

NOTES • DISCUSSIONS • BOOK REVIEWS

The Political Literacy of Experts*

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1. Introduction

Expert agencies are entrusted with public authority in virtue of their technical competence. Areas such as environmental protection, food safety, or market stability are regulated with the backing of professional judgments regarding complex technical matters. But there is a clear political dimension to the work; regulation involves particular ways of framing problems and solutions. The very practice of regulation is bound up with evaluative concepts that are “essentially contested” (Gallie 1956) or “interpretive” (Dworkin 2011, chap. 8). Terms such as *proportionality*, *reasonable precaution*, or *acceptable risk* cannot be operationalized without taking a stand on evaluative matters on which there is reasonable disagreement. Moreover, expert agencies must apply these concepts in regulatory fields of heated political debate, concerning issues such as sustainability, security, and social justice. This paper seeks a model for capturing what it means for expert agencies to exercise political judgment responsibly. How can they engage with political values reflectively yet in a nonpartisan way?

The proposal developed in this paper is that expert agencies must possess a form of “political literacy.” This approach departs from typical ways of connecting the terms *literacy* and *competent rule*. Traditionally, the connection has been made as part of some account of the deficiency of the public. The lack of “scientific literacy” in the general public has long been deemed a problem for the democratic quality of political life and the legitimacy of regulatory policies (Miller 1983). Similarly, *political literacy* is commonly taken to refer to a deficit on the part of the public: “Although the explanation of political literacy is unclear, political scientists agree that the extent of political literacy among mass publics is only modest” (Cassel and Lo 1997, 331).

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This is the sort of claim that is taken to have fundamental normative consequences in books such as *Against Democracy* (Brennan 2016).

This paper develops a conceptual tool for turning the literacy question around: Expert agencies wield regulatory powers largely under the guise of scientific authority, but do they have the political literacy needed to pursue their goals in a legitimate manner? Importantly, the idea of political literacy to be developed does not simply refer to possession of a stock of independent facts. Rather, it follows the lead of theorists who have gestured towards political literacy as a “moral competence” (Goodin 2003, 2). Here, literacy is not primarily about having the right answers, but about the ability to form political judgments responsibly. The methodological approach of the paper is related to “institutional” or “practice-sensitive” readings of John Rawls (cf. James 2005; Sangiovanni 2008). That is, certain basic features of existing institutions or practices are taken as given (in this case, public authority exercised by expert agencies), and the question is what it takes for them to be political in the right way. In light of a practice-sensitive approach, it is to be expected that the form of public reason served by political literacy may diverge from standards of Rawls’s (2005, 442–3) “public political forum.” Rawls explained public reason in terms of a principle of reciprocity—justifications must be acceptable to all reasonable members of the community—that may be appropriate in forums that concern constitutional essentials and matters of basic justice. The decisions of expert agencies, by contrast, are often advisory, open to ongoing contestation, prestrained by rights, and highly targeted. Such factors seem to mitigate the need justify decisions by appeal to a common reason. Moreover, the political aspects of expert agency work are intertwined with technical considerations that flout accessibility criteria that govern the public political forums of basic justice. For example, Rawls (2001, 90) explicitly excludes elaborate economic theories of general equilibrium from the content of public reason if these are in dispute.

The account of political literacy to be developed here is not about shying away from contestedness but about being able to recognize and deal appropriately with the contested political values at stake in the public missions we entrust to experts. The mandates of expert agencies will require them to appeal to controversial claims, and to some extent this passes the buck of legitimation to the delegating authorities. However, such factors clearly do not erase the need for expert agencies to deal with values in a mode that is structured by some form of public reason; the decisions of expert agencies must be justifiable in nonpartisan and sufficiently accessible ways, even though they reach beyond what is acceptable to all reasonable citizens.

As developed here, political literacy is a tripartite capacity that enables expert agencies (1) to be aware of the intrinsic political contestedness of the concepts they operate with, (2) to recognize diverging conceptions as belonging to shared paradigms of value, and (3) to let the specification of political values be guided by the intentions of the mandate. It is a capacity we would not require of citizens as such, but rather an expectation of institutions tasked with carrying out public mandates.

The case of expert agencies is particularly important because the political nature of their work is often obscured by a technical façade.¹ As illustrative examples, the

¹ A large literature is devoted to explaining how political values are intertwined in subtle ways with the more scientific features of expertise and how findings are framed to suit agendas. For a clear overview and critical discussion, see Heazle, Kane, and Patapan (2016, esp. 6).

paper will focus on the expert agencies of the European Union (EU), where the delegated powers are supposed to comply with the *Meroni* doctrine, which restricts agency competences to technical matters “subject to strict review in the light of objective criteria.”² Many doubt that actual expert agency competences fit this prohibitive language. However, insofar as we think there may be a legitimate role for expert agencies in a system of democratic rule, we need a way to conceptualize standards for engaging with the political values that the work of expert agencies inevitably entails. The conditions of political literacy may help illuminate the form of these standards.

