"Reflexive Governance : Redefining the Public Interest in a Pluralistic World"

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Abstract
Reflexive governance offers a theoretical framework for understanding modern patterns of governance in the European Union (EU) institutions and elsewhere. It offers a learning-based approach to governance, but one which can better respond to concerns about the democratic deficit and to the fulfillment of the public interest than the currently dominant neo-institutionalist approaches. The book is composed of one general introduction and eight chapters. Chapter one introduces the concept of reflexive governance and describes the overall framework. The following chapters of the book then summarise the implications of reflexive governance in major areas of domestic, EU and global policy-making. They address in turn: Services of General Interest, Corporate Governance, Institutional Frames for Markets, Regulatory Governance, Fundamental Rights, Healthcare Services, Global Public Services and Common Goods. While the themes are diverse, the chapters are unified by their attempt to get to the...

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Reflexive governance offers a theoretical framework for understanding modern patterns of governance in the European Union (EU) institutions and elsewhere. It offers a learning-based approach to governance, but one which can better respond to concerns about the democratic deficit and to the fulfillment of the public interest than the currently dominant neo-institutionalist approaches. The book is composed of one general introduction and eight chapters. Chapter one introduces the concept of reflexive governance and describes the overall framework. The following chapters of the book then summarise the implications of reflexive governance in major areas of domestic, EU and global policy-making. They address in turn: Services of General Interest, Corporate Governance, Institutional Frames for Markets, Regulatory Governance, Fundamental Rights, Healthcare Services, Global Public Services and Common Goods. While the themes are diverse, the chapters are unified by their attempt to get to the heart of which concepts of governance are dominant in each field, and what their successes and failures have been: reflexive governance then emerges as one possible response to the failures of other governance models currently being relied upon by policy-makers.

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Reflexive Governance

Redefining the Public Interest in a Pluralistic World

Edited by

Olivier De Schutter
and
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Introduction

Institutions Equipped to Learn

OLIVIER DE SCHUTTER AND JACQUES LENOBLE

THE GLOBAL FINANCIAL and economic crisis of 2008–09 confirms the fall of the neo-liberal state, which already was under severe critique since the mid 1990s (Harvey 2005, Mirowski and Plehwe 2009, Plant 2009). This fall in turn followed the demise of the Welfare State in the late 1970s and 1980s. Impressive as they are, these successive defeats have not deprived us of any viable alternative with which to rethink the future of regulation and the role of the state in market mechanisms. On the contrary, they have opened up new possibilities: they are a source not of intellectual stalemate, but of political and institutional imagination. It is the objective of this book to outline some of the possible scenarios. We hope to test these scenarios in the light of what we know, against the background of past failures and, sometimes, successes. We also hope to convince the reader that what we do not know matters, to the same degree as lessons learned from past experiences: only theories of governance that take seriously the limits of our ability to anticipate on all the uncertainties of a complex and fast-changing world have some chances of succeeding.

Our core intuition is that the crisis of the pre-existing, ready-made models is not simply due to the fact that these models were wrong. The crisis runs deeper: it is attributable to the fact that these models believed they were correct — that they could provide answers to the need to manage complexity. It is the very idea of a ‘model’ that should now be questioned. The crisis of the Welfare State ran much deeper than its symptoms, in particular unsustainably high levels of public deficit, in the context of changing demographics and economic globalisation. Also, the demise of the neo-liberal state stems not simply from a failure to recognise the reality of market failures and to provide public goods at an acceptably high level. Rather, both models failed also because of their inability to rethink the mental image of the norm on which they were premised. They failed not simply because they were ill-adapted to a dynamic reality: they failed because their representation of what adaptation means was deeply inadequate.
I. LEARNING-BASED GOVERNANCE

The research programme in which this collection of essays originates is based on the hypothesis that, by examining which new forms of governance are emerging in a variety of fields, and how these different forms of governance succeed in establishing institutions or mechanisms equipped to learn, we can achieve a better understanding of the way forward. Two premises underlie such a research programme. First, we submit, by relating different substantive domains to one another — by establishing links, say, between debates on corporate governance and on health care reform, or between the protection of social rights in the European Union (EU) and the management of global commons — we should make it easier to identify, within each of these domains, certain blindspots: unquestioned assumptions or routines, and in particular, theories of governance on which reforms in each of these domains seem to rely, without a clear understanding of the limits of what each of these theories has to offer. The idea was, in other terms, one of mutual check and control: progress in each substantive field, we believed, could only be achieved through comparison with other fields, in order to uncover the limitations of the range of perspectives competing in each domain.

