

Ph.D. project

***How do deliberative governance processes support
the integration of multiplicity of expertises and the plurality of norms of justices ?
The case of high level radioactive waste***

Preamble

Although R&D programmes on the safe management of high level radioactive wastes have been conducted in some of the major industrial countries for some time now, there is still a degree of scientific controversy with regard to the best management option. One of the many issues facing high level radioactive waste (HLW) management is the need to manage some wastes over extremely long periods of time (ranging from several generations to periods longer than recorded history), raising questions about not only our scientific, technical and organisational ability to face this challenge, but also the ethical consequences of our choices. As a consequence, RWM in general (and HLW management in particular) has been a high-profile issue at different times and in many places worldwide over the past 30 or more years. Faced with problems of securing public and/or political acceptance and support, there has been an observable shift of “problem framing” in RWM from purely technical issues towards innovation in governance. Yet, this shift has not lead to any major change in Belgium regarding HLW management.

Developing a governance project for the management of radioactive waste is a task of high responsibility, particularly for HLW. On the social and political sides, there are no “ready to use” rules for achieving this task. Due attention must be given to the tuning of the governance procedures, at each stage of the process, from the scenario analysis until the long term follow-up of the implemented decision. As there is no “magical formula” fitting every governance situation, the proposal of this Ph.D. is to study both the normative and the empirical sides of governance applied to HLW management. By questioning the criteria for effective governance processes under conditions of high and long term uncertainties, we hope to increase the chances of success (e.g. in terms of acceptance, of duration, etc.) of the future decision-making.

Problem definition

Asking the question of “which guidelines” could be defined for governance is also asking “how” we can define those guidelines. The way we chose to deal with the issue is both theoretical and practical, as we shall make an early use of governance's tools. The practical side of the Ph.D. will be strengthened by the theoretical considerations as we shall explain later. Looking at the question of RWM through the concept of governance is a first step to foster the cooperation between natural sciences (such as physics for instance) and social sciences as it offers to incorporate political and social issues raised by the production of nuclear energy (and therefore of nuclear wastes) in its program. Within the frame of a Ph.D. research project we shall have the opportunity to cover more “fundamental” questions than those primarily related to the perspective of “managing” the waste problem. In other words, the goal of the Ph.D. is to study the governance in a broad perspective: as a process but also in terms of outcomes and of feasibility. We should begin upstream, from the ethical and philosophical aspects, pursue to its setting and its installation, and continue downstream with its implications and impacts. Due to the nature of the issue, the long-term of governance on the long-term is an essential point because its dynamic must stay open, from the beginning to even after the decision-making (one of governance's main interests is the learning dimension, which take place from the earliest moment and proceed along for an undetermined time). It is important to underline that both the setting and the monitoring will be taken into account in the Ph.D.

On governance

Essays and reviews about governance have been flourishing lately, together with a growing use of the term. Alas, it is sometimes unclear what stands behind the concept. In our case, governance must be understood not only as a new way to achieve decision-making, but also in a broadened perspective, encompassing different stages of a process which should contribute *in fine* to anchor the decisions temporally by taking the long term aspect into account. The governance represents a new manner to manage issues in the risk society, but it does not call for the withdrawal of the State. It calls for its adaptation to the nature of modern risks and sociocultural changes (particularly the rise of the “participationist” ideology and the growing public mistrust of technological innovations) in modern pluralist societies. The significant demand for participation shows, as Ulrich Beck puts it, that, “when it comes to risks definition and management, science has lost the monopoly of rationality” (Beck, 2001: 52). Experiences in new approaches of risk governance (in Belgium and

elsewhere) have shown the deep impact of the involvement of stakeholders on the development of new framing and legitimacy patterns.

The actual situation regarding RWM can appear as too unclear and therefore contributes to make the issue more negative from the beginning as citizens may feel fooled or tricked. Among his description of governance's dimensions, Gerry Stoker¹ exposes that governance techniques call for the participation of extra-governmental actors. Doing so, these techniques could lose in legitimacy (due to the fact that they are not conforming with institutional standards -but this is lesser and lesser the case as governance's institutionalization progresses) but also gain in terms of skills. He points then to a potential perverse effect of governance: the (presumed or real) shift of responsibility from the government to those extra-governmental actors, which is particularly relevant in the case of long term choices. This translation's² desirability and effects will be discussed as they are clearly linked with questions of participation and of norms of justice.