As a first step towards explaining the need for political literacy in expert agencies, the next section introduces the idea of an indirect interpretive strategy; political literacy is about accessing political values through constructive interpretation of the mandate. The section shows how the indirect interpretive strategy diverges from several other existing approaches.

2. The Indirect Interpretive Strategy

Political literacy enables expert agencies to pursue what I will call an indirect interpretive strategy in order to get the right kind of access to the political values that rightfully govern their work. This will be contrasted with two further interpretive strategies, but let us first consider a more fundamentally diverging position. According to this position, all this talk of expert agencies engaging with political values is misguided; their public tasks are entrusted in virtue of their technical expertise and they should stick to what they know. More appropriate democratic institutions can worry about the relevant interpretation of values as long as expert agencies are held under sufficient scrutiny.

A paradigmatic example of this position is Frank Vibert’s (2007) *The Rise of the Unelected: Democracy and the New Separation of Powers*. As the title indicates, the book is concerned with the legitimacy of the increasing authority of unelected experts. In search of a justificatory model, Vibert cautions against expert reasoning that leaves “safe and uncontroversial ground” and argues that the more experts “move into the territory of interpreting the substantive values of society, the more they are likely to encroach on the territory of the legislature and the political process” (ibid., 119). On this view, the legitimacy of expert agency reasoning depends on its being “‘constrained by facts’ and attempting to be transparent about value judgments” (ibid., 122). In this way, the approach seeks to deliver a clear-cut division of political labor between legislators and unelected experts.

The problem is that we cannot simply reduce the question of responsible political reasoning to a matter of transparency about normative assumptions. Transparency is of value only insofar as it is connected to an evaluative competence on the part of both the expert agencies and the relevant accountability forums (cf. O’Neill 2014, 183). The creed that expert agencies should be “constrained by facts” and should not “interpret substantive values of society” is not very helpful in this regard. While expert agencies that adopt partisan policies or engage in activism may be an affront to democracy, it does not follow that decisions within the mandate are more legitimate if expert agencies refrain from systematically reflecting on how the values involved

² Judgment of 13 June 1958, *Meroni v High Authority*, C-9/56 and C-10/56, EU:C:1958:8 and EU:C:1958:7.

are conceptualized. To the contrary, it seems that expert agencies have no way of knowing whether they are acting in fidelity to the mandate without substantive interpretation of the entrusted values.

An interesting feature of Vibert's approach is that it is framed as an explicit warning against modeling the political reasoning of expert agencies on Ronald Dworkin's theory of adjudication. The governing assumption is that a more positivist account of expert agency reasoning is necessary in order to maintain a legitimate separation of powers. However, in terms of encroaching on the territory of the legislature, it is clear that legal positivism results in a quite permissive picture in conceptual terms. H. L. A. Hart (1994, 135) famously characterized the "open texture of law" as a space for fresh legislation by the courts. However, in contrast to Vibert, Hart recognized that his theoretical account would not fit the actual justificatory discourse of practitioners. He recognized the need in everyday practice for a "ritual language" that "dramatizes the distinction between Legislator and Judge" (*ibid.*, 274). This practical necessity—to disguise strong discretion as a space predetermined by law—translates directly to the case of expert agencies. There is no reason to think they will find it more appropriate than judges to publicly declare part of their reasoning as mere "normative assumptions" unregulated by mandate.

By contrast, Dworkin's theory of interpretive judgment was developed as a more nuanced way of respecting the separation of powers. Instead of making the judge into a deputy legislator robed in misleading rhetoric, the point was rather to acknowledge how law itself is intrinsically bound up with moral and political principles. On Dworkin's account, seeking justificatory principles of legislation is not a matter of filling in the blanks in a set of established rules, but rather a way of extracting the meaning of the legislation itself (Dworkin 1977, 84–7). The idea of political literacy builds on this insight, in the sense that it holds that experts are obligated to take a more ambitious interpretive approach to the political content of their mandate. In particular, political literacy is an ability experts need in order to practice what Dworkin called constructive interpretation, where one seeks to uncover how the object of interpretation realizes some value (Dworkin 1986, chap. 2). In a disagreement about what the mandate requires, a persuasive argument does not simply point to how some proposed interpretation fits the data (e.g., legislative documents and relevant statements). Rather, it also explains how the interpretation has moral or political appeal because it serves some publicly justifiable purpose.

