Shifts in Governance: Problems of Legitimacy and Accountability

Synthesising study of the NWO programme “Shifts in Governance”
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Problems of Legitimacy and Accountability

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# Table of Contents

**FOREWORD**

## 1. INTRODUCTION

- Shifts in Governance?  
  - Legitimacy  
  - Accountability  
  - Reading keys  

## 2. SHIFTS IN GOVERNANCE IN THE PAST

- *Conquest, Competition and Ideology: Inventing Governance in the Dutch Golden Age*
  - Material used  
  - Project Discussion  
  - Lessons Learnt: Accountability and Legitimacy Issues Related to Shifts in Governance  

## 3. JURIDIFICATION, INTERNATIONALISATION, AND SHIFTS IN PUBLIC-PRIVATE BOUNDARIES

- *Does Liberalization Enhance Juridification? Trading in One Economic Governance Mechanism for (possibly less efficient) Others?*
  - Material Used  
  - Project Discussion  
  - Lessons Learnt: Accountability and Legitimacy Issues Related to Shifts in Governance  

- *The Transnational Political Economy of Corporate Governance Regulation*
  - Material Used  
  - Project Discussion  
  - Lessons Learnt: Accountability and Legitimacy Issues Related to Shifts in Governance  

- *Compensation for Damage: The Shift from Civil Law to Public Findings and Vice Versa*
  - Material Used  
  - Project Discussion  
  - Lessons Learnt: Accountability and Legitimacy Issues Related to Shifts in Governance  

- *Short Synthesis of the Major Research Findings across Projects*

## 4. SHIFTS IN GOVERNANCE IN THE GLOBAL SOUTH

- *Ideal or Real? Cultural Divergence in Accountability and Legitimacy in Multistakeholder Governance of Water Resources Shared by Mozambique and Zimbabwe*
  - Material Used  
  - Project Discussion  
  - Lessons Learnt: Accountability and Legitimacy Issues Related to Shifts in Governance  

- *In the Web and on the Ground: Global Circulation and Local Achievements of a Prospective Shift in Governance*
  - Material Used  
  - Project Discussion  
  - Lessons Learnt: Accountability and Legitimacy Issues Related to Shifts in Governance  

- *Local State and Private Networks in China – Harnessing Political Entrepreneurship Through New Forms of Governance: Legitimacy, Accountability and Innovation*
  - Material Used  
  - Project Discussion  
  - Lessons Learnt: Accountability and Legitimacy Issues Related to Shifts in Governance
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>5. POLICY DIFFUSION, EUROPEANISATION, AND MULTILEVEL GOVERNANCE</strong></td>
<td>65</td>
</tr>
<tr>
<td>Governance as Learning</td>
<td>66</td>
</tr>
<tr>
<td>Material Used</td>
<td>66</td>
</tr>
<tr>
<td>Project Discussion</td>
<td>68</td>
</tr>
<tr>
<td>Lessons Learnt on Accountability and Legitimacy Issues Related to Shifts in Governance</td>
<td>79</td>
</tr>
<tr>
<td>Material Used</td>
<td>83</td>
</tr>
<tr>
<td>Project Discussion</td>
<td>85</td>
</tr>
<tr>
<td>Lessons Learnt on Accountability and Legitimacy Issues Related to Shifts in Governance</td>
<td>94</td>
</tr>
<tr>
<td>The European Prosecutor Service: Towards a Multilevel Criminal Justice System?</td>
<td>94</td>
</tr>
<tr>
<td>Material Used</td>
<td>94</td>
</tr>
<tr>
<td>Project Discussion</td>
<td>94</td>
</tr>
<tr>
<td>Lessons Learnt on Accountability and Legitimacy Issues Related to Shifts in Governance</td>
<td>96</td>
</tr>
<tr>
<td><strong>6. EUROPEANISATION AND MULTILEVEL GOVERNANCE AS DISCURSIVE PRACTICE</strong></td>
<td>97</td>
</tr>
<tr>
<td>Short Synthesis of the Major Research Findings Across Projects</td>
<td>100</td>
</tr>
<tr>
<td>The Shift to the Region: Scalar Politics Versus the Circulation of Regional Policy Issues</td>
<td>100</td>
</tr>
<tr>
<td>Material Used</td>
<td>100</td>
</tr>
<tr>
<td>Project Discussion</td>
<td>100</td>
</tr>
<tr>
<td>Lessons Learnt on Accountability and Legitimacy Issues Related to Shifts in Governance</td>
<td>102</td>
</tr>
<tr>
<td>Nation States and Multi-level Governance in the EU: The Environmental Policy Field</td>
<td>102</td>
</tr>
<tr>
<td>Material Used</td>
<td>102</td>
</tr>
<tr>
<td>Project Discussion</td>
<td>103</td>
</tr>
<tr>
<td>Lessons Learnt on Accountability and Legitimacy Issues Related to Shifts in Governance</td>
<td>104</td>
</tr>
<tr>
<td>Short Synthesis of the Major Research Findings Across Projects</td>
<td>105</td>
</tr>
<tr>
<td><strong>7. GENERAL CONCLUSIONS</strong></td>
<td>107</td>
</tr>
<tr>
<td>Overall Assessment</td>
<td>107</td>
</tr>
<tr>
<td>Potential for Deepening Knowledge on Accountability and Legitimacy of Governance</td>
<td>108</td>
</tr>
<tr>
<td>Further Suggestions</td>
<td>110</td>
</tr>
<tr>
<td><strong>REFERENCES</strong></td>
<td>113</td>
</tr>
</tbody>
</table>
First, I would like to express my gratitude to the NWO for allowing me to conduct this task. It was a unique opportunity for me to learn a great deal in a limited amount of time and to become familiar with some outstanding work that has nourished my own reflection on governance. I would also like to thank my faculty at the University of Lausanne, who showed flexibility and allowed me to use part of the generous NWO funding to pay the substitutes who taught the courses I usually teach. Without such support, I would not have been able to complete the task.

According to the official letter that I received from the NWO, this synthesis should be about “Shifts in Governance: Problems of Legitimacy and Accountability”. This is also the title of the research programme funded by the NWO, and the initial programmatic brochure – in a sense, the “manifesto” of the programme – was entitled “Shifts in Governance: Problems of Legitimacy and Accountability” (NWO 2004) as well. Obviously, synthesising the results of a research programme also implies evaluating to what extent they provide answers to the questions raised. However, at the end of the programme, one realises that it covers a much broader range of issues than those of legitimacy and accountability related to shifts in governance. This can be simultaneously considered an advantage and a shortcoming: on the one hand, it would not be honest to ignore several highly interesting results that are not about legitimacy and accountability; on the other hand, the fact that several projects did not directly address these questions can be seen as a problem, given the initial “mandate”. Therefore, providing only a synthesis of project findings would obscure the problématique of legitimacy and accountability, while focusing only on the latter would not do justice to the programme contribution to the study of governance problems. I decided to try to provide a critical synthesis in which I discuss research results (not only those on legitimacy and accountability), assessing their contribution to a reflection on legitimacy and accountability problems, which sometimes requires the extrapolation of such a contribution.

I have to say that my “parochial” disciplinary lenses made me feel more competent to discuss projects closer to my area of expertise, which is why my comments are lengthier regarding those topics. If any of my comments seem misplaced, this may be due to my ignorance of some topics or disciplinary approaches. Although I hope that I managed to discuss all project results in a fair manner, I must apologise if my bias as a political scientist prevented me from doing equal justice to all work that has been conducted within this programme. However, this is not an attempt to escape my responsibilities in case the synthesis is not found satisfactory!

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1 I used the revised version of 2004. See also the article published by Kees van Kersbergen, then chair of the programme, and Frans van Waarden (van Kersbergen and van Waarden 2004).
INTRODUCTION
The starting assumption in the programmatic brochure is that new forms of governance are emerging whose common characteristic is that they “rely less on the state as the institutional form and hierarchical center of society” (NWO 2004: 4). Although the generic term of “governance” may include all activities of political regulation (in German termed “Steuerung”), several authors have a narrower understanding of “governance”, as opposed to “government” (deemed to subsume the traditional textbook form of top-down hierarchical steering of society by the state). The field of international relations, for example, is considered one of “governance without government” (Rosentau and Czempiel 1992): various “regimes” set up norms that reduce the state of anarchy due to the lack of a supranational government.

Without necessarily assuming that shifts in modes of governing lead to an erosion (“hollowing out”: Rhodes 1994) of the state, the authors of the programmatic document agree that “governance refers to the phenomenon that many public functions increasingly seem to be assumed and carried out by actors other than the classical governmental institutions of the nation-states” (NWO 2004: 4). The state then de facto loses “its monopoly on collectively binding decision-making and on the production of public goods” (Grande and Pauly 2005: 15). The following quote typically illustrates a “governance” pattern in policymaking:

“Decision-making, rather than being centralized, occurs within an amorphous set of subgovernments. Whether the parties involved are characterized as interest groups, iron triangles, advocacy coalitions, issue networks, or policy networks, the point is the same: small networks of policy specialists congregate to discuss specific issues, set agendas, and formulate policy alternatives outside the formal bureaucratic channels, and they also serve as brokers for admitting new ideas into decision-making circles of bureaucrats and elected officials.” (Haas 1992: 31)

Shifts in governance occur in two dimensions. On the one hand, governance (or more accurately here, government) becomes “multilevel”, necessitating the cooperation of public actors representing distinct decisional levels (the local, regional, national, European-supranational level). On the other hand, governance operates along a “partnership”, or “contractual”, logic, according to which nonpublic actors (interest groups, NGOs, various stakeholder groups, experts and even private firms) are closely involved in the formulation or implementation of collectively binding decisions. Even though changes in policy styles may also be driven by concerns about the crisis of state finances, or by the “managerialist” revolution that emphasises the need for efficiency in the delivery of public goods, they should not be assimilated to neoliberalism or marketisation. There is indeed a widespread suspicion about the efficiency of top-down state action, but if privatisation relies on positive anticipations about the impact of market-based reforms, “governance” and cooperative policymaking styles rely on positive anticipations about the role of networks. It is thus no accident that students of policy networks fear that competition might undermine trust among network members, which is considered a precondition for the positive role of cooperative governance (Olsen 2005: 7).

Shifts in Governance?

A question that has not been given sufficient attention in research is whether the alleged major shifts in governance have really occurred. Surprisingly, there are virtually no longitudinal analyses that allow us to corroborate, qualify or disconfirm the thesis that we have been experiencing recently – a trend towards less “state-centric” forms of governance. Noting this problem, the authors of the programme outline pleaded for historical and comparative analysis as well as rigorous empirical tests of presumed trends to assess whether the widely held beliefs about governance shifts are corroborated. They also requested information regarding “how unique or new such shifts are from a comparative and historical perspective” (NWO 2004: 7). This is one of the reasons that the NWO programme is inter-disciplinary and is meant to build bridges across disciplines and intra-disciplinary research agendas (the title of van Keersbergen and van Waarden 2004 is eloquent in that respect). Significantly, historians, economists and urban researchers were particularly encouraged to apply in the second call for projects.

The historical approach is particularly important, as we are not sure if the shifts that we think we observe have indeed occurred, or if they are perceptible now because scholars have changed

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2 A secondary analysis conducted on the grants allocated by the Volkswagen Foundation in Germany within a programme on globalisation and global governance reported that 50 per cent of grants had gone to social science scholars, 30 per cent to economists, and 11 per cent to lawyers (Mayntz 2005: 7). A survey of about 2,100 research projects included in a database on European governance (GOVDATA) found that those with a political science background account for 52 per cent of the total, while law and economics following, and sociology and history lagging behind (Larat and Schneider 2009: 182).
their conceptual lenses on governance phenomena, adopting less state-centric perspectives. One should avoid an evolutionist bias; neither the amplitude of the shifts nor the novelty of cooperative forms of governance should be overstated. In Anglo-American literature about political decision making, several works – written decades ago – have identified de facto “sub-governments” that played a major role in policy formulation and that were composed of cohesive “policy communities” in which public and private actors closely cohabited. As reminded by Haas (see above), “iron triangles,” comprising politicians, bureaucrats and interest representatives used to have a firm grip over key issues (such as agricultural policy) in which large economic interests were at stake. In addition, several small European countries have been characterised by forms of cooperative governance for decades, if not centuries. In “pillarised” countries (i.e., culturally hetero-geneous societies segmented along religious or linguistic groups), the Netherlands being a prime example,3 service delivery in the field of education or linguistic groups), the Netherlands being a prime example 3 and health care has been widely delegated, in a logic of “subsidiarity,” to nonprofit organisations subsidised by the state and closer to the various socio-cultural communities. In countries such as Austria, Germany, and Sweden, “corporatist” arrangements between peak associations that represented business and labour interests used to prepare political decisions in economic or social policies, and the same organisations often managed their implementation (see Pierre and Peters 2000: 199).

There is no doubt then that this requires a historical approach of governance modes. On the one hand, by intending to focus on issues of accountability and legitimacy, the programme intentions seemed to be a scrutiny of the consequences of shifts, and not a genetic perspective on them. On the other hand, one can read the following in NWO (2004: 12): “An important question is, for instance, how cultures of governance, which often demonstrate surprising tenacity, are transmitted from one generation to the next through processes of socialisation, elite education, and political recruitment”. A related question is how new norms of good governance challenge older ones, whether they manage to establish themselves as legitimate, and how this occurs. As can be seen from this synthesis, the question of the emergence of new paradigms of governance is addressed in more detail in this programme than the question of the persistence of old norms (absence of shifts). But in both cases, an adequate treatment requires a longitudinal approach that demonstrates what kind of social mechanisms and actors produce “legitimate” governance norms and recipes, and how the latter are changing.

One question is whether what we are observing now as modes of governance is the outcome of shifts. Another question is if shifts are ubiquitous (say at least within the universe of OECD countries), or if there are also countertrends. So far, the “governance” literature has not seriously dealt with this question, and this is probably due to the excessive specialisation of research communities. For example, recent research on party politics concludes – contrary to governance research that emphasises power fragmentation – that there is a concentration of political power in a narrow circle of actors around party leaderships and, when parties are in government, around the core executive: this is depicted as the “presidentialisation” of politics (Poguntke and Webb 2005). Studying the United Kingdom and Canada, Savoie (2008) concludes as much about the existence of “court government”. He adds that the decision-making process is horizontal, cumbersome and consultative, and that it involves a multitude of actors from different government departments and agencies as well as a variety of individuals operating outside of government – all typical features of “governance” – only for issues that do not matter much to prime ministers and their “courts”. This is one line of interpretation; another one might be that policy styles are sector-specific, so that one has to disaggregate the level of analysis and avoid resorting to generalisations (Papadopoulos 2008). Another possibility is that of a divorce between the cooperative logic of policymaking and a more competitive logic of party politics. On the one hand, according to some scholars at least, the cooperative logic tends to develop during policymaking, even in so-called “Westminster” systems of prime ministerial government (Bevir and Rhodes 2006),4 while, on the other hand, even fragmented multiparty systems with coalition government are today characterised by a bipolar logic of competition between party coalitions (Mair 2009: 8-9). Hence, perhaps the picture is more “messy” than we thought, but in any case, it seems that governance studies should consider more seriously how “politics” develops in parallel with policymaking.

3 See chapter 8 of recent work by Hendriks (2010). Familiarisation with forms of cooperative governance may explain that the first works theorising this policy style (for instance Kooiman 1993) are of Dutch origin. Yet it does not explain why such pioneering studies were not developed in similar countries too.

4 Note, however, that Savoie (2008) would challenge this regarding decisions of utmost importance for the “court”.
Legitimacy

In the NWO (2004) document, it is assumed that shifts in governance can have consequences – possibly problematic – on legitimacy and accountability. Indeed, this important issue has not been given sufficient attention due to the frequent managerial bias that used to characterise research on governance issues. As shifts in governance forms take place with the aim to produce more efficient policies, research on that topic has primarily sought to assess to what extent such a goal has been reached. It has thus largely concentrated on the “adequacy” of policy measures for problem solving – as if the definition of solutions, and even of problems, were uncontroversial, and on the “effectiveness” of policymaking (i.e., whether measures are implemented in conformity with the legislator’s intention), assuming implicitly – in a top down perspective – that this is what must be done, tending to ignore that legislators may not pursue the common interest, that policy goals may be unclear, etc. Kenis and Raab (2008: 138) suggest that “within the international mainstream of administrative and political science dominates a rather positivistic perspective that tends to consider politics as a rather technocratic perspective. In such a situation, issues that require normative considerations are not really en vogue” (translation Y.P.). This is corroborated by the findings of Kohler-Koch (2006: 5), based on GOVDATA, who concluded that just 17 per cent of these projects addressed questions of democracy or legitimacy.5

Legitimacy, according to the programme document, “is about the moral grounding of power and therefore involves social and cultural norms and expectations concerning proper behaviour of those that govern, the social relationship between rulers and the ruled, the role of trust, reputation and force, and the balance between authority and obedience”. Accountability “involves the presence of checks and balances: the acceptance of rulers that they must somehow live up to expectations and justify their actions within given norms, and that the ruled have some sanctioning power” (NWO 2004: 11-12). What has to be clarified is how shifts in governance affect legitimacy and accountability.

Perhaps it is not entirely clear from the NWO document that there are two possible perspectives on legitimacy. One is normative: for example, as democrats, we may consider a political system illegitimate because it falls short of our expectations regarding the channels available to citizens to declare their preferences (since Scharpf 1970, this is usually called “input-legitimacy”), including their preference of having the opportunity to sanction rulers that they dislike because they do not mirror their policy preferences. Another approach to legitimacy concerns the practical (social, political etc.) conditions that must be met by rulers to be considered legitimate by the ruled, on the basis of the latter’s own criteria of legitimacy. These may differ from the normative criteria of legitimacy that democrats cherish; think, for example, about the Weberian forms of domination, where the legitimacy of power is based on beliefs about the “appropriateness” of tradition, charisma, or legal rationality, all situations in which the opportunity that the ruled have to express their preferences to those taking collectively binding decisions affects them (“input-legitimacy”) hardly counts. In this approach, legitimacy is the object of sociological (and not philosophical) scrutiny. It is a relational phenomenon, where the perception by the ruled that their rulers are legitimate6 (on any grounds) ensures, if not active manifestations of their consent, at least their passive obedience,7 and thus governability. Typical of this approach is the following definition of legitimacy: it “refers to the normative belief by an actor that a rule or institution ought to be obeyed. It is a subjective quality, relational between actor and institution, and defined by the actor’s perception of the institution” (Hurd 1999: 381; original emphasis). Although the object of legitimacy is not confined to institutions8 and – as just noticed – active obedience is not a necessary manifestation of legitimacy (rather, respect for the object of legitimacy and lack of challenge of its actions should be considered as such), this statement nicely describes both the inter-active and subjective dimensions of legitimation processes. Legitimacy endows power with authority while

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5 However, there is a perceptible increase of projects dedicated to legitimacy issues from 2001 onwards (Larat and Schneider 2009: 188 n. 34).

6 This is not to say that public opinion data are the best tool to assess legitimacy, for a number of reasons: because support by some social groups may be more decisive for legitimacy than support by others, because public opinion is volatile, because survey items do not necessarily mirror the respondents’ priority concerns, etc.

7 See the distinction between “consenters”, “assenters” and “dissenters” (Wright 1976).

8 In his classic work on political systems, David Easton (1965) distinguished between support for the community, the regime and the authorities. In established democracies, although governments often lose public support, there is no massive contestation of the democratic form of government or violent movements advocating secession.
causing it (at the limit) to not be felt as such by its subjects.\(^9\)

Regarding practical legitimacy, shifts in governance are expected to enhance it; we know that they are deemed to contribute to more efficient policies, and it is reasonable to expect that if policy takers are satisfied with policies produced by policymakers, they will tend to support the latter (i.e., they will not advocate a governmental change, not criticise the bureaucracy, etc.). This is the so-called “output-legitimacy”. Hendriks (2010: 147) notes in this respect that “democracy must be efficacious, and recognized as such”. This kind of legitimacy is valued in managerial discourse and often in governance studies, although it is in reality hard to assess whether shifts in governance forms indeed lead to more efficient policies (or, more accurately, to policies perceived as more efficient by public opinion), and thus – as a second sequence of causation\(^10\) – to increased legitimacy of the power holders.\(^11\) We should not forget that “output-legitimacy” is not necessarily democratic: dictatorships benefit from it as long as they are considered able to “deliver”, perhaps even to perform better than democratic regimes in terms of safety, economic growth, etc. Moreover, “delivering” is not the only source of legitimacy. Hendriks (2010: 147) adds that a political system is legitimate if it is able to “operate in a way that is held to be fair, fitting, and solid”. In addition to the legitimacy generated by perceptions that the channels for input expression to the political system are satisfactory, in addition to (output-) legitimacy generated by perceptions that “the systems delivers”, legitimacy also rests on perceptions of “throughput” fairness. This refers to the “quality” (legality, transparency…) of decision-making procedures, which convinces us to comply with a decision even if we disagree with its content.

**Accountability**

Accountability is also a double-faceted concept (Bovens 2010c); it is both a desired goal and a normatively value-laden “icon”, and is embodied in concrete social mechanisms that require empirical scrutiny. The definition of accountability by NWO cited above tends to conflate two distinct dimensions of accountability that are valued differently depending on one’s perspective about legitimate government (Mény and Surel 2000). It is suggested that accountability relates to the presence of checks and to the sanctioning power of the ruled. As described in the works of the project on *Multilevel Governance and Public Accountability in Europe* (see below), checks are part of a constitutional approach to accountability, whereas popular control is part of a democratic approach to it. Not only are these different dimensions, but they may also conflict, as in cases where courts invalidate decisions by democratically authorised bodies because they consider them to cause prejudice to minority rights. There are different definitions of accountability,\(^12\) but like legitimacy, accountability is a relational concept. It involves an individual or collective actor who has to provide an account to another actor (not necessarily the one who has delegated tasks to the previous one); depending on her appreciation of the account, the latter actor can impose positive or negative consequences on the former one.\(^13\)

One may consider that changes in governance have an impact on forms of accountability and that this impact influences legitimacy. For example, if changes in governance enhance the accountability of policymakers to those subject to their decisions, this may have a positive impact on the legitimacy of the political system. This is a concern of the “accountability agenda” in administrative reform, which “seeks to make administrative agencies accessible, accountable, and transparent by ensuring direct participation or representation of citizens in administrative affairs” (Ansell and Gingrich 2003, p. 165). Conversely, if democratic accountability is impeded by governance shifts, then legitimacy may be undermined too, because in democratic systems most people do not like dealing with unaccountable

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\(^9\) French sociologists Bourdieau and Passeron (1970) called “symbolic violence” domination that is not felt as such. The epistemological question here is whether the analyst can credibly speak about violence when those supposed to be affected by it do not notice it. This problem is encountered more generally in approaches that uncover latent forms of power, such as in the “third dimension” of power by Lukes (1974).

\(^10\) This is problematic too, because the perception of the “quality” of outputs depends on several factors, including trust that the political system is representative (input-legitimacy).

\(^11\) This is a virtuous circle in which “specific” support (Easton 1965) to given measures spills over into more general “diffuse” support for the political system.

\(^12\) For example, Bovens, who conducted a research on accountability within this programme, defines it as a relation-ship “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 judgment, and the actor may face consequences” (Bovens 2007: 450).

\(^13\) Schedler (1999) calls “answerability” the requirement to explain one’s conduct, and “enforcement” the application of rewards and sanctions.
rulers. Scholars criticise for instance the increased interference of the unelected judiciary in policymaking (Bellamy 2007), or reflect on the extensive delegation of regulatory tasks to “independent” agencies that operate at arm’s length from governmental control (Maggetti 2010). A third theoretical scenario, described above, is that output performance compensates for the lack of input-legitimacy generated either because people do not feel represented by their authorities or because they do not have at their disposal the adequate means to sanction such rulers in case of misconduct. Finally, as noted above, legitimacy can also be affected by means other than rulers’ democratic accountability. The latter may not be a necessary condition for practical legitimacy, nor is it a sufficient one. Output-legitimacy can compensate for the lack of democratic accountability, and it is uncertain whether the accountability of political authorities is sufficient for regime legitimacy if such authorities are considered incompetent or, worse, corrupt. We see, then, that the relationship between accountability and legitimacy is complex.

Complexity also characterises the relationship between cooperative forms of governance and accountability (and thus, of course, legitimacy as well). Such forms deviate from the standard “textbook” version of democratic legitimacy that is based on a circular relationship between the rulers and the ruled. Such a relationship is apparent in the chain of delegation from citizens to parliaments, government and administration doubled by a chain of accountability following the reverse direction (Strom et al. 2003). My argument is that the trend (if any) towards more cooperative forms of policy-making – though in all likelihood necessary for policy efficiency (and even at first glance promising with respect to less top-down regulation, inclusiveness and pluralism) – can have negative consequences upon democratic accountability. On the other hand, because these consequences are not easily visible by broad public, deficits in democratic accountability do not necessarily lead to practical legitimacy problems. Briefly stated, the possible problems of cooperative forms of governance with respect to democratic accountability may stem from the following (Papadopoulos 2007 and 2010): the fact that “meta-governance” (i.e., the design of governance procedures) may lie under the control of unelected bureaucrats; the often informal character of policymaking procedures, which inhibits visibility and public scrutiny; the existence of (behind closed doors) negotiations between multiple kinds of actors, which facilitate “blame-shift games” (Hood 2007: 200); and, finally, the weight of social pressure in policy communities, which generates the dilemma of “multiple eyes” to their members, because their accountability to democratic “principals” is put into balance with accountability to their “peers”.15

Reading keys

Initially, the programme was divided into four sub-themes: multilevel governance; urban governance; cultures of governance; private and public responsibilities. The structure adopted here is a bit different. The report is divided in the following five sections, each of them except the first one grouping a couple of projects:

- Shifts in governance in the past;
- Juridification, internationalisation, and shifts in public-private boundaries;
- Shifts in governance in the global South;
- Policy diffusion, Europeanisation, and multilevel governance;
- Governance as discursive practice.

The different sections vary in length, because more space was devoted to large projects (for example, counting several dissertations) than to smaller ones. In agreement with the programme direction, this survey does not consider output related to the replacement subsidies of scholars, and it discusses only projects that have been completed so far. I based my survey on the material provided by NWO, but whenever I was able to access additional material mentioned in the reports, I used it too. In fact, a source of difficulty was that the material received from NWO often dates back to 2007–2008, and does not always cover the entire range of publications from the projects, so additional research and requests were required. I could only use the material governance practices matters for that (Benz and Papadopoulos 2006); it is not the same if representative institutions exist, as in the case of the local, national, and European level, or if they are absent, as in cases of transnational (and, even more, privatised) forms of governance.

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14 Like other risks for democratic accountability, the degree of uncoupling of governance networks from the democratic circuit is subject to empirical variation. Yet, one should add that the formal institutional architecture “surrounding”

15 This also means that policymakers claiming to represent various constituencies are caught in a dilemma between a “logic of influence” and a “logic of members” (Schmitter and Streeck 1999); see the discussion of the project Governance as Learning.
written in English; nonetheless, this represents a large share of the sample. For lack of language knowledge, I had to disregard the literature in Dutch, sometimes also that of other languages. Among the wealth of programme outputs, I read books and edited volumes, articles in scientific journals, and book chapters, but I disregarded shorter pieces such as book reviews, encyclopaedia articles or “grey” literature (however, revised versions of several conference or working papers that were subsequently published as articles or chapters in edited collections were included in the survey). Finally, project leaders pursued different policies regarding the list of publications that they considered linked to their project. Sometimes, there was no complete match between summaries of project results, publication lists and the submitted material. For these reasons, part of my job consisted of trying to establish as accurately as possible what kind of output the project yielded. To be on the safe side, I read first the proposal, then the research report – knowing that differences are always possible (and even welcome!) between intentions and results – and finally, the publications. I concentrated on those publications dealing more closely with the research questions that were posed in project proposals and reports.

The synthesis of each project is structured as follows: first, a short description of the material used, then a critical account of the main results as the pièce de résistance, completed by the lessons learnt from the project on issues of accountability and legitimacy. At the end of each subpart grouping a couple of projects, one can find a more general short synthesis on the relevant results from this subpart. Finally, in a general conclusion, I tried to assess the scientific contribution of the program, emphasising its strengths and some weaknesses, returning to accountability and legitimacy, and making some suggestions for further research.
SHIFTS IN GOVERNANCE IN THE PAST
As noted in the introduction, the question of the novelty of “governance” as a mode of “government” is still open. There is probably some cross-country variation – countries where cooperative forms of governance are not new, others where they are, and others where they have not (yet?) replaced more hierarchical forms of governance.\(^{16}\) Similarly, in the past, there have been important shifts in governance, with probable consequences on accountability and legitimacy. To clarify these points, historical research is necessary. In the “Shifts in Governance” programme, only one project has such a perspective; its proposal argued that the 17th century was a period of dramatic changes in the Netherlands that entailed a paradigm shift similar to the one we are experiencing now.

**Conquest, Competition and Ideology: Inventing Governance in the Dutch Golden Age**

**Material used**

I received numerous documents for this project, but several were not directly linked to the project topic, and some were edited volume chapters written by international scholars not participating in the project. The only published text received was Hartman et al. (2009). To do justice to the project, I decided to rely on the list of publications featured in the final report. I considered the publications drawn from work funded by the NWO program, but (with few exceptions; see below) not those from work funded by other sources. In particular, the report mentions three doctoral dissertations, however:

− From the thesis by Jaap Nieuwstraten (2010) on Boxhorn, the introductory and conclusive chapters (plus some other parts) were missing (I consulted another available text; see below).
− From the thesis by Jan Hartman (2010) on the De la Court brothers, I received only the introduction and chapters 1, 2 and 4. As the thesis was not yet completed and I had access to few chapters, I had to rely on its summary and introduction.
− The thesis by Michel Reinders was not funded by this program\(^ {17}\) and will not be considered here. However, to acquire a better understanding of the period covered, which was unfamiliar to me, I consulted two other available texts by Reinders (see below).

Regarding the postdoc part of the program, on the decline of the Dutch republic (Dr. Stapelbroek), the book announced has not yet been completed. Publications by Dr. Stapelbroek are cited, but none that I could access was directly linked to the project. However, I accessed a recently published article by K. Stapelbroek that serves as an introduction to a journal special issue that he edited on “Dutch Decline in Eighteenth-Century Europe” (see below).


Reinders, Michel (2009), “Capability and the Transformation of Dutch Citizenship”, in Jan Hartman et al. (eds.), *Public Offices, Personal Demands: Capability in Governance in the

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\(^{16}\) There are also policy sectors where cooperative forms of governance like neo-corporatism, or self-regulation, have recently been replaced by more statist modes of steering.

\(^{17}\) However, the following book in Dutch is mentioned (with a different title) in the publications list: Michel Reinders (2010). *Gedrukte Chaos*. Amsterdam: Balans. Several among the publications in the list of project outcomes are authored by Michel Reinders, although he was not funded by this program.

\(^{18}\) This is a volume edited by the three doctoral students (Jan Hartman, Jaap Nieuwstraten, and Michel Reinders) involved in the project. It contains a jointly authored introduction, as well as individually authored chapters, with three among them written by project members (the main applicant Robert von Friedeburg, Jaap Nieuwstraten, and Michel Reinders). This publication is the result of a conference held in Rotterdam in June 2007.
Seventeenth-Century Dutch Republic (pp. 176-198). Newcastle upon Tyne: Cambridge Scholars Press.


Project Discussion

The project proposal describes the 17th century in the Netherlands, especially 1618–1672, as a highly innovative period in the history of Western governance, in which a new reason of state rehabilitated the legitimacy of personal enrichment through trade as an alternative to war. In the 17th century Netherlands, private transactions began to be considered as beneficial to the public good (a belief later theorised by Mandeville’s Fable of the Bees, or Private Vices, Publick Benefits: see Stapelbroek 2010: 141-142). In addition, the successful colonial policy of the United Provinces in the Dutch Golden Age generated the so-called “Jealousy of Trade” by the other European powers, which was an early-modern case of imitation and benchmarking of the Dutch new art of government as well as the first heavily political form of globalisation. The question often posed then by Europe’s most prominent political thinkers and statesmen was: how could a very small country, with few natural resources and with no large centralised state bureaucracy (in many ways an anomaly because it was a republic in a time of monarchies, and a quilt of cities in a world of peasants (Hartman et al. 2009: 6) have managed to become a military and commercial power? The project considers important the work of Dutch thinkers of the 17th century such as Marcus Boxhorn (professor of Oratory at Leiden University) or, later, of his disciple De la Court. It seeks to situate the political ideas of these authors in the relevant historical context, drawing inspiration from the “Cambridge school” of intellectual history with J.G.A. Pocock and Quentin Skinner as leading figures. However, the project did not only study academic texts; thanks to external funding, it also studied pamphlets, mostly issued by adherents of the Orangist party advocating the need to give more power to the stadhouders (the monopolial element in the Dutch republic). These were used in the popular uprising of 1672, the rampjaar (“year of disaster”) that marked the fall of the patrician Regenten regime after military defeat. Finally, also thanks to external funding, the project studied the legitimacy of taxation practices, a topic for which resorting to evidence from social history and political thought was presented as methodologically innovative.

Nieuwstraten’s (2010) very comprehensive dissertation on Boxhorn’s work (including linguistic and historical pieces of this author), based on a careful reading of texts often written in Latin, shows that Boxhorn was very actively involved not only in the academic but also in the political debates of his time. Boxhorn’s political thought is not systematically considered before chapter 7 of the dissertation. Boxhorn held a specific, although somewhat covert, plea for the “democratisation” of Holland in his posthumous book Institutiones Politicae (first published 1657), which contains the political ideas to which an entire generation of students was exposed as they worked their way through the curriculum of the University of Leiden (Nieuwstraten 2010: 161ff). The second book of this treatise is dedicated to a classical discussion on the good and bad forms of government. Boxhorn thinks that sovereignty can be divided between several instances, groups, estates or parts of society, but he does not refer to individual citizenship. According to him, the legitimacy to command must be recognised and must rely on the consent of the repositories of sovereignty, which can be withdrawn. Consent may be generated on religious grounds (Nieuwstraten 2010: 186ff); religion may confer a (fictitious) divine aura to rulers and generates fear among the ruled. The rule of law is important for obedience too, but also

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19 This reason of state is strongly present in the work of Boxhorn (see Nieuwstraten 2010: 132).

20 The subproject by Dr. Koen Stapelbroek dealt with a later period of Dutch history, the middle of the 18th century, and with the different narratives of “decline” of Dutch commercial supremacy.

21 There is no mention of this subpart or of the scheduled monograph on Dutch Golden Age governance by the two project applicants (Profs. Von Friedeburg and Blom) in the project final report.
as a limitation to rulers’ arbitrariness, who must fear punishment and retaliation when they will no longer be in power, and who must be provoked to good behaviour through the prospect of rewards. However, capability and virtues become important assets too, and this makes Boxhorn feel reluctant with respect to hereditary rule; holding a public office should be earned (Nieuwstraten 2009: 129). 23

The exercise of power also entails risks, according to Boxhorn; ambitious rulers – and monarchs count among them – seek to enlarge their power and to rule as they please, which leads to tyranny. Two mechanisms are considered crucial for the protection of freedom: fragmentation of power as an ex ante preventive mechanism, and accountability as an ex post remedy. Fragmentation of power does not necessarily lead to a durable equilibrium, and to avoid sudden disruptions, the lower segments of society – like the Roman “pleb” – must participate in power. Nevertheless, this is the preferred option only in theory, because in practice, Boxhorn favours government by the wealthiest, who are less likely to use power for their own enrichment, and who (for selfish reasons) are in better position to consider the common interest. This is because they have more to lose in case of “bad” governance, in the sense of inadequate organisation of power management (Stapelbroek 2007). 24 Clearly, this is an instrumental view of the virtues of broad participation and non-exclusion, which is expected to generate stability through identification and through the prospect of rotation to power, an important concern because alterations in the power balance are always likely, given the ambitious nature of men. Regarding accountability, Nieuwstraten (2010: 183; see also 2009: 141-142) refers to an interesting device: “Boxhorn advises to install ‘censors’. The censors’ task is to make sure that magistrates do not act against the laws that are established to safeguard the freedom of the people and to notify those ’in whose interest it was’ if the methods of the magistrates oppose ‘the law and freedom’. As an example, Boxhorn refers to the tribunes in ancient Rome who could summon the consuls to give account of their actions in the people’s assembly.” 25 However, Boxhorn does not clearly define whose interests must be protected from abuse of power, and he does not describe what kind of action must be undertaken against magistrates who transgress the fundamental laws.

Boxhorn had a pessimistic perspective on human nature. Human beings are primarily driven by ambition, and man is a stubborn and egocentric creature that likes to dominate but does not want to be dominated himself. Boxhorn saw man’s egocentric motives as the foundations upon which a stable and durable regime should be build out of necessity; he believed the system of positive and negative sanctions related to one’s compliance with the law – motivated by self-interest and fear – should be integrated in this bleak perspective on human nature. The polity has to be structured alongside a hierarchical order in which some men rule and other men obey, for only a well-organised political society differentiating rulers from subjects is tenable. This gloomy ontology, or “negative anthropology of fear, ambition and self-interest” (Nieuwstraten 2010: 172) is also visible in the ideas of Boxhorn’s disciples.

Hartman’s (2010) dissertation on the political thought of the De la Court brothers, Johan (1622–1660) and Pieter (1618–1685), will also be a major outcome of the completed project. It concentrates on the way the De la Court – preeminent publicists defending the urban mercantile regime of the first stadholderless period (1650–1672) of the Dutch Republic – interpreted political reality and sought to reshape it. Their polemical works sought to bridge political theory and political practice, yet the thesis does not focus on the impact of the De la Courts on a contemporary audience or on the possible influence that their theories might have had on actual policymaking at the time (Hartman 2010: 4). The ideals of these brothers are seen by the author as a sharp break with the Dutch tradition of political thought and were heavily contested as such. Johan de la Court’s Considerations of State (1660) was the first Dutch publication that expounded (more radically than the work of his mentor, Boxhorn) a principled anti-monarchical republicanism. Johan is the first to argue that any form of monarchy is tyranny, 25 In contemporary jargon of governance, “censors” with that kind of alert function would be called “whistle blowers” or “fire alarms” (as in “principal-agent” theory).

22 This is clearly the sanctioning element of accountability (see below the project on Multilevel Governance and Public Accountability in Europe).

23 For a presentation of the debate on capability as a condition for legitimately holding power, see Hartman et al. (2009).

24 See also Nieuwstraten (2009: 133). In practice, Boxhorn expressed a preference for open and meritoric aristocratic regimes, between the anarchy of the many and the tyranny of the one: “better, wealthier, wiser and more experienced tradesmen make far better politicians” (Nieuwstraten 2009: 149); see also Nieuwstraten (2010: 194-195 and 201-202). Holland’s regime of the time diverged from the preferred ideal pattern, but this problem could be redressed rather easily (Nieuwstraten 2010: 210). The practical side of politics is particularly present in Disquisitiones Politicae, one of Boxhorn’s most popular works.

25 In contemporary jargon of governance, “censors” with that kind of alert function would be called “whistle blowers” or “fire alarms” (as in “principal-agent” theory).
because the subjects will always be slaves. Pieter’s writings, most of them published in the 1660s, built upon his brother’s theorising and expanded upon the interrelation between (republican) “good government” and the increase of commercial empire. Pieter gave his brother’s ideas a commercial edge and raised them from the level of a city-state to that of the whole province of Holland. He advocated a mercantile reason of state, according to which Holland should prefer naval commercial competition over military conquest.