Secondly, we take as a departure point that governance today should be conceived so as to provide the actors involved with an opportunity for learning. Tools such as monitoring and evaluation, benchmarking of best practices, consultation and participation, or feedback mechanisms, have come to play a central role in many of what are currently the most influential theories of governance. This is not by accident. Rather, these theories of governance share a common diagnosis about what may have gone wrong in the past. More or less explicitly, they all recognise that both decentralised coordination through prices and command-and-control regulation have failed. Market-based solutions appear most often unable to fill the gap between individual and social costs, leaving open the problem of externalities and leading to sub-optimal solutions; and even when appropriate incentive sets are devised to overcome this difficulty, these solutions do not allow for transformative actions that can change the framework in which the actors are placed: they leave unresolved, in other terms, the problem of collective action. As to the regulatory approaches that have been typical of much of the policies associated with the Welfare State, they too are seen as inefficient, insufficiently flexible, and lacking sensitivity to the context in which they are applied; they also are premised on a definition of the public interest that is based on compliance with certain institutional procedures, and which in that sense is formalistic and top-down, rather than deliberative and bottom-up.

Learning-based theories of governance seek to move beyond the current impasse. However, they too confront a dilemma. On the one hand, the formalistic
models of rule application have failed. Such models presupposed the possibility of a clear separation between the principal and the agent, and they were ultimately based on an ideal of the transparency of the norm. These models therefore underestimated the difficulties of maintaining the distinction between rule-making and rule-following in pluralistic societies, in which the contexts are dynamic and increasingly diverse, to the point even that the idea of setting up rules in order to limit the freedom of the actors in local settings strikes us as naive at best, and certainly as anachronistic. Yet, on the other hand, we cannot satisfy ourselves with purely decentralised solutions, uncoordinated with each other, or linked only through market-based interactions. Not only must we ensure that such solutions will be identified according to procedures that take into account the various interests at stake and provide a genuine opportunity for each of the stakeholders to be heard; we also must allow for the possibility of collective action, in order for the collectivity to be able to transform itself and to choose the direction in which to move. Although we may have to renounce the revolutionary ideas of grand meta-narratives and of rebuilding societies brick by brick according to one master plan, we nevertheless must leave open the possibility of history and democratic self-determination. The final destination may be unknown, yet we cannot escape the need to make choices at each crossing point, where different paths depart from — and to explore the widest number of paths possible.

The current attempts to redefine governance on the basis of the learning imperative move in different directions. Among economists, neo-institutionalist approaches seek to escape a definition of learning as a natural selection process, exemplified for instance in the evolutionary branch of economics, in which the most appropriate solutions emerge from being tested against the environment, that will reward some and penalise others. Neo-institutionalists recognise the role of institutions: as Douglass North once put it bluntly, a purely ‘individualistic calculus of costs and benefits would suggest that cheating, shirking, stealing, assault and murder should be everywhere evident’ (North 1981: 1). They recognise the role of institutions in shaping expectations and in solving coordination problems; and they seek to alert us to the need to conceive of ‘choice’ between different options as having to be guided, and as something radically different from a blind process of selection. They fail, however, to explain how what is in the general interest — and deserves to be considered as a desirable outcome — can be imposed or defined from some position external to the actors themselves. Carl Menger, in many ways the founder of evolutionary economics, famously asked ‘How can it be that institutions which serve the common welfare and are extremely significant for its development come into being without a common will directed towards establishing them?’ (Menger (1883) 1995: 146). To this question, the answer of neo-institutionalists is to reject the presupposition of such a perfect match: they assert that the common will must be restored and rehabilitated, and given a central place in directing the evolution of society.
However, they fail to define who is to define this common will, and in the name of which privileged access to what is in the general interest it should be recognised primacy.

Within current political science, the dominant approaches to learning-based governance are collaborative-relational. Such approaches often rely, more or less explicitly, on Habermas’ theory of communicative action. They situate ‘learning’ in the organisation of a dialogue between various constituencies or actors: each of these participants will ‘learn’, it is hoped, by being obliged to provide good reasons for the positions they defend, and by having to engage with the views of the other participants. Communication here is not ‘blind’; it is not understood simply as feedback from the environment and it does not function only through price signals. But nor is it top-down, and nostalgic of a Rousseauist conception of the general will; instead, it is seen as organised deliberation, in which the widest possible spectrum of viewpoints should be heard, and in which consensus should be attained between the participants on the basis of rational argument (see for instance, Freeman 1997). This view, however, fails to make a clear distinction between an argument that is acceptable from a rational point of view, and an argument that is accepted in fact in the course of the deliberation. Because the wedge is not recognised between acceptability in theory and acceptation in fact, no distinction is made between the idealised community of listeners and the existing community of participants. It is in other terms presupposed that the actors involved have access to a ‘rational point of view’ that will emerge through a discussion from which coercion and rhetorical tricks will be banished. Within this understanding of learning, the actors recognise that they do not know, before entering into the discussion, where the most desirable solution lies. However, their apparent modesty is short-lived, for they also believe that by joining their efforts, by confronting their views, they can arrive at the solution that will be most desirable for all. Not only do they act as if disembodied, detached from time, space and context, they also act as if there were no perspective inaccessible to them: they believe, or they want to believe, that they possess within them all the possible perspectives, as if they were just pieces of a hologram — each piece projecting the entire image, although viewed from a smaller subset of angles.

