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Why Organisations Ought to be Accountable

Why do organisations generally, including partnerships, need appropriate accountability mechanisms? For many this may seem like asking 'why should individuals behave morally?' so obvious seems the normative content of accountability. As argued in the Introduction, the moral appeal of the concept of accountability is so strong that it has become a rallying cry for partnership critics. If the charge that partnerships are unaccountable can be substantiated, this would seriously undermine the partnership approach to public policy.

It may be because accountability is a 'hurrahword' (Bovens, 2005, p. 182) that it is rarely discussed why we actually see it as a 'good'. Without a clea r normative basis, however, there is bound to be confusion over what accountability means in practice. Note, for example, that our accountability expectations differ significantly depending on the kind of institution concerned. Thus an accountable government needs democratic elections, an informed public, effective parliamentary control systems and transparency on decision making and the budget. An advocacy NGO, by contrast, may be expected to be transparent about the sources of its funds and their allocation, but not necessarily to be democratic in its operations. Mulgan and Uhr confirm these differences in expectations when they write:

> Although the term 'accountability' is fundamental to governance discourse, expectations of accountability vary quite markedly with different institutional and community perspectives.
>
> (Mulgan and Uhr, 2000, p. 1)

Faced with these variations, some analysts propose to abandon accountability as a normative principle. Brown and Moore, for example, propose to treat

> accountability not as an abstract, fixed moral ideal, but instead as a strategic idea. [… In this conception,] instead of there being one right answer of how best to structure accountability, one gives a contingent answer.
>
> (Brown and Moore, 2001, p. 2)

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This, however, is throwing the baby out with the bathwater.[1] Rather than giving up on accountability as a norm because it has different practical manifestations, we need to investigate what the normative basis of accountability is. This will provide us with a firmer ground for formulating consistent accountability demands.

This chapter aims to clarify why organisations need appropriate accountability mechanisms. It first conducts a literature review to identify which justifications for accountability are commonly given. Finding the main justifications for accountability lacking, it then proposes an alternative argument which grounds the demand for accountability in delegation.

3.1 Major justifications for accountability

This section reviews the literature directly concerned with interorganisational partnerships as well as arguments proposed in the broader global governance literature – and, where applicable, their intellectual roots in other disciplines. The latter was included because the partnerships analysed here operate at the international or global level and can be seen as part of the emerging system of global governance. In this literature, three main types of arguments have been proposed: consequentialist justifications for accountability, arguments derived from stakeholder theory and claims based on power and democracy.

3.1.1 Consequentialist justifications

Many authors argue that organisations should be accountable because this has positive effects. Most often, they claim that appropriate accountability arrangements enhance an organisation's effectiveness. Pauline Vaillancourt Rosenau, for example, claims that 'Public-private policy partnerships must be accountable if they are to fulfill policy objectives successfully' (Vaillancourt Rosenau, 1999, p. 19).

Without further explanation or differentiation, this claim is puzzling. As discussed in section 2.2.1, strong accountability arrangements can have serious practical downsides. Establishing accountability processes can create significant direct costs and strict accountability regimes can hamper flexibility and reduce the agent's willingness to accept risks. Therefore, in Thomas Risse's words, 'improving accountability as such does not insure the effectiveness of governance arrangements' (Risse, 2006, p. 186). Many authors thus explain how accountability is linked to effectiveness or efficiency. But accounts of what this link actually is vary.

Kovach, Neligan and Burall, for example, argue that accountability entails greater participation. Participation leads to better-informed decisions that affected groups are more likely to comply with. Thus accountability can make interventions more effective. For them,

> [i]n the end, accountability boils down to two things. To justice [...]. And to efficiency; the involvement of people in the decisions that affect them leads to better decisions being made in the longer term.
>
> (Kovach et al. 2003, p. 1)

Others argue that the value of accountability lies in its potential to increase the level of trust in a political system. Trust reduces transaction costs and thereby enables institutions to work more efficiently.[2] Margaret Gordon, for example, claims that

> [p]ublic trust in government is important to public officials because it is central to the receiving of support for the creation and implementation of public policies, and subsequently for effective, cooperative compliance. [...] Information that serves to make the actions of public officials transparent to the public improves government accountability and enhances the public's trust.
>
> (Gordon, 2000, p. 297)[3]

Yet others see accountability as a key element of legitimacy.[4] For a system of governance, legitimacy is key, because it encourages voluntary compliance and cooperation. This way, accountability makes governance mechanisms more effective and more efficient. Robert Keohane, for example, argues that without adequate accountability in a democratic era

> those who are being governed will regard processes of governance as illegitimate, and will tend to withhold their allegiance. Without significant accountability, political systems are unlikely to yield either justice or stability.
>
> (Keohane, 2002b, p. 13)

Due to its practical drawbacks, more accountability certainly does not always create more effectiveness. The consequentialist case for accountability, then, can only be that the right type and right level of accountability increase effectiveness. The main arguments provided in the literature, however, do not explain coherently which type and which level of accountability are appropriate.

In addition, a consequentialist justification is always contingent and does not acknowledge the inherent value of a concept or practice. It has often been argued, for example, that authoritarianism is a more efficient form of government than democracy.[5] One could defend democracy by arguing that this is factually incorrect. A more effective defence, however, would claim that democracy has a value in itself because it is based on the rights of individuals.

In the case of accountability, emphasising its positive effects may be a good tactic for convincing institutions to strengthen their accountability mechanisms. But it renders the concept rather arbitrary. Take, for example, Brown and Moore who see accountability as 'a strategic idea to be formulated and acted upon by an INGO [international NGO] with the goal of better understanding and achieving its strategic purposes' (Brown and Moore, 2001, p. 2).

If accountability serves to achieve something else, then an institution can always opt for alternative instruments promising the same results. Most straightforwardly, a partnership could argue, for example, that it can implement its programmes more efficiently and effectively if it eschews lengthy debates and costly participation.[6] The same holds for the more sophisticated arguments, such as the one promoting accountability because it enhances legitimacy. As argued earlier, legitimacy can derive from sources other than accountability and only input-based legitimacy requires adequate accountability, not output-based legitimacy.

3.1.2 Power and stakeholder theory

The most common non-consequentialist claim for accountability is based on power. If institutions affect the lives of others, so the argument goes, they should be accountable to them. Accountability mechanisms are safeguards against the abuse of power. Peter Spiro asserts this connection very explicitly: 'Wherever power is exercised, questions of accountability are appropriately posed. One can never assume that power will be deployed in a responsible manner' (Spiro, 2002, p. 162).

More implicitly, many others are making a similar argument. Kovach, Neligan and Burall, for example, base their claim for more accountability of intergovernmental organisations (IGOs), transnational corporations (TNCs) and NGOs on the following account:

> All three types of organisations [IGOs, TNCs and NGOs] have the power to affect the lives of millions of people throughout the world. [...] The people and communities affected by all three groups of organisation [*sic*] are making ever-louder claims for increased power to hold them to account. [... People have a] right to have a say in decisions that affect them.
>
> (Kovach et al. 2003, p. 1)

The claim that power requires accountability has some intuitive appeal. This is why the argument is frequently used by campaigners. But without further justification, the underlying normative logic is not immediately clear. On what basis do people claim that powerful institutions should be accountable?

For corporations, the argument has been developed most extensively in stakeholder theory. A stakeholder, in the original definition of R. Edward Freeman, is 'any group or individual who is affected by or can affect the achievement of an organization's objectives' (Freeman, 1984, p. 5).

The normative claim is that stakeholder groups should have a say in important decisions of the institutions they are affected by. Again, in Freeman's words,

> each of these stakeholder groups has a right not to be treated as a means to some end, and therefore must participate in determining the future direction of the firm in which they have a stake.
>
> (Freeman, 2001, p. 39)

What Freeman is advocating is much more than just consulting stakeholders before taking decisions. He envisages a system in which the claims of other stakeholder groups have the same weight as the interests of shareholders. The goal of his theory is to replace 'the notion that managers have a duty to stockholders with the concept that managers bear a fiduciary relationship to stakeholders' (Freeman, 2001, p. 39).

Kenneth Goodpaster calls this the 'multi-fiduciary stakeholder synthesis' and explains that this would involve

> a management team processing stakeholder information by giving the same care to the interests of, say, employees, customers, and local communities as to the economic interests of stockholders. [... And] all stakeholders are treated by management as having equally important interests, deserving joint 'maximization'.
>
> (Goodpaster, 2002, p. 53)

Stakeholder theory thus falls clearly into the category of arguments justifying accountability on the basis of power. Stakeholders include those who are influenced by a company's activities.[7] They are said to have a right to be included in decision making, which means that the company has the corresponding duty to establish an accountability mechanism working through participation.

Many advocates of stakeholder theory simply assert that there is a moral basis for this claim, rather than argue for it.[8] As his last quote indicates, however, Freeman does make the normative argument and bases his claims on a Kantian deontological approach to ethics.[9] According to this approach, acts are ethical when they are guided by considerations of rights and duties, not consequences.[10] For Kant, the defining characteristic of humans is their capacity to reason. Reason enables humans to transcend their desires, make ethical judgements and act accordingly. This free will gives humans dignity and constitutes their unconditional worth.

Respect for the unconditional value of individuals is the basis for Kant's moral system. From it he derives the 'categorical imperative', the general rule to which ethical behaviour and norms must conform. In one of its formulations, the categorical imperative demands that we treat other humans as ends in themselves and not merely as means to other ends.[11]

Applying this to corporations, Evan and Freeman conclude that companies have a duty to respect the legitimate rights of others to determine their own freedom and to accept responsibility for their effects on others (Evan and Freeman, 1988). So far their argument does not go beyond claiming that managers have the same moral obligations to their fellow human beings as everybody else. But they take the claim a step further by translating the moral obligation into an institutional requirement. According to them, managers are not only morally required to take stakeholder interests into account but they should guarantee this by making themselves institutionally accountable to them.[12] To come back to Freeman's original articulation of the claim, stakeholders 'must participate in determining the future direction of the firm in which they have a stake' (Freeman, 2001, p. 39).