Constructive interpretation gives expert agencies *indirect access* to political values. It is indirect in the sense that the conception of values is constrained by interpretive material. In the case of expert agencies, the publicly entrusted mandate becomes a lens through which values are given a public meaning. Political literacy is the ability to access this public meaning. It can be useful to distinguish indirect access from two contrasting interpretive strategies. The first is the *no-access* strategy. Unlike Vibert's account, this strategy acknowledges that there are standards for political reasoning in expert agencies, but they are considered procedural democratic standards. That is, the no-access strategy offloads the interpretive work to procedures of inclusive deliberation. Henry Richardson's (2002) *Democratic Autonomy* goes in this direction (but perhaps not all the way). Richardson gives the example of the National Park Service deciding on whether to install safety measures at the Grand Canyon (*ibid.*, 238). Here public costs, human safety, and natural beauty are among the considerations at stake. Clearly, any decision on what adequate respect for these values requires in

this context will be controversial. Richardson notes some relevant considerations regarding potential trade-offs, but he quickly states that we should by no means invite experts to “indulge in such speculations about values” (ibid., 239). On this account, the legitimate approach is rather to extract the evaluative content from “public hearings and processes of negotiated rulemaking” (ibid.).

However, while it is clear that an agency cannot proceed in ignorance of this public input and deliberation, it is misleading to see such procedures as relieving agencies of interpretive responsibility. For one, the right kind of democratic input cannot be gained without an interpretive grasp of the political questions at stake. There are issues such as framing, relevance, and weighting that need to be considered in light of the values in question. Moreover, as Richardson himself notes (ibid., 239–40), expert agencies have core values and missions that “rightly color” their approach. How can the core agency values color the approach without interpretive engagement with the values at stake?

For example, the mission statement of the National Park Service highlights a commitment to preserving “unimpaired the natural and cultural resources and values of the National Park System for the enjoyment, education, and inspiration of this and future generations.”³ That sort of statement hardly provides concrete practical guidance, but it may legitimately structure the interpretive approach, for example by putting special emphasis on long-term interests or avoiding irreversible measures. This comes in addition to other kinds of possible agency-specific constraints, such as basing decisions on features amenable to cost-benefit analysis or principled coherence with other similar decisions. In short, procedural measures for public input are a *component* of evaluative judgment, not a substitute. The no-access strategy exaggerates the evaluative guidance of procedures and underestimates the need for political literacy.

This may be contrasted with the *direct-access* strategy. This recommends that expert agencies be recognized as autonomous political actors. It is grounded in the claim that mandates should be expanded to formally encompass political discretion. For example, some have suggested that “the political character of agencies should be recognized within their design; in particular, agencies should be given requisite room to develop their own missions in an autonomous manner” (Everson, Monda, and Vos 2014, 239). This strategy has been defended on the basis of concerns that prohibition on delegation of political discretion is an impediment to the necessary efficacy or functionality of agencies. This way of politicizing the mandate would certainly permit expert agencies to engage interpretively with values, but the suggestion that this engagement should extend to the political construction of their mission seems to violate democratic constraints. The efficiency of expert agencies is important only insofar as it is directed towards publicly justifiable aims. While experts may contribute to the public understanding of what aims should be, they often have narrow perspectives on the public interest. An overarching division of labor should guide the political judgment of agencies, where citizens and their representatives develop the political aims of the mandates and experts implement them (cf. Christiano 2012).

³ National Park Service, “Our Mission,” <https://www.nps.gov/aboutus/index.htm> (updated January 31, 2020).

As a third way, the indirect-access strategy proposes that values be structured by a public mandate. The concept of political literacy is introduced as a way to counteract any impression that access to the political values of the mandate can be gained in a positivist manner. This distinguishes the approach from Jerry Mashaw's (2018) recent attempt to apply the idea of public reason to expert agencies. He argues that application of public reason to expert agencies avoids theoretical problems that have been raised regarding other deliberative forums. In particular, the argument is that expert agencies are bound by mandates that explicitly define bounds of reasonable acceptance: "The forms of arguments and types of reasons relevant to decision-makers have been specified by statute" (*ibid.*, 169). This seems unduly optimistic regarding the guidance of statutes. As Mashaw's own account shows, it is clear that many important statutes do not specify arguments and types of reasons, but require extensive political judgment. For example, he describes how the US Environmental Protection Agency is mandated by the Clean Air Act to regulate emissions from power plants if the agency finds the regulation "appropriate and necessary." As Mashaw notes, "These terms [...] are so obviously vague that they necessarily devolve broad policy choice to the agency" (*ibid.*, 118). Moreover, the agency is free to consider a range of complex factors, such as public health, fair distribution, and employment (*ibid.*, 119).

