



European
Research Area

EUROPEAN POLICY BRIEF

REFGOV

Reflexive Governance in the Public Interest

Policy implications of REFGOV, an EU funded project involving 29 partners led by the Université catholique de Louvain (Centre de Philosophie du Droit), Louvain-la-Neuve

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INTRODUCTION

Following the crisis of the Welfare State in the 1980s and, since, of the various alternatives that have been tested over the past 30 years, we have witnessed not just the defeat of traditional certain regulatory models. The emergence of the notion of governance and the rise, within the theory of governance itself, of learning-based models of governance, are an indicator of the search for new approaches. Institutions must be equipped to learn, and it is not by accident that 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. These theories all recognize that both decentralized coordination through prices and command-and-control regulation have failed. Yet, they are based on different theories of learning and of collective action. And while they share certain labels in common, they offer widely different definitions of 'reflexive' governance.

Within the 'Reflexive Governance (REFGOV)' network, 29 research teams have sought to test various theories of reflexive governance in different thematic domains. While the themes are diverse, the research projects in the various domains are unified by their attempt to get at 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, 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. This policy brief highlights some of the most salient results achieved within the research project. It aims not only to present the main findings, but also to identify some options that the EU could consider as it seeks both to redefine its modes of governance, and to rebuild a notion of European public interest. This attempt is both forward-looking and policy oriented. Because we seem to be running short of alternatives, institutional imagination is, more than ever, required.

KEY FINDINGS

How are learning based models of governance different?

- The various orientations present in the current landscape of social science research in to theory of governance all share the will to avoid the fallacious assumption of a process of natural selection guaranteeing the constant adjustment of our collective actions towards a “social optimum”. Rather they converge around the need to have actors involved in a collective learning process where the definition of the general interest and the capacities of the actors to move in the direction of the general interest are not given in advance.
- The differences between the main approaches to governance in the social sciences is less reflective of a deep-rooted divergence or antagonism than of a growing recognition of the need to progressively expand the conditions to be put in place to ensure the success of this learning operation.

What are the evaluation criteria of governance within a learning based approach?

- Current understanding of governance shows that progress can be made through promoting a greater reflexivity in the governance process, which implies a shift in attention to the operations through which actors themselves redefine their understanding of the problems to be addressed, and of their role in exploring the solutions to the problems.
- For this to succeed :
 - (1) Actors should become equipped to become active participants in decision-making processes.
 - (2) Actors should be supported in their ability to learn and in their ability to revise their self-representation in the process, that is, of their understanding of the role they are to play.

Why should governance models move beyond the neo-institutionalist approach?

- The neo-institutionalist approach recognize 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 by appropriate institutional rules ;
- It fails, however, to explain how what is in the general interest can be imposed or defined from institutional rules that are defined in a way which is external to the actors themselves.
- Therefore, the efficiency of the institutional proposals suggested by the neo-institutionalist approach is itself reinforced by, and dependent on, complementary mechanisms designed to enhance the capabilities for success of the learning operation required for fulfillment of the normative objectives of the concerned actors.

What is the contribution of new solutions to the regulatory problems?

- 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. However, these “deliberative” approaches still need to be refined, as they fail to address the question of the building of the “actors’ capacities” as a condition for the success of the learning operation.
- Promising approaches in promoting greater reflexivity in deliberative approaches have been developed within the pragmatist and genetic models to governance.
 - Democratic experimentalist models as developed by Sabel posit 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 and Schön 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 of our own mental maps or “frames” and our identities.
 - The genetic approach elaborated by Lenoble and Maesschalck insists on the need to challenge not just the policies we implement or our frames, through reflexive competencies that are already tacitly present in all the subjects, but also to challenge the very sources of these reflexive competencies, by a genealogical approach seeking to locate where they originate from.

What are some of the salient examples of the impact of the new approaches in the REFGOV thematic study areas?

- In the field of environmental policy and health, NGOs increasingly play a role in the direct provision of public services. Overcoming the tensions that result from this new role (such as between a traditional advocacy role and service provision to clients) requires that they redefine their strategies, but also their collective identity, which is precisely the challenge that the genetic approach aims to address.
- In the field of the regulation of private utility providers and energy markets, experiences in the EU with neo-institutionalist approaches to participatory governance shows the fragility of these processes, because of lack of actor capacities and the resulting trend to turn to more conventional top down regulatory or market based approaches.

