

GOVERNANCE IN MODERN SOCIETY

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GOVERNANCE IN MODERN SOCIETY

Effects, Change and Formation of Government Institutions

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PREFACE

This book is the immediate result of the co-operation of a great number of scholars in the Netherlands Institute of Government (NIG). NIG is an interuniversity research school. As such it has a double task. In addition to offering a Ph.D program to students in Public Administration it also is a research institute in which a great number of scholars from seven Dutch universities participate and work on a common research program.

The chapters in this book are all products of the research program that started in 1995. This program had the ambition to explore the frontiers of the discipline in two respects. First by studying a number of recent developments in society and their consequences for the functioning of government. These consequences can be summarised as the development of a system of multi level and multi actor governance. Second, by contributing to the knowledge of institutions, both by studying what factors are most important in the formation and change of institutions and by studying the effects of institutions on the behaviour of actors in different political and administrative settings.

Most contributions to this volume either have their origin in conferences organized by the NIG or were published as an NIG working paper. We are grateful to Marcia Clifford and Connie Hoekstra who prepared the final version of the manuscript, to Ian Priestnall who took care of the language editing and to an anonymous reviewer whose comments were gratefully used.

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INTRODUCTION: MULTI-LEVEL AND MULTI- ACTOR GOVERNANCE

1. SOME DEVELOPMENTS IN POLITICO-ADMINISTRATIVE SYSTEMS

In recent decades, Dutch society, just like the rest of Western Europe, has been confronted with globalization, Europeanisation, economic restructuring, rapid technological innovation, first steps on the way towards the so-called knowledge society or knowledge economy, ongoing processes of individualization and societal pluriformity. These developments and changes pose major challenges to government.

In general, due to processes of globalization and developments in information and communication technology, jurisdictions – from nation states to local governments – are losing their borders (Frederickson, 1999). Moreover, the open economy has led to a situation where nation states, in order to maintain their competitiveness, can hardly allow themselves stricter legislation than their biggest trading partners. A similar line of argument applies, *mutatis mutandis*, in other policy areas. The logical solution for policy areas that cannot be dealt with effectively at the national level is prudential rule at the European level. This also applies from a democratic perspective. The idea that policy that is close to the citizen would be more democratic and have greater legitimacy does not hold true in this particular instance. It little benefits citizens if they have great influence on the decisions of the national or sub-national authorities, if these decisions are of little importance.

The interrelation between (European) states, supranational organizations, in particular the European Union, and various levels of governance have acquired such a scale and have become so complex that a new and unique system of multi-level governance has emerged (see, for instance, Scharpf, 1999). The performance of national governments has come increasingly to depend on supranational organizations like the European Union, which has a direct impact (European legislation) or an indirect one (European subsidizing programs) on national policies. According to Haverland (1999) 'European integration ... affected dramatically the range of national political power and national policy making'. But, on the other hand the European Union is not able to formulate and implement policies and laws without sufficient support from its members and even institutions at the local and regional level (Van Kersbergen, Lieshout and Locke, 1999). Sometimes the EU is even sidelined by multi-lateral negotiations between national governments, as in the case of the Sorbonne (1998) and Bologna declarations (1999) on harmonization of European higher education systems, which were concluded without any contribution

from the EU. European policy making itself is affected by European, state and even sub-national institutions. For instance, the implementation of EU programs aimed at the stimulation of underdeveloped regions is influenced by institutions at the local and regional level. The evolution of European institutions takes place in EU policy arenas but seems also to depend on bargaining between national leaders, whose scope for policy making is to a certain extent determined by the institutions of their own national arenas. '...There remains the stark 'intergovernmental' fact that the agreement of national governments in the [European] Council [of Ministers] is necessary for major decisions ... and that these governments not only have powerful incentives, but are also duty-bound and opposition-pressed to represent what they and their constituents consider to be important national interests in European negotiations' (Scharpf, 1999: 191-192).

The interweaving of governmental relations has increased, not only between the European and the national level, but also between national and local governments. Since the end of the 1980s, local, regional and urban policy matters have risen on the political agenda in the EU and its member states. In the recent past sub-national governments, in their attempt to cope with policy problems like pollution, traffic congestion, unemployment, integration of ethnic minorities et cetera, have come up against some limits set by the institutional context in which sub-national policies have to be formulated and implemented. Many of the policy areas that are particularly important for coping with local and regional problems were more or less strongly directed by national government. This kind of centralization made it difficult to attack specific, local problems. Moreover, the relevant national policies were not always geared to one another and sometimes even worked in opposite directions (e.g. European Commission, 1997). In the 1990s some national governments took a somewhat different approach and expressed the desire to reshape the relation between central and local government. In the Netherlands, national government proclaimed that it considers itself to be a partner of sub-national government rather than its hierarchical superior. This new conception of intergovernmental relations is reflected, for instance, in contracts agreed by central and local governments and has led to increasingly close institutionalized contacts between the national and the local level. In addition to this institutional change one can point at the introduction of new regional administrative bodies in the Netherlands (such as those related to police matters and employment policy).

Generally speaking, the ongoing vertical differentiation of public administration systems in supranational, national, regional, local and quasi-autonomous government organizations furthers the interaction of institutions. Van Kersbergen (1999: 85) concludes: 'the interrelation between the [European] states, the supranational organization, and the various levels of governance have by now acquired such a scale and have become so complex that a new and unique system of multi-level governance has emerged' (also Marks, 1997; Thomassen and Schmitt, 1999).

Besides this vertical differentiation of public administration systems, there is also a certain degree of horizontal differentiation. Growing societal pluriformity and ongoing processes of individualization have undermined the legitimacy of classical

political representation and collective decision making (Andeweg and Van Gunsteren, 1994; Tops, 1994; Thomassen, 1995; Klingemann and Fuchs, 1995; Frissen, 1996; Van Gunsteren, 1998). As a result, changing attitudes towards the role of government have led to a remodeling of the boundaries between the public and private sectors. Governmental authority and the capacity of public administration systems to steer society are limited by the growing dependence of governmental actors on economic and societal actors. This shift of balance has severe consequences for government institutions, decision making, implementation, management and organization.

Concepts like an entrepreneurial spirit in the public sector, decentralization, catalytic government and community ownership occupy an important role in the current academic literature (Kickert, Klijn and Koppenjan, 1997) and point at the societal need for tailor-made policies decided in consultation with citizens and private organizations. As a consequence of this societal need, new and less hierarchical relationships have arisen in the relation between governmental authorities and citizens and societal organizations. Increasingly, public policy has become a matter of co-operation between governmental organizations and societal actors. These changes have found expression in several ways, including various new, interactive forms of policy development, in which government, in co-operation with citizens and their organizations, take on joint responsibility for dealing with social questions. This has meant that public management and policy making have increasingly taken on the character of processes in which a large number of actors are involved, from both the public arena and society (multi-actor governance). Moreover, elements of the market economy have been introduced in the public sector and, instead of central planning and detailed regulation, national government uses incentives and performance indicators (see, for instance, Arentsen, Künneke and Moll, 1997). Neave (1998) interpreted this last development as the "rise of the evaluative state".

To summarize, globalization, European integration, economic, technological and societal developments are exerting a major influence on government institutions and public policies (institutions as a dependent variable), and have furthered a framework in which governmental and non-governmental actors are linked by both reciprocal connections and more complex network relationships (multi-level and multi-actor governance). But on the other hand, existing institutions also have an impact on the shaping of this framework (institutions as an independent variable). For instance: in many Western European countries public decision making is rooted in the institutions of representative democracy and the traditional neo-corporatist system of interest representation by a number of internally coherent and well-organized interest groups, which have privileged or even monopoly access to decision making arenas. It will be obvious that a tension exists between the institutional features of the representative system (primacy of politics) and the neo-corporatist system (privileged access) on the one hand and the interactive, more open and interdependent decision making methods on the other. For researchers in the field of public administration it is a challenge to determine the extent to which existing institutions and developments with regard to multi-level and multi-actor

governance influence each other, and to formulate principles for the formation of government institutions that will further the legitimacy and the effectiveness of public decision making.

Therefore, in 1995 the Netherlands Institute of Government (NIG), in which seven universities participate, decided to formulate a research program to study the developments sketched out above in relation to the dynamics of government institutions. The NIG research program contains three projects:

- Effects of institutions. This project takes institutions as an independent variable, and is directed at understanding the impact of institutions on the course and outcomes of policy making, as well as on the structures and organization of government.
- Changes of institutions. This project considers institutions as the dependent variable, and focuses on examining the origins of institutional changes.
- Formation of institutions. This project is directed at understanding the normative properties of government institutions, and the consequences of these properties for the formation of institutions.

Most contributions to this book either have their origin in conferences organized by NIG or were published as an NIG working paper. In accordance with the design of the NIG research program, this book addresses questions about multi-level and multi-actor governance in relation to the effects, the change and the formation of government institutions. It will be obvious that we do not cover every development of government institutions and policies described above. We have limited ourselves to some of the major themes that have been the subject of NIG research.

2. STRUCTURE OF THE BOOK

The first part of the book deals with the effects of government institutions using empirical and theoretical approaches; the second part goes into the change of government institutions mainly from an empirical point of view; whereas the third part studies the formation of government institutions from an empirical and normative perspective.

Effects of government institutions

The effects of government institutions form the starting point for chapters 2, 3, 4, 5, 6, 7 and 8. Chapter 2, by Steunenberg and Schmidtchen, discusses institutional reforms that might strengthen the role of the European parliament in the policy making process of the European Union. Using simple game theory, the chapter analyzes the working properties of the different implementation procedures that are known as 'comitology'. The council of the European Union employs these procedures when it delegates some of its policy making power to the Commission as part of Union legislation. The chapter shows how the balance of power is

determined by current comitology procedures, and how this balance would change if the role of the European Parliament were strengthened in the comitology game.

Van Kersbergen, Lieshout and Verbeek, in their chapter (chapter 3), investigate the use of neo-institutionalism in analyzing three aspects of European integration: first, (lack of) changes in nature (size and scope) of the European Union; second, (lack of) changes in the policy process in various policy arenas, and third, the impact of EU policies on the political and administrative systems of the member states and their policies. Their point of departure is the notion that the European Union can be perceived of as a system of multi-level governance and they discuss the following topics: the extent to which institutions and European policy arenas affect decision making in the European Council; the impact of the European Union on its member states; the interrelationships between the various policy arenas; and the extent to which institutions affect these interrelationships.

Chapter 4, by De Vries, examines the relative success of public policy making in the Netherlands in the last 55 years from an institutional perspective. From being a relatively poor country at the end of World War II, the Netherlands has been transformed into a relative prosperous country, positioned in the top 10 of the world's economies. The answer given in this chapter is that flexibility in priorities, the implicit rule that you cannot have it all at the same time, the intelligence of the choices made by not swimming against the tide, and the luck of being backed by economic support at the right moments are important explanatory factors.

Aarts, Thomassen and Van Wijnen, in chapter 5, go into the effects of institutions on electoral behavior. Electoral Research in general refers to two important decisions that voters have to make at each election. First, the decision whether to vote or not, and second, which party they will vote for. Traditional electoral research focuses on the characteristics of the individual voter in order to explain his/her electoral behavior. However, it is becoming increasingly clear that there is an interaction between these relations at the individual level and the political-institutional context in which elections take place. The authors give a theoretical overview of which institutional factors might be important and empirically test the extent to which the most important of these factors do indeed influence the two electoral decisions mentioned above.

In chapter 6, Klijn and Koppenjan discuss the effects of the introduction of interactive forms of decision making in the Netherlands. These new forms of participation should result in better government, both in the sense of providing better policies and in bridging the democratic gap between local government and citizens. They analyze one of the major problems in realizing these ambitions: the tensions between interactive decision making which is inspired on the principals of direct democracy, and the institutionalized practices of representative democracy. Both institutional practices are based on two different views of democracy: a substantive and an instrumental view. When brought together these two approaches result in conflicting role prescriptions. This problem is illustrated by analyzing the formation of the urban renewal plan for the Bijlmermeer, a suburb of Amsterdam. To overcome these tensions they propose an institutional redesign of both the institutional roles for politicians and the organization of interactive decision making processes.

Oude Vrielink (chapter 7) focuses on the effects of institutions on the course of action in social conflicts. Traditionally, governmental policies on dispute resolution resulted in legislation that provides legal standards and procedures for the enforcement of rights. Present policies within and outside the Netherlands aim at Alternative Dispute Resolution (ADR). The Dutch Department of Justice particularly encourages mediation, a form of dispute settlement in which disputants try to negotiate their conflict with the help of an independent third party, a mediator. As governmental agencies have to guarantee democratic principles of justice (equality of rights, legal security, and legal protection) the likely effects of mediation on the processing of disputes are compared to court trials, which can be seen as the most dominant institution for dispute settlement provided by the government.

Chapter 8 (Van Heffen and Klok) starts from the position that the behavior of policy related actors can only be explained in an adequate way by simultaneously taking account of both the institutional context and characteristics of policy actors. From a general description of different state models they develop a conceptual model that can be used to analyze institutions and policy processes. The model is based on the institutional approach developed by Elinor Ostrom and an elaborated resource dependency framework. The explanatory power of the conceptual model is illustrated with examples.

Change of government institutions

Chapters 9, 10, 11 and 12 discuss the processes of change as they affect government institutions.

In chapter 9 Van der Veen discusses recent rearrangements of the institutional structure of the Dutch welfare state. These rearrangements aim at increasing the control and activating character of social policies by changing the organization of the different functions of the welfare state in different fields of social policy and by shifting the responsibilities of the state, the social partners and the market. The chapter goes into the general background of the restructuring of the Dutch welfare state, the possible pitfalls of a strategy of managed liberalization, the consequences of this restructuring for the fields of social security and labor market policy, and tries to explain the course the process of restructuring of the Dutch welfare state has taken.

Chapter 10, by Toonen, discusses the administrative institutional infrastructures in the Netherlands and how they have both facilitated and constrained the institutional build-up of governance structures and processes. He explains some paradoxical features of the Dutch system of governance and administration by looking at constraints and opportunities posed by the institutional development of Dutch state structures to the development of the political and the administrative system in mutual interaction. Furthermore, he argues that the legal institutional design of the Dutch State facilitated administrative conditions that constrained hierarchical forms of politics but furthered a consensual orientation and a functional political federalism. Finally, he goes into the future development of the politico-administrative institutions on the regional level.

In chapter 11 Kickert and Hakvoort take the position that the institutional context of a particular state and administration is relevant for the form and content the public sector reforms assume there, and for their success and failure. They argue that introducing 'public management' reform irrespective of the underlying institutional foundations of a country's state and administration is doomed to be a rapidly fading fashion. After a sketch of the history of state and administration in Western Europe and the United States, and an outline of the distinctions between European public law and Anglo-Saxon common law, they concentrate on the small continental European states with their typical similarities in terms of consensus democracy and corporatism. Special attention is paid to four countries: the Netherlands, Belgium, Switzerland and Austria.

Chapter 12 (Bekkers) explores the institutional implications of the changing organizational boundaries and jurisdictions in the public sector as result of the introduction of information and communications technology (ICT), especially network technology. Moreover, this chapter discusses the normative implications of this development in respect of the roles of government and citizens.

Formation of government institutions

Questions concerning the formation of institutions are addressed in chapters 13, 14, 15, 16 and 17. Chapter 13, by Hendriks, explicates the ways in which administrative institutions influence the activation of cultural biases in the policy process - which in turn influences the quality and level of policy-oriented learning - and explores the implications of this for institutional development and institutional design. The impact of administrative institutions on policy processes is discussed in two clusters relating to the identity-shaping impact of institutions and the interaction-arranging impact of institutions. In combination, the two clusters contribute to 'the mobilization of bias'. This classic notion of the administrative sciences is reinterpreted using a combination of Douglasian cultural theory and general institutional theory.

In chapter 14 Esselbrugge discusses the formation of new (interactive) forms of policy development, in which government, in co-operation with citizens and their organizations, take on joint responsibility for dealing with policy questions, especially with regard to major infrastructure projects in the Netherlands. In this policy field governmental actors not only have to meet the needs of the 'homo mobilis', but also must ensure a safe and clean environment. Therefore the Dutch national government is rearranging traditional decision making processes and trying to further more open and interactive ways to cope with the demands of society. This chapter addresses questions concerning these developments and reflects upon methods for designing processes of interactive policy making.

Chapter 15, by De Bruijn and Ten Heuvelhof, starts from the basic idea that a 'good' decision making process in the public sector will lead to 'good' substantive change. The authors assume that process management, a relatively new type of institutional design, will facilitate 'good' decision making processes. They discuss the pros and cons of process management and present the core notions of this

concept. A number of empirical examples are presented, enabling the reader to gain more insight into the possibilities of process management.

In chapter 16, Klijin and Teisman examine new forms of governance, like public-private partnerships and contracting out, which are considered as new institutional arrangements for the implementation of public tasks. They argue that contracting out targets efficiency and costs reduction (given a specified product) and partnership targets added value (e.g. product innovation) by joining information, resources and knowledge of public and private partners. Due to these distinctive orientations, the characteristics and features of both arrangements differ considerably. The differences are elaborated upon as well as the consequences this has for managing strategies to govern these partnerships. They postulate that contracting out on the one hand and public-private partnerships on the other can be accomplished by way of different management strategies, viz. project management and process management.

Ruiter (chapter 17) discusses the semantic structure of legal institutions of different categories as related to the social practices they purport to generate. His analysis is based on a legal-theoretical approach – called ‘institutional legal theory’ – that is partly inspired by speech act theory (Searle), partly by legal positivism (Kelsen, Hart). He argues that the neo-institutionalist social sciences contributing to the study of public administration and public policy must incorporate the concept of validity in their conceptual apparatus in order to be capable of fully grasping the complex character of institutions as value-laden social phenomena.

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PART I

EFFECTS OF GOVERNMENT INSTITUTIONS

THE COMITOLOGY GAME: EUROPEAN
POLICYMAKING WITH PARLIAMENTARY
INVOLVEMENT

1. INTRODUCTION

The European Parliament plays a considerable role in the legislative process of the European Union.¹ Parliament may amend and eventually veto most Council decisions. Despite its legislative role, Parliament is not formally involved in the implementation process of common policies. In this process, and based on legislation set by the Council and Parliament, the Commission decides on the way in which common policies have to be executed by the member states. These policy decisions by the Commission are made conditional on the assistance of supervisory committees and in some cases the agreement of the Council

Parliament has always been interested in gaining a foothold in the implementation process (see Bradley, 1997; Haibach, 1997). Since the way legal acts are implemented is what matters in the end, not being involved in this process might lead to a serious attenuation of the decision making 'rights' assigned to the Parliament, particularly in the cooperation and codecision procedure. In addition, getting involved in the implementation process will strengthen the role of Parliament in the Union. As Westlake puts it, the European Parliament would ideally prefer to see the '...Commission exercising full and untrammelled executive powers, with the Commission directly responsible and clearly accountable to the Parliament' (Westlake, 1994: 71).

The reason why the European Parliament did not succeed lies in the outcome of a 'power game' played during the mid-eighties with three players involved: the European Commission, the Council and Parliament. This game started in the wake of the Single European Act, when the long-standing practice of comitology – that is, the review of Commission decisions by committees of national government officials, which decide whether or not the Council needs to be involved in the decision making process – received the status of primary community law. It reached a temporary peak on July 13, 1987, with the comitology decision of the Council, in which the Council established procedures for the exercise of implementation powers conferred on the Commission.² This decision officially established advisory committees, management committees and regulatory committees, which are bodies of national government officials (mostly civil servants) who supervise the

¹ See Cooter and Drexler (1994), Tsebelis (1994, 1996), Steunenberg (1994b, 1997), Crombez (1996), and Moser (1996, 1997), for more detailed analyses of the legislative procedures in the European Union.

² Decision of the Council of July 13, 1987 (Official Journal of the European Union 1987: L 197/33).

Commission's execution of legal acts. Whereas in the case of the advisory committee the Commission is relatively unrestricted in its policy, the management and the regulatory committees can block a measure proposed by the Commission. While not having decision making power of their own, the latter committees act as *gatekeepers*. If they are in disagreement on the Commission's position, the Council will take up the matter and may overrule or simply void the Commission's decision.

According to some commentators, the comitology decision represents an example of an institutional rollback (Meng, 1988). There was a general feeling that the comitology decision has tilted the balance of power between the Community and the member states too far in favor of the Council (and thereby the member states). This is evident in the fact that the Commission protested against this decision (see Ludlow, 1991: 106), and Parliament brought a claim against the Council before the European Court of Justice, which failed (see Docksey and Williams, 1994: 131-2).³ Despite the fact that Parliament is not an official player in the comitology game, it is still concerned with it. It adopted guidelines on comitology '...the gist of which is systematically to propose amendments seeking to increase the Commission's autonomy and decrease the Council's blocking powers' (Westlake, 1994: 72).⁴ As early as 1988, the Commission agreed '...to keep Parliament fully informed of all proposals it submits to "comitology" committees' (Westlake, 1994: 72).⁵ In 1994 the Commission, the Council and Parliament concluded a provisional agreement, the so-called *modus vivendi*.⁶ According to this agreement the Commission will send any draft proposal for an implementing act not only to the comitology committee, but also to the appropriate committee of the European Parliament. The 'Commission shall take account as far as possible' of the comments of Parliament's committee.⁷ Furthermore, the '...Council shall adopt a draft general implementing act which has been referred to it ... only after informing the European Parliament, ... setting a reasonable time limit for obtaining its Opinion and, in the case of an unfavorable Opinion, taking due account of the European Parliament's point of view without delay, in order to seek a solution in the appropriate framework.'⁸ A definitive solution was left to the 1996 Intergovernmental Conference.⁹ However, at the Amsterdam summit, the member states did not agree on a new comitology procedure. The draft Treaty of Amsterdam (1997) includes a declaration in which the member states call on the Commission to submit to the Council by the end of 1998 a proposal to amend the comitology decision of 1987. On 16 July 1998 the Commission submitted a Proposal for a Council Decision laying down the procedures for the exercise of implementing powers conferred on the Commission, one of the main objectives being to simplify these procedures and reduce the number

³ See case 302/87, European Parliament v. Council of the European Communities, ECR 5615.

⁴ See Westlake (1994: 119) and Corbett, Jacobs and Shackleton (1995: 233-56).

⁵ This is the so-called Delors-Plumb agreement, which is based on an exchange of letters between the former presidents of the Commission and Parliament.

⁶ *Modus vivendi* of December 20, 1994, between the European Parliament, the Council and the Commission concerning the implementing measures for acts adopted in accordance with the procedure laid down in Article 189b of the EC Treaty. See Official Journal 1995, C 43/40.

⁷ *Modus vivendi* of 20 December 1994, Official Journal 1995, C43/40, no. 4 and 6.

⁸ *Modus vivendi* of 20 December 1994, Official Journal 1995, C43/40, no. 5.

⁹ *Modus vivendi* of 20 December 1994, Official Journal 1995, C43/40, no. 3.

of possible formulas.¹⁰ However, according to this proposal the European Parliament still has no formal role in the implementation process. As Article 7 of the Commission proposal makes clear, '[t]he European Parliament shall be informed of committee proceedings on a regular basis. To that end, it shall receive agendas for committee meetings, draft measures submitted to the committees for the implementation of instruments adopted by the procedure provided for by Article 189b of the EC Treaty [*new Article 251, authors*], and the results of voting. It shall also be kept informed wherever the Commission transmits to the Council measures or proposals for measures to be taken.'

In this chapter we analyze the working properties of the different procedures laid down in the comitology decision and show how these procedures affect the balance of power between the Council, the Commission and Parliament. In addition, we focus on some alternative procedures in which the European Parliament plays a role. In preparation for the 1996 Intergovernmental Conference, the various institutional players in the Union have revealed their preferences concerning the direction of reform. Parliament, for instance, states that '[g]eneral responsibility for implementing measures should be devolved to the Commission. The Council and Parliament should be informed of the measures proposed and should each have the opportunity to reject the Commission's decision and to call either for new implementing measures or for full legislative procedures' (European Parliament, 1995a). This view has been supported by the Commission in a report on the proposed treaty reforms (European Commission, 1996: 9). Based on the analysis in this paper we show how alternative implementation procedures may strengthen the role of Parliament in the implementation process.

This chapter is organized as follows. We first analyze the current decision making procedures, using a model in which the Commission may select a policy that is subject to review by a committee of representatives of the member states and the Council. The results of these procedures are summarized using the *strategic power index*, which we developed in another paper (Steunenberg *et al.*, 1999). We then add two decision procedures in which the Parliament is given some influence on the final outcome. The procedures are examined in terms of the extent to which the Council, the Commission and Parliament may affect the final outcome.

2. ANALYZING POLICYMAKING UNDER DIFFERENT ARRANGEMENTS: GENERAL FRAMEWORK

To analyze the extent to which the Commission is bound to the Council in selecting different policy measures, a model with four types of players is used:

- (i) the members of the Council of the European Union,
- (ii) the members of the committee of state representatives, who are civil servants of the national administrations of the member states. Depending on the policy field involved, more than one sector specialist from the same member state can be appointed to these

¹⁰ See Official Journal 1998, C 279/5.

- committees. Furthermore, changes in appointments to these committees occur relatively infrequently. So, in our view, it is not *a priori* clear that committee members have preferences identical to those of the ministers in the Council;
- (iii) the Commission, which will be regarded as a unitary actor; and
 - (iv) the members of the European Parliament (in our hypothetical procedures with parliamentary involvement).

The implementation measures on which we focus have to be set within the framework of an existing legal act. This act, in which the Council delegates policymaking power to the Commission conditional on one of the current comitology procedures, reduces the options the Commission will take into account for policy proposals.

In this chapter we assume that players decide on an issue that can be represented by a one-dimensional space. Their preferences can be represented by a utility function that defines single-peaked preferences, which have two important properties. First, each player prefers one policy to all other possible policies as the outcome of the decision making process. This most preferred policy is represented by a player's *ideal point* on the policy dimension. Second, a player's preference for alternative policies depends on their distance to his or her ideal point. The farther away an alternative is from a player's ideal point, the less preferred this alternative is.

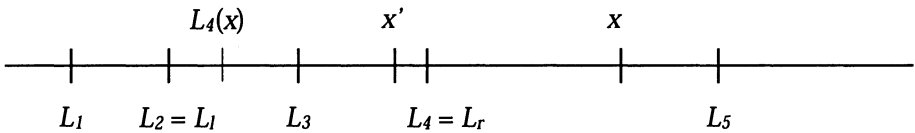
Decisions are assumed to be made sequentially. The sequence is based on the existing procedures that specify the order in which players are allowed to make a move. Players are assumed to have complete and perfect information. This assumption implies that the preferences of players, the structure of the game, and the fact that players behave in a rational way are assumed to be common knowledge, while only one player is allowed to make a move at every stage of the game. Two different lines of research can be distinguished in regard to this choice. The first line, which is found in a large number of studies, explores the effects of information asymmetry on decision making (see, for instance, Matthews, 1989; Banks and Weingast, 1992). A second line examines the effects of different institutions on the outcomes of decision making within a framework in which players are assumed to have complete and perfect information. Naturally, a general model of decision making should incorporate both lines of research. Nevertheless, the incorporation of information asymmetries will increase mathematical complexity and require a reduction of institutional features. In face of this tradeoff, we prefer to maintain in the model the complex sequence of moves, which characterizes the Union's decision making process, and thus follow the second line of research.

Furthermore, we assume that none of the players prefers its decision to be overturned. This preference can be viewed as imposing some cost on a proposal that is not the final outcome of the decision making process. These costs are assumed to reduce the final payoff to a player. All implementation games we consider in this chapter have a unique subgame-perfect Nash equilibrium, which we take to define the outcome of a game.

Both the Council and the various committees have to make decisions by qualified majority. Under this rule, each voter may cast a specific number of votes, and a special majority is required to take a decision. This rule may lead to a number of deadlocks in the decision making process depending on the role of a player in the decision making process. We first discuss the consequences of qualified majority voting for decision making in the Council. We then focus on a committee that may act as a gatekeeper.

Under most implementation procedures, the Council may reverse the Commission proposal by qualified majority. Whether the Council is able to adopt an alternative policy depends on whether sufficient Council members prefer the new policy to the Commission proposal. The critical member for the formation of a qualified majority will be called the *decisive* Council member. However, depending on the location of the Commission proposal on the policy dimension, two potentially decisive Council members can be identified. We define L_r as the rightmost decisive Council member, who finds to its left the ideal points of other Council members whose vote shares constitute the smallest qualified majority, including its own vote share. Similarly, we define L_l as the leftmost decisive Council member.

Figure 2.1: Qualified majority voting in a five-member Council



To illustrate the role of these members, and the extent to which the Council is able to change the Commission proposal, we assume for simplicity that the Council consists of only five members.¹¹ The preferences for these Council members are presented in Figure 2.1. L_i denotes the most preferred outcome of Council member i , and $L_i(x)$ stands for this member's point of indifference to the policy x . If, for instance, a two-thirds majority is needed to approve a proposal, while Council members have equivalent vote shares, members 2 and 4 are the decisive Council members. So, if the initial proposal is found to the right of L_4 , such as x in the figure, a two-thirds majority strictly prefers an alternative proposal $y = L_3$ to the initial proposal x . The alternative policy, $y = L_3$, is found in the Council's *qualified majority win set* of x . This set is defined as *all proposals that are supported by a qualified majority against the current policy, x , and it includes all points up to the decisive member's point of indifference, $L_4(x)$* .¹² Consequently, if the Council can adopt a new proposal by qualified majority, it will choose the alternative proposal $y = L_3$ to the initial proposal x .

¹¹ Our argument, however, holds for any number of Council members and any distribution of vote shares, since decisive members can be identified in both instances.

¹² For notational convenience, we define a win set as those points that are weakly preferred by the constituting members to some reference point, in this case, the Commission policy x . We deviate from the usual definition of a win set as the set of points that is strictly preferred by a majority to a reference point.

However, for intermediate values, i.e. $L_2 \leq x \leq L_4$, the initial proposal divides the members of the Council. This is illustrated by the Commission policy x' in the figure. Now, some members prefer a move to the left, others to the right. But neither fraction is able to form the required qualified majority against the initial proposal. In other words, the Council's *qualified majority win set* is empty. The Council cannot adopt a new proposal, so x' will be implemented.

Both examples show how the Council will choose under qualified majority voting. If all Council members are allowed to propose amendments, the Council will adopt a proposal that is equivalent to the position of its decisive member when its qualified majority win set is not empty.¹³ The policy, like x , will be amended to one that is closer to most Council members. When its qualified majority win set is empty, the Council is not able to form a qualified majority against the initial proposal. That case occurs when the initial proposal made by the Commission is found between the Council's two decisive members.¹⁴ Those proposals that do not allow the Council to adopt an alternative, are part of what we shall call the *Council's blocking set*.

The committees of national government officials play a different role in the implementation procedures. Those committees do not have the right to amend the Commission proposal. However, they act as a *gatekeeper*, that is, they can decide whether or not the Commission proposal has to be submitted to the Council. In fact, the committee can choose only between the initial proposal made by the Commission or the Council's policy. Its choice whether or not to 'open its gates', and to demand that the Commission submits its proposal to the Council, depends on whether the committee can form a qualified majority in favor of either the Commission proposal or the Council's policy. For a further analysis of the consequences of this power for the committee's behavior, we refer to another paper (Steunenberg *et al*, 1996).¹⁵ What is important is that cases exist for which the committee is not able to reach a decision. Depending on the specific implementation procedure that is used, a divided committee may lead to either the implementation of the Commission policy or the submission of this proposal to the Council. We turn to these procedures now.

¹³ Formally, the Council's qualified majority win set is not empty when $x > L_r$ or $x < L_l$. The Council will then amend the initial proposal to a new policy $y = L_r$ or $y = L_l$, respectively.

¹⁴ Formally, when $L_l \leq x \leq L_r$.

¹⁵ Briefly, we need to define two qualified majority win sets for this purpose. The first one is the committee's *qualified majority win set to x* , denoted as $Q_C(x)$, which contains all proposals that are supported by a qualified majority of committee members against the initial proposal made by the Commission. Similarly, we define the committee's *qualified majority win set to the Council policy, y* , denoted as $Q_C(y)$, which contains all proposals that are supported by a qualified majority against the Council proposal. Based on both win sets, three different cases may occur: (i) $y \in Q_C(x)$ and $x \notin Q_C(y)$, which implies that a qualified majority of committee members prefers the Council policy to the Commission proposal and thus decides to open its gates; (ii) $y \notin Q_C(x)$ and $x \in Q_C(y)$, which indicates that a qualified majority of committee members prefers the Commission proposal and keeps the gates closed; and (iii) $y \notin Q_C(x)$ and $x \notin Q_C(y)$, which implies that a qualified majority of committee members does not prefer the Council policy or the initial Commission proposal. In other words, the committee is divided and cannot take a decision.

3. COMMISSION POLICIES UNDER THE CURRENT IMPLEMENTATION PROCEDURES

Based on the comitology decision, we distinguish three types of implementation procedures in this chapter. These procedures are the advisory committee procedure (procedure I according to the formal Council decision on comitology), the management committee procedure (procedure II), and the regulatory committee procedure (procedure III).¹⁶

In the *advisory committee procedure*, a committee gives its opinion on a draft measure of the Commission. The Commission has to take this advice into account and is obliged to inform the committee about the way in which it has affected its final policy choice. This procedure will not be analyzed further in this chapter since it does not grant any decision making power to other players than the Commission.¹⁷ The second type is the *management committee procedure*. In this procedure the committee has to decide by qualified majority whether or not the Commission proposal has to be submitted to the Council.¹⁸ If the committee agrees with the Commission proposal or remains divided, the Commission proposal will be implemented. If the committee adopts a different view—which is called a ‘*negative opinion*’—the Commission reports its proposal to the Council.¹⁹ The Council may only take a decision that deviates from the Commission proposal by qualified majority. If the Council agrees with or does not respond to the proposal, the Commission is allowed to implement its proposal.

The third procedure is the *regulatory committee procedure*. In this procedure, the Commission may only implement its proposal when the committee presents a *positive* opinion, which is the main difference from the management committee procedure. If the committee gives a *negative* opinion, or when the committee does not reach a decision, the Commission has to submit its proposal to the Council. With regard to decision making in the Council, two variants of this procedure can be distinguished. In both variants, the Council may amend the Commission proposal by qualified majority. In variant (a), which we call the *amendment procedure*, the Commission proposal will be adopted if the Council does not decide otherwise. A Council decision that deviates from the Commission proposal has to be based on a qualified majority. In variant (b), which we label as the *veto procedure*, the Council may also veto the Commission proposal by a simple majority. This variant is also known as the *contrefilet* procedure.

The main difference between the two variants of the regulatory committee procedure, viz., the amendment and the veto procedure, is the voting procedure. In

¹⁶ See Kapteyn and Verloren van Themaat (1990: 240-247) and Docksey and Williams (1994: 125-9) for a more detailed discussion of these procedures. See also Westlake (1994: Appendix 3)

¹⁷ In the recently submitted Commission proposal (Official Journal 1998, C279/5), the advisory procedure is defined in Article 3, which is identical to the procedure described in the 1987 comitology decision.

¹⁸ As provided for in Article 205(2) EC.

¹⁹ At this point two variants of the procedure can be distinguished which will not be discussed in this paper. In variant (a) the Commission may implement the measure if it is being discussed by the Council. In variant (b) this is not possible, and the implementation of the measure has to be deferred for a specific period of time. In the recently submitted Commission proposal (Official Journal 1998, C279/5), this procedure is defined in Article 4, which drops variant (a).

the amendment procedure, the Council can change the Commission proposal only if a qualified majority prefers a different point, including the initial *status quo*. If the Council fails to adopt a different view, the Commission proposal will be implemented. In the veto procedure, the Council is able to reject the Commission proposal by a simple majority in favor of the initial *status quo*. In that case, the Council has to make a comparison between the *status quo post* and the *status quo ante*. If the Council prefers the Commission proposal to the *status quo ante*, it will not use its veto power.²⁰

The current implementation procedures can be modeled as sequential games in which the Commission moves first. In these games, the Commission proposes a draft measure or new policy, which has to be considered by a committee in the second stage. This committee considers the Commission proposal, and it may decide by qualified majority whether or not to support the Commission. When it disagrees with the Commission, or, depending on the procedure involved, when it cannot form an opinion on the proposal, the Commission has to submit the proposal to the Council. The Council, in the last stage of the game, may decide to reject the proposal by simple majority (veto version of the regulatory committee procedure), or propose amendments to the proposal by qualified majority (management committee procedure and the amendment version of the regulatory committee procedure). Knowing the responses of the other players, the Commission selects its best policy such that it does not trigger Council involvement. The Commission's choice and the corresponding equilibrium outcome are analyzed in Steunenberg, Koboldt, and Schmidtchen (1996, 1997). They show that the outcomes for these procedures may vary depending on the preferences of the players and the location of the *status quo ante*.

4. STRATEGIC POWER UNDER THE CURRENT IMPLEMENTATION PROCEDURES

To assess the distribution of power between the various players in the European Union, we use the *strategic power index*. This index, which is proposed in Steunenberg, Schmidtchen, and Koboldt (1999), is based on the average distance between the outcomes of a given procedure and the player's ideal point for different player preferences. It presents an *a priori* measurement of power, since it indicates a player's prospects of playing a game without knowing the specific preference constellation of all players. In addition, the index measures power in absolute terms, since it relates the position of a player in a game to an external observer, that is, somebody who does not have any decision making power and thus can be regarded as 'powerless'. For a specific player, a , the strategic power index is defined as

$$P_a = 1 - \frac{A}{E},$$

²⁰ In the recently submitted Commission proposal (Official Journal 1998, C279/5) both variants are dropped. Article 5, defining the regulatory procedure, now states: 'If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall not adopt the measures envisaged. In that event, it may present a proposal relating to the measures to be taken in accordance with the Treaty'.

with A as the mean distance for player a , and E as the mean distance for the external observer. This index lies in the interval $[0,1]$ and increases with the power of a player. The expected distance for a player that is 'powerful' enough to dictate the outcome of a game under any preference configuration would be zero leading to a corresponding value for the index of one. By contrast, if a player has a similar effect on the outcome of a game as the external observer (which, by definition, is 'powerless'), the expected distance for this player is the same as for the dummy player, leading to a corresponding value for the index of zero.

In order to calculate the mean distances between outcomes and the ideal points of the players under different procedures, we make the following simplifying assumptions:

- (1) The possible ideal points of the players and the possible *status quo ante* are equidistant on the policy dimension, and the minimal distance between two possible ideal points is the same for all preference constellations;
- (2) The ideal points of all players as well as the ideal point of the dummy player may but need not differ from each other and may but need not differ from the *status quo ante*; and,
- (3) We call a combination of a particular ideal point for each player and the *status quo* a 'state of the world'. We assume that all states of the world are equally probable.

For each of these states of the world we have determined the equilibrium outcome. Based on the mean distances between these outcomes and the ideal points of each player, we then calculated the strategic power index for a finite outcome space of eight possible outcomes, which are equidistant. Clearly, this does not reflect the diversity of policies that can be observed in reality. However, from an analytical perspective, this outcome space is sufficient to capture the potential for different ideal policy choices for all players whilst preserving a manageable number of simulation runs.²¹ The Commission is treated as a unitary actor whereas the Council is represented by the 'typical' (average) Council member.

²¹ Based on other and smaller numbers, we noted a clear convergence of the values for the index. Nevertheless, some 'bias' might still exist, which is a result of the limited outcome space. However, since we compare the index for different players over different procedures, which are all based on the same number of different states of the world, this 'bias' will be the same for all players and procedures, and therefore does not affect our conclusions. Put differently, the precise value of the strategic power index may change marginally, but the ranking and the order of magnitude of the differences between the index values for different players will remain unaffected by an increase in the number of possible outcomes.

Table 2.1: The distribution of power for the current implementation procedures

	strategic power index			inertia index
	actors: Commission	Council (typical member)	European Parliament (dummy player)	
Procedures:				
Management	0.89	0.06	0	0.00
regulatory-amendment	0.74	0.16	0	0.00
regulatory-veto	0.27	0.07	0	0.46

The results of our simulations are presented in Table 2.1. The first three columns present the values for the strategic power index for the Commission, the (typical) Council member, and the European Parliament. Since Parliament does not participate in the current implementation procedures, it has a power score of zero. We also calculated the average distance between the *status quo ante* and the outcome of a given procedure and derived an 'inertia index' (see Steunenberg *et al.*, 1999). This index reveals the *status quo* bias of a procedure and can be used as an indicator of a procedure's tendency to lead to deadlock. The higher the index, the lower the power of all players (and vice versa: the lower this index the higher the power of all players).²² The index is presented in the last column of Table 2.1.

The strategic power of a player depends not just on the deadlock effect (which has the same sign for all players), but also on the relative strengths of the players in the game. When moving from one procedure to another procedure two effects must be considered, namely a redistribution of power and a change of power the direction of which is the same for all players.²³ This leads to two important conclusions. First, a change of power in the context of the strategic power index is not a zero-sum game. Second, a player's power as measured by the strategic power index can shrink (increase) even if he gains (loses) power from a purely redistributive perspective. That is the case when the (pure) redistributive effect and the level effect, as measured by the inertia index, point into different directions, and the latter is stronger than the former.

The indices presented in Table 2.1 allow us to draw the following implications. First, the current three comitology procedures convey a different amount of power to the Commission. The strategic power index is largest in the management committee procedure and smallest in the regulatory committee veto procedure. Given these results, the Commission prefers the management committee procedure the most and the veto version of the regulatory committee procedure the least. The difference in

²² The basic idea can be illuminated in the following way: Let $a = 1$, $b = 1$ denote the maximum amount of power of player A and B, respectively. In a two players' game the power to these players might be: $a - c$, $b - c$, with $c > 0$. Graphically, a and b could be represented by circles and c measures the area of overlap; c might represent the degree of gridlock due to the rules of the game and the preferences of the players. A move to different rules might reduce the amount of c to c' . Thus: $a - c' > a - c$ and $b - c' > b - c$, which means that the power of both players rises. The same result can be reached by adding a third player.

²³ This might remind the reader of the substitution effect and the income effect following a price change.

Commission power between the management procedure and the amendment version of the regulatory committee procedure results from the fact that the management committee procedure allows the commission to select a proposal from a larger range of policies than the regulatory committee procedure. Both procedures differ with respect to the consequences of an undecided committee. Whereas in the management committee procedure an undecided committee means that it will keep its gates closed, allowing the Commission to implement its proposal, a regulatory committee must form a qualified majority in favor of the proposal to allow the Commission to continue with its plans. The difference in Commission power between the veto version and the amendment version of the regulatory committee procedure results from the fact that the Commission is restricted in the veto version by the possibility that the Council may veto the Commission proposal in favor of the *status quo ante*.

Second, the three procedures also convey a different amount of power to the Council. The strategic power index is largest in the amendment version of the regulatory committee procedure and smallest in the management procedure with no substantial difference to the veto version of the regulatory committee procedure. This difference in Council power between the management procedure and the amendment version of the regulatory committee procedure reflects the influence of the factors that drive Commission's power in the opposite direction. The difference in Council power between the veto version and the amendment version results from the fact, that the Council's veto leads to the *status quo ante*. It is the *status quo* bias of the veto version which explains that the power of both players decreases in comparison to the amendment version.

Third, the current comitology procedures convey more power to the Commission than to the Council. The Commission is thus the most powerful player in the comitology game.²⁴

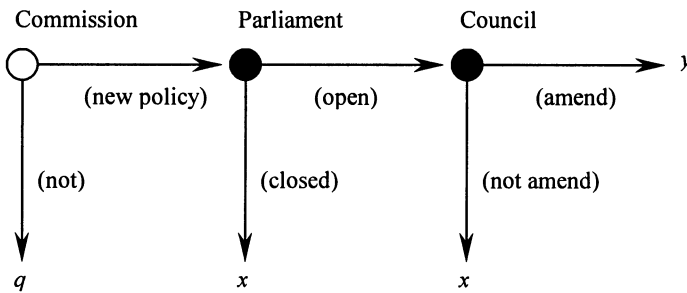
Finally, moving from the management procedure to the amendment version of the regulatory procedure increases the power of Council members at the expense of the Commission. Here we have a pure redistribution of power as indicated by the value of the inertia index. When moving to the regulatory procedure *status quo* bias comes in as the inertia index shows. On the side of the Commission the redistributive effect is reinforced. On the side of the Council members the redistributive effect is overcompensated, leading to a reduction of power in comparison to the amendment version. Although the veto procedure allows Council members to block the Commission by simple majority, this does not mean that Council members gain power. This apparent paradox can thus be understood by focusing on the changes in the distribution as well as the overall level of power in a game, are well-captured by the strategic power index.

²⁴ Our conclusion, based on an *a priori* measurement of power, is in accordance with the Commission's actual power or influence as derived by Joerges and Neyer (1997: 279, 281, 289, 290). Based on expert interviews and questionnaires, they find that the Commission plays a dominant role in the area monitored by the Standing Committee for Foodstuff. Furthermore, note that in our analysis the power of the Council is represented by the power of the 'typical' Council member. Calculating the power for the median member does not change our conclusions, although the median member always has more power than the 'typical' member.

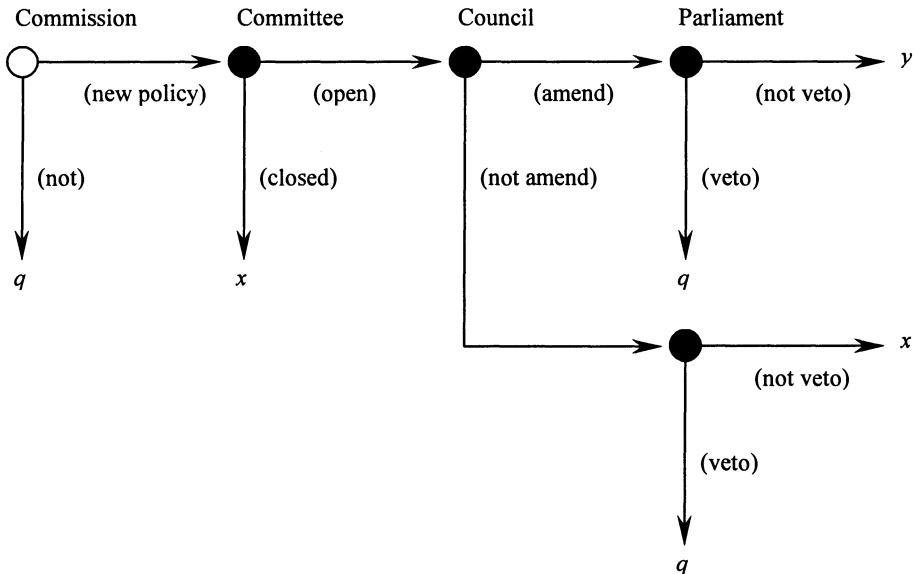
5. ALTERNATIVE PROCEDURES WITH PARLIAMENTARY INVOLVEMENT

As mentioned in the introduction, the European Parliament revealed a strong preference for becoming involved in the implementation phase of legal acts. As indicated in Table 2.1, Parliament is still a ‘powerless’ player under the current comitology procedures. More involvement can be arranged in many different ways. In this chapter we analyze two alternative procedures. In the first procedure Parliament serves as a gatekeeper for Council review of Commission policies. In other words, Parliament takes over the role of the committee of national officials as discussed in the preceding section. In this procedure, Parliament is allowed to make decisions by simple majority. This procedure will be called the *parliamentary gatekeeping* procedure. In the second alternative Parliament is assumed to have an absolute veto on Committee proposals, which is a variant of the veto version of the regulatory committee procedure. Parliament and not the Council may now force the Commission to implement the *status quo ante*. This procedure will be called the *parliamentary contrefilet* procedure. Both procedures will be modeled as alternative policy games that may be played by these actors in the near future.

Figure 2.2: Sequence of play for the parliamentary gatekeeping procedure



In the game that is based on the proposed *parliamentary gatekeeping* procedure, Parliament substitutes for the committee of representatives. This game runs as follows. In the first stage, the Commission selects a new proposal, x , that will be submitted to Parliament. The Commission may also decide not to initiate a new proposal and stick to the current state of affairs, or *status quo*, which is denoted as q . Parliament, as a gatekeeper, has to decide whether or not it will accept this proposal, or open its gates and submit the Commission proposal to the Council. In the last stage the Council decides by qualified majority whether it will amend the Commission policy. If the Council does, we shall have a new and amended policy, y . If the Council decides not amend the Commission proposal, the outcome will be x . The sequence of play for this game is given in Figure 2.2. Note that the median member of Parliament is decisive concerning the opening of the gates and the submission of the Commission proposal to the Council.

Figure 2.3: Sequence of play for the parliamentary *contrefilet* procedure

Under the *parliamentary contrefilet* procedure, Parliament, rather than the Council, may veto the Commission proposal by simple majority. The game tree is given in Figure 2.3. This procedure is a variant of the regulatory committee procedure: after the decision of the committee of representatives to open its gates, the Council may decide by qualified majority whether the Commission proposal, x , will be amended. If it is amended, Parliament can either accept the new Council policy, which is denoted as y , or veto it in view of the *status quo ante*. If there is no amendment, Parliament can either accept the Commission proposal, or issue a veto. This procedure resembles the suggestion for reform made by the Committee on Institutional Affairs of Parliament. In its report on the functioning of the Treaty on European Union, the committee proposes an arrangement in which '[t]he Council and Parliament should be informed of the measures proposed and should each have the opportunity to reject the Commission's decision and to call either for new implementing measures or for full legislative procedures' (European Parliament, 1995a). Both Parliament and the Council should be able to affect the Commission proposal. The solutions for both games are given in the Appendix.

6. THE BALANCE OF POWER UNDER THE NEW ARRANGEMENTS

The results of the alternative procedures can be assessed using the strategic power index as introduced in Section 2.4. The results are presented in Table 2.2, which also includes the current procedures. Again, the power scores for the main actors are presented in the first three columns, while the inertia index is presented in the last column of the table.

Table 2.2: The distribution of power for the alternative implementation procedures

	strategic power index			inertia index
	actors: Commission	Council (typical member)	European Parliament	
<i>alternative procedures:</i>				
- parliamentary gatekeeping	0.82	0.11	0.11	0.00
- parliamentary contrefilet	0.53	0.12	0.21	0.22
<i>current procedures:</i>				
- management	0.89	0.06	0	0.00
- regulatory-amendment	0.74	0.16	0	0.00
- regulatory-veto	0.27	0.07	0	0.46

From the indices in Table 2.2, the following implications can be drawn. First, the position of the Parliament improves by becoming involved in the implementation game, where the improvement from being a gatekeeper under the parliamentary gatekeeping procedure is smaller than the improvement from having veto power (under the parliamentary *contrefilet* procedure).

Second, the Commission remains the most powerful player, whereas the Parliament is at least as powerful as the Council. Nevertheless, the procedures with parliamentary involvement imply a change in Commission power. It is pertinent to compare Commission power in the management procedure with that in Parliamentary gatekeeping and Parliamentary *contrefilet*. In the first case Commission's power shrinks from 0.89 to 0.82. This is due to the fact, that the Parliament may open its gate with simple majority, whereas the management committee has to disagree with a qualified majority. Consequently, Parliament may decide to submit the issue to the Council, which will amend the Commission proposal, in cases where the committee otherwise would be indecisive and thus not able to submit to proposal to the Council or to block the Commission initiative. In the second comparison the Commission's power shrinks more dramatically from 0.89 to 0.53. This is due to the fact that in the case of the parliamentary *contrefilet* procedure, an additional player can veto the Commission proposal and force the Commission to implement the *status quo ante*.

Third, the procedures with parliamentary involvement also imply changes in Council power. Following the comparisons used above for the Commission, it turns out that the power of the Council increases with the involvement of the Parliament. This is due to the fact that the power of the Commission is reduced. The reduction of the power of the Commission corresponds with an increase of the power of the other players. Note that change of power in the context of the strategic power index is not a zero-sum game.

Finally, the possibility of a veto reduces the power of the Commission dramatically (the power of the Commission power goes down to 0.27 for the current regulatory-veto procedure and to 0.53 for the parliamentary *contrefilet* procedure). However, this reduction is less dramatic in the case where the number of players increases (compare the regulatory veto procedure with the parliamentary *contrefilet*

procedure). The Commission may then exploit the conflict of interest that arises among the different players, which prefer policy changes in different directions. As long as these players disagree on the direction of change and therefore block amendments to the Commission proposal, the Commission can implement its initial proposal.²⁵ This explanation is supported by the value of the respective inertia indices, which is smaller for the parliamentary *contrefilet* procedure compared to the regulatory-veto procedure.

7. CONCLUSION

Although advisory committees, management committees and regulatory committees have become an integral part of the European institutional structure there is surprisingly little research on their performance and their influence on the balance of power. Using the tools of non-cooperative theory this chapter analyzes the working properties of the implementation procedures that govern policymaking in the European Union. Based on these insights, the power of the players is measured with the help of a concept that focuses on strategic power. As it turns out, not the Council but the Commission is the most powerful player in the comitology game. It remains in this position even if the European Parliament were to become formally involved in the implementation process.

This is an interesting result for several reasons: taking the Council as the principal and the Commission as the agent, the agent is on average in a better position to impose its preferences on the policy to be implemented than the principal. Obviously, the comitology procedures are not able to solve the problem virulent in all principal-agent relationships, namely how to align the agents actions with the preferences of the principal.²⁶ Matters become even more dramatic if the position of the Commission in European legislative decision making is taken into account. Contrary to a widely held view, it is not the Council which holds most power, but the Commission (see Steunenberg *et al*, 1997). It seems necessary to stress that 'more' or 'less' power for the Commission does not necessarily coincide with 'better' or 'worse' decision making procedures. The latter judgment has to be kept for a *normative* analysis. For this kind of analysis one needs a normative criterion to judge the quality of different procedures in terms of their outcomes. Such a criterion would have to acknowledge that none of the institutional players should be seen as an end in itself, but rather that all of them are intended to serve the interest of the European citizens. Thus, the normative criterion would have to judge how well the preferences of the European citizens are mirrored in the policies that are selected at the European level. An answer to this question needs further institutional analysis.

The strategic power index, as calculated in this chapter, refers to the ability of a player to make a difference in the outcome of a policy game. This ability depends on

²⁵ See Steunenberg (1996), for a more extensive analysis of the discretion of agents that is a result of the structure of the decision making process. His analysis indicates that the more lawmaking power is differentiated and assigned to different players, the larger is the discretion of the agent.

²⁶ See also Joerges and Neyer (1997: 290), who suggest that '[t]he whole argument turns the insights of the principal-agent thesis on its head.'

the rules of the game, which describe the set of players, the sequence of moves and the set of available actions. Since the strategic power index captures general features behind decision making, it is of great importance for constitutional decision making.

Constitutional decision making consists of the design of rules, which govern the daily play of games in the post-constitutional stage of a society. What the framers of the rules need to know are the possible future courses of actions under varying preferences. That is exactly the kind of information the strategic power index provides. That is the reason why we feel that this index might become an indispensable tool in the upcoming European constitutional debate.

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9. APPENDIX. STRUCTURE AND SOLUTIONS TO THE GAMES DISCUSSED

Parliamentary gatekeeping procedure

To solve this game, we proceed by backward induction. We begin with the last stage of the game and determine the last player's best choice. Knowing that, we move to the second-to-last player and determine this player's optimal choice. In this way we work our way back through the game tree. In the last stage, the Council will consider the Commission proposal and determine whether sufficient support exists to select a different and new Council policy that differs from the Commission proposal. The Commission proposal, x , forms the *status quo post* that will be implemented if the Council does not respond, which occurs when it is found in the Council's blocking set. Otherwise the Council will propose a policy that is equivalent to the most preferred position of one of its decisive members. In the second stage, Parliament has to determine whether or not it will accept the Commission proposal given this response of the Council. Parliament keeps its gates closed when:

- (4) a simple majority of its members prefers the Commission proposal to the Council policy; or when
- (5) the Council cannot amend the Commission proposal and therefore will accept its proposal, that is, the Commission proposal is found in the Council's blocking set.

Knowing this response, the Commission selects its best proposal that satisfies one of these two conditions. Such a proposal will thus be either preferred by a majority in Parliament, or cannot be amended by the Council, which implies that Parliament will not consider submission. It therefore forms the equilibrium outcome.

Formally, let L_r be the rightmost decisive qualified majority member in the Council; L_l is the leftmost qualified majority member. In addition, let L_m denote the median Council member. By definition, $L_l \square L_m \square L_r$. The median member of Parliament is denoted as E_m . For simplicity, we restrict our attention to the policy space that is found to the right of the median Council member, that is, for $x \geq L_m$. Then, for the parliamentary gatekeeping procedure, the equilibrium policy x is the

Commission's most preferred point in the interval $[L_m, \max\{L_r, E_m(L_r)\}]$. Similar results can be derived for symmetric cases that are found to the left of the median Council member.

Parliamentary contrefilet procedure

Applying backward induction once again, the game can be solved as follows. In the last stage, Parliament decides whether or not to use its veto right, that is, to veto either the amendment made by the Council or the Commission proposal. A veto-proof proposal, that is, a proposal that will not be vetoed, must be found in Parliament's win set to the *status quo ante*. In the third stage, the Council decides whether or not it will amend the Commission proposal given Parliament's response. The Council will only consider an amendment when it prefers to do so and when the amended proposal is veto-proof. The Council will not consider an amendment when the Commission proposal is found in the Council's blocking set. Then, no qualified majority can be formed since the Council members will be divided about amending the Commission proposal.

In the second stage the committee has to decide whether or not to keep its gates closed, i.e. to give a positive opinion on the Commission proposal. The committee will keep its gates closed when it (weakly) prefers the Commission proposal, x , to either the Council's policy, y , or the *status quo ante*, q .²⁷ The committee also accepts the proposal when the Council cannot amend it and therefore will accept x , while Parliament does not issue a veto.²⁸ Knowing this response of the committee, the Commission selects its best proposal from the union of these sets, which does not lead to involvement of either Parliament or the Council.

Formally, let C_r denote rightmost decisive qualified majority member of the committee; similarly, C_l is the leftmost decisive qualified majority committee member. Assume, again, that $x \geq L_m$. Then, for the parliamentary *contrefilet* procedure, the equilibrium policy x is equivalent to a point, or the point in one of the following intervals which the Commission prefers most:

- (1) for $E_m \leq q$:
 - (a) and if $q \leq L_r$:
 - (i) $[L_m, q]$ for $C_r < q$ and $\min\{E_m(q), C_r(q)\} \leq L_m$;
 - (ii) $[\min\{E_m(q), C_r(q)\}, q]$ for $C_r < q$ and $\min\{E_m(q), C_r(q)\} > L_m$;
 - (iii) $[\max\{L_m, E_m(q)\}, q]$ for $C_l \leq q \leq C_r$; or,
 - (iv) $[\max\{L_m, E_m(q)\}, C_l(q)]$ for $C_l > q$;

²⁷ Note that if the Council decides to amend the Commission proposal, the amended policy will be either $y = L_r$, for $x > L_r$, or $y = L_l$ for $x < L_l$.

²⁸ Formally, the Commission proposal will not be submitted to the Council when:

- (i) $x \in Q_C(L_r) \cup [B_L(x) \cap W_E(q)]$ for $q > L_r$;
- (ii) $x \in Q_C(q) \cup [B_L(x) \cap W_E(q)]$ for $L_l \leq q \leq L_r$; or,
- (iii) $x \in Q_C(L_l) \cup [B_L(x) \cap W_E(q)]$ for $q < L_l$.

- (b) and if $q > L_r$:
- (i) $[L_m, L_r]$ for $C_r < L_r$ and $\min\{E_m(q), C_r(q)\} \leq L_m$;
 - (ii) $[\min\{E_m(q), C_r(q)\}, L_r]$ for $C_r < L_r$ and $\min\{E_m(q), C_r(q)\} > L_m$;
 - (iii) $[\max\{L_m, E_m(q)\}, L_r]$ for $C_i \leq L_r \leq C_r$; or,
 - (iv) $[\max\{L_m, E_m(q)\}, C_i(L_r)]$ for $C_i > L_r$;
- (2) for $E_m > L_r, q > L_r$ and $E_m(q) > L_r$:
- (a) $[\max\{L_m, C_r(q)\}, q]$ for $C_r < q$;
 - (b) the *status quo ante* point q for $C_i \leq q \leq C_r$; or,
 - (c) $[q, C_i(q)]$ for $C_i > q$;
- (3) for $E_m > q$:
- (a) and if $q \leq L_r$ and $E_m(q) > L_r$:
 - (i) $[\max\{L_m, C_r(q)\}, L_r]$ for $C_r < q$;
 - (ii) $[q, L_r]$ for $C_r \geq q$ and $C_i \leq L_r$; or,
 - (iii) $[q, C_i(L_r)]$ for $C_i > L_r$;
 - (b) and if $q \leq L_r$ and $E_m(q) \leq L_r$:
 - (i) $[\max\{L_m, C_r(q)\}, E_m(q)]$ for $C_r < q$;
 - (ii) $[q, E_m(q)]$ for $C_i \leq q \leq C_r$; or,
 - (iii) $[q, \max\{E_m(q), C_i(q)\}]$ for $C_i > q$.

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INSTITUTIONAL CHANGE IN THE EMERGING EUROPEAN POLITY*

1. INTRODUCTION

Few researchers in international and comparative politics and public administration would disagree with the observation that, as a result of the spectacular rise of internationalization and globalization – ‘the spatial and temporal implosion of the globe’ (Ruggie, 1993: 168) – the nation state is in full retreat. For such people it is more or less common knowledge that the enormous increase in interdependence on a worldwide scale during the last few decades has seriously, and perhaps even fatally, weakened the efficacy of the nation state. This applies *a fortiori* to the nation states that make up the European Union (EU). Although the EU was initially set up by these states for the very reason that they wanted to cope with the negative effects of increasing interdependence (cf. Milward, 1992; Moravcsik, 1998), it is widely accepted that the member states of the EU ‘are no longer ‘Westphalian’ in terms of their substantial statehood. They exemplify a new type of statehood... For lack of a better term, this new form of statehood can be labelled ‘postmodern’ (Sørensen, 1999: 602).

In this chapter we try to establish, by means of an analysis of institutional change in the EU at various levels, whether the emerging European polity has indeed become the ‘first truly postmodern international political form’ (Ruggie, 1993: 140). To what extent have the member states, as the classic *international* actors, had to make way for *transnational* and *supranational* actors? It may very well be that in the EU’s founding years (1950–1966) the member states still ruled supreme, but were they still the prime movers as far as the Single European Act (SEA) and the Treaty on European Union were concerned? Moreover, even if it should turn out that the member states remain the dominant actors with respect to the conclusion of treaties, do not the institutional frameworks that are the result of these ‘grand bargains’ confer on the EU’s institutions a substantial degree of policy autonomy *vis-à-vis* the member states that perhaps seriously undermines the member states’ power of independent policy making?

In order to answer these questions, we adopt an amended version of Peterson’s (1995) distinction between three levels of analysis for studying EU decision making. Peterson distinguishes first of all the *super-systemic level* (treaty revision, strategic agenda-setting), where ‘history-making’ decisions are taken that ‘reflect distinctly

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political rationality: the desire of national governments to remain in power' and 'alter the way that the EU works as a system of government' (Peterson, 1995: 72–3). The second level is the *systemic level*, where 'policy-setting' decisions are taken that determine the overall direction of policy development of the EU policy fields. Next to a dominant political logic, a more technocratic and administrative rationality will be found at this level. Finally, there is the *meso-level of policy-shaping*, where decisions are taken that control the options and instruments selected within the general policy framework of the various EU policy sectors. 'Technocratic rationality, based on specialized or technical knowledge, often dominates at the meso-level' (Peterson, 1995: 74).

Peterson's analytical framework is certainly helpful for the study of decision making in the European Union, but has the major drawback that it does not pay attention to the level of individual member states, which themselves are an intrinsic and fundamental unit of the multi-level political system of the EU (cf. Hix, 1999). In addition, we feel that the analytical distinction between policy setting and policy shaping is difficult to maintain, if one appreciates that the question 'what should be done' (policy setting) cannot always easily be separated from the question 'how do we do it' (policy shaping), nor from the issue of 'who do we authorize to do it' (history making). Therefore, we propose to look at day-to-day EU policy making in terms of policy *arenas*, which are characterized by a highly complex mix of actors and institutions. This also helps us to avoid the fallacy that policy shaping is supposedly less driven by political rationality than policy setting. Finally, and in order to be able to say anything sensible at all about the assumed decline of the nation state and the alleged rise of the postmodern polity, it is obviously necessary to include an analysis of policy making at the national level. Given these considerations, we shall distinguish the following three levels of institutional change within the EU: the constitutional level, the level of EU policy arenas, and the national level. The 'history making' decisions taken at the constitutional level define the (formal) institutional setting of the various day-to-day EU policy arenas, while the formal and informal institutions of policy setting and policy shaping at the European level influence the capacity and, conceivably, the autonomy for policy making at the national level.

The outline of the chapter is as follows. In Section 3.3 we start with an exposition of the EU's constitutional foundations, after which we turn to a discussion of the SEA and the Maastricht Treaty, as the two major revisions of these foundations. Subsequently, in Section 3.4, we analyze institutional change in the EU at the level of various policy arenas, such as competition policy, social policy, the internal market, Common Agricultural Policy (CAP) and Economic and Monetary Union. We deal with the national level in Section 3.5. Finally, in Section 3.6, we draw some conclusions. But before commencing our analysis of the role of the member states in the emerging European polity, we think it is imperative – in view of the many misunderstandings surrounding the concept – that first, in Section 3.2, we turn our attention to the state's most contentious attribute: sovereignty.

2. SOME PRELIMINARY REMARKS ON SOVEREIGNTY

In the debate on the relationship between the EU and the states participating in it, sovereignty plays a central role in many ways. It is therefore imperative to avoid conceptual confusion (cf. Caporaso, 1996). Many authors see sovereignty as identical to autonomy, i.e. 'the capacity to insulate oneself from outside influences and forces' (Jackson, 1999: 453). In our view this is not correct. A state is not more sovereign to the extent that its power is greater. There are no 'degrees of sovereignty'.

In our interpretation, sovereignty refers to a situation as well as a claim to that situation (cf. Van Kersbergen et al., 1999). It is impossible to reduce it either to a 'brute' empirical fact or to a purely juridical concept. Sovereignty forms the translation in terms of international law of an actual state of affairs with respect to the effective exercise of authority over a certain territory and the people living there. Most of the time, translation and the actual state of affairs will coincide, but this need not always be the case. The possession of sovereignty constitutes the certificate of membership of the states system, with all the accompanying rights and obligations. Perhaps Huber, the arbiter in the *Island of Palmas* case, brought by the Netherlands against the United States, has put this point most succinctly. According to him 'territorial sovereignty... involves the exclusive right to display the activities of a State' (*Island of Palmas Case (Netherlands v. U.S.A.)* 1928). However, it is possible that under certain circumstances the certificate of membership will be denied to a state by the other states. This denial has very adverse consequences for the effective exercise of authority. This is the reason why sovereignty is more than just a juridical term (cf. also Jackson, 1999: 433 and 449).

Sovereignty has two aspects. The first is that, with regard to its territory and the population living in it, a state recognizes no authority other than its own. This is called 'territorial integrity' or 'internal' sovereignty. A state can delegate part of its internal authority to an international organization – as did the member states of the European Coal and Steel Community (ECSC), when they delegated to the High Authority their authority to determine the price of coal and steel. The second aspect is that a state recognizes no authority above it in its international relations. This is called 'independence' or 'external' sovereignty. Independence refers to a state's authority to conduct relations with other states. A state can also delegate part of its external authority to an international organization – as did the member states of the European Economic Community (EEC), when they delegated to the European Commission their authority to conduct negotiations in the framework of the General Agreement on Tariffs and Trade (GATT) (cf. Lieshout, 1999: 14).

That states can delegate part of their internal or external authority to international organizations neither means that states 'surrender' their sovereignty, or parts of it (cf. Milward, 1992), nor that they 'delegate' or 'pool' it (cf. Moravcsik, 1998). This implies that we should be sceptical of those analyses that claim the end of the Westphalian system – the 'Westfailure system' as Strange would have it (cf. Strange, 1999) – and the nation state. It is not obvious that we should, as Scholte proposes, draw the conclusion that nation states have lost their 'former core attribute of sovereignty' (Scholte, 1997: 442). Nor can we say that the growth of 'multilateral governance arrangements' like the EU formally puts into question the sovereignty of

the participating nation states, which indeed are, directly or indirectly, collectively responsible for these arrangements. It may be the case that the member states of the EU have lost a significant part of their power for autonomous policy making, and that 'in some matters, it seems even to have gone nowhere, just evaporated' (Strange, 1995: 56), but this does not mean that their sovereignty – their claim to supreme authority over a certain territory and its inhabitants within clearly defined borders – has been affected. We can only agree with Jackson, who has recently emphasized that 'the EU does not involve a transfer of sovereignty. There is nothing to prevent Britain from legally withdrawing from the EU. There are of course policy considerations that might make that unwise' (Jackson, 1999: 453; cf. also Colchester and Buchan, 1990: 16). Accordingly, although the emergence of the European polity may have had major consequences for the policy autonomy of the member states, it has not diminished their sovereignty in any way.

3. INSTITUTIONAL CHANGE AT THE CONSTITUTIONAL LEVEL: MAKING HISTORY

Introduction

The EU is a supranational organization. The establishment of the institutions, Council of Ministers, Commission, Parliament, Court of Justice and European Central Bank (ECB), as well as the decision rule, qualified majority voting (QMV), which should guarantee this supranationality, nevertheless rests on intergovernmental bargains. We first discuss the EU's constitutional foundations, which were laid in 1951 (Treaty of Paris) and 1957 (Treaties of Rome). Subsequently, we deal with the Luxembourg Compromise (1966), which prevented the establishment of QMV, although agreed in the Treaty of Rome, for a period of more than 20 years. We turn to the Single European Act (1986). The SEA introduced QMV as far as the completion of the single market was concerned. Subsequently, we deal with the establishment of the ECB.

The Constitutional Foundations of the European Polity

The oldest elements of the constitutional framework of the EU – the Council of Ministers, the Commission, the European Court of Justice and the European Parliament – date back to the Treaty of Paris (1951) by which the ECSC was established. This treaty was the outcome of lengthy negotiations between France, the Federal Republic, Italy and the countries of the Benelux on the basis of the Schuman Plan, which was launched in May 1950. In this plan, France proposed 'to place all of French and German coal and steel production under a joint High Authority, in an organization open to participation by other European countries'. The plan was first of all a new method to give France control over West German recovery. In the supranational High Authority the member states would be represented on equal terms, and its decisions would be binding upon them.

In the working document prepared by the French delegation for the conference on the plan, no mention was made of a Council of Ministers. Moreover, France proposed

that the negotiators limit themselves to achieving agreement on a general framework treaty for the establishment of the High Authority. This intention was almost immediately thwarted by the attitude of the Dutch and Belgian delegations. They were particularly disturbed by the fact that the High Authority would operate in a political vacuum. They found it unacceptable that neither the responsibilities nor the accountability of the High Authority were clearly outlined. The governments must have some control over the High Authority's activities. The Dutch delegation proposed that a Special Council of Ministers be established in addition to the High Authority. This council would have the power to coordinate the policies of the High Authority and those of the member states. It also suggested that this council should have a certain controlling power over the High Authority's performance. This last idea was, of course, out of keeping with the Schuman Plan, as its ultimate consequence would be to degrade the High Authority to little more than an international executive secretariat of the Council of Ministers. This second component of 'the Dutch formula' therefore was completely unacceptable to France. It would undermine the whole *raison d'être* of the Schuman Plan.

A compromise proposal was eventually accepted, providing for a Council of Ministers with coordinating powers, but also for a High Authority with its own supranational powers, which therefore, on certain well-defined issues, would not need the approval of the member states. As a result of this compromise, the powers of the High Authority needed to be defined very precisely. In early August, the delegations reached agreement on the basic institutional design of the coal and steel community. This consisted primarily of a High Authority with supranational powers and a Council of Ministers with coordinating powers. The member states would be represented on an equal footing in both bodies. They also agreed on the establishment of a parliament, known as the Common Assembly – it was 'originally envisaged as a kind of stockholders meeting' (Duchêne, 1994: 210–11) – to which the High Authority was to report on its activities, as well as a Court of Justice, which would settle disputes concerning the functioning of the common coal and steel market.

The spring of 1955 saw the *relance européenne*, in the form of a joint memorandum by the Benelux countries in which it was stated that the time had come to take a new step on the road to European integration. They envisaged a community for the general economic integration of Western Europe. (They also proposed establishing a nuclear energy community, but as this community's institutional make-up is more or less the same as that of the economic community, we shall no further discuss this. It may be noted, however, that the transnational 'Action Committee for the United States of Europe' put all its efforts into promoting this atomic community, which should take priority over the economic community, but that its exertions to this end bore no fruit.) Such a community necessitated the establishment of a common authority entrusted with the power to bring it about. The Benelux countries also proposed convening a conference to prepare a treaty. At the Messina Conference, France was persuaded to agree to the formation of a committee of government representatives, who could not bind their governments, which had the task to prepare the proposed conference. This committee presented its report in the spring of 1956. In the report the supranational element was subordinated to the intergovernmental element as far as possible. Also the designation 'High Authority'

was dropped, as being too pretentious, and replaced with the more modest sounding 'European Commission'. The report constituted the basis for the eventual treaty on the European Economic Community, which was signed in Rome in March 1957.

Compared to the Treaty of Paris, the supranational element in the Treaty of Rome is far more circumscribed. The ECSC Treaty first deals with the High Authority, which is charged with the task to ensure that the Treaty's objectives are attained (Article 8), and subsequently discusses the Special Council of Ministers, which exercises its powers in particular to harmonize the actions of the High Authority and the member states (Article 26). In the EEC Treaty it is not the Commission but the Council that is charged with ensuring the attainment of the Treaty's objectives (Article 145). This time the Council is also treated before the Commission. The latter's task is confined to ensuring the proper functioning and development of the common market (Article 155).

The Rome Treaty also contained various articles providing for QMV in the Council after the last stage of the implementation of the common market had started in January 1966. According to the president of the European Community the coming introduction of QMV meant that the development of the community could no longer be blocked by a veto. The so-called 'empty chair' crisis of 1965–1966 proved him wrong. It had its origins in the Commission's proposed package deal that linked the financing of the Common Agricultural Policy (CAP) with a strengthening of the powers of the Commission and the Parliament. The Commission gambled that France, as the member state that stood to profit most from the CAP, would swallow the proposed increase in power of the Commission and the Parliament. The gamble turned out wrong. France flatly rejected the package deal. It also refused to consider compromise solutions. France withdrew its permanent representative from Brussels, and announced that it would no longer take part in the Council's deliberations. Indeed, France sought to profit from the crisis by stripping the Commission of its right of initiative, and blocking the introduction of QMV (cf. De Vree and Jansen, 1998, Moravcsik, 1998). The solution to the crisis was found in the Luxembourg Compromise. The member states agreed that, in situations where 'very important interests of one or more partners are at stake', the Council would endeavor, 'within a reasonable time', to reach unanimity, even if the Treaty provided for taking decisions by a qualified majority. Furthermore the member states recorded that France considered that, where such very important issues were at stake, 'the discussion must be continued until unanimous agreement is reached', and although the other states did not share this view, they were nevertheless of the opinion that 'this divergence [of views] does not prevent the Community's work being resumed in accordance with the normal procedure'. The Council also declared that it was desirable, in case of initiatives 'with a special meaning', that the Commission should first contact the member states through their permanent representatives.

The Paris summit of December 1974 created one other institution, although it formally remained outside the European constitutional framework for another 12 years (it was first mentioned in the SEA). This is the European Council of heads of state and government, which was to meet at least twice a year. It was established at the instigation of France in an attempt 'to improve decision making and to assert the intergovernmental nature of integration' (Simonian, 1985: 260). The European

Council very soon came to overshadow the older institutions. At the Paris summit it was also decided that direct elections to the European Parliament be held for the first time in 1978.

It will be clear from this review that the negotiations on the constitutional foundations of the EU were dominated by the member states. Indeed, the Commission's attempt in 1965 to strengthen the supranational element in the EEC ended in total failure. Its right of initiative was curtailed and majority voting in the Council became hostage to the whims of the member states, who could invoke vital interests whenever they feared that decisions might go against them.

The White Paper on the Completion of the Internal Market and the Single European Act

Two structural developments that became manifest at the beginning of the 1980s triggered the process leading to the SEA. The first related to fundamental shifts in the international economic environment of the EEC countries, in particular with respect to the electronics sector (information technology), monetary matters and trade affairs. These shifts came down to, 'crudely put, relative American decline and Japanese ascent' (Sandholtz and Zysman, 1989: 95). They pointed to a future in which a technologically backward Europe, all alone, had to face the competition from Japan as well as the United States as the latter no longer could afford to play its traditional role of Europe's benevolent hegemon. A powerful lobby of some of the largest European multinationals, the 'Round Table of European Industrialists', advocated meeting this challenge by developing industrial and technological policies on a European scale, and adopting protectionist measures to shield the European market from foreign competition. The second structural development concerned the inability of the Western European welfare states to deal with the problems that had plagued them since the first oil crisis of 1973–1974: high unemployment, low growth rates, high inflation and ever-growing government debt. As a result, one by one the West European states abandoned the once so successful Keynesian model in favor of one based on supply-side economics and deregulation. A French attempt to go against the stream by establishing 'Keynesianism in one country', failed dramatically and was abruptly aborted in the spring of 1983. This 'tournant de la rigueur' heralded the end of the years of 'Eurosclerosis'. From then on, France again became the self-appointed champion of European causes (cf. Tsoukalis, 1997: 37 and Moravcsik, 1998: 333–4).

In the summer of 1984, the French president-designate of the Commission sounded the governments of the member states on possible initiatives to end the period of stagnation. It soon became clear that the creation of a really functioning internal market was the only initiative that could count on support from all the member states. The new Commission immediately set to work on this project. In June 1985, it presented the White Paper 'Completing the Internal Market'. The White Paper contained 297 measures that were needed to complete the internal market by 31 December 1992 (18 of which were struck from the list in the following months). It also introduced a new approach to non-tariff barriers (NTBs). The White Paper proposed that the EEC 'should rely as much as possible on the principle of

mutual recognition: all goods lawfully manufactured and marketed in one member country should be accepted also by the other member countries' (Tsoukalis, 1997: 43).

At the European Council in Milan of June 1985, the White Paper was accepted without much ado. Subsequently, everything once again turned on QMV. The United Kingdom (UK) accepted that majority voting had to be strengthened as far as decisions for the completion of the single market were concerned, but it was strongly opposed to amending the EEC Treaty, or explicitly reformulating the Luxembourg Compromise. It propagated an informal return to QMV where the Rome Treaty provided for it, and a gentlemen's agreement between the member states to exercise their veto sparingly. Denmark and Greece supported the UK's position. The original Six, however, insisted on a treaty change. Deadlock threatened, but then the Italian Presidency unexpectedly called for a vote to convene a conference of government representatives 'for the purpose of determining by common accord the amendments to be made' to the EEC Treaty. Its claim that this procedure was in agreement with Article 236 of the Rome Treaty was accepted by seven of the member states, vigorous protests by the other three, the UK, Denmark and Greece, notwithstanding. (The claim, however is, of doubtful validity. The best one can say is that Article 236 does not specifically preclude the *Council of Ministers* – as far as the Treaty of Rome is concerned the European Council does not exist – taking a majority vote on the decision to convene an ICG.)

Within a few months the IGC had prepared a draft treaty. The final text was signed in February 1986. In the SEA it was laid down that the Community would take the necessary measures to establish the internal market – 'an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured' – by 31 December 1992 (Article 13), and that the Council would decide on these measures by a qualified majority (Article 18). As far as these decisions were concerned, moreover, the powers of the European Parliament were somewhat strengthened through a new 'cooperation procedure', which applied to a limited number of articles of the Rome Treaty and the greater majority of the measures proposed in the White Paper.

It will be evident from our brief examination of the events leading up to the SEA, that, although the member states took the final decision, the Commission played a very prominent role. In the beginning of 1985, it seized the initiative by adopting the completion of the internal market as its first priority. The part played by the Round Table of European Industrialists during the preparation of 'Europe 1992' should not be overestimated. The measures proposed in the White Paper reflected the new consensus on supply-side economics and deregulation, whereas the Round Table had been lobbying for a program based on old style government intervention and protectionism. The European multinationals only embraced internal market liberalization after it had been accepted by the member states (cf. Colchester and Buchan, 1990: 27 and Moravcsik, 1998: 355–6).

Treaty on European Union

The exchange rate mechanism (ERM) of the European Monetary System (EMS) was devised by the German chancellor and the French president in 1978, in 'a classic Franco-German political fix' (Colchester and Buchan, 1990: 161), to correct the flaws of its predecessor, the so-called 'snake'. The snake had in fact worked as a D-mark zone, in which West Germany could independently set its monetary policy while the weak currency countries had to bear the costs of monetary adjustment. The ERM was supposed to have worked more symmetrically, but very soon after it started functioning it became apparent that it operated in exactly the same way as the snake. The reason was the Bundesbank's refusal to subordinate its constitutional task of maintaining price stability to the Community's ideal of stable exchange rates. According to the rules of the EMS, the Bundesbank, in situations when a weaker currency needed support, should have been prepared to increase the West German money supply, but it was not prepared to do so.

Thanks to the capital controls maintained by, in particular, France and Italy, the EMS did not totally function as a D-mark zone. However, the completion of the single market involved abolishing the existing restrictions on capital transactions. This meant that the last defense line against West German monetary dominance would disappear. In the light of this threat, supranational solutions exerted a new attraction. In January 1988, France distributed a memorandum in which it expressed the French objections to the way in which the EMS was functioning. It proposed an investigation into the possibilities of replacing the EMS by a central European bank. Italy was all in favor. A self-imposed loss of autonomy in favor of a European bank in which all participants would have a say was preferable to the unilateral loss of autonomy which Germany imposed on its partners in the EMS (cf. Colchester and Buchan, 1990: 167).

At the European Council in June 1988, it was decided to set up a committee to study the establishment of an Economic and Monetary Union (EMU). The committee's report issued in the spring of 1989 recognized the desirability of an EMU, but also stated that its creation was going to be a long-term affair given the considerable differences between the economic policies of the member states. Only if a sufficient degree of economic convergence could be achieved would EMU have a chance of success. The report therefore proposed the establishment of EMU in three stages. Furthermore, it advised against fixing the transition from Stage I (which was to commence on 1 July 1990 when the capital markets of the community were liberalized) to Stage II, or that from Stage II to Stage III.

The Franco-Italian attack on the Bundesbank appeared to have been thwarted. Political urgency had to make way for monetary prudence. Although in the summer of 1989 France and the Federal Republic reached agreement in principle on an ICG on EMU (cf. Moravcsik, 1998: 400), everything seemed to indicate that the implementation of EMU would be postponed indefinitely for a lack of convergence. The events after the opening up of the Berlin Wall in the beginning of November, however, lent new weight to the political urgency of EMU (cf. Cameron, 1995: 57). Especially after the German chancellor, at the end of that month, had presented his ten-point plan for German unity. The United States immediately supported the plan, on the condition that 'unification should occur in the context of Germany's continued commitment to NATO and an increasingly integrated European Community' (Zelikow

and Rice, 1997: 133). After a few weeks spent in futile attempts to turn the tide, France accepted what seemed to be the inevitable. It found comfort in the thought that, at the European Council in Strasbourg in 1989, the Federal Republic had made good its promise to support an ICG on EMU. At least German unity would be matched by deeper European integration. The UK, of course, was opposed both to German unity and deeper European unity, but given American support and French acceptance, there was nothing it could do to block both projects.

At the ICG it turned out that the delegations could not reach agreement on the role of the Council of Ministers in EMU and the way in which the transition to the third stage of EMU would have to take place. France was in favor of a European Central Bank (ECB) with extensive powers, but subordinate to the Council of Ministers. This proposal was completely unacceptable to Germany. It insisted on the independence of the ECB. Regarding the way in which the transition to the third stage should take place, the negotiators did agree that the participants in EMU would have to meet strict convergence criteria, but they failed to reach agreement on questions such as how exactly these criteria should be formulated, how to determine whether a member state had met the criteria, and how many countries should meet those criteria before EMU could become operational. These problems would have to be solved at the concluding Maastricht summit.

At Maastricht, Germany and France managed to reach a compromise. The Federal Republic would get what it wanted with regard to the complete independence of the ECB (Article 4 A), the maintenance of price stability as the policy the ECB was to pursue (Article 105), and the contents of the convergence criteria (Article 109 J). In return, France obtained the crucial concession that the third stage of EMU would be irrevocably implemented on 1 January 1999 for all the member states that met the convergence criteria (Article 109 J). Consequently, it was now in France's own hands to end the Bundesbank's rule of Europe, and from January 1999 onwards to determine European monetary policy on an equal footing with Germany.

In the spring of 1990, at West German instigation, France and the Federal Republic requested a parallel ICG on Political Union. This request was granted by the European Council. The ICG on Political Union, however, remained a sideshow. France only paid lip-service to the idea, and the UK was dead against any supranational initiative in this area. As a result, the Treaty on European Union in the end contained only one article on a 'Common Foreign and Security Policy', and another one on 'Cooperation in the Field of Justice and Home Affairs'. Both articles were full of mutual information and consultation, but contained no supranational clauses, although it was up to the Council to determine whether certain decisions would be taken by QMV. The Maastricht Treaty, finally, also provided for an extension of the cooperation procedure, and introduced a new codecision procedure in several of the policy areas covered by the Treaty. In the latter procedure the Parliament for the first time acts in common with the Council as legislator.

Decision making regarding the Treaty on European Union signalled the reassertion of the member states. They once again dominated the field. Supranational and transnational actors played a marginal role at best. It should be noted that the increase of the Parliament's power in the legislative process through the co-decision procedure, was at the expense of the Commission's position in that process.

4. INSTITUTIONAL CHANGE AT THE LEVEL OF EU POLICY ARENAS: SETTING AND SHAPING POLICY

Introduction

The central claim in the previous section, that the EU rests on a set of intergovernmental bargains has, of course, implications for the analysis of institutional change at the levels of the various day-to-day policy arenas in Brussels. These arenas, consisting of actors and rules governing their interactions, constitute the institutional context of day-to-day policy making in Brussels. The questions, then, are, first, to what extent do the larger intergovernmental bargains determine the game in the day-to-day policy arena, and, consequently, second, how easy or difficult is it to effectuate institutional change at the policy arena level? It follows that in this section institutions sometimes figure as a dependent and sometimes as an independent variable. We first describe how the grand bargains have resulted in various types of day-to-day policy arenas. Next we show the consequences of these institutional arrangements for the nature of the policies made, the actual power distribution within these policy arenas, as well as the policy autonomy of national states. Finally, we discuss how institutional change occurs and the extent to which that can be related to the larger intergovernmental bargains underlying the European polity.

How intergovernmental bargains shape day-to-day policy arenas in the European polity

On the level of day-to-day policy making, intergovernmental bargains define for each policy area which actors can take part in the decision making process. They define the scope of the measures that can be taken as well as the decision rules that should be applied. They have resulted in a complex political system in which different rules apply to different policy areas. Sometimes the European Parliament is involved; sometimes it is not; sometimes the European Court of Justice has jurisdiction; sometimes it does not. In other words, the intergovernmental bargains create different policy arenas that operate under different formal rules. The various types of arenas can best be understood by asking a few simple questions. First, is the policy domain formally inside or outside the European framework? The 1984 Schengen Treaty, for instance, was negotiated by five EC members outside the EC framework, even though it was meant to deal with the consequences of an EC policy (the expected launching of an internal market by 1992). This illustrates how careful states are in protecting such vital matters as the inflow of unwanted individuals (criminals), products (drugs, weapons), and services (money fleeing to tax havens). Not until the 1997 Amsterdam Treaty was the Schengen Treaty incorporated into the EU legal framework. Second, is the policy area within or outside the *acquis communautaire*? Only the first pillar of the 1991 Maastricht Treaty (dealing with the European Community) gives the right of initiative to the European Commission and jurisdiction to the European Court of Justice. The second and third pillar (foreign and security policy; justice and home affairs) are strictly intergovernmental policy domains which preclude the European Commission and the European Court from

substantial intervention. Third, what decision rule should be applied? Within the first pillar, we find three types of decision rule. The first is that the European Commission has full authority. These are the policy arenas that get closest to supranationalism. The majority of decisions, however, are taken by the Council of Ministers either unanimously or by qualified majority. Fourth, does the European Parliament have the (highly qualified) right to amend or reject proposals (as embodied in the codecision and cooperation procedure)? Fifth, how many member states participate under these rules? Here we need to stress that member states have the possibility to 'opt out' of certain rules, which is itself an indication of the intergovernmental nature of these rules. These questions are summarized in table 3.1, which gives an survey of possible policy arenas.

Consequences of the nature of policy arenas

Institutional theory tells us that formal and informal rules structure the policy making process. They constrain as well as enable the behavior of actors. As may be observed in Table 3.1, the complicated web of formal rules in the European Union has created many different types of policy arenas. Formal rules for each type of policy arena define who is admitted as a player in the arena. In addition, they set different constraints and opportunities to those actors. If a European policy in the field of social affairs is proposed under the unanimity rule, the European Parliament will not take part in the policy making process in any substantial way. By implication, lobbyists are constrained in their room for maneuver, as it is much more difficult to lobby the intergovernmental institutions, such as the COREPER, than it is to lobby the European Parliament. The reverse is true, if the European Commission decides to introduce such legislation under the formal heading of the social protocol.

