This is a repository copy of *Reconciling credibility and accountability: how expert bodies achieve credibility through accountability processes*.

White Rose Research Online URL for this paper:
https://eprints.whiterose.ac.uk/135330/

Version: Accepted Version

Article:

Reconciling credibility and accountability: How expert bodies achieve credibility through accountability processes

Claudia Landwehr[a] and Matthew Wood[b]*

*a*Political Science, Johannes Gutenberg University, Mainz, Germany; *b*Political Science, University of Sheffield, Sheffield, United Kingdom

*

Dr Matthew Wood, The Department of Politics, University of Sheffield

Elmfield, Northumberland Road, Sheffield, S10 2TU,

Matthew Wood is a lecturer in Politics at the University of Sheffield. He has published on expertise, and political legitimacy in a range of outlets including the *European Journal of Political Research*, *Political Studies*, and *Public Administration*. His forthcoming book *Hyper-active Governance* (Cambridge University Press) deals with how governments manage tensions between the desire to allow experts autonomy in public policy decisions and the need to hold them accountable.

Claudia Landwehr is a professor of public policy at the Johannes Gutenberg University Mainz. Her work focusses on the evolution of democratic institutions and the distributional consequences of institutional design. Her most recent publications deal with challenges of strategic institutional design (*Government & Opposition* 2016), citizens' conflicting normative conceptions of democracy (*Political Studies*, 2017) and the necessity of preserving the procedural consensus through democratic metadeliberation (*Political Studies* 2015).

Reconciling credibility and accountability: How expert bodies achieve credibility through accountability processes

Arguments about the legitimate role of expert bodies in Europe often center on the following question: Does their independence help to make policies credible or should they be made democratically accountable to principals and stakeholders? This article claims this is a false dichotomy. It does so by arguing theoretically that credibility can be achieved through accountability processes. Then, drawing on exemplary case studies, this article identifies distinctive accountability processes for ensuring credibility: revisable competencies, deliberation over institutional design, and engagement in public justification. Credibility and accountability are thus not conflicting, but co-constitutive aims of delegation to expert bodies. The analysis provides European policy makers and others with a guide for thinking beyond the contrast between 'democratic accountability' and 'independent credibility'.

Keywords: delegation, accountability, credibility, expertise, legitimacy

Word count: 8.452

Introduction

In 1996 Giandomenico Majone claimed that 'the delegation of regulatory powers to an independent institution is … a means by which governments can commit themselves to regulatory strategies that would not be credible otherwise' (1996, p. 4). In this analysis, the main benefit of delegating competences to independent bodies staffed with experts is to create 'credible commitments' to policies that politically 'biased' elected governments would otherwise change periodically according to electoral demand. Majone (1996, p. 4) recognised the problematic implications delegation has for democracy, but also offered an algorithm for deciding which powers could and should be delegated, arguing that 'redistributive decisions can only be legitimated by the will of the majority, while efficient policies are basically legitimated by the results they achieve' (Majone 1996, p. 12):

The solution … divides the general problem into two parts: first, the type of issues that can be legitimately delegated to independent experts; and, second, the means by which indirect accountability may be enforced (Majone, 1996, p. 5)

Majone's argument for credibility via independence created a divide between scholars arguing for agencies to be protected from external interference to secure their credibility (Breen & McMenamin, 2013; Elgie & McMenamin, 2005; Keefer & Stasavage, 2003), and scholars arguing for increased accountability through parliamentary or governmental oversight (Flinders, 2004; Papadopoulos, 2003; Scott, 2000). This article marries the first school's stress on credibility with the second school's focus on accountability, to argue that credibility can and has to be ensured *through accountability mechanisms*. This approach seeks to move debates about the relationship between delegation and accountability beyond the idea that they are antithetical. It also generates criteria for credible agency commitment based on three forms of public accountability: institutional reform via central intervention, deliberation over institutional design and public justification (see Schillemans, 2011). The article thus addresses the question: How can expert bodies ensure and maintain credibility through distinct accountability processes?

We argue that expert bodies struggle for credibility in the context of different types of political problems, which we try to capture by drawing on Jürgen Habermas' (1992/1994) distinction between pragmatic, ethical-political and moral discourses and respective decisions. Drawing on three case studies, the article discusses credibility crises faced by expert bodies operating in three different policy areas. All of the crises saw the respective body's credibility challenged and more or less successfully retained through accountability processes. We thus offer an argument for improving credibility *through* accountability processes: revisable competencies, meta-deliberation over institutional design, and engagement in public justification improve the credibility of expert bodies in the eyes of the public.

The remainder of this article proceeds in six sections. First, we argue that it is possible to resolve a tension between credibility and accountability to be found in the literature on agencies, delegation and expert decision-making. Second, we set out our conceptual framework of three forms of credibility 'challenges', based on Habermas' three forms of discourse. Third, we set out our process analysis method, rationale for the case studies, and data collection strategy. Fourth, we detail the findings from each case study in turn. Fifth, we discuss the implications of our argument for accountability practice. We conclude by indicating how future research may build upon our view of credibility being closely linked to accountability processes.

The contested credibility of expert bodies

The concept of 'credibility' is a crucial, albeit often undefined, concept in the study of delegated expert bodies. Existing conceptions focus on the autonomy of expert bodies from electoral pressures, but also from vested interests or industry lobbying' (Coen & Thatcher, 2008, p. 53).

Majone thus assumes that long-term policy goals will be achievable once an agency insulated from sectional interests or electoral motivations is given responsibility for decisions (Majone, 1996). As Elgie states:

> Governments have an inherent interest to renege on their promises in order to maximise
> their short-term self-interest, usually reelection. However, if governments delegate
> decision-making authority to a non-majoritarian institution (agency), then they show that
> they can be trusted not to intervene in the decision-making process and policymaking
> maybe more optimal (2006, p. 208).

A key question structuring prevalent approaches to 'agencification' in European governance has therefore been identifying whether and where independence as the assumed key to credibility is preferable to democratic control through accountability mechanisms (Elgie &

4

McMenamin, 2005). There is strong evidence to suggest 'credible commitment' is a key motivation behind establishing delegated agencies (Elgie & McMenamin, 2005; Gilardi, 2002), especially in consensus democracies with multiple veto players (Yesilkagit, 2004). Yesilkagit (2004, p. 126) finds clear evidence that 'the logic behind the commitment problem will induce political actors to design administrative organisations that are as effectively as possible insulated from political interference'. Elgie (2006, p. 225) also finds 'the desire to make a credible commitment, really do[es] seem to explain in large part why non-majoritarian institutions are created'.