Stakeholder theory was developed to justify the moral obligations and institutional requirements of companies. The argument, however, can be applied to all types of institutions. In fact, the stakeholder concept is now also widely used in debates about political institutions and NGOs.[13]

There are, however, serious problems in stakeholder theory and the kind of institutional environment that would be created by its consistent application. Firstly, the normative claim made by stakeholder theory itself has been vigorously attacked on moral grounds. Milton Friedman's journalistic defence in 1970 of the shareholder approach to business has by now become famous. He argues that a manager has no fiduciary responsibility to other stakeholders. Rather he

> has direct responsibility to his employers. That responsibility is to conduct the business in accordance with their desires, which generally will be to make as much money as possible while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom.
>
> (Friedman, 2002, p. 33)

Friedman bases his claims on a theory of property rights derived from John Locke and follows Adam Smith in his description of the socially beneficent effects of the market. He argues that if managers took the interests of other stakeholders into account and deviated from maximising profits as their sole goal, it would imply that they were spending other people's money on a social purpose of their own choosing. This, however, would amount to the same as taxing other people and deciding how that tax should be spent. In doing so, managers would usurp the role of government and violate

essential democratic principles designed to protect individual liberties: elections as the mechanism to choose representatives and the separation of powers. As a result, not just economic freedom but political freedom as well would be undermined.[14]

Secondly, even if we do not contest the basic normative claim made by stakeholder theory, its consistent translation into institutional practice would create serious practical problems. Following Freeman's argument quoted above, stakeholder theory requires that all stakeholders must participate in determining the future direction of the firm. Implementing this demand would not only generate serious costs, given that stakeholder groups pursue very different interests, it would also make it extremely difficult to take any decisions. Kenneth Goodpaster has articulated this objection for businesses. He argues that adopting a multi-fiduciary stakeholder approach would 'blur [...] traditional goals in terms of entrepreneurial risk-taking [and] push [...] decision making towards paralysis because of the dilemmas posed by divided loyalties' (Goodpaster, 2002, p. 56).

Thirdly, these institutional consequences would contradict some of the basic philosophical tenets underpinning the moral case for stakeholder theory. The creation of encompassing accountability systems would create something approaching total control. Total control may be an effective way to ensure that nobody violates ethical norms and that all behave according to the categorical imperative. At the same time, though, it would eliminate freedom. Individuals would no longer be in a position to make moral judgements and follow their free will in acting accordingly. Respect for humans' capacity to reason and their free will are, however, the starting point for Kant's ethical theory. Demanding institutional control mechanisms for all moral requirements derived from the categorical imperative thus undermines the very philosophical basis on which stakeholder theory is built.

Current practice in the protection of stakeholder rights reflects the fact that a *consistent* application of stakeholder theory would create substantial problems. Over the last century or so liberal democratic societies have increasingly enshrined the protection of certain stakeholder rights in law. Freeman, in fact, used these legal developments as support for his argument that stakeholder theory should replace shareholder theories of the firm. He argues that

> the result of such changes in the legal system can be viewed as giving some rights to those groups that have a claim on the firm, for example, customers, suppliers, employees, local communities, stockholders, and management.
>
> (Freeman, 2001, p. 40)

In some cases legal regulations do not only protect specific rights of stakeholders but strengthen their ability to hold managers or corporations

accountable. Workers in liberal democracies, for example, have the right to unionise, which strengthens their bargaining position in relation to management. In some countries, they even have the right to be represented on the company board. The position of consumers is strengthened, for example, by rules demanding companies to publish the ingredients of products. And many local communities assert their right to influence companies' activities by keeping a tight grip on planning permissions.

But these examples also show that the main demand of stakeholder theory, namely that stakeholders have a right to participate in decision making, is not being implemented consistently. Firstly, the stakeholder groups mentioned by Freeman are granted access to very different accountability mechanisms. Only very few apart from shareholders and managers are recognised to have a direct right to 'determine the future direction of the company' by being represented on the board. In Germany, Austria and the Scandinavian countries, for example, only employees have a right to representation.[15] In countries that are closer to the Anglo-American tradition, not even employee representation is recognised.

Secondly, some stakeholder groups are not granted access to any accountability mechanisms at all. Take the employees of a competitor for instance. They are clearly stakeholders because the company's policies affect the position of its competitors, which in turn influences the prospects of the competitors' employees. Despite their status as stakeholders, their right to hold the company to account is not recognised in any major legal system. Similarly, the rights of communities that don't live in the immediate neighbourhood of a company are not usually protected by law.

Different stakeholder groups are thus treated differently in both practice and discourse. Stakeholder theory claims that institutions should be accountable to all those who are influenced by a company or can influence it. This logic contains two options for differentiating between stakeholders: by the degree of influence they wield over the company or by the degree to which they are influenced by it. Neither version, however, provides a sufficient explanation for why stakeholders should get access to different kinds of accountability mechanisms.

The first option was later pursued, for example, by the original proponents of stakeholder theory. Edward Freeman and David Reed propose to recognise not only 'stakeholders in the wider sense' as defined earlier but also 'stakeholders in the narrow sense'. The latter are defined as 'Any identifiable group or individual on which the organization is dependent for its survival' (Freeman and Reed, 1983, p. 91).[16]

This distinction based on the power of stakeholders generates results that are practically less problematic and provide a better match to current practice than the original formulation. But the match is not perfect. Even using the narrow definition, competitors must be recognised as stakeholders and the demand that they should have a right to hold an organisation

to account is not widely supported. More importantly, though, the distinction itself cannot be justified when stakeholder theory is taken to be non-instrumental and normative. If stakeholder theory demands accountability mechanisms out of respect for the rights of others, why should powerless actors be less worthy of protection than powerful ones?[17]

The alternative is to distinguish stakeholder groups on the basis of the degree of influence an organisation wields over them. This version is much less problematic on a normative level. At the same time, however, it can only justify convincingly that the level of stakeholder involvement should vary with the degree of being influenced. Why, though, should customers, for example, mainly exercise their right to accountability through consumer choice and access to information, communities through their right to set binding rules and regulations and employees through direct representation in decision-making organs?

Stakeholder theory, then, convincingly argues why individuals – including managers – have moral responsibilities towards the people they influence. But it is contested whether they have a duty to actively promote the interests of all those they influence and whether their responsibilities should translate into accountability mechanisms.[18] In addition, even differentiated versions of stakeholder theory cannot account for why different stakeholder groups should get access to different kinds of accountability mechanisms.

3.1.3 Power and the democratic deficit

In the political realm, demands for accountability are also often based upon power or influence. Usually, though, the argument does not refer to stakeholder theory but is linked to the concept of democracy.

Take, for example, the claims articulated by Woods and Narlikar. They demand more accountability for the WTO, the IMF and the World Bank on the following grounds:

> [D]ecisions and policies taken at the international level are increasingly affecting groups and people within states. Where previously these people could hold their national governments to account for policies, they must now look to international institutions where the decisions are being made. The question therefore arises: to whom are these institutions accountable and are they accountable to those whom they directly affect?
>
> (Woods and Narlikar, 2001, p. 569)

The argument thus is that influence has shifted from national governments to international institutions and that this creates a legitimate demand for more accountability. In the wider academic debate, two schools of thought have developed this argument in greater detail: democratic theorists and researchers concerned with global governance.

Most democratic theory is concerned with the conditions and institutional forms of democracy within nation states.[19] But, as some democratic theorists note, the ability of nation states to govern themselves is being eroded. This erosion constitutes a serious threat to the democratic norm of self-rule. Relatively early on, Karl Kaiser stated this threat with some urgency:

> Transnational relations and other multinational processes seriously threaten democratic control of foreign policy, particularly in advanced industrialised societies. The intermeshing of decisionmaking across national frontiers and the growing multinationalization of formerly domestic issues are inherently incompatible with the traditional framework of democratic control.
>
> (Kaiser, 1971, p. 706)

David Held, a leading contemporary contributor to democratic theory, further elaborates that the principle of majority rule within nation states is threatened from two sides: citizens are affected by decisions taken in other states and international institutions increasingly assume decision-making powers. According to him, problems for democracy arise

> because many of the decisions of 'a majority' or, more accurately, its representatives, affect (or potentially affect) not only their communities but citizens in other communities as well. [… And problems arise] from decisions made by quasi-regional or quasi-supranational organizations such as the European Union (EU), the North Atlantic Treaty Organization (NATO) or the International Monetary Fund (IMF). For these decisions can also diminish the range of decisions open to given national 'majorities'. The idea of a community that rightly governs itself and determines its own future – an idea at the very heart of the democratic polity – is today, accordingly, problematic.
>
> (Held, 1996, pp. 337–8)[20]

At this point, scholars of global governance join the debate. These scholars usually have a different starting point. They observe that various forms of governance exist beyond the nation state. These governance systems rarely take the form of a traditional government, but exercise some similar functions. Extrapolating democratic theory from its domestic context, they often argue that global governance therefore needs to be democratic.

The most intensive debate has emerged in the context of the European Union (EU), a prime example of a strong supranational and intergovernmental regime. In some policy areas, the EU can adopt binding policy decisions by majority vote. Much more explicitly than other international institutions, the European Union thus curtails the autonomy of nation states. Many critics have argued that relative to its influence, the democratic

credentials of the EU are too weak. They have coined the concept of the 'democratic deficit' to describe this state of affairs.[21]

While the EU has attracted most attention, analysts have extended the critique to other international organisations or the system of global governance in general. Favourite targets for diagnosing a democratic deficit and demanding institutional reform are the global financial institutions,[22] the United Nations[23] and other intergovernmental institutions or processes.[24] But the demand for more democracy does not stop with intergovernmental institutions. Rather, many scholars and political analysts extend it to all organisations contributing to global governance.[25]

The Commission on Global Governance, a panel of eminent persons initiated by Willy Brandt, recognises NGOs, citizens' movements, transnational corporations and capital markets along with intergovernmental institutions and processes as part of the system of global governance. In its influential, but controversial report 'Our Global Neighbourhood' it demands that

> adequate governance mechanisms [...] must be more inclusive and participatory – that is, more democratic – than in the past. [...] This vision of global governance can only flourish, however, if it is based on a strong commitment to principles of equity and democracy grounded in civil society.
>
> (Commission on Global Governance, 1995, Chapter 1)

This amounts to a general demand for democracy or democratic accountability for all influential institutions. Echoing Peter Spiro's comment quoted above, Held and Koenig-Archibugi express this in a very concise way: 'there is agreement among democrats that wherever power is exercised there should be mechanisms of accountability' (Held and Koenig-Archibugi, 2004, p. 125).

Faced with the erosion of national autonomy and the increasing influence of international institutions, there appears to be a rough consensus that more democracy is needed.[26] How this is to be achieved in practice, however, is highly controversial. It would be beyond the scope of this book to portray even just the major proposals in detail or to analyse their advantages and criticisms. The following paragraphs therefore only sketch some of the main approaches. What is important is that they all advocate the creation of stronger accountability, though they have very different mechanisms in mind.