The point now is not to argue that such findings invalidate the claim that the mandate provides a form of public reason for agencies. Rather, the pervasiveness of vague evaluative terms shows that we cannot take the public reason approach seriously without the contours of an interpretive approach. The next sections turn directly to this issue. In laying out the tripartite structure of political literacy, the goal is to delineate conditions of nonpartisan engagement with political values in expert agencies.

3. Three Conditions of Political Literacy

This section presents three features of political literacy. They are jointly necessary for responsible reasoning about political values, enabling expert agencies to avoid partisan or biased conceptions. Adequate exercise of this capacity does not guarantee that outcomes are acceptable to all reasonable citizens, but that is not the threshold of expert agency justifications. Rather, expert agencies are under an obligation to let their value conceptions be shaped by interpretive practices that are responsive to the mandate. Note that although I will be sticking mainly to EU agencies, nothing in my argument should hinge on the particularities of these expert agencies.

3.1. Reflexive Awareness of Contestedness

The first condition of political literacy is reflexive awareness of the fact that mandates are partly constituted by essentially contested evaluative concepts. In his account of the rule of law as an essentially contested concept, Jeremy Waldron (2002) analyzes how users tend to apply this and other contested concepts as if there were simple criteria of application. For example, for some the rule of law may be seen as exhausted by the criterion of clarity and consistency; for others it may be about principled balancing of conflicting concerns. According to Waldron, "street-level" or everyday interpretations lack reflexive awareness that their conception is subject to reasonable disagreement:

There is (a) the theorizing involved in the construction of a particular conception of a contested concept, and there is (b) the theorizing involved in the diagnosis of the concept as essentially contested. It is probably unrealistic to think that street-level usage involves anything much more than a glimpse of (b). (Ibid., 161)

Insofar as this is true, we should consider ways in which expert agencies stand apart from street-level practice. Expert agencies are institutions that can be designed to promote the necessary awareness in role-holders. Many kinds of expert agencies are arguably already attuned to this need; there are rules for notice-and-comment procedures, stakeholder involvement, attendance at specialized parliamentary committees, communication with ombudsmen, and more. These procedures are not necessarily mere coordination devices for pre-established interests and opinions. They can work as arenas for improving the ability to diagnose concepts as essentially contested. Naturally, these practices do not guarantee adequate awareness, but they warrant heightened expectations; idiosyncratic or unnecessarily controversial conceptions of political values indicate that more contestation and sensitivity to reasonable disagreement should be institutionalized (cf. Pettit 2004; Seidenfeld 1992).

However, such procedures will not serve any awareness-raising function if the work of the agency is not already recognized as engaged with contested political values. A case in point is the framing of agencies within the EU. As described by the European Commission, the increasingly powerful expert agencies are sources of “purely technical evaluations of very high quality and are not influenced by political or contingent considerations” (European Commission 2002, 5). Against accusations that the European Securities and Markets Agency (ESMA) has been granted political discretion,⁴ the EU has been adamant that bodies such as ESMA are not involved in making policy choices but are “simply [...] making a technical assessment in their field of expertise.”⁵ While the EU admitted that there is necessarily a need for judgment in the decisions of ESMA, these are “complex professional considerations”⁶ separated from matters of policy.

Naturally, academic analysts of EU agencies are skeptical of this sort of rhetoric (see, e.g., Busuioc 2013, 256; Groenleer 2014, 283; Mendes 2016). Nevertheless, the arguments won in court and they may well resonate more broadly in governance structures. Consider in this regard ESMA and other securities regulators’ commitment to a value such as market integrity. Today, some lament that regulators around the world are tasked with promoting market integrity without a clear definition that allows for measurement and determinate assessment of progress (Austin 2017). The claim is that these expert agencies should instead operate with a standardized notion that is harmonized between countries and linked to objective performance metrics. This

⁴ The UK brought a case against the ESMA regulation before the Court of Justice of the European Union (judgment of 22 January 2014, *United Kingdom v Parliament and Council*, C-270/12, EU:C:2014:18). The UK argued that ESMA’s mandate required it to “make value judgments and carry out complex economic assessments” (par. 29). In particular, it held that the mandate to intervene on the basis of “a threat to the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system” (par. 37) necessarily rests on a “highly subjective judgment” (par. 28). These kinds of judgments, the UK said, “cannot be categorised as decisions made on the basis of set criteria amenable to objective review” (par. 31).