Much less is known of informal rules, however. Generally, an informal rule seems to have emerged that it is improper to invoke the Luxembourg Compromise regularly. Even in the case of the banana market legislation, Germany decided not to make use of this weapon of last resort, despite the fact that Germany had proclaimed the availability of cheap, big bananas from outside the EU to be a vital national interest (cf. Stevens, 1996). In some policy arenas, actors seem to have developed informal rules of their own. At least, this is the case in the Agricultural Council. The member states seem to have developed, and obey, the informal rule that it is improper to be part of two blocking minorities regarding issues that are supposed to be part of the same package deal. Obedience to this rule caused Germany in December 1992 to drop its support of the minority blocking an increase of Italian milk quota, in the hope of maintaining its blocking minority regarding the banana market legislation. The Netherlands subsequently dropped its adherence to both blocking minorities, having been told by the president of the Council that Germany was about to drop its objections against the Italian milk quota, an issue much more salient to the Dutch. Germany and the Netherlands had been unable to coordinate their positions because the presidency (United Kingdom) had decided to meet with all member states separately before the plenary meeting. This enabled the UK to play off Germany against the Netherlands. This practice illustrates another

Table 3.1: *policy arenas in the European Union*

	inside	outside
inside or outside EU?		
acquis communautaire?	yes	no
decision rules	supranational	unanimity
substantial impact European Parliament?	no	qualified majority
all member states	no	no
not all member states	Aspects of competition policy	Aspects of social policy; CAP
	EMU	internal market; aspects of social policy
		social protocol
		Schengen after 1997
		Schengen before 1997

Source: adapted from t Hart, Metselaar, and Verbeek (1995)

informal rule in the Agricultural Council: the accepted use of the so-called *confessional box procedure* by the President (cf. De Groot, 1995).

Despite the scanty information on informal rules, it is possible to sketch some general consequences of the nature of the different policy arenas for policy making. These consequences not only concern the actual distribution of power, but also the nature of policies eventually adopted. Two main perspectives of the actual distribution of power within policy arenas may be distinguished: the intergovernmentalist perspective and the lobby perspective.

The intergovernmentalist view holds that most policy arenas are battlegrounds for the conflicting interests of the member states. It assumes that member states are keen to retain as much control over European policy making as possible. Given their interests, states will exploit to the maximum the room for maneuver the institutions allow them. Institutional theory tells us that certain decision rules tend to favor specific outcomes. This applies to EU policy arenas too. When policies are introduced under the rule of unanimity, it is likely that policies can be characterized as lowest common denominator as long as some member states consider the issue at stake as highly salient. If saliency is low or moderate, we can expect member states to give up their resistance in exchange for side payments or to be compensated for in another issue (policy linkage) (cf. Moravcsik, 1991). When policies are introduced under the qualified majority rule, the game that is being played is the search for, or the avoidance of, blocking minorities in the Council of Ministers. Under such circumstances, policies are likely to be characterized by exchanges of support on various issues: a member state promises to support fellow member states on issues on which it experiences relatively low salience in exchange for the others' support on issue on which it experiences relatively high salience (cf. Stokman and Van den Bos, 1994). The intergovernmentalist perspective allows little room for 'supranational institutions' such as the European Commission. The Commission is expected to anticipate the positions of the member states in the Council and present proposals that can be expected to find a majority in the Council. The Commission accordingly enjoys little real independence.

The intergovernmentalist view has difficulty in explaining policies in areas that can be characterized by supranationality, such as the competition policy of the European Commission, and the monetary policy of the European Central Bank. Decision making processes within these European institutions have been the subject of very little empirical research (e.g., Cini, 1996). Regarding monetary policy it would expect the ECB to anticipate the vital interests of the larger member states in the so-called *Euro11 council*. Intergovernmentalist scholars would predict that the stability pact, aimed at disciplining Euro-countries that violate the Maastricht criteria, will be applied with gentleness towards the larger Euro-members, as happened with Italy in 1999.

The lobby perspective holds that policy fields are not necessarily arenas in which states defend their national interests. The main reason is that the majority of day-to-day policy making in the European Union simply does not affect their vital interests. Rather, it concerns *dossiers* that affect a variety of public and private actors, but not the member states themselves. The standardization of the profile of car tires is unimportant to governments, but may put the survival of a tire producer at risk.

Assuming that most EU *dossiers* are unimportant and of a technical character, the policy making game changes. Because of the relatively small number of people employed by the Commission and their work overload, these civil servants are in constant need of technical information to prepare EU legislation. This provides an opportunity for lobbyists to affect the legislative contents of the measures prepared by the Commission. As most technical *dossiers* are prepared under the heading of completing the internal market, substantial influence of the European Parliament is the case (through the cooperation and codecision procedures). Lobbyists who have missed the opportunity to affect the first draft of a piece of legislation, have a second opportunity when the European Parliament has appointed an MEP to become *Rapporteur* on the issue: most Rapporteurs also lack technical expertise and therefore welcome input from lobbyists. In this perspective, a fundamental exchange is at the core of EU policy making: the exchange of technical information for a piece of EU policy. In this view, the intergovernmental institutions, COREPER and the Council of Ministers, rubberstamp the majority of these legislative pieces. The formal rules, coupled with the low saliency of the member states, produce a policy making system of lobbying. The empirical issue at stake is whether this policy making system can be characterized as open (in which every actor has a fair chance of winning provided he plays the game well) or closed (in which a few actors have privileged access to policy making, resulting in systematically biased European policies). The Common Agricultural Policy and petrochemical industry are often considered examples of closed policy arenas.

Institutional change

Given such different views on how institutions set the boundaries for EU policy making, how should we then conceive of institutional change at the level of EU policy arenas? Given the striking parallels between policy making by the American Congress and policy making in the EU, we employ policy subsystem theory (cf. Thurber, 1991) to get a grip on institutional change in the EU. We focus on closed policy arenas, explore the three mechanisms that can break up closed policy systems, and discuss the role of member states in such systems. This provides us with the best clues to institutional change in European policy arenas.

First, new Congressional elections may reshuffle the Congressmen in the policy subsystem. New power brokers in important committees may hold different policy views and question the policies that were previously unquestioned. Similarly, changes in the composition of the European Commission as well as the replacement of certain Ministers in the Council after national elections may prove a threat to closed policy arenas. The disappearance of a Christian Democrat as Dutch Agricultural Minister in 1994 clearly weakened the traditionally protected EU position of (some) Dutch farmers. Second, American policy subsystems change if the American President decides to intervene directly, because he assesses his political interests to be at stake. In the European Union, the member states play a role comparable to the American President. One should never forget that any *dossier* in the European Union, no matter how technical, can *at any time* turn into an intergovernmentalist issue. As a matter of fact, interested parties, dependent on their

political clout, are likely to mobilize 'friendly' member states when the proposed legislation is not to their liking. When the Commission proposed banana market legislation threatening the interests of American and British multinationals, these actors lobbied the German government, expecting Germany to change the *dossier* from technical into political, and thus change the game from an exchange game into an intergovernmentalist game. CAP provides another illustration of this point: when CAP threatened to block the conclusion of a GATT treaty in the early 1990s, interest groups affected put pressure on the member states to force the agricultural ministers into policy reform acceptable to the United States, and thus save the treaty. Third, in the United States closed policy subsystems may be opened up because the policies adopted by the actors in the subsystem affect new groups that are subsequently mobilized and demand to be part of the policy making process. This phenomenon can be observed in EU policy arenas as well. The environmental effects of average agricultural production have mobilized the environmental movement to such an extent that agriculture ministers now have to satisfy this part of the electorate and no longer can focus exclusively on the interests of traditional agriculture. Similarly, the Commission has succeeded in weakening the position of the member states in some policy arenas by co-opting previously excluded actors, often pressure groups and non-governmental organizations, into its web of advisory committees. On the one hand, the Commission has thus succeeded in reducing the influence of privileged lobbyists, because it is now assured of technical information on *dossiers* from various corners. On the other hand, the Commission has thus strengthened its position *vis-à-vis* the member states, as the member states have to take seriously these groups, which often are part of domestic constituencies.

The European Union offers examples of agents of institutional changes other than those identified by policy subsystem theory. One important agent of change is the Commission. The technical nature of most *dossiers* gives the Commission the opportunity to widen the scope of many a policy arena. This often is accomplished by means of tactics that have been dubbed *creative legislation* (Leibfried and Pierson, 1995). The Commission has succeeded in opening up the relatively closed policy arena for European social policy, which was dominated by the member states. Its strategy has been to expand its relatively limited formal competency, basically in matters of health and security at the work place, by defining issues technically as falling within its formal authority, which, however, clearly were not meant to be part of it originally. Examples include legislation on paid pregnancy leave. A second important agent of institutional change is the European Court of Justice. The possibility for individuals to go to court may have consequences that were unforeseen and unwanted by the member states. The European policy arena for health policies had been very limited. Health was considered primarily a matter of national concern. Yet, the European Court's decision that a citizen of an EU member state is entitled to a refund for a medical treatment (in this particular case the purchase of a pair of glasses) in another EU member state in principle puts pressure on national health systems and their financing.

Conclusion

In sum, European policy arenas are defined by their formal and informal rules. These institutions tell us who are the relevant players and the rules by which they play the game. Two types of EU policy arenas exist: intergovernmentalist arenas and lobby arenas. The latter can be relatively open or closed. Institutional change in such policy arenas is dependent on a number of factors: changes in the political context, interventions by member states, the widening of the number of actors, the strategic behavior of the European Commission, and, finally, the unintended consequences of Court decisions. The latter source of institutional change has clear impacts, not only on institutional arrangements at the European level, but also at the national level. Member states maintain policy autonomy in the sense that they can change the game, at any time, into an intergovernmentalist game. Nevertheless, policy autonomy is temporarily lost in two ways. First, many *dossiers* are left to the fight between other actors than the member states. Second, 'European' actors, such as the European Commission and the European Court, make use of the freedom given to them by the member states, and sometimes manage to change the day-to-day rules and policies.

5. INSTITUTIONAL CHANGE AT THE NATIONAL LEVEL: SETTING AND SHAPING POLICY

Introduction

With respect to the issue of institutional change at the national level, European integration must be seen from two points of view. On the one hand, European integration enhances the capacity of national institutions to deal with the effects of economic internationalization; on the other hand, it exerts pressure on the member states to adapt to European rules and regulations and thus affects the national institutional framework of policy making. We underscore the need to study the impact of European integration on national institutions in this dual manner, because this helps to avoid mistaken simplifications about the uni-directional decline of national institutions and policy autonomy. In this section, institutions are thus treated both as dependent and as independent variable. We first review theories of national institutions in order to be able, to assess the impact of the European Union on national institutions.

Theories of national institutions

There is an increasing interest in the study of the impact of internationalization on national institutions and national policy, which is also leading to growing attention for how diverging national institutions process external pressures differently. This has brought two sub-fields of political science closely together: international political economy and comparative political science. Traditionally, policy-oriented comparative political science has focused on differences and similarities in policies and policy outcomes of national states. Increasingly, the attention has shifted to 1) the impact of economics on policy making, 2) the impact of international

developments on domestic politics and policies, 3) the specific role in this of interest groups and national institutions of interest mediation, and 4) the role of the self-interest of state actors such as ministries and politicians. A recurrent research question has been how to explain cross-national variation in performance, usually defined in socio-economic terms (unemployment, economic growth, inflation). The key independent variables have been the national institutional framework of policy making and institutional adaptability. We deal with these theories first, because it is in their tradition that recent studies of the impact of the European integration on national policy making stand.

Consider the following two theses: 1) national policies are merely the outcome of the struggles between domestic interests; and 2) institutions and traditions co-determine the outcome of such struggles. For convenience's sake the contrast between these arguments is frequently attributed to the distinction between pluralist and corporatist systems of interest mediation. In pluralist systems none of the interest groups enjoys privileged access to the state and policy making, while in corporatist systems the institutions of government are essential for determining who has access to policy formulation and implementation.

In a pluralist society the response to external pressures is determined by the character of domestic interests. Mancur Olson (1982) argued that most interest groups aim at government policies that favor the redistribution of wealth here and now over investments for the future. The more rent-seeking interest groups there are in a society, the less likely it becomes that this society will invest in policies for the long run. The long-term disadvantages to society will be considerable. Such costs can only be avoided if interest groups are forced to adopt a long-term perspective. Olson argued that rent-seeking behavior of pressure groups explained the economic decline of the United States and Britain in the 1970s. Internationalization may lead to an escalation of conflict between those groups that anticipate winning and those that believe they will lose (cf. Frieden and Rogowski, 1996). Olson's theory would lead one to expect that increasing external pressure affects the stability of the established position of interest groups. One of the drawbacks of Olson's theory was that it could not explain the economic success of other nations – such as West Germany – with strong interest representation. The actor-oriented approach that focuses on the representation of interests at most offered only a partial explanation of cross-national variation in (socio-economic) outcomes.

The success of other countries inspired theories that studied those institutions that were either capable of diminishing the negative effects of short-term oriented interest groups or enabled pressure groups to take other interests into account. Such institutions – whether of a formal or informal nature – tended to function as intermediaries between interests and policies. Even in the exceptionally pluralist American society one could find 'iron triangles' or policy networks that were structurally biased towards certain interest because of the intimate links between bureaucrats, policy makers and pressure groups in that field. There appeared a host of studies of the intermediate, (neo-)corporatist structures that had evolved, especially in Western Europe, in which interest groups and the state cooperated in policy making and policy implementation. The interesting finding was that corporatist interest intermediation was linked with the successful adaptation of open

economies to the world economy. By involving various interest groups in policy making and by making these co-responsible for implementation, a number of states succeeded in carrying out the structural adjustments that were deemed necessary without seriously disrupting social order and peace (cf. Katzenstein, 1985).

Many comparative studies focused on the cross-national variation in patterns of adjustment to the world economy, but paid little attention to the issue of whether and to what extent European institutions mattered. One of the leading hypotheses was that open economies tended to be correlated with the presence of domestic intermediate structures. Such structures meant that necessary adjustments to the requirements of the world economy were carried out in a piecemeal manner and that the potential victims of these adjustments (such as redundant workers) were compensated, for instance via the welfare state. Economic openness, usually measured in terms of exports and imports, is a feature of smaller countries such as Belgium, the Netherlands, Austria, Sweden and Switzerland. These countries could not afford protectionist measures because other countries would respond by closing their borders and because their own markets were too small to sustain economic prosperity. The bigger countries can afford a more protectionist policy thanks to the sheer size of their domestic markets. Sometimes this implied extensive state intervention, as in France, and sometimes a political system that easily translates protectionist demands into policy, as in the United States. The present trend of economic internationalization to a certain extent complicates the continuance of protectionist policies.

The question is whether openness or the small size of the economy offers the best explanation for the variation in adjustment patterns of states. A relatively closed economy, such as those of France and the United States, differs substantially in this respect. But for small states, too, corporatism is not always the easy answer to the problem of economic interdependence (Hemerijck, 1992). Not all open economies have corporatist intermediate structures (e.g. Ireland). Moreover, such structures are culturally idiosyncratic (e.g. pillarization in the Netherlands), founded on very specific political agreements (such as parity between Flanders and the Walloon provinces in Belgium), characteristic of certain sectors and rare in others, or established as a result of political crises rather than economic interdependence (e.g. the civil war in Austria in the 1930s).

These issues suggest that contemporary internationalization does not necessarily lead to uniform institutional adjustment in open economies. The literature seems to indicate that corporatist intermediate structures grant small states the capacity of retaining some level of policy autonomy. The room to maneuver manifests itself in the considerable differences between small states in social and economic policies. This hypothesis is corroborated in recent studies of the impact of internationalization on the political capacity of (small) states (Moses, 1994; Notermans, 1994; Keman and Pennings, 1995; Woldendorp, 1997; Garrett, 1998; Weiss, 1998).

The assumption of most studies of the functioning of intermediate structures, such as corporatism, is that institutions absorb external pressure. Institutions are capable of effecting a gradual adaptation that – perhaps temporarily – compensates the ‘losers’ and prevents internal shocks from creating social upheaval and political instability. Another assumption is that institutions remain relatively stable (fixed)

during a process of adaptation. In fact, some argue that institutions have an inbuilt tendency to stability and the reinforcement of the *status quo* and are unlikely to change under external pressure, even if the consequences of institutional intransigence are deleterious (cf. Garrett and Lange, 1996). However, it is possible that the institutional form remains constant, but that its specific functioning alters regularly. Radical change may occur under conditions of crisis when institutions themselves may also transform. Institutional change, however, is not necessarily the result of circumstances beyond political control, but can also be the product of the strategic behavior of actors who have an interest in change and are capable of using external pressure as a lever. Supranational policies of the EU may accelerate, delay or impede institutional change at the national level.

The impact of the European Union

Specifically national institutions, such as deeply rooted systems of social and economic consultation and interest intermediation, are capable of functioning as a buffer, absorbing external shocks. Different national institutions filter, so to speak, similar external pressures differently and this explains the cross-national variation in policy outcomes. States attempt to retain a certain level of control over their economies by fostering new or reinforcing existing social coalitions and international alliances. Both the domestic strategy of institutional innovation and the external policy to establish a high degree of policy coordination by way of international cooperation may include the deliberate delegation of competencies. However, this does not necessarily imply that national policy autonomy and capacity are the victim of such delegation. On the contrary, it may involve an increase of the role and capacity of the state. The major example is probably monetary union. EMU clearly limits the policy autonomy of the member states, but for some states this autonomy had already been limited, both by economic necessity and by the political choice to peg the national currency to the *Deutschmark*. In fact, by 'Europeanizing' monetary policy and the establishment of the ECB, some states have their influence on monetary policy increased (Berndsen, 1997).

It is important, again, to draw a clear distinction between the deliberate delegation of competencies and authority of nation states and the presumed loss of sovereignty. Alan Milward (1992), in his study of the origin and early development of the European Community, shows how crucial the motivation of the preservation of sovereignty in fact was – even though he himself confusingly speaks of the 'surrender' of sovereignty. Governments of nation states were prepared to delegate certain competencies to the supranational organization if, and only if, they assumed that the solution of pressing problems was beyond the capacity of the nation state, while the solution was nevertheless vital for the very survival of the nation state. In fact, only by closely cooperating at the European level could the European nation state re-establish itself after the Second World War as the fundamental unit of political authority. European integration was an aspect of the post-war reconstruction of the nation state. The European nation states pursued a strategy of integration because this was '... one way of formalizing, regulating and perhaps

limiting the consequences of interdependence, without forfeiting the national allegiance on which its continued existence depends' (Milward, 1992: 19).

European integration may rightfully be considered as the most advanced form of international policy coordination that states have used to withstand the negative consequences of increasing international interdependence. The institutions of the EU in this sense need to be understood as additional buffers against external pressure and shocks. The pace of internationalization after the Second World War accelerated to such a degree that national governments risked the loss of control over such crucial sectors as steel and agriculture. By cooperating internationally, states tried to parry the loss of control and to defend certain sectors, especially those that were also *electorally* important. The price was paid by the surrounding countries that were suddenly confronted with European tariffs, and by those taxpayers who did not directly profit from sector specific-subsidies. Still, most consumers profited from the price reduction of many products as a result of the establishment of, first the customs unions, and then the single market.

In certain policy areas it has been possible to retain control over the domestic economy and to promote economic growth by fixing external customs tariffs without having to adjust radically to the world market. This has led to the imposition of product quotas for coal, steel and textile as well as the introduction of a common agricultural policy (CAP) that protects farmers from too much competition. The 'losers' from the CAP within specific economic sectors for which national compensation arrangements were inadequate were paid off by making a detour via Brussels or Luxembourg.

Certainly, the EU also exerts pressure on the institutional arrangements of the member states. Two important mechanisms can be distinguished. First, European decision making may alter existing relations within national institutions or change the institutional arrangements themselves. Second, European integration offers certain organized interests an additional or new opportunity to achieve their goals, an opportunity that they would otherwise not have, for instance because they do not enjoy access to relevant national institutions.

An example of the first mechanism concerns the CAP as it led to a complete overhaul of the national frameworks of policy making and market regulation in the field of agriculture. An example of the second mechanism concerns the equal treatment of women. Under the condition that member states comply with the rulings of the European Court of Justice or – more generally – accept the supremacy of European law, pressure groups and individuals have been able to effect far-reaching adjustments in the social security systems of some member states by bringing cases before the ECJ (cf. Ostner and Lewis, 1995).

But even if the pressure to adjust to European regulations is equal for all member states, for instance in the case of EU directives, large differences remain as to the specifically national manner in which such pressure is processed. Haverland's study of the Packaging Waste Directive (1998), for instance, has shown that the impact of EU regulations is often complex and ambiguous and, in fact, varies according to existing national institutions and political traditions. They do not eliminate national policy autonomy nor do they lead to an unequivocal convergence of the institutions of member states (cf. also Bailey, 1999). Spanou (1998) reports a similar finding

with respect to how national administrative systems respond to European integration and adds to this that even different parts of the same administrative system react differently to the requirements of integration. The effects may be substantial but not radical. Menon and Hayward (1996) find a highly variable impact of the Europeanization of industrial policy, which is explained by the idiosyncrasy of European decision making and the constraints under which the Commission operates, but also by national policy making and sectoral differences. 'EC action takes place in a physical landscape of fifteen member states characterized by widely different histories, traditions, cultures, constitutional arrangements and administrative systems (...). In the face of the move towards increasing liberalization, national policy preferences were affected by EC action to different degrees, because the prevailing industrial policy mix varied greatly between countries' (Menon and Hayward, 1996: 215). In their study of the impact of the EU on macro-economic policy, Menon and Forder (1998) report that their most striking finding is not that there are clear cases of the limitation of national autonomy by the EU, but that this fact could be established only in a small number of cases. The EU impact 'has varied over time, between countries and between different aspects of macroeconomic policy. State autonomy has been increased, decreased and left unaffected. The EU has nullified the effect of other pressures, has reinforced them, or has failed to have an effect on them. Such other factors – the ideological preferences of governments, the pressure of internationalized capital markets and so on – themselves partially explain why EU impact has been so patchy. Policy making has been affected more in some states than in others. The reactions of private actors have changed, but to differing degrees in different states' (Menon and Forder, 1998: 186).

In this context it is remarkable that there has been little scholarly attention to compliance with EU directives, an issue that is especially relevant for understanding the extent to which member states in fact adjust institutionally to European integration. Yet, the intriguing fact is that the few studies of adaptation and compliance that do exist all seem to agree on the fact that compliance is to a large extent – as Haas (1998: 19) puts it – 'a matter of state choice'. Haas rightly points to the fact that while some states may be *willing* to comply they *may not be able* to do so because they effectively lack the ability to 'discipline' civil society. And as long as there is no authority other than the member state itself that can enforce compliance, the actual impact of European integration remains to a large extent a matter of national political calculation (Gourevitch, 1996).

The Court has systematically tried to expand its capacity to sanction non-complying member states. To this effect, it has established the so-called principle of state liability, by which the Court 'circumvented the weaknesses of existing remedies, improved individuals' possibilities to obtain a powerful incentive for member states to comply with EC law' (Tallberg, 2000: 110). This happened against the explicit wish of the member states as the principle touched upon their sovereignty by moving the competencies for the enforcement of compliance well beyond the member states' original intentions. The member states have reacted in two ways. On the one hand, they have taken the difficult road of Treaty revision in order to limit the Court's unwelcome judicial activism, so far with little success. On

the other hand, they have taken refuge in inaction at the national level: 'existing data suggest that many national courts and governments have emasculated the principle of state liability through various forms of inaction, and thereby, at least temporarily, limited its enforcement-enhancing effects' (Tallberg, 2000: 117).

One may perhaps assume that – if anywhere – the impact of European integration is probably greatest on the institutions of the smaller member states. However, this supposition too turns out to be incorrect, as a recent study of institutional adaptation in eight small member states concludes that 'there seems to have been no radical shift or change in the way that things were done before and after EU membership. That is to say, the governmental adjustments were made in an incremental way, building upon traditions that were already in place' (Soetendorp and Hanf, 1998). In that sense one may turn around the argument and argue – as Lampinen and Uusikylä (1998) do – that pre-existing efficient yet flexible *national* institutions in combination with a stable political culture are necessary for the implementation of EU policies. In other words, from whichever angle one looks at the possible effects of European integration on national institutional change, there is no sign that the state is in full retreat as a policy maker.

6. CONCLUSION

In order to find an answer to the question to what extent the member states of the EU, as the classic *international* actors, had to make way for *transnational* or *supranational* actors, we studied three levels of institutional change within the EU: the constitutional level, the level of EU policy arenas, and the national level. At the constitutional level we found that laying the foundations of the EU has been entirely the affair of the member states, that the Commission has played an important role in the realization of the SEA, and that, with respect to the Maastricht Treaty, the member states have clearly regained their dominance as 'history makers'. Our analysis of policy making at the level of the EU policy arenas indicated that 'history making' decisions describe the formal rules that – together with developing informal rules – define the existence and functioning of different types of these arenas. In some of these member states have apparently lost their policy autonomy. However, it appears that they always maintain the capacity to reclaim their influence by turning lobby arenas (back) into intergovernmental arenas, whenever they deem their vital interests to be at stake. The analysis of institutional change at the national level demonstrated that the emergence of a European polity, at the constitutional level and that of policy arenas, does not imply the emasculation of national institutions and policy making capacity. On the contrary, frequently – if not more often – it even leads to their reinforcement. Certainly, European integration pressures member states to adapt, but this does not imply that the state gives ground. Adaptation redefines the state's role or helps it to regain lost ground. The 'history making' decisions taken at the constitutional level affect the institutional setting of the various day-to-day EU policy arenas, but member states preserve the capacity to defend their interests, also in a supranational setting. Policy setting and policy shaping at the European level do affect the capacity of autonomous policy making at

the national level. Their influence, however, has not resulted in a permanent loss of policy making capacity of the member states.

In our view, then, the European Union is still in the first place an *intergovernmental bargain* between states. This bargain has not affected the sovereignty of the member states, but obviously has had an impact on, although not necessarily diminished, let alone annulled, their policy autonomy. Whenever it concerns decisions that will change the EU's institutions and its rules of the game, states are still the prime movers (cf. Moravcsik, 1998: 1; Pierson, 1996: 126). Surely, the EU is also a *supranational organization*, but this type of organization has much less power *vis-à-vis* the member states than any nation state has *vis-à-vis* its citizens. Haas's observation, in his classic study on the first years of the European integration process, that the newly created European institutions, such as the ECSC's High Authority, 'depend on the good faith of the old power centers for the realization of their aims, both because of the real powers retained by national governments and because the High Authority lacks any substantial means for compelling compliance from a recalcitrant member state' (Haas, [1958] 1968: 58), still holds true today for the present-day institutions, however much their power and scope may have increased since the 1950s. Accordingly, we do not believe that, Sørensen's claim notwithstanding, the EU's member states represent a new, postmodern, kind of statehood.

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THE SECRET AND COST OF SUCCESS:
INSTITUTIONAL CHANGE AND POLICY CHANGE

1. INTRODUCTION

When Douglas North posed his theory of institutions and property rights he used the economic success of the Netherlands in the 16th and 17th centuries as an illustration of his theory (North, 1973). For him institutions are rules in society that structure incentives in human exchange (North, 1990: 3). According to him the Dutch were so successful in those days, despite the scarcity of resources, not only because of their geographic position, being the natural entrepot of Europe, but because of the effective policies of their rulers. The institutions established were profitable because they promoted international trade, reduced guild exclusiveness and monopoly, and prevented the local guilds from imposing their restrictive practices on the development of industry in the country (North, 1990: 132). The state was especially important in the protection of private property. By guaranteeing deposits, for instance, by sanctioning customary trading practices, by enforcing that trading contracts were met as negotiated, by encouraging mobility of production factors, and by recognizing by law commercial innovations resulting in lower transaction costs, the Dutch rulers enforced an economic climate which was very profitable for the economic developments, because it reduced the risks to investors, reduced the transaction costs to traders, and provided the security that stimulated the establishment of an efficient capital market. According to North, economic growth will occur if property rights make it worthwhile to undertake socially productive activity (North, 1990: 8). The policies of the Dutch government were successful in protecting and enforcing such property rights. They created stability and a sharp reduction of transaction costs, since what was laid down in laws and governmental regulations, traders did not have to negotiate in contracts over and over again.

Since the Second World War the Netherlands has again developed into one of the most prosperous nation states. Just after WW II the country was almost completely destroyed. It was forbidden to trade with its natural trading partner, the defeated Germans; one third of the capital stock and a quarter of the housing stock were devastated; accommodation was lacking for one out of every four families; the public debt was 23 billion Dutch guilders (1945); the railways had lost nearly all of their rolling stock; the Rotterdam harbor was shattered; the fleet was sunk; and the population had to live of a diet of only 400-600 calories a person a day. Fifty-five years later, the Netherlands belong to the most prosperous countries of the world, being in the top ten of the world in terms of economic trade and national income and having economic growth figures which exceed those in most of the OECD countries.

The question this chapter tries to answer is how this upsurge can be explained. We argue that it is again a consequence of national public policies as part of the establishment of institutions that affect the incentives in human exchange. This time, however, it is not the institutionalization of the protection and enforcement of property rights as such that was crucial. These could be taken for granted, although the policies encouraging investments did make a difference. It will be argued instead that the respective Dutch governments, consciously or unconsciously, opted for an efficient solution by seeking clear and flexible policies, by choosing to achieve one goal at a time¹ and not trying to accomplish everything at once.

The institutional framework presented by North, and especially his slightly altered theory of institutional change as developed in 1993, may well be used to explain these developments. According to North (1993) institutions alter not only economic behavior, but also the price paid for one's convictions and hence play a critical role in the extent to which non-wealth maximizing motivations influence choice (North, 1993: 22). Institutions constrain human behavior by determining the outcomes thereof. By institutional change, one can change the preferences and hence the choices made. This implies that it becomes crucial to acquire a better understanding of institutional renewal and change. Public policies are still an important part of the institutional structure, but in order to understand its impact we have to relate the change therein to cultural dynamics, changing power relations and learning processes (North, 1994).

This chapter argues that these factors are indeed important for explaining institutional change, but that one also has to look at preference change as a pattern generator between the three factors and institutional change. What most analyses trying to explain institutional change overlook is the second side of preferences, namely neglect. To prefer something implies by definition to neglect some other thing. The importance thereof is the focus of this chapter, which argues that institutional change is neglect-induced. Institutional change has the impact of changing priorities and consequently of changing what is to be neglected for the moment. It is this neglect that induces further change, because the problems neglected will in time become more pressing. Then these problems will be prioritized and the institutional structure has to adapt, resulting in a renewal of the preferences and the things neglected.

This is the center of what is called the theory of policy generations. In our view, an explanation for the developments and changes which occurred in the Netherlands in the last 55 years is the succession of policy generations. Policy generations can be conceived as periods in which one coordinating goal is set for all policy areas and in which other goals are neglected (De Vries, 1999). Such periods succeed one another every 10-15 years, through which a new goal is prioritized: the goal which was neglected most during the preceding generation.

This chapter argues that the main merits of these subsequent policy generations are that they affect preferences by providing clarity, that is structuring incentives for human interactions, and by resulting in flexibility, because neglecting aspects of

¹ One goal does, of course not imply that the Dutch governments did not set many different operational objectives for the different policy areas. The argument below, however, is that these different objectives were subservient to achieving the overriding.

societal behavior too long makes those aspects more urgent and hence induces institutional change.

Clarity is provided about what developments can be expected and which behavior will or will not be rewarded, because government formulates a clear target to be achieved in the years to come. Comparable to the period that North took as an example, this type of policy making has enhanced stability and predictability in the Netherlands in the second half of the 20th century. It will be argued, further, that the success in the Netherlands can be explained because such a target remained the *leitmotiv* for new policies in all policy areas until the target was reached, irrespective of changes in governmental coalitions from right-wing to left wing cabinets.² The whole institutional setting, the formal and informal rules of the game – e.g. the establishment and influence of different groups of actors and organizations, the kind of policy instruments being dominant, the kind of argumentation accepted as valid or invalid and the criteria for judging new policies – converged in order to contribute to achieving the main goal and to make it transparent that this goal dominates the development of new public policies, until the goal set was achieved.

Flexibility is the second feature. Formulating a main target implies the neglect of other possible targets. When the target set is reached, it becomes necessary to devote one's energy to those targets that were previously most neglected. We argue that, although it was not always easy to make these changes, the subsequent institutional settings were sufficiently flexible to adapt to changing conditions and to the demands of new policy generations.

In order to substantiate this thesis, this chapter tries to answer the following questions:

- What is it that makes policy generations successful in theory?
- Can we trace policy generations in the Netherlands in the period 1945-2000?
- Were these policy generations successful?
- Which explanations seem to be valid for the existence and the success of these policy generations?

Before going into these questions, we first need a concise description on the meaning of 'success'. By success we do not mean quality. We do not intend to give an evaluation of the quality of the policies in the Netherlands. We have only one indicator for success of a policy generation, namely whether and to what extent the goals set at the beginning of a period are achieved at the end of that period, regardless of the question of whether or not the achievement of the goal can be ascribed solely to the policies (c.f. Twaalfhoven, 1999).

² It is indeed one of the paradoxes of the policy developments in the Netherlands, that although the social democrats are not known for their love of cutbacks, the government in which they participated in the early 1990s took the harshest measures. And where the right wing parties are not in favor of big government, the most expensive social laws at the end of the 1960s were introduced when they were in government.

2. THE THEORY OF POLICY GENERATIONS

Our hypothesis is that success is mainly due to the flexibility in setting and changing the main policy goal and directing all policies during these periods into contributing to this goal. We argue that the post-War policy dynamics can be divided into five policy generations (De Vries, 1999) in which each policy generation not only prioritizes that goal which is neglected most by the previous generation, but also adapts the policy instruments in such a way that they will contribute to achieving the new goal.

This theory on policy change and its effectiveness starts out from a theory of cultural dynamics (Namenwirth, 1973). This theory poses that, because of economic scarcity, governments lack the resources to address themselves simultaneously and continuously to each of the problems society faces. This makes it impossible to balance the competing values. Therefore governments always shift attention in phases. In one period it focuses on one aspect, neglecting the others, after which the subsequent period sees government devoting much attention to the aspect neglected most in the preceding period: '....Attention devoted to one problem leads to increased tension over neglected problems. Tension is reduced by shifting attention and resources to neglected problems' (Namenwirth and Weber, 1987: 113).

'Phase movement is an efficient problem-solving process. ... societies have but a finite supply of those resources necessary for adaptive problem solving. Although some resources will always be devoted to each problem, devoting more than average resources to one problem at a time is more effective and efficient than equal allocations. Irrespective of the particular phase sequence, the likelihood that a system will survive is increased by efficient and effective utilization of social, cultural and material resources' (Namenwirth and Weber, 1987: 113).

This relative attention paradigm, as it is called, is characterized by the fact that four political / cultural values dominate in turn. These values are: the goals and tasks of government on the basis of consensus (mission, goal-attainment); long-term planning (planning, latency problems); the renewal of cultural patterns regarding the integration and co-ordination of society as a whole and power conflicts (integration problems, democratization, in which the problem of interaction between sectors is dealt with); and concern for prosperity (adaptation to given economic or cultural developments, internal orientation and efficiency), after which attention shifts (back) to the (re-) formulation of a new government mission (goal attainment). Namenwirth speaks of a turning 'wheel of time'. At every quarter, a new aspect becomes dominant.

For instance, at some point there is great attention for the mission and authority of government. The accent lies on the will and decisiveness needed to carry out tasks which government deems to be crucial in the short term. Conflict is subordinated to the co-operation, the respect and the power doctrine deemed necessary to achieve this goal. Government spares no effort to achieve its main objectives. According to Namenwirth this was the case in the second half of the 1940s and the early 1950s, and as early as 1973 he had predicted that this would be the case again in the 1990s.

Latency problems, long-run problems, are neglected during this period. Critics would say that it was characterized by *ad hoc* policymaking. The reaction to this comes in the next period, in which the latent problems are addressed on the basis of planning. The planning phase is also necessary to arrange institutions in such a way that the governmental mission is feasible in the long run (according to Namenwirth, the late 1950s and 1960s may have been characterized by an emphasis on this value).

Planning, however, often results in uniformity, fixed procedures and standardization. This implies that in a 'planning' period there is little room for different interests, conflicts and variation. This shortcoming is avenged in the third quarter, in which the unawareness of differences between societal groups is finally overthrown and replaced by a welter of diverse expressions. This is the time of participation, democratization, and 'something for everybody'. In Namenwirth's words, the power conflict dominates the agenda. By stressing the democratization aspect, however, one loses sight of efficiency (De Vries, 1996). When inefficiency becomes a pressing problem, the wheel moves into a fourth quarter in which the dominant values stress prosperity by efficiency and an emphasis on the survival of society i.e. the organization. Regardless of the mission of government or its external functions, efficiency, cutbacks, downsizing and internal reorganization of the apparatus are given first priority (1930s, 1980s). At the same time, the dominance of these values results in the neglect of external functions and tasks. This period, therefore, also results in its own backlash, a reformulation of the mission and an emphasis on the external functions of the organization or political system.

The idea I have been working on during the last few years is that this model can be extended by combining the idea of periodic changes in the dominant political culture with the idea of policy change. If the changes in the political culture are reflected in changes in actual policies, it might be possible to speak of policy generations. Policy generations may be circumscribed as periods in which policies in different areas converge to meet the same new demands as a reaction to the previous period in which these demands in particular were neglected (De Vries, 1999). This chapter will show that the respective Dutch governments did, consciously or unconsciously, act according to the relative attention paradigm and that this does explain its relative success.

3. FIFTY YEARS OF NATIONAL POLICY MAKING IN THE NETHERLANDS

The reactive missionaries of the 1940's

If there is one period which cannot but be seen as a reaction to the previous period, it is the short period after World War II. With the defeat of the Third Reich, the Netherlands were liberated, but also devastated. The situation at that moment has already been sketched above, the Netherlands was indeed a 'poor' country. The members of government had been in exile for the previous five years and when they returned, the first question to be answered was what the nature of the future Dutch state should be, what its mission should be, and how this should be institutionalized.

What should be the nature of the Dutch nation-state after five years of Fascist occupation? Several discussions were already going on during the War.

Many prominent pre-War politicians were held as hostages together in a detention camp near a place called Sint-Michielsgestel. Their discussions resulted in the opinion that socialism together with personalism, a co-operation between state and economy, was crucial. The Dutch state after the War should adopt a steering and coordinating position, through the establishment of a national board for business and sector bound public organizations.

The members of government who had been in exile in London during the War came to rather different conclusions. Following the ideas of Sir Ernest Beveridge, they opted for a government which would take care of the population from the cradle to the grave. They also came into contact with the ideas of Keynes, and his ideas about governmental intervention and counter-cyclical expenditures were widely shared among this group after the War. This group agreed on the idea that governmental interventions were at least desirable and preferably structural in nature.

After the War the dissension about the governmental mission resulted in at least four groups, namely those favoring renewal; the Christian parties, favoring restoration of the pre-War arrangements; the communists, favoring a strong steering state; and the reactionary forces favoring a military state (Fortuyn, 1981: 219). At first those favoring a military state seemed to hold the winning hand. Because at the end of the War only the south of the Netherlands was freed and the northern part was still occupied, the government in exile could not return, and the military could take the lead in ruling the liberated southern part. They did not wish a return of parliamentary democracy, but wanted a strong, decisive government inhampered by so-called procedural delays. Some even favored a military dictatorship, which should take power instead of the politicians. This was necessary, according to them, because the population was seen as degenerate and displaced, it lacked morals and some even spoke of mental decay. It is therefore understandable that the population was not consulted. In the eyes of the elite they had to be kept passive.

This debate about the mission of government and the shared idea that one had to be decisive and achieve short-term goals in order to solve the most serious problems, resulted in a period in which an image of decisiveness was created. An interim cabinet was set up with a temporary parliament, with fewer powers than before, without elections, because the elite perceived this period as a transition period in which the struggle for life had higher priority than elections. The first official government was a national cabinet, strongly influenced by Socialists and Catholics, governing under the slogan 'Recovery and renewal'. Analysts wrote at a later stage about this cabinet that it was half-hearted (Maas, 1996). On the one hand opting for governmental intervention, on the other hand favoring private initiative. On the one hand favoring long term socio-economic planning, on the other hand accepting the impossibility thereof under the circumstances and only implementing short-term, emergency policies. This becomes visible in slogans like 'temporal steered economic developments' and a continuous discussion about the pros and cons of governmental interference. This resulted in *ad hoc* policy making: emergency measures, temporary decisions and catastrophe politics.

Just after the War, public policies can be characterized as reactive short term policies. It consisted, for instance, on subsidizing the primary living necessities like bread, milk, cheese and meat. There was a general ban on travelling and only limited railway transport. The government prohibited the increase of rents and lowered the margins on products (Hoek, 1979: 290).

Under the guise of practical politics, special courts of justice and urgency programs were established (Drees, 1945, in Hoek, 1979: 143). As one of those involved put it afterwards 'We lived between 1945 and 1950 too much in the train of thought of solving the crisis, instead of steering the scarcity' (VerLoren van Themaat, in Hoek, 1979: 242). 'The quick material recovery required practical politics. There was no time for principal or ethical discussions' (Van de Dunk, 1986: 16)

This implied that the socialists found little support for their idea of long-term planning. The support for these ideas had to wait for the next period. Laws and regulations were absent and only temporary measures were taken, without looking at the long-term effects. The neighboring countries could speak of the chaotic situation in the Netherlands and criticize the lack of democracy, because the first post-War elections had not yet been held.

The second and third post-War cabinets too lacked coherent policies and suffered under a continuous discussion about the relation between the private and public sector. This discussion and the *ad hoc* policies lasted until 1948, when a consensus arose about the role of government. The government should guarantee that every citizen is entitled to social security, but there is no central role for government in social-economic affairs. The minister of economic affairs of that time stated that the government should facilitate private initiatives and co-operate in order to achieve economic growth. The central idea became that government should invest in infrastructure, minimize the regulations constraining business, create stable labor relations, promote a stable position of the Netherlands in the world economy and promote and see to it that capital investors and entrepreneurs receive ample rewards. The only institutions established out of the mission of a steering government was the establishment of the socio-economic council in 1950, which, however in the end turned out to be only an advisory council, and the council for agrarian affairs in 1954.

What we see in the 1940s is in accordance with the expectations out of the theory of policy generations. We see on the one hand a discussion (and conclusion) about the mission of the government and on the other hand in almost every policy area *ad hoc*, temporary policies, out of the necessity of the situation created by the devastation of the War. These *ad hoc* policies created the image of decisiveness. Scholars like Maas, who did extensive research into this period, conclude that many problems were tackled, but none was solved. The temporary solutions were, according to him, found in the areas of education, where only war-damages were removed but regulations were hardly found, the salaries of teachers lacked consistency and only the relation between public and special education seemed to be issues; in the area of internal affairs, where the position of the provinces and municipalities remained unsolved; and in the area of housing where houses were temporarily split to house

more families, and the infrastructure where long-term views were missing and only the recovery of damage got priority.

The evaluation of this period has of course two faces. On the one hand, the *ad hoc* policies were necessary, because of the awkward situation the Netherlands was in. Being devastated and lacking the economic resources to recover quickly from this situation induced the adopted policies, which from every other point of view may be seen as incoherent, short sighted, inefficient and elitist.

The caretaking technocrats (1950 and 1963)

The transition to a new period in which the *ad hoc* policies were increasingly abandoned and replaced by long-term strategic planning came about at the end of the 1940s with a cabinet containing a coalition of Social democrats, Catholics, and the Liberals in a minor position under the prime minister Drees. This prime minister would stay in office until 1958. It is illustrative of a decade of continuous politics, which gave Dutch politics its image of a stable democracy ruled by accommodation politics (Lijphart, 1968) in which the country was governed by the co-operating elites of stable constituencies, depoliticizing those issues which divided the parties, always looking for technocratic solutions, and opting for a corporatist system in which business, government and labor unions co-operate, in order to achieve long term economic prosperity. This idea of corporatism was reflected firstly in the establishment of the Socio-Economic Council. Secondly, the policies were a reflection of the compromise between Catholics, favoring corporatism and subsidiarity, and the socialist idea of governmental planning (Van Kersbergen, 1995: 93). The state penetrated society relatively quickly (Van de Dunk, 1986: 15) and the role of the state became a facilitating and steering one, instead of a directing one. Some talk about the government of those days emphasized a form of elastic steering and mediation between conflicts (Van de Dunk, 1986: 15). As one of the ministers put it in his memoirs: 'The government opted for global intervention in strategic matters as opposed to detailed intervention on many points' (Zijlstra, in Puchinger, 1978: 46).

Governmental policies were increasingly determined by senior civil servants, and advisory committees. Their influence gradually strengthened. Meetings of the council of ministers became inconceivable without the contribution of a series of advisors. The president of the central bank, the managing director of the central planning bureau, the president-director of the economic and military aid program, the secretary general of the department of economic affairs, the director general of prices, the director of the central planning agency, the state advisor of finance and the chairman of the central economic commission (CEC) and the director of the Socio economic council were all regularly present at meetings of the council of ministers. A member of the council of ministers could hardly neglect their advice (Maas, 1996: 788). The department of justice, for instance, became increasingly influenced by the judicial professionals.

The impact of this institutionalization of expertise is evident in that the 'objective' advice resulted in the depolarization of political issues. A network of governmental institutions led by experts was thrown over the country and the governmental

planners enhanced the authority of the ministers over the parliament (Van de Dunk, 1986: 15). This resulted in the formulation of policy goals, the consequences of which were carefully calculated by the mathematicians.

The emerging policies can be seen as a *volte face* compared with the previous period. The temporary and emergency measures were replaced by laws having a much more structural impact. This resulted in ample legislation. In 1948, 207 bills were approved and 250 in 1949. In 1950 some even made a plea against too much legislation.

The shift to long term planning is visible in nearly all policies. In the industrial policies, for instance, the tax law was adapted in such a way that it would stimulate structural investments. By law it was decreed that 30% of all industrial investments could be tax-deducted in one year, thus giving an advance on investments of about 15%. The venture tax was abolished and pre-War investments could be revalued tax-free. The instrument of subsidies was not used, nor any increase of public expenditures, the attempt was made to stimulate investments by legislation. A rigid wages policy insured that the rise of wages lagged behind the increase in productivity. Government promoted professional training, attendance at technical schools and industrial schools during the day as well as in the evening. By further advancing refresher courses, the technical knowledge of the workforce increased. Furthermore, the government stimulated foreign direct investments and foreign participation in Dutch industry in order to increase technical know-how and promote investments. It simplified permits, started an active acquisition campaign and widened standards for the approval of investments. This active national public policy resulted in subsequent years in an economic growth which exceeded that of the neighboring countries with 5% growth on average (Brakel, 1954: 116-7).

In its social policies, the Dutch government also aimed at long-term goals. The welfare state came about, in which the Beveridge's idea of social insurance from the cradle to the grave was materialized. The government became more active in the financing of the sectarian educational and health system. The department of social welfare was founded in 1952. Laws on unemployment benefits (1952), old age insurance (1956), a widows' and orphans' pension (1956), legislation on family allowance (1962), national health service (1964), social assistance (1965), and the disabled (1967) were all planned in the 1950s.

In housing policies too, structural, long-term strategies become dominant. Legislation was introduced on house building standards (1951), the uniformity of buildings (1954), uniform building instructions (1956), a housing act (1960), and a law on listed buildings (1961). The dominant idea became to fix by law the arrangement of the development of built-up areas, to elaborate this in development plans, and to plan such developments on the basis of a general, long-term vision, steered at the national level in order to create propitious conditions for long term developments. In the small country which the Netherlands is, where space is scarce, the national government is seen as the prime actor steering and directing the development of scarce land and co-ordinating area planning. Rohde talks about a preoccupation of parliament during this time with the legislative side of area planning (Rohde, 1984: 90).

Thus an era arrived in which long-term planning became central in national policy making. The predominant kind of policy making involved technocrats having the final say; the basic criterion for policy making was that the policies were well thought out, their long-term impacts calculated, and they conformed to the demands of the technocratic planners (Van Kersbergen, 1995: 91). The five central policy goals to which all governmental policy making had to adjust, were formulated by the Social Economic Council and would last until the middle of the 1960s. These were the achievement of full employment, economic growth, moderate income distribution, budgetary balance and price stability (Daalder and Cramer, 1988: 144). Long range plans appeared and were adopted in nearly all policy areas, eight industrial development plans appeared, aiming for long-term structural industrial investments. Rationalization, standardization and uniformity were seen as the main goals for creating prosperity: the dominance of national government, the cooperation between the elites of the different constituencies which, together with business leaders and the trades unions, out of a corporatist idea, were responsible for creating a society, with continuous economic growth, increasing social security.

The above illustrates that the national policies in the period from 1951 to 1963 can indeed be seen as the opposite of those in the previous period. All temporary and emergency bills of the immediate post-War were replaced by structural measures in which legislation was central. This can partly be explained by the improved situation in the country at the end of the 1940s. As one of the ministers later put it: 'Below the surface the situation had improved. When reading the Queen's speech in the first cabinet under Drees, in 1951, one could see the worries, but also the opportunities. Economically, the situation quickly improved' (in Tromp, 1995: 106). Furthermore, the Americans had launched the European Recovery Program (Marshall plan) from which the Dutch also profited after 1949. In other words, it seemed at the end of the 1940s that the basic problems were solved or about to be solved and that the reactive, short-term emergency policies of the 1940s were no longer necessary. Such policies were increasingly seen as counterproductive and were therefore replaced by more long-term policies.

The period 1948-1952 can be seen as a transition period in which long-term planning slowly replaced the shortsighted policies. This can be explained partly by the personal characteristics of the members of that cabinet. The first cabinet under Drees consisted of people of various generations. It was a combination of old and young, of political career ministers and modern managerial ministers (Maas, 1996, part C: 779), some being area-specialists, while others were generalists. The subsequent coalitions during the 1950s became increasingly populated by people born at the beginning of the century, who had grown up during the roaring twenties, and who had consciously gone through the experience of two World Wars. Increasingly, the elite came to consist of people who had replaced the politicians already active before and during the Second World War and the policies were increasingly made by those who became active politicians after the Second World War. Just after WW II, half of all parliamentarians were new (Van den Berg, 1983: 204). Gradually these young politicians became influential in the 1950s, when they gained experience and status.

Again the national goals were more than met at the end of the period. The long term policies resulted in an unheard of economic growth of 5% on average and the development of the welfare state. Full employment was achieved at the beginning of the 1960s, as was price stability, moderate income growth, and a balance in the governmental budget. But as in the previous period, the question is 'at what price' this came about. The population still had hardly any influence on the policy process, which was dominated by technocrats. Extra-parliamentary actions were absent and disturbance of the societal order or resistance, such as by strikes, was taboo. Even the parliament itself had little influence, since policies were proposed by the cabinet and one did not dare to oppose those plans. The second drawback of the policies implemented and the predominance of legislation was that they resulted in uniformity and standardization and a myth that everyone was equal, and not only before the law.

The policies were even more elitist than those in the years before, and the lack of public participation, the neglect to take into account the pluriformity of the population and emphasis on keeping the population docile had to result in a reaction.

The politicized spenders between 1964 and 1977

The first crack in the façade of this stable and economically prosperous edifice came in the second half of the 1950s. The political elites in the Netherlands started to polarize, parliament became more critical of government, and the population slowly became less docile. The lack of attention to the pluriformity of the population and the immaterial aspects of welfare gradually gained attention. In 1959 the Queen's speech first paid attention to the moral and spiritual elevation of the people, which was possible now that the material foundations appeared to be more durable and appealing than expected (Van de Dunk, 1986: 22). In the USA Kennedy came to power and created the image all over the world that it was time for a new generation; all kinds of democratization processes emerged in western countries. In the Netherlands in 1961 actions against the atomic bomb mobilized part of the population. In 1960 an illegal network broadcast from a ship outside the 12 mile zone, thus defying the authorities. In 1962 the first protest by a farmer opposing the national agricultural policies was broadcast on national television. The acceptance and respect for authorities, which was previously brought about by a complex of societal organizations ordered around the so-called sectarian constituencies, also diminished, because of their failing ideological resilience (Daalder, 1990: 231). Furthermore, family relations changed, as a consequence of their decreasing size, increasing mobility and rising educational levels of the children compared to their parents. The economic growth had made thriftiness appear as outdated and, last but not least, the Dutch society lost some of its classic anchors, illustrated by the diminished influence of the church and religion. In other words, as in other countries, a period of participation, politicization and democratization developed (Daalder, 1990: 241).

The later prime minister and at the time prominent member of the social democrats, Den Uyl, in 1963 wrote a widely discussed essay about the quality of life in which he argued that although material welfare had been achieved, society had

failed to realize the development of social justice and the harmonious development of the individual. The plea was that government had to expand its activities in order to adapt to the changing circumstances and to fill the deficiency of societal provisions in health, personal and social development, recreation and culture.

What came about was an era in which the previous policies of long-range planning, standardization and creating uniformity was replaced by a growing consensus on a national policy in which the immaterial aspects of the quality of life were stressed and pluriformity was encouraged. The transition can be dated to the cabinet of prime minister Marijnen, which was in power from 1963 to 1965. In this coalition, supported by the labor unions, wages increased by 17%, pensions and child support increased, a national insurance on special health care was introduced, a pension for the disabled was introduced and the minimum wages were raised.

With the coming of this cabinet into power the helmet shifted (Puchinger, 1978). It ushered in a period in which the concerted action of the elites of the different parties and pillars came to an end. From 1963 until 1977 only one coalition would last its whole term of four years and even that coalition faced some serious crises. None of the remaining government coalitions was able to survive its full term. They fell over a number of conflicts over material and immaterial affairs, such as the media, budget deficit, and land policy. The number of political parties increased and the five major parties dominating Dutch politics and representing the classic pillars of society in the Netherlands in the previous period, especially the catholic party, lost a substantial part of their voters. New parties like the pacifist party, the Democrats founded in 1966, the Farmers' party, and the Radical party were able to enter parliament and together were able to gain over 13% of the votes in 1967, rising to 16.5% in 1972. The communist party also started to win votes again, increasing its share from 2.8% in 1963 to 4.5% in 1972. These are all indicators that the political arena was becoming increasingly politicized.

In the policy making of the respective Dutch governments this is reflected in the increase in income transfers by government to households, which was five times higher in 1973 than it was in 1963; the value of governmental subsidies, which in 1973 were eight times as much as in 1963; and an increasing budget deficit and an increasing role of government in society, as seen by its increasing share in the gross national product. Its goal, formulated at the beginning of the 1960s – more attention for the welfare and moral elevation of the population – is reflected in the increase of students in higher education, especially the social sciences. The number of students in those fields quadrupled from about 12,000 in 1960 to over 50,000 students in 1971. Where technical education dominated the previous period, now an increasing number of students were trained in social studies. Government promoted this higher education by increasing the amount of and enlarging the access to bursaries. In the health sector, the number of institutions for the mentally handicapped quadrupled in ten years and the number of nursing homes doubled and the number of beds in those homes tripled. In infrastructure, the mobility increased dramatically, tripling the amount of passenger traffic between 1963 and 1973 resulting in increasing government investments in roads and highways. In the housing sector, the end of thriftiness was in the increased area of newly built houses, the improved quality thereof, e.g. increasingly containing a bath, the increased number of private houses

built with government subsidies and the variety of houses built with government subsidies - terrace houses as well as detached houses. In the area of culture and recreation we see a comparable growth of government investments. The net investments for culture grew from 313 million guilders in 1963 to 1,421 million guilders in 1971. Libraries, youth work, job corps programs, subsidies for the arts, museums, recreation areas, sport accommodation and the protection of monuments all received four to ten times as much grant from government in 1972 as they got in 1963.³

On the immaterial side another feature is crucial to this period: the increasing demand by (part of) the population to enhance the democratic process and to make the policy process more open. The different interests had to be represented in politics and in the policy process. Around 1965 three cabinet coalitions fell and were established, without new elections, or the voter having any influence on the establishment thereof. This resulted in the founding of the Democrats '66. Pleas for institutionalizing public participation were heard. First, the universities had to be democratized, then business enterprises and the civil service had to be democratized. Works councils were established, as were participatory procedures and in all areas a social-egalitarian ethos appeared, in which only those decisions were seen as 'good', which had been discussed at length by all stakeholders, in the form of committees, steering groups, and advisory groups. All interest groups had to have their say, had to be allowed to partake in discussions, and everyone tried to overcome objections or at least compensate for them. Advisory councils were booming and it is striking that membership thereof in this period was not so much a question of expertise, as it was in the 1950s, but of representing those interests which were not yet present along the other members of an advisory board. This is the middle level elites of the political parties gaining influence. Their advice was especially sought in the non-profit sector such as social security, housing, welfare, health and education. In the recruitment of public administrators, partisanship was becoming a matter of increasing importance and, slowly but steadily, the advisory boards to the cabinet were valued for their political rather than professional advice. Bureaucrats gradually took political positions and the classic distinction between the neutral bureaucrats and the politician faded. As a consequence of democratizing the bureaucracy, the size of the administrative apparatus exploded until the end of the 1970s. On average it doubled from 74,000 civil servants in 1963 to about 156,400 in 1980. This growth was especially visible within the departments of education, culture, recreation and social welfare and infrastructure.

These developments towards increasing governmental transfers, a politicized arena and less elitism through public participation and public inquiry procedures reached their apotheosis with the coming to power of the Social Democrats in 1973 in the cabinet of Den Uyl. This cabinet can be seen as the ultimate illustration of what went on in this period. Its formation took 164 days, the longest since the Second World War and only exceeded in length by the one in 1977, illustrating the political antagonism. It was characterized by polarization between the coalition partners from the beginning and it was dominated by a prime minister who talked,

³ Figures from several editions of the annual publications of the Central Bureau for Statistics.

discussed and fought from early in the evening until early in the morning to remove any opposition to his proposals. It was, furthermore, a cabinet in which the socialist prime minister was personally able to squeeze large sums money into the budget on behalf of the poor people (Bootsma and Breedveld, 1999: 34). Lastly, the policy plans are characteristic of the period. The creed was the spread of knowledge, income and power through all groups in the population. Enhancing the chances for poor people to get a good education, leveling incomes by progressive taxes and subsidies were important policies. This cabinet also proposed plans to increase the say of workers in business enterprises by creating independent works councils and by allowing them a share of the profits. By surcharging industrial investments in regions where unemployment was low and subsidizing investments in regions where unemployment was high, by implementing policies against speculators and by trying to regulate the financial system, it tried to get a grip on business enterprises. And by continuing subsidies in all policy areas and implementing public inquiry procedures it was responsive to the different political interests. As such this cabinet is the final representative of a period in which the main goal was to elevate the people by enhancing democracy, increasing immaterial welfare, and developing policies which did justice to different interests.

How can we explain the coming about of this policy generation? First of all, it can be seen as a reaction to the policies developed in the previous period. The reconstruction was nearly completed at the beginning of the 1960s. The goals set previously were achieved and this created the possibility for a new era. Secondly, the Dutch profited from the discovery of a natural gas reserve in 1959, which exceeded all expectations. As in 1949 with the European Recovery Program, this reserve gave the economy a strong boost and the government a lot of additional cash, since 50% of the yields went directly to government. Suddenly the Netherlands became a rich country. Thirdly, the change coincided with an international upheaval of demands for democratization and against uniformity, elitism and a docile and passive population. Dutch policymaking just went along with the international tides, in which the same criticism was voiced about elitist, uniform and material policy making, so characteristic of the previous period. Fourthly, it can be explained by a new generation of leading politicians. In 1956, as in 1946, a large number of members of parliament were replaced. These politicians, junior members in the late 1950s, became influential during the 1960s. Also striking is the fact that all prime ministers in the period 1963-1977 were of the same generation, all being born between 1915 and 1920 (Puchinger, 1984). They all grew up during the roaring twenties and all had the same experience. An elite replacement took place in which the caretaking technocrats of the 1950s were replaced by their counterparts, namely the politicized spenders of the 1960s and 70s.

All in all, the goals set at the beginning of the 1960s were more than achieved in 1977. Not without costs, of course. The respective governments had successfully tried to increase the quality of life for the population and public participation within the policy process, but had neglected the fact that policies should also be efficient. That was a subject that had hardly been an issue during this period. Most thought that the sky was the limit, in the end government had become too big and economic

growth had been taken too much for granted, instead of something to be continuously encouraged. The budget deficit had got out of hand, business enterprises did not invest anymore, unemployment grew and the economy slowly stagnated. This is the other side of the success story of this period. In 1973 the Arab oil boycott hit the Netherlands hard, and with a stagnating (inter-) national economy, the transition economy of the Netherlands, being dependent mainly on trade, shrunk even harder than that in the neighboring countries.

The efficient managers between 1978 and 1994

Where the socialist cabinet was the apotheosis of an era of spending and politicized governments, it also marked the beginning of a new period in which efficiency became the magic word. In 1975 this process started prudently with a proposal by the minister of finance, allowing the public sector to grow yearly by only one percent of the national income. Nevertheless the budget deficit would continue to grow until 1982 from 3% in 1977 to 9% in 1982. It was not easy to change policies to become more restrictive and a second oil crisis in 1979 did not help, either. The two cabinets under the catholic prime minister Van Agt, succeeding the center-left cabinet, made all kinds of proposals to reduce the deficit, but because of internal dissension and a heavy opposition in parliament they did not succeed. Nevertheless, the second half of the 1970s can be seen as a transition period in which the political mood slowly changed. The first plans to reduce the role of national government, for instance, by promoting decentralization, appeared during this transition period, and they were steadily promoted in more and more policy areas. They were aimed, for instance, at reorganizing the fixed payments to municipalities and uniting these in 'less expensive' general payments.

Until 1982, these changes proceeded very slowly (Sociaal Cultureel Planbureau, 1999: 201), but in that year – with its very high public expenditures, huge unemployment and economic stagnation – the efficiency stressing managers gained influence. Reports and diagnoses of the situation by the central planning bureau, the scientific council for government policy, and a state commission led by the captain of industry Wagner, pointed simultaneously to the need for far reaching reductions in government expenses. Out of the serious economic situation, the employers' organizations and the trades unions reached a consensus on income policy, the famous 'Wassenaar agreement', in which the unions relinquished wage increases and the employers agreed on the shortening of working hours in order to share the available work among more people. The new government under prime minister Lubbers saw this agreement as an opportunity to freeze wages for civil servants, and to freeze and at a later stage lower the minimum wages and social benefits. The three subsequent cabinets under this premier opted for a reduction of social benefits; economic recovery by improving the competitive position of Dutch business enterprises; increasing employment without raising its costs; reduction of the influence of government in society in favor of the market, by minimizing government outlays, and reducing the subsidies, which had expanded during the previous period (Sociaal Cultureel Planbureau, 1998: 100). The wages of civil servants were further reduced and new recruitment of national civil servants was

temporarily stalled, in order to obtain a reduction in the size of the bureaucratic apparatus. In the first two cabinets under Lubbers, the internal orientation and retreat of national government took shape in five great operations, namely decentralization, deregulation, privatization, reorganization of national government, and reconsideration of policies. In the third cabinet under this PM this new policy generation reached its apotheosis in the so-called 'great efficiency operation'. By then the adaptation to the efficiency goal was implemented in nearly all policy sectors.

Social security benefits were reduced and the social security apparatus was repeatedly reorganized. In education, where more students than ever were attending higher professional education and universities, more strict selection procedures appeared in this period. Bursaries were reduced, tuition fees went up and the maximum study length was shortened. Furthermore, measures were taken to prevent the stacking of training by individual students, for instance from lower professional training, through medium and higher professional education to academic training. This policy generation was indeed the first to stabilize the costs of education in general. As in the previous periods, this period also had its popular education sector, namely the schools for business administration and economics, which replaced the previously popular studies like sociology, political science and social academies. Scholars in economics, public administration as well as organization consultants took over the influence on governmental affairs from social scientists. They increasingly acted as external consultants, steering the repeated departmental reorganizations aimed at achieving more efficiency. At the end of this period the number of consultancy agencies had increased to about 5000.

In the health area government tried to reduce costs by closing down and merging a number of hospitals, by decreasing the number of hospital beds, as well as the number of patient days. Despite these measures, however, a rise in the costs, which still doubled, from 1975 to 1985, could not be prevented in this area. In the social housing sector the amount of rental subsidies decreased and the number of houses built without governmental subsidies increased from 3% in 1982 to about 58% in 1994. The number of rental houses, always built on the basis of government grants, decreased at the same time from 72 percent in 1982 to 30% in 1994.

The twelve years of more or less stable cabinet coalitions under the Christian Democrat Lubbers do reflect a new policy generation. Every policy area had to adapt to the cutbacks and every government department had to reorganize and to function more efficiently. It was the reaction to the previous policy generation in which the issue of efficiency was neglected in favor of the goal of increasing the quality of life. The political polarization of the 1960s and 1970s was replaced by managerial, businesslike thinking and acting.

As said above, the era of cutting down expenses reached its apotheosis and end during the third cabinet of Lubbers, which was paradoxically a coalition with the Social Democrats. This cabinet proposed the 'strictest budgets since Drees' as they were called. Besides heavy cut backs, it also diminished social benefits for the unemployed and, more importantly changed the law on the disabled in order to reduce its generous social benefits. It was, in the words of the prime minister, the last operation to make the welfare state 'healthy' again.

The appearance of this new policy generation can again be explained by the changing economic circumstances. As said before, the international economic crisis and the two oil crises in the 1970s hit the transition economy of the Netherlands hard. Secondly, the public policies on investments of business enterprises of the previous period were hardly stimulating new investments, and instead discouraged them. The generous policies on minimum wages and minimum youth wages were also counterproductive in this respect. Therefore the helmet had to be shifted again. As in the previous periods the success and goal achievement - this time successfully increasing the quality of life - had its drawbacks in other areas, this time in the economic sphere.

The reaction was strengthened by the new generation of leading politicians, born at the end of the 1930s. Between the two elections in 1971-1972 parliament again underwent a strong rejuvenation and these politicians became senior members at the beginning of the 1980s. The new generation is especially reflected in the person and background of the prime minister. Lubbers was born in 1939, and was educated as a modern economist. He started his career as a manager in his family's engineering firm and with this business experience he entered politics in 1973 as a junior minister (of economics) in the center-left cabinet (Steinmetz, 2000).

Thirdly, the policies of this new generation were, like those of the previous ones, congruent with developments taking place in other countries. Similar regulatory mechanisms as applied in the Netherlands can be found in other European countries. In Germany, Austria, the Scandinavian countries and the United Kingdom under Thatcher the retreat of government, decentralization, privatization, results steering and adapting to the market regime also became a dominant policy regime in the 1980s (Naschold, 1994: 45; Lane, 1997; De Vries, 1999). The shift towards a market orientation was not just a national but a global phenomenon; as in the previous period the booming of democratization processes had also been an international phenomenon.

The new missionaries between 1990 and 2000.

At the end of the 1980s the economic situation in the Netherlands slowly started to improve. Industrial investments were growing again and the government deficit was stabilized. The multitude of efficiency operations, reorganizations, and the retreat of government, through the discharge of personnel and the disposal of expensive policies, went hand in hand with a slow upsurge of the economy. But it also went hand in hand with a neglect in reflecting on the role of government. The less government the better seemed to be the adage, but this also meant that several social problems were not handled adequately. The position of the youth, the elderly, the unemployed and the poor people, as well as policy problems like pollution, traffic, crime, health, the socio-economic problems of large cities, and the necessity to provide for an adequate infrastructure to keep up with technological innovations, slowly changed the national mood. The retreat of government as seen in the previous period also appeared to have its drawbacks.

What we see in the 1990s is a new reaction and policy generation with a prudent return of government.⁴ This is apparent in the discussions about missions and on the core business. This started in 1990 when business enterprises change their focus and one by one published their so-called mission statements. The question became: what should we do in the next five years, what should we concentrate on and which parts of our business do we want to develop and which parts do we want to dispose of? The same happened, after a short delay, in government. In the several tiers of government discussions started on the question of their core business. At first this was a discussion about the areas where further efficiency had to be achieved, but slowly this changed into a discussion about the areas where an expansion of the role of government is desirable. Everywhere in the world one returned to the original conception of the welfare state, in which the state delimits its tasks to its most essential function (Aquina, 1993: 127). But this results in its opposite, namely a new impetuosity of government and business. The idea appears that, for survival, efficiency is not enough. Problems become serious in, for instance, the education sector, where teachers were hard to find. In the health sector waiting lists increased. In the judicial system convicts could not be jailed, because there were not enough jails. In the traffic sector the number of traffic jams increased. And in the police sector junior policemen were hard to find. The idea developed that, especially from government, which in the Netherlands still redistributes about a quarter of the national income, one might expect more than just an internal orientation. The manifestos of the political parties in 1993, and especially that of the Christian Democrats, literally represented the end of third cabinet under Lubbers as the end of an era. The elections of 1994 would have to form the disjunction.

The dominance of the concept of efficiency, partly under the influence of management gurus, was slowly replaced by more vague concepts like culture, learning to learn, intuition, human resources and a growing popularity of holistic management (Metze, 1999: 153-4). At first government did not translate this new orientation into the incorporation of new public tasks, but in the creation of boundary conditions, and guaranteeing that others in society, especially business, should indeed weigh off their own profit against societal costs (ibid.) In the Queen's speech of 1990 the Dutch government first called for social and administrative renewal. Town renewal and restructuring city districts are the exponents of social renewal, as increasing transparency of government and improving the relations between government and citizens become the exponents of administrative renewal. This results in the adage of creating a 'responsible society' in which government supports developments making the citizens independent. In 1994 prime minister Kok reintroduced the need for the 'primacy of politics' and this became visible in several departments. The ministers of justice and internal affairs intervened personally in the infighting between their departments. The minister of justice wanted more political control over the public prosecutors. The Prime Minister himself was said to be transformed from just the executive he was in the previous

⁴ It becomes, of course, increasingly hazardous to give a detached analysis of the policies as they become more recent. Well-thought-out publications on the most recent period are still absent (See, however, Hoogerwerf, 1999; Nelissen, 2000; Metze, 2000).

coalition as a minister of finance, to a Prime Minister who is firm in taking control. In the defense department the minister tried to control his generals, and the minister of agriculture demanded a quite different approach from his senior civil servants. He wanted alternatives he could choose from. This new approach in the relations between political leaders and their administration resulted in many conflicts between both sides. Unlike in the previous period, this time the chief executives had to give in, were transferred or had to resign. The minister of environmental affairs presented herself as a 'minister with a mission'. Nevertheless, the minister of finance mitigated this seeming decisiveness and return of politics. He allowed hardly any increase in government expenditure. Only after many debates with the other ministers, in which they have to convince him that the problems are really pressing, were some additional funds allowed to them. This resulted in *ad hoc* policies like a few million for the police and a few million for the health sector. The strict financial boundary had to result in departmental policies that solve one urgent problem by creating other problems, because they had to find the funds for new policies within their own departments. With this restriction, aspects like societal acceptance and vindication became the main criteria for evaluating public policies. Hence, one could see the appearance of new policy instruments, like monitoring, permittance-policies, the growth of the usage of impact assessments, the growth of temporary agreements between government and business, the search for win-win situations. There is in general a return of governmental interference, but, because the means are lacking, there is a dependence on the compliance of the target groups and one has to strive for acceptance among the target groups.

To create this acceptance requires communication skills in particular, and these gain gradually in importance. 'Communicative policy' becomes the magic word of the 1990s. This consists of promoting an external orientation in government, co-production, interactive policymaking, and increasing transparency. In such processes communication advisers support governmental agencies. There is hardly a public organization any more without a communication department. The influence of communication consultants gradually came to replace that of the organization managers of the 1980s. As in the previous periods, young people seemed to see the changing developments very clearly. They increasingly opted in their education for courses and studies in which communication forms a central part of the curriculum. In the 1990s a number of communication studies were commenced at the higher educational and university level and all could welcome hundreds of new students each year.

In the area of privatization the criterion of efficiency is gradually being replaced by the criterion of feasibility. The new view results in a return of government interference in those areas where this is accepted or where this is absolutely needed, because the problems have become too urgent.

A small growth of public expenditure can be seen in the area of public safety, police and prisons. One sees a growth in expenditure on the improvement of the infrastructure, since this is necessary to attract business. Nevertheless, the prudence with which this comes about results in the same kind of *ad hoc*, short-term policies which characterized the end of the 1940s, although out of quite a different mission. This is seen in a number of areas, like the policies on the return of illegal refugees,

the merging of municipalities, the creation of independent agencies, the restructuring of the implementation of social welfare et cetera (see Herweijer, 1999). Only the most pressing problems are tackled and the lack of integration of policies is one of the aspects of policymaking that is most criticized. Because the idea is that public policies have to vary for different target groups, and government is only one, and not even a dominant actor within policy networks, coherent and consistent public policies are absent.

These developments give rise to the idea that decisions made today can be changed tomorrow, depending on the circumstances. This is seen in many policy areas. For instance in health policies, where attempts to steer the consumption of medicines by introducing individual financial contributions were abandoned again in the second half of the 1990s, because government tried to influence choices in areas, where the citizens did not have a choice (Lako, in Nelissen, 2000). Regarding work-related sickness and disability, in 1993 the Dutch government introduced the law on differentiation of premiums to be paid by firms. In 1996 this was replaced by a law which compelled firms to pay 70% of the wages during the first year of sickness. In 1998 this was again replaced by a new law which compelled firms to pay the disability insurance themselves. The laws seem to tumble over one another, without being thought through (Nelissen, 2000). In education, new ideas for the contents of secondary education developed and resulted in a substantial change. However, within a year new problems arose and politicians were eager to change the format again. In the area of infrastructure the decisions about the expansion of the national airport were adapted continuously, as well as decisions regarding new roads and new rails.

One interpretation is that the developments in the 1990s have even further undermined the position of government compared to societal groups. Seen from a historical perspective, and in light of the relative attention paradigm, these developments are interpreted as the beginning of a gradual return of government. In the 1980s government and politics were judged pejoratively and their role was seen as inferior to market forces. This changed in the 1990s. Where administrators in the 1980s could say to politicians 'we have reached agreement among our colleagues and with the target group, so please accept and sign the proposal', after which the politicians agreed, the politicians in the 1990s increasingly vetoed such outcomes and took their own stance.

One problem was the negative image of politicians. This was improved by stressing their decisiveness, again with the help of communication consultants. One minister, after a first year in which her decisiveness was questioned, was even ordered by her colleagues to hire two communication advisers. A re-evaluation of the position and function of government in society was in order and the question about the limits of the public and private spheres were heard more and more. The problems in the quality of life, created in the previous period by neglecting them, became pressing. In the educational system, for instance, the restrictions on the study length, which since 1993 even applied to secondary schools, were lifted again in 1997, since they were very disadvantageous for children in the lower echelons of education. Repeated reports on the problematic position of the poor resulted in a new modification of the social security system, this time in the direction of its

individualization, by the creation of extra allowances for singles, the young and day care centers.

New developments, like globalization, result in new problems, like dual use trade problems, international organized crime, money laundering etc., which require policies which cannot be proposed without vindication by public institutions (Reinicke, 1998). Theoretically, the answers to the question about the role and function of government are given in influential theories on neo-liberalism, 'the third way' and reinventing government.

In the Netherlands the main development in the 1990s is that the contents of national public policies become increasingly dependent on their approval at the European level. Even the main goals of public policies are determined outside the Netherlands. The new mission of government in the 1990s is determined in cooperation with the other members of the EU, illustrated by the treaties of Amsterdam and Maastricht. In these treaties the mission is changed primarily into a monetary one. Whatever a government in the EU does, it must not result in a budget deficit beyond the limit set in Brussels and it should preferably result in a decrease of the deficit. Although the effects of the EU on different policy areas is not yet equally visible, it follows from the theory presented above that we may expect policies to converge in the years to come.

At the beginning of 2000 the goals as set in the 1990s seem to have been achieved. There is no economy booming like the one in the Netherlands. The budget deficit has disappeared and there seems to be no other population which is so satisfied as the Dutch one. At the end of the twentieth century the Netherlands belong among the richest countries in the world. International economic growth is especially profitable for the Dutch economy, which still is heavily dependent on trade and which has invested a lot in improving the necessary infrastructure. Important for our argument is that the monetary target set at the beginning of the 1990s is achieved at the end of that decade.

4. THE SECRET OF SUCCESS

The conclusion of the previous section is that developments in the Netherlands in the last 55 years appear to be a success story. Every policy generation established its own priorities and main target and this target was achieved at the end of each period, after which the main goal shifted to resolving the problems neglected previously. The achievement of the respective goals in the subsequent periods does not have to be a sole consequence of the policies opted for during those periods. However, the previous section has shown that the convergence of policies in different areas towards achieving one coordinating goal does help in achieving that goal.

It was the purpose of the preceding section to show that the existence of policy generations can be demonstrated and that the relative attention paradigm does explain the direction of policy change. We tried to demonstrate the convergence of policies within and change between the subsequent policy generations, with regard to the institutional setting, the formal and informal rules of the game, e.g. the establishment and influence of different groups of actors, the kind of policy instruments being dominant, the kind of argumentation and the criteria for judging

new policies et cetera. Within policy generations these converge in order to contribute to achieving the main goal and to make it clear that this goal dominates the development of new public policies. Between policy generations shifts were seen, for instance, from an institutional setting in which corporatism dominated, to a policy generation in which conflicts between societal actors determined the policy outcomes and back again. Similar shifts are seen from depoliticized to politicized decision making processes and back again; in the intensity of governmental interference and will to interfere; in the dominance of judicial, economic and communicative policy instruments, and in the informal rules of the game. It shifts that determine the rules about what is acceptable and what is simply not done and, in terms of Douglas North, structure incentives in human exchange. In the first period the rule dominated that everything is allowed that contributes to the rapid recovery of the nation. In the second period the dominating rule is that every policy has to be thought through and has to be technically coherent and has to be effective in the long term. In the third period the rule seems to be that 'the sky is the limit' and that all is judged for its contribution to the quality of life. In the fourth period the basic rule is that everything government does must be in conformity with the rules of the market, aimed at achieving greater efficiency, after which in the last period discussed the adage becomes 'money, money, money'. These basic rules seem to determine the institutional settings that appear in the subsequent policy generations and that explain the policies visible within those periods. In all five periods we were able to identify the coordinating policy goals at the beginning of the new policy generation, to demonstrate how this affected the policies in several policy areas and the institutional setting and to conclude that the main target was achieved at the end of the periods. Therefore, although we do not intend to judge the respective policies for their quality, they were successful. All five policy generations succeeded in achieving their goals. Five out of five ain't bad.

Institutions and institutional change have to be seen as intermediate variables. On the one hand they are explanatory for the outcomes, on the other hand they are determined by social, political, cultural and economic developments. Below we give some of the determinants, that are derived from the case study given in the previous section.

Theoretically, the most important factor is economic scarcity. Successful policy making is not just a matter of setting the right priorities, but also a matter of neglecting aspects, which are important in their own respect, but which might be difficult to achieve simultaneously with the main goal. The message of this case study is that one cannot have it all at the same time. Accepting this fact of life, concentrating one's resources on achieving one or two targets at a time, and shifting one's attention when the previous ones are achieved seems indeed to be advantageous. It is especially advantageous because institutional change seems to be neglect-induced and concentrating on one or two aspects results in institutional flexibility.

Secondly, economic developments had an accelerating effect on the change of institutional settings. At the end of the 1940s the Netherlands profited from the European recovery program, thus enabling a more rapid recovery from the

devastation caused by World War II. In 1959 the finding of a huge gas reserve made possible the excessive spending in the 1960s until 1975. The oil crises of 1973 and 1979 and the situation of economic stagflation in the early 1980s accelerated the need for more efficiency characterizing the policies of the 1980s. And the economic growth at the end of the 1980s and 1990s made a prudent return of government possible in the 1990s.

Thirdly, the regular cohort replacement of the political elites is a contributing factor to change. Relatively large replacements in the Dutch parliament took place in the middle of each period. These junior members became experienced and dominating politicians in the subsequent period. This regular succession is fruitful, because it increases the chances for flexibility and generation shifts. This not only holds for the policy makers, but also for their advisors and the type of advice given.

Fourthly, going along with international cultural tides seems helpful. The policy generations existing in the Netherlands are also visible in other countries. This goes for the recovery programs after WW II, the long term planning and industrialization programs in the 1950s, the boom of democratization in the 1960s and early 1970s, the policies aimed at efficiency and reorganization in the 1980s and the new discussion about the role and position of government in the 1990s, as well as agreeing on a monetary mission, stabilizing the exchange rates and reducing governmental deficits.

Fifthly, being responsive to shifting societal demands is an explanatory factor. Successful policies bring about cultural dynamics, which induce shifts in the needs of the members of society. When the basic needs are not met, like nutrition, or a roof above one's head, this demands that policymakers target at removing those basic needs. When these needs disappear, the next step is to provide for work and security. When this is accomplished the needs change again. The subsequent necessity is to develop policies that aim at elevating the population and contribute to the development of the existing talents. And when this all becomes too expensive and more basic demands like full employment are no longer met, one has to economize and when this is successful, redefine the position of government.

5. REFLECTION AND CONCLUSION

This chapter has argued that the policy changes visible in the Netherlands in the last 55 years can be explained by the theory on policy generations in which neglect-induced institutional change is central. It departed from the theory of Douglas North in which institutions are seen as rules that structure incentives in human exchange. In his more recent work he emphasizes the problem of explaining institutional change and points at the importance of cultural dynamics, power relations and economic development. In this chapter this theory is combined with the theory of Namenwirth on cultural dynamics in which the counterpart of setting preferences, namely neglect, is seen as the pattern generator between these factors and institutional change. Economic scarcity implies one cannot achieve all one's goals at the same time, and that attention shifts in phases.

This resulted in the theory of policy generations. Institutional change is visible in the succession of policy generations, which emphasize those values that were neglected most by the preceding generation.

The case study showed that such generations existed in the Netherlands during the last 55 years and that they were successful, because they were able to achieve the main target set at the beginning of the period, and steer policies in different areas towards achieving those goals. The policy generations distinguished were those of the reactive missionaries just after the second world war, the technocratic planners of the 1950s and early 1960s, the politicized spenders of the 1960s and first half of the 1970s, the efficient managers of the 1980s and the new missionaries of the 1990s.

At least two objections might be posed to the above analysis. The first is that the analysis is too benevolent to the developments in the Netherlands in the last 55 years. The secret of success is not that the goals are achieved, but that the policies are all one sided and unbalanced and that one has to look at the costs of success. Balancing a policy in order to simultaneously accomplish short-term objectives, long term effectiveness, a democratic policy process and efficiency was not apparent and therefore the policy process in all five periods has to be severely criticized. This indeed is the other side of the coin. Every policy did result in its own drawbacks, since it neglected three of the four aspects to which an adequate policy has to conform. That is why we explicitly refuse to say anything about the quality of the policies. We talk about success in terms of achieving what one tries to accomplish, regardless of the fact whether the outcomes can be related to the policies. Therefore, the policy generations were successful, although in ordinary terms they might have lacked quality. The absent quality of the policies is, however, a strong explanatory factor for the shifting demands to which new policy generations responded and by which shifts in policies occurred.

The second objection to the analysis presented above might be that the policy examples given to illustrate the features of each policy generation are not representative of the actual policies, but chosen in order to make the point, instead of critically testing the theory. Partly this is a consequence of the structure of this chapter and the point it seeks to make. The approach opted for was to illustrate the substance of each period by giving elucidating examples of what occurred during a period in different policy areas. An alternative approach could have been to present a huge number of graphs and statistics on each of the policy areas. That would have resulted in the description of tendencies that are better verifiable, but hardly manageable within the given space of this chapter. One way to avoid this problem is to examine every policy area separately. That was done earlier for the dynamics in social housing policies in the Netherlands, in which similar conclusions were drawn (De Vries, 1996).

That earlier analysis and this one both point at the likelihood that policy generations exist, that they might explain long term policy change and that such analysis allows for the prediction of the direction thereof. Of course, every scientific study is supposed to end with a plea for further analysis and critical tests and this study is no exception. Such critical tests, however, become more probable if the

theory to be tested is seen as more likely and interesting. It is one of the aims of this chapter to contribute to that feeling.

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KEES AARTS, JACQUES THOMASSEN
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THE SWAMP OF DUTCH POLITICS: HOW THE IMPACT OF MODERNIZATION ON POLITICAL BEHAVIOR IS MODIFIED BY INSTITUTIONAL CONTEXT¹

1. INTRODUCTION

As argued in the introductory chapter, the institutions of government and the relations between government and society are currently undergoing important changes. Firstly, the distinction between different levels of government has become more diffuse than ever. Due to processes of globalization and developments in information and communication technology, jurisdictions – from nation states to local governments – are losing their borders. Secondly, both the effectiveness and the legitimacy of representative democracy in its classic form appear to be undergoing erosion.

This erosion of representative democracy as we have come to know it over the past two centuries is reflected in, for instance, the decline of membership of political parties, of electoral turnout and of other traditional forms of political behavior in virtually all Western-European countries during the last few decades. It is a phenomenon that is often attributed to processes of social modernization, which do not halt at international borders.

But it is not clear from the outset how the international, perhaps even global character of modernization processes links up with political institutions that are for the most important part still nationally defined. When watched from a close range, amorphous global trends tend to show local variations, which sometimes are of great importance for an understanding of politics. It is our aim in this chapter to show how modernization has affected political attitudes and behavior in the Netherlands over the past three decades, and how political institutions have in turn affected the impact of modernization.

The central research question to be answered is: is there evidence of an impact of social modernization on political attitudes and behavior in the Netherlands, and is this relationship influenced by the political-institutional context there?

In the next section we present an outline of modernization theory, which results in three hypotheses on the development of political involvement and political

¹ This chapter is mostly based on several chapters in Jacques Thomassen, Kees Aarts and Henk van der Kolk (eds.), *Politieke veranderingen in Nederland 1971-1998. Kiezers en de smalle marges van de politiek*. Den Haag: SDU, 2000.

behavior. These hypotheses will be tested in the three sections following. In the concluding section we reflect on the possible consequences of our findings for the functioning of democracy.

2. SOCIAL AND POLITICAL CHANGES: THE THEORY OF MODERNIZATION

One of the most persistent suppositions in both the public debate and the political science literature is the existence of a crisis of democracy. However, it is not always clear what exactly the phenomena are that should indicate a crisis and how these phenomena can be explained. It is beyond the purpose of this chapter to present a survey of the voluminous crisis of democracy literature (for a review, see Kaase and Newton, 1995). We will limit ourselves to a set of theoretical notions that at least offers a consistent explanation of the developments in political behavior that we are interested in. These theoretical notions are usually referred to as *modernization theory* (Inglehart, 1977; 1990; 1997; Fuchs and Klingemann, 1995). First, we survey the developments in political behavior that modernization theory predicts and then see whether the developments in real life are consistent with these predictions.

Our point of departure is the tremendous social changes that have occurred throughout the Western world during the past half century: the enormous economic growth and the unparalleled increase in the level of education and the means of communication. These developments have supposedly also resulted in great changes at the level of individual citizens. To begin with, after World War II a generation has grown up with a *post-materialist* rather than a materialist value orientation. Important elements in this value orientation are the quality of life and self-development. The need for self-development ensures that these "new citizens" are no longer satisfied with the limited political role traditionally assigned to citizens, which mainly comes down to their role as voters. They want to manifest themselves more directly in politics and do this, among other things, by becoming involved in what is usually referred to as "unconventional participation" (Barnes, Kaase et al., 1979). This tendency is strengthened by the fact that the importance these people attach to the quality of life raises new demands and issues, like the protection of the environment. As far as traditional political parties do not adequately respond to these demands this will once more lead to political behavior circumventing traditional political institutions.

Secondly, the increase in the level of education and the information revolution have led to a *cognitive mobilization*. Higher levels of education, more information and a growing subjective political competence lead to an increase of political interest. Well educated and self-confident people will tend to rely on direct ways of influencing political decisions instead of traditional means of political participation like being active in political parties. Also the act of voting will become less self-evident, being at best a very indirect way of influencing politics.

This development will also affect people's relationship to political parties. People no longer vote for a particular party only because they and their primary group have always done so or that the party in question has always represented the interests of their social class or otherwise defined position in the traditional cleavage

structure. Cognitive mobilization will lead to a more instrumental orientation in politics. People will no longer more or less automatically vote for a particular party but will make up their mind at each election on the basis of what different parties have to offer them. Voters have finally begun to choose (Rose and McAllister, 1986).

As a result one can expect more fluctuations in the strength of political parties from one election to the next. However, this is not a sign of a lack of political interest, but calls to mind the well informed and rational citizen from the classic theory of democracy, an image that has been ridiculed since the days of Schumpeter, but one that, at least according to some observers, is coming closer to reality. As a consequence the importance of social characteristics like social class and religion for the explanation of party choice will gradually diminish and yield to directly policy-related factors like ideological orientations, issue opinions and the evaluation of political parties, politicians and the incumbent government.

Summarizing, modernization theory predicts:

- An increase in the levels of political interest and political efficacy.
- A gradual decline of forms of conventional political behavior, including turnout at elections, and an increase of unconventional political participation.
- A gradual decline in the importance of social background for the explanation of party choice and a gradual increase in the importance of policy orientations.

In the next sections we will see to what extent these predictions have come true. Thereafter, we will take aspects of the Dutch political-institutional context into account, and reflect on the implications of our findings for the functioning of representative democracy.

3. POLITICAL INTEREST AND SENSE OF EFFICACY

Figure 5.1 presents the trends in political interest and political efficacy.^{2,3} Contrary to our expectations there is no monotonous increase in political interest. While there are some significant differences, no uniform development over the years can be found. The trend in political efficacy is more consistent with the hypothesis above to

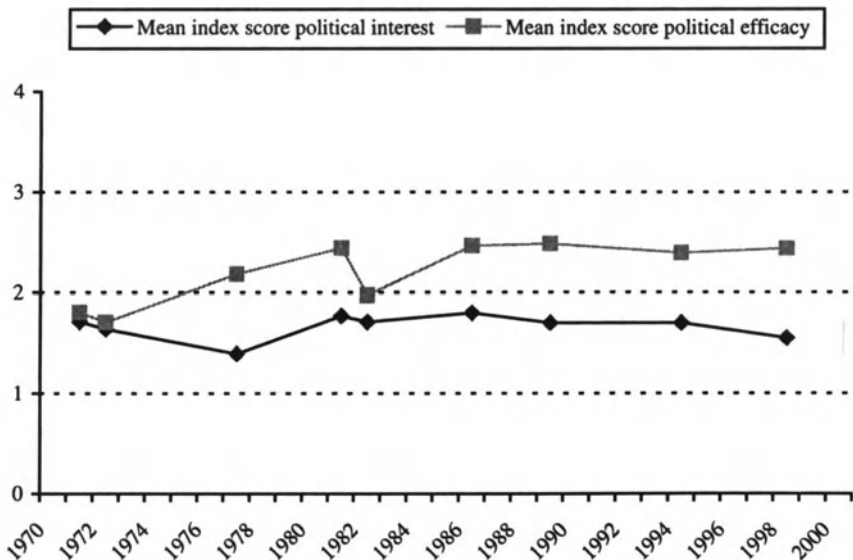
² The data used in this chapter are from the Dutch Parliamentary Election Studies of 1971, 1972, 1977, 1981, 1982, 1986, 1989, 1994 and 1998. The data have been weighted. For details of sources and weighting procedures, refer to Thomassen, Aarts & van der Kolk (eds.) (2000). Details on the analyses reported here are available from the authors.