Theoretical framework

The above statements about the involvement of extragovernmental and non-scientific actors is far from a commonly shared view. Nevertheless, the technical dimension of risk is as undeniable as the social one. Thus it is important to recognize the fact that even in such a technical matter as radioactive wastes, there is a knowledge of "day to day life problem" that is important to design solutions and that is sometimes better mastered by ordinary people confronted to the problem than by scientists themselves. This approach has been developed by -among others- Michel Callon or Pierre Lascoumes with the concept of "lay expertise". What Callon proposes, is to maintain the symmetry between the argumentations and the contradictory points of view of the various actors along the the analysis (Callon, 1990). Recognising the importance and the pertinence of laypeople 's (i.e. actors who may not have the scientific knowledges but are bearer of other dimensions of the assessment and the management of risks) skills and knowledges is of the uttermost importance if we want to establish legitimate and effective principles of governance.

If we stretch out the theoretical frame of "lay expertise", we can come up with the *plurality* of principles of justice in a pluralist society where locality and globality are intermingled. This has been well studied (for instance) by Michael Walzer from a normative point of view and by Luc

1 Stoker Gerry, 1998, Cinq propositions pour une théorie de la gouvernance, RISS 155/ Mars, pp 19-30.

2 The concept should be examined more closely, both in the sense of translating a word in an other language and in the technical sense of moving something.

Boltanski from an empirical point of view. So, it would be important to debate on the mechanisms that produce agreement among people who apply different justice values to structure the world. In the case of HLW management, the questions of inter- and intragenerational justice will be embedded in the study of norms of justice. Also, it is important to apprehend these norms in a flexible manner. With regards to governance issue, two more specific topics will be addressed: on one hand, we shall associate the problematic of justice to the procedural side of governance, on the other hand, we shall talk about the way the norms of justice are perceived and how they evolve in collaborative processes too. We assume (and we shall make efforts in that sense in the empiric part of the Ph.D.) that there will be non-destructive conflicts between the norms (i.e. conflicts that don't prevent from achieving the governance process by weakening or destroying its roots) which will contribute to the agreement building. On the perception and the norms of justice we shall consult Tom Tyler and Jean Kellerhals among others.

Alongside the questions of the involvement of lay persons and interplaying with those about justice come questions about the distribution of risks. The particularity of RWM is that it has to cope with negative goods. Hence, the attitudes regarding their distribution may be very different from attitudes or normative appreciations related to the distribution of positive goods (benefits, care, etc.). This phenomenon has been studied by Kjell Toernblom among others. This will be one of the first tasks for the Ph.D. to make a review of that literature, while including a review of “framing effects” related to feelings of justice (Tversky, Kahneman, Knetsch, e.g.). It is not superfluous to specify that the framing effects' study can be coherently attached to the principle of symmetry mentioned above. Indeed, it proposes to take into consideration the various argumentations, which can be considered as being the manifestation of the framing exercised by the actors.

Meta-theoretical framework

The meta-theoretical framework is at the articulation of a normative and an empirical standpoint. It rests on the idea (very well expressed for instance by Adams Swift but that is in their own way also developed by Rawls and Walzer) that a theory of distributive justice cannot be elaborated in a mere normative stance and must include in some ways empirical studies of actors' intuitions about what is just and what is not.

The first reason of this is that a distributive justice theory that would be completely alien to popular intuitions would have no real possibility to be effective and would appear to the society in which it

is elaborated as a mere fantasy. Of course this does not mean that normative judgements must conform to lay people's ideas about justice but that they have to take those ideas into account in order to produce a “sustainable” (or self-supporting) normative justice theory. Furthermore, the sociological stance we adopt when subscribing to the global principle of symmetry goes in the same direction: we must not accompany one actor or the other in a process of legitimacy. In other words, we must not merely conform to the analyses suggested by the actors.

The second reason is itself a normative reason: because democratic principles are part of our conception of justice, we cannot simply eliminate the *moral fact* that citizens' convictions are, in their own normative right, a component of a conception of distributive justice. A "normative/empirical" meta-theoretical framework could be the good frame to discuss and try to clarify what can be "good governance" and to what extent and in which situation this concept can (or not) be substituted to “government”³ (which includes a closely linked reflection on theory of democracy).