In their criticism of personal rule, the De la Courts drew upon an international body of literature by authors who had sought to curtail the absolutist power of monarchies. Like Boxhorn, both brothers can be seen as representatives of a pragmatic raison d’état tradition. Johan de la Court translated Machiavelli’s Discourses and was inspired by their style regarding the practice of political power. As participants in this tradition, the brothers may be called constitutionalists, republicans, and to some extent, even democrats. They saw a threat in the personal rule of the Prince of Orange and stadhouder and judged negatively any form of monarchy, including its constitutional variant. According to them, all princes oppressed their subjects, and this could only be avoided by republican government, rule of law and constitutional checks that allow one to “tame Leviathan” (Hartman 2010: 10). Hartman (2010: 11) characterises Johan’s thought as “constitutional determinism” because of his belief in the power of equilibrated institutions to shape politically virtuous behaviour that safeguards political liberty. To prevent the rule of private interests and passions, power must be limited and its concentration avoided. According to Hartman (2010: 5), “The De la Courts voiced radically changed views on governability, accountability and legitimacy”.

Unfortunately, this is not elaborated more deeply in the parts of the thesis I had access to, and we do not know with whose views the De la Courts’ perspectives are compared. However, with the ideals of Boxhorn and the De la Court, capability became a condition for legitimate rule,26 and this appeared even more prominently in the nearly one thousand pamphlets (Reinders 2008: 318) circulating during the violent events of 1672 that followed the Dutch military defeat. This period of crisis and turmoil saw the development of “a casuistry of obedience, responsibility, resistance and capability” (Reinders 2008: 319). Capability meant possessing citizenship, wealth and experience, being a member of the adequate religion, and being perceived as endowed with respectability, wisdom, and judgment; a person was considered capable for office only if he was able to “tick all the boxes” (Reinders 2009: 183-184). In the popular upsurge of 1672, the agitators – often ordinary citizens who overwhelmingly supported the Orangist camp against the Regenten regime – were demanding greater functionality of government, especially in reestablishing trust, which had been seriously damaged since the Regenten had not been able to protect the country from external invasion. It was not so much self-rule that was desired as government whose legitimacy would rely on competence. Both ex ante restrictions to the exercise of power and ex post control were suggested to avoid misuse of power: the number of offices per person should be limited, and rotation of office was recommended to prevent oligarchy; civic committees should control government, and the annual accounts should be checked to make sure that public finances were in order. The pamphlets agreeing with collective and organised violence against legally nominated magistrates also argued that such action was feasible under the condition that it would not lead into anarchy and would be led and conducted by men with sufficient qualities. Several pamphlets defended the legitimacy of popular uprisings with the need to bring more competent men to power, and the 1672 disturbances led to the exchange of one set of magistrates for successors who were allegedly more trustworthy and better able to deliver. They did not lead to self-rule, neither to mass slaughter (Von Friedeburg 2009: 23-24).

This project intended to demonstrate that the period under scrutiny is the first case in European history of a system of “governance” avant l’heure, characterised by nonhierarchical relations and consciously developed public-private partnerships. According to the proposal, the United Provinces relied in this period on an intricate and constantly renegotiated interplay of public, private and intermediate actors, emblematic of a new art of governance contrasting with the growing trend of monopolistic absolutism in the rest of Europe, with its reliance on hierarchy and a centralised definition of the public good. According to the final report, however, the results differ considerably from the expectations in the proposal. My own reading makes me think that the project findings – although valuable and interesting because they renew the knowledge of political thought and empirical politics in 17th century Netherlands – are more
conventional than initially announced. The expected combination of intellectual and social history together with political science did not really take place (with the exception of Stapelbroek 2007), and there was no real comparison, contrary to what was initially suggested, of shifts in the 17th century with current shifts. Although some parallels are made in the final report, I would be inclined to stress differences. This kind of study is illuminating in the sense that the “shifts” considered in the 17th century are much more brutal and far-reaching than those we describe as such nowadays. This invites us to reconsider the concepts we use, perhaps sometimes without much reflection. One expected from the initial project that the study would go beyond a traditional contextualised history of political ideas; nevertheless, this kind of study is definitely necessary, because it considerably enriches the reflections of today’s governance analysts.

Lessons Learnt: Accountability and Legitimacy Issues Related to Shifts in Governance

This project offers a view of how these issues were addressed in 17th-century political discourse in the Netherlands:

− There was an important concern with legitimacy “technologies”.
− Devices for the accountability of power-holders were counted among them.

In the initial proposal, there was frequent mention of legitimacy and accountability, but this was without any further specification. Nieuwstraten (2010) discusses issues of legitimacy and accountability in Boxhorn’s work: of particular interest for these problems is the treatment by Boxhorn of legitimising “resources” such as religion and law, as well as of a range of accountability “technologies” having the role to prevent abuses of power. Hartman’s (2010) thesis shows well the characteristics of “good governance” according to the De la Court, but when it mentions governability, accountability or legitimacy, it does this in quite a cursory way (for example, Hartman 2010: 15). However, one should consider that these remarks are based on only a short part of the thesis. The pamphlets of 1672 provide an interesting illustration of how the rulers’ legitimacy was framed at the time; in a more secularised version of legitimate government, the pamphleteers often argued that legitimacy of authority relies on the competence (defined both as moral and professional ability) of leaders. However, virtue does not suffice for “good governance”, and safeguards are required. If competence is found wanting, then in a contractual logic, obedience can no longer be required; it is the duty of the people (rather than their right) to rebel (Reinders 2009: 177), and they are legitimised in replacing the incumbents with more competent and accountable (though it was not clear to whom) rulers. In a sense, such claims were also democratic; sovereignty resides in the people, and magistrates are not considered owners of their charge but rather citizens delegates, whose power is conditional upon public support and who are subject both to ex ante restrictions and to ex post controls. On the other hand, this did not exclude even a monarchical regime if the monarch proved to be the most capable to rule. The findings from this project thus highlight not only issues of governance but also issues of democracy, as these were framed in the past. It is a pity that the “Shifts in Governance” programme offers only this snapshot view of debates in the (Dutch) 17th, and to some extent 18th, century, and that a genuine diachronic perspective on the evolution of definitions and debates on forms of governance and their implications is missing.

For a definition of this category ofburghers, see Reinders (2008: 316).

Considering that analytically, these concepts move at different levels of inquiry (Stapelbroek 2007).
JURIDIFICATION,
INTERNATIONALISATION,
AND SHIFTS IN PUBLIC-
PRIVATE BOUNDARIES
This section comprises projects dealing with some major trends in contemporary rule making. These projects not only cover “governance” as it is described in this programme but also broader issues of regulation. Usually, “governance” (instead of “government”) is associated with phenomena such as private-public cooperation, “multilevelness”, or even informality (“soft law”). Here, shifts equally imply the role of new formal actors such as the courts and include shifts in the content of regulations – for example, between private and public responsibility.

Does Liberalization Enhance Juridification? Trading in One Economic Governance Mechanism for (possibly less efficient) Others?

Material Used


Van Waarden, Frans (2009), “Power to the legal professionals: Is there an Americanization of European law?”, Regulation and Governance 3: 197-216


Project Discussion

This research project studies the deregulation and privatisation of the British and Dutch telecom and bus services. It investigates – using a number of operational measures – whether these changes have led to more juridification for regulation purposes as an unintended consequence, due to the need for market actors to avoid risk and uncertainty. The argument is that competition increases all sorts of commercial conflicts, which need to be solved by the courts, and this may result in an “Americanisation” process characterised by more adversarial legalism.

An important assumption in the theory underlying the study is that market regulating institutions are like communicating vessels: less of the one (in this case, state regulation, monopoly) may lead to more of the other (contracts, case law by the courts). For example, it is argued that where one tries to reduce the “bureaucracy”, one may end up with a more costly and less efficient “lawyerocracy”. This is considered an unwelcome development that entails costs to society: more (legal) conflicts, higher workload for lawyers and judges, and lawyer costs for businesses, all of which are passed on to higher consumer prices or insurance premiums.\footnote{It is difficult to provide empirical evidence on such a causal chain, as it appeared in the attempt by Hildebrand (2010: 262-263) to quantify the “costs of juridification” (indirect costs are especially hard to measure).} It is thus expected that shifts from one regulatory mode to another may imply positive or negative changes in performance, which include (without much specification) changes regarding accountability and legitimacy.

A major output of this project is the thesis of Youri Hildebrand (2010), which is based on a cross-country and a cross-sectoral comparison. The choice for a comparison between the United Kingdom and the Netherlands is justified by the fact that, although both have extensive experience with privatisation and deregulation, Britain has a significant head start and went farther, which allows for an evaluation of long-term consequences. The Netherlands also seems to be a least likely case for Americanisation of law because of the prevalence of a consensual culture with informal negotiation (“consensual informalism”). The cross-sectoral comparison is justified by the fact that telecom liberalisation is considered a success, whereas the liberalisation of bus services is less successful, and by the fact that uncertainty is of technological nature in the former sector, whereas in the latter, where competition occurs in the tendering process, uncertainty is about the public interest. Hence, the maximum variation is sought regarding the independent variable (state or sector) to increase the likelihood that the conclusions can be generalised in a reliable way. The research draws on document analysis and interviews with actors of the relevant sectors.
Hildebrand’s thesis confirms that liberalisation increases risks and uncertainty, and that most strategies deployed to reduce them led to legal conflicts in both sectors under scrutiny.\(^{30}\) There are basically two paths leading from liberalisation to litigation. The introduction of competition leads to conflicts between firms – for example, to complaints to the regulator about the lack of fairness in competition, after which the latter’s decisions are often subsequently challenged at the courts. As nicely suggested by Hildebrand (2010: 265), “firms continue their competition in the courtroom”, which becomes a new “battleground”. In addition, “third parties” who consider that their own interest, or the wider public interest, is not sufficiently safeguarded tend to resort to the courts too. Hence, courts acquire a central role in economic governance. In three of the four markets considered, new conflicts emerged even after court decisions, and this required further refinement and specification of regulatory principles. This, in turn (in addition to constant technological change), generated a large body of complex laws that requires more legal knowledge to cope with it. The juridification effect results thus from a spiral of (positive feedback) mechanisms, and seems to be permanent; it was observed both at the beginning of the 1980s in the UK and nearly two decades later in the Netherlands. The author paraphrases the well-known catch phrase of Steven Vogel depicting the re-regulation that follows deregulation (“freer markets, more rules”) and suggests that freer markets lead not only to more rules but also to more case law (based on court rulings, and indicative of juridification).\(^{31}\)

This work does not deal with accountability or with legitimacy issues. In his conclusion, Hildebrand (2010: 288) emphasises that the sector regulators and the judiciary become the new risk-reducing institutions. One could argue that they also act as accountability “forums” (Bovens 2007 and 2010); firms can appeal to the regulator to complain about their competitors’ behaviour, after which the latter must justify it; then, decisions of the regulator can be challenged at the courts. Hence, the “rise of the unelected” (Vibert 2007) means that they become not only powerful sources of regulation but also powerful “guardian institutions”. With the rise of independent regulatory agencies, the delegation chain (or the so-called “principal-agent” relationship between elected politicians and the administration) is weakened. This deliberate decline in democratic accountability does not mean, however, that accountability declines in general; new accountability mechanisms are established (Majone 1998 and 1999). What about their contribution to the legitimacy of policymaking? This very much depends on one’s views about the legitimate model of policymaking. Those advocating a more “populist” conception of democracy will deplore the insulation of important institutions from the representative circuit (Mény and Surel 2000). Those favouring a more “liberal” conception will applaud the institution of limits to rule by the political majority and the protection of the public interest by nonmajoritarian institutions, such as regulatory bodies and courts. Otherwise, the concrete legitimacy issues will very much depend on the specificities of particular cases; if issues leading to regulatory decisions or court rulings are highly salient, they will more easily be publicised, and decisions or rulings will be more likely to generate controversy than if issues are highly technical and the object of routine regulatory business.

Van Waarden and Hildebrand (2009) go further in the problématique of juridification, but their findings are restricted to the Netherlands. They report about a trend towards increasing juridification and legalism, a more formal and legal conflict resolution, between 1970 and 2008. This trend is related to major changes in economic governance institutions that generated a shift from corporatism toward “lawocracy”; from power of the associations of civil society to power of courts, lawyers and judges. However, as is often the case, change is restricted by path-dependence,\(^{32}\) and new elements of the regulatory system are added in a “layering” process (Streeck and Thelen 2005) to the old elements of Dutch corporatist self-regulation. For example, associations now play new roles, such as

\(^{30}\) Juridification denotes a general movement of expansion of the use of law in social life, considered the most appropriate medium to solve disputes between individuals and the state as well as between private parties. It is a multifaceted concept (Blichner and Molander 2008). Regarding its driving force, if in the economic system it may be liberalisation, its roots may differ in other spheres of society. Rosanvallon (2008: 109) maintains that it results more broadly from individualisation; personal respect, equity and nondiscrimination become core elements of the social demand.

\(^{31}\) For a moderate normative defence of judicial activism concerning the liability of the state for failure to regulate health and safety risks or to enforce existing regulations, see Van Boom and Pinna (2005) from the project Compensation for Damage.

\(^{32}\) In policy studies, the concept of path dependence was used primarily in social policy analysis (Pierson 2004), but limits to transnational convergence were observed in other policy sectors too, as shown by abundant literature in topics such as the “varieties of capitalism” or the diffusion of “new public management” principles. Limits to “Americanisation” (media commercialisation) have also been observed by communication scientists regarding the process of “mediatisation” (Esser and Pfetsch 2004).
aiding in individual tort claims and organising collective claims. Hence, “Americanisation” appears to be limited, and the same can be said about other European countries, as suggested in van Waarden’s (2009) introductory chapter to the journal issue that van Waarden and Hildebrand (2009) are part of. If legalism becomes more prevalent, it does not necessarily mean more adversarial relations – unlike in the United States.

This article does not focus on legitimacy. In principle, if regulatory decisions are embedded in a detailed legal framework and by the possibility of appealing to the courts, this should favour stability and predictability in regulatory behaviour, thus enhancing its legitimacy. The authors remind us, however, that traditional Dutch institutions for conflict resolution, where representatives of major associations of the corporatist circuit were key players, enjoyed a significant degree of legitimacy (this can be explained by the development of trust relations between the participants due to long-term cooperation). By contrast, after liberalisation, regulation was delegated to independent regulators who “felt a need to assert their authority in the industries they were to regulate, and they often did so aggressively, promulgating unpopular rules and standards, enforcing them strictly, and imposing heavy fines, hitherto uncommon in Dutch state-industry relations” (van Waarden and Hildebrand 2009: 278). Thus, state-industry relations changed from the traditional cooperative ones into more adversarial ones; whereas in the past, business saw government as a supporter, now the unintended effect was that it perceived it as an adversarial controller. It can be extrapolated that these developments negatively affect the legitimacy of decisions, which are increasingly conflictual in nature. Interestingly, this kind of analysis does not point out trends towards more but rather towards less cooperative governance. On the other hand, it is possible that the authors overestimate the popular legitimacy of the previous corporatist arrangements, which, as they themselves argue, had an elitist flavour. Corporatist solutions are often inimical to outsiders who do not have a voice in the large associations engaged in mutual cooperation and in negotiations with the state machinery. It may be that, for developments towards juridification to take place, not only the social and economic trends emphasised by the authors were necessary, but perhaps also some degree of delegitimation of the previous institutions and practices of regulation and conflict management (i.e., favouring rent-seeking behaviour on behalf of the privileged who had access to them), not the least under the fire of neoliberal attacks.

What about accountability? Here, too, we have to proceed with deductions and extrapolations from the authors’ interesting findings. With juridification, a specific kind of accountability is strengthened: legal accountability to the judicial “forum”. More generally, increased juridification should in principle mean more codification, which is positive for transparency and a precondition for effective accountability. The authors refer to “gentlemen’s agreements in closed elite communities” (Van Waarden and Hildebrand 2009: 281) that used to serve for conflict resolution in the past, and it is obvious that these required negotiations behind closed doors were not subject to public scrutiny. On the other hand, the article points out similar practices nowadays, notwithstanding changes in the actors involved in them. In some fields, it is now judges who resort to collective concertation. They have constituted numerous semi-formal committees that draw up guidelines and standards restricting the discretionary authority of individual judges. True, this limitation of judicial independence has been an issue before the Dutch Supreme Court, which has enacted procedural rules for such commissions and their regulations to enhance their transparency. Yet the authors suggest that lawyocracy advanced while corporatism was on the retreat, with lawyocracy in the Netherlands adopting corporatist traits. It is difficult to determine whether this hybrid form of “corporatist lawyocracy” implies gains or losses in accountability with respect to the past. Perhaps it is less affected by the lack of legitimacy than the corporatism of traditional associations, not necessarily because judges are more legitimate as a corps but rather because deliberations between judges are even less visible and known to the public – and hence, less subject to debate and criticism – than negotiations between interest groups.

Another publication from this project deals more straightforwardly with legitimacy and accountability. Based on findings, also from Germany, Van Waarden (2009: 213) expresses concerns about the fact that courts, which lack democratic legitimacy, “actually determine many rules and regulations. Increasingly, a professional elite is making the political choices that in a democratic society ought to be made by democratic representatives. In this respect liberalism has grown to the detriment of democracy”. At the same time, the author insists on the weaker politicisation of the judicial system in
Europe as compared with the United States, which he claims increases its legitimacy. However, in our view, accountability issues remain relevant. Precisely because the judicial system is an accountability “forum”, actors, including elected ones, must act in its shadow. They must anticipate its possible veto and be responsive to its preferences (Stone Sweet 2000: 202). Now, it is a controversial issue whether it is legitimate that decision making in democracies mirrors the pre-ferences of the least representative branch of government. The question is raised why “judges, who (typically) are unelected and (typically) are insulated from the bureaucratic control of those who are elected, should be permitted to impose their own views about liberty, equality, and the like, upon the public as a whole” (Dorf 2006: 301). This is an important question, especially as the role of courts is increasing due to the specific mechanisms of economic governance described in this project. Additionally, it is part of a wider “judicialisation” process in Europe, whereby tribunals become policy actors in their own right. Bellamy (2007: 11) notes that in the past thirty years, French, Italian and German courts have invalidated more pieces of legislation than they previously had in their entire history. Besides, according to Bellamy, the legitimisation of judicialisation is based on an idealised view of the judiciary. First, the role of such “counter-majoritarian” institutions whose task is to check possible abuses of power by (democratic) majorities “is biased towards the privileged and well-organised” (Bellamy 2007: 42); in courts, not only is access to them selective, but judges are even less representative of social and ideological plural-ism than elected members of parliamentary assem-bles. Second, Bellamy (2007: 16) argues that judicial decisions may appear arbitrary, because “despite widespread support for both constitutional rights and rights-based judicial review, theorists, politi-cians, lawyers and ordinary citizens frequently dis-agree over which rights merit or require such entrenched, the legal form they should take, the best way of implementing them, their relationship to each other, and the manner in which courts should understand and uphold them”.

Van Waarden (2006 and 2008) do not deal with the link between liberalisation and juridification, but I feel these pieces are worth discussing, because they address important governance shifts, namely the internationalisation of regulation and its con-sequences. One of the merits of Van Waarden (2006) is to recall (briefly) that state regulation – usually presented as the predecessor to the “governance” era – is itself the product of a long-term historical evolution and has followed forms of societal self-regulation that ultimately proved to be insufficient, and thus suffered from a loss of trust. National public food standards mirror national cultural preferences on food, and the recent shift towards alternative sources of regulation and risk control associated with food production and consumption appears to correlate with the internationalisation of food markets. Internationalisation means longer and more complex chains for food production, as well as longer and more complex chains for food control. But it also means simultaneously increasing diversity in the demands for food standards and decreasing capacity to monitor and control the implementation of such standards. Hence, food quality regulation by nation-states becomes less effective, and it becomes necessary to rely again on nonstate institutions for the establishment of quality standards and monitoring procedures, such as supermarket chains, commercial standardisation bodies, or international trade associations. For example, the author argues that when British supermarket chains declared that their products would not contain any genetically modified components, this was more effective in the combat against GMOs than national public regulation. However, the problem does not end here.

First, although consumers are affected by that kind of regulatory activity, their organisations often lack resources such as money, time and expertise to com-pete with business influence within the circuits where norms are set and assessed (see Graz and Nölke 2007: 22 from the project discussed next). Moreover, the proliferation of certifying bodies is not favourable to transparency, and the same applies to the advent of public-private partnerships for regulation, or to the sheer privatisation of regulatory tasks. The author discusses the conse-quences of such developments on legitimacy and accounta-bility in Van Waarden (2008: 92 ff.), and is alarmed by them. It should be emphasised again that lack of democratic accountability does not automatically lead to a loss of legitimacy. This only happens if the accountability gap is framed as such and is criticised by “political entrepreneurs” like social movements or media editorialists, and if this kind of discourse finds broad resonance, leading to public awareness of the existence of a legitimacy problem. Given the

33 In line with Carl Friedrich’s (1963) “law of anticipated reac-tions”.

34 For some examples of complex certification networks see Van Waarden (2008: 90-91).
opacity and technicality of the processes described in this research, this is not the case as long as policy failures are not identified.

In his text, the author also insists that people’s relationship to food is very much culture dependent, implicitly opposing the theses of “MacDonaldization” or “Coca-Colonization”. Consequently, the definition of risks associated with food is also a context-dependent social construct, and the respect of diversity is necessary to procure legitimacy.35 One consequence is that international rules are enforced with a certain degree of discretion by national bureaucracies. This leads to cross-country differences in the implementation of standards, which can only be remedied by the addition of new layers of (international) control over (national) controllers, a duplication process supposed to enhance effectiveness, albeit at the price of high transaction costs. Although the accountability issue is not tackled directly in this text, it may be concluded that accountability mechanisms tend to proliferate with the increase in the steps of control.

The accountability issue is more prominent in van Waarden (2008: 93-95). The author correctly maintains that it is urgent to answer the question to whom international communities of experts are accountable, and he suggests a number of strategies to restore this kind of accountability. It is not clear, however, which of these strategies are prioritised, and it is not discussed whether they are all mutually compatible. Among the various options for a “constitutionalisation of international networks of technocrats” (p. 94), I view the formation of a “second-level indirect representative democracy” (p. 93) as closest to the requirements of democratic accountability. This is where citizens would elect representatives to control experts even beyond the national level. I will get back to this issue in the general conclusions of my synthesis. Let us note, however, that for accountability to be effective, the role of the media is important. A significant body of research is focused on the media as political actors in their own right. For example, political theorist Bernard Manin (1997) would claim that party democracy has been replaced by “audience” democracy (démocratie du public), and communication scientists speak about the “mediatisation” of politics (Schulz 2004) or even the “colonisation” of politics by the media (Meyer 2002). However, although media coverage is a quasi-necessary precondition for public awareness of policy issues, the author correctly notes the deficient interest and knowledge of the media regarding issues linked to transnational governance by technocrats (Van Waarden 2008: 96). Mediatisation reaches “back-stage” politics only in cases of scandals that are fertile soil for treatment, in conformity with the sensationalist logic of most media having a broad audience. Yet another limitation is that although the media are indeed an accountability “forum”, they have only indirect or informal sanctions at their disposal (such as the capacity to destroy reputation). Hence, media scrutiny is a necessary condition for public accountability but is by no means a sufficient one.

Van Waarden also suggests that it is primarily to functional, and not to territorial constituencies, that technocrats operating at transnational level should be and can be accountable. Such constituencies are composed of “those affected by certain threats – or, in other words, sharing a common fate” (Van Waarden 2008: 96; original emphasis). This corresponds to the “stakeholder” principle, very much en vogue in “governance” (as defined in this program). The idea is that those who have particularly intense preferences over a policy issue should have a say in rule making. The questions, however, are who should decide who can be legitimately defined as a stakeholder, on the basis of what kind of criteria this should be defined, and whether this definition is accepted unequivocally. Quite frequently, there are controversies about the stakeholder status, which is a social construct and the object of symbolic struggles.

Nowadays, it is primarily to professional elites that regulators (also professional elites) are accountable; this “peer” accountability (Goodin 2003) has an elitist flavour that distinguishes it from democratic accountability. Let us refer here to a statement regarding accountability by a major specialist in private forms of governance:

“Only public authorities are entitled or empowered to prescribe behavior for others because only public authorities are accountable through political institutions. Private entities, such as corporations or business associations, are not entitled to act authoritatively for the public, because they are not authorized by society and are thus not subject to mechanisms of political accountability. Indeed, their accountability (legally and financially) is to their private members. Thus, under democratic theory, only elected representatives and their delegates...”

35 Scharpf (2004) argues along similar lines (“legitimate diversity”) regarding the different social models and welfare regimes present in European Union member states. For the same line of reasoning regarding harmonisation of tort law at European level see Faure (2004), from the project Compensation for damage.
may function authoritatively in prescribing and proscribing behavior” (Cutler 2002: 32).

Finally, another problem is that when the level of regulation is remote, the distance between regulators and subjects of regulation is high. It is thus very likely that trust in the regulators and their legitimacy by the regulated will be lower, so they will have fewer inhibitions in evading or at least circumventing regulation. This forces an increase in the degree or intensity of regulations, which aliment feelings of their “unreasonableness” or inflexibility and leads to their further delegitimisation. This makes calls for “deregulation” credible until the next regulatory failure and ensuing scandal initiates a new spiral of regulation (“race to the top”: Van Waarden 2008: 88) in a “stop and go” movement.36

The regulation of food risks is often a highly salient issue, and the quality of regulation gives rise to public debates in which the media play an important role as an (informal) accountability forum. In a context of “mediatisation”, a fatalist discourse often develops that “it is nowhere safe anymore”: the author correctly suggests that more control produces more information about fraud, lack of safety and poor quality, which amplifies feelings of distrust and delegitimises the regulation job.

Lessons Learnt: Accountability and Legitimacy Issues Related to Shifts in Governance

Accountability and legitimacy were not central elements in this project; however, the results raise questions regarding the following:

− The accountability of different forms of technocratic policymaking;
− Their positive or negative contribution to legitimacy.

More precisely, this research convincingly presents the mechanisms through which liberalisation leads to juridification as an unintended effect. Institutions such as regulatory agencies or courts simultaneously become key actors in the policy process and accountability “forums” where unsatisfied actors can raise complaints. In principle, this is expected to enhance the legitimacy of the policy process. However, problematic in that respect is the fact that regulatory decisions seem to lead to more conflicts, notwithstanding the claim of independent regulators to be impartial, and (in a country with a consensual culture like the Netherlands) to less cooperative governance than in the past. Also, the increase in regulatory density may not be welcomed by the regulated, and transparency may be lacking, such as with concertation between judges. This is one reason why one should address the issue of the accountability of these unelected actors.

The research also deals with the shift in governance induced by the internationalisation of regulation. Interestingly, this leads to technocratic rule making – in addition to the privatisation of governance. This again leads to accountability problems; technocrats are primarily informally accountable to their professional “peer” community in transnational networks, and the accountability regime of private bodies or public-private partnerships is often unclear. In addition, it is not certain that expertise in regulation necessarily augments its legitimacy; the more distant the regulators are from the regulated, the less they will be trusted. Hence, for other reasons that in domestic rule-making, regulation may not enjoy sufficient “output”-legitimacy, while the conditions for “input-legitimacy” are weakened, because regulatory bodies are detached from the (national) democratic circuit. This does not mean that questions about accountability or legitimacy will be raised. For this to happen, a high level of public awareness on the important role of independent regulators, courts, expert communities or private bodies is necessary, and this condition is only occasionally fulfilled.

The Transnational Political Economy of Corporate Governance Regulation

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36 Especially as people now have higher expectations for their safety and are better informed about risks (Van Waarden 2008: 86).
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**Project Discussion**

Another field in which there have been recent, significant shifts in forms of governance is the field of corporate governance. This large and productive project focuses on corporate governance regulation and seeks to identify the drivers of change in that domain, which broadly lie, according to the authors, in the neoliberal globalisation project.38 Corporate governance is defined as the set of rules and the ensemble of practices governing the power relationships between the various stakeholders in the modern corporation: shareholders, creditors, managers, workers and elements of society (and of the state) at large. As in many policy studies, empirical research relies primarily on document analysis and interviews.39 This project is divided in three subprojects.

The first subproject focuses on changes linked to the Europeanisation process: As regards corporate governance, there is a debate about whether convergence to an Anglo-Saxon model is taking place in continental countries. The project suggests that the European Union pushes in the direction of a shareholder-oriented and market-based system, indicating the takeover directive as illustrative of the trend towards the creation of a European market for corporate control.

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38 For an intellectual history of the "Amsterdam Project" in international political economy with which the research participants identify, see Overbeek (2004). See Van Apeldoorn (2004 and 2005) for its conceptual foundations.

39 For a methodological note, see the conceptual paper by Van Apeldoorn (2005: 96-98).
A major output of the first subproject is the thesis by Laura Horn (2009a). Although most studies of corporate governance focus on the national level of regulation, she deals with regulations beyond this level. She claims from the outset that the European Union has pursued policies regarding corporate governance that consider shareholders as the owners of the corporation and aim at strengthening their position. In her study, she does not confine herself to management-shareholders relations; she includes workers in the picture, because she considers “that it is the social relation between capital and labour on which the corporation ultimately rests” (Horn 2009a: 14). She also emphasises that the observed marketisation of the European corporate governance regime is not simply market-driven but rather takes place through political intervention, motivated by the fact that “an unfettered European market for corporate control is still far from an economic and legal reality” (Van Apeldoorn and Horn 2007: 211). This is seen as a political process driven by transnational social forces in a framework of capitalist restructuring. This view reflects the more general view in this project that the political integration process has a precise underlying socio-economic content, aimed at thorough liberalisation; the purpose is to privilege the most transnationally mobile fractions of (primarily financial) capital. However, there is also the need to provide a “hegemonic” discourse to acquire the support of subaltern classes for a project that is not beneficial to them (Drahokoupil et al. 2009; Van Apeldoorn 2009a); in other words, it must generate a broader legitimacy for the project, including by those who are not among the “winners”.

The empirical analysis in Horn’s thesis rests upon a reconstruction of the transformation of company law and corporate governance regulation in the European Union, with the help of the study of archival material and expert interviews. The explanandum are shifts in the regulation of corporate governance, and the thesis focuses on the factors leading to it. Hence, there is no emphasis on the consequences of such shifts on accountability and legitimacy. However, the thesis emphasises as a sort of intermediate variable – beyond the impact of structural factors such as financial globalisation – the role of actors such as the European Commission or the European Court of Justice, which are crucial decision-making bodies in the EU. Their lack – or at least weakness (in the Commission, compared with traditional parliamentary government) – of democratic accountability is usually judged as partially responsible for the “democratic deficit” of the integration project. Other relevant actors seem to have a profile close to that identified in the previous project: diverse transnational expert groups. Such actors are not authorised to issue collectively binding decisions and therefore are not subject to formal accountability mechanisms. Nevertheless, they are indeed influential, so the issue of their accountability becomes relevant. The author qualifies them – in a “neo-gramscian” vein – as “organic intellectuals” in line with the interests of transnational capital, and she contrasts this definition with the definition by Haas (1992) as “epistemic communities” which, according to her, tends to underplay the political and ideological role of experts.

Horn (2009b) is an interesting case study in that respect, dealing with a group of seven law scholars (the HLG: High Level Group of Company Law Experts, chaired by Dutch professor and adviser for Unilever, Jaap Winter). The European Commission acknowledged that in its Company Law Action Plan of 2003, it followed most of the recommendations of the experts’ 2002 report. Horn argues that this report “significantly changed the trajectory of corporate governance regulation in the European Union” (p. 125). Horn correctly suggests that the private expert group was not accountable to any public body (p. 134) and manifests her surprise that, in spite of the obvious bias in the composition and the political orientation of this group, its legitimacy was not questioned during the policy process. In particular, labour and other potentially critical actors are underrepresented in this kind of group (Horn 2009b: 138); representation bias leads to insufficient pluralism.

In addition, the combination of internationalisation with privatisation in the preparation of rule making is indeed inimical to public accountability. The actors involved operate far from public scrutiny and, usually, in a rather discreet manner. On the other hand, although such actors escape public control, the outcomes of corporate governance regulation....

40 These considerations are from the introduction and the first chapter of an edited volume on Contradictions and Limits of Neoliberal European Governance (Van Apeldoorn et al. 2009), which includes contributions by members of the research team (Horn 2009; Van Apeldoorn 2009b).

41 For a summary, see also Van Apeldoorn and Horn (2007a).

42 See the nuanced discussion of these aspects in the project Multilevel Governance and Public Accountability in Europe.

43 The group studied by Horn is not an isolated case. She also refers to the European Corporate Governance Forum, the Corporate Governance Advisory Group, etc. (Horn 2009b: 138). See also James Perry’s (2009) thesis.
(the "marketisation project") are contested. For example, the European Parliament is not just a "rubber-stamping" institution but rather wants to have a say on them. The EP commissioned its own report to evaluate the Commission's proposal, and the Party of European Socialists, animated by a concern about the bias of several analyses contained in expert reports, created its own expert group on investment funds (Horn 2009b: 134 and 138). This can be considered a countering trend, where public debate on crucial governance issues is at least to some extent restored at the supranational level. There are other indicators of counterrtrends as well, as pointed out by Van Apeldoorn (2009a: 34), who reminds us that shareholder capitalism as part of a strategy of the marketisation of corporate control is resisted by even a section of Europe's managerial class, who feel a threat of becoming victim to hostile takeovers. Further indicators of conflict can be found in Horn's dissertation, and it seems that a wide array of actors contests the issue. For example: "Member states trying to protect national champions, business associations seeking to reduce the regulatory and administrative burden, managers seeking to regain or preserve some of their decision-making autonomy, trade unions worrying about the position of (organised) labour, and members of the European Parliament doubting the compatibility of the marketisation of corporate control with the principles of the European Social Model" (Van Apeldoorn and Horn 2007: 229).

Horn considers it significant that the issue of worker rights and position is relegated outside the realm of the debates on corporate governance, as it was part of the debates on "industrial democracy" until the 1970s. This can be interpreted as a regression, because important issues of social control are no longer part of the public agenda. However, I am not entirely convinced that debates on "industrial democracy" were so prevalent, even few decades ago. Today, the core issue in corporate governance is "shareholder democracy", the control of shareholders over firm management. Clearly, this is not democracy in its proper sense, and even if the management is more accountable to shareholders, this does not make the capitalist firm a democratically accountable entity. Rather, it is the market that should correct for inappropriate behaviour; for example, takeover bids are considered a means to discipline the management of listed companies (Horn 2009b: 136). Nevertheless, shareholder groups increasingly become accountability forums to which the firm management must provide justifications, and in the face of the delegitimisation of some firm practices such as excessive remunerations of top managers, the rehabilitation of shareholder control (e.g., "say on pay") is seen by part of the public as a means to induce more socially legitimate practices. Horn correctly notes the existence of "transparency coalitions" (Gourevitch and Shinn 2005; Schnyder forthcoming) advocating more control over management, and based on the grouping of social forces that defend shareholder interests with social forces – such as trade unions – that preserve the interests of workers as "pensioners, recipients of boni and performance-related pay" (Horn 2009a: 175). Successful in pushing for regulations enhancing transparency in the operation of firm management (i.e., the financial sector), these coalitions play a positive role in the development of the (partial) accountability of the capitalist firm.

What can be considered as a synthesis inspired by the findings of the first subproject emphasises more elements of crisis. The European integration project is seen as elitist, but increasingly subject to politicisation and popular contestation. This leads to a legitimacy crisis of European governance, as evidenced by the failure of referendums on the Constitutional and the Lisbon Treaty (Drahokoupil et al. 2009: 3). This crisis is defined as "multilevel" because national governments find it hard to legitimise their policy performance ("output-legitimacy") and are tempted to blame the European Union for that ("blame-shift" strategies). One could add here that an ingredient of the current crisis is a deficit in "input-legitimacy" of the European Union which cannot easily be compensated for by "output-legitimacy" (Scharpf 1999) that would be ensured through what it "delivers". The origin of the crisis lies in what is defined as the asymmetrical nature of the European project, exemplified by the Lisbon

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44 Defined as a project where who controls the corporation and to what purpose it is run become increasingly mediated through the stock market, in other words through the share price as the regulative mechanism (Van Apeldoorn and Horn 2007: 217).

45 Van Apeldoorn (2009a: 35) mentions in a similar vein the possibility of protectionist coalitions involving segments of capital together with labour. For an example, see Afonso et al. (2010).

46 "People want a Europe that can deliver the goods", stated former EU-Commission President Romano Prodi in a speech held in February 2000.

47 Van Apeldoorn (2009b) interprets the "Nee" in the Dutch referendum as a sign of a legitimacy crisis of the polder model, which he sees as the local variety of asymmetrical (at the prejudice of labour forces), "embedded" neoliberalism. The erosion of the "Dutch miracle" would be due to its inability to articulate in a balanced manner the requirements of competitiveness and cohesion. However, Van Apeldoorn acknowledges that socio-economic concerns were not very prevalent in the framing of the debate during the referendum campaign.
Agenda, which was supported both by business and by European labour unions (Van Apeldoorn 2009a). It attempts to articulate a discourse on the competitiveness of neoliberal inspiration with a discourse on social cohesion and protection, but in the end, it subordinates the latter to the former, leaving its responsibility to the member states. (Note, however, that if this happens, it is also because national governments and public opinions are not necessarily in favour of shifting social policy measures to the supranational level.) What prevails is that each state seeks to offer better conditions to mobile capital, and this requires retrenchment in welfare policies as well as flexibility of the labour market. Instead of being protected from the vagaries of the market, workers must adapt to its conditions. Hence, even at national level, the “embeddedness” of neoliberalism is eroded and asymmetrical. In addition, the Eastern enlargement (see the second subproject) further shifted “the class balance of power in favour of transnationally mobile capital”, making the “Lisbon’s rhetoric of combining cohesion and competitiveness increasingly hollow” (Van Apeldoorn 2009a: 33). It is unavoidable, then, that such a project loses support, as is the case with the European Services directive, which led to Europe-wide demonstrations in 2005 and 2006 (however, such transnational mobilisations remain the exception), and was subsequently watered down significantly by the European Parliament.

There is now a broad scholarly agreement on the legitimacy crisis of European integration, even though one may find the “neo-gramscian” reading of the crisis in terms of class conflict (between competing fractions of capital, and between capital and labour) in this project not always entirely convincing. For example, even though Van Apeldoorn (2009a: 38 and 43) refers to the populist nature of Euroscepticism, he does not consider that anti-establishment Eurosceptic parties, which best exemplify the cross-class protectionist coalition that opposes European integration, belong to the nationalist-populist “family”. These parties draw their major electoral support from a coalition of losers from modernisation and internationalisation, composed of small business, farmers, blue-collar workers, unemployed and the like, while the Left has difficulty drawing support by these segments of the population, including those who used to form its traditional working-class clientele. More importantly, the social-economic foundations of such protest are probably overestimated. The protectionist reflex, though sustained (in some social groups at least) by economic concerns, entails a primarily cultural – nationalist and xenophobic – dimension (Kriesi et al. 2006).

The second subproject studies the introduction of corporate governance regulation in the postcommunist economies of East and Central Europe. It is argued that these countries have been confronted in the last fifteen years with multiple, and sometimes conflicting (but this does not appear very much in the empirical results), demands between global and EU standards. Thus, domestic arrangements are deemed largely shaped by alien forces, among others the European Commission (although there is virtually no reference to the abundant literature on policy diffusion and institutional “import-export”).

Vliegenthart (2008 and 2009) explores the Czech and the Polish cases to conclude on the existence of a strong impact of the transnationalisation of governance. Referring to the comparative literature on “varieties of capitalism”, the author argues that it is rather static and tends to neglect, or at least to downplay, the role of global forces. Vliegenthart and Overbeek (2007: 190-191) show that it is by “smooth” means – such as the socialisation of local

48 For example, “the new neoliberal paradigm had to adjust to the persisting traditions of corporatist industrial relations (‘social partnership’), social and industrial protection offered by an often interventionist state, and other elements of ‘embeddedness’” (Van Apeldoorn 2009a: 25). See also the previous project, which concluded that “legalisation” in the Netherlands had to adjust to the local tradition of concertation and did not embrace the adversarial traits characteristic of the North American model; on social partnership, see the project Governance as Learning below. It is also argued, however, that European integration, together with globalisation, undermines social partnerships for various reasons: because capital has more exit opportunities and thus fewer incentives to offer domestic side-payments (Milner and Keohane 1996), or because governments are reinforced domestically by being able to play a “two-level game” (Moravcsik 1994), and can thus more easily afford top-down decision-making instead of resorting to concertation mechanisms.