³ Political interest and political efficacy were measured as index scores based on four items each. For political interest, these items are: frequency of reading about national news and foreign news in the papers (nearly always – often – now and then – seldom or never – does not read papers), joins in on conversation about politics (joins a conversation – listens with interest – does not listen/no interest), subjective political interest (very – fairly – not interested). For political efficacy the items are: Members of parliament do not care about the opinions of people like me; Political parties are only interested in my vote and not in my opinion; People like me have absolutely no influence on government policy; So many persons vote in elections that my vote does not matter (agree – disagree). The unidimensionality of the index scores has been assessed.

the extent that the mean level of efficacy in the 1980s (with the exception of 1982) and 1990s is somewhat higher than in the 1970s. However, political efficacy has not increased any more since the early eighties. Therefore, it is hard to maintain that our findings strongly support the hypotheses.

However, a more refined test of the hypothesis as deduced from modernization theory should take the possible differences between generations into account. The argument made in the theory of modernization is that the predicted changes are due to the gradual replacement of generations. The younger birth cohorts, more than the older ones, have been subject to the conditions that according to the theory should lead to a more postmaterialist value orientation, they are better educated and therefore should be more interested and efficacious in politics.

Figure 5.1 Political interest and political efficacy: average scores



In order to test this more refined hypothesis we have divided the population into four generations according to the time they became eligible to vote: before World War II, between 1946 and 1967, between 1971 and 1981, and after 1981. The results of this test, as shown in figures 5.2 and 5.3, are remarkable. The findings on political efficacy are consistent with the hypothesis. The average sense of efficacy with which each consecutive generation enters the electorate is above the entrance level of older generations and remains at a higher level over the years. However, the differences between generations in terms of political interest are exactly the opposite of the prediction. The youngest generation is not the most, but the *least* interested in politics, and persistently so over the years. What we observe here is a generation of young people who are operating in politics with more self-confidence than older generations but at the same time are less interested in politics.

Figure 5.2 Political interest by generation

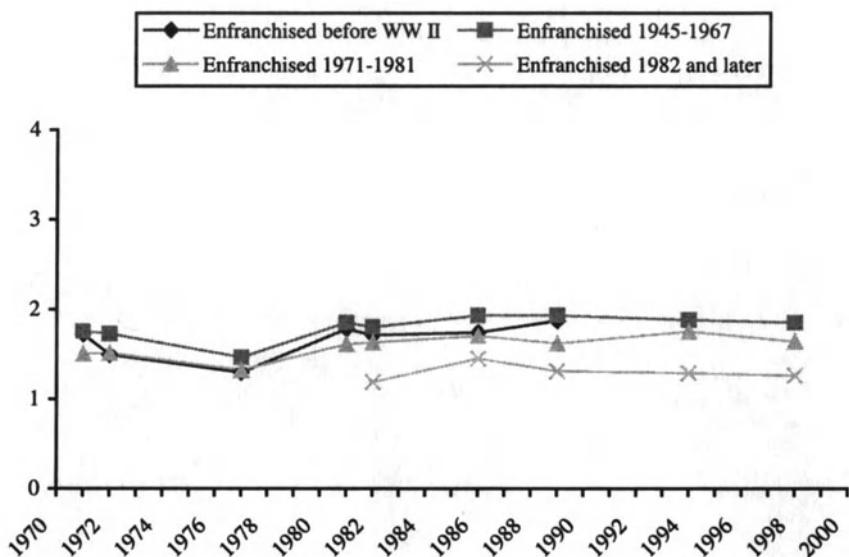
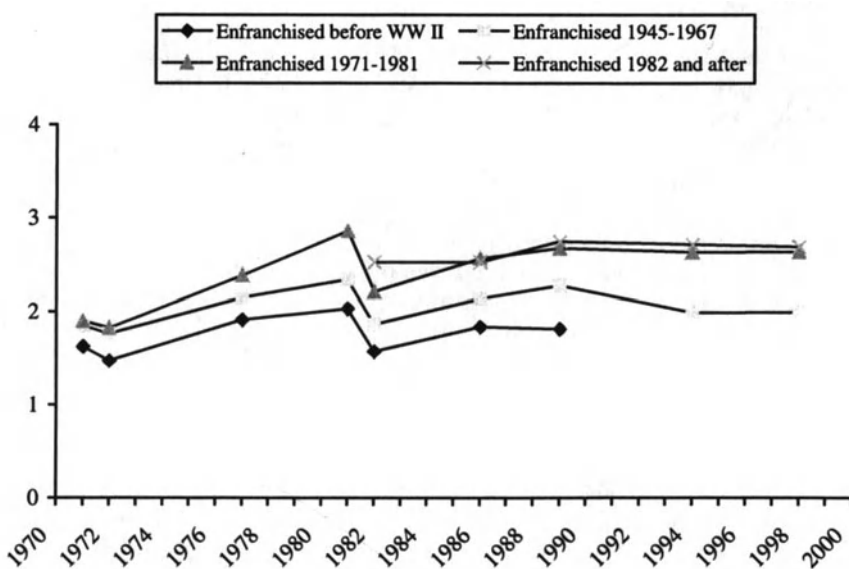


Figure 5.3 Political efficacy by generation



Our findings for political interest and political efficacy are also important in the light of theory and research of political participation. It is now common knowledge that traditional types of political behavior, like being active for political parties, show a negative trend over the past thirty years, in the Netherlands just as in other Western countries (Dekker, 2000). However, the most spectacular change in political behavior over the past decades is the increase of unconventional behavior. "Unconventional political action" has been defined as those voluntary actions by citizens, intended to influence political choice, either directly or indirectly that are neither conventional (via parties or established interest groups such as trade unions) nor violent.⁴ Unconventional political action is often illegal, but is at the same time considered legitimate. The repertory of forms of action that fall under the label is not fixed forever, but changes with the contents of conventional action. Topf (1995: 78) summarized his analysis of the development in a large number of countries as follows:

"[] we have confirmed unequivocally the [] thesis of a participatory revolution. Levels of non-participation in modes of political action beyond voting have declined to such an extent across Western Europe over the last thirty years that non-participants now comprise a minority of national electorates. In several countries [] well over two-thirds of their electorates are now participants in some mode or other of what, but recently, was labelled unconventional activity'.

The development in the Netherlands follows the same pattern, predicted by the theory of modernization.

Political styles and democracy

There can be little misunderstanding about these empirical facts. However, there has been a continuous debate on how both sides of this participatory revolution should be evaluated: the increase of new forms of political behavior and the decline of traditional modes of political participation. The participatory revolution has its roots in the protest movement of the 1960s. Initially it was anything but clear whether this should be seen as a threat or as an enrichment of democracy. That it would be an enrichment was at first not a very plausible thought. Was the protest movement not born out of dissatisfaction with the existing political system, had the activists not set their mind on the overthrow of the existing political system and had they not turned their back on the traditional channels of representative democracy? It turned out not so bad after all. Most activists were interested in politics, and had not turned their back on representative democracy but simply had extended their to be repertory of actions with new and more direct forms of action. Even their satisfaction with the functioning of democracy was in general above average. In the Netherlands as in other Western democracies political activism is not based on a negative assessment of the responsiveness of the political system or on political cynicism and distrust (Dekker, 2000). Therefore, the motives and attitudes of political activists hardly justify the interpretation of the participatory revolution as a threat to traditional representative democracy. Rather than considering it as a threat it was increasingly

⁴ See Barnes and Kaase 1979, and especially the chapter by Kaase and Marsh.

seen as a challenge to representative democracy, the challenge referring to the fact that the political systems of most Western democracies were hardly equipped for the direct involvement of citizens in the process of decision making (Fuchs and Klingemann, 1995).

By now political activism has become widely accepted and that some modes of participation have at one time been labeled as unconventional modes of political participation, has almost been forgotten.

It is hardly a matter of dispute that this development has significantly contributed to a democratization of society. However, at the same time a few critical comments might be justified. Firstly, even more than in the case of conventional political participation, political equality is at stake. With few exceptions, non-conventional modes of political participation require personal resources that are not equally distributed in society. The more that modes of political participation require a certain level of knowledge and skills, the more likely it is that these modes will be disproportionately used by better educated and, more generally, better off people.

This is anything but a new debate. All arguments for and against a society in which a high democratic quality is attributed to the direct participation of interest groups in political decision making have been exchanged in the debate on pluralism that mainly took place in the 1950s and 1960s. According to the advocates of pluralism the political arena can function as efficiently as a market economy on the condition that there is an open competition between interest groups. In that case an invisible hand will guarantee a balance between the often conflicting interests and demands of the multitude of interest groups (Lehning, 1991: 114). This view on the positive effects of pluralism provoked as much criticism as applause. It would be hard to summarize the main criticism more concisely than by quoting Schattschneider's (1960) famous comment that the flaw in the pluralist heaven is that the heavenly chorus sings with an upper-middle class accent. That accent can only be kept under control by a powerful and anything but invisible hand, the powerful hand of a democratically legitimized government taking care of a fair balance of interests. This criticism of the wholesome function of pluralism is equally applicable to very similar ideas presently in vogue in the debate on the democratic virtues of civil society.

A second critical comment was first made by Huntington. In his famous essay *Post-industrial politics, how benign will it be*, he commented upon the possible consequences for democracy of the development of a society of well-educated and self-confident citizens who are well equipped to stand up for their interests. He foresaw a society of citizens who are hardly interested in politics but who stand up for their own interest in a compelling way. And he also predicted that this might be a very unpleasant society, that *post-industrial politics is likely to be the darker side of post-industrial society* (Huntington, 1974).

Empirical research apparently took the edge off Huntington's arguments. As we observed above, not the politically uninterested activist turned out to be the prototype of the new citizen but the politically engaged *homo politicus* who effortlessly combines old and new modes of political participation (Barnes and Kaase, 1979).

But let us now reconsider our findings on political interest, political efficacy, and generations.

Above we reported on a remarkable development among the youngest generation. Whereas their political self-confidence is higher than among older generations, their political interest is significantly lower. What these data suggest is that a generation of citizens is growing up who know how to find their way in the process of decision making but who are hardly interested in politics.

Political interest may be regarded as the most natural indicator of involvement in politics (Barnes and Kaase, 1979: 527). We do not have valid and reliable measurements of political action, either conventional or unconventional, over the period of 30 years that we consider. But our measure of sense of political efficacy depicts at least the most important precondition for political action, namely the sense that one's political opinions and actions might be seen and heard by politicians, that they are not wasted. We therefore propose to construct on the basis of political interest and political efficacy a typology of citizens *à la* Barnes and Kaase (1979: 527), and see how our generations of citizens fit in.

Barnes and Kaase's typology consists of a fourfold table:

Table 5.1: A typology of citizens

		Political Action	
		No	Yes
Political Involvement	No	Political Apathy	Expressive Political Action
	Yes	Political Detachment	Instrumental Political Action

Lacking appropriate data for types of political action, we substitute political efficacy for political action. Of course, this gives a new meaning to the various types of citizens that can now be distinguished. Political efficacy *may* lead to political action in the sense of Barnes and Kaase, but it may also lead to other types of political activity, or result in no activity at all. That said, it seems that a considerable part of the above typology may be preserved when political efficacy replaces political action.

Table 5.2: A modified typology of citizens

		Political Efficacy	
		No (score 0-1)	Yes (score 2-4)
Political Interest	No (score 0-1)	A Neither interested, nor efficacious	B Efficacious, but not interested
	Yes (score 2-4)	C Interested, but not efficacious	D Interested and efficacious

For their own typology, Barnes and Kaase emphasized that a *balance* between expressive and instrumental styles of political action is of great importance for the prospects of the political system. Stated differently: the expressive style, being an orientation towards action 'without political motivation' may hinder 'rational interchanges between authorities and partisans' (1979: 527-528). On the basis of

Figure 5.4 Efficacious but not interested, by generation

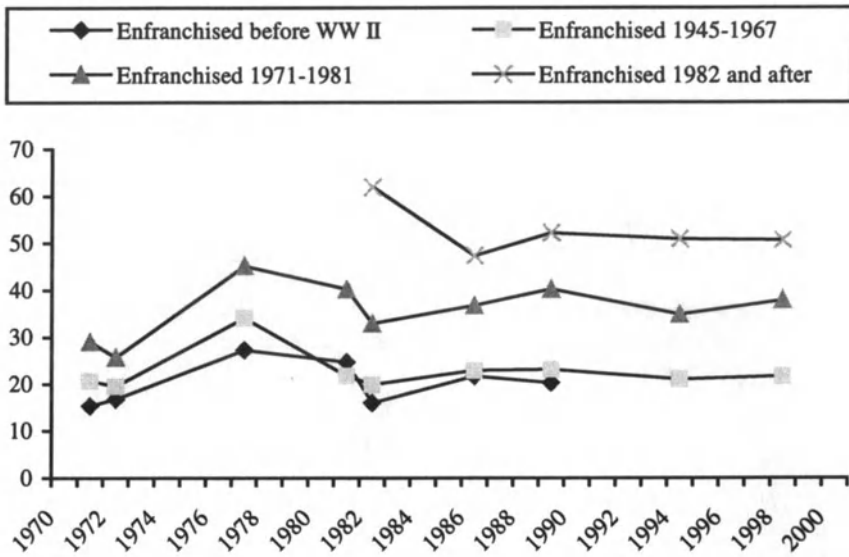
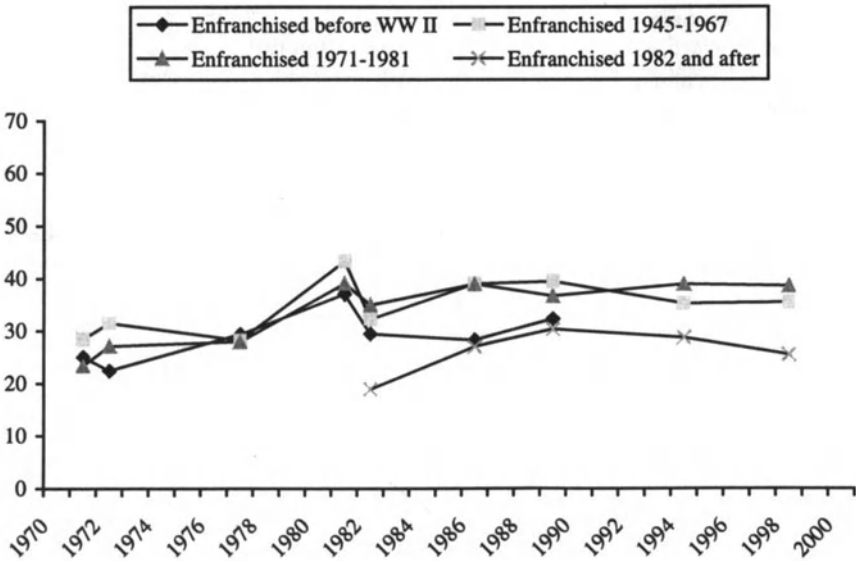


Figure 5.5 Efficacious and interested, by generation



their cross-national data of 1974, they concluded that 'the future holds problems indeed' (530), since the expressive political style appears to become dominant.

Translated into our typology of interest and efficacy, we would likewise expect a shift of the hypothetical balance between cells B and D (efficacious, but not interested versus interested and efficacious) in favor of cell B to spell trouble for parliamentary democracy. And our data show that this shift is well under way, and is carried by the youngest generations.

Figures 5.4 and 5.5 show the development of the percentage of citizens in cells B and D. The youngest generation shows by far the highest percentage of disinterested, but efficacious citizens. The oldest generations show the lowest figures on this style of political orientation. In contrast, the youngest generation shows the lowest percentage of persons both interested and efficacious. The older generations are in this respect rather similar to each other. If there has ever been a balance between interest in political affairs and sense that one may play a nontrivial political role oneself, that balance has been tipped among the younger generations in favor of an uninterested political self-confidence.

4. ELECTORAL PARTICIPATION

The flipside of the participatory revolution shows the decline of traditional modes of participation. The most important of these traditional modes of participation is the act of voting itself. Figure 5.6 presents the trends in turnout for four different levels of government. It is obvious that turnout at all four levels has been decreasing, although the decline for parliamentary elections is less steep than for the other levels and started later. The major drop in turnout between 1967 and 1971 is mainly due to the abolition of compulsory voting in 1970. The further decline some people feared did not occur initially. Quite the contrary, even in 1986 turnout was higher than in 1971. Therefore, for a long time it could be maintained that there was no question of a structural decline of turnout. However, after 1986 turnout has declined continuously to an all time low of 73% in 1998. A similar trend can be observed in just about all European countries and therefore might indeed be interpreted as a trend that is related to general developments in Western societies as argued in modernization theory. More specifically, the argument refers to the process of individualization, which implies a weakening of people's bonds with traditional societal and political organizations, such as the churches and labor unions. If this interpretation is correct, we should find two phenomena at the same time. Firstly, a relationship between the membership of these traditional intermediary groups and turnout, and secondly, a gradual erosion of these bonds.

All three expectations are empirically valid. As an illustration, figure 5.7 shows the gradual decline of the most important type of traditional social adherence, church attendance, over the past 30 years. Figure 5.8 shows how church attendance is related to turnout. These trends are not countered by the increasing level of education among younger persons. Therefore, other things being equal, the prospects for a reversal in the trend in turnout are not very positive.

Figure 5.6 Electoral turnout

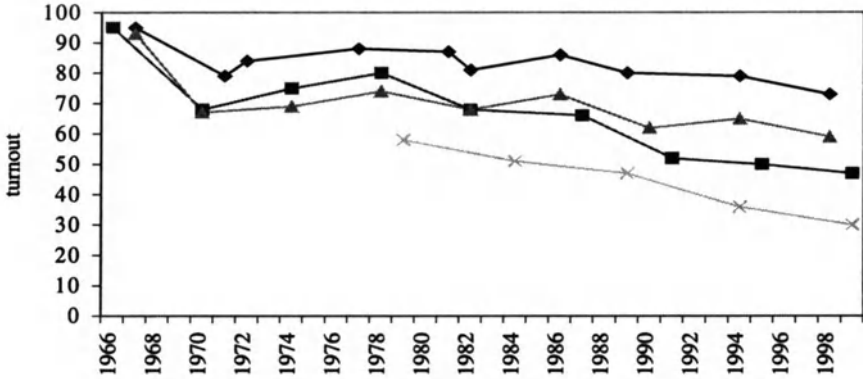
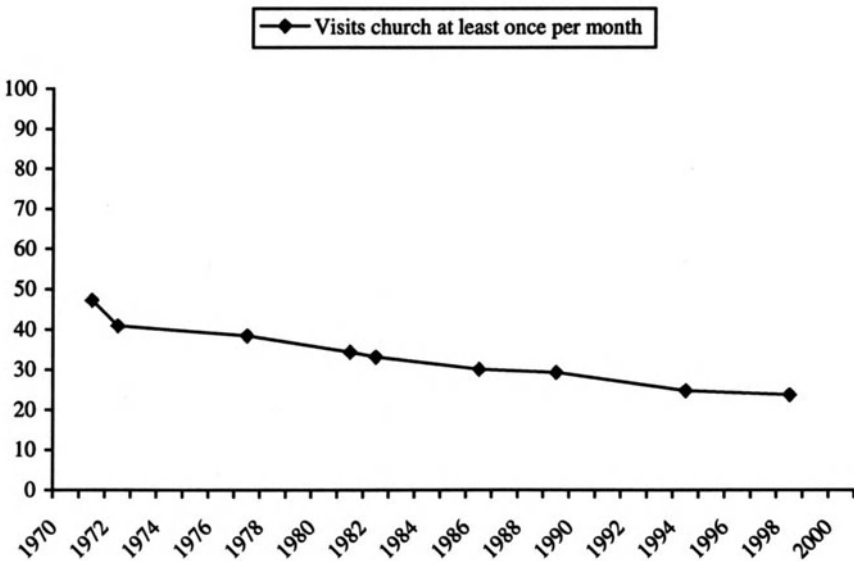


Figure 5.7 Church attendance

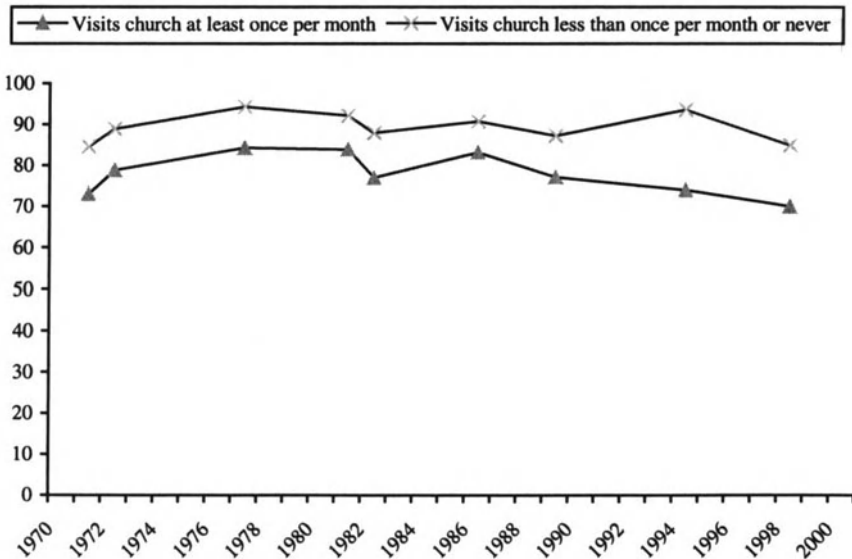


There are at least two frequently used arguments why a decline of turnout should not be seen as much of a tragedy. Firstly, the cognitive mobilization we referred to above has led to an instrumental orientation in politics. People will only become politically active when there is something at stake for them. When they are satisfied with the way things are going and when it does not make much of a difference who is in power they will not consider it worthwhile to vote. Secondly, as we have just

seen, citizens have found more effective ways to convey and effectuate their wants and demands in politics, not by the long and slow way of political parties and the traditional institutions of representative democracy, but by addressing themselves directly to the decision makers in public administration and politics.

However, true as this may be, there are at least as many reasons to consider a declining turnout as a serious political problem. Firstly, in our kind of political system, elections in which political parties compete for the favor of voters are still the most important mechanism to legitimize political authority. This is not to say that each and every eligible voter should use their right of voting, but an ever decreasing turnout might eventually undermine the legitimacy of government. Secondly, as much as in the case of unconventional behavior, political equality is at stake. Immediately after the abolition of compulsory voting, research on the effects of this measure made unequivocally clear that less educated people disproportionately abstained from voting (Irwin, 1974: 299; Verba et al., 1978: 7). In general people with more personal skills and resources are more inclined to political participation than people who are less well off. Also, comparative research indicates that the more people abstain from voting, the stronger this relationship will become (Lijphart, 1997). As a consequence, the further turnout declines the less formal political equality will be effectuated in real equality. Therefore, from a democratic perspective there is little reason to resign one self to a declining turnout. But then the next question is, of course, what one might do about it.

Figure 5.8 Church attendance and turnout in parliamentary elections



The most obvious measure would be to reintroduce compulsory voting. Lijphart (1997) has made a strong argument to do precisely this. However, apart from the doubtful possibilities of enforcing this measure, it is a disputable proposal. Although it would clearly contribute to political equality, it would also be an infringement of the *right* to vote, which implies the liberty *not* to vote. Therefore such a measure would hardly be acceptable any more in modern society.

Once this drastic measure is eliminated, it is hard to think of an effective way to reverse the negative trend in turnout. As we have seen, declining turnout figures are a general phenomenon in about all modern democracies. This suggests – as argued in modernization theory – that it is mainly due to general trends in society that can in itself hardly be controlled by politics.

However, this is not to say that a declining turnout is a natural disaster on which politics would have no effect. Quite the contrary, the process of modernization as described above implies that the decision to vote will become more dependent on the expected utility of voting as perceived by individual voters and less on social predispositions as the membership of political parties and social groups. The utility of voting very much depends on what is at stake in a particular election, i.e. of the importance people attach to the outcome of elections. How important that outcome will be depends at least as much on political-institutional circumstances as on the personal characteristics of individual voters.

Institutional factors

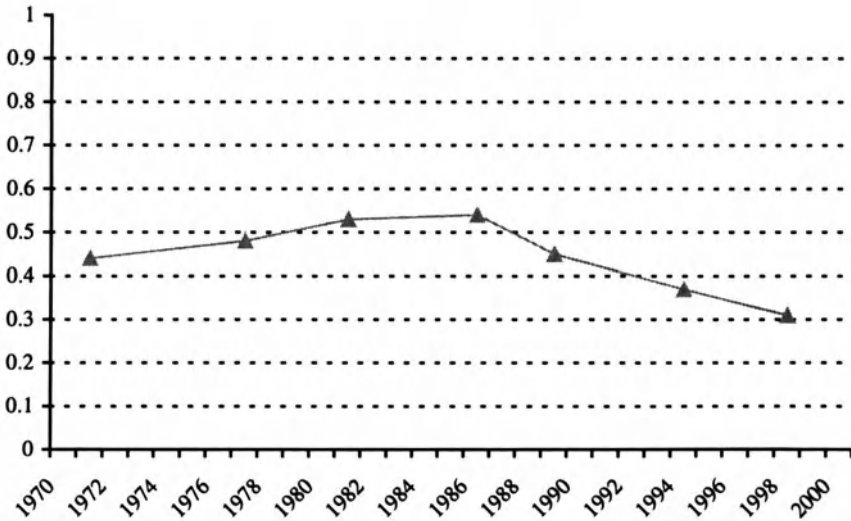
According to the dominant literature there are three important political-institutional factors influencing the decision to vote. The first factor is the importance of the level of government, i.e.: local, regional, national or supra-national. In most countries there are such large differences between turnout for national elections and all other elections that the latter ones are usually referred to as *second order national elections* (Reif and Schmitt, 1980; Van der Eijk and Franklin, 1996). The second important factor is whether the outcome of the elections is decisive for who or which party comes to power (Franklin, 1996). The third factor is the degree of polarization between political parties. The more clear-cut the social and ideological differences between parties are, the more importance voters will attach to the elections and the more inclined they will be to vote (Downs, 1957; Powell, 1986; Grofman, 1996).

These three factors are helpful in the interpretation of the trends in turnout represented in figure 5.6. Local, provincial and European elections score low on each of these factors. Their importance is perceived to be low, there is no visible relationship between the outcome of the elections and the formation of a government after the elections at any of these levels of government. Therefore, assuming that turnout is becoming increasingly dependent on the perceived utility of elections, it is quite understandable that turnout for these second order national elections is not only lower than for parliamentary elections but also that turnout for the former elections is declining more rapidly than for the latter, at least if we can assume that national elections score better on the three factors of importance.

The idea underlying the notion of second-order national elections is that people will find national elections more important than the other ones. There is evidence

that this indeed is the case, although in the Netherlands local elections also tend to be regarded as important in their own right.⁵ The relationship between the outcome of elections and the formation of government at the national level is hardly less blurred than at the other levels of government. This obscure relationship is considered as one of the weakest spots in Dutch democracy. But since the relationship has always been like this in the Netherlands, it cannot by itself explain the decline of turnout. However, to the extent that instrumental orientations have become more important over time, its impact on the decision to vote can still have increased. Also, although one should not overinterpret it, it is remarkable that a local peak in turnout is reached in the two elections which – by Dutch standards – came close to a contest of who should become the next prime minister. This was in 1977 and 1986 when re-electing the prime minister was made into the main campaign slogan of the parties of prime ministers Den Uyl and Lubbers respectively.

Figure 5.9 Polarization of the major political parties



The possible effect of polarization can be seen by comparing the trends of turnout and polarization. Figure 5.9 represents the polarization between the major parties as perceived by the voters is represented. Polarization is measured as the difference between the leftmost and the rightmost of these parties on a left-right scale, as perceived by the electorate. It is clear that polarization is declining rapidly after

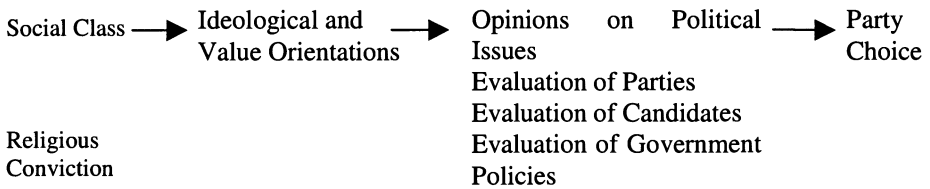
⁵ For example, the 1994 Dutch Parliamentary Election Study contained direct questions on the importance (on a 10-point scale) of the Dutch municipal council, provincial council, Second Chamber, and European parliament. The average ratings ("1" meaning very unimportant, and "10" meaning very important) were respectively 6.88 (municipal council), 5.41 (provincial council), 6.93 (Second Chamber) and 4.87 (European parliament).

1986. A comparison of this trend with the trend in turnout for parliamentary elections is quite revealing. Whereas there is no clear pattern in the turnout figures until 1986, they have been going down ever since. Although the parallel course of the two lines cannot prove that they are causally related, it at least strengthens the hypothesis that they are. An analysis at the individual level, relating the perceived clarity of the differences between parties to the decision to vote, validates that such a relationship exists (Aarts, 1999).

5. PARTY CHOICE

The third hypothesis, derived from modernization theory, predicts a gradual decline in the importance of social background for the explanation of party choice and a gradual increase of the importance of policy orientations. It can be argued in more detail with the help of figure 5.10.

Figure 5.10 Explanation of party choice



The main argument is that the explanatory power of the several variables in this explanatory scheme has gradually shifted from left to right. The traditional party system in the Netherlands, like those in most other European countries, was based on the social cleavage structure as it existed at the beginning of the twentieth century. In the Netherlands the two main dimensions of this cleavage structure were social class and religion. These two cleavages formed the basis of the party system and for a very long time most voters voted according to their social position. In 1954, for instance, no fewer than 87% of all Catholics voted for the KVP, the Catholic People's Party. In other words the explanatory power of social position was such that only little residual variance was left to be explained by the other factors in figure 5.10.

However, this should not be interpreted as if in those days people had no ideological or issue orientations, or had no opinion on the performance of the government or of political parties. Quite the contrary: the traditional cleavage structure was the basis of the ideologies or *Weltanschauungen* (Lipset and Rokkan, 1969: 2-3) that dominated the twentieth century. Part of the process of modernization refers to secularization. More and more people have become independent, not to say liberated themselves from their social background. Their life, including their political orientations and behavior, are ever less predisposed by their social position. As a consequence the explanatory power of social class and religion will gradually diminish.

This is not to say that the ideological orientations traditionally related to the major social cleavages will immediately disappear with them. More or less stable political cleavages can be directly based on these ideological orientations (Bartolini and Mair, 1990: 212-20; Rose and McAllister, 1986: 121-23). It has often been argued that the left-right dimension has become by far the most important dimension on which political parties compete with each other (Sani and Sartori, 1983). Van der Eijk and Niemöller (1983) argued that the lessening of sectarian ties has run parallel with a realignment of Dutch voters according to their position on the left-right dimension. In their view this ideological orientation, originally a reflection of the most important cleavage dimension in society, has become independent of its roots (Van der Eijk and Niemöller, 1992: 332).

But according to the theory of modernization the development will not stop here. The decline of the relevance of social cleavages will in the end not lead to any kind of stable realignment, but to the individualization of politics. This implies a growing heterogeneity of the political issues people find important and an increasingly instrumental orientation towards political behavior. This instrumental orientation lets voters decide from election to election what party they will vote for on the basis of their issue orientations and their evaluation of political parties, politicians and the performance of government.

Summarizing, we expect that over time the explanatory power of social class and religion will decline, initially in favor of the (independent) relevance of ideological orientations (left- right). However, over time the relevance of left-right will decline just as well and give way to the importance of issue positions and policy evaluations.

The declining relevance of social class and religion for party choice is extensively documented elsewhere (e.g. Van der Kolk, 2000) and will not be repeated here. However, in order to test the hypothesis of the growing *independent* explanatory power of the left-right dimension and later of issue positions and the evaluation of governmental policy we need to control for social class and religion (including church attendance).

Figure 5.11 presents the development of the explanatory power of the left-right dimension between 1971 and 1998, controlling for social class and religion (Van Wijnen, 2000). Combined with the quoted evidence for the decreasing importance of social class and religion for voting behavior, the development of the explanatory power of left-right for voting behavior is remarkably consistent with our third hypothesis, which predicts an initial rise and then a drop of the curve. In 1971 the left-right dimension explained 8% of the variance in party choice once social class, religion and church attendance had been taken into account. This figure gradually increases to 20% in 1986. After 1986 the explanatory power of the left-right dimension gradually decreases to 9% in 1998.

Figure 5.11 Explanatory power of the left-right dimension for the vote

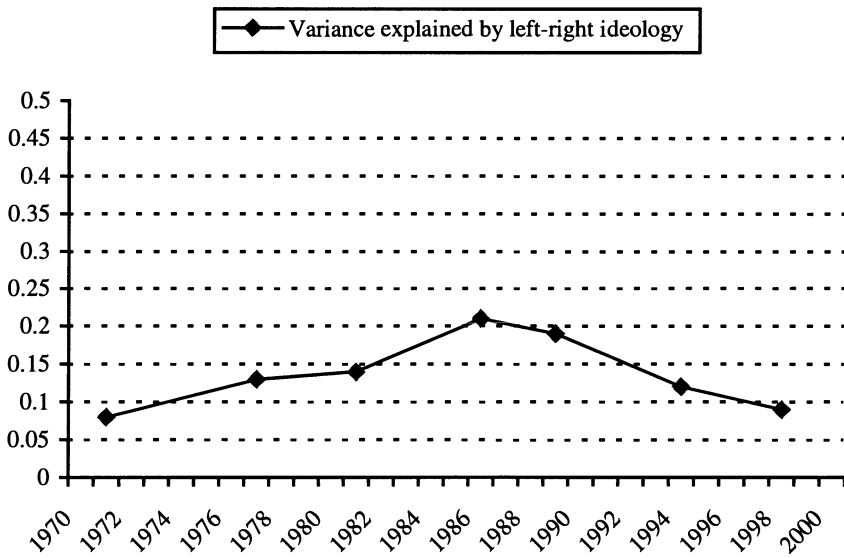
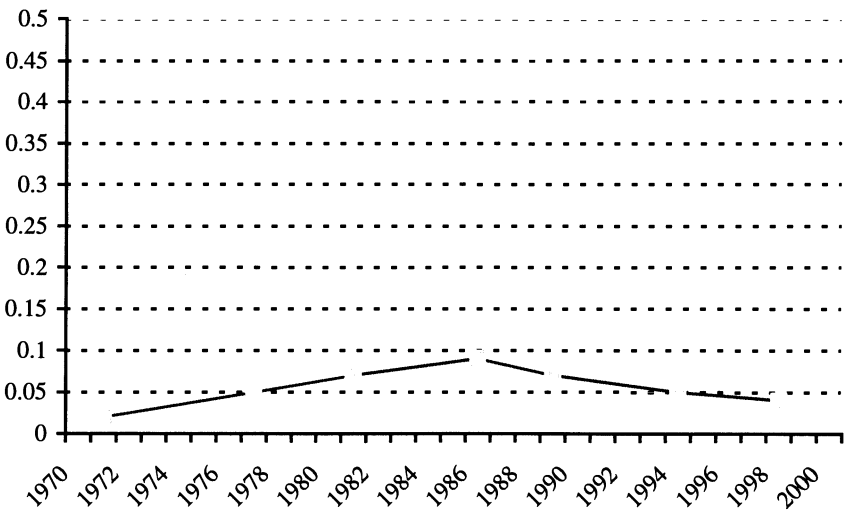


Figure 5.12 Explanatory power of issues and policy satisfaction for the vote



Since this development is what we predicted, we might expect that our prediction that the place of the left-right dimension will gradually be taken over by issue positions and policy evaluations will be corroborated as well. However, this is not the case at all. Figure 5.12 shows the development over time of the combined explanatory power of political issues and satisfaction with government policies, once social background *and* left-right position have been taken into account. Instead of forming communicating vessels with the left-right dimension, the graph presenting the development of the explanatory power of these policy orientations follows *exactly the same pattern* as the left-right dimension. This is totally inconsistent with what we expected and leaves us with a riddle. Modernization theory predicts in the end an increase in the importance of issue and government policies evaluations for the vote. Both the gradual decline of the importance of people's social and religious background, and the initial increase, then decline of the importance of left-right ideology set the stage for a substantial rise of issue-related voting. But it did not happen, or it did not last.

The missing link: the political-institutional context

The fundamental problem with our analysis so far is that it might suggest that the political-institutional context is of no importance. In that respect it is representative of most electoral research. The two most important choices every voter is faced with – the choice whether or not to vote and if so for which party – are traditionally related to the personal characteristics of voters. As far as any structural changes occur in the motives behind voting behavior, they are usually related to changes in society. The theory of modernization is a perfect example of this approach.

There are two explanations for this traditional neglect of the political-institutional context. Firstly, as explained above, for a long time it was possible to explain most of the variance in party choice by just a few social characteristics. However, once party choice becomes more dependent on ideological orientations, opinions on issues, and policy evaluations, the less a neglect of the institutional and political context can be justified. The possibility that voters will vote according to their ideological or issue orientation depends strongly on the extent to which parties make themselves clear and take different positions on those dimensions. If it is not clear where parties stand and if they are hardly distinguishable from each other, it is almost by definition impossible for voters to vote according to their ideological or issue position. Equally, people can only base their party choice on their judgement of government policies when it is clear which party or parties are accountable for those policies. In other words, the more important the variables in the right-hand part of figure 5.10 become, the more relevant the political-institutional context will be. A second reason for the traditional neglect of the political-institutional context is that, for a single election, in a single country, most political-institutional characteristics are not a variable but a constant and cannot contribute to the explanation of party choice in a single election. Also, *within* countries successive elections will normally be fought in a similar institutional context. In the Netherlands all elections between 1971 and 1998, the time interval our data cover,

were competed under the same formal institutional regime. Therefore, as a possible explanation for differences in voting behavior it can be neglected.

However, this does not apply to the party system. In our analysis of the development of turnout we already referred to the relevance of the degree of polarization between parties. Here we are interested in the possible consequences of polarization for the relationship between voters' policy orientations and their party choice. Consider the trend of polarization in figure 5.9, and compare this with the trend in the explanatory power of the left-right dimension in figure 5.11 and of issues and policy satisfaction in figure 5.12. This comparison is most revealing. The development in the explanatory power of the left-right dimension and issue positions runs parallel with the development of the polarization between parties. Both are increasing until the 1986 elections, followed by a decrease in both trends. This parallel development strongly suggests that the decrease of the importance of left-right orientations is not due to the individualization of politics as suggested above, but the direct consequence of the diminishing differences between political parties. It also explains why the role of left-right orientations after 1986 was not taken over by opinions on more specific issues and the evaluation of governmental policy. Although the aggregate data in figures 5.11 and 5.12 do not form conclusive evidence, it can hardly be a coincidence that the line representing the combined contribution of these two factors in the explanation of the variance in party choice follows exactly the same pattern as left-right does in relation to the development of the polarization between parties. As we have shown elsewhere (Van Wijnen, 2000), the differences between the major parties on specific issues follow the same pattern as those on the left-right dimension. And if parties do not clearly distinguish themselves on policy issues it is just as hard to vote on the basis of such issues as it is according to one's ideological orientation. An analysis at the individual level (data not shown) supports this interpretation. After 1986, i.e., since the differences between the major parties have declined, we found a clear difference between different groups of voters. Among voters who see clear differences between parties on the left-right dimension, the explanatory power of this dimension is far greater than among the voters who do not. The same applies to specific issues (Van Wijnen, 2000). These developments in Dutch politics seem to confirm that a weak relationship between policy orientations and party choice is not necessarily due to the characteristics of the electorate but might rather reflect a lack of clear choices offered to them by political parties. The possibilities that the electorate may behave according to the textbook of democracy not only depend on the personal characteristics of voters but are strongly conditioned by the supply-side of politics. Even among the increasing number of sophisticated voters, policy preferences are not decisive when they hardly see a difference between parties.

The next question that comes up is: *why* have the main parties become so much alike over the past 10-15 years? We now turn to an attempt to answer this question – to be sure, an attempt that was formulated even before the electoral developments discussed in this chapter even took place.

6. THE QUALITY OF DEMOCRACY

The developments that we have observed since 1986 lead to a strange paradox. At the same time that voters have started to behave more according to the requirements of the classic theory of democracy, such a behavior is made increasingly difficult by a lack of distinction between political parties. In the well-known typology of Lijphart, Dutch political culture has become evermore homogenous, whereas the behavior of the political elites, after a period of polarization in the 1970s and early 1980s, has become cooperative once again. As a consequence the Dutch political system has moved rapidly in the direction of a depoliticized democracy, a movement Lijphart foresaw almost thirty years ago. The most important characteristic of a depoliticized democracy is that political discord is depoliticized by the political elites. This is what a depoliticized democracy has in common with a consensual type of democracy, the kind of democracy of which the Dutch political system in the first half of the twentieth century was the prototype.

In those days of potentially disruptive conflicts, depoliticization had a clear function. It prevented deeply rooted social cleavages from erupting into an uncontrollable conflict. However, as Lijphart argued, once these intense social cleavages yielded to a more homogeneous society, the less democratic aspects of depoliticization, like a lack of openness and opposition, would be highlighted. This will be a permanent source of opposition and therefore a depoliticized democracy is not a very stable type of democracy. In a homogenous society the responsive quality of democracy would be better served by a centripetal democracy, as in Britain or in the Scandinavian countries, where there is a permanent competition between opposing parties or blocks of parties for political power. In a homogenous society this institutionalized conflict between government and opposition forms the basis of a credible democracy.

Lijphart's analysis is more appropriate than ever. The development of a more sophisticated, instrumentally oriented electorate requires a clear political choice. But as we have seen, exactly the opposite development has occurred since the mid 1980s. The major parties are far less distinguishable from each other than when Lijphart made his observations. This development is not due to a lack of responsiveness of political parties to what is happening among the electorate. Quite the contrary: it is the result of strategic choices made by the major parties intending to please as many voters as possible at the same time. No longer able to count on the loyalty of their voters, they are forced to compete with other parties for the votes. Most votes are to be won where most of the voters are and that is the political center. Therefore, by trying to attract as many voters as possible, political parties achieve the opposite of what perhaps would be desirable from the point of view of democratic elections: they become so much alike that they are endangering one of the core qualities of elections, viz., offering a choice among viable competing policy programs.

How voters will eventually react to this development is hard to predict. The quality of democracy is served by a strong opposition. An essential characteristic of representative democracy is that dissatisfaction with the incumbent government can find an outlet in support for the opposition. Therefore, there is no reason why, in a well established democracy, dissatisfaction with government policy in the short run

should extend to dissatisfaction with the political system. However, if voters see no differences between political parties, if the difference between government and opposition is blurred, it is not inconceivable that dissatisfaction with the incumbent government will be translated into dissatisfaction with the functioning of the political system.

At the moment there are no indications of such a development. Satisfaction with democracy in the Netherlands is high in comparison with other West-European countries, even among voters who hardly see a difference between parties. However, this might easily change when the present economic high tide is over and dissatisfaction with governmental policy might increase. If that dissatisfaction cannot naturally be expressed in a vote for a well established opposition it can easily find its way to parties that capitalize on a then possible dissatisfaction with the functioning of democracy. Even if that does not happen we have already seen a possible consequence of a lack of differences and of a clear pattern of government and opposition: more and more people will abstain from voting at all. Therefore, the quality of democracy would be well served when political parties would better stress their distinctive features. However, as long as the same parties see no advantage in this for their own electoral strategy the chance that this may happen is not much higher than the odds that the baron from Münchhausen could pull himself out of the swamp by his own hair.

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INTERACTIVE DECISION MAKING AND REPRESENTATIVE DEMOCRACY: INSTITUTIONAL COLLISIONS AND SOLUTIONS

1. INTRODUCTION

In the Netherlands in recent years various initiatives have been taken by government authorities to introduce new forms of participation in policy formation and decision making. Under the variety of headings, such as participative policy formation, interactive decision making, and open planning process, various ministries, provinces and local governments have been experimenting with forms of participation in which citizens, consumers and interest organizations as well as private companies and other governmental organizations are invited to contribute ideas and discuss desirable solutions to policy problems.

These initiatives include citizen panels in Rotterdam and Amsterdam about future forms of government, the development of a new plan for traffic regulation and public transport in the city of Groningen, the design of a local environmental plan in Schiedam, interactive debate about the construction of the new Amsterdam underground, and many others.

In general, three motives for the introduction of these new forms of participation can be distinguished:

- Creating support. Interactive decision making can be seen as an attempt to maximize support for policies and to minimize resistance by involving potential veto groups in the process of policy formation.
- Improving quality. By involving citizens in the process of policy formation, local information, experiences and preferences are mobilized in order to improve the quality of local policies.
- Improving local democracy. The participation of citizens, consumers and local pressure groups can also be viewed as an attempt to bridge the gap between citizens and local governments. New forms of participation are part of a remedy for the existing crisis in local representative democracy.

Although the practice of interactive decision making is becoming increasingly widespread, it is not without problems. In particular, the involvement of politicians in these types of processes appears to cause difficulties. Politicians do not participate in these processes, and they claim in advance the right to deviate from emerging proposals by referring to the primacy of politics. Afterwards, participants in

interactive decision-making processes are often disappointed with what politicians do with the outcomes of the interactive process. The link between interactive processes and 'normal' political decision-making procedures is apparently problematic. This experience is not exclusive to the Netherlands. Thus Fischer and Foster (1992) point out that attempts to put 'the argumentative turn in public policy making' into practice often encounter the objection that such forms of participatory democracy are not compatible with the rules of the game of representative democracy prevalent in the West.

In this chapter we examine interactive decision making and the role of politicians in these processes, problems which result from this, how these problems come about, and what can be done about the situation.

In the next section we first present what we understand interactive decision making to be. In section 6.3 we examine one of the major problems which stand in the way of successful interactive decision making: the tension between this new form of participation and that of the existing practices of representative democracy. The tension between these two colliding institutional practices is rooted in different views of democracy and participation. Views underlying representative democracy are mirrored against those of participatory democracy. In section 6.4 we analyze the role of politicians in the interactive decision-making process in the Bijlmer case. In section 6.5 we look for ways to reconcile both institutional practices. We suggest that the tradition of substantive democracy provides us with clues for a redefinition of the role of politicians in decision making. We discuss ways to integrate this new role into the design of interactive decision-making processes. Finally, in section 6.6, we speculate about the chances for this redefinition of the role of politicians to actually take hold.

2. INTERACTIVE DECISION MAKING: A NEW TREND?

Interactive decision making is a way of working in which citizens, users, interest groups and public and private organizations that have a stake in a decision are involved in its preparation.

What is interactive decision making?

The degree of involvement in public decision-making processes may vary. The 'participation ladder' distinguishes among five degrees of involvement (Arnstein, 1969; Edelenbos en Monninkhof, 1998):

- Information. Decision makers inform actors in their area about their policies and decisions.
- Consultation. The opinions and preferences of stakeholders are assessed. Policy makers take them into account in the process of policy formation.
- Advising. Policy makers actively seek the advice of stakeholders. Often the rights of citizens or interest groups to express their opinion

on policy intentions are institutionalized in legal procedures and advisory councils.

- Co-production. Citizens, interest groups, consumers of public services, et cetera are invited to actively participate in the process of policy formation.
- Joint decision making. The jurisdiction to make a public decision is delegated to parties involved in the process of policy formation. Setting up a new public or private institution can do this in a formal way. But informal arrangements are also possible: for example, politicians who commit themselves in advance to the outcome of an interactive process.

Three models of participation

If we take a historical perspective and make use of this participation ladder, three models of citizen participation in local government we can distinguish: the consultation model, the representation model and the discourse model (Klijn, 1998a, 1998b). These models developed more or less chronologically, but are currently co-existent. They are presented in table 6.1.

Table 6.1 Three models of participation

	Consultation model	Representation model	Discourse model
Focus of participation	Expression of opinion on policy intention	Involvement in the whole decision-making process	Involvement in the process of problem definition and design of solutions
Interactions	Incidental	Intensive during the whole process	Intensive at particular moments
Institutionalization	Formal consultation procedures	Standing organizations (project organizations, etc.)	Ad hoc provisions (project groups, meetings, assessments)
Principle of participation	Self interest of individuals, single issue organizations	Solidarity, often territorially organized	Interest as user or resident
Criterion for participation	Personal involvement	Representativeness	Functional involvement, information and knowledge
Motive	Protection of (legal) positions	Citizens' representation	Creating support, quality improvement, democratic legitimization
Examples	Consultation provisions in formal planning procedures	Local networks around urban renewal projects	Interactive decision-making processes: city councils

Interactive decision making differs from the first model. This model represents the decision-making procedures institutionalized on the basis of the democratizing waves of the sixties and seventies. They aim at strengthening the role of representative bodies in decision making and regulating the participation of citizens, interest groups and advisory councils in these processes, by organizing opportunities for advice, objection and appeal. They organize the involvement of parties *ex post*, after a policy proposal is already in place. In contrast, interactive decision making involves parties at an earlier stage and has the objective of actually influencing the content of policy. In other words, interactive decision making is marked by the open character of the interaction, which implies that participation and the agenda are not structured beforehand in such a way that parties or subjects that do not fit in are not given a chance. The first model of participation is useful in that it informs individuals about the potential harm that may come from policy decisions. It gives them the opportunity to inform the policy makers about their problems. As a reaction the policy makers can try to adjust their plans in order not to damage people's interests, or take mitigating actions. But citizen involvement will seldom lead to a fundamental alteration of the policy proposal.

The second model provides the citizen with much more opportunity to influence the decision-making process, from the very beginning to the final solution. However, there are other problems. For instance the goals of solidarity and representation, which are seldom realized. This kind of participation requires a high degree of self organization and expertise on the part of citizens. The urban renewal policy in the city of Rotterdam, for instance, could only be organized along the lines of this representation model because of the intensive and costly support for the residents provided by the city government. Interactive decision making differs from this model in that the circle of participants is not limited to existing institutionalized forms of interest representation. Rather it is characterized by the opening up of existing arenas of decision making to new actors, new interest groups, other authorities, private organizations, citizens and users.

The third model is becoming increasingly popular, especially at the expense of the second model. This means that the way citizens are involved in decision-making processes is changing. Compared to the first model they are involved in earlier stages of the policy formation process. The level of participation is that of co-production. Compared to the second model participation takes place on an *ad hoc* basis and is less intended to achieve goals regarding representation and democratic legitimization. Improving the quality of policy proposals seems to be the most important motive. Interactive decision making can therefore be located on the fourth rung of the participation ladder.

Interactive policy making and the Dutch policy making system

Traditionally, the Netherlands is seen as a country which is characterized by a high degree of involvement of organized interest groups in decision making. Recently the Dutch consensus model (sometimes called the neo-corporatist model) has even been heralded for its very strong economic performances compared to other European countries (for a critical and extensive review see Visser and Hemerijck, 1997). If

one looks at twenty years of research on Dutch policy making processes (see Van Putten, 1984; Koppenjan, Ringeling and Te Velde, 1987) one can see two major characteristics of the Dutch policy making processes. They have a closed character and are dominated by sector specialists, interest groups, specialized civil servants and sector ministers. But at the same time they are complex because the actors involved still are very large in number and have different views on problems, solutions and procedures. This gives decision making within the closed, sector-oriented and professionalized policy networks in the Netherlands a complex and unpredictable character.

Interactive decision making aims at solving problems which are connected with both characteristics in the Dutch decision making system. On the one hand it aims at opening up the closed (neo-corporatist) character of the Dutch decision structure by introducing new actors. In that way it tries to increase the variety of possible solutions and increase support for decisions. On the other hand, the 'solution' interactive policy making accepts the variety of actors and the complexity of the decision-making process as given and tries to enhance decision making by better organization and process management. In that this method distinguishes itself from other attempts to improve decision making by increasing the power of central public authorities (mostly by increasing the juridical power of these agencies)

Explicit and implicit interactive decision-making processes

Sometimes the type of process that we are focusing on here is explicitly labeled interactive decision making, although the exact wording may differ. Take for example the infrastructure laboratories (Infralab) organized by the Dutch Ministry for Transport, Public Works and Water Management in which users and those who live by state roadways meet together with policy makers to tackle local traffic congestion problems (De Rooy, 1997). Other examples are the open planning processes that are set up at the start of national megaprojects to examine their need and purpose, and the countless small-scale projects that local governments initiate under the heading of interactive decision making in order to involve citizens in policy.

But there are also processes that are not explicitly labeled as 'open' or 'interactive' yet which include conscious attempts to stage such a relatively open interaction. This chapter also applies to such a process.

Interactive decision making: backgrounds

Interactive decision making is an attempt by government organizations to handle a number of changes that have occurred within their field and in the relationship between public organizations and private and semi-private organizations. Three important trends form the background of interactive decision making: the increased veto power of many different kinds of civil society organizations, the increased need for information and expertise outside government in making qualitatively good decisions, and the need to lessen the increased gap between citizen and government.

Veto power and stagnant decision making

For many decisions in today's modern complex society, public sector actors depend on the cooperation of private or semi-private actors or others from the public sector. These actors control resources that are essential to the realization of policy efforts. One only needs to think of the knowledge and power of medical specialists, housing corporations, health insurance corporations, schools and other educational institutions, et cetera. This means that decision making increasingly involves interdependence, with the result that each of the parties separately may have limited power to achieve but does have veto power – the capability to delay or block decisions (Rhodes, 1998; Scharpf, 1997). The development of provisions to protect the interests of citizens in legal procedures also provides citizens with such veto power. By using their legal rights to make objections to government plans or to appeal, they can effectively delay public decision making. This power to block decisions can be a major reason for the long duration of many public decision-making processes. By involving actors at an early stage of decision making an attempt is made to increase the actors' support for projects. The idea is that actors would then not use their veto power, or use it with greater restraint.

The need to mobilize knowledge and enrich decisions

The second development concerns the growing awareness that in contemporary complex society it is not possible to concentrate the knowledge and expertise needed to solve social problems at one central point. Knowledge, information and preferences are too widely spread over actors (Castells, 1997). Moreover the problem situations are ambiguous and dynamic: only through interaction between the parties concerned and under the influence of social processes do positions get taken and alternative ways of proceeding become apparent. Complex decision making takes place in a 'reflexive' context (Weick, 1979; March, 1989; Rein and Schön, 1986; Fisher and Forrester 1992).

To develop a policy that does justice to these latent and dynamic interests and preferences, an interactive process is required in which actors, searching and arguing, formulate problems, generate solutions and probe these for their advantages and disadvantages. This means that the outcome of interactive decision making cannot be determined in advance by one of the actors. Outcomes are the result of the interactions of all parties together. The assumption that underlies an interactive approach is that for good, substantive proposals, criticism and amendment by other parties is needed, and that this 'enrichment' at the same time makes proposals more attractive to all parties concerned. Interactive decision making is therefore aimed at achieving both quality and support. In an interactively organized process the emphasis is on the creation of (substantive) variety and selection from that variety in a critical and open debate (March and Olsen, 1976; Crozier and Friedberg, 1980; Teisman, 1997).

The need for democratic legitimization

The third point concerns the efforts of local government authorities in particular to close the gap between citizens and administration (Bovens et al., 1995; Hirst, 1997). When citizens cannot identify with the policy outcomes that the public sector produces, they turn away from government and politics. A number of tenacious problems that confront society, such as indifference regarding rule enforcement, abuse of social services, transgression of norms and political non-participation, are attributed to this gap. Apparently representative democracy is insufficiently capable of representing the interests of the populace. Involving citizens in the development of decisions is viewed as one of the possible remedies for closing the gap (Andersen and Burns, 1996).

Methods of interactive decision making: process design and process management

Involving actors in decision making makes the process complex. This places severe demands upon the organization of decision-making processes. The attention of the policy maker who is responsible for the decision will have to shift from the content of the policy to the way the decision is made: decision making becomes meta-decision making (Dror, 1989; Koppenjan, 1993; De Bruijn, Ten Heuvelhof and In 't Veld, 1997). This is why an interactive procedure is characterized by a conscious effort to design and manage the decision-making process.

The process design is aimed at the structuring of activities and participation of parties involved with the help of agreements, rules and arrangements. The design can not guarantee a good decision-making process and outcome, but does provide the conditions for this. Also, the creation of a process design is not deskwork. It is of crucial importance that the parties that are going to be involved in the interaction process agree upon the way their participation is going to be organized. That is why interaction often precedes the formulation of a process design. This design provides for:

- The boundary conditions: what is the framework in which the interaction takes place; what are the policy, legal and financial conditions that have to be taken into account?
- How does selection of participants take place? Who is allowed to participate?
- What are the rules of the game? How are the vital interests of actors protected from the risks that accompany strategic behavior?
- Which roles are actors allowed to take on (what are the roles of the game)?
- What steps will be taken in the course of the interaction process?
- At which points will actors be allowed to participate and with what purpose?
- How will the interaction process be supported? Which diverging and converging techniques will be used?
- How will conflicts be managed?

- What are the requirements for the outcome of the process?
- What will be done with the results of the interaction process?
- Who will be process manager and how will he or she perform that task?

Interactive decision-making processes are not self-executing, they must be managed. The process design supports the process manager, but cannot replace that person. Much depends on the quality of the process manager and the staff. Is he or she able to activate and motive participants, interpret their behavior correctly, facilitate their interactions?

It is of major importance that the process manager does not take a substantial position in the interaction process, but chooses to facilitate it. If participants do not see the process manager as independent, they will hesitate to invest in the process. Especially when the process manager represents an organization that has a stake in the interaction process, guarantees should be given that he or she will remain neutral.

A further precondition for the successful fulfillment of this role is that participants recognize and support the process manager as such.

Methods of interactive decision making

In practice, questions about design and direction of the process are not answered in the same way. Although the objectives of openness and interactivity are shared, there are a great variety of process designs, working methods and participation patterns. Nevertheless, in many interactive decision-making procedures a three-step process can be recognized in some form. There is generally a problem exploration phase followed by a discussion about alternative problem-solving approaches and a third step focused on selecting alternatives. In the first phase different dimensions of the problem are explored. Attempts are also made to free actors from fixed frameworks and perceptions of problems (De Bruijn, Ten Heuvelhof and In 't Veld, 1998; Koppenjan and Termeer, 1997). In the second phase an attempt is made to elicit a critical dialogue concerning possible solutions by formulating a variety of problem-solving approaches (Teisman, 1997). Finally, a selection is made from the alternative problem-solving approaches that have been discussed. This selection is usually not without problems. In many interactive processes a comparison of different alternatives suffices. Management of the process is usually left in the hands of a civil servant from the most involved government organization, who is more or less confined to steering the interaction process. In interactive decision-making procedures a variety of techniques are used to foster decision making. Much use is made of workshops and (expert) panels to make intensive interaction possible among actors. Other ways to stimulate discussion are role playing or simulation games and Internet discussions. Research and opinion surveys are also used to introduce and promote discussion about new information or about desirable solutions, or to test social support for proposals.

Evaluating interactive processes

The reason for interactive decision making is that in (post-) modern, pluralistic societies, governments cannot solve societal problems by themselves. Actors are interdependent and politically aware. There is far too great a variety of stakes and preferences. And information and knowledge is divided over a great number of individuals, groups and organizations. Furthermore, problem situations are ambiguous and dynamic. Only by interaction do participants develop goals and solutions. Decision making and problem solving is a reflective activity (Weick, 1979; March, 1989; Rein and Schön, 1993). Interaction is needed to develop policy proposals which do justice to the presence of latent and dynamic interests. Actors should be invited to participate in an interaction process in which they investigate the characteristics of a problem situation, the reasons for the problem, why something should be done about it, possible solutions and the desirability of those solutions. This implies that it is impossible to formulate the goal of an interactive decision-making process in advance. For this reason, such a goal cannot be used to evaluate interactive decision-making processes, even if it is the goal of a governmental organization. But what evaluation criteria should then be used?

An interactive decision-making process is considered to be good if a variety of values and ideas are articulated and these then confront each other. Only then is it possible that the alternatives and interests at stake will be weighed and tested. Because of this variety and critical confrontation we can consider the interaction process to be open. Good policy proposals have to prove themselves in confrontation with other alternatives and criticism. They are better if they match the following criteria better (see also: Kickert, Klijn and Koppenjan, 1997; Teisman, 1997):

- More participants were involved in the process of policy formation.
- If these actors are satisfied in the end by the outcomes of the process
- If the decision-making process was open for actors who viewed themselves as stakeholders
- Participants succeed in defining a good content that is if they succeed in defining a common interest and in formulating a proposal that satisfies different preferences at the same time, without harming others.
- The outcomes of the process do not harm the interests of stakeholders or other societal actors who were not participating in the process.

Preliminary experiences with interactive decision making

Presently there is not much systematic knowledge about the success or failure of interactive decision making and the factors that affect it. It is difficult to assess whether the intended results such as creating support and improving quality are realized, especially considering the long duration of decision-making processes. But it is possible to formulate some cautious conclusions from the provisional

experiences and impressions gained in the Netherlands (De Rooy, 1997; Klijn, 1998; Van der Most, Koppenjan and Bots, 1998).

The strongest aspect of interactive decision making seems at this point not to be the realization of speedier decisions or greater support, but the improvement in the quality of proposals and policy outcomes. The quality of the process can increase because more parties get the opportunity to take part in decision making and in this way more variety is created (both in terms of the problems considered and solutions developed).

Interactive decision making involves a lot of work, not at least for the party responsible for management of the process. The question is whether the interaction costs are justified by the increase in quality or legitimization of the decision.

Interactive decision making methods seem to be successful in the mobilization of actors and ideas. They seem at this stage less well equipped to make use of that variety. When it comes to selection – how to arrive at a choice among the variety of ideas – the methods provide hardly any clues. Often there is a throwback to traditional ways of policy development by experts or bureaucrats.

The risk that interactive decision-making processes may break down is high. By involving other parties the complexity of decision making increases. Conflicts can result in blockages. The methods often do not include adequate arrangements to meet this complexity.

Also, in view of the last point, processes rely strongly on the quality of the process design and management. This places high demands on the organization that is responsible for the process.

A problem not mentioned above, but one that is at least equally important, is the way politicians deal with interactive processes and their outcomes. Often politicians themselves are the initiators of interactive processes. However, they also tend to be wary about participating because they fear that their maneuvering room to reject or amend policy proposals will be restricted. This problem is central to the remaining part of this contribution. In the next section we present a theoretical explanation for the problems that arise in the relation between interactive decision making practices and politicians.

3. INTERACTIVE DECISION MAKING AND DEMOCRATIC PERSPECTIVES

Recently much attention has been paid to the functioning of representative democracy and ways to improve its functioning so that citizens are more involved in the decision-making process (Hirst, 1995, 1997). Based on the idea that the postmodern society is constituted differently, interpretations of democracy are being sought that place greater emphasis on the plurality of actors and values. Interactive decision making can be considered as one of the attempts to renew the functioning of democracy. Most efforts at renewal, and this also applies to interactive decision making, take their inspiration from other currents in political-philosophical thought than those in which representative democracy is rooted. To clarify this, these different perspectives in political-philosophical thought, indicated as the contrast

between an *instrumental* and a *substantive* view of democracy (Pateman, 1970; Macpherson, 1979), are briefly touched upon in this article.¹ It is obvious that a certain tension exists between the institutional features of the representative system and its mode of operation and new decision-making methods such as interactive decision making. These tensions already existed in the efforts at participation and democratization of the sixties and seventies. In interactive decision making, however, these tensions are greater since citizens are much more involved in the formulation of policy alternatives. In other words, in interactive decision making the primacy of politics is much more at issue than in the previous forms of participation in decision making. These tensions are the main subject of the second part of this section. The last part of this section deals with the possibilities for sketching an alternative role for politicians based on the substantive view.

Instrumental versus substantive view of democracy

The first perspective on democracy can be identified as the instrumental view. It is this view that to a large extent underlies the practice of representative democracy. Here democracy is seen as an efficient method of decision making that in the long run both achieves good results and protects the individual freedom of citizens. This view strongly emphasizes the formal procedures through which representatives are elected who translate citizens' preferences into policy. The instrumental view of democracy goes back to utilitarians such as Mill and Bentham, and in the years following the Second World War were articulated anew by theoreticians such as Schumpeter and the pluralists (see Macpherson, 1979; Sabine and Thorson, 1973; Schumpeter, 1979). In this view of democracy citizens generally play a passive role. Their wishes are represented by leaders of organized groups (as in pluralism theories) or by elected representatives who can be deposed in elections (see for example the views of the utilitarians or of theorists such as Schumpeter and Downs). Schumpeter, James Mill and Bentham clearly show that they are happy that democracy is not dependent on 'the people' (Sabine and Thorson, 1973; Schumpeter, 1979).

The second perspective is designated the substantive view of democracy because here democracy is seen as a normative ideal that is worth striving for in itself, an objective in itself. This view is the premise of participatory or direct democracy. Here the focus is not so much on democracy as a formalized decision-making procedure but as a societal ideal (Kalma, 1982). Democracy is a value in itself, a political and social ideal that involves citizens in government policy and encourages them to activity and responsibility. This substantive view of democracy goes back to the first utopian democracy theories of people such as Jefferson and Rousseau and authors such as John Stuart Mill (Sabine and Thorson, 1973; Macpherson, 1979). One can also consider the work of theoreticians such as Habermas, with his emphasis on the interaction between equal and responsible citizens who in a

¹ What is primarily at issue here are traditions such as those found in political philosophy and in thinking about political decision making and political systems. These traditions are reflected in concrete political systems. This also makes the tracing of ideas valuable.

discussion free of domination ('herrschaftsfrei') come to agreement about values (Habermas, 1981), as a modern articulation of this second tradition.

These two democratic traditions are juxtaposed to each other in table 6.2.

Table 6.2 Two democratic traditions

	Instrumental vision	Substantive vision
Image of democracy	Representative democracy	Direct democracy
View of democracy	Democracy is a method for making decisions	Democracy is a societal ideal
Image of freedom	Negative image of freedom (emphasis on curtailment of power of state apparatus via right to vote and protection of rights)	Positive image of freedom (emphasis on self-development of citizens)
State and society relation	The state is 'executive institution' of citizens and is 'above the parties'	State and society function thanks to one another (political and social democracy are inextricably linked)
Role of government	Executor of citizens' preferences and guarantor of rights to freedom	Active support of democratic society (creation of opportunities for participation and development)
Role of citizens	Passive role; emphasis on citizens as consumers (expression of preferences)	Active role; emphasis on the citizen as civic subject (importance of participation in decision making)
Adherents	James Mill, Bentham, Schumpeter, Downs	Rousseau, Jefferson, John Stuart Mill, Habermas

Source: adapted from Klijn, 1996

Interactive decision making in a representative system: hybrid democracy

In interactive decision-making processes various features of the substantive view on democracy can be recognized. This applies to the greater emphasis on direct participation of citizens, their responsibility and active role. But also the emphasis on interaction and achieving mutual agreement fits in this picture. This is not surprising considering that interactive decision making is meant to more actively involve social groups and citizens. Especially many local initiatives are taken from the need to narrow 'the gap between government and citizen'. One can rightly argue that through interactive decision making an institutional regime of roles and rules, based on views of democracy that emphasize direct participation and interaction between government and citizens, is introduced into a system dominated by instrumental democracy in which decision making power is concentrated in elected representatives.

This mix of different institutional regimes – one can say hybrid democracy (Edelenbos en Monninkhof, 1998) – is not without problems. There are tensions

between the rules of the game of instrumental democracy, with its emphasis on the passive role of citizens and the strong decision-making power of elected politicians, and the rules of the game of substantive democracy that are oriented much more towards interaction and communication. All the rules of the game of representative democracy are aimed at a procedure in which elected political institutions at the end of the decision-making process pronounce a final judgement in which they represent the general interest unhindered and without consultation. On the other hand, interactive decision making is aimed precisely at settling the question of what the common interest is in and through interactions between interested parties. The question is then what can the role of elected politicians still be at the conclusion of a process of policy preparation if in that process there has been broad social participation? Elected politicians rightly fear the erosion of their political primacy. And if the interactive process is also emphatically legitimized as a correction of the gap between citizen and government that is so salient for representative democracy, the competition between both regimes is sharpened: we then have a zero sum game.

In order to examine the nature and impact of this collision between both institutional regimes, in the next section we analyze the interactive decision-making process regarding the reconstruction of the Bijlmer and the role of politicians therein.

4. INTERACTIVE POLICY MAKING AND REPRESENTATIVE POLITICS: THE CASE OF THE BIJLMERMEER

'Even God does not love the Bijlmermeer,' a resident despaired after an El Al plane crashed into the high-rise estates of Kruitberg and Groeneveen in the Bijlmer (an abbreviated form of the name) on October 4, 1992. Indeed, the Bijlmermeer has never been very popular since its completion in the seventies. Built according to 'modern' architectural principles, the Bijlmermeer was thought of as a 'city of the future', with clusters of ten-storey buildings separated by large grassy areas. Car traffic was led on elevated roads to spacious parking garages. It all looked beautiful on the scale models: large, rather luxurious flats surrounded by lots of greenery, with all kinds of social and recreational activities taking place in the commons areas and the streets between the parking lots and the buildings. The first estates were finished in 1969 and the last in the mid-seventies. In total 18,000 dwellings were built in the Bijlmermeer, of which 13,000 are the high-rise estate type.

Bijlmermeer: an area riddled with problems

From the beginning the Bijlmermeer has faced many problems: dissatisfaction by the residents, socio-economic problems among the population, and a lack of security so that people fear for their personal safety. Although the flats are large and well equipped they are not in demand, and from the start there has been a high vacancy rate. This has been aggravated by the fact that many deviations from the original plans occurred during the development and building process. The inner roadways from the parking garages to the buildings were situated on the first instead of the ground floor, where storage sheds were located. This meant that activities on the

grounds and grassy areas between the high-rise estates were barely visible. The number of elevators was reduced and many facilities such as shopping areas were only constructed after several years. This all added up to making housing in the Bijlmer among the least desirable of the Amsterdam stock. Instead of the middle income groups that the dwellings had been designed for, in the eighties and nineties the inhabitants have mostly consisted of low-income groups, unemployed people and immigrants, initially from Suriname and later from a number of African countries.

When at the end of the seventies and beginning of the eighties other residential areas in Amsterdam and the surrounding suburbs were constructed, the vacancy rate in the Bijlmermeer rose to more than 10%. But, while this was of the utmost importance to the housing associations which manage the dwellings, it is not the only problem facing the Bijlmermeer. The high vacancy rate and the composition of the population have led to other problems. For example, the turnover rate is also very high (most inhabitants want to stay as briefly as possible in the Bijlmer) which means that social integration is low. The high turnover of the units reinforces the class composition of the Bijlmer because higher income groups are leaving. The Bijlmer area is very unsafe: the chance of being robbed is on average 15 times as high as in the city of Amsterdam. In addition, there is a serious drug problem. A lot of addicts live in the area and drug dealing is a source of extra disturbance and danger. The costs of maintaining the dwellings is very high, and most inhabitants are difficult to reach by public and social organizations because they stay there only a short time and because of the variety of ethnic backgrounds. There is a small but active group of Bijlmer residents – mostly white, who have been living there for a long time and support the original ideals of the Bijlmer – known as the ‘Bijlmer believers’. They are the most active of the inhabitants, politically speaking.

Reconstructing the Bijlmer: decisions and organization in the period 1984-1998

By the end of the eighties it became clear that the problems of the Bijlmer could not be solved without taking more dramatic measures than simply improving maintenance. The vacancy rate remained high, higher income groups continued to leave the area and the rapid influx of migrants could not be halted by the policy measures that had been taken. An additional pressure was that the city of Amsterdam was not willing to pay the large annual losses of the housing association. Without this support New Amsterdam – the housing association which was established in 1984 to manage the dwellings – would go bankrupt. The city of Amsterdam, the New Amsterdam housing association and the district council of Amsterdam South-East decided to undertake a drastic restructuring of the Bijlmer. A committee formulated the following goals, which would remain the direction of the policy initiatives in the following period:

- Improvement of the housing stock.
Turnover of the dwellings, around 14% a year in 1992, should be reduced in ten years to 8%. For that, the variety in types of dwellings

should increase. The committee proposes to demolish a part of the high-rise estate (up to 25%) and replace this with other types of dwellings (mostly low-rise). A number of the high-rise dwellings should be renovated and brought into a higher segment of the housing market.

- Stimulation of job creation and reduction of unemployment in the Bijlmer. The unemployment rate in the area is high (about 30% of the population). The aim is to reduce the unemployment rate in ten years to 8% (the average rate in the Netherlands at that time).
- Strengthen cultural and social activities.

The organization of the restructuring process of the Bijlmer is a complex decision-making process. The three central actors – the City of Amsterdam, the New Amsterdam housing association and the district council – have created a joint organization to initiate and manage the whole process, and various organizational arrangements to keep in contact and to supervise the project. The top managers of the three organizations form a steering committee, which is responsible for overall supervision. In addition an operational council exists in which the concrete plans are discussed. The project bureau initiates and coordinates physical aspects of the project. Different project groups function (including one for the restructuring of the K neighborhood) under the project bureau. Restoring good maintenance is a joint responsibility of the housing association and the district council, while improvement of the socio-economic environment is the responsibility of the district council.

Restructuring the Kraaiennest area: an interactive approach

Despite the fact that the restructuring of other areas went reasonably well – the first building activities started in 1995 and were completed by 1999 – and the demolition of two large high-rise blocks caused fewer problems than had been expected (mainly due to the large-scale technical problems), there was some criticism about the way the process had been organized. One point was that large groups of residents, especially those of various ethnic backgrounds, were not involved in the decision making. For this reason, the political parties in the district council suggested that in the proposed restructuring of the neighborhood and shopping area around the Kraaiennest (the so-called K neighborhood) new ways be sought to involve residents in the policy making process. As a result the project group, which was established by the three central partners in the restructuring process, lays out a public participation plan designed explicitly to involve more residents in the policy process. This plan was accepted by the district council at the end of 1995. It includes an overview of all kinds of new methods for involving residents who do not usually attend the ‘official’ citizen input meetings, which are part of this kind of decision-making process. The most important are:

- A suggestion box / contest where residents could send in proposals for improving the K neighborhood. The best ideas were rewarded and fifty were published in a book. In total more than 1,300 items were

received which varied from complaints and criticism to suggestions for solutions (demolish some of the estates, improve maintenance, create new activities et cetera.).

- Brainstorming sessions with residents and other actors on desirable solutions for the K neighborhood. Different types of sessions were held. In the early stages they mainly focused on the problems, at a later stage they were more focused on various architectural and urban development options.
- Residents could experiment with their own ideas for making changes on a large scale-model of the neighborhood and shopping area. They could then show their ideas to others and discuss them.
- Working with different types of organizations in the area such as churches (there are many different churches / religions because of the multi-ethnic composition of the Bijlmer) to reach the inhabitants.

Decision-making process around the K neighborhood

In many ways the K neighborhood is typical of the structure and the problems of the Bijlmermeer. It is made up exclusively of high-rise estates. There are eight of these: Kikkenstein, Kruitberg, Kleiburg, Koningshoef, Kralenbeek, Kempering, Klieverink and Kouwenoord, and together they total 4,018 flats. All the problems that have been mentioned before can be found in the K neighborhood.

Table 6.3 Decision rounds in the restructuring of the K neighborhood

Rounds	mid 1995-December 1995	December 1995- August 1996	August 1996-January 1997
Character	Exploring problems and mobilizing ideas	Exploring and discussing solutions	'Official' decision making (citizen input and political decision)
Activities	Start project group, brainstorming sessions	Surveying physical surroundings/drafting various options	Discussions in the district council and official participation procedures
Ideas	Lack of safety as key issue	Exploring possibilities of restructuring physical surroundings to increase safety (remove parking garages, lower main roads, undo separation of different traffic modes)	Discussion on the measures of the restructuring plan
Participation of residents	Information meetings Idea contest (Bijlmer suggestion box)	Brainstorming sessions on studies about restructuring solutions (later) information meetings about ideas (in churches, shopping area etc.)	Official meetings for citizen input Meetings with committee of district council

Table 6.3 summarizes the main decisions and activities that take place during the making and discussing of the plan, between the summer of 1995 and the beginning of 1997. In the decision-making process three 'rounds' have been demarcated. The first is between mid-1995 and December 1995, when problems were explored. The second round can be situated between December 1995 and August 1996 and consists of sometimes heated discussions from the different perspectives of the participants about possible solutions to the problems in the K neighborhood. Formal decision making took place in the third round. The plan has been changed various times since then, however.

The restructuring process of the K neighborhood started in summer 1995. The project group, which took the initiative, formulated a citizens' participation plan which was accepted by the district council in December. The project group tried to involve groups of residents in brainstorming sessions and at various information meetings and tried to collect ideas in the shopping area and through mailings. In this first round of the decision-making process the project group concluded that the lack of safety is regarded as a very important problem by the residents. The project group tried to connect this formulation of the problem to the main issues of other actors. For the housing association, New Amsterdam, the main problem is the poor market position of the housing units, because they are not in demand and the area is very unpopular. An additional problem is the high maintenance costs of the flats. The district council, meanwhile, is more interested in reducing maintenance around the high-rise blocks and creating a more desirable living area with less criminal activity. After the first round in the decision-making process the project group starts to develop alternative solutions for different sub-areas in the K neighborhood by assigning several urban planners the task of developing architectural solutions which meet certain conditions, such as:

- reducing the number of paths through the green area
- reducing the maintenance costs of the green area
- investigating the possibility of demolishing high-rise estates to create space for low-rise dwellings
- possibilities for lowering several of the elevated roads.

The resulting options were discussed with all kind of actors, including tenant organizations. Along with criticism there was also appreciation for the proposals, although the project leaders stated that some did not go far enough and would not solve the lack of safety problems in the K neighborhood. *Politicians were almost entirely absent from all these sessions.* They did not participate in the discussions on various ideas. The discussions were between the project group, civil servants from the district government, the housing association and some organized tenant groups.

There are some striking differences between the opinions of the well-known tenant groups that participate in the 'official' meetings and the non-organized tenants who express themselves through the more informal channels (like the Bijlmer suggestion box, the meeting in the shopping area and in the results of a survey held in the shopping area). The latter group tend to be less critical and less negative about drastic restructuring measures like demolishing dwellings. It is also

clear that while many tenants are reached through the new methods of interaction and planning, it remains difficult to reach non-organized tenants, especially those of different ethnic backgrounds. While the Bijlmer suggestion box and the interactions in the shopping area produce a large number of reactions, contacts through different organizations, like churches, remain very problematic. The 'official' citizen participation meetings still attract mainly the same people as before.

Some problems occurred in the last round. The plan presented by the project group was a bit more drastic than the one developed during the brainstorming sessions. The plan proposed to demolish 1,013 dwellings (about 25% of the high-rise dwellings) and to build 1,050 new dwellings (mostly low-rise). One of the major elevated roads was to be lowered so that it becomes a regular road through the neighborhood. The strict division between different forms of traffic (cars, cycles and pedestrians) is to be ended. The reactions during the official citizen input session were rather negative, as were the reactions during the input session held by the district council. Also the political parties were also critical and it seems as if most of the proposals by the project group were going to be rejected. However, after intervention by the housing association and deliberations within the executive committee of the district council, the council voted in favor of the plan.

Evaluating the interactive approach

What have been the fruits of this interactive decision making approach and what can be learned from it? For evaluation purposes we use the criteria which have been mentioned before: the variety of ideas and proposals, the enrichment of the content of proposals, the satisfaction of involved actors and the quality of the process.

During the policy making process a large number of studies were carried out in which a great variety of ways to restructure the physical environment and create new dwellings were explored. This, together with the discussions with different actors, provided broad variation among the options. A criticism can be that not all the information was always available for all the actors (especially those outside the project group).

Most actors think the proposals for the K neighborhood are better than earlier plans for restructuring the neighborhoods. The central idea – improving security in the neighborhood – is supported by all the actors and was therefore well chosen as the basis for the plan and the various measures derived from it (which are not all undisputed!). On the other hand, no systematic presentation of different alternatives coherently worked out and put side by side has occurred. Not all the information was well presented and available for everybody, so that discussions took place more within the project group than outside it. This resulted in lower visibility of the information and alternative solutions than might have been possible. The content of the proposals would probably have benefited from a more systematic comparison of proposals.

In general the actors are rather satisfied with the outcomes, given their interests and goals. The most dissatisfied are the organized residents (mostly the white, 'Bijlmer believers') who view the changes in the environment as negative and 'corrupting' of the original ideals of the Bijlmer. The housing association and the

civil servants of the district government are quite satisfied. The mostly non-organized residents seem to be far less dissatisfied than the organized residents. This is a totally different group, a large portion of whom did not select the Bijlmermeer of their own free will. They view the living conditions as negative and are either pleased that drastic measures are being taken to improve the situation or view the possibility of moving to another place (because of the demolition of their dwelling) as a positive opportunity to upgrade their conditions. The political parties are not too happy about the results, if their opinions are taken into account in the end. A lot of objections were voiced and various parties tried to suggest alternatives to demolition of parking garages and / or dwellings. In the end, after strong pressure by the district council, representatives from the various political parties that make up the council and some of the opposition members supported the plan.

Although the policy process in general was rather open and members of the project group invested a lot of time and energy in involving all kinds of groups within the process, some critical remarks can still be made about the openness and organization of the process. Some of the interactions were not well organized, despite the efforts of the project group. This is especially the case with the interactions concerning the political parties of the district council. The contact with non-organized residents remains limited, despite efforts to attract them.

Problems and lessons from the Bijlmer case: the involvement of politics

Two problems and lessons are particularly important: the problem of the participation and representation of residents and the problem of the involvement of politicians. Although a lot of attention was given to attracting non-organized residents, this only partially succeeded. While various 'alternative' forms of participation, like the Bijlmer idea contest and trying to elicit reactions at the shopping center, were somewhat successful, participation in the 'official' channels remained the domain of the well known groups. There is also a striking difference of opinion between these well known groups and the non-organized residents, in so far as this has been voiced. The lesson is that in interactive policy making it remains difficult to attract large, underprivileged groups, but also that it is necessary to look for more than the classical means of participation. These classical means often assume a level of organization of residents, tenants and citizens that does not exist in reality.

Perhaps an even more significant problem is the involvement of politicians. Although political parties in the district council explicitly asked for a participation plan and for an action program to attract non-organized citizens to the planning process, they were largely absent during the process and in the end mostly paid attention to the official modes of participation. They were interested in solutions which had not received much attention during the policy making process, and were rather unwilling to accept the solutions which had been developed. If they had been involved more and at an earlier stage, not only could some of the solutions they were interested in have been developed and tested for feasibility, but it would also have resulted in a better understanding of the process by the politicians. That would have required at least some commitment to the process by politicians before the final

decision in the city council, which they hesitated to make. So interactive policy making seems at odds with the function of politics and the idea of the primacy of politics, which is so widespread in parliamentary democracy. Interactive policy making assumes that some of the decision making power of politicians is being shared with others and that politicians are being drawn into the process. The idea of the primacy of politics, in contrast, assumes that government ultimately makes its choices in the end in 'the general interest' and remains at a certain distance in the interactive process. Yet it is representative governments that mostly initiate these processes. An important aim they have is to 'bridge' the gap between politicians and citizens. The analysis of the problems resulting from this tension between interactive policy making and the existing practice of representative democracy and ideas about possible solutions are developed further in the next sections.

5. RECONCILING TWO DEMOCRATIC TRADITIONS: INSTITUTIONAL REDESIGN

Attempts to fit interactive decision making into a representative system must consciously deal with the tensions between the institutional practices based on the substantive and instrumental perceptions of democracy. Part of this is a reflection on the position and role of elected politicians. Reflection on the roles that politicians are attributed in both views of democracy shows that there are possibilities to break through this competitive relationship. Thus in the substantive view of democracy politicians are attributed a different role than in the instrumental approach. In the latter, politicians are the central and final decision makers, while in the substantive view of democracy politicians are not the only decision makers and also have a much stronger role as catalysts and guardians of the political debate.

The substantive view as source of inspiration for a new political role

Our recommendation is that if politicians allow themselves to be inspired by the ideas of substantive democracy, new possibilities open up for their involvement in interactive decision making. Our concern is not to replace one role with the other, but to question how can the two be reconciled so that they reinforce one another. Essential for this is that politicians are prepared to take on the facilitation of interactive processes. Starting from the assumption that in complex societies the articulation of values and the development and selection of qualitatively good alternatives cannot take place at one central point, interactive decision-making processes offer politicians the possibility of organizing these political processes. Such a facilitating role does not rule out a substantive and selective role. Provided that variety is generated in the interactive process, the selective role of politicians can become even more substantive than in current practice, in which they are often confronted with decisions that have been pre-cooked in bureaucratic and neo-corporatist circles. We see the following mutually reinforcing contributions of politicians and political institutions to interactive decision making:

Initiating and facilitating interactive decision-making processes. In addition to taking the initiative toward interactive decision making in order to guide the social

debate, politicians can act as catalysts for such processes by actively supporting them, by urging those involved to participate or by acting as manager of the process.

Guarding the quality of the processes. Politicians and political institutions should guard the quality of the interactive decision-making process. This concerns guarding the openness, conscientiousness and representativeness of the decision making.

Legitimizing the interactive process. Through their active involvement the meaning of interactive decision making will strongly increase for all parties, as well as their willingness to participate.

Setting the agenda. At the start of the process politicians can make statements about the problem situation, possible solutions and the values at stake. These must not be seen as dictates, however, but rather as challenges and signposts.

Taking part in the substantive discussion. Politicians should participate in any fashion in the interactive process in order to share in the learning process that takes place.

Selection of policy proposals. At the end of the process politicians select an option that best serves the values and interests in question. The more politicians have been partners in the interactive process the greater the chance that arguments and considerations that have gained weight in that process will make their way through to the final selection. This does not have to mean, though, that an interactive proposal is adopted indiscriminately.

Institutional design: the best of both worlds?

Above it is argued that the clash between interactive decision making and the role of politicians is fundamentally an institutional issue. The solution must then be sought at the level of institutional design: reconciling the practice of instrumental and substantive democracy by making agreements between the parties involved about rules and roles, which must subsequently be applied in practice (Weimer, 1995; Goodin, 1996; Timmermans, 1997). This is necessary because politicians themselves often initiate interactive processes but then are wary of combining these processes with 'prevailing' political practice. In institutional design what matters is that in organizing an interactive decision-making process politicians are not only asked to play a new role but also that the design of the process is such that politicians are given the space to shape that new role. In the following section we show how the new role of politicians may be constituted.

Politicians as key players in interactive processes

How can the involvement of politicians in interactive processes take shape? In any case, the situation we want to avoid is clear. Namely, one which politicians unilaterally dictate conditions in advance, do not participate for fear of being committed in a later stage, and make a decision without much regard for the outcome of the interactive process. But what should be avoided likewise is that participants in interactive decision making expect politicians to adopt their proposals unaltered, or that out of their lack of trust they formulate only a single policy proposal so that they can confront politicians with a *fait accompli*.

For politicians to be adequately involved in interactive processes it is not only necessary that they adjust their conception of their role, but also that the interactive process be so designed that there is space for politicians and political institutions to play their role. Accordingly one of the premises must be recognition of the fact that politicians and political institutions will ultimately make their own judgments. Striving for a formal commitment that binds politicians in advance to the (uncertain) outcomes of the interactive process is not very realistic and ignores the risks that are involved in these processes for politicians (compare De Bruijn, Ten Heuvelhof and In 't Veld, 1998). The challenge is so to involve them in the interactive process that they take part in the process of shared vision forming, and of their own accord defend the outcomes because they are convinced of their quality. In the end this does not have to mean that proposals come through the formal procedures completely intact. What matters is that the interests, expertise and considerations that are articulated in the interactive process are being used in the formal decision-making procedures. Below we go into the possible roles of politicians and political institutions in the various rounds of the interactive process: at the start, during and at the end, and the associated design requirements.

The role of politicians at the start of the process: setting the stage

At the start of the interactive process politicians can play an active role as initiators or by picking up and supporting the initiative of others. This gives them the opportunity to politically direct the social debate around a concrete issue. To parties within society this gives a signal that something is actually about to happen. In a political-administrative environment in which attention and time are scarce this can be a powerful impulse to participate in an interactive decision-making process (compare Kingdon, 1984 and 1995).

Politicians and political institutions can establish substantive terms for the interactive process: an indication of the direction to look for solutions and / or measures to be taken. These terms should not be substantive directives, however: rather it is a matter of marking the terrain within which involved parties can develop substantive solutions. By indicating these preconditions, political majorities can profile themselves politically. For the participants in the process they are crucial in order to curtail the strategic uncertainties that surround the interaction process and to align expectations concerning the interaction process among involved parties. Because only the main lines are sketched, politicians are in a position to further develop their selection criteria in the course of the process and to sharpen or adjust them. The assumption is that for politicians too the interaction process is a learning process. Through the process they can gain more insight into the substance of problems and alternatives, which can also lead to the realization that previously proposed terms are not realistic or are unnecessarily restrictive.

In addition to substantive directives they can also pose preconditions for the quality of the interactive decision-making process. Thus they can restrain the power of the bureaucrats in such processes and introduce rules of the game that manage the risks

identified in these kinds of processes (insufficient openness, under representation, exclusion and arbitrariness due to procedural vagueness).

The role of politicians during the process: steering and learning

During the process politicians should stay involved since otherwise there is a risk that they will not assimilate the arguments and solutions developed. Given their tight time constraints this involvement will usually remain limited. It is possible that politicians take part in interactive workshops. A promising approach is to agree with them on a number of times when they are to be informed of the most important developments in the interactive process and have the opportunity to effect the process. This arrangement was followed in the beginning of the decision-making process about the so-called city province, but should be conscientiously sustained in the subsequent phase.