Pragmatist approaches to governance represent an advance on both neo-institutional and collaborative-deliberative approaches, because they take seriously the reality that all knowledge is provisional and radically contextualised. They do not simply recognise this in theory: they organise institutions in order to take this into account. In one version, best represented in the work of Charles Sabel, institutions should favour decentralised problem-solving, combined with the pooling of results in order to facilitate and accelerate collective learning, based on such local experimentalism (Sabel and Zeitlin 2008; Sabel and Zeitlin 2010; Sabel and Cohen 1997; Gerstenberg and Sabel 2002). In another version, typified by authors such as Donald Schön, Martin Rein, and Chris Argyris (Argyris and Schön 1974; Argyris and Schön 1978; Schön and Rein 1994; Argyris 1993), actors engaged in collective action and negotiation should be made aware
of the fact that when they engage controversies, they select the relevant ‘facts’ differently, depending on their respective biases and backgrounds, and that progress can only be made if they agree to question the very ‘framing’ of the problem they seek to address (Schön and Rein 1994: 4–5).

Both these approaches are genuinely pragmatic, in three different and complementary meanings of the expression. First, they accept that innovation — the emergence of new solutions to apparently intractable problems that cannot be resolved by a simple appeal to ‘the facts’ — can only emerge from actors’ engagement with concrete controversies. Learning is therefore not a theoretical enterprise, and it is not an abstract calculation of the pros and the cons of different scenarios. It is necessarily embedded: linked to problem-solving in specific settings. Secondly, they acknowledge the open-ended nature of the inquiry; ‘the policy dialectic’, Schön and Rein write, ‘is inherently open-ended. New solutions tend to generate new problems. The pragmatic resolution of existing controversies tends to set the stage for new controversies’ (Schön and Rein 1994: 81). In that sense, learning is a continuous process, and theories therefore are permanently revised and tested. Thirdly, and most crucially, they posit that true learning can only occur by a revision of the very presuppositions that guide us in action, and those we fall back upon and make explicit when we have to defend our choices against external critiques. True learning, or ‘double loop’ learning in the vocabulary of Argyris and Schön, must be distinguished from mere adaptation of policies to changing environments, without questioning our background assumptions or mental maps: it occurs ‘when error is detected and corrected in ways that involve the modification of an organization’s underlying norms, policies and objectives’ (Argyris and Schön 1978: 2–3). Encouraging learning, in that sense, means encouraging actors becoming aware of their tacit assumptions and the frames guiding their engagement in action, in order to provide them with an incentive to revise them.

The genetic approach to governance, as developed within the Centre for Philosophy of Law (see in particular Lenoble and Maesschalck 2010), builds on these advances in the theory of governance. It is pragmatist in the sense which has just been referred to. Its specific contribution is to ask how the actors involved in collective action and problem-solving can be supported in operating a revision of the assumptions guiding both their description of the problem, and their choice of solutions. It posits that such revision can be triggered by requesting from these actors both an exercise in reconstruction and an exercise in political imagination. The necessity of an exercise in reconstruction appears clearly once we recognise that our desires and expectations, including the evaluation of possible alternatives, are shaped by our past history and by the existing social norms which we have internalised to a more or less important degree (da Cunha and Junho Pena 1997), as well as on the psychological tendency to adapt one’s preferences to one’s situation (Elster 1982 and 1983). These psychological mechanisms imply that individual or collective ‘choices’, made on the basis of subjective preferences, cannot be trusted blindly. Instead, we have to
create the background conditions that will ensure both that the ‘preferences’
expressed will be questioned, by an explicit examination of their genesis; and that
the role each actor seeks to play for himself is open to question. For this reason,
learning-based theories of governance may have to be complemented by an
approach focused on the capacities of the actors. For the ability of actors to
engage in such processes cannot be merely postulated: it must be affirmatively
created. This can only occur from within: it requires not simply an environment
that is empowering and facilitative, but also a transformation in the understand-
ing of the actors themselves of how they should redefine their roles.

The first characteristic of the genetic approach to reflexive governance that
distinguishes it from other, competing versions of reflexive governance, is best
explained if we seek to contrast our approach to that made popular under the
label of ‘capabilities’. Considered superficially, there seem to be strong similarities
between the genetic approach to governance and the capabilities approach,
pioneered in the work of Sen and Nussbaum (Sen 1985 and 1987, Nussbaum
2000). But there are in fact also important differences that deserve highlighting.
The capabilities approach recognises both the need to ensure that individuals
have the resources required to effectively take part in collective action, and that
they may differ widely in their ability to use the resources that are available to
them, depending on their specific situation (for one attempt to ground public
action on the idea of capabilities enhancement in European social policies, see
Salais and Villeneuve 2004). It also leads to insist on the fact that, due in
particular to the tendency of individuals to adapt to their situation, their
subjective ‘happiness’ cannot be trusted as a reliable guide of their wellbeing. This
constitutes one of the cornerstones of Sen’s or Nussbaum’s critiques of utilitari-
anism, which is based on the premise that social choices should be guided by the
need to maximise the ‘utilities’ of individuals, understood as their subjective
degree of happiness. It is a welcome antidote to the view that adaptive preferences
present also certain positive sides (Kahneman et al 1999) and, indeed, could be
treated as a ‘capability’ of some sort — the ability of individuals to ‘make the
best’ of the set of circumstances which they are confronted with (Teschl and
Comim 2005).