The emphasis on credibility in this literature, and growth of such agencies in practice, has provoked a parallel literature on the need for improving democratic accountability in 'networked' or 'polycentric' governance (Scott, 2000). Several authors have argued that the complex forms of multi-level governance created by the rise of the agencies described above have led to an 'accountability crisis'. Scott (2000) typifies this view:

> The central problem of accountability arises from the delegation of authority to a wide range of public and some private actors, through legislation, contracts or other mechanisms … Debates over accountability have to grapple with the uncomfortable dilemma of how to give sufficient autonomy to these actors for them to be able to achieve their tasks, while at the same time ensuring an adequate degree of control (Scott, 2000, p. 39).

Scholars have argued along with Scott that there is a tension between a 'perceived need to insulate certain activities from political influence' and a reality that 'the existence of organisations enjoying a degree of autonomy can make the lines of accountability somewhat opaque due to the existence of a 'buffer zone' between elected politicians and action' (Flinders, 2004, p. 898). Papadopoulos (2007, p. 477) intriguingly notes that attempting to balance the two may not work in practice because of the need for credibility: 'to claim credibility, [delegated agencies] have to convince of their independence. They should not

appear as the vehicles of the preferences of any 'principal' to which they would have to account'. As such, the pure potential that a democratically elected 'principal' (parliament or state department) may hold agencies to account may not be enough. Once credibility becomes a key criterion for legitimate rule, there is a slippery slope in which delegated agencies gain greater power, eventually becoming 'depoliticised' (Fawcett & Marsh, 2014). As Papadopoulos (2007, p. 473) notes, delegation is 'not conceived primarily in terms of its potential for democratisation of policy making, but meant as a solution to functional problems' (Papadopoulos, 2007, p. 473). This is why democratic channels for participation in these bodies are weak: Where networked 'peer' accountability forums have been installed (Romzek, LeRoux and Blackmar, 2012), these explicitly exclude the wider public sphere and are often designed to enhance credibility by mainly involving scientific elites (Perez-Duran, 2017).

The argument that a focus on credibility leads, in the last instance, to an instigation of expert rule has led to an unfortunate bifurcation of debate between those arguing for credibility as an enhancing facet of wider democratic governance, and those who reject it in favour of clearer lines of accountability. Summarising this debate, Maggetti (2010) argues that on the one hand, improving the 'procedural legitimacy of regulatory governance, […], may challenge the [agencies'] main raison d'être, that is, the supposed gains in terms of credibility and efficiency of regulation', while on the other hand, 'independence produces a net loss of legitimacy for a political system' (Maggetti, 2010, p. 6). Thus, Maggetti concludes with a theoretical dilemma, suggesting the legitimacy of agencies rests on 'fragile normative foundations and raises potential qualms concerning its social sustainability' (Maggetti, 2010, p. 6).

This article argues that this theoretical dilemma about the sustainability and normative foundations for delegated governance can be addressed by combining and refining the

concepts of credibility and accountability. Specifically, we argue that accountability can enhance credibility, when 1) credibility is conceptualised as a quality of policy decisions (rather than institutions) that must be accepted by the public as credible, and 2) accountability is viewed as a dynamic process involving responses to challenges to an expert body's credibility.

(1) First, agencies need to take decisions that *qualify as credible*. Credibility is thus a property of decisions, but by derivation can become a property of institutions (in this case agencies). According to the understanding in this article, a decision is 'externally' credible *if the validity claims it is based upon are made explicit and successfully defended.* This definition highlights that agency decisions are not only credible due to their staff being 'committed' to them, nor due to the existence of 'independence' per se. Rather, credibility is the quality of a particular decision or piece of advice, which is based on contestable claims that do not carry prima facie authority over the public. Externally obtained credibility is necessary, but not sufficient for authority. Authority also depends upon other factors, such as those summarised in Carpenter and Krause's concept of reputation (2012, p. 27), which refers to long-run facets of a body rather than its decisions. As the credible commitment literature highlights, it also requires the internal 'commitment' of a body to act upon its mandate. Majone recognised that external perceptions of credibility are crucial for independent agencies' legitimacy, but as illustrated above in the debate around accountability this nuance ought to be reasserted.

(2) We argue that public accountability can enable achieving credibility in the context of challenges. Public accountability, as defined by Bovens (2007, p. 450) refers to '*a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass*

judgement, and the actor may face consequences' (italics in original). This relationship is characterised as a threefold process of information provision, discussion and consequences. The 'forum' can be towards a central government department, or the broader public or media. Critically, however, accountability processes are often *dynamic* rather than structured rituals (Busuioc & Schillemans, 2014) and often occur under conditions of political stress or controversy (Romzek & Dubnick, 1987). Instances where credibility is challenged may be called 'credibility crises', potentially leading to accountability processes being triggered. Here, as Schillemans, Van Twist and Vanhommerig (2013) note, there is a connection to broader issues of legitimacy. If a body becomes discredited on the basis of its credibility, accountability processes may be triggered, during which questions of organisational legitimacy and learning capacity are raised (Wood, 2015). If the credibility challenges a body is experiencing can be resolved via accountability processes, and it comes out of a crisis with similar and even enhanced credibility, then accountability can be seen to enhance, rather than counterbalance or oppose, credibility.

Types of discourses and credibility challenges

To understand how credibility may be enhanced by accountability, it is necessary to capture the variety of ways in which the validity claims behind agency policies are constructed and contested. Above, credibility was defined as a quality of decisions that derives from the *validity claim*s they are based upon being successfully defended. The construction and contestation of validity claims in political discourses has been seminally theorised by Jürgen Habermas. In *Between Facts and Norms*, Habermas distinguishes between three types of political problems and corresponding discourses in which validity claims are raised and

contested: pragmatic, ethical-political and moral ones (Habermas, 1992/1994). He views

these as components of the practical reason that citizens and decision-makers apply in

answering the superordinate question 'What shall we do?' (Habermas, 1992/1994, p. 197):

(1) *Pragmatic* questions and discourses concern the selection of adequate means for given ends. They can give rise to conflicts over facts in which different actors or groups try to defend opposing validity claims about facts and causal relationships. In pragmatic discourses, speakers try to establish the truth of assumptions or premises and seek to derive conclusions for the instrumental adequacy of alternative options or strategies. Pragmatic discourses centre on empirical or scientific evidence and arguments.