This also means that in the design of the process there must be time reserved for such a feedback mechanism. This interim involvement enables politicians to familiarize themselves with the process of shared visioning that has taken place in the interaction process, to fine-tune their own assumptions and criteria accordingly and to influence the interaction process. These interim opportunities are particularly important when significant changes occur at the political end, for example when new representatives and administrations take office following elections.

The role of politicians at the end of the interactive process: combining and selecting

In the interactive process what matters is that one knows how to create a variety of directions towards solutions that do justice to the multi-interpretability and complexity of the problem situation. This occurs through establishing a design process between involved actors and experts that is inspired by the principles of creative competition: solutions elaborated simultaneously by competing design teams (Teisman, 1997). Next, the design process must allow the strong points of the competing designs to be woven together in an interaction process with politicians and administrators. The task is to create such a mix that a diversity of social preferences is satisfied. For politicians this means that interactive decision-making procedures enlarge their field of choices at the end of the process. Compared to current practice in which politicians often deal with proposals that have been developed in relatively closed bureaucratic and neo-corporatist circles, more alternative solutions can come to the table. Thus interactive decision making can enhance the freedom of choice of politicians and political institutions in relation to the existing practice of policy preparation. Table 6.4 summarizes the role of politicians during the process and the demands that are made on the process itself.

Table 6.4: Roles and design requirements for politicians in interactive decision making

Phase	Role of politicians	Design requirements for the interactive process
Start	Initiating and legitimizing	Space for political initiative and terms of the game
	Formulating substantive terms of the game	Commitment to rules of the game
	Rules of the game for those involved (access to process)	Acceptance of limited commitment of politicians and political institutions
During	Support for initiatives, clarifying status in decision making	Attune process design to interim involvement of politicians
	Actively involved and supportive	Build-in feedback opportunities for administrators and politicians
	Prevent exclusion of actors	Accept possible adjustment of the interactive process
	Feedback to initial terms	Realize mobilization of expertise and variety
End	Foster confrontation of different ideas	
	Reconciling points of view and selecting alternatives	Offer competing alternatives
	Attempt to forge majorities in favor of proposals	Open up possibility to combine alternatives
	Selection and combination of attractive policy proposals	

6. REDEFINING PRIMACY OF POLITICS: THE PROBABILITY OF A CHANGE IN POLITICAL ROLES

Vital to the successful involvement of politicians in interactive decision making is their preparedness to take the lead in these processes. This implies a fundamental change in the way they perceive their role and the way they define the primacy of politics. While such a profound institutional change will not occur easily it is also not unlikely to happen. Conditions which will provoke this change are increasingly prevalent. For instance, because experiments currently underway with interactive decision making collide with the traditional role that politicians fulfil, increased reflection on this role can be expected. Furthermore, politicians' involvement in these processes makes them aware of new conceptions of their role, with which they then experiment. In addition, if successful interactive decision-making processes result in better policy solutions, which are more readily accepted within the community, there will be an increased demand in the political arena for such processes. This too will provide an incentive for politicians to initiate and become more engaged in interactive processes. But above all, politicians are striving to prevent politics from becoming ineffectual. Trends like internationalization, privatization, the development of information technology and policy making in networks, are increasingly being perceived as threats to the primacy of politics. Politicians are inclined toward re-establishing their political primacy within these new institutional realities. If they try to do this by insisting upon the right to define

the content of societal problems and solutions by themselves, they will be disappointed. Interactive decision making provides them with an alternative role model in which they can perform a new, but no less prominent role in processes of societal decision making.

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IS MEDIATION A SUITABLE ALTERNATIVE TO COURT TRIALS?

An assessment of institutional effects on the processing of disputes

1. INTRODUCTION

The relationship between state and society has changed. Firstly, citizens are nowadays much more educated which enables them to stand up for their rights. Moreover, their emancipation has decreased the need for the help of traditional intermediary organizations to pursue these rights. Secondly, the relationship between state and society has changed due to processes of globalization and new technologies that reduce the significance of geographical borders. As a consequence the ability of the government to 'manage' public policy issues unilaterally has declined. These developments have resulted in a new perspective on the relationship between state and society regarding public policy issues, the so-called governance approach. In this perspective public policy is conceived of as a joint responsibility of governmental agencies and societal organizations or citizens who (in consultation) deal with questions of social interest.¹ So public management these days relates to governmental as well as non-governmental organizations and institutions that provide services of a 'public' nature (cf. Frederickson, 1999: 702-703).

Traditionally governmental policies in Western countries rely on a system of law to prevent and resolve societal conflicts.² Legal rules and legislation provide rules of conduct that, if violated, can be enforced by means of judicial proceedings. In some (professional) fields, like the construction industry for example, disputes are settled by means of pseudo- or pre-judicial arrangements.³ These arrangements are additional to state institutions for conflict resolution and applicable only to disputes about particular issues or to particular professional fields. Because of their highly institutionalized character the pseudo- or pre-judicial arrangements fit in well with the traditional view of conflict resolution.

The shift in perspective on the relationship between state and society regarding public policy issues has affected Dutch policies on dispute resolution. Present policies aim at Alternative Dispute Resolution (ADR) which calls upon the problem-solving capacities of conflicting parties. Institutions that resolve conflicts through ADR are additional to state institutions for conflict resolution. But, in contrast to the earlier mentioned pseudo- and pre-judicial arrangements, dispute settlement by

¹ The term 'citizen' is used with respect to individuals as well as civil groups.

² In this contribution 'conflict' and 'dispute' are used as synonyms.

³ See for example Blankenburg (1994) for a description of some pre-court arrangements on several (professional) fields.

means of ADR is not restricted to a particular field or particular type of conflict. In the Netherlands the current departmental policy regarding ADR concentrates on mediation. In this type of conflict resolution disputants call in an independent and impartial third party, a mediator, who facilitates and monitors the processes in which the disputants negotiate the conflict.⁴

In democratic legal states citizens are entitled to be protected from infringements of their rights by the government. Government agencies have to act in accordance with democratic values that have been laid down by the law. These values concern freedom, equality, legal security, democracy, and servitude. In situations of social conflict democratic values are to be realized by the democratic principle of judicial review (cf. Scheltema, 1989). This principle concerns the right to take a conflict to an independent and impartial third party. As conflict resolution can be provided for by state as well as societal institutions the possibility of power abuse not only pertains to the relationship between state and society but also among societal actors. Hence societal institutions for conflict resolution can also be assessed by democratic values. It is against this background that the central question of this chapter can be formulated: *“What are the institutional effects of the Dutch governmental reorientation towards conflict resolution on the processing of disputes and how can this reorientation be assessed in view of core values of a democratic legal state?”*

To analyze the institutional effects on the processing of disputes I first have to clarify what is meant by the concept of institution. For this reason section 7.2 goes into this concept. It is posited that the institutional context has to be taken into account to explain disputing conduct in a satisfactory way. To analyze and describe the institutional structure of court trials and of mediation the *Institutional Analysis and Development Framework* of Ostrom et al. (1994) is introduced in section 7.3. The institutional effects of the structure of court trials and of mediation on the processing of disputes are described in section 7.4. The remaining sections evaluate the consequences of a remodeling of state and societal institutions for conflict resolution. To this end court trials and mediation are compared in terms of their contribution to democratic values. Section 7.5 presents the values that are to be realized through the principle of judicial review. It also sets out the institutional features that are required for the realization of values at stake. These standards are applied in section 7.6 to court trials and mediation, which enables us to assess government reorientation regarding institutions for conflict resolution. The last section (7.7) presents an answer to the central question.

2. INSTITUTIONS

In general, institutions are perceived of as enduring systems of rules that both enable and restrict human and social action (Scott, 1995). Actors impose meaning on the ongoing stream of happenings in everyday life. The meanings are communicated in

⁴ The Dutch legal system is typical of legal systems belonging to the European doctrine of public law. Conclusions about the effects of court trials in other countries on the realization of democratic values can be generalized to the extent these countries have a comparable legal system, as France or Germany do, for example.

interaction and enable actors to make sense of their social surroundings. The underlying assumption is that frequently repeated interaction falls into a pattern, which is reproduced because of its economy of effort (Giddens, 1984). In the course of time institutions gain the quality of objectivity, which means that they are experienced as existing over and beyond the actors who embody them at a particular moment in time (Berger and Luckmann, 1967).

The patterns of action become institutionalized through reciprocal typifications of both human conduct and social positions, leading to expectations in the context of ongoing interaction. Actors holding a particular position are conceived of as role performers. Roles are considered to be formal if they are intentionally constructed to carry out specified actions. Informal roles arise if the communication of meaning in interaction results in expectations about actions undertaken by actors in a particular social position.

In ongoing social life relationships and interaction between actors are oriented and guided by systems of rules that are current in society or some particular sector of it. Although actors more often than not act according to these rules with little conscious reflection, disagreements may arise. Disagreements usually get resolved within a relationship through a process of (dyadic) adjustment. Only when participants in ongoing interaction are unable or unwilling to resolve their disagreement does a dispute emerge. That is, when at least one of the participants is not prepared to accept the status quo and a participant neither accedes to a demand by the other nor accepts a denial of their own claim (Gulliver, 1979: 75). At this point actors often feel the need to call in a third party for help. That kind of third parties that may become involved in the processing of a dispute depends upon the institutional arrangements a society provides to resolve social conflicts.

Two types of actors can be involved with respect to institutions for conflict resolution. On the one hand, actors that are engaged through their social relationship with at least one of the disputants. This type of actor has an informal role that rises to the occasion. On the other hand, actors can take part in conflict situations because they hold a formal role in the institutional arrangement appealed to by disputants (cf. Griffiths, 1983). Regarding this type of actor a further distinction can be made with respect to whether or not this formally involved third party can impose and enforce a solution. In this contribution those who have no say in the outcome of disputes are referred to as 'mediator', whereas those who do are called 'judge'.

3. INSTITUTIONAL STRUCTURE OF COURT TRIALS AND MEDIATION

In this section the structure of institutions for conflict resolution is examined using the theoretical notions of Ostrom et al. (1994),⁵ who developed the so-called *Institutional Analysis and Development Framework* that enables us to examine the institutional structure of a social space where individuals or organizations interact. These interaction spheres are referred to as 'action situation' (Ostrom et al., 1994: 28).

⁵ I thereby concentrate on rules that specify the formal structure of mediation and court trials, though I am aware of the fact that in practice actors may depart from these rules.

The structure of an action situation relates to 'participants in positions who must decide among diverse actions in the light of the information they possess about how actions are linked to potential outcomes and the costs and benefits assigned to actions and outcomes' (Ostrom et al., 1994: 29). This quotation encompasses seven elements that make up a structure: '(1) participants, (2) positions, (3) actions, (4) potential outcomes, (5) a function that maps actions into realized outcomes, (6) information, and (7) the costs and benefits assigned to actions and outcomes' (Ostrom et al., 1994: 29). Theoretically an enormous variety of action situations can be construed from this set of elements. In practice, however, the values that elements can adopt are restricted by a multitude of rules. For they stipulate the required, prohibited, or permitted actions and outcomes in a particular action situation. The rules can also lay down the sanctions that are authorized if actions and outcomes diverge from prescriptions (Ostrom et al., 1994: 38).

According to Ostrom et al. (1994: 41-42) the analysis of rules that structure an action situation affecting actions and outcomes requires a classification. Rules are clustered according to the effects on the structure of an action situation:

- 'Position rules specify a set of positions and how many participants are to hold a position.'
- 'Boundary rules specify how participants enter or leave these positions (...) and the qualifications an actor must have to be considered eligible to hold a position'.
- 'Authority rules specify which set of actions is assigned to which position at each node of a decision tree.'
- 'Aggregation rules specify the transformation function to be used at a particular node, to map actions into intermediate or final outcomes.'
- 'Scope rules specify the set of outcomes that may be affected, including whether outcomes are intermediate or final.'
- 'Information rules specify the information available to each position at a decision node.'
- 'Payoff rules specify how benefits and costs are required, permitted, or forbidden in relation to players, based on the full set of actions taken en outcomes reached.'

In deciding upon the course of action to be taken within a particular institutional structure, four attributes of actors play a role (Ostrom et al, 1994: 33):

- information-processing skills,
- selection criteria,
- preference evaluation, and,
- resources.

The capability of human actors to act rationally is bounded for they cannot *process* all *information* about all actions and outcomes possible and all costs and benefits involved (Simon, 1945). As human actors cannot act completely rationally they rely on *selection criteria* and *preference evaluations* that specify what actions and

outcomes are required, permitted, or forbidden in the social space concerned. The criteria and preferences to some extent reflect rules structuring the social space. So the rationality is also bounded by rules current in the social space where individuals and organizations interact. *Resources* are required for the realization of the preferred actions or outcomes.

Rules structuring an institution link an action situation to the attributes of actors. They bound the decision making about the course of action to be taken, for the rules specify, among other things, what information is available to actors, what actions can be selected from, and what actions and outcomes are preferable. The rules probably not only affect decision-making processes but actual conduct as well, for it can reasonably be assumed that the access to resources is specified by rules.⁶

An institution for conflict resolution can be regarded as a social sphere where disputes are processed. So it can be conceived of as a kind of action situation. The structure of a particular action situation can be depicted by describing the content of the (systems of) rules current in the action situation concerned. The institutional structure of court trials and of mediation can therefore be pictured by filling in the types of rules distinguished.

Court trials

In the Dutch legal system conflicts according to civil law fall within the jurisdiction of local courts and district courts.⁷ There are three types of actors who are considered as *participants* in a court trial: litigants, legal representatives, and judges. They each hold formal *positions*. Litigants can hold the position of 'plaintiff' or 'defendant'. Plaintiffs are disputants who institute legal proceedings. Through their legal representative they issue a writ against actors with whom they are in conflict. The latter are called 'defendant' (Knottenbelt et al, 1990: 261). Depending on the stage of the legal proceedings, legal representatives can hold two position as well, namely the position of 'attorney' or 'procurator'. During the stage in which the conduct of a case takes place in writing litigants have to be represented by a attorney. The position of attorney can be maintained during the court sessions as well, provided that the case is heard on the basis of the written documents. If, however, a legal representative asks for the opportunity to plead orally before the Bench, he or she has to be a procurator (Knottenbelt et al., 1990: 261).⁸ Just like legal representative judges hold different positions in the various stages of legal action. At first one of the judges involved in a case holds the position of 'cause-list

⁶ In the previous section it is stated that information rules specify what information is available to actors in a particular position. As information is a particular kind of resource it is likely that similar kinds of rules specify what resources are assigned to what positions.

⁷ Regarding the positions of participants, local courts differ from district courts in respect of the number of judges involved in a case and whether legal representation during court sessions is compulsory or not. In a local court the administration of justice is entrusted to one judge and legal representation is voluntary. In district courts a bench of three judges hears the case and litigants have to be represented by a solicitor or lawyer.

⁸ Provided that a jurist is registered in the district concerned, a legal representative can be both attorney and procurator in the same case.

judge'. In this stage the judge hears both sides. After the final pleading judges pass a (final) verdict.

In court trials judges and legal representatives decide among several *actions* that can be taken in the processing of a dispute. On behalf of a plaintiff a legal representative brings a claim against the defendant which is at the discretion of the judge (authority rules). A decision to lodge a claim is taken by legal representatives in the light of their *information*. They depend strongly on a plaintiff's information regarding the social conflict situation. Furthermore information can be collected through examining witnesses or experts (Knottenbelt et al, 1990: 266). Those who are called to the stand are legally bound to tell the truth. All information obtained is reinterpreted from a legal point of view. This means the legal representative decides upon rules applicable to the situation at hand in view of the information obtained. The same holds true for judges who have to decide whether a claim is to be allowed or dismissed (information rules).

Based on whatever information they have about *how actions are linked to potential outcomes* legal representatives decide about what claims to lodge. They aspire to an *outcome* that maximizes the profits of their clients. Legal representatives deliberate upon what is most profitable in view of the strength of their case to plan their strategy. If disputants are completely in their right they benefit from a judicial verdict that proves the opposite party to be wrong. This persuades legal representatives to focus on clashing interests and to any possible violation of rights by the opposite party. Yet if disputants have a rather weak case, it is preferable to settle a lawsuit. Judges also map outcomes to actions in deciding upon their course of action. The set of potential verdicts judges can pass is legally bounded. It is restricted both through the claims lodged by legal representatives and through prescriptions on the range of verdicts possible in view of the rules applied (Knottenbelt et al., 1990: 258, 267). Judges who have to decide upon claims lodged by legal representatives can encourage a settlement by giving an impression of what verdict they are heading for (cf. Bruinsma, 1999: 97, 98). If this verdict is not attractive to either of the disputing parties the legal representatives may adjust their strategy towards settling the conflict. If they are not willing or able to settle, judges pass a sentence all the same (aggregation rules and scope rules).

In making their decision legal representatives as well as judges weigh *costs and benefits* assigned to actions and outcomes. In court trials legal representatives are allowed to look after their interests at the expense of opposing parties. As the focus is on clashing interests the outcome of a trial puts one party in the right and the other in the wrong. The chances of winning or losing determine what costs and benefits are involved in the strategy that legal representatives pursue on behalf of their clients. The costs and benefits assigned to administering justice by judges go beyond the individual cases. As judges are impartial and independent they themselves do not benefit from conflict resolution. However, as their verdicts establish precedents for similar cases, judges may take the collective interests into consideration in deciding upon a claim in an individual case.

Mediation

Mediation is an institution for conflict resolution in which disputing parties try to settle their dispute by means of negotiation with the help of a mediator.⁹ The *positions* these two types of *participants* – disputing party and mediator – hold are each bounded by rules that disputants have to agree on at the outset of mediation. General features of mediation are that disputants have to assent to some procedure and that the mediator will see to it that negotiations stay in line with the procedure (boundary rules and position rules). The procedure to be followed in mediation, usually laid down in protocols, can be imposed by a mediator and / or decided upon in consultation (cf. Kocken, 1999: 84). The content concerns, for example, the confidentiality of what is communicated in the processes of mediation, the way it is reported, resolution conditions and / or whether an agreement reached will be legalized.

Once disputants have agreed upon the mediation procedure they can turn to the *actions* to be undertaken with respect to the social conflict. In processes of negotiation disputants sort out what their conflict is about, what has to be done about it and, possibly, what they expect from each other in future interactions. The role of mediators is to facilitate communication and to monitor the processes of negotiation (authority rules).

In deciding on their strategy, disputants process *information* to decide among actions. Actors take part in various action arenas, each affecting the availability of information. Hence no general answer can be given to the question what information disputants possess in the action arena where they try to settle their dispute through mediation. Moreover, it usually is up to the disputants whether they bring the information available to them to the negotiation table. But occasionally the sharing of information may be part of the procedure disputants agreed upon at the outset. A similar reasoning is applicable to the information available to mediators. Their position in other action arenas may provide them with information relevant to mediation, but in regard to the social conflict to be resolved through mediation they generally depend on what information disputants choose to share with them (information rules).

If disputants try to resolve their conflict with the help of a mediator they opt for consensual dispute settlement (Kocken, 1999: 84). Disputants can come to an understanding only if they are prepared to look for mutual interests and to give in on clashing ones. Mediators aim at an understanding between the disputants that is reached through processes of negotiation in accordance with the procedure they agreed upon (scope rules). As disputants and mediators aim at consensual dispute settlement they deliberate upon *actions that are linked to outcomes* agreeable to each of them. Actions in accordance with this aspiration include conduct that advances reconciliation and exclude conduct that aggravates differences of opinion (aggregation rules).

⁹ The position of disputing party is usually held by actors in conflict. Disputants who have been referred to an institution for mediation by a legal professional are sometimes supported by an external adviser (cf. Kocken en Van Manen, 1998, 71-72). In that case both types of actors hold the position of disputing party.

In deciding upon their course of action disputants and mediators evaluate actions and outcomes by *costs and benefits* involved. Disputants should all have their share in both costs and benefits of action taken and outcomes reached through mediation. For if they do not benefit from it, disputants will quit the mediation process before an outcome is reached. Mediators encounter costs and benefits in terms of social status. Their standing increases if disputants are satisfied (payoff rules).

4. INSTITUTIONAL EFFECTS ON THE PROCESSING OF DISPUTES

In the previous section it was stated that rules link a particular institutional structure to attributes of actors involved. The attributes concern the information a boundedly rational actor can process, the criteria and preferences of this actor and his or her access to resources. All these attributes are to some extent influenced by one or more types of rules that structure an action situation. Now that the institutional structure of court trials and mediation has been clarified, a comparison can be made of their effects on the processing of disputes.

As has been stated, disagreements emerge in social interaction and may result in a dispute if the actors involved fail to resolve their disagreement through (dyadic) adjustment while at the same time they are not prepared to accept the status quo. This transformation from a disagreement into a conflict is considered the first of various transformations that shape the processing of disputes. Three sorts of transformation are produced by the structure of the institution to which a conflict is taken.

Firstly, the institutional structure has an impact on disputing processes as it affects the definition of issues at stake in a social conflict. Disputants repeatedly (re-) define the causes and subjects of a dispute and modify their objectives correspondingly (Felstiner et al., 1980: 638). A change of perception usually occurs if disputants acquire new insights. Actors who are related to the disputants on a social or professional basis often induce such a change of perception as they provide information and, implicitly or explicitly, express their own preferences in encouraging or discouraging particular dispute processing strategies of these actors. Secondly, the institutional structure affects the range of actions and outcomes that are taken into account. The structure influences the objectives that are sought by disputants. It also has an effect on the scope of a conflict which demarcates the preferable tactics and the outcomes that become feasible (Felstiner et al., 1980: 642). Thirdly, the institutional structure impinges on access to resources that are required to act in accordance with the objectives sought. If resources are not available the options open to disputants become restricted (cf. Felstiner et al., 1980: 649-650). The course of action often also depends heavily on the relative distribution of resources among the actors involved, as they can serve as a power base. Actors who are considered to be powerful and willing to use their resources are able to affect the conduct of others that feel dependent (cf. Gross and Etzioni, 1985), for the first actors can supply resources to the second actors on condition that these second actors act in a particular way. So the processing of conflict can be affected by the power

dependence relation as perceived by disputants as well as the actual availability of resources.

The transformations can be conceived of as direct effects of an institutional structure on the processing of a particular conflict. In addition to this they can also have an indirect effect. The processing of a dispute is a continuing process of which the end is most of the time rather indistinct. Even a formal (legal) decision that is supposed to put an end to a conflict is generally considered to be an input for further dispute. In addition, the experience of dispute is likely to have an impact on future actions too. For example, it may encourage actors to avoid similar disputes in the future or to take a course of action that places them in a stronger position should a dispute occur. So the disputing experience will probably color future (disputing) conduct (Felstiner et al., 1980: 639). Generally such an experience will have an effect only on the future course of action of the actors involved. But the dispute may also have a wider effect, as when a group of actors enter into a lawsuit to use the courts as a mechanism to bring about social change or to mobilize political activity (Felstiner et al., 1980: 639-640). Inversely, collective struggle can be translated into an individual lawsuit that serves as a precedent for similar cases. So the effects of an institution for conflict resolution on the processing of disputes may influence future disputes of actors involved in conflict resolution as well as disputing conduct of other actors that think they have similar conflicts (cf. Galanter, 1981).

In order to compare court trials with mediation with respect to the institutional effects on the processing of disputes I shall concentrate on the consequences of the institutional structure for:

- the definition of issues at stake in a social conflict,
- the range of actions and outcomes taken into account,
- actual and perceived power dependence relations, and
- the resolving quality in terms of the endurance of a solution and its indirect implications of an institutional structure for other disputing processes.

In court trials a social conflict is defined from a legal point of view. In view of legal rules that are applicable to the case concerned, judges determine what the conflict is about. They thereby use information given by legal representatives and litigants as well as legal knowledge of rules, principles and jurisprudence. The judicial interpretation of rules and their applicability is binding upon disputants that have taken their conflict to the court. This generally implies a restriction of the issues at stake, because aspects of the conflict that are legally irrelevant are left out.

Disputants who aim at dispute settlement through mediation jointly decide about the content of the conflict. The way they interpret the causes of the conflict and the issues at stake is affected by their information. They can bring whatever information they possess at the negotiation table in order to influence the point of view of the opposite party. Whether they succeed in this attempt depends on the power dependence relationship between them.

The actions deliberated upon are selected in view of the outcome aspired to, and the costs and benefits involved. With respect to disputants and legal representatives, this strongly depends on the strength of their case. As jurisprudence may pertain to a prior interpretation of a similar conflict, it enables disputants to estimate their chances of being in the right. Jurisprudence can therefore affect the decision making of disputants and their legal representatives about the strategy that serves their ends. In a similar way it can be influenced by judges giving an indication of the likely verdict to encourage settlement. The actions deliberated upon by judges result from the legal rules applied to a case and the procedure to be followed in court.

In processes of negotiation, facilitated and monitored by a mediator, various actions and outcomes can be taken into consideration. They are restricted by one prerequisite only: actions and outcomes have to be mutually agreeable to the disputants. Generally this comes down to the notion of 'give and take'. If disputants are not prepared to search for 'win-win solutions' mediation will probably end prematurely.

The relative power dependence relationship between disputants is based on the distribution of resources among them. Besides information, the processing of disputes requires (access to) resources like time, money, bureaucratic competence, and social and communicative skills. Disputants need money and bureaucratic competence to find their way to the court. An appeal to the court involves considerable expense, which may stop actors who are in lower socio-economic positions from instituting legal proceedings. To prevent these actors from being put at a disadvantage they are legally entitled to counsel funded by legal aid. Once an appeal to the court is allowed the relative power based on time, money, and social and communicative skills are to some extent smoothed by the fact that disputants are usually represented by a procurator. Moreover, judicial procedures make it impossible to use these resources in court to influence opposite parties or judges.¹⁰

Disputants have to pay a fee to gain access to mediation. Analogously to legal aid regulations, the government contributes towards the costs of mediation in case disputants are unable to pay for it themselves because of their socio-economic position. However, the processes in which the conflict is actually negotiated can to some extent be affected by the relative power of one of the disputing parties, since disputants decide among themselves what is subject of negotiation and what outcome they will agree upon. An unequal distribution of resources like time, money, information, and social and communicative skills allows disputants that are perceived as more powerful to impose their will as far as possible.¹¹ Yet to some extent this is counteracted by the risk that the process of negotiation may end prematurely. Power abuse is discouraged by the fact that disputants who consider themselves to be less powerful are only willing to participate in mediation if there is something to gain for them, too.

¹⁰ This, however, should not be overstated as disputants who are financially well off can engage lawyers of higher quality than those having little money.

¹¹ Especially if one of the disputants is supported by an external adviser while the other is not, the first has much better chances to impose his or her will (Kocken and Van Manen, 1998: 103, 124).

The resolving quality of conflict resolution pertains to both the endurance of the solution to a conflict and the indirect implications it has for other disputing processes. From a legal point of view conflicts are assumed to be resolved by means of a judicial verdict. As conflicts in court trials are rephrased from a legal perspective, certain aspects of a conflict are left out because they are legally irrelevant (Eindrapport platform ADR, 1998: 5). Disputants, however, consider these aspects to be part of the conflict they want to resolve (Kocken and Van Manen, 1998: 70). Consequently judicial verdicts can offer a solution to part of the problem only. This may be sufficient if disputants are neither forced nor wish to continue their relationship. Otherwise the conflict persists in spite of the verdict. In fact, a further escalation of the conflict is more likely as in court trials the strategy of confrontation emphasizes clashing interests (cf. Eindrapport platform ADR, 1998: 5). The endurance of the solution brought about by means of mediation will probably last longer than judicial verdict. An agreement that is reached voluntarily through mediation has a greater chance of actually resolving the conflict, for it encompasses all aspects that the disputants consider relevant. Its voluntary nature enables disputants to let bygones be bygones and concentrate on the future. This enables disputants to continue their relationship or to end it in a comfortable way (cf. Kleiboer et al., 1999: 44, 55; Kocken and Van Manen, 1998: 104). A solution to a conflict that disputants have negotiated with the help of a mediator is very likely to last if it is laid down in a lawful agreement, since this reduces the chance that disputants enter to a new conflict that emerges out of a misinterpretation of what they agreed upon (Kocken and Van Manen, 1998: 111). Moreover, the legal status of such an agreement enhances mutual confidence.

The social implications of sentences passed by judges in court trials concern the provision of a precedent for similar cases. Though judicial verdicts often fail to bring about an enduring solution in a particular case they are generally of great significance to a wide range of individuals and organizations. Verdicts are after all part of jurisprudence, creating a precedent for similar cases (Kleiboer et al., 1999: 55-56). Though disputants have an option to legalize the agreement, this will not create a precedent. So the implications of the agreement are restricted to the parties involved.

5. DEMOCRATIC VALUES AND STANDARDS

So far I have discussed the effects of the institutional structure of court trials and mediation on the processing of disputes. Now I turn to an evaluation of the remodeling of the boundaries between state and societal institutions for conflict resolution, in this case between court trials and mediation. The latter part of the central question deals with this subject. It reads: "How can this reorientation be assessed in view of core values of a democratic legal state?"

In Western countries the concept of a democratic legal state is underpinned by the continental doctrine of public law, which refers to cross-national principles of legality, constitutional rights, democratic decision making, distribution of power, and judicial review (Burkens, 1997). These principles can be regarded as

requirements for the realization of one or more core values of democratic states (Scheltema, 1989; De Jong and Dorbeck-Jung, 1997). Core values are freedom, equality, legal security, democracy, and servitude.

With respect to conflict resolution the principle of interest is judicial review. This concerns the opportunity to have a conflict resolved by means of an independent judge (De Jong and Dorbeck-Jung, 1997: 221). It should be noticed that the principle of judicial review is traditionally oriented towards the protection of citizens from infringements of their rights by governmental agencies or other citizens. Because of the current governance perspective the realization of democratic values through judicial review is assumed to be applicable to relationships between societal actors as well. Legal rights and opportunities of self-development may be endangered not only by interference by the state but also by other participants in social interaction (cf. Burkens, 1997: 135). In other words, the principle of judicial review is a prerequisite for a democratic legal state that can be provided by state as well as societal institutions for conflict resolution.

Democratic values to be realized by judicial review

This section discusses what democratic values are at stake if judicial review is provided for by state or societal institutions for conflict resolution.

With respect to the democratic value of *freedom* two types of freedom can be distinguished: 'freedom of' and 'freedom from'. The first type relates to the right to be left alone by the state whereas the second type concerns the right to be protected by the state against threats of third parties (Van der Pot et al., 1995: 207). As institutions for resolving social conflicts are our concern, freedom in this contribution pertains to the second type. So here the principle of judicial review is considered as a requirement to protect citizens from infringements of rights by other citizens.

Closely related to freedom is the core value of *equality*. With respect to conflict resolution by a state or societal institution, equality refers to being treated without respect of persons (cf. Scheltema, 1989: 18). This requires disputants to be treated equally because they are taken to be equal. Or it calls for a treatment that allows unequal actors to be treated unequally in order to bring about equality of opportunity (cf. De Jong and Dorbeck-Jung, 1997: 215).

The value of *legal security* relates to the predictability and controllability of authorities to protect citizens from arbitrary acts (De Jong and Dorbeck-Jung, 1997: 216). Though the term suggests otherwise, legal security does not necessarily have to be legal in nature, as a result of the current perspective that acknowledges conflict resolution by non-legal institutions. Legal security pertains to the predictability and controllability of actors who are authorized to decide upon the course of action.

Democracy as a core value relates to decision making processes in the democratic legal state. In Western countries this value is reflected in a representative political system. In government decision making processes the value of democracy requires that decisions can be challenged by citizens (De Jong and Dorbeck-Jung, 1997: 216-217). In this respect the principle of judicial review is related to the core

value of democracy. Regarding social conflict situations, however, this value has no direct link to judicial review.

Servitude is a democratic value that pertains to the relationship between means and goals of governmental agencies. Governmental action has to be a means to an end: 'government for the people' (Scheltema, 1989: 20). The value of servitude is meant to counteract the exclusive right of the state to (threaten to) use violence. As a result servitude – in contrast to values like freedom, equality and legal security – applies only to governmental interference in social conflict situations.

Standards to assess institutions for conflict resolution

In social conflict situations freedom, equality, legal security and servitude are democratic values that are to be realized by the principle of judicial review. Here we discuss the institutional features that are required to realize these values through judicial review provided by a state or societal institution for conflict resolution. The required institutional features will serve as standards of assessment.

Judicial review concerns the opportunity to take a conflict to a state or societal institution for conflict resolution that protects an actor's freedom from infringements by others. Standards of *freedom* pertain to the accessibility of these institutions in case rights are violated. Furthermore, actors have to be protected from arbitrary acts by the authorities (cf. De Jong and Dorbeck-Jung, 1997: 216). This requires legal security.

Equality pertains to being treated equally or to equality of opportunity. Standards of equality relate to being treated without respect of persons. Firstly, this implies an equal opportunity to take a conflict to an institution for conflict resolution. This equal treatment of actors calls for general and abstract rules (cf. Scheltema, 1989: 19) that specify the conditions under which an actor is allowed access to an institution for conflict resolution. Equality of chances demands the unequal treatment of actors in underprivileged positions in order to ensure that their position will not form a barrier to seeking justice by means of an institution for conflict resolution. Secondly, equal protection of rights calls for equal treatment of actors once the conflict is processed by means of an institution for conflict resolution. This also requires general and abstract rules, but now they apply to procedures of conflict resolution. An important feature of such a procedure is that the third party involved is impartial and independent of the disputants. Another relevant procedural feature is that decision making processes are based on general notions to protect actors from unfair and arbitrary outcomes (cf. Scheltema, 1989: 18).

Standards of *legal security* pertain to institutional features required to make the actions of authorities predictable and controllable. Predictability requires clarity about who is authorized to take what action under what conditions and with what consequences (cf. De Jong and Dorbeck-Jung, 1997: 262). This is brought about by (systems of) rules that lead to expectation, especially if the rules are made public in advance (cf. Scheltema, 1989: 16-17). Controllability calls for a supervisory body to

inspect the actions of authorities. A distinction can be drawn between internal and external control. Internal control concerns supervision within an institution by judging actions of authorities against the institution's own criteria. External control refers to the controlling activities of a body that is external to the institution. The scope of external control is generally restricted to the nature and result of the internal control. If internal supervision is absent the actions of authorities are judged by the criteria of the external supervising body (De Jong and Dorbeck-Jung, forthcoming).

Standards of *servitude* apply exclusively to governmental interference. Proportionality of governmental interference as well as instrumental validity are the main requirements to realize the value of servitude (cf. Scheltema, 1989: 21-22). A means has to be in proportion to its end in order to protect citizens and organizations against excessive governmental interference. If governmental agencies have equally valid instruments at their disposal the value of servitude is served best if they opt for the means that are favorable in terms of societal costs and benefits. An instrument is considered to be valid if it has the capacity to contribute to the realization of a desired outcome. Governmental policies regarding social conflict resolution aim at (re-) establishing social order (cf. Van der Pot et al., 1995: 565). So an institution for conflict resolution is a valid instrument if can contribute to this objective.

6. THE DUTCH GOVERNMENTAL REORIENTATION ASSESSED

How can the Dutch governmental reorientation regarding institutions for conflict resolution be assessed in view of the democratic values of freedom, equality, legal security, and servitude? To answer this question the institutional features of a court trial and of mediation have to be measured against the standards presented in the previous section.

The realization of freedom firstly requires that disputants can take their conflict to a state or societal institution. Courts and bodies of mediation are both eligible institutions for conflict resolution, though the conditions under which they are open to disputants differ. An appeal to the court is allowed only if the writ served on a defendant complies with the law, if the case falls within the competence of the court and if the plaintiffs' claim is admissible (Knottenbelt et al., 1990: 267-268). Institutions for conflict resolution by means of mediation afford an opportunity to settle all kind of disputes regardless of their legal statuses (cf. Kocken and Van Manen, 1998: 32-33).

The realization of equality requires first that disputants have equal access to an institution for conflict resolution. General and abstract rules determine what conflicts are admissible to the court. If a plaintiffs claim is admissible the equality of access to a (subdistrict) court is enhanced by offering legal aid counsel to disputants in low socio-economic positions (Knottenbelt et al., 1990: 260). Likewise the equal access to bodies of mediation is provided for by a government subsidy, but legal rules that specify the conditions of entrance are absent.

The second requirement applies to being treated equally by judges or mediators. Mediators and judges both comply with the required independence (Knottenbelt et al., 1990: 99, 101). Yet mediators sometimes take sides to counterbalance an unequal distribution of skills and knowledge (Kocken and Van Manen, 1998: 82, 124; Kleiboer et al., 1999: 47). This causes inequality of treatment within a case. Court trials also differ from mediation with respect to the equal treatment of disputants that have a similar case. In court, equality of treatment is guaranteed by a formal procedure entailing legal rules that are of general and abstract nature (cf. Knottenbelt et al., 1990: 259). In contrast, disputants with similar cases can be treated unequally in mediation, because they themselves negotiate the procedure to be followed. In case a mediator imposes a standard protocol involving general and abstract rules of procedure, equal treatment may be improved. But such a protocol has to be agreed upon first by the disputing parties.

For the realization of legal security it is required that the actions of authorities be predictable and controllable. Predictability demands knowable rules specifying who is authorized to take what actions under what conditions and with what consequences. In court trials the procedure to be followed is laid down in law. Among other things this is concerned with legal authority, legal action, conditions and effects of legal review (Knottenbelt et al., 1990: 253-278). In dispute settlement through mediation the procedure to be followed concerns similar subjects, though it has no legal status (cf. Kleiboer et al., 1999: 57). Controllability requires an internal and / or external supervisory body to inspect actions of authorities. In the Dutch legal system the Supreme Court controls whether members of the judiciary observe the regulations (Knottenbelt et al., 1990: 107). In case a legal provision laid down in the Code of Civil Procedure is violated or when legal rules are misapplied or misinterpreted, litigants can complain about it to the Supreme Court. If the Supreme Court judges agrees with the complaint it can quash the verdict of the court (Knottenbelt et al., 1990: 108, 109). Mediators control disputants as they monitor the processes of negotiation between disputants. So far, there is no a legal institution to control mediators (Eindrapport platform ADR, 1998: 46).¹²

Standards of *servitude* require government agencies to make use of valid means that are in proportion to the end. As stated before, an institution for conflict resolution is a valid instrument if it can contribute to a (re-) establishment of social order. With respect to court trials and mediation this means that disputants have to be prevented from (further) disrupting the social order. Previously I described the institutional effects on the endurance of a solution to a conflict. Judicial verdicts hardly ever offer a solution to aspects of the conflict that are legally irrelevant (cf. Eindrapport platform ADR, 1998: 5) In case disputants cannot or do not wish to end their relationship, this may lead to a new conflict. Yet court trials are a valid instrument to resolve a conflict situation as far as the legal aspects are concerned, for judicial

¹² There is, however, the so-called *Netherlands Mediation Institute* (NMI) which provides mediation training and registers mediators on condition they are trained. This could evolve into a body of external control if the NMI is given the authority to formulate additional conditions and to sanction mediators if they violate the conditions (Eindrapport platform ADR, 1998: 47).

verdicts can be forced upon the disputants. Disputants who settle their dispute by means of mediation can negotiate all aspects they consider relevant to their conflict. If they reach an agreement its voluntary nature enhances future interaction on friendly terms. So mediation seems to be a valid instrument to (re-) establish social order.

The second requirement to realize servitude concerns proportionality, which involves a comparison of institutions for conflict resolution in view of their societal costs and benefits. Whether dispute settlement through a court trial or by means of mediation is most favorable can be answered only by means of empirical findings. Dutch experiments in which mediation is an alternative for conflict resolution – in addition to traditional judicial proceedings – allow only some tentative inferences (Kocken and Van Manen, 1998: 19). From a societal perspective court trials are costly as they are paid for mainly with public money. In this respect mediation is favorable to court trials because disputants have to bear most of the costs of mediation themselves. Yet if the focus is on the societal benefits, mediation is less favorable than court trials, for judicial verdicts establish precedents, while agreements reached through mediation are profitable only for those participating in it. Moreover court trials also contribute to the refinement and spread of legal norms (cf. Kleiboer et al., 1999).

7. SUMMARY AND CONCLUSION

The first part of this contribution focused on the effects of an institutional structure on the processing of disputes through a court trial or mediation. The structure of these institutions for conflict resolution has been described by means of the so-called *Institutional Analysis and Development Framework* of Ostrom et al. (1994). Rules structuring an institution for conflict resolution affect the processing of disputes in four ways. They have an effect on the perception of a social conflict, the range of actions and outcomes deliberated upon, the relative power or dependence of actors involved, and the quality and impact of a solution.

The institutional effects on the processing of disputes are relevant to evaluate the remodeling of boundaries between state and societal institutions for conflict resolution. It is argued that freedom, equality, legal security, and servitude are democratic values to be realized by means of judicial review. In line with the governance approach, governmental actors in the Netherlands rely on state and societal institutions for conflict resolution to deal with social conflict situations. To realize the democratic values these institutions have to meet certain standards. The governmental reorientation from court trials towards mediation is evaluated by means of these standards.

With this in mind I shall now answer the central question of this contribution: “What are the effects of the Dutch governmental reorientation regarding the institutions for conflict resolution on the processing of disputes and how can this reorientation be assessed in view of core values of democratic states?”

By giving preference to mediation, government agencies steer towards a form of conflict resolution in which disputants negotiate the issues at stake in the processing of a dispute. As a consequence, disputants have greater opportunity to take their

conflict to an institution for conflict resolution, for bodies of mediation also provide settlement of disputes that are legally irrelevant. So the reorientation towards mediation can be evaluated positively since mediation is to be preferred in terms of the democratic value of freedom.

However, a second consequence of the reorientation towards mediation is that a possible power imbalance between disputants is not compensated for. An unequal distribution of resources can severely affect the course and outcome of disputes of conflict resolution through mediation as disputants jointly decide on the subject of negotiation. In contrast, an unequal distribution of resources has less impact in court as a conflict is redefined from a legal perspective. Moreover, the predominant position judges have in comparison to mediators enables them to control the processing of disputes more effectively. As the democratic values of equality and legal security are better served by court trials, the encouragement of mediation can be regarded as an inadequate path.

A third consequence of the governmental reorientation concerns the range of actions and outcomes that are taken into account in the processing of disputes. In mediation disputants seek an outcome that is agreeable to the actors involved and deliberate on actions that can bring about the objectives sought. In contrast, actions and outcomes in court trials have to be in accordance with rules and procedures laid down in law. This advances an equal treatment of disputants and equal outcomes of similar cases. So the democratic value of equality is once more served by conflict resolution through a court trial. It is incompatible with the governmental encouragement of mediation.

The final consequence of the reorientation applies to the realization of the democratic value of servitude. Both mediation and court trials serve this value, though in different respects. By encouraging mediation the government improves the chance that solutions to conflicts endure and enable the disputing parties to continue their relation in the future. Compared to court trials, mediation can be seen as having a greater capacity to actually bring a conflict to an end. Yet a drawback of mediation is that similar conflicts have to be negotiated afresh. In contrast, court trials result in jurisprudence that sets a precedent and contributes to the refinement of legal rules.

Although predictable, I cannot but come to the conclusion that the government's reorientation towards mediation serves some of the democratic values but only at the expense of others. It is up to democratically chosen representatives to determine the ranking of the values and to reconsider the current policies accordingly. But I wonder if the path chosen can be reversed, for the shift in perspective on the relationship between state and societal actors has an effect on the democratic powers. As Frederickson (1999: 703, 704) stated: "It is difficult to conceptualize representative democracy when many important decisions that affect the lives of the represented are often not controlled or even influenced by those who represent them."

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PART II

CHANGE OF GOVERNMENT INSTITUTIONS

INSTITUTIONALISM: STATE MODELS AND POLICY PROCESSES

1. INTRODUCTION

Many approaches and theories have been developed to understand and to explain policy processes, policy outcomes and policy effects. Since the 1950s theories based on contextualism (the view that policy and politics are subordinated to exogenous forces), utilitarianism (the idea that policy politics revolve around choice rather than interpretation), instrumentalism (the idea that outcomes are more important than symbols and processes) and functionalism (the search for efficient outcomes and organizations) have predominated the scholarly debate in the field of public administration (Grendstad and Selle, 1995). Most of these theories take as starting point the calculative means-ends rationality of the rational choice approach, which considers a choice rational if, by this choice, a maximum goal accomplishment can be realized, given the goal in question and the actual world as it is (Dahl and Lindblom, 1953). In the 1980s the dominance of rational approaches was challenged by the new institutionalism in the social sciences. Generally, institutions can be considered as 'the working rules of society' (Ostrom, 1990: 51), whereas government institutions can be defined as systems of collectively binding working rules, which are pivotal for co-ordinating collective decision making.

'The new institutionalism ... comprises a rejection of rational-actor models, ... and an interest in properties of supra-individual units of analysis that cannot be reduced to aggregations of direct consequences of individuals' attributes and motives' (DiMaggio and Powell, 1991: 8). This rejection draws upon a theory of action containing the routine, unreflective and taken-for-granted nature of most human behavior. An important difference between the institutional approaches on the one hand and the rational approaches on the other is touched upon with this, namely man as a creature of habit versus rational man. In a rational approach, for example, policy is presented as the product of a deliberate weighing of needs, wishes and means with which these needs and wishes can be fulfilled. An institutional model mainly explains policy from the working of institutional rules that have probably been deliberately obtained at some time, but which are now not always recognizable as determinants of behavior for a certain actor. For that matter, it is such that the less extreme forms of institutional approaches and the rational approaches do not exclude each other. The more voluntaristic view of institutionalism attributes man with independent room for decision making in which rational principles can play a role. The well known amendments of Simon (1945) and Wildavsky (1987) to the classical rational actor model put the idea of man as a rational creature in perspective.

To understand and explain policy processes it is necessary to relate the actions and interactions in policy processes to the political institutions of society by combining institutional theory with an advanced actor-orientated (rational) approach. Therefore we describe a conceptual model by which both institutions and interactions in policy processes can be analyzed. This is done by first turning our attention to the most general form of institutional context: the state model. Developments in the theory of the state are described in section 8.2. In section 8.3 three of these models (the market, the hierarchy and the network) are characterized by a framework for institutional analysis and development. Section 8.4 treats the relationship between institutions and interactions and also gives a classification of policy instruments from an actor perspective. With this combined conceptual model it is possible to analyze the complex interactions between the institutional context and human behavior, most notably in its form of institutional change. Some conclusions are drawn in section 8.5.

2. THEORIES OF THE STATE

Unlike traditional pluralism, elitism and structuralism in the social sciences, a number of modern theories consider the state as an active element in the policy process. Hill (1997) gives an outline of theoretical developments giving more attention to the state, in which he links earlier theories to later developments.

Table 8.1: Theories regarding state and society (Hill, 1997, 65)

Original theory	Development	Later developments
Pluralism	Corporatist theory	Policy networks
Elitism	Wider exploration of characteristics of bureaucrats	Concern with the 'core executive'
Public choice	Economic theory of bureaucracy	Bureau shaping pluralism
Instrumental Marxism	Marxist corporatism	
Structural Marxism	Theorizing the 'autonomous state'	
Structure/action theory	Institutional analysis	Analysis of constitutional constraints

A number of these theories and developments are of relevance, namely corporatist theory, policy networks, 'modern elitism', economic theory of bureaucracy, and institutional analysis.

Corporatist theory and policy networks

Schmitter (1974: 93-94) defines corporatism as 'a system of interest representation in which the constituent units are organized into a limited number of singular, compulsory, non-competitive, hierarchically ordered and functionally differentiated categories, recognized or licensed by the state and granted a deliberate representational monopoly within respective categories in exchange for observing certain controls on their selection of leaders and articulation of demands and

supports'. Furthermore, Schmitter distinguishes state and societal corporatism. State corporatism is anti-democratic and is applied to fascist Italy and Nazi Germany. Societal corporatism blossomed in western democratic societies during the decay of pluralism. According to Schmitter, changes in the institutions of capitalism, i.e. changes in the concentration of ownership and competition between national economies, triggered the development of corporatism. The state had to intervene more directly and to bargain with societal associations to secure the conditions for sufficient capital accumulation. Concerning corporatism in the Netherlands, Kickert and Van Vught (1995) say: '... the Netherlands developed into an extreme example of the modern non-statist concept of neo-corporatism. This concept emphasizes the interest representation by a number of internally coherent and well organized interest groups which are recognized by the state and have privileged or even monopolized access to it'. It may be clear that the Dutch 'Polder model', which recently attracted some international attention in discussions on the Third Way between market (liberalism) and state (social democracy), has not just sprung up overnight.

More cautious formulations of corporatist theory talk about a variety of looser links between interest groups and the state. This leads us to theoretical developments with regard to policy networks.

Corporatist theory pays attention to the relations between interest groups outside the state and groups within the state. These groups are seen as unitary actors, but empirical studies suggest that they should not be regarded as such. For instance: '...analysts of government have recognized that there are many difficulties in getting departments to act corporately. Many policy issues are fiercely contested between departments in relatively unitary systems of government, between central and local governments...' (Hill, 1997: 71) and between the many different elements in a modern, complex political system. Besides, the assumption of corporatist theory that relationships between state and societal groups are one-way is not always correct. These considerations led to the formulation of an alternative view, namely the notion of policy networks.

State organizations and non-state organizations or groups can be seen as linked by reciprocal connections and more complex network relationships than is stated by corporatist theory. Smith (1993: 67) says: 'The notion of policy networks is a way of coming to terms with the traditional stark state / civil society dichotomy.... State actors are also actors in civil society, they live in society and have constant contact with groups which represent societal interests. Therefore the interests of state actors develop along with the interests of group actors and the degree of autonomy that exists depends on the nature of policy networks'.

Policy networks with a strong cohesiveness have the following characteristics (Marsh and Rhodes (1992):

- Having comparatively limited memberships, often with economic or professional interests, sometimes consciously excluding others.
- Sharing values and interacting frequently.
- Exchanging resources, with group leaders able to regulate this.
- Having a relative balance of power among the members.

Less cohesive policy networks are likely to have the following features:

- Large and diverse.
- Fluctuating levels of contacts and lower level of agreement.
- Varying resources and inability to regulate their use on a collective basis.
- Unequal power.

Cohesive policy networks facilitate a consultative style of government, reduce conflict, make it possible to depoliticize issues, make policy predictable and relate well to the departmental organization of government (Jordan and Richardson, 1987). Although policy networks have a considerable stability, external relationships, economic change, social change, new technologies, etc. may cause change.

The policy network approach offers a description of how relationships between the state and interest groups are likely to be structured. These descriptions implicitly refer to a specific state-model. This so-called pluri-centric model will be further elaborated in section 8.3.

'Modern elitism'

Unlike classical Marxism, traditional elite theory regards the state as an autonomous source of power. The work of Max Weber on bureaucracy and the growing power of bureaucratic officials supported this idea¹. After World War II Mills explored the developing power of modern bureaucrats. He says: 'In the polarised world of our time, international as well as national, means of history-making are being centralised. Is it not thus clear that the scope and the chance for conscious human agency in history-making are just now uniquely available? Elites of power in charge of these means do now make history ... '(Mills, 1963: 244). According to Mills, a triangle of corporations, government and the military runs (American) society. As a result of processes of standardization and bureaucratization the skills and knowledge which are necessary to hold a leading position in these 'institutions' have become more alike. This development has also stimulated the integration of the power elites because the standardization of skills and knowledge furthered the exchangeability of positions between these centers of power.

Closely linked to these ideas of the growing power of modern bureaucracy are the synoptic model of decision making and the top-down approach to implementation. The synoptic model is about rational decision making. Rational choice means selecting alternatives which are conducive to the achievement of goals. It involves the selection of an alternative, which will maximize the values of a decision maker. This selection is based on a comprehensive analysis of alternatives and their supposed consequences (Simon, 1945). In accordance with ends articulated by the dominating political force, well-trained bureaucrats list the alternative strategies and determinate the consequences that follow upon each of these strategies. Subsequently one of the alternatives is chosen and implemented.

¹ This does not mean that Weber can be enlisted as an elitist.

An elitist view implicitly presupposes a top-down implementation of a policy. After all, the governing groups in a society have enough power to control the implementation process. Hogwood and Gunn (1984) point out the conditions necessary to achieve a top-down implementation:

- Circumstances external to the implementing agency do not impose crippling constraints.
- Adequate time and sufficient resources are made available to the program.
- Not only are there no constraints in terms of overall resources but also, at each stage in the implementation process, the required combination of resources is actually available.
- The policy to be implemented is based upon a valid theory of cause and effect.
- The relationship between cause and effect is direct and there are few, if any, intervening links.
- There is a single implementing agency, which need not depend upon other agencies for success, or, if other agencies must be involved, the dependency relationships are minimal in number and importance.
- There is complete understanding of, and agreement upon, the objectives to be achieved; and these conditions persist throughout the implementation process.
- In moving towards agreed objectives it is possible to specify, in complete detail and perfect sequence, the task to be performed by each participant
- There is perfect communication among, and co-ordination of, the various elements involved in the program.
- Those in authority can demand and obtain perfect obedience.

A top-down approach is about minimizing an implementation deficit and maximizing goal attainment. 'Policy is taken to be the property of the policy-makers at the top' (Hill, 1997: 131).

The synoptic model of decision making and the top down approach of implementation are the central concepts of the classical paradigm of government control. Den Hoed, Salet and Van der Sluijs (1983) have typified the classical control paradigm as follows: 'The legend says of Archimedes that once, after having designed a lever with which a large ship could be lifted out of the water, he remarked: 'Give me a solid place to stand on and I shall move the earth'. It is of importance here that the solid turning point – the 'Archimedes position' – lies outside the object that has to change direction. What is interesting about Archimedes' statement is that he indeed realizes that he does not dispose of such an independent and external position'. If, implicitly or explicitly, one assumes such an independent and external position, one irresponsibly reduces policy and planning to a question of control, whereby the effectiveness of control is the most important criterion. As is probably known by now, the implementation of the controlling task is too often interpreted solely from the policy organization. It is insufficiently

realized that this organization is also one of the parties in the field and that its actions are strongly dependent on the actions of others².

Just like the policy network approach, modern elitism offers a description of the relationships between state actors and societal groups. Unlike the network approach, elitism considers this relationship as one-way domination by the state actors, who to a great extent operate on their own behalf (Etzioni-Halevy, 1989), as the political instrument of the societal (economic) elite (Miliband, 1969) or as the democratically chosen political elite (Dye and Zeigler, 1970). Therefore elitism refers to a contrasting state model. This hierarchical model is discussed in section 8.3.

Economic theory of bureaucracy

Traditional public choice theory analyzes politics in terms of economic market behavior. Therefore this theoretical perspective can be considered as a demand-side approach to the behavior of the state. Later on, public choice was amplified by a supply-side argument, namely the economic theory of bureaucracy (see for example, Tullock, 1965; Niskanen, 1971).

The economic theory of bureaucracy states that government bureaucracies tend to become monopoly providers of goods and services. In line with the economic theory on monopolies, several authors argue that superfluous costs will be passed on to consumers (citizens and companies), bureaucracies will produce an excessive output, and bureaucrats will tend to enlarge their organizations and their possession of resources. In the words of Tullock (1976: 29): 'As a general rule, a bureaucrat will find that his possibilities for promotion increase, his power, influence and public respect improve, and even the physical conditions of his office improve, if the bureaucracy in which he works expands'.

The economic theory of bureaucracy appeals to common sense, but little evidence has been produced to support it. According to Self (1993: 34), the theory is for the most part empirically wrong:

- The salary of a bureau chief is not closely related to the size of bureau
- Bureaux are not necessarily monopolistic
- It is impossible to say that bureaux produce an excessive output if there is no objective way of valuing the output.

Dunleavy (1991) shows that 'public choice models of bureaucracy which predict open-ended budget-maximization are badly flawed internally'. Attempts to increase budgets usually fail because of well-known collective action problems. Moreover, Hill (1997: 75) notices that the political attack on big government has led to situations in which civil servants have been rewarded for their skills at cutting budgets, privatizing services and so on.

The economic theory of bureaucracy and also public choice have led the theoretical foundation for the attack on 'big government' and far-reaching policy

² See Hill (1997) for a summary of the critic on the synoptic model and the top-down approach .

interventions which go beyond preserving or stimulating conditions for market operations. This attack has taken the form of a plea for privatization and competition between or within bureaucracies (Olsen, 1982). In both these proposals the emphasis is upon the superiority of market relationships. It is supposed that the market is superior to hierarchies (in this case: traditional bureaucracies) because market relations are more flexible and therefore lead to societal needed innovations (the innovation argument). Besides, the competition between organizations keeps down costs (the efficiency argument).

On the basis of the above considerations, several authors have formulated market-orientated concepts of the relationships between state and societal actors, and between societal actors themselves. The next section presents a multi-central or market state-model, which is an amalgam of these concepts.

Institutional analysis

Policy processes occur in an organized context where there are established norms, values, (power) relations, procedures, etc. Such an institutional view emphasizes that political, economic and social sets of rules or institutions influence the behavior of policy actors. Hall (1986: 19) says: 'Institutional factors play two fundamental roles.... On the one hand, the organization of policy making affects the degree of power that any one set of actors has over the policy outcomes ... On the other hand, organizational position also influences an actor's definition of his own interests, by establishing his institutional responsibilities and relationships to other actors. In this way, organizational factors affect both the degree of pressure an actor can bring to bear on policy and the likely direction of that pressure'. This also implies that differences between state models, conceived as a constellation of rules on norms, values, relations and procedures concerning the what, when and how of politics, are relevant for the course of policy processes and the resulting policy content and policy outcomes. But, while institutions structure politics and policy processes, they ordinarily do not determine policy behavior precisely (March and Olsen, 1996: 252).

The institutional approach is concerned with the relationship between structure and action. An institution like a constitution is not a straitjacket which makes it impossible to discuss a certain issue or to get it on the political agenda. Institutions can change in time, because they can be subject to reinterpretation. A policy process is not just a game played within the rules, it is also often about renegotiations, revisions or reinterpretations of these rules or institutions.

Institutions also influence the course of a policy process, the policy content and the policy outcomes, because they embody implicit exclusion assumptions. 'Constitutions, laws, contracts and customary rules of politics make many potential actions or considerations illegitimate or unnoticed; some alternatives are excluded from the agenda before politics begins..., but these constraints are not imposed full blown by an external social system the develop within the context of political institutions' (March and Olsen, 1984: 740).

In our view the institutional approach makes it possible to frame the descriptions of the state-societal relationships offered by the policy network approach, 'new elitism' and the economic theory of bureaucracy. The state models, which these theoretical

approaches imply, can be regarded as the institutional contexts of policy processes. From this perspective, the question of which state model to use becomes an empirical one, referring to the rules that adequately describe the policy context, rather than a normative or conceptual one.

State models refer to the rules of policy arenas in which policy actors try to influence the policy outcome by using their resources (implementing power strategies). To a certain extent 'the rules of the game' structure the interactions, but simultaneously these interactions confirm or deny these the rules (the institutions).

A theoretical approach that is well suited for description of state models in terms of policy arenas is the Institutional Analysis and Development (IAD) framework proposed by Elinor Ostrom (Ostrom 1986, Ostrom, Gardner and Walker, 1994). In this framework the conceptual unit, called an action arena, is used for analysis, prediction and explanation of behavior and outcomes. Action arenas include an action situation component and an actor component. Action situations refer to the social space where individuals interact. They involve (1) participants in (2) positions, who must decide among diverse (3) actions in the light of the (4) information they possess about how actions are (5) linked to potential (6) outcomes and the (7) costs and benefits assigned to actions and outcomes. Actors are the participants in action situations who have (1) preferences on outcomes, (2) information processing capabilities to make decisions based on (3) selection criteria for actions using (4) resources that enable them to take these actions (Ostrom, Gardner and Walker, 1994).

The action arena is used to explain the patterns of interaction that are formed by the actions the different actors take. The characteristics of the actions arena are the result of three sets of factors: attributes of the physical world, attributes of the community within which the arena occurs (also referred to as culture) and the rules individuals use to order their relationships. Of these, the rules in use have been given the greatest attention in subsequent analysis and work of other authors. These rules are directly linked to the elements of the action situation in the following manner:

Position rules specify a set of positions and how many participants are to hold each position;

- Boundary rules specify how participants enter or leave these positions;
- Authority rules specify which set of actions is assigned to which position;
- Aggregation rules specify the transformation function to be used to map actions to intermediate and final outcomes;
- Scope rules specify the set of outcomes that may be affected;
- Information rules specify the information available to each position;
- Payoff rules specify how benefits and costs are required, permitted or forbidden in relation to actors, based on the full set of actions taken and the outcomes reached.

In the next section these different rule types, resulting in different action situations and the characteristics of the actors involved, will be used to describe a typology of pure types of state models.

3. AN OUTLINE OF THREE ALTERNATIVE STATE MODELS

Several authors (for example: Williamson, 1975; Olsen, 1988; Van Vught, 1989; Jessop, 1992; Osborne and Gaebler, 1992) have modeled the factors which affect the relationships between state and society. Some of them distinguish two, three or even four alternative state models. Williamson presents the classical dichotomy between markets and hierarchies. Basically the same distinction is made by Van Vught, who talks about the rational planning and control model (the hierarchy) and the self-regulation model (a somewhat broader concept than market). Olsen formulated four state models, namely the sovereign state (compatible with the classical paradigm of state control), the moral state community, the segmented state (compatible with the concepts of the policy network approach), and the classical liberal state (compatible with the market orientated concepts of relationships between state and societal actors, and between societal actors themselves).

Olsen's state models, with exception of the moral state community, are in accordance with 'new elitism', the policy network approach (corporatist theory) and the economic theory on bureaucracy. Only the moral state community does not fit in one of this classical approaches of the relationship between state and society. According to Olsen the moral state community is about the norms of individual rights, and institutions that are set to uphold specific values and traditions against the whims of shifting political regimes. In our view the moral state is not a divergent model concerning the relationship between state and society. The other state models also have a moral dimension and specific values and traditions. Some people think that market parties operate in a moral vacuum (for example Williamson, 1985: 47) and will lie when they see opportunities to maximize their profits. On the other hand Bowles and Gintis (1993) say: the market paradigm '...depicts a charmingly Victorian but utopian world in which conflicts abound but a handshake is a handshake'. We agree, every contract is based on trust and co-operation. The normative basis of the market ideology covers ancient commandments like 'thou shall not steal', 'thou shall not lie' and 'keep your promises'. Only in such a moral world can the market model function.

The three state models we concentrate on – the multi-centric or market model, the uni-centric or hierarchic model and the pluri-centric or network model – can be described by the Institutional Analysis and Development framework in the following manner (see also table 8.2).

To start with, *position rules* define the positions that are central in an action arena. For the multi-centric model the crucial positions are that of the seller and the buyer. Of course more positions are defined, like state authorities, the police and judges (Ostrom, 1986), but in this rather general description we would like to concentrate on the positions that constitute the most important elements of the model. For the uni-centric model the crucial positions can be defined as the authorities and

the citizen. The authorities represent the state, whereas the citizen is subject to state control, but is also offered state protection. As is implied by the name, the pluricentric model might contain a large number of positions, but when focussing on the characteristics of the model as a network, the main positions can be called the network members (those who are in) and the non-members (those who are out).

The *boundary rules* for the market model are non-restrictive: all actors can enter the market either as seller or buyer, provided they have the ability (resources) to exchange goods. One of the basic functions of the state in this model is to secure the non-restrictiveness of the boundary rules, for instance by preventing entry barriers that might be the result of the co-ordinated actions of large market parties. In the uni-centric model the number of authority positions is fixed and the way in which an actor can acclaim these positions is well defined by constitutional rules. This means that the boundary rules are rather restrictive, although in democratic societies all citizens are able to 'run for' at least a number of political positions. Entry rules for the position of the citizen are rather non-restrictive, for most actors become citizens by birth. This does not mean that the position of the citizen is always open to every actor. People from other countries might face severe restrictions in trying to become a citizen and certain actions (such as 'high treason') deprive an actor of his position as a citizen. Boundary rules for becoming a member of a network can vary from very restrictive to non-restrictive. Some networks might have tight rules on the number of members and the ways of becoming a member (for instance a classic 'old boys network' like a rotary club), others might be open to all actors that are willing to participate in interaction for a certain time (an informal voluntary running group).

The most important *authority rule* in the multi-centric model is the liberty (freedom) of all actors to act on the goods they own, while leaving others the freedom to act on their properties. The safeguarding of this freedom provides a basic rule of 'non-intervention' for any actors in authority positions, though an orderly organization of society will need a minimum set of constitutional and other general legal rules that restrict actors in acquiring and using certain goods (such as heavy weapons). The central authority rule in a uni-centric model is the freedom of authorities to take the decisions that are specified for their position by the constitutional legal rules. In general, several authority positions will be defined, each with a specific set of actions that can, and others that cannot be taken. In most constitutional states these rather powerful authority rules are accompanied by restrictive procedural rules that specify how decisions are to be made and give citizens specific rights to enter this process or fight the decisions in court. In pluricentric models specific authority rules might be defined for certain positions inside the network, but decisions might also be the result of voluntary agreement by all members. In general, members will be included in collective decision making and non-members will not be included. This does not mean that non-members are entirely without authority; they always have their basic civil rights when decisions of members affect their actions or outcomes.

Table 8.2. *Three state models as action arenas*

Interaction Rules:	Multi-centric (market)	Uni-centric (hierarchy)	Pluri-centric (network)
Position	Seller	Authorities	Member
Boundary	Buyer non-restrictive: free entry for buyers and sellers	Citizen Authorities: restrictive Citizen: non-restrictive (except for foreigners)	Non-member Restrictive or non-restrictive
Authority	Freedom to act on own property (not on property of others), limited only by constitutional and general legal rules	Authorities: freedom to take decisions assigned to position by constitutional legal rules, in accordance with procedures. Citizen: freedom to use civil rights, also in relation to authorities	Members: specific positions might have specific authority, members mostly included in collective decisions Non-members: no specific authority, only as citizen
Aggregation	Bilateral agreement and spontaneous through individual action and price setting	Authorities decide on basis of constitutional rules	Consultation, multi-actor agreement, spontaneous through individual actions
Scope	Freedom, only limited by constitutional legal rules	For each authority-position specified by constitutional rules	Interconnected members' activities
Pay-off	Exchange of goods through payment	Decided by authorities, but limited by general rules	Decided by collective and individual decisions, mostly aimed at benefits of members with exclusion of non-members
Information	Truthful specification of prices and product characteristics	Specified in constitution, public motivation of decisions by authorities	Perhaps specified, mostly restricted to members
Actor's Preferences	Personal interest	Authorities: linked to position, common interest Citizen: personal interest	Mix of common (members only) and personal interest
Information processing capacities	Personal / organizational	Authorities: organizational (bureaucratic and political) Citizen: personal / organizational	Personal / organizational and exchange by members
Selection criterion	Personal interest	Authorities: common interest Citizen: personal interest within limits of decisions by authorities	Mix of personal and common (members only) interest
Resources	Personal/organizational	Authorities: organizational and political Citizen: personal/organizational	Personal/organizational and exchange with members

The basic modes of *aggregation* in market models are the bilateral agreement of sellers and buyers and spontaneous co-ordination through individual action and price setting by supply and demand. In uni-centric models aggregation is governed by constitutional rules, most notably the democratic 'majority vote', sometimes accompanied by veto-powers for certain positions on certain topics or rules of qualified majority. Although specific aggregation rules may exist, network members usually come to collective decisions by consultation or other forms of multi-actor agreement. Like in markets, spontaneous co-ordination through individual action might also play an important role in non-restrictive networks. The relative importance of collective decision-making and aggregation through individual decisions might vary considerably.

The *scope rules* in multi-centric models offer actors a great deal of freedom to affect the outcomes they want. Of course, as is generally the case, some basic restrictions are formulated in the constitutional and other legal rules of the system (for instance it will not be allowed to create outcomes that result in the death of other people). In uni-centric models specific scope rules specify the outcomes that can be produced by each position. The scope rules for authorities can go much further than those of citizens, including the deprivation of goods (through fines or taxation), freedom and even life (death penalty). In networks the scope rules are generally restricted to the interconnected members' activities, that constitute the network. An informal running group might make collective decisions on how and where to run, but would (in general) not interfere with the members' activities in work or church.

The basic *pay-off rule* of market models is the exchange of goods between sellers and buyers through paying money or services. In hierarchic models the authorities usually decide upon the pay-off rules. Although this might provide them with considerable freedom, the authorities might also be constrained by rules like 'equal treatment of all citizens' and 'détournement de pouvoir'. In networks the pay-off rules might be decided by collective action of the members or might be the result of individual actions (as in markets). In most cases, however, collective decision making will play some role and be directed towards the mutual benefits of members, with exclusion of (and sometimes explicitly at the cost of) non-members.

The most important *information rule* in a market model is the truthful specification of prices and product characteristics. Because the exchange of goods through prices forms the basic co-ordination mechanism, buyers and seller have to be able to get and rely on this information. Apart from prices and product characteristics market actors just 'mind their own business', which accounts for the absence of further information rules, such as on the motives of actors for their actions. This is rather different in uni-centric models, where the authorities have extensive possibilities to interfere in the decisions of citizens. However, in democratic societies this power comes with a duty to motivate most of the decisions by authorities in public debate. The rights to information of citizens and those who represent them (parliament, press) are generally specified in constitutional and other legal rules. The information rules in networks might or might not be specified, but in case they are present, they would be restricted to members only.

So far the state models have been described with the interaction rules that constitute the action situation where actors form their behavior. Although attention is mostly drawn to these rules, we think it is important to extend our attention to the actor characteristics that form the other component of action arenas. We believe that the characteristics of the action situation are only compatible with certain characteristics of the actors that occupy the positions of the arena. This is directly related to the assumption that the different elements of the action arena are to be seen as 'configurations': a change in one characteristic might influence the effects and values of other characteristics (Ostrom, 1986).

In market models the *preferences of the actors* are formed by their own perception of their personal interest. In a uni-centric model the preferences of the citizen can be formed by his personal interest, but the preferences of the authorities are linked to the responsibility that comes with their specific position. Common to all authority positions is that the common interest of all citizens functions as a basic guideline for the formation of preferences. In network situations there would generally be a mix of common (members only) and personal interest that shapes preferences. The relative weight of common and personal interest will vary from network to network.

The *information processing capacities* of market actors are their personal capacities in case of a single actor or the organizational informational capacities in case the actor is an organization (such as a company). The same holds true for citizens in a uni-centric model. The information processing capacities of authorities are generally organizational and can have a bureaucratic and / or political character. The information processing capacities of network members are basically personal or organizational, but will generally be supplemented with the capacity to exchange information with other members.

The *selection criteria* that market actors use for taking action are based on their personal interest. Only through striving for their personal interest, in competition with other actors doing the same, can a market result in an efficient allocation of resources. For authorities in uni-centric models the primary selection criterion for action is the common or public interest. Actors in positions of authority that follow their personal interest will soon lose legitimacy and credibility and run the risk of being 'thrown out' of their position. Citizens in a hierarchy can follow their personal interests, but only within the limits set by the decisions of the authorities. Authoritative decisions should form an exclusive motivation for action, whatever the personal preferences of the citizen may be. For network members the selection criteria for action will generally be a mix of personal and common (members only) interest.

The *resources* of market actors are their personal resources or the organizational resources in case the actor is an organization. The same holds for citizens in a uni-centric model. Authorities generally have organizational (bureaucratic) resources along with political resources like the legitimacy that comes with the (democratic) way in which they came to their position. Network actors can supplement their personal or organizational resources with those of other members, mostly through exchange. In fact the mutual interdependence of actors in terms of their resources

(and the possibilities of providing them by more or less stable interactions) are mostly seen as the primary reason for networks to exist (Marsh and Rhodes, 1992).

As can be seen from the sketchy description presented here, the IAD framework can be used to analyze the differences between the three state models. A complete analysis of these models would have to define the different rules and actor characteristics in more detail, if only because more than two positions would have to be defined. Such an analysis is however outside the scope of this chapter, for we will now focus on an actor-orientated approach suited for explaining interaction processes in policy arenas.

4. INSTITUTIONAL AND ACTOR ORIENTATED APPROACHES

Institutions and interactions

Structural approaches often consider the institutional context of policy processes as given. Many of these approaches are static and deterministic. They are not always able to give a more specific, detailed explanation of institutional changes processes. The new institutionalism in the social sciences has a more dynamic view on the relationship between institutional context and the interactions in a policy process (see also Hendriks, this volume). Institutions are seen as cognitive resources, which enable or restrict behavior, but institutions can also be changed intentionally or unintentionally as a result of interaction processes. Institutionalization is often described as a social process in which constructions of reality are accepted by a certain group of people (originally Berger and Luckmann, 1967). However, most institutional approaches are rather vague about the way behavior and interactions influence institutions.

The formation of government institutions is generally considered as a political game within the context of existing institutions (Skocpol, 1995; Immergut, 1992). 'Political activity is not just a game played within rules, it also often involves efforts to renegotiate the rules' (Hill, 1997: 88). Skocpol (1995) explores the relation between institutions, action and institutional change. She concludes that action (such as policy change) can create institutions with certain normative properties, which serve as a barrier to change at a later point in time. According to Esping-Andersen (1996) major changes are almost impossible because existing institutions determine the scope for policy making. With regard to the transition of the welfare state he says: '... the alignment of political forces conspires just about everywhere to maintain the existing principles of the welfare state'. In this respect the literature on institutional change speaks of path-dependency. But Hwang (1995), in a study of health reform in Great Britain and Taiwan, draws the conclusion that a revolutionary reform of institutions is possible under certain conditions. Trommel and Van der Veen (1999) recently concluded that the institutions of the Dutch welfare state have undergone important changes in the last decade.

In our view integration of an actor-orientated approach and institutional analysis will increase our insight into the change or the preservation of institutions, and accordingly shed light on the relation between institution and interaction.

Actor-orientated approaches analyze policies and policy outcomes by using individual characteristics like motivation (preferences) and the possession of resources. Of course, these characteristics are explicitly part of the abovementioned IAD framework, but in this framework the actor acts upon these factors, whereas our basic concern here is the actions of the actor that are directed at changing the action arena (including other actors' characteristics), in order to find himself in a context that will lead to more preferable outcomes (see for example, Pfeffer and Salancik, 1978). It is this intended change of an actors' context or environment that is at the heart of the questions on policy processes: through instrumental tactics an actor tries to influence his and other actors' action arenas, in order to come to (or maintain) preferred outcomes.

This means that our view of institutionalism is partly voluntaristic. Actors have independent room for decision making in which rational principles can play a role. At the same time our position considering an actor oriented approach like the model of instrumental tactics to be presented in the following subsection, is in a way partly deterministic: choice is limited to a certain extent by the rules of an institutional setting. This point of view shows similarities with the beliefs of Giddens (1984) who says that the unfruitful division of methodological individualism (actor orientated approaches) and methodological holism (structuralism and institutionalism) is overcome by methodological dualism.

In an analytical sense we consider action and interaction on the one hand and institutions on the other hand as parts of separate but not independent systems. The most noticeable characteristic of institutions is that they have a general nature: they are rules that refer to a class of actions that is not specified in the time/space dimension. Interactions, on the other hand, are a particular occurrence of such a class within the time/space dimension (Giddens, 1984). The rules of football refer to the class of football games, of which the interactions of the 1974 World Cup final in Munich are a particular occurrence.

Interactions as such do not influence institutions directly, nor do institutions have an immediate impact on interactions (Vancoillie and Verhoeven, 1999). Within 'social reality' interaction systems and institutional systems are separate domains, which have their own dynamics. Intentionally or unintentionally, actors use institutions as inputs for shaping their actions and interactions. These interactions and / or their results enter other constellations of actions and interactions in the form of information. Together with information on rules stemming from the institutional system in question it is used to shape further actions and interactions, for instance actions and interactions aimed at a rearrangement or preservation of the institutional system. An example may clarify this.

Using the IAD framework of Ostrom we can distinguish some of the institutions with regard to soccer games played in the framework of a national football competition.

- Position rules, which circumscribe the position of goalkeepers, (field) players, substitutes, two teams (eleven players each), referee, linesmen, clubs and coaches.

- Boundary rules: goalkeepers, (field) players and substitutes can only enter a game if they are mentioned on an official competition form. Players can only leave the field and substitutes can only come on at the request of the coach and with permission of the referee. Referee and linesmen are appointed by the national soccer organization.
- Authority rules: within certain limits players have the freedom to make their own decisions: for instance handling the ball: goalkeepers are allowed to touch the ball with their hands within the penalty area, field players are not allowed to use their hands; rules on sliding tackles, off-side etc.; the referee is the final authority on the implementation of the rules of the game, the linesmen are his assistants.
- Aggregation rules: Goals scored by a player count for his team (provided it is in the right goal), goals of team-mates are added to count as the total for the team.
- Scope rules: If the ball leaves the field or the referee indicates a foul, play stops. The referee decides when play starts and the game has ended.
- Information rules: Players are allowed to speak to each other, the coach is allowed to speak to his players (but no 'time-outs' are permitted). The referee uses his whistle, colored cards and specified movement of his arms to indicate his decisions.
- Payoff rules: The team with the most goals scored wins, equal goals mean the game is a draw, points are likewise rewarded for the competition. Fouls will result in loss of possession of the ball (free kick), a 'penalty', or even expulsion of the player.

These rules do not influence the actions and interactions in a soccer game directly, but always through the interpretation of the actors. A referee has the freedom to give his own interpretation of the rules, and also the capability, however not legitimate, to bend or even to ignore rules. Players can try to disguise offences or to use rules as a resource, for instance defenders using the offside rule to disrupt an attack and get possession of the ball. It is also possible that a number of players or even the referee and linesmen do not know the official rules or have made some rules for themselves. Generally institutions inform actors how to act, but it depends on their interpretations, actions and interactions if institutional rules are observed or offended.

Offence against the soccer rules in a certain game does not immediately imply that institutions are changing. Let us assume that in a certain game an important rule is deliberately ignored by the referee, for instance the rule that says a player should be send off if he fouls an opponent who broke through to right in front of the goal. This refereeing decision may lead to:

- Activities of the disciplinary committee of the soccer association, which on the basis of institutional rules decide that the referee made a mistake.

- The disciplinary committee not undertaking any action.
- Other referees following their colleague's example.
- Other referees not following their colleague's example.
- Activities of the decision-making body of the soccer association aimed at changing the rules (institutions).
- The decision-making body of the soccer association does not changing the rules.

In this example we can distinguish several action arenas, which to a certain extent are linked together, and in which different games with different stakes are played:

- The arena in which the original soccer game took place.
- The setting of the disciplinary committee.
- Arenas of other (future) soccer games.
- The setting of the decision-making body.

As a result of the games played in these arenas the institutional system can be adapted or maintained and the behavior of referees can be in accordance with the adaptation or maintenance, but of course a cleavage between institutions and behavior is also possible. A systematic analysis of actions and outcomes in these arenas is presented in table 8. 3.

Starting from the question whether actions are in accordance with the rules in the initial soccer game (initial conformity), different options in the other arenas are systematically combined into 13 situations. For each situation a characterization of the outcome is presented in the last column. These outcomes can be subsumed into the following categories:

Situations of institutional stability (situations 1, 2, 5, 8 and 11). Stability can be the result of initial conformity (situation 1), of spontaneous return to conformity (situations 5 and 11), of a situation where the braking of a rule is not followed in future games and thus remains an incident (situation 8), and of successful application of a sanction (situation 2).

Situations of institutional change, where rules are adapted to 'conform' with the actions that were not in accordance with the initial rule (situations 3 and 9).

Table 8.3 Institutional Change

Initial Conformity	Initial sanction	Conformity after sanction	Formal change of rule	Conformity to current rule	Sanctions	Situation	Outcome
Yes						1	Affirmation of rule
No	Yes	Yes				2	Breaking of rule remains incident by successful sanction
	No	No	Yes	Yes		3	Successful change of formal institution
			No	No		4	Unsuccessful institutional change, back to situation 2 for the new rule
			No	Yes		5	Unlikely return of conformity, possible as result of discussion on changing the rule
			No	No	Yes	6	Open conflict between rule and behavior
					No	7	Working rule in conflict with formal rule, formal rule as 'dead letter', latent conflict
No		Yes				8	Breaking of rule remains incident
	No	No	Yes	Yes		9	Successful change of formal institution
			No	No		10	Unsuccessful institutional change, back to situation 2 for the new rule
			No	Yes		11	Very unlikely return of conformity, possibly as result of discussion on changing the rule
			No	No	Yes	12	Unexpected sanctions
					No	13	Working rule in conflict with formal rule, formal rule as 'dead letter', latent conflict

Situations where actions and institutions are in conflict. These conflicts might be called 'open' or 'manifest', in situations where actions that do not comply with the rule are continuously met with sanctions (situations 6) or 'latent' when behavior is not in accordance with the rule, but no sanctions are applied (situations 7 and 13). In these situations 'informal' rules are likely to develop that can be said to guide actual behavior. Depending upon the question whether these rules should be seen as institutions (Ostrom, 1986), these situations could also be labeled as 'institutional change' in terms of the 'working rules'. Three situations where actions are not in accordance with the rule (numbers 4, 10 and 12), can be labeled as 'preliminary' in the sense that future reactions can be assessed by using the table once more, starting in situation 2. Eventually they will result in one of the other situations.

For the explanation of actions, interactions and their outcomes a conceptual framework has to be able to describe the institutional system, the interaction arenas and their linkages. For this the IAD framework is very helpful. However, to provide an adequate explanation of the actions, interactions, strategies and outcomes in these interaction arenas we need a model of human behavior that can be linked to this institutional framework. Such a model will be presented in the next section.

An actor orientated approach to policy processes¹

Generally speaking, one can state that human activity, including policy formation and implementation, is the product of the available resources and the motivation to undertake a certain activity (to be able to and to want to).²

The availability of and access to resources is a necessary precondition for an actor to be able to undertake certain activities. Hereby one can think of resources such as physical goods, skills, manpower, information, and time. Basically, these resources suffice for one actor to undertake certain activities. However, the activities of one actor are usually related to the activities of other actors, so that resources other than those mentioned above will have to be drawn on. The most obvious 'interactive' resource is money, or more generally speaking, means of exchange. Besides this, legal rights or formal competencies, trust, reputation and a good understanding or relation with an actor that has access to relevant resources can be mentioned. These resources are 'interactive' in the sense that they can only act as resources to an actor if at least one other actor recognizes them as such. Interactive resources are a part of the reality definitions of actors and are construed and re-construed in processes of continuing interaction (see also Termeer, 1993: 31).

This typology of resources is of course not exclusive, but the principle of division has been chosen such that other resources can also be taken up in the classification. New or already existing resources that have not been mentioned above can also be noted as interactive or non-interactive (individual).

¹ This subsection is based on Van Heffen and Klok, 1997.

² This section uses a slightly different terminology than the IAD framework. The information processing capacities from this framework are seen as one of the resources of an actor. The combination of preferences and the selection criteria for action (IAD), is referred to as the motivation of an actor.

Supply, flow, function and spreading

The supply, the flow, the function and the spreading or distribution of resources are important concepts. Supply refers to the amount of resources that an actor has at his disposal. Flow refers to the variation in this amount. There can be a positive or a negative variation. In a multi-actor situation, four types of flows can be distinguished:

- (1) Obtaining resources from other actors;
- (2) Relinquish your resources to other actors;
- (3) Production of resources by the actor;
- (4) Destruction of resources (use or destruction).

The production of resources by an actor presupposes that the amount of a certain resource can be manipulated. This manipulation, however will, generally be limited to a greater or lesser extent by physical, cognitive or social boundaries.

The function of resources is related to the activities that an actor wishes to undertake. This concerns the special effects and actions that the input of resources accomplishes with regard to certain activities. Thus a metal chisel is suited for splitting wood, but not for cutting diamonds. In the first case the chisel is functional, in the second it is not.

The possession of sufficient resources can confer on an actor a certain independence with regard to other actors. Turned around, a shortage of resources indicates a certain dependence. It is rather obvious that an actor can exercise his influence on somebody if this second actor requires the resources of the first actor to undertake certain activities. One can view the relation between these actors as a power dependence relationship, whereby power is defined as the ability to influence the behavior of another actor in accordance with one's own aims, by changing the availability, characteristics or consequences of behavioral alternatives (Klok, 1991). The dependence component refers to the resources that an actor has control over and that are necessary for another actor to undertake certain activities (Gross and Etzioni, 1985). The spreading or the distribution of resources thus influences the available behavioral alternatives.

Different types of instrumental tactics

The activities of an actor can be stimulated, opposed or changed by another actor because the second actor is capable of influencing the motivation and / or the available resources of the first actor (see also French and Raven, 1959; Emerson, 1962). Thereby the second actor can apply the following instrumental tactics (Van Heffen and Klok, 1997): facilitate, defacilitate, motivate and discourage. These tactics can present themselves in various forms (see table 8.4).

Table 8.4: Different forms of policy technologies

Facilitate	Defacilitate
- once-only provision of resources	- depriving of resources
- start a flow of resources	- interrupting a flow of resources
- functionalize	- defunctionalizing
Organize	Deorganize
- creation of an actor	- eliminating an actor
- reorganization of an actor	- reorganization of an actor
Motivation	Discourage
- provisional facilitation	- provisional defacilitation
- provisional defacilitation	- provisional deorganization
- provisional organization	

The facilitating of resources can take place in different ways. An actor can supply resources only once (pass the ball to a teammate) or he can start a ‘permanent’ flow (provide a weekly salary). It is also possible that he effects changes in an environment, which will make the resources of a second actor relevant for the undertaking of certain activities (enable a player to shoot at goal by blocking a defender). This form of facilitating is denoted as functionalizing.

The defacilitation of resources can take place by taking away or destroying the supply of resources (depriving an opponent of the ball), interrupting a permanent flow and the changing of an environment, which will cause resources to partly or completely lose their function (create a ‘wall of players’ to prevent an opponent shooting at goal). We call this last form defunctionalization.

One can ask whether ‘organizing and deorganizing’ are separate tactics or whether they are merely special forms of facilitation and defacilitation. The purpose of organizing an actor is that a changed or a new actor will develop certain activities. Deorganization in fact tries to accomplish that an actor will no longer be capable of developing ‘activities that are not wanted’. By means of organization and deorganization, an attempt is made at influencing the deployment of resources. As opposed to facilitation and defacilitation, which are aimed at the amount, the flow or the function of resources, the pretext of organization and deorganization is the structure of the actor itself.

The organization of an actor can refer to the creation of a new actor or the reorganization of an existing actor (in terms of our football examples these tactics could be used at the clubs as actor). Creation can be considered the uniting of resources and motivation and reorganization can be considered the rearrangement of resources and motivation.

Deorganization appears to be the elimination or reorganization of an existing actor. Elimination, in turn, is the dissolution of resources and motivation. Reorganization as a form of deorganization can also be expressed as the rearrangement of motivation and resources, aimed at the prevention of certain activities, however, and not their stimulation, which is the aim of reorganization as a form of organization.

Motivating an actor is aimed at having this actor display a certain form of behavior. Motivation can be done by means of provisional facilitation, provisional defacilitation and provisional organization. Provisional facilitation means that an actor is supplied with resources (once-only or a permanent flow) or that his environment is changed, such that his (potential) resources become functional, provided that he will undertake certain activities. (Allocating a team 3 points for a win and 1 for a draw aims at motivating them to win.) We call threatening to take away, destroy or interrupt a flow and the defunctionalization of resources of a certain actor if he does not undertake certain activities, provisional defacilitation. Provisional organization means that an actor is confronted with the prospect of the creation of another actor (a competitor) if the first actor refuses to develop certain activities or the first actor can be confronted with the threat of reorganization.

Discouraging an actor aims to prevent him from showing a certain form of behavior. Discouragement can take place in the form of provisional defacilitation and deorganization. Provisional defacilitation means that an actor is told that his resources will be taken away or destroyed, that a flow of resources will be interrupted or that his environment will be changed such that his resources will lose their function, if he continues to pursue certain activities. (Sanctions should discourage players to brake the rules.) One can speak of provisional deorganization when the threat is expressed that an actor will be reorganized or eliminated if he continues to undertake certain (undesired) activities (sending a player off the field).

Instrumental tactics and institutions

So far the instrumental tactics we have distinguished refer to the different ways in which another actor's characteristics (motivation and capabilities) can be changed. Comparing this conceptualization to the IAD framework the question arises how these tactics relate to its central variables. Besides the actor characteristics, the action situation and its context (consisting of rules, culture and the physical world) are to be examined here.

Careful comparison shows that there is no one-to-one relation between the tactics and the IAD variables. For instance, the facilitation of an actor B by actor A by once-only provision of resources can happen in at least three ways:

- By direct provision of B by actor A. In this way A changes the *actor characteristics* of B;
- By motivating a third actor C to provide the resources to B. In this way A changes the *action situation* for B;
- By creating a general rule that gives B the right to these resources. In this way A changes the *rules in the context* of B's action arena.

For the tactics of facilitation by starting a flow of resources and defacilitation by depriving or interrupting a flow of resources the same possibilities are available.

The tactic of (de-) functionalizing however refers to changes in the environment of the actor and would therefore change the physical world as part of the context.

Organizing by creation of an actor, or deorganizing by elimination of an actor clearly changes the action situation. However, this can be done by direct action (injuring an opponent so he has to leave the field) or by use of the (boundary) rules in the context (provoking an opponent to commit a foul that is serious enough to be sent off).

Reorganization is usually applied to 'institutional actors' (organizations) and will involve the use of several types of rules in the context of the arena.

The tactics aimed at changing the motivation of an actor (motivating and discouraging) involve all other tactics, but make them conditional on the behavioral choice of actor B. This implies that it is always the costs or benefits in the action situation that are changed. Again, both direct action and (pay-off) rules can be used.

So far we have seen that the instrumental tactics can be used to change the different variables describing the action arena and its context. The actor who wants to attain his goals, however, has at least one additional instrumental tactic: to change from his current arena to another one (where his possibilities for success might be better). A buyer of a certain good may negotiate with the seller in case he has complaints about its functioning, but he might also take him to court, where his options and pay-offs will be quite different. Likewise, an actor who wants to influence a policy might use the arena of public debate through the media, a congressional hearing or direct lobbying behind closed doors. This possibility of strategically changing the arena can be labelled '*venue shopping*' (Baumgartner and Jones, 1993).