The genetic version of reflexive governance recognises the need to create the
background conditions required to ensure that such preferences will not be
dependent on context-dependent baselines (or, more realistically, will be less
dependent on such baselines). However, the genetic approach departs from the
capabilities approach in two important respects. First, it is sceptical of the ‘basic
needs’ approach such as pioneered by Nussbaum and (reluctantly) endorsed, in
certain respects, by Sen (Drèze and Sen 1995). While it recognises the need for
individuals and organisations to be equipped to learn — and thus to have access
to the required normative and organisational resources — the genetic approach
to governance therefore does not believe in the possibility of listing those
resources, as some sort of minimum set of entitlements that would ensure the
success of collective action. Those resources can only be identified in particular
contexts, and the list must necessarily be open to revision; although a failure to ask whether the conditions are appropriate to allow for learning to take place in any particular setting is a guarantee of failure, no predefined set of conditions can form a guarantee of success. Secondly, in addition, what actors need is not just to be equipped with the required capabilities: they must be prepared to question their very representation of their role and, ultimately, of their identity. The problem is therefore not simply to provide these actors with resources, and to enhance their ability to influence the processes in which they are engaged: the problem is for these actors to perceive that they may change their understanding of how they may contribute to identifying solutions to new problems, for which it not just their past knowledge that is inadequate, but also their past ‘positioning’, or what they understood were their ‘preferences’. In order terms, while a ‘capabilities’ approach seeks to equip actors from the outside (with more or less attention being paid to the context in which the actors are placed), the genetic approach insists on the need to empower actors in a very specific way: by encouraging them to exercise power also on the existing identities and traditional definition of interests.

The genetic approach to reflexive governance is also specific in a second sense. Turning its attention to the future — the actors’ expectations, rather than their inherited preferences, identities or representations — it emphasises the need to broaden political imagination. It does so by encouraging actors to reflect upon possible futures by getting rid of institutional fetishism: by re-imagining ways to act collectively that are not constrained by the existing institutional frameworks and by the narrow range of possibilities such frameworks allow. In a complex and fast-changing world, realism commands to broaden this inventive capacity, and it is unrealistic to expect that all problems can be solved appropriately within institutions as they are given. Whether, politically, certain scenarios will be feasible, is a different matter. However, we would be conceding defeat at too early a stage if we were to renounce exploring certain possibilities before testing them.

II. COMPARING DIFFERENT VERSIONS OF LEARNING-BASED GOVERNANCE

The previous section has distinguished among different attempts to develop reflexive governance, the new institutionalist démarche, the collaborative-relational (or deliberative) model, or various pragmatist approaches. All these versions of governance recognise the limits of formal models, and the inability of theory to guide the practice of institutions. They are all, in that basic sense, institutional and holistic, rather than formal and prone to reduce the complex reality into simple schemes or grand narratives. But they draw different conclusions from the fact that we don’t know. They all acknowledge that we must learn — and they are all, in that sense, reflexive. However, these different versions of governance organise mechanisms for learning that are based on different assumptions, more or less heroic, and that equip institutions, more or less well, to
deal with contexts which are increasingly diverse, unpredictable, and dynamic. This book offers to explore these different answers, and to provide the reader with the tools that will allow him or her to compare their respective insufficiencies and merits. While various criteria can be used for such an evaluation, we suggest that three criteria in particular may play an important role in the future.

First, theories of governance are more or less attentive to the concrete possibilities of actors to become active participants in decision-making processes that seek to include them. Learning-based theories of governance posit that learning should take place without teaching: the solutions are not to be imposed from above, they must emerge from below. However, that is not to say that the actors should not be supported in their ability to learn. The lack of information, power imbalances, the inability to translate intuitions about desired outcomes into concrete policy proposals, or the lack of access to networks — all this matters, and even the best institutional frameworks will fail to result in the formulation of innovative and optimal solutions unless these questions are addressed. Indeed, this is something approaches based on the notion of capabilities adequately point out. Whether these approaches provide the best answer may be questioned, but the problem at least seems to us difficult to ignore. The test for us, however, is not simply whether each of the various models pay sufficient attention to this problem: it is also whether, beyond equipping the actors to learn, they will succeed in triggering a revision of actors’ self-representation, i.e. of their understanding of the role they are to play.

