DIFFERENT SHADES OF GREEN

REFLECTIONS ON THE LEGITIMACY OF DUTCH NATURE POLICY AND PRACTICES

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SETTING THE SCENE

1.1 DIFFERENT SHADES OF GREEN

When it comes to nature, I have clear preferences and, if it was up to me, the Netherlands would be woodland! In this ideal, vast tree-dominated landscapes stretch from the rolling hills in the south of Limburg all the way up to the Wadden Isles in the north. To those who think that this is a monotonous fantasy, I reply that it consists of a beautiful landscape characterized by a diversity of forested biotopes that correspond to the biotic and a-biotic circumstances, specific to the different geographical regions that characterize the Netherlands. The Netherlands would be a mix of dense forest, alternated with park-like open landscapes that only hint at the notion of something like a horizon, which would only be a reality on higher ground or at the seaside. This is my ideal, my fantasy; this is my favourite shade of green!

Although my ideal might prove to be very close to what the Netherlands used to look like long ago (see Vera 1997), it is a far stretch from present-day Dutch reality. Only about 10% of the total land surface of the Netherlands is made up of forested or open natural terrain, and these sites are all influenced or created by human hands. Further, more than 50% of the Netherlands has an agricultural designation and about 7% is built-up area.[1] With more than 16 million people inhabiting the Netherlands, and with a surface of a little over 4000 km^2, the Netherlands is one of the most densely populated countries in the world. Given this reality, it is understandable that my favourite shade of green is at present just a fantasy.

Thinking about nature as I do should not automatically be put aside as romantic escapism. I will not deny that my ideal has a highly romanticized content and that it represents a wish for something that in my opinion is missing in our countryside. However, what I imagine is not automatically impossible. Although I admit up front that I do not think that the Netherlands will look like anything that comes close to my favourite shade of green anytime soon, it is not because it is a technical impossibility! On the contrary, we, the Dutch, have a capacity to change our surroundings as we see fit. A good example of this, something that we are internationally renowned for and fondly try to explain to visitors to the Netherlands, is the fact that a large percentage of our land surface lies below sea level. This is because we make sure the sea stays out. We build and maintain dykes and other waterworks that protect us from the water; we even created an entire new province that we reclaimed from the sea.

One of the places where this technical ability and ambition are made visible is the flood barrier in the province of Zeeland. The massive man-made structure that was built to keep the sea at bay is accompanied by a heroic sculpture with a bold strophe by Ed Leeflang:

Hier gaan over het tij – de maan, de wind en wij.

Freely translated it says: ‘Here the tide is ruled – by the moon, the wind and us’. This line leaves nothing to the imagination. The Dutch stand on the same footing as the forces of nature and are capable of influencing their surroundings as they see fit.

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[1] In 2003, the total surface of the Netherlands was 4,152,618 ha, of which 2,304,074 ha had an agricultural designation, 346,374 ha was forested, 137,716 ha was open natural terrain and 328,867 ha was built up (source: statline.cbs.nl, last accessed on 10 April 2009).

This optimism and technical capacity is also displayed in Dutch nature conservation and particularly in the Nature Policy Plan (NPP) of 1990. This policy is a benchmark in Dutch nature conservation. It is the first policy with a predominant ecological perspective. Moreover, the NPP is of special importance, because it not only focuses on the protection of nature but it also foresees the creation of new nature. This might sound paradoxical to most, as 'nature' is often associated with the absence of human influence; however, in the Netherlands, nature is heavily intertwined with human presence. The ambition of the NPP has been made concrete in the concept and practice of the National Ecological Network (NEN), an interconnected network of existing and newly-to-be-created nature areas. Where the creation of new nature takes place, it is announced by construction signs, which are accompanied by bulldozers and other heavy machinery, after which new nature is born. Interestingly, the underlying concept of this NEN was successfully uploaded to the European level where it gained shape as Natura 2000.

Seen this ambition and given the technical abilities of the Dutch, I do not think that my shade of green is unrealistic. However, the problem lies not with either ambition or technical capacities, nor with the Dutch attitude of creating nature, but more with the fact that it is difficult to speak of the Dutch as a homogeneous people with a single view and, thus, a single conception of nature. On the contrary, different shades of green are valued (see e.g. Aarts 1995, Buijs 2009), which present challenges to policy and practice. For, if no uniform conception of nature can be identified, what kind of nature needs to be protected or realized?

The Netherlands is made of predominantly cultural landscapes, and, on top of that, many of the nature reserves in the Netherlands have their origin in some form of exploitation (or over-exploitation; see, for example, Van Zanden & Verstegen 1993, Van Toorn & Keulartz 2000). The much-valued landscapes that are nowadays managed as nature reserves often owe their characteristic and valued appearance to human use and abuse. Heather fields and sand dunes are now seen as valuable natural sites, whereas in the 18th and 19th centuries they were regarded as wastelands that were synonymous with poverty and mismanagement (Van der Meulen 2009). However, the economic driving force behind these forms of exploitation has become a thing of the past, whereas the human activities that shaped these landscapes are still needed to preserve them in the way they are valued. These measures, often agricultural in origin, have become an integrated part of Dutch nature conservation that incorporates different shades of green. One shared point of reference thus seems to be missing.

Regarding this point of reference, Frans Vera, one of the spiritual fathers of the NEN, points to the phenomenon of the shifting baseline syndrome (Vera 2010), a concept introduced by Pauly (1995) and Sheppard (1995). Pauly has formulated the shifting baseline syndrome to describe what he witnessed in the fishing industry: 'essentially, this syndrome has arisen because each generation of fisheries scientists accepts a baseline, the stock size and species composition that occurred at the beginning of their careers, and uses this to evaluate changes [...]. The result is a gradual accommodation of the creeping disappearance of resource species, and inappropriate reference points for evaluating economic losses, resulting from overfishing, or for identifying targets for rehabilitation measures' (Pauly 1995, p. 430). Applying this concept to nature in the Netherlands, as Vera does, presumes that we have forgotten, through generations of human exploitation, our 'natural' reference or baseline and thus what characterizes, or ought to characterize, nature.

Although the concept of shifting baselines might prove helpful in challenging persistent ideas of what constitutes nature, it begs the question if *the* natural baseline can be found. Even if we could establish this natural baseline, it does then not presume to be the only valuable point of reference. A 'natural' baseline will undoubtedly be arbitrary and the subject of debate. No matter how you define nature, this nature will need to compete for space with other forms of justifiable land use, now and in the future.

This situation is exemplified by the realization of the NEN, which has the ambition go beyond protecting nature and which includes the creation of new nature. Farmland or industrial sites are destined to be transformed into new nature. Here, we do not reclaim land from the sea, but we reclaim nature from ourselves. This is a difficult process, as one can imagine, and is especially problematic if it concerns 'your' backyard. During the implementation of and subsequent alterations to the NEN, it has become clear that our views on nature are highly divergent. As a consequence, the initial darker shade of green of the NPP has become lighter shades of green, in which human needs and wishes are given more attention.

Next to my favourite shade of green, there are many more to be distinguished. I will not defend my, or any other, valued conception of nature in this study, nor will I try to define what is nature. Many shades of green exist that draw upon different historical, ecological, cultural and personal references. However, this does not mean that just any nature and subsequent policy or practice will do. The need for qualitative and quantitative green spaces is uncontested, but what this entails and the way this ought to be realized is not. Although the Dutch nature protection movement is considered to have started around 1900, the deterioration of and the concern for nature has been the source of societal discussions at least since the 1500s (Van der Windt 1995), and it continuous to this day. Despite this long history of debating and protecting natural values, our environment is still under significant pressure (see e.g. Planbureau voor de Leefomgeving 2009, 2011; Bredenoord et al 2013).

1.2 REASONS FOR REFLECTION

Realizing that there are many different shades of green that compete with each other and with other land uses for space, it is understandable that decisions regarding what to favour can be controversial and will meet public and political resistance. The issue of legitimacy in Dutch nature policy and practices, the main subject of this study, then becomes important.

Legitimacy is a rather elusive concept that is seldom defined; however, most of us are aware of the normative connotation that is enclosed in its meaning. The normative character is focused on the exercise of power or, better said, the just or unjust exercise of power. Legitimacy implies a justified exercise of what Weber describes as the ability of an actor to achieve his or her will in a social context, even against the will of other actors (Weber 1972). In our western society, legitimate power is equated with democratic governance and the principles on which it is founded. When power is exercised according to those principles, then power is legitimate; otherwise, it is not. However, these principles are manifold, and democracy comes in different guises, both in theory and in practice. Nevertheless, there is a call for 'more' or 'better' democracy that is exemplified by two connected shifts. The first is a shift from government to governance; the second is a shift from normal science to post-normal science.

The first shift, from government to governance, expresses a decline in top-down planning by state agents in favour of more participatory and interactive policy-making. This shift can also be observed in Dutch nature policy. In 1990, the NPP was adopted by Dutch parliament and aims at the realization of the NEN. This policy was judged 'a textbook example of classic top-down planning' (Wetenschappelijke Raad voor Regeringsbeleid 1998, p. 137). On the assumption that it is up to scientific experts and not to ordinary citizens and politicians to determine the direction of nature policy, the starting point of the entire process was ecological knowledge about the various ecosystems and the environmental conditions in which they are viable. However, as soon as it became clear that the interests of many local stakeholders would be substantially affected, the implementation process almost came to a standstill. In response, the government gradually abandoned its centralist, top-down steering approach and increasingly switched toward methods of participatory and interactive policy-making to realize the intended outcomes.

This shift in nature policy exemplifies the general trend that has gradually become visible during the past decades in many Western European countries: the shift from public to semi-public and private organizations and from command and control to contract and negotiation (Van Kersbergen & Van Waarden 2001). These changes confront policy-makers with problems of coordination and communication (Glasbergen 1998). However, the results of the more interactive modes of policy-making that follow the horizontal and vertical shifts are far from unequivocal. Some welcome this tendency to incorporate the interests of all stakeholders and the attendant integration of nature objectives in other policy fields, while others mourn the dilution of the original nature goals (see Van den Belt 2003).

The second shift that calls for more democratization is the shift from normal science to post-normal science. 'Normal science' in the Kuhnian sense, involves the creation and accumulation of knowledge within a given paradigm, assuming the provision of objective and impartial empirical facts that can guide politics and policy (see Kuhn 1962). According to Silvio Funtowicz and Jerome Ravetz (1993), the puzzle-solving strategies of this normal science are no longer appropriate in relation to issue-driven fields such as health care and the protection of the environment (see also Ravetz 2002, 2004). They coined the term 'post-normal science' as a suitable substitute to normal science, as this approach to science is more equipped to deal with issue-driven fields where 'facts are uncertain, values in dispute, stakes high, and decisions urgent' (Ravetz 2004, p. 349). The idea is that in domains such as nature conservation – which are value laden – objective facts provide no absolute answers to political or ethical issues. The uncertainty and diversity of values that characterize these issues ask for a science in which the degree of uncertainty and the range of values are made explicit.

The model for scientific argument should, therefore, be based on an interactive dialogue that involves an extension of the peer community. 'With mutual respect among various perspectives and forms of knowing, there is a possibility for the development of a genuine and effective democratic element in the life of science' (Funtowicz & Ravetz 1993, pp. 740–741). With the emergence of post-normal science, the practice of science 'is becoming more akin to the workings of a democratic society, characterized by extensive participation and toleration of diversity' (ibid., p. 754). In short: 'Post-normal science can provide a path to the democratization of science' (ibid., p. 739)."

This call for democratization thus not only serves an ethical purpose, but also serves a quest for effectiveness in tackling post-normal problems. By involving extended peer communities, the process of scientific investigation is enriched with knowledge of local conditions that not only may help to clarify the problem, but may prove to determine which data are relevant in finding a solution to a perceived problem (see, for example, McCarthy 2003).

The reason why such a shift is called for by Funtowicz and Ravetz can be illustrated by looking at the implementation of the NEN. Although the implementation of the NEN exemplifies the shift from government to governance, it also points to the contested scientific basis as source of that shift. It shows that ecological scientific data about the state of nature do not automatically translate to a right approach to nature conservation, but are in need of broad stakeholder deliberation to set an agreed-upon course of action.

The shifts both from government to governance and from normal to post-normal science are relevant to Dutch nature conservation policy and practices and ask for more 'democratization' by means of more stakeholder involvement. However, how much involvement is right or enough? 'More' participation might increase the level of direct democracy; it might, at the same time, hinder the representative power of democracy.

A critical reflection on legitimacy is warranted. However, what exactly is 'legitimacy', how should we understand it and how can we realize it? In this study, I will tackle these questions in relation to Dutch nature policy and practices.

1.3 RESEARCH OBJECTIVE AND QUESTIONS

Legitimacy is a grand idea. It goes to the essence of what makes power right. As such, the idea of legitimacy has permeated history and has challenged many scholars, philosophers, spiritual leaders and politicians to come up with an answer. Judging from the many conflicts that still riddle our contemporary age, an ultimate answer does not seem to have been formulated or, when it has, it has not convinced everyone. Although most people have a strong sense what legitimacy implies, it is not often defined or made operational.

Although democracy is seen to be the principal source of what is considered legitimate power, democracy itself is only an institutionalized arena to deal with power conflicts and to establish the contingent status quos. Moreover, while democracy has found a strong footing on the level of the nation state, it is matter of debate of how to apply and interpret democratic principles beyond the nation state and within the shifts from government to governance and from normal to post-normal science.

It is the purpose of this study to explain and understand the concept and problem of legitimacy in relation to Dutch nature policy and practices. Further, this study aims to support the realization of legitimate nature policy and practices.

To reach the objective of this study the following questions are addressed:

(1) *What is legitimacy? Or how should we understand the concept of legitimacy?*
This question addresses the theoretical need to define the concept of legitimacy. In order to make empirical and normative inquiries possible it is necessary to have a clear understanding of the concept of legitimacy. Although in more general terms legitimacy implies rightful authority it is necessary to delineate the concept in relation to Dutch nature policy and practices.

(2) *What are the issues or problems with regard to legitimacy in Dutch nature policy and practices?*
In answering this question I address the empirical need to understand the concept of legitimacy in relation to concrete practices. Only by looking at concrete practices is it possible to fully understand the problems and challenges regarding legitimacy.

(3) *What characterizes legitimate nature policy and practices?*
The theoretical insights combined with the empirical observations that follow from the first two questions make it possible to define practical and normative insights. This final question thus foresees in the need to frame guidelines, which have practical implications as legitimacy implies rightful exercise of authority.

These questions represent a search for understanding and will be answered step by step. In the following section, I will explain the way these questions are approached and tackled.

1.4 RESEARCH APPROACH AND DESIGN

My approach to the concept and problem of legitimacy is inspired by the philosophical pragmatist tradition (see Walzer 1983 and Keulartz et al. 2004, pp. 15–17). I do not try to distance myself from the social world of which I am part. I will not try to undertake a classical philosophical approach in looking at reality by distancing myself from it, defining that same reality from a distance and formulating a truth of what makes power rightful and, consequently, returning to the world and confronting it with that truth. Thus, I will not approach legitimacy as a philosophical artefact (see Walzer 1983 p. xiv), but will approach it from within the context in which it appears relevant. This is necessary as no theory of legitimacy is offered idly or accidentally. All theories have a pragmatic or expediential element and appear when the uses of power are matters of controversy (Schaar 1981). The objective is to stay connected to the world I live in and come up with a conception of how to understand legitimacy in Dutch nature policy and practices, so that this may serve as a tool to establish legitimacy.

This approach to philosophy suits the purpose of my research in a number of ways. First of all, the object of contestation – nature – that lies at the basis of my research is a concept open to interpretation. The Netherlands is intensively shaped by its inhabitants, and what constitutes nature is currently highly dependent on what we want it to be. The conservation, management and creation of nature in the Netherlands are thus everything but a black and white situation.

Second, Dutch nature policy and its practices take place or ought to take place within the prevailing democratic conditions. As the moral core intuitions of pragmatism revolve around the possibility for living and working together (see Keulartz et al. 2004, p. 17), this facilitates a promising way to address legitimacy in Dutch nature policy and practices. Because the pragmatic approach is focused on the settlement of conflicts for the sake of further cooperation, a strong interest in the process of moral inquiry next to its outcomes serves as a focal point. As a result, fairness and quality of the process are seen as essential (see also Caspary 2000). As such, the pragmatic approach will prove in tune with what entails democratic legitimacy (see chapter 5).

This study is ultimately the product of many years' philosophizing. Thinking, reasoning, writing and discussing but also procrastinating, wondering, dreaming and hoping were crucial in realizing this study. With the above-formulated research questions in mind and philosophical pragmatism as inspiration, these activities were undertaken separately but also in conjunction with each other. This was done often systematically, more often chaotically but always as creative and constructive as possible and in tune with the context wherein legitimacy is an issue of concern: Dutch nature policy and practices. With this approach, the research questions were tackled.

The first question – *What is legitimacy? Or how should we understand the concept of legitimacy?* – is dealt with in chapter 5. Because context is important, this chapter 5 is preceded by three contextual chapters that discuss the character of Dutch nature conservation (chapter 2), the governance shift (chapter 3) and international examples (chapter 4). These chapters are based on desk research, but chapters 3 and 4 also benefited from interacting with other scholars. Chapter 3 benefited from the participation in a governance study group, consisting of a number of PhD candidates from different academic backgrounds. Chapter 4 is an extensive summary of the volume that Jozef Keulartz and I edited on legitimacy in EU nature policy (see Keulartz and Leistra 2008), which is the result of an international workshop that we organized specifically for this research. Chapters 2, 3 and 4 provide the necessary context for the development of the theoretical account of legitimacy in chapter 5 and for answering the first research question.

With the insights of chapter 5, the second question – *What are the issues or problems with regard to legitimacy in Dutch nature conservation policy and practices?* – is tackled. The theoretical framework is used to analyze four case studies in chapters 6, 7 and 8. These case studies represent different shades of green within diverse governance contexts. The case studies first of all have an explorative character and will illustrate the problem of legitimacy in different contexts. Moreover, the case studies help to explain how legitimacy is being created or secured. The case studies will show that the issue of legitimacy permeates all layers of administration, comes in different guises and can be dealt with in various ways.

To assess the relevance of the case studies in relation to the focus and purpose of this research, the case studies were presented to an advisory committee, the members of which came from both the scientific and professional community (see appendix IV). The case studies studied are:

(1) Future Amstelland: A broad participatory process that ran from autumn 2002 up to spring 2004, initiated by a number of municipalities around Amstelland in which local stakeholders are challenged and invited to design a future vision and action plan for the region. Central in this case study is the tension between local input versus an outcome that addresses regional problems.

(2) Wintering geese: The implementation of the 2003 Policy Framework Fauna Management (PFFM) is discussed. This plan was a governmental initiative to deal with growing populations of wintering geese and the subsequent increasing costs of indemnification.

(3) Gaasterland versus the Oostvaardersplassen: A comparison is made between two well-known cases in Dutch nature policy and practices. Both Gaasterland and the Oostvaardersplassen are part of the NEN, but have different shades of green. A comparison is made to reflect upon long-term goals that are often imbedded in nature policy and practices.

At the time that the case studies were selected, all but the situation of the wintering geese were well documented. In each of these cases, information could be found regarding the policy and practice in question, its implementation, its effect and evaluation or assessment. The information used varied per case and consisted of a combination of scientific reports, policy evaluations, newspaper articles, blog entries etcetera. Because the purpose of this study is, first of all, to understand the concept of legitimacy in relation to everyday reality, the advantage of well-documented cases is that they contain information regarding the exercise of power, its effect and its evaluation or assessment. This information helped, as did the information in the contextual chapters, in developing an account of legitimacy.

The case studies are based on desk research, but are ultimately the result of a triangulation of document analyses, interviews (see appendix V) and participant observation. Interviews and participant observation were used to enrich and clarify the studied information. Particularly the Wintering Geese case study profited from additional interviews and participant observation during information meetings on the PFFM. In contrast to the other cases, the Wintering Geese case was developing concurrent to the progress of this research.

In addition, the intermediate findings of this study, which have been presented and discussed during conference presentations, international workshops and a book volume which I co-edited and to which I contributed, have helped in addressing the objective of this research.[2]

1.5 OUTLINE

This dissertation contains nine chapters (see Fig. 1.1). The purpose of this research is first of all to understand the problem of legitimacy in Dutch nature conservation policy and practices. So before a conceptual account of legitimacy is given, the context in which legitimacy is an issue is further explored. Chapters 2, 3 and 4 discuss this context in more detail. In chapter 5, a theoretical framework is presented that helps to understand the problem of legitimacy in Dutch nature conservation policy and practices. Chapter 5 thus provides an answer to the first research question and contains the analytical content to address the second research question.

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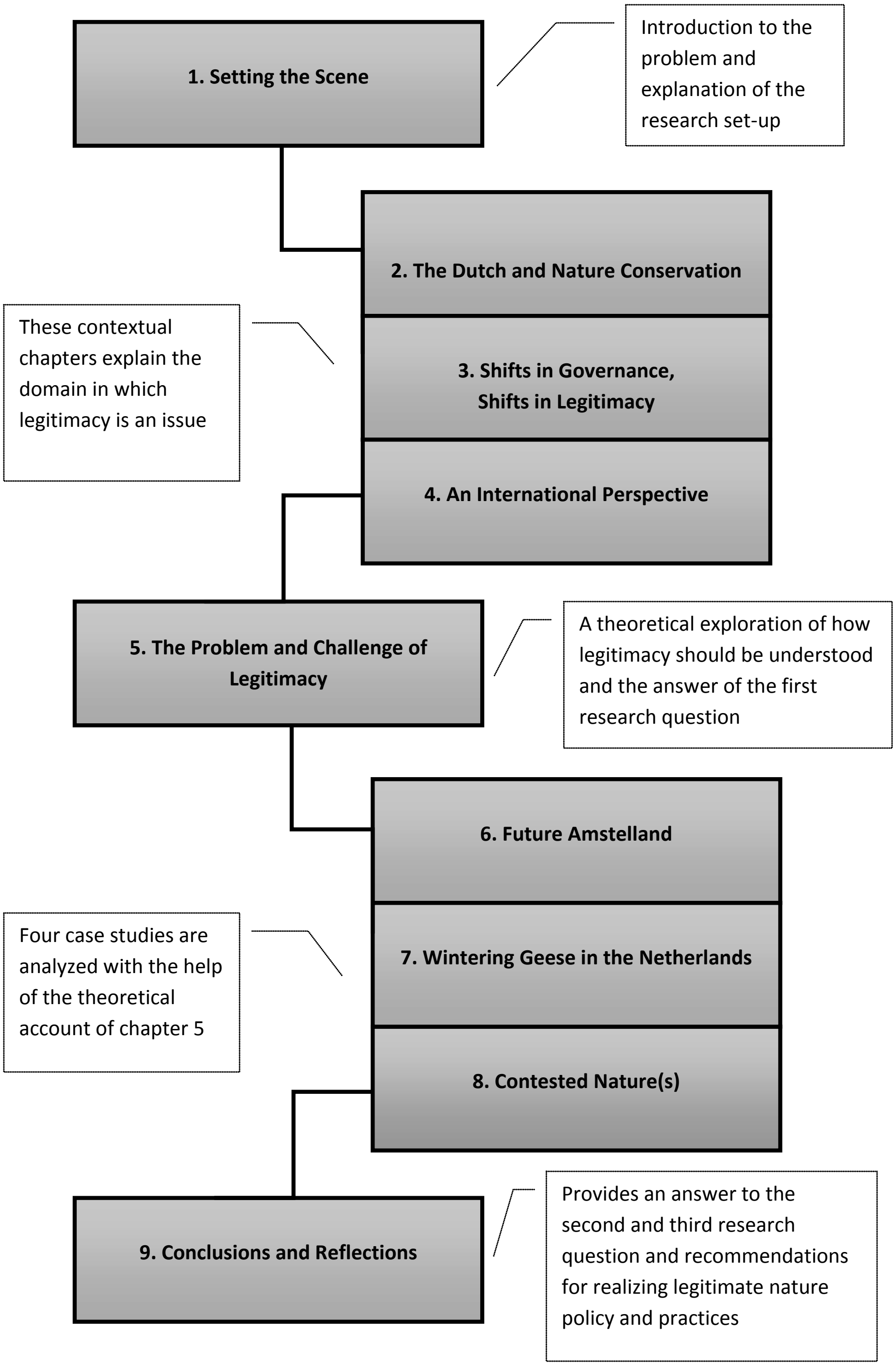
[2] The following activities have helped in addressing the objective of this study:
- International Workshop on Legitimacy in EU Biodiversity Conservation, Wageningen, November 2005;
- Presentation: Wintering geese in the Netherlands...legitimate policy?! PATH conference, Edinburgh 2006, Participatory Approaches in Science and Technology;
- Presentation: Producing legitimacy – a reflection on European case studies, 7th ESEE conference 2007, Leipzig: European Society for Ecological Economics;
- Book publication: Keulartz, J. and G. Leistra (ed.) (2008). Legitimacy in European Nature Conservation Policy: Case Studies in Multilevel Governance. Series title: International Library of Environmental, Agricultural and Food Ethics, vol. 14. Berlin: Springer. ISSN 1570-3010, 282 pp.