5. STATE MODELS, INSTITUTIONS AND INSTRUMENTAL TACTICS

Above we have presented an institutional and an actor framework for the analysis of behavior. We have also taken the methodological position that these perspectives should be combined in order to understand behavior and institutional change. We explicitly described the links between institutions, behavior and institutional change both from the voluntary institutional perspective and from an actor's perspective, who may involve the use of institutional change as one of its instrumental tactics

One of the topics for further analysis is the systematic comparison, 'translation' and integration of the concepts that are used. Until now, for instance, the concept 'resources' is used in both perspectives, but no systematic comparison of its meaning has been made.

A second topic for further analysis is the interaction between the different elements of these perspectives, for instance between the interaction rules of a state model and the tactics an actor has at his disposal. Within the limits of a state model or an action arena, actors interact on the basis of their motivation and their access to resources. They can choose one or more instruments to obtain their goals. To a certain extent the rules of the state model in question determine 'the play field', 'the objectives of the game', the possibilities for acting etc. The interaction rules limit the choice of instruments, but can also enable actors to choose them. For example: in the uni-centric state model authorities have right to take decisions assigned to their position by constitutional legal rules. This 'freedom' enables authorities or state actors to take other actions (choose other instruments) than citizens. On the other

hand, in a pluri-centric state model, state actors normally have relatively less freedom to act, or at least will have to take into account certain consequences for other network members. Perhaps one-sided defacilitation of resources is in a pluri-centric arena a less suitable instrumental tactic. Though others might go pretty far in concluding that certain instrumental tactics or policy instruments are incompatible with certain state models, such one sided defacilitation by direct regulation with network models (De Bruijn and Ten Heuvelhof, 1995), we believe that the complexity of the interaction between institutional rules and behavioral options to actors, including instrumental tactics, will not result in simple answers and needs a lot more analysis.

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ROMKE VAN DER VEEN

RESTRUCTURING A CORPORATIST WELFARE STATE

Managed Liberalization and the role of the state, the social partners and the market in Dutch social security and labor market policy

1. INTRODUCTION

This chapter deals with recent changes in the Dutch welfare state. I use an institutional perspective. This implies that I do not focus on levels of protection but on the way this protection is organized. Discussing the institutional structure of welfare states I focus on two issues: the way the different functions of the welfare state are organized in particular fields of social policy and the distribution of power and responsibilities across the actors involved: the state, the social partners and the market.

From an institutional perspective it is important to note that the Dutch welfare state, in its organizational structure, is a corporatist welfare state. Corporatist policy making and administration implies exchange and reciprocity between the state and organized interests (in the field of social security and labor market policy: the unions and employers' organizations). Organized interests receive influence on government policies and in return they are recognized and get responsibilities (Van Waarden 1989: 74-79). In practice this implies two things: that policies are developed in negotiations between the state and the social partners, and that state-authority in the sphere of implementation and administration of social policy is delegated to the social partners.

In the analysis of welfare state change the notion of retrenchment is dominant (cf. Pierson, 1994). Change is then seen in the light of the decrease of the level of social protection. The process of change of the Dutch welfare state that took off in the 1980s, however, is much more a process of institutional restructuring than retrenchment, although it started as a process of retrenchment (cf. Van der Veen et al., 2000). The restructuring of the institutional structure in the Netherlands is aimed at increasing the control and activating character of social policies by changing the organization of the different functions of the welfare state in different fields of social policy and by shifting the responsibilities of the state, the social partners and the market. Although it cannot be denied that in the course of the process of restructuring some retrenchment still can take place, it is not and was not the prime objective of the process (cf. Teulings et al., 1997; Van der Veen, 1999).

The process of institutional restructuring is based on a problem definition that developed gradually in the 1980s and that increasingly determined the process of

policy change in the 1990s. Section 9.2 describes this institutional problem definition and its consequences for social policy.

A central element in the restructuring the Dutch welfare state is the *managed liberalization* of social policy. This implies an increasing role of the market in the domains of social policy, but these markets are highly regulated. Managed liberalization raises questions about the feasibility and possibility of control of markets and about the responsibility for the management of markets. These questions are dealt with in section 9.3.

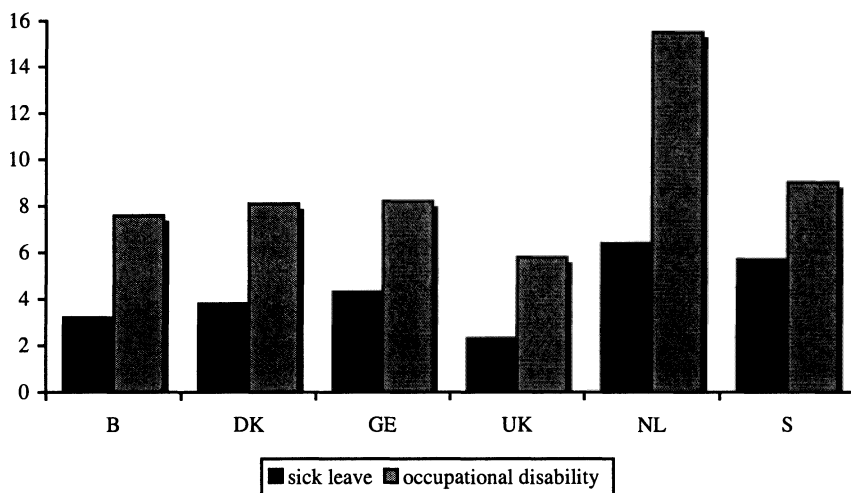
After having described the general background of the restructuring of the Dutch welfare state and the possible pitfalls of a strategy of managed liberalization, I then turn to the actual process of institutional restructuring and its consequences on the fields of social security and labor market policy. I pay attention to the developments in both fields separately (section 9.4) as well as to the interrelation between the fields (section 9.5). In the last section (9.6) I explain the course that the process of restructuring of the Dutch welfare state has taken.

2. RESTRUCTURING THE DUTCH WELFARE STATE: AN INSTITUTIONAL APPROACH

Fiscal problems and economic pressure due to the internationalization of markets, in particular financial markets, are generally seen as the main determinants of retrenchment of welfare states (Pierson, 1994). Although this may be true in general, we have to take a closer look at the peculiarities of specific countries if we want to understand processes of welfare state change and the direction they take. Under the surface of fiscal problems and economic pressures, countries have their own specific problems, problems that are probably more directly important for processes of change. These more specific problems are directly related to the particular structure of the welfare state in question .

The Netherlands, as all welfare states, was confronted with a steep increase in social security take-up and thus with a rapid rise of expenditures in the seventies and eighties, but these problems manifested themselves in a specific way: an explosion of disability and a low level of labor market participation, in particular of women and elderly workers. The extent of these problems was unique for the Netherlands, as is illustrated in the next two figures:

Figure 9.1 Prevalence of sick leave and occupational disability for six European countries in 1990



Source: Ministry of Social Affairs 1995: 84

Table 9.1: Labor market participation in 1983, the Netherlands compared with the EU and the USA (in percentages)

	Men		Women		Total			
	25-54	55-64	25-54	55-64	15-24	25-54	55-64	15-64
NL	85.1	50.5	38.0	12.5	38.5	62.0	30.6	52.0
NW-EU	88.7	56.8	57.8	28.4	48.8	73.4	41.4	63.2
EU	89.1	58.5	51.1	25.0	44.6	70.1	40.7	59.2
USA	86.1	65.2	62.0	39.4	55.6	73.7	51.4	68.0

Source: Ministry of Social Affairs 1998: 27

The unique characteristics of the problems in the Netherlands determined the problem definition that developed. In the 1980s the approach was comparable to that followed by most western welfare states: retrenchment in order to control total expenditure. Benefit levels were reduced, the duration of benefits was decreased, the indexing of benefits was frozen etc. (cf. Visser and Hemerijck, 1997). Although these interventions were successful in terms of expenses, they were not successful in terms of the reduction of take-up of social security benefits. The prevalence of sickness and disability kept on rising and the level of long-term unemployment stayed high, in spite of a prospering economy in the second half of the eighties. As a consequence the discussion shifted from cost reduction to more fundamental issues: the possibilities for increasing the control and activating character of the systems of social security and labor market policy.

In the second half of the 1980s and the first half of the 1990s the problem definition thus shifted from a focus on costs to a focus on the institutional characteristics of the administration and implementation of the social security system. Gradually the *organization* of the systems of social security and labor market policy came to be seen as the main cause of uncontrollability and a lenient administration. This can be characterized as a paradigm change (Hall, 1993; Sabatier and Jenkins-Smith, 1993). The thinking about the motives of individuals and collectivities gradually changed and this led to drastic modifications to the setup of social policy. Social policy can be described in two ways: as a system of rights and duties, and as a system of incentives and disincentives. The paradigm shift that has taken place can be typified as a reversal from thinking about social policy in terms of rights and duties to thinking about it in terms of incentives and disincentives (cf. LeGrand, 1997). Images of individuals, organizations, companies, administrative agencies and administrators as conformist rule-followers underlie thinking in terms of rights and duties. For a long time these images were dominant and they implicitly gave direction to the process of retrenchment in the 1980s. These images, however, have gradually been undermined by the failure to control the levels of disability and long-term unemployment and were replaced by images of individuals and organizations as economic actors. Citizens and organizations are then seen as motivated by self-interest (or organizational interest), and will always weigh up the costs and benefits of conformist behavior. This calculating behavior came to be seen as an important cause of unintended program use and the organizational structure of social security and labor market policy – the corporatist structure – was perceived as an encouragement rather than as a barrier to calculating behavior by individuals and organizations. In such a way of thinking, the public interest requires that these calculations are influenced so that self-interest (or organizational interest) corresponds as far as possible with public goals, that is: conformity to program goals and controlled use of programs.

In the new ‘incentive paradigm’ – the institutional problem definition – high take-up rates are not primarily perceived as the consequence of social and economic problems but as the result of the conscious manipulation and use of the system of social security by individuals (employers, employees and beneficiaries) and organizations (firms, employers’ associations, unions and administrative agencies) on their own behalf. This then leads to high take-up rates, to easy access to benefits and to frustration of reintegration and an active labor-market policy.

An institutional perspective to welfare state change departs from the dominant ‘retrenchment’ perspective because, contrary to the notion of retrenchment, it does not focus on quantitative changes in costs and benefits, but on institutional change, on qualitative changes in the institutional make-up of a welfare state (programs and organization). Instead of costs, program structure, implementation, administration and supervision become the central topic of analysis (Van der Veen et al., 2000).

The shift to the incentive paradigm as dominant paradigm took place in the beginning of the 1990s. In 1992 the Office of the Auditor General published a report in which the Social Insurance Council (the SVR, the organization that was expected to control and monitor the administration and implementation of social security legislation and which was dominated by representatives of unions and employers

associations) was said to have failed completely in its task of controlling and monitoring the administration. These conclusions were confirmed by a Parliamentary Commission in 1993, which drew far-reaching conclusions about the necessity of institutional reform of the system of social security, conclusions that were approved by parliament.

The paradigm change fundamentally affected the thinking about the Dutch welfare state. What was seen as an asset came to be seen as a disadvantage. Until the mid 1980s the Dutch welfare state was characterized by:

- a centralized, corporatist organization of the social and economic policy formation process and of the administration of social security in particular;
- concentration on income compensation and the almost complete lack of an active labor market policy;
- a low level of female labor participation; and
- a lenient and friendly implementation.

The institutional problem definition affects all of these characteristics. 'The Dutch disease' had to be cured by:

- *institutional redesign* of the organized relationships between government, organized interests, companies and administrative agencies by the (partial) dismantling of corporatist structures;
- the *introduction of financial incentives* as an additional instrument of control in the relationship between central and local government, in the relationship with and between administrative agencies, and in the relationship with policy 'consumers' (citizens and organizations);
- *reduction of discretion* of the administration in the implementation process by creating more precise legal rules, by stressing the duties of beneficiaries and other interested parties and by further bureaucratization of the implementation process.

These restructuring strategies had two objectives: increasing the control and stringency of implementation and administration by removing the social partners from the administrative agencies and supervisory boards and increasing the activating character of the Dutch welfare state by increasing the financial responsibilities of employers and by emphasizing and implementing the duties of beneficiaries.

The institutional approach to 'the Dutch disease' led among other things to *managed liberalization* of the welfare state, which implied the (partial) privatization of risks and of the administration. This, however, was implemented in such a way that the range and level of social protection could be maintained as far as possible. In this way the institutional approach tries to save the universalist character of the Dutch welfare state, one of the characteristics that has not (yet?) been affected by the

institutional problem definition. Before turning to the developments in the fields of social security and labor market policy I shall first pay attention to the idea of 'quasi-markets', that is to the use of the market mechanism within the context of social policy, a central idea in the approach of managed liberalization.

3. THE PITFALLS OF A REGULATED MARKET FOR SOCIAL POLICY

The introduction of market mechanisms (prices and competition) in the domain of social policy within the framework of managed liberalization serves the goal of increasing the control of these policies. The increase of control is reached in two ways. Firstly, by making it unattractive to make use of services. Secondly, by stimulating 'the administrators' to guard 'the entrance' to services strictly. The first goal is aimed at by the (partial) privatization of risks. In the sphere of social security this means making employers financially responsible for the first period of sickness and disability, in the hope that this will encourage them to fight the causes of long and short term sick leave and in the hope that this will prevent unintended or fraudulent use of services. The second goal is aimed at by the privatization of the administration. Administrative agencies are transformed into market companies that have to compete for orders.

When we introduce the market mechanism into the domain of social policy this implies that these markets – Bartlett and LeGrand call them 'quasi-markets' (1993) – have to answer two sets of conditions. One set arises out of the goals of social policy in the context of a modern welfare state. The other set is related to the requirements for the functioning of markets. The first implies equal treatment and attention to the needs of clients. The second implies among other things competition, accurate information and transparency. The question is whether these different sets of conditions can be reconciled with each other.

Clients are usually not the buyers in markets for social services. The buyers are often '*third parties*' that operate on behalf of their clients. For example, insurance companies that buy medical care, employers' associations that buy insurance or local governments that buy reintegration services. This implies that the product is often sold in the form of a '*block contract*': a fixed number of services delivered to a fixed group of clients. The phenomenon of 'third parties' and 'block contracts' complicate the functioning of these markets.

Theoretically a number of problems can arise in these markets: vertical and horizontal mergers which can lead to oligopolies, manipulation of information (moral hazard) and risk selection. Mergers are the result of strategies of uncertainty reduction by suppliers by integrating different services (vertical mergers) or by reduction of competition (horizontal mergers). Moral hazard and risk selection too are strategies of uncertainty reduction by suppliers that can occur when it is difficult for buyers to control them, because of information problems or opaque or complex transactions.

Following Bartlett and LeGrand (1993), we can construct the following table of conditions for an efficient and just functioning of markets in the domain of social policy, the problems that can arise as a result of the specific characteristics of the

domain of social policy (e.g. 'third parties' and 'block contracts'), and the risks of introducing markets in this domain (cf. Van der Veen, 1997):

Table 9.2: Conditions for, problems of and risks associated with quasi-markets for social policy

	conditions:	problems:	Risks:
Market structure:	- competition - exit - market prices	- large-scale suppliers and buyers (third-parties)	- oligopolization - no market prices
Information:	- accurate and complete	- complex products - block contracts - incomplete information	- information advantage supplier - opportunism - moral hazard
Transaction-costs:	- certainty - transparency	- complex and multiple transactions - high investments - complexity of drawing-up and control of contracts	- elimination of competition - high transaction costs
Motivation:	- supplier motivated by economic returns - buyer motivated by needs of clients	- third parties - great distance between buyers and clients	- interests and needs of clients dominated by those of supplier and/or buyer
Equal treatment:	- needs of clients determine services/treatment	- block contracts - incomplete information	- risk selection (selection of profitable clients) - no equal treatment

Summarizing: the introduction of markets on the domain of social policy is a complicated process. The efficient and just operation of these markets requires detailed management of the market structure, of the relations between suppliers, buyers and clients and supervision of the functioning of the market. Managed liberalization of the Dutch welfare state therefore created completely new tasks for government: the introduction and management of markets, tasks that dominated the policy debate in the nineties.

In the next section (9.4) I give a rough sketch of the developments in two areas of social policy: social security and labor market policy. Both fields of social policy went through (or are still going through) a transition from a more or less collective and public organization of the field towards privatization. The institutional approach as sketched in section 9.2, however does not only imply privatization but also a restructuring of the roles and responsibilities of the state and the social partners vis-à-vis market parties. As we shall see, this process of institutional restructuring is a complicated process, in which developments in one field, that of social security, are highly dependent on developments in other fields, e.g. that of labor market policy, and have to be tuned to the simultaneous development of a market for social policy. This fine tuning between both processes became a major problem in the process of

institutional restructuring. In section (9.5) I give attention to the interaction between both fields.

4. MANAGED LIBERALIZATION¹

In comparison with other European welfare states the institutional structure of the Dutch welfare state and in particular the systems of socio-economic policy making and social security, were until recently marked by a number of typical features. First, a centralized system of consultation and negotiation between the state, the unions and the employers' associations concerning the development of policies (cf. Visser and Hemerijck, 1997). Secondly it was marked by a complex intertwining of the state and the social partners (unions and employers' associations) in the administration and supervision of social security. Social security was public because of collective and universal regulation of social insurance and social assistance. This regulation, however, was developed and implemented only after intensive and lengthy negotiation and consultation with the social partners in the Social and Economic Council (SER). The further application of these general regulations and the control on the implementation was in the hands of the Social Insurance Council (SVR), a tri partite institute in which the unions and the employers' associations had the majority of votes in the board. The daily administration and implementation of social insurance was the responsibility of the social partners, executed by bi partite sectoral industrial insurance boards. The system of social security was financed by a complex mix of public and private funding. Thirdly, the social security system was concentrated on income compensation; activating measures were almost completely absent.

The process of managed liberalization of social security: privatization and an increasing role of the state

The rise of the 'incentive paradigm' has drastically affected the organization of the field of social security. As mentioned before, the process of institutional change that was set in motion by this new paradigm and the institutional approach that arose out of this paradigm, led to the introduction of financial incentives, institutional redesign and reduction of discretion. I shall discuss these three processes in more detail.

The introduction of financial incentives

The introduction of financial incentives has been increasing since the beginning of the 1990s. This manifests itself in different ways. Firstly, by way of a certain privatization of risks. Privatization of risks, however, takes place under strict legislative restrictions. Secondly, incentives are introduced for administrative agencies, either by way of organizing the implementation of social policy on a market or by way of introducing financial risks for administrative agencies. In the first instance a 'quasi-market' is created for the implementation of social policy, in

¹ This section is partly based on a paragraph in R. Van der Veen and W. Trommel 1999.

the second instance budget size is made dependent on the performance of the administrative agencies, for example the municipality that carries financial responsibility for the implementation of social services.

The financial incentives that were introduced (or strengthened) in the 1990s were mainly directed at employers and administrative agencies. Incentives for employers were introduced by the (partial) privatization of the sickness and occupational disability risk. The privatization of these risks was accompanied by a reduction of benefit rights and of the duration of benefits. These reductions are the so-called 'holes' in the social security legislation.² The sickness insurance was dismantled and privatized in two steps (in 1994 and 1996). Employers are, however, still obliged to pay 70% of the wage during sickness (the first year), they are free only in their decision whether to insure this risk on the private insurance market or not. A similar reform of the occupational disability insurance was introduced in 1998. Employers have two options. They can take the financial responsibility for the first five years of occupational disability (during which they are again obliged to pay benefits which are laid down in the new Occupational Disability Act) and are free to insure this risk on the private insurance market, or they can stay in the public insurance but then they will be confronted with premiums that rise with the number of occupationally disabled in the firm (experience rating). By giving the employer more responsibility for sickness and disability the incentive for firms to develop a policy for safety and sick leave is strengthened (again they are obliged to develop such policies) and it ensures that they will not use the disability insurance to get rid of older or less productive workers.

Incentives were also introduced for administrative organizations in the field of social insurance. This operation is part of a broader strategy to redesign the institutional structure of the field of social insurance.

Institutional redesign

The process of institutional redesign is fueled by the idea that the corporatist structure of the field (existing up to 1994) was the main cause of the uncontrolled expansion of the number of beneficiaries and the low level of labor market participation and reintegration of long-term unemployed or disabled persons. Unions and employer associations were responsible for the administration and monitoring of the implementation of social insurances. They shared a common interest in an easy entrance to social insurances, however, in order to be able to use these insurances as a comfortable exit for massive lay-offs in times of economic decline or reorganization of firms. In this way the costs of reorganization were too easily passed on to public funds. (cf. Trommel, 1995)

This institutional redesign affects the relationships between government, organized interests, companies, social organizations and administrative agencies.

² In most branches and sectors the privatized risks of sickness and disability were again insured – for almost 80% of the working population – often not on the level of individual companies but – through the mechanism of collective labor agreements – on the level of branches and even sectors. Decollectivization (the privatization of risks) thus started a process of recollectivization, albeit at a somewhat lower level of aggregation. See Van der Veen (1998), Van der Veen en Van den Hauten (1999).

The aim here is to separate the responsibilities for policy making, administration, implementation and supervision as much as possible. Combining these responsibilities leads to a merging of public and private interests, which in turn can have unintended and unwanted consequences, as history has shown. Dismantling of corporatist structures is therefore necessary in order to control the incentive structure. An unclear distribution of responsibility and liability will distort the calculations which the parties involved make.

The institutional redesign of the field of social insurance led to:

- an increase in the control and monitoring of administrative organizations,
- a decrease in the role of unions and employers-associations in the administration of social insurance, and
- the creation of a market for the administration of social insurances.

The operation of institutional redesign started in 1994 with dismantling the Social Insurance Council (the SVR). This organization controlled and monitored the administration and implementation of social security legislation and was dominated by representatives of unions and employers associations. The SVR was replaced by an independent institution (CTSV). Also in 1994 a new institution was set up which became responsible for the coordination and steering of the implementation process by administrative agencies (TICA, later: LISV). In 1997 the industrial insurance boards (associations of employers and unions that were responsible for the administration of the social insurances) were dismantled and the administrative parts of these organizations became private organizations. The TICA became the National Institute for Social Insurances (LISV) and the principal of the privatized administrations of the former industrial insurance boards. The unions and employers associations formerly organized in the insurance boards got a new role of advising the board of the LISV. In the year 2000 the market for the administration of the social insurances was to become an open market, until then the existing contracts with the administrations of the former insurance boards were maintained. This, however, has not happened. I shall explain why later, when I discuss the consequences and risks of the process of managed liberalization in section 9.5.

By introducing independent control and monitoring (by the CTSV and the LISV) and by creating a 'quasi-market' for the administration of the social insurances it was hoped that the implementation process could be better controlled and that the administration would become more self-controlled because it has an incentive to operate more efficiently and effectively.

Reduction of discretion

To conclude, many revisions in legislation and regulations were intended to reduce the discretion of administrators and administrative agencies. During the eighties, the realization that discretion could lead to unintended and unwanted consequences, sometimes the very opposite of what was intended, strongly increased. A number of enquiries (Knegt, 1986; Engbersen, 1990; Van der Veen, 1990; Van der Zwan,

1993) revealed that the workers who implemented the social security legislation had considerable discretion. This discretion was caused by incomplete and ambiguous rules, by a discrepancy between the legal program and social reality and by insufficient monitoring of the practices and decisions of street-level workers (cf. Lipsky, 1980). In the daily practices of the street-level workers this led to a neglect of inspection of clients and to insufficient and selective enforcement of rights and duties. These practices were perceived as one of the main causes of the lenient culture that characterized the implementation up to the 1990s.

This has led to further specification of legislation and regulations, to the highlighting and improved implementation of duties, and to further regulation (bureaucratization) of the implementation process. In this way, the legislator aims to narrow the gap between the law as it stands and its practical implementation. Alongside these attempts to decrease discretion, a process of decentralization has taken place in many fields. The social provisions, the administration of which has always been in the hands of the municipalities, were partially deregulated and decentralized. Social provisions now consist of a basic benefit, which is the same for all clients, and of a bonus, which is dependent on the living conditions of clients. Municipalities establish the rights of citizens to such a bonus, but they also have to finance these bonuses. So deregulation of social provisions was accompanied by the introduction of an incentive for municipalities to limit their expenses. Decentralization seems to conflict directly with the goal of reduction of discretion, but that is not in fact the case. Decentralization is accompanied by an increase in financial responsibility. Thus a stricter financial regime, not stricter legislation, should ensure tighter control of implementation.

Deregulation and decentralization did not take place in social insurance arrangements. Here rules were specified, rights were made more selective and the monitoring of the administration was intensified, alongside the privatization of the administration.

The changes that result from the process of '*managed liberalization*' are somewhat paradoxical. There is no suggestion of the state stepping back to leave more freedom to social actors. On the contrary, the state is trying to obtain more grip on the way in which all kinds of actors with a bearing on social policy are acting – this is what is meant by "managed" – and is using the tools of the market: principal-agent relations, incentives and private risks.

Managed liberalization and labor market policy: the labor exchanges in the roller coaster

In their book *A Dutch Miracle. Job Growth, Welfare Reform and Corporatism in the Netherlands* (1997) Visser and Hemerijck state that an exchange between the social partners and the state in 1982 (in the Accord of Wassenaar) laid the foundation for the restructuring and recovery of the Dutch welfare state. The 'Accord of Wassenaar' was an agreement arrived at in the Foundation of Labor between the unions and employers' associations. It sets the stage for future wage negotiations and the restructuring of socio-economic policy. In the Accord of Wassenaar

agreement was reached about wage moderation and the suspension of cost-of-living adjustments. In return, agreement was reached about employment encouragement measures: reduction of working hours and job sharing. In essence it was an exchange of wages for jobs. It was also an exchange between income policies (including social security) and labor market policy. The social partners, the unions in particular, accepted retrenchment and restructuring of the social security system in exchange for a more active labor market policy. The first changes in the system of social security (in the 1980s), freezing of indexation, reduction of benefit levels, arose more or less out of this agreement. The latter changes in the system of social security – the process of managed liberalization in the 1990s – however, arose out of a conflict between the state and the social partners and not out of agreement. This conflict started, as described before, with the report of the Auditor General and the subsequent Parliamentary Inquiry.

The same history applies to the development of labor market policy, as I shall illustrate in this section. What is important to note in this introduction is that developments in social security and labor market policy are related to one another and that there have been exchanges between both policy fields whether negotiated or not.

For a long time labor market policy was the tailpiece of Dutch socio-economic policy. During the 1950s and 1960s socio-economic policy aimed at wage control on the one hand and an income guarantee through social security on the other. This policy was the result of an agreement between government and social partners (after World War II) in which the social partners accepted wage control in exchange for a corporatist organization of social security. Labor market policy was restricted to employment provision for those people who were seen as unable to function on a normal labor market. Not only was labor-market policy the tailpiece of socio-economic policy, it was – contrary to most European countries (cf. Sol, 2000) – not integrated with the administration of social security.

Until the 1970s this approach of labor market policy was unproblematic. However, when unemployment started to rise in the second half of the 1970s, labor market policy finally reached the political agenda. With the aforementioned Accord of Wassenaar an active labor market policy became the other side of a renewed phase of wage control starting in the 1980s. This active labor market policy also affected the labor exchanges, which were the central, though inconspicuous agencies for labor market policy.

Since World War II the labor exchanges were state agencies, governed by the Ministry of Social Affairs. This changed in the 1980s. A more active labor market approach was assumed to profit from a larger commitment of the social partners in the governance of the labor exchanges. The idea was that an active labor market policy was impossible without the active involvement of unions and employers' associations. During the 1980s government and social partners worked towards an institutional restructuring of the labor exchanges in line with the corporatist organization of social security: a tripartite administration with a central and a number of regional boards that were responsible for the functioning of the labor exchanges. This new administrative structure was implemented in 1990.

Next to the 'tripartization' of labor market policy, the labor exchanges lost their monopoly on mediation. The 'market' for mediation was (partially) opened up for private organizations, like temporary employment agencies. Principals on this market are municipalities, social insurance agencies and employers. The administration of labor market policy was however not integrated with the administration of social security, although suggestions in this direction were made. Relations remained limited to a mutual obligation to provide information and to the duty for social security beneficiaries to register with the labor exchange.

The tripartization of the administration of the labor exchanges however did not last long. Already in 1995 a commission came to a negative evaluation of the functioning of the (central) board in its report to Parliament. Since 1995 government has gradually dismantled the only recently introduced corporatist administrative structure, by a number of measures:

- a gradual restoration of the authority of the Minister of Social Affairs (starting in 1996);
- an increase (also starting in 1996) of the market for reintegration by transferring part of the budget of the labor exchanges to municipalities and social security agencies for which they have to buy reintegration-services with the labor exchanges;
- the introduction of Centers for Work and Income (in 2000) in which the functions of registration and claim-assessment will be located;
- the privatization (in 2000) of the reintegration-services delivered by the labor exchanges.

These measures represent a radical shift in labor market policy compared to the intentions in 1990. This shift cannot only be explained by the evaluation report from 1995. It are the unintended consequences of the process of managed liberalization and the interdependencies between the fields of social security and labor market policy that can explain the policy changes that have recently been introduced. In the next section I will elaborate on this.

5. AN INSTITUTIONAL DEADLOCK AND A REVERSAL OF THE PROCESS OF MANAGED LIBERALIZATION?

The unintended consequences of managed liberalization³

In order to evaluate the process of managed liberalization I will first sketch the possible unintended consequences. Next I will illustrate the role these unintended consequences played in the recent developments in the restructuring of social security and labor market policy.

³ I will concentrate here on the institutional consequences of the process of managed liberalization. The consequences for the level and range of social protection will be neglected. (For this see Van der Veen 1999).

Following the analysis of the possible pitfalls of a regulated market, made in section 9.2, I distinguish two main risks that are connected to managed liberalization: the risk of exclusion and the risk of 'market corporatism'.

The risk of exclusion

An increase of incentives and (partial) privatization of risks will lead to greater cautiousness in society. This is deliberate: calculation is encouraged by consciously designed behavioral incentives. When risks are less easily transferred – for example to collective social insurances – citizens and organizations will exhibit risk evasive behavior. A greater risk for employers should lead to prevention of illness and disability. However, undesired forms of risk evasive behavior can also occur. An employer can evade greater risk by applying stricter selection criteria to employees, or by using temporary, flexible labor contracts on a long-term basis. Recent research has demonstrated that both phenomena are increasingly occurring (Andriessen et al., 1995; Van Deursen et al., 1998: 48; SCP, 1996; SCP, 1998: 371, 375). Such undesired risk evasive behavior will also occur in other fields of social policy where managed liberalization is applied. It can manifest itself in selection of clients: an organization focusing its activities on clients that are easily (read: cheaply) dealt with, or in the choice of activities: a housing corporation specializing in building offices and expensive owner-occupied houses.

Such risk evasive behavior can have undesirable consequences. Risk selection in contracting employees hit the weakest categories at the labor market, such as the partially disabled or the long-term unemployed. Policies aimed at decreasing the accessibility of social security (privatization) in this way unintentionally decrease access to the labor market for the most vulnerable categories. This process of selection and exclusion is a risk that can manifest itself in different ways in every form of managed liberalization.

However, it is not the case that managed liberalization leads to more exclusion than a comprehensive, universal and collectively organized system. Taking social security as an example once again: a disability insurance without a private risk for employers also leads to transferal: the shift of weaker employees to the disability insurance. Financial risk for employers curtails this form of transferal. On balance, I believe that managed liberalization does indeed lead to less exclusion, but the problems of exclusion become centered on specific categories. This means that exclusion processes in different fields reinforce one another. This in turn implies that the boundaries between insiders and outsiders will become increasingly sharp.

The risk of 'market corporatism'

The English political philosopher Gray (1997) aptly described the close connections between bureaucracy and companies resulting from Thatcher's new-right revolution as 'market corporatism'. Dependence on powerful unions was exchanged for dependence on companies. A similar risk can also manifest itself in managed liberalization. In practice, the success of managed liberalization is largely determined by the market. The introduction of a quasi-market assumes that there is a

market in the first place. This means, among other things, that there should be competition and that market prices are used. The as yet limited experiences with quasi-markets show that the risk of no market coming into existence is not imaginary. Large-scale merger processes have occurred, for example in the fields of social security and health care, for example between private and public insurers. Through these mergers, the number of parties operating in this market has declined sharply. This can lead to cooperation among parties operating in the market and to conspiracy against the government (cf. Enthoven, 1988). Cooperation and conspiracy undermine the free market, and thereby the process of managed liberalization.

The risks of exclusion and market corporatism can once again undermine the controllability of the reorganized social security arrangements. A hardening of the boundary between insiders and outsiders in the field of social security can impede the goal of activation and reintegration. When no actual market relations come into existence in quasi-markets, controllability, as before, starts to depend on the extent to which the legislator succeeds in steering and controlling the free market, and the courtesy of the parties operating on the market.

It is exactly these problems that have led to increased discussion in the Netherlands about the continuation of the process of managed liberalization and to some remarkable policy changes in the year 2000, which are having a drastic effect on both the sectors of social security and labor market policy.

Recent institutional changes: back to state administration and curtailment of the market

As mentioned before, in the year 2000 the final step had to be taken in the privatization of the administration of social insurances. This step has not been taken and this is due to an increasing level of occupational disability, which is on the increase once again, to developments in the market, and to political problems with the institutional organization of the market for social security and labor market policy. I shall discuss the latter two issues.

Mergers and hybrid organizations

A number of the problems that can develop in regulated markets for social policy, as discussed before, have become manifest in the course of the development of the market for the administration of social insurances in the 1990s. There have been large-scale mergers between private insurance companies and administrative agencies, resulting in a market for the administration of social security in the year 2000 limited to four large organizations that have more or less divided the market between them. These horizontal mergers have been accompanied by vertical mergers between these income-insurance companies, health-insurance companies

and typical Dutch organizations for working conditions.⁴ In this way these companies tried to get control of the complete chain, starting with sick leave and possibly ending with occupational disability, and to provide all the associated insurances and services in one bundle. So the privatization of 'the market for the administration' led to the integration of services and insurances in the hands of the newly formed market parties.

These processes of merging posed two problems. In the first place they led to a concentration of power in the hands of market parties with all the associated risks of opportunistic behavior and moral hazard. In the second place they conflicted with the official policy goal of integration of the function of income guarantee with the function of activation and reintegration. The last function is mainly in the hands of municipalities and the labor exchanges.

The concentration of power in the hands of a limited number of market parties gave rise to a discussion about what came to be called 'hybrid organizations'. These are organizations that at the same time function as market parties and as public agencies, as do most of the new market parties discussed above. In such a situation information can flow from the public agency to the private company (for example information about the working or sick leave history of clients) and thus enable risk selection. It is also possible that public agencies favor the private companies that are part of the same hybrid organization with orders, and thus eliminate competition. Finally, government feared uncontrollable (financial) transactions between the more or less public agencies and the private parts of these companies.

The processes of merger and the associated risks led to a remarkable change in policy in 2000: the reversal of the strategy of privatization of the administration. Government decided to place the administration of social insurance in the hands of a newly to be established government agency.

Claim assessment

Related to the discussion about the risks of hybrid organizations was a discussion about who was to become responsible for claim assessment: that is, the assessment of the rights and duties of citizens. For a long time it was more or less tacitly assumed that this had to be a task of the privatized administrative agencies. The problems that started to manifest themselves on this market, resulting in possible risk-selection, elimination of competition and new forms of uncontrollability, however, gave rise to a public discussion about claim assessment. Three issues dominated this discussion.

In the first place the question what would happen if private companies became responsible for claim assessment. Would this not increase the risk of selection? It was argued however – by the CTSV – that privatization of the administration implied privatization of claim assessment too. Both processes are so intimately intertwined that it is impossible to separate them. Although most political parties acknowledged this, their fear of risk selection remained.

⁴ The privatization of the sickness risk in 1994 was accompanied by an obligation on employers to hire services devoted to the control of sick leave and working conditions and rehabilitation of the long-term sick from (also privatized) companies for working conditions (the 'Arbodiensten', as they are called).

The second issue in the discussion about claim assessment concerned the integration of functions. Government had always intended that the function of income guarantee should be integrated with the function of reintegration. Besides the process of privatization of social insurance, government was therefore working on integration of these functions in newly to be formed Centers for Work and Income, in which private administrations (the market organizations for the administration of social security) and public (municipalities and the labor exchanges) ones had to cooperate. The development of the market for the administration of social security, which led increasingly to integration of functions in the hand of the market parties, started to conflict with the idea of integration of functions with these centers. The idea of the Centers for Work and Income – under the conditions produced by the process of privatization of the administration – also implied that competitors had to cooperate in these new centers. According to many commentators (again including the CTSV), this would lead to insurmountable problems due to conflicting interests. Finally, government also intended to give the task of claim assessment to the Centers for Work and Income, because it was seen as pivotal in the process of reintegration. This too, as mentioned above, conflicted with the process of privatization.

The third issue in the discussion about claim assessment concerned the concentration of power in the hands of the market parties and – as they used to be called – the social partners. Because the privatization of risks had led to reinsurance of these risks on the level of branches or even sectors,⁵ the market for social insurances was dominated – again – by the social partners, now as principals, and the newly formed market parties. This concentration of power led almost all political parties to fear for new forms of uncontrollability of social insurances.

After a fierce political debate, in which a number of solutions were presented, government decided recently to reverse the process of privatization of the administration of social security, to establish a new state agency for the administration of social insurance in which the almost completely privatized administration of the former industrial insurances boards have to merge, and to establish new state agencies on the local level in which the integration of the income guarantee and reintegration function has to take place (the now completely public Centers for Work and Income).

6. PARADOXICAL RESULTS OF THE PROCESS OF MANAGED LIBERALIZATION

The evolution of the institutional structure for social security and labor market policy based on the ideas of managed liberalization has resulted in an unpredictable and peculiar result. The hitherto mainly *perceived* risks of selection and market-corporatism, possibly resulting in new forms of uncontrollability and ungovernability of the system, have led again to a rearrangement of the relations between the state, the social partners and the market. The process started with the following ideas:

⁵ See footnote 2.

- the state as manager of a system of collectively established rights and duties,
- privatization of risks and of the administration, and
- the social partners placed at a distance from the daily administration in advisory boards.

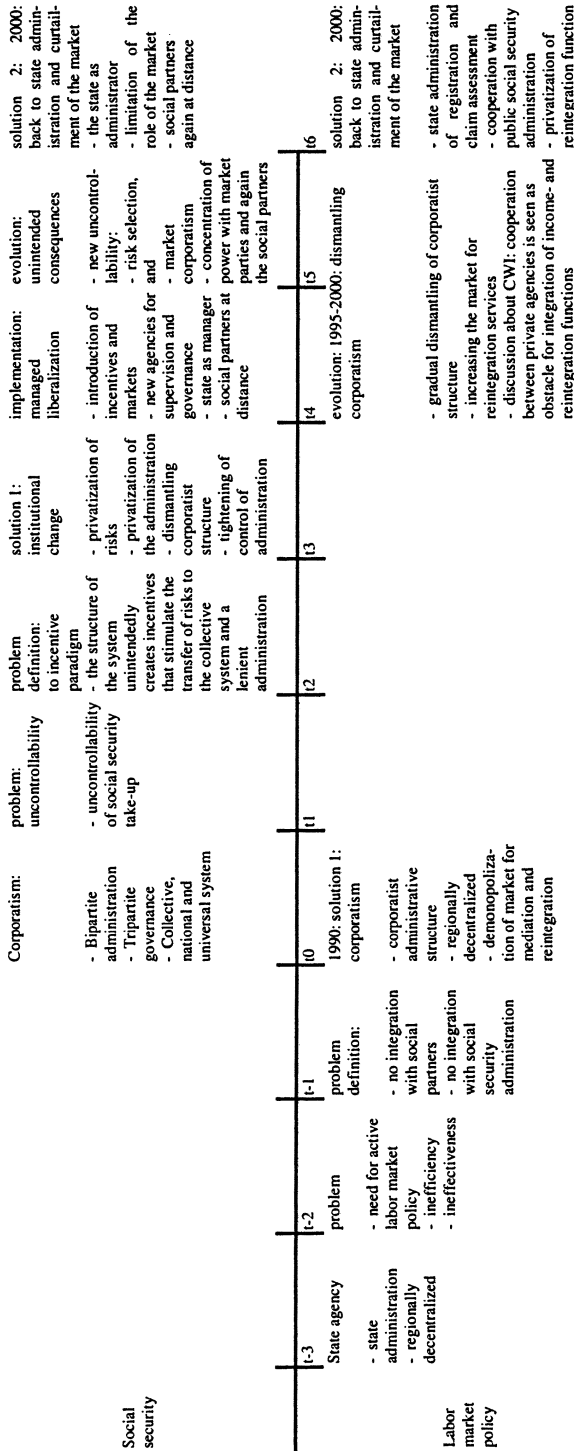
Autonomous processes of the development of markets and recollectivization of risks undermined these ideas and resulted, paradoxically, in an institutional structure in which:

- the state becomes the main administrator of social insurance, a role which it had not had before and which did not intend to assume at the start of the process of managed liberalization,
- the market is now concerned with the insurance of the partially privatized risks and with reintegration and working condition services, and
- the social partners are still involved in the policy making process and are again placed at distance from the daily administration.

Figure 9.2 shows the evolution schematically.

In the process of managed liberalization of the Dutch welfare state two issues have caused major problems: the fine-tuning of market development on the one hand with institutional redesign on the other and the interdependencies between the fields of social security and labor market policy. These problems result first out of the fact that the process of institutional restructuring is not a process of liberalization *per se*, but liberalization that has to contribute to the viability of the welfare state in the future. This implies that liberalization should affect the social protection of citizens as little as possible and has to contribute to the controllability of the welfare state. The goals of social protection and controllability, however, started to conflict increasingly with the (perceived consequences of the) actual developments that were set in motion by the process of managed liberalization. This produced the remarkable shift in the restructuring process that has occurred in 2000. Secondly, these problems are the result of the fact that the developments on the field of social security did not run parallel with developments in the field of labor market policy. Institutional changes were implemented sooner in the field of labor market policy than in social security, but before the shift to the incentive paradigm took place. The incentive paradigm had drastic consequences for the role of organized interests that

Figure 9.2 The process of restructuring of labor market policy and social security



did not fit with the tripartization of the labor exchanges that was implemented in 1990. Thirdly, at the start of the process of managed liberalization in 1993/1994, no one really considered the way the administration of social security was interwoven with the labor exchanges. Although government subscribed to the general goal of integration of functions, deliberations of the institutional consequences of this goal were postponed, probably due to the recent restructuring of the labor exchanges in 1990.

The Dutch welfare state is still a corporatist welfare state. Organized interests, however, take less responsibility for the supervision and administration of welfare arrangements than before. The experience with the uncontrollable expansion of social security take-up in the seventies and eighties made political parties wary of the role of organized interests in supervision and administration. Although the process of restructuring the Dutch welfare state took off with the idea of shifting responsibilities from organized interests to the market, it resulted in a shift of administrative responsibilities to the state. The new institutional structure, with a more prominent role for government, as outlined in the beginning of this section, however, has to be typified as the unintended result of the process of managed liberalization.

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THEO A.J. TOONEN

ADMINISTRATIVE CONDITIONS TO INSTITUTIONAL POLITICS: FEDERALISM IN AN UNITARY STATE

1. INTRODUCTION

The Netherlands is a paradoxical case in comparative public administration and comparative political science. On the one hand it is often seen as one of the most centralized state systems in Western Europe. On the other hand the system exhibits the institutional characteristics of a fragmented and disjointed 'consociational' consensus democracy. The institutional features of both political and administrative systems are traditionally characterized by differentiation, plurality and diversity. This strange marriage between unity and plurality is reflected in the self-imposed label of the constitutional structure as a 'decentralized unitary state', a label that merely seems to underscore the hybrid nature of the system (Toonen, 1990). The combination of the characteristics of a plural consensus democracy with those of a unitary rather than a federal structure – which would have been in line with the more common pattern – makes it a case of its own in comparative studies (Lijphart, 1984). This case is difficult to assess in comparative terms and therefore intriguing in academic terms.

What seems paradoxical or conflicting from an international comparative perspective is less difficult to understand from a 'holistic' understanding of the institutional development and the institutional logic of the system itself. International comparison is often set up from one theoretical dimension. An 'holistic' understanding requires a configurative analysis combining different theoretical angles into one approach (Heady, 1996; Bekke, Perry, Toonen, 1996). In this contribution I bring together some separate research on different aspects of the plural Dutch decentralized unitary state structure. I use the 'elusive' institutional concept as an interface to link and relate legal, political and administrative dimensions of the system to each other in an effort to understand the institutional development of the system as a whole.

My point of departure is the basic assumption underlying the NIG research program: that institutions are both facilitators and constraints for processes of governance. In this chapter I concentrate on administrative institutional infrastructures and how they have both facilitated and constrained the institutional build-up of governance structures and processes in the Netherlands.

I start by briefly outlining some paradoxical features of the Dutch system of governance and administration, particularly at the regional level (section 10.2). I then try to explain these paradoxes by looking at constraints and opportunities posed by the institutional development of Dutch state structures to the development of the political and the administrative system in mutual interaction. I briefly describe this historical development (section 10.3). The next step is to show how the legal institutional design of the decentralized unitary state facilitated administrative conditions that constrained hierarchical forms of politics (section 10.4). This facilitated the development of a consensual orientation and a functional political federalism, which had consequences for the administrative organization. The institutional development of a functional federalism in the political domain constrained, among other things, the development of the legally designed entity of regional governance and administration in the administrative domain: the province (section 10.5). This, in turn, facilitated the emergence of bureaucratic forms of regional governance, which up until the present day constrains the development of an effective institutional infrastructure for regional politics and policy (section 10.6).

2. REGIONAL PARADOXES IN A UNITARY STATE: A CALL FOR CONSTITUTIONAL ANALYSIS

The institutional political system of the Netherlands and its development, has mostly been described in terms of a 'pillarized system'. Dutch society for a long time consisted of Catholic, Calvinist-protestant and 'humanist' subsocieties and subcultures at the mass level, forming the 'pillars' of society as a whole. The humanist group is usually subdivided into a socialist and 'liberale' (free) pillar. Each of these were more or less societies in themselves, with their own political parties, newspapers, radio and television stations within a centrally co-ordinated broadcasting system, trades unions, employers' associations, agricultural associations, cultural, recreational and social organizations.

This system of pillarization started to emerge from the middle of the 19th century onwards: 'The strong institutional build-up of Calvinist and Catholic organizations led to a strong segmentation of the Dutch nation in separate subcultural communities of Calvinists, Catholics and more secular groups' (Daalder, 1971). This lasted in its full form until the end of the 1960s. It was presumed to be held together by elite co-operation through a well-developed institutional system of rules of the political game, identified as 'the politics of accommodation' (Lijphart, 1976). This consisted of a number of unwritten but very real decision-making rules, which furthered a 'consociational' and consensual, rather than a confrontational type of politics, which supposedly held the system together. This created the picture of a 'unitary' society, subdivided into three fairly institutionalized vertical social structures (catholic; protestant; socialist) and one less tightly organized one ('Liberale', i.e. Free or Conservative), among which there were hardly any 'overlapping' memberships and virtually no interactions at the mass level.

Four 'pillars' stood side-by-side, with only 'elite' interaction by the leadership of these pillars within the national political system at the top: national politics as the accommodating roof over a divided Dutch society. After the 1960s the system

started to crumble, but Dutch society still reflects many political, institutional and cultural remains of 'Pillarization' up until the present day.

For at least two reasons, this institutional system and the way it has traditionally been analyzed deserves further attention here. First, where traditional political theory predicted instability, the Dutch society actually had been very stable and peaceful over a relatively long period of time. In political theory the benevolence, statesmanship and oversight of the national political elites are generally adduced to explain this. It has been pointed out that the segmentation of society also provided an easy cartellization of the electoral market in the self-interest of political leadership, but the view from the top as such has not been challenged.

The institutional behavior of the political elites – be it out of benevolence or out of self-interest – has never really been explained. Why did the Netherlands get the – benevolent – leadership it needed? And, if motives were not all that benevolent, why did the self-interested behavior of the national elites not degenerate into the devastating actions and processes which in the end seem to be the result of such behavior elsewhere? What caused the invisible hand that obviously managed to combine self interest with a desirable collective social outcome?

Second, merely seen from the territorial division and regional concentration of the different religious groupings ('Zuilen') in terms of majorities, it is actually remarkable that a pluralist country like the Netherlands never faced the territorial and separatist regional claims and demands that have occurred in countries with a similar degree of cultural and political diversity. The territorial dimension of Dutch pillarization might perhaps not be so strong as in Belgium for example, but in terms of political majorities, the different 'pillars' clearly had their pediments in different regions of the country. The south and southeastern region constituted the catholic homeland. The Protestants dominated in the band that runs from the southwestern to the north and northeastern region. The smaller and in any case less well organized social-democratic and conservative ('free' or *liberale*) 'pillars' had their territorial roots largely in the urbanized and therefore automatically more heterogeneous western part of Holland.

Despite this clear territorial dimension of the system of pillarization, there has hardly been a 'regional' debate. Public opinion sometimes reflects some envy of the Randstad region (the urbanized western part of the country) by the North or the South. The latter accuse national politics of a mobilization of bias in favor of the first. But this debate is more often gaged in functional 'urban-rural' terms, than in political regionalist contradictions.

The absence of a regional conflict deserves a closer look at the legal, political and administrative structure of the country. The obvious assertion, that regional conflict must have been averted by a strong central rule and national government control, will not do. In empirical comparison, the unitary states of Belgium and the Netherlands stood out as the disturbing deviant cases among pluralist societies (USA, Germany, Switzerland, Austria, Canada) which were all characterized by a decentralized and federal state structure. Even a reference to the 'sociological

federalism' (Lijphart, 1984: 186) of Belgium and the Netherlands could not present a convincing explanation for the exceptional position of both countries.

The ongoing 'regionalization' and (con-) federalization of Belgium implies that this country, in the meantime, went into a direction that is in accordance with contemporary political theory: plurality coupled to federalism. The Dutch state system, to the contrary, is still characterized by a fairly underdeveloped role of the meso or regional level of government, i.e. the constituting elements of the former Dutch Republic: the provinces.

Institutional analysis may help in understanding and explaining some of these puzzles and paradoxes. More notably, the 'forgotten tradition of constitutional analysis', which Vincent Ostrom has not ceased to bringing to the attention of institutional analysts (Ostrom, 1986, 1982), may be of use. A constitutional analysis tries to understand the operation and development of a system of government and administration from the underlying pattern of rules, forces and opportunity structures embedded in the institutional configuration which 'constitutes' a system of governance.

The constitutional approach to institutional analysis forces us to link the political, the legal and the administrative dimensions of the state which – in combination – constitute a system of governance. In the case of the Netherlands this has seldom been done. The political, legal and administrative systems of the Netherlands are usually treated independently from one another and studied in different academic circles: political science, public law and public administration, respectively. However much criticized in theory, the actual study of government in the Netherlands is often based on an implicit separation of politics, law and administration. Political scientists seldom pay attention to the peculiar administrative structures of the Netherlands. PA and policy analysts often do not incorporate the peculiar political and social structures into their analysis. They also tend to treat Law merely as an instrumental 'tool' and not as a constitutional dimension of policy and administration. Students of Comparative Public Law do not in general pay much attention to the political, social and bureaucratic contexts within which the legal system has to operate.

As a consequence we also have to operate with a diffuse meaning of the concept of institutions. It means different things to people of different disciplinary backgrounds. 'Institution' is therefore generally seen an elusive concept. The diffuse meaning of the concept of institutions is mostly perceived to be a problem. The 'elusiveness' may, however, also be seen as an asset. It provides a common denominator – an 'interface' if you like – for linking different schools of thought, each preoccupied with their own specific meaning of 'institutions'.

Concepts have no meaning outside of the broader theoretical framework in which they play a part. One might also say they have a *different* meaning outside of the theoretical framework in which they play a part. This means that taking them out of their established theoretical or disciplinary contexts, models and traditions opens the potential for whole new perspectives on classical issues in political and

administrative theory, with potentially broader implications than only with regard to the one case at hand.

3. INSTITUTIONAL TRANSFORMATION: CONSENSUAL GOVERNANCE IN THE DEVELOPMENT OF THE DUTCH STATE

Federalism in the United States, Switzerland and in the Low Countries, i.e. contemporary Netherlands and Belgium, can be traced back to the reformation of the 16th century. Protestantism has played an important role in developing the federal idea and Protestantism has dominated large parts of the historical and ideological development of the Netherlands. Federalism in the Netherlands should be seen in the perspective of the Reformation and its consequences for political thought as formulated by Calvinist theorists especially the French Huguenots and the 'founding father of federalism' Althusius (Hoetjes, 1992).

Several factors have prepared the ground for revolt and reform in 16th century Germany – 'the Holy Roman Empire of the German nation' – where emperor and pope had struggled for supremacy and which was the hotbed of the Reformation. In the church serious abuses had developed and profit and power prevailed over religion and theology. The pope made extreme claims for power in religious as well as worldly affairs. Deep divisions had developed within the church, a visible sign of all that discredited the church.

Four centuries later, with the benefit of hindsight, one might argue that the Reformation on the European Continent was the beginning of a parting of the ways between religion, politics and man, between church and state. Governments throughout Europe at all levels were confronted with the question of how to establish and defend 'true Christianity' and found themselves taking sides.

The Calvinist position towards government, which is relevant to the Dutch case, was rather ambivalent (Banning, 1964: 104-136; Sabine, Torson, 1975: 339-347). Calvin's theory offered ways for a justification for resistance: the right and duty of subordinate magistrates to resist tyranny by the head of the state (king or emperor) and to protect the people against him. A much more elaborate version of this principle was developed by the French protestant Huguenots into a revolutionary and anti-monarchical Calvinism. Huguenot theorists set out their arguments in the *Vindiciae contra tyrannos* (1579), which became the famous document in the struggles between kings and people. The basic idea was that the actual resistance should come from the people as a corporate body, i.e. through lower ranked magistrates, the nobility, the estates, local and municipal officials each in their own territory.

Dutch federalism

Theorizing along the same lines and in the same tradition, but in a more systematic contractual and 'federal' framework, was Johannes Althusius (1557 - 1630) (Elazar, 1968; Friedrich, 1975, Hoetjes, 1988). Althusius was influenced by the French Huguenots and the Calvinists of Geneva. He became rector of the Calvinist University at Herborn, County Nassau, in Germany, where his employer was Count Johan

the Elder, who was the younger brother of William of Orange, leader of the Dutch rebellion. Althusius developed a political theory logically based on concept of the contract and owing substantially nothing to religious authority. In his rather Aristotelian philosophy, human social life is based on implicit and explicit contracts. Any human association - *consociatio* - by which man becomes a social being, is based on a contract regulating the sharing of services, goods, and laws among the members of the group.

In this vision society is based on a series of contracts between various levels of nested and therefore increasingly complex associations: family, voluntary corporation, local community, province, and state. In advanced groupings the associations rather than single individuals could be the contracting parties. In each case the new 'higher' or more embracing group assumes the regulation only of those activities which are necessary for its purposes, leaving the rest in the hands of the more elementary constituent groupings. In this conception, the state arises from the association of provinces and local communities and has its sovereignty, which is, however, never unconditional.

It is important to note that Althusius does not use the term 'Federalism', but his theory could be considered both federal and subsidiary in the modern sense. His theory strengthened the Calvinist rebellion against Spain in the Low Countries, where the seven revolting provinces had joined hands in the Treaty of Union in Utrecht in 1579. This eventually gave birth to an independent Federal Dutch Republic with the Treaty of Westphalia (1648). The Republic of the United Provinces was basically a war organization dominated by the province of Holland and the larger Dutch cities. The Union of Utrecht constituted a weak federation. Only matters of war were subject to common decision making. The Republic was more confederal than federal in nature. One might perhaps even say that the willingness of the cities and provinces, apart from the external threats and opportunities, to stay together was induced by the very weakness of its common 'federal' institutions.

Nevertheless, the Republic became a major power in 17th century European and World politics. In the 18th century its power started to wane and its political and administrative system lost many of its credentials internationally and locally. By the late 1700s Althusian ideas of federalism were also heavily criticized both with arguments derived from royal absolutism as well as, during the French Revolution, on the basis of principles like popular sovereignty. In North America the Dutch federalism served as a negative model: the federal constitution of the 13 united states was not to follow the example of the Seven Provinces in the Low Countries.

In retrospect this might be seen as more or less the end of the official Dutch federalism and the recognized Dutch influence on the international development of ideas and theories of federalism in and outside Europe. Also, within the Netherlands itself, the legal, political and administrative developments from the end of the 18th century onward, are seldom perceived, conceptualized or analyzed in terms of 'federalism'. In 1795 the Republic of the United Provinces was replaced, under French domination, by the unitary Batavian Republic which was modeled along the

lines of the constitutional ideals of the French Enlightenment and the French Revolution. After the defeat of Napoleon in 1815 the Republic was transformed into a monarchy headed by the House of Orange. Notions of federalism, however, were not revived. The basic structure of a unitary state inherited from French occupation was sustained.

The formal-legal constitutional structure of a unitary state has placed the Netherlands largely outside the attention of observers preoccupied with questions of federalism ever since. Also within the Netherlands, federalism is nowadays largely understood as a foreign – non-Dutch – state structure and one that would all in all be less than desirable for the Netherlands.

Dutch unitarism

At first, in the 19th century, the negative experiences with government and administration in the federal Dutch Republic and later, in the 20th century, a fear for separation and fragmentation of Dutch state and society have been the main driving forces for a lasting preference for unitarism above federalism, as far as the structure of the Dutch state is concerned. Up until the present day – often with the Belgian experience in mind as the case in point – federalism is mostly presented in terms of an undesirable threat to the unity of the Netherlands.

The consolidation of the unitary state in 1815 after French occupation had ended, did not constitute a completely centralized system. Parliament was to be bicameral, providing for a separate Chamber (Senate or First Chamber) representing the provinces and elected indirectly by the Provincial councils. Also, the legal autonomy of provinces (regional government) and municipalities (local government) was laid down in the constitution.

The principle of decentralization, as well as the bicameral system, was confirmed by the major constitutional revisions that took place in the middle of the last century, and which introduced the still existing constitutional foundation of the modern Dutch state. The Dutch constitution since 1848 requires that provincial and municipal government organization and reorganization has to be rooted in law, i.e. subject to parliamentary decision making. The subsequent Provincial (1850) and Municipal Government Act (1851) constituted, or better, confirmed, a state structure which consisted of three layers of government: a national, a provincial, and a local, i.e. municipal layer of government.

From the 1920s onward Dutch national government has systematically used para-governmental, not-for-profit organizations, in addition to or instead of municipal or provincial government as the vehicles to carry out government policies (Van Poelje, 1931). Particularly in the area of cultural affairs, including the broadcasting system, education, schools, health care, social insurance, water management and social housing this so-called 'functional decentralization' (as against the 'territorial' decentralization of provinces and municipalities) has become an important way to institutionalize the policy organization.

Within the system of intergovernmental relations, the emphasis is on central local relations. The regional government – the province – has been rather unimportant,

politically and administratively, ever since the beginning of the 19th century. The lack of regionalism, is remarkable, in a way. In cultural scope and political ambition there is no comparison in the Netherlands with the socio-cultural movements that have captured the debates on regionalization in other European countries. This is true despite the fact that for a long time, and still, there has been a fundamental regional disparity in terms of the strong major religious groups or pillars (*zuilen*) into which the Dutch population and political structure has been mutually divided.

4. THE ADMINISTRATIVE CONDITION OF POLITICS: THE MOBILIZATION OF CONSOCIATIONALISM

The constitutional design of the middle of the last century was later labeled ‘the decentralized unitary state’ (Toonen, 1990). The constitutional work has been conducted under the leadership of Johan Rudolf Thorbecke (1798 - 1872). It is important to note that Thorbecke was strongly inspired by the German Historical Law School and the corresponding organic state theory (Rottenleuthner, 1988, Beuckers, 1983; Boersema, 1949; Verkade, 1935). Placing himself within this Romantic reaction to, among other things, the rationalist principles of the French Enlightenment and dogmatic and centralist – Jacobean – interpretations of the principle of popular and therefore parliamentary sovereignty, Thorbecke was very critical of a centralized unitary state structure along the lines of the French model.

Instead of a top-down model, in which central state authority is necessary to maintain the unity and give direction to a system, Thorbecke was thinking far more along the lines of the necessity to constitute a complex consensual system. The basic idea with Thorbecke is not that state authority is necessary to create unity, but, to the contrary, that a certain degree of unity – read consensus or political will formation – is necessary to generate state authority. A degree of agreement among the component parts of the compound state – citizens, communities, regional and national groupings – is considered necessary for acceptance (legitimacy) of collective decisions by citizens and the different other parts and elements of the state.

To Thorbecke, the state was a compound and complex system of nested units, in much the same way as Althusius’ conception of a ‘federal’ system, described above. Rather than a ‘contractual’ relationship – which had received a special connotation in relation to the ideas of Rousseau and the French revolution – Thorbecke conceptualized the interrelations between state and component parts as a dynamic, living and constantly evolving ‘organic’ relationship. This concept may be seen as a juxtaposition to ‘mechanistic’ conceptualizations of the state as a machine or a contractual ‘tool’ in the hands of a central ruler (Hobbes) or the people (Rousseau).

Tools and instruments are to be manipulated from the outside. As a living – organic – entity, state institutions are considered to have a dynamic institutional life of their own. The ‘binding allocation of values’ should, in Thorbecke’s political and administrative theory ultimately rest upon acquired legitimacy, not authoritative force. State authority (legitimacy) may be an accumulating and reinforcing resource, but it has to be yielded and cultivated. It is social capital. In Thorbecke’s

perspective, therefore, state authority does not precede unity, but unity (consensus) precedes state authority.

Rather than a hierarchical form of 'steering', Thorbecke's concept of the 'unitary state' actually comes down as the concept of a 'consensus state'. The primary task in constituting a state system is to enable and facilitate individuals and their collective movements – governments and otherwise – to build 'unity' through institutional arrangements for consultation, negotiation, mutual adjustment and conflict resolution.

Consensus does not mean unanimity, complete agreement or shared goals and values. Consensus might just as well take the form of 'negative co-ordination', agreements to disagree or multi-lateral package deals and agreements on means instead of goals.

Autonomy and co-governance (medebewind)

As an analytical point of departure, the original Thorbeckian state theory underlying the conception of the Dutch unitary state provides a different interpretative framework than the hierarchical (monocentric) frame of reference which is nowadays more commonly used to understand the institutional development and the operation of the system. The 'unitary' overall character of the constitutional-legal Dutch state structure has led many to overlook that, actually, Thorbecke's constitutional design only gave comparatively weak opportunities for unilateral, top-down central steering and central control.

Provisions for provincial supervision of municipalities and national supervision of provinces in Thorbecke's perspective constituted only a 'negative' power of higher authorities to block, nullify or suspend decisions of lower authorities. All other forms of 'positive' steering, unless more or less supported and consented to by subnational, sub-state, forces would require considerable effort and display of political resources to enforce them.

Within the state structure the policy execution process was often put into the hands of sometimes provincial, but mostly municipal authorities. This principle of co-governance – provinces or municipalities carrying out policy for national government departments – was already implicit in Thorbecke's constitutional design and understanding of the Dutch unitary state. It became legally more fully developed in the 1880s, when the principle of co-governance was also formally written into the Dutch constitution. It has been practiced ever since. The practice of co-governance in specific legislation in different policy areas constitutes a basic interdependence relationship in the policy and management processes across levels of government.

The basic features of indirect steering by veto and blocking powers (supervision) and a general right to rule one's own affairs (autonomy as a general competence) is therefore complemented by a structure which constitutes a system of interdependence and co-production of policy among various levels of government (co-governance). The institutional set-up of the intergovernmental system is not as 'centralized' as one might have expected from a unitary state. Within such a system,

there is ample opportunity to challenge, modify, redefine, renegotiate and relocate national decisions.

Stated otherwise: in such an administrative system it is very hard to centrally deliver public services on the right time, in the right form, on the right territorial spot. Nationally taken decisions will have the tendency to 'trickle down' instead of being effectively and centrally 'spatially targeted'. 'Pork-barrel politics', regional clientalism, spatial favoritism, political balkanization and other potentially destabilizing political strategies in a system of territorial plurality, are 'constitutionally' discouraged. Administrative power which has to put (national) political decision making into effect to decide 'who gets what, when and how', is much too dispersed and 'unpredictable' as to enable a centralist mode of national policy implementation.

Even if the winner could take it all on political grounds, the winner was less likely to get it all on administrative grounds. The system provides ample opportunity to take back at the base what is lost at the top. This awareness of dependence promotes a gradualist and consensual approach in policymaking at the center.

It is within this general institutional context of the 'decentralized unitary state' that the typical development of the Dutch political system from the middle of the last century onward has to be understood. The institutional structure of the decentralized unitary state provided an administrative condition to politics. The administrative structure implied by the decentralized unitary state provided an institutional containment of national elite in the non-bureaucratic implementation process. In matters of implementation there was little opportunity for unilateral steering. Certain polarizing types of politics and adversarial strategies are institutionally discouraged by a subtle system of checks and balances and intricate interdependencies. The legal structure of government and administration are tools, but at the same time constraints on the behavior of political groups and elites. The intergovernmental structure provides an institutional basis for politics. Since this is largely taking the form of a non-hierarchical administrative condition, there is an institutional mobilization of bias towards accommodating and consensual approaches.

Seen as an evolutionary model, this perspective could help explain the deeper origins of the accommodating elite behavior that has characterized Dutch politics over a long period of time. The analyses suggests that the formal legal and basically 'non-hierarchical' set-up of the intergovernmental system of Thorbecke's decentralized unitary state in the middle of last century has provided an institutional infrastructure which has been 'cocooning' national politics.

Control of government did not automatically mean control over public service delivery structures. The overall institutional structure prohibited administrative effectiveness as far as deliberate territorial or regional political strategies were concerned. This forced the elites into a co-operative position, rather than a position of direct central control usually associated with a 'unitary' system.

Of course there will be a consistent efforts to bypass the complexities of this institutional structure and arrive at more 'direct', 'effective' and 'powerful' means

for government intervention. The desire for more possibilities for direct intervention by the national government can still be heard up to the present day. The absence of possibilities for direct central intervention, compounded by the consensual nature of the plural political system, has led to an incentive to try to bypass the formal framework.

The build up of 'pillarized' structures may easily be interpreted as a successful effort to bypass the formal democratic structures of the intergovernmental system. It may be understood as an institutional development to create more direct, informal linkages between center and periphery than following the formal intergovernmental path would allow. This development served both top-down interest from the center as bottom-up interests from the region, at least as long as the 'pillarized' system was able to function properly and deliver its promises.

In his comparison of the Netherlands and Switzerland, Kriesi (1990: 433-448) clarifies, that *Swiss federalism* and *Dutch pillarization* have fulfilled many of the same functions in coping with the plurality of both societies and corresponding political systems: 'federalism and pillarization constitute two alternative mechanisms for the integration of subcultures into a larger national community' (Kriesi, 1990: 437). Among other things, he concludes that the '... enormous difference between the two countries concerns the intermediate level of government, which is most important in Switzerland, while it turns out to be almost nonexistent in the Netherlands' (ibid: 437).

Kriesi refers to a long historical development in which particularly the Catholic elites in both countries have been looking for their institutional interest representation, both in terms of the emancipation of the catholic section of the community as in terms of the protection of their leadership interests. In Switzerland, besides religion, there were more factors (language, culture) affecting the diversity of society. This diversity encouraged the catholic elites to withdraw in the 'catholic homelands' (Kriesi, 1990: 440), i.e. the cantons in the central part of Switzerland. They used the institutions and procedures of federalism to accommodate religious and other societal cleavages.

In the Netherlands not a territorial ('federal'), but a functional system of accommodation has emerged over time. Kriesi concludes, that once the resistance of the catholic conservatives in the southern catholic 'homelands' of the Netherlands – the provinces of Brabant and Limburg – against pillarization was broken, '... pillarization was no longer impeded by regional considerations' (Kriesi, 1990: 441).

5. THE POLITICAL CONDITION OF INSTITUTIONAL ADMINISTRATIVE DEVELOPMENT: 'PILLARIZATION' AS REGIONAL GOVERNANCE

The institutional build up of pillarization took place within the constitutional framework of the Netherlands, laid down in 1813 and revised in 1848. By concentrating attention almost exclusively on the national political system as a 'summit diplomacy among a limited number of coherent actors' (Kriesi, 1990: 442), like

much of political science has done, one easily overlooks the decentralized, administrative and regional dimension the Dutch 'vertical' integration structure.

To begin with, the consensus within the pillars should not be overestimated (Daalder, 1990). Political consensus is never given and has to be constantly elaborated. The 'passiveness of the masses' within the pillars and the extent to which the elites 'commanded' and the rank and file members 'obeyed' the order of a given pillar, is much overstated (Scholten, 1980; Pennings, 1991). The relative autonomy (discretion) of executive agencies – be it organizations, individual citizens or local governments – from a viewpoint of Public Administration may not easily be overestimated. Principal-agent dynamics existed already in administrative law and the study of public administration long before they were also discovered by (institutional) economists.

By looking at it from this organic, institutional perspective it becomes obvious that the pillarized system and the politics of accommodation not only provided mechanisms for integration *across* pillars. They must have been instrumental equally well for accommodating and integrating the differential functional economic and social interests that were grouped together *within* the different pillars. Within the pillars the various functional interests of (catholic, protestant, socialist or 'free') labor unions, political parties, employer associations, cultural groups and organizations had to be integrated. This is by nature and because of the difficulty of centrally 'steering' the compound administrative structure of the Dutch decentralized unitary state described earlier, not a simple 'top-down' or hierarchical process.

The system of pillarization may be seen as a system of governance and represented next to a sociological and political order also an administrative framework. It has often been observed that many functions the government essentially regarded as falling within its province were in effect performed with government subsidy by denominationally or ideologically based organizations (e.g. Van Doorn, 1996). Tasks that in other countries would have been performed by the government bureaucracy at the national, local or regional government levels, became the subject of independent executive organizations of various forms in the 'pillarized system'. These executive organizations were operating in the 'intermediate' institutional area between government and market. We would probably call this 'agencyfication' these days, and certainly identify the institutions as Quango's: Quasi Autonomous Non-governmental Organizations.

As we know, institutions like this and processes which amount to their establishment raise profound administrative questions in terms of steering, control, supervision, co-ordination, accountability and transparency. The pillarized structure provided an administrative home to these executive organizations. Whatever the (democratic) quality, they have provided guidance and control to the 'agencies'. The structures of pillarization themselves formed an intermediate institutional layer between the state and these organizations. We know very little about how this system operated and was managed on a day-to-day basis. The topic has mainly been the subject of normative speculation in terms of a presumed lack of control in

dubious 'networks'. Pillarization should, however, be studied as a form of network management. What historians should unravel is the operation of the internal coordination and integration between the various functions clustered into one pillar.

Whatever the findings, the governance system called 'pillarization' is not very well understood when perceived as a mere arrangement for centralized control and central steering. It also provided an institutional framework for 'bottom up' consensus formation and interest integration in an also regionally diversified country. In representing their functional interests, the different pillars implicitly, almost on a continuous basis, were also dealing with many 'regional' interests of the subcultures involved, even though – or perhaps because – these issues were seldom represented as interregional problems. The rule of the politics of accommodation 'to agree to disagree' and to stress 'points of agreement instead of conflict', implied that the fundamental regional differences and different regional backgrounds of the pillars were defined as non-issues in Dutch politics. Distributional problems were resolved by the rule of 'proportionality'. Dutch politics of accommodation have never been characterized by a 'winner takes all' position. The strategy has been to distribute the costs and benefits of all kinds of policies – from budgets for schools and welfare organizations to appointments of mayors and top civil servants – proportionally to the relative size of the various pillars. This way the 'regional' distributional issues have also been resolved.

In this system regional and interregional questions and problems are handled and resolved in passing. Pillarization does not have to be established for the purpose of regional governance or the defense of regional interests in order to acquire and perform some functions in regional governance. When the pillar elites were negotiating the funding of schools, there was a fair chance that the Catholic school would be located the Southern region, the protestant school in the Northern region and the Public School in the western region. And there was also a fair chance that public schools in the Northern or Southern region were most likely *de facto* to have protestant or catholic pupils anyway. Seen in this way, the pillarized system constituted not formally or legally, but *de facto*, the system of regional governance of the Netherlands. Because of the exclusive attention to the sociological and political aspects of pillarization and consociational democracy, and a preoccupation with 'governments' when the issue of 'governance' is at stake, it has been systematically overlooked that one is also dealing with an institutionalized system of public organization and administration.

Pillarization of Dutch society constituted an institutionalized pattern to deal with *interregional* distributional issues as well with *intra*regional problems. Intermunicipal issues and city-rural area conflicts were resolved along the lines of intra-pillar pressure and accommodation. These institutional arrangements for 'non-governmental' regional governance were more effective in the Southern and north-eastern provinces than in the Western Randstad (coastal conurbation) region. In the latter case the social and political distinction between the pillars often reinforced the functional distinction between central city ('home' of the social democrats) and the

suburbs ('home' of the conservatives, catholic or protestant 'pillars'). This is why urban regions in the Western part of the country have always experienced a 'regional steering deficit', which was not recognized – or was deliberately neglected – by the protestant and catholic pillars which have dominated national politics for such a long time.

The pillars constituted vertical channels of communication and decision making between the national and regional political arenas, largely by-passing the 'formal' intergovernmental set-up of the decentralized unitary state. The fact that they were not formalized in the legal sense does not make them any less 'real' as a part of the constitution of the Dutch system of governance up until the 1960s. There is also no need for a one-to-one relationship of 'pillar' and 'region' in order for the pillar structure to fulfil 'regionalized' function. From the perspective of the constituent regional communities, and seen over a longer period of time, pillarization has constituted a more effective system of regional accommodation and interest representation, than a 'federal' system of accommodation – as in Switzerland – would have implied.

One should realize that there were many Catholics living in several important cities 'above the rivers'. The position of cities and city networks is an integral part of the issue of regionalization. The advantage of the pillarized form of regionalization even has some advantages over the territorial (provincial) form of regionalization. It allows regional leaders to 'hop over' territorial regions and to serve people in areas not immediately adjacent to one another. Within the territorial form of 'regionalization' using the provinces as vehicle for regional politics and policy, some of the Catholic 'city-regions' would not as easily be integrated into the 'Catholic regionalization' (or city) networks as they would be under the pillarized system of regionalization. The same reasoning would apply to the protestant communities.

To put the analysis into a comparative perspective: think for a moment of the headaches the Walloon region had in finding a solution for the French-speaking community in Brussels, not to mention the economic importance of keeping Brussels an integral part of the regional configuration. The solution has partly been found in differentiating between 'Regions' (*Gewesten*) and Communities (*Gemeenschappen*). One could say that the Regions deal with the territory-oriented physical infrastructure and the Communities with the people-related cultural infrastructure.

This is admittedly a very crude simplification of the enormous complexities of 'Belgian regionalization'. But the main point is that by separating these two components, one is able to design a complex but flexible regional governance system, which one allows in principle to deal with the very common and sometimes violent regional issues that arise out of the situation in which there is a mismatch between the location of the territory of a cultural region and the people who belong to the cultural region. It allowed for a way to keep the Brussels agglomeration also part of the Walloon regional administrative system. The 'virtual region' sometimes allows for practical solutions without the creation of corridors.

One could also formulate it differently. The 'Northern Netherlands' itself has followed the 'typical Belgian solution' to their territorial and regional problems for about one hundred years. The 'metaphor' would be that the provinces fulfilled the role of the Regions (territory and physical infrastructure) and the Pillars the role of the Communities (people and cultural infrastructure).

Rivaling institutions

By automatically playing a partly regionalized card while solving their functional distribution problems, the pillarized executive structures basically forced the designated regional government – i.e. the province – out of the business of regional governance. The institutional political structure interfered with the institutional legal structure of the Dutch intergovernmental system. The fact that the provinces played such an unimportant or better an invisible role for a long time in Dutch politics is not by institutional design or because of a flaw in this design. As a matter of fact, if one were solely to compare the legal-formal status of the Dutch province with other European systems, it would probably come out as one of the 'meso-structures' legally best equipped to deal with the modern regional questions.

Pillarization has – intentionally or not – provided national government precisely the kind of institutional bypass to municipal government that the national governments are nowadays so afraid of in the relationship between the European Commission and 'its' regions, i.e. the regions that are politically important to them. At times of the reconstruction of the Dutch unitary state in the middle of the 19th century a fear existed for the return of the federalism of the Dutch Republic. National and municipal government therefore had a tendency to by-pass the previously predominant provinces as much as possible.

The indirect nature of doing administration via the administrative infrastructure of the decentralized unitary state, provided an additional incentive for national government to bypass the regular state structures for public service delivery altogether and to set up a para-governmental social organization to carry out state tasks directly vis à vis its political clientèle. Given the nature of the problems current in the basically rural society that the Netherlands at that time was, the two governments could relatively easily divide tasks among themselves.

The perspective developed here may clarify why the Dutch provinces were never really able to get hold of the regional issue for which, in the (legal) constitutional design, they were not only meant, but also – in terms of legal and administrative position – fairly well equipped. Regional and interregional issues and conflicts of a somewhat larger scale and more complex nature did arise towards the turn of the century. They followed from the social and economic transformations caused by the industrial revolution that washed over Dutch society from the 1880s onward. The situation, thus, was ripe for dovetailing the constitutional steering capacity of the provinces with the emerging regional economic problems of an industrializing and urbanizing society. However, by that time the institutionalization process of pillarization described above had already made its beginning at the local level.

Starting from the middle of the century, this process – in retrospect – was characterized by a relative peak even before 1900 (Pennings, 1990: 101). By the time

the constitutional meso – the province – could have been set into gear, a rivaling form of intermediate and ‘regional governance’ had developed: one that also channeled much of the other political issues and the political energy and steering capacity within the system. The system of pillarization thus overtook the legal constitutional set up. It provided the institutionalization for regional governance, already before the constitutional meso (the province) had satisfactorily been able to resume its designated job.

6. CONCLUSION: CONSEQUENCES FOR CONTEMPORARY INSTITUTIONAL DEVELOPMENT

In this contribution a constitutional analysis of the Dutch system of governance has been tried by linking the political order, the legal structure and the civic culture of the Netherlands. It is concluded that the specific configuration of institutional arrangements across these domains has helped to create an administrative condition to politics in which non-consensual tactics and strategies were discouraged – not because they were forbidden, but because administratively they would be less effective or even contra-productive. A form of pragmatic politics was stimulated, not because it was prescribed, but because it was induced by a ‘constitutional’ structure of governance characterized by interdependency, power sharing and opportunities for ‘unity-building’ or consensus formation.

This institutional structure induced not only a pragmatic type of national politics. It also stimulated efforts to ‘change’ the constitutional structure of governance by going outside the formal legal IGR set up and build different institutional links with the regions of the Netherlands. In retrospect, this has been done so effectively that regional governance hardly ever entered the agenda as a political problem and therefore was mistaken for a ‘non-issue’. Regionalism has hardly become an issue in the Netherlands since pillarization – among other things – also provided an effective form of regional governance by which regional differences could be ‘accommodated’

The preceding analysis has thorough implications for the analysis of ongoing events in the Dutch system of governance. Everybody agrees that the process of depillarization, which started in the middle of the 1960s, is continuing – slowly and steadily. Many observers are now willing to admit that the political system is in need of modernization. In the analysis in this chapter it is suggested pillarization was not only a sociological and a political, but an administrative phenomenon as well. Pillarization provided the Dutch society with an integrated decision making infrastructure, which might have had its defects in terms of democratic content and decision making capacity, but which needs to be replaced once it starts to fall apart. This analysis suggests that many of the ‘modernizations’ and unexpected ‘crises’ in Dutch politics and administration are actually the by-products of a fundamental change in the underlying constitutional structure of the system of governance. Many Dutch administrative analysts are only able to look at the surface and perceive a permanent incident and crisis management as the leading principle of today’s policy. The perspective developed here suggests that we look behind the crises and perceive

current developments as a reflection of changes in the underlying – ‘constitutional’ – dimension of the Dutch system of governance. We are living in an age of reconstruction and the crisis and incidents, as well as the efforts of the liberal-socialist Purple Coalition to deal with them may be interpreted as signals of institutional change and transformation.

Implementation federalism

In this reconstruction process, the issue of federalism should not easily be dismissed as irrelevant to the Dutch case as it often is. Seen from a slightly different point of view, there are more ‘federal’ elements to Dutch society than a mere look at formal government structures is bound to reveal. In the Netherlands, it seems, we are not about to reinvent government – we do not have to – but we might need to reconstitute the system of governance, particularly in the region.

Although not federal in the strict sense of a territorial state organization and despite its unitary and centralist image, the structure and development of the Dutch overall system of governance exemplifies many traits, that in another country would probably be presented and analyzed in terms of federalism. The foundations of this formally incomplete *de facto* federalism lie in a functional federalism in the social organization of Dutch society and – borrowing Kriesi’s term – implementation federalism in the relationship between national legislation and subnational, particularly municipal policy implementators. Implementation or co-operative federalism means that national and subnational governments work together, not in sharing their autonomy, but in combining national (or European) rule setting and legislation with local and regional execution and enforcement. In order to be effective this requires well-developed intermediate and mediating institutional arrangements.

Many problems, which over the past few decades have characterized Dutch sub-national intergovernmental relations, can be explained by the fact that this *de facto* federalism – inherent in the principle of co-governance – has not been recognized by official – legal – theory and the rationalist doctrines of Dutch policy analysts. These are still very much operating on the basis of a unitary image of Dutch intergovernmental relations.

Let me take one example and look at one of the last domains in which the pillarized tradition still has a lasting impact. The analysis applies equally well to the domain of social economic policy, mental and physical health care or cultural politics, all former domains of ‘pillarized administration’.

Educational politics were at the heart of the politics of pacification within Dutch pillarization. In all its complexity, the highly differentiated educational system did function for a long time because there was an intermediate level operating as a buffer between government and executive agencies, in this case schools and school systems. This intermediate level may be criticized and has been criticized for its lack of democracy, for ‘Consociationalism and all its dangers’ (Berry, 1991: 136). But the fact is that it has gone. With it went the function of the executive in the network society, which was also being performed within this institutional arrangement.

Pillarized structures fulfilled the role of bringing together various functional interests on an ideological or religious ticket. One might or might not appreciate the ticket, but it functioned as an integrative force. In modern terminology one might label this a form of 'cultural co-ordination' for and within 'the civil society'. Within the pillars, and therefore within many regions, it would link schools to employers, cultural institutions, labor market organizations, churches, police organizations, sports associations, health care systems, etc. It would have made the school an integral part of a broader socio-economic system. Now, under the present institutional conditions, the intermediate level has been removed, and the school system is confronted with a sectorally organized bureaucracy, specialized and professionally competent, but unable to provide this cross-sectoral 'network environment'. The school functions within 'the educational sector', not the social, local or regional environment. Managerial solutions will not do. Functional performance will not be enough to survive as a vital organization in the long run. The educational system needs to be reintegrated into the broader social environment. To this end, regional institutional development is as much if not more necessary than improved educational policies and professional school management.

If pillarization had not existed, we probably would have to invent it in the near future. Since it has existed, we will have to reinvent forms of functional pillarization at the regional level within the Dutch system of governance. Education and schools play an increasingly important role in efforts to formulate a new urban policy, integrating, on a territorial basis, many of the functions that in the model were attributed to the institutional structures of pillarization. The quality of education at schools is increasingly dependent on the developments in the area of welfare politics, youth policy, the multicultural society, labor market, and the criminal justice and police system. The development of a 'broad school' concept requires a modification of Dutch physical and spatial planning policy. There is a clear need for institutional infrastructures, which provide a regionalized administrative and political framework for functional co-operation and policy partnerships at local levels of government.

If not provided, the long-term development of a refined and potentially tailor-made system of education is bound to 'unify'. If not under conditions of centralization, this unification will be achieved by competitive market forces. Either form is a threat to the plural society the Netherlands has always been, and, in a different form, will continue to be.

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PUBLIC GOVERNANCE IN EUROPE: A HISTORICAL- INSTITUTIONAL TOUR D'HORIZON¹

1. INTRODUCTION

This chapter presents an international and historical overview of various types of states, administrations and ways of public governance in different European countries and the United States. The aim is to broaden the present debate about public management developments in Western administrations by placing it in an international comparative perspective, as well as a historical institutional one. The point of departure of this chapter is that the assertion that administrative reforms in Western countries converge towards one common 'new public management', is too simple. Indeed, managerial reforms are inevitable because of the underlying budgetary stress, but the national circumstances do matter, do exercise influence, and do differ. The main thesis of this chapter is that the institutional context of a particular state and administration is relevant for the form and content the reforms assume there, and for their success and failure. Introducing 'public management' reforms irrespective of the underlying institutional foundations of a country's state and administration, is doomed to be a quickly fading fashion. Western states and administrations do differ considerably in many relevant respects. Understanding these differences requires insight in to their institutional backgrounds, and hence into the history of their state and administration. Before embarking on this *tour d'horizon*, let us further elaborate the main thesis.

Common trend of management reforms

According to the trend reports of the OECD (1990, 1993, 1995), most Western public sectors are adopting a more 'managerial' and 'businesslike' approach to administration. The Western world is apparently converging upon a common trend of 'new public management' (Hood, 1991; Pollitt, 1993), that is, the introduction of techniques of business management, a greater orientation to service and the client, the introduction of market mechanisms and competition into public services. Indeed, there is no doubt that the severe fiscal crisis necessarily leaves no other option to the public sector than to reduce costs, increase effectiveness and efficiency, deliver 'more value for money', hence to become more 'businesslike', and to 'work better and cost less'. According to this financial-economic line of argument, this common convergent trend of 'new public management' is quite understandable.

¹ An abbreviated version of this chapter will be published in a mini-symposium edited by B. Guy Peters and John Pierre in the journal *Public Administration*.

Management and public governance

As has been elaborated and illustrated elsewhere (Kickert, 1993; 1997a), and will not be repeated here, public management, government steering, or 'public governance', as we might better term it, requires more than effectively and efficiently running the 'government's business'. Public governance has a broader meaning than the restricted business-like, market-oriented interpretation of the term 'management'. Public governance is related to legality and legitimacy and more than strict business values. In public governance the context of political democracy and *Rechtsstaat* plays a crucial role, as do the external orientation at the social-political context, the complexity of administrative relations, and the specific character of 'governance' in complex networks in societal policy sectors (Kickert et al., 1997).

Institutional and historical context

When public management is more broadly interpreted as public governance, the institutional context of a country's state and administration evidently becomes very important. Public governance cannot be separated from its institutional context, the organization and functioning of a nation's administration, and the latter cannot be seen detached from its historical development and traditions. Maybe the internal organization and management of some particular public agency at some moment in time might be examined apart from a national historical context, but the way an administration 'governs' its societal sector can surely not be regarded without that socio-political historical context. In this chapter the historical-institutionalist variant of the 'neo-institutionalism' approach (March and Olsen, 1989) is adopted, with which it is assumed that the readers are familiar.

International and institutional perspective

Current administrative reforms in e.g. the British, German or French government cannot be rightly understood without some historical, institutional insight into the particular traditions of the British 'gentleman amateur' civil service, the German *Beamtentum* or the French *haute fonction publique* (Rouban, 1998), particularly when the reform trends tend to resemble typical North-American business management. For it does not seem odd that in the 'homeland' of business management, the 20th century United States, such a development has penetrated the public sector (see e.g. Kickert, 1997b). But it is remarkable that a country such as Great Britain with its long, unique tradition of highly esteemed civil servants as the traditional public school and Oxbridge educated 'gentleman amateur', must suddenly give way to a new business-like 'public manager'. Also remarkable is that in a continental European country like Germany, with its long *Rechtsstaat* tradition and its highly legalistic administration, the traditional European Weberian bureaucracy in the 1990s transforms into 'public management' (König, 1997).

The characteristics of state, politics, government, administration and bureaucracy, differ significantly between Western countries. Some insight into institutional and historical differences between the administrations of various

countries might be useful to understand the contemporary trends in administrative reform, especially when these apparently form a departure from traditional administrative practice, which undoubtedly is the case when public management is introduced in a traditional European Weberian administration.

Brief international and historical survey

As Finer (1997) shows us in his *magnum opus*, the history of the modern state and government in Europe was preceded millennia ago by extremely interesting and relevant forms of government and administration in the middle East and in China. In our review, however, we shall, not go back to 3200 BC, nor consider the entire world, but restrict ourselves to Europe and the United States in 'modern times' (Finer, 1954; Finer, 1997; Gladden, 1972; Page, 1992; Wickwar, 1991).

We begin with an outline of the history of some states and administrations. This historical review of state formation and development of administration will be kept brief so as to highlight only the main features without becoming unacceptably superficial. The usual classification of Europe into Napoleonic, Germanic and Anglo-Saxon types of states obliges us to pay substantial attention to the three large European countries: France, Germany and Britain. In order to explain the differences between the United States and Europe, explicit attention is paid to that country as well. As will become clear in the course of this chapter, our interest is not only in the large states of Europe and the United States, but also in the smaller continental European states. The Netherlands is presented as a case that deviates from the usual European pattern.

After the historical introduction, attention is paid to the juridical dimension, the different legal systems of states. The end of the medieval absolute monarchies, the 19th century beginning of constitutional democracy and *Rechtsstaat*, ensured that the public law system henceforth played a predominant, essential role in the continental European 'nightwatch' states and administrations. The difference between the continental European 'public law' system and the Anglo-Saxon 'common law' system is fundamental and essential. The scholarly community studying public policy and administration today, almost completely lacking any historical awareness, does not seem sufficiently acquainted with those essences.

The survey will then proceed to its ultimate point of interest, a review of different types of 'public governance'. Here it will be argued that it is not only the large states of Europe that are interesting, but particularly the smaller continental states, because many of them are similar in two main aspects of public governance, that is, the political aspect of consensus democracy, and the social-economic aspect of neo-corporatism. The Netherlands is a clear and highly institutionalized example of these aspects of public governance. After a brief theoretical outline of consensus democracy and neo-corporatism, attention will be paid to some empirical examples, for which we chose to review the recent history of four small European countries: The Netherlands, Belgium, Switzerland and Austria, all of which are probably hardly known at all to a foreign audience.