(2) *Ethical-political* questions concern matters of identity and community. In corresponding discourses, political communities seek to find out 'who we are' and 'how we want to live' (Habermas 1992/1994, p. 198). Ethical-political questions may give rise to disputes over what is good for our community at this point in time or about what constitutes a 'common good'.

(3) *Moral* questions are questions of justice. They concern norms that take the form of categorical imperatives: options that entail moral wrongs according to these norms *may* not (and not only: should not) be chosen, even if they promote other goods. The 'correctness' of moral norms is independent of time and place. However, in most political communities, there is no consensus on the validity of moral norms and priorities between them. Disagreements on moral norms may lead to particularly acrimonious conflicts over whether actions or rules are morally correct or not and about how conflicting (and perhaps equally accepted) norms should be prioritised in their application.

In each case there is a question of whether individuals or groups tasked with a particular objective are equipped to carry out or achieve the task they have been given, *on the basis of different criteria*. Table 1 below highlights the distinctive features of each dimension.

Table 1. Dimensions of Credibility Crises

Dimension	Key question	Agency functions	Policy areas	Credibility challenge
Pragmatic	What are appropriate means to given ends?	Regulation	Medicines, food safety, cartel authorities	Independence, expertise, absence of vested interests
Ethical-political	How do we want to live as a community?	Development of policies, statutory instruments and guidelines	Immigration and asylum, working conditions, education	Justification with regard to societal interests and values
Moral	What does justice require?	Advising governments in morally controversial questions	Assisted dying, IVF treatment, animal testing	Deductive consistency and coherence with moral norms

Obviously, the three types of questions and discourses can only be distinguished at an analytical level, and contestations of credibility will typically involve aspects of all three. However, in many political conflicts, one question seems to dominate the others. For example, the debate on how to credibly fight climate change is first of all a pragmatic one, since most people seem to agree that climate change should be prevented. Immigration is an example of an ethical-political question, or rather: one that most societies chose to treat as an ethical-political one (what is good for us, now and here?), rather than a moral or pragmatic one. Finally, questions such as the permissibility of assisted suicide or research with human embryos are typically treated as moral ones.

The assumption of this article is that expert bodies are set up to take on tasks concerning pragmatic, ethical-political or moral questions. Depending on the type of

discourse they are supposed to complement, their own design and decision-making processes face specific credibility challenges on the basis of these different questions. Table 1 hypothesises some credibility challenges that respective bodies may face. In the case of pragmatic discourses, where debates principally concern specialised factual information, credibility issues concern the superior expertise of the body's members and their independence from both government administration and from potential vested interests. Given the specialised scientific evidence involved in assessing, for example, new medical technologies or financial market regulation, public engagement is often limited. Therefore, central government must ensure control over the body's goals and prevent expert domination and regulatory capture. By contrast, bodies addressing ethical-political discourses face the need to justify their decisions in public. The social and public activities they regulate – like, for example immigration limits or working hours - are issues with wide accessibility and contestability among the public, and less insulated by technical considerations. Theoretically, then, there is an important question of the congruence between and recommendations of an expert body and the interests and values of the population, which may require justification. Finally, expert bodies dealing with moral questions face the challenge of a lack of public participation within their inner workings. While the questions they deal with can be highly specialised, they are also inherently contestable issues of justice and morality. Hence, their credibility will depend upon consistency and coherence with moral norms, but also on how diverse a range of views on these norms they include in their internal deliberations. We argue that it is situations of credibility challenges, if not crises, that accountability processes are typically initiated. This is why, in the second part of this paper, we empirically explore three cases of expert bodies dealing with credibility crises.

Three cases of credibility crises

We illustrate our argument that expert bodies face different credibility crises and can resolve them through accountability processes with three case studies. These case studies serve as a preliminary illustration of the theoretical considerations outlined above and are carried out as a 'theory-oriented process analysis' based on the reconstruction of events (Hall, 2008, p. 314). The rationale behind the case selection is, first, that we assume accountability processes to be initiated in response to challenges and have therefore selected bodies that underwent some kind of crises. Secondly, we have selected bodies that were set up to deal, respectively, with pragmatic, ethical-political and moral issues, as we assume challenges and responses to be specific to the type of decisions bodies are set up to address. As these case studies are explorative and exemplary in nature rather than intended to test hypotheses, the selection is thus based on the dependent variable: the occurrence of a credibility crisis, and its resolution, in each case. Our claims to generalisability are strictly limited: we merely want to demonstrate the payoff from exploring links between credibility and accountability and to identify key factors determining success in securing credibility through accountability processes.

Table 2. Case Studies and Their Application

Case study agency	Formation	Credibility Crisis	Reconciliation	Credibility created through…
IQWiG (Germany)	Advisory agency to the Schroeder government on funding for controversial drugs	*Pragmatic:* Disputes about its refusal to use cost-benefit analysis common in medical economics	Reduced institutional role, revised mandate	Revision of the agency's task and mandate by the government
National/German Ethics Council (Germany)	Advisory council to Schroeder government on bioethical policies	*Moral:* The council was perceived to represent only a one-sided (liberal) moral discourse	Reformed into a democratically mandated body informing wider public discourse	Reconfiguration of appointment and legal status
Independent Parliamentary Standards Authority (UK)	Advisory agency to Labour government on MPs' salary and expense rates	*Ethical-political:* Allegations its recommendations would see unjust pay increase for MPs	Eventual implementation of agency recommendations	Public defence by agency of the ethical-political justification for increasing salaries

The first case, the Institut für Qualität und Wirtschaftlichkeit (Institute for Quality and Efficiency in Health Care, IQWiG) in Germany is an exemplary case of an agency in charge of 'pragmatic' questions of distributing limited resources for funding controversial drugs. Here, pharmaceutical companies and campaign groups contested the validity of IQWiG's scientific methodology for the comparative assessment of new drugs (specifically through cost-benefit analysis). The outcome of this was a reduced role for IQWiG. The second case of the Nationaler / Deutscher Ethikrat (National/German Ethics Council), set up to advice the government on bioethical decisions, is exemplary of 'moral' problems. Here, the council's validity claims were challenged because they were seen as being biased towards a position

that sought to liberalise regulation. This crisis was reconciled as the agency became more democratic, with a more pluralistic membership and clearer democratic mandate. Lastly, the UK Independent Parliamentary Standards Authority (IPSA) exemplifies 'ethical-political' questions. IPSA was set up to advice on the salaries and expenses of Members of Parliament (MPs) after the 2009 parliamentary expenses scandal. The validity claim IPSA made was contested by opposition MPs, the media and campaigners who argued it would create unjust pay rises for MPs. Despite these criticisms, IPSA's recommendations were implemented by David Cameron's Coalition government in 2012.

