

The antinomy of accountability

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Introduction

I have in my hands the Environmental Report of an Italian chemical firm¹, drawn up according to the Responsible Care programme. The programme is described as a voluntary initiative aimed at overcoming mere compliance with regulations in favour of 'an ongoing improvement of performance and dialogue and transparency towards all components of society'. Upon skimming the text and tables of this report, the typical lay citizen's questions spring out: How should I evaluate the tasks specified in the company's action plan? Did they actually deserve to be prioritized? How should I consider financial investments, technology improvements and performance records (regarding emissions into the atmosphere and water, for example) contained in the report? Do they represent major commitments and achievements or negligible ones? To assist in interpreting the report, it would be helpful to have some training in chemical engineering and financial accounting and to be able to draw comparisons with the records of other firms' records. Yet these aids could hardly solve a problem. If, as the report states, the company is committed to combining corporate profit and sustainable development, what is missing is precisely this information: how the two goals have been balanced by the subject that retains an unquestioned right to do it – the company itself. A proper scrutiny of the scope of its environmental commitment would require a detailed analysis of the entire corporate policy; access to confidential information would likely be needed. Ironically, the exact meaning of the report can be understood only by people like the corporation's top managers who possess all the relevant information.

There seems to be a core antinomy in accountability – a paradox, a contradiction. Complete fulfilment of the aims of accountability corresponds to its emptying. Full accountability is possible only between identical subjects; but then it is a circular, self-referential exercise with no actual purpose and content. I can tell you everything and you can grasp everything I say if you are just like me; but then you have nothing to learn from me and I have nothing to learn from you. Complete disclosure verges on closure and silence. This classic political problem becomes particularly troublesome in current governance arrangements, of which environmental reporting represents a typical example. To be fruitful, accountability must circumvent self-reference and address alterity; it must be opened up to unexpected questions and unforeseen claims.

This is the argument I develop in this chapter². As described by systems theory (Luhmann, 1984), different forms of circularity are relevant to accountability. Elements of a system, for example, clauses of a contract, may account for each other. Processes such as accounting operations may apply to themselves. Systems may refer to themselves; for example, accounting procedures may appeal to general principles of accounting. Systems may self-reproduce, being at the same time open and closed to their environment; for example, accounting rules may specify when they should be amended, so that any event can be classified as relevant or irrelevant in this respect.

From a historical viewpoint, the antinomy of accountability has characterized political modernity from its beginning and has been described in many ways. Hobbes's *Leviathan* expresses the will of individuals who submitted themselves to his own will. Being subjected to him, they are subjected to themselves; thus he is fully accountable to them, yet an account is neither necessary nor due. For Schmitt (1922), sovereignty consists of the ability to decide upon the exception to the rule. A sovereign is at the same time within and outside the legal order, allowed to adjudicate a case by disregarding any existing rule. Sovereigns are rulers onto themselves, thus at the same time accountable and unaccountable to anyone. Similarly, for Benjamin (1977), law originates from an act of violence that cannot be legally justified. Attempts to make legal systems fully accountable inevitably result in paradoxes. On what grounds, for example, can a constitutional rule be self-entrenched, implying that its own change is not allowed? Can an amendment clause be applied to amend itself (Suber, 1990)?

For centuries this antinomy remained hidden within political and legal systems, springing out only in dramatic historical passages – revolutions, totalitarian rule (Agamben, 1998). Liberal democracies kept the antinomy at bay by extending citizenship rights in increasingly differentiated and secularized societies while preserving a reference to 'the people' as the source of power to which its exercise must be accounted. This normative ideal has been questioned, however, by the growing individualization and privatization of social relations and the increasing focus on personal autonomy understood as ownership of oneself and the outcome of one's labour. Freedom of will has been increasingly conceived of as the possibility of fully expressing one's own subjectivity and individuality in order to immunize oneself from onerous communal belongings and duties (Esposito, 2002). The means by which this can be obtained is contract. As a form of social regulation, contract differs from both reciprocity and covenant; a contract entails the making or renewal of a social tie, whereas reciprocity and covenant entail a forward-oriented pledge. Contract entails a strict definition of the terms of exchange and a permanent liquidation of obligations. It allows for the obtaining of one's desires without engaging in personal, enduring relationships with others (Godbout, 1998).

Accountability is stressed as being a core element of new forms of governance (EC, 2001). It should help preserve what keeps society together, as state or community-centred relationships of responsibility lose relevance. Yet this purpose may be hindered by the contractualization of social relations. Trust, legitimacy, solidarity and other social goods increasingly depend on the ability of contractual arrangements to replace traditional forms of vertical and horizontal answerability. The problem is, however, that the logic of contract is intrinsically self-referential, preventing any account to and for whatever lies outside the world produced by the contract itself.

A thorough elaboration of this argument would extend far beyond the limits of this chapter. In the following discussion, I use a few concepts drawn from governance studies, political philosophy and social theory, and my empirical references focus primarily on the environmental field. I do not pretend to advance any definitive statement, therefore – merely to outline what seems to me to be a major issue. The first section addresses the problem of self-reference by examining the last wave of contractual arrangements in environmental governance. I then elaborate on the notion of the public as a core element of accountability and discuss in greater detail the self-referential structure of contract and its implications. Finally I compare two ways of

coping with the antinomy of accountability: celebrating self-reference and dealing with alterity.