Modest aspirations of the review

The modest aspiration of this international and historical review is merely to get some insight into the various countries' administrative histories in order to obtain a contextual picture of their various forms of public governance. The authors are well aware that the dilemma of presenting too many themes within the limits of an article inevitably leads to superficiality. Administrative historians and scholars of comparative politics will undoubtedly be horrified by the broad and brief, and sometimes maybe almost erroneous overview, but they are not our intended primary audience. Our primary intention is that scholars of and those engaged in administrative reforms and public management might acquire some reflective insights and ideas from the brief and broad international and historical perspective. Historical awareness is a precondition for understanding the future.

2. HISTORY OF STATES

In this section we take a brief historical look into the early stage of the formation of nation states in Europe in the late middle ages. Starting with the prototypical process of state formation via absolute monarchies, the difference between continental Europe and Great Britain is shown, then the even greater differences between the United States and Europe, and finally the review reveals how much the Netherlands diverges from the normal European pattern. The assertion is that it matters for public governance whether a state is strong, weak, or even stateless.

State formation. Absolute monarchy

State formation is defined as the process of achieving state sovereignty and centralization of authority within a nation state (Tilly, 1975). State sovereignty consists of an external and an internal aspect. External sovereignty is obtained by creating secure borders and being capable of defending them against threatening enemies from across the borders. Internal authority is created by establishing central rule and order by a single authority.

The formation of nation states in Europe was a stage of development which followed after the middle ages with its fragmented societies and total lack of central authorities. Medieval feudalism consisted of a large number of independent small estates each headed by a separate independent landlord, who ruled autonomously over his piece of land. A country as a common whole did not exist, it consisted of separate and independent estates and was an 'anarchy' without central national power.

Only in the course of the middle ages did a *primus inter pares* arise from amidst his fellow landlords, who with great trouble and after numerous combats was finally recognized as the common leader of the united landlords. Because he had proven to be an effective warlord in defending the common lands, he was granted central command over the combined troops, to which each of the separate landlords promised to deliver men and goods. Subsequently he also acquired the internal leadership of the common lands, that is, first the financial authority to levy taxes in

order to pay for the army and the wars, and later the juridical authority to unify the various feudal rules and impose central rules and jurisdiction. Civil and administrative authority were the concluding part of the process of centralization of authority. The *primus inter pares* had gradually become an absolute monarch. The absolute power over the country was impersonated in the King. In Europe that normally formed the origin of the nation state.

So in many European countries, like Russia, Prussia, Habsburg Austria and France did the centralization of authorities lead to the formation of absolute monarchies. The king assumed charge of central national power and strong national administrations developed. The central command of the Hohenzollerns from Berlin was famous and feared (Hartung, 1950). The French origin of the word *étatisme* illustrates the Parisian authority of the Bourbons. The Habsburg monarchy controlled from Vienna an empire that encompassed just about the whole of middle Europe (Taylor, 1990). Likewise was the forceful hand of the Russian Czars well known.

Variety in state formation

Although the process of state formation via absolute monarchies seems to be prototypical for Europe, the variations in state formation between different countries are large. Various nations have followed different paths of state formation, different ways and degrees of centralization of power, leading to differences in 'strength' of nation states.

One of the possible explanations for the differences in state formation is the geopolitical positioning of a country, for state formation at the outset was primarily a process of creating and defending borders. A country like Prussia, lying in the Mid European low lands and surrounded by no natural borders except the Baltic sea, experienced a much stronger necessity to build a strong national army and authority than the insular Great Britain which was surrounded at all sides by sea barriers. Various models and theories of state formation have been developed in political science (Rokkan, 1975; Tilly, 1975, 1990). Tilly (1990) distinguishes two factors of state formation: 'force' (sword power) and 'capital' (merchant money). In his view most European states have either been formed by the power of armed forces or have originated as a result of merchant money. Tilly indicates a range from merchant states starting in the Mediterranean South from merchant city states like Venice and Genoa, across Europe up to the North Western river deltas of Holland and Flanders. According to Tilly's theory another important factor in the rise of nation states was the 'distance' from the catholic power of the church in Rome, distance being either interpreted as geographical distance from Rome or religious distance from Catholicism. Tilly also mentions the importance for state formation of a common language and culture.

Great Britain

In many respects Great Britain differs from continental Europe, and so does the formation of its state. In Great Britain authority was centralized to a lesser extent

and sovereignty became vested in parliament instead of the monarch. The process of centralization of power and authority on the isle of Great Britain did lead to the establishment of a monarchy but not to the full subjection of the nobility to the central authority. The power equilibrium between the monarch and the nobility was reflected in the concept of 'sovereignty of the (queen in) parliament'. At that time the aristocracy reigned in the House of Lords and Commons. The executive and judiciary were subordinated to parliamentary sovereignty. Although Great Britain is an example of state formation through monarchy, it does differ from the European pattern. Great Britain had a 'weaker' centralization of state authority. One of the explanations is the weaker military necessity, as the island is fully surrounded by the obstacle of the sea. A relatively slow, gradual, more 'organic' development of state institutions took place in Great Britain.

The United States

The United States differ strongly from the European pattern of state formation. No wonder, as the country was only 'discovered' in the late middle ages, and was populated by colonists who had fled from Europe due to suppression by absolute state (and church) authorities. After the war of separation from Great Britain a state was proclaimed and a constitution established which was the prime example of liberal democracy (and admired by the French revolutionaries). Whereas in most European countries a liberal constitution was the 19th century transformation stage in a centuries-long process of state formation, the American constitution at the end of the 18th century in fact formed the beginning of this 'state'.

The constitutional founding fathers of the United States emphasized the fundamental freedoms of speech, faith etc. Never again should the colonists who had fled to the country be oppressed by a totalitarian powerful state. The American constitution consists of guarantees against centralization of state authority. The process of 'state' formation in the United States, as e.g. reflected in the debate about the constitution in the 'Federalist Papers', is dominated by the fear of a mighty central state. That 'state' is based upon the diffusion and disperse of power, upon 'checks and balances', upon the democratic principle of 'pluralism' as the fundamental political back bone of the United States.

The United States in fact represents a counter-example of centralization of state authority. Power was highly decentralized, both geographically – federalism would prevent 'Washington' from becoming an overpowering center – and functionally – the *trias politica* of Montesquieu which explicitly separates the executive, legislative and judiciary. In that sense the United States is typically a 'weak' state. According to Waldo (1948) and Stillman (1991), the United States is even a 'stateless' state. Notice that 'weakness' of a nation state, in this sense, did not prevent the United States from becoming the world's 'strongest' superpower.

The Netherlands

Let us turn to another exception from the normal European pattern. The Netherlands is also an example of a country which during its 'golden century' was a colonial

great power on the international seas, as well as a European power against Spain and Great Britain, although it had hardly any central state authority at the time. In smaller continental European states like the Netherlands and Switzerland, the struggle for freedom against the Habsburg *Heilige Römische Reich* (Holy Roman Empire) resulted in a decentralized state. In the so-called Dutch 'Republic of Seven United Provinces' there was as a matter of fact hardly any unity at all. Power remained in the hands of the highly autonomous provinces, of which the province of Holland was by far the richest, contributed most to the state budget, and therefore dominated the Republic's state affairs. The only central state authorities were the 'Estates General' – the Dutch parliament – and the 'Stateholder' – the central commander of the army and navy (the Prince of Orange). Notice that the function of commander of the armed forces is a mighty position in times of war, but that during periods of peace – which occasionally happened at the time in Europe – the position was weak, the more so as the tightfisted Dutchmen usually refused to pay for an army and navy in times of peace. Notice furthermore that at a time when everywhere in Europe monarchies were established, the Netherlands made a revolutionary choice for a republic, though of course the *Zeitgeist* made them request a nobleman to lead the revolution against the Spaniards. Another difference from the normal European pattern is that – at least in the dominant province of Holland – power was not in the hands of the landowner-based aristocracy, but in the hands of the wealthy patricians in the rich merchant towns. During the geopolitical heyday of the Dutch Republic the municipal merchant elites were in charge of a particularistic 'state'.

Only at the end of the 18th century did the notion of nation-state arise in the Netherlands. Centralization of state authority actually took place during the French occupation (mainly for the sake of effective tax collection to pay for the French Napoleonic wars). After the defeat of Napoleon and the liberation from the French, most of the central state authorities were maintained. Until the early 19th century the Netherlands actually lacked any central state authority. This tradition is also reflected in the delicate local-central government balance in the 1848 constitution of the 'decentralized unitary' state of the Netherlands. So traditionally, and until quite recently, the Netherlands was a 'weak' state.

3. HISTORY OF ADMINISTRATIONS

Current modern administrative reforms in e.g. the German, French and British administrations cannot be fully comprehended without some insight into their institutional traditions, especially when the reforms form a clear departure from the traditional administrative practice. So let us take a brief look at the history of the administrations in these three countries.

Germany

The outstanding European example of a traditionally mighty state bureaucracy is Prussia (Crankshaw, 1981; Finer, 1954; Hartung, 1950; Hattenhauer, 1993; Page, 1992; Wunder, 1986). The area lay in the North East lowlands of middle Europe, was open on all sides, was surrounded by powerful enemies like Russia, France, and

above all, the mighty Habsburg monarchy which reigned over the whole of middle Europe and at the time had the uncontested hegemony over German-speaking Europe. The geopolitical necessity to create a strong and powerful army was evident here. Under the three famous Prussian Hohenzollern Rulers – the Great Elector, Frederick William of Brandenburg (1640-88), Frederick William I (1713-40) and Frederick the Great (1740-86) – the Prussians developed into a mighty nation state, which ultimately, under Bismarck in 1870, even defeated Habsburg Austria and became the leader of German Europe. Under the Hohenzollerns the different Prussian estates were united in a process of centralization and militarization. An extreme degree of centralization of state authority occurred under Frederick the Great, firstly as an administrative system for military affairs, later also for civil affairs. The mighty bureaucracy developed into a professional body of experts with life-long employment in the service of the state. A special educational system was set up to prepare the bureaucrats for their job. The quality of the state administration was secured by formal entrance examination, planned career system, hierarchical command lines, etc. A special science – *Kameralistik* – was established at Prussian universities for the training of future civil servants, including not only law and economics, but also mathematics, chemistry and physics and various other subjects necessary to administer every sector of Prussian society, such as technology, economy, infrastructure, housing, health, education, et cetera (for a broader historical review of the study of administration, including *Polizewissenschaften*, the French *études de la Police*, and developments in other countries, see (Rutgers, 1993).

The strong juridical orientation of the continental European German *Rechtsstaat* dates only from the 19th century. Only after the French revolution, the introduction of the capitalist free-market economy and liberal ideology, did the role of the state become reduced to that of a *Rechtsstaat*. The role of bureaucracy in the 19th century liberal capitalistic ‘nightwatch’ state was reduced to legislation, implementation and jurisdiction. Such a state only needed lawyers. The only relevant study of public administration was constitutional and administrative law. The 19th century German administration became populated by lawyers. All higher ranking officials were lawyers. That *Juristenmonopol* still exists.

France

A striking difference from the highly professional Prussian administration was that during the *ancien régime* of the Bourbon monarchy, public offices could be bought from or gifted by the crown and were even hereditary. Due to the many French wars and the consequent financial needs of the state, this selling-out of administrative functions increased in the 18th century. Public offices became salable and hereditary property and due to their considerable prices had to be major sources of private income. Offices were sold to the highest bidder or the favorite relative of the king or the queen, not necessarily to the best qualified. State officials and public administration were distrusted and despised by the French population.

The origin of the highly qualified and esteemed French administration lies in the period of Napoleon Bonaparte’s reign, first as consul, soon afterwards as emperor.

The administration of Imperial France under Napoleon was transformed into a highly qualified bureaucracy (Burdeau, 1989; Légendre, 1992; Thuillier and Tulard, 1984). Public offices required formal entrance examinations, and good qualifications were needed to acquire the function. Public officials were qualified, effective, and furthermore most cost efficient and hard working, as Napoleon himself was thrifty and a workaholic. Since Napoleon the *haute fonction publique* gained high popular esteem. In the context of the traditionally strong central state authority - *étatisme* - France gradually became an 'administrative state' run by an elite of high officials.

One reason for the dominance of officials is the rather fluid osmosis between politics and administration in France. There is no formal separation between politics and administration. Members of the *grand corps* can acquire a political function and afterwards return into the administrative functions of the corps. As a matter of fact many ministers, premiers and presidents are former *haute fonctionnaires public*, members of a *grand corps* and *ancien élève* of the *Ecole Nationale d'Administration* (ENA). Another argument adding to the 'administrative state' is the custom that top officials near the end of their career are parachuted into top positions in private business, that is, are appointed by the government as *président-directeur-général* of one of the many large nationalized state companies - the so-called *pantouflage*.

A small French elite of ENA-trained top officials run both the public administration and the government and politics, and the private business sector. In France the administrative elite governs the whole state, economy and society. Hence the allegation that France is an *état administrative*.

Great Britain

The world famous Whitehall model of the British civil service dates from the mid 19th century, the Northcote-Trevelyan reform of 1853 (Dowding, 1995; Drewry and Butcher, 1991). In the past administrative functions used to be the privilege of the aristocracy. To serve the state in a public function was considered one of the duties of the gentry. This gentry therefore of course resisted the Northcote-Trevelyan reform which intended to equip the administration with adequately qualified civil servants, a non-political administrative class educated in the moral values of a liberal university education. The public service should be transformed from aristocracy into a meritocracy.

The art and craft of administration could not be taught at school but had to be acquired during practical experience, hence the preference for an inflow of generally educated 'gentlemen amateurs'. Their formation took place during their practical career. The prototypical career of a 'high flyer' consisted of fulfilling varying functions in varying departments for a couple of years. The higher civil service therefore became a class of general administrators who were not sectorally bound to certain policy areas but generally usable. According to Hennessy (1990) this archetype of the British civil service remained almost unchanged for some 130 years, unaffected by the early 20th century Haldane report, survived both World Wars, and was even capable of neutralizing the major reform proposals of the post-War Fulton committee, which intended to put an end to the 'gentleman amateur' type of civil servant. Although not so extreme as in France, the British

administration can also be characterized as an elite of higher civil servants, combined with a strong governance of the central state. The administrative Whitehall mandarins govern Great Britain from the London-based central ministerial departments.

The Netherlands

As remarked before, the central state and national administration was only established early 19th century as a leftover from the French occupation. Due to the centuries-long tradition of provincial dominance of particularist interest, the central authority and administration was still weak in the early 19th century. Early in the 19th century, king William I put a great deal of effort into industrialization, the development of industry, railways and infrastructure. Most of that, however, was realized in the Southern Netherlands, that is, Belgium, which became independent in 1830-39. Although the merchant Netherlands certainly did not lack money and Dutch banks actually provided the financial means for many a war during the 19th century, the conservative Dutch banks refrained from investing in new economic business activities. The Northern Netherlands suffered from an economic standstill during the 19th century. During that period a strong and large state administration was not necessary, the more so as power always used to be decentral. The 1848 Dutch constitution institutionalized the precarious balance between central state and local government. The Netherlands became a 'decentralized unitary state'. During the major part of the 19th century, central administration was confined to a single ministerial department of Home Affairs (besides Foreign Affairs, War, Finance and Justice) with only a couple of officials. During the 19th century the function of public officials evolved. Under King William I ministers were the personal servants of the crown, who could be appointed or dismissed at the will of the King. The principle of ministerial responsibility was introduced with the constitution of 1848. A minister was no longer servant of the crown but servant of the state and was accountable to parliament.

After the Second World War the Dutch central state became increasingly powerful. The post-war reconstruction of economy and society evidently required a strong state role. Subsequently the creation and extension of the welfare state led to an ever-increasing role of the central state in providing and paying for the social welfare arrangements. According to the principle that he who pays the piper calls the tune, state authority in the Netherlands after World War II gradually shifted to the national administration, leading to the present situation where the Dutch state is rather 'unitary' than 'decentralized'.

4. LEGAL SYSTEMS COMPARED: PUBLIC OR COMMON LAW

The French revolution marked a fundamental transformation of the European states and administrations. With the 19th century rise of capitalism and liberalism, the tasks of the continental European state and administration in the newly established liberal *Rechtsstaat* were reduced to legislation and implementation of laws and regulations. With the victory of the *bourgeoisie* over the aristocracy in the French

revolution, the capitalist free market, and its accompanying political ideology of liberalism, the freedom of individual and property broke through. During the 19th century, the constitutional parliamentary democracy and *Rechtsstaat* was introduced throughout Europe. The absolute power of the King was finished; henceforth every free citizen possessed legal security and equality before the law. The legal state would guarantee those rights and freedoms. The law played a crucial role. Making and executing laws was the primary, if not the sole task of the 19th century night watch state.

This dominance of the law within public administration held *a fortiori* true in continental Europe, because there, after the French revolution, a separate administrative judiciary was created for the juridical review of state and administration, with a separate constitutional and administrative law based on the *code Napoléon* (Koopmans, 1986). A separate 'public law' system arose in France, followed by Germany and soon all of continental Europe. Thus arose the *Juristenmonopol* within continental European administrations. The only relevant expertise for the satisfactory functioning of the state was juridical. Civil servants were lawyers, a situation that continued in Europe well into the 20th century, and still holds true in some countries.

Although in various continental (particularly North Western) European countries, administration has loosened its monopolistic relationship with public law and there the civil servants nowadays have a variety of educational backgrounds and professional expertise, the system of constitutional and administrative law still influences the way public governance is conducted. Legal equality, legal security, principles of proper administration and many other principles of administrative law still belong to the primary norms and values of the European administration. This forms a remarkable distinction with the Anglo-Saxon 'common law' tradition of Great Britain and the United States. The authoritative opinion was that Britain did not have any public law (Dicey, 1885). The British (national) civil service recruits generalists, Oxbridge liberal arts educated 'gentlemen amateurs', and is surely not inhabited by lawyers (except in local government), neither is the North American.

Civil law and common law

The main underlying legalistic watershed between continental Europe and the Anglo-Saxon world lies in the (private law) difference between civil and common law.

In comparative (private) law the following 'Western' families of private law are usually distinguished: Romanic, Germanic and common law (David and Brierly, 1978; Prakke en Kortman, 1993; Schwarze, 1988; Zweigert and Koetz, 1977). Romanic or Napoleonic law goes back to the history of French law, particularly the *code civil* which Napoleon introduced in 1804 as a completely new and comprehensive system of private law. The French law tradition and the *code civil* was based on the Romanic law tradition. Typical of Romanic law is its ordered and detailed system of rational rules. The influence of Napoleonic *code civil* has been enormous in continental Europe. Italy, Spain and Portugal have also introduced this Romanic law family. During the French occupation of Belgium and The Netherlands, the

Napoleonic *code civil* was introduced there too. The second family of Germanic law goes back to the German law tradition which was also based on Romanic law. The tradition of detailed rational systematics is also clearly reflected there.

The Anglo-Saxon 'common law' family greatly differs from the Romanic and Germanic families. It was based on the system of wits, that is on casuistic evidence. It is basically an inductive law system, not deductively rational as the Romanic law system. Common law is applied separately to each case, by searching for preceding similar cases from which parallels and conclusions might be drawn. The law system is a gradual accumulation of casuistic jurisprudence from separate empirical cases. The continental Romanic law-based civil law tradition is by contrast based on an exhaustive, complete deductive system of detailed rules from which the judiciary can systematically derive the appropriate jurisdiction for the particular judicial case at hand.

The major differences between the Anglo-Saxon common law and continental European civil law families are summarized in the following table.

Table 11.1 Differences between the Anglo-Saxon common law and the continental European civil law

common law	civil law
inductive, casuistic, empiricism	deductive, rational, systematic
forensic and pragmatic	academic, abstract and theoretical
precedent cases	application of general rules and formulas
legal practice, law reports	statutes, comprehensive codes
concrete experience	university professors, academic textbooks

Following Koopmans (1986) the distinctions between the public law systems of various countries can be described along the three classical lines of Montesquieu's *trias politica*, the tri-partition between legislation, execution and jurisdiction.

Legislation and jurisdiction

Koopmans begins with the question of the validity of the law. Does the law bind everyone or is an appeal against the law possible? That question is treated in various law systems in two different ways:

- The 'democratic' model is that the legislator (parliament) always has the last word. The British principle of the 'sovereignty of (queen in) parliament'. The parliament (plus government and crown) has the last word. The law is inviolable. Subordinate legislation is only valid by law. Public decisions and royal orders are juridically reviewed by the law.
- The 'constitutional' model is that judicial review by natural law or by constitution is possible. In Germany judicial review takes place by a separate body. Sectoral special courts exist in Germany. Constitutional review is performed by the *BundesVerfassungsgericht*. In the United States judicial review is performed by the ordinary judges (common

law). The US supreme court has become increasingly specialized in constitutional affairs.

Jurisdiction and execution

What is the legality of the executive branch, the administration? How is the legality of administrative acts reviewed in a *Rechtsstaat*?

- in the Anglo-Saxon common law tradition the ordinary judge reviews the legality of administrative acts of the executive;
- in the French / German public law tradition judicial review is performed by a separate administrative judiciary.

After the French revolution the new rulers rightly suspected the judicial authorities of the *ancien régime* to be contra-revolutionary, which resulted in the explicit prohibition of judges from interfering with administrative acts. A separate system of administrative law and jurisdiction was created. Napoleon used the *conseil d'état* for that aim.

In Great Britain the system of common law existed from time immemorial, without a system of legal rules, based on casuistic precedents and a gradual growth of jurisprudence. The public administration there was subject to common law and the ordinary judge. At the time of the French revolution the British were disgusted by the French model of 'administration above the law'. It was considered utterly undemocratic that the French state placed itself above the ordinary law and let itself be controlled by state officials. For the members of the *conseil d'état* were not independent judges but officials appointed by the state. In Great Britain there was an aversion against a separate administrative law, and the belief in parliament and common law persisted.

Execution and legislation

The third of the triangular relation in the *trias politica* is the relation between government and parliament. How independent or dependent is the executive branch? The main distinction is the bi-partition into:

- parliamentary system, the executive government is elected and controlled by the parliament;
- presidential system, a separately elected executive and parliament.

Koopmans also mentions some forms intermediate between both systems, such as the French dynasty of government and president in the Fifth Republic, or the German Chancellor. The Chancellor gives directions to other ministers, so his power resembles that of the British prime minister.

5. PUBLIC GOVERNANCE IN SMALL CONTINENTAL EUROPEAN STATES: CONSENSUS DEMOCRACY AND CORPORATISM

After the previous brief look at the juridical system of public governance, let us now take a closer look at the political system, the underlying type of democratic system.

Types of States and Administrations in Europe

So far most attention has been paid to the large European countries of France, Germany and Great Britain. Indeed, European states and administrations are usually distinguished according to these three prototypes. First the Napoleonic type of states, with post-revolutionary France as the main example. Spain and Italy are typically considered to belong to this type and so does Belgium. Second, the Germanic type with its Prussian and Habsburg roots, in which Germany and Austria can be placed. Third, the Anglo-Saxon type with Great Britain as the main example. The smaller Northern European states such as the Netherlands and the Scandinavian countries are usually considered a mixed form of the Anglo-Saxon and Germanic types of state.

However, the large European states like Britain, France and Germany are all unique and highly dissimilar. By contrast, many of the smaller states in continental Europe are highly similar in three respects which are highly relevant for the type of public governance:

- *State and politics.* They all have a consociationalist type of consensus democracy (Lijphart, 1984). By contrast to the majoritarian Anglo-American two-party system of democracy, they have a multi-party system with proportional elections where governments consist of coalitions between more parties. The search for compromises and consensus is a main ingredient of their political culture. The search for consensus in the post-war *Große Koalition* in Austria, in the *Proporz* system of division of seats in government in Switzerland, in the coalition governments between the Flemish Christian democrats and Walloon socialists in Belgium, in the varying coalitions between the social democrats, Christian democrats and conservative liberals in The Netherlands, in the multi-party coalition cabinets in Denmark and Norway which sometimes do not even have a parliamentary majority, these forms of consociationalism explain the political stability in these societies.
- *State-society relations.* They all have a neo-corporatist type of democracy. In contrast to the American pluralist type of democracy, in a neo-corporatist type of democracy interests are represented by a few, well-organized groups which are recognized by the state and to which many public tasks and state authority has been delegated (Williamson, 1989). Sweden has a social democrat type of corporatism, the Netherlands a typically confessional type, Belgium a linguistic,

regional and confessional type, Austria yet another type, but all are variations of the same basic type of neo-corporatism.

- *Society*. They all have socio-political cleavages and fragmented political and social subcultures. Austria has its Christian and socialist *Lager*. Switzerland has its regional and linguistic fragmentation into *Kantons*. Belgium has the linguistic cleavage between Flanders and Walloon and the political cleavage between socialists and Christians. The Netherlands has a *Verzuiling* ('pillarization') as a consequence of its confessional history, the pillars of society in question being protestant, catholic, socialist and liberal-neutral.

The whole range of countries from the far North to the middle of continental Europe – Finland, Sweden, Norway, Denmark, the Netherlands, Belgium, Switzerland, Austria – all have these three characteristics in common, albeit to a greater or lesser degree and in different variations. No political fragmentation like that in Austria, Belgium or the Netherlands, exists in Scandinavian states.

In the next section we pay some attention to these characteristics of public governance in some lesser known, small continental European countries. Due to the size limitations of a single chapter, it is of course impossible to treat the whole range. Only four examples will be considered. Unfortunately, the very interesting Scandinavian countries (Andren, 1964; Elder et al, 1982) cannot be considered.

Consociational or consensus democracy

The political science theory of consociational democracy was invented at the end of the sixties by Lijphart (1968, 1969). He remarked that a number of small European states displayed a politically interesting phenomenon: although they possessed fragmented political subcultures, they nevertheless enjoyed political stability, and Lijphart concluded that the political elites played a major role in these so-called 'consociational' democracies. Lijphart (1968) extensively studied the Dutch pillarization and pacification democracy, in a seminal work that nowadays is still considered as a standard textbook on the Dutch political system. He perceived similar social, political and cultural fragmentations in Belgium, Switzerland, Austria and Scandinavia. In all those states some form of consociational democracy existed in which the political elites of the fragmented political subcultures co-operated in coalitions. This led Lijphart (1977) to the following four characteristics of consociational democracy:

- grand coalition (more than minimal winning coalition),
- mutual veto for minorities,
- proportional election system, and
- segmental autonomy and federalism (territorial or sociological).

In his later empirical comparative book about democracies in twenty-one countries, Lijphart (1984) rejected the term 'consociationalism' as too vague and broad and

hardly empirically measurable, and introduced the 'consensus' model of democracy versus the majoritarian Whitehall model of democracy (see table 11.2).

Table 11.2 The Whitehall model of democracy and the consensus model of democracy

Whitehall model	Consensus model
1. concentration of power in one-party majoritarian cabinets	1. power sharing in grand coalitions
2. fusion of power, cabinet dominance	2. separation of powers
3. asymmetric bi-cameralism	3. balanced bi-cameralism and minority representation
4. two-party system	4. multi-party system
5. one dimensional party system	5. multidimensional party system
6. pluralistic election system	6. proportional election system
7. unitary centralized government	7. federalism and decentralization
8. unwritten constitution	8. written constitution with minority veto
9. exclusively representative democracy	

The seminal work of Lijphart induced several political scientists at that time to investigate the consensus democracies in various countries (Daalder, 1971, 1987) albeit under various titles. Gerhard Lehbruch (1967) published on the so-called *Proporzdemokratie* in Switzerland and Austria – in German the term *Konkordanz* is used as well – Jurg Steiner (1974) named the system in Switzerland 'Amicable Agreement', Elder et al. (1982) used the term 'consensual democracies' for the Scandinavian states, and Lucien Huyse (1970, 1986, 1994) used Lijphart's Dutch term *Verzuiling* (pillarization) to typify the Belgian situation.

Corporatist interest intermediation

After the highdays of political science studies into consociationalism and consensus democracies in the late sixties and seventies, at the end of the seventies a new political theory was launched by Schmitter (1974, 1981) and Lehbruch (1976, 1991), that is, the rediscovery of corporatism as a typical European form of interest intermediation as an alternative to the hitherto dominant American model of pluralism (Schmitter and Lehbruch, 1979, 1982). Schmitter and Lehbruch were interested in explaining the socio-economic policy differences between Europe and the United States. Notice that in the seventies leading American politicians publicly expressed their interest in the surprisingly successful economic performance of several small European states. Neo-corporatism became the new catchword (like the Dutch 'polder model' nowadays).

The model of neo-corporatism should not be confused with the top-down state corporatism of the catholic model from the beginning of this century, which sought to build a dam against socialism and class struggle, nor with fascist or Nazi variants of state corporatism in which employers' associations and labor unions were mere extensions of the state. It is explicitly a democratic model of bottom-up interest representation, hence the adjective *neo*. Corporatism is defined (Schmitter and Lehbruch, 1979; Williamson, 1989) as:

- a system of interest representation
- in which a limited number of interest organizations,
- each compulsory, hierarchically organized and ideologically coherent
- are recognized or licensed by the state,
- and granted a representational monopoly by the state,
- in exchange for certain control on leader selection and interest articulation.

In other words, the state recognizes a limited number of interest associations, involves them in the decision making and commits them, grants them privileges and delegates the execution of certain public tasks to them, and the leadership ensures that its rank and file stick to the agreements reached centrally. The state delegates authority in exchange for social peace and order.

United States: pluralism

Neo-corporatism offered an explicit European alternative to the North American paradigm of interest politics which until then dominated the political sciences, the model of pluralism. In the typical North American pluralist conception of democracy, all interests should have equal access to political agenda formation and equal influence on political decision making. Political democracy in the United states typically consists of a plurality of temporary, single-issue, action, pressure and lobby groups which all try to exert influence. Democratic decision making is the balanced weighting by the government between this plurality of interests, the outcome of a process of give and take between many diverse interests. Government does not have close contacts and co-operation with particular interest organizations in the policy fields concerned. That would be considered most undemocratic. American public authorities should avoid dependence on particularist interests groups. Democracy – in its typical North American pluralist variant – implies that favoritism for specific interest groups should be avoided. In order to guarantee equal access and treatment, public authorities in the States tend to have a formal regulatory style. Formal procedures, detailed regulations, uniform application of general universal rules, and open and public decision procedures, ought to guarantee the equal treatment of all participants in the policy-making process.

France: étatism

Public authority in France is the very opposite of particularism. The state is supposed to be the main representative of the *intérêt général*, in contrast to most social groups which only represent particular and singular interests. The state should safeguard the *volonté général*, the general interest against particularism. The state should stand above particularism. Public officials therefore learn a haughty contempt for particularist interest groups. Public policy sectors as well as the private business sector are hierarchically regulated by the state. Policy sectors fall under the regulatory *tutelage* of the respective public authorities in the Paris-based ministries.

In general in France there is no formal corporatist recognition and co-operation with interest organizations. Relations between public officials and interest groups are *ad hoc* and informal. There is strong state governance of most policy areas.

6. PUBLIC GOVERNANCE IN SMALL CONTINENTAL EUROPEAN STATES: FOUR ILLUSTRATIVE EXAMPLES

In order to give a foreign audience, which usually has hardly any knowledge of the small European states, a little contextual background, some attention will be paid to the development of four of these states in recent history.

The Netherlands

The strong confessional roots of the early Dutch state formation account for its three main constituent characteristics: the sociological characteristic of 'pillarization' (Lijphart, 1982), the socio-economic characteristic of 'corporatism' (Hemerijck, 1992) and the political characteristic of 'consensus democracy' (Lijphart, 1984).

'Pillarization'

During the last decades of the 19th century, political parties were founded based on confessional grounds. Besides the liberal party, a catholic party and several protestant parties were created, leading to the rise of the 'pillarization' (*Verzuiling*), that is, the segmentation of political, social, economical and individual life into separate confessional 'pillars' (*zuilen*) (Kossman, 1986; Lademacher, 1993). After the labor movement arose late in the 19th century, Dutch society became fragmented into four 'pillars' – protestant, catholic, socialist and liberal-neutral. The whole social organization of the Dutch state and society, ranging from political parties, employers' associations, labor unions, schools and universities, health and welfare institutions, media organization and even sports clubs, fishing and bicycle clubs, became divided along this four-partition line.

A typical trait of the Dutch state and society therefore was that many social and 'public' tasks, such as education, health, welfare etc., were performed by social organizations, having the legal status of private foundations or associations, and belonging to one of the four pillars. The execution of public tasks was left to the so-called *private initiative*. Dutch civic life was totally dominated by private pillarized social organizations.

Labor movement and corporatism

Dutch society was not split along the class division between capital and labor. The threat of the labor revolt and rising socialism was countered in the late 19th century by the creation of 'corporatism' by the catholic church. In the Netherlands the co-operation across class divisions between representatives of organized capital and labor together with government was soon institutionalized. Besides the traditional

socio-economic corporatism the Netherlands also forms a good example of the modern non-statist concept of neo-corporatism, in the sense that in most sectoral policy fields major interest organizations became institutionalized, legally recognized and obtained formal access to governmental decision making in a statutory right of consultation, formal seats in advisory and regulatory bodies, and in a huge number of bi-, tri- and multi-partite semi-state agencies in the various policy sectors. Neo-corporatism became well established and highly institutionalized in the Netherlands.

Political stability and 'pillarization'

Although the Dutch political landscape became scattered between dozens of political parties, Dutch politics and government were very stable during the interbellum, because of the successive coalition cabinets formed between the confessional catholic and protestant parties. The social democrats were not considered *Regierungsfähig* and were excluded from government participation until 1939. The catholics and protestants had their own labor movement and unions. During the interbellum the social democrats did not succeed attracting masses of confessional industrial and rural workers to their camp.

The pillarization into protestant, catholic, socialist and liberal-neutral pillars contributed strongly to the political stability in the Netherlands. The all-pervasive consciousness of Dutch citizens to belong to a certain pillar has enabled the political elites of the pillars to influence, stabilize and effectively control their 'rank and file'. Particularly the Catholic Church authorities have effectively succeeded in structuring and ordering the life of their fellow believers.

Post-war reconstruction

The devastation of infrastructure, economy and society after the Second World War led to the co-operative effort to 'reconstruct' the Netherlands. The pillarization and the consociationalist politics of accommodation between the political elites, which had ensured high stability during the interbellum, still existed to the sixties. Moreover the corporatist co-operation between employers' associations, labor and government was given an extra impetus after the War.

The post-War reconstruction of the destroyed Netherlands and the subsequent creation and extension of the social welfare state in the 'fifties and sixties' was performed in a co-operative political climate of tranquillity and stability. The Netherlands was an example of highly institutionalized corporatist and consociational democracy.

Depillarization and individualization

Since the late fifties and early sixties the pillarization of Dutch society has decreased and state influence has increased (Lijphart, 1982). Secularization and democratization were accompanied by a growing individualization of society. The behavior of individual citizens was decreasingly determined by the traditional

cohesive value patterns and the accompanying social institutions of the 'pillars'. The governing role of the church has diminished. Undeniably the sociological concept of pillarization no longer characterizes Dutch society. So the first characteristic of Dutch society nowadays no longer holds, with the exception of Dutch educational politics, where pillarization is still beyond discussion.

As to the other two characteristics – corporatism and consociationalism – the democratization movement of the seventies did lead at that time to a clear politicization and polarization. Participation and co-determination were the key words in those days. The times of accommodation, deliberation and consensus seemed to have come to an end. The democratization also seemed to put an end to the corporatist power of organized interest groups. They were no longer exclusively recognized and consulted. Everyone had the right to express his or her opinions, represent his or her interest. The many single-issue interest and pressure groups arising those days seemed to point in a pluralistic direction, and seemed to replace corporatism and consociationalism. The revolutionary élan of the seventies, however, has evaporated, to be replaced by the no-nonsense attitude of the eighties. Political and social institutions have managed to survive the storm almost unharmed. Dutch multi-party politics of today are still characterized by compromise and consensus. Dutch sectoral policy making still heavily rests on organized interest groups. The recognized interest groups of today may not be the ones of the past or the future, but the essence of corporatism, that a limited number of well-organized interest groups are recognized as partner for deliberation and consultation, still holds true.

Belgium

The profound fragmentation which has dominated Belgian political life is composed of three oppositions: religion, class and language (Lorwin, 1966; Fitzmaurice, 1996). Luc Huyse (1970; 1986) has applied Lijphart's consociationalist framework to post-War Belgian politics (Eppink, 1998).

As in the Netherlands the first religious opposition arose from the 19th century school dispute about catholic and public schools and the role of the state. The Catholics first fought against the liberals and later also against the socialists, both of which favored a state supporting neutral public schools. The second, class opposition concentrated in a fight between the socialist party and the catholic left wing on the one hand and the catholic right wing and liberal party on the other. The third opposition, between the Flemish and French speaking ethnic-linguistic communities, with the bilingual capital Brussels as third intermediate community, crossed party lines. This threefold political scheme has been remarkably stable since the end of the 19th century.

The Belgian parliamentary state has its origins in the national revolution of 1830 against king William I of the United Northern and Southern Netherlands. The Catholics opposed the Dutch protestant hegemony, the liberals opposed the royal oppression of freedoms of speech, press etc. The united Belgian Catholics and liberals in 1836 produced a constitution, which at the time formed an outstanding

example of liberal democracy, with freedoms of speech, press and religion, of education and association, and with suffrage provisions. In the initial years of the Belgian state King Leopold I presided over mixed cabinets of Catholics and liberals. The controversy between liberals and Catholics hardened when liberals started to publicly advocate the layicization of education. The clergy urged the faithful to unify politically, after 1863 within the catholic party. The mutual attacks between Catholics and liberals – the so-called *familles spirituelles* – became increasingly vehement and poisoned the atmosphere of social life and political discourse.

Class

Church-state opposition had prevented the ruling class from concentrating in a conservative party, and religious differences had prevented the socialist political organization from representing the working class. In the fight for universal suffrage the socialists used the at the time revolutionary weapon of a general strike and the grant of universal male suffrage in 1894 brought them into the parliamentary arena. After the First World War, King Albert unconstitutionally overruled the conservatives in changing suffrage from a weighted voting system into a one-man-one-vote system. The ruin of the First World War saw revolutions breaking out throughout Europe. Belgium was the only one of the post-War nations where the socialists continued in the cabinet. The socialists had become *Regierungsfähig*.

Language

Belgium is divided into the French-speaking Southern Walloon provinces and the Flemish-speaking Northern provinces of Flanders. Although the workers, peasants and middle classes in Flanders spoke Flemish, the native elites in Flanders spoke French. The phrase ‘French in the parlor, Flemish in the kitchen’ illustrates the economic and cultural backwardness of Flanders in those days. Only in French could one make a professional career. Parliament debated in French, the army was commanded in French, the courts pronounced judgement in French. Only at the end of the 19th century did government publish its laws in both French and Flemish.

On the liberation of the country in 1918 King Albert had promised to support the equality of the Flemish. In view of the delays the Flemish became bitter and the *Francophones* showed irritation. In the 1930s the Flemish movement became more extremist, riots and bloodshed led to a state of turmoil. Finally, a series of laws enacted the long-delayed equality for the Flemish language in education, administration, justice and the army. Instruction in the second national language would be given in the schools. Nevertheless French remained the language of the elites in economic life and the public sector.

Post-War Corporatism

As in the Netherlands, the Second World War led to a strong system of corporatism. The German occupation and the pre-War conflicts led among the political elites to the persuasion that things should change after the liberation. During the Nazi

oppression of the Second World War a 'pact of social solidarity' was in Belgium entered into between the leaders of industry and the catholic, socialist and liberal trade unions. After the War a system of regular meetings between employers' associations, trades unions and government was established to regulate the labor market and discuss social policies, social legislation was renewed and co-operative ways of collective bargaining were found. In other words, a corporatist system of state-capital-labor deliberations was introduced. Unions and labor were granted power in a number of quasi-governmental agencies, in various advisory councils on socio-economic policies and on the boards of semi-public financial and industrial institutions. Within a few post-War years, corporatism was strongly institutionalized in Belgium. Contact and co-operation were close, social peace reigned, industrial conflicts rare.

Post-War language question

The Flemish question re-erupted violently in the 1960s. The Flemish movement organized marches on Brussels, interrupted French-language sermons in Antwerp and Gent churches, destroyed French road signs on Flemish soil, and organized various other incidents and riots. The real solution of the Flemish language question, however, was of a socio-economic nature. Most post-War investment in new industries was in Flanders, the structural Flemish unemployment gradually vanished, while the old Walloon coal mines were closed, and their outdated steel mills and other heavy industry declined or went bankrupt. The Walloon area increasingly became the economically backward area and Flanders the new industrial boom area. With this change of socio-economic tide came a real end to the Flemish backwardness.

With the post-War advent of economic stagnation, frustrations and fears arose in the Walloon area, leading, for instance, to a long general strike in 1960-61, and demands for federalism and regional autonomy, which of course was also grist to the Flemish mill. The French-speaking Belgians, who had always been a numerical minority, now feared that they would become a real social and economic minority. The *Mouvement Populaire Wallon* was created and now the fight was fought fiercely on both sides.

Federalization of the unitary state

Gradually the politicians became aware that the ethnic-linguistic problems could only effectively be solved by some form of regionalization and federalization. In 1968 a grand coalition cabinet was formed to prepare the necessary measures for constitutional change with the co-operation and consensus of all interest groups. National consociationalism had been resurrected in Belgium. Deliberation with all parties, the search for compromise and consensus prevailed, and a 'pact of the Belgians' was reached at the end of 1970. The linguistic-regional problem was finally solved by dividing Belgium into a federal state with regional autonomy (Wuyts, 1992; Delmartino, 1993). In 1970 a legal basis was laid for the regionalization of Belgium by introducing three separate 'communities'. After long and

troublesome legislation, a new constitution was finally accepted in 1993, changing Belgium from a unitary into a federal state with directly elected (regional) councils. Belgium is now composed of three 'communities' (in Dutch *gemeenschappen* in French *communeautés*) – the French, Flemish and small German speaking ones – and of three 'regions' (in Dutch *gewesten*, in French *régions*) – Walloon, Flanders and the capital Brussels. 'Communities' have authority in so-called 'person-related' affairs, such as culture, education, national and international co-operation, and of course linguistic affairs. 'Regions' have authority in so-called 'soil-related' affairs, such as physical planning, environmental affairs, nature preservation and water control, gas electricity, employment, public works and transport.

Switzerland

The old Confederation (*Eidgenossenschaft*) Switzerland has its origin in the fight for cities and peasants against the Habsburg empire. As in the Netherlands, the French occupation under Napoleon briefly led to a strongly centralized Helvetican republic. The federal system of independent Cantons was established thereafter.

Historical tensions

Some historical tensions exist in the political culture of Switzerland (Steiner, 1974; Linder, 1999).

The tension between the catholic minority and the Protestants cost four civil wars in the past. Church and state are separate; the church does not possess any privileges in education or marriage. At the turn of the 19th century the Catholics created their own 'pillar' with own parties, trades unions, press et cetera. This did not occur on the protestant side. The catholic pillar was dissolved in the '50s.

The tensions between city and countryside have (e.g. in 1833 in Basel) led to the separation of the (half) Cantons Basel-Stadt and Basel-Land and is nowadays revealed in the country-oriented conservative party.

Tensions about language differences are cautiously avoided in Switzerland by the official multilingual character of government and the proportional representation of each language group (75% German, 20% French, 4% Italian and 1% Romansch) in political parties and administration. Nevertheless the three language regions *Deutschschweiz*, *la Suisse Romande* and *Tizzino* are still politically autonomous and relatively closed.

Political culture

The Swiss political system possesses some typical institutional peculiarities, viz. direct democracy, federalism and *Konkordanz* (Church, 1989; Kerr, 1987; Klöti et al., 1999; Kriesi, 1998; Linder, 1998, 1999).

The referenda and citizen initiatives are the outstanding features of the direct democracy. The Swiss are especially proud of these. They form a core of the national identity. However, only 40% of the population take part in them. Participation in elections is also relatively low. Swiss politics is characterized by the

so-called *Milizsystem* in which political functions (at local, Cantonal and federal level) are fulfilled by unpaid, non-professional volunteers, who are politician besides their normal regular job, and whose time is thus necessarily limited. The political *Ehrenamt* (honorary function) is not a job in which a career is made, not even in national politics. (The term *Miliz* should not be confused with the army, another typical Swiss tradition of which they are very proud). Every year four weeks of retraining exercise; for officers even more and longer. Every soldier has a gun at home; officers a pistol. Until recently, at the second largest bank in the world, UBS, being an army officer was a precondition for making a career.)

The federalism in Switzerland is much less centralist than in Germany or the United States. Cantonal sovereignty is based on the constitution. Everything that does not explicitly belong to the federation, is automatically the competence of the Cantons. The autonomy of the Cantons and municipalities is relatively very great, as shown, for example, in their own authority for education, judiciary and taxation. The following table (figures in %) is revealing (Kriesi, 1998).

Table 11.3 Income, expenditure and personnel of Swiss jurisdictions

	Incomes	Expenditures	Personnel
Bund	29.8	31.6	11.2
Cantons	40.2	39.7	46.6
Municipalities	30.0	28.7	42.2

In Swiss federalism the idea of co-operation and interregional solidarity is strong. The far-reaching *Finanzausgleich* (financial equalization) between the Cantons particularly helps the economically underdeveloped country and mountain regions. Canton Zürich is the largest, by far the richest, and pays most to the other Cantons.

The solution of political conflicts by deliberation, negotiation and compromise is in the Swiss blood. The consensus system in Switzerland is called *Konkordanz* and is extreme, according to the well-developed *Proporz* principle. From 1848, the different languages were cautiously and strictly proportionally represented in the federal government, and later on also in all other government bodies at federal, Cantonal and local level. The *Konkordanz* principle also holds true in other areas of public life, such as national professional or sports associations etc. Regions and linguistic minorities are always meticulously represented in a board, chairmen rotate along language lines, or second and third vice-chairmen of complementary languages are appointed. Deliberation, compromise and consensus are fundamental traits of the political and social culture in Switzerland, too. The disadvantages of this slow and lethargic form of *Konkordanz* and *Proporz* democracy have induced some Swiss municipalities and a single Canton in the 1980s to experiment with majority government and program politics. Without success.

Parliament and government

The national parliament consists of two equivalent, directly elected chambers, the People's Chamber (the *Nationalrat* with 200 members) and the Cantonal Chamber

(the *Ständerat* with 46 members, senate). Conflicts between both chambers seldom occur.

In the federal government (*Bundesrat*) a *Proporz* holds of two seats each for the free democrats (FDP liberal), the Christian democrats (CVP conservative catholic) and the Social democrats (SP), and one seat for the People Party (SVP conservative countryside). This 2:2:2:1 division is also called the 'magic formula' and has existed since 1959. The principle of a seven-member government with fixed seat division over parties has already existed for more than a century. The federal government (*Bundesrat*) consists of seven individually elected members. The president is chosen from among the members as their chairman and has no extra authority. There is no coalition program, cabinets do not fall, nor do individual members of government. Each party votes for or against, per issue. The seven *Eidgenössischen* departments in the capital city of Bern are distributed between the government members, and hence over the parties. The functioning of the *Bundesrat* is dominated by three principles, the Collegial principle (government takes decisions as a whole, consensus and unity reign), the Departmental principle (government affairs are divided between the seven members), and the Delegation principle (delegation of authorities to the directors of the various bureaux within the seven departments (Germann, 1998; Klöti, 1999).

The enormous growth of government tasks, the increasing new societal problems, and the internationalization, briefly, the enormous size and complexity of present-day government tasks, demonstrate the limitations of this traditional model. Proposals by a parliamentary working group in the early 1990s to reform the government system (either two-headed leadership of a department, or more members of government, or a small core government plus a larger number of administrative ministers, or a prime minister with greater authority) were not adopted.

Cantons and municipalities

The small state of Switzerland with only 7 million inhabitants is divided into 26 strongly different Cantons (and half-Cantons in Unterwalden, Appenzell and Basel) which vary in size from 15,000 inhabitants in Appenzell-Innerhoden to 1.2 million in Zürich. Every sixth Swiss lives in Canton Zürich and a fourth of the whole Swiss national income is earned there. The yearly contribution of Zürich to the *Eidgenössischer* solidarity (the *Finanzausgleich*) is more than the seven financially weakest Cantons receive together. Cantonal parliaments vary in size from 55 to 200 seats. Cantonal governments vary from 5 to 9 members, the *Proporz* and Collegial principles also hold here and the president (also chairman only) changes yearly (Germann and Weiss, 1995).

Switzerland, a small country, has 2942 municipalities of which 40% count less than 500 inhabitants. The number of small municipalities has increased. The average number of inhabitants is 2300 (in Germany 7000 in Sweden 30,000 and in the Netherlands 30,000). As to the municipal autonomy, everything which is not

explicitly attributed to a Canton, is automatically the competence of a municipality. The municipal president is directly elected and possesses hierarchical authorities.

The Swiss are extremely proud of their national political traditions and are therefore not inclined to reform them. Some cynics say that these historical features of the political culture – the Swiss identity – are the predominant glue that holds the strongly different and relatively closed regions of Switzerland together.

Austria

Turbulent Interbellum

After the defeat of the Habsburg empire in the First World War, in 1918 the Allied victors split up the Austrian empire and formed a new small state, the first Republic of Austria (Steiner, 1972; Barker, 1973). That tiny Austrian state was artificially constructed, had inherited the much too large Vienna bureaucracy of the entire former Habsburg empire, and was economically incapable of autonomous viability. Poverty and famine reigned during the early years of the new republic. This explains the widespread sentiments of the Austrian population in favor of joining Germany. The political post-War landscape consisted of the catholic Christian Social Party (ÖVP), the Social Democrats (SPÖ) which were excluded from power, and the nationalist German Part (FPÖ) the latter being anti-liberal, anti-socialist and anti-Semitic. These three parties were the so-called *Lager* (camps) which were highly adversarial. In 1934 a short but fierce and armed civil war broke out, which resulted in the social democrats being outlawed. The Austrian political culture during the interbellum was very antagonistic, there was no majoritarian democracy but a single party rule which led to a political atmosphere of distrust. The riots and fights during the civil war led to many wounded and dead, and to the formation of paramilitary groups which were German oriented and Nazi influenced. It should be realized that the artificial 'state' of Austria, in its search for a national identity, naturally tended to look to Germany. In 1938 came the *Anschluß*, that is, the annexation of Austria and its incorporation in Hitler's third *Reich*. Actually the far from positive experience the Austrians had with the German *Anschluß* and subsequent Second World War profoundly 'cured' them of any excessive Germanophilia and effectively 'helped' them to create their post-War independent Austrian national republican identity.

Reasons for post-War consociationalism

After the Second World War the Christian democratic ÖVP and the social democratic SPÖ formed the so-called *große Koalition* (grand coalition) which lasted until 1966. Post-War Austria became a prototype of consociational democracy (Luther and Mueller, 1992a). A number of reasons can explain why the Austrian politicians became so consensus minded.

Post-War Austrian politicians wanted to prevent at all costs the return to the devastating pre-War political culture of distrust, conflict and fight. The leaders of ÖVP and SPÖ had both been imprisoned by the Nazis during the War in the same

concentration camp and had had ample time to deliberate about the future freedom. These political elites were highly dedicated to co-operation in the post-War reconstruction of their devastated and conquered country.

Another reason was the need to stick together against the threatening Soviet occupation (Bader, 1966; Barker, 1973). The conquered country of Austria was occupied after the War by the four allied forces and divided into different occupation zones. After long Soviet squabbling, Vienna became a four-power city in the midst of the Soviet zone. At first a three-party coalition was formed with the communists, who soon left government, resulting in a two-party ÖVP-SPÖ 'grand coalition'. (The small German nationalist party FPÖ was excluded from power.) With the help of the Soviets the communists made several attempts to organize a 'revolution', which failed time and again. From 1946 to 1955 endless four-power negotiations took place about the Austrian State Treaty. The Soviets did not want an independent Austrian state and related the Austrian issue to the German remilitarization and entrance to NATO. Only after the death of Stalin in 1955 did the Russians suddenly agree to Austrian independence and to withdraw their troops on the explicit condition of the guaranteed 'neutrality' of Austria.

Consociationalism, Proporz and corporatism

In Austria a *Proporz* system between the two main parties, the Christian and social democrats, was introduced in government and administration. Administrative spheres were simply divided between the two parties, leading to a segmentation of government and society into autonomous, single-party-influenced spheres. This granted each of the two governing parties a proportion of public sector jobs roughly equal to their share of the vote at the last election (Luther and Mueller, 1992a). This was made explicit for public sector firms, but was implicit for the civil service. Each party had autonomy over personnel in the department under its control. During the grand coalition period the bureaucracy became almost entirely party controlled. Although this violated the classical Weberian concept of a neutral, non-partisan, expert bureaucracy, the Austrian civil service and army now incorporated both *Lager* and were acceptable to both political subcultures. Since the end of the grand coalition in 1966 this party dominance of bureaucracy has become more moderate.

The situation of consociationalism did continue to prevail after the end of the grand coalition in 1966, which was followed by a long period of single-party governments until 1983. Although some observers predict the relative end of Austrian consociationalism (Gerlich, 1992; Luther and Mueller, 1992b), no change in the direction of adversarial elite behavior can be found and Austria continues to be referred to as an example of consociational democracy.

7. CONCLUSIONS AND DISCUSSION: PUBLIC GOVERNANCE IN EUROPE

In this chapter an attempt has been made to place the subject of public management in the broader perspective of an international and historical review of public governance in various European states. The argument for a broadening of our perspective is that public management should not be restricted to the mere effective and efficient

'running of the government's business', that it should be widened to embrace public governance, including the context of democracy and *Rechtsstaat*. In this chapter only three dimensions of public governance have been considered: the legal system, the political system, and the societal interest representation. From the multi-disciplinary character of administrative sciences it can logically be deduced that some important other dimensions still fail. Moreover, a simple, straightforward systems-theoretical model of governance would also yield many more relevant variables and aspects. This chapter, which at first sight gives an impression of immense broadness, is actually still quite limited. Let us also point at a second limitation. In this chapter the abstract argument for broadening has been specified to a degree, but surely not operationalized into specific recommendations for a particular reform in a particular country. Insight and reflection were the aim, rather than specific management consultancy. With these limitations in mind, let us highlight some of the illustrative, reflective insights the historical institutional perspective has yielded.

Institutional conservatism

First a warning. The historical institutional perspective adopted in this review should not be misunderstood as inherently conservative. Saying that institutions do matter does not mean that institutions do prevent change. Our main focus of interest is especially the administrative reforms and modernizations. The more these reforms are accompanied by appropriate institutional adaptations, the greater the chance that these reforms will be lasting. Or to put it the other way round, reforms that take place regardless of underlying institutional bases, are doomed to be a quickly fading fashion.

The Netherlands forms a good counterexample to the alleged conservatism of institutionalism. On top of the legalistic institutional barriers common to continental European states, the Netherlands moreover possesses an all-pervasive political culture of deliberation, consultation, compromise and consensus. Many Anglo-American observers of this type of political system, in eternal pursuit of compromises and consensus, wonder in utter amazement how decisions are ever taken at all. On the Dutch political surface hardly anything exciting ever occurs, let alone revolutionary changes. Under that surface, however, a multitude of pragmatic decisions is taken. From an international comparative point of view the Netherlands is front-runner in many types of administrative reforms (Naschold, 1995). In view of the popularity of the 'Tilburg model' in German municipal reforms, administrative reform has even become an export article of the Netherlands.

Legalistic administration

A separate administrative law system is in force in continental Europe. On the continent government and administration are subject to judicial review in a Romanic-law-like deductive, rational, comprehensive system of general rules of administrative law. Of course Great Britain is also a legal state where administration has to ensure the legality of its actions, but the fundamental difference in legal philosophy, thinking and system, equally in the private and public sector, has major

consequences for the style of public governance. Certainly, the British (national) civil service is definitely not so dominated by legalistic thinking as e.g. German, Austrian and Swiss administrations (British local government has a more legalistic character though). It is no coincidence that in the German (and French) language there is no separate word for 'policy' besides 'politics'. Policy-making in a German ministerial department consists solely of the preparation of legislation. White Papers or other policy documents sent to parliament preceding legislative proposals, do not exist, or are at least highly unusual there. The all-pervasive dominance of administrative law, combined with the rational, deductive, comprehensive, systematic way of legal thinking, must have serious implications for the form of 'public management' that is adopted. The typical German legalistic type of administrative thinking and acting, does seem at odds with a 'managerial' attitude, to put it mildly. Nevertheless, an impressive wave of managerial reforms has pervaded many German municipalities and some *Länder* since the early nineties (the *Neues Steuerungsmodell*, see Reichard (1997)) and 'new public management' reforms have also had considerable impact on the Swiss administration (the *wirkungsorientierte Verwaltungsführung*, see Schedler (1995) and Hablützel et al. (1995)). It would be most interesting to conduct some in-depth empirical studies to investigate the implications of the legalistic institutional situation on the particular managerial forms which were adopted.

Consensus and corporatism

The political science theory of consociationalism, which has enjoyed great popularity in the sixties and seventies, seemed to have become oblivious in the revolutionary democratic seventies, when politicization and polarization apparently put an end to the consensus and corporatist tradition. The revolutionary élan, however, has evaporated, and the typical multi-party coalition-forming and consensus-reaching has reappeared on the political stage. Deliberation, consultation, compromise and consensus have once more become the fundamental traits of the political culture in many small European states.

The resurrection of compromise and consensus politics does not imply the resurrection of the underlying political fragmentation that induced political scientists to study that form of democracy. The *Verzuiling* in the Netherlands has almost disappeared, the ethnic-linguistic fragmentation in Belgium has been resolved by transforming the unitary state into a federal one, and the Austrian *Lager* seems to have buried the hatchet.

It goes without saying that such dominant traits of political culture must have consequences for the style of public management. Top-down hierarchical steering and control are concepts that are hardly adequate in such a political context. Although the authors are well aware that modern management science consists of more than only the classical hierarchical control archetype, a mild warning does not seem redundant. In such a political context of a multitude of political participants, which ought at least be consulted, with which compromises have to be reached, which should consent to the proposed compromise agreement, decision-making and

governance rather take shape in terms of the management of 'complex policy networks' (Kickert et al., 1997; Rhodes, 1990, 1997).

The consensus model of democracy explains the stability of the political system of government, neo-corporatism explains for the stability of the social economy of a state, that is, the system of relationships between government, employers' associations and labor unions. On the surface the phenomena are equal: deliberation, consultation, compromise and consensus. Here, however, that does not take place between political parties only, but also with societal organizations. It is a model of a particular type of state-society interrelation. In a certain sense it is also a model of public governance, the way government 'deals' with societal actors in order to move in a certain direction.

The issue is closely related to the questions that were raised in the eighties about the state's ability to shape and control society. The economic crisis and the subsequent public budget deficits had forced Western states to withdraw from many welfare arrangements. The high days of the integral government planning of the welfare state were over. Government proved not even able to control the ever-growing unemployment. The belief in the governability and controllability of society waned (Mayntz, 1987). The limitations of a more modest state were realized (Crozier, 1987). Insight into the complexity of social policy networks led to the recognition that government could indeed not unilaterally and hierarchically 'steer' such processes. Another form of public governance was needed. A form of governance in public sector complexity (Rhodes, 1997).

The currently popular Dutch 'polder model' has proved to be quite effective in dealing with socio-economic questions. Without no rebellion and no riots, Dutch governments have been able to achieve a fundamental deconstruction of the welfare state. An example of successful mutual agreement and conflict resolution.

The Netherlands: a clear example

The inclusion of the Netherlands in the review may initially have given the impression of an amusing token of the authors' nationality. Gradually the reader may have become convinced that the tiny kingdom of the lowlands represents an interesting special case in the European scene. The consociational consensus form of democracy and corporatist form of interest representation made clear that the international review was far from complete with only France, Germany and Britain.

As a matter of fact, one would be tempted to state that a typical international survey of Western Europe should not so much display the dissimilarities between France, Germany and Britain, but rather show the similarities between the small continental European states. Many of the small continental European states – the whole range of countries from the far North to the middle of Europe, Finland, Sweden, Norway, Denmark, the Netherlands, Belgium, Switzerland, Austria – are very similar in three not totally irrelevant respects: their type of state and politics, their type of state-society relations and their type of society. The real reason why the Netherlands – in population and economy the largest of the small European states – has been included in the review from the very beginning, is that it represents an extremely clear and highly institutionalized example of these three characteristics.

Which, by the way, does not rule out the possibility of some national pride on the part of the authors.

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PART III

FORMATION OF GOVERNMENT INSTITUTIONS

INFORMATION AND COMMUNICATION
TECHNOLOGY AND THE REDEFINITION OF THE
FUNCTIONAL AND NORMATIVE BOUNDARIES OF
GOVERNMENT

1. INTRODUCTION

In 1996 the Dutch parliament passed a law (the *Koppelingswet*), which enables a large number of (quasi-) public and private organizations, like the immigrant office, the tax administration, social security agencies, hospitals and notary's offices, to exchange electronic data regarding the permit of residency of foreigners and immigrants. The goal of this coupling operation is the reduction of fraud and abuse of services by people who have no residency permit. The information resources of the immigrant offices and other organizations are being shared and integrated, which leads to changes in the organizational boundaries of these organizations; to some extent they are beginning to blur.

The literature about public organizations does not pay much attention to the question whether information and communication technology (ICT), especially the use of network technology, changes the nature of organizational boundaries. Posing this question is important, because the blurring of organizational boundaries in the public sector could have profound implications for the assumptions and doctrines which underlie the organization and functioning of the government. The idea of jurisdiction, which plays an important role in the Weberian theory of bureaucracy as well as in political theories about federalism, separation of powers and 'checks and balances', is challenged by computerization. Jurisdiction can be described as the exclusive authority of an actor as a unified entity to determine rights and obligations of citizens in a task domain with (a certain degree of) discretion for which this actor is legally and politically accountable. In this chapter I demonstrate that the use of ICT will lead to changes in the boundaries of government organizations which will also affect the jurisdictions of government organizations.

In this contribution I develop a conceptual framework which helps me to investigate the question of whether the nature of organizational boundaries is changing and in which direction boundaries are shifting due to ICT. The idea of organizational boundaries is a fuzzy concept, which becomes even fuzzier if we accept that our understanding of organizations is susceptible to a multitude of interpretations (Morgan, 1986). In section 12.2 I define organizational boundaries from a legal and rational perspective. From this point of view boundaries have a normative nature. However, this is just one way of defining boundaries. In section 12.3 other theoretical perspectives are presented, which define the boundaries of

organizations in a different way. All these definitions have one striking resemblance. They refer to the changeover between critical uncertainty and ambiguity of the outside world and uncertainty which can be controlled and managed in the organization itself (12.4). At the same time I conclude that organizations become more (inter-) dependent on each other, which very often leads to an increase in the exchange of information. ICT facilitates these exchange processes. In section 12.5 a number of characteristics of ICT are sketched, which can influence the definition of organizational boundaries and jurisdictions. In section 12.6 some scenarios are sketched which show us how the boundaries of (semi-) public organizations are changing through the application of ICT in order to realize certain policy goals. The scenarios are constructed on empirical research (Bekkers, 1998). In section 12.7 I show how the implementation of information technology leads to a re-definition of organizational boundaries and jurisdictions in public administration.

2. ORGANIZATIONAL JURISDICTIONS AND LEGAL BOUNDARIES

In European public administration the term jurisdiction is traditionally reserved for the competences of judges and courts to administer justice in a certain geographical or functional domain. Every region has its own court and for specific areas there are special judges, such as those adjudicating on tax matters. However, the notion of jurisdiction can also be used to describe the competences and tasks of government organizations. For instance, in the Netherlands municipalities have the competence to lend social assistance to people who lack an income, or to give people a permit to build a house. More generally, public administration can be seen as a collection of organizational competences and jurisdictions. Between these government organizations, but also between public and private organizations, information is exchanged in order to fulfil their tasks and to achieve their policy goals. Jurisdictions are embedded in a network of information exchange patterns and relations. Very often ICT is used to facilitate these exchange relations.

An organizational jurisdiction I describe as the exclusive authority of an actor as a unified entity to determine rights and obligations of citizens in a task domain with (a certain degree of) discretion for which this actor is legally and politically accountable (Bekkers, 1998). The board of the mayor and aldermen in a municipality (a unified entity) and the executing local social service agency have the exclusive authority to give citizens who live within the territory of the municipality social benefits, under specific conditions. Citizens have certain legal rights and obligations to receive them, while a municipality also has legal rights and obligations to render them. A municipality has the right, within a framework, to develop and implement its own social aids program. The board of laymen is politically accountable for this program and the decisions based on it, to the council of the municipality.

Two ideas underlie this notion of organizational jurisdiction. The first idea is that government should be seen as a rational organization. After all, government bureaucracies should be seen as the expression of functional rationality, as Weber once described it. The second idea is that government organizations should function according to some principles of the '*Rechtsstaat*' (constitutional state).

The rational model of organization

The rational approach to organization stresses that an organization is a set of means and people to achieve a number of specific goals in an efficient and effective way (Scott, 1992). These goals can only be accomplished if these means and people are rationally ordered. The emphasis lies on the structure of the organization, which resembles the image of a machine and a pyramid. Mintzberg (1979: 2) defines the organization structure as 'the sum total of the ways in which labor is divided into distinct tasks and then its coordination is achieved among these tasks'.

How are the boundaries of organization conceived in the rational model? The goal of the organization is decisive; a goal which is further operationalized and translated into sub-goals and corresponding tasks and competences. This aspect is especially important for government organizations, because their tasks and competences are laid down in all kinds of laws and regulations, which define the organizational jurisdiction of a government organization. If these tasks and competences are to change, or become entangled with those of other organizations, then the boundaries and jurisdictions are changing, too.

Formalization is another relevant factor in determining the boundaries of government organizations. Formalization tries to make the behavior of people predictable by reducing uncertainty, variety and subjectivity. The boundaries of an organization become visible in situations where the behavior of people within the organization has become uncertain and capricious. Uncertainty can be reduced by the further rationalization of the organization, by using new and more sophisticated ways of formalizing, standardizing and controlling organizational behavior (Scott, 1992).

Rationality is also a factor that should be mentioned. Simon (1956) questioned the rationality of organizational decision making by introducing the concept of bounded rationality. Organizational boundaries refer to the limited cognitive capacity of individuals to make rational decisions. There are informational boundaries, determined by the limited information processing (cognitive) capacity of an organization which can be enlarged by using ICT.

The legal model of the organization

Government organizations are embedded in the '*Rechtstaat*'. What are the principles which underlie this idea and how do they influence the functioning of government organizations and the definition of jurisdictions? Typical of the '*Rechtstaat*' is that government action which influences and very often restricts the behavior of citizens, should be based on the law. It is the law that allocates the competences, tasks and responsibilities among government organizations, and it is the law that defines the extent and the contents of these competences, tasks and responsibilities.

We can discern a number of characteristics, which are related to the attribution of legal competences. First, there are the contents of the legal task and competence. Secondly, there is the territorial and / or functional domain of the competency. Thirdly, there is the degree of discretion a government organization has in fulfilling its tasks. Does the law describe in detail how a task should be executed, what is the

degree of formalization, and the extent to which the organization is free in the execution of this task?

The degree of formalization of the content of a task and the territorial and / or functional domain define to some extent the legal boundaries of government organizations. They become even more important if we look at another characteristic of the '*Rechtsstaat*', in which well defined tasks and competences are seen as a guarantee to prevent unwanted concentration of power in the hands of one government organization. Doctrines like the '*trias politica*', the division of powers and 'checks and balances' are important principles which define the normative boundaries of government organizations and the patterns of accountability which accompany them.

Another relevant characteristic of the '*Rechtsstaat*' is the notion of the constitutional rights of citizens. They are seen as a safeguard against the abuse of power of government organizations such as the right of privacy. These rights also define the jurisdiction of government organizations. The last characteristic of the '*Rechtsstaat*' is the fact that citizens could appeal to an independent judge or court (Burkens et al., 1997).

In this section I have described the factors which influence the definition of organizational boundaries and jurisdictions. These boundaries have a normative nature. They refer to ideas of the '*Rechtsstaat*' and they refer to the specific goals, which government organizations should realize and which are laid down in a policy program or in the law. However, the meaning of organizational boundaries cannot only be understood in terms of their rationality and legality. Other perspectives should also be taken into consideration.

3. OTHER ORGANIZATIONAL MODELS AND OTHER ORGANIZATIONAL BOUNDARIES

If one tries to investigate the question of whether organizational boundaries are changing through ICT, one has to broaden its scope. An organization can be conceptualized in many ways, which also influences the definition of these boundaries (Haas and Drabeck, 1973; Morgan, 1986). Paying attention to these other boundaries is important, because there is interaction between the legal and rational boundaries of the organization and other organizational boundaries. Legal boundaries are important, but they are not the only relevant ones.

The cultural model of organization

An organization is a community, in which people work and live. One of the characteristics of a community is that it has a culture, which can be described in terms of 'taken for granted assumptions', values and norms, rituals, heroes, legends and communication patterns (Frissen, 1989). Norms, values, rites, rituals, heroes, myths, legends etc. reduce uncertainty and create safety and stability. They give meaning to the life of the members of the organization. Organizational boundaries symbolize the distinction between the well-known and sheltered world inside – inclusion – and the relatively unknown world outside the organization – exclusion

(Easton, 1965; Katz and Kahn, 1966). 'A boundary line stands rather as a symbol or as a spatial embodiment of the criteria of inclusion-exclusion with respect to a system. It is a summary way of referring phenomenally to what we have included in or left out of a system' (Easton, 1965: 66). Coding systems make people aware that he / she is leaving or entering the organization. Certain symbols (e.g. the uniform of the porter, insignia like badges), specific languages or grammar (e.g. the way a stranger is treated at the reception desk or by the telephone operator), rituals (like procedures for checking in and out) are manifestations of organizational boundaries and organizational jurisdictions (Katz and Kahn, 1966). These manifestations play an important role in the communication of people in the organization and between organizations (Weick, 1969). As Willke (1991: 30) puts it: "Intersubjektiv geteilter Sinn grenzt systemspezifisch ab, was als sinnvoll und was als sinnlos zu gelten hat". Boundaries are not only (re-)defined in the communication between people, but they also influence the meaningfulness of communication between people.

The political model of organization

In the political perspective an organization is seen as an arena. This arena consists of a conglomerate of parties with conflicting, but also with mutual interests. Parties try to protect their interests by using power. They develop strategies and tactics to mobilize and employ different power resources, like formal authority, financial funds, knowledge and expertise, information, relations, image etc. However, these resources are not always concentrated in the hands of just one party. They are distributed among several parties, which leads to all kinds of patterns of (inter-) dependency and exchange. This creates uncertainty and controlling uncertainty opens the door to the employment of power (Crozier and Friedberg, 1980; Pfeffer, 1981; Morgan, 1986).

The idea of controlling uncertainty and dependency as important power resources is important for establishing an insight into the nature of organizational boundaries. In the literature attention is paid to those people or units which are called 'gatekeepers'. They are situated on the boundaries of the organization and they fulfil or occupy 'boundary spanning functions or positions' (Adams, 1980). Due to the differentiation and specialization of tasks, there are, within an organization, numerous sub-environments and corresponding gatekeepers and boundary spanning activities.

Characteristic of gatekeepers is that they open or close channels of communication, thereby filtering, summarizing, analyzing information and thus shaping knowledge with a view of the world that favors their interests (Morgan, 1986). They control not only information and knowledge but also their distribution, and thus employ power by influencing the perceptions and attitudes of those parties who are dependent on it (Pfeffer, 1981). According to Crozier and Friedberg (1980) the (re-) definition of organizational boundaries is an ongoing political game which involves parties both within and outside the organization.

The open systems model of organization

In the systems approach the organization is seen as a set of loosely coupled, but interrelated elements or subsystems which aim at the achievement of certain goals. But the ultimate goal is the organization's survival within a specific environment. Organizations are seen as natural and open systems, which are connected to an environment through all kinds of input and output processes. An organization draws its resources from the environment (input), and transforms these resources (the throughput) into goods or services (output). An organization is capable of surviving if it is able to attract those inputs necessary to survive and to produce those outputs which can be disposed of (Scott, 1992).

The introduction of an environment means that somewhere there is a changeover between the system and the environment. However, this changeover is not clear. Boundaries refer to the transactions i.e. interactions between a system and the environment. Transactions with the environment imply discontinuity and are therefore a source of uncertainty. On the one hand these transactions are a threat to the stability of the system, on the other hand many of these transactions are vital to the survival of the system (Katz and Kahn, 1966; Miller and Rice, 1967).

The idea of the 'organizational domain' could bring some relief operationalizing the empty concept of 'the environment'. The domain of the organization consists of the claims it makes on products or services provided and populations served. The claims immediately relate it to a number of other organizations, such as suppliers, customers, competitors and regulatory groups like governments, that affect its behavior and outcomes (Thompson, 1967). Organizational boundaries refer to the degree of consensus among the parties within an organizational domain about the properness of their claims (Levine and White, 1961). 'Domain consensus defines a set of expectations both for the members of an organization and for the others with whom they interact about what the organization will and will not do' (Thompson, 1967: 29). The result of this consensus is that it stabilizes the exchange relations between organizations. Zucker et al. (1995) see the production of trust – as a result of bargaining and communication in order to reduce uncertainty – as a necessary condition for establishing domain consensus. An organizational jurisdiction can be seen as the expression of domain consensus and trust with respect to the ways an public organization exercises its legal competences. They influence the legitimacy of a government organization.

The open systems model of organization extended: the interorganizational relations

The definition of organizational boundaries is not only influenced by the legal domain of an organization or its jurisdiction, the exchange relations between organization also play an important role (Levine and White, 1961; Evan, 1966; Warren, 1966; Thompson, 1967; Benson, 1978; Pfeffer and Salancik, 1978; Aldrich, 1979; Van de Ven et al., 1979). Government organizations are embedded in a network of information exchange relations that constitute a policy sector. The number and contents of exchange relations also influence the definition of organizational boundaries.

The fact that organizations are (inter-) dependent on each other has important implications for their autonomy. Pfeffer and Salancik (1978) elaborate this idea. An organization is only capable of surviving if it can reduce its dependence on resources which are vital or critical for its functioning and existence. However, the problem is that the access, distribution and availability of these resources are controlled by other organizations. The resulting dependence creates uncertainty. Organizations are not fully in control of themselves. There is some external control and power over them. Therefore Pfeffer and Salancik (1978: 32) conclude that the boundary is 'where the discretion of the organization to control an activity is less than the discretion of another organization or individual to control that activity'. In other words, 'the organization ends where its discretion ends and another's begins (Pfeffer and Salancik, 1978: 32). Discretion refers to capacity to control external resources. However, determining exactly where the discretion of an organization ends and another's begins, is rather ambiguous.

Organizations develop several strategies to reduce external uncertainty and dependence. By re-defining their external relations they are capable of creating or enacting their own environment. The boundaries of the organization shift, for instance through mergers, interlocking directorates, joint ventures and other strategic alliances. They also shift if an organization can determine the assumptions and premises of the decisions of other (dependent) organizations (Pfeffer and Salancik, 1978).

In the exchange model of organizations (Levine and White, 1961; Evan, 1966; Warren, 1967; Benson, 1978) interdependency is related to the need for coordination and concerted action. Much attention is paid to processes of communication, negotiation, competition and exchange. These processes move between two needs: the necessity to cooperate on the one hand and the desire to maintain the organization's autonomy, i.e. to secure the organizational boundaries, on the other. Negotiation and communication processes are important in creating a balance between these two needs and in establishing a degree of consensus about the nature of the perceived dependence and the conditions under which exchange of resources could take place.

In studies about interorganizational relations attention is not only paid to the definition of these relations, but also to their structure. Several dimensions can be discerned (Marret, 1971; Van de Ven et al., 1979; Aldrich, 1979). First, interorganizational relations can be standardized and formalized, as in a contract or public regulation. For instance, is an exchange relation mandatory, and are specific procedures developed to exchange resources such as information? Secondly, the intensity of the relationship tells us something about the degree of (inter-) dependency. Intensity refers to the amount of resources exchanged as well as the frequency of exchange: it is this *ad hoc* or permanent? Another dimension is the degree of reciprocity. Is there symmetric or asymmetric dependency? Does the exchange of resources lead to a situation from which both parties can benefit? And is there consensus about the nature of, and the conditions under which an exchange can take place? For instance, organizational boundaries become more important if an organization has the obligation to exchange certain resources like information or money, which affects the organizational autonomy. And the more these exchange

relations are standardized and intensified, the more organizations become entangled and the more permeable the boundaries become. This is very often the case in public policy networks and in situations in which certain activities are outsourced or subcontracted.

These relations can become institutionalized and all kinds of stable patterns and forms of exchange and negotiation can emerge. Warren (1967) has paid special attention to these forms of cooperation. The more exchange relations become permanent and institutionalized, the higher the degree of interdependence, the more the boundaries of organizations are put under pressure.

4. ABOUT THE NATURE OF ORGANIZATIONAL BOUNDARIES

The previous observations show that *the* organization as such does not exist. Every model defines the boundaries of an organization in a different way. An organization is simultaneously rational and legally oriented, culturally embedded, subjected to a struggle for power, and engaged in all kinds of interactions with groups in the environment. Our notion of organizational boundaries is therefore relative.

However, a closer inspection reveals that these models do have something in common. Organizational boundaries refer to the management of critical uncertainty and ambiguity, but every model highlights other aspects of the nature and causes of uncertainty and ambiguity. Critical, because this kind of uncertainty is vital for the stability and smooth functioning of the organization.

The notion that *the* organizational boundaries do not exist also has important methodological implications. Some authors (Easton, 1965; Haas and Drabek, 1973; Pfeffer and Salancik, 1978) observe that organizational boundaries are an analytical construct. "Organizational boundaries may be viewed as constructs invented by analysts who will draw them at different points, depending upon their theoretical interests" (Haas and Drabek, 1973: 20). However, these constructs refer to empirical manifestations, but what are they? Haas and Drabek (1973) and Pfeffer and Salancik (1978) focus their attention on the interactions of actors (groups, individuals, units). Typical of these interactions is that they are accompanied by uncertainty, which could have different (e.g. cultural and political) meanings for the actors involved. The boundaries of an organization are defined in the interactions between members and groups within the organization and between members and groups outside the organization.

However, there is another relevant observation. Boundaries differ according to the position of the actor involved. The boundaries a minister defines as meaningful differ from those of the director of a policy unit or the department's accountant. Organizational boundaries are also a normative construct (Haas and Drabek, 1973; Willke, 1992). The actor's position or role defines the things which he sees as crucial to the discretion of the organization and which can or should be influenced. In the case of a government organization the normative nature of boundaries becomes even more important, because they are formulated in the law and they are embedded in the '*Rechtstaat*'.

5. INTERORGANIZATIONAL INFORMATION PROCESSING

Relations and transactions between organizations often involve the exchange of information. ICT can facilitate these exchange processes. If we want to understand what impact these technologies have on the functioning of organizations and the changing nature of organizational boundaries, attention should be paid to the characteristics of ICT (Bekkers, 1993; Tapscott, 1995; Frissen, 1996, Martin, 1996). However, the characteristics of ICT and their translation into specific ICT applications should not be seen as neutral forces. They are linked to certain policy goals which an organization would like to accomplish and the position and interests an organization tries to protect within a policy sector or policy network (Kling, 1987).

Characteristics of ICT

Twenty years ago, information technology was primarily a technology, that was used for calculation purposes and to undertake massive, standardized transactions. Automation was the key word. During the last ten years we have seen that information technology has also become communication technology. The development of network technologies (EDI, Inter- and intranet), the coupling of databases, telematics, groupware and all kinds of search systems have stressed the importance of other characteristics, besides calculation.

First, there is the communication potential. The necessity of physical presence, availability, in terms of sharing the same time, place and location, is no longer an essential precondition for effective communication. Secondly, network technologies offers new possibilities for establishing all kinds of links between people and organizations. They become 'wired' and the quality and quantity of their interactions increases. These linkages become even more meaningful if we look at the increased digital integration or interconnectivity between speech, images and sounds and the corresponding infrastructures and technologies (Negroponte, 1994; De Kerckhove, 1996). Thirdly, ICT enhances the transparency and access of organizations. The surrounding walls are falling down. For instance, the information systems of libraries, laboratories and government agencies can be consulted through the Internet, while intranets and groupware devices also make it possible to share organization-wide information resources. Also, computers systems and databases are being coupled by using network technology and data is being matched. It becomes easier to detect relevant trends and development in policy fields, policy target groups; and the outcomes of policy organizations can also be made more visible. Fourthly, transparency opens the door for more sophisticated methods of control and surveillance. Monitoring systems are deployed in order to observe the results of those policy units which implement certain policy programs. But the coupling of databases and the use of 'data mining' techniques and data profiles also enable government organizations to reconstruct, follow and control the behavior of (groups of) citizens, for instance in order to detect fraud or abuse of social security services. Fifthly, there is virtual reality. Network technology has shaped new, virtual realities, which stand apart from the real world in which people live, work, learn, shop and

produce. This is the world of the virtual communities, cyber corporations and electronic markets. Everything, that occurs in the real world also happens in cyberspace. But do boundaries exist in cyberspace, if everything is connected?

These characteristics, in combination with the interests that are at stake and the goals an organization seeks to realize, influence the definition of organizational boundaries. Information processing, communication and interaction is being facilitated through these new technologies. The wiring of organizations means that those organizations which participate in a network lose some of their autonomy. For instance, they become more transparent, thereby enhancing the possibility of external or interorganizational control, which redefines the boundaries of the organization. For instance, how permeable should a municipality be if it implements a policy program which is formulated by the Department of Social Affairs? Moreover, the establishment of a network creates new interdependencies between organizations which very often can be seen as the expression of trust or power. But, working and planning processes between separate organizations can also be better integrated. This integration becomes more crucial if there are on-line, real time connections.

Characteristics of interorganizational information processing

Not only do these characteristics of ICT affect organizational boundaries; other factors, too, should be considered, related to the broader concept of interorganizational information processing. First, there is the direction of information processing. Is this one-way processing? For instance, a government agency which is mandatorily obliged to give information to another agency or ministry. Or do separate organizations share the same information systems and databases? Another factor is the intensity of interorganizational information processing. Do organizations exchange data permanently or on an *ad hoc* basis? For instance, the structural exchange of data could encourage organizations to develop a common infrastructure and common data definitions. Another factor relates to the way data is transferred and processed. Is this, for instance, in batch-mode or on-line and in real time? Is the data exchanged according to a format, or is it unstructured? What is the nature of the information to be processed? Does it concern technical and operational information, which relates to the working processes within two or more organizations (e.g. name and address information), or does it concern allocative information (e.g. budgeting, planning and control information), or does it regard strategic information (e.g. market information). Or is it privacy sensitive information? The latter refers to the techniques of interorganizational information processing. The exchange of information through structured communication networks like EDI has other implications for the blurring of organizational boundaries than open communication networks like the Internet.

6. RE-DEFINING ORGANIZATIONAL BOUNDARIES

Research into the question if and how the boundaries of organizations in the public sector change through ICT has led to the inductive development of a number of scenarios (Bekkers, 1998). In general two types of scenarios are discerned. The first elaborates on the observation that boundaries move in several directions through the use of ICT. The second shows that the nature of organizational boundaries is changing and that they are being re-defined.

Scenarios concerning the changing direction of organizational boundaries

Scenario I: The colonization of the environment by the focal organization

In this scenario a government organization tries to reduce uncertainty about the speed, quantity and quality of the data which should be delivered by other organizations. An organization tries to formalize and discipline the exchange of data by extending its discretion. ICT is used as a way of colonizing the environment, especially the data exchange relations with certain groups. Very often formats and protocols are developed, which other organizations are obliged to use when they exchange data. Especially EDI technology favors this kind of colonization strategy. Moreover, developing formats and using EDI offers all kinds of efficiency advantages which in the end will lead to a further rationalization of the internal information processing.

For instance, when a garage inspects a used car for its safety – in The Netherlands every car which is older than three years should be inspected every year – it is obliged to use a certain format to electronically exchange the relevant data with the Vehicle License Agency. Another example is the so-called SAGITTA network of the Dutch Customs Administration. Companies which are active in the import of goods are obliged to pay taxes. An EDI network, which connects the Customs Administration and a large number of firms, enables these firms to handle their taxes electronically. The result is that the boundaries of the Vehicle License Agency and the Customs Administration are being extended. They control the exchange of information by the garages and the import companies by introducing a data architecture which standardizes the contents of data and data exchange, and a communication infrastructure which enables them to actually exchange the necessary information.

A number of factors favor this colonization scenario. First, there is the powerful position of the organizations in question. Very often these organizations have a well established position and reputation as a data administrator and registrar, such as the Vehicle License Agency, the Tax and Customs Administration, the Land Registry and the Student Loans Agency in The Netherlands. Their power is built on the fact that other organizations and people are legally obliged to exchange certain data and they have gained knowledge and experience in handling large amounts of data. Secondly, the most important characteristics of ICT which account for this scenario are the capability to facilitate massive transactions and to exercise control. Thirdly, in this scenario we see that a specific type of ICT is used. EDI and data formats are used to extend the boundaries of the organizations in question. Also the kind of data

which is exchanged favors this scenario: it is rather stable, operational, quantitative and well-structured, standardized data. The information relations are stable and have a rather intensive exchange character.

Looking at the organization models I have described in section 12.2, we see that this scenario can be understood from the rational-legal and systems and the institutional approaches to organization. The rational approach stresses the importance of formalization as a way of reducing uncertainty and enhancing the rationality of the internal information processing processes. The open systems and institutional model stresses the importance of dependency, due to legal obligations to deliver certain data.

Scenario II: The penetration of the focal organization by the environment

In this scenario we see the opposite. An organization can be penetrated by the environment thereby using ICT and confronting the focal organization with new and unknown forms of uncertainty. The boundaries become electronically permeable. If an organization hesitates about whether its employees should have access to the Internet, the main question to be considered is very often, do we lose control? And what do these new forms of electronic communication mean for the traditional procedures for handling messages, which an organization has developed to communicate with the outside world? What is the status of an e-mail message? Can a citizen appeal to these messages if he / she has a legal dispute with the agency in question?

If every employee has new forms of access, then he / she becomes a gatekeeper. This could be a threat to the more traditional gatekeepers. Their monopoly is under challenge. In a number of Dutch ministries, the question has been raised if a unit can have its own World Wide Web page. Does this threaten the unity of the department? Or is this a prerogative of the corporate communications and public relations unit? Moreover, if an individual unit opens its own page, what kind of information should be made accessible to outsiders?

The penetration of the organization by the environment is not only perceived as a threat. For instance, Dutch university libraries perceive the possibilities that the Internet offers in terms of access as an opportunity. Here we observe that the goals i.e. tasks of libraries, for instance enabling people to learn and a low threshold, are connected to certain values of the virtual culture of the Internet: free information and universal access. In this example the permeability of organizational boundaries can be seen from a cultural perspective. Also, it would be interesting to see if the position and status of those civil servants who participate in discussion groups – which are sometimes initiated by agencies to discuss policy proposals – changes. Is there is a tension between the horizontal culture(s) of the Internet and the hierarchical culture of the agency they belong to? An experiment in the Dutch province of Brabant has shown that an active civil servant who participated in such a discussion group was asked by his fellow participants if he was speaking as a representative of the regional government. However, he was not in a position to do so, nor was he able – because of the speed of the discussion – to consult his colleagues and / or superiors. In the end he was only capable of participating as a

private person. We can observe a process of 'exclusion' from of the existing organization and a process of 'inclusion' in a new organization, the discussion platform.

The 'unstructured' world of the Internet and the World Wide Web in particular creates new sources of uncertainty, which are sometimes seen as an opportunity or as a threat. If we look at relevant characteristics of ICT we see that communication and transparency are important characteristics that account for the penetration of organizations. If we look at the information relations and patterns which occur, than we see that unstructured data is exchanged. Very often organizations try to protect themselves from these new forms of uncertainty, by trying to establish all kinds of procedures to protect the stability of the organization and certain gatekeeper positions, which can be understood from the rational-legal and political model of the organization. Processes of 'inclusion and exclusion' can be understood in terms of the cultural model of the organization.

Scenario III: The integration of organizations

In this scenario the information between organizations is shared and exchanged in such a way that organizations integrate or couple their information processing, planning and other working processes in order to further reduce uncertainty. This enhances the rationality of the organizations involved. Very often this integration takes place between organizations which are a member of the same value chain. The electronic coupling of the links in the chain created new interdependencies between them. Sharing data electronically means the further rationalization of added value.

In the health sector we see all kinds of electronic linkages established between pharmacies, family doctors, hospitals, medical laboratories and nursing homes. In several cities and regions in the Netherlands we see that local doctors and pharmacies in a region have developed a common database to gain better insight into prescriptions. This system enables the pharmacists and doctors to see what kind of medication the patient had previously from another doctor or pharmacist. Enhancing the transparency of the patients and their medication leads to a better and more professional service delivery. At the same time in the city of Eindhoven, the Catharina Hospital has started some experiments with electronic communication between the regional and the hospital's own doctors. When a physician in a hospital has released a patient the necessary letter of release, containing vital medical information, is sent electronically to the family doctor. This has the advantage that the family doctor has a better and much quicker insight into the medical history of the patient and the hospital's treatment. Laboratory results, like blood test results, are also given electronically. Moreover, the planning processes between hospitals and nursing homes are being coupled in certain regions. When a patient is released from hospital but still needs professional medical care, which only a nursing-home can provide, one major question is: which nursing-home has the capability to nurse this patient? The coupling of capacity planning between hospitals and nursing-homes means that the total capacity in a region has become more transparent, so that the coordination between demand and supply of nursing capacity has improved.

In the social security area we see another kind of integration. The fight against abuse and fraud has led to an increasing awareness about the nature and number of interdependencies between a number of public organizations with different but complementary tasks within this sector. This has led to the establishment of common information architecture and the development of a number of playing rules for exchanging data. The RINIS concept, as it is called, tries to achieve procedural integration, thereby recognizing the autonomy and the ownership of certain data of the organizations participating in RINIS.