In each case, the agencies survived the crises, retaining credibility through a particular accountability process. Our case studies seek to trace the factors leading to these outcomes. We find that a revision of the agency's task and mandate by the government (case 1), reconfiguration of its appointment procedures and legal status (case 2), and public justification by the agency itself (case 3) were critical (column 5, table 2). The cases thus exemplify the argument that credibility is not antithetical to accountability, but integral.

CASE 1: Pragmatic crisis - the Institute for Quality and Efficiency in Health Care, Germany

IQWiG was set up as an independent expert advisory body in 2004 by the red-green coalition government in Germany as part of a major reform package aiming to improve health care provision. The health care system was one of the first reform targets of the Schröder government, elected in 1998. The social democrats were critical of rising co-payments and insurance contribution rates, both of which have regressive distributional effects. Moreover, they wanted to break the pharmaceutical industry's traditional stronghold in German health politics and redirect resources from drugs to service provision and prevention. In 2003, a positive list for drugs had passed the *Bundestag*, which was supposed to render the default for

coverage decisions negative: no drug would have been covered without an explicit appraisal decision. However, this list was blocked in the *Bundesrat*. Inspired by the model of the already successful British NICE (National Institute for Clinical Excellence), the red-green government nonetheless stuck with its goal of introducing cost-benefit analysis to the German healthcare system.

Originally, IQWiG was to be modelled after a blueprint of NICE to make authoritative recommendations in decisions concerning coverage of controversial drugs. However, these plans were opposed by manufacturers and providers, so IQWiG was eventually equipped with fewer competences than intended. Compared to NICE, technology assessment and appraisal (coverage decision-making) are institutionally separated in Germany: coverage decisions are taken by a corporatist body representing service providers (contracted doctors and hospitals) and health insurance funds (the Federal Joint Committee, FJC). The FJC can charge IQWiG with reports, which it can take into account in its decisions. However, it can also draw on other sources of evidence and is free not to follow IQWiG's recommendations. The institutional separation of technology assessment from coverage decision-making may inadvertently have promoted IQWiG's credibility as an independent expert agency, as it unburdened its members from taking budget considerations into account in their decisions.

Nonetheless, IQWiG struggled to gain authority in health technology assessment. Its first chair, physician Peter Sawicki, was known to be pharma-critical and influenced by the Cochrane foundation's approach of critically assessing drugs for comparative advantage in major meta-studies. Under Sawicki's management, IQWiG developed a non-standard method of technology assessment. In short, IQWiG refused to carry out cost-benefit or cost-utility assessments that are standard in health economics. Using methods like the Quality-Adjusted-Life-Year calculus, these assessments enable a comparison of treatments pairs across different conditions, for example the cost-benefit of a drug for hypertension compared with that of a

cancer drug. IQWiG, by contrast, insisted on assessing only the comparative benefit of different drugs for the same condition, comparing, for example, different drugs for diabetes. IQWiG thus evaded the discussion on priority setting and rationing in service provision by ruling out a ranking of services which would have enabled the definition of a basic health care package.

Within expert circles, IQWiG's method was seen as peculiar and openly criticised. Sculpher and Claxton, for example, write: 'By effectively ignoring the implications of resource scarcity, it [IQWiG] fails to inform the German health care system on whether new technologies offer value' (Sculpher & Claxton, 2010, p. 1135). Kuhlmann et al. argue that 'IQWiGs efficiency threshold is entirely inadequate' (Kuhlmann, Schöffski, Schumann, Landshut, & Schwarzbach, 2012: p. 123, own translation). While a number of health economists criticised IQWiG for its resistance to state-of-the-art cost-benefit analysis and for not moving the debate on priority setting – which most of them deemed necessary – forward, manufacturers, patient groups and the parliamentary opposition were similarly critical. Soon after it had taken up its work, IQWiG published a negative report on a group of insulin analogs, recommending against funding. Considerable protest from patients, doctors and manufacturers resulted. Critics not only pointed out the benefits of insulin analogs and lack of alternatives for certain patients, but also accused IQWiG of health care rationing – a taboo in German health politics. Protests dwindled only after insulin analogs were found to increase the risk for certain cancers, leading to an abrupt slump in demand.

While Angela Merkel's first grand coalition government left IQWiG untouched, the conservative-liberal government inaugurated in 2009 was highly critical of its performance, and in particular, of its pharma-critical chair. Along with a number of conservative and liberal ministers from the German *Länder*, Philipp Rösler, minister of health after the 2009 election, had signed a critical statement on IQWiG that, along with the association of major

pharmaceutical manufacturers (Verband Forschender Arzneimittelhersteller, VFA) criticised IQWiG as a threat to the manufacturers' international competitiveness and Germany's attractiveness as a location for industry. Soon after Rösler had come into office, Sawicki's contract as IQWiG chairman was up for renewal. After an auditing firm commissioned by Rösler had found irregularities regarding Sawicki's company car, the contract was not renewed and CDU-member Jürgen Windeler was appointed as new chair by the ministry of health.

In 2011, a new law initiated by the conservative-liberal government (Arzneimittelneuordnungsgesetz) changed the German system of drug appraisal completely. In essence, this law reversed explicit rationing, instead introducing price negotiations with manufacturers. Under this new drug appraisal regime, IQWiG supports negotiations with reports on the comparative advantage of drugs. In its new role, IQWiG is no longer under pressure to either justify its methodology (as it is not expected to carry out cost-benefit assessments) nor under attack for recommending rationing decisions. While according to its chair and the ministry, IQWiGs has been strengthened, its new role is purely advisory and hardly noticed in public.