1. Setting the Scene
Introduction to the problem and explanation of the research set-up
2. The Dutch and Nature Conservation
3. Shifts in Governance, Shifts in Legitimacy
4. An International Perspective
These contextual chapters explain the domain in which legitimacy is an issue
5. The Problem and Challenge of Legitimacy
A theoretical exploration of how legitimacy should be understood and the answer of the first research question
6. Future Amstelland
7. Wintering Geese in the Netherlands
8. Contested Nature(s)
Four case studies are analyzed with the help of the theoretical account of chapter 5
9. Conclusions and Reflections
Provides an answer to the second and third research question and recommendations for realizing legitimate nature policy and practices

Fig. 1.1 Chapter outline

In chapters 6, 7 and 8, the conceptual framework is used to analyze four case studies. In the final chapter, the second and third research questions are addressed.

In chapter 2, I elaborate on the characteristics of Dutch nature policy that are relevant in relation to legitimacy. Focal points are the evolution of Dutch nature policy that reveals the divergent perceptions of nature in the Netherlands, the high ambitions regarding land use and the post-normal character of Dutch nature conservation policy and practices.

Chapter 3 discusses the shift from government to governance. A closer look at the governance debate is warranted, because this shift implies a transition from hierarchical government control to a system of governance that is characterized by multiple parties at different levels of administration. This shift may affect the legitimacy of Dutch nature conservation policy and practices as a plurality of perspectives and views of the good life that need to be taken into consideration due to the increase in the number of actors at different levels of administration.

In chapter 4, the Dutch situation is placed in an international perspective. This chapter provides an extensive summary of a volume, edited by Keulartz and Leistra, on legitimacy in EU nature policy. The volume is the result of an international workshop that the Applied Philosophy chairgroup from Wageningen University organized in November 2005. The findings of this workshop have guided my search for understanding legitimacy in Dutch nature policy.

The purpose of chapter 5 is to make the concept of legitimacy operational in order to facilitate descriptive and normative analysis of Dutch nature policy practices. A conceptual framework is presented that offers an instrument to describe and analyze legitimacy and that facilitates normative reflection. This framework serves both an analytic and a strategic purpose. First of all, the framework is developed to facilitate an analysis of legitimacy. Legitimacy is a multi-faceted phenomenon and, with the framework, different and tangled problems can be described. The strategic value is linked to the potential identification of ways to strengthen the legitimacy of nature policy and practices. At the end of chapter 5, I answer the first research question of how to understand legitimacy and I revisit the second research question in terms of the conceptual framework.

Chapter 6 opens the second part of this study in which the theoretical account of chapter 5 is used to analyze four case studies. Chapter 6 discusses the legitimacy of an exploratory and participative process in Amstelland. This process was part of the 'Future Amstelland' project that ran from autumn 2002 up to spring 2004. The purpose was to develop a shared vision and action plan for the rural 'green wedge' that penetrates the city of Amsterdam from the south. During the Future Amstelland process, initiated by the municipalities of Amsterdam, Abcoude, Amstelveen, Ouderamstel, de Ronde Venen en Uithoorn, a broad spectrum of stakeholders were invited to develop a shared vision for the future. However, the outcome was criticized by international partners because of limited representation of interests and a rather conservative vision that failed to incorporate pressing issues. In other words, the legitimacy of Future Amstelland was scrutinized.

Chapter 7 discusses the 2003 Policy Framework Fauna Management: a new phase in almost half a century of managing wild geese populations in the Netherlands. In contrast to earlier initiatives, this policy does not address threatened populations but thriving populations of wild geese. Due to international and national initiatives taken from the 1970s onwards, Dutch wild-geese populations have increased by a factor of ten, which has dramatically increased damage to local agricultural crops. The mounting costs of indemnification and the growing distress of the agricultural community confronted with wintering geese populations led to the development of the PFFM. The nationally initiated policy depends on the implementation by all twelve provincial authorities and the willingness of farmers to participate in the solutions offered.

Chapter 8 presents a diptych of two very different shades of green: the Oostvaardersplassen and Gaasterland. Both areas are part of the NEN, but, where the Oostvaardersplassen is assumed to provide for 'real' nature, Gaasterland is an example of agricultural-orientated nature management. Both cases have led to much controversy and have influenced the course of Dutch nature conservation policy and practices. The comparison of both cases is used to reflect on how legitimacy relates to long-term goals that are often at the foundation of conservation policies and practices.

Chapter 9 opens with a brief synopsis of the purpose of this research. Subsequently, an answer to the three research questions that have guided this research will be given. This is done by discussing and synthesizing the main insights and conclusions of the conceptual inquiries and the case studies. The dissertation concludes with recommendations that aim to support the realization of legitimate nature policy and practices.

2

THE DUTCH AND NATURE CONSERVATION

2.1 INTRODUCTION

To succeed in achieving the research objectives (i.e. understanding and explaining the concept and problem of legitimacy and contributing to the realization of legitimate nature policy and practices), it is necessary to understand the context in which legitimacy is an issue of concern. I touched upon the character of Dutch nature conservation in the first chapter, and in this chapter I intend to sketch a more detailed picture.

There are many possible characterizations when addressing nature conservation in the Netherlands. This fact can be illustrated by a number of studies that have been published in recent decades. For example, the historical works by Henny van der Windt (1995) and Jos Dekker (2002) reveal the different ways in which nature was framed in the 20th century. Their studies show that the different shades of green that we can distinguish today are not a recent phenomenon. At the heart of the work by Noelle Aarts (1998) is the recognition that there are different but equally valid conceptions of nature, which requires careful communication and negotiation if an acceptable nature policy is to be formulated. Marielle van der Zouwen (2006) touches upon another dimension of legitimacy – that of responsibility and accountability – when she investigates the shift from government to governance, which I will discuss in more detail in Chapter 3. The study by Esther Turnhout (2003) shows that even the proponents of the darker shades of green can differ over which types of nature are valuable and which types need protection. Kris van Koppen's thesis (2002) starts from the assumption that it is possible to trace long-standing and dominant social traditions of nature conceptualization across the multiplicity of natures encountered in modern societies. More recently, Arjen Buijs (2009) focused on the fact that policy makers and site managers are frequently confronted by the differing views between experts and lay people, as well as by the diversity, demands and interests that exist among the general public.

What I intend to highlight is that although nature is generally perceived as a common good that needs protection, the perception and appreciation of nature compared to other forms of land use differ considerably between various groups and communities. The different shades of green make it difficult to reach consensus on what actions to take and what consequences are deemed acceptable.

I will do this by trying to answer four questions: Who are we? Where do we come from? Where ought we to go? How can we get there? The answers to these questions will reveal something about the identity of Dutch nature conservation, or more correctly, about the identity of the Dutch regarding nature conservation. In section 2.2, I will answer the question 'Who are we?' by discussing the National Ecological Network (NEN). The NEN provides a point of entry to present-day nature conservation in the Netherlands and its contested character. Although the NEN is a success in many respects, it has been and still is a much debated phenomenon. This contested character of the NEN is best understood against the background of the history of Dutch nature conservation (section 2.3). I will describe some of the dynamics that characterizes nature conservation in the Netherlands. These dynamics show a shift from nature preservation to the more proactive attitude of nature creation. Section 2.4 reflects upon 'Where ought we to go?' regarding perceived problems in nature conservation in relation to the position of nature as a separate policy category versus nature as an integral concern in relation to other policy domains. In the final section, I will discuss the implications of this characterization for the issue of legitimacy.

2.2 WHO ARE WE?

According to Barry Needham (2007), the Dutch are an ambitious people. Having worked in spatial planning in the Netherlands as an Englishman, Needham is able to provide a refreshing outsider's perspective on how the Dutch deal with their space. According to Needham, the inscription on the monument on the *Afsluitdijk* (the dyke that closes off the old Zuiderzee from the North Sea) typifies this attitude: 'A nation that lives, builds for its future' (Needham 2007 p.43).

The ambition regarding land-use is focused not only on location and allocation, but also on the character of the development taking place. Ambition is thus displayed not only through the not so obvious places – reclaiming land from the sea, for example – but also through the rationale that accompanies planning. A concentration of urbanization, spatial cohesion, spatial differentiation, spatial hierarchy and spatial justice are the leading principles underlying this rationale (see also Wetenschappelijke Raad voor Regeringsbeleid 1998). These principles give rise to a practice that focuses on a good geographical relationship between the various activities in an area, the avoidance of uniformity and monotony, the highest grade facilities in the biggest centers, and access to good facilities and services for all people. Needham also distinguishes a set of principles that apply to the form of development rather than its location. These include quality rather than quantity, integral development, multiple use of land and the intensive use of land. The idea is that spatial cohesion can best be realized by developing an area integrally as though it were one large project. On top of that, land is best used intensively and for more than one purpose at a time. These principles have been laid down in an impressive construction of laws and rules. It is through these principles and rules that the, often self-confessed 'preacher' mentality of the Dutch is exposed: the Dutch know what is right and do not hesitate to criticize when they think that what other people are doing is wrong (Needham 2007 p. 30). But the reality of Dutch planning also reflects a second identity: that of the Dutch as 'merchants' (pp. 30–1). Needham's account of Dutch planning shows how rigid norms and rules, derived from the earlier mentioned principles, are pragmatically modified to enable effective implementation and the interplay of institutional values and interests in the evolution of the real from the ideal model of Dutch planning.

This portrayal is also applicable to nature conservation in the Netherlands, or more specifically to the NEN – the backbone of Dutch nature conservation policy – which is a typical example of Dutch land use planning.

THE NATIONAL ECOLOGICAL NETWORK

Dutch nature conservation is to a great extent synonymous with the concept and practice of the NEN, which was presented in the 1990 Nature Policy Plan (NPP) (Ministerie van Landbouw, Natuurbeheer en Visserij 1990a). This ambitious concept aims at the sustainable preservation, restoration and development of ecosystems that are of national and international importance. The objective of the 1990 NPP was to link these reserves into a network of over 700,000 ha – roughly 20% of the surface of the Netherlands – by 2018. This network was to include existing nature reserves and forests, and an additional 130,000 ha that needed to be 'created' on land with a different use, mostly agricultural. To achieve the interlinked qualitative and quantitative objectives, the NPP spells out the kinds of nature that need to be realized. So-called *nature target types* dictate the what, where and how of specific kinds of nature (see Bal et al. 2001). Both the NPP and the NEN have a technocratic character and a strong scientific and ecological emphasis (see Wetenschappelijke Raad voor Regeringsbeleid 1998). As such, nature conservation in the form of the NEN displays many characteristics of 'regular' land use planning. It is an ambitious plan: nature is also built.

Since 1990, the concept has been affirmed, extended, made concrete, slimmed down and given new emphasis in a number of policy documents, such as the Structure Plan for the Rural Areas (Structuurschema Groene Ruimte; Ministerie van Landbouw, Natuurbeheer en Visserij 1993), Nature for People, People for Nature (Natuur voor Mensen, Mensen voor Natuur: NvMMvN; Ministerie van Landbouw, Natuurbeheer en Visserij 2000), the National Spatial Policy Document (Nota Ruimte; Ministerie van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer 2004), and the 2011 Negotiation Agreement Decentralization nature (Onderhandelingsakkoord Decentralisatie Natuur; Ministerie van Economische Zaken, Landbouw en Innovatie 2011, September 20). Although these alterations exemplify the 'mercantile' character of Dutch nature policy, the NEN remains a 'preachers' plan.

This quantitative goal that is enclosed in the NEN should not be seen in isolation from an interlinked qualitative goal. The environmental conditions (e.g. the quality of the topsoil, air, and ground and surface water) largely determine the possibilities for sustainable preservation. Therefore, the success of the NEN depends not only on its size but also on a certain quality. Furthermore, and more importantly, the idea is that the diversity and quality of ecosystems can only be successfully preserved and protected if there is both enough land available for nature and enough connectivity between the various sites. Frans Vera emphasizes the need for strong coherence by presenting nature in analogy to a Persian carpet (Vera 2008). A Persian carpet is both beautiful and valuable, but only if it is unspoiled: if you take a pair of scissors and cut it up, you will have the same amount of carpet, but it will have lost all its beauty and value.

The NEN is inspired on Robert MacArthur and Edward Wilson's (1969) theory of island biogeography, which holds that islands have fewer species than areas of the same size on the mainland. Species on islands are more prone to extinctions due to storms, famines or other disasters than their counterparts on the mainland. Moreover, the further an island is from the mainland, the fewer species it has. The theory of island biogeography proved to also apply to isolated nature areas on the mainland, perceived as islands in a sea of cultivated land (see e.g. Begon at al. 1990). From the early 1980s onward, this theory is the fundamental stronghold in Dutch nature policy that was going to play an important role in the formulation of Natura 2000, the cornerstone of European nature policy.

2.3 WHERE DO WE COME FROM?

The NPP is the first national policy to focus specifically on the conservation and creation of nature. However, nature conservation in the Netherlands is not a recent phenomenon. It has a respectable history, one that has been described elaborately and in great detail by, for example, Henny van der Windt in his study '*En dan: wat is natuur nog in dit land?*

Natuurbescherming in Nederland 1880-1990', and Jos Dekker in his work '*Dynamiek in de Nederlandse natuurbescherming*'. What these studies show, among other things, and what I want to highlight in this section, is that the different shades of green we distinguish today are not a recent phenomenon. What nature is and which parts of nature need conservation have been interpreted and formulated differently by a diverse group of people from different backgrounds since the beginning of the nature conservation movement. I will discuss this by highlighting just a few snapshots of the movement's rich and dynamic past.

URBAN ORIGINS

The founding of the Society for the Preservation of Nature Monuments (Vereniging tot behoud van Natuurmonumenten in Nederland), or Nature Monuments for short, at the turn of the 19th century is often regarded as marking the birth of the nature conservation movement. However, the movement has its roots in the preceding centuries, during which the Dutch had succeeded in shaping the physical environment to their needs. New technologies arising from the agricultural and industrial revolution resulted in large-scale changes. Accompanied and strengthened by a growing population and the process of urbanization, these changes drastically and rapidly altered the physical environment. It was these developments that triggered the birth of the nature conservation movement throughout the western world.

The nature protection movement emerged as a social movement in reaction to the ongoing deterioration of the physical environment. In the Netherlands, school teachers, amateur biologists and business people joined forces in successfully protecting the Naardermeer, a natural peat lake that was destined to become a refuse dump for the city of Amsterdam (see e.g. Van der Windt 1995, Coesèl et al. 2007). As a result of the introduction of affordable artificial fertilizer, urban waste fell out of grace as a fertilizer. Larger cities needed to dispose of their waste, and the city of Amsterdam opted to dump its waste in the Naardermeer. It was not only nearby, but once it had been filled up it could function as fertile arable land (Van Zanden & Verstegen 1993, in Keulartz 2005, p. 43)

Van der Windt and Feddes (1998) argue that initiatives to protect the natural environment were only possible because of a shared idea that nature demands respect as it is both beautiful and vulnerable. Man has not only tried to conquer and utilize wilderness, but has also had respect and admiration for the world that he lives in. In this view, conquest, utilization and admiration are the 'keywords for a cultural history of nature' (ibid. p. 25) and can be considered the creating forces of the various shades of green that we can distinguish today. It is remarkable, but also understandable that the nature conservation movement has an 'urban' origin. It was the city that provided an environment in which people were no longer subjected to the whims of nature. The distance, literally and figuratively, between man and nature increased, which provided room for reflection, scientific research, idealization and romanticism. Two of the 'founding fathers' of the nature conservation movement – Eli Heimans and Jacobus Pieter Thijsse, both of whom were primary school teachers – spent a large part of their professional careers in Amsterdam. Heimans even contended that one would really start to appreciate nature only if one did not reside in it every day (Coesèl et al2007 p. 13).

PROTECTION, NATURE MONUMENTS AND MANAGEMENT

By the end of the 19th century, and under the pressure of ongoing industrialization and urbanization, people with different agendas and from different social backgrounds organized themselves. This led to the first successful campaign by the Dutch nature conservation movement: the protection of the Naardermeer. This action set the tone. Nature conservation found its vehicle in the 'nature monument', which Van der Windt regards as the hinge in modern day nature conservation (Van der Windt 1995, p. 246). The idea behind the nature monument was to protect and preserve nature that is free of human influence. Although this wilderness ideal still permeates the Dutch nature conservation movement, reality dictates that by the time the nature protection movement got started, almost all of the Netherlands had been shaped or at least extensively influenced by human activities (Van Zanden & Verstegen 1993). In addition, the sites that were acquired as nature monuments had by necessity a very pragmatic character, and were linked to the diverse interests of the people involved in the movement. The reasons for protecting nature were based on aesthetic and ethical ideals ('admiration'), but were also linked to practical utility arguments, such as recreation, cultural history and – last but far from least – financial opportunities ('utilization'). For example, the loan with which the Naardermeer was bought was financed with the revenues of fisheries and the harvesting of reed (Coesèl et al. 2007, p. 20), while the purchase of a large forest on the Veluwe was largely influenced by the fact that a forest is also an economic asset, because of the timber that can be harvested (Van der Windt 1995, p. 72). Furthermore, the purchase of nature monuments depended on the associations with befriended landowners and business people. Despite different agendas and interests, the shared fear that endangered plants and animals would disappear, brought together nobility, business people, teachers and biologists. These groups were interdependent: the nobility and business people provided the land and financial means for protection, while the academics provided its legitimacy (Van der Windt 1995).

This strategy of acquisition and protection resulted in a wide range of different sites that demanded different types of attention. A forest purchased with an economic and recreational goal, required different management than a site purchased for its natural beauty and natural processes. This led to a debate within Nature Monuments over what was considered natural and what influence was wished for and necessary in the conservation of nature. The idea of untouched nature that is both beautiful and vulnerable that lies at the base of the Dutch nature conservation movement, did not equate with the management and exploitation of many of the nature monuments. Around 1945, Victor Westhoff, a biologist who became a prominent figure in Nature Monuments, provided a solution. He introduced new concepts like 'nature techniques' and 'half-nature' and presented a broad spectrum ranging from 'real' nature to culture – different shades of green, if you will – that allowed a place for human interference and influence (Van der Windt 1995, p. 249). With the introduction of a new ´language' based on the science of plant sociology, Victor Westhoff not only solved the problem how to ´manage` the different nature monuments, but also legitimized active influence as nature conservation practice. He argued that many of the valued nature monuments were the result of human influence, and that such influence is necessary to conserve these sites. Characteristic Dutch vegetation types such as heather, hay and reed fields are the result of human influence. In this perspective, admiration and utilization are not necessarily mutually exclusive. Westhoff explicitly gave man a role in the conservation of nature: nature conservation became nature management.

INTERDEPENDENCY

The definition of nature and its subsequent 'management' arose not only out of an internal discussion within the elitist conservationist community. Admiration and utilization of nature, as we have seen, are not necessarily opposing forces. However, with respect to a third disposition that Van der Windt and Feddes distinguish – conquest – it is a different story. Many of the significant developments in Dutch nature conservation can be seen as a reaction to developments within the agricultural sector (Van Zanden & Verstegen 1993 p. 63, see also Keulartz 2005). Until 1850, 'nature' and land use practices were not by definition mutually exclusive. Van Zanden and Verstegen even claim that nature displayed a greater diversity because of extensive, but systematic and low intensity human use. However, the large-scale introduction of affordable fertilizer set in motion a series of events that not only led to the purchase and protection of the Naardermeer, but also facilitated the large-scale cultivation of the last remaining wild places, the so-called *woeste gronden*. The purposeful drive behind these developments was the ambition to continuously increase production and yield. The Dutch have been extremely successful in this, which can be largely attributed to the joint effort of the national government, scientific research, education and extension, an organized agricultural sector, cooperative banks and cattle-fodder companies (ibid. pp. 63-64).

By the 1930s, the pressure on the remaining wild places increased significantly under the influence of poverty, unemployment and the availability of affordable artificial fertilizer. The advocates of nature had to reorient themselves. This reorientation included a reformulation of 'nature', new coalitions and a new practice (Van der Windt 1995, pp. 102-103). Nature conservationists realized that not all wild places or natural sites could be protected by means of acquisition. Not only was it impossible to purchase all valued sites, but there was also the need to address the consequences and effects of changes in land use within a broader societal and political arena. In 1932, many of the organizations whose goal was the protection of nature, organized themselves into the 'Contact Committee concerning nature protection' (CC). The CC had a broad, national focus, and its establishment gave nature conservation movement an organized political strategy that was aimed at providing a counter-force to the ongoing changes in rural areas. The strategy of purchasing and managing nature monuments was complemented by a political strategy of influencing spatial policy and planning.

The changes in land use resulted in broader societal interest in the quality of our physical surroundings. The members of the CC had diverse backgrounds. The membership comprised not only such organizations as Nature Monuments, but also the Royal Dutch Automotive Association and the Dutch Youth Hostel Association. Natural values, as well as landscape values, became of interest to a broader spectrum of societal actors and organizations. The conservation of nature, and now also of landscapes, became a more prominent activity. This is also illustrated by the name change of the CC from the 'Contact Committee concerning nature protection' to the 'Contact Committee concerning Nature and landscape protection'.

The ideal of untouched nature needed to be remoulded in order to survive in a society full of competing interests and different ideas about the right use of land. The ideal of untouched nature permeates Dutch nature conservation, but the nature conservation movement has continuously had to reformulate this ideal. Because the advocates of nature conservation were (and still are) largely dependent on the goodwill (or confronted with the opposition) of others within society, they had to adopt a certain flexibility in their approach and strategy. In more than a century of nature conservation, the advocates of these practices have tried to protect and manage valued sites in a world full of dynamic spatial changes – changes that put pressure on valued nature reserves and cultural landscapes.

COMING OF AGE

It was only in the 1970s that nature was placed firmly on the political agenda. The loss of landscape and biodiversity resulting from the process of land consolidation was intensified by the problems that arose in the agricultural sector after the 1950s. Intensification and rationalization in the agricultural sector further damaged the environment. The growing concern for the environment, an expanding environmental movement and the subsequent political attention regarding the liveability of our environment, led to nature being recognized as an important matter. As a result, the position of advocates of nature conservation in the spatial planning arena was strengthened.