49 Sharpf’s (1999) argument runs along similar lines: the European project is basically about “negative integration” (market-making), whereas “positive integration” (market-correcting) has a subordinate position.

50 See Papadopoulos and Magnette 2010 for a summary and references.

51 I also received papers dealing with the political economy of the enlargement countries, without direct connection to issues of corporate governance. On fiscal policies, see Vliegenthart and Overbeek (2009).

52 Although not a specialist, I am not sure that such criticism does justice to this body of literature. There is much current debate regarding the diffusion of an Anglo-Saxon model of capitalism, and globalisation is considered a major driving force in that process.
elites and learning through them – that foreign principles of corporate governance are introduced in the corporate governance codes of postsocialist countries. In fact, the appeal of cases such as former socialist economies lies in the design of a new institutional system from scratch, and international actors themselves viewed such economies as laboratories and testing grounds for the development of new policies.

Various kinds of external influence and pressure had a cumulated impact on the Czech economy, but the important consequence is that both banks and important firms came under foreign control. This, according to Vliegenthart, undermines the national character of capitalism, because economic development is realised in the interest of foreign capital. As a result, the resemblance to the "Rhineland" model of capitalism is only apparent, in spite of the high proportion of German direct investment that might lead to hypothesise a diffusion of the German model through isomorphism. In addition, neoliberalism is even less "embedded" in new East and Central European capitalist economies than in their West European counterparts; the welfare state is lean. Furthermore, the presence of a highly skilled labour force is accompanied by low wage costs, making these sites attractive for the production of goods such as automobiles or consumer electronics. All this led Nölke and Vliegenthart (2009) to characterise the economies of East and Central Europe as a new model among the "varieties of capitalism", whose major characteristic is dependence upon the decisions of foreign capital: the model of the "dependent market economy". Based on a number of indicators of foreign investment as well as on the characteristics of systems of corporate governance, industrial relations, training and innovation, the authors conclude that patterns do exist that "form a rather coherent, stable whole" (Nölke and Vliegenthart 2009: 694). According to the authors, in this model, the central coordinating mechanism is neither the market nor the state; rather, it is the hierarchical relations between the headquarters of transnational firms and their local subsidiaries.

If the influence of transnational forces is as strong as suggested in this project, then there is clearly an accountability problem for important socio-economic issues, which seem to be more acute in the new European capitalist economies where the impact of external influence is higher.53 There is for instance a normative problem of lack of "congruence" between policymakers and policy "takers" when the EU imposes through conditionality a domestic course54 on countries wishing to join the "club". Of course, formally national governments are sovereign and can decide whether to accept the rules of the "club", but in reality, their autonomy is very much restricted. Vliegenthart does not discuss legitimacy issues in the Czech case, but his piece on the corporate governance debate in postsocialist Poland (Vliegenthart 2009) raises an interesting issue. His argument is that, although there was strong domestic support for a corporate governance model characterised by employee control over the firm, the model that prevailed was that of external control.55 This was made possible through the interplay between transnational forces and a supportive domestic coalition (transnationalisation as such is not a sufficient condition). The adopted model of privatisation facilitated foreign direct investment, the result of a strategy of market opening that was also pushed by the EU. With regard to the legitimacy of this strategy, one might be tempted to conclude – but Vliegenthart doesn’t – that there is a serious problem if the option adopted is not that favoured by the domestic power opinion but rather by external forces. However, based on Vliegenthart’s analysis, things do not seem so clear. First, although it is argued that the model of control by employees enjoyed large opinion support, there is no evidence for that. Second, one cannot rule out that the external control model also enjoyed domestic support (perhaps in a subsequent phase), and the fact that there was a coalition of Polish social and political forces supporting it can be seen as an indicator thereof. These actors probably anticipated that Poland would be more attractive for foreign investment with such a model. Things were probably similar in Hungary, where there was a "nearly complete consensus" on the desirability of integration in the EU and the global economy, as "an overarching goal shared by (most) political actors in the region" (Vliegenthart 2007: 78).

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53 It is hypothesised that the "dependent market economy model" applies to semiperipheral small countries of Southern Europe too, such as Portugal or Greece (Van Apeldoorn et al. 2007: 17). See also the project The Shift to the Region, where the comparison of Hungary with England shows that territorial reforms in the former were much more influenced by EU development policies.

54 For example, see Vliegenthart (2007: 74–75) for the requirement that accession countries implement some of the EU company law directives. The other side of the coin, however, is that one cannot easily disagree with the imposition of the "Copenhagen criteria", such as democratic government and respect of human rights, to candidate countries.

55 See also Vliegenthart (2007) on employee representation in corporate supervisory boards in Hungary.
This conclusion should not obscure the fact that, in a context of transnationalisation, particularly for widely exposed economies such as the postsocialist ones, national policies are highly dependent on the formal or informal approval of important actors other than the domestic citizenry, including actors lacking any form of public accountability and democratic legitimacy (such as transnational market forces). However, it is likely that a significant part of the citizenry does not disagree with such a dependence. In fact, the crucial issue about accountability is whether there is a public debate on the price to pay for the selected option and its consequences. Nölke and Vliegenthart (2009: 696-697) correctly remind us that in “dependent market economies” there is increased dualism, which leads to tensions and rising populism. Although one can find similar sources of social conflict in West European countries (Kriesi et al. 2006), it is possible that conflict is exacerbated and the legitimacy of policy options is weakened in ECE, precisely due to the high level of external dependency.

The third subproject concentrates on the shift to global modes of standard-setting, including by private actors. The study of the shift to private authority – the example provided is that of accounting standards – is particularly relevant for the discussion of issues of transparency and accountability. It must be noted, however, that such issues are also more generally at the core of recent debates on what kind of practices in corporate governance are legitimate, even though this does not transpire in all studies of this project.

A major output of the subproject is the dissertation by James Perry (2009). In 2002, the European Parliament and the Council of the European Union ruled that all EU stock exchange-listed companies were to adopt a single set of accounting standards written by the International Accounting Standards Board (IASB). This ruling came into force in January 2005. The dissertation addresses three research questions: What is the political content of the change in accounting standards introduced by the IASB? How and through which mode of governance have these changes taken place? Why are they taking place, what explains their content, and in which regard are they constitutive of broader structural shifts in the political economy? As this synthesis focuses on issues of legitimacy and accountability, it will deal primarily with the second question (how changes are taking place).56

The author recalls that for almost three decades after 1973, the International Accounting Standards Board existed as a forum for national accounting standard setters to agree upon, and disseminate, best practice. However, owing to a 2002 decision by the European Parliament, the IASB has now become the de facto global regulator of accounting standards. In addition to its use in the 27 EU member states, IASB standards are used today in more than 70 countries worldwide (not yet in the United States). In the European Union alone, more than 7000 companies have started using these standards. The rise of the IASB as the global accounting regulator is not just a shift in governance from the national to the international level; it is also a shift from public to private regulation, which goes far beyond traditional lobbying activities by nonpublic actors (see also Horn 2009a and 2009b from the first subproject).

Based in London, the IASB is a private organisation directed and financed by the International Accounting Standards Committee Foundation, a private company registered in the U.S. state of Delaware and funded by voluntary contributions. Most of them come from the “Big Four” global accountancy firms, which also monitor the implementation of accounting standards. To be sure, the EU has delegated authority to a private organisation, but each IASB standard requires endorsement by the EU Commission, and this form of public recognition is reversible. Yet, the Commission – which is a major driving force behind the diffusion of forms of private governance beyond the state level (Nölke and Graz 2007: 234) – bases its endorsement decisions on regular advice from another private organisation: the European Financial Reporting Advisory Group (EFRAG), which is “an umbrella network of organisations representing European employers, banks, accountancy professions, insurers, stock

56 The main change that the IASB brings to the content of accounting standards is the extended use of a valuation paradigm called Fair Value Accounting in place of the more traditional Historic Cost Accounting paradigm. The difference between these paradigms can be summarised thus: Under Historic Cost Accounting, the value of a corporate asset was directly linked to the amount originally paid for it; under Fair Value Accounting, this link with the past is broken, and the accounting value of an asset is determined instead by reference to its current market price or, in many cases, to a simulated model of the market price. According to Perry, Fair Value Accounting is part of the “ideational armoury of financialisation” that characterises the advancing Anglo-Saxon variety of capitalism at the prejudice of the “Rhine” model.
exchanges and financial analysts” (Perry and Nölke 2006: 576).

It is not just that the IASB and EFRAG are private organisations in legal terms but also that the memberships of their executive committees is drawn from a dense network of transnational actors, of which the overwhelming majority are also private. The thesis investigates in detail the composition of the policy network that sets accounting standards. It shows that it comprises public- and private-sector actors who represent the financial sector, the non-financial sector and a range of state bodies, both national and transnational. Network analysis techniques demonstrate, however, that private actors are much more influential than public actors and, furthermore, that private financial sector actors (like the Big Four accounting firms) are by far the most connected of all. The IASB-EFRAG nexus also has a distinct Anglo-Saxon flavour, as indicated by the relative over-representation of Anglo-Saxon financial-sector actors, as well as by international organizations that are usually perceived to be close to the preferences of this sector (e.g., the International Organization of Securities Commissions, the World Bank and the International Monetary Fund). Finally, companies from the manufacturing sector, domestic regulatory agencies, and labour unions are underrepresented or entirely absent. In sum, privatisation of governance means restricted pluralism; not only have public actors retreated, but broad social constituencies are not represented at all. Given that wider social constituencies such as labour are (indirectly) affected by accounting, this is problematic as regards accountability. As pointed out by Nölke (2006: 139) in a stock-taking and research agenda exercise:

“Outside the purview of national democratic institutions, transnational private norms suffer if not all participating actors have equal power, and some are not represented at all. This applies to the wider public and to developing countries, which each lack the detailed knowledge necessary to meaningfully participate in private norm-setting and enforcement. Also, decision-making within transnational institutions may not fulfill the usual domestic standards of accountability and transparency.”57

Another part of Perry’s dissertation examines the rising private authority of accounting firms along-side credit rating agencies, a significant subset in the category of “coordination service firms” that includes prominent examples management consultancies, or financial clearing houses.58 Despite the apparent rise of private authority, both rating agencies and accounting firms have been explicitly empowered in their authority in recent years by governments. Rating agencies are empowered by the new guidelines on capital adequacy ratios (Basle II), and accounting firms by the publicly mandated adoption of International Financial Reporting Standards (IFRS) throughout the European Union. Somewhat ironically, in both cases, the European Union and its member states were core drivers of a process that primarily benefited U.S.-based firms. More importantly, by shifting to transnational private expert bodies, the supervision of the economy has been further isolated from broad public scrutiny and debate. The author concludes that the implications of the rise of private authority for the organisation of capitalism have not become an object of public contestation, also because privatisation depoliticises regulatory issues.59

In other words, the accountability deficit induced by the privatisation of governance does not lead to practical legitimacy problems because it has been largely unnoticed, even though it is argued that the case of accounting that is scrutinised “impacts the lives of everyone in society, even (or perhaps especially) those who know very little about the subject and have never set eyes on a financial statement” (Perry and Nölke 2006: 560). I would be inclined to argue that if asymmetries of information on such complex issues were overcome, and if people were to become aware of the existence of significant trends in the privatisation of governance (with consequences on limited ex ante pluralism in representation and limited ex post public control), then the already-existing strong distrust about governance institutions and transnational integration might well be accentuated. Graz and Nölke (2007: 23)

57 Nölke (2006: 140) adds that even the involvement of “civil society” (NGOs) does not necessarily redress the imbalance in representation, because NGOs often come from Northern countries and are not accountable to populations of the South (for further developments on this topic, see Sperling 2009: chapter 6).

58 In terms of content, this part highlights how the practices of rating agencies and accounting firms are undermining the fabric of the Rhenish variety of capitalism (see also Nölke and Perry 2007). Perhaps more importantly, private agencies exercise (through their ratings) power over public actors (states) too, by downgrading their debt, which generates higher costs for refinancing (Nölke 2004: 172 n.4; Nölke and Perry 2007: 130).

59 "By delegating a prominent regulatory function to some professions or expert groups, the eminent political implications become less obvious. Correspondingly, those social forces that are negatively affected by the content of regulation find it difficult to mobilize against this shift in corporate governance regulation, and in some cases may not even notice what is at stake” (Nölke et al. 2007: 210).
explicitly refer to “raising problems of accountabil-
ity and input legitimacy”.

In fact, even if this research concludes that there is a 
lack of public debate, it also mentions that there has 
been opposition by the European Parliament and 
some member states against the lack of legitimacy 
of the predominant mode of accounting standard 
setting in the EU. It would indeed be misleading to 
not consider the potential of conflict inherent in 
such regulatory policies, which (although they aim 
at collective efficiency) have “significant distribu-
tional consequences” (Nölke and Graz 2007: 235) and 
thus generate winners and losers. In this particular 
case, opposition has led to the establishment of a 
new advisory body at EU level and to a study by the 
Commission on IASB governance and funding. 
Additionally, the European Parliament’s Economic 
and Monetary Affairs Committee threatened to 
block the adoption of a new accounting standard 
and was able to force the Commission to conduct 
additional investigations about its impact. More-
over, the same committee issued a document criticis-
ing the IASB for its lack of transparency and 
democratic control. Even the Ministers of Finance of 
EU member states condemned the undemocratic 
operating procedures of the IASB (Nölke and Perry 
that the concept of private 
legitimate power by private 
actors. Controversies demonstrate that formal endorsement 
their public accountability is even weaker. A 
crucial issue about accountability relates to whether 
there is a public debate on decision-making pro-
cesses and the content of collectively binding deci-
sions. The interesting point is that there has been at 
European level some contestation both of proce-
dures and of substance of transnational private gov-
ernance, with the European Parliament being a key 
(democratically elected) player in that respect. Such 
controversies demonstrate that formal endorsement 
of private power by public bodies is not sufficient to 
transform private power into legiti-
mate authority.

 Lessons Learnt: Accountability and Legitimacy 
Issues Related to Shifts in Governance

Although these aspects do not lie at the core of the 
research questions of this project, one should reflect 
on the following:
– The accountability deficits generated by the trans-
nationalisation and the privatisation of gover-
nance.
– The fact that when policy choices are politici-
sed, they can become controversial, and this may 
negatively affect the legitimacy of the trans-
national governance process.

This research also dealt with regulatory issues, but it 
is the transnationalisation of governance that lies at 
its core. The project shows that diverse transna-
tional expert groups and policy networks are 
influential in decision making; additionally, it dem-
onstrates that private bodies can be formally 
authorised by public bodies to act as regulators. 
There is both private influence over public authority 
and public endorsement of private authority. 
Therefore, the issue of the accountability of private 
actors is indeed relevant, especially because the pri-
vatisation of governance is conducive to restricted 
pluralism. Not only do public actors withdraw from 
rule making, but broad social constituencies 
affected by regulatory decisions are not represented 
in circuits of governance.

The combination of privatisation with internationa-
isation is inimical to accountability because it yields 
a double accountability deficit. There are now trans-
national actors who operate far from public scrutiny 
and in a rather discreet manner; if these actors are 
private, their public accountability is even weaker. A 
crucial issue about accountability relates to whether 
there is a public debate on decision-making pro-
cesses and the content of collectively binding deci-
sions. The interesting point is that there has been at 
European level some contestation both of proce-
dures and of substance of transnational private gov-
ernance, with the European Parliament being a key 
(democratically elected) player in that respect. Such 
controversies demonstrate that formal endorsement 
of private power by public bodies is not sufficient to 
transform it into legitimate authority in the eyes of 
accountability “forums”.

There are other interesting findings derived from 
the study of the introduction of market principles 
and corporate governance regulations in the post-
communist countries of East and Central Europe. In 
this part of the project, “transnationalisation” 
means something a bit different: not delegation of 
public authority to the supranational level, but the 
interplay in policymaking between (public and pri-
ivate) transnational and national forces. If the influ-
ence of transnational forces is as strong as 
suggested, then there is clearly an accountability 
problem regarding important socio-economic issues. 
National policies in the countries under considera-
tion are seen as highly dependent on the formal or 
informal approval by important actors other than 
the domestic citizenry, including actors lacking any 
form of public accountability, and democratic legiti-
мacy (such as transnational market forces).

A possible conclusion is that if “transnationalisat-
ion” undermines popular and national sovereignty 
and control, this is aggravated in the new European 
capitalist economies because the impact of external
influence is higher. If EU enlargement to Central and East European countries means a new structural centre-periphery cleavage in Europe, then the accountability deficit is higher in the European periphery, because the congruence between policymakers and policy takers is lower. However, even in “dependent” states, the success of options privileged by external forces requires a supportive domestic coalition. Hence, their options enjoy some internal legitimacy too; even though it is not certain that there is a genuine domestic endorsement following an enlightened public debate, it is challenging to note that a significant part of the citizenry does not disagree with external dependence – and thus with more “heteronomy” (considered the price of affluence).

Let me conclude with a few critical comments to this project that yielded considerable research findings and publications. Overall, there is a tendency to view the interests of “transnationally mobile capital, in particular global capital market actors”, as the basic *explanans* of current governance shifts, in conjunction with the preferences of “some professions (such as transnational law firms and the Big Four auditing companies) and a number of public authorities, most notably the European Commission, but also the World Bank and the OECD” (Nölke et al. 2007: 213 and 217). The original project emphasised conflict among competing pressures for change, but this hypothesis was not tested (to be disconfirmed if necessary). For example, Graz and Nölke (2007: 21) write the following:

> “Having transnational private governance in place legitimises the retreat of the state or at least its unwillingness to tackle certain issues by intergovernmental regulation. This, in turn, works as a shield against popular calls for business re-regulation in case of major discontent with economic globalisation. Thus, private governance is supposed to make it more difficult for labour unions and social movements to mobilise, whereas business’ preference for the existing socioeconomic order is being privileged.”

Basically, I do not disagree with the symptoms described, such as avoidance of intergovernmental regulation, insulation from public scrutiny or asymmetries in interest capacity to gain influence. However, I find it hard to agree with a diagnosis that attributes most of these characteristics (if not all of them!) to a deliberate attempt by neoliberal forces to capture governance. This is not to say that such attempts do not exist, but some effects may be wrongly attributed to them; for example, public actors may simply view intergovernmental regulation as too difficult or cumbersome, and may genuinely depend on the expertise provided by private actors. Furthermore, the lack of visibility or deficits in representation can be structural characteristics of collective processes rather than outcomes of conscious design. Some actors do not invest privatised forms of governance because they are not aware of their importance, but this does not necessarily happen because other actors seek to conceal that importance to introduce more easily their preferred options “through the back door”.

A further point is that it is not clear how, and to what extent, neoliberal “hegemony” is achieved. Hegemony “is understood as a form of social domination in which one group exercises leadership and imposes its projects through the explicit or tacit consent of all drawn into the coalition of social forces identifying their particular interest as the general interest” (Graz and Nölke 2007: 13). Is hegemony effective because the public has been persuaded about the virtues of neoliberalism, or is the latter hegemonic because of the absence of a public debate that would uncover the interests at stake? More importantly, although hegemony is postulated, it is also argued that crisis affects shifts to both neoliberalism and European governance (which are considered interrelated). For example, the research leaders write the following in their conclusion to a jointly edited book:

> “Finally, we have shown that political contestation plays a key role in the final outcome of processes of restructuring and (re-)regulation. The trend towards deepening commodification and further marketization, undeniable as it is, is not an inevitable and irreversible process. The process is full of internal contradictions, the hegemonic project driving it is unstable, and the social forces supporting the neoliberal project will find it increasingly difficult to keep the presently quite fragmented oppositional forces divided as the consequent polarizing effects (in terms of unequal distribution of income and political influence) continue to deepen those internal contradictions” (Nölke et al. 2007: 218-219).

In fact, the question that I had some difficulty answering based on the results of this project is whether the “glass” of “hegemony” (or legitimacy) is half empty or half full.
Compensation for Damage: The Shift from Civil Law to Public Findings and Vice Versa

Material Used

The major output of this project is a “trilogy” of three edited volumes, which were not included in the initial reading material. However, I was able to gain access to a few contributions from these volumes, and, in a later stage, I received from the NWO (sometimes incomplete) PDF versions of the “trilogy”. In agreement with the chair of the program, I decided to not consider all the chapters of the trilogy volumes that I received. This was for three reasons: to not get lost in too many technical matters; because the content of some chapters partially overlapped that of other documents received previously; and especially because (unlike most projects) this one provided a genuine and eloquent synthesis in the final report, which greatly facilitated my task (see “Compensation for Damage: The Shift from Civil Law to Public Findings and Vice Versa”, Report of a Joint Research Programme 2004–2006, NWO Grant 450-02-440, Programme Leaders W-H. van Boom and M.G. Faure). This project was conceived from the outset as a collaborative undertaking of a group of international scholars coordinated by the programme leaders and by postdoctoral staff in the Netherlands. Below, readers can find the complete list of documents consulted:


60 This volume was included in the corpus although it is not a direct outcome of the project; it results from cooperation with mainly Chinese scholars.

61 This volume was included in the corpus although it is not a direct outcome of the project; it results from cooperation with mainly Chinese scholars.
Project Discussion

This productive project scrutinises shifts in paradigm between civil law and public funding with regard to compensation for damage. The researchers argue that these shifts have a conflicting nature, because in some cases (e.g., employee disability benefits and sick pay) there is a shift from public funding to civil law, while in others there is a growing call for governmental intervention to ensure adequate compensation of victims (as in cases of natural catastrophes or terrorism). Additionally, there is a sort of “third way” consisting in the development of alternative forms of collective solidarity, such as compulsory insurance schemes (as in cases of medical experiments and environmental damage).

Issues of accountability are addressed in the initial project (see also Van Boom and Faure 2007:...
40 | Juridification, Internationalisation, and Shifts in Public-Private Boundaries

It is often heard that a “claims culture” is developing. Interestingly, Faure et al. (2006) found that the demand for legal assistance insurance policies (whose conclusion would facilitate claims) remains stable in the Netherlands, and that the claim frequency in liability insurance is diminishing.  

In compensation for industrial accidents and occupational diseases, employers’ liability has been expanding, with public funding of sick pay and disability benefits being put into question. However, employers protest that they face more claims than they can afford, and alternatives such as direct insurance are envisaged. Three time periods have been identified in which shifts were observed (Engelhard 2007) and, interestingly, the circumstances that gave rise to shifts appeared to be largely the same in several European countries. A first shift took place at the end of the nineteenth century where, to improve the situation of employers suffering from work-related injuries and diseases. This implied a shift from the prevailing framing that workers were responsible for their own fate (De Swaan 1988). New beliefs on employers’ responsibility of accidents probably spread across countries in manner similar to current cross-country diffusion processes identified by the relevant literature (for a conceptual synthesis, see Simmons and Elkins 2005). After the World War II, a transition took place towards a social security system with strong public law elements, such as mandatory insurance, as well as state-regulated minimum or maximum levels of compensation. However, in a more recent third period (starting in the late 1970s) considerations of cost containment led to a reduction of the scope of compensation in the public system and to a shift of costs back from the public to the private sector. Nevertheless, it should be noted that important differences still exist among legal systems (Philipsen 2007).

In compensation for environmental damage, public funding was replaced by “the polluter pays” principle. Although the limits to this principle begin to appear now, there is no clear return towards public compensation systems. In some domains (like oil pollution and nuclear accidents) a shift towards strict liability, combined with compulsory insurance as well as a compensation fund, is observed. It should be noted that as regards compensation for oil pollution, the role of transnational regimes is important, with ever-increasing damages leading to a cascade of additional protocols and amendments to the international conventions regulating the field (Faure and Wang 2006). In this, the European Union appears as an important actor. Having established that more stringent rules as part of international conventions were not adequately implemented because of lack of monitoring and sanctions, it decided to include international standards in its own legislative framework and to check for compliance (Wang 2006). Moreover, having realised that international conventions proved inadequate to provide sufficient compensation to victims of catastrophic accidents, the EU Commission took the initiative to propose a European compensation fund, which led to an amendment of the international regime. As a result, almost one billion US$ can be made available to victims of oil pollution damage (Faure and Hu 2006: 356-357). This is an
A shift from private to more public intervention can also be noticed in the domain of soil clean-up costs, for a variety of reasons. These include difficulty in proving causality in tort law, difficulty in finding polluters of the past, the desire to not aggress the industry, and the fact that some branches of government and consumer demand could be blamed for pollution (Verheij 2007: paragraph 201). However, it is hard to determine whether shifts are clearly moving in a particular direction. Even though in most environmental damages, there has been a shift away from private law to public compensation systems, public authorities also use private law mechanisms (more specifically, tort law) to obtain compensation from polluters for the clean-up costs incurred. Moreover, in some cases like the International Oil Pollution Compensation Fund, the organisation of the system may be public, but the financing may be private (especially through levies paid by oil receivers). Interestingly, supplementary private funding and substantial increase in the limits of private liability were obtained through pressure by public actors, namely the governments of big coastal states such as France, during the negotiations on the Oil Pollution Compensation Fund. In sum, it is not easy to identify clear shifts from private to public compensation systems, even though this seems to be a more general trend in the environmental field.

In the field of compensation for natural disasters, large-scale accidents and acts of terrorism, a traditional model, still followed in many countries, is simply that the governments undertake nothing specific at all. This means that victims of catastrophes rely on personal accident insurance and the social security system to cover their injuries. Moreover, where this is available, the victims can also rely on first-party insurance schemes to cover property damage. However, problems stem from the fact that coverage for damage caused by catastrophes in first-party insurances is insufficient and that victims do not seem to make sufficient use of insurances due to informational limitations. A second model (in Sweden, Germany and Italy), which relies on the provision of public relief, is the one whereby governments largely intervene on an ad hoc basis: when a catastrophe strikes, governments decide to provide sometimes very generous compensation to victims. However, this model is criticised because it is not satisfactory in terms of legal certainty (too much leeway for governments) and because of budget restraints. Therefore, a third model that increasingly gains popularity is the model introduced in France in the 1980s and more recently in Belgium in 2005. It is a model whereby a mandatory cover in addition to voluntary insurance policies is provided to cover the risks of (mostly natural) hazards. Catastrophe insurance is not generally mandatory, but when voluntary (e.g., housing) insurances are concluded, cover for the damage caused by natural hazards is automatically included. A fourth model (often combined with the third one) consists in public-private partnerships whereby governments intervene to facilitate insurance solutions – for example, as reinsurer. Even though this model has received criticism as well (specifically, that public involvement would disturb the normal functioning of markets), it is also gaining increased popularity. Van den Bergh and Faure (2006) argue that concerns about competitive distortions are legitimate but should be put in balance with social welfare concerns regarding national solidarity. In France, a central “caisse” provides this reinsurance for natural hazards, and after 9/11, many countries adopted this model, in which governments intervene as an insurer of last resort to provide reinsurance for risks caused by terrorism. The researchers conclude that in the case of compensation of victims of catastrophes, no major shift could be observed, and various countries today still follow different paths, but the field is in evolution (see Faure and Hartlief 2006).65

Regarding the field of compensation for medical malpractice (and medical experiments), there was a tendency towards private law compensation in cases of medical liability, but this did not go without criticism due to cost increases. As a result, another tendency is a shift towards public solutions in the form of no-fault compensation schemes (for a comparative analysis, see Dute et al. 2004). Some countries (especially New Zealand and the Scandinavian states) have already set up such schemes, while other countries (e.g., Belgium) are considering introducing them. However, criticism appears against this solution too, because it induces a lack of accountability of physicians, who may then more easily engage into risky practice (this makes risk creators, and probably their insurers too, warm advocates of no-fault regimes). Minor shifts within private law are possible as well. An interesting example is provided by the Dutch legislation

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64 For more details on EU policy, see Faure and Wang (2004).
65 For a discussion of the pros and cons of new instruments for the compensation of “systemic risks”, see Faure (2004).
concerning biomedical research, which stipulates that whenever a researcher undertakes an experiment on a patient, she has to take out an insurance policy. This compulsory insurance is not a liability insurance but rather a direct, first-party insurance policy to the benefit of the patient (the potential victim). In case of harm, the victim can claim directly on the insurance policy without having to prove wrongful behaviour of the physician. Yet the direction of change is unclear, because the comparative research disclosed non-negligible cross-country variation due to the “path-dependent” persistence of the specificities of local legal cultures (Cascao and Hendrickx 2007).  

Overall, the researchers did not identify radical changes between public and private systems of compensation, although they acknowledge that shifts within a system can be relevant from a policy perspective and even shifts in case law initiated by judges can deploy broader effects by being later incorporated into legislation. In addition, one should differentiate shifts between public and self-regulation (and vice versa) from situations where public regulations introduce changes in the public-private balance of actors in charge of a policy. The researchers were unable to identify clear patterns of change: the latter differed across areas or countries. In professional accidents, the current context is largely that of state retrenchment, and this can be attributed to the overall dynamics of the welfare system, in which the combination of pressure for costs containment and neoliberal beliefs often led to the dismantlement of previous measures whose costs were considered excessive. Conversely, as regards environmental damage, the trend seems to be towards more public involvement. Finally, in compensation for large-scale disasters and for damage from medical errors, cross-country variation largely subsists. Reality appears to be “prismatic”, and how it is described also depends on the conceptual lenses of scientists. A nice example (not directly drawn from the project) refers to the debate on convergence or divergence in the broader field of environmental policy in the United States and the European Union. Here, there was no agreement among the analysts, and the book editors conclude with the existence of transatlantic learning and “hybridisation” but simultaneously point out its limits (Faure and Vig 2004). The researchers warn us against generalisations and plead for circumspection, as their empirical work focused on only a few domains and countries.

In addition to identifying possible trends, the researchers had aimed to explain the reasons for change, but for the political scientist at least, the outcome is a bit disappointing. The causal factors generally identified are not very precise (such as national preferences, the prevailing legal doctrine, etc.). Explanations of paths for change would have been more robust with a preliminary reflection on the logic of case selection according to Mill’s methods of similarity and difference. For a policy analyst bred with theories of change in policy-making, it comes as no surprise that the objectives of changes are not always very clear, for strategic reasons (i.e., the necessity to formulate goals in a vague manner to gather majorities), or because shifts take place without clear insights on their effects due to cognitive limitations (“bounded rationality”). On the other hand, when reading lawyers’ work, the political scientist realises how cursorily he and his colleagues of the discipline often deal with the technical aspects of legislation, pretending to ignore that the devil is in the details!

It is also interesting to note that the researchers found that the “formal” reasons for change advanced by the legislator did not always seem to be the real ones. The official explanation for change is usually of the problem-solving type: changes are presented as resulting from problem pressure – for example, following a highly mediatised accident that draws wide public attention – and from functional imperatives (thus changes can be more legitimate, because they appear as the consequence of necessity and not as the enactment of subjective beliefs). This “public interest explanation” relies on causal narratives, which, without being necessarily

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66 There is also mention of path-dependency regarding shifts in compensating work-related injuries and diseases (Hartlief and Klosse 2007: paragraph 17). The concept is also employed in the case of oil pollution regimes (Faure and Verheij 2007: paragraph 950), but it does not denote legacy from the past – rather, diffusion of similar regulation practice from one sector to another.

67 See, for example, Faure (2007) for alternative financial instruments used for the compensation of environmental damage.

68 For instance, according to French case law has considered the state can be liable for not regulating risks related to exposure to asbestos (Van Boom and Pinna 2005).

69 See also below the project Governance as Learning, especially the subpart by Anton Hemerijck, which provides an encompassing overview of welfare state “recalibration” (hence, not merely retrenchment).

70 Or “insurability” (a function of the position of insurance industry), “politics”, and “the lawyers” (Van Boom and Faure 2007: paragraphs 34-37), the last factor reminding of “legalisation” described in the project Does Liberalization Enhance Juridification?

71 Or more precisely, causal “hypotheses” (Jobert and Muller 1987); for example, in the cases surveyed here, that the shift of a funding obligation to polluters not only normatively fits
insincere, may conceal private interests. In fact, lobbying by powerful interest groups may be a strong predictor of change. For example, this “private interest explanation” (Hoop 2007; Ogus 2007) makes more understandable compromises observed in arrangements regarding compensation for nuclear accidents and oil pollution damage; although a strict liability regime was introduced, a severe limit on the amount of compensation was placed. This reduces the rights of victims but seemed necessary to gain industry consent.

When the anticipated “official” policy effect is not the real one, it does not make much sense to establish whether it has been attained (for example, an enhancement of collective welfare, if the genuine motivation was to improve the condition of a particular social group). In fact, the achievement of the next aim of the research, the identification of the effects of the measures adopted, appeared problematic. Policymaking seldom seems to be “evidence-based”, and ex post monitoring of effects is not the rule. Hence, it comes as no surprise that it is hard to identify empirical evidence on policy effects. Perhaps more fundamentally, the difficulty of establishing clear-cut causal links between policy measures and effects is a well-known problem in the evaluation of policy consequences (see, for example, industrial accidents and occupational diseases, Philipsen 2007): it is virtually impossible to isolate observed effects of policy from effects due to other uncontrolled factors in a quasi-experimental manner.

The researchers not only adopted a positive approach of legal change but also wished to evaluate its desirability, based on normative criteria of individual justice, operative efficiency, preventive incentives and insurability. Overall, they sought to identify measures that provide a “right” balance between private responsibility and public solidarity. However, they soon realised that a consensus on such a balance hardly exists, because the boundaries between public and private regulation are constantly a matter of controversy. For example, Ogus (2007) reminds us that differences in values and in conceptions of justice may lead to different normative perceptions of desirable compensation systems. As an illustration, Van Boom and Pinna (2007) argue that a shift to a no-fault compensation regime should be analysed in terms of not only the costs but also the degree of satisfaction of the victims (which is deemed higher). The researchers finally opted to remain extremely cautious about making any normative statements.72

As the concluding word of my discussion, I would like to return to the “Concluding remarks” of the general book of the research “trilogy” (see above). Faure and Van Boom (2007: paragraph 12) claim that their research allowed them to identify and explain shifts, whereas it was more difficult to situ- ate their effects or assess them on a normative basis. I would say that the strong point of this research is the extremely fine-grained analysis of shifts themselves – which is already a lot.

Lessons Learnt: Accountability and Legitimacy Issues Related to Shifts in Governance

More than on consequences of governance shifts, this project offers interesting insights into the following:
– The detailed content of legislative change.
– The complex logics of change at work.

Compared with the other projects included in this section, this one seems to understand “shifts” in governance more as changes in policy content and less as changes in decision-making procedures. The longue durée perspective demonstrates that there has been a spiral of change since the end of the 19th century; regularly, the adopted policy solutions give rise to problems and to a search for new solutions. However, this is not the only mechanism of change, considering that the available evidence on policy effects is often scant, that arguments for a need to change are often not “evidence-based”, and that relationships between cause and effect are difficult to establish. What happens is that solutions are usually contested on material or ideological grounds, and thus claims emerge for alternative solutions, pointing in the opposite direction.

What we learn from this project is less on accountability or legitimacy issues than on the logic of “shifts”. To be sure, if legislation changes, this is implicitly because alternative options seem to have a higher problem-solving potential and are thus more legitimate. In the cases scrutinised by this project, change also occurs because the way responsibility for damage is defined seems problematic (and sometimes because there is a problem with the

72 For modest statements on the possibility to evaluate the shifts under scrutiny, see Van Boom and Faure 2007 (paragraphs 38-43).
accountability of public decision makers). However, the most interesting conclusion relates to the way(s) things change; unlike in the other projects, there does not seem to be any major direction of change, a single major cause of shifts, or a major path of change understood as cross-country or cross-sectoral convergence. This holds true even in issues involving natural or technical risks that are considered the object of increased social concern throughout the developed world (Beck 1992). Actually, even if this project dealt with some specific issues of compensation to damage, it had the advantage of adopting (although not deliberately) a sort of “most different cases” principle for the selection of the domains to be considered. This allowed it to encompass a wide variety of subjects. Hence, there is not much in common between the field of labour relations, which seems to suffer from the general contestation of welfare provisions, and the field of pollution, where more public intervention is advocated as a result of the increasing prevalence of ecological considerations (which at times are even acknowledged by business). This prismatic description contrasts with the stronger emphasis on “shifts” by the other projects of this section, and this probably has to do with the different conceptual lenses that are employed here; “macro” factors of change that are deemed to produce overarching effects are not at the core of the argument.

Short Synthesis of the Major Research Findings across Projects

In this section of the programme, research dealt largely with the vast movement of liberalisation, but it also crucially emphasised its unintended effects, such as the increased “juridification” of governance procedures. However, a more alarming “shift” with regard to the accountability of decision-makers may be the “technocratisation” of the policy process and the blurring of public-private boundaries. This should be considered in the light of the internationalisation of governance, especially as the “privatisation” of governance seems to attain its peak at this level. Internationalisation not only makes the “chain of accountability” lengthier and challenges the principle of congruence between policymakers and policy takers, but it implies that networks of experts and representatives of particular interests become crucial actors in the formulation or the implementation of rules that apply to wide communities. Such actors are not authorised to issue binding rules, and formally, this is not what they do, but their impact on policy-making – though admittedly variable – may be decisive. Hence, the issue of their deficit in public accountability, often coupled with deficits in representation stemming from a limited pluralism in terms of interests or ideas, should be a normative concern. At the same time, it is not certain that this becomes ipso facto a practical concern for the legitimacy of decisions, because the public at large, even though increasingly critical with respect to the functioning of political institutions, largely ignores the emergence of such hardly visible spheres of governance (and it is even questionable if the media or politicians themselves are better informed).

The question is to what extent such alarming trends are general. Research on shifts in substance rather than shifts in procedure showed that, depending on policy issues, these are more or less ample across countries. There is for instance more public intervention when the environment is at stake, in contrast to the “neoliberal hegemony” in economic governance. Evidence on procedural shifts remains fragmentary, but these do not all necessarily go in the same direction either. Additionally, there is probably an effect of the conceptual lenses employed: the more one gets into the details, the more chances she has to find variation. In that sense, the reality described by political scientists and sociologists in the first two projects is not the same as the picture provided by lawyers in the third project. This pleads for more interdisciplinary cooperation, especially as the former seem more apt to identify the drivers of changes – the independent variable – while the latter seem more apt to precisely describe the object of change – the dependent variable.

73 Conducting a very “parochial” study of procedural changes in political decision making in the Swiss consensual democracy, I realised that the impact of interest concertation was on the decline, but the “shift” benefitted the bureaucracy in the highly “Europeanised” regulatory policies, and benefitted the parliament in the more domestically determined social policy reforms (Papadopoulos 2008).
SHIFTs IN GOVERNANCE IN THE GLOBAL SOUTH
As reminded in the introduction to this synthesis, a major shift in governance seems to be the fact that policies are formulated or implemented by multi-actor constellations, involving representatives of different decisional levels and both public and nonpublic agents. This view of decision making starkly contrasts with the “textbook” view, in which policies are made within the official institutions – governments and parliaments – of the democratic representative system. It may even be argued that the “governance” approach unduly removes institutions from the picture (Benz and Papadopoulos 2006), whereas depending on the institutional configuration, the structure and role of policy networks may differ. For example, where there are several institutional “veto points” – institutions able to veto policy choices (think about a bicameral legislature or a constitutional court) – there are incentives to include in the informal negotiations key players from these institutions. Most studies of shifts in governance at national and subnational level deal with established democracies, where governance arrangements are formally embedded in the web of consolidated democratic institutions. Clearly, this is not always the case in other parts of the world.