Secondly, theories of governance may be more or less capable of offering answers to the regulatory needs of a world that is increasingly economically globalised and interdependent. On the one hand, this globalisation and this interdependency can be seen as an opportunity: particularly as transnational networks develop, this facilitates benchmarking on the basis of the best practices identified through comparison, and mutual evaluation. Accountability and collective learning can improve as a result, and each actor’s ideologies and representations may have to be questioned in the light of a fast-changing environment. But, on the other hand, the increasingly global nature of the problems confronting societies — ranging from preserving the environment and managing natural resources to protecting workers’ rights and regulating financial markets — require collective action at a scale that far exceeds the nation-state, or even that of regional integration organisations. This confronts the theory of collective action to new and largely unprecedented challenges: how to develop collective action in the absence of fora that are sufficiently integrative to allow for trade-offs between different issues, and in which actors meet that only share a minimal sense of solidarity? In addition, in the context of globalisation, responses may be given within each local constituency, based primarily on the need to improve the competitiveness and efficiency of the local economic actors, in disregard of other, equally important values — particularly social and environmental sustainability. How the two can be reconciled, and how, in particular, collective learning can be
orientated towards the fulfilment of aims other than improving performance on increasingly global markets, is a question addressed in a number of contributions to this book.

Thirdly, the different theories of governance discussed in this volume differ in their ability to generate truly novel solutions to regulatory problems. ‘New’ cannot automatically emerge from the ‘old’; to make real progress, and to do so at the required speed, questioning and re-examining past routines may not be enough. But if innovation doesn’t happen by chance, can it happen by design? Can it be ‘generated’, for instance, by comparison between different answers given to similar problems — in the hope, perhaps, that the transposition into one situation of a response tested elsewhere will be sufficiently distorted to develop into something new and untested? As we have seen, one of the disabilities of the neo-institutionalist and collaborative-deliberative models of governance is that these models posit that innovation can emerge from within existing panoplies, as if solutions currently in use were necessarily capable of redefining themselves and mutating into something new. Pragmatist models offer alternative answers to this problem. Democratic experimentalism posits that exchanges between different constituencies can result in innovation, as each constituency will have to redefine its policies, and improve on them, in the light of the successes and failures of others. Organisational learning as pioneered by Argyris locates the source of innovation in the dialectic between theory-in-use (guiding action in practice) and espoused theory (professed by the actor when asked to justify choices), since the tension between what we do in fact and what we profess to do leads to permanent correction and improvement. The genetic approach insists on the need to challenge not just the policies we implement nor just our mental maps, or ‘frames’, but also the very sources of our preferences and orientations, and the definition of our identities, by a genealogical approach seeking to locate where they originate from.

III. THE STRUCTURE OF THE BOOK

We could have sought to address these questions by a theoretical discussion of each of the models of reflexive governance distinguished above. Alternatively, we could have aligned a set of case studies, without any theoretical framework, but with a comparative chapter trying to draw the lessons from the different examples surveyed and attempting to reconstruct, from the outside as it were, what has been at stake in each of the developments. We chose instead a method that faithfully replicates what has characterised the research programme on ‘Reflexive governance’ from the outset.

Each of the authors is a member of one of the research networks involved in this collective endeavour. These teams have been exploring a variety of areas, through a variety of disciplines — including in particular law, political science, economics, and philosophy. They were asked to map the positions adopted in the
different substantive fields under study, and to criticise these positions in the light of alternative, emerging theories of governance that might challenge whichever approaches are dominant in the particular area concerned. The method is at once reconstructive, reflexive, and prospective. It is reconstructive in that it seeks to examine the theories of governance (and associated understandings of collective learning) mobilised in the debates conducted within each substantive area of study. It is reflexive insofar as it seeks to criticise the way these debates are conducted, by highlighting their blindspots and limitations in the light of alternative theories available — thus exposing the fragility and, sometimes, the poverty of the background theories mobilised in current debates. It is also prospective, in that the researchers sought to propose new ways of addressing the challenges facing regulators, on the basis of the insights gained from the first two steps of the method outlined. One advantage of this approach, we believed, was that it could create bridges between jurists, political scientists, economists, and philosophers, oblige all the researchers involved to identify the dependency of the various positions adopted within their respective disciplines on what represents in fact a very limited set of theories of governance, if compared to the wide spectrum of alternative theories available.

This book is arranged with a view both to introduce the reader to the theoretical debates on different theories of governance, and to examine how these debates are played out in a number of substantive areas.