⁵ Ibid., par. 40.

⁶ Ibid., par. 35.

aims to take questions of definition away from ongoing and messy political debate, which is potentially sensitive to contextual issues of fairness and trust, and hand them over to the International Organization of Securities Commissions (IOSCO)—a professional rather than a political body.

With its focus on reflexive awareness of contestedness, the idea of political literacy helps identify legitimacy issues in this regard. Are we sure that a relatively homogenous professional body like IOSCO will be sufficiently sensitive to scope for reasonable disagreement? As Paul Mahoney (1990) has shown in his account of the rise of a global securities regime, the move to uniformity crowds out a range of cultural, political, and moral views on market stability and acceptable risk. The resulting definition is not a framework for political contestation but rather a particular conception locked in institutional constraints.

The point is not that the objectives of expert agencies should be left vague, but that it matters that specifications flow from an awareness of contestedness. Specific performance metrics may be necessary to assess an agency, but what is this worth if the metrics are geared to a biased conception beyond public contestation?

3.2. Recognition of Shared Paradigms

Although expert agencies can be designed to promote awareness of contestedness, this is of little help unless the awareness is used in the service of responsible reasoning. By itself, the awareness does not lead to a distinct interpretive attitude. It is compatible with experts seeing the situation as calling for choice between several predefined conflicting conceptions. The second condition of political literacy is about recognition of how diverging conceptions of contested concepts are grounded in shared paradigms.

Consider the notion of “accountability” that runs through standard policy documents on good administration in expert agencies. Mark Bovens (2010, 949) describes this as the essentially contested concept “*par excellence*, because there is no general consensus about the standards for accountable behavior, and because these standards differ, depending on role, institutional context, era, and political perspective.” However, as Bovens and others point out in a more recent review of various kinds of accountability research, there is at least a minimal conceptual consensus that “accountability is about providing answers; is about answerability to others with a legitimate claim to demand an account” (Bovens, Schillemans, and Goodin 2014, 6). Imagine, then, an expert agency being redesigned in order to meet a demand for increased accountability. The new institutional design provides for more input from stakeholders, greater transparency regarding decision procedures, and less ties with industry. Someone might argue that this new design neglects features of expert accountability such as liability to sanction or independence from majoritarian political institutions. This is a disagreement about how to set the standards of accountability for this institution, but it does not have to be a disagreement about the *paradigm* meaning of accountability. There is a shared understanding that expert agencies must be prevented from making decisions unchecked by guardians of public interest, but what counts as appropriate “checking” will clearly be a matter of contestation.

Recognition of shared paradigms opens the door for interpretive engagement between actors with diverging conceptions. This may of course be a door expert agencies want to see shut in order to protect the status of their judgment. They can have an incentive to keep conceptions of risk and impact couched in the language of their scientific or professional discipline. But that does not genuinely promote the kind

of political neutrality or independence that should guide responsible engagement with values. Sticking as close as possible to narrowly defined scientific standards and ignoring the broader political morality may take the political *reasoning* out of expert agency decisions, but it does not remove the political nature of the matter at hand.

The case of the European Food Safety Authority (EFSA) and its risk assessment of the herbicide glyphosate vividly illustrates this. EFSA chose to exclusively consider narrow carcinogenic factors and leave broader environmental considerations out of the assessment (Paskalev 2017, 210). In this case, a broadening of the assessment criteria would not seem to violate EFSA's mandate, seeing as the founding regulation states:

The Authority should provide a comprehensive independent scientific view of the safety and other aspects of the whole food and feed supply chains, which implies wide-ranging responsibilities for the Authority. These should include issues having a direct or indirect impact on the safety of the food and feed supply chains, animal health and welfare, and plant health.⁷

Naturally, such a sweeping responsibility calls for a complex view of safety. Fidelity to mandate seems to require the expert agency to connect its narrow conceptions of risk to a more overarching safety paradigm. Relying on a conception of risk that exclusively considers carcinogenic effects fails to include the actual range of appropriate concerns. This makes the process less responsive to political values of the mandate.

3.3. *Tracking Intentions of the Mandate*

The previous two conditions of political literacy are about setting up a task for responsible reasoning beyond narrow professional parameters. Expert agencies should nurture awareness of how the political values intertwined with technical tasks are contested, and they should strive for interpretive engagement with diverging conceptions based on recognition of shared paradigms. The third step is about using this sensitivity in the service of tracking the intentions of the mandate. This should still be understood within the framework of constructive interpretation. Here, the tracking of intentions is about seeking to speak and act in the name of the entrusting community, not seeking the original intentions of any particular legislator. That is, the approach follows Dworkin (1986, 172) in holding that “the community can adopt and express and be faithful or unfaithful to principles of its own, distinct from those of any of its officials or citizens as individuals.” Political literacy takes this as a regulative idea, in the sense that it is governed by fidelity to values entrusted in the name of the community.