Although the central government has always acknowledged its responsibility for the conservation of nature, it has not always acted adequately. For example, although the Nature Protection Act was announced in 1928, it was not enacted until 1968 (Berendse et al. 2003). And when the national government was faced with large-scale unemployment and poverty in the 1930s, it initiated and stimulated the reclamation of the remaining *woeste gronden*, despite protests from the conservation movement. This lukewarm love for nature protection is also illustrated by the various ministries that have been responsible for the conservation of nature. Before 1940, it fell under the responsibility of the Dutch State Forest Service; after 1940, it was placed under the umbrella of the Ministry of Education, Arts and Sciences; and from 1965 the Ministry of Culture, Recreation and Welfare was responsible. From 1983, nature conservation came under the Ministry of Agriculture, Nature Management and Fisheries, which became the ministries of Agriculture, Nature, and Food Quality. After the 2010 parliamentary elections, when the ministries of Agriculture, Food Quality, and Nature merged with the Ministry of Economic Affairs into the Ministry of Economic Affairs, Agriculture and Innovation, nature conservation became the responsibility of the latter. In 2012 this ministry changed its name once more into the Ministry of Economic Affairs.

The advocates of nature conservation gained momentum through societal and political processes, but also through new insights into nature management and conservation (Feddes et al. 1998). In 1972 and 1974, severe storms destroyed large areas of forest, which until then had been managed as crops to be harvested. After these storms, plants and animals re-established themselves rather quickly. Nature conservationists argued that such spontaneous development should be allowed more often and on a larger scale. Self-regulation was presented as a new norm for nature management. This example was soon followed by a similar event, one that has become the flagship for real nature or wilderness in the Netherlands: the Oostvaardersplassen. This natural reserve was destined to become an industrial site in Flevoland, a reclaimed polder. However, due to delays the site was left untouched, and plants and animals started to settle there. These processes caught the attention of biologists and provided the foundation for a new turn in nature conservation in the Netherlands. Supported by these new insights, system ecology became the scientific legitimacy for nature conservation. According to Frans Vera, these new insights proved that nature is not a historical and outdated category, but an always present possibility in which man does not necessarily play a part (Vera 2010).

All these developments provided the space in which nature conservation could develop as an autonomous activity, which in 1990 resulted in the NPP. This policy marked a new phase in Dutch nature conservation and introduced a new paradigm in nature conservation in the Netherlands. Keulartz (2005) distinguishes four characteristics of the NPP that represent a break with the past.

- First and foremost, it marked the transition from a defensive to an offensive strategy. In contrast to the past, it no longer focused solely on the conservation and preservation of existing nature reserves, but included the creation and restoration of 'new' nature.
- Second, an ecological reference served as the benchmark for nature preservation. What is considered nature is dictated by a scientific reconstruction of physical conditions that are devoid of human influence.
- Third, nature conservation is deemed possible only through the creation of the NEN, which consists of existing nature, ecological corridors and nature that is yet to be developed.
- Fourth, it is supported by a detailed scientific classification of all areas in the Netherlands with a potential nature destination into no less than 132 different nature target types.

The NPP was the first national policy document with a specific focus on nature. Until then, the conservation of nature as a policy objective had always been defined in relation to other spatial functions[3]. As such, it too signifies a break with the past. The emphasis has, however, shifted from a romantic ideal to a scientific concept, and ultimately to a technological practice (Van der Windt 1995 p. 253). The 'admiration' for the beauty of nature has been complemented by a scientific language: nature is communicated in terms of nature target types, biodiversity, ecological networks and island theory, to name just a few.

2.4 WHERE OUGHT WE TO GO?

The NEN is in many ways a successful initiative. It has become *the* framework for nature conservation. The NEN was 'uploaded' (see Héritier 1996) to the European level, where it took shape as the European Ecological Network (Natura 2000) and is also known among Dutch civil servants as the 'Dutch Directive' (Würzel 2007). Moreover, the NPP and the NEN placed nature

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[3] One could argue that the Relatienota 1975 (Ministerie van Cultuur, Recreatie en Maatschappelijk Werk 1975) was the first national policy to address the national importance of the protection of nature. Although the protection of nature is the reason for appearance, it is addressed in relation to agricultural practices. The NPP is the first (and the last!) policy plan with a primarily ecological perspective.

firmly on the agenda as a topic of concern for both politicians and society. Seen from this perspective, the concept of the NEN is uncontested, and its successful implementation is seen as essential if we are to halt biodiversity loss and to conserve typical Dutch natural ecosystems.

Despite the success of the NEN concept, its practice and realization have proven cumbersome since its launch. For example, the original plan to create 500 ha of new nature in the south-west of the province of Friesland led to large protests in the 1990s. The agrarian and local community, whose lands were to be used to realize this ambitious plan, successfully opposed the expropriation of their lands and their subsequent management by nature organizations. Instead, the ambition to have a darker shade of green was abandoned in favour of a more pragmatic lighter shade of green for which the agrarian community themselves were responsible. This is just one example of the high ambitions of the NPP being confronted with the highly complex societal reality. I will discuss this specific example in detail in Chapter 8, in which I will treat it as an emblematic example of Dutch nature conservation.

The national authorities have received criticism during the implementation process of the NEN not only from those who deem the NEN to be top-down, technocratic and exclusive, but also from those who scorn the lack of progress in the realization of the NEN or the lack of backbone when it comes to using expropriation as a tool for realization (see e.g. Dubbink & Zadelhof 2005 for a nuanced critical perspective). A returning theme in the official evaluations on the state of nature in the Netherlands is this lack of progress (see e.g. Milieu- en Natuurplanbureau 2004, Planbureau voor de Leefomgeving 2009). Both the quantitative and qualitative goals remain behind on schedule and are not likely to be attained by 2018. As indicated, quality and quantity are intricately linked in the case of the NEN. In the *Natuurbalans 2004* and *Natuurbalans 2009* (Milieu- en Natuurplanbureau 2004, Planbureau voor de Leefomgeving 2009), the observation is made that connectivity between the various nature reserves is still lacking and that almost no progress has been made in its realization. In 2013, both the quality and quantity of Dutch nature still are an issue of concern (see Bredenoord et al 2013).

Considering the great ambition of land use planning in the Netherlands and of nature conservation in particular, it is not difficult to understand that its realization is cumbersome. The ambitious aims of the NEN conflicted, and still conflict, with other land use. On top of that, in 2011, twenty years after its launch, the original goals of the NEN were under further revision by the government. Due to the economic recession, the government under the lead of Prime Minister Rutte that was installed in the fall of 2010, decided to cut spending by 18 billion euros over a 4-year period. As a result, nature conservation budgets were under pressure as well. In his letter of 16 February 2011 addressed to the House of Representatives, Secretary of State Bleker announced that a firm change of course necessary, a change that will affect not only the acquisition of land for nature conservation purposes, but also the management of existing nature terrains (Bleker 2011). The aim was still to realize the NEN, but in an amended form. Next to the budget cuts and a further decentralization of responsibilities in the realization of the NEN to provincial authorities, the cabinet altered some of the starting points of the nature policy. The available means are to be used solely for the management of the already existing nature reserves (about 600,000 ha); the realization of so-called new nature has been put on hold, and the acquisition of land and the realization of ecological corridors have been cancelled. Furthermore, more emphasize has been placed on lighter shades of green by focusing on private and agricultural nature management in the realization of the NEN: ‘farmers … have to play a bigger role in the conservation of nature, so they can produce nature as well as food’ (ibid.; see also Planbureau voor de Leefomgeving 2011). The concept of the NEN remains at the centre of Dutch nature conservation, but its emphasis has shifted from nature’s needs to human needs. This shift was formulated earlier in, for example, the successor to the NPP, NvMMvN and was reaffirmed in the 2010 Governmental Agreement Nature[4]. These policies provide more room for lighter shades of green and management by agrarians and private land owners.

Like most developments regarding the NEN, this change has been received with mixed emotions and denotes a difference of opinion on where we ought to go. The presentation of the new course of action stirred both proponents and adversaries of the initial NEN. Nature conservation organizations – as well as provincial authorities, which have an official mandate in the realization of the NEN – have protested against these new developments. On the other hand, the change was applauded by those that have had great difficulty with the NEN right from the beginning.

A most remarkable reaction to the new plans was the re-establishment of *Das & Boom* (‘Badger & Tree’). In 2006, this association dissolved itself, as it had completed its self-proclaimed mission. Although its primary objective was to protect endangered species, such as the badger and the European hamster, *Das & Boom* played an important role in confronting the Dutch authorities with the responsibilities they had taken on by ratifying such treaties as the Birds Directive and the Habitats Directive. *Das & Boom* repeatedly accused the national authorities of not adhering to national and international agreements, and frustrated numerous development projects by means of relentless judicial procedures. Not only did the organization succeed in protecting such endangered species as the badger, but its role as ‘prosecutor’ of the state contributed to the translation of ratified conservation treaties into Dutch law and policy. In 2006, its goals were achieved, but in 2011, its re-establishment was announced. According to Dirkmaat, frontman and spokesperson for *Das & Boom*, this had to be done because laws, regulations and international treaties will be violated if the new government plans are implemented (Das& Boom 2011, 16 February).

What nature policy and its subsequent practices show us is that it is far from evident where we ought to go (see also Van Oostenbrugge et al. 2010).

2.5 HOW DO WE GET THERE?

The previous sections revealed a lot about the reasons why the NEN is so difficult to realize. Where we ought to go with respect to nature protection is clear on an abstract level, but how

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[4] The Governmental Agreement Nature [Bestuursakkoord Natuur] encompasses the agreements between national and provincial authorities regarding the decentralization of nature policy, which include the Negotiation Agreement Decentralization nature (Onderhandelingsakkoord Decentralisatie Natuur; Ministerie van Economische Zaken, Landbouw en Innovatie 2011, 20 september), the additional agreements (aanvullende afspraken) of 7 December 2011 and the implementation agreements (uitvoeringsafspraken) of 8 February 2012.

this should look in practice is heavily debated. That nature needs protection is uncontested, but the 'what', 'where' and 'how' are not. So how do we get there? What is legitimate?

One could argue that the success of the NEN was also its downfall. The NPP placed nature as independent concern on the political and societal agenda, but the fact that nature could be established as an autonomous policy category was the result of a number of developments. However, by isolating nature and tackling the NEN as an independent project, it failed to place nature in its spatial, social and cultural contexts (see Feddes et al. 1998). The history of Dutch nature conservation shows that there is a stark contrast between the dark shade of green that is advocated in the NPP and the NEN, and the kaleidoscope that has characterized nature conservation for the last hundred years. Moreover, the classic top-down approach (Wetenschappelijke Raad voor Regeringsbeleid 1998) did not take into account the complexity of the many claims that exist regarding land use.

Although the NEN might be rightfully characterized as a textbook example of top-down policy (Wetenschappelijke Raad voor Regeringsbeleid 1998 p137), it is important to realize that the NPP and its successor the NvMMvN are strategic documents that delineate national ambitions and objectives. The implementation, however, is largely dependent on the voluntary cooperation of both authorities and individual members of society. Achieving both the quantitative and the qualitative goals requires contributions from many different partners that often have different ideas about what is valuable and what needs protection. The national government presented the NEN, but the provincial authorities are responsible for its delineation and realization. The actual implementation is subsequently dependent on the owners and users of the lands on which the NEN is planned.

The chosen dependency of the national government on voluntary cooperation is also illustrated by the hesitant use of the legal instrument of expropriation. Whereas expropriation was not shunned in the realization of many contested large-scale projects – such as the Betuwelijn (see e.g. Van Dinther 1997, May 30), a railroad that was built specifically for the transport of goods – voluntary cooperation is still the preferred route in the realization of the NEN. Even though more pressure to expropriate has been called for in the past (see e.g. Raad voor het Landelijk Gebied 2008). The financial stimuli that are often necessary to trigger voluntary cooperation are also absent. In 2002, the purchase of land for the realization of new nature was also halted, and more emphasis was placed on the realization of the NEN through private and agrarian nature management. Instead of management by nature conservation agencies, which are dependent on the purchase of land, a large part needs to be realized by subsidized private and agrarian nature management. The idea is that subsidies are less costly than site purchases. This line of thinking was maintained by the first Rutte cabinet that was installed in October 2010. Due to the recession not only more emphasis was placed on nature management by agrarians and private landowners, but the plan also foresaw to downscale the total size of the NEN: the total budget available for its realization was cut by 40%.

Is the NEN the plan of a 'preacher'? If so, can it be realized only if complemented by the pragmatic attitude of the 'merchant'? Whether this Janus-faced characterization is on the mark or not, it is evident that high ambitions regarding nature are confronted with a complex day-to-day reality, and highly divergent ideas about what nature ought to be.

NATURE AS DEPENDENT POLICY CATEGORY?

Despite the successful integration of nature conservation in the spatial planning arena with the NPP and the NEN, nature remains contested. Not only are the qualitative and quantitative goals under pressure, but there is a broader and ongoing disagreement regarding both what particular conquest and utilization is acceptable and what exactly is worthy of our admiration. In 1998 the authors of *Oorden van Onthouding* ('places of abstinence') (Feddes et al. 1998) communicate that nature encompasses much more than the dark shade of green of the NEN. They argue for more, better and captivating nature, as well as for a broad, thorough discussion of what this entails. The authors whose work appears in *Oorden van Onthouding* provide a basis for this discussion. They contend that nature is not one phenomenon, but the sum of feelings, images and ideas. Nature can be categorized, but the acknowledgement and value of diversity remains essential (p. 15). The sectoral approach of the NEN was considered counterproductive, and arguments were given for a more integrative approach. As such, the authors plead for a diversity of shades of green.

Thirteen years later, nine young professionals organized in the project *Panorama Natuur* (Innovatienetwerk 2011), are sending out a similar message. The core of their message is that we need more connection, and not only between nature, but also between nature and people. Nature is not just one shade of green that can be equated with a technological practice. It should reflect the diversity within society and be the responsibility of that society. Based on their vision, these young professionals make plea not only to the national government, but also to provincial authorities, conservation agencies, the agrarian community and the public in general to live up to the challenge and make a mutual effort to conserve nature. All parts of society should play their part and ought to have a voice.

This plea could certainly be seen as the new challenge in nature conservation, but it is also a return to its beginnings. Nature conservation is once again, or perhaps still is, an idea and practice that is the responsibility of many political and societal actors – actors who not only acknowledge their own responsibility, but also try to hold each other accountable. For example in 2009, in the *Landscape Manifest,* 44 societal organizations call for extra efforts, cooperation and financial means to protect, conserve and create a more beautiful landscape (see Landschapsmanifest 2009). Although the partners in the manifest are critical of their own contribution, their collaboration should also be seen as a plea to the national authorities for more leadership and steering in safeguarding what is a common good.

We also see that the national government - in for example NvMMvN and the *Nota Ruimte* - is calling upon societal partners to help realize this common good. In his address to the House of Representatives, Secretary of State Bleker stressed this shared responsibility (Bleker 2011). He wanted to stimulate the involvement of local people with their nature and to utilize the creativity of inhabitants, users and managers of that nature. Bleker set in motion a movement in which the care for and the management of nature is more and more the responsibility of individuals, farmers and entrepreneurs.

Thus, the plea for more cooperation has not fallen on deaf ears. However, despite the common idea of shared responsibility, there is still debate on what this responsibility should entail and where this shared effort should take us. Nature is not an independent phenomenon.

Admiration, utilization and conquest are intertwined in our actions. What needs protection or is worthy of our admiration is often defined in relation to what we want nature to be. A shift from acquisition to private and agricultural nature management, climate change as a challenge, the meaning of high quality green for people, and the financial value of nature, all indicate that nature is not an independent phenomenon. Nature conservation has become land-use planning, and land-use planning is about more than resolving conflicting claims on land: it is an attempt to get land used in ways that meet certain social goals (Needham 2007). But these goals are many and often contested.

2.6 DIFFERENT SHADES OF GREEN AND LEGITIMACY

What nature is or ought to be is far from evident. What determines what nature is, is not an objective classification, but our ideas of what nature is or ought to be. And these ideas can be very diverse. They might be based on admiration, but also conquest and utilization. They differ in what we value, how we ought to act, and what our place is in relation to the world that we inhabit. There are many conceptions of nature (see e.g. Commissie Natuur- en Milieu-Educatie 1993, Schouten 2005) and many different ethical positions in which we can relate ourselves to the natural world (see e.g. Zweers 1994). Images of nature can ultimately be seen as complex value structures that order and guide the perception and valuation of our physical surroundings (Keulartz 2005 pp. 72-73; see also Keulartz et al. 2000, Van der Windt et al. 2006). First, they determine what we value cognitively; the way we perceive empirical entities and the causal relations between them. Second, they determine our normative position; they define the moral status we assign to, for example, living organisms or ecosystems, and subsequently which actions are acceptable regarding animals, plants and ecosystems. And third, images of nature influence how we perceive our surroundings expressively; they set standards for what we experience to be beautiful or repulsive, exhilarating or boring, etc. These value dimensions can be distinguished in the three dominant concepts of nature that can be found in the literature: wilderness nature, Arcadian nature and functional nature (see e.g. Keulartz 2005)

The problem of the different shades of green and the many preferences that exist in the Netherlands leave a lot of room to interpret the existing situation regarding the quantity and quality of `nature´ in the country, even though government plans and scientific documents can be rather clear on what the state of nature is in the Netherlands and what is deemed necessary to undertake. The NEN – the backbone of Dutch nature policy – is a good example

	Cognitive (Ecological theory)	Normative (Ethical perspective)	Expressive (Aesthetic perspective)
Wilderness	System ecology	Ecocentric	Objectivist
Arcadia	Community ecology	Steward/partner	Subjectivist
Functional nature	Production ecology	Anthropocentric	Formalist

Nature images according to their cognitive, normative and expressive dimensions
(Keulartz 2005 p. 79)

of this contested character. Not only is the NEN a continuous source for debating the right kind of nature, but it also highlights the complex spatial relations in the Netherlands. Even if we could agree on what the right shade of green is, we would still have to deal with various other (justifiable) land uses, such as housing, industry and agriculture. Dutch society is in continuous flux, as evidenced by the history of Dutch nature conservation.

WHO, WHERE, WHERE AND HOW?

In the above, I tried to sketch the context in which legitimacy is an issue of concern. I did so by trying to answer four questions: Who are we? Where do we come from? Where ought we to go? How can we get there? The answers to the first and the second question show that the Dutch are an ambitious people regarding land use and nature conservation, but that this ambition is multifaceted and reflects a dynamic past with different actors with different interests.

Given this characterization, it is not surprising that I could not answer the third and forth questions with resolution; they remain open to debate. But if we assume that a legitimate policy is also an effective policy, then how should we frame effectiveness if its goals are contested? The rudimentary conception that legitimacy and effectiveness are linked does not automatically take into account the complexity of opposing views of, and therefore different ideas about that common good that is called nature, and thus the level of effectiveness that needs to be reached. So the proposition that a legitimate policy should be effective loses its rhetorical power when these policies are formulated in a complex post-normal world in which facts are uncertain, values are in dispute, the stakes are high and decisions are deemed urgent (see e.g. Ravetz 1999; Funtowicz and Ravetz 1993). However, we should not conclude that effectiveness is unimportant. It seems wise to be critical in formulating this effectiveness.

Given the post-normal condition, it seems difficult or even impossible to formulate the best solution, policy or approach to tackle a certain problem. However, it does not mean that any approach will do, or that we cannot make a distinction between more valuable shades of green. On the contrary, the lack of a shared perspective on what is necessary or valuable, albeit on a more abstract level, does not imply easy decisions; rather, they are more complex and difficult. The prerequisites provided by our democratic society create a challenging situation: we ought to consider the many different conceptions of the common good, whatever that may be or however that may be formulated. As such, an effective policy, and consequently a legitimate policy, should take this diversity into account.

GOVERNANCE

In the following chapter, I will discuss the issue of authority in Dutch nature conservation in relation to the governance phenomenon. Implicit to the governance literature is a shift from hierarchical government control to a system of governance that is characterized by multiple parties at different levels of administration. Although a shift from pure government control to a situation of co-governance is a too black and white depiction, the increased role of EU policy and politics and an ongoing decentralization of government tasks have resulted in an increase in actors and administrative levels that are involved, or need to be involved, in nature conservation and policy.

A closer look at the governance debate is warranted for two reasons. First, in the shift from government to governance, different ideas and ambitions are made explicit through, for example, the conflict between national/international goals and ambitions, and regional and local interests. Second, differences in ideas of the good life are also problematized due to the increase in the number of actors at different levels of administration that need to be taken into consideration.

3

SHIFTS IN GOVERNANCE, SHIFTS IN LEGITIMACY

3.1 INTRODUCTION

The responsibility for the public good, such as national safety, education and health-care, is often assigned to democratically elected authorities, whether it be at the international, national, provincial or local level. In a democratic society, we expect our elected representatives to safeguard and realize these public goods. The power that comes with a democratic mandate ought to be used in the realization of these goods.

Although nature is considered a public good for which authorities have a responsibility, it most definitely is also a contested good. People will acknowledge the need for nature conservation on a more abstract level, but when nature becomes concrete and manifests itself in a specific type of green, or in policy plans, regulations or restraints on their actions, it is not necessarily valued. On the contrary, nature may then become the cause of societal and political protests. Yet, nature needs to be protected. How, by whom and on the basis of what authority are becoming relevant questions. Who is responsible for the protection of nature, who can be held accountable? These are questions that relate to the issue of legitimacy, which is characteristically a problem when the prevailing power and authority structures change, both in reality and in people's perceptions (see Chapter 5). A change in authority confronts people with that authority. It might change the underlying conventions, which might trigger close scrutiny of that authority or it may make people aware of initial implicit and unconscious acceptance. It is exactly for this reason that the issue of legitimacy is becoming important again, or better said, remains an essential concern. The change that is described in scientific literature as a shift 'from government to governance' indicates a change in the prevailing authority structures. We might assume that this shift affects the legitimacy of Dutch nature conservation.

In this chapter, I will discuss the concept of governance in relation to Dutch nature conservation. I will start with a discussion on the existing body of governance literature. I will subsequently relate this discussion to Dutch nature conservation policy and reflect upon the concept of legitimacy in relation to these practices. We will see that national authorities are just one of the many actors that are involved in the formulation and implementation of policy. I will argue that although legitimacy has always been an important issue, it deserves special attention in the light of changes in the perception of the institutional character of Dutch nature policy and practices.

3.2 GOVERNANCE: CONCEPT AND PHENOMENON[5]

When addressing the concept of governance, I prefer to stay close to its lexical definition, which refers to the administration of authority. Talking about governance is then closely linked to the concept of legitimacy, because the question what makes it just, lingers in the background or

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[5] For the analyses in this section, I am indebted to Ewald Engelen and Jozef Keulartz, with whom I organized an international workshop in November 2005. The outcomes of the workshop have been published (see Keulartz & Leistra 2008). Although this section has a different set-up and contains new information, part of the analyses in this chapter originates from the opening chapter of that book.

becomes imperative when that authority is questioned.[6] With this in mind, I turn to the literature on the concept of governance. However, 'there is not one coherent body of governance theory, and it is difficult to get a clear picture what governance is about' (Kjaer 2004 p.2). The concept is defined in diverse ways, it is tackled by many scientific disciplines, and it has found its way into the public and private sector, where it has become a buzzword with different connotations.