Accountability and self-reference in environmental governance

Accountability is an intrinsic feature of reciprocity in human relations and a core feature of democratic systems. Why is it attracting such interest? Answers usually point to the current transformation of governance from a state-centred hierarchical steering system to decentralized horizontal networks of public and private actors that have resulted from neoliberal reforms or from the unforeseen effect of the combination of these reforms with a self-steering globalization of economies (Strange, 1996). The expanding public roles of private actors – their growing explicit engagement in the policy process – combined with the consequent blurring of the distinction between public and private, call for an increase in controls (Power, 1997). Interactions between interdependent actors, supposedly equipped with the best knowledge of the state of affairs in their fields, may be expected to improve policy effectiveness and efficiency; this cannot be taken for granted, however, and must be accounted for. In its turn, legal liability increasingly depends on compliance with contractual or single-handed obligations rather than the rule of law.

The rise of accountability has also been linked to the growing salience of the semantics of risk, the latter being a consequence of the detraditionalization and individualization of society (Giddens, 1990). These processes increase social complexity and entail a decline of authority and the traditional ties of solidarity. The weaker the perceived legitimacy of power (that is, the weaker the authority), the stronger the requirement of justification; the weaker the sense of belonging, the weaker the grounds for the division of labour and for the distribution of burdens and benefits (for example, the right to hold social positions, to manage public questions, to define collective goals and to obtain valuable resources), the feebler the shared assumption of responsibility for the consequences of decisions and the higher the requirement of justifications and accounts (Pellizzoni, 2005). Trust investments are not replaced by accountability arrangements, however. They are simply shifted from actors to controllers – controllers who are often depersonalized into expert systems and procedures of verification, of which the supposed beneficiary has little knowledge. Organizational artefacts replace interpersonal relations.

An example of this trend can be found in environmental policy. A third generation of approaches (after command-and-control and market-based regulation) has emerged since the 1990s and includes three main categories of instruments (Prakash and Kollman, 2004): mandatory information disclosure through labels or emission registers such as the US Toxic Release Inventory Program (TRI); business-government partnerships such as the US 33/50 and Project XL programmes or the Dutch covenants; and government- and non-government-sourced management systems, such as ISO 14001, EMAS, the US chemical industry's Responsible Care Program or the certification system of the Forest Stewardship Council (FSC). These instruments can be regarded as part of a broader family of corporate social responsibility (CSR) approaches aimed at contributing to sustainable development and enhancing quality of life, the common feature of which is to be found in their voluntariness (Bendell and Kearins, 2005). In its turn, CSR is part of a broader growth of 'civil regulation' (Vogel, 2006) or

‘private governments’ that include, for example, the so-called *lex mercatoria*, the corpus of trade usages developed outside national legislation that resembles, to some extent, the ‘merchant law’ of the Middle Ages (Teubner, 2002).

According to their supporters, third-generation environmental policies (and, more generally, CSR initiatives and private governments) effectively address the problems of command-and-control and market-based regulation (Prakash and Kollman, 2004). Command-and-control mechanisms – consisting basically of a target, like an emission limit for a pollutant, and a penalty to be applied if such target is not met – result in 1) over-legalization; 2) inflexibility regarding the dynamics of technology and economy; 3) prevention of ‘fine tuning’ to specific social or environmental conditions; 4) knowledge gaps in the environmental and health impacts of human activities and people’s willingness to bear cost schedules for regulations; 5) money being spent on relatively insignificant risks; and 6) requirements for effective and costly monitoring and sanctioning systems.

Rather than requiring compliance with a legal obligation, market-based instruments seek to exert influence on their addressees, a typical example being fiscal charges on emission units of pollutants. These instruments provide more operational flexibility. They also require effective monitoring and sanctioning, however, together with well specified property rights; that is, they require effective state-centred institutions and regulations. Moreover, approaches such as tradable permits legitimize arbitrarily settled levels of pollution and may promote relocation of polluting activities to less expensive neighbourhoods inhabited by disadvantaged groups.

Against these drawbacks, stronger environmental protection or higher economic efficiency with an equivalent environmental performance are ensured – so the argument goes – by promoting ‘beyond compliance’ corporate behaviour and building on the direct interaction of private actors. Even information disclosure (van Den Burg and Mol, chapter eleven) is not ‘mandatory’ in the traditional sense of command-and-control regulation: It does not specify required outcomes, but leaves firms free to self-regulate on the grounds that it is in their interest to present themselves as ‘green’ to their contractual stakeholders (customers, suppliers, bondholders) and non-contractual stakeholders (from neighbouring communities to the public at large). Thus all third-generation instruments follow a contractual logic. If no formal deals are made they basically consist of single-handed obligations towards specified or unspecified ‘counterparts’.