Chapter one, by Jacques Lenoble and Marc Maesschalck, reviews the different versions of ‘reflexive governance’ that currently coexist under this label. They show how this coexistence is fragile, and how the label is therefore ambiguous when used too loosely. Indeed, each of these theories is based (albeit most often implicitly) on a distinct view of collective learning. But the different views of collective learning that these theories espouse are more or less plausible, in that they make more or less strong assumptions about the ability of social actors to ‘learn’, ie to revise their framing of the situation and the adequacy of the answers they provide to the question of regulation. Lenoble and Maesschalck are particularly suspicious of theories of governance that presuppose a natural capacity of actors to adapt to the feedback from the environment, as in biological theories of natural selection. Instead, they insist on the need to affirmatively create the conditions required for this ‘capacity to learn’ to emerge. The ‘genetic’ approach to reflexive governance is defined as one that satisfies this condition: it is ‘genetic’ in the sense that it seeks to ‘generate’ this capacity, or to ‘produce’ it, rather than simply presupposing it or ignoring the question. This introductory chapter therefore elaborates on the content of the ‘genetic’ approach to reflexive governance, and situates it in comparison with other approaches, mapping the different stages of the debate within learning-based theories of governance.

In part I of the book, two contributions explore the significance, for theory of governance in general, of the attempt to relate different approaches to reflexive governance to different understandings of learning and collective action. The departure point is in the new institutionalist approach, and its characteristically
‘regulatory’ understanding of the role of the state in taming the markets. In chapter two, Eric Brousseau and Jean-Michel Glachant explore the implications that follow from adopting a neo-institutional approach. Such an approach seeks to move beyond the dilemma between top-down regulatory approaches on the one hand, and ‘pure’ market mechanisms (supposedly autonomous), on the other hand. The chapter by Brousseau and Glachant examines what it would be to establish institutional frames for markets to function so as to maximise the normative expectations of all the actors involved. In chapter three, Colin Scott offers to reflect on the questions posed by these debates on regulation. His contribution is based on the idea that regulatory regimes involve three sets of functions, since they involve mechanisms for the setting of norms or rules — and monitoring by the principal of the agent in charge of implementation — feedback and behaviour modification where behaviour deviates from the norms of the system. He analyses these various functions of a regulatory regime from the perspective of the approaches to learning derived from new institutionalist conceptions of reflexive governance.

The other chapters in the book in parts II and III explore specific thematic areas, with a twofold objective. First, they seek to use the mapping of various approaches to reflexive governance recalled above in this Introduction and described in greater detail in chapter one, in order to provide a description of the evolutions at work in each of the fields under study. In this respect, the theoretical framework proposed serves, or should serve, as an analytical framework improving our understanding of the dynamics involved. It is backward-looking and explanatory. Secondly, these chapters also use this framework in a way that is forward-looking and critical. Contrast modes of governance that are dominant in each of the fields under study, they seek to contribute to the current debates about reform, by enriching our panoply of solutions to be explored.

Part II of the book collects contributions that identify the alternatives to new institutionalism that are emerging in certain fields, which are chosen as case studies to improve our understanding of shifting approaches to governance. In chapter four, Prosser et al discuss the tensions between the neo-institutionalist and collaborative-relational (or deliberative) models of governance in the energy sector, focusing on the United Kingdom and Germany, although including certain examples from three Canadian provinces, as an example of how the management of services of general interest is undergoing transformations in contemporary societies. Their contribution examines how the liberalisation of the market of energy, ie privatisation, was accompanied by institutional innovations that, at times, presented participatory dimensions, and that also had to adapt to unexpected developments in the implementation process. The main finding is that the reforms in this sector remain largely wedded to a neo-institutionalist approach, with only very few elements of a collaborative-relational model emerging. In the United Kingdom, even where consultation takes place, this remains largely as an external check to the system, rather than as
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a central part of the decision-making process itself — something which the authors attribute to the important role of Parliament in representing the public interest and in the correlative distrust for alternative, and potentially competing, avenues of participation. In Germany, after attempts at self-regulation of the sector failed, there was a return to classical regulatory approaches. To a large extent, the Canadian example illustrates the same difficulty for an alternative to classical representative democracy to emerge, with a more active participation of stakeholders. In all these cases, the establishment of new, participatory processes, which should have encouraged consumers to invest in reshaping the rules, were met with distrust, as a means to circumvent traditional decision-making processes and to legitimise decisions made elsewhere, for other motives. The result is that the neo-institutionalist model — a market placed under certain ground rules — remained dominant: even where some form of consultation took place, this, the authors write, ‘remained “externalist” through the regulator passively receiving evidence from outside to incorporate into decision-making rather than attempting to organise the capacities of outside interests to contribute to a mutual process of learning’.