The story of IQWiG's credibility crisis can be interpreted as follows: IQWiG was originally set up to advance the introduction of cost-benefit assessment, and eventually explicit rationing, into German health politics (see Landwehr & Böhm 2016). While this was a clear goal of the red-green coalition government, the German public was mostly opposed to it. Under these conditions, the establishment of IQWiG and the commissioning of its sister body, the FJC, with rationing tasks were an attempt to both avoid electoral blame and win support and credibility for the respective policy program. However, an agency can only gain credibility in pragmatic discourses if the goals for which it seeks to provide adequate instruments are consensual, which was clearly not the case for IQWiG. Sensing public

resistance to rationing, IQWiG adopted a less controversial methodology, but was nonetheless attacked as a rationing institution. In the end, it proved neither willing nor able to gain support for cost-benefit assessments, but was equally unable to attain public support. While it was not terminated, IQWiG was practically reprogrammed to support price negotiations with manufacturers. Its credibility in this new, more circumscribed and less controversial role has not been challenged. For its original task, however, IQWiG did not achieve authority alongside its credible commitment.

CASE 2: Moral crisis - the National Ethics Council and German Ethics Council, Germany.

In the years 2000/2001, German politics was confronted with a deep bioethical conflict. New research in the United States indicated a high potential of studies using human embryonic stem cells. Producing embryonic stem cells, which at the time inevitably meant killing human embryos, was not allowed in Germany. However, German researchers had tried to import stem cells from the US, making the attempt public to force the legislator to take action and close what was seen as a gap in legislation, thus achieving legal certainty. The decision was made difficult by the fact that the government and each of the four parliamentary parties were as much internally divided over the issue as the German public. One side argued that by ruling out research with embryonic stem cells in Germany would mean denying desperately ill patients hope for a cure, but also damaged international competitiveness. The other side argued that by enabling the import of stem cell lines would create demand for new ones and eventually embryos to be killed abroad. This side not only saw the issue as about protecting human life and dignity, but also feared a slippery slope eventually leading to genetic engineering and euthanasia.

Chancellor Schröder took a liberal stance on bioethical questions, including research

with human embryonic stem cells, but was cautious not to raise resistance from his own party and the public. Seeking to advance the bioethics debate, he set up the National Ethics Council, an independent advisory body, in April 2001. The National Ethics Council was staffed with 25 members, mostly university professors from different disciplinary backgrounds, but with a clear dominance of natural scientists and scholars taking a liberal stance on bioethics. Although the Council produced its first report on the import of embryonic stem cells cautiously, not arriving at a unanimous verdict, it was criticised as Schröder's 'nodding through-body' (or 'rubber stamp', see Reich, 2010, p. 33; Rogalla 2001; Thelen, 2001). The accusation was that Schröder had set up the Council not to enrich the discourse on bioethics, but to legitimate his own liberal position. Bogner and Menz (2002) take a more nuanced position, arguing the point in setting up the Council was to demonstrate even experts would not arrive at a moral consensus and that a political decision was necessary and inevitable. Whatever Schröder's true motives were, the National Ethics Council was unable to gain credibility due to its 'birth defect' of being set up by decree and lacking a democratic mandate.

Not only opposition politicians (Hüppe, 2004; Zimmermann, 2005), but also experts in the parliamentary study commission on bioethics criticised the National Ethics Council for lacking a democratic mandate (Dpa, 2001). Jens Reich summarises:

> The public reception of the 'National Ethics Council's' reports and events was broad, but almost exclusively negative. It was criticised that the Ethics Council could not agree on consensual points of view and instead tried to achieve fairness by pointing out controversial standpoints and alternative options for action. But in particular, its illegitimate birth out of the will of the executive was permanently branded. Nonetheless, the actual influence on political decisions and the public awareness of bioethical problems remained rather low (Reich, 2012, p. 29, own translation).

In 2007, the new grand coalition government (Merkel I) changed the legal status of the Ethics Council and its members. A law drafted by the ministry of education and research passed the Bundestag with a large majority in April 2007, changing the name of the council to 'German Ethics Council' and its appointment procedure: half of the council's members are now appointed by the *Bundestag*, the other half by the federal government. Despite the council being given a stronger democratic mandate, critics did not fall silent. The Left party and the Greens continued to bemoan its liberal bias and lack of democratic legitimation (as the small *Bundestag* opposition effectively had hardly any influence on appointments), and several MPs argued parliamentary study commissions were more adequate forums for bioethical discussions.

In subsequent years, the Council produced a number of highly controversial reports. A report in which a slim majority of members supported the introduction of pre-implantation diagnostics under tight restrictions was criticised both as too restrictive and too permissive. A proposal to lift the ban on sex between adult siblings met severe criticism from conservative politicians and Catholic clerics. However, these occasional attacks on the Council are part of a wider democratic discourse on bioethics in which the council has become recognised as a legitimate and trustworthy voice besides others. Now, the council's function involves enriching the discourse rather than advising the government on steps to take. Despite the birth defects of its predecessor, the German Ethics Council may even be seen as complementing and democratising the German debate on bioethics. As Kai Arzheimer (2015) shows, the resistance to liberalisation may be sustained by a Christian democratic / New Left issue coalition that has less backing in the German public. While its recommendations may often be lopsided towards liberal positions, the council thus closes certain argumentative gaps in the discourse.

In sum, the case study of the National/German Ethics Council shows that an independent expert body can contribute to moral discourses by providing arguments and assessing the justification of different positions. However, the National Ethics Council's birth defect as Schröder's 'rubber-stamp' body deprived it of any chance to gain 'external' credibility. Only its re-establishment as a democratically authorised forum for bioethical debate in 2007 allowed it to gain public acceptance. Despite the authority the Council has gained, its reports are viewed as one among many voices in the bioethical discourse rather than as recommendations to the government that could be implemented without further discussion and complex decision-making processes.

Case 3: Ethical-political crisis - The Independent Parliamentary Standards Authority, UK.

The Independent Parliamentary Standards Authority (IPSA) is a non-majoritarian institution set up in the UK in 2009 by the *Parliamentary Standards Act* (2009, c.13). Its job is to 'regulate the expenses system' within the UK national parliament and 'administer and pay MPs' expenses and their salaries'. Set up in response to a crisis in 2008 when the *Telegraph* newspaper uncovered evidence of MPs abusing their right to claim parliamentary expenses, including, for example, the purchase of a duck house for a country estate, IPSA is a classic example of a body established to adjudicate on 'ethical-political' issues (see Table 1). Whereas before the crisis, expense claims were managed internally by parliamentary staff, and a committee of MPs decided on MPs' pay levels, following the crisis it was deemed that 'The public want to have full confidence in the parliamentary system … so that the cloud of suspicion is lifted and the reputation of the House [of Commons] can be restored' (Hansard, 23 Jun 2009, Vol.494, part 97, Col.678).