An impressive bulk of literature has grown up around third-generation environmental instruments, yet their evaluation remains controversial (Gunningham and Grabosky, 1998; Steinzor, 1998; Prakash, 2005). In part, the controversy may be due to the lack of sufficient empirical data and the necessity of using counterfactual reasoning to compare voluntary and self-regulation mechanisms with command-and-control and market-based mechanisms (EEA, 1997). Major criticisms seem to refer, however, to accountability, whether directly or indirectly. Corporate ecological commitments cannot be taken for granted (which brings us back to the issue of controls and sanctions); such commitments may be mere ‘greenwashing’ (Laufer 2003). Sectoral targets may encourage free riding, whereby polluters take advantage of the improved performance of other firms (Börkey and Lévêque, 2000). Agreements may be used to postpone or forgo stricter command-and-control regulation (EC, 1997). Inadequate monitoring and sanctioning weakens the impact of many voluntary commitments (Bressers and de Bruijn, 2005). Thus accountability is crucial.

Reliability of decision making and of subsequent verification, is a matter of, hindsight, foresight (ability to process information), insight (access to and selection of information), and independence from the accountable actor. These qualities are not easily achieved and may be conflicting. 'Third-party' verification performed by independent organizations should be more reliable than 'second-party' verification conducted by trade associations or other industry groups. As many scandals testify, however, even independent auditors may be tempted to accommodate the businesses they certify (Kerwer, chapter six). Moreover, auditors may suffer from informational asymmetries (Power, 1997) (gathering and interpreting data may be exceedingly difficult or time-consuming if the accountable actor is reluctant to cooperate), which may press them to concentrate on documents rather than on facts and to respect formal requirements rather than substantive outcomes (Kimerling, 2001).

There is another, possibly crucial, point arising from some criticisms (Ost, 1994; Steinzor 1998; Pellizzoni 2004). Voluntary regulation and self-regulation should, ideally, combine particular interests with general ones. Such a combination does not necessarily result in state-of-the-art environmental performance, however. Verification usually focuses on how a given goal has been pursued or achieved rather than on how and why such a goal has been set. This situation arises not so much because of faulty accountability designs but because of the logic of voluntary regulation. The alleged efficiency of such regulation in the face of growing difficulties in setting reliable output standards depends precisely on the fact that goals and means are negotiated or defined by the firms themselves. As economic actors with the autonomy to do so, they retain the right and duty to 'use their resources and engage in activities designed to increase their profits' (Friedman, 1962, p. 133). Stakeholders and auditors have no way of knowing the breadth of more ambitious environmental goals that the firm may have rejected because of cost. Accountable actors set the frame of their accountability, therefore, and there is little possibility for stakeholders and auditors to question their choices.

These considerations are not limited to environmental issues, but resonate with broader discussions about CSR. 'Partnerships can develop only where the company is interested in achieving the goal concerned... [and] the range and level of obligations [firms] are expected to fulfil are largely left to their discretion' (Newell 2005, p. 545-546). For example, 'crucial economic issues tend to be excluded from the contents of CSR standards' (Frynas, 2005, p. 587). Such issues include the impact of industrial infrastructure on the subsistence of local people, the firms' freedom to invest and divest at will, and the drawbacks for national economies of a heavy reliance on the export of natural resources. Thus usable, fruitful accountability seems to demand more than information, competence and independence. It requires access to the framing of issues. The accountable actor's self-definition of issues and goals dramatically narrows the scope of deliberation about choices or verification of their implementation. Involvement of contractual and non-contractual stakeholders is not an automatic answer. Such involvement may even worsen the problem, to the extent that the good of someone is misleadingly taken for the good of all. The issue of participant selection and equal stance is intensively debated both in the literature on public deliberation (Parkinson, 2003) and in the CSR literature. Stakeholders' representatives are often bound to accept the issue-framing done by the accountable actor. Or, in questioning it, these representatives usually defend their own interests and viewpoints, taking stances that do not necessarily coincide with the views of unrepresented stakeholders. Because NGOs, government representatives and academics have their own agendas, it is possible for

them to be captured by the answerable interests (Bendell and Kearins, 2005). There are also problems of ‘intra-community accountability’ (Newell, 2005), whereby women and younger people, particularly in developing countries, are often left outside deliberative settings. On the whole, the most resourceful participants may override the others (Boström, 2006). Entrusting selection to the accountable actors increases the risk of a narrow representation of concerns, of course. On the contrary, suitable procedural rules may lower the risk of imbalances. For example, FSC seeks to balance the decision-making power of social, environmental and economic interests (Gulbrandsen, chapter four). The basic problem, however, is that broadening inclusion does not by itself ward off self-reference in issue framing, but simply broadens it. As a consequence, residual externalities of decisions may become difficult to recognize.

Accountability can be enlarged beyond formal settings of deliberation or verification by providing information to ‘extended peer communities’ (Funtowicz and Ravetz, 1993) composed of various categories of stakeholders, as happens with mandatory information disclosure. This step alone, however, does not provide a solution to the problem of accountability framing.

