

Claiming Democracy: Participatory and Deliberative Norms within EU governance.

Jelle Behagel¹, Esther Turnhout² & Bas Arts³

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Abstract:

Governing beyond the state means that cross-boundary issues such as environmental policy are dealt with by governance networks. Although the inclusion of civil society within these governance networks is expected to contribute to democratic quality, this is not necessarily the case. Power relations can be reproduced or skewed rather than balanced and civil society does not necessarily represent society as a whole. This process is explained by analyzing democratic norms. As the role and substantive input of civil society are shifted in governance, democratic norms are likely to shift in meaning as well. This paper illustrates how within the implementation of the EU Water Framework Directive, democratic norms shifted in meaning. To do so, it employs the concept of discursive claims-making in order to explain how democratic norms are articulated within a discourse. A case study in the Netherlands shows how one coalition articulated a claim that brought about a hegemonic discourse based on a social demand for room for agriculture. A second coalition that supported environmental demands was not successful in contesting this hegemonic discourse, because it did not follow a political logic. As the two coalitions held different ideas on the role and input of civil society within the governance network, democratic norms got articulated differently within these discourses. The paper concludes by discussing the relationship of democratic norms with questions of legitimacy. In answering these questions, we observe a need for the definition of the role of civil society and believe that in the absence of deliberation, the structuring and excluding effects of hegemonic discourse should be heeded.

Governing beyond the state: new norms of democracy

¹ Forest and Nature Conservation Policy Group, Wageningen University, jelle.behagel@wur.nl

² Forest and Nature Conservation Policy Group, Wageningen University, Esther.Turnhout@wur.nl

³ Forest and Nature Conservation Policy Group, Wageningen University, Bas.Arts@wur.nl

Today, governing no longer takes place exclusively *within* the state, but also *beyond*. Under the influence of supranational institutions like the European Union (EU) and processes of globalization (Bevir 2003), a 'shift from government to governance' has taken place. This shift is usually understood in terms of a changing role of the state: from an overloaded state of 'big government' to a hollowed-out state that can be identified by a lack of legitimacy, a greater role for market forces and civil society, and a loss of neutrality for- and confidence in civil servants (Skelcher 2000). As a result, many activities and services that were formerly carried out by the central state have been devolved to lower authorities or contracted out to private or semiprivate bodies. Notwithstanding the resulting fragmented organisational landscape, governance is still expected to address issues that cut across boundaries, such as environmental concerns. What is more, today, most natural resources can no longer be exclusively managed by states as a result of transboundary issues such as pollution and climate change (Dietz et al 2003). These transboundary issues have stimulated the creation of what we call governance networks.

Within governance networks, civil society is included in policy formulation and implementation. The inclusion of civil society in governance is commonly viewed as an antidote to the lack of legitimacy that accompanies the hollowed-out state (Scholte 2002). In addition, governance networks are believed to be better suited to address issues of complexity and globalization and to offer a broader scope for participation (Warren 2002). The European Commission (EC) in particular views the inclusion of civil society in policy formulation and implementation as a source for democratic legitimacy and accountability, and tries to realise this through by means of public participation. The EC sketches out its take on public participation by public communication and by the White Paper on Governance (EC 2001). For instance, with regard to the Water Framework Directive (WFD), the EC offers two reasons for public participation: 1.) balancing the interests of various groups and 2.) enforcing implementation, through consultation or, if necessary, legal action.

Governance networks are not only praised for their democratic potential, they are criticized as well. Criticism is addressed at the limited administrative capacities of actors to engage in governance networks (Schout & Jordan 2008); the degree of willingness found in states to take up a governance approach (Moss 2004); the elite characteristics of governance network actors, which raise questions about democratic legitimacy (Saurugger 2008); or the general level of participation when compared to 'older' styles of governance (Smismans 2008); amongst others. More fundamental criticism has been directed at the mechanism of public participation itself: if participation within a policy area is limited to those

organizations and individuals that are immediately concerned (e.g. 'those affected'), it can diminish accountability to a more general public (Peters 2004). In a similar vein, Scholte (2002) discusses that civil society is not necessarily democratic, but might be reproducing or skewing power structures.

In order to deal with the above criticisms of the democratic quality of governance networks, there has been a number of responses. For instance, Fritz Scharpf (1999) emphasises efficient governing in terms of output legitimacy as an alternative to democratic legitimacy. Another response comes from Eva Sørensen and Jacob Torfing (2005), who suggest that governance networks be anchored in the democratic norms that are (already) part of the ethos of society. Criticisms of democratic governance in the EU are generally addressed by what has been called a normative turn (Bellamy & Castiglione 2003). This turn – as a result of the shift from government to governance – suggests more attention for norms such as sovereignty, identity and democracy.

In governing beyond the state, democratic norms are taken out of the socio-cultural embedding of the nation state context and subsequently are altered in meaning. That is to say that democratic norms are dependent on social, cultural and historical contexts and are expected to change when transferred from one context to another (Wiener 2007). For example, the concept of subsidiarity taken out of relative obscurity in preparation of the Maastricht Treaty of 1992, in order to act a tool for protecting the sovereignty of EU member states. Since then, within the EU-context, it has changed into a technical concept of 'better law-making' (Jordan 2000). A similar change in meaning also occurs when democratic norms are transferred in the shift from government to governance: traditional liberal and democratic norms that have come to articulation within the context of the nation state (see Mouffe 2000) are transformed within a governance context into participatory or deliberative democratic norms (Liebert & Trenz 2009), amongst others.