Hajer and colleagues (2004) say that the haziness that exists regarding the concept of governance is due to the confusion between governance as an analytical model and governance as a steering theory (p.9). Governance structures or the changes within these can be described as an empirical phenomenon with the purpose of, for example, describing a search for more effective forms of governance. But the emergence of the concept of governance can also be seen as a reflection of a more fundamental change in assumptions about how political and governmental processes ought to get shape in modern societies (see also Kooiman 1993, 2000). These two approaches to governance are often intertwined. This diversity of the use of governance can be confusing, but I will refrain from trying to systemize the various definitions and approaches – partly because insightful overviews already exist (see for example Kjaer 2004; Van Kersbergen & Van Waarden 2001, 2004), but mostly because most definitions and approaches stay true to the lexical connotation and to the normative connotation that I am interested in. In this section, I will discuss the concept and phenomenon of governance in relation to real-world changes, the demystification of human rationality, the relation to government, and the multiplication of levels and places of policy making. As such, I use the concept of governance as an analytical tool to shed light on how authority is structured and distributed.

REAL-WORLD CHANGES

While no comprehensive history of the concept of governance has been written, it is obvious that its rapid dissemination within the social sciences is related to real-world changes that can be traced to the momentous macroeconomic shifts of the 1970s. The neo-liberal project of market-making that was (enthusiastically or reluctantly) pursued by a growing number of national political and economic elites as an answer to the predicaments of economic stagnation, growing unemployment and rising inflation, raised the spectre of the end of the nation-state as we know it (Strange 1996; Ohmae 1995). While the expectation of a stateless world proved to be too pessimistic or optimistic (depending on the perspective), what has come about, especially in the European region, is a regulatory order in which the state and national democratic institutions have come to play other roles than they used to. States now have to share their regulatory powers with a growing number of multinational and supranational organizations and institutes, while being forced by growing societal differentiation and fragmentation to pursue policies of federalization, devolution and subsidiarity, which have enhanced the importance of local polities and local agents. At the same time, due to

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[6] Dictionaries (online and in print) differ only marginally in their definitions of the term governance. Although these definitions might refer to, for example, 'government' or the broader 'governing body', all deal with the administration of authority; the right or power to exercise control over others through, for example, giving orders or making decisions. Understood like this, the concept of governance implies more than its etymological roots, which can be traced back to the Greek verb *Kubernân* – to 'pilot' or 'steer' (Kjaer 2004).

the market-making and market-extending effects of neo-liberal globalization, a growing number of regulatory and decision making tasks that used to be the prerogatives of the Westphalian state have either intentionally or unintentionally been taken over by private agents such as firms, labour unions, employers organizations and other non-governmental agencies.

Since the social sciences are by nature backward looking, there was a certain time lag before these real-world developments actually started to change the conceptual map of such disciplines as political economy, sociology, public administration, international relations and political science. Since the 'shifts' described above touch upon almost every dimension of social life — ranging from procreation to migration — almost every discipline has been confronted with the need for conceptual retooling. Cherished concepts like power, labour, community, society and economy had to be cleansed from their methodological nationalist overtones (Smith 1983; Glick Schiller & Wimmer 2003). The same was true for the concept of 'government' and, vice versa, the concept of 'state'. Since the conceptual history of 'governance' is actually a multitude of 'local' histories, it is hard to capture in one general tale (see also Van Kersbergen & Van Waarden 2001). Nevertheless, three observations can be made that are at the core of the conceptual renewals that were forced upon the social sciences by the developments given above: the demystification of human rationality, the replacement of government by governance, and a multiplication of levels and places of policy making.

DEMYSTIFICATION OF HUMAN RATIONALITY

Functionalism, of each and every shade, presumes an orderly world that is knowable and changeable by rational agents using scientific insights that are neutral and objective. As such, societal changes are supposed to culminate in a way of doing things that will deliver optimal outcomes. If the crises of the 1970s demonstrated anything, it was that human knowledge had proven to be inherently fallible, limited and ideologically blinkered. This 'discovery' not only marked the end of modernization theory, which had proclaimed the ultimate triumph of liberal democracies and capitalist economies (Kerr 1960; Parsons 1966), but also initiated a growing reflexivity among both scientists and policy makers concerning the nature of the knowledge on which they based their interventions. For limits of rationality implied limits of malleability, as was demonstrated by a growing number of large-scale planning disasters (Scott 1998), and hence forced policy makers to look for other instruments to solve societal problems than the top-down approaches of yesteryear that presupposed infallible knowledge. Here, the postmodern critique of empiricist and positivist conceptualizations of scientific knowledge joined hands with the new left critique of undemocratic and paternalist modes of top-down planning of the 1960s and 1970s, and the older conservative critique of rationalism per se, which resulted in an increased 'politicization of scientific expertise' as an answer to the 'scientification of politics' that preceded it (Gouldner 1970; Rueschemeyer & Skocpol 1996; Oakeshott 1962).

REPLACEMENT OF GOVERNMENT BY 'GOVERNANCE'

The shift from government to governance might seem a *contradictio in terminis*, as government implies governance. This shift, however, points to the assumption that governance no longer refers automatically and exclusively to government. The concept of 'governance' was minted in the early 19th century to denominate forms of regulation that closely resembled state regulation – in form as well as in substance – but were undertaken by agents that did not conform to the characteristics of the nation-state, for example colonial governance or the governance of guild-like institutes such as universities and churches. During the 1980s, the term governance re-emerged with a new meaning, now referring to something broader than government. The discovery that states are limited in what they can do and that they are highly dependent on other agents for agenda setting, legitimate decision making and effective implementation, led social scientists in the 1980s to 'discover' that states are not godlike 'unmoved movers' but that they act in a 'shared public space' (Crouch & Streeck 1993). Around that time, it also became increasingly accepted that the dispersal of sovereignty implied by this discovery was not something new, but had, in fact, always characterized each and every state to some degree, raising pressing questions about continuity and change. Nevertheless, a growing conceptual need to decouple state and government arose, since non-state agents increasingly took over tasks and responsibilities that could easily be called 'government' as the concept is understood in the traditional sense. In other words, state and government were no longer identical, raising the question of how to refer to that which non-state agents were doing. And what did the actual distribution of governing tasks imply for the dominant conceptualization of the nation-state as being 'sovereign' within its own territorial jurisdiction? In the early 1980s, after a long period of near total neglect, 'governance' was 'rediscovered' and rapidly taken up to fill this conceptual gap. Here, the older literature on corporatism as well as the more prospective sub-discipline of public administration proved instrumental (Schmitter 1974; Streeck & Schmitter 1985; Rhodes 1997; Pierre & Guy Peters 2000; Pierre 2000; Kjaer 2004).

Many different definitions of governance exist, but they all have in common that they do not point to state actors and institutions as the only relevant institutions and actors in the administration of authority. References to processes and actors outside the narrow realm of government are now included. Depending on the sub-fields of political science, the emphasis differs and therefore points to different debates (see Kjaer 2004). However, they all focus to some extent on the role of networks in the pursuit of common goals. In her book *Governance*, Kjaer discusses the concept and phenomenon of governance in relation to three sub-fields of political science: public administration and public policy, international relations and comparative politics. Next to a focus on networks, Kjaer gives an additional feature that is common to the three academic disciplines: a focus on institutions and institutional change. A common definition of an institution may be: formal and informal rules, behavioural codes and norms that constitute prescriptions ordering repeated, interdependent relations. Kjaer argues that the increasing use of the concept of governance should be seen as a reaction to a change in political practices. The core task for institutional analyses is thus to identify those rules that are relevant to the political phenomenon that one wishes to study. As governance theory more openly explores changes in political practices and their implications for the political rules of the game, governance analysts often explore the nature of governance: is it old or is it new? Has the role of the state declined? And if it has not declined, has it changed? So, according to Kjaer, governance refers to something broader than government, and it is about steering and the rules of the game.

MULTIPLICATION OF LEVELS AND PLACES OF POLICY MAKING

Building upon both the work of German scholars investigating the functionality and dysfunctionality of federalism and the work of international relations scholars investigating the problems of delegation in the case of supranational bargaining and negotiation – which are called 'two-level games' (Scharpf 1988; Benz et al. 1992; Putnam 1988) – an increasing number of students of international law, international relations and international political economy, as well as political science more broadly, started to couch the phenomenon of European integration in terms of multilevel governance (Benz 1998; 2000; Benz & Eberlein 2001; Scharpf 1999; 2003; Hooghe & Marks 2001; Marks 2001; Marks & Hooghe 2004). [7]

Thus, multilevel governance does not only refer to something broader than government; it also refers explicitly to a multiplication of levels and places of policy making. Van Kersbergen and Van Waarden provide an insightful account of this multiplication in their article 'Governance as a bridge between disciplines: Cross-disciplinary inspiration regarding shifts in governance and problems of governability, accountability and legitimacy' (2004; see also Van Kersbergen & Van Waarden 2001). Like Kjaer, Van Kersbergen and Van Waarden base their discussion on a comparison of various scientific approaches to governance. These approaches differ but have characteristics in common. The approaches are pluricentric rather than unicentric; networks play a role (inter- and intra-organizational); there is an emphasis on processes and functions of governing; risks and uncertainties between actors are a matter of concern; many approaches are normative, and many prescribe an ideal as well as an empirical reality (see also Hajer et al. 2004). Next to these characteristics, all of the approaches that Van Kersbergen and Van Waarden studied, identify, hypothesize and discuss one or more crucial shifts in governance (2004 p.152). These shifts occurred both horizontally and vertically.

There were vertical shifts both upward – from the national to the supranational level – and downward, from the national to the sub-national or regional level. The upward vertical shifts deal with formal and informal authority that is situated with international public institutions that have supranational characteristics, such as the EU and the World Trade Organization. Although most attention has focused on shifts from national to international 'governments', we can also observe a comparable shift from national to supranational courts, such as the European Court of Justice, the European Court of Human Rights, the International Court of Justice (which is located in The

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[7] The American political scientists Gary Marks and Liesbeth Hooghe identified in a review paper two 'contrasting visions of multilevel governance' in the EU and beyond (Marks & Hooghe 2004). The first type of governance system retains the territorial basis of the Westphalian state as well as its general-purpose orientation, but distributes jurisdiction, responsibility and power over a limited, well-defined number of sub-national and supranational territorial levels, namely the local, the national, and the supranational or regional level. In one normative vision of the EU's future, European citizens become subjects of three, well-defined, territorial polities simultaneously. The other type of system is less easy to qualify because it dispenses with the transparency of territorial organization. Instead, in this vision, multilevel governance systems are conceptualized as functionally based, overlapping and temporary. In this explicitly post-nationalist perspective, problem solving is the dominant orientation, while 'exit' is its dominant virtue. Both models have various fields of application. While the first type, in one form or other, predominates in the seemingly endless discussions on how to characterize the EU, scholars more interested in other fields of supranational decision making tend to lean towards the second model.

Hague) and the judicial agency of the WTO (Van Kersbergen & Van Waarden 2004 pp. 152,153). At the same time, we see a related downward vertical shift to the local and regional level. Van Kersbergen and Van Waarden assert that this is in part related to the internationalization shift, as international bodies rely on local agencies to implement and enforce their regulations and therefore tend to strengthen them. The multilevel approach to governance tends to emphasize the independent role of supranational and sub-national actors, next to national governments, in the formation and implementation of, for example, European policy (e.g. Hooghe & Marks 2001). Hajer and colleagues (2004) argue that this institutional approach does not do justice to more informal, horizontal policy processes. They put forward that the EU facilitates the creation of new and alternative political spaces next to or complementing existing institutional practices in which both public and private actors participate. According to Van Tatentenhove and Liefferink, multilevel governance therefore refers to 'the sharing of policy-making competences in a system of negotiation between nested governments at several tiers (supranational, national, regional and local) on the one hand and private actors (NGO's, producers, consumers, citizens, etc.) on the other'(in: Hajer et al 2004 p.18)

The growing interweaving of the state with civil society and the market, a process of socialization as well as a commercialization of policy, has thus led to the emergence of all sorts of 'multi-actor governance'. The vertical shift is complemented with several horizontal shifts. We can observe a horizontal shift from public to semi-public and private organizations, as well as from the legislative bodies proper to the judicial bodies, and from command and control to contract and negotiation (Van Kersbergen & Van Waarden 2001, 2004). The commercialization of policy comes to light in, for example, the establishment of a bureau for public–private cooperation by the Ministry of Agriculture, Nature Management and Fisheries, and in the recent emergence of green business and green entrepreneurship. The socialization shows itself especially in the emergence of more participatory modes of policy making, with an increasing emphasis on negotiations and trade-offs between the various stakeholders involved.

These vertical and horizontal shifts often take place simultaneously and form complex connections: the national government not only has to reckon with the market and with civil society, but also has to take account of higher and lower administrative bodies. As a consequence of this double shift, the number of administrative layers as well as the number of public and private players increased significantly. In summary, the state is no longer omnipotent and omniscient, it has lost its monopoly on policy making to other public and private agents, and it has increasingly become embedded in a multilevel and multi-agent governance structure that combines territorial and functional modes of organization in complex ways.

Governance, whether seen as an analytical model or as a steering theory, provides us with a perspective that allows us to be sensitive to the many actors that are involved, at different levels, in the realization and alteration of policy. We have seen that the replacement of government by governance is not per definition something new, but refers to a growing conceptual need to decouple state and government, as non-state agents are increasingly seen to function as 'government' in the more traditional sense. Furthermore, the demystification of human rationality and actual changes in the levels and places of policy making provide the concept of governance with a relevant perspective to be sensitive to issues of legitimacy.

3.3 GOVERNANCE IN DUTCH NATURE POLICY/CONSERVATION

Framing Dutch nature conservation policy as one of governance has become commonplace. The last decade saw the appearance of a multitude of publications and reports that explicitly frame Dutch nature conservation policy and practices as governance (see e.g. Van den Top & Van der Zouwen 2000; Kuindersma 2002; Van der Zouwen 2006; Hajer et al. 2004[8]; Boonstra et al. 2006; De Boer et al. 2007; Van Bommel 2008; Beunen 2010). These studies point to a situation in which nature conservation policy and practices are the domain of a diversity of actors that operate at international, national and regional levels (also see Hajer et al. 2004, De Boer et al. 2007).

The assumption that Dutch nature conservation takes place in a multilevel and multi-actor setting seems uncontested. However, governance in Dutch nature conservation, understood as something broader than government, is not necessarily something new. As we saw in Chapter 2, nature conservation has always been the domain of a diversity of players, of which the various levels of government have not always been the most influential. Framing Dutch nature conservation as governance thus does not necessarily indicate an empirical shift, but should certainly also be seen as an attempt to analyse the dynamic character of Dutch nature conservation and of the related policy as they move between the various levels, actors and places of policy making. These dynamics lead to new forms of governance.

The dynamic multilevel and multi-actor governance character of Dutch nature conservation and the subsequent new forms of governance can be illustrated by looking at the realization of Natura 2000. Natura 2000 is the cornerstone of EU nature and biodiversity policy, which aims to ensure the long-term survival of Europe's most valuable and threatened species and habitats. The envisaged result is a network comprised of Special Areas of Conservation (SAC) designated by Member States under the 1992 Habitats Directive, and that also incorporates the Special Protection Areas (SPAs) designated under the 1979 Birds Directive. These directives are the core of EU nature conservation policy and illustrate the transnational problems that are felt regarding the protection of nature and biodiversity. Natura 2000 gives nature conservation in the Netherlands an explicit international dimension. Moreover, the Netherlands played a significant role in the international ratification of the Habitats Directive. The striving for European integration and the felt need to protect European nature were important arguments for the Dutch input (Van der Zouwen & Van Tatenhove 2002, Wurzel 2008). What is more, the Habitat Directive provided an opportunity for the Netherlands to make its mark in the European arena. This objective was reached, as it was under the Dutch presidency that political agreement was arrived at. As a result, the idea of a network of nature reserves – the main characteristic of the Dutch National Ecological Network, which was introduced in the 1990 NPP – was successfully uploaded to the European level. However, the irony is that, despite the Dutch character of the Habitats Directive, the implementation of the directives in the Dutch context is rather problematic. The difficulties with the implementation of the Birds and Habitats Directives (BHDs) became especially manifest after 1998, the year that the Netherlands was convicted by the European Court of Justice (ECJ)

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[8] Hajer and colleagues do not address Dutch nature policy specifically, but investigate the concept and phenomenon of governance in relation to food security and regional spatial development.

for failing to implement the BHDs. Until 1998 the ministry of Agriculture, Nature Management and Fisheries (Landbouw, Natuurbeheer en Visserij - LNV) did not prioritize the implementation of the BHDs, as it assumed that Dutch policy already covered the main elements of the EU directives. The National Ecological Network (NEN) and Natura 2000 superficially have a lot in common. Both envisage a network of nature reserves, and, moreover, Natura 2000 reserves in the Netherlands fall largely within the boundaries of the NEN. However, the 'demystification of human rationality' that also got a hold on Dutch nature policy does not equate with the more sectoral – science based – approach of the BHDs. As we saw in Chapter 2, the 1990 Nature Policy Plan was branded a textbook example of top-down planning (Wetenschappelijke Raad voor Regeringsbeleid 1998). On the assumption that it is up to scientific experts and not to ordinary citizens and politicians to determine the direction of nature policy, the starting point of the entire process was ecological knowledge of the various ecosystems and the environmental conditions in which they are viable. However, as soon as it became clear that the interests of many local stakeholders would be substantially affected, the implementation process was frustrated and became delayed. In response, the government gradually abandoned its centralist, top-down steering approach and increasingly switched to methods of participatory and interactive policy making (Keulartz 2009). In the successor to the NPP (i.e. Nature for People, People for Nature), the Dutch government explicitly places the responsibility for achieving the nature conservation goals also with societal actors, and seeks cooperation instead of employing a predominantly top-down approach. Although the concept of the NEN remains intact and there is still a strong scientific emphasis, the overall approach has been significantly broadened from intrinsic values to aesthetic and instrumental values (see Raad voor het Landelijk Gebied 1998; Ministerie van Landbouw, Natuurbeheer en Visserij 2000). Due to this broadening, Dutch nature policy is no longer in line with the European nature directives, which require that the designation of SACs and SPAs ought to occur on the basis of scientific criteria only (Van der Zouwen & Van Tatenhove 2002). Moreover, the Dutch interactive 'green polder model' appears to be at odds with the much more rigid European policy model (Van den Top & Van der Zouwen 2000).[9] The fact that this European dimension was not taken into consideration in the Dutch context is illustrated by its absence from the decentralization[10] initiatives regarding the NEN. Since the ensuing IPO/LNV covenant in 1997, the province has become the agency responsible for realizing the national ecological network – a responsibility that originates with the national authorities. However, in the agreement between the twelve provinces and the Ministry of Agriculture, Nature Management and Fisheries (IPO/LNV Covenant), in which the particularities of decentralization are discussed, no attention is given to the implementation of the BHDs.

After issuing several warnings, the European Commission eventually lost patience, and in 1998 the ECJ convicted the Netherlands for failing to make progress. This was a turning point

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[9] The Natuurbalans 2002 concludes: 'The Dutch policy of nature development does not mesh well with the European policy of nature conservation' (Milieu- en Natuurplanbureau 2002).

[10] The decentralization of responsibilities regarding the NEN is part of a broader decentralization movement that started in the 1980s. It resulted from the need for better governance in terms of democratic legitimacy, effectiveness and efficiency (see Fleurke et al. 1997:9).

(see Arnouts & Arts 2009 p.219). The ECJ conviction showed how powerful the EC actually is. It clarified the rules of the game and showed the discrepancy between the Dutch and the EU approach to nature conservation. After the conviction, the ministry had no choice but to immediately implement the BHDs by adapting Dutch legislation and designating new areas. The ECJ conviction and increased efforts on the part of the government to implement the BHDs mobilized new actors. Arnouts and Arts (2009; p.222) speak of an 'overload of actors' – governmental and non-governmental, provincial and local. These actors, both adversaries and advocates, started to interfere in the policy processes, as they felt that their interests were at stake. Advocates of the BHDs, such as the Netherlands Society for the Protection of Birds (Vogelbescherming Nederland), Nature Monuments and the State Forest Service, saw this as an opportunity to stress the necessity of international protection; whereas the adversaries feared restrictions on further development in the assigned areas. The adversaries consisted not only of such obvious parties as agricultural organizations and NGOs that represent Dutch entrepreneurs, but also of people in ministries, such as that of Economic Affairs, Finance and Defence. The Ministry of Agriculture, Nature Management and Fisheries had to deal with both sides, while meeting international obligations. The ministry upheld its integral approach by trying to balance the interests of both adversaries and advocates of the strict ecological approach of the BHDs.

To solve the implementation problems at lower policy levels, the Ministry established the Targets and Management Project (Project Doelen en Beheer). This project aims to translate the directives to the lower administrative levels, while involving provincial and local stakeholders. Under the supervision of the twelve provinces, the Government Service for Land and Water Management (Dienst Landelijk Gebied) and the State Forest Service are to formulate a management plan for each of the assigned areas. The plans are to clarify what activities will be allowed in and around these areas, and how the nature goals are to be realized. Whereas the management plans needed to be finalized in 2013, the definitive designation of the 162 Natura 2000 areas had to be finalized in 2010.

Although the first responses from the field were positive, because people felt that their problems were being taken seriously (Arnouts & Arts 2009), the controversy regarding Natura 2000 continues. In January 2010, a Dutch newspaper published a story based on confidential correspondence between former Prime Minister Balkenende of the Netherlands and former president of the European Commission Barosso (see Janssen & Van Lieshout 2010, January 9). In his letter, Balkenende pleas for a more lenient implementation of Natura 2000, as the European nature directives inhibit or exclude economic activities. This news triggered reactions from within both politics and society. Part of the turmoil was caused by the fact that the Dutch prime minister had addressed the president of the European Commission on behalf of the Dutch government without the knowledge of the Dutch parliament. But the prime disquiet concerned the request itself. Although the prime minister's request was seen as an opportunity by the CDA (Christian Democratic Party) and the VVD (Liberals) to redress the problematic Natura 2000, the request was broadly criticized. Labour representative and member of parliament Diederik Samson labelled the prime minister's action 'an awkward, unwanted and luckily failed attempt to undermine nature conservation' (see Trouw 2010). Kees Bastmeijer, professor of Nature

Conservation and Water Law, calls Balkenende's request 'remarkable', as the cabinet had repeatedly expressed its concern regarding the ongoing decline of biodiversity and is an avid advocate of the implementation of the BHDs (see Janssen & Van Lieshout 2010, January 9)). According to Bastmeijer, the Dutch government explicitly distances itself from Natura 2000, the most important tool to halt the loss of biodiversity (see Janssen & Van Lieshout 2010, January 9).

The brief elaboration on Natura 2000 shows us that Dutch nature policy takes shape in a dynamic international governance setting. Nature policy is increasingly a result of the interplay between various layers of government: the European, national and local levels. At each level, public and private players try to influence policy on and the implementation of nature conservation. The scale of many of the environmental problems gives rise to complex internationally orientated governance settings. Already in 1997, the former Dutch minister De Boer of Housing, Spatial Planning and the Environment (Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer - VROM) maintained that 50% of the legislation and the policy with respect to environmental protection originates directly from Brussels and that this will only increase in the future (Van den Top & Van der Zouwen 2000). However, we also see that its success depends on realization on the ground, and that in the confrontation between various levels of government new governance practices emerge. The Natura 2000 example illustrates the contested formal and practical dependency between the local, regional national and international levels. The formal connections expressed through the BHDs and national legislation imply that local practices need to be in tune with national and international obligations. At the same time, local, regional and national conservation practices make essential contributions to international ambitions to safeguard biodiversity. We subsequently observe that formal international requirements are contested at the national levels and that the effectiveness of national practices are questioned at the international level. This not only equates with the concept of 'multilevel' and 'multi-actor' governance, but also raises the issue of legitimacy.