On the one hand, such communities have even less opportunity than do those taking part in proper deliberative settings to bring such framing into question, for they must rely on the information spontaneously provided by the answerable actor. Although accessible and comprehensible, such information may say nothing about the reasons for a technical or commercial choice – about other possible options and why they were discarded. Moreover, extended communities are able to express their dissatisfaction only indirectly, through the market or the public sphere.

On the other hand, we are confronted again with the problem of self-definition of the terms by which an assessment is conducted. Consider so-called ‘political consumerism’. Consumers increasingly choose ‘producers and products with the goal of changing objectionable institutional or market practices’ (Micheletti *et al.*, 2004, p. xiv), according to considerations of justice, fairness, personal and family wellbeing, animal welfare, or environmental protection. Through boycotts and ‘buycotts’ they conduct ethical or political assessments of business and government practices. Although sometimes ‘unreliable and capricious’ (Micheletti *et al.*, 2004, p. xv) and exposed to ‘greenwashing’ and other forms of manipulation, ‘political consumerists argue that citizen concern for their private lives can be used in a beneficial way for society at large. Privately oriented virtues have, thus, a public role to play’ (Micheletti, 2003, p. 159-160).

This is the crucial point, because it mirrors on the demand side what CSR and third-generation environmental instruments assume on the supply side. Actually, when consumers ‘engage in collective action in very concrete, problem-oriented local networks’ (Micheletti, 2003, p. 20), they are engaging in what is to be considered traditional forms of social mobilization. The novelty of political consumerism lies in its reliance on *individual* specifications of a firm’s answerability, personal assessments of the public good, and the effects of one’s own shopping behaviour³. Research suggests, however, that decisions are affected by their setting: Political consumers are more likely to be agenda takers than agenda setters, tending to accept government or corporate issue framings more easily than do organized groups (Tovey, 2005). As with corporate self-regulation, therefore, the question is: Can any public interest be privately, self-reflexively defined?

Accountability and publicness

Being accountable or answerable means being required to justify one's own conduct by providing reasons and explanations for such action (Pellizzoni, 2004). Accountability is usually described in terms of a dual relationship between principal and agent. This description is likely to be inadequate, however. As we have seen, the transformation of governance is said to blur the distinction between the public and the private. But what is public and what is private? Without turning to the endless literature on this issue, one can observe that agents may be confronted with seemingly different types of principals. The preceding section showed that the adoption of CSR initiatives is expected to be economically viable yet ecologically and socially viable. Such initiatives should be able to combine private and public interests effectively by means of agreements rather than through a ruling authority or through market mechanisms, and should be justified by shareholder and stakeholder interests. Regarding the relationship between corporate managers and owners, the latter represent a third party. This is not a novel situation. Traditional financial accounts address both shareholder and stakeholder concerns⁴. Stakeholder concerns are assuming increasing weight, however, with new actors and claims coming to the fore, to the point that 'corporate self-regulation [may] reflect not so much a desire by corporations to govern themselves but a need to respond to public pressure' (Falkner, 2003, p. 79) in a context of growing independence from the state.

This trend draws attention to a theoretical point: The notion of answerability refers to a justification of one's own conduct in front of a judge (Pellizzoni, 2004) – towards a third party. This relationship is also at the core of the notion of publicness (as opposed to privacy). Public discourse has been related to three different codes (Ku, 2000): inclusion/exclusion (*who* is able to speak), openness/secretcy (*what* it is possible to talk about), and accountability/unaccountability (*how* one is allowed to talk). The latter probably represents the key element. According to Dewey, 'a public consists of all those who are affected by the indirect consequences of transactions to such an extent that it is deemed necessary to have those consequences systematically cared for' (1927, p. 245-6). Publicness thus entails acknowledgement that someone is entitled to meddle in our own business, to have a say, to judge it. Transactions are private when their consequences are deemed to affect only those actors who are directly involved; they are public when participants (whoever they are and whatever they are talking about) discuss and act (also) by considering external interests and viewpoints. As a consequence, what is public and what is private cannot be specified in substantive terms, once and for all.

Thus if inclusion is a matter of democracy and openness is a matter of transparency, accountability is a matter of publicness. It involves a third party (the public). There is no 'private accountability' as such: Any account requires a reference to independent viewpoints and criteria. To judge means to confront the object of judgement with a (cognitive, normative, affective) term of reference that lies outside the relationship between agent and principal. Such a term – the third party, the public – must be specified. The third party is not 'one of us', a mirror of us, or a total alien. Confrontation requires a benchmark, some entitlement and ability to look at, question, evaluate. The third party looks like a 'stranger' (Simmel, 1908): close and distant, member and nonmember, an involved but detached observer. The third party belongs to a broader 'us' that we grasp but have to qualify. Being accountable *to* somebody implies

saying *who* the latter is, for *what* we have to account and *how*, by using what language and what factual or principled references.