Ideal or Real? Cultural Divergence in Accountability and Legitimacy in Multistakeholder Governance of Water Resources Shared by Mozambique and Zimbabwe

Material Used


Project Discussion

This project discusses cases of “multi-stakeholder” governance in countries of the Southern cone of Africa, which do not belong to the “usual suspects” considered in the “governance” literature. In fact, although this is seldom stated explicitly, this body of research formulates conclusions on governance and its dynamics that are limited to the affluent societies of the developed world (broadly speaking, the OECD universe). Hence, it is a challenging undertaking to scrutinise governance arrangements outside this part of the world. The research relies on case-study fieldwork about newly created institutions for water governance characterised by three profound shifts based on the – hegemonic according to the authors (Warner et al. 2008) – doctrine that market solutions combined with stakeholder participation are more adequate than state interventionism. The three shifts are the following: (1) from state- to market-driven regulation (introduction of water pricing); (2) from centrally administered to decentralised democratic user-based management institutions (through a regional water authority, and river basin committees);74 and (3) from administrating (province) to resource-based management (river basin). The new institutions originally considered dealt with the management of two river basins shared across borders by Mozambique and Zimbabwe, the Save and Pungwe basins. Although these countries differ with respect to problems faced and cultures of governance, they both embarked into water management reforms in the mid-1990s under the pressure of donors. (Mozambique is considered a “good pupil” by international institutions, whereas Zimbabwe has strongly realigned itself towards state-controlled development.) “Shifts” in governance are deemed here to better cope with a combination of several important challenges: providing more water to the majority (poor) population without jeopardising commercial agriculture and industry, and keeping some for the environment – all in the face of recurrent droughts and floods.

74 On this aspect (typical of the “shifts” which are at the core of this program), see the work of Nobel prize winner Elinor Ostrom (1990) on cooperative institutional arrangements to remedy the problem of the “tragedy of commons”.
The objective of this research is very much at the core of the NWO program. It has a normative and evaluative component, as it aims to assess to what extent the new governance structures result in financially, socially and environmentally sound development and management of water resources. Based on historical material and a literature review (Warner et al. 2008), it is suggested from the outset that the legitimacy and accountability of such governance institutions is highly problematic, because it is unsure whether they can provide equitable, efficient and sustainable water management. For instance, there are no social and political institutions in place assuring that the new river basin institutions will be broadly democratic, and market solutions tend to increase inequality with respect to access to water resources. Although this type of governance appears “natural” and depoliticised, based on concepts of participation, integration and sustainable development that are positively connotated, this new orthodoxy is undeniably the result of a political choice that usually implies winners and losers. For example, some social groups have no voice, either because they are deliberately excluded, their views colliding in their substance or in their forms of expression with the mainstream approach, or because they do not have the organisational or discursive capacity to make themselves heard. The emphasis on the political dimension of governance shifts, whose diffusion is linked not only to their functional efficacy but also to their rhetorical appeal that may conceal power issues, should be welcomed.

It is assumed in the project that in both countries, the emerging forums for river basin management mirror the priorities and models of governance that prevail among government technocrats (largely over-represented in governance bodies, enjoying considerable discretion, and thus able to control procedures in spite of formal decentralisation), white farmers and transnational estates, all wishing to maximise water’s utility value. This clashes with the organisational practices and cultures of governance of those hitherto left out and now invited to participate, namely African small farmers, urban dwellers and poor women, who perceive water to be “god given” and a provision for their basic needs. The majority of potential stakeholders lacks access to water and is unaware of the new governance structures, while the authors correctly argue that choices of resource management forms should not only tacitly perpetuated by the few but supported by the many. This is more difficult if they are perceived as purely symbolic “talking shops” or as mechanisms delaying decisions (Warner et al. 2008). The interesting assumption here is the lack of legitimacy of governance solutions that have been coined along the views of only one part of the participants. The study aims, thus, to concentrate on diverging cultures of governance among different stakeholders. It seeks to establish how and to what extent disadvantaged stakeholders succeed in contesting the domination by powerholders, and how a new balance in power relations can affect policy outputs (the management of water resources).

Originally, the project intended to scrutinise the management of water resources in four locations (two in Zimbabwe and two in Mozambique) spread over the upper and lower reaches of the Save and Pungwe rivers, but the political situation prevented the conducting of fieldwork in Zimbabwe. Therefore, the research effort was concentrated on three case studies conducted in the Pungwe basin in Mozambique. However, it is unclear how these three sites were selected, and unfortunately, concentration on a single country has prevented the achievement of the initial comparative ambitions. The research design is based primarily on direct observation of meetings, negotiations and various forms of social interactions, supplemented by quantitative surveys to corroborate the qualitative findings.

It is reported that the findings contradict the official expectations from governance shifts but are very much in line with the researchers’ initial expectations: further entrenchment of centralised state management, lack of influence of the local stakeholders and inequalities regarding fair access to water provision. The lack of a democratic culture and tradition of democratic rule is considered the main explanatory factor for these perverse effects. A more detailed discussion of accountability and legitimacy issues would have been welcomed here. The weakly developed administrative and technical capacity is also indicated as a cause of problems; however, this has more to do with lack of efficiency and does not seem to be an explanation in itself of administrative capture (governance arrangements can be captured by both an efficient and an
inefficient administration).  However, the major problem I see with this research is the lack of empirical evidence (at least accessible in published mode) based on the three case studies that would sustain the claims that are made. One of the articles of the publication list is based on fieldwork in Malawi (Veldwisch et al. 2009); a book chapter that was enclosed but is no longer on the final list (perhaps because it was antecedent to the project) was about Zimbabwe (Bolding et al. 2004). 79 We do not know if there any lessons drawn from the three sites in Mozambique.

Finally, it should be added that an interesting output of this project is its knowledge transfer activities (for which Alex Bolding received a dissemination premium from the NWO). Although the overall picture of governance quality is dull, smallholders who were unaware of governance changes were offered the opportunity by the research team to learn from other water users and water managers. A discussion of possible effects of such an “enlightenment” process would have been useful.

Lessons Learnt: Accountability and Legitimacy Issues Related to Shifts in Governance

As I had no access to material based on empirical research, the conclusions I can draw from this project are tentative and should be formulated as hypotheses.

Caution should prevail when new multi-stakeholder approaches on governance are transplanted in unfavourable settings without much critical reflection, whether in the form of “black-boxed” institutional technology (Veldwisch et al. 2009) or of ready-made toolkits. In underdeveloped countries with high levels of inequality, problems of illiteracy and absence of a democratic culture, the perverse effects (lack of accountability, technocratic capture, selectivity) can be a caricature of what we observe with “horizontal” management in our own societies. However, this means that such problems are also present in more favourable settings; the lack of handicapping factors is not a sufficient condition for democratic and fair governance arrangements. Therefore, the latter do not always uphold their promises, although the gap between proclaimed goals and reality is smaller than in the cases this project aimed to consider.

In the Web and on the Ground: Global Circulation and Local Achievements of a Prospective Shift inGovernance 80

Material Used

The project website http://www.hydrousmantle.org is now a webpage on health information and tips (accessed Nov. 9, 2010), and the project blog http://hydrousmantle.blogspot.com is no longer accessible. The CD “In the Web and on the Ground” (a documentary film) was not enclosed in the package.


80 This project has several components (see below), of which only one refers to situations of governance outside the Western world.

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78 A more complex mechanism that is portrayed by Bolding and van der Zaag (2005) is that of local bosses gaining power with decentralised management, which generates a need for control, leading to bureaucratic centralisation or even authoritarian decision making – provided that the state is not too weak to monitor and regulate.

79 I disregarded the enclosed “PowerPoint” presentations. Given the scarcity of published empirical material, I made an exception to the rule that I had set for myself, and I consulted a conference paper on the Pungwe river basin (Bolding and van der Zaag 2005). However, this paper does not present evidence from the local case studies; rather, it expands the considerations presented in the initial project. Significantly, it deals with Zimbabwe as well, despite the impossibility of conducting the case studies announced in the final report. There is also mention of Alex Bolding’s (not included) Ph.D. dissertation. However, given that it was defended in 2004 and that A. Bolding worked as a post-doc in this project, I am inclined to not consider it as a project output.
Project Discussion

This project deals with the management of water resources too, albeit from the very different perspective of a study of cultures of governance. It relates to discourse and communication regarding the governance model of “integrated water resources management” (IWRM), a paradigm for the management of water resources on an international scale. This paradigm became part of Agenda 21, the wide-ranging UN agreement for sustainable development, and was formalised during the World Summit on Sustainable Development in 2002.

According to the final report, the project has three components:
1. A textual analysis of the diffusion of IWRM discourse on the Web, conducted in 2005;
2. A study of how the United Nations monitor the implementation of IWRM at national level;81
3. An analysis of concrete local activities of IWRM (in the Bhima river basin, in West India; in the initial project, two case studies were planned), to understand how a model can simultaneously be globally diffused and locally specific, and with the working hypothesis that possible tensions are mirrored in texts.

Most publications from the project are based on the Web analysis (Thelwall et al. 2005, Thelwall et al. 2006; Vann 2009). An original hypothesis was that the Web provides resources for the diffusion of IWRM as a normative model that ought to be adopted: the Web helps to make IWRM a “globally circulated ‘soft law’” (Vann 2009: 180).82 It was also expected that the Web would contribute to the globalisation of a participatory management model, as in the IWRM formal programmatic documents “participation” was a key aspect of what may be called the “governance narrative” (Rhodes 2000) about what kind of procedures are desirable and legitimate. In a methodologically reflective article based on “critical discourse analysis” techniques, Vann (2009) showed that this was not correct. Emphasis on the Web was on IWRM objectives, such as “sustainable development” (the “Plan of Implementation” of the World Summit on Sustainable Development cites IWRM as one of the key components for the achievement of sustainable development). The prevalence of a developmental discourse on the Web is related to the presence of the United Nations and especially of NGOs from the global North as massive text producers (Vann 2009: 175; see also the results of the “Web issue analysis” by Thelwall et al. 2006: 1309). However, this does not explain why – and this is probably a limitation of the method used – this kind of actor emphasises development over participation on the Web. Yet this remains an interesting finding as such, because, although domination on the Web of transnational pro-IWRM organisations from the global North is not surprising (given the North-South “digital divide”), it is yet another manifestation of the fact that the NGO presence in global governance does not necessarily mirror the world “civil society”.

Hence, the latter should not be idealised, because it is also affected by representation problems, considering that potential beneficiaries of IWRM are developing countries. Although the NGOs that are most frequently present at global level claim to represent a variety of interests, this raises accountability problems, because those whose interests are thus allegedly represented may not have a voice in the system.83 A previous study of the Web within the same project (Thelwall et al. 2005), focusing more narrowly on coverage of local experiments, concluded that Internet communication takes place primarily within the emerging international professional community of IWRM, and it is composed primarily of NGO members and academics. Although giving a voice to laypersons is central in IWRM, local people were not present on the Web, and very few sites were of interest to them.

Due to the “soft law” nature of IWRM, nation states are held accountable regarding its implementation. Hence, the project also analysed the UN monitoring study conducted by the UN Commission on Sustainable Development. Evaluations of implementation are considered necessary for the legitimacy of internationally agreed norms. Yet Vann (forthcoming) stresses an inherent ambiguity in the attempt to evaluate “progress toward implementing IWRM”. On the one hand, as in other contemporary “soft” modes of governance,84 much discretion is left to the responsible authorities for the concrete implementation steps. Because contextual factors

81 Originally, the analysis of two national IWRM plans was scheduled, but in the course of the research, it was observed that few national plans had been written and that the IWRM community had shifted its attention to cross-national assessments, such as those by the UN (see the project final report).
82 Or perhaps more accurately “semi-soft”, because it seems that there is an element of conditionality: conducting activities in the name of IWRM is often a criterion for donor funding from institutions such as the World Bank or national donor organisations (Vann 2006: 171).
83 See also note 57.
84 Reference is made to the environmental policy of the European Union, but see also the subproject on the Open method of coordination in the project Governance as Learning.
matter, “procedural ambiguity” (Vann forthcoming: 12) is unavoidable, and some flexibility is required. On the other hand, ambiguity generates uncertainty; there is no action plan or “instruction manual” to offer guidelines for implementation. First, this is a problem for evaluation, which requires standardisation and accounting, notwithstanding their “dilemmatic” character (Vann forthcoming: 15). Second, it is also a problem for local practitioners who do not know “exactly what they are supposed to be doing and how their practices are going to be assessed” (Vann forthcoming: 13).

Vann (forthcoming: 35) also found that the questions posed in the UN evaluation focus on state-based policies and legislation, to which new forms of governance practice such as IWRM cannot be reduced, because civil society organisations are key local players in this field too. She thinks that the UN “survey doesn’t reflect a desire or need to know all the wild details of how IWRM ‘happens on the ground’ in ‘different contexts’”, and concludes that “technologies of inscription … render some practices in the domestic fields of nations visible and others invisible”. Vann interprets this as a sign that national governments are the primary target of the UN’s assessments, because they are assumed to be key mediating actors whose authority is the only legitimate power. I am not entirely convinced by this interpretation; it may well be that UN officials are aware that the information they receive through IWRM is limited or even distorted; however, they operate as rational actors who wish to minimise the costs related to information search. Hence, selectivity is necessary as a device for complexity reduction, and it may also be a bit provocatively suggested – based on knowledge from the “meta-evaluation” literature – that one cannot assume that the UN is necessarily profoundly committed to an adequate evaluation of concrete IWRM practice (this would require empirical confirmation). It is nevertheless quite correct to conclude that, if the UN choose national governments as the sites of accounting for IWRM implementation at the local level, then this kind of supranational accountability can be fictitious. It may happen that national governments do not possess adequate information or that they are in a position – due to informational asymmetry – to manipulate it.

This last point should alert us to the social construction of justificatory discourses on governance practice. “Governance stories” do not simply mirror sincere beliefs but rather are also the site of rhetorical strategies, and not only from governments.85 According to the final report, the third part of the project demonstrates how local actors “translate” the operation of systems of local water governance into the IWRM classificatory categories to have them legitimised by the state and trans-national organisations. This appears eloquently in the following quote by a local actor in India who seems to be very familiar with – and a bit blasé about – “how things work” in the implementation of principles, and with how one should formulate accounts on local level management. He says, “the international principles get changed and metamorphosed by the time they are actually applied, and there’s nothing wrong with it. And when they go back in the form of a case study, they are refor-mulated and presented in the language that the international communities will understand. But these are standard research loops”. Unfortunately, the short text presenting this kind of evidence (sub-mitted by Vann) does not specify who the inter-viewed persons are, and more fundamentally, it does not go much beyond the sheer quotations.

Lessons Learnt: Accountability and Legitimacy Issues Related to Shifts in Governance

This project confirms that flexibility in the implementation of regulations may enhance their legitimacy to the affected populations. On the other hand, it shows a trade-off: the “upwards” accountability of “street-level” actors might then be limited.

This study offers insights on properties of “soft” transnational governance norms and on the procedural “technologies” that accompany them. Unlike top-town regulation, soft law leaves considerable margin for interpretation in the implementation phase, because flexibility is considered necessary to adjust to the specificities of local contexts, to take into account local knowledge and to generate “ownership” at grass-roots level, which is necessary for legitimation. At the same time, to have the opportunity to be effective, the implementation of soft law must be conducted under the shadow of some kind of monitoring. But the chain of delegation from the supranational to the “street” level is extremely lengthy. The diverse “agents” to which implementation tasks are delegated are required to provide accounts on their deeds, but there may well be a paradoxical correlation: the more a local actor

85 See note 76 on “euphemisation”.
enjoys discretion, the more she should be constrained to justify her conduct – but probably also the more resources she has with which to act strategically. Thus, she benefits from informational asymmetry and can render the account-giving process fictitious. Delegation theory – namely the “principal-agent” model – considers the “Damoclean sword” of accountability a means to avoid “shirking” by agents: “trust but verify” (Behn 2001: 106). It appears here that “shirking” can be part of account giving. In addition, this study demonstrates that the frequently observed imbalances between the North and South in global governance are observable even in a new media like the Internet, which seems to reproduce traditional inequalities. NGOs are active producers of messages on the Web, but this does not mean that the voice of the affected populations is expressed thereby.

Local State and Private Networks in China – Harnessing Political Entrepreneurship Through New Forms of Governance: Legitimacy, Accountability and Innovation

Material Used

Unfortunately, it was difficult to obtain a clear image of the project structure. For example, five subprojects were presented in the initial proposal, but the project Web page$^{86}$ lists seven subprojects. It seems that there have been some shifts in topics (no project of the final list overlaps with a project from the initial list) as well as in personnel. Therefore, I decided to rely primarily on the four Ph.D. dissertations (major project outputs) that were not enclosed with the material I received but were accessible on the project Web page.


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$^{87}$ This edited volume was not included in the documents that I received, and I could only consult it later. With the exception of this text on networks, which was crucial to the general topic of the NWO program, I included in my discussion only the chapters written by project members.
Project Discussion

In this multidisciplinary project, shifts in Chinese governance are scrutinised. As China is a transition economy, massive changes occurred at the local level where a number of new institutions replace those inherited from the socialist past, despite the maintenance of the one-party state, leading to phenomena of “hybridity” (Krug 2007: 137). The project focuses on the interactions between local political-administrative and business systems. Although in a country like China, it is difficult to generalise from local findings (Krug 2007: 115), it may be expected that some of these new governance arrangements are copied by other localities or transferred at national level. For example, interviewees confirmed that local governments organise study tours to examine institutional practices in other jurisdictions (Krug and Hendrischke 2008: 96).

The rather daring expectation formulated in the initial proposal was that the aggregation of local regimes becomes a new form of quasi-constitutional reality, leaving its mark on the Chinese business environment more than on its formal components (in other words, the “real” Constitution).

Taxation systems are a good case to illustrate changes. The thesis by Zhu (2007), in reality a cumulative dissertation based on quite different papers, describes changes of tax systems and fiscal decentralisation in the Chinese transition economy over the last three decades. In contrast to the European transition economies, which from the beginning copied tax codes from neighbouring countries (or the EU), China opted for incremental reform of its tax system. The thesis assumes a peculiar situation of “local autonomy” at the interplay of formal and informal governance structures: a formal and standardized national tax system operates under the custody of the central government while de facto informal and flexible local tax systems are managed by local governments” (Zhu 2007: 2).

The informal character of local tax systems exacerbates problems of data collection. Therefore, the author first interviewed firms in two townships (called M and L in the thesis) by which it was possible to learn about the informal part of local tax systems. The focus was placed on the lowest level of the political and administrative hierarchy because this is the level where government agents meet taxpayers (in most cases firms). In a second step, representatives of local tax bureaus or finance departments were interviewed to understand the formal part of local tax systems. More importantly, due to the local coordinator’s special network, these local officials were also willing to disclose information on their informal practices. Three types of data were collected: published official documents (statistical yearbooks, government reports, etc.); archive data from firms (organisation charts, financial reports, enterprise brochures and magazines); and material from around thirty interviews with local officials and managers or CEOs of private enterprises. The Zhejiang and Jiangsu provinces, where fieldwork was carried out, count among the most developed and open regions in China.

Interestingly, taxes are negotiated not only between the administration and taxpayers but also – given that all aspects of tax collection are not regulated on a statutory basis – between the different territorial levels of the tax administration (Zhu 2007: 28). As long as neither the Party nor superior government agencies object, each local jurisdiction can opt for its own mix of regulation and taxation: “Subsequently, the ‘mix’ of regulation and taxation is subject to permanent bargaining and contracting within the administration and between the administration and the business sector. Such a form of decentralisation needs to be seen as a move by which the central government secures support from the lower administrative agencies on whose compliance the enforcement depends” (Krug and Hendrischke 2008: 90–91). The multiple governmental levels plus firms (at local level) are considered in their interactions in the thesis as the core actors of the “central-local dual-track” Chinese tax system, a de facto fiscal federalism that allows local governments to either accommodate national tax policy according to local differences or to formulate local tax systems through coordination with local economic actors.

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88 For example, participatory budgets have aroused interest among some Chinese local authorities (Baogang and Warren, 2008).

89 A peculiarity that affects other issues too, such as firms’ strategies: see below.

90 Close to Suzhou, Jiangsu province, Township M covers 34 square kilometres with a population of 53,000 in 2003. Township L is located 15 kilometers away from Hangzhou, capital of Zhejiang province and covers 43 square kilometres with a population of 60,000 in 2003 (Zhu 2007: 26).

91 Interestingly, people interviewed by Krug and Hendrischke (2008: 96) reported that mediation processes between authorities at different levels generally took place publicly and were not controversial. This is an intriguing finding that contradicts not only stereotypes about a one-party bureaucracy but also most evidence on the lack of transparency of intergovernmental negotiation procedures (hence, it would be prudent to learn more about the concrete facets of this negotiation in public). It was not clear to me of there was an overlap between the interviews referred to here (as well as in Hendrischke 2007 and Krug 2007) and those conducted for Zhu’s thesis.
This is a facet of the more general evolution of the Chinese economic and political system: diversity in local jurisdictions and local business regimes depends on how local government agencies responded to the downwards shift of resources and regulatory power by co-opting local businesses. A great part of the heterogeneity of local business systems finds its explanation in informal institutions and unpublished local implementation procedures. This diverse and multi-layer system (see also Krug 2007) often generates contradictory public policies that increase uncertainty for economic actors. For example, interviews in Wujiang City near Suzhou showed that the city (county)-level administration “planned” industrial development, whereas at the subordinate township level, government agencies practiced a policy of minimum interference (Krug and Hendrischke 2008: 93). The interesting article by Krug and Hendrischke, which provides different types of empirical evidence, also shows cases of complex public-private interaction. For example, during the privatisation process, local government agencies kept minority shares in most private companies. They bargained for and obtained shares, as firms saw this as a way to limit government control of corporate cash flow. Managers and entrepreneurs used the transfer of shares to government agencies as a sort of “investment” into social and political capital (Krug and Hendrischke 2008: 101).

In this context, private firms also perform an active voice strategy with respect to local authorities, using “guanxi” networks to influence fiscal policymaking, while local tax administrations have incentives (for tax competition) to make concessions on taxation. This is illustrated by three case studies involving a multinational firm (Procter and Gamble), a joint venture (SZCH), and a domestic private company (WZSL), each a different ownership type of firms belonging to different industrial sectors (consuming products, manufacturing and processing). These eloquent short stories show that interactions in a network are indeed bargaining oriented, and as such are also characterised by inimical moves like mutual threats; “antagonistic cooperation” (Marin 1990) seems the appropriate expression for them. For example, encouraged by the “exit” option as a credible threat, a firm can more easily express “voice” and force the local government to offer tax concessions. Although it is a bit exaggerated to present the combination of “exit” and “voice” strategies as an original finding (see mobile capital, Milner and Keohane 1996), it is interesting to note that an asymmetric information structure in favour of the firm allows it to bluff even without a feasible exit option. The local government tends to believe that the threat is “credible” and then compromises (Zhu 2007: 78-79).

The thesis by Greeven (2009) provides an explanation for the emergence of knowledge industries in China in an adverse economic environment with changing institutions. It takes a local perspective and deals with innovative firms in the software industry of Hangzhou’s local business system. The IT industry is among the fastest growing industries in China, surpassing some traditional industries such as oil and steel. The industry ranks first among all national industries in output, gross sales scale and contribution to national growth. The total amount of sales in 2007 accounted for 18 per cent of the world total. China even surpassed Japan in 2003 and became the largest producer of IT products in the world (Greeven 2007).

Research suggests that small, private, high-tech firms generally become increasingly innovative. Innovation in the IT sectors takes place primarily in the coastal regions of China. While indigenous computer companies emerged from the state sector, entrepreneurial activities in the software sectors led to the development of new private firms. These innovative businesses are being integrated in international value chains, sometimes stock listed on NASDAQ, and attract foreign capital. Moreover, Sino-foreign research and development collaborations are being established to perform increasingly complex research activities in IT sectors, which indicates the advanced level of capabilities of Chinese IT companies. The research question is how such a “success story” is possible in an unfriendly – uncertain, transitional and locally variable – regulatory environment.

Innovative capability is defined as the firm’s capacity to build and reconfigure internal and external resources to develop and successfully commercialise new products and services. Innovation in the computer hardware sectors was facilitated by state support and foreign investment. The development of the Chinese software sectors, however, relies on a different basis. These sectors started to develop only in the 1990s without support from public resources.
and they focused on developing Chinese language software to serve a growing domestic market. The market is skewed with a handful of foreign firms dominating 60 per cent of it, while the rest is left to domestic, small, private firms. Without a link to state S & T resources or foreign technologies and capital, software firms need to be extremely innovative in several respects while coping with political constraints and limitations in resources. One of the key insights of the thesis is that innovation is possible in an environment with institutional uncertainty and limited protection of property rights; on the one hand, institutional uncertainty creates not only restrictions but also incentives for innovation. On the other hand, firms are able to develop specific innovative capabilities that manage sectoral constraints while fighting off institutional constraints. The empirical findings of the study emphasise thus the double-faced character of weak institutions; they generate costs but also induce actors to search for ways to overcome their weakness.

Three software sectors were selected for a comparative study in the thesis: standard application-based software, “middleware”, and enterprise software. On the one hand, these sectors represent the three main software sectors in terms of type of software development. On the other hand, they represent sectors with distinct innovation patterns. This allows the researcher to analyse innovative capability development in the most important software sectors and simultaneously across different types of innovation. Four criteria were used to select Hangzhou as a research location: the presence of a successful indigenous software industry; private firm as a dominant form of economic coordination and organisation; the success of the locality in terms of economic prosperity; and the presence of all three software sectors. The approach is inductive – based on analysis at the local level – and relies on qualitative methods. Data were gathered between 2005 and 2007. The thesis relies on two data sets: in-depth interview data of 45 Chinese software enterprises and archival data, including company Web sites, industry news and publications to complement and triangulate data sources.

The thesis analyses how and why innovative capabilities are developed (five of them, jointly necessary, are listed: organisational integration, financial commitment, external knowledge transformation, reputation development and strategic flexibility). In addition to economic and political triggering factors at a national aggregate level, the local government in Hangzhou allows market forces to shape economic development. It is striking to find a local business system within the one-party state of China that is characterised by high market competition, a nonintervening local government and a focus on innovation and entrepreneurship. Greeven (2009: 200) concludes that “Hangzhou can be characterised as a capitalist city without a functioning democracy, financial or labour markets”. In addition, there are elite universities, good monetary incentives for IT jobs and increased professional skills training organised by companies. Furthermore, increased private savings and (foreign) investments in tertiary industries provide opportunities while simultaneously generating strong competition for private and foreign capital. Interest-ingly, Greeven (2009: 185) argues that none of these factors are new; rather, they are path-dependent: “First, the role of the local government has historically been behind the scenes due to a large extent of local autonomy and a strong local business community. Next, private capital and entrepreneurship have played a significant role, even during the high-times of communism. Next, Hangzhou’s local economy has been integrated in global markets via overseas entrepreneurs, less due to its natural position”. Hence, path dependence seems to be a reinforcing factor; the more some local characteristics are historically entrenched, the stronger effects they deploy.

Another interesting finding with respect to governance is that framework conditions differ across industrial sectors. For example, the enterprise software sector faces high institutional uncertainty because it is affected by changing local policies, there is a political risk as many customers are government departments and agencies, and current foreign policy privileges foreign enterprise software firms at the cost of local firms. On the other hand, firms receive considerable support from the local government in terms of subsidies for office, equipment and tax reductions, and they have not remained passive in front of uncertainty; they have sought to reduce political risks by developing a strong reputation in the local business environment. Regarding firms of the standard software sector, they face uncertainty about how government agencies will respond to the expected increase in competition, and local preferential policies often are not implemented to their full purpose. In addition, rather than promoting innovation, they promote homogeneity in products and develop-ment processes. The political-administrative environment is again different in the middleware sector: little state interference and an incapability of the government
apparatus to follow advanced technological changes limit the institutional constraints. In this study, governance arrangements and practice are independent variables; they considerably differ across local settings in China. Additionally, the study convincingly demonstrates how they can influence differently across different branches of the same economic sector. Can we draw any more general conclusions beyond the Hangzhou case? Greeven (2009: 201) argues that “the lessons learnt from local samples can tell us something about mechanisms, or relations between variables, even though the local contexts might differ. It must be noted that Hangzhou is at the forefront of economic and technical developments and there-fore is likely to be a benchmark for other regions, which increases the potential generalizability of this study”.

The thesis by Zhang (2007) deals with foreign enterprises in China. Realized foreign direct investment (FDI) increased from US$ 57 million in 1978 to US$ 69.5 billion in 2006. The number of approved foreign invested enterprises reached 594,445 by the end of 2006 from virtually zero in 1978. Consequently, the proportion of exports from foreign invested enterprises in China’s total exports continues to increase, reaching 58.2 per cent in 2006. By the end of 2005, more than 400 multinational corporations (MNCs) from the Global 500 have invested in China, and more than 40 MNCs have established regional headquarters there. At the national level, Chinese policies concerning FDI have been streamlined with the aim of gradually establishing rule of law as the basis of the relationship between government and business. The promulgation of a Property Rights Law in March 2007 ensures the protection of property rights for the first time since 1949. However, as we know now, the implementation of central policies often depends on local conditions and interests (Zhang 2007: 1-2).

This thesis investigates how foreign firms cope with the uncertainties of Chinese local governance, even though they initially enter the market with their own routines and norms. There are a couple of similarities with the research question of the previous thesis by Greeven (2009), which deals with how firms from the software sector cope with this kind of problem. Among the different strategies developed, I would like to concentrate on the “non-market” political strategies at the local level. A learning effect may have made foreign enterprises more eager to become embedded in local networks that play a supportive role in economic exchanges when the formal institutions are weak. An exchange process occurs that facilitates the market-oriented operations of foreign firms.

The thesis studied the behaviour of about thirty foreign firms over a three-year period in six cities in eastern China: Suzhou, Hangzhou, Shanghai, Wuxi, Shenyang and Dezhou (with a special focus on the first three cities). Statistics show that 82 per cent of foreign firms in China are located in the eastern provinces. The empirical evidence is composed of archival material (company Web sites, corporate brochures, newspapers and magazine reports) and semi-structured face-to-face interviews (one or two per firm) with top management and some governmental officials. Twenty-four case studies analyse the political strategies of foreign firms at the local level; the scrutinised firms are diverse in terms of size, sector, country of origin and year of establishment (chapter 5 of the dissertation: see tables in pp. 97-98).

It is argued that the more “foreign” a potential host country, the more important it is for a firm to gain local legitimacy. To do so, cooperation with local business communities and political authorities is essential. This kind of cooperation also helps in bargaining with the central government, and it is useful for acquiring better knowledge on local conditions and habits. This is portrayed as a “fitting” strategy that relies on local embeddedness (Zhang 2007: 25-26). Firms are not equal with respect to their ability to deploy such a strategy; factors such as firm size, technology and economic spillover count as reputational assets when one has to negotiate with the local government. It is also suggested that local networking strategies require intermediaries; foreign investors may not be able to interact directly with local authorities. Rather, they may have to rely on local managers, overseas Chinese or partners from Hong Kong, who have knowledge of local culture, language and institutions and who – most importantly – provide access to “guanxi” networks based on mutual trust and reciprocity obligations. In other words, a learning process leads foreign firms to follow the example of their local counterparts and to invest not only in formal exchanges but also in the building of social capital at the interpersonal level, which favours the exchange of individual or constituency favours. The main motivation of foreign firms is to mitigate government intervention and capture preferential treatment in an environment where firms face what they consider unexpected (and often arbitrary)

93 See also Zhang and Reinmoeller (2007).
intervention from representatives of local authorities, unpredictable policy changes, and ambiguous policy implementation from administrations that enjoy considerable discretion.

Seen from a governance perspective, the study of firm practices in a transitional system like China allows one to conclude that – unlike in more stable environments – private actors engage in networking activities not only to receive preferential treatment but also to minimise the risk of “irritating” administrative intervention. A research question in the initial proposal was about the articulation of networks based on family and ethnic ties, and relying on obligation, with networks having a functional orientation and on interest. Clearly, the networks that are of relevance here are interest based (functional), but it would be useful to give a bit more “flesh” to them (see descriptions in Zhu 2007: 75-78). We know that “wining and dining” events are part of their activities, for example, but a more detailed description of some of them would be welcomed: Who actually composes networks, what are the properties of their members, and is their configuration similar across the local contexts?

Finally, the thesis by Kuilman (2005) also deals with foreign firms, but from an organisational ecology perspective whose relevance for governance issues is less apparent. This thesis examines the re-emergence and evolution of the foreign banking industry in Shanghai after a period of dormancy of almost thirty years. In the last twenty-five years, Shanghai – which was one of Asia’s main financial centres in the 1920s and 1930s – has experienced a rapid inflow of foreign banks. Although only four “quasi-foreign” banks were present in Shanghai in the early 1980s, this number grew to over one hundred foreign banks after 1997. This may not seem surprising given the fact that this city has been receiving the lion’s share of FDI in China and accounts for a large proportion of foreign trade, both of which increased substantially after China embarked on its open-door policy in the early 1980s. In 2004 for instance, Shanghai, with a population of only 1.3 per cent of China’s total population and a land area of only 0.1 per cent, accounted for more than ten per cent of the total level of FDI in China, with a similar share of China’s total level of foreign trade.

Among the various issues that the thesis addresses, I would like to focus on the legitimacy of what can be considered as a new organisational form in China. Legitimacy can be interpreted here as the social recognition of foreign banks among the Shanghainese population, but it also denotes the broader social recognition of Shanghai as a suitable location for international finance (Kuilman 2005: 54-55). The thesis suggests that the identity of Shanghai as a financial centre may have been preserved during the period of economic isola-tionism and that the banking community outside China, specifically in Hong Kong, which is located relatively close to Shanghai, may have actively preserved Shanghai’s identity as a financial centre. It accomplished this by retaining a keen interest in the large Chinese market and by remembering the historical importance of Shanghai in international finance (Kuilman 2005: 61).

Previous studies that have sought to explain the re-emergence of organisational populations after a period of temporary discontinuity have focused on the local preservation of skills and knowledge, or have emphasised a locally preserved collective memory of the blueprints of that population. This dissertation investigates an alternative (although not necessarily contradictory) explanation of the re-emergence of organisational populations, namely the continued preservation of the organisational form outside the society in which the period of dormancy takes place. Forms generally survive in other social systems in the meantime, serving as a platform from which they may re-emerge in a given social system. These results suggest that moving beyond the customary approach of studying organisational forms within a single social system to studying multiple social systems is important in understanding their evolution. It appears that “legitimacy spillovers” (Kuilman 2005: 37) may affect the diffusion of organisational forms. Clearly, this is an interesting hypothesis that may more generally apply to the diffusion of legitimate organisational (and governance) forms. It should be further specified, however, under what conditions legitimacy transfers are successful (for example, reputation of high performance in combination with local proximity).

94 See the body of work about “growth coalitions” in urban politics.

95 The chapter by Hendrischke (2007) provides additional interesting information on these aspects of networks among others, and includes two network case studies.

96 See also Kuilman and Li (2006) and Kuilman (2007) for a historical perspective.
Lessons Learnt: Accountability and Legitimacy

I think the most interesting finding of this project regarding these issues relates to the “guanxi” networks in China; although their participants are held mutally accountable, there is no requirement to justify one’s behaviour within a network to a broader external public, and the networks’ legitimacy is not questioned.

China seems to be a very complex case in the field of economic governance: to the multilevel aspect should be added a strong horizontal variety of structures and outputs, coupled with powerful informal mechanisms. If it is argued that shifts in governance are frequently shifts towards network forms of governance, this is clearly exemplified in the Chinese case. In a jointly edited volume on Governance and Democracy, we argued with Arthur Benz (Benz and Papadopoulos 2006) that the degree of coupling of governance networks with democratic institutions affects accountability (and that coupling and thus accountability are more strongly eroded in governance beyond the democratic nation-state). China is a case in which even at the local level, networks develop outside of any form of democratic institutional environment. This is the case of the famous “guanxi” networks based on personal interrelations, whose contemporary relevance has often been stressed; they should not be considered a mere survival of a “pre-modern” legacy. Although “guanxi” networks are not new, it is likely that with the dramatic changes undergone by the Chinese society and China’s governance system, their composition and role have changed; this requires further investigation, and a sociological approach of networks is essential.

Unlike the classic literature on lobbying, the more recent literature on governance networks emphasises their positive contribution, namely as problem-solving and consensus-building mechanisms. The image provided by this project on China is closer to the traditional lobbying role conferred to interpersonal relations, whose contemporary relevance has often been stressed; they should not be considered a mere survival of a “pre-modern” legacy. Although “guanxi” networks are not new, it is likely that with the dramatic changes undergone by the Chinese society and China’s governance system, their composition and role have changed; this requires further investigation, and a sociological approach of networks is essential.

Regarding legitimacy issues, the initial project also dealt rather cursorily with them: local business systems are deemed legitimate as long as central politics does not object to them, but legitimacy is also ensured by locally embedding new institutions, so that accountability is not perceived as an issue. Again, these issues are not at the core of research findings, but it is important to note that, in spite of “guanxi” networks acting collusively and not being subject to public scrutiny, they remain unchallenged and retain their force and legitimacy. This is probably because their existence is taken for granted (a cultural explanation), and in an unstable environment, no rational alternative is presented (a “rational choice” explanation). 97

Local Agenda 21 in Action: A Comparative Analysis of North-South Partnerships in Urban Governance

Material Used


Bontenbal, Marike (2009a), “Understanding North-South municipal partnership conditions for capacity development: A Dutch-Peruvian example”, Habitat International 33 (2): 100-105. 98


97 I refer here to two varieties of “neo-institutional” theory (Hall and Taylor 1996).
98 This is a special issue of this journal, coordinated by Marike Bontenbal and Paul Van Lindert on “City-to-City Cooperation”.

Shifts in Governance: Problems of Legitimacy and Accountability | 57
Project Discussion

The core product of this project is the dissertation by Bontenbal (2009), and findings from this dissertation are published in a couple of journal articles and book chapters as well. The thesis deals with city-to-city (C2C) voluntary cooperation between municipalities of the North and the South operating under different socio-economic, institutional and political conditions. This kind of cooperation is a relatively new but growing phenomenon, especially because of decentralisation; it has been estimated that about 70 per cent of the world’s cities have engaged in some form of international cooperation, the range of which is now very diverse. Intermunicipal cooperation, which often includes civil society actors, is considered a means to ensure knowledge sharing, poverty alleviation and development, and is a means to more generally transfer resources and technology to enhance urban governance and institutional capacity building. In this thesis, C2C is both an independent and a dependent variable; the thesis seeks to identify under what conditions and with what kind of motivations it emerges; how the process concretely takes place and what kind of actors compose partnership networks; and what outcomes there are of cooperation in terms of good governance practices, such as strengthening public participation to make governance more responsive to the needs of ordinary citizens and to improve service delivery. In fact, more competencies for local governments in developing countries generate a “capacity imperative” (Bontenbal 2009: 31 ff.).

The analysis is based on case-study research and on a careful selection of cases along a number of theoretical and practical criteria. To ensure variety, four bilateral partnerships involving a total of eight cities are analysed. These partnerships involve (from the “North”) three Dutch and one German city as well as (from the “South”) two cities in Peru, one in Nicaragua, and one in South Africa. The empirical evidence is, as is usual in this type of studies, based on document collection, over 100 in-depth interviews conducted primarily in the South (plus an additional survey, whose function remains unclear), and whenever possible, direct observation. Inevitably, the quality of this material varies across the cases; some partnerships are better documented than others, and observation was not equally easy in all cases.