In chapter five, Simon Deakin and Aristea Koukiadaki examine the transformations of the corporate governance debate in the light of the complex and innovative governance structure set up for the construction of the Terminal 5 building (‘T5’) at London’s Heathrow Airport. Because of the very high stakes of this project for the airport operator BAA, BAA convinced its shareholders (mainly institutional investors) to take a long-term view of their interest; it built a relationship with the sub-contractors that moved away from traditional forms of contracting and included the pooling of liabilities between the suppliers collectively, with BAA taking out insurance policies to cover certain project-wide liabilities; and it sought to manage labour relations on the site that allowed for integrated team working (cooperation between workers with different employers), that included a commitment to pay bonuses for higher productivity resulting in substantially higher wages than would otherwise have been paid, and that went through the establishment of fora for negotiation over pay and working conditions, but also for dialogue over strategic decision-making. Deakin and Koukiadaki conclude from this case study not only that ‘governance structures based on deliberation and on the inclusion of multiple stakeholders can successfully emerge even in a context […] where pressures on firms to prioritise shareholder value are strong’, but also that such governance structures, in the T5 case, allowed for ‘inter-systemic learning’, ‘that is, the possibility for learning in the sense of error correction to spill over from one systemic context to another’. Indeed, the different sub-systems at play — which the authors identify as ‘corporate governance (narrowly construed to refer to company-shareholder relations), utility regulation, inter-firm contracting and industrial relations’ — were forced to reconsider their routine ways of defining their values and objectives, without any one sub-system imposing its dominance above others.
Inter-systemic learning is presented as an ‘alternative that focuses on the interactions within and across systems through which established roles, distinct disciplines and traditional cultures overcome in certain cases conflicting interpretations and engage in a process of social learning and development of capabilities’.

Chapter six, by Olivier De Schutter, revisits the debate between harmonisation of social laws and regulatory competition in the European Union (EU), and asks how the mapping of different theories of learning-based governance might bring new insights into this debate. Fears about ‘social dumping’ in the EU have been revived recently, and doubts are increasingly expressed about the optimistic view that the EU Member States would progressively converge towards higher social standards. De Schutter seeks to move beyond the usual dichotomy opposing de-regulation at domestic level to re-regulation at EU level. Instead, he shows that mechanisms allowing for an improved learning across jurisdictions could constitute a more promising avenue, provided certain institutional conditions are created. Building on the experimentalist approach to governance, he argues that instead of being conceived as a formalistic mechanism, aimed at ensuring compliance with certain values on which European integration is built, an evaluation of each Member State’s successes and failures should be seen as promoting learning across jurisdictions, and as encouraging actors at the domestic level to redefine their position in the light of experiments launched elsewhere. This can strengthen accountability at the domestic level. It can accelerate the identification of innovative solutions and of swift responses to new problems. It can also lead to identify where collective action is required at EU level: in order for the range of choices at domestic level to be truly expanded, these choices should not be based on considerations of efficiency and competitiveness, in disregard of the European public interest and of the possibility for states to coordinate with one another and to make progress in one agreed direction. The chapter argues, however, that in order to achieve this, simply encouraging local experimentation is not enough. In addition, ‘the pooling of lessons from local experiments, and the organisation of a deliberation about how they should be evaluated, should constitute both a disincentive for the adoption of beggar-thy-neighbour policies, and a source of enhanced accountability’; and ‘the establishment, within each EU member State, of an institution specifically dedicated to the analysis of policies conducted in other States, as well as the strengthening of transnational networks, could accelerate learning across jurisdictions, and favor policy imitation’. The question that remains open — and which, in the genetic approach to governance, is decisive — is whether this alone will be sufficient to bring about a perspective shift within the public and private actors concerned.

In part III, the authors seek to describe how our dominant understanding of governance as learning could be further improved by relying on the ‘genetic’ approach, the emergence of which they seek to identify. Chapters seven and eight go the furthest in assessing the specific contribution of the genetic approach to reflexive governance to current debates. In chapter seven, Peter Vincent-Jones
and Caroline Mullen provide an overview of healthcare governance in England. They locate the current debates within the different versions of reflexive governance outlined above, linking the processes of privatisation and the emergence of quasi-markets to the neo-institutional model, as well as the introduction of systems of patient and public involvement to the collaborative-relational model — two parallel processes that lead the 'economic and democratic elements' to 'co-exist in uneasy tension'. However, they also show how these models remain insufficient because of their failure to ensure that the conditions they postulate, in particular conditions related to the capacities of actors, are present. Vincent-Jones and Mullen also seek to explore the promises of the genetic approach to governance by focusing on the changing role of non-governmental organisations (NGOs) in the health and social care sectors. Here, they conclude that NGOs shall have to accept a 'fundamental reconsideration of the way in which they serve the interests they represent, and how they position themselves strategically in relation to government and other actors in healthcare networks'. This, indeed, the ability and disposition of actors to rethink their position, is a key element of the genetic approach to governance: it is by ensuring such a reflexivity from those engaged in collective action that we can hope to move towards truly innovative solutions. These authors write:

The main problem for NGOs in England is how to make the most of the opportunities presented by the new institutional and organizational environment. New Labour's enthusiasm for engaging the energies of the 'third sector' in human services has created a potential for NGOs to strengthen their position in healthcare networks, both by influencing policy making at national level, and bidding for and winning social care and health service contracts in competition with NHS and private sector bodies. However, these opportunities are accompanied by new challenges. The extension of the role of NGOs to include the quasi-market provision of (publicly funded) services directly to client groups has led to tensions with their traditionally independent public service mission (...). Furthermore, closer ties with government in the making and development of policy create dilemmas over the extent to which NGOs feel able to challenge government in promoting the interests of the particular service user groups they represent.