Accountability therefore means an acknowledgment of a difference between ‘us’ and ‘them’ and then searching for those elements that single out such a difference and that may provide terms for inclusion. Inclusion is always tentative and contingent. It can be more or less adequate, according to our ability and willingness to grasp and address difference. Many factors affect our understanding of this third party, the public: our awareness of possible consequences of our actions; how we define such consequences; our normative judgements about the consequences we deem to be requiring control; and who we regarded as being directly and indirectly involved (Geuss, 2003). Defining the public is a difficult task, particularly if it is a counterfactual, self-reflective endeavour, as with future generations or interests not represented at a deliberative table. The risk is failing to ‘make the other strange’ (Gurevitch, 1988), to produce a mirror of oneself, to *start* from an ‘us’ rather than to *arrive* at it or to find ‘thirdness’ within sameness and identity rather than the opposite. If this happens, accountability becomes pure self-reference and publicness becomes privacy. Typical indications of private, self-referential, fictitious accountability are a lack of friction between answerable subjects and their public, statements about third-party concerns as being ‘entirely our own’, and disappearance of conflict or unaddressed questions.

This is the antinomy of accountability. The latter requires publicness, thirdness, alterity. But then its task can never be entirely fulfilled. Should this happen, it would contradict itself; if agent, principal and public overlap, everything can be said, but nothing needs to be said. Everything the accountable subject does is just what everyone would have done or asked for. Full accountability is possible only between identical subjects as a self-reflexive, empty exercise, a mirror that mirrors itself. Accountability is a fruitful endeavour, therefore, only when it acknowledges otherness as something that cannot be returned to sameness (Shearer, 2002) and engages with it in a never-ending dialogue in which reciprocal understanding is always partial and contingent.

Re-entering the public: Accountability and self-reference in contractual arrangements

To whom and for what may one be required to account? Situations vary widely. Yet, at a basic level, any account refers to a community and a solidarity framework according to which a division of labour – a particular distribution of roles, burdens and benefits – is legitimized. As noted, justifications appeal, though often indirectly, to acknowledged rights to hold social positions, manage questions of common interest, define collective goals, take communal responsibilities, and obtain valuable resources. Such a distribution of social goods is maintained as ultimately being in the interest of ‘all’ – agents, principals and acknowledged third parties⁵.

Accountability spreads today in a context of declining state and community-centred institutions in which a growing number of public goods become common goods, with consequent problems of under-maintenance and over-exploitation and need of regulation⁶. This is due to an increase in the number of users and their ability to exploit goods as a result of scientific and technical advancement and other intertwined reasons: demographic, economic, political, legal, cultural, and ‘natural’ (not ascribed to human action). When one breathes air polluted by industries and traffic; when access to a beach

is hampered by crowds of tourists; when a town council transforms a park into a building site; when new biotechnologies select and transfer genetic traits from one living being to another – in these, as in many other cases, air, sunshine, land and genes are perceived as common goods rather than as public goods.

Weakened state authority and weakened communal ties, in combination with an increased need for regulation, lead to fully privatized accountability arrangements. Traditionally, limits are set on the owners' freedom to decide about their use of goods and on non-owners' access to such goods. Property rights and contract capabilities are subject to the rules of law, aimed at protecting nonuser, public interests. The scope of this endeavour is narrowed by the decline of command and control regulation, however, and by the spread of private governments, with major implications for accountability. The more the freedom of private actors is confronted with a ruling authority, the more their accountability can ultimately be returned to the political forum where the regulatory frame has been established⁷. The weaker such a frame, the greater the actors' freedom to find balance between various interests – their own and those of the public – as specified by themselves. Third parties no longer impinge on the contract as a transcending principle (the people's will, the common good) that finds concrete inflection in the mediation of competing interests within political institutions; they become a fictitious entity produced by the contract itself.

Environmental policies offer ample evidence of that. Many third-generation instruments create clubs of users that share a non-rival interest in their use and maintenance (Prakash, 2005). Firms that subscribe to voluntary agreements or adopt ISO 14000 or EMAS are expected to take them seriously, bearing the related costs, because the expected benefits depend on the effectiveness and credibility of their application. The alleged strength of the approach lies precisely in this squaring of the circle: Firms act in their own interest, improving market competitiveness and attractiveness, while simultaneously acting in the interest of the public, improving economic efficiency and environmental protection. Yet, as noted, they cannot be made accountable for anything more than those commitments that they have negotiated or freely established with a single-handed obligation. The same happens with any CSR or consumer initiative, to the extent that accountability is framed by the answerable actor or its principal⁸. Accountability, therefore, ultimately depends on how the parties to a formal or implicit deal define the public. Such parties are sovereign precisely in Schmitt's (1922) sense. They decide on a state of exception. No overriding rule may be applied to define and balance private and public interests. They are rulers of themselves.

Systems theory provides what is perhaps the most stringent description of this issue. According to Luhmann, 'in a fully individualized, functionally differentiated society, any individual system can perceive external inputs only in terms of "perturbations" or "irritations" that to become meaningful need to be interpreted according to its own code' (Luhmann, 1993, p. 494)⁹. That is why political steering becomes increasingly problematic. If politics operate through the exercise of power and economy is sensitive only to money, the former cannot drive the latter, but can aspire only to promote its self-steering, a self-amendment in the desired direction (Luhmann, 1997). As citizens, persons may be committed to reducing environmental damage or promoting development. As entrepreneurs, they cannot but look at the cost effectiveness of their business, if they are to survive.