Based on the cases studied, the thesis confirms that there has been increased recognition (from the donor community as well) of local governments – as well as NGOs and other civil society actors – as partners in development cooperation. Further, cities realise that they can learn from transnational peers through networking and that partnerships can contribute to a positive social image of municipalities. In addition, development thinking has integrated strong local government institutions as a necessary factor, and decentralisation has led to municipal authorities being endowed with more responsibilities. However, local governments still

99 Despite the initial title of the project, this thesis does not deal only with partnerships under the aegis of the Local Agenda 21.

100 On decentralisation policies in Latin America, see Van Lindert (2008), indirectly linked to this project.

101 See the very detailed and transparent Annex 1 on research design and methods, which includes a discussion of the conditions for generalisation of findings as well as other sometimes neglected issues, such as the reasons for opinion bias in interviews (Bontenbal 2009: 309–318).
lack the human and financial resources to cope with their new tasks. Thus, a number of conditions must be met to launch partnerships, such as global awareness (a function largely delegated to civil society entities), capacity to attract external funding, political support and specialised administrative segments (based on the international literature, see also Bontenbal and Van Lindert 2009).

It is determined that partnerships operate with a high level of mutual understanding and are conducive to diverse forms of learning. Regular development promoters such as NGOs can hardly compete with the municipal expertise and professionalism provided by cities of the North. Additionally, NGO involvement is better coordinated with the plans of local authorities. Moreover, long-lasting twinning agreements (notwithstanding the inevitable staff turnover) are more prone to facilitate continuity in the projects launched than more intermittent forms of cooperation. For example, Van Lindert (2009) shows how the partnership between Utrecht and Leon in Nicaragua was conducted with increased professionalism, which seems to be part of a general trend (Bontenbal and Van Lindert 2006).

In the North, actors other than the local administrations participate in the local partnership, with coordinating civil society entities having the C2C as their core activity. Yet civil society actors have no strong initiative role, and the private sector is generally underrepresented. It seems that the key for partnership effectiveness is a balanced combination between the role of local government and that of nonpublic actors, the former bringing necessary political and organisational support, and the latter bringing external recognition that counterbalances technocratic tendencies. In the South, public-private networks are more informal and more conflictual; a gap between local government and civil society and even a counterproductive increase of mutual mistrust were observed in several cases. Although civil society organisations were indirectly strengthened by the partnership logic, the empowerment of the citizenry would probably be higher if they were not confined to a functional role and if issues of citizenship and ownership were at the fore. In the more fluid local political contexts of the South, the concrete implementation of partnerships very much depends on how high it is prioritised on the agenda of local political leaders. But in the North, too, the role of municipalities as local developers in the South remained vulnerable to (right-wing or media) criticism on tax money spending. Implementation can be sustained through funding by the North, but this obviously entails dependence problems and heteronomy. For example, in the Nicaraguan city Leon, as high as 60 per cent of the municipal budget results from the contribution of C2C (Bontenbal and Van Lindert 2008: 478), and three European partner cities provide more than half of international assistance to the Peruvian city of Villa El Salvador (Bontenbal 2009a: 103). Given the structurally asymmetrical relation of donor-recipient, international cooperation is a higher priority for the South, but its terms are largely dictated by the North. This tension demonstrates that although partnerships are often about technical matters, they are value laden, and power relations are not absent either between or within municipalities.

Regarding the improvement of urban governance brought about by partnerships, some outcomes are far from negligible in the resolution of practical problems such as waste management (for example, through training of local civil servants that increased staff capacity and knowledge) and the improvement of administrative efficiency (for example, through organisational and financial reform). Although it is asserted in the thesis that “institutions and people need to be brought more closely together”, and that for that purpose “a strong local state and a strong civil society are needed” (Bontenbal 2009: 72), it seems a bit exaggerated to expect these kinds of “macro” improvements from piecemeal initiatives such as C2C partnerships. More troublesome is the fact that C2C partnerships have not always focused on the most pressing needs and top priorities of partner cities in the South. This can be related to several factors, such as lack of organisational capacity and of political will. Regarding capacity building, it was basically administrative capacity that was improved, but the participatory nature of projects rendered the local authorities more responsive, transparent in their operations, subject to monitoring, and thus more accountable. This is plausible, but more research is required to test whether these virtuous effects always go together. In some cases (such as waste collection), public-private partnerships embody the principles of participation and responsiveness, but it is not clear whether they function in a transparent manner, and their often complex structure may be inimical to accountability. There are also accountability conflicts that are typical of “horizontal” forms of cooperation; in the North-South C2C partnerships, “peer” account-ability of municipal authorities to their partners of the “other side” – which is primar-
ily about the fulfilment of long-term objectives – can collide with the accountability of the same authorities to their local constituencies. The latter usually causes the fulfilment of short-term electoral pledges to prevail. For example, there is a difficult balance between visible, media-attractive events and highly technical forms of cooperation necessary for development. In some cities of the North, this has led to a functional division of labour, where public awareness activities were delegated to civil society actors. Conversely, this has not contributed in strengthening the role of civil society in the North during the implementation phase of the partnership.

Dilemmas emerge also between accountability to donors – who require money for value – and domestic accountability. It is argued that the former tends to prevail (for obvious reasons of power balance) over domestic accountability. Clearly, dependence on (per definition volatile) external funding entails the risk of undermining sustainability. Additionally, it involves the risk that object-ives be defined primarily by those who pay (this is more likely to happen if municipalities of the South do not have a clear doctrine on the needs of their populations for economic development) as well as the risk that involvement of externally dependent civil society organisations will fluctuate depending on the external support they receive. The case of Leon in Nicaragua is interesting; while the Utrecht partners are seeking to make their local partners sensitive to a culture of policymaking and planning, thus strengthening their capacity building (Bontenbal 2009: 239), local groups directly contact the local offices of sister cities (Bontenbal 2009: 261). In normative terms, this situation of quasi-tutelage is problematic, especially if objectives that are remotely defined are ill informed with regard to field knowledge. Also problematic is the likelihood that accountability to donors better serves the collective well-being than domestic accountability, which may not primarily be to ordinary citizens but rather to powerful, organised groups.

Overall, this thesis offers a soundly documented and balanced account of C2C partnerships. It focuses on conditions for partnership success, and this is particularly suitable for the goal of knowledge transfer. In that sense, in spite of the initial intentions, the aim is more analytical and prescriptive than explanatory, and perhaps this is the main weakness of such a project. As suggested in a contribution by the project leader, “city-to-city cooperation does not operate in a neutral politico-economic environment” (Van Lindert 2009: 180). Hence, a more systematic and theoretically informed explanation of similarities and differences in the operation and outcomes of the scrutinised partnerships (on instruments of governance and their effects as dependent variables) would be welcomed.

Lessons Learnt: Accountability and Legitimacy

Issues Related to Shifts in Governance

The project shows the following with regard to C2C partnerships:

− Accountability problems are not the same (and have different consequences) in municipalities of the North and the South.

− In the South, the legitimacy of partnerships is very much a function of the codification of participatory arrangements.

This research demonstrates that C2C partnerships are a valuable instrument for the advent of “good” governance, primarily in countries of the South, and as such, they should be encouraged. It also shows the limitations of this kind of endeavour. Inevitably, any positive impact is basically local, given the decentralised forms of partnerships. Inevitably, development cooperation is not the reason for being of local governments in cities of the North; hence, one should not expect too high an investment in them. Obviously, networks of C2C cooperation are just an instrument among many others for exchanging and learning about good practice.

Although that was not a research question in this project, municipalities of the North are accountable for this kind of cooperation, and the legitimacy of such instruments can be questioned by opposition parties or the media. On the other hand, this may lead to a trade-off: more accountability to those preoccupied with tax spending may be conducive to less solidarity with those (in the South) most in need (although it should not be taken for granted that partnerships always serve the most pressing needs of populations in developing countries). In the South, there are basically two issues. The study shows that through administrative reforms like the

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102 See the “optimal” scenario presented (with caution) in a synthesis of case study results (Bontenbal 2009b: 188-189) and the sections “Success Factors and Challenges – Conditions for

103 On “good” local governance, see Van Lindert (2006: 58–59), indirectly linked to this project.
introduction of performance indicators or of guidelines for financial transparency, the accountability of the local bureaucracy to service users has increased. A different issue is the participation of potential beneficiaries in local projects, which does not go without problems, mainly because who participates is weakly codified. Although it is generally argued that policy networks are more likely to be ossified when they are consolidated, the findings here suggest that codification of participatory processes is necessary, because it leaves less room for arbitrariness of the local administration, notably in the selection of participants. It may be expected (but this aspect was not discussed in this project) that better bureaucratic accountability increases the legitimacy of the local political system, but if participation gaps are observed, this is likely to undermine such an improvement. Anyway, as Bontenbal (2009b: 188) suggests, more general issues regarding "politics" and political representation are not included in partnership arrangements. Although their outcomes may clearly affect the perception of the entire local political system by citizens, no question is posed regarding the accountability and legitimacy of elected power holders.

Finally, it is of note that structural asymmetries leave their marks through the one-sidedness of flows on this kind of partnership, in spite of the good will and generosity manifested by those engaging in them. Partnership relations are formally horizontal, but resource gaps among partners may transform them in de facto vertical relations. We should be particularly circumspect about that, because asymmetries tend to make municipalities of the North paternalistic and not very open to learning from the South. Officially, partnerships are not shear technical assistance; it is expected that learning should be based on reciprocity. This is perhaps too daring an anticipation, yet municipalities from the North could also benefit from participatory experiments in the South. In reality, it is primarily partners from the South that are preoccupied with learning, while Northern partners miss opportunities to improve their own governance systems. For example, it is correctly suggested that much could be learnt from participatory experiments in the South (Bontenbal and Van Lindert 2008: 479; see also Van Lindert 2008: 243-246), but there is not much interest in them.105 As once stated by Karl W. Deutsch (1963: 11), power is "the ability to talk instead of listen, the ability to afford not to learn" (or rather, to believe that one can afford that).

**Assessing Public Participation at Municipal Politics: The Cases of Porto Alegre and Santiago de Chile**

**Material Used**

I am somewhat puzzled by the material produced by this project. I received a couple of papers from 2003 and 2004, apparently published before the beginning of the project. They deal with various issues only indirectly linked to public participation in Latin America, such as the role of technocrats or civil-military relations in Chile. As they do not focus on local participatory experiments, I decided to disregard them.106 In looking for publications focused on such experiments in Porto Alegre (Brazil) and Santiago (Chile), I only found few of them:

Cleuren, Herwig M. (2007), “Local Democracy and Participation in Post-Authoritarian Chile”, *European Review of Latin American and Caribbean Studies* 83: 3-18 (received in manuscript form). This article displays very good knowledge of Chilean municipal politics, but does not present any empirical material based on fieldwork (I could not find any text based on fieldwork in Chile).

Cleuren, Herwig (2008), “Administering Participatory Budgeting in Porto Alegre: Street-level Officials and Organisational Preconditions”, *Revista Chilena de Administracion Publica* 12: 19-41. This article was not included in the package but it is cited in Silva and Cleuren (2009a), and I accessed it on this journal website. It is the only piece based on fieldwork.

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104 An interesting case is that of the emulation in Europe of participatory budgets initially invented in South America; however, their transatlantic diffusion led to much heterogeneity (Sintomer et al. 2008).

105 Things seem different in the European Union, as suggested by the Governance as Learning project (see below). Sabel and Zeitlin (2010: 24) argue that one of the unexpected effects of EU enlargement to Central and East European countries was "the re-importation of governance innovations from the periphery to the centre". On the other hand, it is asserted in the same project about the Netherlands that presentation of local best practice to others is a major concern in Dutch Ministries, even though best practice from other member states might also be relevant to officials of this country (Hemerijk 2007: 185). Probably, generalisations about possibilities of unexpected learning are not possible.

106 Some more recent works by Prof. Silva that are featured on the report or on his Web page but were not included in the package that I received deal with similar issues, and more broadly with Chilean politics (such as the liberal drift of the Chilean socialist party).
I also received Silva, Patricio and Cleuren, Herwig (eds.) (2009). *Widening Democracy. Citizens and Participatory Schemes in Brazil and Chile*. Leiden/ Boston: Brill. This book is the outcome of expert meetings and contains an introduction by the editors on the research topic (Silva and Cleuren 2009a). There are also several chapters on Brazil and Chile (including by prominent specialists of the Porto Alegre participatory budget such as Gianpaolo Biaocchi and Rebecca Abers), but none of them is based on fieldwork carried out within the project. I considered the introductory piece by Silva and Cleuren (2009a), but this text is likewise uninformed by fieldwork carried out within the project.

Finally, I received in manuscript form the recently published book by Silva, Patricio (2009). *In the Name of Reason: Technocrats and Politics in Chile*. Penn State University Press. This is a historical analysis of the role of technocratic elites in Chile. It should be considered important background work to the project (leading to the specification of the explanatory factors: see below), but not as a project outcome.

In summary, for my synthesis, I could only rely on Cleuren (2007 and 2008) and Silva and Cleuren (2009a).

**Project Discussion**

Participatory experiments at local level can be considered emblematic of “governance-driven democratization” (Warren, 2009). Therefore, the idea of this project to compare contrasting cases was highly stimulating. Brazil is characterised by a profusion of participatory devices, whereas there is an atrophy of the latter in Chile, and this seems to be part of a broader technocratic culture (Silva and Cleuren 2009a). In addition, the intention to link the study of participatory processes with the question of democratic consolidation in newly established democratic polities should be welcome, because these two strands of research seldom communicate with each other.

A list of factors is provided that seem to affect the uneven development of participatory procedures in Brazil and Chile (Silva and Cleuren 2009a: 5): balance of power between Left and Right, role of political culture and memory of the past, citizens’ evaluation of public corruption and performance, and welfare level of the population. To put it in a nutshell, the argument is that if there is no public participation in local policymaking in Chile, it is because (unlike Brazil) right-wing forces have penetrated even popular strongholds. There is a technocratic culture coupled with widespread concerns for avoiding past ungovernability. Representative democracy sustained by doctrine-based parties is trusted for ensuring sufficient responsiveness and accountability, and the political-administrative system is viewed as efficient, not subject to massive corruption, and favouring economic growth that enhances collective welfare (the level of poverty has considerably declined). Therefore, there are no major legitimacy deficits and not much pressure for reform. On the other hand, the corrupt, unresponsive and clientelistic party system of Brazil favoured Left hegemony at the local level, which proved to be participation-friendly, and participatory mechanisms established by Left forces gained legitimacy due to the discredit of the previous system.

A systematic and coherent explanatory model for the uneven development of participatory processes should be based on counterfactual reasoning and should emphasise the conditions enabling public participation that are present in Brazil but absent in Chile.  

The proposed “narrative” is not devoid of some contradictions in that respect. The presidentialism of Latin American political systems is initially considered an inhibiting factor for public participation because of power concentration on the top, but Brazil, where participatory budgeting flourishes, is a presidential regime too. It is also noted that transnational bodies, such as the World Bank, that promote liberal policies have seen the benefit in making claims for more citizen involvement in policymaking, but in Chile, liberal hegemony is cited as an inhibiting device for such a participatory shift. Later in the chapter, it appears that the Chilean conservative forces did organise public participation and even took over a leadership role in that respect. However, they did it in their own way, inspired by managerial principles emphasising the depoliticised role of people as consumers rather than as citizens (Silva and Cleuren 2009a: 7). This seems close to “New public management” principles, given that the conservative right-wing party in Chile “conceives the local administration as a public enterprise, led by a mayor and supported by technicians, that

107 Ideally, one should subsequently check (for the sake of generalisation) the impact of such conditions on “intermediate” Latin American cases between the two “extreme” cases of Brazil and Chile.
renders services to clients with a right to choose” (Cleuren 2007: 6). Another factor initially considered inhibiting is the fear that mass participation might undermine governability, a concern justified by the trauma caused by the domestic polarisation that led to the establishment of dictatorships in the Southern Cone of Latin America. But this kind of concern is primarily developed in Chile, and there is no convincing explanation regarding why this is not so in Brazil, which experienced not too dissimilar traumas.

In Chile, additional ad hoc domestic local explanations are suggested – not only the unfavourable power balance for the Left but also the lack of willingness of the far-left forces to play the democratic game. On the other hand, the reader is reminded that the far left is weak in Chile (Silva and Cleuren 2009a: 6-7), so one would be tempted to ask whether its positions matter politically. Definitely, the exact impact and definition of power balance between partisan forces is not very clear. Additionally, a functional argument is advanced, namely that the similar strength of Left and Right in Chile favours accountability through the interplay between (local) government and opposition, reducing the need for alternative mechanisms of accountability through popular participation. To complicate the issue, the presence in Chile of powerful auditing and judicial institutions is mentioned as an additional resource for (horizontal) accountability (Silva and Cleuren 2009a: 12). After all, the development of participatory procedures in Brazil is very much a local matter. Therefore, a factor that matters is the degree of autonomy and discretion of municipal governments, but this factor is cited only incidentally.

Notwithstanding these problems, the proposed narrative can be considered generally plausible. However – especially in Chile, where empirical analyses of local experiments are missing and where one gets the impression that the answers are somewhat given in advance – this narrative requires some empirical testing. To be more precise, it is not clear whether the list of factors enabling or conversely impeding broad public participation is based on a literature survey – if these are then theoretically derived hypotheses on causal relations – or if the list is based on the empirical analyses provided by the various book chapters included in Silva and Cleuren (2009). In any case, the relevance of this useful heuristic tool should have been tested on contrasting local cases; one would expect the researchers to test what makes some local settings more prone to participatory policymaking than others. What would also deserve closer scrutiny is the fact that, “around fifteen municipalities in Chile run by left-wing mayors have been experimenting with (the participatory budgeting) model, enabling citizens to vote for investment projects in their neighbourhood” (Cleuren 2007: 8). The author adds, however, that the amounts involved are limited, and the number of participants low. It would have been interesting to know more about these experiments (only a footnote is devoted to one of them). In the final report, in-depth interviews with stakeholders in Porto Alegre and Santiago are mentioned that might be illuminating in that respect, but in Cleuren (2007), there is no reference to them.

The final report also concludes on control of the decision-making process by the bureaucracy in Porto Alegre, and the local participatory budget is considered “window-dressing and part of a charm offensive to improve the public image of bureaucrats”. Although this seems to contradict the findings of a significant body of literature (see Cleuren 2008: 21), it could be an interesting counterintuitive finding. The intention to not succumb to idealisation and to provide a more balanced assessment of the Porto Alegre experiment is welcome, provided that it is substantiated by more empirical evidence. An interesting fact for instance is that, even in Porto Alegre, high policy performance seems to result from administrative efficacy – such as the “expert knowledge of … intermediary officials” (Cleuren 2008: 22) and the commitment of “militant street-level officials” (Cleuren 2008: 26) – rather than from the participatory nature of the policy process. Cleuren (2008) opens up the administrative “black box” of the participatory budget process, yet, unfortunately, this is the only research finding that is substantiated by evidence from interviews.

Lessons Learnt: Accountability and Legitimacy Issues Related to Shifts in Governance

This project showed the following:
− The participatory shifts under scrutiny rely on causal interpretations emphasising the links between participation, accountability, performance and legitimacy.
− Participatory devices are not the only way to acquire legitimacy through performance.

An interesting finding is that a sort of “democratic accountability agenda” entailing more sustained
citizen involvement in policymaking may rely on an overarching consensus between Left and Right, notwithstanding variations in left- and right-wing modes of citizen incorporation. Such an agenda, as already noted in the introduction, “seeks to make administrative agencies accessible, accountable, and transparent by ensuring direct participation or representation of citizens in administrative affairs” (Ansell and Gingrich 2003: 165). The Chilean case (inspired by liberal principles) is more concerned about “output” (performance-based) legitimacy than about “input” (democratisation-based) legitimacy, and is characterised by reduced levels of citizen participation in comparison with the more radical experiments in Brazil. Nevertheless, it also embodies a “need to develop transparent policy measures to increase the effectiveness of policies and reduce corruption. This implies that governments have to guarantee accountability and consult citizens about public spending” (Cleuren 2007: 3).

Notwithstanding their dissimilarities, Latin American cases of participatory shifts seem to rely on clear causal hypotheses: participation is necessary for accountability, accountability is necessary for good performance, and good performance is necessary for legitimacy. On the other hand, Cleuren argues that performance is not closely related to participation, and even Brazil’s Curitiba, a city close to Porto Alegre, was more successful in combating housing problems with an NPM approach (Cleuren 2008: 24). More generally, this research stresses that shifts to more participatory or more managerial modes of service delivery are not simply a matter of political will but rather require support by the administration in charge of implementation. This in turn entails the risk of an excessive professionalisation that is likely to undermine the vitality of the process. It seems that something like that happened in Porto Alegre – with the participatory budget becoming victim of its own success – but it is a pity that more substantial evidence is not provided to support this kind of claim.

For example, we are made aware that – as it often happens with institutional transfer – simply copying “successful” Western models does not guarantee the expected results. It can be counterproductive, in fact, when power asymmetries are too strong. Interestingly in that respect, the Porto Alegre experiment of a participatory budget contains incentives favouring the participation of those segments of the society that usually exclude themselves from the policy process. “City to city” partnerships are a good way to promote “good governance” practice; however, they remain limited in spite of their recent development. The Chinese cases allow the assessment of the consequences of informal network-like forms of governance in the absence of a democratic state. They remind us that such forms are not new, but their functions are evolving in a changing political and socio-economic setting. Chinese “guanxi” networks are useful for economic prosperity; nevertheless, they are also characterised by collusiveness and lack of transparency. Hence, even though they are still taken for granted, one should note that their legitimacy can gradually be challenged.

Most projects included into this section rely on studies at the local or regional level. It would be interesting to extend the analysis beyond that level outside the Western world as well. In that respect, the study of the “soft” norms of “International water resource management” is instructive; even though the legitimacy of delegation of implementation from the transnational down to the local level requires that the latter becomes accountable to the former, the chain of delegation is so lengthy that account giving seems to be a primarily strategic and symbolic activity.

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**Short Synthesis of the Major Research Findings Across Projects**

Projects classified under this heading provide us with information about governance in countries that do not belong to the “usual suspects” in governance studies, and this undeniably represents significant value added to our knowledge.
POLICY DIFFUSION, EUROPEANISATION, AND MULTILEVEL GOVERNANCE
Among the major project outputs will count three dissertations by Gerben Korthouwer, Bart Vanhercke, and Nynke Wiekenkamp, respectively. I could only read the almost completed first one, the other two being still unfinished. I received a dissertation by Minna van Gerven, but as she was hired as a post doc in the project, her dissertation should not be considered part of it. Three major books are also scheduled: Sabina Avdagic, Martin Rhodes and Jelle Visser (eds), Social Pacts in Europe: Emergence, Evolution, and Institutionalization. Oxford: Oxford University Press (forthcoming 2011).


Hemerijck, Anton (2006a), “The Forgotten Center. State Activism and Corporatist Adjustment in Holland and Germany”, in Jonah D. Levy (ed.), The State after Statism. New State Activities in the Age...
of Liberalization (pp. 57-92). Cambridge (Mass.): Harvard University Press.


Vanhercke, Bart (2009), “Against the odds. The OMC as a Selective Amplifier for Reforming Belgian Pension Policies”, European Integration online Papers, 1 (13), Art. 16.


110 Such shifts also aim to legitimise policy practice by other means: participation of social partners as “co-producers” of policy measures is expected to strengthen their “ownership” feelings over them, and framing of policy measures as imported “best practice” confers to them an aura (“one best way”) that can help in neutralising domestic oppositions.

111 My impression, however, was that the question of learning was a core topic, above all in the third subproject.

112 See note 97 on the two varieties of institutional theory. I would be inclined to think that sociological institutionalism is more deterministic than the rational choice variant: in the former, actors’ behaviour is unconsciously preshaped by the dominant modes of thought (what French sociologist Pierre Bourdieu called “habitus”), while in the latter, social reproduction is the result of conscious calculations made by strategically operating actors.
European integration. Relying on Streeck and Thelen (2005), Hemerijck argues that institutional conversion (a change in the functions of an institution) and institutional layering (the juxtaposition of new institutions with old ones) are options for gradualist reform that are available to policy actors. Among the observed shifts, one of them can properly be considered a shift in modes of governance (the others being shifts in policy outputs): “institutional recalibration”. This concerns “reforms in the design of institutions, levels of decision-making and social and economic policy governance, and the responsibilities of individuals, states, markets and families” (Hemerijck 2008: 44; see also 2008a: 438-439 and 2009: 89-90). This kind of recalibration goes in the direction of a challenge of the “state-centric edifice of the welfare state” and the emergence of “new forms of ‘governance’”, including decentralisation of competencies, but it also implies greater responsibilities for markets and families. Hemerijck (2008a: 429) cites the case of public employment services that lost their monopoly on job placement in many countries to the profit of private placement agencies. Although the latter have not gained a significant market share, he argues that they have pushed public services to modernise service delivery.

The article then seeks to solve the following puzzle: if policymakers engage in major reforms in spite of institutional obstacles and the political costs, what allows them to do so? It is suggested that “dynamics of policy learning, the readiness to use information feedback from past performance, new ideas and expertise and the diffusion of inspiring reform successes in other countries” (Hemerijck 2008: 22) or “evolving cognitive understanding of policy elites, changing beliefs of politicians and changing normative orientations with respect to issues of social justice” (Hemerijck 2008: 22, original emphasis) count as important factors leading to “welfare recalibration”. This is the second basic idea of this text: if more changes are observed in the dependent variable than usually suggested, the learning factor and the “transformative power of policy ideas” (Hemerijck 2008: 30) are good candidates for explaining variation. In social policy, learning is domestic and then crisis-induced – as well as cross-national – and then the European Union plays an important role (Hemerijck 2008a: 426). Hemerijck is absolutely right in his intention to rehabilitate the idea that politics is not just about power relations between competing interests but also about solving puzzles, and that this implies concertation and deliberation. Considering this fact, the intention here is to rehabilitate the role of actors’ reflexivity with respect to policy problems, which has been underestimated to the profit of cultural and institutional determinations, or of purely strategic considerations.

Reflexivity plays a role when decision makers are confronted with uncertainty regarding the consequences of their policy choices, and this indeed seems to be the case in several domains of welfare policy, such as the consequences of demographic ageing and falling birth rates on pension systems, or when new types of social risks and new groups of socially vulnerable people appear. Reflexivity on public problems is probably a stronger attribute of actors such as experts or bureaucrats (although they, too, have normative preferences and must anticipate the reception of their proposals by official decision makers) than of politicians who have ideological cues at their disposal to reduce uncertainty and who must convince the electorate about their preferred options. Unfortunately, the article does not distinguish between different categories of “policy reformers”, apart from assuming that in the face of puzzles “experts and high level civil servants are likely to matter” (Hemerijck 2008: 31).

In fact, a weakness of this piece is that, although it emphasises the role of policy learning, it does not penetrate the interface between expertise and politics. It is likely that a more elaborate concept-ualisation and a more disaggregated approach of interactions in policy networks would help in sharpening the analysis. For example, Sabatier (1998) focused in his “advocacy coalition frame-work” on the role of “policy brokers” – frequently members of the bureaucracy – as bridge-builders facilitating mutual learning between coalitions of actors with different beliefs about the appropriate policy. Bruno Jobert (2003) differentiated between various types of “policy forums” where different kinds of policy debates take place: the experts’ forum where a sort of “intellectual cogitation” (Lindblom 1978) with respect to problem-solving is the prevalent mode of interaction, the forum of policy communities where bargaining between competing views prevails and compromises are worked out, and the forum of political communication where politicians publicise their views and often adjust them to those they perceive as the views of publics that matter.

113 See also Hemerijck (2006: 145).
114 Defined as “a reflexive, knowledge-intensive, multidimensional, interconnected and institutional bounded change process” (Hemerijck 2008: 38).
them. Further, Genieys and Smyrl (2008) open the black box of decision making by focusing on the competition between groups of “programmatic elites” with contrasting preferences within the administrative machinery.

As an example in which further differentiation would have been helpful, Hemerijck (2008: 37) correctly argues that, in an era of “semi-sovereign” welfare states, the European Union (together with other international bodies such as the OECD and the ILO) has become an important agenda-setter of reform, or, in Börzel and Risse’s (2000) terms, an active “norm entrepreneur” injecting new norms into the policy debate. He gives the example of the European Employment Strategy, which led to a major redefinition (a “paradigmatic shift”) of the unemployment problem, with an emphasis on employment promotion that can be disaggregated into the avoidance of early retirement, the promotion of part-time work, lifelong learning, gender mainstreaming, “flexicurity”, and the reconciliation of work with family life. Hemerijck (2005: 30) defines learning operationally as a “change of ideas or beliefs (cognitive and/or normative orientations), skills or competences as a result of the observation and interpretation of experience.” He is also aware that learning in politics is bound by several constraints. However, it remains unclear in the analysis to what extent welfare reform is indeed “a highly reflexive and knowledge intensive process” (Hemerijck 2008a: 426), or to what extent it would simply reflect “ideologically pre-packaged” (Hemerijck 2005: 30) policy recipes. Another limitation is that the approach remains rather functional and insufficiently constructivist. For example a “need for functional recalibration” is postulated (Hemerijck 2008: 40), but it would be interesting to know how this need is socially and politically constructed: who frames problems in terms of such a need, and how do decision makers become convinced about it? This may happen because some “norm entrepreneurs” are particularly credible or because their message resonates with the more diffuse beliefs of decision makers, and it provides a ready-made “systematised-rationalised elaboration” (Castoriadis 1975) of them.

In sum, a more explicit process-tracing approach should better highlight mechanisms of causation on policy reform. For example, Hemerijck (2008: 45) contends that modes of governance matter in the eyes of policy reformers, who must “have very clear ideas about the institutional feasibility and the administrative capabilities of different forms and levels of policymaking, whether central, local, functional or intergovernmental and supranational”. But is there any concrete evidence that the appropriate modes of governance are less taken for granted and increasingly become the object of reflection and deliberation, or that (some) actors are subject to learning processes (from some other actors) with respect to modes of governance? As regards modes of governance, in countries like the Netherlands (and others: see Hemerijck 2005: 37 and the Visser project below), welfare reform was legitimised through the revival of corporatist “social pacts” (Hemerijck 2007: 192). But is the outcome of these pacts really produced by mutual learning through knowledge-intensive and problem-solving deliberation, and not through bargaining and compromising? In my interpretation, the results of the next subproject do not plead in favour of the first option (see below).

The “learning” dimension does not appear concrete if we consider the more recent texts from this subproject. Eichhorst and Hemerijck (2010) present a well-informed, in-depth comparative analysis of welfare policies in European countries and on their performance with respect to employment, but there is no “process tracing” of changes in policymaking. These are presented in detail in Hemerijck (2010),

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115 Hemerijck (2008: 44) perspicaciously notes that the need to legitimise policy reform increases with its redistributive impact on vested interests.

116 In a recent article, Bonoli (2010) also argues that the diffusion of active labour market policies is a matter of cross-national learning. It would be interesting to know more about the circulation of messages regarding policy recipes, from the “production” to the “consumption” phase: which are the most influential recipes, who are the primary receivers of new ideas at national level, how do they (re-)interpret the proposed solutions, etc.

117 In another text, Hemerijck (2007: 180–181 and 192) shows how the Netherlands has been able to “upload” the concept of “flexicurity” at European level, and how EU recommendations for limiting disability pensions, ensuring equal treatment, and preventing long-term unemployment helped legitimise Dutch reforms in these domains.

118 This is an area in which sociology research (on social problems) meets policy analysis (on their politicisation).

119 For a nice illustration through “process tracing” of how national actors are socialised by the European Union, see Checkel (2000).

120 For a detailed account of the fate of neocorporatist arrangements in the 1980s and 1990s in Germany and the Netherlands, rehabilitating the analysis of governmental initiative and of its limits, see Hemerijck (2006a). More recent research shows some diverging trends: Fontana (forthcoming) found evidence for a decline of social concertation in consensual small countries (Belgium and Switzerland) in the first decade of the 21st century.

121 For a discussion of these often intertwined, yet analytically distinguished modes of interaction, see Prittwitz (1996).
but more in a descriptive way (in a sort of “macro-narrative”), although this chapter clearly shows that several countries followed the same reform path. It is only in the end that a few pages are devoted to a discussion of some influential publications and of the role of national think tanks, but this chapter does not reveal the concrete steps of “learning” or scrutinise how and to whom some actors or documents become influential. As a final example in the same vein, Hemerijck (2008a: 429) mentioned the Jobs, Jobs, Jobs report of the Employment Taskforce established by the European Commission, but he provided no information on the fate of its recommendations.

Hemerijck (2009: 92ff.; otherwise quite similar to Hemerijck 2008a and 2010) concludes his analyses with prescriptions for reforms based on the “social investment” model (also called “developmental” model in Hemerijck 2008a). This model, which seems to have become the new orthodoxy among social policy analysts, is described as a paradigm change towards a dynamic perspective on social policies – from ex post social insurance compensation to ex ante preventive social investment, and from the social protection function to the social promotion function of the welfare state – and is presented as an imperative. But to what extent have policy-makers become sensitive to such a need? Overall, the description of learning processes is vague, as compared with the detailed portrait of the changing context and the comprehensive presentation of its consequences, which is an extremely valuable contribution to the literature on welfare reform. In a nutshell, one sees more what changes and why in that field than how the changes occur: inputs and outputs are clearly described, but the study of the “throughput” (process) dimension has been neglected, and one seldom learns whether changes result from learning, as the latter is defined. Finally, one also obtains more information on changes in substance than on changes in modes of governance.

A major outcome of this subproject is Gerben Korthouwer’s (s.d.) dissertation on welfare reform. Korthouwer notes that the classic paradigms of interpretation of welfare policies currently face limitations; there is no longer any agreement regarding to what extent “parties matter” in welfare reform, namely through the ideological coloring of the incumbent government. In addition, not only (as suggested by Hemerijck) did important reforms take place, which contradicts path-dependence theory, but in some countries, reforms that were expected to be promoted by the Left were promoted by the Right, and vice versa. The author claims that parties continue to matter; however, they are far more heterogeneous than hitherto assumed. They can be considered “miniature political systems” (p. 19) in which internal coalitions compete with each other to impose policy options. The idea to disaggregate collective actors is a promising analytical strategy, also employed in the next subproject.

The dissertation studies the positions of Social- and Christian-democratic parties with respect to pension and family policy reform. Based on a “most similar systems” comparative design, the countries considered are Austria, Germany and the Netherlands. The study of reforms relies on detailed process tracing of policy cases. The major internal divide within parties is, according to the author, between “pragmatists” eager to support welfare reform and “traditionalists” who oppose it. Usually it is failure to assure participation in govern-ment in coalition systems, rather than electoral failure, that leads to a shift in the intrapartisan-dominant coalition. In addition, learning matters, according to the author, because “puzzling” counts as much as “powering”. “For the intraparty groups analyzed here, diagnosing the nature and magnitude of problem loads, setting priorities, and identifying potentially effective solutions is the product of puzzling, while skilfully rallying political and societal support for selecting particular solutions falls in the jurisdiction of powering” (p. 11).

The results confirm that internal processes within parties affect policy change, and this is indeed an interesting contribution to the literature on welfare reform, strengthened by the fact that the next subproject shows that internal processes within interest associations matter as well. However, this should be described as a refinement of the “power resources” theory, which in this version takes into account power relations not only between but also within parties. To be sure, there is a connection with the literature on policy ideas (and “advocacy coalitions”; see above), because it appears that beliefs

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122 See Hemerijck (2007) for a presentation of welfare reforms in the Netherlands, constitutive of the so-called “Dutch miracle” and the “Polder model”.

123 Qualifying reformers as “pragmatists” sounds a bit problematic in a scientific work, because the term is value laden and is used in the political competition to discredit adversaries of reforms. “Traditionalists” here are not those who have conservative views but rather those who advocate the traditional party position.

124 Van der Meer et al. (2005: 351) cite Mayntz (2004: 7-8), according to whom one should not by definition “assume that politics is always about resolving collective problems and not also or primarily – about conquering and maintaining power”.

Shifts in Governance: Problems of Legitimacy and Accountability | 71
of internal party coalitions affect policy choice. However, the connection to policy learning as such remains underdeveloped. It is suggested that in all three countries under scrutiny, “failure to dominate government spurred critical moments of reflection, that is, puzzling within both social democratic and Christian democratic parties. This had important consequences for internal power distributions, considerably weakening traditionalists at the expense of pragmatists” (p. 260). Yet if things are so, “puzzling” was not about how to best solve wicked problems or how to pool relevant knowledge for that. The puzzle here is primarily a matter of what is the right or wrong power strategy, and this renders the initial distinction between “puzzling” and “powering” irrelevant. As suggested by Visser (2009: 42), “reformers must puzzle a good deal about powering, i.e. how to gain the support for their preferred policy choices”. If there is any form of learning observed in that case, it is basically that of strategic nature: political, and not policy learning. Or, to put it differently, “single-loop” learning (an adjustment of strategy following the critical event of failure to achieve power as an aim) as opposed to “double-loop” learning (questioning previous policy beliefs and values) (Argyris and Schon 1978).

There are only a few examples of double-loop learning (i.e., distinct from power considerations) in the thesis, and they are not scrutinised in much detail (in Germany, beliefs that deregulation of the labour market would boost employment, p. 128; on the necessity of child care, pp. 166 and 277; and on long-term deficits of the pension system, p. 277; on limits to learning in Austria with respect of family policy, pp. 245-246; on broader awareness that early retirement leads to a financial dead end, p. 281). This is confirmed by the fact that “pragmatics” are not defined with respect to their policy values as with respect to their office-seeking nature, which makes them sensitive to the need to attract the moderate segment of the electorate. Contextual conditions for change are indeed identified, such as austerity, but they are seen as triggering factors for a change in the internal party balance in favour of “pragmatists” (p. 19), and not as a triggering factor of conversions in policy beliefs. In the end, it is difficult to establish whether policymakers are seldom induced to learn from policy “puzzles” – which would disconfirm one of the core arguments of the project that policy reformers are required “to principally think problem and goal-oriented” (Hemerijck 2009: 90) – or if the author of the thesis devotes insufficient attention to this kind of situation. For example, Hemerijck (2005: 31-32) listed a number of factors likely to affect the recept-ion of new policy ideas by political actors: the strength of coalitions, state traditions, the status of policy analysis, and the organisational capacity of the administration. The influence of none of these factors is systematically considered here.

If the first subproject concentrates on economic and social policy reforms (and, in a couple of papers, on their outcomes too), the subproject on social pacts concentrates on a governance mode (“throughput”) that in several countries led to these reforms. In that sense, these subprojects nicely complement each other. “Pacts” are defined in the introduction of the volume to be published with research results (Avdagic et al. forthcoming a) as “formal agreements of social concertation between the state, unions and employers that seek to facilitate adjustment in the areas of wage setting, the labour market and welfare policies”. Pacts of the 1990s are different from neocorporatist arrangements of the 1970s not only in context, but also in their policy content (with a shift from wage to pensions, labour market and employment policy), the role of the government and, most importantly for this study, their (lower) degree of consolidation and institutionalisation making them more fragile.

The study first uses fuzzy-set Qualitative Comparative Analysis (QCA), a rigorous methodological tool that permits the identification of the

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125 See also Hemerijck (2005: 31), who views elections as a source of information provision to parties. Yet, this is primarily (not very elaborate) information on the preferences of the electorate, and therefore one may doubt that it can lead to learning in the sense of “a highly reflexive and knowledge intensive process” (Hemerijck 2008a: 426). In economic and social policy reform, a standard theoretical reference is Hall (1993), who distinguished between learning of first, second, and third order (with increasing magnitude). Although references to Hall are made, there is no proper classification of forms of learning according to Hall’s criteria. Sabatier (see above) distinguishes between changes of decreasing magnitude in the core beliefs of an advocacy coalition, in its policy aspects, and (most frequently) in secondary aspects.

126 Van der Meer et al. (2005: 355) distinguish between reflexive and merely adaptive learning.

127 The learning process of chancellor Schüssel” (p. 242) was about the need to conduct negotiations with social partners. This was not about the content of welfare policies but rather about the appropriate “governance” mode to ensure legitimacy (however, this issue is not really discussed by the author).