3.4 REFLECTIONS ON LEGITIMACY

The concept and phenomenon of governance provide us with a frame of reference that is sensitive to the many levels and actors that influence policies, directives, legislation and other plans that have an impact on our lives. It makes us ask not only who is responsible, but also who is accountable for the success (or lack of such) in solving societal problems and safeguarding the public good.

Governance in Dutch nature policy, as something broader than government, is nothing new; however, it does help us to recognize the various administrative levels and actors that are involved. The concept of multilevel and multi-actor governance provides in any case an approach to studying Dutch nature policy practices that are sensitive to the many organizations, authorities and individuals that operate in relation to each other at the various administrative levels that we can distinguish in the Netherlands and Europe. These vertical and horizontal shifts often take place simultaneously and form complex connections: the national government not only has to reckon with the market and with civil society, but also has to take account of higher and lower administrative bodies.

In the introduction, I stated that legitimacy is characteristically a problem when the prevailing power and authority structures change. A change in authority confronts people with that authority; it might change the underlying conventions, which might trigger close scrutiny of that authority, or it may make people aware of initial implicit acceptance. The governance debate shows us exactly that. Shifts in governance require shifts in legitimacy.

THE NEED FOR NEW MODES OF LEGITIMACY PRODUCTION

The shift from government to governance along horizontal and vertical axes has widened considerably the gap between two opposing views of democracy that have kept political philosophy divided for a long time (see Engelen et al. 2008). In one view, the representation of citizens in state organizations is supposed to be as direct and proportional as possible in order to honour as completely as possible the claims of the majority of the population in political decision making. In the other view, the quality of a democracy is judged by the extent to which minority rights are guaranteed. To face the possible danger of a 'tyranny of the majority', this view advocates a strict division of powers in combination with an elaborate system of checks and balances. Supporters of the first view will to an increasing degree have to cope with a serious credibility problem. Their ambition to maintain or restore the primacy of representative democracy now seems devoid of the necessary sense of reality, especially if the European dimension is taken into account. Apart from being impracticable, this ambition also seems undesirable because the increase in democratic legitimacy would inescapably go hand in hand with a decrease in administrative effectiveness. Supporters of the second view have, in a sense, to cope with the opposite problem. In present circumstances, their proposals show a greater sense of reality than those of the advocates of an unconditional primacy of representative democracy. After all, they do not adhere to the idea that there is only one single model of democracy, but on the contrary embrace the idea of a large variety of policy arenas and political forums with various forms of representation and accountability. Even though the administrative effectiveness will no doubt be enhanced by such a pluralist system, the democratic legitimacy of decisions will be in jeopardy because of a lack of transparency – the notorious 'back-room politics', as it is called in the Netherlands (Akkerman et al. 2000). This state of affairs stresses the empirical and theoretical need to find new modes of legitimacy production (see Engelen et al. 2008).

A useful distinction in the pursuance of new modes of legitimacy production is that made by Fritz Scharpf between input-orientated and output-orientated legitimacy (Scharpf, 1997 152-5). This distinction indicates that legitimacy may be derived from 'democracy' as well as from efficiency. Input-orientated legitimacy looks for the agreement of those who are asked to comply with the rules. Output-orientated legitimacy derives from the effectiveness of rules to produce tangible results. Hence, input-orientated legitimacy arguments concern, in a democracy, the establishment of democratic procedures, accepted by a majority, for taking collectively binding decisions; while output-orientated arguments refer to substantive criteria of good government, in the sense that effective policies can claim legitimacy if they serve the common good. This implies that legitimacy is dependent on success and thus that governability – the capacity to solve problems – is a precondition for overall legitimacy (see also Van Kersbergen & Van Waarden 2004). Legitimacy in such a situation thus asks not only for effectiveness but also for flexibility on the input side of policy and its implementation.

I will discuss and elaborate on the distinction between input- and output-based legitimacy in detail in Chapter 5, and will complement this distinction by adding a third dimension: throughput legitimacy, which addresses the quality of the process of decision making. For now, I want to stress that governance has an inherent normative component that is based on democratic rules and procedures on the one hand, and efficiency in realizing outcomes that benefit the common good on the other hand.

What is clear is that the Dutch situation does not stand on its own. Nature conservation in the Netherlands has particular characteristics, but it has the same obligations as other EU Member States with respect to Natura 2000. An international perspective is necessary as many of the conservation problems and challenges transcend national borders. If we want to realize the desired outcomes on a national and an international level, cooperation and coordination at a transnational level is necessary. At the same time:

> *The region should be involved in the implementation of European nature policy. National policy should be judged from the European policy perspective, the region should be open to external initiatives and on the European level there has to be receptiveness to regional input. Coalitions have to be 'cross-scale', discourses and rules should be geared to each other and there has to be a balance between hierarchical control and bargaining within projects on regional level.*
> (Van der Zouwen & Van Tatenhove 2002, p.7)

Because the Dutch situation should not be seen in isolation from its EU context, in Chapter 4 I will discuss the issue of legitimacy in the context of the EU. What we will see, again, is that shifts in governance require shifts in legitimacy.

4

AN INTERNATIONAL PERSPECTIVE

4.1 INTRODUCTION

Although nature protection in the Netherlands is unique in many respects, the Dutch situation is not one of isolation. On the contrary, nature protection is an international phenomenon; moreover, it is one of shared responsibility and interdependency. At the European level this can best be illustrated by the joint effort to protect valuable and endangered species and habitats through the realization of the Natura 2000 network. For this reason, an international perspective might aid in understanding the issue of legitimacy in the Netherlands.

The international context presented in this chapter is primarily based on *Legitimacy in European Nature Conservation Policy* (Keulartz & Leistra 2008), a collection of nine EU case studies followed by in-depth comments upon them. The case studies were presented during a workshop that was organized with the purpose of contributing to the research presented in the book. Scholars from within the EU were invited to reflect upon legitimacy in relation to nature conservation. The scholars departed from a general conception of legitimacy, much like the problem conception as set out in Chapter 1, and were given the challenge to reflect upon the problem of legitimacy in the context with which they are most familiar. We deliberately left the conceptual interpretation of the concept of legitimacy to the participants, as it was one of the objectives of the workshop to clarify the various dimensions of legitimacy in relation to nature protection.

The workshop resulted in a kaleidoscope of images and reflections: two case studies on protected species (wintering geese in the Netherlands[11], and the great cormorant in Denmark, France and Italy), four on specific protected areas (in Spain, Finland, Poland and the UK), and three on the implementation of Natura 2000 at the country level (Belgium, France and Germany). In the book, these case studies are followed by extensive comments. The final chapter situates these contributions within the wider EU environmental policy and political context.

In this chapter, two thematic threads that surfaced in the book are discussed and illustrated by some of the case studies. The first thematic thread – 'democratic duality in a post-normal world' – is discussed in section 4.3. The case studies show both top-down and more deliberative approaches to nature conservation. Although both approaches are contested, they are deemed necessary in the highly controversial policy arena of nature conservation. The second thematic thread – 'conflicting interests and ideas' – is discussed in section 4.4. In section 4.5, I discuss how the outcomes of this book have focused my understanding of legitimacy. But first, I present the context of European nature conservation.

4.2 EUROPEAN NATURE PROTECTION

Europe is rich not only in history and culture but also in nature. Its natural diversity, which is often shaped, moulded and influenced by human activities, has significant ecological, aesthetic and

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[11] The case of wintering geese in the Netherlands is also presented in this work (Chapter 6). This case study evolved throughout the research. It was a test case in exploring the problem of legitimacy and guided my search of the relevant literature. The case study also benefited from the input that was given during the workshop. The workshop also provided new ideas about and insights into how to understand and frame legitimacy; this is dealt with in Chapter 5.

economic value. Due to the continuing deterioration of natural habitats and the threats posed to certain species, the preservation, protection and improvement of the quality of the environment, including the conservation of natural habitats and of wild fauna and flora, have increasingly become objectives of environmental policy making at the level of the EU. Emblematic of this newly felt responsibility is the fairly recent Natura 2000 initiative, which aims at creating a coherent European-wide network to protect the most valuable nature areas in the EU. The creation of this network is undoubtedly one of the most ambitious supranational initiatives for nature conservation worldwide and forms the cornerstone of EU nature conservation policies.

The idea of Natura 2000 was first broached in Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. This directive – the Habitats Directive – states that in order to ensure the restoration or maintenance of natural habitats and species that are of interest to the Community, it is necessary to designate Special Areas of Conservation (SACs) to create a coherent European ecological network. In addition, it was decided that the Natura 2000 network would also incorporate Special Protection Areas (SPAs), whose designation would be up to the member states in accordance with Council Directive 79/409/EEC, which is better known as the Birds Directive.

The Birds Directive, the precursor to the Natura 2000 initiative, was the first piece of EU legislation in the field of nature conservation. It reflected international indignation over the killing of migratory birds, especially in the Mediterranean area, in such numbers that their survival was endangered. Research had demonstrated that more than half of the bird species in Europe were in decline. Although the directive was an uncomfortable compromise between the ecological value of protection and the economic value of exploitation, it was still perceived as a great step forward (Osieck 1998): not only was it the EU's first action in this field, but it also forced all member states to commit themselves to protect more than 200 endangered bird species as well as the areas that were crucial to the species' survival.

Natura 2000 should be seen in the broader context of the international commitments that the EU and its member states have made. The most important of these are the 1992 Convention on Biodiversity (CBD), the 1971 Ramsar Convention on Wetlands and the 1979 pan-European Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention). The 1992 Convention on Biodiversity (CBD) – which was signed by 150 government leaders at the 1992 Rio Earth Summit and is dedicated to promoting sustainable development – resulted in the EU's commitment to stop the decline of biodiversity within its territory by 2010. The Convention on Wetlands (signed in Ramsar, Iran, in 1971) is an intergovernmental treaty that provides the framework for national action plans as well as international cooperation, aimed at the conservation and sustainable use of wetlands and their resources. The Bern Convention launched the idea of a pan-European network of protected habitats, which is known as the Emerald Network. The Bern Convention and Natura 2000 have similar objectives, since both are international legal instruments aimed at the conservation of wild flora and fauna and natural habitats. Their main difference concerns the territory to which they apply. The Emerald Network envisages a network of Areas of Special Conservation Interest (ASCIs) in Europe and parts of Africa, while Natura 2000 focuses only on EU member states.

The Habitats and Birds Directives form the most important legal framework in the field of nature conservation in Europe. The directives are legally binding texts that require the individual member states to translate them into national legislation. As with other EU directives, they give member states a significant amount of leeway as to the exact rules to be adopted. If a member state fails to pass the required national legislation, or if the national legislation does not adequately comply with the requirements of the directive, the European Commission can initiate legal action through the European Court of Justice (ECJ). Although significant successes have been achieved, reflecting the largely uncontested character of the overall goals of Natura 2000, implementation problems have been encountered in various EU member states. The difficulties and delays that have beset implementation in the 'old' 15 EU member states (i.e. states granted EU membership before May 2004) have resulted in several member states – including Denmark, Finland, France, Germany, Greece, Ireland, and the Netherlands – being taken to the ECJ by the European Commission for failure to submit lists of designated sites in accordance with the Habitats Directive (Paavola 2004).

There are several reasons why the implementation throughout the EU is causing growing problems. In analogy to the Dutch NEN, the scientific legitimation underlying Natura 2000 has proven to be both a strength and a weakness. To its benefit, Natura 2000 can claim strong support from ecological experts in other supranational and national conservation organizations. The World Wildlife Fund (WWF), for example, 'strongly support[s]' the establishment of Natura 2000, as it is perceived to be a 'real attempt to conserve Europe's biodiversity [...]. The sites will not just be a collection of national or regional parks designated for a variety of reasons' (de Pous & Beckmann 2005: 3). However, the scientific legitimation of Natura 2000 is also a source of weakness, because the scientific ecological concepts underlying the Natura 2000 network seem to invite a technocratic, top-down mode of policy making that is increasingly being rejected by local constituencies as too insensitive to local interests, too paternalistic for modern tastes and too elitist for modern democracies. Low political priority and a tight implementation schedule have in many cases made the implementation process even more problematic, forcing governments to speed up the process and to limit the extent to which local interests can collectively decide on it (Paavola 2004). A lack of communication, information and recognition has added to national and local resistance to the implementation of Natura 2000. In France, for example, the lack of communication outraged local stakeholders, who questioned both the science-based site designation and the quality of the information on which the designations were based (Alphandéry & Fortier 2001). Of a different nature are the challenges faced by the new member states. Many of the Natura 2000 sites proposed in the accession countries have been under threat, not only because EU nature conservation policies are poorly integrated with other sectoral policy making trajectories, but also because the available resources and regulatory capacities are limited (de Pous & Beckmann 2005).

In other words, the EU's evident legislative success in the field of nature conservation policies upstream has increasingly been frustrated by highly politicized decision making downstream, which has resulted in delays, deadlocks and even out-and-out resistance. In response, member states have increasingly resorted to more participatory forms of decision making. Public consultation, interactive governance, and deliberative democracy are some of the key models that are currently being used in many member states to overcome opposition, enhance the legitimacy of policy outcomes, increase the quality of decision making and facilitate implementation.

The experts who participated in the workshop and contributed to the book were invited to reflect upon this state of affairs and the way in which 'legitimacy' is being 'produced' within the country that is their main object of study. The expectation was that we would observe in most member states a shift from substantive sources of legitimacy to more procedural ones, implying a shift from top-down policy making by experts and bureaucrats to a more bottom-up mode of policy making through democratic deliberation (see section 3.4). The assumptions underlying this expectation are easy to identify. First, there is the increasing politicization of nature conservation policies as soon as they hit the ground: what is easily perceived as a mere technical issue upstream appears to have strong distributive consequences downstream. Since most EU directives in the field of nature policy making have reached the downstream phase of the policy trajectory, we would expect increasing politicization and, hence, an urgently felt need on the part of policy makers for new modes of legitimacy 'production'. Second, the cause behind the shift from substantive to procedural sources of legitimacy has to do with the increasing delegitimation of scientific expertise, as a result of both the postmodern relativization of scientific truth claims and the increasing politicization of scientific prescriptions (see Chapter 3).

4.3 DEMOCRATIC DUALITY IN A POST-NORMAL WORLD

The expectation that we would observe a shift from substantive sources of legitimacy to more procedural ones – implying a shift from top-down policy making by experts to a more bottom-up mode of policy making through democratic deliberation – was confirmed in the contributions from the participants in the workshop. However, this course of affairs has not been appraised without criticism. Participation is not a panacea, but brings its own challenges, such as representation deficiencies and downscaling of the original, more ambitious objectives. These problems can be illustrated by the case studies of France (Pinton 2008), Spain (Aguilar Fernandez 2008), Poland (Chmielewski & Krogulec 2008) and Flanders (Bogaert & Leroy 2008).

In France, the very first effort made by the government to implement Natura 2000 met with fierce resistance. A sharp distinction was initially made between, on the one hand, the compilation of national inventories by scientists and their validation at the European level , and on the other hand the consultation involving other rural stakeholders in defining, drawing up and developing management plans for these sites at a later stage. So the implementation of Natura 2000 in France at first favoured the scientific dimension at the expense of the social dimension, thereby provoking strong opposition from a powerful alliance of hunters, foresters, farmers and fishermen that reached its peak in March 1996, when the administration presented its final list of sites covering 13 per cent of the national territory. The protest led to the suspension of the inventory procedure for several months in 1997. To resume dialogue with the various stakeholders, the procedure was thoroughly revised. The consultation process, initially limited to management plans, was broadened to include the selection and size of sites. As in most other European countries, what took place was a shift from substantive sources of legitimacy, in particular scientific expertise, to procedural sources of legitimacy, such as consultation, negotiation and deliberation. In her chapter, Florence Pinton (2008) describes some consequences of this shift for the implementation of Natura 2000 in France. She presents a somewhat mixed picture. Although the new system appears to be locally accepted, the total area of sites proposed to the EU dropped from the initial figure of 13 per cent in 1996 to 7 per cent at the end of 2002. Despite a number of innovations that have opened up space for new and promising forms of cooperation, mutual learning and consensus building, Pinton comes to the conclusion that the situation at the moment is far from ideal due to the very low involvement of scientists and experts and the fragmented representation of environmental and nature protection interests.

Similar outcomes can be observed elsewhere in Europe. For instance, in Spain the shift from a top-down to a bottom-up approach took place at the expense of 'good' nature conservation (Aguilar Fernandez 2008). Here, in an atmosphere of 'building fever', pro-development interests, which had formed a powerful alliance with civic authorities, farmers, and cattle breeders, were able to severely reduce the effectiveness of nature conservation policy. Aguilar Fernandez shows how the change in approach to nature policy from a national top–down style to a more decentralized framework with additional regional control, did not necessarily lead to the implementation of improved nature policies or outcomes. The author cites the inability of Spain to meet the aims of the EU's nature policies as being influenced by ineffective coordination and accountability at the national, regional and local levels. She discusses numerous occasions when problems with too much interest in short-term, often economic and production-related gains occurred to the detriment of long-term ecological health. She concludes that 'broad social participation (input legitimacy) and even impeccable environmental governance do not necessarily produce good policies (output) legitimacy' (Aguilar Fernandez 2008 p. 99).

This pattern recurred in the new EU member states. A good example is Poland, one of the 10 countries that joined the EU on 1 May 2004. Here, the initial list of Natura 2000 sites covered about 20 per cent of the country's area. However, because of severe criticism of the designation process from local authorities, foresters and water management institutions, the final national list prepared for submission to the European Commission was reduced to about half its original size (see Chmielewski & Krogulec 2008).

In his comments on Pinton's study, Henk van den Belt (2008) makes two remarks that can easily be translated to the other cases presented above. First, Van den Belt notices that the shift in emphasis from a top-down to a bottom-up approach throughout Europe seems to go hand in hand with a 'dilution' of the original nature goals, quantitatively (in terms of hectares) as well as qualitatively (from deeper to lighter shades of green). Second, he questions the democratic quality of the consultation process with local stakeholders. He has strong reservations about the credibility of claims that the local knowledge of farmers, foresters and hunters is more adequate than 'abstract' and 'formal' scientific knowledge. Furthermore, he contends that the consultation process is about bargaining rather than arguing. It falls severely short of the criterion of democratic inclusiveness because the fate of nature and biodiversity is actually placed in the hands of that 10 per cent of the population who happen to live in the countryside. The legitimacy of nature policy is therefore not automatically guaranteed when procedural initiatives are in place.

Not unlike Henk van den Belt, Wim Dubbink (2008) alerts us to the danger that too much stress on interactive policy will hold politicians and policy makers hostage to local interests at the expense of broader interests, in particular the interests of future generations in a healthy and beautiful natural environment. Furthermore, the inclusion of a wide range of stakeholders in the policy making process is usually costly and time consuming. It may therefore delay the urgently needed adoption of policy measures, such as protection measures for species that are on the verge of extinction (Wurzel 2008, 274). Whereas procedural approaches have the potential to strengthen democratic legitimacy, the argument of Van den Belt and Dubbink addresses the need for effective solutions for which democratically elected authorities have a responsibility.

The implementation of Natura 2000 in Flanders is also one of problematic execution, although the authors draw a conclusion that differs from that of the authors of the previous cases (see Bogaert & Leroy 2008). Due to a lack of public support, the implementation of the Flemish version of Nature 2000 – the Green Main Structure (GMS) – failed. As Europe expected Flanders to take its part in Natura 2000, the aim of an ecological network remained on the Flemish political agenda. Hence, the Flemish Ecological Network (FEN) that was launched after the failure of its precursor, was in fact a kind of replica of the former initiative. With lessons drawn from the policy disaster of the GMS, a uniform policy implementation and a clear communication plan were identified as crucial for acquiring legitimacy. However, despite the lessons learned from the former failure, implementation of the FEN also ran into severe difficulties. Because the policy design made no clear distinction between the issues of allocation, location and joint use, it provoked simultaneous protest and debate at all levels and on all issues. In addition, political disagreement led to incompatible rules for public participation, which increased obstruction rather than reduced it. As a result, the handling of the FEN significantly damaged the legitimacy of Flemish nature policy.

Bogaert and Leroy acknowledge the problematic implementation of the FEN, but they also stress the necessity of a deliberative approach. The authors draw an interesting conclusion in that they hold that it is not the content that causes the problem. They argue that people and societal organizations differ and will continue to differ with regard to their preferences as to the quality of the environment, the future of rural areas, and the weighing of different interests such as agriculture, nature conservation, hunting and recreation. Nonetheless, they believe that it is not this eternal controversy over content that has caused legitimacy decline in Flanders, since in the end a fair and pragmatic settlement between competing values and goals can be accepted by different parties. It is rather the lack of clarity and transparency that provokes irritation and unrest. On top of that, recent Flemish nature policy has handled and managed nature policy processes in a rather awkward way, in particular regarding the compatibility of GMS and FEN. Bogaert and Leroy's analysis provides illustrations of the sloppy management of the launching, withdrawal, amending and redesigning of strategies, even with regard to such basic questions as how to proceed, how to decide who will be involved, and when and at what level what decision on which issue will be taken. The inconsistent answers given to these and related questions have resulted in a situation in which nature policy planning is perceived by the public as unpredictable and unreliable.

Bogaert and Leroy's analysis addresses a problem that has been around for some time. For example, Cohen and Uphoff argue that there is a real danger that with faddishness and a lot of lip service, participation could be drained of substance (Cohen & Uphoff, 1980: p.213). Although participatory processes have the potential to improve governance (Van den Hove 2000), the realistic concern is that participation – a legitimate democratic tool – may lose its potential to realize democratic legitimacy if it is not deployed adequately. This problem is demonstrated by Bogaert and Leroy in the case of Flanders. They argue that as a result of the contingent character of environmental problems there is the need for a sound process, or throughput legitimacy; next to a need for input legitimacy and output legitimacy.

Interestingly, the arguments given by Van den Belt and Dubbink are used to criticize the impact of deliberative approaches, while those given by Bogaert and Leroy, which stress the necessity of these same approaches, jointly epitomize the post-normal condition in which facts are uncertain, values are in dispute, the stakes are high and decisions are deemed urgent (Ravetz 1999; Funtowicz & Ravetz 1993; see also Chapter 1). Van den Belt and Dubbink stress the need for effective solutions in relation to pressing issues like the extinction of species and, as such, exemplify the last two characteristics of the post-normal condition: high stakes and urgent decisions. Bogaert and Leroy exemplify the first two characteristics – uncertain facts and disputed values – by stressing the need for deliberative approaches, as people and societal organizations differ, and will continue to differ, with regard to their preferences.

Both camps stress the democratic legitimacy of governance practices, but the emphasis lies with distinct faces of democratic authority. Whereas Van den Belt and Dubbink address the need for effective solutions (or output legitimacy), Bogaert and Leroy emphasize the need for qualitative deliberation (or throughput legitimacy). The necessity of both seems apparent. However, the question remains how these different dimensions of democratic legitimacy can complement each other and where eventual trade-offs are necessary and fruitful.