NGOs are thus increasingly facing conflicting loyalties, towards government or towards their constituencies, and they have to manage tensions between different roles, as spokespersons for their traditional advocacy themes and as service providers to clients, for instance. Overcoming these conflicts and tensions requires that they redefine their identity in the process: not only how they act is open to question, but also whom they are and which constituencies they are accountable to. In the genetic approach to governance, it is this redefinition that the operation of 'terceisation' should facilitate.

Finally, chapter eight, by Tom Dedeurwaerdere, explores the potential of governance networks in the field of global environmental governance. In the view of its proponents, network governance — because networks aggregate different
sources of knowledge and perspectives — can be very successful in situations of uncertainty, where information is incomplete and where rationality is strongly bounded. Dedeurwaerdere revisits the debate about the promises and limitations of governance networks, by relating this debate to the genetic approach to governance and the understanding of reflexivity that this approach proposes. He does so by relying on two case studies, concerning respectively the provision of forest-related services in fragmented forest landscapes in Flanders, and the establishment of a global commons of genetic resources in the seed bank network of the Consultative Group on International Agricultural Research (CGIAR). Both cases illustrate the potential of network governance to the provision of collective goods, whether in decentralised settings as in the first case study or at global level. In particular, these examples show that network governance can ensure ‘the stabilization of the cooperative outcomes resulting from the mutual adjustments of the various actor strategies’, as well as ‘the social learning on the content of the overall normative orientation of the interaction within the governance networks’. However, Dedeurwaerdere notes, ‘missing from both is a reflection on the articulation between the strategic and normative level of the analysis’. It is this articulation that a genetic approach should favour. In such an approach, ‘the stake is not so much to rely on existing reflexive abilities, whether they be capacities of self-adjustment or of cooperative learning, but to act on the conditions of emergence of reflexive abilities through the mechanism of terceisation’. Only this, and the transformation it implies in the representation the actors have of their identity and objectives, may allow overcoming ‘frame conflicts’ that are an obstacle (and sometimes an insuperable one) to cooperation across different perspectives. This study thus provides a particularly enlightening example of what the genetic approach to reflexive governance may contribute, in particular in the management of global commons.

IV. CONCLUSION

Taken together, these different studies illustrate the transformations in our current understandings of governance. Since the 1990s, in particular, a wide range of initiatives have emerged that seek to go beyond the public/private divide, and that seek either to rely on market-based mechanisms with some sort of regulatory control in order to ensure that the public interest is taken into account (what some have called the Regulatory State), or that experiment various private-public combinations, often in decentralised settings. These initiatives remain entrapped in what we call an ‘externalist’ concept of learning, in which the public interest is defined from above, outside the actors concerned, defining the boundaries which the actors are prohibited from crossing. At the same time, various forms of participatory democracy, as well as social dialogue at different levels, are making progress, illustrating the emergence of a collaborative model of shaping the public interest. While many of these innovations in participation
remain closer to bargaining than to deliberation, some are deliberative in character, leading the actors involved to re-examine their preferences and to reformulate their arguments in the light of the arguments of the other side. In other terms, what we see developing in practice, is in many ways a duopoly: the neo-institutionalist and collaborative-relational models dominate the field, and few institutional solutions currently implemented truly move beyond them.

However, these studies also show the need for, and the possibility of, a leap in institutional imagination. They show that progress can be made in promoting greater reflexivity in governance processes, and that this reflexivity may be understood as the ‘internalisation’ of the conditions of learning. Learning, in other terms, should be conceived as an operation in which the actors themselves redefine their understanding of the problem to be addressed, and are led not simply to question the solutions that are routinely explored, but also their relationship to the problem and the way they traditionally define their interests. The different case studies collected here all move in this direction, but they do so at different levels. The studies by Prosser et al and by Deakin and Koukiadaki, based on examples respectively from the energy sector and from the governance of the BAA-led consortium for the building of Terminal 5 at Heathrow airport, note the insufficiencies of the new institutional approaches, and of the classical tool of incentives to steer decision-making by economic actors in the right direction. Both studies conclude for the need to include more deliberative elements in the governance structures set up in such areas, and they note that this could be achieved by radicalising certain participatory elements that are already present in this regard. The study by De Schutter identifies the need to operate a shift towards a more pragmatic and experimentalist approach to the fulfilment of social rights at the level of each EU Member State, in order to move beyond the current impasse, that has nothing to oppose to the spectre of deregulation than the chimera of re-regulation at EU level; and he identifies certain institutional innovations that could support such an experimentalist approach. The studies by Vincent-Jones and Mullen and by Dedeurwaerdere, finally, illustrate the promises of the genetic approach to governance, where the attempt to ‘internalise’ the operation of learning is pushed furthest. It is our hope to contribute, by this book, to a debate on forms of governance that should now move away from generalities, and towards specific institutional proposals.
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