If a proper translation is impossible because any individual system works according to its own code, however, how do 'irritations' operate? According to Luhmann, they

work through *re-entries*. ‘A distinction re-enters itself if it is copied into itself. It then reappears as part of its own space, as part of what it distinguishes’ (1993, p. 485). Re-entry thus designates a process by which an observation – the distinction of something from something else (an act of sovereignty in Schmitt’s terms) – is reproduced within one of the poles of the distinction; ‘It is the “internalization” of the external/internal distinction’ (Teubner, 2002, p. 205).

The public thus becomes a distinction internal to the private pole of the distinction between private and public. What is public and what is private is privately established. The external becomes a category of the internal. The third party is included only in the sense that it re-enters as a codified description. The differentiation between the inner and outer side is internalized and so becomes ‘visible’ and ‘meaningful’. For example, cost-benefit analyses or insurance programmes re-enter the difference between monetary and non-monetary values by fixing a monetary value to the latter, as with the loss of a human life. Firms re-enter the distinction between profit and environmental protection or community development by assessing the profitability of ecological or development programmes. Consumers re-enter the difference between tastes and ethical or political issues in their own buying behaviours – that is, through their choices of taste.

Thus if in principle nothing prevents self-regulating actors from looking for and listening to third-party claims, in an increasingly individualized and differentiated society there are fundamental obstacles to this endeavour. Consider what the structure of contract implies. 1) Actors are understood to be fully rational and autonomous individuals – literally ‘non-divided’, that is, they are viewed as self-sustaining, cohesive units. 2) They are only contingently tied and definitively released after completion of the exchange. 3) Any power asymmetry disappears behind the formal equivalence of counterparts. 4) Exchange is symmetrical because it is so defined by the counterparts’ will; thus goods are perfectly substitutable, among themselves and with money. 5) No other concern is relevant unless specified and accepted by the contracting parties. 6) To be considered, third-party interests must be made to fit in the deal; the contracting parties are, by definition, the only stake- and goal-setters. Thus the public is tailor-made, framed within the issue as defined in the deal.

Regarding the contracting parties, their formal equality is apparently similar to the one typical of political fora. To ensure equality essentially means to limit or ban restrictive covenants favouring the more powerful parties. The weaker the weight of the political and legal institution, however, the lower the probability of enforcing suitable rules. Moreover, even the most sensitive, well meaning parties may find it difficult to consider public interests. Voluntary regulation and self-regulation do not provide fora for dissecting and discussing issue framings that are comparable to those of political institutions, with their broadness, transparency and democratic stance. Admittedly this is, in part, a matter of designing appropriate deliberative procedures. The literature on CSR and private governments show, however, that profitability provides a meta-frame overarching any other issue and concern. By their very nature, ‘companies are not development agencies’ (Frynas, 2005, p. 593), which means that even the most publicly oriented initiatives are likely to be framed by self-regarding aims (for example, improving corporate image, maintaining a stable working environment). When substantial benefits are provided, they are usually ‘philanthropic gestures’ (Frynas, 2005; Newell, 2005) rather than proper responses to stakeholder needs and claims – they are sovereign decisions by which the good of others is self-referentially defined¹⁰.

In summary, within political institutions, the antinomy of accountability – the community as accountable to itself for itself – was somehow circumvented by providing suitable fora for the confrontation of concrete interests, the public one resulting from contingent agreements, the scope and fairness of which was related to the effectiveness of rules enforced under the assumption of a reciprocal political obligation. Such fora, adjusted and refined by trial and error over a number of centuries, are now increasingly replaced by or reproduced within and according to contracts or single-handed obligations, with the sovereignty to decide about public interest taken by private actors. The narrower the scope of such sovereignty (for example, profitability as a meta-frame, self-organization of deliberative fora, limited acquaintance with issues reaching beyond the scope of organizational activity), the narrower the sovereigns' view (their willingness and ability to conceive) of third parties, and the more self-reference shines through. If social, economic and political change threatens the traditional bases of trust, legitimacy and solidarity, contractualization seems to be an insufficient response. Rid of old institutional constraints, the antinomy of accountability spreads like a worm in the networks of governance, possibly further eroding the social ties.

Coping with antinomy: Celebrating self-reference or addressing alterity?

The problem outlined in this chapter has the structure of a deadlock. The crisis of state-centred political institutions reveals the antinomic core of their relationship with citizens. Efforts to make institutions more transparent and accountable are confronted with growing dissatisfaction with their unaccountable and inefficient self-referential logic. Governance as an answer to the weakening of traditional bonds of trust, legitimacy and solidarity tries to thrust back the problem by transferring powers to horizontal networks while simultaneously strengthening their accountability. The contractual structure of networks, however, reproduces and spreads the antinomy. Governance may promote reflexivity in regulation, but not necessarily in the positive sense usually stressed. The ambivalence of the term – reflexivity as extrovert learning or introvert mirroring of oneself – is indicative of the ambiguity of the entire process.