The observations raised in this scenario can be understood for instance from the perspective of interorganizational relations, in which exchange and interdependence are the key concepts. To what extent do organizations share the same data? May they alter the data? What does it mean for their autonomy? And in the example of the disclosure of the doctors' and pharmacists' prescriptions, how does it affect the professional behavior of doctors in terms of intercollegial monitoring, which also has important cultural and political implications. At the same time the rational model of organizations can give some important insights into why and to what extent organizational boundaries in this scenario are shifting. Developing interorganizational information systems and infrastructures can increase the rationality of the internal information processing and decision-making processes.

Looking at these and other examples, we see that transparency and communication are the most important characteristics of ICT, which lead to more permeable organizational boundaries. Moreover, more transparency opens the door to more external control. However, control is a characteristic of ICT, which always plays a role in the shaping of interorganizational relations.

The data which is exchanged has a rather stable and standardized character, because it is very often operational data. The information relations are also quite stable and formalized, which also influences the kind of ICT. EDI systems and common data infrastructures, like regional medical systems, are favored. We also see that formats and protocols are developed to facilitate a smoother exchange of data.

Scenarios concerning the changing nature of organizational boundaries

As mentioned before, organizational boundaries can change in several directions. However, this concerns just one set of expectations. Another set deals with the changing nature of these boundaries.

Scenario I: The blurring of organizational boundaries

When organizations are electronically penetrated by the environment, or if organizations share information and integrate their operational and planning processes, we often see that boundaries begin to blur.

Boundary blurring can be understood in terms of a cultural and a political model. If people from other organizations can look into certain information systems, this influences such notions as awareness and interdependence. It influences the way of conceiving these people at the other end of the 'line', for instance in terms of 'Big

Brother'. Does it lead to a surveillance culture? In the Dutch city of Rotterdam members of the district attorney's office have limited authorization to look at a select number of data in the operational systems of the regional police, which at a later stage will be transferred to them on paper (the 'record of evidence'). The advantage is that the district attorney can subpoena a suspect more quickly. At the same time he can easily monitor the behavior of the attending police officer. This example also underlines the scenario of the colonization of the environment: the attorney's office can monitor the throughput of the police. Moreover, it re-defines the boundaries between the executive power (the police) and the judiciary (district attorney's office). It challenges constitutional principles like the division of power and the idea of checks and balances.

Another example is the Dutch BVE network. This is an Internet and World Wide Web application. Using the Internet, a web has been spun over a large number of schools for educational training and adult education. Students are given access to the courses and educational material of other schools. Learning at a distance has become a real option. We also see that a web has been spun over the university libraries in the Netherlands. A student at Tilburg University can log into the files and catalogs of Utrecht University. The electronic linkages between the libraries and the schools have created a new organization, crossing the traditional and physical boundaries of these schools and libraries by making them obsolete. The notion of a classroom, for instance, is fundamentally challenged. What we see here is that transparency, communication and virtual reality are important characteristics of ICT. Internet technology in particular fundamentally challenges the idea of organizational boundaries.

Scenario II: The fixation of organizational boundaries

Organizations are afraid of external uncertainty, which is mobilized by ICT. They try to protect their own autonomy by establishing firewalls or buffers. Boundaries are being reinforced by using ICT applications. The development of the intranet is an example of this scenario. An intranet is a company-wide network which very often operates like the Internet, but has no or only a limited amount of access to the outside world. Intranets aim at using the advantages of the Internet, in terms of e-mail or accessibility of company-wide databases but, on the other hand, they try to protect their users from 'bad' influences from outside. Do these outside connections seduce users to surf all day on the Internet, preventing them from doing their work? How far can outsiders enter the organization and use the organizations own information? Do they need special authorization procedures or code words? Are there special gatekeepers within the organization, who have privileged access to the Internet?

An example of an interorganizational intranet which connects separate public and private organizations and at the same time tries to protect its boundaries (this is sometimes called an extranet) is MIS, the Environmental Information Service System of the North Holland region. To some extent information resources are shared between local and regional governments and private corporations, but citizens, for whom this information could also be interesting, are not given access to

this Web page. So certain groups are included and other are excluded as a way of protecting organizational boundaries.

The RINIS concept also shows us another way of preserving the informational autonomy of the participating organizations. A number of these organizations control certain registers. The data in these registers are recognized by the other RINIS organizations as authentic databases. So the Tax and Customs Administration has the monopoly on the income information, the GBA system has the monopoly on name, address, residence, date of birth information, and the Vehicle and License Agency has the only authentic data on vehicles. Another way of protecting organizational boundaries is the automatic referral index of the RINIS system. If one organization request certain data from an other organization, the request is dealt with using referral index. Certain questions are automatically transferred. Other questions get a special treatment, if they do not meet the specifications of the protocols. This index functions as an automatic gatekeeper.

The examples show how insights from for instance the rational-legal, the political and the institutional model organizations can be used to see how organizational boundaries are being reinforced.

Scenario III: Controlled transparency

Two or more organizations can agree to exchange information to a certain degree. This scenario combines the previous. The degree to which organizations become transparent to each other is fixed, within certain limits. Within a well-defined framework they become mutually transparent. However, if an organization wants to cross the framework boundaries, bells begin to sound. This means that only a limited number of data can be exchanged and used, or strict authorization has to be given to look into or use a database.

The case of the Dutch Student Loans Agency shows us that students are only able to cross the boundaries of the agency to a certain, well-defined and well-protected level. However, they are able to check and alter a limited number of standardized data (e.g. changing the period and number of return payments), by using the smart card technology which is distributed by the Student Loans Agency in combination with the communication terminals which are distributed among the universities. They are also able to ask questions, which will be answered within 24 hours. The Student Loans Agency shows that an organization can colonize its environment by re-designing the relations with the student and at the same time become more transparent to its clients. The boundaries of the Agency have become more permeable, but on the terms and under the conditions set by the agency. This also influences the internal structure of the Agency. They are now establishing 'front offices'. These offices consist of multi-disciplinary teams, which can handle almost all the questions raised within one or two days. The controlled penetration of the outside world, which is made possible by ICT, leads to new ideas and values regarding client-friendliness within the Agency. Moreover these 'front offices' become important 'gatekeepers' because they have the monopoly on the communications with the outside world. The effectiveness and legitimacy of the Agency depends very much on these interactions.

So, to some degree, organization boundaries become permeable, begin to blur, but there is a borderline which cannot be crossed. All kinds of procedures and firewalls are developed and introduced to protect the informational heart of the organization. Very often privacy considerations or considerations of a strategic nature mark the informational domain, which is not accessible to others. Moreover, one can protect this heart, if an organization or a coalition of organizations can determine the selection and use of ICT. Boundary changes can be understood in terms of the interorganizational model of organizations (focusing on the external control of organizations), the rational-legal (focusing on the internal structure and the organization's procedures) and the cultural model (referring to changing values and norms in the approach of clients).

7. THE MANAGEMENT OF ORGANIZATIONAL BOUNDARIES AND CHANGING ORGANIZATIONAL JURISDICTIONS: AN INSTITUTIONAL PERSPECTIVE

Organizational boundaries and jurisdictions on the move

The redefinition of information exchange relations between government organizations and their environments – suppliers and clients – due to the use of ICT implies that uncertainty can be reduced but at the same time that new forms of uncertainty are being introduced, which influence the stability and the autonomy of the organization. Network technology 'literally' opens new horizons. Boundaries are going to change. They are on the move. We have seen that environments are being colonized, that organizations are being penetrated by the outside world, and that organizations integrate. Organizational boundaries begin to blur, fully or to some extent, or they are being protected by new walls. Therefore, the management of organizational boundaries is an important strategic issue since it influences the definition of organizational jurisdictions. Some jurisdictions become more powerful and dominant, while other shrink or integrate. This raises the question whether the original description and allocation of certain tasks and competences still matches with these changing organizational boundaries and jurisdictions and the corresponding changes in the distribution of power among them. Checks and balances are being challenged, while perhaps new checks and balances are being created which do not correspond with well-established principles of the legal system. In this section I show how these changing boundaries influence some elements in the definition of organizational jurisdiction.

Exclusive authority of an actor as a unified entity

The sharing of information and knowledge between government organizations implies that organizational boundaries begin (partially) to blur. This can influence the exclusiveness of a certain authority. We can see this in the creation of integrated 'front offices' which try to deliver public services to citizens as a 'whole person'. However, there is a gap between the authority of these front offices and the authority of the 'back offices' which feed these front offices with information. These back

offices have well-defined organizational jurisdictions. They have exclusive competences, but competences are being shared and integrated in the 'front office'. This also influences the way in which these front offices and back offices are accountable for their actions and decisions. I shall elaborate this point later on.

Other examples are the websites of certain units within a government agency and the e-mail facilities for civil servants. As said before, the fact that these units are able to develop their own web sites is often seen as a threat to the unity of an organization. What is the status of the information supplied by these units? Who is politically responsible for them? Should there be some degree of central coordination? What is the status of an e-mail message if a civil servant participates in a discussion platform on the Internet, or if he answers questions from citizens? E-mail is often seen as a 'slippery' way of communicating which enables civil servants to place themselves outside the control of the organization.

Legal and political accountability

The changing of the boundaries of government organizations and the entanglement of informational domains can lead to difficulties in exercising political and public control. I can illustrate this problem by referring to the establishment of civic service centers, or one-stop shops, within a municipality. There can be a tension between the responsibility for the integrated front office and the responsibility for the separate back office organizations. Who can be held responsible if the front office organization takes decisions in respect of its clients, if this information is unjust and incomplete and it is not quite clear if this is the result of faults in the databases of the back offices? When information domains entangle, it is quite difficult to discover where something has going wrong; certainly if the original data has been modified. And if information is shared, where does the right of ownership lie? Who is responsible if new data is created on the basis of data supplied by the back offices? Who is responsible for the creation of new, virtual databases?

Accountability is enhanced if there are 'checks and balances' between organizations in order to prevent abuse of information power. The integration of information systems and the sharing of information can be defended from the perspective of improving customer friendliness or attacking fraud, and gaining a better insight into developments in a policy sector or target group. The blurring of organizational boundaries is then a necessary consequence. However, this raises some questions which not only relate to the privacy aspect, but also to the distribution and concentration of information power. The extension (i.e. colonization) and integration of information domains of government organizations has not been an issue that has attracted a lot of public and political attention. It is a process which has proceeded very silently. It is an issue which is being discussed and is dominated by civil servants and the bureaucracy. The notion of 'checks and balances' as a principle in (re-) designing information relations in order to neutralize concentration of information power does not play an important role in political and public discussions. Interorganizational information systems and data sharing have been primarily seen as an instrument to enhance the rationality of policy formulation, implementation and monitoring (Bekkers, 1993; Van de Donk, 1996).

However, in several political theories the existence of organizational boundaries plays an important role as a way of creating 'checks and balances' in order to protect an undesired degree of power coming into the hands of one or a limited number of people and organizations. That it is possible to develop a common information architecture between organizations, which respects the autonomy and the 'checks and balances' between them is shown by the RINIS concept. In RINIS there is an agreement that the ownership of certain data shall be protected. If an organization wants to use certain data, which is gathered and owned by other organizations, it does not collect the data itself, but it asks (using an automated reference index) if it may use this data. The tax administration has the monopoly on income information, while the municipalities have the monopoly on the correct data concerning name, address, place and time of birth etc. However, in the construction of RINIS no attention was paid to introducing 'checks and balances' in the relationship between the information power of the participating organizations and the citizen.

To determine rights and obligations of citizens in a task domain

The fact that organizational boundaries begin to blur, or that boundaries are being enlarged and environments are being colonized through ICT changes the position of the citizen *vis à vis* government and its information rights and obligations. For instance, the coupling of databases means that more and more information is being gathered about individual citizens, while they have never given their permission to combine these data and use the information created. They have only given permission to use data for certain specific goals. The information autonomy of citizens to determine how data is being used, is challenged. Moreover, we see that through ICT, citizens are electronically linked with the public administration. They become increasingly a part of public administration. They are not seen as autonomous individuals, but as information providing agents. The handling of data by these agents is controlled and monitored in order to reduce uncertainty and increase the efficiency of internal processes. From a more democratic and legal perspective, one can argue that the boundaries between a government organization and the citizen can be seen as a safeguard against abuse of power, as way of creating 'checks and balances'. These walls fall down when a citizen is included in the organization of public administration.

A certain degree of discretion

The electronic integration of organizations (e.g. the example of RINIS) and the electronic colonization of organizations also influence the discretion of organizations and citizens (e.g. the example of the Vehicle License Agency). Both scenarios point in the direction of Zuurmond's (1994) infocracy. Typical of infocracy is the increased standardization of data definitions and exchange relations, and corresponding procedures and routines: the organization or coalition of organizations who can develop and impose a common data architecture which can influence the degree of discretion of other organizations. If these organizations or even citizens want to exchange information they have to comply with the data

definitions etc. of the data architecture. Developing and imposing a data architecture means that an organization or coalition of organizations can influence the decision-making premises of the gathering and use of information by other organizations and citizens (Zuurmond and Snellen, 1997). According to Pfeffer and Salancik (1978) organizational boundaries are going to move, if one is capable of altering and influencing these decision making premises.

However, the degree of discretion can also change in another way. The line of reasoning above implies that the discretion of organizations and citizens is becoming limited. ICT, especially network technology like the Internet, can also increase the discretion of the participants in the network. If a member of an organization participates in a discussion group or platform on the Internet, he becomes part of a virtual community. The formal background of the participant becomes less important and his discretion increases to act according his own wishes, as illustrated by the example of the civil servant of the Dutch province of Brabant who participated in a discussion group.

Multi-dimensional organizational jurisdictions and the management of boundaries

Organizational boundaries are an important indication of organizational jurisdiction. ICT can alter both of them. However, it is important to notice that organizational jurisdiction should not be limited to a narrow legal definition. The competences of an organization also affect the cultural and political contents of an organization. It gives meaning to people and it enables certain people to exercise power within an organization. Moreover, organizational jurisdictions also influence the exchange relations with other organizations. Some competences can only be exercised if other organizations provide vital information. I can illustrate this with an example. In the Student Loans Agency the call center and help desk has been transformed into a professional front office. Within the near future more than 75% of the communications with students will be handled electronically. This has important consequences for the culture and the management of the front office, in contrast to the traditional administrative back offices. Certain values which play an important role in the back office can differ and clash with those in the front office, while both offices are situated in the same organization. The front office is necessarily more open to influences from the environment than the back office, because it has a closer relationship with the students. Moreover the front office is team-oriented, client-oriented, technology-driven and has a problem-solving orientation, while the back office has a more bureaucratic and functional orientation. In the end the division between front office and back office can lead to a shift in power between the two.

This example shows that the management of boundaries takes places in several organizational spheres or domains. Redesigning external relationships leads to changing organizational boundaries, but these changes also have important consequences for organizational culture and politics. This means that processes of boundary management take place in several organizational spheres or domains, which can conflict.

Wanted: a political theory of government in the information age

The scenarios and examples described in this chapter show that organizational boundaries are changing. In general, we see on the one hand that boundaries are enlarged and thus the control potential of government organizations enlarges with them; on the other hand we see that boundaries begin to blur. On a micro level, studying the specific effect of ICT applications these changes look maybe harmless, but they have profound implications on a meso and macro level. These changes also influence the definition of the jurisdiction of organizations. Well-established patterns of responsibility and accountability as well as the distribution of powers between these organizations are drifting. In the end they also affect the relationship between government and the citizen. The ideas and principles which underlie these patterns had their meaning in an age in which there was no computer technology. If Montesquieu and Madison were to live at the beginning of the 21st century, how should they appreciate these changes? It is 250 years ago that Montesquieu wrote his famous *'L'esprit de lois'* and about 200 years ago that Madison drafted *'The Federalist Papers'*, but how fruitful are the principles of the division of power and 'checks and balances' in the age of computer and network technology? The changing boundaries and jurisdictions through the use of network technology demand a re-definition of the role of government in the information age.

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FRANK HENDRIKS

THE MOBILIZATION OF BIAS REVISITED: INSTITUTIONAL DESIGN, CULTURAL BIAS AND POLICY-ORIENTED LEARNING

“Organization is the mobilization of bias. Some issues are organized into politics while others are organized out” (Schattschneider, 1961: 71).

1. INTRODUCTION

This chapter explicates and illustrates the way in which institutional design influences the activation of cultural biases in the policy process, which in turn influences the process of policy-oriented learning. The institutional domain under consideration includes constitutional structures and formal administrative organizations as well as informal links, rules and procedures that structure policy making (cf. Hall, 1986). The various effects of administrative institutions are discussed in two clusters relating to: (1) the formative or *identity-shaping* effects of administrative institutions, and (2) the relational or *interaction-arranging* effects of administrative institutions. In accordance with this, administrative institutions are defined as all the relatively persistent patterns of behavior and organization within the administrative system that have a formative or relational impact on the communities and actors involved in the development of public policy.

In combination the formative and relational effects stemming from administrative institutions contribute to the *'mobilization of bias'*, a concept originally developed by Schattschneider (1961). In this chapter the mobilization of bias is reinterpreted using a combination of institutional theory and cultural theory as developed by Douglas and others. In this chapter the *'bias'* element of Schattschneider's classic concept is reconceptualized using Douglasian Cultural Theory, while the *'mobilization'* element is reconceptualized using a combination of this theory and other institutional theories, both old and new. Following Selznick's advice (1996) the 'old institutionalism' and the 'new institutionalism' do not exclude but rather complement each other in this chapter. The theoretical argument is illustrated with a comparative analysis of institutional design and public policy making in Birmingham, England and Munich, Germany.

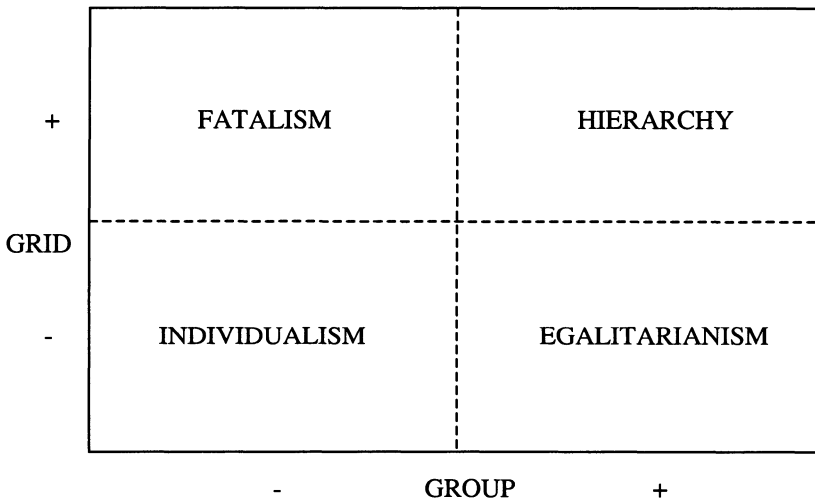
2. CULTURAL BIASES AND POLICY-ORIENTED LEARNING

Policy positions and policy actors tend to be numerous and meshed in many fields of collective choice. Douglasian Cultural Theory provides a typology, the group-grid

typology, which can be used to structure and describe such complex fields in social and cultural terms (Douglas, 1986, 1992; Thompson, Ellis and Wildavsky, 1990; Coyle and Ellis, 1994).

In its current version, the group-grid typology is built on two dimensions of sociality: the group dimension and the grid dimension. The group dimension denotes the degree to which people are restricted in thought and action by their commitment to a specific social group or collective. The grid dimension refers to the extent to which an individual's thinking and acting is prescribed by rules and regulations specifying what to do and think in particular instances. Dichotomization and permutation of the two dimensions leads to a matrix with four quadrants, representing four ideal typical cultures (see figure 13.1): individualism (low group, low grid), egalitarianism (high group, low grid), hierarchy (high group, high grid) and fatalism (low group, high grid).

Figure 13.1: Cultural biases in Douglasian Cultural Theory



The individualist culture is consonant with social relations that are low group/low grid. Individualists dislike to be subject to group decisions and group pressures. The roles that they play are preferably achieved and not ascribed. The individualist view of human nature takes man as incurably self-seeking, which is seen as not a bad thing at all. Individualists embrace the market as a general mechanism for conflict resolution, as an 'invisible hand' creating acceptable social and economic equilibria. Nature is benign from an individualist viewpoint. The individualist culture accepts no limits to expansion as there are assumed to be no limits to human resourcefulness.

The egalitarian culture corresponds with social relations that are low grid/high group. Egalitarians share with individualists an antipathy to externally imposed prescriptions, but unlike individualists they tend to find fulfillment in bounded and exacting social units. Egalitarians believe that human beings are born good, but are

corrupted by the dominant institutions of modern life. They prefer the modest life in relatively small communities, based on voluntary cooperation and ruled by unanimous decision making. Nature is precious and vulnerable in the eyes of egalitarians. Ecological disaster is assumed to be just around the corner.

The hierarchical culture concurs with social relations that are high grid/high group. Hierarchists strongly believe that organizations and societies will be a mess unless they are structured and regulated in a proper way. Hierarchists suppose that human beings are born bad, but can be redeemed by disciplining institutions and policies. Human nature is assumed to need guidance and control. The same goes for physical nature. In general, nature is assumed to be forgivable within boundaries, but unforgivable beyond those boundaries.

The fatalistic culture is associated with a social situation in which group ties are weak, while individualized prescriptions are many. Fatalists tend to be distrustful of human nature. Not knowing who they can trust, they tend to distrust everyone. Physical nature is just as capricious to fatalists as human nature. Life in general is like a lottery.

In public decision making the fatalistic culture usually plays a passive role, whereas the three other cultures tend to play an active role. The involvement of these cultures can be traced by taking a careful look at the assumptions that are made in a particular policy field, the values that are stressed, the problem definitions that are accepted, and the policy options that are considered and finally chosen.

Analyzing Policy Cultures

Tracing cultural elements in policy processes requires the translation of the general cultural ideal types outlined above into more elaborated analytic types which should be sensitive to the particularities of the policy field under study.

An example may clarify this. Suppose we want to analyze policy debate regarding urban car traffic using individualism, hierarchy and egalitarianism as analytic types. The core elements of the analytic types would be identical to the ones described above. In addition to these core elements, policy premises that are logically in line with the three cultures will have to be specified. Individualists can be expected to stress economic accessibility, privacy, flexibility, speed and freedom of choice regarding the means of transportation. Egalitarians can be expected to favor equal access to means of transportation, sustainability and liveability, whereas hierarchists can be expected to put an emphasis on orderliness, synopsis and control of the transport system. Individualists, egalitarians and hierarchists can be expected to conceptualize policy problems as violations of the policy values that they cherish and the core elements that are fundamental to their culture.

For a comprehensive cultural analysis, the preferred policy technologies of individualists, hierarchists and egalitarians will have to be considered too. Individualists can be expected to lean towards market-analogous techniques like road pricing or other techniques that may be used to correct the perceived mismatch between demand and supply in the road sector. Egalitarians can be expected to favor relatively 'soft', communicative and pedagogic instruments designed to make everyone aware of the supposed ecological tragedy of present transportation

patterns, as well as convince everyone of the need to make a radical change towards a modest, small-scale and low-speed transportation system. Hierarchists, finally, can be expected to lean towards relatively 'hard', high-tech, sophisticated instruments that help detect the boundary line between normal and chaotic transportation patterns, and make corrective interventions if necessary.

The ideal typical policy approaches of individualists, hierarchs and egalitarians could be described as 'laissez-aller', 'research and development' and 'radical change now' respectively. Analytic types like these can be used in empirical research into policy making and policy learning, as will be illustrated below, after a theoretical exploration of the connection between cultural bias and policy learning.

Cultural Biases and Learning in the Public Domain

Cultures can be compared with magnifying glasses. They draw attention to some sides of a policy issue but not to others. Cultural biases and cultural blindness are closely connected: each way of seeing is a way of not seeing. Adherents of rivaling cultures can in theory compensate for each others' blind spot by looking at the same issue through different cultural lenses. Things that adherents of one culture tend to neglect can be brought in by adherents of other cultures, and *vice versa*. Cultures are not only ways of perceiving, they are also ways of doing. Adherents of different cultures display varying strengths and weaknesses in the process of making and implementing policy. This again offers prospects for correction and compensation across cultures.

Correction and compensation across different ways of thinking and doing can stimulate what Sabatier (1988, 1993) has coined 'policy-oriented learning'. In the literature on the subject a common distinction is made between at least two types (and levels) of policy-oriented learning: a) *single-loop* learning, being able to detect and correct error in relation to a given set of operational norms, and b) *double-loop* learning, being able to take a 'double look' at the situation by questioning the relevance and the importance of operating norms. Single-loop learning tends to confine policy making to a 'single-problem-single-solution' approach, characterized by a focus on a single problem definition and, as a consequence, a fixation on a particular type of solution. Double-loop learning, on the other hand, can push policy making up to a 'multiple-problem-multiple-solution' approach, characterized by sensitivity to more than one way of defining and tackling a problem (Thompson and Warburton, 1987).

Interaction between different cultures is in theory conducive to both types of learning. It is easier, however, to score successes on the first (instrumental) level of learning than on the second (substantial) level of learning. It is much easier, for example, to convince hierarchists to enlarge their toolkit for the good of their own objectives, than it is to convince them that taken-for-granted norms and goals should be redefined. Redefinition of given norms and goals is viewed with anguish in the hierarchal culture, as it may harm the policy technology in which a lot of expertise as well as prestige has been invested. Strong barriers to redefinition of goals and norms also exist within the egalitarian culture. These barriers, however, are of a different kind. In the egalitarian culture, it is not acceptable to negotiate about

principles, or to have these principles redefined by actors outside the egalitarian in-group. The individualist culture nurtures a rather flexible and pragmatic approach to principles and policy premises. Individualists pay tribute to a few basic values and norms, but these tend to be rather abstract and multi-interpretable. Within broad normative margins, individualists welcome all changes with a positive rate of return. The argument thus far replicates the observation of Sabatier, who argues that the (normative) deep core of a policy belief system is always more resistant to change than the (practical) peripheral aspects of such a belief system (Sabatier, 1988; 1993). He adds the point that this phenomenon can be expected to appear differently in different cultures. Egalitarians stress the importance of double-loop learning for other cultures, but tend to be highly resistant to demands for change in their own normative core. Hierarchists are less pre-occupied with double-loop learning than egalitarians, but they are also more prone than egalitarians to accept externally defined changes of the norms that are to be followed. Individualists are expected to focus on instrumental learning, just like hierarchs, but unlike hierarchs, individualists are expected to disallow external interventions at the normative level. They are, however, likely to accept negotiation at this level, making exceptions for only a few basic principles.

If a policy making system is designed in such a way that it strongly favors one particular culture, chances are that policy-oriented learning will be confined to relatively peripheral elements of the policy belief system, leaving core elements untouched. If competing cultures with alternative visions are made to interact intensively in the policy process opportunities for higher-level double-loop learning will grow, as will be illustrated below.

3. EXCURSION: POLICY MAKING FOR THE MOTOR CAR IN MUNICH AND BIRMINGHAM

Birmingham (England) and Munich (Germany) present interesting cases for comparative research into policy making for the motor car because they displayed similar opportunities for *tabula rasa* planning at the end of the Second World War. Munich's city center was almost totally in ruins. Devastation in Birmingham was less complete, but the city center was written off all the same. Both cities had the opportunity to reconstruct the city center in such a way that it would be able to accommodate the expected rise of car ownership and car use. Both cities made far-reaching plans to do so, but only Birmingham really made it all the way. While Munich gradually turned away from the model of the car-oriented city, Birmingham went ahead and became the European prototype of the car-dependent city. Munich developed a multi-modal transportation system corresponding to a multi-functional city center, which appeared to work increasingly as a magnet in attracting much-wanted activities and enterprises, while Birmingham's mono-functional city center appeared to be doing the opposite.

Comparative research (Hendriks, 1999) shows that the contrast in policy making patterns in Birmingham and Munich is strongly related to the divergent ways in which both cities have dealt with cultural bias and cultural pluralism. Munich's policy-making system was characterized by inclusion, balance of and interaction

between rivaling cultures. Birmingham's policy-making system was characterized by selective exclusion, lack of balance and defective interaction. This influenced the quality and the level of policy-oriented learning.

In Birmingham, policy-oriented learning appeared to be confined to single-loop learning for most of the post War period. Policy makers were almost invariably focused on the norm that growing car traffic should be accommodated. The car-accommodating policy was based on an implicit consensus between the hierarchical and the individualistic cultures. The egalitarian culture, which gained momentum in Munich in the 1960s and 1970s, had a relatively weak position in Birmingham's traffic policy community. It was not until the end of the 1980s that Birmingham's policy community appeared to be able to take a double look at the normative premises of the car-accommodating policy. In Munich the rival policy cultures interacted much earlier and more intensively than in Birmingham, whereas the hierarchical culture dominated policy making in default of effective opposition. As a consequence Munich's policy community did not develop the sort of tunnel view that Birmingham's policy community did. Munich is nowadays one of the most successful European cities in terms of both prosperity and liveability – and it is far ahead of Birmingham in both these respects.

The cases of Birmingham and Munich suggest a correlation between the level of policy-oriented learning and the degree of cultural pluralism and cultural interaction in the policy-making system. Both are influenced by the institutional design of the policy-making system. In this context, it is relevant to look into the status of the institutional factor in Douglasian Cultural Theory. What does it tell us about the connection between cultures and institutions? And does it tell us all we need to know?

4. DOUGLASIAN CULTURAL THEORY AND THE INSTITUTIONAL FACTOR

Douglasian Cultural Theory can be seen as a 'typological version of the new institutionalism' (Grendstad and Selle, 1995: 6). The new institutionalism covers many contributions, arguing that actors and organizations are guided by varying beliefs and preferences, but only a few that specify how these beliefs and preferences could be separated and clustered in a clear and convincing way. Douglasian Cultural Theory is one of the few.

Douglasian Cultural Theory presents a typology that is parsimonious and heuristically valuable at the same time. A broad range of phenomena can be covered using only a few categories. The categories of group and grid refer to basic dimensions of sociality that are strongly rooted in classic social theory. The typology of cultural biases runs parallel to other influential typologies of beliefs and preferences, while at the same time surpassing many of these categorizations in terms of logical structure and heuristic value. The four types of culture are connected to the same two dimensions, while many other categorizations are built on varying dimensions (type 1 refers to dimension A, type 2 to dimension B, type 3 to dimension C, et cetera). The Douglasian types of culture are mutually exclusive and exhaustive, as should be expected from analytic types.

Compared to kindred typologies, the heuristic value of the Douglasian typology is relatively high. Jacobs's rather intuitive distinction of commercial and guardian syndromes, for instance, denies the autonomous impact of the egalitarian culture that can be found among, for instance, many New Social Movements (Jacobs, 1992). The New Social Movement literature takes the egalitarian culture very seriously as an analytic category, but tends to force the individualistic culture and the hierarchical culture into one 'establishment' category (Castells, 1983). The popular distinction between individualism and communitarianism gives the market culture an autonomous position in the normative political universe, but neglects the distinction between communitarian ideals that are hierarchical in nature and those that are egalitarian in nature (Avineri and De Shalit, 1992).

Mary Douglas once described the group-grid typology as 'a good little typology that goes a long way in helping us understand the world around us' (Douglas, 1992: 137). There is a lot of truth in this observation, especially for the world of policy making. The typology helps us grasp policy positions, and it helps us understand patterns of policy-oriented learning. But does it also help us understand the way in which cultural biases become mobilized in the policy arena? More specifically, does it help us understand the role of administrative institutions, and institutional design, in this?

Group and grid as ultimate independent variables?

In Douglasian Cultural Theory, institutional factors are reduced to two dimensions: the group dimension, referring to the extent of group integration, and the grid dimension, referring to the extent of individual prescription. Grendstad and Selle (1995) describe group and grid as 'the ultimate independent variables' of the theory. One could wonder to what extent the dimensions of group and grid can live up to such high expectations, particularly when they are used in the explanation of cultural variation found in policy arenas. Group and grid can explain some of this variation, but certainly not all of it.

Group and grid come to the fore as important, though not all-important, variables when the analysis focuses on the identity-shaping aspect of administrative institutions. Administrative institutions draw boundaries, they classify persons and groups, they contain role prescriptions and they distribute measures of discretion. In this way, they create social settings that help actors find answers to crucial identity questions as 'Who am I?' and 'What should I do?' (Wildavsky, 1987). There is, however, more to administrative institutions than just that. Besides the identity-shaping aspect of administrative institutions, there is an interaction-arranging aspect as well. Administrative institutions not only influence the ideas that actors have regarding public issues, they also influence the opportunities that actors and ideas get to penetrate public decision making.

Douglasian Cultural Theory zooms in on the identity-shaping aspect of administrative institutions but covers it only partially by focusing on the level of group integration (high or low) and the level of individual regulation (high or low). Preferences and beliefs, however, are not only influenced by the *level* of individual regulation (to what extent do administrative rules and prescriptions actually

regulate?), but also by the specific *content* of rules and prescriptions (what is it that rules and prescriptions actually demand and leave open?). Beliefs and preferences are not only influenced by the *degree* of group integration (to what extent do administrative boundaries produce in-group / out-group feelings?) but also by the specific *type* of group integration (what are the substantial characteristics of groups or networks in which actors operate?).

In short, Douglasian Cultural Theory does not tell us everything we need to know about the relation between institutional design and the mobilization of cultural biases in policy making. It needs to be supplemented. Below, Douglasian Cultural Theory will be supplemented with other institutional approaches, both old and new, in order to understand the various ways in which cultural biases may be shaped, guided, mixed and separated by administrative institutions. For this purpose, a basic distinction will be made between: (1) the formative or identity-shaping effects of administrative institutions, and (2) the relational or interaction-arranging effects of administrative institutions.

5. SHAPING IDENTITIES: FORMATIVE ASPECTS OF INSTITUTIONAL DESIGN

Institutional design influences the way in which actors approach policy problems. Administrative institutions shape and cultivate the categories that actors use, the norms they value and the customs they routinely follow. In this way administrative institutions influence the development of cultural biases in the public domain. In this section the formative or identity-shaping impact of institutional design will be discussed in three parts, focusing on: (a) the construction of meaning, (b) the homogenization of habits, and (c) the distribution of goals and duties. These three parts build on, as well as move beyond what Douglasian Cultural Theory has to say about the formative impact of institutions.

Institutions and the construction of meaning

Administrative institutions comprise categories and classes that influence the way in which policy makers define reality. The classifying aspect of institutions has received a lot of attention from new institutionalists in organization theory. In their view, institutionalization is, in essence, a cognitive process in which actors develop 'taken-for-granted scripts, rules and classifications' (Powell and Dimaggio, 1991: 15). These cognitive resources are manifestations of values and norms that are often not recognized by the actors actually using the scripts, rules and classifications. They are automatically and routinely activated. They are part of the socially sanctioned common sense (Meyer and Rowan, 1991: 42).

The new institutionalism in organization theory is influenced by the phenomenological approach of Berger and Luckmann and by the ethnomethodology of Garfinkel, both of which played an important role in the cognitive turn in the social sciences. Garfinkel (1976: 76) drew attention to the 'socially-sanctioned-facts-of-life-that-any-bona-fide-member-of-society-knows'. Berger and Luckmann stressed

the crucial role of institutions in the social construction of reality. They described institutionalization as a social process in which subjective constructions of reality obtain a more or less objective and commonly accepted character. Successful institutionalization is characterized by the bracketing of doubt: actors put their doubts between brackets and begin to believe in the correctness of the social construct (Berger and Luckmann, 1967: 54).

Some institutionalized classifications may coincide with categories in which hierarchs tend to think, other classifications may coincide with categories on which other cultures tend to rely. The high politics / low politics distinction ingrained in the unitary system of the United Kingdom, for instance, supports a rather hierarchical approach to territorial politics (Bulpitt, 1983).

Institutions and the homogenization of habits

Institutions not only influence the cognitive categories in which actors think, they also influence the ways in which actors tend to handle matters and persons. They influence the degree to which, as well as the way in which, actors make plans, perform tasks, coordinate activities and seek interaction. Institutionalised ways of (inter-) acting tend to persist. The force of habit should not be underestimated, as the work of sociologists such as Giddens (1984) and Bourdieu (1977) also shows.

Organisations within a particular policy field often exhibit similar ways of doing things. This is called 'institutional isomorphism' and can be explained as the result of three forces (DiMaggio and Powell, 1991: 67-76). First, there are powerful external actors (most notably state agencies) that urge organizations and actors to adjust their codes of conduct (coercive isomorphism). Second, there is a general tendency to imitate popular models and methods (mimetic isomorphism). Third, there are professional associations and training institutes that transmit a certain logic of appropriateness (normative isomorphism). Sometimes the forces of institutional isomorphism may fit in with a typically individualistic or egalitarian way of doing things, at other times the forces of institutional isomorphism may fit in with a typically hierarchical way of doing things. Hierarchical routines in local government can, for instance, be fortified by directives coming from central government offices drawing a lot of attention to administrative detail.

Institutions and the distribution of goals and duties

In organization theory a common distinction is made between the 'new institutionalism', which emphasizes the previously discussed cognitive and habitual aspects of institutions, and the 'old institutionalism', which is much more focused on the normative aspect of institutions: on the values and norms that specify the mission of the organization (DiMaggio and Powell, 1991: 13).

According to old institutionalists, institutionalization occurs when an organization, which before institutionalization had merely instrumental value, becomes valued as a significant entity in and of itself. To institutionalize is, in the words of Selznick (1957: 17), 'to infuse with value beyond the technical requirements of the task at hand'. In the process of institutionalization the

organizational pattern acquires a normative status that, in a process of socialization, is transmitted to all newcomers in the organization. The interrelated processes of institutionalization and socialization create organizations which in the eyes of temporary (political) leaders are often seen as 'recalcitrant tools': tools that seem to have their own will.

New institutionalists like March and Olsen (1989, 1996) can be seen as the intellectual heirs to the old institutionalism of Selznick and others. Most relevant at this point is the 'duty metaphor' developed by March and Olsen as a correction to the 'choice metaphor' that dominates mainstream political science. March and Olsen argue that actors are not so much preoccupied with the consequences of their choices as with the position-related obligations that they have to meet. The duties and the responsibilities linked to the varying organizational positions determine, to a large extent, the attention that actors pay to the varying aspects of a policy issue.

Institutional structures define units and positions with related goals, norms, duties and obligations that may bend towards a particular type of culture. An organization designed to make the public aware of environmental problems, for example, exhibits a certain institutional bias in the direction of the egalitarian culture.

6. ARRANGING INTERACTION: RELATIONAL ASPECTS OF INSTITUTIONAL DESIGN

Against the background of the previous discussion it can now be understood why actors embedded in different administrative settings display different ambitions and aspirations (cf. Scott, 1987). What is also to be understood, however, is what happens when varying aspirations and ambitions meet in the policy arena. Why do some institutional settings present relational and strategic advantages to a cultural bias while other settings present relational and strategic disadvantages? This section will therefore focus on the ways in which administrative institutions can (a) support, (b) constrain and (c) empower cultural biases in the policy making process.

Institutions as Opportunity Structures

Administrative institutions constitute connections, channels and gates of entry, which influence the fate of problem definitions, policy options and concepts embraced by various actors and organizations in the public domain.

In earlier work – together with Cohen – March and Olsen described policy actors, public problems and policy options in terms of relatively autonomous 'streams' that may converge or diverge in particular choice situations (Cohen, March and Olsen, 1972). In some cases the various streams display an erratic pattern, corresponding to the popular interpretation of the garbage-can model: policy choices are made on the basis of problem definitions and policy options that just happen to converge at a certain moment in time.

In many other cases, however, decision making appears to be rather involuntary. Cohen, March and Olsen explain this by pointing to the existence of two institutional structures: decision structures, which determine the rights and duties of

actors in the decision making process, and access structures, which regulate the access of problems and solutions to the policy arena. In combination, the two institutional structures determine the probability that certain issues will be dealt with in a certain way. Political opportunities, or 'policy windows', are thus created, or opened, by institutional factors (Kingdon, 1984).

Organizations in the public sector are often established to watch over certain problem areas or certain policy options. This makes them the obvious gate of entry, or policy window, for groups that champion a related cause (Downs, 1972). The relatively egalitarian anti-roads movement, for example, inclines to reach out to ministries or divisions established to create environmental policy, while the relatively individualistic, market-oriented roads lobby inclines to connect with ministries or departments for public works or transportation policy.

Institutions as restrictions and boundaries

Scholars using the garbage can model are primarily concerned with the links and connections that make policies move. Others are primarily concerned with the stalemates, gridlocks and standstills in policy processes. They tend to see institutions as restrictions or barriers rather than as opportunities or channels.

Thinking in terms of institutionalized boundaries and has been inspired by Schattschneider's work, which focused on the structural barriers and partition-walls in the American political landscape that play an important role in separating the few issues that will reach the political arena from the many issues that will not get that far. He sought the explanation for this in the organization of the politico-administrative system: 'Organization is the mobilization of bias. Some issues are organized into politics while others are organized out' (Schattschneider, 1961: 71).

The barriers on which potential conflicts can run aground have been described in great detail by Bachrach and Baratz (1963, 1970) who in the final analysis focus on what institutionalized constraints mean to particular groups and actors. In addition to the 'first face of power' – the power of actors to get what they want – revealed earlier by Dahl and others – Bachrach and Baratz reveal a 'second face of power' – the power of actors to block what they do not want. There is, however, also a 'third face of power': institutional values, norms and codes may lead to non-decision making, 'un-politics' or 'policy blindness' in a matter-of-fact way, that is, without any group or actor making conscious use of its (blocking) power (Lukes, 1974).

A classic illustration of institutionalized non-decision making is Crenson's analysis of air-pollution policy in two neighboring towns in Indiana. In Gary, Indiana, non-decision making on the subject was remarkably more persistent than in East Chicago, Indiana, which Crenson explains from the prominent presence of US Steel in Gary. US Steel's interests permeated Gary's decision making system to such an extent that a policy that deviated from them was, for a long time, simply out of the question (Crenson, 1971).

Institutions as Distributors of Resources and Dependences

Administrative institutions not only shape and guide cultures, they also give weight and clout to cultures in the policy making process. Institutions distribute resources and dependences, which may strengthen or weaken the power position of particular actors and organizations displaying particular cultural biases. This aspect of administrative institutions has received a fair amount of attention from students of intergovernmental relations. Two research traditions stand out (Rhodes, 1980).

The first tradition associates policy making power with the possession of resources such as legal competences, financial means and policy-relevant information. These resources are unevenly distributed in every administrative system, but not in the same way in every administrative system (cf. Hanf and Scharpf, 1978; Page and Goldsmith, 1987). The second research tradition is not so much focused on the possession of resources as on the strategic use of resources. Power is not an objectively assessable fact but a subjectively perceived relation of dependency. Administrative institutions come to the fore as rules of the game that are constraining the players but that are also being constructed, reconstructed and interpreted strategically by the same actors (Crozier and Friedberg, 1976).

Figure 13 2: *Formative and Relational Aspects of Institutions*

Shaping identities: formative aspects of institutional design		
<i>Institutions</i>	<i>Impact</i>	<i>Inspiration</i>
Cognitive categories, schemes, classifications, distinctions	formative impact: the construction of meaning and the bracketing of doubt	Berger and Luckmann, phenomenological approach; Garfinkel, ethnomethodology
Habitual ways of acting, standard-operating procedures, isomorphous (policy) styles	formative impact: the homogenization of habits; the standardization of action	Giddens, Bourdieu; new institutionalism in organization theory, Powell and DiMaggio
infused values and norms, position-related duties and obligations	formative impact: the distribution of goals and duties through socialization	Selznick, old institutionalism in organizational theory; March and Olsen, new institutionalism in political science
Arranging interaction: relational aspects of institutional design		
<i>Institutions</i>	<i>Impact</i>	<i>Inspiration</i>
Endurable opportunity structures, hardwearing supportive channels,	interaction-arranging impact: the creation of opportunities and policy windows	stream model, garbage can model, Kingdon; Cohen, March and Olsen
Recurring restrictions and boundaries, structural barriers and partition walls	interaction-arranging impact: the curtailment of decision making and the mobilization of bias	models of non-decision making and mobilization of bias, Schattschneider, Bachrach and Baratz; Crenson
Structural relations of resource (inter-) dependency	interaction-arranging impact: the distribution of resources and dependencies; empowerment	theories of intergovernmental relations and dependencies, Scharpf, Crozier

The two traditions do not exclude but rather complement each other. For a good understanding of the weight that a particular actor can bring to bear one needs to consider both sides of the coin (Rhodes, 1980). For an illustration of this point, one could look at the power position of the Dutch provinces in the regional policy making system of the Netherlands. Looking at the formal institutions (including the institutionalized set of tasks and responsibilities) one could think that the relationship between provincial government and local government in the Netherlands is rather hierarchical. Taking the informal institutions (including the institutionalized reputation for power) into account as well, one would discover that the hierarchical culture can not carry a lot of weight in the regional policy making system of the Netherlands.

7. EXCURSION: INSTITUTIONAL DESIGN AND POLICY MAKING IN MUNICH AND BIRMINGHAM

The identity-shaping and interaction-arranging impact of institutional design can be illustrated with the previously discussed cases of Birmingham and Munich. Policies regarding the motor car in Birmingham and Munich were formed in institutional settings that affected the mobilization of cultural bias, and thus the capacity for policy-oriented learning, in different ways.

The institutional design of Birmingham's policy making system supported the hierarchical and individualistic policy cultures ('pushing' and 'pulling' car-accommodating policy measures) to a greater extent than the institutional design of Munich's policy making system; the institutional setting of Munich promoted the egalitarian policy culture ('countering' car-accommodating policies) to a greater extent. In Munich the egalitarian culture was given more opportunities to offer a counterbalance and to enter into alternative coalitions with the individualist and the hierarchical policy cultures. Post-War institutional reform ('institutional redesign') was at the same time geared at containing the fatalistic culture, which was seen as anathema to the restoration of democracy in post-War Germany. This contrasted with Birmingham, where the egalitarian policy culture received relatively little institutional support while the fatalistic culture got plenty of room to grow in the background.

It is beyond the scope of this chapter to go into all the details of the institutional design found in Birmingham and Munich; some highlights of identity-shaping and interaction-arranging effects will do for the purpose of illustration (for more detail see Hendriks, 1999).

Identity-shaping effects can partly be traced to the internal state structures and the dominant administrative doctrines of the United Kingdom and the Federal Republic of Germany. The hierarchical culture has been cultivated by Westminster-style Unitarism with its emphasis on centralization and concentration. The decentralized and fragmented state structure of post-War Germany, on the other hand, has been effective in suppressing the hierarchical culture in a variety of ways.

Underlying the British Westminster system is a distinction between 'high politics' and 'low politics'. This distinction has cultivated a hierarchical approach to

the system of home administration. In the organic administrative doctrine underlying Germany's Cooperative Federalism, the hierarchical lines are much less accentuated.

The individualistic bias has been cultivated by the pluralist political philosophy that accompanies the English 'stateless society', more than by the organic tradition that accompanies the German 'state society'. The egalitarian culture has found a better seedbed in the German 'soziale Rechtsstaat' than in the British 'minimal state' with its emphasis on negative freedom rights. Institutionalized policy styles – conventional ways of making policy – support these patterns. The British policy style is generally more incremental and reactive. The German policy style is generally more rational, synoptic and proactive.

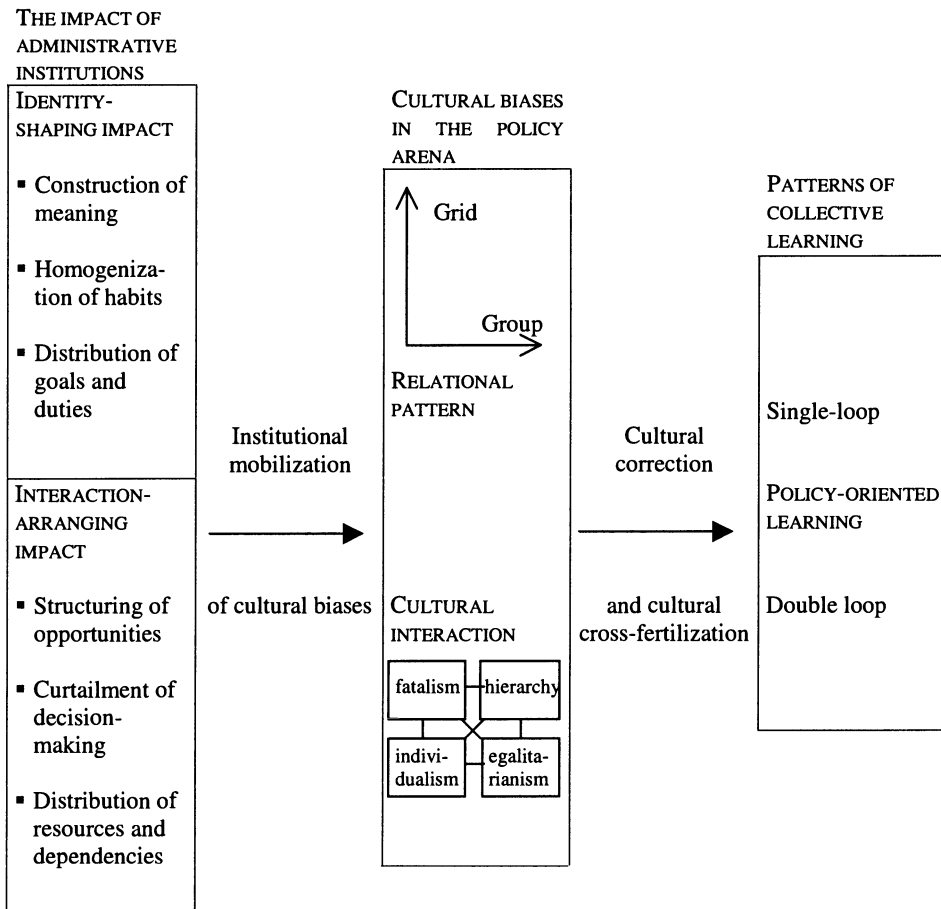
Interaction-arranging effects can be traced to institutions that have helped or hindered policy cultures from interacting in policy making in the cases of Munich and Birmingham. Established channels between Birmingham Corporation and civil society conventionally offered more opportunities to the hierarchical and individualistic establishment cultures than to the egalitarian counter-culture. Brand new channels between government and society were established in Munich after the war (Ward Board, Citizens Assembly, Münchner Forum), which have been open and helpful to the egalitarian policy culture from the start.

For the egalitarian counter-culture, the German new-politics party 'Die Grünen' has been a helpful bridgehead at national and subnational level as well. A similar bridgehead for counter-cultural concerns did not develop in Westminster nor in Birmingham City Council. The British 'first-past-the-post' electoral system has proved to be a high barrier to a green or postmaterialist party. By contrast, the threshold built into the German electoral system has proved to be a stimulus rather than a barrier to the merging of a number of movements into one green new-politics party.

Veto powers and blocking powers are more dispersed in the cooperative-federal German system than in the British Westminster-style unitary state. Counter-cultural movements can link up with many rules and procedures, and with many administrative bodies, each representing a certain amount of blocking power. Government in Germany is dependent on the agreement and cooperation of policy making partners to a much greater degree than government in the UK.

In sum: the institutional design of Birmingham's policy making system contributed to the formation and facilitation of a strong hierarchically biased road building sector, which was supported rather than corrected by outside forces. In Munich, post-War policies with respect to the motor car were made in an institutional setting which countered the tendency to close policy communities, and which more or less forced policy actors with different views to interact. The relationships between engineers, planners, politicians and citizens were organized in ways that encouraged cross-cultural checks and balances. This affected the quality of policy-oriented learning in a positive way. Figure 13.3 summarizes the underlying connections schematically.

Figure 13.3: Institutions, Biases and Learning



8. CONCLUSION

Institutional design influences the mobilization of cultural biases in the policy arena, which in turn affects the quality of policy-oriented learning. The quality of policy-oriented learning is positively related to the level of interaction between different cultural biases, which tend to be mobilized by administrative institutions in a number of ways. In common language, mobilization implies assembling as well as bringing into action. These two elements are implied in the concept of ‘the institutional mobilization of cultural bias’. Administrative institutions cultivate cultural biases, but they also bring them into (inter-) action. Administrative institutions shape identities, but they also arrange interaction between these identities. Both sides of the coin have been explored theoretically and illustrated empirically in this chapter. The examples of Birmingham and Munich suggest that

institutional design geared at the activation of, and interaction between, cultural biases (note the plural) may be far more effective in producing learning-effects than institutional design geared at the activation and seclusion of cultural bias.

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INTERACTIVE POLICY MAKING AS A SERIOUS ALTERNATIVE: BALANCING BETWEEN AN OPEN AND CLOSED APPROACH

1. INTRODUCTION

Decision making about large-scale projects, and particularly about the need and necessity for the expansion of new infrastructure projects, is under discussion in several European countries. The discussion no longer only revolves around the question of which projects should be realized. The question how these processes should be organized and managed is also part of the deliberations. Many parties involved in public decision making about infrastructure issues have become dissatisfied with the decision making procedures, methods, speed and results. Infrastructure investments are facing considerable resistance from the private sector, groups of citizens, and also some governmental bodies. They criticize the long duration, the high costs and the inability to deal with a variety of interests and claims (Teisman, 1997b):

Firstly, the long duration between the transformation of an idea about new infrastructure into a realized facility is being criticized. Several attempts, especially new laws, have been made to speed up decision making. However, up till now these attempts have not had any success.

Secondly, the high costs of the facility due to the incapability of government of working efficiently are being criticized. Market elements, especially competition, are introduced to overcome this criticism. But these kinds of privatization processes are stagnating in several countries.

Thirdly, (national) government is blamed in that it is unable to deal with groups of citizens in an adequate way. Infrastructure policies not only have to meet the claims of the '*homo mobilis*' but also have to ensure a safe and clean environment. This brings all kind of tensions and dilemmas in the decision making process, because unambiguous problem definitions and solutions are absent.

The abovementioned disapproval of government performance in the field of infrastructure is also mentioned in the report 'Deciding about Large Projects' by the Dutch Scientific Council for Government Policy (WRR, 1994). It seems to be a problem to find accurate strategies and working methods to meet this criticism. Infrastructure projects have to deal with a diversity of actors, perceptions, positions and (strained) relations, expectations and opportunities. It is often stated that conflict of values and claims between interdependent actors are the main reason why policy processes give rise to chaotic and lengthy debates and deadlocks. The question arises

'How can one develop governance arrangements and management principles which can deal with this conflict of interests?'

We can distinguish two main perspectives in order to discover accurate strategies and working methods to organize complex decision making infrastructure. The first perspective, the instrumental perspective, aims at reducing the planning phase. Advocates of this perspective focus on reducing the power of plan opponents. The time allowed them to motivate their objection and also the number of opportunities to object is shortened. In the Netherlands this perspective can be found in the called Trace Law, which was adopted in 1993. This law contains rules about the concentration of decision power, the shortening of the time schedule, and the combining of permits and decisions. Another example is the Dutch law that states that decisions of local government can be overruled by national planning (Not in my backyard law). Private actors, issue groups and citizens are to some extent excluded from the decision making processes. Therefore, these actors often have the idea that they are facing accomplished facts, which may lead to the mobilization of massive opposition that blocks the decision making processes or at least slows them down (see Tops, 1998). The outcomes of such, rather closed processes do not seem to meet the demands resulting from complex situations, intertwined problems and ambiguous preferences of modern society.

The second perspective, the process perspective, tries to further the participation of non-governmental actors in an early phase of decision making, so that they may exert an influence on processes of problem definition and the development of alternatives. This perspective is based on the idea of government losing much of its traditional steering potentials in a world with many centers of power (Bryson and Crosby, 1993). The complex interdependences which exist between relevant stakeholders in policy ventures (Frissen, 1996; van Tatenhove and Leroy, 1995), would necessitate a (further) shift towards policy making by negotiation ('t Hart and Kleiboer, 1995). Experiments of this kind that have been introduced in the field of infrastructure are public forums, urban conferences, user panels, scenario workshops, etc. These interactive ways of organizing policy processes not only influence the environment of government, they also influence the shape and substance of political institutions. Rather than depending on traditional hierarchical forms of organization, public managers are experimenting with flatter structures and more participatory ways of organizing. Policy making becomes more transparent, new actors participate and communication is nowadays very important. Supporters of the process perspective argue that co-operation between the main political and social institutions makes it possible to handle the growing diversity, dynamics and complexity of societal issues. Policy making can than be seen as a joint governance process. This notion that policy making is the result of an interaction process between many actors, of whom only some are government agencies, has become common wisdom among policy scientists (Scharpf, 1978; Klijn, 1996a).

In this chapter we examine the open and interactive way of making decisions, the tensions which open processes may generate, and techniques that can be helpful to manage public decision making in (post) modern society. In section 2 we first present what we understand interactive policy making to be. Three main characteristics of the interactive approach are discussed and an interactive experiment is described. Section 2 also pays attention to tensions in interactive decision making related to the open or closed character of the process. In section 3 we present a typology of open and closed

approaches rooted in network and configuration literature. We argue that decision-making processes have to be open and closed simultaneously. This point of view opens the road to new working methods and strategies for organizing and managing dynamic, divers and complex decision making processes. The most important of these management principles are described briefly in section 4.

2. REDESIGNING DECISION MAKING: THE INTERACTIVE APPROACH

Introduction

Based on past experiences, it can be argued that the steering ability of government did not meet its high expectations. A substantial number of governmental policies in the 1960s and 1970s failed to meet their original targets. Less public sector, more private sector, deregulation and decentralization became the new catchwords (Kickert et al., 1997). Experience taught that central government was unable unilaterally to control the complexities and pluralistic diversity, which are fundamental characteristics of modern societies. The so-called unicentric perspective or 'scheme-approach' (Donk, 1997) to policy processes is not very suitable in a situation in which there are more actors involved and no single actor has enough steering capacity to determine the strategies of other actors. In such a situation, policy making has to be an interactive interorganizational activity and cannot only take place through existing institutional arrangements like corporatist structures or the institutions of representative democracy. Policy making will have to originate from interaction and negotiation with non-governmental actors, like private actors, issue groups or even pressure groups and citizens.

Since, the mid-1990s interactive decision making has become quite popular in the Netherlands. This refers to new forms of participation in which all parties who have an interest at stake are involved in processes of problem formulation, generating, elaborating and ranking alternatives and/or deciding upon alternatives. Citizens, private organizations and political actors have become co-producers of solutions for all kinds of problems, also involving infrastructure problems. In other words: the open character marks the interactions of interactive policy making. The nature and degree of 'interactivity' may vary: in some processes the emphasis lies on participation of governmental organizations (Koppenjan, 1998), but citizens are important participants in other processes. Several organizations may actively participate in the policy making process for their own reasons; goals they themselves have set, their formal position, or the fact they possess indispensable information, money, goodwill or means. This kind of complexity necessitates that policy making becomes a process in which the goals of different actors are integrated in a widely supported compromise. Therefore, the need for interactive decision making is strongly felt within the public sector (the WRR reports 'Deciding about large projects' (1994) and 'Spatial development politics' (1998), 'Large project: if necessary, then good!' Dutch council for the countryside (1998), 'Coupling ambitions' Dutch council for Infrastructure and Watermanagement (1998) and the 1997 'Environment and Economy').

The ambitions with regard to interactive policy making are high: these new forms of participation should result in better government, both in the sense of providing better policies and in bridging the democratic gap between government and society. As has

already been stated, the outcomes of decision making should satisfy a number of existing interests and claims in society. For dealing with these multiple preferences it can be useful for the government to consider the private organizations, interest groups and citizens as co-makers of decisions on major infrastructure projects. The knowledge and compliance of the actors involved, it is to be expected, will enlarge the quality and the legitimacy of decision making processes.

Characteristics of interactive policy

Interactive policy can be defined as '*a process to form a common conception, towards a collective policy practice in a network of mutually dependent participants*' (Bekkers et al., 1996). The three main concepts in this definition are: mutual dependent actors, common conception and a collective policy practice (Benou, 1996; Esselbrugge, 1999; Tops et al., 1996; Weterings, 1998):

Mutually dependent actors: interactivity refers to decision-making as an interaction process between public and private partners. Therefore, the concept of interactive decision making is inextricably bound up with a network society. After all, in a context where one single actor can decide alone, co-production does not seem very fruitful. In a network there are no actors who have power over other actors. No single person has control over all the resources necessary to attain his own goals or preferences. Each actor has a specific resource at his disposal, such as expertise, support or money. All of these resources are essential in the decision making process. This means that actors in a network are mutually dependent. However, this does not imply that actors are of equal merit. There are, of course, differences in power and asymmetrical relations. Here, the power question is linked to the transformation of individual goals of actors into outcomes on the collective level. Power, then, is the ability to (co-) determine valuable collective outcomes within a social system (Edelenbos, Monnikhof, and Krouwel, 1999).

Common conception: as stated, actors differ in their opinions, claims, problem formulation(s) and ideas about possible solution(s). Actors may have different views of reality. It is therefore of great importance in a process of interactive decision making that actors reformulate their perspectives and try to reach an agreement on a common conceptualization of the problem, possible solutions, and the role each participant should play in the process. It is relevant that actors can freely and openly speak about their preferences and opinions, without immediately prioritizing them. They are probably not willing to participate when they have to commit themselves for everything they say during the debate. The process should institutionalize open debate in which preferences and opinions can be discussed. Furthermore, it is important that the final outcome reflects the influence and the contributions of the actors involved. It is necessary that they can 'identify' themselves with this outcome.

Collective policy practice: interactive policy making assumes that in the end a (collectively chosen) project will be realized. The process of developing a common conception has to result in a collectively supported 'policy practice', such as an agreement or a fully public-private partnership. However, the collectively supported policy practice can also refer to passive action, which means that one or more actors

decide not to mobilize their potential as 'obstructive power'. In any case, interactive decision making should lead to a surplus for all actors involved.

Interactive policy making seems to be the answer to dealing with a variety of demands and challenges, because it combines knowledge and resources which are disseminated over a great number of societal actors, who all operate on the basis of relatively autonomous positions and separate, parochial perceptions and rationalities. Furthermore, advocates argue that remodeling public decision making into an open and interactive process will broaden societal support (legitimacy). It is even stated that interactive policy making will enrich the process. Here 'enrich' refers to the contributions of other important actors and interest groups to the quality of the decision making process. The aims of organizing decision making in a more open and interactive way are, in short:

- Involvement of citizens and private organizations in the development of alternative solutions: creation of legitimacy and support by involving stakeholders.
- Mobilization of creativity and local knowledge.
- Co-ordination with other policy areas.

Some policy analysts and practitioners consider interactive policy making to be the solution to all the problems we face. Therefore it is not surprising that the Dutch central government, especially the Department of Transport, Public Works and Water management, has enthusiastically embraced the concept of interactive policy.

Interactive policy in practice: the example of Infralab

Some new initiatives in Dutch infrastructure policies are: benefit-and-necessity discussions (TNLI, VERM), open planning procedures (NEC), interactive planning (Infralab). To give the reader an impression of how interactive policies take shape in practice we describe the so-called Infralab-approach.

'Rijkswaterstaat' (RWS), a unit of the Department of Transport, Public Works and Water Management, established Infralab in 1993. The immediate reason for establishing Infralab was the increasing congestion on the Dutch national highways. Infralab is a platform where, in interaction with citizens, new methods and new ideas are developed to overcome the problem of traffic jams. This Infralab approach is nowadays known as 'interactive planning'. In 1993 the Infralab experiment started with the rather 'vague' belief that interactive processes could gain more support from society than the traditional 'closed' processes. It was also assumed that open processes would proceed faster than closed ones and would lead to a better quality of policy outcome. RWS formulated three central principles. Firstly, the opinion of the end-user is the main focus. Secondly, co-operation is desirable between government and citizens throughout the process. Thirdly, the policy process has a time limit of one year. The general idea of the Infralab method of working is that all relevant actors get involved in an early phase of the policy making process and that no special knowledge and skills are necessary: 'they can speak from out their own background and knowledge'. Furthermore, their

input should have an impact on the outcome of the process. The method used contains the three following stages (Hoofdkantoor Rijkswaterstaat, 1997):

Problem formulation (*stemfase*): In this phase, road users, people living near (future) roads and other interested persons shared their personal experiences and concerns. What problems do they have? What are bottlenecks and irritations? These sessions result in descriptions of the most relevant problems that the participants experienced with a specific infrastructure object.

Quest for possible solutions (*agorafase*): In this phase the search for creative solutions is central. Together with some experts the citizens generate as many solutions as possible. The most preferred alternative is selected and judged against the background of political, financial, time and technical conditions. The political authorities decide which solutions will be worked out.

Designing of the chosen alternative (*projectproposal*) by co-producers (*actiefase*): Co-producers refer in this respect to experts who have a role or task in developing, using or managing the chosen alternative. Finally, the competent government institution formalizes the plan agreed on.

Infralab, and interactive policy making in general, finds itself on the borderline between policy making and pure communication. In a sense it is one big communication circus with citizens, interests groups, pressure groups, private organizations, media and actors from several governmental levels. However, interactive policy making is not only communication, it is also about creating a common conception. It is first of all a process aimed at the shaping of a 'collective policy practice'.

Tensions of interactive policy

The open character of interactive policy making implies that access to the 'arena' and the agenda are not structured beforehand in such a way that parties or subjects that do not fit in are excluded from the very beginning (Klijn and Koppenjan, 1999). This subsection distinguishes four fields of tensions related to an open and a closed approach (Esselbrugge, 1999).

Firstly, we can observe a tension with regard to the inclusion or exclusion of actors. Openness in this field implies that all relevant actors will be involved in the process of decision making (de Bruijn et al., 1998). This seems necessary because otherwise, when certain actors are excluded, they may try to block the process. Or, formulated more positively, a variety of actors is preferable because these actors have (essential) resources at their disposal. However, by doing so the number of actors will increase and also the perceptions of the problem and the possible solutions. This will lead to a more complex policy process and generate uncertainty about the outcome(s). Therefore, a closed approach can be preferable, because it can reduce the complexity and the uncertainty of policy making. On the other hand, a closed approach implies excluding some actors and the resources they have at their disposal, and exclusion can mobilize opposition.

Secondly, we can distinguish a tension with regard to the domain of perceptions, which refers to the inclusion or exclusion of opinions and interpretations. Inclusion is advisable from a democratic point of view, because in principle a democratic

society takes account of all opinions and interpretations which exist in society. Full access of opinions and interpretations is also desirable, because such openness may improve the quality of the (substantive) outcome of a policy process (De Bruijn et al., 1998; Teisman, 1997a). However, continuous access to opinions also creates risks. It can lead to a confusion of tongues; impractical ideas and a multitude of perceptions can result in not seeing what really counts. Again, a closed approach seems to be preferable under certain conditions.

Thirdly, there is a tension in the field of information, which is naturally a very important resource in decision making processes. Openness in the field of information is needed to come to well-considered decisions. Actors should have access to different kinds of information and for adequate problem solving they have to make use of (most of) this information. The confrontation between different sources of information may improve the quality of decision making. However, this kind of openness may also lead to an information overload and therefore to incomplete information and thus to non-transparency. This means that actors involved in the process cannot deal with the huge and diverse amount of information: they cannot distinguish relevant information from details of minor importance. Nevertheless, decisions have to be made. In such situation the process should focus on reducing information and the risks that are at stake by making decisions. This implies that a closed approach is preferable at some time during the process.

Finally, tensions related to an open and a closed structure can be found in the field of decision making itself. This is related to the fine tuning of decisions made during the process and linking the final outcome of the process to the activities following. Particularly, the link between interactive processes and 'normal' political decision making procedures is problematic (see Klijn and Koppenjan, 1999; Koppenjan and Klijn, this volume). Problematic linkages between interactive decision making and formal (democratic) procedures are not exclusive to the Netherlands. Fischer and Foster (1993) point out that attempts to put 'the argumentative turn in public policy making' into practice often encounter the objection that such forms of participatory democracy are not compatible with the rules of the game of representative democracy prevalent in the West. To overcome this tension it seems necessary to give a clear outline of the structure of decision making within interactive policy process and to clarify the (legal) status of the outcome of open, interactive processes beforehand.

These tensions illustrate that both an open and a closed structure are valuable for decision-making. It will be obvious that continuous openness does have its risks: confusion of tongues, slackening, unrealizable ideas, etc. The possibility exists that interactivity will only lead to inertia. Therefore, we should recognize that a closed approach within an interactive policy process could be of the utmost importance.

3. TYPOLOGY OF OPEN AND CLOSED APPROACHES

Referring to the tensions related to open and closed approaches in the fields mentioned, it can be imagined that the nature and degree of openness may vary on different aspects of the decision-making process. Within the process perspective on

public decision making, questions about the open versus the closed structure are important subjects in the debate on how decision making processes should be organized and managed (Edelenbos and Monnikhof, 1998; Pröpper, 1998, 1999; Teisman, 1997). The question whether the process should be organized open or closed according to different interaction aspects is a renewed¹ theme in public administration.

In the Netherlands, policy making processes in the field of infrastructure investments are simultaneously (partially) open and (partially) closed. For instance, the process is closed when the administrative machinery wants to (re-) consider the output so far, before the next step in the process is taken. Ideally two extreme situations can be distinguished. On the one hand, the situation that the participation of actors, the problem definition, the policy outcome, the resources and the structure of decision making are determined beforehand by the initiator or the existing institutions. This situation can be typified as extremely closed. On the other hand, we can distinguish the situation that no restrictions are made on the number of actors, perceptions, resources and structure of decision-making. Such processes are unlimited and can be characterized as supreme forms of anarchy. Everything is possible or, following the postmodernist: anything goes! This kind of situation can be typified as extremely open.

In Dutch policy practice these extremes are exceptional, especially in the context of large-scale infrastructure policy making. Decision making is never totally open or closed, but open and closed simultaneously. Therefore, it is necessary to develop new working methods and strategies, which are suited to the organization and management of complex decision making processes. But first, to gain a better understanding, we have to reflect on the concepts 'open' and 'closed' structure in relation to the aspects of interaction processes.

The literature on networks has contributed to our knowledge of the closed structure of policy networks (e.g. Rhodes, 1980; Jordan, 1990a; Schaap and Van Twist, 1997; De Bruijn and Ten Heuvelhof 1991, 1998). On the whole, this literature pays insufficient attention to whether it is the closed minds of separate actors or the closed structure of the process (network) which is at issue (Schaap and Van Twist, 1997). Furthermore, little attention is paid to uneven power distributions and unequal access to decision-making processes or networks.

Combining network literature and the literature on configuration theories may help to overcome these flaws. On the basis of these two schools of thought we can distinguish two dimensions of the decision making process: a social and a cognitive dimension (Termeer and Van Twist, 1991; Termeer, 1993).

The social dimension is about the actors and their relations with each other. An important precondition for relations between actors to arise and continue to exist is dependence. Actors want to attain their goals but are dependent on other actors for the means to reach those goals (Aldrich 1979; Benson 1978; Rhodes, 1981; Scharpf, 1978). This interdependence is not static but has to be discovered and is changed by

¹ Renewed because this question was also part of the pluralism discussion (1950 / 60) and the corporatism debate in the seventies, although the question then was raised in other words.

actors engaged in interaction. A consecutive series of interactions, leads to the formation of a pattern of relations. These assumptions can be found in network theory (Klijn, 1996b; Kickert et al., 1997).²

The cognitive dimension refers to the (different) views or perceptions that actors have about problems and solutions. Perceptions can be seen as the result of interactions. Actors exchange their 'individual reality' through interactions and negotiate on definitions of reality. This is an important assumption of the configuration approach, which starts from the position that reality is constructed, reconstructed and changed in processes of ongoing interaction (Maas, 1988: 38-47; Voogt, 1991: 24). Actors engage in interactions on the basis of their perceptions of reality (Termeer, 1993). These perceptions of reality form the cognitive dimension of interactions ('what'), which is closely related to the social dimension of interaction ('who' and 'how'). 'Who', 'what' and 'how' are important aspects of interaction processes. These aspects have to be complemented with the 'when' aspect. Following Lasswell (1958), politics and policy is about 'who gets what, how and when?'

According to Schaap and Van Twist, closed and open structures may refer to the social dimension (who and how) and the cognitive dimension (what). But the coupling of moments of decision-making (when) can also be open or closed, for example when an policy actor, who is strongly focused on 'his own subproject', speeds up the decision making on this project without paying attention to adjacent decision making processes.

As will be clear, whether a decision making process is open or closed depends on the score on all four aspects of interaction. For example, we can speak about a closed approach when the decision making process is restricted to actors who want to participate, notably, when some perceptions are not debatable, if not all relevant information is freely exchangeable, and if the coupling of decision moments is predetermined. Table 14.1 contains a typology of an open and closed approach.

To avoid disappointments, it is of great importance that all actors involved have knowledge of the limits of openness from the very beginning of the process. But the complexity of interactive decision making makes it necessary to reconsider the progress of the process over and over again. During this reconsideration, the advantages and disadvantages of an open and closed approach, as mentioned above, should be taken into account. This variable perspective on the open or closed structure of a decision making process should help to develop new governance arrangements and management principles.

² These assumptions can also be found in the resource dependency and social exchange theory (Emerson, 1972; Pfeffer and Salancik, 1978).

Table 14.1: Typology of open and closed approaches

Interaction-aspects	Open approach	Closed approach
Actors	Entry of actors into the process is free of restrictions	Entry of actors is restricted
Perceptions	All perceptions can be subject to debate and are considered during the process	Some perceptions are excluded for debate and some are not considered
Resources	All relevant resources for the process are exchangeable (available and accessible)	Some resources are not exchangeable during the process
Moments (structure)	The linkage with adjacent decision making is allowed	The linkage with adjacent decision making is predetermined

4. PROCESS MANAGEMENT: BALANCING BETWEEN AN OPEN AND CLOSED STRUCTURE

Interactive policy making is more likely to deal with the diversity, pluralism and complexity of today's society. On the other hand, the same complexities and pluralistic diversity are the main reason that decision making processes cannot be organized completely open. Dynamics, diversity and complexity are the three most relevant concepts to characterize social conditions, situations and developments, which can be considered as important challenges to modern government. The central issue is how to handle these main characteristics, for instance with regard to the management of large-scale infrastructure projects.

Process management with the potential to handle these main characteristics, maintains the balance between an open and a closed structure. But process management also has the intention of avoiding the domination of one single actor or a one-sided view of the problem and its solutions. This is by no means an easy task, because on the one hand an open structure is necessary for generating innovative and creative ideas but, on the other hand a closed structure is needed to supply certainty and build up trust among participators. 'Closing a decision making process' is aimed at maintaining existing structures and institutions, and 'opening' at changing these structures and institutions. So effective process management can be described as the search for the balance between an open and a closed approach with regard to the four interaction aspects of policy making processes, namely actors, perceptions, resources and moments.

The open or closed structure of a decision making process can be influenced by manipulating the four aspects of interaction. The process management approach considers such manipulation necessary only if the open or closed structure leads to dysfunctions. Evaluation criteria for determining dysfunctions or, more positively formulated, standards for the quality of decision making processes, could be speed, satisfaction of involved actors and the highest possible cost-benefit balance (M. de Jong, 1999).

Table 14.2 contains a set of management techniques (see de Bruijn et al., 1998; Kickert et al., 1997; Teisman, 1997; Klijn, 1996; Scharpf, 1978; Friend, 1974), which can be used to influence the aspects of interaction. The aim of these techniques is to encourage interaction and to overcome obstruction arising due to avoidance, free-rider behavior or conflicts over who is in charge and whose perception best corresponds to reality. Two main levels of interference can be distinguished. First, there are techniques which can be used to change the policy making network by influencing the number of actors or their characteristics. Therefore these techniques are positioned on the actor level. For that matter, outsiders often use these techniques in their attempts to influence the process. They will try to create a context for decision making in which the actors who are already involved in the process will respect the unrepresented interests. Second, there are techniques which aim to improve the interaction within the policy making process. Participants in the interaction process often use these techniques. Therefore these techniques are positioned on the process level.

Table 14.2: management techniques and four points of application

	Actors	Perceptions	Resources	Moment (structure)
Actor Level	Selective (de-) activation	Changing perceptions	Mobilizing resources	Changing powers
Process Level	Changing relations between actors	Intertwining perceptions (consensus building)	Changing the distribution of resources	Anticipating decision rules

Techniques on the actor level

The first technique mentioned is selective (de-) activation (Scharpf, 1978), which can be used to obtain an adequate representation of actors (and their often conflicting interests). It may be clear that it matters which actors are participating. In terms of regulation, this means that policy making can be improved by the selective (de-) activation of participants. Some decision making processes have ended in a stalemate because the initiator had forgotten to include certain key players.

Changing perceptions, the second technique on the actor level, is aimed at influencing individual actors, so that they will reformulate their perceptions of the problem (or solution). This management technique aims at making perceptions more explicit. All actors have to reach some kind of congruent definition of what their ambition is, and decide whether or not to participate in the policy process. The process manager has to be constantly aware of the danger of the exclusion of certain perceptions. Closure of the process can be prevented by efforts to maintain or introduce variation by initiating research, organizing brainstorming sessions, etc.

Mobilizing resources is the third technique on the actor level. If an actor wants to achieve something, he is dependent on his access to indispensable resources. Resources become relevant as soon as actors need them. Facilitation of resources to an actor, who

does not dispose of sufficient resources to participate in the process, leads to a more adequate representation and a more open decision making process.

The fourth form of leverage on the actor level is 'moment'. Managing policy process is not only a question of allowing certain actors to enter the process. It is also about good timing, the right moment. This is crucial because every actor has a limited attention span (March and Olsen, 1976). On an actor level we distinguish the technique of 'changing powers'. When certain indispensable resources are available in an adjacent policy process, actors have to choose the right moment to link this specific process to their process by involving the (relevant) actors of this other process.

Techniques on the process level

The first management application on the process level – changing relations between actors – is partly a co-ordination task. The question is how to connect the series of relations between the different actors to each other. Changing relations between interdependent actors also means changing the network in a specific moment of decision making. Hereby, powerful actors (or a process manager) can increase their influence on the policy process. Therefore, special attention needs to be paid to the tendency to exclude opponents, critics and 'bearers of bad news' from further interaction (Termeer, 1993).

The second technique on the process level is intertwining perceptions, which refers to the necessity for laying a foundation for concerted action. Some common understanding of reality is necessary for interactive decision making. Therefore, the different perceptions must be redefined in such a way that the content of a proposal will be adequate to build such a consensus among actors that is sufficiently powerful to transform the proposal into policy-in-action. Of course, we do not mean that an overall consensus is a necessary condition for acting collectively; the actors involved do not need to share visions, ambitions, etc. in all respects. Managing perceptions is aimed at the direct and indirect adjustment of perceptions in order to improve the conditions for collective decision-making and joint action (Koppenjan and Termeer, 1997: 87).

The redistribution or reallocation of resources is the third technique on the process level. This technique is a rather indirect way of managing policy processes. By changing rules and procedures for interaction, which are used in the process, the distribution of resources is changed; for example, the creation of a conflict regulation mechanism that strengthens the position of weaker parties.

Finally, we can point at the fourth management technique on the process level, namely 'anticipating decision rules'. Decision rules deal with procedures for single decision making, but can also determine whether decisions on different subjects have to be taken at the same time (package deal). The coupling of different decisions can change perceptions and interaction patterns within the process, and open the road to a set of agreements with something attractive for everyone. A process manager must have the capability to introduce such decision rules when the process is deadlocked (see also De Bruijn and Ten Heuvelhof, this volume).

This kaleidoscope of management techniques offer a sound basis for managing policy processes in a complex and plural society. The techniques are aimed at different aspects of interaction (on different levels) and can influence the open or closed

character of public decision making. A competent process manager should have the ability to make flexible and creative use of these techniques. This is extremely important in a society where many diverse ambitions and claims are striving for priority.

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PROCESS MANAGEMENT¹

1. INTRODUCTION

In recent years many organizations in both the public and the private sector have turned to an interactive type of decision making in which decisions are made in consultation with parties in the organizations' environment. Terms used for this practice include 'open decision making', 'interactive decision making', 'process management', and 'stakeholder management' (this last concept is used primarily in the private sector as a complement to 'shareholder management'). In this chapter we use the term process management to describe this type of decision making.

Until now, the literature on open decision making has generally been reflective and / or theoretical in nature. A number of essays have been written on the necessity of open decision making (Galbraith, 1995; In 't Veld, 1995), and there are numerous manuals for organizations desiring to organize an open decision making process (Rijkswaterstaat Noord-Holland, 1996; Van Rooy, 1997; Vrakking and Oosterhout, 1996). Finally, a number of theoretical-academic reflections have been published recently on open decision making. These are generally critical in tone and are organized along two themes: the democratic nature of decision making and the quality of decision making (van Meegen, 1997²). Both are alleged to suffer in open decision making.

In this chapter we add to this literature by describing a number of experiences with open decision making (section 15.3). Based on these experiences, we present a number of recommendations for structuring open decision making processes (section 15.4 and 15.5). We begin, however, with a brief description of process management (section 15.2). In the conclusion (section 15.6), we summarize the aspects of process management discussed in this chapter and relate them to the design requirements.

2. PROCESS MANAGEMENT AS INSTITUTIONAL DESIGN

Two elements are central to *process management*:

- an initiator involves other parties in decision making, and
- the *process*, not the *substance*, of decision making is central.

¹This chapter is a revised version of an article which was previously published in Dutch in *Bestuurswetenschappen*, Vol. 52, No. 2.

² Also see additional references to Van Meegen in this chapter.

Table 15.1 summarizes the most significant differences between the substantive approach and the process approach to decision making.

Table 15.1 The substantive approach and process approach to decision making

	Substantive decision making	Process decision making
Focus of initiator	Good, substantively argued initiative	Interests of the most important stakeholders
How to acquire support	Through the content of the initiative: it is so good that others are convinced	By giving stakeholders influence in the design of the initiative so that it becomes more attractive to them
Central element of design	A substantive solution to the problem	A description of the process that must lead to a solution of the problem
Type of decision rules	Many content rules and some process arrangements for circumstances that cannot be foreseen	Many process agreements and a few substantive rules for subjects that, no matter how the process evolves, require protection
Role of manager	architect: develops a substantive design manager: takes care of the implementation of substantive design monitors a limited number of procedural preconditions	process architect: designs the process approach process manager: facilitates decision making process monitors a limited number of substantive contextual conditions

Process managerial decision making begins by identifying the most important parties and their interests (hence, it does not begin with the content of the problem). In a negotiation process, the *stakeholders* present their interests. Then, together, the parties seek an appropriate problem definition and identify solutions that are attractive enough to garner everyone's commitment. Often, the outcome of this process has the character of a *package deal*: a set of agreements with something attractive for everyone. The process can be designed (by a process architect) and must be monitored (by a process manager).

Process management is focused on complex decision making processes in administrative networks. A network consists of ' ... more or less stable patterns of social relations between mutually dependent actors ' (Klijn, 1996: 47). Since all of these actors in the interaction process – who are already pushing and pulling – attempt to encourage the process to develop in a direction they desire, the process proceeds in a capricious manner. From a substantive point of view, the process can evolve in an unexpected manner and little can be predicted about its course. In these interactions the agenda of the process may change. Some issues will be linked, others will be delinked. The changes may be very profound. Processes with the

character of a zero-sum game may evolve into non-zero-sum games. Actors know that they depend upon one another and this is why they interact. Institutions provide structure to these interactions. Rules indicate which actions and interactions are allowable and desirable (Burns and Flam, 1987).

Process management consists of a set of rules that actors have more or less agreed upon. The process manager applies these rules to concrete situations and then shapes them further. Only those design rules that relate to the existing rules will be effective. They may enhance existing rules, make informal rules more explicit, or make existing, generic rules more tangible in view of decision making on an issue. Decision making evolves further, aided in part by the rules agreed upon. Other rules can also play a role in decision making: self-evident rules, rules that concern unexpected processes and events, etc. After some time, the context will have changed so much that the importance of the agreed rules diminishes. New rules come in their place, explicit or not.

3. ADVANTAGES AND DISADVANTAGES OF PROCESS MANAGEMENT

A process approach claims to have the following advantages (De Bruijn, Ten Heuvelhof and In 't Veld, 1998):

- It results in *support* for a package of decisions.
- It encourages the *quality* of decision making since the parties not only present their interests but also their knowledge and expertise.
- It promotes the *transparency* of decision making since there is prior clarity about which parties can co-decide what and under what conditions. Parties can determine whether they want to participate in the process and whether the process is sufficiently fair.
- A process approach results in *depoliticization*. A detailed, substantive proposal at the outset operates as an incentive to resistance in the network. By choosing 'only' a process proposal, this incentive is neutralized.

Important disadvantages that have been mentioned are:

- A process approach is *no guarantee* that a *problem will be solved* (Van Meegen, 1997). Such an objection is based on the naive notion that there is a 'best solution' that can be objectively determined and that can be authoritative for the parties involved. This objection is unsupportable: after all, a process approach is necessary precisely because such a solution and such a consensus have not emerged spontaneously. It is true, however, that a process approach may diminish the problem solving capacity of parties in a network. Parties who confront each other in a process may end up in a conflict, which exacerbates their differences. At least as important is the risk that a process approach may stall innovation. The parties who participate in

a process are typically an expression of the existing power positions, and this can block innovation.

- Process approaches may be based on naive propositions about participation. Process management appears to be grounded in the notion that parties can – and are willing to – participate. Both the possibility and the willingness can be problematic. A process approach *excommunicates*: if you do not hold a position of power, you cannot participate in decision making. Every form of participation excludes certain parties (Van Meegen, 1997). With respect to those parties who are able to participate, the question is, are they willing? It is not difficult to find evidence to support the suggestion that little use is made of the opportunity to participate: the *degree of participation is low*.
- The introduction of the process approach also leads to a new role in administrative interaction: the process manager. An important point of criticism is that a process approach *degrades* the *position* of formally responsible parties. It violates political responsibility (in the public sector) and corporate managerial accountability (in the private sector). In extreme cases, these parties become facilitators while they continue to represent special interests (public: the ‘general’ interest versus a particular interest; private: the ‘shareholder’ versus the ‘stakeholder’ interest). An evident solution to this is the appointment of a neutral third party as a process manager. This carries the risk of *insufficient authority* in the process. A process manager without formal authority can quickly become the scapegoat when the process evolves less smoothly than the parties desired (De Bruijn, Ten Heuvelhof and In ’t Veld, 1998: 14). All of these objections draw attention to the role and position of the process manager.
- A process approach imposes certain demands on the structure of organizations that participate in a process. They must be organized in a manner that enables them to commit to the process. Many organizations are unable to do this and can *provide few or no commitments*.
- For hierarchically structured organizations, the mandate of the negotiator is problematic. The notion that someone from the organization (who does not normally have discretionary power) could bind the organization to certain outcomes of the negotiation process does not fit well with the hierarchy. This is a problem for government departments, for NGOs and for private organizations alike.
- A comparable problem exists for organizations which are the opposite of hierarchical organizations: what is the value of a commitment from a societal organization given its unstructured nature? Being unstructured means, after all, that the members of the organization can resist certain outcomes of a process and bypass the management.
- A final objection is that a tension exists between the process approach and the need for *quick decision making*. A process approach implies

consultation and negotiations among, sometimes unwilling, parties which obviously takes time.

An important question is whether process management can be shaped in such a way that all of these objections can be countered. In the next section we summarize a number of experiences with open decision making processes which elaborate on what has been said above:

- the relation between substance and process;
- the degree of participation;
- the role of the process manager;
- the organizational formation of the representation;
- the speed of open decision making processes.

Each of these themes imposes certain demands on a process approach. In section 15.5 we show how process management answers these demands.

4. FIVE ASPECTS OF PROCESS MANAGEMENT

In the following discussion, we must realize that many types of open decision making processes are conceivable. Some important distinguishing variables are:

- The degree of organization of the participants: are we referring to an established organization, a 'voluntary organization', or individual citizens?
- The complexity of the subject of decision making: is it a simple issue (construction of a road) or a complex issue involving, e.g., matters of traffic, economic development and nature development?
- The studies we use in the following discussion primarily concern open decision making in established organizations involving multi-issue problems.³

The Relation between Content and Process

When parties participate in an open process, decision making acquires the character of a negotiation. How is the outcome of such a process related to substantive standards? Two phenomena are relevant here.

Process Drives Out Substance. Open decision making requires a number of procedural agreements to which the parties in the process are bound. If substantial distrust arises among the parties during the process or if the parties feel uncertain in

³. Boogmans, 1997 (on culture covenants); Van den Bosch and S. Postma, 1995 (on Shell's Per+ project); De Bruijn, et al., 1998; De Bruijn, Ten Heuvelhof and In't Veld, 1998 (on various interactive processes); Keaton, 1996; Miranda et al., 1995 (on negotiations in South Africa between the Botha government and the ANC); Stern and Fineberg, 1996 (on risk analysis); Vaughan, 1996 (on process management inside NASA); De Vlaam, et al., 1997.

the process, there is a natural inclination to withdraw into procedural argumentation. Since procedures are important in open decision making, there is ample room for parties to focus the discussion and the decision making on these. In a negotiation process between the packaging industry and societal organizations in the Netherlands (De Bruijn et al.), distrust and insecurity were so great at one point that it seemed the process would drown in proceduralism (De Bruijn et al., 1998). In such a situation, the process drives out the content: parties involved in the process are so focused on the process itself and on process rationality that substantive issues are pushed aside.

The often-heard allegation of long windedness partially originates in this mechanism. Parties consult one another and lose themselves in procedures so that a substantial amount of time passes before anything is concluded – and the conclusion is often a compromise.

One should add here that this phenomenon is not always negative. When parties are bound to each other to make a decision, this mechanism provides them with the needed discretion. Thanks to this mechanism, they continue to talk, at least. Thus the mechanism can have a conflict reducing effect at certain moments in the process. It only becomes negative when the entire process is dominated by it.

The Outcome Can not be Sustained In Terms of Substance. Closely related to the former is the phenomenon that while the outcome of a process may have the support of all parties, it cannot be sustained from a substantive point of view. This is a well known phenomenon in the use of technical-analytic instruments. In determining the environmental burden of a packaging system, for example, determining the risks associated with using an incinerator or the chances of flooding requires the use of technical-analytic instruments. In applying these instruments, there is some room for maneuver in terms of the system boundaries, the data, or the methods, which are used to calculate the outcomes. Sometimes parties have a mutual interest in a certain outcome, so the calculation that is best suited to that outcome is selected. But this outcome might lie outside the maneuvering zone: the outcome might be, in all fairness, unsustainable. The outcome could also pose a threat to the package, which may be an additional reason for parties to accept an outcome that is wrong from a substantive point of view.