128 See also Hemerijck (2005: 31), who views elections as a source of information provision to parties. Yet, this is primarily (not very elaborate) information on the preferences of the electorate, and therefore one may doubt that it can lead to learning in the sense of “a highly reflexive and knowledge intensive process” (Hemerijck 2008a: 426). In economic and social policy reform, a standard theoretical reference is Hall (1993), who distinguished between learning of first, second, and third order (with increasing magnitude). Although references to Hall are made, there is no proper classification of forms of learning according to Hall’s criteria. Sabatier (see above) distinguishes between changes of decreasing magnitude in the core beliefs of an advocacy coalition, in its policy aspects, and (most frequently) in secondary aspects.

129 As I have only a manuscript version without pagination, I cannot provide page numbers.

129 It may be, however, that the identification of a more important role for the government is due to a shift in researchers’ “conceptual lenses” and more attention to it. I did not have the impression that previous research on social concertation focused much on governmental dynamics. Amusingly, perhaps it was not sufficiently “state focused”, whereas other research on policymaking was too “state focused” (see the introduction to this synthesis).
factors responsible for cross-national variation in the adoption of pacts in fourteen countries during the 1990s. This methodological strategy is particularly suitable to examine why some countries adopt pacts while others do not. It allows us to see the necessary and sufficient conditions for the adoption of pacts and whether there is one path or more ("equifinality") leading to it. From the fuzzy-set analysis is drawn the original and robust conclusion that, although pacts were established to deal with strong economic pressure (compliance with Maastricht criteria, inflation and high unemployment), the functional argument of the "problem load" is by no means a sufficient condition. There are various causal paths leading to pacts, but two important political conditions are either the presence of a weak government or an intermediate level of union centralisation. Weakness of government is basically defined for the purposes of cross-national comparison as lack of a strong parliamentary support, but the more fine-grained case studies also demonstrate that the proximity of elections or internal divisions can affect the perception that governments have of their own strength. Regarding the intermediate level of union centralisation, the idea is that unions have more incentives then to compromise than if they were more unified, and they are more credible in their capacity to impose compromises on their members than if they were more fragmented.

Twenty pacts are studied in Ireland, Italy, Portugal, Spain, Slovenia and the Netherlands, all counting among the countries with the largest number of pacts. Interestingly, these were "least-likely" cases for the implementation of social concertation; they used to lack a tradition and the institutions of corporatist negotiations. A second sequence in the analysis, focusing on the genesis of pacts, explains why, once established (in less propitious environments than in the past), some pacts lead to successful negotiations, while in others, negotiations fail. As stated in chapter 4 (Visser and Rhodes forthcoming), the question here is: "Why and how did the more successful examples proceed from being one-shot bargains, meant to solve a particular problem at a particular point in time, to becoming a more lasting form of concertation and governance, sometimes expanding into other policy domains beyond wage bargaining, where most pacts had their origins?" It is suggested that there are two, more or less ambitious, paths for social pact institutionalisation. The first pattern, observed in Ireland and Slovenia, is expansive and based on the reinforcement of initial arrangements: actors adjust capabilities to ambitions through a mechanism of constant or positive returns. Repetition is a sign that tripartite bargaining and social pacts are becoming the standard operating procedure in socio-economic policymaking, sometimes even spilling over into other policy domains. The second pattern is less extensive, and therefore more frequent; it is ambitions that are here adjusted to capabilities, previous pacts are corrected through a negative feedback loop, and repetition alternates with periods characterised by unilateral state bargaining, bargaining between the social partners without state presence, or even complete inactivity.

These are indeed interesting learning mechanisms that deserve close scrutiny, especially as it is suggested that actors may hesitate regarding which path to select. Equally interesting are the motives found, usually in varying combinations, that are likely to lead to the institutionalisation of pacts. In fact, a new theoretical angle in this study is the focus on the role of the motivations and behaviour of political actors, instead of that of structural determinants of pact-making activities. This translates into a couple of hypotheses:

1. Pacts are likely to be reproduced if they serve a certain function for the "system", even if there are disadvantages for the participants (functionalist hypothesis);
2. Pacts are likely to be reproduced if the possibly interested actors believe that their benefits exceed the costs of their abandonment (utilitarian hypothesis);
3. Pacts are likely to be reproduced if reproduction is supported by the most powerful elite actors, and particularly by the state or employers (power-distributitional hypothesis);

Pacts are likely to be reproduced as an "appropriate" governance mode if the norm that policy decisions must be based on prior consultation and negotiation with all involved parties gains broad validity, and if the outcomes of negotiations are believed to be just and fairly distributed (normative hypothesis).

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130 Older forms of domestic corporatism were also considered as responses to problem pressure: Katzenstein (1985) studied their development in small European states whose economy was highly dependent on the international market.

131 With the exception of the Dutch case, which scores high on corporatism indexes, but where concertation did not work well in the 1960s and 1970s (Avdagic et al. forthcoming b).

132 For a more comprehensive account of the project's theoretical foundations, see Avdagic et al. 2005.)
Among the case studies, I could only access the Dutch one (Visser and van der Meer forthcoming). It yields interesting results with respect to the general framework and the hypotheses. There were eight social pacts in the Netherlands between 1980 and 2009, all but one of them about wage moderation, many about other issues as well, and the vast majority of them concluded under adverse econo-mic conditions. An interesting argument is that the characteristics of each pact are, at least to some extent, influenced by those of the pact that preceded it (“each pact stands on the shoulders of its predecessor”). This should indeed drive us in the direction of learning processes. For example, if “social pacts are the standard operating procedure in times of crisis”, then the chances that they, mutatis mutandis, routinely re-emerge increase with time, and this relates to forms of “bounded” learning from experience by governmental actors and organisational leaders. Yet, these forms are not analysed in much detail. The Dutch chapter emphasises the political context preceding the pacts and during the pact negotiations. This is well taken, and the authors point out that internal negotiations within the (coalition) government and business and labour unions matter. This fact is often neglected in the literature, which tends to consider all these collective bodies as unitary actors. An important merit of this kind of “thick” case study is the disaggregation of the level of analysis, opening up the black box of the policy process. For instance, the Dutch case shows that internal shifts in power between ministries affect the content of reforms (illustrative of a new context for negotiations, the Finance ministry supplanted in its leadership role the traditional interlocutor for corporatism, the Ministry of Social Affairs and Employment: van der Meer and Visser 2010: 214). It is also shown that overcoming internal distrust and discord was a concern for some Dutch governments. Form the Italian case we learn that internal decision-making processes were influential in the formulation of unions’ positions; internal referenda and membership ballots generated more decisive and stable strategies on behalf of unions, because their leaderships felt more self-confident (Avdagic et al. forthcoming b).

With respect to the hypotheses on the consolidation of pacts, the Dutch case tests and refines them. It disconfirms the “functional” hypothesis (number 1): although pacts follow diverse social-economic challenges, they also address the internal difficulties of coalition governments, and in addition, all pacts required hard bargaining between particular interests, with no major actor appealing to an alleged general systemic or public interest. The functionalist hypothesis seems also a bit shaky on theoretical grounds; the issue is not challenges to the system as such, but rather the fact that some actors are able to construct credible narratives about them. According to Avdagic et al. (forthcoming b) this hypothesis is confirmed only in Ireland, where the adversarial nature of industrial relations and clientelistic politics generate a need for alternative solutions to secure economic growth and stability. This is coupled with a strong interest in keeping Ireland attractive to foreign investors with stable macroeconomic commitments and social peace. This fact shows that the functionalist hypotheses is, in reality, about actors’ ability to create consensus through persuasion (and learning!) on a functionalist narrative that is socially constructed (this is not to say that this narrative should be discredited). Hypothesis 4 seems equally rather irrelevant; the evaluation of outcomes is made in very general terms, even in countries like the Netherlands, Ireland and Slovenia, where pacts are widely seen as “win-win” solutions, and “fairness” is an issue of concern only for those excluded from the negotiations.

It is rather unsurprising that hypothesis 3 is confirmed in five out of six case studies; pacts need the support of, or the legitimisation by, powerful actors, namely the government and employers. Legitimisation is primarily achieved if all of these actors are satisfied with the outcomes of the pacts, and can thus be defined as legitimisation “through success”. Yet, we are in a period in which interest organisations often no longer adequately represent increasingly heterogeneous reference groups, and in which populist tendencies become tangible. There is a risk, then, that the legitimacy “from below” of devices like social pacts could be undermined because they can be criticised as collusive elitist practice. The study also shows that negotiations take place under conditions of high situational uncertainty in which actors are not able to predict each other’s moves and cannot be sure of what their own appropriate responses should be. These are typically situations of “bounded” rationality where actors cannot and do not calculate far ahead; rather, they seek to rely on experience and make “informed guesses” (Avdagic et al. forthcoming b). This is not to say that actors don’t try to assess costs and

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133 As I did not have access to the other country studies (which were not funded by the NWO program), I rely primarily on the Dutch case but also use the more general conclusions presented in Avdagic et al. (forthcoming b).

134 Further disaggregating the level of analysis, it also matters who the Minister in charge is, and, in coalition governments, to which party he or she belongs (see Fontana forthcoming).
benefits (hypothesis 2), in addition, they seek to evaluate the relative power of their negotiation partners as well as their trustworthiness. The Dutch case shows that operating in a relatively small system of governance, where actors entertain durable relations, contributes to the circulation of information in policy networks. This allows perceptions to adjust to changing interaction contexts and facilitates the avoidance of misperceptions on each other’s intentions.

In reality, some of the hypotheses operate jointly: because actors are satisfied with pacts, their assessment thereof is positive (one would be tempted to say positive both in terms of functionality and fairness), and then, logically, actors further support them. Conversely, dissatisfaction unsurprisingly leads to withdrawal of support. It is a pity, however, that these aspects are not more conceptualised in relation to actors’ learning capacities. I can only discuss two examples here, both of which I consider eloquent.

It is suggested that union preferences changed in the Slovenian case “through a process of learning and gradual crystallization of interests. The preferences of the unions in the early transition reflected their respective ideological and political positions, but as they learned that such divisions were counterproductive and would weaken their ability to influence government policies, those preferences changed and the unions adopted a more pragmatic, coordinated approach to bargaining with government and employers” (Avdagic et al. forthcoming b). Is such a pattern specific to a new democracy like Slovenia, or does participation in negotiations produce moderation as a more general effect? Can actors be positively surprised by the outcomes of pacts, and do they then adjust their behaviour? Are other, perhaps contrasting, dynamic patterns discernible? In other words, what are the conditions for a contingent generalisation of the findings from the Slovenian case, which correspond to what is usually expected to be a core function of “pacts”?

The chapter on the Netherlands concludes with the statement that the emergence and periodic institutionalisation of pacts is also a matter “of inventing and accepting key ideas that become drivers of change and compromise”. Yet, in the general conclusion, it is suggested that “the creation of pacts is ultimately a political process, driven more by interests and power than by ideas or spontaneous coordination” (Avdagic forthcoming b). Later in the same chapter, it is argued that “governments of different political persuasions continued with what now seemed to be a ‘beneficial’ institution to most participants”. This means that governments’ conversion to pacts is driven by what they perceive as their previous success, which is typical institution building through learning. Hence, one is inclined to ask oneself: do ideas about policy and decision-making recipes matter? Does learning take place, and if yes, is it confined to strategic considerations – i.e., how to become more talented for negotiations – or is it broader? Does it only relate to “powering” or also to “puzzling”; is it sheer “adaptive” or also “reflexive” learning? Do actors reflect primarily on causal links between institutions, their behaviour and their position, or also between policy problems and policy solutions?

It is plausible indeed that the explanatory factors identified by the authors primarily relate to different kinds of actors’ calculations about costs and benefits (more narrowly for themselves, or more generally for the “system”) and to their perceptions on the nature of their interactions. For example, the authors find strong empirical support for a “simple bargaining model” according to which “negotiations are more likely to be successful when power disparities are clearly evident, albeit not excessively large. Situations most conducive to the conclusion of pacts are those in which one actor perceives its bargaining power as strong or increasing and the other as weak or decreasing, and when such perceptions are mutually shared” (Avdagic et al. forthcoming b). This parsimonious conclusion is an important one, yet it provides no indication whether any kind of learning processes take place. Overall, perhaps because the question of learning is somewhat underconceptualised, it seems that the potential of case studies regarding the scrutiny of learning is not exploited. As in the previous subproject, one wonders in the end if “double-loop” learning matters little in fact-making and pact-institutionalisation or if this is an impression due to the project conceptualisation.

Of course, one can consider that mutual adjustment of actors’ strategies results from experience in interactions, and this is a matter of learning too – albeit of the “single-loop” form (adjustment of means to ends). Yet, given that pacts are studied in several countries in the same period, the reader misses a
discussion regarding whether some forms of cross-national learning have led to an exogenously driven (Braun and Gilardi 2006) diffusion of pacts. For example, I have the impression that Slovenia largely copied several institutions of Austrian neocorporatism (unfortunately, I could not read the case study on this country). Regarding interactions once pacts have been adopted, if one conceives the latter as devices for the “management of interdependence” (Mayntz 1997: 272) in complex societies, then one expects them to be genuine learning mechanisms that enhance the consciousness of belonging to a “community of fate”. Although this is probably too idealistic if stated as an assumption, I expected a discussion of a hypothesis that this kind of procedure is likely to increase “empathy” between the participants (a better understanding of other participants’ motives), strengthen mutual trust by habituation, change the framing of situations into “win-win” games (e.g., become aware that “we are all on the same boat”), etc. The empirical evidence shows that there is broad support for pacts, because they are seen as “win-win” mechanisms, yet “in no case were norms strong enough to determine institutionalisation” (Avdagic et al. forthcoming b). One could thus argue that the legitimisation of pacts relies more on the “logic of consequences” than on the “logic of appropriateness” (March and Olsen 1989). And if actors support them because they believe them beneficial, not because they take for granted that this is the right kind of institutions, then this explains why pacts are fragile and vulnerable institutions. This is one of the important findings of that project, which relies on well-documented and convincing case narratives, and which is path breaking in uncovering the mechanisms of the production (and eventually reproduction) of social concertation.

The third subproject concentrates on the Open Method of Coordination (OMC) as a new informal mode of multilevel and networked governance in the European Union. In 2000, the European Council formally recognised the OMC in Lisbon as a new form of European governance, “based on common guidelines to be translated into national policy, combined with periodic monitoring, evaluation and peer review organized as learning processes and accompanied by indicators as a means of combining best practices” (Hemerijck 2008a: 441). The issue of learning is crucial here, because cross-national learning on the most appropriate policy recipes, supposed to take place through mutual inspiration, is a central goal of this method. OMC can be considered a prototypical example of “soft” law; it has been established because the traditional “Community” method on matters of European integration is considered too vertical (i.e., hier-archical), and it relies on the causal assumption that (relative) convergence in policies of member states will be better achieved if it is the outcome of more horizontal cooperation in learning processes based on mutual deliberation. However, what is “soft” is more the cooperative process and the lack of formal sanctions for failure to comply, rather than the outcomes: the OMC may result in revisions of EU decisions or in the formulation of standards that may be given binding force. This argument is developed in an introduction to a recent, jointly edited volume by Sabel and Zeitlin (2010).

The authors argue that “experimentalist” forms of governance in the EU such as the OMC are flexible, because they permit member states to regulate diverse important problems “in ways that grow out of their own traditions and allow them to pursue their own best judgements for innovative advance” (Sabel and Zeitlin 2010: 1-2). This clearly reminds of Schapf’s (2004) requirement for “legitimate diversity” within the Union. Mutual deliberation and the force of the better argument are considered the means to organise differentiation by (to some extent) institutionalising heterogeneity. This is the kind of paradoxical management that one is likely to encounter in complex governance systems (Papadopoulos 1995: 61-62). Instead of being an obstacle to closer integration, diversity becomes an asset for achieving it (Sabel and Zeitlin 2010: 6).

Regarding the concrete characteristics of the OMC, the following quote illustrates them well:

“In this design, first, framework goals (such as ‘good water status’, safe food, non-discrimination, and a unified energy grid) and measures for gauging their achievement are established by joint action of the Member States and EU institutions. Lower-level units (such as national ministries or regulatory authorities and the actors with whom they collaborate) are, second, given the freedom to advance these ends as they see fit. Subsidiarity in this architecture implies that the lower-level units have sufficient autonomy in implementing framework rules to propose changes to them. But in return for this autonomy, they must, third, report regularly on performance, especially as measured by the agreed indicators, and participate in a peer review in which their own results are

136 As suggested by advocates of “reflexive law” such as Wilke (1992).

137 This causal assumption is particularly present in the German intellectual tradition of “Kontextsteuerung”, inspired by the works of sociologist Niklas Luhmann (see Wilke 2001).
This kind of arrangement covers various domains, such as the regulation of telecommunications, energy, drug authorisation, data privacy, environmental protection, occupational health and safety, food, maritime and rail safety, financial services, justice and home affairs, employment promotion, social inclusion and pension reform, health care, anti-discrimination policy, fundamental rights, genetically modified organism regulation, competition policy and state aid. The OMC is considered successful in a book edited by Heidenreich and Zeitlin (2009: 3):

“Despite variations among the individual authors and countries, however, the cumulative evidence presented in this book shows, in our view, that the OMC has systematically (though neither deterministically nor uniformly) stimulated substantive changes in national policy agendas, cognitive paradigms, and (in some cases) programmes, as well as procedural shifts in governance and policymaking processes, through a series of direct and indirect mechanisms, including but not confined to transnational learning and creative appropriation by domestic actors.”

Partly based on the analysis of secondary literature, the chapter by Visser on the European Employment Strategy (a precursor to the OMC) and the OECD Job Strategy portrays them as a “qualified success” as well (Visser 2009: 55). Interestingly, reform intensity in a given country does not seem to be related to problem pressure, and learning is driven both by success and by failure, elsewhere and at home. Cross-country convergence is facilitated by the diffusion of new, common problem definitions (“mental maps”); however, the movement does not display the same density or the same degree of success everywhere. Finally, because unlike in functionalist accounts problem load is not a sufficient condition for change, cross-national learning takes place primarily between countries that share not only the same problems but also similar normative concerns and financial conditions.

Van Gerven and Beckers (2009) similarly analyse the extent and nature of reforms in unemployment benefit provisions in Belgium, Finland, the Netherlands and the United Kingdom. The authors find that cross-national convergence indeed occurred (increased work-relatedness of the schemes, activation measures, targeting of benefits), but primarily in relation to policy goals, and much less in relation to policy instruments and extent of the reforms. They conclude that EU-member states use international benchmarking procedures to determine policy priorities but retain their autonomy in the concrete reform implementation. Additionally, relying on interviews, the authors found an interesting difference between the EES and the OECD Jobs Strategy: while the former is negotiated and deliberative, the latter prescribes policy recipes in a unilateral and top-down way. Hence, the distinct mechanisms driving the effectiveness of these strategies account for their differential impact on national agenda setting; because of its negotiated character, the EES has been more able to “irritate” and infiltrate national policy arenas. This has happened in two ways: through an influence at actors’ cognitive level on the problem definition and conceptual vocabulary of labour market policies, and through the strategic “creative appropriation” (Hamel and Vanhercke 2009: 85) of OMC by actors desiring to legitimise their own preferences, to put new issues on the agenda, and to challenge the viability of existing policy options. 140

Studying the OMC in the Netherlands, Visser (2005) considered it “a selective amplifier of domestic policy choices” (p. 23 of manuscript). He showed that in the “uploading” phase, the Dutch Minister of Social Affairs and Employment and top civil servants had been actively involved in the design of the EES, being desirous “to sell the Dutch success story”. In the “downloading” phase, the EES helped to consolidate and expand in the Netherlands a Social Democratic version of the activation approach.

Hamel and Vanhercke (2009) study the OMC with regard to matters of social inclusion. They note that it is expected that the OMC deploy procedural effects in the sense of an “institutional recalibration” (Hemerijck 2008: 44) at the profit of “multi-level governance” types of processes: stronger vertical coordination between national and subnational administrations, and better-structured

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138 I only received and considered the chapters written by participants of the NWO project.
139 This challenges Hall’s (1993) idea that “third-order” learning (i.e., at the level of the philosophy of policies) is the hardest to achieve.
140 I personally find it difficult to conclude whether an actor really comes to think that the OMC is “good” (learning) or uses it strategically (appropriation). I suspect that the assessment also depends on analysts’ ontological beliefs about actors’ motivations and behaviour (more or less value- or interest-driven).
involvement of nonstate actors in national policies. In reality, does this happen? Belgium used to consider itself the “best pupil in the class” and, hence, a source of inspiration regarding stakeholder involvement, and it was able to “upload” its participatory model to the European level; however, the OMC made this country realise that even its own so widely praised model could be further improved. Regarding coordination between levels of government, the OMC has strengthened horizontal cooperation between autonomous Regions in Belgium and has increased the coordination role of the federal level.141 On the other hand, the feed-back effects of the OMC seem to be less significant in France.

Seeking to assess the impact of this new networked and multilevel mode of governance is an important exercise, because many expectations are formulated on the positive contribution upon policy efficiency and the legitimacy of such modes. Especially the “soft” aspect is of note; not only is the OMC “softer” than the traditional Community method in matters of European integration, but it is even more soft compared with the various forms of transnationally imposed conditionality, especially by bodies like the IMF or the World Bank.142 The nuanced accounts provided in this volume show that the OMC “is certainly more than window dressing” (Hamel and Vanhercke 2009: 108),143 while not displaying all of the ambitious effects expected from it. Overall, the tone is more positive than that of previous evaluations, and there may be several reasons for that: emphasis is given to indirect effects (like the fact that the OMC facilitates the reframing of policy issues), the procedural impact is included (enhanced coordination between decisional units, deeper involvement of nonstate actors, development of policy networks, all important dimensions of “shifts in governance”), and national variations in the selective local “hybridisation” of the OMC are also considered.

In his conclusive chapter, Zeitlin (2009: 215) wisely notes the numerous methodological difficulties associated with the identification of causal effects in so complex processes, adding that “the OMC encapsulates in extreme form the broad methodological problems involved in studying the impact of ‘Europeanization’ on domestic policy and politics”. On the other hand, Zeitlin (2009: 231-233) suggests that strategic appropriation of the OMC is a core mechanism of diffusion but also maintains that, in the long run, this instrumental use of the OMC leads to deeper transformative effects, because actors are bound by their commitments in its favour.144 Now, an obvious question is whether the learning effects of the OMC are indeed deployed in the countries that are more in need of learning – in other words, the “worst performers” (Zeitlin 2009: 234). Are the latter also less able to learn because some of the relevant domestic actors lack the cognitive capacities, or the political will, for that? One should not forget that for a learning process to be effective, a conversion of a whole range of actors – whether sincerely or for strategic reasons – to the new paradigm must take place. Zeitlin shows well how all sorts of actors can exploit the opportunities of the OMC. He also writes that OMC diffusion depends on factors such as the domestic public attitudes towards the EU (Zeitlin 2009: 232). However, there is no mention of actors likely to oppose or ignore the OMC. It is difficult to find in this book an answer to the question about which factors matter most,145 where and how, for the fate of the OMC in the various member states; consequently, we do not know how “bad performers” deal with the OMC. Yet this is so because the country findings are fine-grained, often sector specific, and are presented in a differentiated manner; therefore, the “big” picture provided by this project is prismatic.

141 Verschraegen et al. (2011) observe a similar effect on domestic intergovernmental coordination (and on cooperation with nonpublic actors) in Belgium for the European Social Fund (ESF), closely coupled with the European Employment Strategy (EES) through the fact that ESF money must be used for EES objectives. ESF also explicitly refers to OMC, resulting in Hervey and Vanhercke’s (2010: 131) discussion about cases of “instrument hybridity”.

142 Judged as “expertocratic” by Zeitlin (2009: 230). See above the project The Transnational Political Economy..., and especially the contributions by Arjan Vliegenthart on East Central Europe.

143 This is also Vanhercke’s (2009) argument on the influence of the OMC on the pensions regime in Belgium, albeit with a different perspective on the kinds of effects involved (based on the “policy streams” approach).

144 This points to the mechanism called “civilizing force of hypocrisy” by Jon Elster (1998: 12): even if actors favour options for self-interested reasons, they cannot expose such reasons in public and therefore must justify their options on the grounds of disinterested motives. As a result, self-interested actors bind themselves to the public-spirited commitments they make.

145 See, for example, the fuzzy-set cross-country comparative analysis conducted on social pacts.
Lessons Learnt on Accountability and Legitimacy Issues Related to Shifts in Governance

This project was divided into subprojects, and these issues were not equally present in all of them. However, the major findings concerning accountability and legitimacy can be summarised as follows:
- Different kinds of “learning” can be invoked strategically to legitimise policy change.
- Concertation and deliberation as elements of the policy change process have similar legitimising functions.
- However (as with other participatory and “partnership” forms of governance studied in this program), the democratic quality of the policy process can be questioned, especially if publicity is deficient as a prerequisite of accountability.

Although the overall project is about Governance as Learning, what we actually learn about this aspect of governance depends on the subprojects. It is the project on the Open method of coordination that concentrates more on it, especially in emphasising factors related to the advent of multilevel forms of governance.

All three subprojects are concerned with how political decisions are legitimised. Obviously, presenting reforms as the result of learning is a legitimatory device; however, this is not central in the analysis. What appears in the more general work by Hemerijck, and this is confirmed by the two other subprojects, is that basically two ways of legitimisation are at work, both of which may have connections with learning processes, although the latter are seldom explicitly stated.

Domestic “social pacts” crafted between national governments and the major social partners become a source of legitimacy; this is an asset for the acceptance of sometimes painful reforms if these are compromises between key players, especially those involved in their production. This is not new; the legitimising function of interest concertation was a core argument in the classic literature on “neocorporatism”. More recently, the broader inclusion of “civil society” actors in governance processes has been perceived through a similar angle.146 In that sense, the establishment in countries without similar experiences of “pacts” as an important policymaking mode in social and economic reform can indeed be considered a shift in governance. On the other hand, this is not the single discernible trend in that respect; in the Netherlands, there has been a “revival” of concertation as a governance mode, while in other traditionally consensual countries like Belgium, Austria or Switzerland, concertation has experienced considerable ups and downs in the last years. Needless to say, there is no teleology in governance shifts;147 there are paths to institutionalisation but also to deinstitutionalisation, and what characterises social pacts is their contingent nature and ensuing vulnerability for frequent lack of formalisation. For example, the research nicely shows that the fate of pacts depends in part on the internal power balance and internal decision-making processes of several collective actors involved in negotiations.

Corporatist arrangements are not simply “fair-weather” products as suggested in the 1980s; they can prove to be functional in “hard times” too. Yet for “pacts” to be established and to succeed, a number of conditions must be met. Most importantly, the research rehabilitates the crucial role of governments as initiators of policy concertation, which in the past was often viewed merely as a bilateral “class” compromise between competing socio-economic interests. In that respect, the research shows that governments are induced to resort to this mode of governance when they are weak and lack public support, but it also demonstrates that the legitimisation of pacts through governmental endorsement “from above” is necessary. However, this is not sufficient; legitimisation “from below” is also necessary, especially as organisations are now less vertically organised than they were in the past – although the representation crisis coupled with populist politics is likely to undermine it.

Although accountability is not an explicit issue, one may raise it regarding some of the developments analysed in this project. The revival of corporatism through “social pacts” has implications with respect to democratic accountability that should continue to be discussed, as they were used to be discussed in the past in the classic literature on neo-corporatism.

146 For recent, more critical accounts, see Jobert and Kohler-Koch (2008).

147 In an older paper, Visser (2005a: 303) notes (as regards modes of governance) that “a distinction between ‘old’ and ‘new’ modes is clearly insufficient as there has been a blending of individual and collective rights, hard and soft law, self-regulation and state action and concertation, creating a very complex and hybrid form of regulation”. In the fields of industrial relations, for instance, European integration leads to the replacement of self-regulation and “custom” by mandatory law. See also above the discussion of the results of the project on legalisation and juridification and of the project on shifts in compensation between private and public systems.
Although we noted above that pacts are a legitimising device, they raise problems with respect to representation and thus to accountability. The official interlocutors of the government and “co-producers” of pacts are not always representative of the broad constituencies in the name of which they claim to speak, and this problem has probably been aggravated by the increasing heterogeneity of postindustrial societies. For example, unions tend to defend primarily the interests of the best-integrated people in the labour market, and less those of market “outsiders”. This can be conceptualised as a lack of “external” accountability to those affected by the policy options of social partners. In addition, the degree to which the organisational leaders involved in negotiations have to account for their positions to the rank-and-file is an open question, and this can be conceptualised as a lack of internal accountability (Koenig-Archibugi 2004: 237–238). Especially as leaders of organisations have to make compromises in pacts, they are caught in a dilemma between (“peer”) accountability to their partners and accountability at home. This reflects the dilemma between the “logic of influence” and the “logic of members” described by Schmitter and Streeck (1999): the narrowing of the preference gap between collective actors in summit negotiations is the result of the intense relations between them which, in turn, lead to a loosening of their ties with their reference group. However, the Dutch case shows that organisational leaders are under more pressure now than they were in the past to provide convincing accounts to their members about negotiations they are involved in.

Research in this project rehabilitated the role of governments in social concertation. It showed that compromises achieved through the “social pact method” must be endorsed by governments; therefore, social partners negotiate under a more or less threatening “shadow of hierarchy”. In that sense, the anticipation of accountability to formal decision-making institutions operates as a disciplining device for employers and unions: social concertation is by no means tantamount to a “hollowing out” of the state or synonymous with an “erosion of the ‘primacy of politics’” (van der Meer et al. 2005: 347). On the other hand, one may suspect (although the chapters read provide no answer to this) that it is parliaments that are circumvented. This inevitably raises accountability problems if we consider the latter as the primary depositaries of the authorisation by citizens to issue collectively binding decisions. However, concertation is not the sole reason for a weakening of legislatures with respect to executives. The marginalisation of parliaments in decision making in parliamentary democracies is a broader phenomenon that should be considered as a matter of concern, especially as the internationalisation of policymaking (European integration and beyond) is yet another challenge to their role.

Presentation of reforms as the product of “learning” from outside helps legitimise them. In European multilevel governance, exogenously driven reform not only offers, as often suggested, opportunities for “blame-shift games” (Hood 2007: 200) but may also enjoy a value added in terms of legitimacy if it is convincingly presented as imitated “best practice”. External input is a strategic asset not only when it can serve as an excuse but also – if the external illustration is a “success story” – when it serves as an argument in persuasion processes that affect the formation of preferences (Risse 2000), and where exemplification plays an important role (Majone 1989). However, learning from “best practice” acknowledged as such in other member states must be coupled with a feeling of policy ownership that enhances policy legitimacy; the selected policy is not externally imposed, but deliberately selected through careful benchmarking. In fact, “experimentalist” forms of governance like the Open method of coordination rely on the argument that policy legitimacy is better attained if coercion is reduced. Policy effectiveness is deemed achieved due to both the learning component of the policy process and its cooperative characteristics that facilitate member states’ identification with policies – and thus, their national implementation.

However, if the OMC renders policies more legitimate (and one should ask then to whom), this does not mean that the method is legitimate itself (procedural legitimacy). For example, de la Porte and Nanz (2004) as well as Kröger (2007) find a legitimacy deficit of the OMC with respect to normative criteria of democratic quality. Additionally, value added in terms of policy (“output”) legitimacy does not mean that the problem of the accountability of “experimentalist” forms of governance is solved. Considering the European Union as a “forerunner” in terms of experimentalism, Sabel and Zeitlin (2010) extensively discuss this issue. They start by acknowledging that “deliberation, especially informal deliberation, among technical elites rather than decision making by majority vote of elected...”

148 See the eloquent title of an article on this topic: “The Commission Made Me Do It” (Smith 1997).

149 Visser (2005) writes: “Brussels can help to win an argument at home” (p. 23 of manuscript).
representatives naturally looks suspicious” from the perspective of representative democracy, based on delegation of power from citizens to their elected representatives (the so-called “principal-agent” model). They are also aware that “whether such deliberative decision making can establish its legitimacy by the emergent standards of some alternative deliberative democracy remains a question even for those who strongly suspect that the answer will be yes” (Sabel and Zeitlin 2010: 2). An obvious question here is whether this kind of technocratic governance is simply deliberative elitism (Papadopoulos 2010), or “deliberation between elites for elites” (Kröger 2010: 6). Yet the authors clearly do not agree with such a severe judgement and even find a positive contribution of “experimentalist” forms of govern-ance on accountability. They add: “Recursive framework making and revision is prompting the emergence of new forms of dynamic accountability and peer review, which discipline the state and protect the rights of citizens without freezing the institutions of decision making. Arguably, these dynamic mechanisms provide effective ways of addressing long-standing accountability and rule-of-law deficits within the nation-state itself. We call this new form of governance directly deliberative polyarchy (DDP)” (Sabel and Zeitlin 2010: 5).

I must confess I am somewhat less enthusiastic about the democratic credentials of “DDP”. I do not adhere to the conventional view, rightly criticised by the authors, that “deliberation involving experts is tantamount to a supranational or trans-governmental conspiracy against democracy” (Sabel and Zeitlin 2010: 6). I nevertheless believe that the structural conditions of this kind of governance are not favourable to democratic accountability. I find rather overoptimistic the authors’ belief that “the requirement that each national administration justify its choice of rules publicly, in the light of comparable choices by the others, allows traditional political actors, new ones emerging from civil society, and coalitions among these to contest official proposals against the backdrop of much richer information about the range of arguably feasible choices, and better understanding of the argument about their merits, than traditionally available in domestic debate” (Sabel and Zeitlin 2010: 6).

To be sure, the authors are cautious: they write that “whether or not the potential participants avail themselves of the possibilities thus created, and whether, if they do, the result is more fully democratic decision making (on any of the many dimensions on which this could be counted) are of course of matters of domestic institutional and political context. But to the extent this potential is realized, the linkage of domestic and supranational rule making in the EU does indeed create a democra-tizing destabilization effect” (Sabel and Zeitlin 2010: 6). I agree with them that publicity and contestability are important conditions for democratic accountability. However, I do not think these conditions are met in the OMC. First, what the authors mean by public justification is not clear; to be sure, national administrations have to justify their choices, but usually not beyond the narrow circles of peers or of Commission officials to whom national experts must provide accounts. There is not much public debate on issues related to the implementation of the OMC, as had been acknowledged by Zeitlin (2005: 225) himself, by Visser (2005) on the Netherlands, and more recently by Vanhercke (2010) about the Social OMC. Lack of publicity does not result from deliberate opaqueness or from a conscious will to shield the OMC from public scrutiny but rather from the lack of information on behalf of the media and public opinion. When the policy is not visible, its process and outcomes cannot be contested. I have discussed more in detail elsewhere (Papadopoulos 2007 and 2010a) why these forms of networked multilevel governance tend to be insulated from public control; this is primarily due to their weak visibility, the weak influence of elected officials and the dilution of responsibilities (the so-called “problem of many hands”: Thompson 1980).

On the other hand, Sabel and Zeitlin (2010: 12) put great emphasis on the contribution of peer review to accountability. They correctly remind us that peers in policy networks are in a better position to make informed judgments about policy performance than lay citizens. However, although accountability to peers may indeed have disciplining

150 “The democratic sovereign sitting in the legislature sets goals and delegates responsibility for their execution to the administrative branch. The legislature periodically reviews the administration’s fidelity to statutory instruction and the electorate periodically judges the legislature’s fidelity to its political mandate” (Sabel and Zeitlin 2010: 10–11).

151 On a more skeptical reading of the OMC see the state-of-the-art paper by Sandra Kröger (2009) and the various articles in the journal special issue edited by this author.

152 Benz (2007) formulates an interesting hypothesis: although the deliberative mode of the OMC is not propitious to public accountability, things may be different as regards its competitive component, which can stimulate public discussion on policies (why some countries perform better, and who is responsible for poor performance). Such issues are often widely debated in the case of the OECD “Pisa” study, but, to my knowledge, not regarding the achievement of OMC goals.
effects and thus enhance policy performance, it surely could not act as a substitute for the declining accountability to democratic “principals”.153 The reason is precisely that – although sometimes for good reasons (i.e., because they are better informed) – peers may have different preferences from principals. Hence, accountability to peers may be important for accountability as “learning”, but not for accountability as a feedback mechanism for popular control over rule making.154 The latter is realised when policymakers must justify their action under the threat of sanctions by those who have delegated the policy role to them and who (in a circular relationship) are subject to their binding decisions. Justification of performance to peers who have not delegated any task to policymakers and who are not subject to the consequences of their decisions is something completely different.

It is true that in the OMC, member states often operate under the shadow of direct European interference (Sabel and Zeitlin 2010: 13-16), but this cannot be assimilated to popular control. Curiously, Sabel and Zeitlin (2010: 17-18) are conscious that even if the OMC is not unaccountable, it is not necessarily democratic. They write:

“Democracy requires not only that citizens be equally subject to the law, but also that they be jointly and equally its authors. In this regard, peer review and directly deliberative polyarchy more generally are doubly suspicious: first because the rules they make are not validated by the familiar processes of representative democracy through legislative enactment and control; second, and worse still, in deviating from the norms of representative democracy and principal–agent accountability, they appear to deliver decision making into the hands of a technocratic elite, whose potentially self-interested manipulations are cloaked in the robes of dispassionate deliberation.”

However, the authors believe that this judgment overlooks the destabilising potential of the OMC with respect to entrenched power, most notably that of technocrats. This happens, according to them, through enhanced transparency requirements in policymaking and through broad opportunities for stakeholder participation. This is correct, but one should perhaps distinguish between formal requirements for transparency, and effective transparency, which seems rather weak in the OMC. Many scholars (see for instance Dawson 2009: 8) find the OMC processes even more closed than their hard law equivalents, as they only involve a rather narrow circle of bureaucrats (Kröger 2009: 6 and 13). There may well be a trade-off between flexibility and transparency (Papadopoulos 2007 and 2010a).

Moreover, transparency is not an equivalent of but only a precondition for public accountability. If the public at large is not sufficiently informed, accountability remains fictitious even when the process is transparent. Parliamentary scrutiny is therefore necessary (Tsakatika 2007, Büchs 2008); however, Raunio (2007: 169) refers to – admittedly so far scarce – evidence on the OMC, according to which “national parliaments have not scrutinized OMC documents in the same way as they process EU laws”. Discussing the democratic credentials of the OMC, Zeitlin (2005: 223–224) does not believe that parliaments have the necessary resources to exercise effective control over policymaking and administration in complex fields such as employment and social protection. Hence, Zeitlin does not think that greater parliamentary involvement is a realistic option. Numerous respondents to an assessment of the OMC responded that the short time-frame for consultation on the OMC National Action Plans has foreclosed possibilities for scrutiny by national parliaments (Dawson 2009: 10). The question, then, is whether the OMC itself provides sufficient opportunities for scrutiny by democratically elected bodies.

Finally, regarding opportunities for participation of organised interests that are perceived to make the system more pluralist, how these are exploited is an

153 See also above Frans van Waarden’s conclusions from his project on “juridification”, and from the same project Governance as Learning Hemerijck (2008a: 442–443): “In practice, however, OMC processes are far from perfect. Especially, its degree of openness in terms of political exposure and commitment, together with lack of substantive focus, should be criticized. Omc practices are particularly poorly integrated in domestic policy processes, public awareness, and media coverage, so parliamentary overview remains poorly developed. The role of the European parliament so far has been only considered in strict advisory terms, while, more seriously, national parliaments have let themselves be marginalized in the process. Open coordination is dominated by a new class of high civil servants and Eu officials. These problems of political accountability have not been adequately offset by other mechanisms of civil society articulation and representation.” See in a similar vein Hemerijck (2006: 138), but it must be added that Hemerijck has not conducted empirical investigations on the OMC.