One possibility for safeguarding democracy is to limit the influence of global forces and to reassert national autonomy. Some leading thinkers doubt that intergovernmental institutions – let alone transnational corporations, NGOs or partnerships – can ever be democratic. Robert Dahl, for example, the most respected and vocal sceptic in this regard, doubts that citizens can ever exercise effective control over international organisations. Nevertheless he acknowledges that international institutions can be

necessary and useful. He only cautions against seeing the decline of national and local governments as unavoidable:

> In weighing the desirability of bureaucratic bargaining systems in international organizations, the *costs to democracy* should be clearly indicated and taken into account. [...] Supporters of democracy should resist the argument that a great decline in the capacity of national and subnational units to govern themselves is inevitable because globalization is inevitable.
>
> (Dahl, 1999, p. 34, emphasis original)

Other intellectuals and activists take the argument further and demand strict limits to the influence of international regimes and actors. This, so the argument goes, would reassert the sovereignty and autonomy of nation states and thus safeguard democracy. The argument has, for example, been en vogue among neo-conservatives in the US. An influential group of scholars dubbed 'the new sovereigntists' argue that America should defend its sovereignty and refuse to sign core international treaties.[27] Jeremy Rabkin, for example, argues that

> [b]ecause the United States is fully sovereign, it can determine for itself what its Constitution will require. And the Constitution necessarily requires that sovereignty be safeguarded so that the Constitution itself can be secure.
>
> (Quoted in Spiro, 2000)

This logic has proved influential in the US where policymakers have refused to support new international regimes from the Kyoto Protocol to the establishment of the International Criminal Court. But most American analysts are aware that a genuine limitation of global forces would be very costly for powerful states like the US and probably impossible for weaker nations. A rollback of globalisation and the abolishment of certain international institutions are therefore only advocated by some of the most radical anti-globalisation movements and lack scholarly support.

Rather than limiting global forces, most scholars propose to strengthen democracy by making international actors more accountable. In Joseph Stiglitz' words, economic globalisation has outpaced political globalisation, requiring the strengthening and democratisation of global political institutions:

> There are too many problems – trade, capital, the environment – that can be dealt with only at the global level. But while the nation-state has been weakened, there has yet to be created at the international level the kinds of democratic global institutions that can deal effectively with the problems globalization has created.
>
> (Stiglitz, 2006, p. 21)

Proposals cover a continuum between the creation of a democratic world state and the increased use of existing accountability mechanisms. Some advocate revolution to reach their goals, whereas others hope for political evolution. And while most scholars make a prescriptive case for their proposed solution, some believe that the developments they sketch are inevitable.

Alexander Wendt, for example, suggests not only that the creation of a world state with a monopoly on the legitimate use of organised violence is desirable but believes that it will be the natural outcome of the dynamics inherent in the current 'anarchical society' of sovereign states (Wendt, 2003). Immanuel Wallerstein also believes that the current international system faces a fundamental transformation based on its inherent tensions and dialectic forces. He, however, predicts that sovereign states will 'wither away' and pave the way for world socialism (Wallerstein, 1984).

Less radical but still far reaching are proposals that don't envisage the creation of a fully blown world state but of certain elements of world government. Falk and Strauss, for example, suggest the installation of a global parliament. This parliament would be elected by popular vote and would be in a position to adopt laws binding on all international actors. In addition, it would supervise the implementation of existing international laws and provide democratic oversight over institutions like the IMF, the WTO or the World Bank (Falk and Strauss, 2001). Similarly, Otfried Höffe proposes the creation of a minimal world republic. This federal construction would complement the system of sovereign states and work in accordance with the principle of subsidiarity (Höffe, 1999).

All of the proposals just mentioned seek to remedy the current democratic deficit of global governance by creating democratic institutions at the global level. Thereby, citizens and their representatives gain new means to hold powerful institutions to account and to participate in decision-making processes. In part, this is also how a number of proposals that envisage a system of multiple, overlapping jurisdictions would address the democratic deficit. In addition, however, these systems would rely on increased competition between systems or levels of governance to generate stronger accountability.

In a 'cosmopolitan democracy', for example, various levels of governance would coexist. Depending on their scope, problems would be tackled either at the local, state, interstate, regional or global level. A world constitutional court would adjudicate conflicts over the allocation of authority between these levels (Archibugi, 2004).[28] At each level, non-trivially affected people would participate in the decision-making process (Held, 2004). In a similar vein, Eichenberger and Frey have proposed the concept of 'FOCJ': Functional, Overlapping, Competing Jurisdictions. Key to their model is that there are not only various levels of jurisdiction but that different jurisdictions compete for providing the same 'governmental goods'. Democratic

control and competition are the accountability mechanisms ensuring justice and efficiency (Eichenberger and Frey, 2002).

Yet another set of proposals accepts the current institutional structure as it is and suggests strengthening its democratic accountability mechanisms. For most writers, this would entail an expansion of the possibilities for participation. Civil society organisations or NGOs already play an increasingly influential role in international politics.[29] Many analysts believe that increased NGO participation in international organisations could provide the key for creating more democratic accountability. Jan Aart Scholte, for example, argues that NGOs could help reduce the democratic deficit of global governance, both through their activism and their participation in international organisations (Scholte, 2002). Others, however, are sceptical about the legitimacy and representative nature of NGOs.[30] Stutzer and Frey therefore present an alternative for increasing popular participation. They advocate giving groups of citizens chosen through a process of random selection direct voting rights in important decisions and control over leaders of international organisations (Stutzer and Frey, 2005).

Finally, some authors see attempts to increase the democratic accountability of international actors as unrealistic. Instead, they propose to rely on a broader variety of accountability mechanisms. Keohane and Nye, for example, suggest that next to electoral accountability, there can be 'hierarchical accountability', 'legal accountability', 'reputational accountability' and 'market accountability'. Faced with the realities of the current international system, they propose to strengthen its overall accountability by focusing on and fostering these different kinds of accountability:

> Rather than offer a counsel of despair, we argue for more imagination in conceptualizing, and more emphasis on operationalizing, different types of accountability. It is better to devise pluralist forms of accountability than to bewail the 'democratic deficit'.
>
> (Keohane and Nye, 2001, p. 8)

To cut a very long debate short, scholars of different backgrounds and ideological convictions propose strengthening accountability mechanisms to counter the democratic deficit of global governance. To achieve this they propose reasserting the authority of nation states, creating a world state or at least the functional institutions of a cosmopolitan democracy, increasing participation in international organisations or relying on varied forms of accountability – and this list could be extended further.

The number of authors writing in this vein indicates that the argument that influence creates a legitimate demand for accountability gains sway when couched in terms of democracy. But the vast discrepancies in the recommendations derived from this also suggest that the argument is problematic. Two aspects in particular fail to convince when a general

requirement for accountability for all influential actors is derived from the norm of democracy:

Firstly, it is not clear why *all* institutions should have *democratic* accountability. Many propose extending the possibilities for participation at the international level as a realistic way of bridging the democratic deficit. This, however, runs into the same practical difficulties as the demands derived from stakeholder theory. Even when based on a democratic foundation, we have to agree with Robert Keohane's assessment that 'Merely being affected cannot be sufficient to create a valid claim. If it were, virtually nothing could ever be done, since there would be so many requirements for consultation, and even veto points' (Keohane, 2002a, p. 15).

In addition, the requirement of democratic accountability for all institutions does not really follow from the logic of the democratic deficit argument. Even in the domestic context, the norm of democracy only requires that citizens elect a parliament. The main role of parliaments is to set rules and to control the executive. Transferring this to the international level, it would seem appropriate to demand democratic accountability of institutions exercising similar functions, that is, rule setting.[31] But it is not evident why actors contributing to global governance in other ways should also be democratically accountable.

A closer look at the proposals introduced above reveals that many authors would probably not oppose this limitation. They often start their argument with the problem that the increasing influence of different actors in global governance creates a democratic deficit. This suggests that their proposals for more democratic accountability would apply to all actors involved in global governance. But their concrete examples are most often concerned with rule-setting institutions. This is obviously the case for those advocating the creation of a world state or a world parliament. It is also true for proponents of cosmopolitan democracy and 'FOCJ' who speak of the creation of 'jurisdictions' at different levels. And it also applies to many authors proposing increased participation. Their favourite examples for concrete reforms are all involved in defining norms and rules: the European Union, the United Nations and the international financial institutions, in so far as they set rules for international trade or for the internal macroeconomic policies of states.[32]

Secondly, where the use of different forms of accountability is proposed, it remains unclear *which* institutions ought to have *what kind* of accountability. A 'pluralistic system of accountability' (Benner et al., 2004) avoids the first problem just discussed. If various types of accountability are considered, it becomes much easier to see how they can apply to all actors involved in global governance. Transnational corporations for instance are clearly subject to market accountability, whereas NGOs are often subject to reputational accountability. It is also plausible that the application of these different accountability mechanisms can be diversified. In the 'FOCJ' proposal, for

example, various jurisdictions would compete for providing 'governmental goods'. This amounts to the creation of market-based accountability for governmental institutions. It is very difficult, however, to use this 'pluralistic system of accountability' as a normative concept. It shows how accountability *could* be created, but not how it *should* be created.

A justification of accountability based on power and democracy, then, relies on a more solid normative basis than consequentialist and stakeholder arguments. As in the case of stakeholder theory, however, the translation of the moral claim into institutional practice is problematic. Analysts supporting this line of reasoning either demand democratic accountability for all kinds of institutions, which is neither logically convincing nor practicable, or they allow for various forms of accountability but are not in a position to indicate when which kind of accountability should be in place.

3.2 The alternative: Justifying accountability through delegation

Another way to justify the demand for accountability is through delegation and authorisation. As discussed in section 2.2.1, the concept of accountability is closely linked to the idea of delegation. 'To be accountable' originally meant to 'answer for money held in trust'. This section argues that the link between accountability and delegation is not just etymological and definitional. Rather, delegation also forms the normative core of the concept of accountability.

The argument based on delegation intersects and overlaps with instrumental, stakeholder and democratic approaches in various instances. The basic claim, however, is different and leads to a more stringent and differentiated assessment of the accountability requirements of different organisations. This approach is therefore better suited as the basis for developing accountability standards for partnerships.

The claim that delegation demands the creation of appropriate accountability mechanisms is developed in three steps. Firstly, it is argued that delegation creates a duty for the agent to act in the best interest of the principal. Then, the case is made that in institutional settings only appropriate accountability mechanisms can guarantee respect for the principals' interests and autonomy. Finally, it is maintained that the argument holds not only for explicit forms of delegation but also for implicit, ex-post and hypothetical delegation.

3.2.1 Delegation and the duty to act in the best interest of the principal

It is widely accepted as a norm that individuals or organisations acting on behalf of others have a duty to act in their best interest. This is reflected in different legal and philosophical traditions.

The first philosophical and legal principle supporting the obligation to promote principals' interests is the *duty to keep promises and honour contracts*. Delegation is often formal and its terms and conditions are enshrined in a contract. To establish a partnership, for example, different organisations may sign a memorandum of understanding defining the authority, structure, tasks and goals of the partnership. In this constitutional contract, the partners define their expectations and interests. The partnership then has an obligation to fulfil its mandate because it has agreed to do so in a contract.

Promise keeping is a central norm in Western moral philosophy that is reflected in most legal systems around the world. In Holly Smith's words: 'For centuries it has been a mainstay of European and American moral thought that keeping promises – and the allied activity of upholding contracts – is one of the most important requirements of morality' (Smith, 1997, p. 153).