In her study of the *Challenger* disaster, Vaughan shows the tragic consequences of this dynamic. NASA uses a highly process managerial approach to solve technical problems. Problems with the O-rings were solved through this approach: at some point, it became *negotiated knowledge* that the O-rings were robust. All parties involved (technical experts with various professional backgrounds and managers) agreed on this. But the reality was different, and the failure of the O-rings to function resulted in the explosion of the *Challenger* (Vaughan, 1996).

The Degree of Participation

Open decision making is based on the assumption that parties are prepared to participate. It is also assumed that they will behave cooperatively: while they may

pursue confrontation, but they are nevertheless expected to remain loyal to the process and to the process agreements.

The Participation Paradox. The objective of involving the parties in the process is to improve the quality of and the support for the decisions. The paradox is that the opposite may be achieved. By participating in the process, certain parties acquire more and better information than had they not participated. This information can be used after the conclusion of the process to contest the decision making (instead of supporting it). The acquisition of information places these parties in a more convincing position to resist the decision making than they would be in had they not participated at all (De Bruijn, Ten Heuvelhof and In 't Veld, 1998: 141).

Participation at the Beginning versus Participation at the End. The intensity of participation in the process may vary over time. When we limit ourselves to the beginning and / or the end of the process, the following may happen. At the *beginning* of a process, interest on the part of a number of actors may be limited, primarily because it is not yet clear to them where the decision making process will go. Participation costs time (and money), while the outcome that this investment can produce is uncertain. Thus, there is insufficient incentive for certain actors to participate in the process, but there is ample room for these actors to influence the decision making.

At the *end* of the process, the reverse is the case. There will be significant interest on the part of certain actors to participate in the decision making process after all since the products of the process have become clear. At the same time, the most important decisions have already been made, so their ability to influence is limited. When ample opportunities exist to influence decision making (at the beginning of the process), the degree of participation is low; and the degree of participation is high when the opportunities to influence the decision making are low. The stronger parties in a network, in particular, tend to display this behavior. These parties may develop the idea that they have sufficient power to block agreements made toward the end of the process (De Bruijn, Ten Heuvelhof and In 't Veld, 1998: 141). Thus, an odd situation may develop in which the parties who have insufficient power are excommunicated, while powerful parties do not participate for strategic reasons, or only participate opportunistically.

The Role of the Process Manager

The application of process management has consequences for the initiator. He can be placed in a dual role. On one hand, he organizes the process of consultation and negotiation among parties as process manager ('facilitator', 'director'); on the other hand, he participates in this process as the representative of an interest. This raises the issue of the *role* and the *attitude* of the process manager.

Accumulation of Roles for the Process Manager. How many roles can the process manager fill in addition to managing the process? The process manager can also be, for instance, an expert on the substantive matter, the advocate of a particular interest,

or the manager of the financial means of the process. This accumulation of roles has two advantages. It strengthens the power position of the process manager and thus his influence over other parties. It can also promote efficient process management: if the process manager does not fill these roles, other actors will have to – and this comes with a price tag.

A contextual precondition for a multi-rolled process manager is that parties involved in the process experience some minimum level of cooperation and trust. If this does not exist and the relations among parties are politicized, an accumulation of functions may well work against the process manager. A substantive position could be interpreted as choosing sides with one of the parties. An intervention as process manager might be viewed as favoring his 'self' interest. The process manager can be blamed for financial problems even if they are not his fault. In the literature on process management, it is frequently remarked that the process manager derives his influence from a limited power position and that this forms the basis for trust in him (Kanter, 1983).

Attitude: Instrumental or Intrinsic. Another important issue concerning the position of the process manager is whether he has a merely instrumental function or whether the process also has intrinsic value (Stern and Fineberg, 1996). From an instrumental perspective, open decision making serves to enhance quality and support. The process manager can depart from a process approach once there are results. If he does not do so, then the process becomes a goal in itself instead of a means to an end, and the danger of proceduralism lurks around the corner. Again: process drives out content.

The process manager may also opt for the idea that the process has intrinsic value. A process organizes relations among parties. It serves not only as a means to generate support and quality, but it is also an investment in long-lasting and trusting relations. The careful and prudent commitment to process agreements can be an objective of process management. This is especially the case when parties in the process are confronted with *repetitive* dependencies and will undoubtedly meet again. If, in such a situation, process agreements are approached in an instrumental manner, it may provide parties with the incentive for opportunistic behavior.

The Organizational Formation of Representation

Open decision making implies that the participating parties relinquish some of their autonomy. If a process proceeds well, they will get something in return, for instance, in the form of an attractive *package deal* or in the support for a decision. The question is how much autonomy parties should give up?

Commitment Power of Participants. In section 15.2, we pointed to the problem of *commitment power* of representatives. The issue here is whether substantial commitment power is desirable and possible⁴.

⁴. We pass over a preceding question, namely, how representative is the participant in the process. This question is primarily relevant when individuals participate in the process.

Substantial *commitment power* can be threatening both to a party and to the process manager. A representative, who participates in a process and who has agreed to commit to partial decisions, must consult his constituency on these decisions (which can frustrate process development). Furthermore, he will fear that the process might function like a trap – by committing to partial decisions, he runs the risk that at some point, he may be forced in a certain direction.

Both attitudes can result in an atmosphere of distrust, which does little good for the process. Thus, few parties are willing to furnish commitment prior to the process. Instead, the representative is provided with some limited *commitment power* at the beginning of the process, and the process manager will then have to ‘earn’ commitment during the process: the parties will have to gain trust and benefit during the process in order to commit to its results. More important than whether a representative has formal *commitment power*, is whether the representative is strong enough to convince his supporters once he believes that the outcome of the process has added value (Van den Bosch and Postma, 1995).

The Process as Legitimation. An often-heard complaint about process management is that the parties are invited to consult with one another but that they have no influence over the final decision making. The idea may evolve among the parties that they are ‘encapsulated’ and that their participation only serves to legitimize a decision.

Processes are obviously powerful: they legitimize decision making. Furthermore: parties who participate in a process will subsequently find it hard to withdraw. Sparks describes how the South African minority regime made a number of process-type agreements with the ANC. These agreements appeared non-threatening. But later the regime recognized that it was captured in the process that it had itself designed and withdrawal was no longer possible (Sparks, 1995).

Partially as a consequence of this, the process may be perceived as a trap: once entered, a party may initially have discretion, but is inexorably driven in a particular direction. Obviously, such a perception diminishes the chances for successful open decision making. In the short run, a strategy of ‘encapsulation’ may be successful, but in the longer run the legitimacy of the process manager or the type of process becomes debatable.

The Speed of Open Decision Making Processes

An important aspect of open decision making is, naturally, speed. An often heard complaint against this type of decision making is that the progress of decision making is not served by openness because it works in a delaying manner.

Progress = speed x robustness. A first nuance of this statement is that the progress of decision making depends upon at least two variables: the *speed* and the *robustness* of decision making. A decision is robust when it is retained for a long period of time. In a network, speed often leads to *stop-go* decision making. A decision is made quickly (*go*), but it fails to consider the strength of the various interests. Because of these interests, the decision is ultimately weakened or

amended, implementation is postponed or the decision is reversed (*stop*). Disappointment about this may then provide a reason for 'active' decision making (*go*), after which the network exercises its blocking function (*stop*), etc.

Ideally, open decision making processes result in robust outcomes. These may come at the cost of speed, but they afford more progress than stop-go decision making. When this becomes apparent to the parties (they recognize that a package deal is in the making), it may contribute to support for the process – and to much slower decision making than would be formally possible otherwise. Three asides should be stated. First, *during* the process, it is uncertain if the desired result will be achieved. This may make open decision making vulnerable: it clearly goes more slowly than 'closed' decision making and it is uncertain whether the fruits of open decision making can be harvested. Second, parties *learn* during an open decision making process: they may conclude that the initial problem statement or solution is not the right one. From a project type of perspective, this may make decision making uncontrollable. The negotiation process between the packaging industry and societal organizations mentioned above began with the question of what the most environmentally friendly type of package was: one-time use packaging or return packaging. After the completion of the process, one conclusion was that this question was too simple (Steering Group on Environmental Analysis, 1994). The parties learned, which is positive, but the initial goal was not realized, which is negative from a project managerial perspective. Third parties can use a process strategically to postpone or avoid decision making. Since a process takes time, this may be attractive to parties: they can postpone or even terminate undesirable decision making.

The Follow up of the Process. A process is concluded with a decision that requires implementation. An important risk of this type of decision making processes is *ex post* opportunism: when the time comes to implement decisions, one or more parties decides to withdraw from the agreement after all. We can imagine a situation where industry and societal organizations have negotiated and agreed upon the construction of an installation. But after the company has filed its permits, environmental organizations file objections.

It is important to remember that *ex post* opportunism will occur under a number of conditions: (1) the meeting between parties was only on one occasion and (2) one of the parties has already realized its gain. The chances of this situation occurring are smaller when (1) parties meet again after the process and (2) when it is impossible to pay party A's profit completely without party B having received its profit. The negotiations between the environmental movement and Shell on the Per+ area in Rotterdam harbor are illustrative. The modernization promised by Shell was scheduled to proceed in a number of phases. The environmental movement responded in the following way: "Naturally we keep on saying that as long as the refinery has not yet been modernized, it is not adequate for the environment. But we are able to react positively and abandon our appeal against the permits, because of a promise of the second phase of the Per+ project" (Van den Bosch and Postma, 1995). (Naturally, we continue to say that until the refinery is modernized, it is unacceptable for the environment. But we can react positively and refrain from

objecting to the permits because of promises made for the second phase of the Per+ project.)

5. LESSONS: DEMANDS ON A PROCESS APPROACH

What can be demanded, in light of the above, of a successful process approach?

The Necessity of a Process Design

It is important to explicate process agreements between parties. This means that it is clear which organizations will participate in the process, who its representatives are, what mandate these representatives have, what decision rules exist and within what (substantive, financial) contextual conditions the process will proceed. All this may appear trivial, but experience reveals that a significant part of process management is *implicit*: consultation among parties occurs without the foundation of a well thought-out process design. This may be detrimental to the transparency and integrity of the process. Parties are not aware of the status of the consultation, are sometimes involved too late, do not recognize how their input influences the outcome, may have the impression that other parties have more influence, etc. Once transparency and / or integrity are disrupted, the participants may come to believe that a process is going to proceed in an unstructured manner and / or that they won't have a fair chance of influencing the result. It is obvious that the process may be discredited. Explicating process designs is, however, not new. Standardized process designs have been used in the world of arbitration and mediation for quite some time now.

What requirements should a process design meet? We formulate five requirements, each of which is based on a paradox.

Design Requirement 1: The Necessity of a Sense of Urgency

A process design requires a *sense of urgency* (Kotter, 1997). This means that a sufficient number of parties must believe that a problem exists and that it can only be solved by some means of cooperation. If these two conditions are not met, then the process manager has a slim chance of success: no one is prepared to commit to the decision making process. Phenomena such as the participation paradox and limited participation at the start of the process will especially occur when the *sense of urgency* is low. If there is a *sense of urgency*, the position of the process manager improves: a process is necessary and the process manager deserves respect and authority.

It is also important for the process manager to be patient. If he initiates a process in a hasty manner, the parties may not be sufficiently motivated to participate. Parties who see themselves as powerful may hold the opinion that they are able to get things done without the process. Their willingness to participate will not be very high. If powerful actors do not participate, the process will deteriorate and the result will be an unclear product, ostensible agreement, sloppy participation, a disorderly process, lightweight representatives, etc.

This is the first paradox of process management: a process that is initiated at a seemingly (too) late moment may be more effective as a consequence. At this moment, the *sense of urgency* is high and this may work as an incentive to participation.

Design Requirement 2: Integrity and Openness

Another requirement is that the process design has to be honest and open. This means that the parties involved can be assured that their interests will be sufficiently met and that they can properly influence the outcome. Openness leads to trust, which is an important condition for making decisions in a network. A closed approach often emerges from the need to be efficient and to control the process. But in network situations, a closed approach may work as an incentive to distrust among the parties and could ultimately result in non-decision making. This dynamic is exactly the converse in an open approach. The paradox is that while openness may appear to lead to lack of control, in reality it creates trust, which is a good foundation for decision making.

This requirement implies that the process should not be overburdened by substantive contextual conditions. Strong contextual conditions exist when the problem and direction of solutions are known in principle, and parties are only allowed to discuss a number of amendments to the solution. Openness might come in the form of the initiator giving parties the space to formulate their own problem definition as well as providing the discretion to determine the direction of the solution. What constitutes sufficient openness varies from subject to subject. The norm is that parties are able to have sufficient input of their interests.

Integrity is also important in relation to the *result* of the process. We mentioned above that the outcome of the process can be uncertain: it can vary from complete consensus about a number of decisions to an escalation of conflict. In the latter case especially, an open and honest process may have a legitimizing function. Parties have presented their interests and have learned that these cannot be reconciled. The process has been fair: every party has had sufficient opportunity to wield influence. When an initiator believes that decision making is necessary, a decision – which in this case is likely to be contrary to the desires of some parties – is legitimized. After all, the initiator has done his best to reach an agreement through an open process.

Design Requirement 3: Protection of Core Interest and Core Values of Parties

Open decision making has its limitations, so the third requirement is that the core interests and values of the parties are protected. It is clear from experience that each participant has certain *core interests* that are beyond negotiation. A number of important core interests include:

- Certain *company* data are confidential and strategically important. A process should not be designed in such a manner that confidential information is made public. This type of core interest has to be

protected. If it is not protected, then it is unlikely that companies will participate in the process.

- *Government* is bound by the primacy of politics and cannot disregard questions from Parliament. A process should not be designed in such a manner that it is impossible for the political officeholder to adequately shape his political responsibility.
- *Societal associations* are expected to take a public standpoint. A process cannot be designed in a manner that requires these organizations to remain silent about certain subjects for a long period of time.
- The *initiator* of a process often plays a special role. When a governmental unit is the initiator, it has a special responsibility as a government entity while, at the same time, it is a 'normal' participant in relation to the other parties. This special position requires protection, i.e. by giving this government the opportunity to have two players gain access to the process. One player assumes the role of process manager and another player represents the government interest (versus the argument of *degradation*). The special responsibility of government can also imply that it involves certain parties in the process on the ground of moral considerations (versus the argument of *excommunication*).

Thus this requirement is also based on a paradox. Openness will only be possible if parties are allowed to be closed with respect to a number of interests and values.

Design Requirement 4: Incentives for Sufficient Progress

When a design allows for open decision making, there is a chance that the process will take a lot of time. It requires the participation of many actors to gain openness. It is easy to imagine that this will delay the process. Thus, the fourth requirement is that the process design must include incentives for progress.

What are such incentives like? Clearly, a *command-and-control* type of method is only sporadically effective in a policy process. It may result in parties simply leaving the process. The essence of incentives for progress is that parties see sufficient 'profit' to be gained. There must be some perspective for an attractive package deal as the outcome of participation in a process. A process manager must have sufficient opportunities to create such 'profit'. In simple projects, this might be extra financial means (for instance, to partially honor the desire of some citizens to construct a road). In complex projects, it is important to include enough items on the agenda to allow the parties to barter (for instance, in negotiations on the construction of a large industrial area, include items such as a new nature area, recreation infrastructure, certain compensations for adjacent municipalities, employment, etc.). This implies that increasing complexity may be attractive to process managers. The greater the number of *items / subjects* addressed in the process, the greater the number of opportunities for package deals.

A similar notion is also relevant for the number of *parties*. When a critical mass of parties participates in the process, it may be attractive to other parties to participate, this in turn increases the opportunity for package deals. Also, the indirect effects of the process then become important: an often-mentioned advantage to parties is that their networks expand thanks to participation (Boogmans et al., 1997). Expansion of networks can mitigate the behavior of parties. They know that opportunistic behavior can damage the relations they maintain.

The underlying paradox is that increased complexity (the number of subjects and of parties) can enhance the progress of decision making.

Finally, a process manager may use *command and control* selectively, for instance, at times when parties are realizing profit and are enthusiastic about the process. In this situation, *command and control* will not result in parties leaving the process.

Design Requirement 5: Process Style Arrangements for Sufficient Substantive Input

Finally, the outcome of the process will have to be a quality outcome since parties may agree – forced by a sharp conflict of interests – on a decision that is wrong from a substantive point of view. The result may be ‘negotiated nonsense’.

The requirement of substance is somewhat problematic since there is no one ‘best’ solution. A substantive judgement – for instance by experts – about the decision making in the process can be disputed: the assumptions, the data, and the system boundaries applied by the expert are not entirely objectifiable.

There is a risk of an *anything goes* mentality emerging in which parties fail to sufficiently consider the substantive correctness of their standpoint. There may not be a ‘best’ solution, but there is some room for maneuvering – outside of which, a substantive standpoint cannot be allowed. It is necessary to build in arrangements, which guarantee that these are ‘substantive’ borderlines, which cannot be crossed. Thus, the parties will have to agree on a decision that falls within this maneuvering arena; if not, process drives out content.

For a substantive judgement to play a role in decision making, it must somehow be embedded in decision making. An expert who formulates his standpoint outside the process, can become a victim of *anything goes* since he is not obliged to explicate and discuss his own assumptions, data and system boundaries. Within the process, insights provided by the expert can be addressed critically by the parties who determine which insights are solid and which are debatable (Keaton, 1996; Miranda et al., 1995).

The paradox here is that substantive quality can only be guaranteed by process-type arrangements. The process is designed in such manner that experts on the substance of the issue can play a role.

When experts are involved in the process, they play a critical role *vis-à-vis* the interested parties. During the interaction with the interested parties, the experts can separate sense from nonsense, provide substantive insights, unmask unsound reasoning, indicate what information is hard and what is soft, conduct sensitivity analysis, etc. Also, they can offer new professional insights and thus help prevent

the process from becoming nothing more than an expression of existing interests and insights.

6. CONCLUSION

In table 15.2, the aspects of process management discussed in this chapter are summarized and related to the design requirements.

Table 15.2 Process management and design requirements

Design Requirement	Consequences
Sense of urgency	<ul style="list-style-type: none"> - prevents participation paradox - prevents low participation at the beginning, high participation at the end - enhances the authority of an independent process manager
Openness and integrity	<ul style="list-style-type: none"> - prevents instrumental use of process management - prevents the perception of the process as trap, as a way to smother resistance - reduces the chance of ex post opportunism - legitimizes decision making, even when the process has aggravated differences
Protection of core interests and core values of parties	<ul style="list-style-type: none"> - makes it possible to earn commitment power - provides opportunity to account for the special responsibility of one or more parties
Incentives for progress	<ul style="list-style-type: none"> - prevents the stop-and-go effect of command and control - prevents strategic behavior: process as a means for delay/end of decision making
Process type of arrangements for sufficient substance	<ul style="list-style-type: none"> - prevents negative outcome of 'process driving out content' - improves the quality of a substantive outcome - improves substantive innovation

The table illustrates that process management is more than simply 'involving parties'. In fact, if a process manager limits himself to that, failure lurks around every corner. Parties will not feel the necessity to cooperate, they will believe that their core interests are in jeopardy, or they will use the process as a means for delay. Thus, merely connecting parties may lead to the opposite effect of what was intended, and dormant conflicts of interests will be intensified to new heights by the process.

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MANAGING PUBLIC-PRIVATE PARTNERSHIPS: INFLUENCING PROCESSES AND INSTITUTIONAL CONTEXT OF PUBLIC-PRIVATE PARTNERSHIPS

1. INTRODUCTION: PUBLIC-PRIVATE PARTNERSHIPS AS A GOVERNANCE STRATEGY

Public private partnerships are growing in importance and in number in most of the member states in the European Union.¹ This growth seems to be connected with the attempt of government all over the world to look for new ways to govern complex and dynamic developments (for a review see Pollitt and Bouckaert, 2000). Partnerships are part of a large movement toward government reform which includes public management reform strategies like privatization, contracting out, deregulation and decentralization on the one hand (Pollitt and Bouckaert, 2000) and a wide variety of what can be called governance reforms to cope with (increasing) interdependencies between public actors and a wide variety of societal actors on the other hand (Kooiman, 1993; Alter and Hage, 1993).

Two types of governmental reform

These two types of reform seem to be addressed to different problems and have been inspired by different (theoretical) views on governance and the role of public actors. In public management reforms like contracting out and privatization one can find strong views about making government more efficient. Government should do more with less (Osborne and Gabler, 1992). Strategies like privatization and contracting out are strongly inspired by ideas of the new public management. New public management ideas try to translate managerial ideas from the private sector, such as client orientation, better performance by contracting out and improving efficiency by the introduction of market mechanisms, to the public sector (Pollitt, 1990; Kickert (ed.), 1997).

Governance reforms like partnerships, interactive policymaking or network management are aimed at dealing with complex interdependencies between public and private actors. They try to develop (new) organizational structures and strategies for process management to cope with interdependencies and complexity of interorganizational decision making (Waddock, 1991; Alter and Hage, 1993;

¹ See, for instance, Collin (1998) for trends in Sweden (also: Matuschewski 1997), for Germany: Budaus and Eichhorn, 1997; for the Netherlands: Teisman, 1999, Klijn and Teisman, 2000), for Great Britain: Lowndes/Skelcher, 1998

Lowdes and Skelcher, 1998, Kickert, Klijn and Koppenjan, 1997; Clarence and Painter, 1999; Klijn and Koppenjan, 2000).

So one can see a difference in inspiration for the governmental reforms, a difference in aims at which the governmental reforms are directed and a difference in focus of the reform.

Table 16.1 A comparison of Public Management reform and governance reforms

	Focus	Aim	(theoretical) inspiration
Governance reform	Changes in interorganizational governance structures and developing and improving process management	Dealing with and improving interorganizational decision making	Theories on network management, negotiating, mediating and complex decision making
Public management reform	Organizational and institutional changes within public sector	Increasing efficiency of public services and public organization (doing more with less)	New public management: translating private managerial ideas to the public sector

Outline of this chapter

In this contribution we argue that partnerships – as a more network-like strategy of governance – distinguish themselves from the strategies which aim at improving the efficiency of governments. One of the essential characteristics of partnership is joint responsibility and co-operation. This contrasts with the characteristics of contracting out in which a clear division of tasks and tendering rules are important. The differences between partnership and forms of contracting out are dealt with in section 16.3. This is preceded by section 16.2 in which some general backgrounds to the growth of partnership strategies are treated: the rising of a network society. Section 16.4 deals with an important condition of partnerships, transparency and trust, and the problems of generating these prerequisites. Section 16.5 discusses various management strategies for governing Public Private Partnership relations. The chapter ends with some conclusions (section 16.6).

2. THE CONTEXT FOR PUBLIC-PRIVATE PARTNERSHIPS: THE DEVELOPMENT OF A NETWORK SOCIETY

Despite the accompanying problems, public private partnerships are time and again pointed out as attractive arrangements (see, for instance, Ministry of Finance, 1998). Partnerships seem to be *the* way to govern complex relations and interactions in modern network society. In such a society (Castells, 1996; Guehenno, 1994) the public and private sector are strongly intertwined and this calls for different forms of governance.

Beyond markets and hierarchies and public and private

The development of the network society implies that the classic separation between market and hierarchy or between public and private sector is increasingly coming to lose its value. This can be seen in many ways. The first that comes to mind, of course, is that public and private actors are becoming increasingly dependent on each other. But one can also see that the organization mechanisms of what has traditionally been labeled as public and private sector (and mostly is at the same time called hierarchy and market, although this is of course not always appropriate) are changing.

Markets more and more are losing their 'textbook character': free competition between a wide variety of firms. This is nothing new, of course. The literature on market failures because of monopolies and imperfect markets is large. What is new is the development that firms are increasingly becoming dependent on each other for their functioning and survival in markets. The rapid growth of strategic alliances illustrate this (Faulkner, 1995). More and more firms operate within 'industrial networks' in which they depend on a range of other firms for the manufacture and sale of their products. Examples of this can be found in high-tech industries like the manufacture of airplanes but also in many other branches. A growing body of literature tries to explain these developing relations between firms and addresses the question of how these industrial networks function and what advantages they have to offer (Miles and Snow, 1986; Hakansson and Johanson, 1993; Lundvall 1993; Alter and Hage, 1993). Noteworthy is the attention that is addressed in some of this literature to the importance of trust in replacing costly and time-consuming processes of contracting (Lundvall, 1993; Alter and Hage, 1993).

At the same time, governments are coming increasingly to depend on private and semi-private actors for the achievement of their policy. Government actors function within networks of interdependent actors (see a large amount of literature on this topic: Hanf and Scharpf, 1978; Rhodes, 1988; Hufen and Ringeling 1990; Marsh and Rhodes, 1992; Klijn, Koppenjan and Termeer, 1995; Kickert, Klijn and Koppenjan (eds.), 1997). This makes the achievement of policy and / or projects a complex matter in which co-operation with various actors is needed. A hierarchical governance mechanism does not fit very well in these situations.

The conclusion that can be drawn, therefore, is that the traditional distinction between market and hierarchy has become less strict (Alter and Hage, 1993). Markets increasingly resemble networks in which companies function as a result of a good relationship with other organizations. Government agencies, on the other hand, are more and more dependent on network-like ways of co-ordination for their own efficiency and effectiveness.

The boundary between the private and public sectors as an expression of the distinction between market and hierarchy also seems to be fading. Local conditions for the establishment of new businesses, of major importance for economic activity, are largely determined by the actions (and lack of action) of government agencies, while the actual decision about location is made by individual companies. The mutual adjustment of public and private strategies becomes a fundamental prerequisite for the success of numerous economic and infrastructure initiatives.

Characteristics of the network society

Characteristic of the network society is thus the blurring of the borders between the public and private sector but also the *interdependence* of various organizations (Guéhenno, 1994; Castells, 1996). Both are very apparent in many PPP projects in the Netherlands (Ministry of Finance, 1989, 1999) but also in many other decision-making processes. In such cases a satisfactory achievement of the goals of each of the individual actors requires the activity of the other actors. This occurs because knowledge and resources, which are necessary for reaching these outcomes and which can vary in their nature and importance, are distributed among different actors. The importance of the resources that actors possess gives them more or less power in the network (Scharpf, 1978, 1997) But even less powerful actors often have some veto power, which means the power to block decisions (Klijn and Koppenjan, 2000). The potential veto power that all these actors possess because of their control of various resources creates a 'world in which nobody is in charge' (Bryson and Crosby, 1992: VI). This interdependence and the veto power that accompanies it means that interesting (policy) proposals, projects and outcomes cannot be reached without a certain co-operation of various actors. This kind of interdependence leads to *complexity*.

Complexity is the result of the processes of interaction and negotiation between different actors whose resources are indispensable for a joint undertaking. The complexity is enhanced by the fact that these actors have their own perceptions and strategies, which can conflict with each other (Klijn, Koppenjan and Termeer, 1995). Powerful public-private partnerships can only be established if the partners are able to deal with complexity. If complexity is seen as a threat, partnership will probably soon be transformed into a traditional contracting out arrangement. This means that not only a fruitful partnership among the participants with different perceptions, interests and goals has to be created, but it is also necessary to co-ordinate the different activities of the actors so that actual results can be achieved. Or to put it another way: the network society with its interdependences and dispersion of resources, information and (political) legitimacy creates a management problem of how to bring both knowledge and resources together in public-private partnerships.

Institutional barriers to public-private partnerships

Given the above, it is understandable why public and private co-operation has attracted considerable attention for quite some time. For this co-operation to be achieved, adequate arrangements are required to direct the co-ordination between public and private actors. Development of these arrangements, however, seems to be blocked by various institutional barriers, which are related to the classical separation of the public and private sectors. It is not possible within the framework of this chapter to cover this topic fully. We only make three important observations in relation to institutional barriers.

Traditionally, all kinds of institutional arrangements are aimed at separating the public from the private sphere. Especially all kind of legal arrangements, which

promote free competition, can be an obstacle to more intense co-operation between public and private actors. This tension can for instance be found in the European Policy on Public Private Partnership. On the one hand this kind of co-operation is being encouraged as a way to use the knowledge of the private sector for large infrastructural projects. On the other hand this conflicts with the rather strict policy of the European Union to open up markets and promote competition in the European market. This last policy is based on (implicit) views of strict separation between public and private sphere, which should get translated into strict rules for tendering, and anti-trust laws.

Connected to the first point, one can find strong role patterns of public and private actors that are an obstacle to the functioning of PPP constructions. Private parties tend to focus on the commercial risks they can foresee and manage, and hesitate to engage in other risks (political risks, for instance). Public parties hesitate to share their decision power with others. In the PPP process of the expansion of Rotterdam harbor, which is described in the next section, one can see such problems. Public authorities want to retain their primacy in the process and stress the unity of the governance structure in the harbor while, private actors hesitate to engage in the project because they want to be sure that bringing in ideas will lead to implementation. Some authors even think that these role patterns are fundamental and so in conflict with each other that they cannot be combined (Jacobs, 1992).

This leads to a third observation, which has been mentioned already, namely trust relations are very important. Achieving trust relations between public and private actors, given the above observations, is not an easy task. This topic is explored further in section 16.4

These institutional obstacles are an important reason why concrete PPP projects are hard to realize, as has been observed very often in the Netherlands (Ministry of Finance, 1999; Klijn and Teisman, 2000). Very often a real partnership does not emerge and in fact the PPP project turns to be something like a contracting out construction. But this arrangement differs from a partnership construction, as we argue in the next section.

3. THE DIFFERENCE BETWEEN PARTNERSHIP AND CONTRACTING OUT

Partnership, in our view, is part of another class of arrangements than contracting out, even though the two are often seen as twins. This misunderstanding creates many of the problems because ambitions originally set in partnerships are not realized as a result of organizing it on a contract-out basis; actors optimize their own part of the project and the profits which go along with it. Contracting out is something different, and to some extent not is linked with partnerships at all. The two arrangements have different impacts and are based on different rules and cannot be mixed. We elaborate on this theme below.

Contracting out versus partnerships

In order to depict public-private partnerships, we have to draw a distinction between alliances of market parties and governments at one side and contracting out defined

as making private firms responsible for the production of a public good after a tendering procedure and based on a detailed contract. Contracting out implies that the public principal is able to specify the service that should be delivered by private enterprises and also to define the desired output. Many of the contracting out arrangements have been established in the realm of service provision (health care, welfare services, social security). Other contracting out arrangements have been developed in the area of capital goods, like military armaments (Kettl, 1988). It is instructive to see that principals often have difficulty in specifying the product (input for the agent) and the performance indicators (output of the agent) (Pollitt, 1990). Many of the management efforts will be put into a better and more thorough definition of these two specifications.

Table 16.2: A comparison between contracting out arrangements and partnership

Characteristics	Contacting out arrangements	Public Private Partnerships
Type of relationship	Government and company (or consortium) are involved in principal-agent relationship	Government and company (consortium) are involved in joint decision making and production
Sort of problem and solution specification	Government defines problem / goals and solution / product and selects private company that can produce it efficiently	Both parties are involved in joint processes early on in order to develop joint products that contribute to both their interests
Main target	Efficiency (quicker and cheaper)	Effectiveness (synergy and enrichment of output).
Assumed keys to success	Unambiguous definition of goals, product and rules for tendering, selection and delivery	Interweaving ambitions, rules for interaction, creating commitments and rewarding co-production
Management principles in use	Based on principles of project management, assuming a clear principal, clear goals and well-defined product specifications	Based on principles of process management, come across joint goals, joint financing and joint realization and / or utilization
Specifications of transparency and trust	Contractual transparency regarding rules of tendering, selection and delivery and rules of inspection to gain trust	Perceived need of co-production creates trust; transparency is created by way of accountability towards third parties

Adapted from: Teisman, 1998

Partnership refers to arrangements in which public and private partners are engaged in joint decision making. In essence it is 'a commitment between public and private actors of some durability, in which partners develop products together and share risks, costs and revenues which are associate with these products'. Ideally an typically, partnerships should be applied in circumstances in which the parties involved accept that neither the product nor the performance can be defined to such an extent that the production itself can be left to a single (often private) producer. Often this will be the case where the parties involved are dissatisfied with the projects and products that have been produced, have the ambition or feel the need to make products of a higher quality, but at the same time are not able to specify the elements of the quality needed. This situation resembles research and development

activities in the private sector. New products are needed in order to maintain a market share, without precisely knowing what the specifications of these products are. In a way, partnerships are needed to grope around in the dark. This creates differences between contracting out and partnership arrangements (table 16.2).

Contracting out is characterized by a principal-agent relationship in which the public actor defines the problem and provides the specifications of the solution. Contracting out often aims to increase efficiency of production processes. The principle knows what he wants from the agent. In order to create transparency in the relation between principle and agent, usually specified contracts will be used.

Partnership is based on joint research and development, followed by actual production. Partnership is an arrangement to achieve effectiveness for both partners. Problems and solutions cannot be specified one-sided. Transparency can no longer be achieved by specified contracts concluded by the moment the responsibility is transferred from the public to the private domain. In a partnership arrangement relational transparency becomes crucial. First of all transparency is needed in terms of mutual trust. New products with substantial added value can only be created by combining mutual resources. Secondly, transparency is needed to politics and society. Otherwise all types of cross-subsidization could undermine the reliability of government and the principles of the free market. We deal with this in section 16.4.

Keys to success for contracting out are the ability to specify goals as well as explicit rules for tendering, selection and delivery. Key to successful partnerships is the ability to combine goals and to create tailor-made arrangements for creative interaction (in terms of new products). We discuss these issues in section 16.5.

Institutional characteristics of contracting out and partnerships

Partnership, in traditional institutional terms, is a rather hybrid arrangement, creating all kinds of political and financial risks. From this viewpoint it is logical that many governments which intend to start a partnership, finally come to a (sometimes innovative kind of) contracting out arrangement. On the other hand, contracting out will be an inadequate arrangement in situations in which neither products nor performance indicators can be defined in advance. Using contracting out, then, will often lead to a premature specification of problem and solution and for that reason hinders public and private parties from potential innovation.

If one assumes that the number of situations in which governments do not have clear images of the specifications of the policy, product or project that they want to produce, a search for more suitable arrangements should be considered. It is our impression that this assumption is valid in various fields of government policy. The question whether or not a satisfactory new urban area will be created depends on a series of criteria, represented by several actors. Many of these criteria will be developed during the period of twenty years that planning and building activities take place. It can be expected that the criteria will refer to important societal values like sufficient housing quality, support of economic development, livability, need for mobility, need for recreation and green facilities, and environmental qualities. All these values should be dealt with simultaneously. This already generates the

need for innovative development and building principles. Furthermore, all the criteria that can be derived from the values will change over time, sometimes dramatically in a relative short period of one or two decades. In order to chase these changing and increasingly complex sets of demands, the public and private parties involved in the development process cannot cling to a master plan made a decade ago, nor to contracts of a few years ago. If they do so, and there will be a natural habit to do so, the result will be less than optimum. In order to prevent parties from generating sub-optimal results, new arrangements should be considered, based on the following three assumptions:

- a large degree of uncertainty and ambiguity concerning the nature of the product; due to the fact that the project has to satisfy society in the future;
- the presence of many actors who have the necessary means for realizing products or policy aims and who bring with them additional evaluation criteria;
- very little clarity on what to achieve because actors have different views and different interpretations of the uncertainty and ambiguity which is part of the policy setting

Partnership arrangements should be able to deal with many actors who have different, sometimes conflicting ambitions and methods to achieve their ambitions, but who are nonetheless dependent on each other in attaining meaningful outcomes for themselves. In these situations a less strictly formalized type of co-operation is needed between public and private actors, accepting that the outlines of a satisfactory result are not clear in advance. This is the area in which partnership arrangements should be established.

Table 16.3: Institutional characteristics of contracting out and partnerships

	Contracting out	Partnership
Division of responsibility	Clear division (both in developing and in implementing projects)	Shared responsibility (in Research and Development activities but often during realization)
Organization rules	Separation of principle and agent, strict rules for tendering, competition during tendering, rules for judging outputs	Most important rules: joint rules for decision making, exit rules, rules for conflict regulation, rules for joint production and division of benefits
Pay off rules	Arrangement stimulates that actors maximize their own profit (pay off rules separate profits of actors); transaction costs are mainly incurred in monitoring agent and tendering procedure	Arrangement stimulates actors to maximizing joint profit (pay off rules tie actors to each other); Transaction costs are mainly incurred in organizing process and exchange of information
Information	Strictly separated and used as strategic resource	Indispensable resource but that needs to be shared

It is our prediction that these arrangements will become a significant part of public service production, due to the fact that the public sector is facing the same problems as the private sector. The high development costs of new products and their often short lifecycles means that firms have to create strategic alliances to spread risk and to gain access to different kinds of expertise in order to develop new products (Miles and Snow, 1986; Alter and Hage, 1993; Faulkner, 1995). So it is not surprising that public agencies use partnerships as well as contracting out arrangements to achieve public goals. But these two ways of governance have to be clearly separated. They are based on different assumptions on the division of responsibilities, rules for organizing and achieving benefits and rules for the exchange of information (Ostrom, 1986, Klijn, 1996). This is shown in table 16.3.

Both governance strategies have different institutional characteristics. It may be assumed that problems will arise if the two institutional regimes are mixed together, without a conscious distinction in terms of management requisites. Pay off rules in contracting out arrangements, based on competition and individual profits potentially are in conflict with pay off rules in partnerships favoring joint benefits. The juridical need for competitive tendering procedures in the near future for instance, part of the European laws on contracting out, will prevent private parties in a development partnership from exchanging information on innovative products. An important question to be answered in the next decade is whether or not it is possible to design parallel and sequential combinations of the two governance strategies.

Management of contracting out and partnerships: project versus process management

Due to the different characteristics of the two arrangements it may be assumed that different management strategies and skills are needed. Managing contracting out focuses on designing tendering procedures, getting the objects of the project or product clear, and monitoring the implementation of the agent. This boils down to a strong preoccupation with the basic principles of project management: defining the project, dealing with design and tendering of the project and monitoring costs, activities and quality of the implementation (Kranendonk (ed.), 1995). This type of management does not suit situations in which goals are complex and in transition and in which different actors have different views of the project. To illustrate the problem we give the example of the expansion of Rotterdam harbor. The nature of process management is elaborated further in section 16.4.

Development of Rotterdam harbor; an illustration of a shift from an approach dominated by *project* management to a process dominated by *process* management

Rotterdam is a mainport in Europe. In order to maintain its position new investments are needed, especially since a shortage of industrial terrain is expected. In the early 1990s the harbor authority presented a trend report in which this shortage was pointed out (clear problem definition) and a solution was chosen (creation of a new artificial island in the mouth of the river, resembling the island that was created in the 1960s). From that

point on the harbor authority stuck to its guns: the problem was a shortage of industrial terrain, especially for container transshipments and for the chemical industry.

The authority set up a project organization to implement the chosen solution and contacted the Ministry of Transport for financial support. In 1995 the project became entangled with other social issues and developments. The goals and the solution were questioned. The response of the harbor authority was predictable from its project management perspective: there cannot be any question about the urgency of the problem nor about the correctness of the solution. But unlike the earlier post-War period, the harbor authority now faced an audience that no longer accepted the dominance of its views.

Questions about the actuality of the shortage, the kind of shortage, possibilities for solving the problem in other regions and about the added value and environmental costs of investments in new industrial areas compared to alternatives, could not be answered by the harbor authority or the project organization. These questions were beyond their scope. The project organization could not deal with this new and hostile environment. Confusion and frustration were the results.

The national government took over decision making. In order to regain support, a national debate about the benefit and necessity of the harbor investments was organized. During that time the project organization continued its work. The debate, however, generated new directions for solutions. The output of the debate was presented to the government. In contrast to what the harbor authority had expected, the government was not convinced of the necessity of a new island. A new round of decision making began in which the search for solutions was broadened. The idea of a new island would now be compared with the proposal to intensify the use of existing areas in Rotterdam and with the development of new industrial areas in the Southwest of the Netherlands. In addition, the need for environmental safeguards was incorporated into the decision-making process.

So the principles of process management have been adopted. The set of relevant actors has been increased from five to more than thirty. The set of solutions has been increased from one to three directions as well as several combinations. Investment in the environment and ecology are now part of decision making. And, last but not least, it is now accepted that the process of decision making has become dynamic, ambiguous and much more extensive. Process management is needed to answer questions about added value, for benchmarking the three solutions and to connect the process concerning harbor investment to a whole range of related processes. This variety can help public and private investors to develop mutually interesting package deals.

The case presented above illustrates a shift from project management, organizing and optimizing decision making within given and fixed goals to process management, expanding and connecting goals and ideas for the project in order to create added value for the project and political and societal support. This fits a situation in which interdependency exists between actors and in which a clear division between public and private actors or public and private interest is hard to make. A situation which has been indicated as characteristic of the development of a network society, as we have seen in the previous section. Before we elaborate further on the difference between project management and process management we shall deal with an important precondition for making public private partnerships work: the creation and maintenance of trust.

4. TRANSPARENCY AND TRUST AS PRECONDITIONS IN CREATING QUALITY

Public-private partnership should be used if added value has to be created (Borys and Jemison, 1989; Teisman and In 't Veld, 1992). Sharing Research and Development as well as economies of scale are basic examples of added value. Speeding up the production process is another example. Partnership really fulfils its potentials when it results in products that would not have been achieved in contracting out arrangements.

Transparency and trust as things to be managed

Synergy requires partners willing to look for new solutions for joint ambitions. This requires exchange of information and ideas. Or, in other words: achieving synergy demands a true partnership in which the partners are willing to discuss their perceptions and goals in a search for new solutions. They are willing to become more transparent to each other. This raises the question of trust, not coincidentally a theme that is dealt with extensively in the literature on strategic alliances and public-private partnerships (see Borys and Jemison, 1989; Kouwenhoven, 1991; Lundvall, 1993; Faulkner, 1995).

In the first place, partners are not likely to co-operate in a search for new solutions if they do not have assurance that the outcomes will not hurt them (Scharpf, 1997; De Bruijn, Ten Heuvelhof and In 't Veld, 1998). In this way the creation of extra value is connected to its distribution. The search for creative solutions, therefore, is vulnerable to misrepresentation, asymmetric information and opportunism (Scharpf, 1997). This threat often leads to a situation in which partners stick to their own interests and refuse to search for new solutions for fear of being exploited by the other actors.

Fear as an important reason to avoid partnership: the case of corridor development

In the Netherlands, as is the case in many other countries, there is a conflict between the aim of improving the quality of cities and the aim of facilitating the mobility of citizens and companies. One government agency is responsible for the improvement of cities, another for facilitating mobility and a third for improvement of the economy and employment. In fact these three agencies represent three important elements of what citizens would define as the public interest.

The three agencies, however, each tend to behave as if their share of the public interest is superior to that of others. The Minister of Town and Country Planning and Housing, for instance, defines the development of transport corridors and new adjoining industrial estates as enemies of urban development and therefore fights against the policies of the Minister of Transport and Economic Affairs. As a consequence there is no partnership. They are not able to develop a joint strategy. New solutions, which could possibly combine their three aspirations, are not developed. The situation is defined as a zero-sum game. This strategy, however, results in a collective tragedy, because the absence of a joint policy allows all kinds of undesirable developments, like low-quality building

along the highways. The moral of this story is that sticking to one's own narrow interests can lead to very meager results.

But even if guarantees are given that the interests of partners will not be hurt, the partnership remains vulnerable to opportunistic behavior. In essence, partners find themselves in the classical negotiators' dilemma. The successful search for new solutions that create extra value requires that actors be open minded and that a certain minimum level of trust between the partners exists, while success in the distributive 'game' requires opportunistic behavior which includes all the usual tactics of misinformation and strategic communication (see Scharpf, 1997). So the conclusion can be that partnerships that work need processes of interactive learning, which in their turn require trust between the partners (Lundvall, 1993). This is precisely what networks can provide under certain circumstances.

Transparency, trust and networks

Because of interdependencies in networks, actors may be tied to each other for long periods. This generates all kinds of rules and organizational arrangements over time (Klijn, 1996). In networks a kind of weak trust can evolve (Scharpf, 1997, 137). This is the expectation that communication about each other's options and preferences is needed and that commitment to others will be honored. Trust relations will mainly be based on rules, many of which will have a rather informal character. Trust, therefore, is vulnerable to opportunism. Actors can choose to break the rules.

Mechanisms for maintaining trust and rules that support these mechanisms have to be developed. This is possible in network societies. The endurance of network relations creates a 'longer shadow of the future' (Axelrod, 1984), that is a stream of future benefits which increases the chances that partners will remain working together.

Network relations also reduce transaction costs. Contracts are problematic arrangements in partnerships because it is not clear what has to be contracted. To define all possible outcomes in contractual terms would be too costly. Transaction costs in networks are reduced because partners can rely on that specific, long-term trust (see Borys and Jemison, 1989; Lundvall, 1993; Scharpf, 1997). Scharpf (1997, 138) rightly observes that the maintenance of trust relations, however, is costly too. He expects that strong trust relations can only be maintained with a limited number of organizations. This means that networks will often consist of all kinds of different trust relations, some of them weak, some of them strong. Governance of public-private partnerships should not only recognize these differences but can also use them in managing partnerships. It is, for instance, possible to use strong trust relations to activate relations that are weak and not built on trust and mutual appreciation.

5. MANAGING PUBLIC-PRIVATE PARTNERSHIPS: THREE TYPES OF STRATEGY

The challenge of managing public-private partnerships is thus to create extra value by using the knowledge and resources of the partners while at the same time fostering a minimum level of trust in the relationship and achieving concrete outcomes, which are the actual realization of the extra value. To accomplish this, a fine tuning of three different types of management strategies is needed: project management to realize concrete projects, process management to develop interesting projects, and network constitution to create and maintain a baseline of trust. Of course, this is an analytical distinction. In practice all three types of management strategies are employed at the same time.

Project management: optimizing within given goals

Strategies of project management are aimed at controlling the cost and processes of projects. They try to fix the content, procedures and organizational structure of projects in order to achieve good products at low cost in a short time (Kranendonk, 1995). Mostly various phases are being discerned (Kranendonk, 1995; Kouwenhoven, 1991):

- Orientation or initiative phase: the feasibility of the project is being looked at in this phase. It is dominated by collecting data, doing feasibility studies and a first glance at possible partners and other important organization. The result of this first phase is a preliminary program of demands.
- Definition or preparation phase; results of this phase consist of a design, which matches the program of demands of the orientation phase. The project organization which is needed for the development and implementation is also designed.
- Development and implementation phase: in this phase the design is completed and transformed into concrete implementation plans and the implementation structure is set up. In this phase too much attention is paid at cost control and budgeting mechanisms and the organizational principles and structures to guarantee that (such as contracting and daily management).
- Use and maintenance phase: use and maintenance are being set up in this phase. Demands for maintenance are formulated, the maintenance organization is designed and installed.

Two instruments are used to achieve the principles of control. On the one hand documents are made which form the references for actions and which aim to provide as much information as possible, a clear definition of products, efforts and performance criteria and starting points for organizing and controlling the process. In other words, documents are the main instrument to control the content of the

project planning. On the other hand the basic component of project management is a clear control and organization of the project. This aims at managing:

- quality of the project (setting standards, maintaining them and attention of output control);
- time spent on the project by controlling various necessary activities;
- cost control (by using various budgeting mechanisms);
- well functioning organization of the project (mostly a form of project organization with well defined responsibility roles and accountability);
- control of adequate information flows.

Although project management has its value, it is aimed at reducing complexity and fixing content and processes of projects. The example of the expansion of Rotterdam harbor already showed the limitations of this approach. Partnerships are complex and processes around partnerships are dynamic in terms of content and process. For this, process management is an essential part of the management task.

Process management: achieving creative solutions

Partnership is based on the idea that projects evolve from long-term interaction. During the period of partnership (and for urban development this can take several decades) the subject of co-operation can change shape over and over again. Perhaps the most important aim for process management is to preserve flexibility and openness in the co-operative effort, without losing the ability to make progress in terms of actual investments. The case of the development of the Rotterdam harbor, presented earlier, illustrates the need for process management.

Process management, which can roughly be described as influencing and facilitating interaction processes (De Bruijn, Ten Heuvelhof and In 't Veld, 1998), must be introduced in addition to project management in order to carry out processes of interaction between a variety of actors (Teisman, 1998). In order to make effective arrangements in networks it will be necessary to take four elements into account again and again:

- What is the context in which any actor is taking action (dynamics, actors, means and related processes)? A partnership must include all stakeholders whose contributions are necessary for achieving the partnership's goals. It is risky to exclude parties that have to contribute resources or have veto power in the interaction process. On the other hand, it is not sensible to include parties that are not significantly affected by the (expected) activities of the partnership. The demarcation between stakeholders and outsiders is vague and develops during the evolution of a partnership. This also means that activating actors requires a strategy that does not pertain to only the start of the process but has to be worked on throughout the partnership.

- What kinds of interactions are needed from one's own perspective and what can be expected from others? Achievement of interdependence is more a state of mind than an actual fact of life. A partnership with limited objectives is easier to develop. The arrangements are more manageable and likely to require fewer partners and fewer resources. Nevertheless, it is interesting to consider the opposite hypothesis: 'In order to create successful partnerships a broadening of scope, ambition and involvement is needed.' There are two important arguments that support this statement. The first is that an orientation toward partnerships with a limited objective will often lead to a situation in which an organization is involved in a huge number of partnerships. Adequate strategic steering of these partnerships becomes problematic and a fragmentation of focus is the result. Top managers are involved in so many steering groups and committees that it becomes difficult to invest in all these groups. The second argument is that limitation also implies a more narrow perspective. Partnerships are established in order to deal with broader complexes of problems and solutions in a context of interdependence. If this is true, it will probably be wise to introduce broad objectives and goals. Within a partnership it will be possible to create consortia responsible for limited solutions. This refers to the necessity to combine openness and closeness in the network society. Openness is needed toward goals and actors; closeness is needed to establish an effective and efficient search for interesting solutions. As far as management strategies are concerned, this problem requires exploring different perceptions of the partners and connecting them to each other.
- How can actors be joined together and what are the conditions for creating ongoing interaction? In order to create an enduring and effective partnership, a great degree of mutual dependence is needed. If the degree of dependence is light it is better also to create a lightweight arrangement. If the dependence is one-sided it is better to create a one-sided arrangement, like contracting out and tendering.² Who can or should bring parties together, can propose a certain process architecture and play a mediation role? So this question raises the point: which management strategies can be used to guide interaction and, above all, guarantee that interactions between partners will continue?
- What form and content can a kick-off moment take (document, meeting, contract, covenant, gentlemen's agreement, etc.) and on what should the choice of a certain form and content be based (contingency (cost-benefit analysis) or considerations and preferences of actors involved)?

² In practice it has become clear that many contracting out arrangements lead as much to mutual dependence as partnerships do (Kettl, 1986, 1992).

Table 16.4: Process management strategies for public-private partnerships

Strategy	Aim
Activation of actors	Assemble a set of actors that have the resources, power and ability to achieve significant outcomes
Intertwining perceptions and goals	Promote a creative setting for analyzing existing goals and searching for new goals
Mediating interactions	Bring about continuous interaction between partners and coordination of different (strategic) actions
Creating arrangements and starting points	Get the partnership off the ground and create stable organizational arrangements for interaction which do not result in high transaction costs

Network constitution: creating and sustaining trust

Trust is important in partnerships. Trust, however, depends not only on the specific process itself, but also on the stability of the network in which partnerships are developed and the type of rules that are at work. If a network is dominated by the rule that autonomy is important, it will be difficult to develop partnerships. The actors will not be inclined to exchange information and ideas and will tend to focus on their own ambitions and goals (Klijn, 1996a). If this rule exists the network needs to be reconstituted. Reconstitution aims to change the rules and structure of a network and by so doing changes the context for partnerships. Three reconstitution strategies can be distinguished: (1) changing positions of actors, (2) re-framing perceptions of actors, and (3) changing the rules (Klijn, Koppenjan and Termeer, 1995). In order to get networks ready for partnership, three sets of questions have to be answered:

- What is the structure of the network in which partnerships have to be developed? A network consists of actors, means and connections. Every network will be limited in certain ways. Some actors, along with their capabilities and expertise, will not be available. In order to create a more fertile ground for partnership, some actors, especially governments, can introduce or invite new actors into networks (for example, a board of end users).
- What preconceptions are operating in the network in which partnerships have to be developed? In some networks the agenda and the opinion about what quality is can be rather dated and narrow. This will leave out sets of interesting partnerships. In order to encourage creativity, it can be useful to bring new concepts of quality into networks.
- What are the rules in a network and are these rules conflicting? Partners can decide on rules to regulate conflicts, for instance by appointing a mediator or setting standard procedures for dealing with conflicts. Rules for the evaluation and division of added value achieved in partnerships are also crucial. Finally, the positions of

actors are important. It will be difficult to establish a partnership between two parties if they occupy asymmetric positions in networks.

Table 16.5: network constitution strategies for public-private partnerships

Strategy	Aim
Add new actors / change distribution of means over different actors	Break the closed character of networks in order to generate a wider field for formation of partnerships
Re-frame the themes and beliefs in a network by introducing alternatives	Establish new ideas and transform inflexible thinking in order to facilitate the search for quality
Change rules of behavior towards: Conflict regulation Evaluation / benefits Positions	Establish rules that facilitate partnering and also generate a common approach concerning how to behave in partnerships

6. CONCLUSION: THE COMBINATION OF MANAGEMENT STRATEGIES

Partnership became popular in the 1980s, together with contracting out. Often the two are perceived as twin arrangements. Theoretically, however, partnership differs considerably from contracting out. While contracting out is an attempt to hand over specific and rather well defined activities to the private sector in order to improve efficiency (cost reduction), partnership is in essence a joint venture aimed at innovation and improvement of quality. While contracting out fits best into a more competitive situation, partnership fits within a situation in which projects or policy output cannot be specified very well in advance, and creativity and flexibility are needed during the process. Our argument is that this situation occurs many times in an affluent network society. To increase the quality of life in these network societies, more complex interactions and co-production arrangements are probably needed.

The need for partnerships is proclaimed loudly. The establishment of these arrangements is toilsome, however. Due to the orientation on innovation, partnerships can only be successful as long as trust can be established and maintained between the partners. We have argued that project management will often be a good method in the case of contracting out arrangements, but will often not be able to generate trust. It is for this reason that we elaborated two additional categories of management methods that could be able to create added value and enrichment: process management and network constitution.

Network constitution is needed to create active and strong policy arenas, with interdependent public and private parties, able to start partnerships. Process management is needed to establish and maintain these partnerships, not focusing on contracts, clear goals and division of tasks, but on interaction and arranging.

Project management still will be needed, however, but in another way. In order to enter into partnerships, governments will have to redesign their internal organizational structure and procedures in order to respond adequately to external interdependence. An analogy can be drawn with the private sector, where the establishment of embedded firms (Graeber, 1993) coincided with internal business process redesign. Partnerships have to be maintained in a turbulent context. In order to generate cogent partnerships within this inherent complexity, all partners, including governments, have to increase their efficiency. This can be done by way of adequate internal project management: government as partner instead of government as a complex arena in itself.

At the same time, governments will have the ability in the long run to influence the constitution of networks and the existence of vital arenas. And even though these abilities will possibly be reduced due to the internationalization of networks and arenas, the importance of network constitution must not be neglected.

In partnerships process management will be crucial. We expect that process managers will be appointed by the partners in policy processes. Their main task will probably be generating quality, referring to different sets of goals, creating space for the detailed development of competing solutions and creating space for partners to build and express their commitment to each other, to problem definitions and to directions for solutions.

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LEGAL INSTITUTIONS AS SYSTEMS OF LEGAL NORMS

1. INTRODUCTION

In all social sciences that participate in the interdisciplinary science of public administration and public policy, one can observe a revival of the institutional approach (Keman, 1997). Although these institutional approaches may differ in many respects, what they have in common is that they all characterize institutions as distinct systems of rules purporting to effectuate social practices in which those systems are realized. In some studies the social practices are set in the first place while the rules are considered to be of secondary importance. In other studies the analysis takes the reverse order of precedence. However, the dual nature of institutions is generally recognized. Using terms coined by the Austrian legal theorist Ota Weinberger, I call institutions *qua* distinct systems of rules ‘normative institutions’ and institutions *qua* social practices ‘real institutions’. (Weinberger, 1991: 20-21) Thus, a distinction can be drawn between the local authority ‘Amsterdam’ on the one hand and the local community ‘Amsterdam’ on the other. Likewise, a distinction can be drawn between the public limited company ‘Ajax’ on the one hand and the football club ‘Ajax’ on the other. Finally, a similar distinction can be drawn between, on the one hand, the outline of the European Union laid down in the EC Treaty, the Maastricht Treaty and the Treaty of Amsterdam and, on the other hand, the evolving, large-scale, real institution of that name.

Schedule 17.1 Normative and Real Institutions

Normative Institution	Real Institution
Distinct System of Rules	Social Practice
Local Authority ‘Amsterdam’ Public Limited Company ‘Ajax’ EC and EU Treaties	Community of Amsterdam Football club Ajax European Union

The empirical social sciences tend to focus their attention on real institutions. As a legal scholar I am primarily concerned with the ‘normative’ side of legal institutions without seeking to disparage the significance of their ‘real’ side. Legal institutions *qua* distinct systems of rules that fail to effectuate corresponding social practices remain black letter law. On the other hand, many social practices can only be fully

understood on the basis of knowledge of the underlying institutional systems of rules.

Empirical social scientists, though realizing that institutions not only have a factual side, tend to get into problems when they make attempts to conceptualize their non-factual aspects. The problems result from a lack of understanding of the way normative social systems are structured and from insufficient insight into the different kinds of elements such systems are composed of. This contribution provides a survey of legal-theoretical insights into the fundamental 'architecture' of the normative side of the institutional landscape in which processes of public administration and public policy take place. It will be shown (i) how *legal* institutions – and the normative sides of institutions involved in processes of public administration and public policy in present-day society are predominantly legally grounded – provide patterns of social conduct, (ii) that the component parts of normative institutions fall within a limited number of categories, and (iii) that there are also only a limited number of categories of normative institutions. I expect that these insights derived from legal theory can help empirical social scientists to gain a clearer picture of the normative settings in which they pursue their quests for the facts of public life.

2. LEGAL INSTITUTIONS: SYSTEMS OF RULES

It is easy enough to state that, as seen from their normative side, legal institutions are distinct systems of rules. It is far more difficult, however, to explicate how institutional systems of rules distinguish themselves from their environments and how they are internally organized as systems. To that end, I shall make use of some important theoretical notions borrowed from the Scottish legal theorist Neil MacCormick.

First, MacCormick makes a distinction between:

(T)he institution itself (contract, trust, or whatever) and instances of the institution (*a* contract, *a* trust, and so on). This involves a certain clumsiness of speech but is quite essential, for there is an important difference between the existence of an institution and the existence of any instance of it. To show what I mean, let me cite the true proposition that the trust is an institution which does not exist in French law. That does not simply mean that nobody ever got round to establishing a trust in France. It means that nobody can, because French law does not contain provisions by which any act can bring about the sort of legal consequences which are essential features of our 'trust'. (MacCormick and Weinberger, 1986: 54)

According to MacCormick, the concept of a legal institution is prior to any of its instances, for there inevitably lies a certain space of time between the moment at which a certain institutional legal concept is admitted to the legal system and the moment of creation of its first instance.

Just because we are dealing with abstract institutional concepts and facts, the institutional concept must be logically prior to any factual instance of the concept. If my understanding is correct, Plato thought that the idea of beds was logically prior to the existence of any particular bed; that has always seemed to me a singularly implausible view in relation to brute facts; but at least the world of legal institutions is a world safe for Platonists; whether that is good or bad publicity for the world of legal institutions I

should not care to say, but it is clear that the institution as a concept is logically prior to the existence of any instance of it. (MacCormick and Weinberger, 1986: 55)

Thus we must, for example, distinguish between such institutional legal concepts of public international law as 'State', 'Treaty', 'Territorial Sea' on the one hand and particular legal institutions forming instances of these concepts, such as France, the Antarctic Treaty, and the British territorial sea, respectively, on the other.

A sharp distinction must be drawn between extra-legal concepts as used in legal rules and institutional legal concepts. Extra-legal concepts are concepts that are generally used in non-legal language. In principle, any extra-legal concept can be part of a legal rule. Its function in a legal rule is not fundamentally different from the one it has in non-legal language. In particular, the existence of the states of affairs denoted by an extra-legal concept appearing in a legal rule remains independent of that rule. For instance, individuals do not become road users in consequence of the legal rule determining that members of the category identified by the concept 'road user' must keep to the right. In contrast, an institutional legal concept denotes institutions whose validity depends on the concept's being part of a legal rule. To give an example, trusts are valid in consequence of a legal rule determining that members of the category identified by the concept 'trust' can achieve validity. To give another example, treaties are valid in consequence of the customary international rule *pacta sunt servanda*.

The legal rules of which institutional legal concepts must be part in order that institutions of the category identified by them may become valid, are of the kind John Searle has termed 'constitutive rules'. Following Searle, a constitutive rule has the form '*x* counts as *y* in context *c*' (Searle, 1969: 36; Searle, 1995: 43-51). In this formula, *x* can be taken to stand for a specification of a type of legal expression, and *y* for a specification of the type of result legal expressions answering to the first specification have in the legal system *c*, in which the constitutive rule is perfect.

Constitutive rules of institutional legal concepts, however, are at a higher level than Searle's 'primary' constitutive rules. Searle presents the rule for checkmate as an example of a 'primary' constitutive rule: 'A checkmate is made when the king is attacked in such a way that no move will leave it unattacked', (Searle, 1969: 34). In the same manner as the concept 'checkmate' is included in the game of chess – namely, by means of the constitutive rule of checkmate – institutional legal concepts are included in a legal system by means of constitutive legal rules. There is, however, a complication. Whereas the constitutive rule of checkmate represents a class of single institutional facts – cases of checkmate – constitutive rules of institutional legal concepts represent a class of legal institutions, that is to say, contexts in which single institutional legal facts can have a place. Legal institutions are conceivable as complex institutional legal facts but they are, first and foremost, *systems* of institutional legal facts.

The introduction of a new category of legal institutions in society thus appears to take place in the form of the issuance of a legal rule by which an abstract institutional legal concept designating that category is added to the legal system. The overall structures of most present-day social institutions, therefore, result not from individualizing policies providing custom-made designs for singular institutions, but from general policies directed at coining institutional legal concepts. In other words,

institutional design is generally concerned with *types* of legal institutions rather than with singular institutions forming their *tokens*.

3. CONSTITUTIVE, INSTITUTIVE, TERMINATIVE, AND CONSEQUENTIAL RULES

The constitutive rule of an institutional legal concept presents a certain category of distinct legal systems that are capable of achieving validity within the overall legal system. For that purpose, the constitutive rule uses the name of the members of that category to designate the institutional legal concept thus admitted to the legal system. Mostly, such a name is already in use in the legal community ahead of its use as the designation of an institutional legal concept. Most institutional legal concepts are, originally, social notions that have subsequently received legal recognition. However, there also exist institutional legal concepts that are the result not of legal reception but of legal design. Partly owing to the varied origins of institutional legal concepts, the ways in which their constitutive rules are included in the legal system differ. The existence of the constitutive rules of some institutional legal concepts can be conjectured only from the fact that their name is actually used in the legal system. For instance, the Dutch Civil Code does not provide an explicit constitutive rule of 'marriage' but simply uses the term. Other institutional concepts are included in legal rules that explicitly acknowledge them but fail to specify what they stand for. For example, art. 123 of the Dutch Constitution provides that local authorities can be established and dissolved, but the Dutch legal system does not include a specification of 'local authority'. Still other institutional legal concepts are included in constitutive rules defining them. An example is offered by the constitutive rule of 'public limited company' laid down in article 2:64 of the Dutch Civil Code: 'The public limited company is a legal person with an authorized capital that is divided into transferable shares.'

Respecting Searle's account of constitutive rules in general, it would seem that the constitutive rule of an institutional legal concept must have the form of a specification of the act whose performance brings about instances of the concept. In Searle's example: 'To make a promise is to undertake an obligation', the constitutive rule of the institutional concept 'promise' is actually a specification of the act of promising (Searle, 1969: 63, 179; Conte, 1986: 46). With respect to those instances of institutional legal concepts that can only be created by the performance of a single act, one can say that such concepts are constituted by specifying how their instances are created. In such cases the institutive rules in the sense proposed by MacCormick, that is, as rules laying down that the occurrence of a certain act or event triggers a specific instance of an institutional legal concept, coincides with the constitutive rules (MacCormick and Weinberger, 1986: 52-53; Ruiter, 1993: 208).

A major objection to the view that the constitutive rule of an institutional legal concept and the institutive rule of legal institutions instantiating the concept coincide in this manner and can, therefore, be identified with each other, is that instances of many institutional legal concepts can become valid in different ways. Of course, this objection can be met by introducing constitutive rules that include disjunctive enumerations of institutive acts and events. This solution, however, discards the

pragmatic advantages of differentiating between constitutive rules of institutional legal concepts and institutive rules of their instances. It is this differentiation which makes it possible to use legal institutions to lay systematic connections between extensive sets of 'conditioning facts' and 'legal consequences' in a manageable way. The advantages of this method would be lost if the constitutive rules of institutional legal concepts were assimilated to the sets of rules that determine the ways in which instances of them can achieve validity. Moreover, a differentiation between both kinds of rules greatly facilitates the changing of the ways in which legal institutions can become valid without changing the institutional legal concepts in question.

These advantages can be illustrated with the help of the famous *tû-tû* allegory presented by the Danish legal theorist Alf Ross. Ross begins by recording the account given by the imaginary Illyrian anthropologist Ydobon of the way of life of the utterly primitive Noît-cif tribe inhabiting the Noîsulli Islands in the South Pacific (Ross 1957; Ruiter 1997a, 72-74).

This tribe, according to Mr. Ydobon, holds the belief that in the case of an infringement of certain taboos – for example, if a man encounters his mother-in-law, or if a totem animal is killed, or if someone has eaten of the food prepared for the chief – there arises what is called *tû-tû*. The members of the tribe also say that the person who committed the infringement has become *tû-tû*. It is very difficult to explain what is meant by this. Perhaps the nearest one can get to an explanation is to say that *tû-tû* is conceived of as a kind of dangerous force or infection which attaches to the guilty person and threatens the whole community with disaster. For this reason a person who has become *tû-tû* must be subjected to a special ceremony of purification. (Ross, 1957: 812)

Ross goes on to show that the way in which the members of the Noît-cif tribe use *tû-tû* is in no way different from that in which we use the institutional legal concepts 'ownership', 'claim', 'territory', 'body corporate', and even 'state' (Ross, 1957: 817-821; Ross, 1958b: 145). Below Ross's analysis will be presented in the form of a simplified example.

Suppose that a certain community recognizes two ways in which property can be acquired: conveyance and succession. Moreover, there are two consequences of such an acquisition: exclusive right of use and right of reclamation. The systematic connections between the two operative facts and the two consequences can then be represented as follows (the symbol '→' means 'if ... then'):

- 1) CONVEYANCE → USE 2) SUCCESSION → USE
 3) CONVEYANCE → RECLAMATION 4) SUCCESSION → RECLAMATION

Even with respect to a small set of rules like this one, a systematization with the help of 'ownership' is considerably less complex:



Plainly, ownership plays a similar role to that of *tû-tû* in Ross's allegory. Just as infringements of the three taboos are considered to render individuals committing such infringements *tû-tû*, conveyance and succession are considered to make buyers and successors, respectively, owners of the property at issue. And just as a person's being *tû-tû* implies that he shall be subjected to a ceremony of purification, a person's being owner of property implies that he may use and reclaim it (Ross, 1958a: 170-172).

Besides institutive rules, MacCormick distinguishes terminative rules, that is, rules providing for the termination of valid legal institutions (MacCormick and Weinberger, 1998: 53; Ruiter, 1993: 208, 213).

Finally, according to MacCormick, 'for each institution there is a set of rules of which an operative fact is that an instance of the institution exists' (MacCormick and Weinberger, 1986: 52-53; Ruiter, 1993: 208). Examples are rules vesting owners of property with rights to use and reclaim it. Such rules MacCormick terms 'consequential rules'.

On the basis of MacCormick's distinctions, the following categorization of rules relating to a certain category of legal institutions can be given.

Constitutive Rule

The constitutive rule of a certain category of legal institutions determines that successful performances of legal acts purporting to establish legal institutions of that category cause the institutions in question to become valid.

Institutive Rules

Institutive rules of a certain category of legal institutions determine how legal acts purporting to establish legal institutions of that category can be successfully performed.

Consequential Rules

The consequential rules of a certain category of legal institutions are rules of which an operative fact is that an institution of that class is valid.

Terminative Rules

The terminative rules of a certain category of legal institutions determine how legal acts purporting to terminate the validity of legal institutions of that category can be successfully performed.

This categorization provides policy makers with a convenient set of criteria for assessing the completeness of their institutional designs. It instructs them to check carefully (i) whether the terms in which the new category of normative institutions is specified are sufficiently accurate to generate distinct and coherent real institutions, (ii) whether it is clear how such institutions are created and when they come into

existence, as well as how and when their existence comes to an end, and (iii) what it exactly is that must be socially realized between their creation and termination.

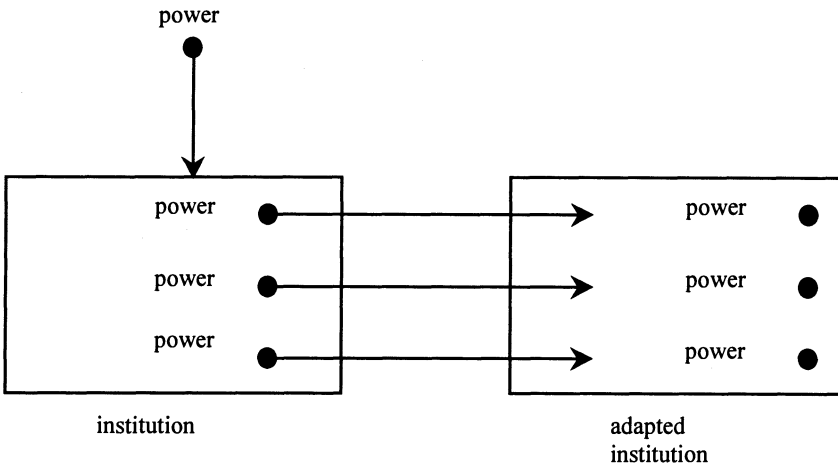
4. RELATIONS BETWEEN LEGAL POWERS AND LEGAL INSTITUTIONS

Most legal institutions in contemporary social orders have come into existence in consequence of formal decisions to establish them. We need only think of private legal persons, such as companies and foundations, and public bodies, such as local and regional authorities, to see that that their existence usually rests on explicit decisions by which they have been established. Such decisions must be made by virtue of legal powers that are conferred on certain subjects by power-conferring institutive rules. It is interesting to see that legal institutions are not only *established* by virtue of power-conferring institutive rules but usually *include* further power-conferring legal rules on the basis of which they are competent to change their own contents to adapt to new situations.

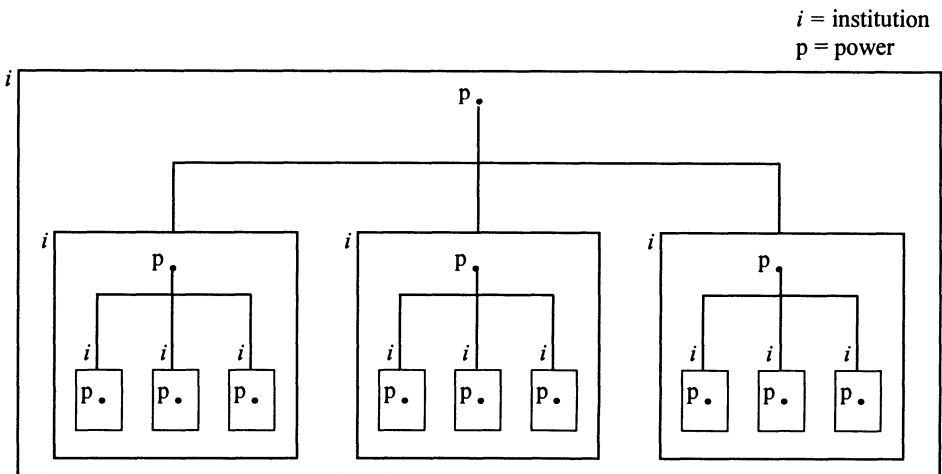
For example, the local authority of Amsterdam exists owing to the fact that at some time in the past the highest Dutch legislative body has exercised its general legal power to incorporate local authorities with the specific objective of establishing 'Amsterdam'. Apart from its statutory organ – the Communal Council, the Burgomaster, and the College of Burgomaster and Aldermen – the internal organization of Amsterdam comprises a number of territorially determined organs called 'boroughs'. The latter have been called into existence by the Communal Council exercising its legal power to institute such additional organs. The legal power exercised by the national legislator to establish Amsterdam forms part of the overall legal system of the Netherlands; in contrast, the legal power exercised by the Communal Council to establish the said boroughs forms part of the communal legal regime of Amsterdam. This self-adaptive capacity can be represented as shown in schedule 17.2.

Powers serve as links between nested legal institutions. For instance, the national constitution comprises the power of the legislative body to create local authorities. The legal regimes of the local authorities in turn comprise the powers to divide the local territories into boroughs with their own legal regimes. This is suggestive of a construction consisting of layers of units. The regime of an encompassing legal institution serves as a framework for yet other collections of units.

Schedule 17.2 Self-Adaptive Capacity

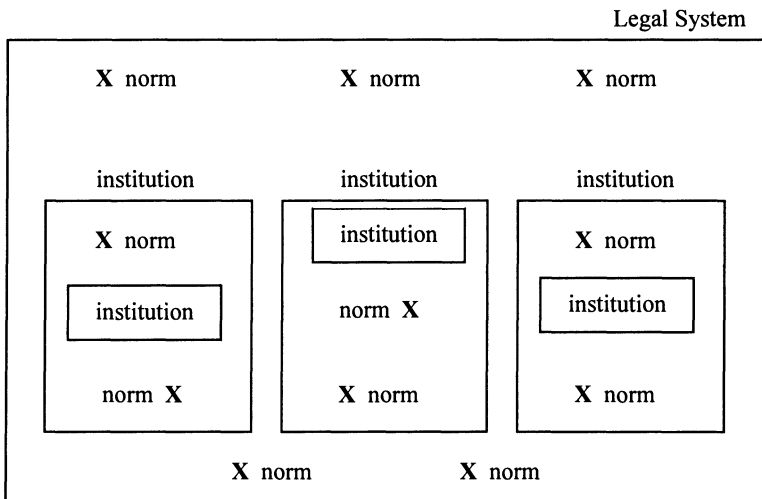


Schedule 17.3 Powers and Nested Legal Institutions



In the final analysis, the legal regime of each of these legal institutions consists of elements that are not further decomposable. Here I stipulate some terminological conventions. The encompassing legal institution and its legal regime I call *the legal system*. Distinct legal regimes contained in the overall legal system I call *legal institutions*. Atomic elements of the legal system and of legal institutions I call *legal norms*.

Schedule 17.4 Legal System, Legal Institutions and Legal Norms



5. CREATING LEGAL NORMS

I use the term ‘legal norm’ in the wide sense of ‘institutional legal fact’. It covers not only classical legal obligations and permissions but also other legal properties and relations, such as your being suspended from a game, Yellowstone’s status of national park, or John and Mary’s marriage etc.. Actually, all elements that are fit to be part of the legal system fall under the term ‘legal norm’. Consequently, legal institutions themselves are legal norms having the special feature of serving as frameworks for legal norms. And, of course, legal powers are legal norms as well.

What kind of norms are legal powers? In order to explicate this, I must make a detour. I begin by considering the way in which a legal norm is brought into existence. To that end, I take the example of John and Mary’s marriage. Let us assume that John and Mary’s marriage is celebrated by the priest’s utterance of the sentence: ‘I hereby pronounce you, John and Mary, husband and wife.’ How can this utterance be analyzed? In the first place, we hear a sequence of words. This sequence expresses a judgment, namely, the judgment that John and Mary are to be a married couple. Thus, the judgment has as its sense the possible norm of John and Mary’s being a married couple. However, anybody can express such a judgment without John and Mary thereby becoming a married couple. When does someone succeed in marrying a couple? Let us for the time being leave this question aside and simply assume that the priest succeeds in rendering John and Mary a married couple. In that case the possible norm presented by his judgment becomes valid. This is not enough, however, for the validity of John and Mary’s marriage has the purport that this marriage will be socially accepted. This acceptance takes the form of a practice evidencing a common belief in the existence of John and Mary’s marriage.

The foregoing is summed up in the following schedule.

Schedule 17.5 Celebrating a Marriage

Sign	Legal Judgment	Meaning	Validity	Acceptance	Obedience
Priest: 'I hereby pronounce you, John and Mary, husband and wife'	John and Mary be married	The possible norm of John and Mary's marriage	John and Mary's marriage	Practice evidencing belief in the existence of the marriage	--

This analysis can also be applied to a more complicated example, namely, the command of a police officer to the demonstrator, John, to leave the area. We can fill in the same category 'sign', 'judgement', 'meaning', 'validity', 'acceptance', and have only to add 'obedience', which leads to the following schedule.

Schedule 17.6 Giving a Command

Sign	Legal Judgment	Meaning	Validity	Acceptance	Obedience
Police officer: 'Move!'	John, you must leave the area	The possible obligation of John to leave the area	John's obligation to leave the area	Practice evidencing belief in the existence of John's obligation	John leaves the area because of the police officer's instruction

The first three columns of schedules 17.5 and 17.6, respectively, characterize the speech act whose performance is required in order that a specific legal norm will achieve validity. The question arises why performances of the speech act in question yield this result. The answer is that this is warranted by a power-conferring rule to which appeal is made in performing the speech act. It is this power-conferring rule that turns the speech act in question into a *legal* act. To that end, the rule stipulates that if legal judgments with certain meanings are expressed by certain agents following a certain procedure, the meanings of such legal judgments become valid legal norms.

Schedule 17.9 The Power to Command

If legal judgments (that a demonstrator must leave) are expressed by police-officers maintaining the public order, then that demonstrator is under an obligation to do so.

JUDGMENT (OBLIGATION (LEAVE demonstrator)) →
 POLICE-OFFICER
 → OBLIGATION (LEAVE demonstrator)

From these schedules we can now read off the structure of legal powers and the way they function. I shall illustrate this with the example of the ecclesiastical wedding ceremony. For that purpose, I elaborate the appeal made to the power-conferring rule by priest Cadfael in marrying John and Mary. In ordinary language, we could say that Cadfael exercises the legal power conferred upon him by the rule in order to marry John and Mary. In schedule 17.10 this can be presented as follows.

Schedule 17.10 Exercise of a Legal Power

Rule	JUDGMENT (MARRIED (man, woman)) →
	PRIEST
	→ MARRIED (man, woman)
Power	JUDGMENT (MARRIED (John, Mary)) →
	CADFAEL
	→ MARRIED (John, Mary)
Exercise	JUDGMENT (MARRIED (John, Mary))
	CADFAEL
<hr/>	
Marriage	MARRIED (John, Mary)

It is my hope that the analyses of how marriages are celebrated and commands given, respectively, will help to eliminate a widespread popular misunderstanding in the science of public administration and public policy. This is the idea that power-conferring rules would make up a kind of *permissive rules of conduct*. This misconception can, for instance, be found in Elinor Ostrom's *An Agenda for the Study of Institutions* of 1986, as well as in the 1995 article *A Grammar of*

Institutions Ostrom wrote together with Sue Crawford. It blinds us to the most important feature of legal powers, namely, that they serve to *create* new forms of behavior rather than permitting *existent* forms of behavior. Perhaps one of the most significant contributions legal theory can make to the science of public administration and public policy in general is the distinction between, on the one hand, rules of conduct regulating 'brute' factual acts and, on the other hand, power-conferring rules that create legal acts and enable certain categories of subjects to perform them to establish certain intended legal effects. Without this distinction, regulatory policy-making processes can hardly be analyzed in an adequate manner.

6. NORMS IN A WIDE SENSE

I have already pointed out that the concept of a legal norm used here is rather wide. Actually it encompasses all elements fit to achieve validity in the legal system. Validity is in fact nothing more than being the case in the legal system, just as existence is nothing but being the case in reality (Ruiter, 1997b). It would be very helpful to have a classification of such norms in the wide sense at our disposal. This classification can be developed on the basis of a classification of legal judgments that is inspired by John Searle's taxonomy of speech acts (Searle, 1979). The classification rests on the idea that legal acts can be distinguished on the basis of five kinds of legal judgments that are expressible by performing them. The five kinds of expressible legal judgments are in turn distinguishable on the basis of the different kinds of norms they can project.

Declarative Legal Judgments

First, we are confronted with *exclusively declarative* legal judgments. The norms expressed by such judgments may be called 'legal states of affairs'. Valid legal states of affairs have the sole purport of effectuating a social practice evidencing a common belief in their existence. For example, the exclusively declarative legal judgment expressed by the sentence 'I name this ship the *Queen Elizabeth*' presents the valid state of affairs of this ship having the name *Queen Elizabeth*. This valid state of affairs purports to effectuate a social practice of calling the ship the *Queen Elizabeth*.

All further legal judgments are also declarative in character. However, they have additional features which make that their meanings are not mere valid states of affairs striving for social recognition. They purport to more.

Prescriptive Legal Judgments

The first kind of legal judgments having such an additional feature are *prescriptive* legal judgments. Prescriptive legal judgments present obligations. Obligations, of course, purport to effectuate social practices evidencing common beliefs in their existence. However, they additionally purport to be fulfilled by the respective obligation-owners because the latter consider themselves bound to do so.

Non-binding Directive Legal Judgments

Prescriptive legal judgments can thus be characterized as binding directives. There are, however, non-binding *directives* as well. We may think of legal applications for licenses or formal recommendations by advisory boards. Such applications and recommendations have in common that they indicate a certain course of conduct to their addressees. However, the course of conduct in question is not made obligatory. Once again, the non-mandatory norm of conduct produced by a directive legal judgment purports not only to be accepted but moreover to be followed. However, the addressees are not bound to comply.

Assertory Legal Judgments

The next kind of legal judgments are called *assertory* legal judgments. The standard example is the judgment expressed by the umpire in a game 'You're out!' First of all such a judgment purports to be true in the sense that you are indeed 'out'. But let us assume that you are in fact 'in'. Does this make any difference for the further course of the game? Unless the umpire reconsiders his decision, not at all: you continue to count as having been 'out'. Assertory legal judgments turn out to produce valid states of affairs that purport to be accepted as existent even if they are in actual fact non-existent. Such norms can be called 'legally granted facts'.

Expressive Legal Judgments

The last kind of legal judgments are called *expressive* legal judgments. Normally, expressive speech acts are performed in order to express the speaker's state of mind about some fact. For example, when I congratulate you on your birthday, I express my joy about your having lived another year. By way of contrast, take the example of lodging an official protest. This does not automatically amount to expressing a state of mind unless one would be willing to ascribe metaphorical minds to pressure groups, companies and governments. This unattractive option can be avoided by conceiving of the act of lodging an official protest as expressing a legal judgment. Such a legal judgment, then, presents the valid state of affairs of some agent's disapproval of some other agent's behavior. Like all valid states of affairs, this state of affairs purports to effectuate a social practice evidencing a common belief in the protesting agent's disapproval, irrespective of whether or not the agent in question is capable of disapproving of something.

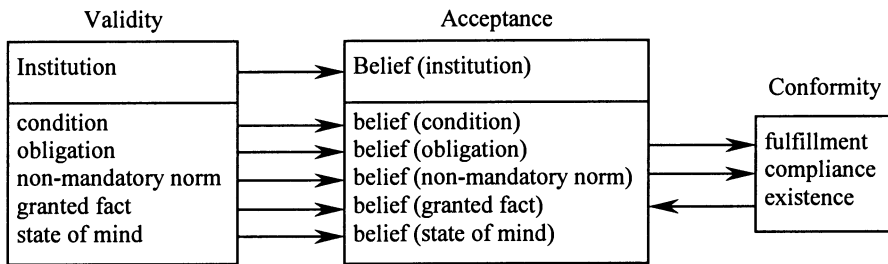
Schedule 17.11 Classification of Legal Norms

Judgment	Norm	Example
(1) Declarative	State of Affairs	Queen Elizabeth
(2) Prescriptive	Obligation	John's obligation to leave
(3) Directive	Non-Mandatory Norm	John's application for a grant of licence
(4) Assertory	Granted Fact	Your being out
(5) Expressive	State of Mind	Formally Lodged Protest

7. THE NATURE OF LEGAL INSTITUTIONS

Previously, I have said that legal institutions are norms with the social feature that they serve as frameworks for other legal norms. If it is true that legal institutions are norms, it must be possible to determine in which of the five distinguished categories they fall. To that end, it is useful to realize that legal institutions are distinct systems of norms that are identified as valid unities. *Qua valid* unities they have the purport of effectuating a social practice evidencing a common belief that they are *existent* unities. The individual norms composing the regimes of legal institutions may be of all the kinds distinguished above. However, the legal institutions themselves as valid encompassing unities purport only to be generally recognised as existent. This means that legal institutions are complex norms that are presented by *exclusively declarative* legal judgments. Thus, any legal institution forms a distinct legal system expressed by a declarative legal judgment and purporting to effectuate a social practice that can be interpreted as resting on a common belief that it exists. The relations between legal institutions and the norms that may be contained in their legal regimes are represented in the following schedule.

Schedule 17.12 Legal Institutions and Legal Norms



8. A CLASSIFICATIONS OF LEGAL INSTITUTIONS

What forms can legal institutions take? It is possible to find an answer on the basis of the insight that legal institutions purport to effectuate a social practice that can be interpreted as resting on a common belief in their existence. Consequently, the forms legal institutions can take must be such as to make them conceivable as existent. This amounts to the requirement that legal institutions take the shape of state of affairs that can be represented by propositions. The question arises what categories of states of affairs can be distinguished. The following categorization, comprising three basic categories of propositions representing states of affairs, offers a point of departure:

- (1) Propositions representing a certain *entity*. (There is an *Eiffel Tower*.)
- (2) Propositions representing a certain entity as having a certain *property*. (*The Eiffel Tower* is made of steel.)
- (3) Propositions representing certain entities as having a certain *connection*. (*The Eiffel Tower* is near the Louvre.)

Furthermore, within the category of entities a distinction can be made between subjects and objects. Subjects can perform acts, objects cannot.

These distinctions lead to the following classification consisting of seven categories of propositions according to states of affairs they represent:

- (1) Propositions representing a *subject*.
- (2) Propositions representing an *object*.
- (3) Propositions representing a *property* of a *subject*.
- (4) Propositions representing a *property* of an *object*.
- (5) Propositions representing a *connection* between *subjects*.
- (6) Propositions representing a *connection* between *objects*.
- (7) Propositions representing a *connection* between a *subject* and an *object*.

Whether this classification can also be used to distinguish different categories of legal institutions, turns on the answer to the question of whether legal judgments are capable of projecting legal institutions as subjects, objects, properties, or connections, respectively. The difference between propositions and legal judgments is that the former represent states of affairs that can *obtain* in reality, whereas the latter project legal norms that can only be *believed to obtain* in reality. In spite of this fundamental difference, both exhibit a significant common characteristic in that what they present must at least be *conceivable* as taking part in reality. The question then becomes whether legal institutions are indeed conceivable as taking part in reality as subjects, objects, properties or connections. An answer in the affirmative would justify the following classification:

- (1) Legal judgments projecting a legal institution as a *subject*.
- (2) Legal judgments projecting a legal institution as an *object*.
- (3) Legal judgments projecting a legal institution as a *property* of a *subject*.
- (4) Legal judgments projecting a legal institution as a *property* of an *object*.
- (5) Legal judgments projecting a legal institution as a *connection* between *subjects*.
- (6) Legal judgments projecting a legal institution as a *connection* between *objects*.
- (7) Legal judgments projecting a legal institution as a *connection* between a *subject* and an *object*.

Valid legal institutions projected by legal judgments of all seven categories are indeed discernible in legal systems. (Ruiter, 1997c: 365-369).

1. Legal Persons

A legal person is a legal institution with the form of an entity that can act.

Example: the European Community.

2. Legal Objects

A legal object is a legal institution with the form of an entity that can serve as the object of (trans)actions.

Example: a conveyable right of ownership.

3. Legal Qualities

A legal quality is a legal institution with the form of a property of a subject.

Example: a person's legal majority.

4. Legal Status

A legal status is a legal institution with the form of a property of an object.

Example: a listed historical monument.

5. Personal Legal Connections

A personal legal connection is legal institution with the form of a connection between subjects.

Example: a personal right.

6. Legal Configurations

A legal configuration is a legal institution with the form of a connection between objects.

Example: an easement, that is, a legal regime with the form of a connection between a servient tenement and a dominant tenement consisting in a burden (e.g. a right of way) laid on the former for the benefit of the latter. All successive owners of the servient tenement are obligated to bear the burden and all successive owners of the dominant tenement are entitled to treat the former as thus obligated.

7. Objective Legal Connections

An objective legal connection is a legal institution with the form of a connection between a subject and an object.

Example: ownership of property.

9. CONCLUSION

In the introduction I promised (i) to show how legal institutions provide patterns of social conduct, (ii) to present a categorization of elements legal institutions are composed of, and (iii) to present a categorization of legal institutions themselves.

We have seen that normative institutions provide patterns of social conduct by projecting distinct systems of norms in the wide sense, which systems purport to effectuate specific social practices evidencing common beliefs in their existence.

In addition to that, we have seen that the norms in the wide sense composing normative institutions are legal states of affairs as projected by declarative legal judgements, obligations as projected by prescriptive legal judgements, non-binding incentives to act as projected by directive legal judgements, granted states of affairs as projected by assertory legal judgements, and formal positions as projected by expressive legal judgements.

Finally, we have seen that legal institutions can be classified into the categories of legal persons, legal objects, legal qualities, legal status, personal legal connections, legal configurations, and objective legal connections.

It is my firm conviction that both policy-makers and policy-analysts who take the trouble of trying to grasp the structure of the institutional contexts in which policy-making processes take place in terms of these legal-theoretical distinctions will be recompensed by gaining a clearer understanding of what could be termed the 'semantic' regularities that both constrain and shape our public life.

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