4.4 CONFLICTING KNOWLEDGE, INTERESTS AND IDEAS

Bogaert and Leroy's argument for sound deliberative approaches is based on the fact that people differ and will continue to differ regarding what they value. This situation of 'diversity' is also one of the thematic threads that surfaced in *Legitimacy in European Nature Conservation Policy*. We see that nature management conflicts can be aggravated not only by differences in values, but also by differences in the kinds of knowledge, interests and ideas that the various stakeholders have. Especially problematic is the contrast between the universal, science-based knowledge on which EU nature policy has so far relied heavily, and local, experience-based knowledge (Wurzel 2008, 275). In the previous chapter and the previous section, we saw that the increased participation of stakeholders has gone hand in hand with a strong decline in scientific participation, because scientific expertise lost credibility in the early stages of the policy implementation process. It is not uncommon to see the two types of knowledge trading places (see e.g. Rauschmayer et al. 2009).

Next to different kinds of knowledge, we see that the problems that were addressed in the previous section were partly caused and partly aggravated by conflicting member state interests and conflicting social interests. For instance, nature protection measures for endangered species may have triggered unintended negative consequences for other species or for legitimate societal interests, such as fishing or farming. This can be illustrated by the case of the great cormorant (see Rauschmayer & Behrens 2008, 57). As a result of shooting and habitat destruction, in the 1960s the number of cormorants fell to a very low level all over Europe, and the species was threatened with extinction. However, since 1979, when the Birds Directive was enacted, cormorant numbers have increased fairly dramatically, namely from about 800 breeding pairs in the Netherlands in the early 1960s, to 150,000 breeding pairs in 1995. Numbers increased not only in the cormorant nesting countries of the Netherlands and Denmark, but also in most other European countries where the cormorants forage during winter or during their migration southward. Estimates of the population today vary between half a million and 3 million birds (Rauschmayer & Behrens 2008, 57). The very success of this conservation policy posed a threat to certain fish species (a cormorant eats approximately half a kilo of fish per day) and led to conflicts with fishing and angling organizations.

This resource conflict can be resolved successfully only at the European level as it transcends national borders. However, such a solution is frustrated by conflicting member state interests. Denmark and the Netherlands play a key role in the issue because they are home to the most important breeding colonies. However, neither country is interested in international management. Whereas the national positions of the Netherlands and Denmark reflect nature conservation interests, other European states such as Germany, France, Italy and Austria are more responsive to fishery interests (Rauschmayer & Behrens 2008, 61). According to Rauschmayer and Behrens, the shift from species preservation to species management poses new challenges to the question of legitimacy, especially in a multilevel governance setting.

Nature management conflicts are deepened not only by the different kinds of knowledge but also by the different perceptions or visions of nature held by the various stakeholders. Farmers and foresters generally have a functional vision of nature, whereas some nature conservationists have an Arcadian vision and others have a wilderness vision of nature (Swart et al. 2001; Keulartz et al. 2004). In his comment on the chapter on the great cormorant, Hub Zwart (2009) raises the issue of perceptions or visions of nature. According to Zwart, Rauschmayer and Behrens' story of the great cormorant attests to the emergence of an influential new view on nature, namely the 'governance' view. Whereas the 'rationalist' view perceives nature as the domain of the non-human, the non-moral and the non-rational, and the 'romantic' view envisions nature as a realm of symbiosis, equilibrium and harmony, the governance view sees nature as an arena where the interests and claims of various stakeholders, viz. species, including our own, may conflict. To manage inter-species tensions and conflicts, we cannot simply impose our rational laws, nor can we rely on nature's own resources for self-governance, but must enter into a complicated process of negotiation and deliberation and of monitoring and evaluating, in which the claims and interests of all the species involved must be taken into account.

This governance view of nature can be recognized, for example, in conflicts over the reintroduction of indigenous species that have been pushed out of their native environment. Take, for example, the reintroduction of large, semi-wild herbivores in newly developed nature areas in the Netherlands. In this case, most conflicts are about the 'moral' status of the animals: should they be seen as (still) domesticated or as (already) wild? Whereas the majority of animal protectionists, farmers and visitors view the released horses and cattle as domesticated animals to be cared for as individuals, most park rangers, herd managers and ecologists prefer to treat them the same as wild animals and consider them part of complex wholes, such as populations or ecosystems (Klaver et al. 2002; see also Chapter 8).

The aforementioned arguments are often compounded by wider patterns of social conflict. In Norway, the debate over the reintroduction of large predators, such as bears and lynxes, is coloured by tensions between urban and rural communities. Local protest is triggered not only by the material consequences of the return of large predators for livestock, reindeer or hunting interests, but also serves a symbolic purpose: reintroduction programmes are considered by locals as projects of the urban elites that threaten traditional lifestyles that have already been forced on the defensive (Keulartz 2009b).

Conflicts that have a symbolic meaning that points to wider social issues are not only typical in the case of the reintroduction of indigenous species that had been pushed out of their native environment, but can also be observed in the complementary case of the elimination of alien and exotic species that have invaded and degraded ecosystems. Terms like ‘alien’, ‘exotic’ and ‘non-native’ have a racist or xenophobic ring for many people. Those who want to eradicate non-native species often attribute to them the same infamous qualities that xenophobes attribute to immigrant groups, such as sexual robustness, uncontrolled fecundity, low parental involvement with the young, aggressiveness and predatory behaviour. People not only take offence at metaphors that have a racist and xenophobic resonance, but also feel annoyed at the frequent use of militaristic and combative metaphors. Comparing plant and animal species to ‘natural enemies’ and ‘declaring war on’ these species can have a boomerang effect and alienate the very communities that the nature conservation and restoration movements need most (Keulartz 2009b).

4.5 CONTEXTUAL SYNTHESIS

A SHIFT IS PERCEIVED – BUT IS LEGITIMACY OBTAINED?

Building upon recent developments in democracy theory that have identified multiple forms of legitimacy, the book observes an EU-wide shift from output legitimacy at the international level to procedural sources of legitimacy at national, regional and local levels. What the case studies nicely illustrate is that what is considered legitimate at one level of governance is not automatically considered legitimate at another. Good arguments can be given that Natura 2000 and the Birds and Habitats Directives that provide its legal basis are legitimate. That is to say, they are products that were developed by means of negotiation between the member states that ultimately have to live up to the directives themselves. At the same time, we see that their content is contested, not only on the ground where the diverse constituencies are responsible for the actual implementation, but also at the level of the nation state where directives are the cause of political debate (see e.g. Janssen & Van Lieshout 2010). Top-down policy making, focused on the conservation of nature – a common good – is increasingly encountering resistance from local constituencies that are confronted with measures over which they had no direct influence. This lack of input legitimacy is acknowledged insofar as procedural remedies are in place at the national and the local level to aid its implementation. In this case, we see a shift in legitimacy that successively follows the shift in governance from the international to the national and the local level. As a result, the importance for policy makers of enhancing the democratic legitimacy of their policy plans has increased. The popularity of deliberative decision making procedures can be seen as a procedural response to this state of affairs. However, as we have seen, this shift does not seem automatically to result in a more legitimate nature protection as it has specific drawbacks, such as a representation deficit and contested results.

A GOVERNANCE VIEW OF NATURE AS THE PURSUIT OF LEGITIMACY?

In his reaction to the contribution from Rauschmayer and Behrens on the cormorant case, Hub Zwart presented the concept of a governance view of nature. Zwart's proposal does not provide a blueprint for a legitimate policy, but stresses the necessity of interaction and therefore of participation. The different shades of green that emanated from the case studies and the different scales and levels of administration and abstraction make necessary a governance view of nature, but do not automatically provide a legitimate solution, as deliberation and negotiation are open-ended processes the outcomes of which are not fixed.

Because of this procedural nature of democracy, a conception of legitimacy is therefore best framed as one of activity, focusing on both results and processes, and consequently departing from a evaluative connotation. If we want to contribute to legitimate nature conservation, an evaluation should be sensitive to this procedural nature of legitimacy. However, a procedural approach to legitimacy does not make it less difficult to assess its quality. The problems that are addressed in nature conservation are often pressing problems that require effective solutions. At the same time, the diversity of values, interests and knowledge necessitates room for deliberation and negotiation. That the different faces of democratic legitimacy ought to complement each other seems evident, but how this ought to happen is not clear. It is apparent that authoritative solutions alone do not suffice and that deliberation alone suffers the same fate. It seems that legitimacy ultimately depends on how these different dimensions of democratic legitimacy are dealt with in relation to each other. So we need to know how these different dimensions can complement one another and where trade-offs between the different dimensions are possible and necessary.

In the following chapter, I provide a theoretical account of legitimacy that builds on the insights presented thus far.

5

THE PROBLEM AND CHALLENGE OF LEGITIMACY

5.1 INTRODUCTION

Legitimacy is a concept that lies at the heart of politics, power and policy. It is therefore not uncommon to find the concept of legitimacy being used in relation to terms such as accountability, legislation, customs, procedures, effects and consequences. The term has a distinctive normative connotation and is often used with the purpose of evaluating authorities as well as their actions. However, trying to understand exactly what the term legitimacy entails proves to be very difficult, as it is a complex concept with many dimensions. In his paper 'Measuring political legitimacy', Stephen Weatherford calls the concept of legitimacy 'too unwieldy and complex a concept to be grappled in a frontal assault' (1992 p. 149) and adds that almost all empirical literature follows the tactic of breaking the concept down into 'relatively easily digestible parts'. However, an inclusive operational account is necessary to make empirical inquiries possible. The purpose of this chapter is to provide such an account.

In the previous chapters, legitimacy has been touched upon, but it has never been made concrete or operational. These chapters have had an exploratory purpose and provided valuable insight in the problem of legitimacy. In the second chapter, we have seen that Dutch nature conservation is complex. What nature is, is anything but a given. Different perceptions of nature are at odds with each other and, on top of that, nature conservation is just one of many justifiable land-use activities. Nevertheless, the need for effective conservation policies is uncontested. The question who is responsible for these policies has been addressed in more detail in chapter three. The horizontal and vertical shifts in governance show us that the responsibility for nature conservation is in the hands of many different players. National and international authorities as well as public and private organizations take and claim responsibility. Governance, as something broader than government, in Dutch nature policy is nothing new. It is nevertheless far from clear what legitimacy entails in this multi-level and multi-actor arena. In chapter four, in which nature conservation in the European Union was discussed, we have seen the complexity of dealing with international challenges and realizing these at the national, regional and local level. On top of that, the discovery of the limits of rationality, the replacement of government by governance and the multiplication of levels and places of policy-making all point to the empirical and theoretical need to find new modes of legitimacy production.

The purpose of this chapter is to make the concept of legitimacy operational in order to facilitate descriptive and normative analysis of Dutch nature policy practices. Weatherford's characterization of legitimacy as 'too unwieldy and complex a concept' is taken seriously, but the focus will nevertheless be on a full account of legitimacy and not just on one or more of its more 'easily digestible parts'. This approach is chosen since, if one wants to investigate and/or evaluate legitimacy in its entirety, the focus should include all dimensions and not just certain aspects, such as accountability or public participation, which are often seen as tools for securing legitimacy.

To fulfil this purpose, a number of consecutive steps will be taken. In paragraph 5.2, the concept of legitimacy is clarified. In paragraph 5.3, David Beetham's distinction of the three dimensions of legitimate power is used as a general framework to understand what it is that makes authority legitimate. This is a useful tool, as it lays the foundation for descriptive and normative analyses. The framework, however, is rather abstract and needs to be made operational. This is done in relation to the worldwide perceived source of legitimate power: democracy. In paragraph 5.4, an analysis of democracy will outline the rules, values and acts of consent on which legitimacy is based, and which will need to be taken into account in addressing the legitimacy of Dutch nature policy practices. Although democracy is seen as the preferred form of institutional power, it is in itself a contested concept. What emerges from an examination in paragraph 5.5 of three different approaches to democracy is that the values that are identified can conflict. What will become clear is that legitimacy is better perceived as a quality 'maintained' as opposed to a quality 'possessed'. Rather than seeing legitimacy as a fixed quality, it is better understood as an active process of legitimation and de-legitimation where legitimacy is produced and maintained or eroded and lost. In paragraph 5.6, the insights of the previous paragraphs are summarized in a conceptual framework that facilitates descriptive and normative analysis of legitimacy in Dutch nature conservation. In the final paragraph (§5.7), I will reflect upon the research questions of chapter 1. By then I will have provided an answer to the first research question: How should we understand the concept of legitimacy in relation to Dutch nature conservation practices? The insights provided in this chapter allow us to critically reassess the other research questions. These will be reformulated to provide focus to the case studies presented in chapters 6 to 8.

5.2 WHAT IS LEGITIMACY?

The problem of legitimacy can be traced back as far as Plato and Aristotle (see e.g. Stillman 1974; Larsson 2005), but is still a concept that comes under close scrutiny by both those that research authority and those subject to authority.

The Swiss-French philosopher Jean-Jacques Rousseau formulated the problem of authority as follows:

> *'Man is born free, and everywhere he is in chains...How did this change occur?*
> *I do not know. What can it make legitimate?'*

This most famous line of Rousseau (Rousseau 2003, p. 17) opens the first chapter of his work *On The Social Contract*. Rousseau maintains the idea, like Hobbes (1651) and Locke (1690) before him, that man is essentially free and that, as a result, no one has a natural right to govern others. According to Rousseau, the freedom to which man is entitled only exists as a condition that is referred to as the *state of nature*. This *state of nature* is best perceived hypothetically as an environment without government, civilization or laws. Rousseau claims that man has lost his freedom and is now shackled by means of civilization. He describes numerous ways in which the 'chains' of civil society suppress the physical freedom of man, which is his natural birthright. Civilization has substituted subservience to others for that freedom, through dependence, economic and social inequalities and the extent to which we judge ourselves through comparisons with others. A return to the *state of nature* is not only impossible, but is also deemed undesirable, as this is considered to be a hostile state of anarchy. Thus, the purpose of politics is to restore our freedom, thereby reconciling who we truly and essentially are with how we live together. That is the fundamental philosophical problem that *The Social Contract* seeks to address (see also Friend 2006).

The metaphor of 'chains' that Rousseau uses might present a pretty bleak depiction; however, we can understand that it is not necessarily problematic, as this downside has its upside. For example, in modern-day societies, authority is principally institutionalized through systems of democratic governance. Within this political system, we generally accept authority and its 'chains', as it does not only place limits on our freedom, but it also safeguards that freedom by enforcing the social and legal rules that protect us from others with less honourable intentions. By doing so, it aims to secure and protect the stability of an effective social organization. However, this does not mean that an authority should not be questioned. On the contrary: built-in mechanisms in our democracy allow for holding authorities responsible for their actions.

Thus, I will not follow Rousseau's analogy and compare the subjection to authority, whether it be voluntary or involuntary, to imprisonment. However, I will take up the question of what makes power legitimate, because to speak of legitimacy is to speak of acceptance of the consequences, both negative and positive, of being subject to authority or power. Although the term 'legitimacy' is often used rather loosely in both research and practice, it refers to the rightfulness of authority or, to be more precise, to the principles on basis of which power, authority, decision-making, policy and law is accepted and accounted for (D'Hollander 2003 p. 38). So when we address the legitimacy of an authority and its actions, we implicitly ask whether or not it is right to submit our lives to that authority even if it affects our freedom, when it inhibits our actions or places constraints on our behaviour and when it asks us to stop or undertake actions that would not be the chosen course of action if that power was not present.

The question *what makes power legitimate* has been particularly the object of political philosophy. Political philosophy treats legitimacy as a normative principle that deals with the question of what should make it rightful to obey an authority or to defy its demands (Barnard 2001). At its core, the quest of political philosophy is to understand the ethical foundations of authority. Questions that are relevant in this respect are those that address the nature of political authority and those that address the scope or extent of that authority. But political philosophy is just one of the various professional and scientific disciplines that tackle the concept of legitimacy; all of these have different objectives and approaches. The literature on legitimacy covers at least four more different scientific disciplines, including law, sociology, psychology and economy (D'Hollander 2003). These different approaches are not only illustrative of the perceived importance of legitimacy, but also of its complexity, as different disciplines offer different definitions of what legitimacy is or what it should entail. Whereas political philosophy is focused on the normative foundations, the social scientific approach tries to explain why and when those confronted with authoritative power accept that power. Within sociology, legitimacy is reduced to a 'sociological norm', namely the acceptance of authority by a demos (D'Hollander 2003 p. 38) or even the 'belief in legitimacy' as legitimacy (Weber 1968). These different approaches to legitimacy stress the necessity of understanding legitimacy as a multi-faceted concept.

5.3 THE THREE DIMENSIONS OF LEGITIMACY

A very insightful account of the multi-dimensional character of the concept of legitimacy is provided by David Beetham's *The Legitimation of Power* (1990). Beetham does not address legitimacy in relation to authority specifically but to power in general. He argues that it provides an underlying structure to legitimacy common to all societies (p. 22). His analytical frame reveals an underlying structure and logic of legitimacy that forms a sound basis for empirical inquiries. It is part of a compelling account that shows that all forms of power stand in need of legitimation, although they do not all possess or achieve it. Power can be said to be legitimate to the extent that:

(1) it conforms to established rules;

(2) the rules can be justified by reference to beliefs shared by both the dominant and the subordinate parties; and

(3) there is evidence of consent by the subordinate to the particular power relationship.

These three levels, or dimensions, of rule-derived validity, the justification of power rules and expressed consent are complementary and all provide the subordinate with moral grounds for compliance. This distinction is particularly useful as it helps to capture the complexity of the concept of legitimacy, while at the same time to provide conceptual distinction between the different dimensions that facilitates research and understanding. The conceptual framework is summarized in matrix 5.1.

LEGITIMACY AS RULE-CONFORMITY

The first dimension of legitimacy that we can distinguish is that of rule-conformity.

> *'[p]ower can be said to be legitimate [...]*
> *if it is acquired and exercised in accordance with established rules.'*
> (Beetham 1991 p. 16)

These rules can be formal, in the form of established law and regulation, but also informal, in the shape of informal conventions. These social rules form a basic component of social life and carry a normative and prescriptive force in them, so that they impose obligations and create corresponding entitlements. Beetham argues that, in a rule-governed social order, we cannot separate power from legitimacy, since both occur simultaneously: in acquiring power according to the rules, a person also requires the right to exercise it (Beetham 1991 p. 65). The

Matrix 5.1 Three dimensions of legitimacy (Beetham 1991 p. 20)

Criteria of legitimacy	Form of non-legitimate power
i conformity to rules (legal validity)	illegitimacy (breach of rules)
ii justifiability of rules in terms of shared beliefs	legitimacy deficit (discrepancy between rules and supporting beliefs, absence of shared beliefs)
iii legitimation through expressed consent	de-legitimation (withdrawal of consent)

RULE-DERIVED LEGITIMACY

Agnes Jongerius, the head of a major labour union, reaches an agreement with governmental and employer organizations to raise the official pension age from 65 to 67. As an elected representative, she has a mandate to negotiate agreements that affect the lives of her constituency. This unpopular decision will affect the lives of millions of people in the Netherlands, amongst which the people she represents. Her actions are legitimate in so far that her official mandate entails making decisions on behalf of the workers in the labour union, and which represent their interests.

opposite of rule-confirmative legitimacy, or legal validity when it concerns formal rules and legislation, is called illegitimacy and is specifically an issue when rules are breached and power is acquired and/or exercised in contravention with the established rules.

An appeal to the law or established rules, thus, can provide legitimacy. According to Beetham this is a necessary first step. It is necessary because established rules provide the recognized source of entitlements, and because a generalized respect for rules is the condition of any social order. This is, however, no more than a first step because rules cannot justify themselves: the law is only a primary and provisional source of legitimacy and cannot provide a fully adequate criterion of legitimacy (ibid, pp. 68, 69). Here the second dimension comes into play: the justifiability of rules.

LEGITIMACY AS THE JUSTIFIABILITY OF RULES IN TERMS OF SHARED BELIEFS

Rules alone are not enough to secure legitimacy, since the rules through which power is acquired and exercised stand in need of justification themselves. Beetham argues that power is legitimate only when the rules of power can be justified in terms of beliefs shared by both the dominant and the subordinate party.

> *'Without a common framework of belief, the rules from which the powerful derive their power cannot be justifiable to the subordinate; the powerful can enjoy no moral authority for the exercise of their power, whatever its legal validity; and their requirements cannot be normatively binding, though they may be successfully enforced.'*
>
> (Beetham 1991 p. 69)

With regard to criteria of justifiability and the beliefs they ought to be based on, Beetham points to the contingency of particular situations. Beliefs have differed throughout history; therefore, what is considered legitimate, and what justifications are valid, depends on the beliefs of the specific society. The source of a common framework could be, for example, tradition, heredity, science, religion (see e.g. Weber 1972 ch. 9; Friedrich 1972) or a political ideal such as democracy that is grounded in popular sovereignty. The sources of justification can thus be very diverse; however, Beetham argues that the source of justification itself does not explain the authority of some over others and why certain rules prevail over others. For this we must turn to the justifiable content of rules, which can be found in the principle of differentiation and the idea of common interest. The principle of differentiation points to the presupposition of separation of the dominant and the subordinate party. This separation is justified only in so far as those who hold power possess certain qualities that the subordinate lacks, and that those qualities are appropriate to the particular form of power that is exercised. Beetham argues that it might be sufficient for the powerful to justify their power to themselves, but an idea of common interest is necessary as well. For power to be justified, the dominant and the subordinate parties need to be linked by a community interest; also, the distribution of power should serve the interests of the subordinate and not just those of the powerful (Beetham 1991 p. 82). In other words, the subordinate is seen as having self-standing concerns that require thoughtfulness. This dimension of legitimacy has an opposite form of non-legitimacy as well: a legitimacy deficit. This is the case when there is a discrepancy between rules and supporting beliefs or when there is a sheer lack of shared belief.[12]

LEGITIMACY BASED ON SHARED JUSTIFICATIONS

The decision of Agnes Jongerius to concur to an agreement with governmental and employer organizations can count on legal validity. However, her constituency has indicated en masse to disagree with the proposed action of raising the pension age from 65 to 67. Her legal actions thus do not promote the interests of the workers. That there are no shared justifications implies a legitimacy deficit.

LEGITIMACY THROUGH EXPRESSED CONSENT

The third dimension of legitimacy is the demonstrable expression of consent and, as such, it is a contribution to legitimacy. Beetham stresses that what is important about consent is not the condition of voluntary agreement, but the specific actions that publicly express it.

> ‘It is in the sense of the public actions of the subordinate, expressive of consent, that we can properly talk about the legitimating of power, not the propaganda or public relations campaigns, the “legitimations” generated by the powerful themselves.’ (Beetham 1991 p. 19)

These actions confer legitimacy to the powerful. This is so, firstly, as an expression of consent. For example, by taking part in elections, or by signing a contract, the subordinate contributes to legitimacy. Even if these actions are undertaken purely out of self-interest, the subordinate introduces a moral component that creates a normative commitment on the part of those engaging in them. Secondly, an expression of consent has a declaratory force in that it

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[12] It is interesting to note that much of the literature on the European Union deals with the issue of a legitimacy deficit. According to the distinction made by Beetham, this is a correct but incomplete typification. The EU operates on basis of established ‘formal’ rules, but these lack legitimacy as they lack democratic legitimacy. Thus, the exercised rules are not in tune with the ideas/beliefs of what entails good ‘democratic’ governance. At the same time, there is debate regarding the informal rules (Van Tatenhove et al 2006) that eludes most of the EU constituency and is best defined as a problem of illegitimacy.

acknowledges the position of the powerful, which the latter are able to use as confirmation of their legitimacy to third parties. What counts as consent, however, just as rules and justifications, is culturally specific. Thus, which actions count as consent, and from whom it is required will differ from context to context. It is only through the actions of the subordinate that we can properly talk about the legitimation or the de-legitimation of power (Beetham 1991 p. 19). For example, we can assume that, when governmental elections have a turnout of 90%, the office holders will enjoy a significant amount of legitimacy; however, when in a democracy – where the legitimacy of power is largely a matter of popular consent – election turnout drops below 50%, a closer look at its legitimacy is called for.