Democratic norms can incorporate a governance context across two distinct axes, as figure 1 below illustrates: First, the role of civil society in governance can be understood as ranging from auxiliary to constitutive (Liebert & Trenz 2009). For instance, on the auxiliary side of the axis sits the ideal of EU governance that civil society actors can help balance interests and thus contribute to democratic legitimacy, while still heavily relying on the input of the Council and the European Parliament for the major share of democratic legitimacy. On the other side of the axis sits the ideal that civil society is co-constitutive for a new kind of institutional and political order in which the role of civil society is to counterbalance and control political power as well as market forces, for example in the ideal of associational

democracy. Second, the substantive input of civil society can be understood on an axis that ranges from the representation of private interests to the manifestation of social deliberation (Kohler-Koch & Quittkat 2009). For example, the ideal of participatory democracy relies heavily on the concept of representation and the inclusion of social demands, whereas the ideal of deliberative democracy attributes more weight to processes of deliberation and a joint search for a common good.

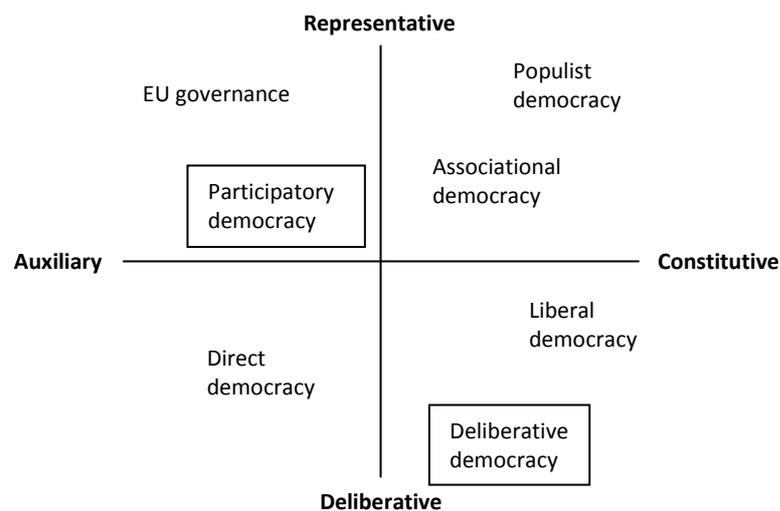


Figure 1: Democratic norms in terms of the role and input of civil society

In this paper, we set out to describe how democratic norms take on meaning and are used within governance networks. To this purpose, we discuss a case-study in which norms of participation and deliberation were given meaning through the discourse and practices of the actors within a governance network that connects to the implementation of the WFD in the Netherlands. Our analysis revolves around the concept of claims-making. This concept allows us to move along the axes of the role and input of civil society: we observe how legitimacy is claimed based on norms of representativeness or deliberation; and we describe how one coalition of civil society actors takes on an auxiliary role, while a second coalition of actors prefers a more constitutive role for civil society. In addition, the concept of claims-making foregrounds the - often hidden - political dimension in governance networks.

Claim and request; the political and the social

In order to describe democratic norms in the discourse and practices of governance networks, we draw for our theoretical framework on Discourse Theory (Laclau & Mouffe 1985). By doing so, we add a political dimension to the concept of democratic legitimacy.

This political dimension is found in the constitutive role that identity has in the realization of the discourses and practices of governance, besides the role that interests have. That is to say that the articulation of a democratic norm within a specific governance-discourse does not only alter its meaning, but is constitutive for relations of power as well. Along these lines we gain insight in how the role and input of civil society influences relations of power through the articulation of a discourse. In addition, we see how legitimacy can be claimed based on different ways of articulating democratic norms.

We make our theoretical framework operational by using the concept of 'social demand' as a unit for analysis. This concept is situated on the intersection between interest and identity: a demand articulates a certain interest, but always does this within a context-specific discourse. In addition, a 'social demand' can be understood to be based in a civil society that is situated on the outside or the periphery of processes of governance, but it can also be understood to describe the issues that are constitutive for a specific field governance. This ambiguity in meaning is further explored by Laclau (2005a, 2005b) in the distinction he makes between *request* and *claim*. According to Laclau, we can consider a social demands to be either articulated as requests or as a claim, which we will explain further below.

A social demand that is articulated as a *request* does not call into question the decision-making power of the authority it directs its demand to. That is to say that a request does not attempt to change the institutional order at which a demand is directed. Moreover, a request is posed in a dialectical manner: it is styled as an intellectual exchange of ideas which are believed to be well-defined and not influenced by power relations. Furthermore, a request is passive: it trusts in the current institutional order for satisfaction and does not enter into action itself. Finally, a request is punctual, closed in on itself. That is to say that it does not represent a larger set of demands or some other unarticulated civil grievance. This also means that it will be articulated within a pre-existing, institutionalized discourse, in which meanings will not be altered significantly. These points - taken together - make that demands that are articulated as requests do not create a chasm or frontier within society (Laclau 2005a).