In David Hume's sceptical tradition, promise keeping is seen as a very useful social practice enabling, for example, the division of labour. Since it is in everyone's interest to protect promise keeping as a social institution, breaking one's promises is morally bad (Hume, 1969). Based on very different assumptions, rationalist philosophers arrive at the same conclusion. In John Rawls' formulation, the principle of fairness demands that if you benefit from a social practice, you ought to adhere to it yourself (Rawls, 1971). It has also been argued that promises create a moral obligation in themselves and not just because they are a useful and just social practice. Thomas Scanlon, for example, reasons that promise breaking is morally wrong because it disappoints expectations and can lead to losses for other parties who acted on these expectations (Scanlon, 1990).[33]

Reflecting this broad moral agreement, most societies have enshrined the duty to uphold contracts in law. Partnership officials are therefore bound by moral standards and law to act in the interests of their principals in so far as these are expressed in a mutual contract. If the obligation to act in the principal's interest were only founded on contract, however, it would be very limited. Contracts can never provide a full and detailed definition of the principal's interests. Even when adhering to the terms defined in the contract, agents have significant autonomy and discretion. In addition, many instances of delegation are not formalised in a contract.

Independent of any contractual obligations, there is a wider norm demanding that agents promote the interests of their principals. This norm finds various expressions in legal practice and reasoning. In common law countries, for example, it is enacted through the concept of *fiduciary obligations*. A fiduciary relationship exists when one person acts on behalf of another, has significant discretion and by exercising this discretion can affect the interests of the principal. Typical fiduciary relationships include that between agent and principal, director and corporation, guardian and ward, lawyer and client, partner and fellow partner and trustee and trust

beneficiary.[34] A fiduciary relationship generates the obligation that the fiduciary act in the principal's best interest:

> If a person in a particular relationship with another is subject to a fiduciary obligation, that person (the fiduciary) must be loyal to the interest of the other person (the beneficiary). The fiduciary's duties go beyond mere fairness and honesty; they oblige him to act to further the beneficiary's best interests.
>
> (DeMott, 1988, p. 882)

More specifically, the evolving common law practice in this area demands that fiduciaries have no conflict of interest with their fiduciary duty, do not accept different fiduciary duties that conflict with each other and do not profit from their position.[35] The purpose of these rules is to create a basic protection against the abuse of delegated authority:

> The need to control discretion has been a justification for the imposition of the harsh rule concerning fiduciaries since the beginning. [...] The desirability of deterring the fiduciary from using his discretion except for the benefit of the principal or beneficiary is often mentioned in subsequent judgements, and this aspect is also enshrined in the prohibition against allowing a conflict of interest and duty.
>
> (Weinrib, 1975, p. 4)

The concept of fiduciary obligations was introduced by the English courts of equity and has since been developed through case law in common law countries. As such, the concept has no direct equivalent in civil law countries. The norm that agents should act in the best interest of their principals nevertheless finds expression in civil law systems. Lacking general regulations on fiduciary duties, most civil law countries have instead developed more specific rules governing individual fiduciary relationships. A comprehensive analysis of these rules is impossible here – on the one hand because many different relationships are at stake and on the other because there are infinite variations between civil law countries. A few examples must therefore suffice to indicate that the norm that agents should act in the best interest of their principals also pervades systems of civil law.

The German institution of *Treuhand*, for example, covers the trustee – trust beneficiary relationship. Stefan Grundmann argues that most civil law jurisdictions have functionally equivalent institutions to trust and *Treuhand* which are all characterised by the fact that the 'trustee administers the assets for the benefit of the settlor' (Grundmann, 1999, p. 414).[36] The fiduciary relationship between guardian and ward corresponds to the German *Vormundschaft*. According to the Bürgerliches Gesetzbuch (BGB),

a *Vormund* is obliged to care for and represent the ward and his assets (BGB, 2006, §§ 1793 and 1796). When the interests of the ward conflict with those of the guardian, a court can withdraw the *Vormund*'s authorities. The Roman principle of *negotiorum gestio* also exists in many civil law countries. It covers instances of ex-post delegation and decrees that a previously unauthorised agent cannot demand remuneration for his services to avoid conflict of interest.[37]

The norm that those who act on behalf of others have a duty to promote their principals' interests is not only prominent in legal thinking and practice but also in political theory. In fact, it lies at the heart of *liberal democratic thought*.

Liberal democracy has its intellectual roots in the Enlightenment. Rather than accepting government as God given, philosophers of the Enlightenment were searching for ways to legitimise political authority rationally. The most prominent school of thought uses the concept of a social contract to do so. While there is a huge diversity between social contract thinkers,[38] they usually start with describing or imagining a state of nature. In the pre-social state of nature, humans are born free and equal and this endows them with a set of natural rights. This, however, also leads to pervasive conflict – be it because the human instinct for self-preservation inevitably creates competition and conflict over scarce resources[39] or because social interactions corrupt humans and make them selfish and competitive.[40] In any case, conflict challenges humans to use their capacity to reason to overcome the state of nature. They conclude a social contract and establish society and/or political authority.

What are the implications for the government thus created? Using the same intellectual construct, contract theorists have arrived at fundamentally different answers to this question. Thomas Hobbes famously argued that life in the state of nature was a constant war of all against all, violating natural law. To ensure 'their own preservation' and 'a more contented life thereby' (Hobbes, 1909, Chapter XVII), all individuals permanently transfer their liberties to a central institution, the Leviathan. The Leviathan is created through this contract but is not himself a party to the contract. Therefore, and because it is necessary to establish security, argues Hobbes, his authority is absolute and cannot be revoked.

Another version of the social contract justifying absolutist rule is that of Jean-Jacques Rousseau. Very much concerned with preserving individual liberty, Rousseau's individuals in the state of nature only enter a contract of association, not one of submission. They square the circle and gain a system of government while preserving their liberty by ruling themselves. The resulting doctrine of popular sovereignty nevertheless creates absolute power. Embodying the *volonté générale*, the sovereign holds indivisible, inalienable and unlimited authority.[41] Both Hobbes and Rousseau thus arrive at a somewhat paradoxical conclusion. They assume that individuals are born

free, equal and rational, yet voluntarily create a sovereign with unlimited power who is under no obligation to respect individual rights.

It may be because of this inherent contradiction that another version of social contract theory has become much more widely accepted.[42] Similar to Hobbes and Rousseau, John Locke argues that conflict prevailing in the state of nature threatens individuals' liberty and property. And since humans are rational, they can be presumed to agree to the establishment of a central authority to determine rules and adjudicate their application. But according to Locke, this consent is only imaginable if the government fulfils the purpose for which it was established, namely to protect liberty and property. The social contract therefore limits the sovereign's authority and creates an obligation for him to act in the interest of his subjects. In Locke's words:

> [Y]et it being only with an intention in every one the better to preserve himself, his liberty and property; (for no rational creature can be supposed to change his condition with an intention to be worse) the power of the society, or legislative constituted by them, can never be supposed to extend farther, than the common good; but is obliged to secure every one's property, by providing against those three defects above mentioned, that made the state of nature so unsafe and uneasy.
>
> (Locke, 1690, Chapter IX, §131)[43]

This key argument in John Locke's political theory thus embodies the norm that agents (in this case the government) have a duty to promote the interests of their principals (the citizens). The claim is central to our current normative understanding of politics. Locke stands at the beginning of a strong tradition of liberal and constitutional thought. Of course, neither social contract theories nor the doctrine of liberal democracy have remained without their critics,[44] but since at least the eighteenth century, they have become dominant in Europe and America. David Held, for example, describes at once the significance of John Locke as one of the first exponents of the liberal tradition and recognises the centrality of this school of thought:

> Locke [...] signals the clear beginnings of the liberal constitutionalist tradition, which became the dominant thread in the changing fabric of European and American politics from the eighteenth century.
>
> (Held, 1996, p. 74)

Boucher and Kelly also emphasise the importance of the social contract tradition for contemporary politics: They write that it

> is also clear that the ideal of political life as an agreement on fair terms of association between individuals who have a recognized status as free and equal is a moral ideal that has a very deep resonance in modern culture,

> and it is one that has proved a great inspiration to those who do not enjoy the recognition of that status.
>
> (Boucher and Kelly, 1994, p. 29)

And while this philosophical tradition originated and developed in 'the West',[45] liberal democracy has come to enjoy broad support as a normative ideal throughout the world.[46] Amartya Sen emphasises this point in an essay on the universality of democracy as a value:

> While democracy is not yet universally practiced, nor indeed uniformly accepted, in the general climate of world opinion, democratic governance has now achieved the status of being taken to be generally right.
>
> (Sen, 1999, p. 5)

3.2.2 Delegation and the need for appropriate accountability mechanisms

The norm that delegation creates a duty for the agent to act in the best interest of his principal, then, is well established in philosophy and legal thinking. It is argued in this section that the need for appropriate accountability mechanisms in institutional settings involving delegation follows quite directly from this norm. Before further developing this thought, however, an important objection has to be considered. What happens when the norm is rejected?

The main branch of thought rejecting the norm that agents have a moral duty to act in the best interest of their principals is economics. This is significant since economic principal–agent theory forms the main basis for our understanding of accountability. Interestingly, despite the differences in philosophical assumptions, economists arrive at the same institutional conclusions. They also argue that appropriate accountability mechanisms are necessary. Before returning to our main argument, let us therefore briefly consider the economic case for accountability.

Economists following the tradition of Adam Smith agree with many moral and political philosophers that humans are free and rational beings. But, while many moral philosophers condemn self-interested behaviour, economists accept it. More than that, they believe that self-interest gives rise to the division of labour and trade and thereby vastly increases the wealth and well-being of societies. Adam Smith famously described this as an effect of the 'invisible hand':

> Every individual [...] generally, indeed, neither intends to promote the public interest, nor knows how much he is promoting it. [...H]e intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention.

> Nor is it always the worse for the society that it was no part of it. By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it.
>
> (Smith, 1904, Book IV, Chapter 2, §9)[47]

Even in a principal–agent relationship, economists would therefore expect agents to act in their own self-interest. But while economists would not, in general, condemn this behaviour as immoral, they would also see it as problematic. Because the interests of owners and managers diverge, owners must expect a loss when they delegate management authority. Adam Smith describes the problem for joint stock companies, where ownership is divided and control over managers weak:

> The directors of such companies, however, being the managers rather of other people's money than of their own, it cannot well be expected, that they should watch over it with the same anxious vigilance with which the partners in a private copartnery frequently watch over their own. Like the stewards of a rich man, they are apt to consider attention to small matters as not for their master's honour, and very easily give themselves a dispensation from having it. Negligence and profusion, therefore, must always prevail, more or less, in the management of the affairs of such a company.
>
> (Smith, 1904, Book V, Chapter 1, §107)

First and foremost, this loss affects the owners and stockholders of companies. But it also reduces the overall wealth of society because it implies an inefficient allocation and use of resources. Seen from a utilitarian perspective – which most economists share – the efficiency loss created by delegation is therefore not only economically but also morally bad.[48] Most economists would probably reject demands for accountability based on the claim that agents have a moral duty to act in the best interest of their principal.[49] But they do demand the creation of adequate accountability mechanisms because it can limit the efficiency loss inherent in delegation.[50]

The economic justification for accountability also contains the criteria for establishing what 'appropriate' accountability mechanisms are. The goal is to minimise the loss incurred from delegation. Not only does the self-interested behaviour of agents generate costs but the creation of accountability as well. Principals have to invest in incentives for the agent and monitor the agent's behaviour. Agents incur so-called bonding costs trying to assure the principals that they will act in their interests. 'Agency loss', the overall loss from delegation, thus comprises incentive and monitoring costs, bonding costs and the remaining loss resulting from diverging interests.[51] An ideal accountability arrangement is one that minimises the combined agency loss.