IPSA's 'external' credibility hence rested upon the idea it would set MPs' expenses and salaries at an acceptable level, and would prevent 'gaming' of the system. IPSA was seen as a guardian of public money, aiming, in its own words, to ensure 'the highest standards of integrity and morality' (IPSA, 2013, p. 93). As part of IPSA's remit, it was charged with recommending a 'new settlement' for how much MPs and ministers should be paid. Its report, circulated in June 2013 sparked a 'credibility crisis'.

After lengthy consultation, IPSA proposed MPs' salary be on par with other parts of the civil service, starting at £74,000 in 2015 (a 10.3% one-off increase) indexed to annual growth in average earnings thereafter (IPSA, 2013, pp.7-8). These recommendations were met with staunch public opposition. In the consultation period from 11 July-20 October IPSA received 550 written responses, 530 posts on its website, and 3,450 responses to an online survey. The online survey showed a large majority against the proposals – 12% for with 88% against. Moreover, a ComRes poll commissioned by IPSA showed significant opposition to any pay increase for MPs. 66% were against it, compared to 24% in favour. When asked the same question with the caveat that any rise would not increase costs to the taxpayer, more respondents were still opposed than for (45% to 43%).

At this stage the proposals were particularly contentious, described by Prime Minister David Cameron as 'simply unacceptable' (Syal, 2015). The first pay increase was not scheduled, however, until after the 2015 elections. In 2015 IPSA conducted another public consultation investigating whether its recommendations should change after 'tak[ing] into account all relevant circumstances as part of our review of our determination of MPs' pay' (IPSA, 2015a, p. 10). In June 2015 the second consultation was published, and, surprisingly, IPSA stood its ground about the need for an increase, arguing 'we can see no clear reason why the economic circumstances today should lead us to depart from the determination of £74,000 that we reached in December (IPSA, 2015a, p. 11).

This led several MPs to state they would give any increase to charity, while 57,000 people signed a petition against the pay rise. Analysing the reasons given, it is clear that the ethical-political implications were put centre stage. Accusations of 'hypocrisy' were banded around and contrasts drawn with low paid groups in society. The proposal was contrasted with the government's fiscal austerity programme, with objections stating it sent the 'wrong message' in times of supposed frugality. As one parliamentarian commented: 'I … accept that there is never a good time to implement this. However, you have decided to choose the WORST POSSIBLE TIME to do this!' (IPSA, 2015).

Tasked with producing an ethically sound set of guidelines, IPSA confounded those expectations by proposing a substantial increase. The upshot was a crisis for IPSA and its 'credibility' was thrown into doubt. However, following the May 2015 election IPSA's recommendations were implemented for the new parliament, beginning in September 2015. After opposing its June 2015 report, David Cameron confirmed support for the recommendation on July 16th 2015, stating: 'It's a matter for IPSA … you're paid a rate for the job and you should take the rate for the job and it's done independently' (Syal, 2015). The pay rise was hence not overruled by the Conservative administration.

This remarkable about-turn to IPSA's position by Cameron was influenced by contextual factors. Firstly, once the pay increase was accepted, it became an individual matter for MPs whether they chose to take it, or, as several subsequently did, donate it to charity. In this sense, the fact IPSA was an advisory rather than executive body meant its 'recommendation' was less toxic. At the same time, however, the advisory nature of IPSA's role meant its decision was more open to contestation. As one commentator advised, IPSA's decisions could be made *less* contestable by giving it greater formal power: 'Make IPSA's annual pay awards binding. And neutralise the issue' (Hodges, 2015). Other aspects of IPSA's agenda had significant support, such as tightly controlling parliamentary expenses,

and 'naming and shaming' MPs who failed to repay debts owed on parliamentary credit cards. So, in this sense, IPSA arguably had a surplus of political capital in other areas it could expend on the specific issue of MPs' salaries.

At the same time, however, the issue of MPs' salaries was still toxic, and one with high opposition in the media and public, so how it retained its credibility still represents a puzzle. It seems that the way IPSA acted was crucial to its success: IPSA did not back down in re-stating the case for 'fairness'. In 2014 IPSA's Chief Executive, Marcial Boo, stated: 'We want to have good people doing the job and they need to be paid fairly' (Dearden, 2014).

In its final report IPSA reaffirmed its thinking, whilst acknowledging the criticism 'IPSA was established as an independent regulator in order to take difficult decisions … we have not seen anything by way of evidence that is new or compelling such as to cause us to change our decision […]' (IPSA, 2015b, p. 12). IPSA acknowledged disagreement, but argued MPs *should* receive fair pay for the work they undertook. In this case, then, the agency managed an ethical-political credibility crisis by showing ethical leadership – acknowledging the issue was contested, but sticking to a principled stance in order to re-assert its credibility against public onslaught.

Discussion: Meeting the credibility challenge through accountability processes

Our analysis adds a new angle to understanding the credibility challenges faced by expert agencies. To reiterate, credibility is not institutionalised simply through institutional independence and 'commitment'. It is also obtained in contests over the validity claims decisions are based upon. This argument calls attention to how more or less independent expert bodies deal with challenges through accountability processes, and in turn, what forms of accountability might effectively manage public contestation. While we cannot say whether highly structured accountability 'mechanisms' create credibility, we can argue that

accountability processes are an important part of what makes public perceptions of credibility achievable. From our case studies, it is possible to identify three ways in which expert bodies obtain and defend credibility in times of crisis via accountability processes: state intervention and revision of competencies (Case 1); meta-deliberation over how agencies are designed and provided with a democratic mandate (Case 2), and voluntary public communication (Case 3).(see Koop, 2013; Landwehr, 2015).

Firstly, IQWiG became externally credible via a revision of its goals and tasks, such that those goals matched public expectations. The government reduced its competencies such that credibility was secured only when it was clear IQWiG was not overstretching its mandate by institutionalising a form of decision making that was accepted neither by the German public nor by the academic community. Here, accountability via health ministry intervention enabled the agency to revise its 'credible claim' – from being the major institution responsible for recommending drug funding decisions to providing only an information base. The lesson for institutional design is that competencies of expert bodies in politics should be *challengeable* and *revisable* in response to contestation (Landwehr, 2013, p. 310).