Social demands that are articulated as a *claim*, do create a frontier within society: when multiple social demands are not satisfied, it becomes possible for them to be articulated as a claim. First of all, a claim differs from a request in that it calls the current institutional order into question and in that it may advocate taking action outside of that order. In addition, a claim is put in an active and forceful way. Furthermore, a claim will be

open to include many different demands, which have the commonality of being unfulfilled by the institutional order. Finally, an identity – which unifies a claim – is created in the articulation of these demands in reference to one of them: one demand will act to signify the complete chain of demands that become articulated within the claim, thus becoming the ‘hegemonic’ or ‘empty’ signifier. This signifier is hegemonic because it structures the articulation of the entire claim, but it is also emptied out of its original content in its function of representing all social demands that are part of the claim. For a demand to attain this function of ‘hegemonic’ or ‘empty’ signifier, rhetoric is used: words and ideas are strategically employed in order to create an identity; redefine meaning; co-opt social demands; and oppose institutional order. To conclude, the articulation of a claim involves the alteration of meaning of one specific demand, the binding of a group of social demands through the creation of identity, and, when successful, is accompanied by the creation of a new discourse.

We now shift our attention from the specificity of social demands to the relations of power within society and make a distinction between *social* and *political* logics (Glynos & Howarth 2007); a distinction that runs parallel with the distinction between request and claim. We encounter *social* logics when there is relative stability in relations of power. These logics are identified by having a specific place or structure in which each single social demand can be addressed. This instituted and institutional stability reflects in the dominance or hegemony of a certain discourse in which social demands are expressed and dealt with. On an ontological level, social logics correspond with a logic of *difference*. This correspondence operates from the assumption that, within a certain discourse, meaning is created through an internal difference of signifiers (symbols, words, etc.) with each other. This internal difference fixes meaning and keeps relations of power in place.

Political logics occur when there is a significant instability in the relations of power. Political logics are identified by a lack of place or structure in which multiple social demands can be addressed. Subsequently, these demands can become frustrated. As a result, the dominant discourse might be challenged by a new discourse that articulates a number of the frustrated demands outside of the (current) institutional order. On an ontological level, political logics correspond with a logic of *equivalence*. The constitution of identity is of particular importance here: The new discourse that acts as a contestant to the old dominant discourse constitutes itself in two movements. First, by opposing itself to the dominant discourse, it establishes an identity through an external frontier, creating an *other*. In their opposition to dominant discourse, frustrated demands become *equated* to each other.

Second, the new discourse is internally structured by the articulatory power of one single demand, which we have called the ‘hegemonic’ signifier earlier, thereby creating new relations of difference. When an instituted discourse is challenged by an alternative discourse, relations of internal difference can become unfixed because of the equation of demands. These relations can be re-fixed through the articulation of meaning by the new, hegemonic signifier that lends to the new discourse its identity. With this re-articulation of meaning, power relations are changed as well. Table 1 below schematically represents the logics and manifestations of a request and a claim, and summarizes our theoretical framework.

	Request	Claim
Logic	Social	Political
	Difference	Equivalence
Manifestation	Single Demand	Multiple Demands
	Passive	Active
	Respects institutional order	Calls institutional order into question
	Punctual	Chained
	Dialectical	Rhetorical

Table 1: The logic and manifestation of a request and a claim

Implementing the WFD in the Netherlands: a governance network

We employ our theoretical framework to link up political dynamics with the meaning and usage of democratic norms that we found in a governance network that connects to the implementation of the WFD in the Netherlands. We have selected this particular governance network for the following reasons: 1) the WFD serves as an early example of EU environmental governance legislation, entailing transboundary issues such as pollution; 2) the WFD explicitly promotes the inclusion of civil society in policy formulation and implementation; 3) the implementation of the WFD in the Netherlands was accompanied by a distinct politization of governance practices; 4) the implementation process offers an example of claim-making in policy practice. In order to research this governance network, we take a case study approach. This means that only a single governance network was addressed and that the research was limited to a definite area (the Netherlands) and time period (2003-2006), entailing a number of key events. As such, a case study is not expected to lead to generalizable results. Instead, the case study was expected to yield results that

serve as exemplary (Flyvbjerg 2006) of the usage and meaning of democratic norms in governance contexts. In addition, the case study was expected to illustrate how democratic norms themselves can become part of political contestations and do not necessarily regulate the same.

We chose the social demand as a leading unit of analysis. A social demand is articulated within a discourse, which is to say that it is context-dependent. Consequently, we adopted a qualitative approach to data collection. The gathered data consists of documents (from written media, policy notes, public reports, and advisory reports), and transcribed interviews. Documents selection was based on the role these documents fulfilled within the public discourse on the implementation of the WFD in the Netherlands. These roles entail the influencing of public opinion, setting out policy lines, engendering political debate, and legitimizing or criticizing policy choices. Interviewees were selected based on the prominence of their participation in the governance network. This prominence was assessed by indication of participation in key events, structural participation in formalized networks, impact of statements on the public discourse and by snowball sampling. Twelve key interviews were planned and semi-structured. During the interviews, interviewees were asked to give their own historical account of the implementation of the WFD, in which key events and documents were brought into memory by the interviewer. Furthermore, the interviewees were asked to give their opinion on the role of civil society in the implementation process. In addition to key interviews, several unstructured interviews took place during workshops, informal gatherings, and conferences, in which key events were identified and preliminary findings were tested. We analyzed our data by searching for the articulation of social demands within discourses. To identify discourses, we employed the categories of the logic and manifestation of a request and a claim and paid special attention to the articulation of democratic norms in terms of role and input of civil society. The results that are discussed below follow the chronological order of events in the process of implementing the WFD in the Netherlands.