CONSENT-BASED LEGITIMACY

As a reaction to the outcome of the negotiations between governmental, employer and worker representatives, the members of the labour union call for the resignation of their spokesperson. This is a withdrawal of consent and an act of de-legitimation.

The framework presented above addresses legitimacy in terms of rules, justification and consent. Although each of these three components has its own rationale, the three dimensions together form the building blocks to the normative ‘quality’ or ‘characteristic’ of legitimacy that is necessary for power to be labelled just, rightful and legitimate.

Each of the three dimensions can be studied separately but, in an informed statement regarding legitimacy, all three requirements need to be incorporated. A statement regarding the legitimacy of a specific power-holder, whether it be a person or organization (or an action carried out by either), is consequently never an easy one. Based on this assumption and in light of the purpose of this research, I consider a legitimacy statement best perceived as a comprehensive normative perception or assumption regarding the exercise of power within a constructed system of norms, values and principles. Legitimacy is seen as a ‘comprehensive’ statement in that it must attempt to include all norms, values and principles that are relevant in determining the appropriateness of the actions of a certain entity. Making a statement regarding the appropriateness of an action based on just one norm or value is ‘just’ that. It can, however, not be seen as an all-inclusive legitimacy statement. In that sense, it is also what Suchman calls an ‘umbrella evaluation’ (1995 p. 574). The complexity that the three dimensions of legitimacy entail make the question ‘is this specific act, policy, authority legitimate?’ tough to answer. Strong statements whether power is or is not legitimate are therefore best nuanced within the framework presented above. Rules or laws might be breached, supporting beliefs might alter or evolve and consent might be withdrawn, but it is rarely the case that legitimacy fails in all three dimensions to such an extent that the label ‘non-legitimate’ fits unconditionally.

Although the framework is very useful and necessary for understanding what one tries to address when talking about legitimacy, it does not provide any content up front regarding the legitimacy of a power-holder. Informed statements are only possible when the framework is dressed up and norms, justifications and consent are defined. In the next paragraph, this is done for democratic authority, as the political landscape this research is focused on and situated in is democracy.

5.4 DEMOCRACY AND LEGITIMACY

'For power to become authority, it must originate in democratic consent and aim at the common good or public interest.'
(Schaar 1984 p. 111)

WHAT IS DEMOCRACY?

The above statement sounds rather straightforward: for power to be legitimate, it needs to be imbedded in democracy. This is a strong statement but, at present, not necessarily a controversial one, as not many people will contest this claim. Although the term 'democracy' might trigger immediate associations, it is rather difficult to give an encompassing description. This is due to the fact that, both in theory and in practice, democracy comes in different guises.

To aid a better understanding of democracy, a rudimentary sketch of democracy is given in terms of rules, justifications and consent. As is clear, legitimacy and authority are intricately linked and if democracy is the basis for legitimacy, democracy can be explained by addressing it in terms of rule-derived validity, the justifiability of power rules and expressed consent. With respect to the rules dimension, these are largely defined by our modern-day concept of democracy. Democracy has become the frame of reference for billions of people when addressing power and authority. Although the concept and practice of democracy is as old as Western society, its widespread practice is not. While ancient Greek society and the Italian city states of the Renaissance show that the concept and practice of democracy permeates Western civilization, its current and widespread global manifestation is a contingent and more recent phenomenon that has manifested itself only in the last century (see Held 2006). In ancient Greece, the literal translation of democracy – 'rule by the people' – reflected reality in so far that it was indeed the 'people' – Athenian males with property rights – that ruled over a relatively manageable social and geographical scale – a city. Contemporary democracies do not resemble the small-scale set-up of ancient Greece or the Italian city states; the geographical range has increased dramatically, as well as the concept of citizenship. Nowadays, we speak of a democracy, according to Gerry Stoker (2006 p. 20), when a regime meets the criteria of the universal right to vote for all adults, when governments are chosen by means of regular, free and competitive elections and when a set of political rights is present that address individual liberty. When we take this as the frame of reference, then two-thirds of all countries have a form of democratic rule and most people are at least in theory able to participate in political life by means of electing representatives (Stoker 2006). Democratic governance has become the benchmark for legitimate authority.

Despite the different appearances of democracy, the core idea remains the same: power or authority ought to be derived from the people. This brings us to the second dimension of legitimacy for which I turn to Nobel-prize winner Amartya Sen. Sen (1999) does more than provide a justification for democracy; he goes further than just calling democracy the preferred rule of state and argues that democracy is a universal value! The claim of universality lies in the fact that 'people anywhere may have reason to see it as valuable' (p. 11). Sen provides three sets of virtues that he uses to support his claim. These are intrinsic, instrumental and constructive value.

First, the intrinsic value of democracy is rooted in political freedom. Political freedom is part of human freedom in general, and exercising civil and political rights is seen as a crucial part of a good life of an individual. Consequently, to be prevented from participation in the political life of the community is considered a major deprivation.

The second virtue of democracy, instrumental value, enhances the hearing that people get in expressing and supporting their claims to political attention. Through periodic elections and other means of participation, individuals and the people as a whole can influence the political agenda and, consequently, its outcomes. Simultaneously, authorities are kept responsible and accountable. Even if you consider democracy not to be perfect, it carries the possibility to get rid of your rulers and replace them with new ones, which is probably one of the greatest assets of democracy.

The third virtue refers to the constructive value of democracy. The democratic practice gives individuals an opportunity to learn from each other. The possibility of open debate and open discussion, all related to the intrinsic value of democracy, creates an atmosphere where people can learn from each other. In this sense, democracy can help in the formation of shared values and the understanding of needs, rights and duties. As all people may have good reason to see these virtues as valuable, democracy can be seen to be a universal value.

The consent dimension plays a pivotal role within democracy. The consent of the people lies at the foundation of democratic authority and assumes active as opposed to passive consent. It is the people that confer power under certain conditions. For this reason, democracy requires an organized civil society of non-state actors whose members are active and engaged and are capable at a minimum of holding the state to account; further, at a broader level, they offer the foundation for democratic ideas and practices (Stoker 2006 p. 29). Without such consent, democracy is void. But although the consent of the people offers the most compelling principle of legitimacy, the way this principle of the consent of the people is put into practice differs. It remains the centre point of debate (Held 2006).

DIFFERENT GUISES OF DEMOCRACY

The above description is rather abstract and general in nature. The practices and theories of democracy are manifold and each practice and theory could provide more detail of how each of the three dimensions gets or ought to get shaped. I will touch upon a very crude three-way distinction between direct, representative and deliberative democracy.[13] This distinction is useful in addressing the contested nature of democracy and the different ways the principle of the consent of the people is interpreted and implemented.

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[13] It goes without saying that there are many more models of democracy that can be distinguished in both theory and practice; however, the suggested three-way distinction will provide rough, but sufficient analytical content to point to the differences of how democratic societies are organized and what the grounds for contestation and discussion are. For a comprehensive account, see, for example, David Held's Models of Democracy (third edition, 2006).

Matrix 5.2 Three dimensions of democratic legitimacy

Criteria of legitimacy	Democratic legitimacy
i rule-conformity	Power is acquired and exercised on basis of popular consent, and can be held accountable by the constituency.
ii justifications	People ought to be able to participate in political life. The intrinsic, instrumental and constructive values of democracy allow the subjects of power to influence that power.
iii expressed consent	By participating in and using democratic forums such as general elections or referenda, citizens can not only exercise and confer power, but also hold their power-holders accountable.

DIRECT DEMOCRACY

Direct democracy focuses on the involvement of citizens in directly influencing or participating in politics, power and policy. What all concepts of direct democracy have in common is a great confidence in the rationality of the demos, for who takes the democratic ideal – *rule by the people* – seriously cannot but take the people seriously. It gives the people who make up the demos instruments to decide what the ruling authority needs to do (Engelen and Sie Dhian Ho 2004 p.31). Today, direct democrats come in different appearances but they all look for ways to realize the ideal of collective self-government. Some advocate small-scale democratic units where this ideal can be put into practice, whereas others opt for complementing the existing representative democratic institutions with more direct components such as referenda, directly chosen representatives and citizens' initiatives (Engelen and Sie Dhian Ho 2004 p.31). In terms of Beetham's three dimensions of legitimacy, we see that, in direct democracy, the emphasis lies with the expression of consent. It is the actual participation of the demos in matters of politics that makes the exercise of power ultimately legitimate.

REPRESENTATIVE DEMOCRACY

In representative democracy, the principle of rule by the people is exercised through the possibility of electing political representatives through competitive elections. Thus, not the people themselves have authority, but the representatives that they choose. Engelen and Sie Dhian Ho (2004 p.30) point to a certain amount of distrust in the people that is characteristic of a representative democratic theoretical perspective. This approach to democracy makes the people subordinates of power rather than the proprietor of that power, although they have the right and ability to hold the power-holders accountable by means of regular elections. The demos votes but the representative speaks, deliberates and decides. The democratic ideal is, in this case, best typified as r*ule for the people*. The assumption is that the politician is a professional who acts on behalf of the people and tries to act in the best interest of the people, although that might not be in congruence what the people say that they want (Engelen and Sie Dhian Ho 2004 p. 30). The representative element of democracy manifests itself throughout society. Not only are government officials elected by means of competitive elections but, in the many governance processes (see previous chapters), representation also plays a central role. These representatives do not necessarily have a democratic mandate but represent society in their function as a member of, for example, environmental agencies, agricultural organizations, nature protection associations or even scientific institutes. Because representative democracy relies on the rule of some over many, it is especially important that power is acquired and exercised in accordance with the 'rules' in order to claim legitimacy.

DELIBERATIVE DEMOCRACY

In the last two decades, the never-ending discussion concerning democracy has been complemented with a new debate revolving around the concept of deliberative democracy. This concept is seen as an answer to the inability of existing democratic theories and practices to come up with a satisfactory solution to address societal problems. In contrast to direct and representative democracy, which are established conventions and have a rich body of corresponding literature, deliberative democracy is better understood as work in progress in both theory as well as practice. The views on deliberative democracy are many and diverge on many issues. There seems to be a consensus in the literature on deliberative democracy on why to deliberate, but not on how, or how to assess when deliberation is successful (Held 2006 p. 252). The emphasis on deliberation has a procedural nature. The legitimacy of this form of democratic governance is enclosed in a 'process' of discovery.

> *'The major contention of deliberative democrats is to bid farewell to any notion of fixed preferences and to replace them with a learning process in and through which people come to terms with the range of issues they need to understand in order to hold a sound and reasonable judgment'*
> (Manin 1987, pp. 351)

The source of legitimacy is not the predetermined will of individuals or their representatives, but rather the process of its formation that is deliberation itself. According to Gutmann and Thompson (1996), deliberation does not resolve moral conflicts but can clarify opposing views and interests and consequently create understanding and respect. The deliberative approach is in line with the constructive value of democracy that Sen distinguishes, and emphasizes the ideal of *government with the people*. Power is legitimate in that it facilitates deliberation in order to clarify disputes and possible solutions. As such, it emphasizes the second dimension of legitimacy: legitimacy on basis of shared beliefs or, better, legitimation through a search for shared beliefs.

Under the umbrella of direct, representative and deliberative democracy, many practices and specific models can be positioned. In reality, elements of different models will co-exist next to each other.

THE PROBLEM AND CHALLENGE OF DEMOCRACY

The different models and practices of democracy tell us that democracy is not necessarily a clear-cut phenomenon. Despite its uncontested pole-position in the race for legitimate authority, democracy is not without problems and challenges. Gutmann and Thompson hold that what all practices and theories of democracy have in common is that none of them have found an adequate way to cope with conflicts about fundamental values (1996 p. 1). As a matter of fact, the challenge of modern-day democracies is not an easy one. Democratic legitimacy is a juggling act that tries to uphold different values that range from individual freedom and popular consent to binding collective decisions that provide solutions to social, economic and ecological problems (see also Scharpf 1970; 1999; 2004; Weber 1972; Engelen et al. 2008). The different models of democracy all provide elements that can contribute to legitimate authority, but can also have their specific drawbacks.

For example, the ideal of direct democracy in which individuals need to be able to participate in politics, power and policy is problematized by the sheer scale – as is illustrated in chapter 4 – of both the location of politics and the problems that it addresses. Direct involvement might be possible in the small-scale set-up of ancient Greek cities or in modern-day small-scale participatory processes, but when scale (economic, geographical, ecological etc.) increases, direct involvement is hindered by practical possibility. Next to the practical difficulties of organizing direct democracy on larger scales, there is a normative drawback that could be held against direct modes of democracy. The elitist perspective on direct democracy stresses that en masse participation of individuals in politics could lead to rule of the mob, political anarchy and chaos, and populist policy that lacks quality (Krouwel 2004).

Representative modes of democracy offer a possible solution to the drawbacks of direct democracy, but present also their own shortcomings. A representative system can provide the mechanism whereby central powers can be watched and controlled; also it could provide the necessary political and economic infrastructure to deal with large-scale economic, social and ecological problems and challenges (Held 2006). However, a representative system can also prove to be inflexible through its bureaucratic character. Moreover, representative modes of democracy do not only limit the influence of individual citizens, but may also suffer a decline in overall political participation as a result of discontent regarding the functioning of the political elite and processes of modernization and individualization (Tromp 2004).

Deliberative modes of democracy might form a bridge between direct and representative modes of democracy but, just like direct democracy, deliberative modes of democracy work better in small-scale settings. When outcomes are legitimate to the extent that they receive reflective assent through participation in authentic deliberation by all those subject to the decision in question (see Dryzek 2001 p. 651), then deliberative participation by all those affected by collective decision-making is extremely implausible. Given this characterization, deliberative democracy seems unable to deliver legitimate outcomes, as it defines its own shortcomings (Parkinson 2003).

Despite the fact that democracy is far from an ideal system for generating legitimate authority (see e.g. Stoker 2006, Mouffe 2000), it has been defended vigorously (see e.g. Stoker 2006, Held 2006, Van Gunsteren 2005, Sen 1999, Barnard 2001). What the different defences have in common is that democracy is seen as an institutionalized arena to deal with diversity; it is a political system that does not dictate ultimate outcomes, but facilitates contingent and ultimately provisional solutions. There is no one way to organize democracy. The challenge is thus, following Mouffe, to deal with this problematic nature without having the illusion of solving problems once and for all. Democracy should be seen as a 'basis for tolerating, discussing and negotiating difference' (Mouffe 2000 p. 261). This makes democracy a continuing and active process where again and again solutions must be found to societal problems that are contingent and need continuous re-adjustment.

This challenge is intensified as the location of democracy is contested as well. Nation states have been the carriers of political power in the last centuries, but the shifts in governance, both vertically (to the international and local level) as well as horizontally (to the market and civil society), place the challenge and need for legitimacy also outside the realm of the nation state (see Scheltema 2004). The public interest is no longer, and can no longer, be safeguarded by national authorities alone. Moreover, the actions of private organizations, exemplified by the economic crises, can have significant consequences on society. These are strong powers that also stand in need of legitimation.

TOWARDS PROCEDURAL SOLUTIONS

Given the 'condition of pluralism' (Rawls 1995), there is no longer a shared perception of the good life. Substantive sources of legitimacy, such as religion, charisma, tradition and scientific expertise (Weber 1972 ch. 9.; Friedrich 1972), have increasingly lost their legitimating capacity for collective decision-making. As a result, legitimacy increasingly has to be produced. Democracy can provide precisely that: a procedural solution to the inability to find broadly acceptable sources of substantial legitimacy. Nevertheless, how legitimacy ought to be produced is the subject of continuous debate. Elements of direct, representative and deliberative democracy can and must complement each other within and between democratic societies; however, whether an issue is to be resolved by means of top-down policy implementation of a democratically chosen government or by means of deliberation of a group of representatives whose democratic mandate is limited is not a given. Deciding how to deal with societal problems, and thus choosing which procedural instruments are to be used, is addressing the fundaments of legitimacy.

5.5 THREE MODES OF LEGITIMACY PRODUCTION

Following the description of democracy given in the previous paragraphs, legitimacy can be produced in one of three ways: (i) by letting people decide for themselves, (ii) by ensuring that collective decisions serve societal interest (without unsubstantiated overriding the rights of individuals or minorities), or (iii) by guaranteeing a high level of fairness and transparency in the decision procedure itself. The first type of procedural legitimacy is known as *input legitimacy*, the second as *output legitimacy* and the third as *throughput legitimacy*.

Input legitimacy implies that collectively binding decisions should originate from the authentic expression of the preferences of the constituency, whereas output legitimacy implies that collectively binding decisions should serve the common interest of that same constituency. These two dimensions are, however, not be seen as separate spheres, as they are interrelated (Boedeltje and Cornips 2004). Output legitimacy depends on a certain amount of effectiveness in securing or realizing society's interests. These interests have meaning only in relation to the preferences of the citizenry. As a result, procedures or mechanisms are needed to track down these preferences and translate them into political decisions. In the following, the three modes of legitimacy production are worked out in more detail.

INPUT LEGITIMACY

Input legitimacy emphasizes 'government by the people'. Political choices are legitimate if they reflect the 'will of the people' – that is, if they can be derived from the authentic preferences of the members of a community (Scharpf 1999 p.6). As such, input legitimacy is strongly rooted in the tradition of direct democracy. People need to have the possibility to participate in politics and make their interests known. This facilitates the intrinsic value of democracy as propagated by Amartya Sen (see above). The degree of participation and participatory possibilities is a matter of debate and will vary between the different concepts of democracy but, whatever the form or scope, this requires at least a minimum of participation. At the same time, the possibilities, and the rules and regulations that delineate these possibilities, must be accepted by the people.

While strongly rooted in the tradition of direct or participatory democracy, input legitimacy in the Netherlands is largely realized through representative platforms. The Dutch democratic system has inherently relatively few direct participatory possibilities due to its indirect representative nature. Government by the people is largely a matter of representation through intermediary bodies such as the Dutch parliament, political parties and interest groups (Engelen and Sie Dhian Ho 2004 p.31). Representative notions of input legitimacy are generally based upon the assumption of a congruence between rulers and the ruled through mechanisms or representation and contestation (Risse and Kleine 2007). Key in this approach is the concept of accountability, where the subjects of authority have the possibility to hold the representatives to a set of standards, to judge whether they have fulfilled their responsibilities in light of these standards and to impose sanctions if they determine that these have not been met (Grant and Keohane 2005 p. 4 in: Risse and Kleine 2007). At the national, provincial and local level, this mechanism is present through periodic competitive elections and through, for example, the general governance decree (*algemene wet bestuursrecht*) that lays down a code of conduct for the relationship between those who govern and those who are governed. When we understand majority rule in this way, the results of majority rule are legitimate because the procedure is fair (Gutmann and Thompson 1996) or, to place it in the terminologies of Beetham (1991), because the rules and regulations were properly applied. This does not say anything about whether the results are right. However, given the complexity of the social, economic and ecological problems that we are faced with, given the condition of pluralism and the realization that solutions to problems have a contingent and temporary character, combined with the shift from government to governance, it is understandable that majority rule alone is not sufficient in understanding the ‘will of the people’. Moreover the ‘people’ are far from homogeneous, and take on different identities depending on the issues that society has to deal with. Requests for more direct and diverse forms of participation emerge, which seem justified from an instrumental and constructive point of view (Sen 1999; see above). Not only is it difficult to distil the people’s interest in all the social, economic and ecological problems that society is faced with through general elections, they do by far not provide enough input to resolve societal problems. Furthermore, if ‘government by the people’ must refer to individuals, rather than the collective, purely representative notions of input legitimacy may lead to normatively indefensible policy outcomes (Scharpf 1999). The interest in participatory and deliberative democracy should be seen as an attempt to fortify input legitimacy. Input-oriented legitimacy thus refers to the reflection of the interests of involved participants in the formulation of politics and policy through direct, representative, participative, deliberative or other means.

OUTPUT LEGITIMACY

Output legitimacy emphasizes 'government for the people': political choices are legitimate if and because they effectively promote the common welfare of the constituency in question (Scharpf 1999 p.6). 'Government for the people' derives legitimacy from its capacity to solve problems requiring collective solutions, because those problems could not be solved through individual action, through market exchanges or through voluntary cooperation in civil society (Scharpf, 1999 p.11). Whether the subjects had any say over the input-side of the policy cycle is less important. This type of legitimacy is part and parcel of the theoretical tradition of 'democratic minimalism', which stresses the dangers of majority rule and emphasizes the need for safety mechanisms such as the 'trias politicas', federalism and two-chamber decision-making (see Barber 1984).

With respect to output legitimacy, the focal point of which is effectiveness in relation to safeguarding common goods, it is useful to make a three-way distinction between *products*, *outcomes* and *impacts*. This three-way distinction has been defined to analyze the nuances of policy effectiveness (see cf. Arts 2007; Nordbeck and Kvarda 2006)[14], but also suits a description of output legitimacy in terms of rules, justifications and expressed consent. In this context, an output *product* delineates the mandate of a power-holder. Examples of such products are new or amended political strategies, policies, new laws or the reform of existing law. Power has legal validity as long as it is exercised within the scope of the particular product, and is focussed on effectiveness as described in the product in question.

The justification of output legitimacy is enclosed within the envisioned or realized concrete *outcomes*. These *outcomes* are thus not only the consequences that have materialized because of authority that has been exercised according to the rules or within the scope of a *product*. *Outcomes* provide the justification of the power-holder in question and the rules this power-holder ought to live by. In the case of Dutch nature conservation as discussed in chapter 2, we see that top-down policy as formulated in the Nature Policy Plan aims at protected species and habitats. These envisaged consequences form the justification of the power attributed to national and provincial authorities.

The term 'impact' addresses the behavioural change of key actors or target groups as a result of, for example, a policy process. This can involve changes in the behaviour of people, the solution of existing conflicts or the development and creation of new coalitions and networks. Impact indicates the extent to which a change in behaviour contributes to the realization of effectiveness with respect to a certain problem. As such, it is a measure of expressed consent regarding the power that is enclosed in the authoritative *product*.

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[14] In this research, I base my distinction between product, outcomes and impact on the three dimensions of policy effectiveness given by Nordbeck and Kvarda (2006) and Arts (2007). This research uses, however, slightly different labels. In this research, the labels 'product', 'outcome' and 'impact' are used, whereas Nordbeck and Kvarda use 'output', 'outcome' and 'effect', respectively; Arts uses the same terminology as Norbeck and Kvarda. However, the explanation Arts uses for impacts and outcome is similar to the description given by Nordbeck and Kvarda but in alternate order: outcome and impacts instead of impacts and outcome. With respect to outcome and impact, I follow the description used by Nordbeck and Kvarda, but I have exchanged the term 'policy output' with 'policy product' to prevent confusion with the concept of 'output legitimacy'.

This three-way distinction is valuable, as it is not always clear what the best solutions are to political and social problems. Especially in nature conservation, this information is not always available, as outcomes are envisaged beyond the duration of specific practices. With respect to policy effectiveness, Arts (2007) argues that it is necessary to consider *policy outcomes* in any assessment of policy success, but that a sole focus on this aspect will obscure success achievements in policy product and policy impact. Because successes in nature conservation are also dependent on forces from outside the specific policy process, outcomes do not necessarily have a direct link with products and impacts. Nonetheless, products and impacts are necessary prerequisites for policy outcomes in the longer run.