It is reassuring that the school of thought that rejects the basic assumption underlying the argument for accountability presented here arrives at similar conclusions regarding the need for accountability mechanisms. Ultimately, however, the economic argument is a consequentialist one. It demands accountability because, and as long as, it increases efficiency. As discussed in section 3.1.1, consequentialist arguments can neither provide a solid defence of accountability, nor can they account for the inherent value we tend to attach to accountability. A more stringent demand for accountability can be derived from the rights of principals and the corresponding duty of agents to act in their best interest.

Let us thus return to our main argument. We have established that agents have a duty to act in the best interest of their principals. How, then, does this lead to the demand for appropriate accountability mechanisms? Accountability creates control over agents. Since agents cannot always be trusted to respect their duties, accountability mechanisms are necessary to prevent the abuse of authority and to protect the principals' rights.

The argument is so well established in political philosophy[52] that it is only rarely made explicit. John Locke, for example, seems to perceive no need to argue why the duty of the government to act in the interests of the governed requires certain institutional practices. As if it were self-evident, he simply claims that because government should protect the interests of citizens, it has to respect and promote the rule of law:

> And so whoever has the legislative or supreme power of any commonwealth, is bound to govern by established standing laws, promulgated and known to the people, and not by extemporary decrees; by indifferent and upright judges, who are to decide controversies by those laws; and to employ the force of the community at home, only in the execution of such laws, or abroad to prevent or redress foreign injuries, and secure the community from inroads and invasion. And all this to be directed to no other end, but the peace, safety, and public good of the people.
>
> (Locke, 1690, Chapter IX, section 131)

The rationale behind this and other demands for procedural and substantial controls on government activities is quite simple. Humans are assumed to be fallible and corruptible. There is therefore always a risk that those who are put in a position to govern over others will abuse their authority and violate the rights of the governed. A 'good' form of government is therefore one that has effective accountability mechanisms in place to prevent this from happening. Most famously and eloquently, James Madison has articulated this connection:

> If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government

> would be necessary. 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.
>
> (Hamilton et al. 1992, Federalist No. 51)

Next to periodic elections, Madison proposed 'checks and balances' between different government departments as effective mechanisms of control. His claim that governments need to be controlled has been accepted by most subsequent political thinkers. The bulk of the debate has not centred on whether or not accountability is necessary but on which accountability mechanisms are most effective. Standard debates in the normative and comparative political science literature, for example, tackle questions such as which electoral system best enables citizens to express their preferences and control parliament and the executive; how elements of direct democracy can strengthen citizen control; whether federal or centralised, presidential or parliamentary systems are best suited to create accountability while allowing for an effective system of government; and what role independent government agencies play to strengthen or weaken accountability.[53]

More recently, the tone of this debate has changed. Rather than exploring how the public sector can be controlled most effectively, a range of authors now focus on the negative side effects of existing accountability mechanisms. The predominantly procedural controls, so the argument goes, stifle creativity and discourage public officials from taking risks. As a result, public services are often inefficient. Despite this critique, however, these authors do not simply demand the abolition of existing accountability structures. Rather, they advocate the adoption of different kinds of accountability mechanisms. The New Public Management literature,[54] which is at the forefront of this debate, for example, demands replacing procedural accountability with accountability for outcomes. Christopher Pollitt summarises the New Public Management proposals as follows:

> Responsibility is to be decentralized, targets – not procedures – are to become the key focus for public officials, costs will be cut, bureaucracy eliminated, standards raised, and service to the citizen-customer thrust to the foreground of concern.
>
> (Pollitt, 1995, p. 203)

Even among the critics of the standard accountability arrangements of governments it is thus widely accepted that a 'good' form of government is an accountable one because this protects citizen rights and ensures that officials respect their duty to act in the best interest of citizens. Molly Beutz

even goes so far as to suggest that the consensus on the desirability of accountability is so great that democracy is most appropriately defined in terms of accountability:

> Focusing on accountability provides the basis for a functional vision of democracy that both attends to questions of social and material equality and structural change and can be applied in a variety of contexts. A vision of democracy as accountability is more robust than a purely procedural definition because it attends to important substantive goals. At the same time, however, it avoids the necessity of a priori agreement on the substantive ends to be achieved by leaving those decisions in the hands of those who are in the best position to make them.
>
> (Beutz, 2003, p. 405)[55]

It is understandable why the concern with accountability is so central in political thinking. After all, citizens do not just delegate any authority but the authority to define and enforce the rules by which a society lives. This makes the transfer of authority very far reaching and potentially difficult to reverse.[56]

But the argument also applies to other spheres. It is true for all kinds of institutions that a 'good' institutional set-up is one that effectively protects rights and encourages ethical behaviour. For institutions involving delegation this means that the 'ideal' institutional form includes accountability mechanisms that effectively protect the principals' rights. Both the legal practice in liberal democracies and a plethora of additional, voluntary governance codes reflect this normative consensus.

Earlier, in the section on stakeholder theory, it was discussed that in many countries companies are required by law to have certain accountability mechanisms. Legal rules determine standards among others for organisational structures, procedures and the transparency of companies and other organisations. How strict these standards are depends on the nature of the organisation and differs from country to country. Under German law, for example, all companies are required to maintain correct books and publish annual results. Medium and large companies additionally have to conduct professional audits and have to allow worker representation (Handelsgesetzbuch §§ 238–325, Mitbestimmungsgesetz). The governance requirements are also usually much stricter for public companies. In the US, for example, the Sarbanes-Oxley Act of 2002 applies only to publicly traded companies. It demands that companies evaluate and disclose their internal control systems, establish independent audit committees and that chief executive officers (CEOs) and chief financial officers (CFOs) swear by oath that their accounts are correct.[57]

Over recent years, these legal regulations have been supplemented by a veritable flood of voluntary governance codes. For companies, for example, Holly Gregory has compiled a 'partial listing of corporate governance

guidelines and codes of best practice' for developed markets that includes over 100 such codes (Gregory, 2001). For non-profit organisations, the NGO Independent Sector publishes a compendium of standards, codes and principles that lists over 60 examples applicable in the US.[58] These codes are published by intergovernmental organisations, governments, professional associations and social groups and vary significantly in scope and strictness.[59] The application of these codes is usually voluntary. Nevertheless their number and spread shows that the normative consensus that 'good' organisations need accountability mechanisms is widespread.

Earlier in the chapter stakeholder theorists were criticised for using these laws and emerging regulations to support their claim that all stakeholders should have the right to participate in determining a company's future. In what way, then, is the argument made here different? Firstly, the claim here is that there is a normative consensus that organisations need appropriate accountability mechanisms, not that all groups should be allowed to participate in decision making. What exactly counts as 'appropriate' will be analysed in greater detail at the end of this chapter. Secondly, a closer look at the exact requirements made by law and voluntary codes reveals that only those stakeholder groups that are principals, that is, those who delegate some form of authority to an organisation, are included in accountability arrangements.

To illustrate this, let's return to the example of a public company. An operating company has various forms of authority delegated to it. Investors delegate the right to manage their money to the company. Local communities or governments authorise it to operate on their territory. Employees give it the authority to determine under what conditions they work. Consumers, finally, by buying the company's products, authorise it to take over a specific segment in the division of labour. Laws also protect the rights of other groups. Competitors, for example, are shielded from unfair competition by anti-trust and anti-dumping legislation. But only the groups delegating authority to the company are recognised to have a right to accountability. Thus most governance codes are concerned with issues that enable shareholders to control managers. Local communities are included in the planning process, workers have the right to unionise or sit on the company's board and consumers at least get some rights to information so they can take informed decisions. Competitors, suppliers or non-local communities that are affected by the company's activities, by contrast, are not granted any rights that would enable them to hold the company to account.

Accountability mechanisms, then, are designed to prevent the abuse of authority and protect the rights of principals. Appropriate accountability arrangements are therefore an integral part of what constitutes a 'good' institutional set-up. This is the normative core of the concept of accountability and the main reason why we cherish accountability as something good.

The argument leaves one potential loophole. What if people are not as fallible and corruptible as James Madison and the political thinkers following

him assumed? Would accountability mechanisms not be superfluous if agents were less prone to abuse their authority? The answer is no. Even where agents have the best intentions, accountability mechanisms are necessary because individuals are autonomous and determine their preferences and conceptions of the good individually. Agents can therefore not simply assume they know their principals' interests. As illustrated in the basic model of accountability presented in section 2.2.1, accountability is not only about evaluating the agent, accountability mechanisms can also enable principals to articulate their preferences by formulating a mandate, through consultations or by sanctioning agents who get it wrong. Even well-intentioned agents therefore need appropriate accountability arrangements.

As already alluded to earlier, a core assumption in liberal philosophy is that humans are by their nature free and rational. The concept of human autonomy, which derives from the Greek 'autonomos' or 'self-ruling', encompasses exactly these two elements.[60] Firstly, humans are autonomous in the sense that they are independent of others. And secondly, humans are autonomous because they are rational. Rather than blindly following their passions, their capacity to reason enables humans to develop moral and ethical norms and to act according to them.[61]

The term 'autonomy' can refer to the capability, actual ability, the right or the value of self-government.[62] Philosophers also disagree on what it means exactly for an individual to act autonomously.[63] All accounts, however, at least agree that individuals have the capacity to form their own understanding of what is good and to pursue this in their actions. Autonomy in this sense is an essential human characteristic that deserves respect.

Liberal philosophers have used the demand for respect for human autonomy to justify a range of different norms. A prominent argument is that respect for autonomy renders most instances of paternalism illegitimate.[64] Autonomy has also been used to defend the right to free speech, the right to vote, the right to be free from taxation for redistributive purposes, as well as the right to contraception, abortion, association and religion.[65] While the value of autonomy tends to go undisputed, it is controversial which specific rights can be derived from it.[66]

The argument put forward here should be much less controversial. If autonomy means that individuals have the capacity to form their own conceptions of the good, this implies that they determine their preferences and interests individually. Without communication or observation, it is therefore difficult if not impossible for outsiders to determine what exactly the preferences of an individual are. The assertion that preferences are specific to individuals is widely accepted. Mainstream economic theory, for example, sees preferences as individually determined and builds its rational choice models[67] around that assumption.[68]

If preferences are intrinsically determined by individuals, it implies that agents can never fully anticipate the preferences of their principals. If they

really want to live up to their duty and act in the best interest of their principals, agents need some mechanisms to determine what these interests are.