The case of the EU Water Framework Directive

The implementation of the WFD in the Netherlands had received little attention from the time of its publication in the year 2000. This early period was characterized by a respondent as:

'No one in the Netherlands has even heard of the WFD, except for those who are busy with implementing it'¹.

Indeed, no public participation event to speak of had taken place. This period may be characterized as mainly administrative and government centered, which is illustrated by the systematic pursuit of the objectives that were set out by the WFD, following an established timeframe. As the quality of waters in the Netherlands was believed to be good, the effect of the WFD was thought to be mainly on administrative capacities and to have an impact on the water sector alone:

'Originally the Netherlands thought: well, this directive, oh well, it could imply something for Southern Europe. Hey, in the Netherlands we are already very good in water management ... that was around the period when the directive first took effect. But I believe we have changed that view relatively fast, like: Oh, what have we gotten ourselves into?'²

The early, administrative view changed dramatically at the end of 2003. This change was given rise by the publication of a scenario-study on the implications of the WFD on agriculture, nature, fishery, and recreation. The study was named 'Aquarein' (van der Bolt et al 2003) and carried out by a Dutch research institute named 'Alterra'.

The sectors that Aquarein addressed are predominantly the domain of the ministry of Agriculture, Nature and Food Quality (LNV), although the competent authority for the implementation of the WFD in the Netherlands is the ministry of Traffic, Public Works and Water Management (V&W). It was LNV that financed and supervised the realization of the Aquarein study. By emphasizing sectors not directly connected to the technicalities of the implementation process of the WFD, Aquarein brought in new demands in this process, or rather actively articulated existing demands for room for agriculture, fishery and recreation. Nevertheless, LNV was passive at first in the setting of these demands. It considered implementation of the WFD to be a responsibility of V&W and it did not want to invest either time or money. In contrast, Alterra actively pushed the initiation of a study into the effects of the WFD and devoted time of its staff to an explorative study. The findings of this first study prompted Alterra to warn LNV for the broad impact the WFD would have on their sectors of interest (such as agriculture and nature) and to recommend better

communication across departments and ministries. As a result, LNV became active and initiated the Aquarein study after all.

As a result of Aquarein, demands from agriculture, nature, fishery and recreation became part of the discourse on the implementation of the WFD. What is more, these demands were made in an active way. However, it was only after these demands were set forcefully and articulated within a discourse that called the institutional order into question, that the request was turned into a claim. This happened at a conference which was organized by LNV.

A claim is made

At the 28th November of 2003, LNV organized a conference to present the Aquarein study and to discuss the impact of the WFD on its policy domains. The conference was attended by almost all of the societal and governmental actors that were involved in water policy. The scenario's that were presented by the Aquarein study painted a devastating picture for the agricultural sector. Even the mildest scenario predicted that 70% of agricultural land in the Netherlands would have to be taken out of production in order to meet the goals that were set out by the WFD. This prediction was contested, but should be viewed in relation to the primary goal of the report, according to both the author of Aquarein and to its coordinator at LNV, which was to stir up political discussion on the implementation of the WFD:

*'[Making political choices], that was the message. Our message wasn't that agriculture would disappear from the Netherlands; that was just a coincidental result of the methods we used.'*³

*'...one of the options is to use advice, a study, something that can be thrown in from outside ... [Placing the WFD on the political agenda] was necessary, if you are already busy for four years, ... , if it is kept far too bureaucratic, kept out of sight for too long, understand?'*⁴

The study achieved this goal of agenda-setting: as a result of it, demands were made more forcefully, as some of the reactions of the participants of the conference illustrate:

*'Time is pressing; the council of ministers should choose the ambitions for the WFD within a short time span.' 'WFD or not: in the Netherlands there should be a place for sustainable competitive agriculture and a vital nature.'*⁵

There was also a first attempt to articulate social demands in a chain around the demand that all societal groups had in common, namely public participation:

*'With the balancing of interests comes a broad participation process, of water boards, municipalities and others.'*⁶

Nevertheless, the demand for public participation did not articulate a claim. The series of demands, which varied from space for agriculture, recreational fishing, and nature conservation, to public participation, were still put forward in the form of a separate requests. A claim was only then formulated when demands that had arisen out of frustration with the implementation of earlier EU environmental directives were linked to the demands of agriculture. In the Netherlands, EU environmental standards on air quality had led in many instances to the delay or even abandonment of big development projects. The resulting frustration had led to demands by industry and entrepreneurs for less (legal) obstacles to spatial developments. As a spokesperson for the drinking water companies put it:

*'Besides [the lobby for agriculture], the dossier on air quality has resulted in a lot of problems ... Politically, this meant: 'never again' ... That's why I think [the government] is more sensitive to demands by VNO-NCW and the agriculturists.'*⁷

It was the organisation for agriculture and horticulture in the Netherlands (LTO) that succeeded in the articulation of a claim by linking the social demands ensuing from frustration with EU environmental standards to the demand of room for agriculture. Although LNV - by initiating a study into the effects of the implementation of the WFD - already implicitly had called the institutional order into question by getting mixed up with water policy, LTO now did this explicitly and demanded change:

'It should be clear that if these are the consequences for Dutch agriculture, leaving no future for agriculture, then a discussion on the vision on the WFD will be of little use. ... The manner in which elected officials are dealing with the development and implementation of European Directives should be made subject to discussion ... the implementation of the WFD has been, up until this moment, an affair of civil servants and scientists that are concerned with water

*quality. The situation should not be that ecologists are responsible for the implementation of the WFD.*⁸

What was more, ‘civil servants and scientists’ were accused by LTO of having a ‘predominantly environmental focus’. Even further, the competence of the junior minister of V&W was seriously doubted by LTO. LTO demanded change; a future for agriculture should be prominent in the formulation of water policy, besides the concern for water quality. According to one of its spokespersons, the most important issue in the implementation of the WFD was to make sure that: *‘the existing agricultural functions [...] don’t have to give way to water quality’*⁹. LTOs demand for change was picked up by regional and national media. The heading of one national newspaper read: *‘Econorm EU finishes agriculture’*¹⁰, the heading of another stated: *‘rules drive farmers out of the country’*¹¹. As a result, action was undertaken. A majority of MPs joined the claim of LTO by demanding from the junior minister of V&W to draw up a strategic plan that would protect the Dutch agricultural sector from the effects of the WFD. They backed this demand up by refusing to transpose the WFD in national legislation. Now, what had been imagined to be an administrative step within a timeframe for implementation became a political moment. What resulted was a social divide in the field of water policy between two coalitions with corresponding discourses.

A new discourse

As a result of the claim that was made by LTO and that was backed up by most of the Dutch MPs, the junior minister of V&W made haste with drafting a note on the strategic implementation of the WFD. This note was named ‘Pragmatic Implementation of the WFD in the Netherlands (V&W 2004)’ and started a new phase in the implementation process. First, the call for public participation that was made during the conference at the 28th November of 2003 was honoured. This meant that societal groups, departments outside of V&W, water boards, provinces, and municipalities got involved in the drafting of the note, and sounding boards were set up for regional public participation. Secondly, the WFD was no longer thought of as merely an administrative process: the point of view of elected officials had to be considered in the process of achieving the objectives set out in the timeframe for implementation. To this purpose, an annual note reported to the parliament the progress of the implementation of the WFD. One of the objectives discussed in parliament was the reporting on the characterization of a river basin district that includes the identification of water bodies as natural, heavily modified or artificial:

*'To me, the identification of a water as heavily modified, means that on the one hand you are obligated to identify a goal for that separate water body, but on the other hand it offers you the chance to identify a goal on the level you believe is feasible and affordable ... That has been acknowledged in a relatively early stage: there is space there, there is room for political choices.'*¹²

The implementation of the WFD had now become a process in which societal parties could participate and that was open for political choices. In the preparation of the note, an exercise with societal parties was undertaken in which they identified themes of the WFD as feasible, feasible with extra effort or not very feasible. Many themes were identified to be 'feasible with extra effort', including the achievement of ecological goals and measures that would involve spatial planning. In fact, the only themes that were identified as 'feasible' were public participation, effective water pricing and 'new' pollutants.. Although 'feasible with extra effort' appears to be a rational phrasing of whether something can be accomplished, it had a large rhetorical function that some societal parties had overlooked. In fact, the note on 'pragmatic implementation' not only opened up political choices, but was also very influential in determining them. It did this by fixing the meaning of what it meant to implement the WFD in a 'feasible and affordable' manner, in articulating what was 'feasible' was and through appealing to cost-effectiveness:

*'The Netherlands takes as a starting point a pragmatic implementation of the WFD and nothing more. This note chooses a course of action that keeps the consequences and the costs as restricted as possible en makes the benefits optimal.'*¹³

In practice, this phrasing meant that very little consequences or costs would be acceptable. Also, when the note on pragmatic implementation spoke of extra effort, it was referring to new, innovative techniques, rather than money: *'The task seems feasible with extra effort, on top of existing policy, ... The application of innovative techniques will be necessary to accomplish this.'*¹⁴ Similarly, something was considered 'feasible' when goals could be achieved based on existing policy measures, that is to say measures that were already anticipated upon independently of the WFD.

The general term 'feasibility' and the general notion of cost-effectiveness can be interpreted as a articulation of the social demands of the agricultural sector – room for

agriculture – and of industry and entrepreneurs – not to have obstacles for new developments – into a new discourse. This discourse needed to be based in a shared identity. This identity was personified by the Netherlands and created by exclusion of ‘frustrating’ environmental legislation. The WFD was portrayed as piece of legislation forced upon the Netherlands by the EU and imposing difficult obligations. These obligations could be escaped from through strategies offered by the note on pragmatic implementation. To offer some examples, it stated that for the reporting on the characterization of a river basin district:

- *‘The Netherlands will, where possible, identify water bodies as ‘artificial’ or ‘heavily modified’*
- *‘The WFD offers, within restrictions, options to phase goals when the achieving of a good status in 2015 leads to unreasonable demands. The Netherlands will have to use the options to phase goals frequently.’*
- *‘In the River Basin Management Plans, the Netherlands will identify goals that are feasible, if necessary with phasing until 2027.’¹⁵*