Empirical Level⁴

The empirical level could begin with a review of what has been going on in other countries (United Kingdom, France, Sweden, and others) regarding HLW management in order to prepare a comparative study and a primary evaluation of their adaptability to the Belgian context, along the lines presented above (organising the governance processes, integrating multiple expertises and plurality of norms of justice). In addition, a study of the developed “partnership approach” with the low level waste (LLW) management, both in Flanders (Mol-Dessel) and in the Walloon Region (Fleurus-Farciennes) could be useful: we could benefit from a certain experience, especially if we consider that what prevails for LLW constitutes a basis for HLW. Case studies would benefit from the consultation of guidance documents such as the aforementioned European Directive, ONDRAF/NIRAS reports (SAFIR 2 report for instance) or OCDE papers (“Learning and Adapting to Societal Requirements for Radioactive Waste Management”), etc.

We could extend those case studies to more active approaches, such as focus groups or scenario workshops for instance. Focus groups are well known non-directive group interview techniques. Scenario workshop is a participative method allowing interactions between the various actors.

3 The opposition between “government” and “governance” is an opposition between respectively “top-down” and “bottom-up” processes. As we have already mentioned, governance is not *against* government.

4 As this side strongly depends on the funding, we shall privilege the conditional form.

concerned. It creates a dialogue between stakeholders and spokesmen of the concerned actors with other groups, playing roles in the scenario workshop. The technique aims to involve actors in the future programme but also to contribute to the identification of obstacles that the programme could have to face. It also informs the developer on the feasibility of the scenarios he foresees. Moreover, this singular technique allow and encourage a certain creativity on behalf of the participants because they can alter the scenarios without deviating towards utopia. It settles a dialogue between actors who would not talk in other circumstances due to the lack of discussion frame. Both focus groups and scenario workshop will provide empirical inputs to the criteria of effectiveness for the guidelines to be developed as a major deliverable of this Ph.D.

Last but not least, these guidelines will be developed in reference to the mandatory procedures of the Strategic Environmental Assessment. This might be the Ph.D.'s strongest point as it should give us the opportunity to define the conditions of practical application of several deliberative techniques.

Strategic Environmental Assessment (SEA)

Following the European Directive dedicated to the assessment of the effects of certain plans and programmes on the environment, “environmental assessment” corresponds to the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of information on the decision (Directive 2001/42/EC - Art 2 (b)). We shall consider the notion of “environment” in its broader sense i.e. not only referring to the nature. In many point this instrument is congruent with our theoretical approach and with the Ph.D.'s objective which is to study efficient governance in risk management from its very first steps to its furthest outcomes.

Concretely, SEA is a multi-staged process whose first step is the proposal for a project, plan or programme prepared by a developer. At the 2nd screening stage, the Competent Authority determines the need for submitting the proposal to a complete EA. The 3rd stage, the scoping stage, is aimed at establishing the programme for the environmental assessment: the likely significant effects to be assessed, assessment methods to be used, alternative actions to be considered, etc. This stage includes broad consultations with the public, experts and the developer. Efficient procedures are to be developed in order to facilitate the integration of multiple expertises and pluralistic views. How this process will feed the 4th “Environmental reporting” stage is still to be defined, on the basis of

existing experience. The 5th stage of consultations is organised with designated authorities and the public, on the basis of the Environmental Report, in order to obtain their views about the different alternative actions and corresponding expected effects. When announcing the decision, the Competent Authority also describes the mitigation and monitoring. Finally, the Monitoring and post-evaluation stage is a long-term stage during which the actual effects of the plan, programme or project are monitored, in order to allow the undertaking of remedial action when necessary.

The main advantage of SEA is that it provides the frame for a proactive process forging a chain of feedback loops, diminishing the irreversibility of the potential negative impacts of each stage. The dynamic inherent to SEA and its processual reversibility serves as clear evidence of the fluidization of public decision-making granted by governance. This approach is also congruent with the Ph.D.'s theoretical questions of norms of justice, deliberative democracy or lay expertise: the several stages involving the various actors would be ideal places for their study. SEA fits quite well with RWM as it has been designed to cope with the transferral of a patrimony and the sustainable development. Also, the characteristic uncertainty of an issue such as ours pleads for a bottom-up approach, much more fitted to tackle with shadowed zones than top-down decision-making. The SEA make it possible to work in a situation of uncertainty by taking them into consideration and not trying to delete them.

A critical review of the applications of SEA (in Belgium and in Europe) will be performed during the starting phase, considering that SEA too often tend to neglect the ethical and social dimensions while overweighting technique and environment (SUIT – Task 3.2 : 25). The very adaptability of the SEA instrument is related to its focus on decision process rather than on final outcomes.

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In perspective, it is probable that this Ph.D. could be of significant importance on both Belgian and European scales as it could deliver a major guidance document and a model for new cases.

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