Depending on their nature, accountability arrangements can contribute to a clarification of the principals' interests in at least three different ways. Firstly, some accountability mechanisms enable principals to express their preferences by formulating a mandate at the outset of the exercise of delegated authority. Secondly, accountability mechanisms can enable principals to provide feedback on the agent's ongoing performance. Finally, all accountability mechanisms include an element of sanction or reward. This enables principals to signal after the fact whether or not they agree with the agent's performance. Democratic elections are a good example for an accountability mechanism that fulfils two of these functions. They formulate a mandate for incoming politicians and sanction incumbent officials.[69] Opinion polls or midterm elections are an example for an ongoing feedback mechanism.

In addition to preventing the abuse of authority and protecting the rights of principals, accountability mechanisms thus provide principals with an opportunity to articulate their preferences and interests and to protect their autonomy. Irrespective of whether an agent is well intentioned or not, a good institutional set-up requires appropriate accountability arrangements.

3.2.3 Ex-post and hypothetical delegation

> Any accountability relationship […] always presupposes some delegated authority.
>
> (Löffler, 2000, p. 15)

It has been argued that delegation is not only an important defining characteristic of accountability but that it also lies at the heart of the normative content of the concept. What exactly, though, is meant by delegation? Does the argument only apply to instances of explicit and formal delegation or also to other situations? This section argues that it is also valid for implicit, ex-post and hypothetical delegation.[70]

When individuals or organisations delegate authority, they can do so explicitly, implicitly or hypothetically, as well as before or after the agent engages in any activities. The classical and most easily recognisable form of delegation is explicit and ex-ante. It occurs when somebody formally entrusts an agent with a certain authority and the agent subsequently acts on this authority. Most partnerships are created through an act of explicit and ex-ante delegation. The founding partner organisations take the decision to set up a partnership and define its mandate. WCD, for instance, was formally set up by a stakeholder workshop convened by the World Bank and the World Conservation Union (IUCN). Its authority and tasks were defined to include a review of the development effectiveness of large dams and their alternatives, as well as the development of internationally acceptable criteria, guidelines and standards for large dams (World Commission on Dams,

2000, p. 28). All major activities of the commission thereafter – the creation of a knowledge base, deliberations and negotiations among commissioners and communication and awareness raising – served to achieve these goals.

The ex-ante delegation of authority can also be implicit. Here, the transfer of authority can be inferred from somebody's behaviour and the agent subsequently bases his action on this implicit or inferred delegation. Take a simple example: before getting on a bus, I hand my suitcase to the driver who stores it in the luggage compartment. By handing over my luggage, I implicitly confer the authority and responsibility to look after my luggage on the bus company. Within the realm of partnerships, implicit ex-ante delegation could happen, for example, when the Roll Back Malaria Partnership (RBM) collects signatures for a petition on malaria.[71] By signing the petition, individuals indicate not only their support for a specific issue but also their acceptance that RBM will speak on their behalf on this issue.

When authority is transferred before the agent takes action, it is usually easy to recognise the act of delegation. Often, though, no prior authorisation takes place. Many organisations acting for or on behalf of others simply usurp the authority to do so and define their own mandates.

One set of organisations, for example, receive appropriate initial authorisation, but over time, they expand their activities beyond the original mandate. Critics have coined the term 'mission creep' to describe this expansion of responsibilities. In international politics, the charge of mission creep is most frequently levelled against international financial institutions like the IMF. The IMF was originally set up to act as a lender of last resort to promote the stability of the international exchange rate system. Over time, however, the IMF has also come to extend loans to countries for various different reasons. It has especially been criticised because it attaches conditionalities to its loans and thus influences the domestic economic policies of the borrower countries.[72]

Another group of organisations lacks appropriate formal authorisation. They have been given a mandate and respect it in their activities, yet those who defined the original mandate had no or only partial authority to do so. Many partnerships fall under this category as they are initiated by a small group of relevant stakeholders, while their activities aspire to be more broadly applicable. The Common Code for the Coffee Community (4C), for example, was founded by only two organisations, GTZ and the Deutscher Kaffee-Verband.[73] Its mandate is to develop a code for sustainability in the production, processing and trading of mainstream coffee. The code aspires to be applicable at the global level and to be accepted as binding by all organisations dealing with coffee. Similarly, GRI was founded by CERES, an NGO. It set itself the goal to develop and disseminate standards to guide the sustainability reporting practices of companies and other organisations. None of the organisations that – as GRI hoped – would later accept these standards as binding for themselves authorised GRI to assume this task.

Organisations acting without appropriate prior authorisation are not, however, necessarily illegitimate. Authority can also be delegated retrospectively or agents can act as if they were properly authorised. Ex-post authorisation can be explicit. Affected parties can, for example, formally ratify an organisation's mandate by joining at a later stage. Thus states joining the European Union have to accept the *acquis communautaire* and delegate the authority to legislate in all areas that have already been integrated. Similarly, new partner organisations typically have to formally endorse the partnership's mandate. When a range of important coffee processing and trading companies as well as producers' associations joined the 4C initiative, they formally acknowledged its authority to develop a sustainability code.

Ex-post delegation can also occur implicitly. In some instances, we can infer from the behaviour of an organisation that it has retrospectively accepted the delegation of authority. Take GRI as an example. The initiative boasts that by the end of 2005, 750 organisations were using the GRI guidelines as the basis for their sustainability reporting (Global Reporting Initiative, 2006a, p. 4). Even though they have not formally joined the partnership, these organisations implicitly accept the GRI's authority to develop guidelines by using them. In other cases, even the failure to protest can be interpreted as implicit ex-post delegation. Voigt and Salzberger, for example, do this for the delegation of legislative powers in domestic democratic systems:

> [Whenever collective decision-making powers] that are not constitutionally assigned to a body other than the legislature are in fact being exercised by such a body, this can be regarded as a delegation of legislative powers. [... This includes] *Ex post* delegation, which occurs when another organ performed decision-making and the legislature refrains from reversing (or positively affirming) the decision.
>
> (Voigt and Salzberger, 2002, p. 292, emphasis original)

Finally, delegation can be hypothetical. In this case, the organisation does not intend to achieve real authorisation. To determine a legitimate course of action, it nevertheless tries to imagine what the principals would or ought to consent to. Organisations promoting animal rights, acting on behalf of severely mentally handicapped people or the rights of small children, for example, can rely on hypothetical delegation to guide their activities. For governments, Hanna Pitkin was one of the first to explicitly name hypothetical consent as a criterion for legitimate authority. She explains the 'doctrine of hypothetical consent' as follows:

> For a legitimate government, a true authority, one whose subjects are obligated to obey it, emerges as one to which they *ought to consent*, quite apart from whether they have done so.
>
> (Pitkin, 1965, p. 999, emphasis original)

Hypothetical and ex-post delegation play a particularly important role in circumstances where prior authorisation is difficult, costly or impossible to achieve. At the international level, for example, the lack of an established political system and the existence of a very broad range of actors with different interests make it hard to organise consensus.[74] Many areas of political concern would never be addressed if ex-ante delegation were always required. The system of international law, for example, could only come into existence through implicit and ex-post consent.[75] Organisations acting without proper authorisation can therefore play a constructive part in international politics and other similar areas.

The frequency and impact of organisations acting without ex-ante authorisation make it all the more important to define institutional criteria for their legitimacy. Where organisations act without appropriate authorisation, a simple criterion applies. They usurp authority unless they intend to achieve ex-post authorisation, or, where this is not possible, act as if the necessary authority had been delegated to them.

This has important implications for our discussion of accountability. Even where no explicit prior act of delegation has taken place, legitimate agents have the obligation to act in the best interest of their future or hypothetical principals. Therefore, a good institutional set-up under these conditions requires that agents identify their principals and create appropriate accountability mechanisms to them.

There is, however, a significant difference between ex-post and ex-ante delegation. Ex-post delegation means that principals – at least in theory – reserve the right to accept or reject the activities of the agent and thereby to grant or deny retrospective authorisation. This links the argument back to power and effectiveness. In some cases, the agents become so powerful that the principals do not actually have the freedom to choose whether or not they agree to ex-post delegation. Take the IMF, for example. Borrower countries are typically in an economically difficult position that makes them dependent on extended or new IMF loans. This forces them to accept conditionalities and does not allow them to freely decide whether or not they want to accept the IMF's authority to impose such conditions. In situations like this, appropriate accountability mechanisms remain necessary to protect the principals' rights.

In other cases, no such power asymmetries prevent principals from exercising their freedom of choice. Here, accountability, while in theory still based on the principals' rights, in practice becomes more a question of effectiveness. The principals' rights are automatically protected as principals can reject the agent's activities. But accountability remains important when seen from the agent's perspective. The agent's efforts are in vain if they are not accepted by the relevant principals. Appropriate accountability mechanisms provide the agent with a better understanding of the principals' real preferences. They also assure principals that their interests

are taken seriously and thereby increase the principals' sense of ownership and perception of legitimacy. This makes principals more likely to support or comply with the results generated by the partnership and thus grant ex-post authorisation.[76] This way, accountability becomes an important tool for increasing effectiveness.

Both GRI and the 4C initiative illustrate these mechanisms. Both partnerships define rules or guidelines in order to change the behaviour of organisations. Their success thus depends on whether or not relevant actors accept the proposed rules and act accordingly. It may be for that reason why both initiatives have opted to structure themselves as partnerships. By turning their key prospective principals into partner organisations, they make themselves accountable to them.

Deriving a requirement for appropriate accountability arrangements from ex-post or hypothetical delegation is also a widespread and broadly accepted practice in other disciplines. It has been argued here that the normative core of the concept of accountability is based on the rights of principals that are created through delegation. Earlier, we found that the rights of principals are recognised in today's major legal systems and that they are a central element in liberal democratic thought. Closer examination of these legal norms and philosophical arguments shows that both also cover instances of ex-post and hypothetical delegation.

First, the legal regulations. Most domestic legal systems have elaborate rules covering instances of explicit delegation. Cases in which agents act without prior authorisation are an exception from the rule. Under certain conditions, though, ex-post and hypothetical delegation are recognised. Where they are, the agents are considered to have the same or, if anything, stricter obligations towards the principal than in instances of explicit ex-ante delegation.