In practice, this means expert agencies need to seek attunement with the commitments that are expressed the relevant public forums. Consider in this regard ESMA's account of how it seeks to be responsive to political intentions in performing its more specific work. ESMA is mandated to draft technical standards to implement the regulations and directives enacted in the EU legislative process. In EU terms, the agency responds to “level 1” legislation by making analyses and consultations to advise

⁷ Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety. *Official Journal L 31* of 1 February 2002, p. 4, par. 36.

on the more specialized “level 2” legislation. At a public speaking event, the chair made it clear that ESMA and the other financial agencies—the European Supervisory Authorities (ESAs)—should be involved at an earlier stage in the legislative process:

Concerning involvement of ESAs in the level 1 debate. We all agree on this; this is not to give us a formal role in the negotiations. We are not a political body and so we should not be part of those negotiations. But we can see that some of those debates could benefit, on both sides, from understanding the intentions behind level 1.⁸

By “understanding the intentions” behind legislation, we do not have to see this as an originalist approach or that ESMA is seeking extract an aggregated will from the individual legislators. Expert agencies are aware that a piece of legislation is typically supported for a variety of reasons; some legislators are merely acting strategically, others on partisan or sectarian convictions that are not appropriate for expert agency justifications, and so on. Nevertheless, there may still be a range of evaluative claims that proceed with broad support throughout the debates and that can be seen as part of the public mandate that agency interpretation must fit (cf. Dworkin 1986, 343).

However, the governing intentions of a mandate are clearly not settled by any single act or in any unique forum. The public authority of expert agencies is not part of a simple chain of delegation where a clearly defined principal entrusts a settled task. Expert agencies are part of an administrative system where they are subjected to ongoing and diverging expectations from different institutions; there are complex networks, competing institutions, overlapping competences, and unsettled jurisdictions. In this regard, Johan P. Olsen (2017, 47) has claimed that “the legitimacy of public administration depends on their ability to reconcile contradictory premises and competing accountabilities to multiple principals on specific issues in specific situations.” The idea of political literacy highlights that there are standards for this process of “reconciliation.” Political literacy is an ability to respond to it as an interpretive challenge to gain principled coherence and thereby act in the name of the entrusting community.

For example, an expert agency may be subjected to an auditing institution’s expectation that decisions rest on comprehensive cost-benefit analysis and detailed regulatory impact assessments. This can be in tension with a political forum’s focus on precautionary measures and risk aversion. In order to make a principled reconciliation, the expert agency must consider how the expectations fit the broader set of public intentions that govern their mandate. An expert agency’s inaction due to lack of accurate impact assessments may be irresponsible if the mission has been framed in terms of immediate public concerns about the risks involved and an urgent need for active measures. This mode of reconciling diverging expectations is a way of gaining indirect access to the political values in question. It is indirect in the sense that the operative meaning of the values is constructed from a public record of evaluative input. The input does not predetermine how the values are to be respected or promoted, but it shapes the public space of reasons in which the expert agency orients itself.

This is not to claim that the shaping of this space can or should be a unidirectional affair. The professional expertise of agencies may plausibly play a legitimate role

⁸ Politico Morning Exchange Live with Steven Maijor, London, June 29, 2016, <https://www.politico.eu/event/politico-morning-exchange-live-with-steven-maijor/>.

in forming the intentions of a mandate. For example, it has been argued that the European Environment Agency (EEA), in its chemical risk assessments, legitimately used an “acknowledgement of ignorance to open up a further interpretive space within which to explore the meaning of ‘precaution’ relevant to the case” (Waterton and Wynne 2004, 100). The expert agency took an active stance to prevent the abuse of its expertise that might ensue if the existing forms of risk assessment were taken to warrant concrete science-backed judgments about the safety of chemicals. This pointed towards a more ambitious precautionary approach than what the political institutions had envisioned. In opening up an interpretive space, the contribution of professional standards goes beyond finding the means to pre-established political intentions; it feeds back into the process of shaping what the intentions should be.