These strategies, together with the identification of most themes of the WFD as ‘feasible with extra effort’, show how the claim made by LTO had become hegemonic. The lowering of ambitions was articulated as a national interest of pragmatics and cost-effectiveness, yet the private interests of agri- and horticulture were central: *‘An extra load on top of the Nitrates Directive would lead the [agricultural]] sector to disproportionate costs’¹⁶* In governmental notes that followed after the note on ‘pragmatic implementation’ and during subsequent events of public participation this equation of feasibility and affordability with the interest of the agricultural sector would remain dominant. The hegemony of the discourse of ‘feasible and affordable’ was sustained by what we call the ‘pragmatic coalition’. As we will see below, efforts to break the hegemony of their discourse by what we will call the ‘ambitious coalition’ failed.

Civil society split: sustaining hegemonic discourse and building a counter-claim

The hegemonic discourse of ‘feasible and affordable’ adequately addressed social demands by groups from civil society such as LTO and the national employers organisation (VNO-

NCW), but environmental demands – which were supposed to benefit by the implementation of the WFD – now became frustrated. With environmental groups in civil society, such as Natuurmonumenten⁴ and Natuur & Milieu⁵, discontent grew about how the implementation of the WFD took shape in the Netherlands. This discontent took aim at the general ambition that was spread out in governmental notes – in terms of allocated resources and goal commitment – , but also at the role that was envisioned for and the input that was expected of civil society by governmental authorities during the implementation of the WFD.

Those civil society actors that backed the hegemonic discourse, who we will call the ‘pragmatic coalition’, did not feel completely reassured by their first success of the note on pragmatic implementation either. They maintained an ‘outsider’ role, keeping pressure on authorities to maintain the strategic course set out by the note on pragmatic implementation, for instance in a letter they send to all the ministries involved in the implementation of the WFD:

‘[The WFD] is very ambitious in its aims and will demand great efforts of the Netherlands on the fields of environment, spatial planning and agriculture. The boards of VNO-NCW and LTO-Netherlands are seriously concerned about the economic consequences of the European Water Framework Directive. Great concern exists about the manner of implementation employed by the government.’¹⁷

In addition to this kind of bilateral public participation, members of the pragmatic coalition also took part in formal public participation events – which entailed a quadrennial national consultancy body of civil society groups with authorities (Overlegorgaan Water en Noordzeeaangelegenheden), regional sounding boards, and local workshops. In these venues, an auxiliary role was deemed appropriate by the members of the pragmatic coalition. That is to say that voices could be made heard, but there was less room for direct influence:

‘I found it useful and especially informative for societal organisations, ... You could bring forward a vision. There was less room for advice.’¹⁸

⁴ Natuurmonumenten is an organization that owns and manages a large number a nature areas in the Netherlands

⁵ Natuur & Milieu is a national lobby organization representing regional environmental federations.

The pragmatic vision brought forward in these venues aligned with the original claim that was brought forward by LTO. Within public participation in general, the input of the pragmatic coalition remained predominantly on stakes or interests, as these quotes illustrate:

*'The moment we don't get the LTO to join us in our effort, we don't even have to try. ... The moment we didn't have support from LTO [for the discussion of goals on water quality], we gave up on them... LTO puts its stakes on what is possible for them as agriculture and it ends there.'*¹⁹

*'So we did everything to prevent the possibility for the environmental movement to start legal procedures. ... VNO-NCW has no interest in the environmental movements to start legal procedures with the province, with the State Counsel.'*²⁰

Most organizers of public participation events understood the input of civil society to consist of private interests as well. According to one of them:

*'...there are differences between those who have to [implement the WFD] and pay for it and interest groups that just keep on asking ... And then you do not get a constructive dialogue either, no.'*²¹

Indeed, a constructive dialogue was hard to find; within media communications, rhetoric has remained present:

*'Hundreds of civil servants and local and regional elected officials are painstakingly occupied with the implementation, for years already. Lots of them would see it as their mission to realize long cherished environmental ideals – under the banner of the new directive.'*²²

If we describe the role and input of the pragmatic coalition in terms of social and political logics, we find both: the hegemony of the 'feasible and affordable' discourse is sustained by a social logic. This follows from the differentiation between government and civil society that is made in formal public participation events and the acceptance of bringing in interests without directly influencing decision-making. Simultaneously, a political logic is still present in bilateral- and media communications. The defense of private interests by

playing the 'outsider' role and the use of rhetoric to oppose a formerly dominant discourse show that power relations were not entirely fixed yet by the new discourse. This is not surprising: power relations will never be completely fixed, their stability is to be thought of as temporal, whatsoever the time span. In fact, some see the alternation between discourses and their power constellations to be a natural processes of policy making:

*'The WFD was a driving force for ecology. You see that automatically opposing forces surface that bring it down to practicable size in terms of time and money.'*²³

Environmental groups were frustrated with the new discourse of 'feasible and affordable'. They feared that the promise of the WFD for environmental quality would be lost to low ambitions and a lack of political support. Consequently, these groups tried to build a counter-claim in which the ecological aspects of the WFD were highlighted as its core goal. The counter-claim was supported by an ad-hoc coalition that called itself 'benefits for clean water' and was articulated by means of a pamphlet that set out to describe the benefits of the WFD. It did this by appealing to the official text of the WFD, which states:

'Water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such.' (EC, 2000)

Although initiated by the environmental lobbying group Natuur & Milieu, those participating in the ad-hoc coalition represented a broad field of civil society. Besides environmental groups, recreational groups and the drinking water companies took part in the coalition as well. This coalition tried to change the dominant discourse of 'feasible and affordable' by emphasizing the benefits that the implementation of the WFD could lead to:

*'Direct use value: agriculture, fishery, industry, recreation and private citizens could profit from clean water. Even better, it could help some sectors grow.'*²⁴

It attempted to try to shift discussion away from the mainly negative focus on costs and to articulate the notions of 'feasibility' and 'affordability' within a discourse of benefits that included all social demands. The coalition was not successful however: the discourse of 'feasible and affordable' remained hegemonic. This was felt in public participation events as well, as the quote below illustrates:

‘Very soon in those discussion groups (organized by water boards), when financial objections, or mainly the objections of the agricultural sector came into view, Pavlov-reactions occurred in those area groups, like: “this is significant damage or disproportionately expensive”, that’s not an obligation of the WFD. In the end, the notion of ‘disproportional costs’ was no longer used, it was just ‘feasible and affordable’. It was just very hard to verify: is that correct? [Our staff] let themselves be influenced by the societal discourse.’²⁵

Still, environmental groups kept trying to make their arguments heard. In part, they identified the complex administrative process of implementation as an impediment to constructive dialogue:

‘It is not about how the Netherlands took on the administrative route, it is about interaction, involving civil society in the planning. ... The entire administrative route is so complex that one does not have time for actors from civil society, it is just too difficult to have a real dialogue. [I am saying this] still searching for constructive deliberation in the future.’²⁶

Apart from trying to bring in arguments for a more ambitious approach to the implementation of the WFD, environmental groups also tried to obtain a more constitutive role in the process. In a recommendation to the junior minister²⁷, they asked for a help desk for actively supporting the involvement of civil society groups, as well as for additional national meetings for specific target groups, such as environmental or recreational groups. The purpose for these recommendations lay in the wish of environmental groups to be more involved in the decision-making process:

‘Look, if you attend these sounding boards ... I can go and state my opinion, but I am still on the outside, I am not really a decision-maker ... more attention should be given to the carry-over to the societal arena. Special meetings for civil society actors where national and regional are sitting side-by-side. Some kind of target group meetings...’²⁸

The role and input of the coalition ‘benefits for clean water’ – whose core was made up of environmental groups – followed primarily social logics and only partly political logics. First, it followed social logics by posing demands in the specific places that were assigned by government for public participation: in the national consultancy body, regional sounding

boards and local workshops. As such, the auxiliary role that was envisaged by government for civil society was acknowledged. Yet environmental groups also pushed for a more constitutive role in which alternative places would be created to bring in their demands. This path of action followed more of a political logic, since it results from a frustration with the available places for public participation. Secondly, in its emphasize on arguments, dialogue, and deliberation, the arguments of the coalition 'benefits for clean water' were structured according a social logic. Although there was an effort to co-opt agricultural and industrial demands by means of the notion of 'benefits', arguments were still articulated within the hegemonic discourse of 'feasible and affordable'. The notion of 'benefits' remained closely linked to the notion of 'costs' and continued to receive its meaning in reference to it. In addition, a call for more 'ambition' on goals was directly derived from the original reproach by the pragmatic coalition that the Netherlands was too 'ambitious' in its environmental policy.

In conclusion, it appears that there were two factors that contributed to the sustenance of the hegemonic discourse of 'feasible and affordable' and explain why the counterclaim articulated by the coalition 'benefits for clean water' did not succeed. First, the pragmatic coalition upheld a level of political activity through bilateral and media communications. They regularly took on the role of the 'outsider', in which way they could more easily bring forward their own, private interests. In addition, they repeatedly employed rhetoric to keep a formerly dominant discourse from resurfacing, effectively safeguarding the hegemonic discourse of 'feasible and affordable'. Secondly, the coalition 'benefits for clean water' did not fully succeed in following a political logic and therefore failed to change the hegemonic discourse. Although attempts were made to change the institutional order and to rearticulate demands around the notion of 'benefits', the real political dynamics were missing. The attempt to establish new places for public participation wasn't made very forcefully: a letter of rejection of the junior minister²⁹ was enough to block it. Moreover, the attempt to co-opt the hegemonic discourse of 'feasible and affordable' in its entirety within a new discourse of benefits did not employ rhetoric, nor the (partial) exclusion of the hegemonic discourse. Consequently, no strong identity could be established, which was reflected in the ad-hoc character of the coalition 'benefits clean water'.

Conclusion: the political construction of democracy

'Since the vote has been extended to every adult citizen, without class, gender, or racial discrimination, etc., the contemporary challenge of strengthening democratic regimes is not mainly about who participates, but how, when and where citizens should participate' (Bobbio 1989; cited from Vitale 2006).