Under German law, for example, 'mission creep' is covered by § 665 BGB. It states that agents can only diverge from their original mandate if they can assume that the principal would consent to this if he knew about the circumstances. In addition, the agent is required to inform the principal about this change and should wait for a reply, unless action is necessary to avert danger. The BGB also regulates the actions of unauthorised agents. It clearly states that agents have to respect the real or hypothetical interests of the principal and have the same obligations as authorised agents:

> If somebody acts on behalf of somebody else without being authorised by him or without otherwise having the right to do so, he must act in the way required by the interest of the principal as defined by his real or assumed will. [...] Otherwise, the duties of an authorised agent as defined in §§ 666–8 apply to the agent.
>
> (BGB, 2006, §§ 677 and 681) (Author's rough translation)[77]

Interestingly, in German law and other civil law systems, hypothetical delegation also creates obligations for the principal. Following the Roman principle of *negotiorum gestio*, unauthorised agents are not allowed to make a profit from their activities, but they are entitled to receive compensation for the damages they incur.[78] Common law countries are often more restrictive in this respect. The obligation for the restitution of damages and costs is recognised more rarely, thus providing even stronger protection of the rights of principals.[79]

Another legal institution recognising hypothetical and ex-post delegation is prominent in common law countries. As already discussed,[80] the concept of fiduciary obligations is key to regulating principal–agent relationships. It creates protections to ensure the agent uses his discretionary power beneficently. The concept also covers situations in which the principal has not authorised the agent to act on his behalf, as, for example, the relationship between a guardian and a ward. In this case, fiduciary obligations apply and demand that the agent act in a way that would meet the ward's approval if he had the capacity to consider the situation or that he will accept once he has achieved the ability to do so.

Admittedly, most legal systems only recognise ex-post or hypothetical delegation under relatively strict conditions. But where it is recognised, the agents are considered to have the same or more far-reaching obligations as in instances of explicit ex-ante delegation. In normative philosophy, ex-post and particularly hypothetical delegation enjoy a much stronger standing than in legal practice. The most prominent rights-based approaches in political and moral philosophy rely on hypothetical consent as the basis for their arguments.

Social contract theory was introduced here as a cornerstone of liberal thought. Early proponents of the theory such as Hobbes, Rousseau and Locke described the pre-social state of nature and the process leading to the formation of societies as part of their argument. Many critics read these parts as an interpretation of history and attacked the philosophers on the ground that their reading of history was unrealistic.[81] Robert Filmer, for example, argued that individuals were not actually born free and equal as assumed by the contractarians. Instead, Filmer contends, humans are born into pre-existing authority structures and have a natural obligation to respect the authority of their fathers. On this account, individuals cannot transfer their right to self-rule to a ruler because they do not have it in the first place.[82] David Hume rejects Filmer's patriarchalism, but also doubts the realism of the social contract. He argues that the existing governments he knows are actually founded on usurpation or conquest, not the consent of the governed. To those arguing that the original contract was concluded in ancient history when humans first grouped in societies, he counters that such historical agreement cannot be binding for governments or citizens today:

> But the contract, on which government is founded, is said to be the original contract, and consequently may be supposed too old to fall under

> the knowledge of the present generation. If the agreement, by which savage men first associated and conjoined their force, be here meant, this is acknowledged to be real; but being so ancient, and being obliterated by a thousand changes of government and princes, it cannot now be supposed to retain any authority. […] But besides that this supposes the consent of the fathers to bind the children, even to the most remote generations, (which republican writers will never allow) besides this, I say, it is not justified by history or experience, in any age or country of the world.
>
> (Hume, 1994, p. 190)

Even among the early contract thinkers, though, the social contract was often understood as a mental construct rather than historical fact. John Locke, for example, does make repeated efforts to find real life examples for his contract argument. But at the same time, he argues that moral principles cannot be derived from history. Rather, it is from reason and through reason that moral norms are discovered:[83]

> [A]t best an argument from what has been, to what should of right be, has no great force […]. But to conclude, reason being plain on our side, that men are naturally free, and the examples of history shewing, that the governments of the world, that were begun in peace, had their beginning laid on that foundation, and were made by the consent of the people; there can be little room for doubt, either where the right is, or what has been the opinion, or practice of mankind, about the first erecting of governments.
>
> (Locke, 1690, Book 2, Chapter VIII, §§ 103–4)

In modern political and moral philosophy, the social contract remains central. Modern contractarians have given up all pretence about the historicity of the contract. Instead, they rely explicitly on hypothetical models of consent and delegation to derive the principles of morality as well as criteria for the legitimacy of government. Fred D'Agostino, for example, stresses this point:

> In its modern guises, contract approaches are not intended as accounts of the historical origins of current social arrangements, but, instead, as answers to, or frameworks for answering, questions about legitimacy and political obligation.
>
> (D'Agostino, 2006)

In moral philosophy, for instance, thinkers writing in the tradition of Immanuel Kant use a hypothetical contract to derive the principles of morality. Kantian contract thinkers argue that individuals can determine

what it right and what is wrong by doing a thought experiment. Would rational individuals agree to the norm underlying or the reasons given for an activity? If they would, the activity is morally acceptable, but if they would not, the activity is morally wrong. Kant expresses this principle in the first formulation of the categorical imperative: 'handle nur nach derjenigen Maxime, durch die du zugleich wollen kannst, daß sie ein allgemeines Gesetz werde' (Kant, 1996/1786, p. 68).[84]

John Rawls, the most famous contemporary Kantian philosopher, tries to make this thought experiment more impartial. He demands that individuals ignore their actual situation while considering the same question. To achieve this, individuals must make the morality test from an 'original position' or behind a 'veil of ignorance' disguising their real current position:

> [T]he principles of justice for the basic structure of society are the object of the original agreement. They are the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality [...]. Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. [...] The principles of justice are chosen behind a veil of ignorance.
>
> (Rawls, 1971, pp. 11–12)

For Thomas Scanlon, a wrong action similarly is one that 'I could not justify to others on grounds I could expect them to accept' (Scanlon, 1998, p. 4). Also seeking to include a criterion of impartiality, this leads him to describe judgements about right and wrong as 'judgments about what would be permitted by principles that could not reasonably by rejected, by people who were moved to find principles for the general regulation of the behavior of others' (Scanlon, 1998, p. 4).

The contract argument in this form involves hypothetical consent. Kantian contractarians are typically concerned with establishing the legitimacy of specific norms and actions. The contract they are using therefore tends to involve the direct hypothetical consent of individuals to moral or legal norms and principles. Only rarely do moral contract thinkers consider the legitimacy of institutions. But where they do, they tend to follow the logic of their moral argument and rejoin the political social contract tradition based on Locke's writings.

Kant, for example, treats the question of what good political institutions ought to look like only fleetingly.[85] According to him, humans need to live in societies ruled by law to realise their innate capabilities. Government is necessary because humans are not purely governed by reason but sometimes also follow their animal-like instincts, violating the freedom of others. Government enforcing obedience to just laws is thus necessary to protect

the freedom of all. Kant realises that this poses a dilemma because rulers are also fallible humans prone to succumbing to their instincts. While perfectly just rule is impossible, Kant's theory demands that humans seek to approach it – presumably by creating accountability mechanisms that prevent the abuse of authority and protect the rights of the hypothetical principals:

> The head of state should be just in himself, and yet a human. This task is therefore the most difficult of all; its complete achievement is impossible: humans are made from such twisted material, that nothing totally straight can be built from it. Nature only demands us to approach the idea.
>
> (Kant, 1996a, p. 316) (Author's rough translation)[86]

For contemporary thinkers using a social contract argument, Ann Cudd confirms that most moral contractarians are also political contractarians, though she does not see this link as a necessary one: 'There is no necessity for a contractarian about political theory to be a contractarian about moral theory, although most contemporary contractarians are both' (Cudd, 2006).

Accordingly, most social contract thinkers agree that legitimate institutions are those that rational individuals could or would consent to. In other words, institutions need to be set up as if individuals had delegated the necessary authority to them or so that they will delegate this authority retrospectively.[87] Social contract thinkers thus base their influential arguments on models involving hypothetical consent or delegation.

But social contract theory has not remained undisputed. As indicated, Filmer and Hume criticised the realism of the social contract. Hypothetical contracts have also created intense debate. Communitarians following in the footsteps of Georg Wilhelm Friedrich Hegel, for example, doubt that humans can be thought of as independent of their communities. They posit that individuals can only develop their potential and capacities within a community and that it is therefore only in the context of a community that individuals can be said to be free and have rights. Even hypothetically, the idea of a social contract to establish a political or moral community therefore makes no sense.[88] Marxists claim that individuals are shaped by the material conditions they live in. They argue that material exploitation and alienation first need to be overcome before individuals can enjoy freedom. It is only after the revolution that individuals can found a genuine human community allowing them to achieve their full potential.[89] Feminists, finally, criticise social contract thinkers for ignoring the 'sexual contract' that precedes the social contract and subjects women to the authority of men, for implicitly giving the 'free and equal individuals' (white) male characteristics and for ignoring the morality of care.[90]

These and other criticisms present serious challenges for social contract theories. Contractarians have particular difficulties in countering the argument that humans are shaped by society. Because they are so deeply

embedded in concrete social structures, it is questionable whether social contract thought experiments can create impartial judgements.[91] But this critique is much less damaging for the argument on accountability proposed here. It acknowledges that individuals are socially embedded and pursue particular interests. In fact it is because humans have different conceptions of the good and different interests that appropriate accountability structures are necessary. Recall that hypothetical or ex-post delegation creates an obligation for the agent to act in the best interest of his principals. Accountability structures are necessary to prevent the abuse of authority and to enable the autonomous principals to articulate their specific interests and preferences. The communitarian, Marxist and feminist critiques may thus be problematic for social contract theorists, but they attack other assumptions made by contractarians and do not question the construct of hypothetical consent or delegation itself.

There is, however, another challenge against the social contract that is more directly relevant to the argument proposed here. An important number of thinkers deny that a hypothetical contract can be binding. Ronald Dworkin, for example, argues that

> hypothetical contracts do not supply an independent argument for the fairness of enforcing their terms. A hypothetical contract is not simply a pale form of an actual contract; it is no contract at all. [… I]t may be that I would have agreed to any number of […] rules if I had been asked in advance […]. It does not follow that these rules may be enforced against me if I have not, in fact, agreed to them.
>
> (Dworkin, 1973, p. 501)[92]

Contract thinkers have reacted in different ways to this charge. Rawls argues that even if hypothetical agreements cannot bind, the concept of the original position is significant because it describes the conditions under which individuals agree on a political conception of justice that we consider fair (Rawls, 1993, pp. 24–7). Similarly, Thomas Scanlon is prepared to admit that hypothetical consent is mainly used as a heuristic device or a metaphor to help unearth what we believe is 'reasonable' or 'just'. Other contractarians including Jeffrey Paul, Samuel Freeman, Brian Barry, Gerald Gaus, Christopher Morris and James Fishkin agree with Dworkin that a hypothetical contract may not be binding. Nevertheless they argue that it has argumentative force as a justification for specific norms.[93] Cynthia Stark suggests distinguishing between a contract that is morally binding and one that is enforceable. She proposes that a hypothetical contract is binding in the sense that it justifies moral principles and gives individuals reasons why they should comply with these norms. But she argues that hypothetical consent is not sufficient for justifying governmental enforcement of these norms (Stark, 2000).