Secondly, the German Ethics Council was given a clearer democratic mandate so its composition and decisions were credible in the face of accusations of bias. This mode of reform can be seen as an instance of '*meta-deliberation'* about institutional design, or 'deciding how to decide', and democratic legitimation. The German Ethics Council case shows that accountable meta-deliberation and the resulting new mandate and composition of the body were crucial to obtaining credibility.

Lastly, IPSA secured credibility by justifying its proposals on MPs' pay publicly. This last case shows that institutions should also give 'voluntarily account' (Koop, 2013) of their decisions to the public: 'If an appointed body's decisions are repeatedly challenged by the public and fail to be accepted and implemented, this may indicate not a failure of the body

itself but deficiencies in its institutional design' (Landwehr, 2013). As such, forms of stakeholder and public engagement can be seen as crucial accountability processes allowing agencies to secure credibility. Agencies should be required and resourced to justify the validity claims their decisions are based upon to the public, in a way that complements their internal 'commitment' to credible decision-making.

Conclusion: beyond credibility versus accountability

This article has argued that the public perceptions of an expert body's credibility depend upon the outcomes of dynamic accountability processes. Expert bodies face differential challenges to their decisions that can be cast as 'credibility crises', and resolutions to these crises vary. We pointed out that a central function of expert bodies in politics is to complement discourses and decision-making processes that can be classified – following Habermas - as moral, ethical-political, and pragmatic ones. Our empirical analysis illustrates the *contested* roles expert bodies have in politics. Hence, how they should be legitimated as forms of governance represents a substantive challenge rather than one that can be resolved through *a priori* normative theorising. We have identified some specific accountability processes – intervention to revise competencies, meta-deliberation and reform of institutional design, and engagement in public justification – that can help complement internal credible commitment with external recognition of credibility.

Our theoretical considerations and empirical findings might also have implications for future research on credibility. Our focus has been on accountability processes through which credibility is obtained and defended. Scholars studying the role of agencies and experts in democracy should develop theories of how credibility is developed in response to contestation and through accountability mechanisms, rather than seeing the two in opposition. Accountability on the one hand and credibility on the other are two sides of the same coin

rather than opposing logics. Credibility should be seen as obtained as a *result* of accountability mechanisms rather than as a Madisonian check on majoritarian will. Designing closer studies of accountability mechanisms enacted by governments, agencies and expert bodies can improve our understanding of how accountability and credibility can work together. Finally, this article should encourage governance scholars to question assumptions about agency independence being the primary determinant of 'credibility', because internal 'commitment' to credible decision making needs to be complemented with the perception by important audiences that agency decisions are 'credible'.

References

Arzheimer, K. (2015). Strange bedfellows. *Research & Politics*, *2*(3), 1-7.

Bogner A., & Menz, W. (2002). Wissenschaftliche Politikberatung? Der Dissens der Experten und die Autorität der Politik [Academic policy advice? The dissent of experts]. *Leviathan, 30*(3), 384-399.

Bovens, M. (2007). Analysing and assessing accountability: A conceptual framework. *European law journal*, *13*(4), 447-468.

Breen, M., & McMenamin, I. (2013). Political institutions, credible commitment, and sovereign debt in advanced economies. *International Studies Quarterly*, *57*(4), 842-854.

Schillemans, T., & Busuioc, M. (2014). Predicting public sector accountability: From agency drift to forum drift. *Journal of Public Administration Research and Theory*, *25*(1), 191-215.

Carpenter, D., & Krause, G. (2012). Reputation and public administration. *Public Administration Review*, *72*(1), 26-32.

Coen, D., & Thatcher, M. (2008). Network governance and multi-level delegation. *Journal of Public Policy*, *28*(1), 49-71.

Dearden, L. (2014, September 7). Head of expenses watchdog says miserly 67,000 salary

should be increased. *Independent.* Retrieved from

http://www.independent.co.uk/news/uk/politics/mps-pay-rise-2014-head-of-expenses-

watchdog-says-miserly-67000-salary-should-be-increased-9716709.html

Dpa (2001, May 15). Bundestagskommission kritisiert Einrichtung des Nationalen Ethikrats

[Bundestag committee criticizes establishment of a national ethics council].

Bild der Wissenschaft. Retrieved from http://www.wissenschaft.de/archiv/-

/journal_content/56/12054/1208240/Bundestagskommission-kritisiert-Einrichtung-

des-Nationalen-Ethikrats/

Elgie, R. (2006). Why do governments delegate authority to quasi-autonomous agencies?

Governance, *19*(2), 207-227.

Elgie, R., & McMenamin, I. (2005). Credible commitment, political uncertainty or policy

complexity? *British Journal of Political Science*, *35*(3), 531-548.

Fawcett, P., & Marsh, D. (2014). Depoliticisation, governance and political participation. *Policy &*

Politics, *42*(2), 171-188.

Flinders, M. (2004). Distributed public governance in the European Union. *Journal of European Public*

Policy, *11*(3), 520-544.

Gilardi, F. (2002). Policy credibility and delegation to independent regulatory agencies.

Journal of European Public Policy, *9*(6), 873-893.

Habermas, J. (1992/1994). *Faktizität und Geltung*. [Between facts and norms] Frankfurt:

Suhrkamp.

Hall, P. (2008). Systematic Process Analysis. *European Political Science*, *7*(3), 304-317.

Hansard (23 Jun 2009). Vol.494.

Hodges, D. (2015, June 15). The MPs pay row is a farce. *Telegraph.* Retrieved

from http://www.telegraph.co.uk/news/general-election-2015/politics-

blog/11649761/The-MPs-pay-row-is-a-farce.-Of-course-they-should-get-more.html

Hüppe, H. (2004). Schlechter Rat ist teuer. [Bad advice is expensive] Retrieved from

      http://www.huberthueppe.de/schlechter-rat-ist-teuer/

IPSA (2013). *Reviewing MPs' pay and pensions*. Retrieved from

      http://parliamentarystandards.org.uk/payandpensions/Documents/Ipsa%20final%20re

      port.pdf

IPSA (2015a). *MPs pay in the 2015 parliament: A consultation*. Retrieved from

      http://parliamentarystandards.org.uk/payandpensions/SiteAssets/Pages/default/MPs%

      27%20Pay%20Consultation%202015.pdf

IPSA (2015b). *MPs' pay in the 2015 parliament: final report*. Retrieved from

      http://parliamentarystandards.org.uk/transparency/Our%20consultations/Pay%20and

      %20Pensions/MPs'%20Pay%20Consultation%202015/MPs'%20Pay%20in%20the%2

      02015%20Parliament%20-%20Final%20Report.pdf

Keefer, P., & Stasavage, D. (2003). The limits of delegation. *American Political Science

      Review*, *97*(3), 407–423.