When we translate the challenge that Bobbio identifies into the role played and input given by civil society in the implementation of the WFD in the Netherlands, two separate democratic norms are of importance. First, the norm of participation figured distinctly in the actual or envisaged role of civil society that the different coalitions took up. Since the early debate in the 1960's (Arnstein 1971), participatory democracy has focused on the need to implement direct forms of democracy and on the importance to include non-state structures (Vitale 2006). This importance was acknowledged by all groups in civil society. Secondly, the norm of the search for a common good through dialogue and communication, known from deliberative democracy, was also supported by the whole of civil society.

Despite the support for above norms, the actual implementation of the WFD in the Netherlands far from approached the ideals of participatory or deliberative democracy. Public participation remained limited to information and consultation; the possibility for more direct influence in decision-making was not felt by civil society. Equally, open-ended deliberation did not or did hardly occur; discussions within public participation venues were chiefly determined by the hegemonic discourse and were set up to bring in group interests, rather than searching for a common good. Based on literature (e.g. Cornwall and Coelho 2006, Norton 2007), this apparent lack of meeting democratic norms is not surprising: the normative expectations of deliberative and participatory democracy are hardly ever met and mechanisms of public participation are consequently often considered to be failing. Participation in decision-making on the highest levels is rare, as it usually complements an already existing representative form of democracy (Vitale 2006). According to Cohen (1989), venues that are organized exclusively on sectional or issue-specific lines are unlikely to produce open-ended deliberation. Since these venues bring together only a narrow range of interests, a comprehensive conception of the common good is unlikely to result.

The paradox between the support for participatory and deliberative norms and the failing of these norms living up to expectations disappears when we consider democratic norms to be part of discourse. In the process of claims-making, social demands will

structure and confer identity to a specific discourse. As a result of this process, democratic norms are taken out of an academic or governmental discourse and articulated within a social one. Subsequently, these norms will acquire meaning in relation – or even subordination – to social demands. In our case described above, one coalition used the norm of participation to describe an auxiliary role for civil society in which private interests could be brought into the decision-making process. The other coalition tried to incorporate the norms of deliberative democracy into their own discourse, as they wanted to be granted a more constitutive role in the decision-making process and as they conceived their own social demand (environmental quality) in terms of the common good. Consequently, we expect democratic norms within a social discourse to be dependent on how and which institutions address specific social demands; and whether these social demands are economical, societal or ideological. As different groups bring in different social demands, it matters who participates; what they say; and where they do it (Verba et al 1993).

´ In conclusion, the role and input of civil society in governance networks is usually not very clear in advance. This has consequences for our understanding of democratic legitimacy. Although representative and more direct forms of democracy can be complementary, whether civil society plays an auxiliary or a constitutive role makes a fundamental difference for the locus of democratic legitimacy. Equally, as governance networks are usually sectoral or issue-specific, deliberative processes are unlikely to occur: they are at best expected to produce coherent sectional interests. Therefore, we believe it to be important to have a clear conception of the role that civil society plays in concrete governance networks in order to address questions of democratic legitimacy. Moreover, as deliberative processes are unlikely to occur, special attention should be paid to those social demands that are dominant within a discourse, and to those that are frustrated or excluded by it. Democratic norms are commonly understood to promote values of equality and openness, but without a thorough and explicit understanding of their discursive articulations, they might just as easily reproduce or skew power structures and obscure dialogue.

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¹ R1

² R2

³ R1

⁴ R3

⁵ De Kaderrichtlijn Water en een vitaal platteland; *Verslag van de werkconferentie op 28 november 2003*. Expertisecentrum LNV, juli 2004.

⁶ Idem.

⁷ R4

⁸ Idem.

⁹ R5

¹⁰ NRC Handelsblad, 29-11-2003.

¹¹ Algemeen Dagblad, 01-12-2003.

¹² R2

¹³ Note 'Pragmatische Implementatie Europese Kaderrichtlijn Water in Nederland'.

¹⁴ Idem.

¹⁵ Idem.

¹⁶ Idem.

¹⁷ Letter by VNO-NCW and LTO, addressed to the ministers of VW, EZ, VROM and LNV, 23-11-2004.

¹⁸ R6

¹⁹ R7

²⁰ R6

²¹ R8

²² WaterForum Online, 03-02-05.

²³ R9

²⁴ Pamphlet 'Baten schoon water', 21-02-2006.

²⁵ R10

²⁶ R11

²⁷ Secretary note 'Overlegorgaan Water en Noordzee', 10-04-2008.

²⁸ R11

²⁹ Letter by junior minister of V&W to OWN, 16-06-2008.

Legenda:

R1: A researcher at the Dutch research institute Alterra. Interview, held at 24-04-2008.

R2: A civil servant of the ministry of V&W. Interview, held at 18-03-2008.

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- R3: National coordinator of the WFD in the Netherlands. Interview, held at 02-07-2008.
R4: A spokesperson of VEWIN. Interview, held at 23-06-2008
R5: A spokesperson of LTO Netherlands. Interview, held at 02-06-2008.
R6: A spokesperson of VNO-NCW. Interview, held at 18-06-2008.
R7: A spokesperson of Produktschap Vis. Interview, held at 16-0-2008.
R8: A civil servant from the waterboard 'Rivierenland'. Interview, held at 14-03-2008.
R9: A civil servant from the province of Gelderland. Interview, held at 24-06-2008.
R10: A spokesperson of Natuurmonumenten. Interview, held at 18-06-2008.
R11: A spokesperson of Natuur & Milieu. Interview, held at 31-06-2008