- In the field of the protection of fundamental socio-economic rights, mechanisms for improved learning across jurisdictions prove to be a more promising avenue to overcome the recent fears about resurgence of “social dumping” in the EU, compared to a return to re-regulation at EU level. Provided certain institutional conditions are created, in particular to take into account the European public interest, encouraging actors at the domestic level to redefine their position in the light of experiments launched elsewhere can strengthen accountability and accelerate the identification of innovative solutions.
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**Are Gender Imbalances
being addressed in
knowledge economies?**

RECOMMENDATIONS FOR POLICY MAKERS

Create mechanisms for generating new learning capacities

- Create mechanisms for pooling lessons from local experiments and for cross-regional / cross-country learning
 - Organize deliberation with the collective actors on how to evaluate the collective experiments, on who should participate to the evaluation and the criteria to be used
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Increase opportunities for forward looking experimentation with new social possibilities

- Encourage the effective testing of action strategies within the new frames resulting from deliberative processes, for example through the use of common criteria and indicators and mutual monitoring of progress amongst initiatives
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Pursue deeper levels of collective learning by self-evaluation of actor identities

- Develop initiatives for confronting actors with new user groups and stakeholders.
 - Involve the actors and users / stakeholders in a common process of self-evaluation of their identity and objectives (this collective process operating as a “third” both for the actors and the users/stakeholders, without this “third” being the state / an external regulator).
 - Promote the association of these new user groups / stakeholders to learning processes within these redefined identities and objectives.
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RESEARCH PARAMETERS

The integrated project REFGOV (Reflexive Governance in the Public Interest) was an EU-funded research project aimed at understanding modern patterns of governance in the European Union (EU) and elsewhere.

Objectives of the research

This research focused on emerging institutional mechanisms which seek to answer the question of market failures by means other than command-and-control regulation imposed in the name of the public interest. It sought to identify these new mechanisms, to evaluate them and to make institutional proposals for an improved form of governance. The main objectives of the project were to:

- highlight two categories of insufficiency: insufficiency in the governance devices and insufficiency in the theoretical models currently available to address the former;
 - synthesize the achievements of the current interdisciplinary research and set up an interaction not only between the most advanced questions of Economics, Law, Political Science, but also between those questions and the Theory of Action related to the public interest governance;
 - push forward the research on collective action and seek to build the theoretical tools required to address the remaining insufficiencies, upon the hypothesis that such improvements depend on the better construction of the preconditions of the collective learning process, which conditions the efficiency of any collective action.
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Methodology

REFGOV was a multidisciplinary project that included researchers from economics, law, political sciences, legal sociology, philosophy and other disciplines. Its empirical work was grounded in five material fields:

- Services of General Interest,
- Global Public Services and Common Goods,
- Institutional Frames for Markets,
- Corporate Governance and
- Fundamental Rights Governance.

These laboratories of new forms of governance in the public interest have been chosen because a wide perspective must be adopted to define the preconditions of public interest, especially in the provision of public services. They constitute the five thematic sub-networks of the project.

The research teams were asked to map the positions adopted in the substantive fields under study, and to criticize the positions in the light of alternative, emerging theories of governance that might

challenge whichever approaches are dominant in the particular area concerned. On the basis of the insights gained from the confrontation to the wider spectrum of governance theories elaborated within the project, the researchers sought to propose new ways of addressing the challenges facing regulators and policy makers.

A Cross-thematic Seminar ensured an integrated and consistent reflection on common theoretical questions considered by each sub-network in their specific research.

A Theory of the Norm Unit linked the current perspectives on governance theory to the more epistemological reflections originating in the Theory of Action and the Theory of the Norm. It was closely connected to the Cross-thematic Seminar.

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Further reading	<p>De Schutter, O. and Lenoble, J. (eds.) (2010), <i>Reflexive Governance. Redefining Public Interest in a Pluralistic World</i>, Oxford, Hart Publishing, 235 p.</p> <p>Lenoble, J. and Maesschalck, M. (eds) (2010) <i>Democracy, Law and Governance</i>, Aldershot (UK), Ashgate, 276 p.</p> <p>De Schutter, O. and Moreno Lax, V. (eds) (2010), <i>Human Rights in the Web of Governance. Towards a Learning-Based Fundamental Rights Policy for the EU</i>, Brussels, Bruylant, 321 p.</p> <p>Dedeurwaerdere, T. (2009), 'Social Learning as a Basis for Cooperative Small-Scale Forest Management', <i>Small-Scale Forestry</i> 8 (2): 193–209.</p> <p>Brousseau, E., Dedeurwaerdere, T. and Siebenhüner, B. (2011) "Knowledge Matters: Institutional Frameworks to Govern the Provision of Global Public Goods", in <i>Reflexive Governance and Global Public Goods</i>, (eds) E. Brousseau, T. Dedeurwaerdere and B. Siebenhüner, MIT Press</p> <p>Vincent-Jones, P., Hughes, D., and Mullen, C., 'New Labour's PPI Reforms: Patient and Public Involvement in Healthcare Governance?', (2009) <i>72 Modern Law Review</i> 247-271.</p> <p>Brousseau, E. Glachant, J-M, <i>Manufacturing Markets: legal, political and economic dynamics</i>, CUP Cambridge University Press forthcoming</p> <p>Deakin, S. and Koukiadaki, A. (2009) "Governance processes, labour-management partnership and employee voice in the construction of Heathrow Terminal 5" <i>Industrial Law Journal</i>, 38: 365-389.</p> <p>See Publication pages at http://refgov.cpdr.ucl.ac.be/?go=publications</p>