However, this contribution to the forging of the mandate does not make expert agencies into autonomous political actors in the way suggested by the direct-access strategy. It is still in the service of tracking and realizing the intentions of the mandate. When an expert agency like the EEA emphasizes scientific ignorance and its implications for conceptions of precaution and environmental responsibility, it is not pursuing a conception that competes with politically settled intentions. Rather, it identifies a lack of settled intentions. The expert agency shows how legislative intentions concerning precaution are not yet determinate enough for application in the regulatory field, given the state of knowledge. In other words, the agency is still governed by the idea of acting on conceptions that are attuned to political intentions. Political literacy then takes the forward-looking form of acting in anticipation of reasoned engagement and acceptance by political forums.

Hopefully, the account of political literacy given so far can include most of the reasonable approaches expert agencies take towards their entrusted values. The aim has been to delineate the basic capacity that gives the interpretation the right direction, where the overarching idea is that politically literate expert agencies are governed by the idea of fidelity to the community’s publicly entrusted values. The three conditions articulated in the preceding sections highlight how this can be a nonpartisan and reflective enterprise. The next section argues that this may also be useful as a framework for constructive interpretation of actual practice.

4. Interpretive Reconciliation or Strategic Management?

As argued so far, political literacy can enable agencies to engage in the appropriate form of constructive interpretation of their mandate. The argument has concerned the way expert agencies should reason about political values. The focus has not primarily been on how we, from an external perspective, should interpret expert agency practices. However, by using examples from expert agencies such as ESMA and EEA, the paper has at least indicated that the idea of political literacy can serve as a constructive interpretation of the actual practice of expert agencies.

The current section contrasts the perspective of political literacy with a currently influential “value management” perspective on the practice of expert agencies. Many analysts have identified various strategies agencies use in order to “cope with” or “manage” conflicting values (De Graaf, Huberts, and Smulders 2016; Thacher and Rein 2004; Stewart 2009). For example, agencies may divide their attention to values over time (“cycling”) or segregate them institutionally (“firewalls”). This perspective has also been presented as a form of constructive interpretation of actual practice

(Thacher and Rein 2004, 463). The stated goal of these analyses is to show how each strategy is “rational” in the sense that they enable agencies to get things done and not get stuck in evaluative exercises: “Firewalls and cycling, in particular, explicitly avoid considering the relative importance of conflicting values, recognizing that the effort to do so can be downright paralyzing” (ibid., 469).

The point of this section is principally to dispute the normative endorsement involved in the value-management perspective. But in doing so, it also raises questions about the empirical traction of the perspective. Perhaps the analytical framework makes expert agencies out to be worse than they are because it lacks an adequate theory of responsible engagement with political values. In general, these analyses have a low threshold for when it is considered legitimate for agencies to engage in such strategies of value management. There is no expectation that agencies should respond to seemingly conflicting values as an interpretive challenge. Instead, by seeing values as something to be “managed,” they are treated akin to hurdles that have to be passed in the most efficient manner. Why are such management strategies unsatisfactory responses to the conflicting expectations expert agencies face?

Each of the three conditions of political literacy raises the bar for normative endorsement. Together, they call for substantive interpretive measures in order to understand the nature or extent of the conflict. First, awareness of contestedness resists certain framings of the normative situation. Consider the following claim from the value-management perspective, which regards the professional judgment required in the administration of criminal justice; “crime policy generally tries simultaneously to pursue safety, just deserts, liberty, and equity; conflicts among these values take many forms, including the common tension between liberty and safety that pervades all criminal justice institutions” (ibid., 460). The perspective of political literacy rejects this way of speaking of “the” common tension between values such as liberty and safety. Any given impression of what this tension amounts to will depend on one’s conception of the respective values. It is not as if the specific meaning of such values is plain just because they are embedded in an institutional context. To the contrary, the public institutional context makes it less warranted to simply assume that one particular conception of a political value is appropriate. Moreover, experts are trusted to act in compliance with standards of scientific and professional integrity, which adds another interpretive dimension. As discussed above, they may have a duty to open new interpretive spaces when the expectations of political forums fail to understand how values translate to a regulatory field.

Second, recognition of how diverging conceptions rest on shared paradigms can lead to a broadening of application criteria. Consider liberty again. A conception that sees valid claims to liberty as necessarily about claims to rights may be theoretically attractive, but it arguably fails to make sense of the role liberty plays in many kinds of political arguments and the ways in which rightful restrictions are experienced as *costs* to liberty (Williams 2005, 84). The problem is not that a strictly rights-based conception of liberty is not acceptable to every reasonable citizen, but rather that it may not be the public conception that grounds the mandate. But the management approach to values fails to frame this as even a potential problem. It portrays engagement with values as a form of institutional housecleaning in the name of efficiency. Asking whether the criteria of different value conceptions are relevant to decision-making is considered to be paralyzing. While it is true that expert agencies are created to get things done rather than lapse into philosophy seminars, an inability

to recognize shared paradigms prevents agencies from learning from accusations of partisan bias or professional myopia. Rather than seeing criticism as potentially grounded in a shared paradigm of value, it becomes pre-labeled as mere competition between incompatible value conceptions.