154 See Bovens (2010: 955–956, italics in the original): “Accountability mechanisms can also serve as a tool to induce reflection and learning, as feedback mechanisms that can make and keep governments, agencies and individual officials effective in delivering on their promises. Accountability can induce the executive branch to learn and to improve its performance, because it provides external feedback about the intended and unintended effects of its policies”. Apart from accountability as a source of learning and a device for popular control, Bovens adds a third function to accountability mechanisms – that of detecting and preventing abuse of power (typically in checks and balance systems). See also the next project, which concludes that popular control over “committee” forms of governance in the European Union is lower than over other EU institutions.
empirical issue (Borras and Conzelmann 2007), and we have already noted that sometimes the organisations that seize these opportunities may themselves be deficient with respect to their own internal or external accountability. Hence, organised pluralism should not be equated with democratically accountable governance. In the case of the OMC, social NGO respondents to its assessment raised complaints about their exclusion from its peer-review procedures, and it seems that national executives act as filters not only to NGO involvement but also to local participation (Dawson 2009: 8-10). Interestingly, Zeitlin himself (2009a) does not seem convinced by stakeholder participation in the OMC and therefore (correctly) pleads for the development of indicators of participatory governance.

**Multilevel Governance and Public Accountability in Europe. Which Institutions, Which Practices, Which Deficit?**

**Material Used**

This large and productive project is the only one in the “Shifts in Governance” programme where the question of accountability (and, to some extent, that of legitimacy) occupies a central position. Therefore, I discuss these issues while reporting on the project findings, so the part dedicated to lessons learnt consists only of a short summary. Apart from two dissertations (Brandsma 2010 and Busuioc 2010), a major outcome with several contributions from this project is the volume edited by Bovens et al. (2010). I will rely primarily on this book that presents a synthesis of the research findings (with four chapters written by the three editors, and another four written mainly by the NWO project collaborators), and will also refer occasionally to the other project publications.


155 See the various articles in this journal special issue edited by the authors.

156 Radulova (2007: 373–374) came to similar conclusions in her own empirical study on employment matters.


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\(^{157}\) This article is part of a special issue edited by the authors on the topic Towards A New Executive Order in Europe? (also available as a book published by Routledge in 2009). On the same topic see also Deirdre Curtin’s major book *Executive Power of the European Union. Law, Practices and the Living Constitution*. Oxford: Oxford University Press (2009), with a chapter on “Accountable Executive Power” (chapter 9).
Project Discussion

The criticism that the European Union presents a “democratic deficit” is notorious; some authors consider the core feature of this deficit to be the lack of accountability (Follesdal and Hix 2006; Magnette 2003; Papadopoulos 2005). This interdisciplinary project (law, political science and public administration) rightfully disentangles the deficit depending on the various loci of power of the EU complex decisional system and according to different perspectives on accountability, leading “from assertions to assessments” on the subject (Bovens et al. 2010d: 174). In fact, Mark Bovens – one of the major theorists of accountability nowadays158 – has carefully delineated in several of his works159 the various facets of the concrete social relations established between “an actor and a forum in which the actor has the obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgment, and the actor may face consequences” (Bovens et al. 2010c: 35; see pp. 35-56 on dimensions and approaches of accountability). This definition of accountability goes far beyond the deontological dimension of the concept and its often ritualistic incantation as an elusive “virtue” or an “icon” of good governance.

In their introductory chapter to Bovens et al. (2010), the volume editors (Mark Bovens, Deirdre Curtin, and Paul’t Hart) give some telling examples of the policy influence of the European Union, mentioning the questions with regard to accountability that such a shift of the locus of governance implies. If the Commission is the widest-known example of a European influential decisional body, the authors note the role of “backstagers”, such as the (233 in 2010!) comitology committees (composed of national experts and in charge of the implementation of European legislation). They also note the role of “outposts”, such as the European agencies, which have in the EU “perhaps less conspicuous but no less significant roles to play in shaping and implementing policies and decisions that bind the governments, businesses, and private citizens of its member states” (Bovens et al. 2010a: 4). In reviewing the case of the comitology committees in charge of the implementation of EU policies, it is evident that the degree of public transparency of their operation – a precondition for accountability – is rather low. A study of all the committee documents available on the Internet in 2005 (Brandsma et al. 2008) concluded that the committee system could be much more transparent. To be sure, some committees are performing much better in terms of transparency than others. Nevertheless, it is disturbing to read that committee membership lists do not contain information about the identity of participants other than the number of representatives per country, that summary records contain only very brief information about committee discussions, and that if nearly all votes are registered, not more than 5.5 per cent of the draft measures decided are publicly available, which prevents citizens and interested parties from holding committees to account (Brandsma et al. 2008: 836).160

The question of EU legitimacy is posed from the outset (Bovens et al. 2010b: 11-12). The authors first point out the limitations of the “intergovernmentalist” view, most prominent among international relations and public international law scholars. According to these scholars, the EU is nothing more than a creature of its member states, so its legitimacy derives from the democratic character of national decision-making systems. They argue that such an indirect legitimacy is insufficient, because the EU has become an autonomous political force in its own right. The authors further distinguish between the formal-legal legitimacy of the EU, which is undisputed to the extent that treaty reform follows proper procedures of authorisation, and “social” legitimacy, which refers to the loyalty of those bound by a structure of authority. Regardless of any normative considerations, it is argued that the latter is insufficient in the EU, and the expectation that “output” legitimacy based on the superior problem-solving capacity (according to the functionalist thesis on European integration) of a supranational system would make up for its limited, direct democratic (“input”) legitimacy has proven incorrect. The “permissive consensus” that seemed to be a characteristic of the first decades of the European project has now faded out (see Hooghe and Marks 2009). In addition, even if treaty making enjoys legitimacy of an intergovernmental nature, the same cannot be said about day-to-day complex tasks.

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158 For Bovens’ conceptual and typological work on accountability among the material sent from this project, see Bovens (2007 and 2007a) and Bovens et al. (2008).

159 I should mention that two theoretical contributions by Bovens – one of them is Bovens (2007) – were published in journal special issues that I co-edited.

160 Regarding the transparency of Council procedures, Curtin (2007) notes that it is now higher, but, despite a pro-transparency rhetoric, it does not really empower the “public”, as those who use the new access provisions are professionals with a level of expertise above the average. In this case, production of information does not guarantee its reception, and this is probably a more general rule. The Council is also more transparent in its accomplishment of legislative than of executive tasks.
procedures of European policymaking that correspond to the pattern of multilevel governance, where the procedural legitimacy of often informally negotiated bargains is shakier.

To disaggregate the discussion on EU accountability, the latter is evaluated with regard to distinct European institutions, each with its own accountability “regime”: two highly visible bodies, the Commission and the Council, and two kinds of less visible bodies, EU agencies and comitology committees.161 I discuss more briefly the first empirical chapter by Wille (2010), which studies the accountability of the Commission in a diachronic perspective, because this part of the research was not funded by the “Shifts in Governance” program. An important finding is that, following developments since the 1990s, the Commission now faces an accountability paradox. On the one hand, it has become increasingly accountable to the European Parliament. This can be considered a relative yet significant democratisation and “parliamentarisation” of the EU system of governance, which makes it increasingly resemble national democratic parliamentary systems. However, this “internal” accountability between EU institutions has not been followed by more public accountability. Although transparency is lauded by European institutions, stronger formal transparency requirements regarding the operation of the Commission remain to some extent on paper. In reality, transparency is not the “holistic medicine” (Curtin 2007) it is deemed to be, and the public continues to view the Commission as a remote and unaccountable body in spite of expectations that more transparency would facilitate people’s identification with the Union institutions and would thus increase their legitimacy. The feeling of remoteness finds its roots in the cumulated impact of the weakness of two decisive elements in the delegation and accountability chain, one formal and one practical. The following analysis draws from Wille’s chapter and seeks to elaborate on it, because this is the core of the accountability problems of the EU governance system.

The formal weakness in the accountability chain lies in the fact that the European Parliament cannot dismiss the Commission (although it can pressure the Commission to resign, as it did with the Santer Commission in 1999 following serious accusations of mismanagement and corruption). Hence, there is no formal possibility to “throw the rascals out” as a sanction mechanism. The practical weakness lies in the tenuous links between the European Parliament and the European electorate. There is a representation problem, which is due not to a lack of formal accountability of the EP to voters but rather to deficiencies in the effective operation of account-ability. European elections are still considered a “second-order” national contest (Reif and Schmitt 1980), in which national electorates sanction national governments for their general conduct (and not particularly for their positions at European level) – such as in “midterm” domestic (local or regional) elections. Hence, in reality, European voters do not deliver ex ante mandates to MEPs to deal with European matters, nor do they evaluate ex post (through retrospective voting) their conduct. It is appalling that this situation of a “politics deficit”162 has not changed, in spite of the dramatic increase of decisional and control powers of the EP that have taken place since the concept of “second-order” for EP elections was forged about thirty years ago, when the EP was directly elected for the first time.

The representation problem is aptly illustrated by the fact that, although EP’s powers have steadily increased, turnout in European elections has steadily decreased, reaching a minimum record of 20 per cent in Slovakia in the 2009 European election! The problem stems from the fact that there is no European public sphere and no party competition on the basis of European-wide policy platforms (Bovens et al. 2010: 191). It is a matter of controversy if at the origin this is a “demand” problem (i.e., no European “demos” exists to ask for European-wide policy solutions by real European parties) or if it is “supply”-driven (i.e., the lack of European-wide platforms on policy issues that impedes the formation of a common public sphere). In any case, the question remains if the EP enjoys the necessary public legitimacy to act as an accountability “forum” with respect to the Commission. On the other hand, given the lack of public interest in the EP, in reality this question is not posed. Another problem, then, is that, although the EP increasingly acts as an accountability forum, this role is hardly noticed by the European public. There is here to some extent a parallel with what happens in the accountability relationship between national executives operating at EU level and national parliaments, which is also strengthened in a couple of EU member states at the expense of the accountability relationship between national parliaments and voters.

161 For further selection criteria, see Bovens et al. (2010c: 58).

162 There is vast literature on this aspect; for some references, see from this project material (but in fact an introduction to a report for the “Connex” EU “Network of Excellence”) Curtin and Wille (2008: 4-7).
Parliamentary influence is usually exercised through informal negotiations with the government on elaborating its positions to be defended in Brussels (Auel 2007). Therefore, a trade-off appears: governments become more accountable to parliaments, but MPs are not really accountable to voters regarding the not very visible influence they exert on EU matters (more successfully than in the past). This double weakness of links in the accountability chain is dangerous if one considers that at EU level develops an order characterised by expanded executive power and by increased complexity (including “satellite” bodies such as the agencies described below as well as a multitude of committees). Such an order is layered around existing national orders that are often subject to similar tendencies, so that one may aptly speak of an integrated political and administrative space (Curtin 2007a). Multilevel expansion of executive power around both Commission and Council makes accountability a necessary but also difficult task given the compound and composite nature of this power system (Curtin 2009).

The “agencification” process at the European level is part of a broader trend of transnational diffusion of independent agencies as regulatory bodies (Gilardi 2008). In the complex EU decision-making system, is not easy to say who the “principals” of these agencies are; nevertheless, the fact remains that the Commission, the Council and member states have now delegated a whole range of executive powers to agencies meant to operate at arm’s length from political control. Such agencies have now been set up in a multitude of important – and sometimes politically salient – fields, such as medicines, food safety, chemicals, border control, police cooperation, telecommunications, energy or disease prevention. At present, more than thirty agencies exist, and more than half of them were created in the past decade (Busuioc 2010a: 87). Agencies are deemed to provide value added in terms of efficient and legitimate policymaking. First, they are staffed with personnel endowed with a high level of expertise in the field to be regulated, and, second, their independence should immunise them from political pressure likely to lead to the satisfaction of narrow constituency interests, or to short-term policy choices conditioned by the electoral cycle (Majone 1997). On the other hand, agencies have real power, and their recommendations or decisions can have an impact (one should add a “soft” or a “hard” one) on individuals, stake-holders in the regulated sector, and state policies. This obviously raises the issue of their accountability for their behaviour (Busuioc 2010a: 88); particularly for bodies designed as independent, accountability to “principals” or to their representatives is a sort of double-edged sword (March and Olsen 1995), for it may undermine the benefits expected from autonomy. There is a tension between agency autonomy and control (Busuioc 2007: 604-608), but as accountability is a form of ex post control, it should in principle not encroach with agency independence. Is the dilemma of accountable independence just a “myth”, as suggested by Busuioc (2007: 614)? This doesn’t sound fully convincing, because there are good reasons to believe that the fear of ex post control (a “Damocles’ Sword”, Busuioc 2010: 87) may reduce the room to manoeuvre even for actors who supposedly enjoy independence and as such are not subject to ex ante stringent directions or to the ongoing direct interference by the “principal”.

The study of EU agencies concentrates on their internal managerial accountability to management boards as well as on their political accountability to the European Parliament and the Council. The case of EU agencies demonstrates the inadequacy of the classic “principal-agent” model (because of insufficient analytical complexity) that is usually employed for the study of the delegation of tasks to this kind of body. Powers to agencies are delegated from multiple sources, and multiple actors are involved in their setup; the tasks delegated to them may be those of the EU member states, not of those actors performing the delegation (Curtin 2005: 89-97; Curtin 2007: 528-529). The study is based on a selection of five agencies, which count among the most powerful at European level, and which display variation regarding their formal accountability regime. Again, findings for this study draw on the analysis of documents and on interview material from 63 senior agency officials and members of the three kinds of forums to which agencies have to give account (i.e., their management board, the European Parliament, and Council structures) (Busuioc 2010a: 90-91).

It should first be noted that agency boards tend to be very large – comprising a representative from each member state, as well as (depending on agency) representatives from the Commission, the EP and stakeholders – and this impedes their operation as accountability forums. Given this...
composition, boards should be seen not as forums of managerial accountability but rather as a lower tier of political accountability (Busuioc 2010a: 91). It is discussed first whether information provision by agencies to boards – a necessary condition for accountability – is sufficient. In fact it is; however, the boards have problems in processing this information, as a cumulative effect of lack of time and lack of competence of board members amplifies problems of informational asymmetry between agency staff and board. Furthermore, the next phase of interactions around accountability, the debate on the provided information, is not satisfactory, usually because boards are too big and even plethoric – as in the European Police College CEPOL, which has a staff of twenty-one, and a board of twenty-seven (Busuioc 2010a: 95)! This is probably one reason that several board members attend meetings passively but do not participate actively.

To worsen things, boards tend to focus on micro-management at the prejudice of strategic debates, and board members often narrowly concentrate on national interests instead of evaluating the overall agency performance. This problem also has structural roots: board members steer and monitor a European agency that may find itself in competition with its national counterparts. Hence, it comes as no surprise that administrators of European agencies feel that “they don’t want us to get better” (Busuioc 2010a: 97). What is at stake here is actually the independence not of the agency but of the forum to which it must give account. Regarding the sanctions available to boards, the main formal direct sanction is the possibility that boards (with variations) dismiss the agency director. However, the use of such a sanction is considered so delicate that sanctions disciplining for agency operation are more indirect, which means a likelier risk is that the budget approval will be delayed by the board.

Regarding the political accountability of agencies to the European Parliament, the formal agencies’ obligations to account and the EP’s powers to sanction depend on the agency, with more recent agencies being subject to more intensive parliamentary scrutiny, as a by-product of the overall increase of EP’s control powers (for a more detailed report on that, see Busuioc 2010a: 99-100). The monitoring of agencies by the EP is conducted through specialised committees. Reporting and hearings should help to evaluate agency performance, but it is hard to assess whether agency reports are read or what kind of impact they have, and the degree of interest expressed by the committees in charge is variable. However, this interest has increased across time, and interestingly, agencies often lobby proactively to gain parliamentary interest. This finding shows that accountability relations between an actor and a forum should not be seen as merely adversarial and constraining for the actor who has to account, because a benevolent attitude from the forum if it behaves as an ally is a resource (and even cases of mismanagement may go unnoticed because of collusion between the two accountability partners). Here the proactive attitude on behalf of agency senior staff is probably a strategy to generate trust in order to safeguard independence, or a strategy used because having the support of the “parent” parliamentary committee is an asset in the competition for resources between agencies (Busuioc 2010a: 103-104). Unsurprisingly, debates on agencies in the EP tend to be restricted to highly salient and mediatised issues, which are not necessarily the most important (although it is hard to reach a commonly agreed definition of issue importance). Finally, what about possible sanctions from the EP? If the specialised committees opt for denying the endorsement of an agency annual report or work programme, there is an ingenuous mechanism according to which the Committee of budgets will refuse to release 10 per cent of the agency budget. In addition, the EP can terminate or rewrite the mandate of the agencies that are accountable to it. Whether such sanctions are effective is hard to say; they have never been applied so far, and there is no evidence regarding the extent to which agencies operate under their shadow.

Two of the agencies considered in the project, Europol and Eurojust, are accountable to the Council of Ministers.165 Both agencies must submit reports to the Council and are subject to periodic evaluations. However, on several points, there is no unity of doctrine, and accountability practices before the Council are fluid (Busuioc 2010a: 109). Further, the Council has not made use of its (variable depending on the agency) sanctioning powers. We are in presence of ad hoc and “patchy” procedures. This is aggravated by the fact that there is hardly any communication between the Council and member states in agency boards, which – as we have seen – may not be very supportive of agencies, although not for good reasons.166

165 The accountability of Eurojust is also discussed from a legal perspective in the next project (Zwiers forthcoming: 258-259).
166 Busuioc’s (2010: 133 ff.) thesis also includes a scrutiny of agencies’ financial and judicial accountability. The judgment on financial accountability is less critical, and in that case, forums like auditing bodies do not display weaknesses regarding monitoring performance or expertise. In addition, they offer
The study concludes that, although there has been an expansion of agencies’ accountability obligations, the existing accountability regimes remain imperfect. Informal procedures such as hearings tend to develop, but on the other hand, not all formal accountability mechanisms are exploited. Whether formal sanctions are a credible or a toothless deterrent is unclear. Often, the problem lies with the forum: the quality of its input to the accountability process is substandard (Busuioc 2010a: 113). This is an interesting point: in the project on In the Web and on the Ground, I found that “shirking” can be also part of account-giving. Here, the weakness of accountability is due to a different factor: “principals” may have good reasons to trust – according to the “fiduciary” principle – agencies, but informational asymmetry prevents them from verifying whether their trust should be renewed. It is no accident that the most efficient accountability forums are those such as courts or auditing institutions that, in a sense, make of the exercise of accountability their profession. If we have a “bird’s eye view” (Busuioc 2010: 214), the agency accountability regime looks composite. Its deficits are not of a quantitative nature; agencies do not operate in an accountability vacuum (rather, it is the contrary). The menu of accountability mechanisms is large, and agencies are subject to a multitude of account-giving obligations to a broad variety of forums. Although the system’s complexity is inescapable, its setup is not optimal; there are some problems in the interplay between mechanisms. Additionally, there are sometimes conflicting expectations between forums, which causes a “multiple accountabilities disorder” as well as prejudice to agency operation (the disorder’s acronym is “MAD”...). For example, auditing bodies require that measures be implemented that are strongly opposed by management boards (Busuioc 2010: 160). It seems that accountability mechanisms lack transparency themselves, being a black box to outsiders. Public accountability is not visible and is often not structured very clearly (Curtin 2007: 540). Busuioc also points out problems of mechanisms operating better on paper than in practice: some forums underuse their competencies, and maybe some others misuse them. To me, the deficiencies of political accountability mechanisms are particularly problematic (given their composition, management boards should be considered an instance of political representation too), and I don’t think that well-developed financial or legal accountability mechanisms can fix this problem, as they have different functions. Finally, the public sphere seems to be again the great absent in the accountability regime, although one cannot determine this because of the conceptual lenses of the study, which privilege inter-institutional accountability regimes. For example, it is often argued that accountability forums react according to the “whistle blowing” principle, but one does not know what kind of actors – organised stakeholder groups, the media, etc. – perform this function effectively. Similarly, the next study (van de Steeg 2010: 145) suggests that de facto (effective as opposed to sheer formal) accountability depends on the social pressure generated by public attention, but she does not elaborate on that relationship in her chapter. This more sociological approach seems to go beyond the aims of a project on accountability that concentrates on formally constituted accountability relations. The study of the European Council (van de Steeg 2010) scrutinises the relationship between its Presidency and the European Parliament, as well as between its members representing national governments and their national parliaments, using for that the Dutch case. Two kinds of issues are scrutinised: accountability about Treaty reform, and about the management of severe crises. Composed by the heads of government of the member states, the Council is the EU’s main political institution and

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167 Interestingly, imperfections are related not only to insufficient accountability but also to accountability to forums that are considered to lack the legitimacy to act as such. Busuioc (2007: 615) cites the case of the Commission interfering with the operation of agencies that have been granted autonomy by the European Parliament or the Council.

168 I would be inclined to think that the case of EU agency accountability is a nice illustration of the problems of accountability in multilevel governance, as I formulated them in more abstract form (Papadopoulos 2010a: 1040–1042).

169 In another work, van de Steeg (2006) analysed empirically the characteristics of the public sphere at European level. Van de Steeg (2010) focuses on theoretical approaches to the European public sphere, based on a secondary analysis of operationalisations in the relevant literature. Although it was included in the project material, van de Steeg (2010a) is rather a subproduct of another project to which she participated.

170 See also on the same subject Van de Steeg (2007). The next project also briefly discusses the accountability of the Council (Zwijers forthcoming: 152–153).
functions “as the principal agenda-setter, the ultimate arbiter in decision-making, and the motor behind European integration” (van de Steeg 2010: 119). As such, and like the Commission as a collective European organ, the Council might be expected to be accountable to the European Parliament. However, although the Council performs executive tasks with the help of its own administration and national civil servants and is assisted by a conglomeration of committees, it is not the EU’s government.\footnote{To some extent, being in several cases co-legislator with the EP, the Council can also be considered a sort of functional equivalent to State Chambers in bicameral federalist systems, with the particularity of its more extensive powers that render the EU sui generis form of “bicameralism” asymmetric in its favour. A body that has incrementally been endowed with new executive tasks is the Council’s Secretariat General (Curtin 2009a), for which they should be called to account. Finally, unlike in national parliamentary systems, the powers of the Council do not derive from any delegation by the EP. Hence, it is not surprising that – compared to the formal accountability arrangement between Dutch national government and parliament – the formal arrangement between the European Council and the EP is much weaker. After the semiannual summit of chiefs of government, the Presidency of the Council regularly appears in front of the EP to inform it on matters discussed, but formally, nothing is foreseen beyond that. However, in some of the scrutinised cases, debates have taken place between the EP and the Council Presidency. It seems there was a turning point around the end of the 1990s: Presidencies started behaving as though they had to be accountable to the EP, establishing thus a habit (a sort of self-binding “soft” norm) that had to be followed at the risk of loss of reputation. In spite of weak \textit{de jure} accountability, \textit{de facto} accountability is becoming regular practice. On the other hand, being dependent on the willingness of the most powerful partner (the Presidency), this practice is too weakly institutionalised to not be fragile. Delegations of national governments present at Council meetings are accountable to national parliaments for their positions.\footnote{This kind of accountability is complicated with qualified majority vote in the Council, which no longer allows for national vetoes.} According to the relevant literature, there is broad variation in the effective accountability of national governments to their parliaments for their European role. An important source of variation is the nature of legislative-executive relations, which affects the extent to which parliaments are able to “fight back” (Raunio and Hix 2000) against the “deparliamentarisation” caused by European integration.\footnote{One of the reasons national governments are reinforced \textit{vis-à-vis} national parliaments with the internationalisation of politics is that they are the sole domestic actors present at the domestic and the international level. This endows them with additional strategic resources, most notably an information surplus that allows them to play a “two-level” game: see note 48.} \textit{“Westminster”} type systems are more inimical to accountability; because of the strong party discipline in the government camp, the control function is confined to opposition parties, whose demands for accountability can be ignored (even if they impose as a sanction a vote of no-confidence, the government knows that they do not have the necessary majority to win). This kind of accountability is studied here in the Dutch case, considered to be a “most-likely crucial” one (van de Steeg 2010: 123), because the Dutch Parliament is among the formally better equipped to influence governmental policy in European decision making.

Although one may well understand the selection of the Dutch case for practical reasons, this is probably not the best choice regarding the contribution of findings to theoretical improvement and refinement. The findings here are confirmatory and therefore unsurprising: the Dutch parliament lives up to the expectations regarding its capacity to act as an effective accountability forum. If the three sequences of the accountability relation – information provision, debate with the forum, judgment by the forum – are considered, they are all present (the two latter phases with some qualifications). But what should we conclude from that? We seem to learn from the Dutch study that formal resources for accountability are not a sufficient condition for effective control, because additional conditions have to be met to render sanctions from the forum plausible (weak party discipline). The study of the EP also seems to show that formal equipment is not a necessary condition, because accountability to the forum can be generated by other means. Hence, even if in the specific Dutch case\footnote{In the initial project, it was scheduled to consider Ireland, Germany and the United Kingdom too. It was also planned to do media content analysis, secondary analysis of Eurobarometer and polling data, etc. There is no explanation in the final report why this has not been possible.} \textit{de jure} and \textit{de facto} accountability coincide (van de Steeg 2010: 135), formal accountability seems to be neither a sufficient nor a necessary condition for effective
accountability. This finding is a bit disappointing in terms of causal explanation unless alternative causal paths are suggested.

More interesting is the fact that the Dutch government has only exceptionally been held accountable domestically under its “European hat” (i.e., as a member of a European collective body). As this does not seem to preoccupy the Dutch parliament, the author suggests that the EP should fill that void with respect to the Council as a whole (van de Steeg 2010: 136-138). It is here that the analysis of the Dutch case is crucial: if even for a well-equipped parliament, just holding the national government accountable “is difficult as it is” (van de Steeg 2010: 137), then one can see good reasons to shift the forum to the superior supranational level regarding the accountability of the Council as a collective body. In the EU institutional system, there should be some sort of division of labour regarding accountability between national parliaments and the EP: the former should hold their individual governments accountable for their national responsibilities in European decision making, and the latter the European Council for its collective responsibility.

Ideally then, better accountability would require a stronger “parliamentarisation” of the EU system both at the supranational and at the national level (Bovens et al. 2010d: 194-195). National parliaments should align their accountability practice (through mutual learning mechanisms?) to those that have successfully “fought back”, and the EP should come closer to the operation of parliaments in classic parliamentary systems. This seems to be “the constellation towards which we are heading in due course” (van de Steeg 2010: 144). The author considers the future of the Council’s accountability to the EP promising: the new European Council President has to regularly interact with the EP, making of these interactions a “repeated game” that will induce him to be more proactive regarding accountability. In other words, and as it has been suggested by Luhmann (2000), the “Gesetz des Wiedersehens” produces disciplining effects regarding the willingness to display cooperative behaviour to avoid loss of trust and reputation (only these informal sanctions are available here to the forum). With the Lisbon Treaty, the role of national parliaments as accountability forums might be boosted too, this time with respect to the European Commission. The Treaty foresees an “early-warning mechanism” that allows each national parliament to indicate when the subsidiarity principle is, according to it, in danger of being violated by the EU. Beyond one-third (or one-quarter in the area of “justice and internal affairs”) of negative opinions on the part of national parliaments, the Commission must reconsider its proposal. This mechanism also includes the possibility for national parliaments to turn to the European Court of Justice – yet another accountability forum – for violations of the subsidiarity principle. Experts doubt, however, that this mechanism will produce any substantial changes, most notably because it is unlikely that a sufficient number of national parliaments will agree on a violation of subsidiarity by a single legislative proposal (Raunio 2009: 325).

The comitology study (Brandsma 2010a) focuses on the hierarchical accountability of national public servants attending committee meetings to their superiors “at home”, in Denmark and the Netherlands. These “comitology” meetings serve, at the end of the policy process, to discuss and vote on measures drafted by the Commission to implement EU legislation decided by the Council (and, under the co-decision regime, also by the European Parliament). Should the proposed measure not be approved by a committee, it would be referred to the Council of Ministers. The comitology committees were invented in the early 1960s by member states to ensure that the Commission would not enjoy too much discretion in policy implementation, a sequence that matters indeed in the policymaking process. Such measures may have important European-wide implications on social life; therefore, broad constituencies may be, sometimes profoundly, affected. Comitology committees are an important governance tool for the EU multilevel system; nearly 50 per cent of all European acts are handled by them, and they release over 2,000 implementation measures per year (Brandsma 2010: 17 and 49). Therefore, the issue of the accountability of those deciding about these measures should not be overlooked, and for that, both the EU and the national level should be considered; multilevel

175 See also on the same subject Brandsma (2010b). This is probably the subproject in which there has been the most variation between the initial research design announced in the proposal and the final study. Initially, this subproject intended to study expertise in the EU; in the end, it had to concentrate on a substantial subpart of it.

176 For a descriptive analysis of how the practice of committee work varies in spite of increasing codification, see Alfé et al. (2009).

177 See Brandsma and Hansen (2010) for a thorough study of the position of the Commission in comitology committees: its role oscillates between simple mediation and a more activist status of policy entrepreneur. Again, the “principal-agent” model is unsatisfactory for the study of committees’ accountability. It is hard to say whose “agents” are committees, as they have developed a role on their own (Curtin 2007: 531).
governance tools should be subject to multilevel accountability procedures (Papadopoulos 2010a).

Interestingly, although the participants in these committees (chaired by a Commission official) are expected to represent and defend national interests, they do not receive instructions from "home", and deliberate with their colleagues to find common solutions. Thus, in practice, they work somewhat detached from their national ties, and over time, they internalise common European norms even though they continue to consider themselves as national representatives. According to several studies, their interactions in committee work approximate more a problem-solving and deliberative model than a model of fierce bargaining between competing national interests (see Brandsma 2010a: 152-153). Brandsma refers in his dissertation to Edmund Burke’s conception of representation, but it is worth citing here Burke’s classic argument about parliamentary representation in his 1774 speech to the electors of Bristol, because it clearly applies to representation in governance networks as well (Mayntz 1999):

“Parliament is not a congress of ambassadors from different and hostile interests; which interests each must maintain, as an agent and advocate, against other agents and advocates; but parliament is a deliberative assembly of one nation, with one interest, that of the whole; where, not local purposes, not local prejudices, ought to guide, but the general good, resulting from the general reason of the whole. You choose a member indeed; but when you have chosen him, he is not member of Bristol, but he is a member of parliament. If the local constituent should have an interest, or should form an hasty opinion, evidently opposite to the real good of the rest of the community, the member for that place ought to be as far, as any other, from any endeavour to give it effect” (Burke 1990: original emphasis).

Ex ante discretion of representatives (lack of binding instructions) does not mean lack of ex post accountability. Similar to the individual vertical accountability of MPs to their voters, the individual hierarchical accountability of committee members to their national superiors matters. Nevertheless, the literature has only focused on the collective accountability of committees to the European Parliament, with the latter feeling uneasy because it considers itself handicapped as a forum in its task of holding committees to account (Brandsma 2010a: 155). Given the tension between the European citizens who can be considered the ultimate principals.

Accountability to the EP should not be viewed in "principal-agent" terms either: the EP is not a direct "principal" (Curtin 2007: 531); rather, it is the institution representing the European citizens who can be considered the ultimate principals.

If we take again the three sequences of the accountability relation, the results look mixed. Let us start this time with the last (the sanctioning) phase: the study showed that formal negative sanctions are usually avoided because of the high costs they may entail (for example, reallocating a committee member to new tasks requires finding an alternate that possesses the relevant expertise for the previous tasks). Therefore, informal and more subtle positive sanctions are preferred, such as (symbolic but highly valued) salary bonuses or support for career promotion. Now, all of this implies as a necessary condition that the superior be well-informed about the way national representatives do their job. Superiors do estimate themselves sufficiently informed; however, this may be due to a social desirability bias: few superiors would be eager to admit without fearing the loss of credibility that they are not well informed. In fact, the survey also showed that debates between national delegates and their superiors at home are not very intense, that a debate does not make sense if the superior is not well informed, and that issues discussed in comitology committees are often dealt with as “business as usual” and overshadowed by more salient issues. This occurs even though such issues sometimes deserve more careful treatment because of the stakes involved, and because they may be politicised in the future. Brandsma (2010a: 166-169) ingeniously considers the various possible combinations of a low or high supply of information, debates, and sanctions in the accountability relation, concluding that in more than two-thirds of the cases, although the sanctioning capacity of superiors is theoretically high, relatively little information is
transferred, and relatively few debates take place. Brandsma (2010b) refers to this as an "uncomfortable silence" (with respect to accountability). The problem, therefore, does not lie in the formal design of the accountability regime but rather in the practice of ex post control. Hierarchical superiors at "home" are hardly interested in committee discussions in Brussels; hence, the first element in the accountability chain is already broken, not to mention the parts of the chain involving national ministers or members of parliaments. It is therefore not an exaggeration to say that if accountability happens, it is by accident (Brandsma 2010a: 171), and the accountability links are probably even more tenuous in bureaucracies with a lower degree of professionalism (Brandsma 2010: 184). Although here, too, case selection could be more representative of European diversity, it appears that even most likely candidates for optimal accountability conditions (Brandsma 2010: 92) do not live up to expectations.

If these mitigated results about individual accountability at national level are combined with those on the deficiencies of collective accountability of committees to the European Parliament (that have been fixed only partially with the Lisbon Treaty), then the overall picture of "comitology" accountability is rather gloomy. Interestingly, as with the accountability of EU agencies, the deficit of individual accountability of committee members is not due to a lack of information supply by "agents" (often suspected in theory to "shirk") but rather is due to a lack of information demand by "principals". The rather low accountability of agencies as collectives and of committee members as individuals is due to various reasons, but it can be contrasted with the higher, and increasing, level of accountability of institutions like the European Council or the Commission, formally in charge of "high politics" issues. This shows the extent to which the public visibility of governance processes is a necessary condition for effective accountability and the extent to which the lack thereof may lead to a neglect of the public importance of issues sometimes unduly considered trivial ("low politics") that are addressed as such in less-known bodies such as agencies and committees. Bovens et al. (2010d: 190) compare such a denial of reality to "the ostrich with its head in the sand, choosing to ignore the realities around it that it does not wish to see or engage with". On the other hand, as long as public visibility of agency or committee operation is missing, lack of accountability cannot become a politicised issue itself; therefore, practical (or "social" in the terminology of the book editors) legitimacy problems can be avoided even if one finds that accountability deficits are problematic on normative grounds.

This project elegantly demonstrates that in a complex governance system like that of the EU, the quest for public accountability is simultaneously necessary and hard to achieve. On the one hand, the authors emphasise that "complexity breeds opaque- ness, indeterminacy, and creates incentives for executive improvisation, negotiation, and entrepreneurship" (Bovens et al 2010d: 196). Hence, effective control procedures are a basic requirement, at the risk that they are themselves complex, informal, and intransparent. Bovens et al (2010a: 192) correctly suggest that "it takes a network to catch a network, but from an accountability perspective the simultaneous dispersal of both actors and forums into networks creates a whole set of new challenges". Overall, the project comes to nuanced conclusions about the accountability of EU institutions. The picture is composite, it differs according to the institution considered, and it varies if one focuses on formal accountability relations ("on paper"), or on effective accountability relations "in the real world". The picture is also influenced both by one's particular perspective on the characteristics of the European political system and by the privileged dimension of accountability (Bovens et al. 2010 d). Bovens (2007) distinguishes between a democratic, a constitutional, and a learning perspective on accountability. The disturbing issue is that in the EU, there are several new forms of accountability that have now been developed that could enhance policy learning and provide formal and informal checks to rule-making bodies, but that are no alternative to the still-deficient traditional forms of popular control (Bovens

181 The survey showed that the committee participants feel that in 43 per cent of the cases, their direct superiors are not very interested in committee work. These figures rise to 84 per cent and 84 per cent respectively for the responsible minister and the government as a whole (Brandsma 2010: 197).

182 See the final prospective section in Brandsma (2010a: 171-172). For a preliminary presentation of the overall accountability framework regarding comitology, see Brandsma (2007).

183 Similar deficits can be found in domestic policies regarding the lack of parliament interest in monitoring the administration.

184 Perhaps with some reservation for the rationale of case selection in national studies, although I fully agree that selection for such data-intensive studies must cope with serious practical constraints.


186 Bovens et al. (2008) apply this distinction to agency accountability to boards in the Netherlands.
Hence, as already suggested, they cannot be considered their functional equivalents. The accountability problem is an important one because, due to the compound and accumulated structure of EU multilevel governance, it is not confined to EU institutions but rather affects national ones too. It is suggested in yet another work involving a project member (Curtin and Egeberg 2008) that the EU Commission and EU agencies seek to exert influence on national agencies by forging partnerships with them that bypass national ministries, because they consider them important for the implementation of EU policy. This generates centrifugal trends within national executives, because not only do agencies operate at arm’s length from governments, but they also tend to become “double-hatted” and to develop loyalties with respect to EU institutions, themselves imperfectly (to a varying degree) democratically accountable. In such a case, the negative effects of agencification and Europeanisation on popular control cumulate themselves.

Lessons Learnt: Accountability and Legitimacy Issues Related to Shifts in Governance

This project posits a clear link between the democratic accountability of the European Union and the legitimacy of the integration process. However, it goes far beyond the rhetoric of the “democratic deficit”, because it shows the following:

– Accountability should be scrutinised both at the level of collective decision-making bodies and at the level of the individual participants in these bodies.
– The accountability of various EU decision-making bodies greatly varies depending on their nature (more or less technocratic, more or less representative).
– The real accountability relations of each of these bodies are not always identical to those prescribed on paper in their formal accountability “regime”.
– The assessment of EU accountability depends on the perspective adopted; for example, accountability through a mutual “checks” system between institutions is more developed than democratic accountability.

For a more detailed account, please see the previous section on “project discussion”, as the entire project concentrates on accountability.

The European Prosecutor Service: Towards a Multilevel Criminal Justice System?

Material Used


Project Discussion

Over the last years, the creation of a public prosecutor’s office within the European Union has been the subject of political debate. It is inspired by the view that the EU needs a body that has the express purpose of detecting and prosecuting European offences, especially EU fraud. This debate has led to the establishment of Eurojust. Together with Europol and the Organisation de la Lutte Anti-Fraude as a Commission department with a hybrid, semi-independent status, one could speak according to this project of a de facto emerging European Prosecutorial Service. In addition, Article 86 of the (Lisbon) Treaty on the Functioning of the Union (TFEU) provides that “[i]n order to combat crimes affecting the financial interests of the Union, the Council ... may establish a European Public Prosecutor’s Office from Eurojust”. This can be seen as the culmination of a project initiated by the European Commission in 1995, which has always been a strong supporter of a European prosecutor dedicated to the fight against EU fraud, and which was consistently supported by the European Parliament.

The key objective of the initial proposal was prescriptive: to identify what legal framework must be in existence to implement an effective and constitutionally legitimate European Prosecution Service. The latter should be effective (notwithstanding the large cross-national variation of conceptions of
effectiveness), meaning that the conditions under which a European Prosecution Service can investigate and prosecute a case should be more favourable to combating crime than if the same case were dealt with on a purely national basis. On the other hand, such a body should enjoy “constitutional” legitimacy; it must be guaranteed that public prosecutors can be held publicly accountable for their actions and that these actions conform with basic elements of the rule of law. On this aspect, too, there is much cross-national variation (as regards the degree of independence of equivalent national bodies, etc.), but it is nevertheless argued that there are common standards within the EU with regard to the constitutional position of the public prosecutor (ius commune).

