort. Ministries have only rarely taken the time and provided the staff quality to carefully analyse the situation of each individual agency and to devise and implement a control environment in interaction with the agency. Usually some standard requirements were imposed unilaterally; as these were often of a distant and bureaucratic form-filling nature, agencies felt them to be abusive (Hogwood *et al* 1999:11). Most important, ministries have often failed to build up the permanent high-quality capacity needed to steer their agencies effectively, and the ultimate explanation may well be a somewhat high-handed disinterest in what most agencies produce: services. However, services and service quality are nowadays higher on the public agenda than they used to be, when citizens were less assertive and less informed, and the chances are that ministerial accountability will revolve around services more often than in the past. The deepening of democracy should not leave the focuses and priorities of ministries unchanged.

An alternative to improving ministerial capacity to control agencies could be to move some agencies under a master agency that is naturally interested in services. This kind of master agency can be found among strong sub-national governments endowed with an elected assembly. Where these governments exist, they mainly deliver services. In Germany, the *Länder* are successively relocating service-intensive agencies to the counties and the larger cities. The problem is that the requisite funds do not always follow the devolution of responsibilities. In France, a similar movement can be observed towards the provinces. Citizens have a more direct impact on sub-national assemblies and bureaucracies than on national institutions for several reasons: sub-national governments are closer to the electorate and to the local media; their responsibilities are more or less narrowed down to service delivery; and the quantity and quality of these services are the focus of voter expectations. Voter interest and regular media coverage of local or regional service issues ensure that elected representatives and mayors/chief executives alike are held to account almost non-stop. A systematic devolution of services with a predominantly local impact to sub-national governments could relieve central governments of some of the strain that is more difficult to cope with at national level.

The Crucial Role of Transparency

In the introduction to this paper, the question was raised as to whether the growing complexity of modern government, its fragmentation into various agencies and authorities at different levels — national as well as international, and the increased “networking” modes of decision-making could have created structures that are hardly visible, let alone readable by the general public. There is no doubt that accountability mechanisms are necessary for democratic politics because without them elite responsiveness cannot be ensured. Does democratic accountability risk falling between the cracks in a world of complexity and interdependence?

Accountability depends on information. In developed democracies more information is available and accessible than there ever was, and the flux of information is continually expanding. At the same time, the room for secretiveness of government has been ever more restrained. Open government means that laws and regulations, government budgets, a plethora of statistics, organisation charts and mandatory reports of government organisations, and numerous reports of audit courts are now all public information. In addition, NPM-practices have generated an explosion of output and performance measurements and indicators, performance comparisons and assessments, peer reviews and evaluation reports that are public record. Freedom of information laws have been voted in many countries — with notable laggards like Germany (at federal level) and Britain and unexpected pioneers like Turkey. Most of the information to hold government to account is officially available. But can it be readily used, even by literate and educated citizens? This is certainly not the case. The information is there, but it does not make sense — it is not transparent — because the pieces are isolated and scattered. The ordinary citizen is unable to put the pieces together in a “package” that can be used for accountability purposes. There is no “general accountability process”, except in elections. Day-to-day accountability needs facts and figures to be focused on specific actions or decisions.

This is where a free press and freedom of expression come in. In situations of public uneasiness — a crisis or a perceived scandal — the media have the capacity to blend publicly available information with opposition views, expertise, occasional leaked information from government circles, and general public discontent into a story that makes sense and shapes the problem into a case for holding an actor or a group of actors to account. As long as the freedom of the press and freedom of expression are restricted, government will only be as transparent as it wishes, and accountability is not ensured as standard democratic practice.

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