The cautionary message of the third condition of political literacy—responsiveness to the intentions of the mandate—is particularly aimed at the fragmentary or disjointed nature of the form of reasoning that management approaches recommend. Strategies like cycling and firewalls distort the constitutive and unifying role of values in expert agencies. While it is indisputable that expert agencies may legitimately vary their priorities regarding resources and attention, and that they may delegate special responsibilities to subdivisions, there is a real legitimacy loss in doing this by way of a cyclical normative commitments and walling values off to single-minded departments. This becomes clear once we consider the role of values in expert agencies' justificatory claims. For example, in order to justify its more ambitious precautionary approach, an expert agency cannot appeal to a temporary break in its commitment to accuracy, as if this does not matter in this regard. Rather, it must explain how its approach fits the required level of accuracy given the urgency of the matter. Nor can a working group dedicated to a special issue, such as carcinogenic risks, refuse to be responsive to the broader concerns of the expert agency. The normative judgment of each subsection must be sensitive to the overall mandate of the institution. For example, it counts against the judgment of a specialized working group on carcinogenic risks that its conceptions of safety and responsibility are not harmonized with understandings that have been worked out in more representative forums.

In other words, the value-management perspective fails to distinguish sufficiently between *value commitments* and *policy priorities*. Value commitments are constitutive of agencies in a way that does not lend itself to the management mentality. As Gerald Postema recently put it, "what makes a collection of individuals into an enduring community are its enduring commitments and the efforts of its members to take responsibility for these commitments" (Postema 2018, 176). This is as true for expert agencies as for the polities they serve. An important difference, however, is that an agency is not *self-constituting* in the way a democratic community is.⁹ Agencies are *fiduciaries* of the community (Majone 2001); they are constitutively entrusted with value commitments that have been expressed in forums with the normative powers to set the ends of public authority. Hence, access to values is indirect through fidelity to the legitimately established intentions of the community. Political literacy is about attunement to the justifying reasons of legislators and the interpretations of the mandate that are offered by accountability forums. As an indirect strategy of value interpretation, it does not permit agencies to treat their entrusted values as a set of isolated ideals or detached considerations. Instead, the values must be taken as shaped and joined by a public mandate.

This verdict on strategies of value management does not necessarily imply a verdict on actual agency behavior; it may instead question the empirical traction of the analytical framework. The value-management perspective needs to be challenged by the alternative perspective that highlights reconciliation through interpretive

⁹ On the relevant notion of self-constitution, see Korsgaard 2009, where she argues that normative principles unify manifolds into particular kinds and traces this view back to Plato, Aristotle, and Kant.

judgment. Instead of taking the management mode as given, empirical analysis should be open to potential modes of value responsiveness that draw on political literacy. In articulating the idea of political literacy, this paper has built on real examples that show how expert agencies and the forums they interact with perceive the evaluative responsibility to be far greater than the mere avoidance of paralysis that management strategies aim towards. Agencies have institutionalized procedures to counteract bias and broaden awareness of application criteria, and they actively seek to understand the intentions of legislation. This is an indication that political literacy may indeed serve as part of a constructive interpretation of actual practice.

5. Conclusion

This paper has sought to explain how the capacity of political literacy gives expert agencies the appropriate indirect access to political values. As a first step, it was argued that it is not sufficient for expert agencies to simply be transparent about their “normative assumptions.” The engagement with political values must be structured by the mandate in the right way. While inclusive public procedures play an important part here, they cannot relieve expert agencies of their interpretive responsibility. Agencies face a broad variety of public expectations and it is their responsibility to seek their mandate through a principled reconciliation of the normative input.

The three conditions of political literacy can guide inquiries into whether the reconciliation has been conducted in a responsible way. Has the expert agency recognized that the political values do not have simple criteria of application? Are divergent views acknowledged as interpretations of the same issue? Is contestation adjudicated by appeal to the intentions that govern the mandate? Assessments according to these criteria presuppose a capacity for reflexive awareness of contestedness, recognition of shared paradigms, and an ability to let specifications be guided by the intentions of the mandate. Possession of this complex competence does not guarantee legitimate decision-making, but it partly enables it. It thereby contributes to making the expert agency an appropriate subject of political responsibility.

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