The thesis by M.W. Zwiers (forthcoming) tackles these issues. It offers a genetic perspective by showing how, although in the end of the 1990s the idea of a European Public Prosecutor’s Office (EPPO) could still seem unrealistic, this is no longer true. The author describes in detail the process leading to such a change, and he considers other international guidelines on the status of prosecution services (like the Council of Europe Recommendation of 2000). The core research question of the thesis is how the EPPO could be embedded in the constitutional structure of the European Union and its member states, and how it could be ensured that the office functions in an accountable manner. Although the thesis (unlike the initial proposal) does not intend to focus on the conditions under which the EPPO would be effective, some considerations on effectiveness are present. The EPPO must work with and through its national counterparts, and its capacity to do so will depend on the overall compatibility of the supranational organisation with the national prosecution services. It is also argued that trust on the EPPO, necessary for its effective operation, will be generated more easily if its setup is based on the traditions and solutions found at the national level. Thus, only a limited number of options for the establishment of the EPPO are available, and they are described in the thesis.

The national prosecution services of EU Member States are the products of very diverse histories and historical events, and combine a wide array of perspectives on the position of this kind of service among the other branches of the state. The various “models” of prosecution services are presented in a systematic manner. The author of the thesis uses five criteria, all of which relate to the independence of prosecutors. On this basis, the national prosecution systems are categorised in five models (the choice was made to cover with more or less detailed descriptions all or nearly all EU legal systems). For the political scientist that I am, what is also interesting is the statement that the marks of history are clearly visible in the various prosecution services. Thus, some countries directly inherited the prosecution service of another country, like Belgium and the Netherlands, which were occupied by France and had to adopt the Napoleonic public prosecution service – one can speak here of clear cases of “institutional transfer”. Numerous other countries, such as Spain and Italy, changed their public prosecution service in the wake of dictatorial rule, while most of the Eastern European countries did so after the demise of communism. Hence, one observes both “path dependency” and path-shifting changes that took place in contexts of “critical junctures”.

The other side of the coin is that the EPPO must also be embedded in the wider institutional structure of the European Union. Therefore, for each organisation or institution considered in this thesis, the detailed discussion of its internal structure is followed by a discussion of its interaction with other actors of the EU system. In addition, there is a lengthy description of the complex EU decision-making system. Considering the amount of (potential) power that a prosecution service possesses, its introduction also requires a reflection on the principle of institutional balance and the consequences it might have. For example, it must be clarified if and to which executive actor the EPPO should be linked as well as the way this executive actor itself is positioned. Parallels are drawn here with EU agencies, which are an important component of “multilevel” governance and provide a useful illustration of the way this is organised in practice and in detail. Considering that EU agencies form another useful source of inspiration, this time on acceptable ways to introduce the EPPO in the EU system, there is also a section on them that includes Eurojust.

Further, working together with national counterparts entails the setup of a multilevel structure for the EPPO itself. Zwiers explains first what such a structure consists of in the EU in general, and includes a discussion of its accountability deficits (largely based on Papadopoulos 2007). He also had the ingenious idea to analyse what can be called an existing “proxy” of multilevel networks that would be in charge of the enforcement of criminal law. A rather close parallel to supranational criminal law enforcement is available in the form of direct enforcement of competition law. The system for
that presents a mix of direct participation of national actors and supranational oversight. All of this is organised in the European Competition Network, viewed as a possible parallel to EU multilevel criminal law enforcement. Competition law is the only field of direct EU enforcement: the Commission has investigative competences as well as the power to enforce competition law in court. Although competition law is not formally criminal law, the author considers the difference relative. He therefore engaged in a thorough study of the evolution of European competition policy to draw lessons from it.

I am not familiar with dissertations in the field of law studies. The present work is based primarily on literature review and seems well informed as far as I can judge. Like the project on Compensation for Damage, I found this work exciting for political scientists who, even when they work on institutions, usually fail to consider them in all their aspects as it is done here. I found it difficult to evaluate, however, to what extent the thesis is innovative (and in what respect) in law studies. What struck me is that this is a thesis on the design, and possible problems thereof, of a “virtual” object (i.e., not yet existing). It was inevitable, then, that most of the thesis does not cover – at least directly – the topic of the EPPO. Answers to the initial research question are provided only in chapter 7, the last one of the thesis; the EPPO will probably exhibit a mixture of intergovernmental (Council/Member States) and supranational (European Parliament/Commission) elements. More precisely, it will in all likelihood be a Council-oriented, executive-type, multilevel, and network-like structure. Because the author believes that answering the question posed requires a broad approach, he discussed several issues at length before coming to the point. This is an interesting attempt for “evidence-based” design of a novel institution; only conjectures can be formulated on the EPPO’s status, based on “real world” experiments in the EU system of governance judged as similar. What surprised me somewhat, however, was the length of the developments devoted to these experiments compared with developments on the EPPO itself.

Lessons Learnt: Accountability and Legitimacy Issues Related to Shifts in Governance

This thesis, informed by the kind of research developed in the previous project on accountability in the European Union, also posits that if a European Public Prosecutor’s Office were established, its legitimacy would strongly depend on its accountability. The author warns against different kinds of accountability deficits.

The establishment of the EPPO would constitute yet another substantial transfer of power to the European level, because the power exercised by a prosecution service ranks among the most pervasive powers at the disposal of the state. Hence, the author of the thesis believes that such a body must enjoy a proper democratic legitimisation, and that the prosecutor and the organisation to which he belongs must be subject to effective accountability mechanisms. These mechanisms should clarify whether the prosecutor acts in accordance with the rule of law and must prevent abuse of power. Accountability issues are thus discussed at length. Zwiers uses definitions of accountability by Bovens, sometimes adopts a political science perspective, and warns us against possible ex post political accountability deficits. The latter is considered more important than concerns with the “input” legitimacy that the EPPO might enjoy, while the question of “output” legitimacy generated by effectiveness is not properly tackled.

The question of EPPO’s accountability is first related to that of its independence. The conclusion that the thesis draws deviates from the official proposals considered, which defended a strictly independent status for the EPPO. This deviation rests on various issues, one of which is the idea that a strictly independent EPPO does not seem in accordance with the European ius commune on the constitutional position of prosecution services, as only a small minority of prosecution services has such a status under national law; additionally, other European-level enforcement actors are not independent. As already mentioned, article 86 of the Lisbon Treaty indicates that Eurojust (a Council office) will be upgraded to an EPPO. This means that the EPPO’s position and accountability will be at least somewhat determined by the current design of Eurojust. The EPPO will probably then be introduced as an actor in a more or less subordinate relationship to the Council of Ministers. The accountability of Eurojust is mainly limited to rendering account and providing explanations, as sanctions vis-à-vis Eurojust are nowhere foreseen in the Eurojust Decision. In addition, the lack of accountability of the Council as a collective body is repeatedly described as problematic in the
Moreover, the multilevel nature of the EU system raises important issues in relation to accountability; among others, the problematic accountability of networks should be addressed, and avoiding this issue does not seem possible given the likely network-like structure of the Office. The parallel drawn with the European Competition Network is instructive in that respect. To be sure, this network does not issue binding decisions, but the fact that it does not function transparently is a problem. There is thus a risk of three kinds of accountability deficits: of the future EPPO itself, of its political “principal” and of the networks that it would set up.

Short Synthesis of the Major Research Findings Across Projects

I think it makes sense to pick up for this synthesis three instruments of the EU: the Open method of coordination, agencies and comitology committees. They are expected to improve the performance of the EU governance system by various means, such as mutual learning, expertise and deliberation. Whether this improvement takes place is hard to assess, and even harder to assess is whether any improvement is conducive to more (output) legitimacy on behalf of European citizens, or at least among the interested publics. In any case, such devices do not seem to have been helpful in mitigating the erosion of the "permissive consensus" on European integration.

On the other hand, all these devices – largely based on the role of bureaucrats and experts – are found wanting not only in terms of democratic input but also in terms of ex post public accountability and control. One finds similar devices at national level as well, with committees of experts being admittedly nothing new, but with agencies being now considered the appropriate body (through transnational diffusion) to regulate markets and risks. Additionally, informal and often behind-closed-doors negotiations between interests that “count” (mostly those with the highest “blackmailing” potential with regard to decision making) are inescapable for the implementation of policy. Moreover, more or less informal network forms of cooperation between experts tend to develop across decisional levels (the national and the European level, but also beyond). Even accountability between bureaucrats can be low, as shown by the study on relations between “comitology” committee members in the EU and their national superiors. Furthermore, future bodies such as the European Public Prosecutor’s Office may be plagued by multiple accountability deficits as well.

Would it then be an exaggeration to mention a “technocratic governance complex” with significant deficits in public accountability? If one adds to this the increased involvement in governance of private actors whose own accountability is questionable, the picture is alarming. One might expect, then, that instead of producing more output-legitimacy, the advent of this kind of governance modes would lead to less public legitimacy, due to their procedural defects. However, one must acknowledge that this is not the case, because few accountability “forums” are well informed about such a profound shift in governance. The shift’s lack of public visibility is a source of concern regarding the democratic quality of contemporary governance. It must also be acknowledged that such a lack of visibility prevents a legitimacy crisis for the moment. However, as has been demonstrated in various projects, one should not take the lack of public awareness of shifts for granted. Thus, to avoid legitimacy problems in the future, it is necessary that formally authorised democratically elected bodies adjust to governance shifts and operate as appropriate accountability forums, as the EP and quite a number of national parliaments are now doing with respect to European integration. In addition, they must enjoy sufficient legitimacy to perform such a role, which is not always the case in times of a “representation crisis”.

The same evaluation is made on the accountability of the Commission; see also the previous project.
EUROPEANISATION AND MULTILEVEL GOVERNANCE AS DISCURSIVE PRACTICE
The following projects also deal with Europeanisation and the “multilevel” aspect of cooperative governance. However, they are probably unique among the “Shifts in Governance” projects in reminding us that such shifts are primarily symbolic constructions (Rhodes 2000; Bevir 2004). Symbolic constructions may lead to the formation of new identities and may, or may not, be translated into new institutional and power arrangements. These projects can be considered representative of the “interpretative” turn in governance studies.

The Shift to the Region: Scalar Politics Versus the Circulation of Regional Policy Issues

Material Used

The major outcome of this project is the dissertation by Krisztina Varro. I consulted two other published pieces related to this thesis.


Project Discussion

Varro’s research was motivated by an interest in the phenomenon of “new regionalism”, which entailed an enhanced focus on regions in the 1990s; although the autonomy of national governments had been weakened, specific regional assets had become important in securing competitive advantages in a global economy. In addition, globalisation fostered the reaffirmation of regional identities. In contrast with the “devaluation” of regions in the process of state and national construction, one can speak about their recent resurgence or re-emergence. It is argued in the thesis that “new regionalist” thinking fits the more general neoliberal rationale of policy reform well (Varro 2010: 4), because subnational entities are expected (more now than in the past) to act as autonomous actors. I did not find this argument entirely convincing, because such claims often emanated from the regions themselves and were also animated by a desire for resource redistribution. This is not the primary goal of neoliberal thinking, even though it is correct that “neo-regionalism” has a competitive orientation also. The reality is that the implementation of regionalist reform was hesitant and less far-reaching than originally expected.191 However, “neo-regionalism” reappeared under the face of “city regionalism”:192 most notably in the discourse of European Union institutions, cities are considered the engines of economic growth.

The dissertation studies the English and Hungarian cases. In the initial proposal, it was scheduled to concentrate on North Western Europe, and to include – apart from the United Kingdom – France (an equivalent case of decentralisation) and the Netherlands (a contrasted case of a centralised polity). Varro (2010: 6-7) explains how her work began with a concern about spatial reform in Hungary, whereas the United Kingdom was selected because most research based on a regulationist perspective of the state has been conducted on this country – and also because England is a “Western capitalist state”. These criteria are not entirely satisfactory; among “Western capitalist states” it would have been better to select a less investigated case for the sake of innovative knowledge production. The empirical research relies on the study of secondary literature (the reference list is impressive), press material, policy documents accessible on the internet, parliamentary debates and interviews with some practitioners and academics (considered participating through their discourse in the reform process).

Varro (2010: 104) also explains how she initially relied on the regulationist approach of Marxist inspiration, which views the state as a key mediator and an architect in the reorganisation of capitalist relations. Being of British origin, however, this approach appeared to be of limited use for the understanding of reform in Hungary, a postsocialist

191 This “messiness” is not a sui generis characteristic, but rather common to grandiose reform projects (see, for example, welfare state reform as it is studied by Anton Hemerijk in the Governance as Learning project).

192 This distinction between two stages in neo-regionalist thinking was not apparent in the initial proposal.
economy and, as such, an atypical case for regulationist theory. In particular, political variables neglected in this approach are crucial for the restructuring of the state; more specifically, the latter is accompanied by symbolic struggles and contestation about the meaning of the nation as a spatial community (chapter 2 is devoted to a thorough critical discussion of the regulationist approach). The author’s own “politics of space approach” concentrates on how the understanding of the nation as a spatial community is problematised and redefined in state spatial restructuring processes. The theoretical approach relies on discourse theory (mainly the contributions by Ernesto Laclau and Chantal Mouffe) and reflects the need for more culturally inflected accounts of state spatial restructuring. Discourse theory cannot be applied to all social phenomena; however, it is plausibly suggested that it is particularly suited for the study of identities (Varro 2010: 99). This conceptual orientation was less prominent in the original proposal, where it was nevertheless suggested that policy issues develop their own dynamics and performative power.

The study of the Hungarian case is basically a detailed analysis of the debates around the elaboration of this country’s second National Development Plan. A conclusion invalidating the relevance of regulation theory for that case is that, although “neoliberalisation” was undeniable, it was not accompanied by a strategic reaffirmation of cities and regions. True, the latter was part of the development concept, but no concrete measures were taken to strengthen the position of major urban centres. Furthermore, the development policy – also promoted by the EU – strengthened centralising tendencies. This happened even though municipal governments appeared as the “natural” units of spatial (re-)organisation (Varro 2010: 213), a process of “naturalisation” that is often emphasised by constructivist approaches and serves to depoliticise political choices by making them appear self-evident. By the same token, the “meso-level” of regions was mostly emptied, with the increasingly influential Regional Development Agencies.

The findings from this dissertation research are useful in showing that the empirical validity of one theoretical approach (discourse theory) is higher than the validity of another theoretical approach (regulation theory). They also help us better understand to what extent – and under what limitations – territorial governance is reshaped, particularly in the Hungarian case, which had largely remained terra incognita in studies of multilevel governance.

Unlike other works based on discourse analysis, Varro’s thesis also carefully points out several discrepancies between rhetoric and actual political practice. On the other hand, I am unconvinced of the real value added by the rather heavy (and a bit jargonesque) conceptual apparatus of the “politics of space” approach. In other words, would our understanding of the Hungarian case be weaker if the author had not resorted to this kind of conceptual lens? Or if we consider “how the understanding of the nation as a spatial community” has been reproblematised and how the nation is re-imagined, does this bring significant new elements with respect to our knowledge of the frequently analysed English case? Given that the empirical chapters are not strongly influenced by the conceptual apparatus and look more like classic policy descriptions, I am uncertain.

Another possibly problematic aspect is that the study of texts tends to prevail over the study of actors’ interactions in “organisational fields” (this is frequently the case in empirical applications of discourse theory). Varro shows how discourse is gradually turning into vectors of centrally steered development policies. This kind of analysis allows us to identify possible gaps between rhetoric and state practice. In the United Kingdom, cities and their regions were considered “articles of faith” (Varro 2010: 221) in their role of sources of improvement of governance performance; however, this kind of discourse lacked coherence. Furthermore, claims for modernisation did not translate into a firm governmental commitment to institutionalise city-regions as spaces of state intervention. The concept of city-region was diluted; this can be interpreted as a pragmatic adjustment to the fact that the central state remained powerful.

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In that respect I would be inclined to distinguish, following Dobry’s (2009) preface to a revised edition of his book, two kinds of constructivism seeking to establish how social realities are fashioned: one, more moderate, focusing on how messages circulate between actors, and one with interpretivist epistemological foundations, focusing through closer textual analysis on the interplay at discourse level. The former is exemplified by Checkel’s (2005) process tracing approach.

See also the part on Eastern and Central Europe in the project The Transnational Political Economy...
“structurally inscribed” (namely in different kinds of framings of territorial divisions), but her study of actors’ (often changing) motivations and relations – that could contribute to a better contextualisation of the analysis of controversies at the discourse level – is a bit underdeveloped (apart from the welcome emphasis on gaps between discourse and practice). Varro argues in her methodological part that all social phenomena can be analysed as discourse; however, this is not actually translated into research practice. After all, it is written texts that are the primary object of this study. Finally, it would probably have been useful to aim at a closer and more systematic comparison between the two countries under consideration. I realise that the adopted interpretivist methodological posture raises doubts about the possibility to compare adequately. Nevertheless, I am neither entirely convinced that one should not go beyond the sheer juxtaposition of two extensive case study narratives nor fully convinced of the added value of long historical descriptions, although I fully acknowledge the necessity of a historical contextualisation of discourse.

Lessons Learnt: Accountability and Legitimacy
Issues Related to Shifts in Governance

Although these questions are not addressed in detail, the project results show the following:
− Discourse should be scrutinised carefully, because it counts as a major legitimising device.
− Legitimacy may be undermined when a gap appears between discourse and policy practice.

This research focuses on policy discourse. Discourse is often used as a legitimising device, and Varro (2008: 958ff) is well aware of strategic uses of discourse and the fact that the resonance of “speech acts” mobilises consent, but also of the fact that such a resonance may not occur. More than in the thesis itself, I found these aspects present in Varro (2008), where it is nicely shown how the European Union legitimises itself through “narratives of European space” (most recently through novel narratives developed around the Eastern enlargement) and how Hungary legitimises itself as a EU candidate by emphasising its record as a “good pupil” and by demarcating itself from other candidate states.

Policy practice may also delegitimise discourse when the gap between these two levels is too conspicuous. This project – like a substantial body of research that concentrates on the “ideational” aspects of policy reform – shows the complex relationship between discursive framings and concrete political practice. This is demonstrated in the case of EU interference and its effects on the reorganisation of Hungarian territorial structure. However, the question of legitimacy remains very marginal. This is a bit surprising, because claims regarding the status of different spaces, and how they should be defined and recognised, are intimately linked to legitimacy concerns. For example, what if a type of space is rhetorically recognised and considered legitimate, but policy practice does not follow? Are there any consequences for the legitimacy of those behaving in this manner? Political actors often have to deploy sophisticated strategies to conceal the gap between words and deeds. It would be worth exploring this aspect in depth.

Nation States and Multi-level Governance in the EU: The Environmental Policy Field

Material Used

Birkel, Kathrin (2009). We, Europe and the rest. EU discourse(s) at work in environmental politics. Ph.D. dissertation, Radbout University Nijmegen.

Birkel, Kathrin (under review), “From sovereignty to performance. EU member states, ‘the EU’, and international climate change negotiations”, under review by Journal of European Public Policy.


which is attentive to causation (see note 119), whereas Varro’s work is typical of the latter.

197 See also from the next project Birkel (2009: 19 and 24).
198 As is shown in the project on Governance as Learning, where, for example, the invocation of the European Union agenda contributes to making domestic reform proposals more broadly politically acceptable.
199 This had been theorised in the debate on revisionism within German social democracy at the end of the 19th century.
200 Although I have not been able to verify that this still unpublished piece is forthcoming in JEPP, I assume that it is publishable, because I received it as a PDF file from the journal.
Project Discussion

The project significantly differed from the intentions initially expressed in the research proposal, which were to test competing theories of European integration in the environmental policy field. The initial choice was probably driven by the research interests of the person who might then be hired in the project as a doctoral candidate. Although the research question has completely changed, EU environmental policy (with regard to climate change and “green” biotechnology) continues to be the object of study, with the policy cases being selected because they have to do with “normal everyday” policymaking (as opposed to treaty making) on “salient” issues.

The dissertation by Kathrin Birkel (2009) is the principal outcome of this project. As in the previous project, discourse analysis is used to trace patterns of meaning and identity formation, this time on the basis of approximately fifty interviews with policymakers (Commission officials, members of the European Parliament, and civil servants from five Member States: the United Kingdom, the Netherlands, France, Germany, and Austria) and, in a subsidiary manner, on the basis of the study of written documents. The original assumption is that in European integration studies (EIS) the conventional wisdom sees the European Union as a field of institutional battles. The EU member states, on the one hand, and EU supranational institutions (such as the European Commission or the European Parliament), on the other hand, are deemed to conflict naturally. EU institutions would strive to gain maximum power while member states would try to defend their sovereignty; according to conventional wisdom, exemplified by “principal-agent” approaches on delegation of sovereignty by nation states to EU institutions, this would be tantamount to a sort of zero-sum game. In her dissertation, Birkel tests these assumptions (which may be excessively stylised) against the perceptions of policymakers, seeking to determine whether there is a discrepancy between the interpretations of scientists and the interpretations of those whose actions they analyse. If that were the case, Birkel argues, then analysts would have to adjust their perceptions (which seems a hasty conclusion, because there is no reason why “indigenous” self-interpretations should serve as benchmarks to avoid misperceptions).

In the EU climate policy, the research offers a view that is presented as less “monochromatic” than the conventional one. For instance, some of the member states’ respondents accepted the legal legitimacy of mandate claims by the EU Commission for international negotiations, and not all member states respondents linked mandate claims to illegitimate and malicious attempts by the Commission to expand its powers to the detriment of states. It also happened that a number of member states put aside their own interests for the benefit of general EU prosperity and success on the international level. Also, considering the role of the EU as an international actor appears to be a necessary adaptation of the “multilevel governance” framework, which surprisingly overlooks this level of governance (Birkel and Liefferink 2008). Member states have agreed to institutional changes in the EU that could be viewed as major sovereignty concessions in conventional literature. “EU performance” has come to dominate the discursive field along with floating “signifiers” such as “effectiveness” or “expertise” borrowed from managerial discourse. Statehood has lost much of its former structuring power. The Commission has been able to assume functions that, under other auspices, would have triggered major controversies, and this is possible because “Commission staff are regarded as particularly qualified combatants and not as power-obsessed adversaries” (Birkel 2009: 179). It is argued that the unity of the EU as an “in-group” developed in connection with the “otherness” of the “outside” actor of international negotiations, the United States, especially under the Bush Jr. Administration (Birkel 2009: 180). The question may be raised if EU cohesion is weaker in internal matters, where the “other” is absent. However, in the crucial case of the carbon tax, statehood was only one of the many signifiers structuring the debate, although the tax project was widely seen as the example of how sovereignty concerns prevailed over ecological considerations in the making of EU climate change legislation. Even in that case, a managerial discourse depoliticising the issue became dominant. Rejecting the tax (which did not pass the unanimity requirement) for fear of losing sovereignty was denounced as ideological by respondents. “Cross-identities” and “cross-loyalties” developed, in particular between those that regarded themselves as the EU’s “environmental

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201 One of the points discussed in the thesis is the effects of the emergence in the EU of a system of so-called issue leaders and lead negotiators (Birkel 2009: 64–71), whose institutional affiliation is irrelevant for their selection. This point is also discussed in Birkel (under review).

202 Respondents not only from the Commission but also from member states, and this is considered “one of the most stupefying findings” (Birkel 2009: 193).
In the name of output, the main priority was to create a functioning single market, and the particular interests of the reluctant member states were discredited as irrational and as threatening the whole project. Most states not only tolerated but also actively demanded Commission intervention.

In the case of green biotechnology policy, the Commission gradually ceased to be perceived as a "greenhorn" in matters of biotechnology and biosafety, and started being viewed as a precise source of expertise for the EU as a whole (Birkel 2009: 185). The formation of a distinct EU identity has emerged in opposition to a "threatening" outside, again embodied by the United States. Taken-for-grantedness and naturalisation were the next steps: "unity became something that was self-understood, that came from within, that almost seemed the natural thing to do" (Birkel 2009: 186; original emphasis). Conflict was more acute within the EU, but the dividing line between supporters and sceptics of green biotechnology run through all EU member states and institutions. Overall, signifiers such as statehood and sovereignty have played a marginal role.

Like those of the previous project, the findings of this one shed light on the "immaterial" aspect of European integration, albeit more on actors' perceptions (as they are presented in self-narratives) than on official "sedimented" discourse. Birkel (2009: 194-195) modestly invites us to criticise her work, but I am afraid that my line of criticism will not exactly follow what she has in mind. The question is, again, if the particular theoretical framework used by the author is necessary to draw the (interesting) conclusions she does – namely, to challenge an allegedly "rather black-and-white account of the relations between EU institutions and Member States" (Birkel 2009: 189). I do not contend that such a reductionist account does not exist (the argument is convincingly made by the author in chapter 1 of her thesis). However, I think that it is unnecessary to adopt discourse theory to demonstrate that this is a cliché view, and poststructuralism is not necessary to unveil contradictions in discourse. I would even go so far as to say that an approach of discourse that would not dismiss the search of causal relations (like this one does) would be helpful in showing through what kind of mechanisms and interactions (learning, deliberation, etc.) "meaning making" and "discursive shifts" are concretely produced. This issue does not lie at the core of this research, but is nevertheless important.

### Lessons Learnt: Accountability and Legitimacy Issues Related to Shifts in Governance

Like the previous project, this one also focuses on discourse. It shows how a "managerialist" discourse can provide legitimacy by depoliticising issues,204 but it also shows that the correlative eclipse of a discourse on democratic accountability is likely to erode legitimacy.

This research takes a fresh look at studies on internationalised environmental governance, which largely concentrate on matters related to policy content (for example, the implementation of EU directives by member states). It does not focus directly on legitimacy issues; however, especially in the conclusions, it points out the legitimising properties of a managerial discourse that depoliticises issues. This is accomplished by focusing on the allegedly uncontroversial positive properties of "sound" policy outputs. At the same time, the author is aware that the resonance of this kind of discourse may be confined to a small – and relatively closed – circle of elites. Moreover, the eclipse of "democratic signifiers" in a technocratic European discourse prevents the identification of wider segments with the European integration project and is one of the factors boosting the discursive combination of Euroscepticism and populism. An additional possible limitation of this kind of "output" legitimacy may be the fact that it is issue-contingent. Although ascribing essentialist properties to policy issues would be oversimplifying, the "managerial" frame is more likely to find a positive resonance in cases where "efficiency" is not a matter of controversy than in policies where redistributive issues are more openly at stake (Majone 1994).

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203 Common beliefs shared by actors transcending institutional boundaries are the “glue” of “advocacy coalitions” as described in environmental policy by Sabatier (1998), who does not rely on a post-positivist epistemology. Thus, the question remains whether different ontological foundations necessarily lead to divergent conclusions.

204 Depoliticisation through “managerialist” reform has also been evoked in other projects (mainly those discussing the role of new regulatory agencies in policy making) at the national or European level.
Although few projects are inspired by the “interpretative” turn in the study of governance, it is interesting to note that they not only share commonalities but also display some differences in the way they look at political processes. The two projects draw inspiration from similar paradigms of discourse theory and they have based their own theoretical framework on them. However, although they also both deal with processes of Europeanisation and multilevel governance, they have somewhat diverging looks on them. They study discourses whose contextual conditions of production are different. Varro’s (2010) research is attentive to socio-cultural divides, as they are framed in discursive controversies, as well as to gaps between discourse and policy practice. Birkel (2010) intends to show by contrast that the European Union imaginary – at least that of policymaking elites – is rather unified. She does not really consider the adequacy between discourse and practice, although she is aware that how one defines oneself does not necessarily match with how one acts.205 It is indeed a pity that both projects seem to not sufficiently exploit the potential contributions of their findings to a discussion of questions of legitimacy and accountability related to Europeanisation and multilevel governance.

205 “Having a green identity does not necessarily mean acting green” (Birkel 2009: 197).
GENERAL CONCLUSIONS

Overall Assessment
I conceived this synthesis as a critical discussion of the research results, with the question regarding their contribution to the attainment of the programme goals and (to the extent I was able to evaluate this) regarding their innovative character with respect to existing research. Therefore, my synthesis is not an evaluation of the programme’s number of publications, the “quality” (measured by impact factors, etc.) of publication outlets, the reception of results by the international scientific community (evaluated for instance through bibliometric measures)\textsuperscript{206} and so on.

A few years ago, the midterm evaluation of the programme (section on “Self-evaluation by the programme committee”) concluded, among others, that “much SIG research is theoretically modest and somewhat conservative to the extent that it remains unclear or unspecified how established theories and approaches are challenged by new lines of research” (p. 119). After programme completion, I am inclined to feel much more positive about that and not to share this rather pessimistic conclusion. Although it is hard to make generalisations, it seems to me that the programme has added considerable value to our knowledge of governance (in its broad meaning) and represents a significant breakthrough compared with the bulk of managerial studies on this field. Among major programme assets, I would count the fact that in a “multilevel” perspective, all relevant levels were considered: the subnational, the national, the supranational and the transnational levels.\textsuperscript{207} In addition, the programme made a significant contribution by extending the scrutiny of governance and participation issues to countries that do not belong to the “usual suspects’” universe of established democracies.

I believe I should also point out some limitations with respect to the programme’s initial intentions. Not all projects closely dealt with shifts in governance as they were defined in the programme initial brochure (NWO 2004) – a few of them perhaps not even with shifts in governance of any particular nature but rather with governance (i.e., regulation, “steering”) issues in general. As I suggested in the introduction, my synthesis aimed to concentrate on issues of accountability and legitimacy, which initially were distinctive attributes of this program. Unfortunately, this kind of reflection has not been at the core of several projects. The midterm self-evaluation by the programme committee also concluded that “quite a few of the questions explicitly formulated in the brochure and the adjusted brochure have not been taken up in any of the research projects” (p. 120), and the situation did not substantially improve in that respect. Nevertheless, some of the programme findings on governance shifts display considerable potential for extrapolations on accountability and legitimacy. I will provide an example (although this is certainly not the only possible contribution to knowledge improvement; see below for further suggestions for research).\textsuperscript{208}

### Potential for Deepening Knowledge on Accountability and Legitimacy of Governance

According to several projects, shifts in governance refer to some form of “transnationalisation” of regulation. However, the projects also show that these forms exhibit a great variety of patterns. One example is European integration: the EU is a combination of supranational institutions – some of which were studied here (the Commission); of intergovernmental institutions; and of hybrid bodies as shown through research on agencies that were part of this programme. On the other hand, “Europeanisation” is a wider process, which necessitates taking into account the dimension of “multilevel governance”, a form of governance that is accompanied by the development of policy networks, which in turn may be more or less formalised. In addition, the “transnationalisation” of regulation is not confined to the formal vertical “uploading” and “downloading” of policies by and to EU member states; it also refers to the vertical diffusion of policy recipes through other international bodies like the OECD, as well as horizontal – and in principle voluntary – policy diffusion through emulation and learning across states. Beyond the EU level, transnational governance often takes “privatised” forms in varying combinations with informality in the process and production of “soft” forms of law. Clearly, the accountability and, thus, the legitimacy problems related to these

\textsuperscript{206} That would probably yield biased results, because several publications from the programme are very recent.

\textsuperscript{207} However, I think there is definitely more potential for research on the local and regional (urban) level, on which much of the reflection on the democratic “anchorage” of cooperative forms of governance has concentrated so far, including in the Dutch scientific community (see, for example, Edelenbos et al. 2010).

\textsuperscript{208} I didn’t find that a “grand” synthesis of the programme results would make much sense, because the projects are too heterogeneous. However, please refer to the “Lessons Learnt: Accountability and Legitimacy Issues Related to Shifts in Governance” sections, at the end of the discussion of each project, and the “Short Synthesis of the Major Research Findings Across Projects” sections at the end of each subpart of this study.
shifts of governance differ according to their characteristics.

Let us look at the interesting case of the European Union, which is scrutinised in the only project (Multilevel Governance and Public Accountability in Europe) entirely devoted to the problem of accountability. Several studies, including a few pieces by the author of this synthesis (Papadopoulos 2007 and 2010), criticise the accountability deficits of multilevel forms of governance. It comes as no surprise that the governance forms in the EU that better approximate this model – such as comitology – are indeed deficient in terms of democratic control. But the EU case also shows that the officially authorised decision-making institutions of representative democracy, be it the European Parliament or some of its national counterparts, are able to counteract the dispossession of their power. A necessary condition for the “reparliamentarisation” of policymaking seems to be that the governance system is strongly formalised. Yet, there is so far no supranational equivalent to the EU in that respect, although Bovens et al. (2010d: 193) correctly point out that the EU “is not an island, and its structures and processes are partially and perhaps increasingly intertwined with those of larger international regimes, creating the kinds of ‘networks of networks’ that are perhaps the most elusive targets for democratic accountability designers and scholars alike”.

How can one best deal with such elusive targets? Some forms of institutional design are likely to increase their democratic accountability. For example, networks of national parliamentarians emerge with the aim of checking the activity of international organisations, such as the Parliamentary Network on the World Bank. For the time being, legislators remain “laggards” with respect to their international networking activity; it has low priority in the perspective of re-election, and turnover rates are higher and the degree of expertise lower among parliamentarians than among bureaucrats and regulators (Slaughter 2004: 105). Furthermore, networks of legislators only occasionally acquire an official role or receive formal recognition, as is now the case in the EU with the COSAC (Conference of Community and European Affairs Committees of Parliaments of the European Union), and even COSAC’s influence on European matters remains marginal for lack of true decision-making capacity (Bengtson 2007). However, complex governance arrangements (for lack of a better term) do require complex control mechanisms; the development of multilevel accountability networks seems necessary in settings where multilevel governance networks possess (often informal and soft) influence.

This requires that the officially authorised “account-holders” who can legitimately perform the role of accountability “forums” – namely, citizens and their elected representatives209 – become familiar with the complexities of governance shifts. Scholars themselves should devote more attention to the advent of new forms of arcana imperii, where secrecy and informality that prevent the “Tribunal of public opinion” (Bentham 1990: 27) to play its role is perhaps no longer a deliberate art of government, but is not considered a problem either – and sometimes is even considered an asset. As stated before, the degree to which such governance arrangements are problematic as regards their legitimacy with respect to democratic normative requirements depends on their specific configuration. Have they received a mandate from officially authorised bodies, and if yes, how long is the chain of delegation? To whom are their individual members accountable? How influential are these arrangements? How “soft” or “hard” is their regulatory power? Are their “outputs” de facto or formally binding, and how extended is the circle of the affected parties? To what extent do the latter have a voice in their activity? How much, and through which mechanisms, is the “congruence” principle between policymakers and policy takers respected? Is some form of consent by the affected required, or are (at least) governance outputs public, and thus subject to contestation? What is the role of public authorities in delegation to these governance arrangements, in the monitoring of their activity and in the endorsement of their outputs?

These are but a few questions that research should address regarding the accountability and normative legitimacy of such arrangements. As was suggested in the introduction of this synthesis, there is yet another way to approach legitimacy. Problems generated by governance shifts may be more normative – we may be shocked as democrats by lack of accountability – than practical, because the public at large is hardly aware of them. As long as what we perceive as a problem through scientific research goes unnoticed, as long as it is not framed as a problem in the political arena, it will not undermine the practical legitimacy of the exercise of power. However – and I will get back to this issue in the next section of my conclusion – I am convinced that

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209 I mention citizens explicitly, because in a period of “crisis of representation”, elected officials may lack trust from the citizenry.
Further Suggestions

I heard that the programme will be discontinued, but I do hope that there will be other possibilities to develop cumulative research on the programme topic. Let me formulate a few recommendations in this direction.

In the field of political science, where I consider myself less ignorant than in other fields, more attention should perhaps be devoted to administrative reform. Only a few projects dealt with public-private partnerships or with deliberative instruments of policymaking, typical examples respectively of cooperative and participatory governance. No project had at its core the consequences of the “New public management” (NPM) agenda, or those of post-NPM reform (“joined-up government” and the like). Given the focus on accountability, it is also a pity that no study was devoted to the impact of “mediatisation” on governance practices, and the nature of its contribution – if any – to public control over policymaking. One could also pursue further the synchronic study of shifts in governance in other parts of the world. Perhaps more importantly, in my view, it is especially to the diachronic development of governance forms that more attention should be devoted. Only one project in the programme (Conquest, Competition and Ideology) offered a snapshot view of the governance – in its broad sense – problématique in seventeenth-century Netherlands. It seems then that the programme did not live up to the expectations of its inspirers as regards the development of a genetic perspective on shifts. As stated in the introduction, an adequate treatment of this topic requires a longitudinal approach that shows through what kind of social mechanisms governance recipes and “policy styles” are changing – and in which direction(s). In a sense, this treatment entails a constructivist approach, albeit focusing on “process-tracing” and thus not concentrating only at the level of discourse, as research inspired by the interpretivist turn tends to do. In other words, although it is necessary to identify “governance narratives” (Rhodes 2000), a further necessary step is to produce narratives telling how “governance narratives” are themselves constructed and legitimised. In that sense, the interpretivist (or linguistic) turn should be accompanied by a historical turn in governance studies.

This obviously requires a renewed emphasis on the necessity of interdisciplinarity. To be sure, the “Shifts in Governance” programme is multidisciplinary, probably more than other similar programs. Yet, what is also required is that individual projects become increasingly interdisciplinary. Individual disciplines have greatly expanded and have undergone internal differentiation processes, so that borders should first be crossed within disciplines. For instance, within the discipline of political science, cooperation between policy analysts and international relations specialists is necessary to apprehend adequately problems related to the advent of transnational forms of governance, whose combined characteristics are informality, recourse to expertise, and privatisation, as is shown by some of the projects included in this program. Across disciplines, cooperation within individual projects seems required between political and administrative scientists specialising in governance (and lawyers more attentive to important details of legislative change, as evidenced by their contributions to this programme), or between the former and urban or social geographers (more familiar with the spatial-territorial dimension of politics). Of course, interdisciplinary cooperation between scholars with different specialised disciplinary backgrounds is not conflict-free and cannot be initiated from scratch. However, long-term projects facilitate this task by allowing researchers to gradually engage in mutual learning processes.

210 See, for instance, recent studies by Hajer (2009), including on the Dutch case.

211 Including the narratives of policy actors about their own perceptions of the relationship between governance, democracy, accountability, etc.; see the recent work by Farrelly and Sullivan (2010) on local governance in the United Kingdom.

212 See Koch (2011) for instance on the historical development of governance forms throughout the twentieth century in Swiss agglomerations.

213 On the basis of GOVDATA, multidisciplinary individual projects in European countries on issues of European governance accounted for less than 25 per cent of the total, with political science occupying a pivotal position, combined with law, economics, and sociology (Larat and Schneider 2009: 182).

214 Let me refer here to my own recent positive experience within a Swiss research program, the NCCR “Challenges to Democracy Conquest, Competition and Ideology”.
Finally, overall, the “Shifts in Governance” programme has provided extremely rich material that permits us to update our knowledge of complex governance processes that are sometimes hardly visible to the “lay” citizen. These forms of governance deviate from common knowledge of how our political systems work, and even from textbook accounts on this subject. As scientists, we are urged to disseminate our knowledge outside the boundaries of the scientific community: to policymakers, the media or stakeholders. The task of this knowledge transfer sometimes challenges our everyday routines, but is without doubt a contribution that the social and human sciences can and should provide to societal development. Undertaking this kind of task for this particular programme is of paramount importance, because this would lead to a more realistic perception of politics and governance on behalf of the wider public. I do not know how civic education programmes are developed in Dutch schools; however, I think that, to ensure sustainability of knowledge, it would also be worthwhile to incorporate the important findings of this programme into course material targeted to secondary school pupils. After all, it is more constructive to show future generations that democracy has not fulfilled all its promises (Bobbio 1987) but that improvements are always possible, than it is to leave the monopoly of critique to self-interested “populist” political entrepreneurs. Democratic legitimacy definitely rests on the socialisation of responsible citizens who are well informed about politics in a changing world, as well as about what our leaders can or cannot do for our fate, and eager to hold them accountable on these issues. In addition to its undeniable scientific merits, the “Shifts in Governance” programme should be seen as a stone in the construction of such an edifice.

215 They should be part of the Maatschappijleer classes in secondary education according to information from http://www.ecpsa.org/civic-education-in-europe.html (accessed January 14, 2011).