Kuhlmann, A., Schöffski, O., Schumann, A., Landshut, K., & Schwarzbach, C. (2012). Das

      Schwellenwertkonzept: Theorie sowie Umsetzung beim IQWiG und anderen

      Institutionen. [The marginal value concept: theory and implementation in the IQWiG

      and other institutions] In O. Schöffski (Ed.), *Gesundheitsökonomische evaluationen*

      (pp. 111-153). Heidelberg: Springer.

Landwehr, C. (2013). Procedural justice and democratic institutional design in health-care

      priority-setting. *Contemporary Political Theory, 12*(4), 296-317.

Landwehr, C. (2015). Democratic meta-deliberation: towards reflective institutional design.

      Political Studies, 63(1), 38-54.

Landwehr, C., & Böhm, K. (2016). Strategic institutional design. Two case studies of non-

majoritarian agencies in health care priority setting. *Government and Opposition, 51*(4)**,** 632-60.

Maggetti, M. (2010). Legitimacy and accountability of independent regulatory agencies: A critical review. *Living Reviews in Democracy*, *2*.

Majone, G. (1996). *Regulating Europe*. London: Routledge.

Papadopoulos, Y. (2003). Cooperative forms of governance. *European Journal of Political Research*, *42*(4), 473-501.

Parliamentary Standards Act (2009) c.13. London: HMSO.

Pérez Durán, I. (2017). Interest group representation in the formal design of European Union agencies. *Regulation & Governance*.

Reich, J. (2012). Anspruch und Wirklichkeit der Politikberatung durch die Wissenschaft. [Expectations and reality in academic policy advice] Retrieved from <https://edoc.bbaw.de/opus4-bbaw/frontdoor/index/index/docId/1957>

Rogalla, A. (2001). Eher ein Zustimmungsgremium. [More like a rubber-stamp body] *T AZ-online.* Retrieved from   http://www.taz.de/1/archiv/?dig=2001/05/03/a0100

Romzek, B. S., & Dubnick, M. J. (1987). Accountability in the public sector: Lessons from the Challenger tragedy. *Public administration review*, 227-238.

Romzek, B. S., LeRoux, K., & Blackmar, J. M. (2012). A preliminary theory of informal accountability among network organizational actors. *Public Administration Review*, *72*(3), 442-453.

Schillemans, T. (2011). Does horizontal accountability work? Evaluating potential remedies for the accountability deficit of agencies. *Administration & Society*, *43*(4), 387-416.

Schillemans, T., Van Twist, M., & Vanhommerig, I. (2013). Innovations in accountability: Learning through interactive, dynamic, and citizen-initiated forms of accountability. *Public Performance & Management Review*, *36*(3), 407-435.

Scott, C. (2000). Accountability in the regulatory state. *Journal of law and society*, *27*(1), 38-60.

Sculpher, M., & Claxton, K. (2010). Sins of omission and obfuscation: IQWIG's guidelines on economic evaluation methods. *Health Economics, 19*(10), 1132-1136.

Syal, R. (2015, July 16). IPSA goes ahead with pay rise for MPs. *The Guardian.* Retrieved from http://www.theguardian.com/politics/2015/jul/16/ipsa-goes-ahead-with-10-pay-rise-for-mps

Thelen, P. (2001, April 16). Hintergrund: der rot-grüne Zickzack-Kurs bei der Biotechnologie [The red-green backward and forward moves in biopolitics].

Handelsblatt. Retrieved from http://www.handelsblatt.com/archiv/mit-seinem-nationalen-ethikrat-will-kanzler-schroeder-ein-gegengewicht-zur-skeptischen-medizin-ethik-kommission-des-bundestags-schaffen-hintergrund-der-rot-gruene-zickzack-kurs-bei-der-biotechnologie/2057866.html

Wood, M. (2015). Beyond Accountability: Political Legitimacy and Delegated Water Governance in Australia. *Public Administration*, *93*(4), 1012-1030.

Yesilkagit, K. (2004). The design of public agencies. *Public Administration and Development, 24*(2), 119-127.

Zimmermann, M. (2005, June 24). Lob und Kritik für den Nationalen Ethikrat. [criticism and praise for the National Ethics Council] *Kölner Stadtanzeiger.* Retrieved from http://www.ksta.de/politik/lob-und-kritik-fuer-den-nationalen-ethikrat,15187246,13855632.html#plx257055665

Table 1. Dimensions of Credibility Crises

Dimension	Key question	Agency functions	Policy areas	Credibility challenge
Pragmatic	What are appropriate means to given ends?	Regulation	Medicines, food safety, cartel authorities	Independence, expertise, absence of vested interests
Ethical-political	How do we want to live as a community?	Development of policies, statutory instruments and guidelines	Immigration and asylum, working conditions, education	Justification with regard to societal interests and values
Moral	What does justice require?	Advising governments in morally controversial questions	Assisted dying, IVF treatment, animal testing	Deductive consistency and coherence with moral norms

Table 2. Case Studies and Their Application

Case study agency	Formation	Credibility Crisis	Reconciliation	Credibility created through…
IQWiG (Germany)	Advisory agency to the Schroeder government on funding for controversial drugs	*Pragmatic:* Disputes about its refusal to use cost-benefit analysis common in medical economics	Reduced institutional role, revised mandate	Revision of the agency's task and mandate by the government
National/German Ethics Council (Germany)	Advisory council to Schroeder government on bioethical policies	*Moral:* The council was perceived to represent only a one-sided (liberal) moral discourse	Reformed into a democratically mandated body informing wider public discourse	Reconfiguration of appointment and legal status
Independent Parliamentary	Advisory agency to Labour	*Ethical-political:* Allegations its recommendations	Eventual implementation	Public defence by agency of the ethical-

Standards Authority (UK)	government on MPs' salary and expense rates	would see unjust pay increase for MPs	of agency recommendations	political justification for increasing salaries