Indeed it is possible to acknowledge this issue without drawing negative conclusions about its social effects. Again, systems theory provides the cleverest version of this argument. If individualization and differentiation of society entail a growing 'collision of discourses' (Teubner, 1996), what are the results of a 'link-up' that operates through 're-entries'? If Luhmann is ambivalent on this point, Teubner is explicit, maintaining that the spread of autonomous private governments is capable of effectively replacing the old social order, and the interaction among these governments produces a spontaneous harmony by means of 'productive misunderstandings' (Teubner, 2002). From this viewpoint, accountability works because it is misleading, not in spite of its being misleading. Accountability provides misunderstood answers to misunderstood questions. So, for example, many development initiatives exist because firms interpret community needs in terms of philanthropic gestures to 'calm down' their social environment, while local people read their own deprivation as an 'entitlement' to receive gifts (Frynas, 2005). Similarly, companies respond to consumers' political or ethical questions because they interpret them as economic questions (shifts in product demand) – the only ones that make sense for them – whereas consumers welcome modifications in product provision because such changes meet their concerns. One

could argue that consumers may understand firms, but simply do not expect firms to exhibit sincere ethical commitment. Yet consumers' concerns are *not* economic, as are the concerns of firms: A fundamental mismatch of meanings remains, and the bet is that non-economic aims can be re-entered in full as economic aims. Actually there are four basic questions. What (there is no possible who!) ensures that any desired outcome will be achieved? Why should misunderstandings be productive rather than destructive? Above all, in context of reciprocally unaccountable actors, who is entitled to decide that an outcome is positive or negative – in what respect and for whom? Can agreements be considered positive, independent of which sovereigns make the crucial distinction between private and public interests and between sameness and otherness?

Commento [MB1]: I didn't understand this sentence.

Indeed the very notion of a productive misunderstanding is contradictory because, by definition, a process with no drivers can have no purpose. On closer look, one grasps that the systems perspective on governance suggests a new version of the invisible hand: a mysterious, quasi-magical meshing of fully independent and reciprocally insensitive spheres of action. Such reformulation, however, is even more problematic than the original. On the one side, the invisible hand rested on a network of broader social ties (Sen, 1987), now remarkably weakened. On the other side, the invisible hand was supposed to work, as it were, 'automatically': Individuals contributed to the common good by simply looking after their own interests; whereas, in its 'governance' version, they decide at the same time upon their own good and the common good. Win-win outcomes, however, can hardly be taken for granted. In developing countries there are plenty of 'non-functioning white elephants' (Frynas, 2005, p. 587) – unfinished buildings, unused machines, broken devices – testifying to the failure of dialogues of the deaf, misunderstood misunderstandings between companies and local people. And consumers' ecological concerns often create new market segments, with a consequent increase in resource depletion and waste production. The sovereigns of the distinction between private and public are expected to gain, first and foremost, merely because they re-enter the public interest in their own private interest. Whether or not benefits will reach the environment, disadvantaged groups and other stakeholders, and what those benefits will be, are questions that a self-referential accountability is ill-equipped to address.

The idea of productive misunderstanding, like that of 'structural coupling' or 'resonance' (preferred by Luhmann [1993]), is indicative of the difficulty of conceiving of something – a bridge or a tie between functionally differentiated spheres – that is still needed if society is to survive, but is extraneous to a logic of separation, immunization and unaccountability. This logic lies deep inside modernity, the contractualization of governance representing its full-fledged expression¹¹.

Modernization is an encompassing process centred on rationality, universal rights of individual freedom and equality, and a dynamic and forward-oriented vision of life. Everyone is now or will become a citizen, accountable to fellow citizens – that is, to oneself. There is no one outside the modern city – no one worthy of consideration. If there are people 'out there', they look like barbarians; I use the word in its original meaning, to be found in Plato or Aristotle (Berti, 2003). Barbarians are people who talk a totally different language, so it is impossible to dialogue with them, to grasp and consider their claims. There is no way for the two parties to understand each other. There is no dialogue and no reciprocal accountability. The only possible relationship with barbarians is war – unless they begin speaking our language, unless they apply for the status of citizens.

We can recognize here a typical stakeholder dilemma that is involved in CSR. Stakeholders can enter into 'community-based accountability strategies'; that is, they can pursue informal, sometimes illegal, 'micro-strategies of resistance' like petty sabotage and blockades or popular and worker epidemiology, aimed at 'registering dissent rather than expecting to bring about change in the behaviour of the company' (Newell, 2005, p. 547). Or stakeholders can attempt to gain weight in private governance at the cost of leaving unpacked its underlying premises (overall benefit of profit-seeking initiatives and market as a driving force, for example), leading to forms of interdependence or cooptation that automatically legitimize corporations and entail a loss of cognitive, normative and financial autonomy (Falkner, 2003; Klintman and Boström, 2004).

Although a major part, this is only part of the story. Self-reference dominates, but it does not totally bar a dialogue between identity and alterity. The literature on environmental governance and CSR reports cases of successful dialogue and constructive relationships of accountability; and this in a variety of contexts ranging from Swedish eco-labelling (Boström, 2006) to Nigerian community development initiatives (Frynas, 2005). These cases usually entail time- and energy-consuming efforts to provide fair and broad representation of concerns, promote community empowerment, and establish appropriate fora for confrontation and reciprocal learning.