The dispute on whether or not or to what degree a hypothetical contract can be considered as binding cannot be resolved here. But neither does it need to be resolved for the argument on accountability. Critics question only whether social contracts can be binding on individuals, by creating either political obligations or specific norms. They do not, however, protest when the social contract is used to argue for a limited government that has an obligation to promote the interests of its citizens and needs accountability mechanisms to ensure this.

Where does this difference stem from? Hypothetical contracts can have different structures with implications for the standing of the parties involved. Consider first a contract à la Rawls or Kant that justifies norms. Its hypothetical members are the same individuals who would then be bound by the norm. In that sense, the contract is symmetrical, and in this case, its binding force is disputed. In political theory, it is more common to deal with contracts that involve both individuals and a government. Here, the contract is asymmetrical. Individuals conclude a hypothetical contract conferring authority on a government. The government assumes this authority consciously and explicitly. While the individuals thus grant their consent only hypothetically, the government actually agrees to the delegation contract. As a result, it is controversial whether the individuals can be considered bound by the contract. But, as long as we believe that individuals are autonomous and have certain rights, it is beyond dispute that the government incurs certain obligations through its involvement in the social contract.

In the argument on accountability presented here, we are concerned with real, ex-post and hypothetical delegation. If the contract establishing these principal–agent relationships is hypothetical, it is asymmetrical. Just like the government in the example above, the agent assumes authority that originally belongs to individuals or other institutions. If the agent acts legitimately, it does not rob others of their rightful authority, but becomes party to a delegation contract. Again, the consent of the agent to this contract can be considered real, whereas the consent of the principals is hypothetical. Even when no actual delegation takes place, the agent is bound by the same obligations as an agent who was properly authorised.[94]

Assuming that individuals are autonomous and endowed with certain rights, this leaves us with the following conclusion: delegation of authority creates an obligation for the agent to promote the interests of the principals. Appropriate accountability mechanisms are necessary to prevent the abuse of authority and to protect the principals' autonomy. An agent acting without prior authorisation can only be legitimate if she acts as if the authority had been delegated to her or so that it will be delegated later on. Hypothetical and ex-post delegation may not be binding for principals but create the same obligations for agents as real delegation. A good institutional set up therefore involves appropriate accountability mechanisms protecting the rights of those who originally held the authority now exercised by the organisation.

3.3 The advantages of justifying accountability through delegation

The argument based on delegation proposed here intersects and overlaps in various ways with the other justifications of accountability sketched at the outset of this chapter. In what ways, then, does it differ from and how does it improve on alternative accounts? Put very briefly, it provides a theoretical basis for accountability that at the same time creates a firmer normative basis and leads to more differentiated practical results.

Let's recapitulate in slightly greater detail. Three main existing approaches to justifying accountability were found in the literature relevant to partnerships. The claims based on a consequentialist logic, on stakeholder theory or on arguments derived from democracy were found open to criticism on different levels. An important recurring problem was that the arguments either relied on a weak normative basis or that their political demands did not follow from their main normative case.

Thus consequentialist arguments only demand accountability if and in so far as it promotes another good, such as efficiency or effectiveness. In doing so, accountability is not recognised as a value in itself. The demand for accountability remains contingent and accountability can be replaced by other mechanisms if they produce the same result.

Stakeholder theory, at least in its original formulation by Edward Freeman, stands on much firmer philosophical grounds. Based on an account of individual rights, it provides a strong – though disputed – case for why managers ought to act morally and consider the effects of their decisions on others. As argued above, though, the theory becomes more problematic when it is used to justify demands for accountability mechanisms. The claim that all stakeholders ought to be included in decision making is not widely accepted or reflected in social practices. Moreover, a consistent realisation of these demands would contradict the philosophical principles the argument is built on.

Democratic theory, finally, makes a philosophically sound and widely accepted claim that governments ought to have democratic accountability mechanisms. Researchers have extended the democratic argument to other situations. To remedy a democratic deficit or to create a legitimate system of global governance, they demand the extension of accountability mechanisms to all influential organisations. As argued earlier, however, the democratic logic does not really back a call for democratic accountability for all institutions. And where more differentiated accountability mechanisms are proposed, the theory provides no guidelines for determining which accountability mechanisms should apply to which organisations.

The argument based on delegation presented here provides a clearer justification for accountability as well as a firm normative basis for its claims. Firstly, like stakeholder and democratic theory, it relies on a rights-based

philosophical approach, emphasising the value of individual autonomy. As a result, the normative power of the argument is stronger than that of consequentialist justifications.

There is, however, an exception to this. Where delegation is ex-post and the principals can genuinely choose whether or not to grant authorisation after the fact, the argument relapses into a consequentialist one.[95] In this case accountability is not necessary to protect rights but only to enhance the effectiveness of an organisation's work. But even in this instance, the argument based on delegation does not create a normatively less powerful demand for accountability than stakeholder and democratic theory. Rather, like them, it claims that accountability is a matter of right only where an institution wields significant power. Beyond this, it provides a coherent account of when accountability is (also) a matter of expedience, namely, when organisations need ex-post approval and support to be successful.

Secondly, delegation avoids some of the theoretical problems of stakeholder theory. The basic claim is that delegation creates an obligation for agents to promote the interests of their principals. This, together with the need to protect the autonomy of principals, justifies the demand for appropriate accountability mechanisms. This claim is much more widely accepted in the social sciences and more broadly reflected in social practices than the case made by stakeholder theory that all those influenced by somebody's actions have a claim to accountability. Moreover, as will become clear in Chapter 5, the concrete demands derived from delegation do not create the kind of total accountability that a consistent application of stakeholder theory would. Thus the application of the theory does not undermine the philosophical principles it is built on.

Finally, like the democratic deficit and global governance arguments, the case based on delegation builds on the strong normative foundations of democratic theory. But rather than directly extending democratic theory to other institutional settings, delegation makes the analogy at a more abstract level. All organisations rely on some form of delegated authority. Therefore, they all need appropriate accountability mechanisms, but these do not necessarily have to involve democratic accountability. This way, the delegation argument applies the principles of democratic theory more consistently to other spheres.

Another important criticism against existing justifications concerns their ability to generate differentiated demands for accountability. The existing consequentialist, stakeholder or democracy arguments either lead to a general, undifferentiated claim for accountability or provide no basis for establishing which situation requires what kind of accountability mechanisms.

Consequentialist arguments, for example, do allow for the application of different accountability mechanisms. If accountability is necessary to achieve other goals, organisations should choose the mechanisms that best promote these goals. But rather than providing a normative case for the

adoption of specific accountability mechanisms, it is left to each organisation to figure out which arrangement best suits it. Diversity and flexibility thus come at the cost of arbitrariness.

Stakeholder theory in its original formulation recognises all groups that are influenced by or can influence an organisation as stakeholders. Apart from the degree of influence, it contains no criterion allowing for a differentiation between stakeholders. As a consequence, the same kind of accountability is demanded for all stakeholder groups. This, however, does not clearly correspond to widely held moral convictions as expressed by laws, regulations and the demands of accountability activists.

Arguments based on democratic theory, finally, either demand democratic accountability for all or recognise different possible accountability mechanisms without providing guidance on how and why to apply them. The accountability demands derived from delegation, by contrast, are more differentiated in two respects. On the one hand, delegation recognises a smaller group as legitimate accountability holders than stakeholder and democratic theory. Only those who originally or rightfully hold the authority exercised by an institution have a right to access to accountability mechanisms. This excludes a number of groups who are only influenced by an organisation. On the other hand, within this smaller group, delegation allows for a variety of accountability mechanisms and provides criteria for their application. What authority is delegated determines which accountability mechanisms are appropriate. How exactly this works and which authority requires which accountability type is discussed in the next section.

3.4 Form should follow function

Wherever authority is delegated, appropriate accountability mechanisms are necessary. What, though, counts as an ‘adequate’ or ‘appropriate’ accountability arrangement for the wide variety of partnerships?

To date, there are only few initiatives or organisations that define explicit accountability standards applicable to partnerships. The few that exist – like the Global Accountability Index of the NGO One World Trust[96] – propose to apply the same standards to companies, the public sector, civil society and, by implication, to all forms of partnerships. Most existing governance and accountability standards, however, refer to a much more limited group of organisations. This can be companies, civil society organisations and public agencies or even more specific groups, such as the extractive industries, educational institutions or health care providers.[97] These standards define very different accountability requirements depending on the type of organisation they address. At the same time, they usually fail to define a more general principle that would explain why different standards are valid under different circumstances. Without such a principle, however, it is difficult to apply the standards to new situations such as partnerships.

This section establishes a general criterion for determining when an accountability arrangement is appropriate. It argues that concrete accountability requirements depend on the organisation's function. Function determines which accountability mechanisms are appropriate.

If delegation makes accountability necessary, it also establishes which accountability mechanisms are appropriate. What authority is delegated affects what the agent is accountable for. Different mechanisms are suited for creating accountability for different aspects. An organisation's function indicates what authority has been, will be or is assumed to have been delegated to it. Therefore, function determines which accountability mechanisms are appropriate. This, in a nutshell, is why form should follow function in partnership accountability.

The previous section established that agents need adequate accountability arrangements because they exercise authority that originally or rightfully belongs to somebody else. This argument already includes a general definition of what the agent is accountable for. Agents are accountable for exercising their authority in a way that corresponds to the interests of the original authority holders (the principals).[98]

Principal–agent relationships, though, can involve the delegation of different kinds of authority. It can be, for example, the authority to manage property, the authority to set rules and standards or the authority to generate information or knowledge. What exactly the agent is accountable for, then, depends to an important degree on what authority has been delegated. Thus property managers are typically accountable for generating high returns. Legislators are accountable for adopting policies that promote the interests of society and for creating rules that are implemented in a fair and impartial manner. Monitoring agencies or scientific institutions, finally, are accountable for generating accurate and high-quality information or knowledge.[99]

To create or strengthen the accountability of organisations, a variety of concrete mechanisms can be employed. They can range from elections, participation rights and process rules to performance evaluation and incentive packages. In any given situation, those mechanisms are appropriate that are likely to strengthen accountability for the relevant issue area. Accurate accounting and reporting combined with sanctions or incentives, for example, are well suited for creating accountability for financial results. Elections, opinion polls and direct participation, by contrast, are better suited for enabling individuals to articulate their preferences and process rules can help to ensure that rules are implemented in a fair and impartial way. The participation of independent experts and compliance with quality standards, in turn, are safeguards for accurate and high-quality information or knowledge.

These brief examples show that the adequacy of an accountability arrangement to an important degree depends on the nature of authority that is delegated. As discussed in the previous section, the notion of delegation used here is wide. It includes not only explicit and ex-ante delegation but also

implicit, hypothetical and ex-post delegation. This means that what counts for evaluating an accountability arrangement is not just what authority has been formally delegated. Rather, it depends on the authority an organisation actually exercises and thus on what function is fulfils. Therefore, organisational function is key to judging what accountability arrangements are appropriate under what circumstances. It is in this sense that the dogma of 'form follows function'[100] applies to partnership accountability.