Insight from case studies is valuable. It may help us to understand the extent to which corporate commitments in a context of competition and growing stakeholder awareness and expectations promote a snowball effect, for example. It may also help us to grasp the role of unconditional cooperation, the unconstrained assumption of responsibility, retreat from the exercise of a power and intentional payment of avoidable costs, which seem to lie at the core of some successful experiences (Frey, 1997). Such features share a resemblance with a particular form of gift: the nonreciprocal, open, 'first' gift (Simmel, 1908) with which, as with blood donation or a mother feeding her baby, one 'gives something for nothing' (Gouldner, 1973), renewing the social tie beyond the symmetrical relationship of contract and formal reciprocity (including modern citizenship) and beyond the closed, self-referential asymmetry of corporate philanthropy, humanitarian aid and any other gesture of sovereign benevolence.

If, as has been argued (Esposito, 2002), what we have in common is what is not our own, it is an absence rather than a presence, a deficiency rather than a good, an original gift that can never be fully reciprocated, then the best clue to how we can circumvent the antinomy of accountability is perhaps provided by the distinction between barbarians and strangers. To grasp this concept we can look again at ancient Greece. Strangers, as opposed to barbarians, were recognised as part of a deal by which reciprocal rights and duties were defined (Derrida, 1997). Strangers did not become citizens; they retained their status. Being provided with a recognizable identity, however, they could build stable relationships with the city. As we have seen, publicness in accountability means just that: the acknowledgement of strangers – people who are not and will not become part of us, principals and agents – with whom we can, however, talk and find contingent, revisable agreements; the acknowledgement that, in our turn, we are strangers to others who have to account for whatever they are indebted to us.

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Notes

¹ *Rapporto Ambientale 2003*, Caffaro SPA, www.caffarochem.com

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³ This holds also for joint shopping, as practised by some consumer groups. Its public relevance rests on the symbolic value it may have for third parties – its ability to exceed the boundaries of a particular consumer-producer (or retailer) relationship.

⁴ This double function is related to the economic actors' recognized social role as producers of individual, yet at the same time of collective wealth. See Friedman's statement reported above and, behind it, the powerful metaphor of the invisible hand to which I return later.

⁵ Justificatory arguments are of two basic types, according to an instrumental or principled definition of interests. Either my control over a material or immaterial good (from soil to knowledge) yields more than you would obtain by managing it yourself, or it follows on a moral or religious rule: If you accept it you will be rewarded in this or another life; if you disregard it you are bound to be swept away by the consequent disorder of the world.

⁶ As usually defined, commons, like rivers or open grazing lands, entail easy subtractability and difficult excludability. Their users have equal access and competing interests. Public goods are instead characterised by difficult excludability and subtractability. Everyone has access to them without affecting anyone else's use. Paradoxically, therefore, public goods have no proper public! This is easily explained. In the expression 'public goods', the term 'public' is used to mean 'pertaining to all of us' rather than 'pertaining (also) to third parties'. Note, however, that although some public goods, like sunshine, are available without social labour, others, like the security provided by police, need it and are regulated accordingly. Then such rules are accounted for by referring to some transcendent point of reference. God, human nature, fairness, the people, the common good, the national interest: these and other notions provide a fictitious third party, the purpose of which is to hide the basic political antinomy.

⁷ For example, anyone who regards the way I legally use my property as being detrimental to the public interest will have to appeal to legislative powers to modify the corresponding rules.

⁸ Command-and-control regulation is not disappearing, but enters an ambiguous relationship with third-generation approaches and, more generally, with CSR. Voluntary regulation or self-regulation replaces state regulation, yet its role is strengthened if legitimized by government authorities. It improves compliance with state regulation, but at the same time replaces government responsibility-taking (Falkner 2003; Prakash 2005).

⁹ Codes are binary oppositions by which systems elaborate information from the environment, producing their own elements of meaning. Codes, in other words, allow the self-reproduction of systems. For example, science applies the true/false code, whereas law applies the right/wrong code.

¹⁰ Oversensitivity to stakeholder concerns may represent no lesser problem than lack of sensitivity, however. As Vogel (2006) has remarked, for example, if developing countries applied the same

restrictions to the employment of young workers as Western countries do, families living in developing countries would probably suffer far more by finding their income substantially reduced. This means, however, that listening to stakeholder preferences may sometimes protract social injustice. Preferences are context-dependent. Yet to change the context is hardly a goal to be privately pursued by means of civil regulation. It is a matter of proper political action aimed at strengthening citizen rights and promoting democratization.

¹¹ Current communitarian revivals, from religious fundamentalisms to the plea for cultural rights in liberal democracies, seem to offer a (not necessarily desirable) alternative. However they follow the very logic of immunization they pretend to counter. Community is invariably understood in substantial terms, as provided with a proper essence: a blood, a soil, a language, a tradition, a religion, a core value system. Any of these instances reproduces the antinomy of accountability: As a member of the community, I am accountable only to those who are just like me and for what is our own.