Given the post-normal condition in which 'facts are uncertain, values are in dispute, the stakes are high and decisions are deemed urgent' (see e.g. Ravetz 1999; Funtowicz and Ravetz 1993), it is not automatically obvious what the best solution is in a specific situation. Even if you disregard the need for input legitimacy and focus solely on the solution of a perceived problem, it does not mean that the envisaged outcome will provide the necessary effects. Effectiveness is also an issue if you have high ambitions, as is the case in Dutch land-use planning, where different, contrasting and opposing opinions exist regarding land uses and the wished-for outcomes. Because the ambitions and conflicts regarding land use are high, a strictly output-orientated strategy is not likely to succeed. Because of the conflicting land uses and consequently highly conflicting interests of different stakeholders, some form of participation seems necessary.

THROUGHPUT LEGITIMACY

Throughput legitimacy emphasizes 'government with the people' and is defined here as a concern for the quality of the structure and procedure of a policy-making *process* in terms of legality, transparency, fairness, responsiveness, deliberation, openness and efficiency (Risse and Kleine, 2007). Procedures or mechanisms are needed to track down the preferences of the citizenry and translate them into political decisions. This 'process' dimension that is inherent to both the input and output dimension, either to retrieve the citizen's interest (normative) or to produce effectiveness (instrumental), has become equally important in the light of the shifts in governance as discussed earlier; this raises issues such as transparency, inclusivity and fairness. As such, the democratic dilemma has gone beyond weighing input (government by the people) and output (government for the people) legitimacy and has come to include considerations of the quality of the process itself – throughput legitimacy.

The throughput dimension is able to fortify both the input and output dimension of legitimacy. However, producing legitimacy with an emphasis on the quality of the process has its own rationale. *Throughput criteria* have been formulated mostly in the body of literature that has become known as 'deliberative democracy'- theory, a mostly normative approach to issues of legitimacy in contemporary democracies; this theory emphasizes the importance of the design of the actual decision-making procedure – ensuring fair and inclusive forums in which each participant has equal standing and equal speaking time – for the transformation of individual *interests* in collective *reasons* (Elster 1998; Bohman 1998). The deliberative approach also entails that decision-making processes allow systematically for arguing, reason-giving and mutual learning rather than hard-nosed bargaining which, is the assumption, lead to better results. The idea is that such a process provides a mechanism to understand and challenge the validity of actors' interests as well as to check the empirical facts on which policy choices are based (Risse and Kleine 2007). The source of legitimacy is not the predetermined will of individuals or their representatives, but rather the process of its formation, i.e. deliberation itself (Manin 1987). This notion of a 'deliberative approach' emphasizes the constructive value of democracy as propagated by Amartya Sen (see e.g. Sen 1999).

The three-way distinction between input, throughput and output legitimacy is explicitly presented as means of producing legitimacy. It is presented in this fashion under the assumption that legitimacy, within the democratic context, is not a qualification that is intrinsically present because direct, deliberative and representative mechanisms are present to govern *by*, *with* and *for* the people. Instead, legitimacy depends on how these mechanisms are used to deal with the issues that society is faced with, whether they be economic, social or ecological. The consensus seems to be that democracy is a continuous and active process where again and again solutions must be found to societal problems that, concluding from the above, are contingent and might need continuous re-adjustment. Legitimacy thus depends on how you can balance the input, throughput and output modes of legitimacy production. Legitimacy can, therefore, be seen as a function of the interdependence and interplay of input, throughput and output mechanisms.

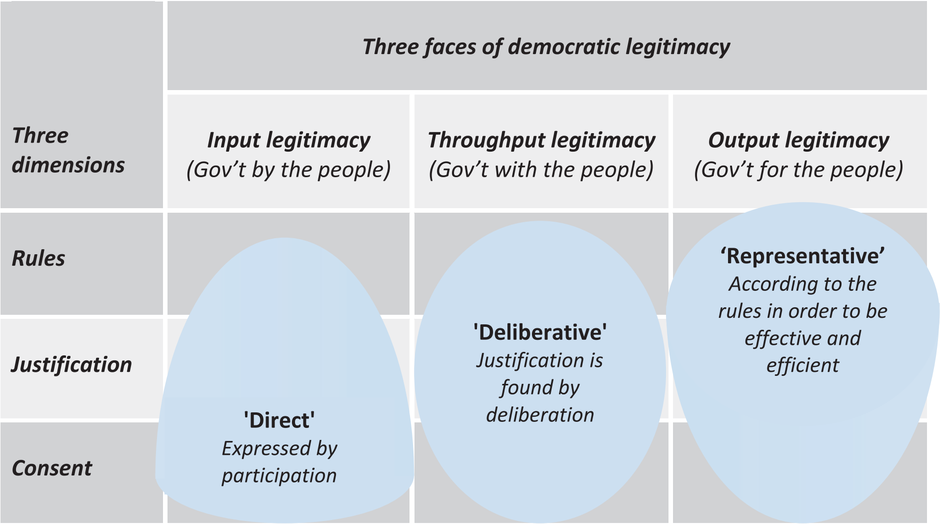
Traditionally, it is argued that there are mechanisms of *compensation* between the various forms of legitimacy: a deficit in one area can be made up in another. However, Beetham and Lord draw attention to the possibility of *displacement*: a situation where resolving a deficit in one area displaces the problem onto another (Beetham and Lord 1998 pp. 127–128). In their line of arguing, I therefore do not envisage an ultimate solution or an ultimate answer to what legitimacy should entail but think about it 'in terms of management of dilemmas rather than the solution of deficits' (Beetham and Lord 1998 p. 30)

5.6 A CONCEPTUAL SUMMARY

The three dimensions of legitimacy as distinguished by Beetham and the distinction between input, throughput and output legitimacy complement each other well. Combining these conceptual approaches provides an elaborate conceptual tool to analyze legitimacy and pinpoint the specific legitimacy issue at stake. Each of the three faces of procedural legitimacy can be elaborated upon in terms of the three dimensions of legitimacy (rules, justifications and consent). The content for these dimensions is provided by the three different models of democracy as discussed above.

In the elaboration on the three modes of legitimacy production, I explained that these modes complement each other within a democratic society. They each represent different faces of the character of modern-day democracy. On the one hand, democracy entails government by the people which implies direct involvement of the demos. On the other hand, representative forums are necessary in democratic societies in order to tackle societal problems effectively and efficiently. But because we live in a complex world with different values, ideals and conceptions of problems, deliberative approaches are necessary in order to get all parties to shake hands.

Matrix 5.3 Three faces of democratic legitimacy



Three dimensions	*Three faces of democratic legitimacy*		
	Input legitimacy *(Gov't by the people)*	***Throughput legitimacy*** *(Gov't with the people)*	***Output legitimacy*** *(Gov't for the people)*
Rules			**'Representative'** *According to the rules in order to be effective and efficient*
Justification		**'Deliberative'** *Justification is found by deliberation*	
Consent	**'Direct'** *Expressed by participation*		

Although input, throughput and output legitimacy all draw upon democracy – in terms of rules, justification and consent – as the source of legitimacy, the three modes of legitimacy production place a specific focus on the three dimensions of legitimacy (see matrix 5.3)

Although input, throughput and output legitimacy place an emphasis on consent, justification and rules, respectively, they can all be typified by all three dimensions. On the basis of the description of democracy as given above, we can distinguish between nine different positions of democratic legitimacy (see matrix 5.4). I elaborate on each of these positions in the following.

(I) Input legitimacy and rules

In this position, 'legitimacy' refers to the rules regarding participation, representation and inclusivity, and 'rules' relates to access and scope to political choices/arenas. These rules are laid down officially in, for example, the constitution and laws such as the general governance decree (algemene wet bestuursrecht). A situation of illegitimacy could occur when these rules are broken or not lived up too.

(II) Input legitimacy and justification

The rules as addressed above are based on the justification that it is the will of the people that should lie at the basis of political choices, as political choices are only legitimate if they reflect this will of the people.

(III) Input legitimacy and expressed consent

Ideally the demos participate directly in those affairs that affect their lives. 'Expressed consent' with regards to input legitimacy is expounded through the acknowledgement of the processes and the compliance of the participants through, for example, the participation in available forums that facilitate the expression of interest, such as general elections, referenda and participatory processes.

(IV) Throughput legitimacy and rules

Because problems have a contingent character, power ought to be exercised in conjunction with its constituency. In this position, authority needs to be transparent, fair, inclusive and responsive in decision-making procedures.

(V) Throughput legitimacy and justifications

The justification of power is found in that authorities enter a process of discovery with their constituency. What power is considered legitimate is not a given, but needs to found out by means of deliberation.

(VI) Throughput legitimacy and expressed consent

Expressed consent is especially in this position one of participation in deliberation. Whereas input legitimacy can rely on the expression of interests through, for example, general elections, here it is a more active and demanding form of participation that expresses consent. As such, it asks more of the subordinate.

(VII) Output legitimacy and rules

Authority is legitimate when it is exercised in congruence with relevant *products* that promote the welfare of the constituency in question.

(VIII) Output legitimacy and justifications

The justification of output legitimacy is enclosed within the envisioned or realized concrete results of authoritative actions. The *outcomes* provide the justification of the power-holder in question and the rules this power-holder ought to live by.

(IX) Output legitimacy and expressed consent

Expressed consent will manifest itself through *impacts* that are in congruence with relevant policy products. These impacts might refer to actual behaviour, the solution to existing conflicts or development of new coalitions and networks, which contribute to the realization of a wished-for outcome.

Matrix 5.4 Nine positions in legitimacy

	Three faces of democratic legitimacy		
Three dimensions	**Input legitimacy (Gov't by the people)**	**Throughput legitimacy (Gov't with the people)**	**Output legitimacy (Gov't for the people)**
Rules	Participation Representation Inclusivity I	Transparent, fair, inclusive Responsive IV	Products outline responsibilities and mandate VII
Justification	Will of the people II	Uncertainty regarding facts problems and solutions V	Outcomes ensure the welfare of the constituency VIII
Consent	Participation III	Deliberation VI	Impacts IX

These nine distinct positions of procedural legitimacy form an elaborate conceptual tool to tackle an analysis of Dutch nature policy practices. It makes it possible to pinpoint the legitimacy issue at stake and gives the opportunity to observe changes in this position over time when policies change and alter under conditions from inside or outside a specific policy process.

5.7 RESEARCH QUESTIONS REVISITED

The aim of this study is to explain and understand the concept and problem of legitimacy in relation to Dutch nature policy and practices. Furthermore, this study is intended to contribute to the realization of legitimate nature conservation. The research questions as formulated in chapter 1 represent a search for understanding, and have been formulated as follows:

(1) *What is legitimacy? Or how should we understand the concept and problem of legitimacy?*

(2) *What are the issues or problems with regard to legitimacy in Dutch nature policy and practices?*

(3) *What characterizes legitimate nature conservation practices?*

This chapter has provided the answer to the first research question. We know that legitimacy refers to the rightfulness or appropriateness of power and the exercise of that power. In modern-day societies, that rightfulness is imbedded in the concept of democracy. However democracy is anything but a clear concept. Popular sovereignty and individual freedom are two distinct values that take on different guises within the different concepts of democracy. The issue of democratic legitimacy arises only under very specific conditions where individuals are interdependent and where the interests of these individuals are seen as valid concerns.

The account of legitimacy presented in this chapter is an account of legitimacy as activity. Legitimacy is not a given, but needs to be re-established within a democratic context where often post-normal conditions prevail. When ‘facts are uncertain, values in dispute, the stakes are high and decisions are deemed urgent’ (see e.g. Ravetz 1999; Funtowicz and Ravetz 1993), solutions are often contested. This asks for a procedural approach to legitimacy in which legitimacy is seen as an activity. However, producing legitimacy is not as clear cut as it may seem. The three different modes of production – input, throughput and output – all play their part in producing legitimacy, but their relation is not a given. The conceptual framework presented in the previous section brings together the different procedural dimensions, but does not imply a fixed protocol for legitimacy production. However, the theoretical framework has provided enough analytic content to reformulate and specify the second research question.

With respect to the second research question we can ask ourselves:

- Can we observe procedural legitimacy production in Dutch nature conservation? If so,
- Can we observe trade-offs between the different modes of legitimacy production?

In answering the above questions, we need to be sensitive to the governance character of Dutch nature conservation. Chapters 3 and 4 have shown us that shifts in governance imply shifts in legitimacy.

For this reason we may also ask ourselves:

- Can we observe shifts in governance? If so,
- How do these shifts in governance affect legitimacy?

These questions will now guide us through four case studies. These case studies can be considered to represent the diversity of the perceptions of nature, and the subsequent policy practices, that we have in the Netherlands. These case studies may act as mirrors in which interested parties may see themselves and others in the practices that they are most familiar with.

By answering these questions for each of these case studies, we will gain insight that will help us in answering the final research question: What characterizes legitimate nature policy and practices?

6

FUTURE AMSTELLAND

6.1 INTRODUCTION

In this chapter, the point of entry to a discussion on legitimacy is an exploratory and participative process in Amstelland. This process was part of the Future Amstelland project that ran from autumn 2002 to spring 2004, the purpose of which was to develop a shared vision and action plan for the rural 'green wedge' that penetrates the city of Amsterdam from the south. In terms of the conceptual framework as discussed in chapter 5, the Future Amstelland (FA) project can be identified as an attempt to produce legitimacy by throughput mechanisms. During the FA process, initiated by the municipalities of Amsterdam, Abcoude, Amstelveen, Ouderamstel, de Ronde Venen and Uithoorn, a broad spectrum of stakeholders were invited to develop a shared vision for the future. However, the outcome was criticized by international partners because of a limited representation of interests and a rather conservative vision that fails to incorporate pressing issues. In other words, both the input and output legitimacy of FA were scrutinized.

Because of this legitimacy deficit, the FA project was chosen to aid the purpose of this study. Furthermore, this case was chosen to exemplify the diversity in shades of green that is nature in the Netherlands. Even though Amstelland – a rural area – will not automatically be typified as 'nature', it is an example of Dutch nature. Not only is part of Amstelland incorporated into the National Ecological Network, but safeguarding green open spaces in urban areas is an important part of Dutch nature policy (see box 6.1). The analyses of the FA process[15] in this chapter discusses the perceived legitimacy deficit and is based on desk research and additional interviews (see appendix V).

The build up of this chapter is as follows. In § 6.2, the FA project is introduced. First, the historical context is sketched to place the ambitions of FA in perspective. Also in this section, the connection that the FA initiative has to the EU initiative Sustainable and Accessible Urban Landscapes (SAUL) is described. In § 6.3, the administrative surroundings to which Amstelland is subjected are discussed. The area is subject to policy and planning initiatives that originate at different administrative levels and that often overlap. This might seem chaotic, but a hierarchy of national, provincial and local plans and policies can be distinguished. With the historical and administrative context explained, the FA process is discussed in more detail in § 6.4. In § 6.5, the conceptual framework of chapter 5 will be used to analyze the FA case. The revisited research questions of § 5.7 will be addressed in relation to FA in § 6.6.

6.2 AMSTELLAND: PAST, PRESENT AND FUTURE!

Amstelland, the object of the FA project, is the area immediately south of Amsterdam. Amstelland is part of the *Groene Hart* (green heart), a predominantly rural area that is enclosed by the *Randstad* (rim city), an urban belt that consists of the cities Utrecht, The Hague, Rotterdam and Amsterdam. The Randstad is home to more than 7 million people and can in many ways – although not geographically – be considered the centre of the Netherlands. The political and economical centres are located in the Randstad and much of what the Netherlands is known for

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[15] Elaborate documentation regarding Future Amstelland can be found on www.toekomstamstelland.nl and http://www.destadbv.nl/projecten/categorie/toekomstonderzoek/projecten/toekomst-amstelland/#bijlagen

can be found here. Within this urban landscape, rural and natural areas are under pressure, but are still valued for their openness, naturalness and recreational potential. Amstelland contributes to the objective of providing enough green space of sufficient quality within an urban environment.

Over the past 1000 years, Amstelland changed from an uninhabited marshland, consisting of broad expanses of raised peat lands that were dissected by streams, into a typical Dutch landscape with windmills and dykes that is characterized by Haartsen and Brand as a 'turned around' landscape (2005). In this landscape, the rivers, once the lowest point in the countryside, were transformed into the highest point in the landscape as a result of human interference. The first farmers settled on the river banks, but as time progressed they started to cultivate the surrounding marshlands. As a result of drainage, necessary to enable cultivation, the peaty soil, which largely consists of water, started to subside. This process was increased by tillage, as the air that was mixed with the soil in the process caused oxidation of the partially decomposed plant matter. The land that once stood several metres above sea level now laid several metres below sea level, and the rivers were now the highest points in the landscape. During high storm tides, the river banks could burst and the sea could find its way through the river into the polders. The people started to protect their houses and the first dykes were built around 1200, soon followed by dams and sluices. The dam on the Amstel was built around 1270. The system of dams and sluices required a sophisticated solution of water drainage. At first, a system of drainage ditches and sluices sufficed, but the ongoing soil subsidence required more rigorous measures. From 1480 onwards, drainage mills were built to discharge the water, but these were replaced in the nineteenth century by pumping stations. The ongoing soil subsidence not only offered technical challenges, but also influenced the possible land use. Lowering the water level made arable farming possible; however, the inevitable subsidence of the soil ultimately led to a situation where the soil became too damp and farmers were unable to continue their mixed farming practices. By this time, Amsterdam had developed into a mercantile city with high demand for rural products, such as milk and butter. Consequently, dairy farming became an attractive alternative agricultural activity; to date, this is still the prevalent agricultural practice in Amstelland, which consequently dominates the current appearance of this turned around landscape.

The current appearance of Amstelland is thus very much the result of its history, a history that is characterized by the reciprocal relationship between Amstelland and Amsterdam and other surrounding cities. Amstelland provided the means for the growth of the urban conglomerate, whereas Amstelland could preserve its open rural character thanks to the specific rural functions it provided for. However, this relationship is currently under pressure.

The present shape of Amstelland and Amsterdam might have already been lost if it was not for the seminal Algemeen Uitbreidingsplan (AUP – Amsterdam Extension Plan) of 1935. In this AUP, a spatial planning document of the municipality of Amsterdam, Amsterdam is designed on the basis of the concept of the *vingerstad* (literally: finger city). The core of Amsterdam is the palm of the hand, which stretches its urban fingers into its rural surroundings (much like spokes in a wheel) forming green wedges that reach into the city. Amstelland is such a wedge and is also referred to as the Amstelscheg (Amstel Wedge). These wedges, which highlight the radial structure of the past, are no longer functional. The logic of the landscape is contested, as Amstelland is under growing pressure of contemporary forces of development such as mobilization, industrialization and urbanization. The Structuurplan (a municipal planning document) of 2003 shows that the spatial characteristics of the area have already been lost to a large degree (Dienst Ruimtelijke Ordening 2003). The open spaces can hardly be distinguished from the city areas. For example, the agricultural agglomerates have evolved into suburbs, and the green open spaces are concentrated around the city rather than reaching into the city. Because the historic important radial connections – such as the Amstel river – between the cities and Amstelland have lost their significance and because the tangential connections – such as roads, highways and railways – have gained importance, the area's open rural character is fading.

Today the Amstel River Wedge is well used and part of the regional population's mental map as a leisure area. An appreciated aspect of the landscape is its present agricultural use. However, with the loss of economic relevancy, agriculture as the driving force behind the spatial dynamics has disappeared. On top of that, the development potential of Amstelland has increased the value of the land to a higher price than is justified by agricultural production only (Dienst Ruimtelijke Ordening 2003).

The situation of Amstelland in relation to its rural, green or natural surroundings can be considered typical for many urban/rural relations elsewhere in the Netherlands. Given the highly urbanized character of the Netherlands, there is great need for qualitative 'green' spaces in the vicinity of the city. *Groen in en om de stad* (GIOS), which means literally 'green in and around the city', used to be an important pillar of Dutch nature policy (see box 6.1), but is now primarily addressed in urban policy programmes. The necessity of qualitative green spaces in and around the city is uncontested. In theory, there is no administrative objection in realizing these spaces, but practice proves different (see Vuijsje 2002).

THE FUTURE OF AMSTELLAND

Just as the present appearance of Amstelland is the result of past dynamics, the future appearance will be determined by present dynamics such as initiated within the FA project. This cooperation of several municipalities envisages a vision and action plan for the region. In the background documents to the FA project, three motives are given that indicate the necessity of a future vision. These motives address a larger trend that can be witnessed in the Netherlands that is best described as a disappearance of the urban–rural dichotomy (see Wiskerke 2007).

The first motive has to do with the changing agricultural dynamics in the region. The main driver behind the appearance of Amstelland – dairy farming – is confronted with a precarious future. The agricultural sector is likely to change and diversify its practices under the pressure of international market conditions. As a result, agricultural enterprises look for possibilities to scale-up, modernize and intensify their practices. However, the limits of growth seem to have been reached with increasing claims of nature conservation, water management and recreation.

A second motive refers to the changing relationship between the cities and their rural counterparts. First of all, towns and villages no longer depend on neighbouring rural areas for food and dairy products. Thus, the historical necessity of an open rural countryside has diminished. Second, the towns in Amstelland are becoming part of a growing city district in

BOX 6.1 URBAN GREEN - GIOS

In the national policy document 'Nature for people, People for Nature' (Natuur voor Mensen, Mensen voor Natuur; NvMMvN) of 2000, the focus on nature in and around cities is one of the five key issues that are addressed. Although cities are becoming greener in the Netherlands, cities in the west of the Netherlands stay far below the desired 75 m^2 (Ministerie van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer 2004) of green space per inhabitant.

The 'Natuurbalans 2004', an annual assessment of the state of nature in the Netherlands, even starts with the following quote: 'The urbanization of the last decades has led to a decrease of quality of the landscape in the Netherlands' (Rijksinstituut voor Volksgezondheid en Milieuhygiëne 2004). This quote sets the tone of the Natuurbalans 2004, in which urbanization is recognized as the major driver of change in the Dutch landscape, a role that used to be played by agriculture in the past centuries. In this document, it is concluded that broad regional plans are absent and that towns often do not look beyond their town boundaries. Moreover, a strong steering function of the provinces is lacking. Investments in the green surroundings are often left to developers.

How the green spaces will take shape and what they are supposed to look like depends to a large degree on the local situation and local needs. As local authorities should know best what their city needs, the responsibilities for the implementation of this policy are delegated by the national government to these local authorities. As of 1990, the national responsibilities for the green spaces around cities have been delegated to the twelve provinces. However, the provinces have problems to take up this task with decisiveness, all the more since a clear definition of responsibilities at the various levels of government is still lacking. In practice, we see that dozens of different parties are involved, with often unclear objectives and intentions (Rijksinstituut voor Volksgezondheid en Milieuhygiëne 2004).

which the smaller towns have taken on a suburban character and provide services formerly found in the bigger surrounding cities such as Amsterdam. Because of these expanding urban centres and interconnecting infrastructure, Amstelland is under continuous pressure.

The changing administrative roles and responsibilities within Amstelland is the third motive. Amsterdam is no longer the centre of the Amstelland region. The monocentric city has been replaced with a city region that counts a number of regional centres, with their own jurisdictions. This trend is acknowledged in the Nota Ruimte (Ministerie van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer 2004) in which regions are challenged to come up with solutions to the problems that these regions are faced with. This challenge is especially relevant as the Amstelland region does not exist as an administrative entity.

Under the administrative lead of the Steering Group Future Amstelland – whose members are council members from the municipalities of Abcoude, Amstelveen, Amsterdam, Ouderamstel, de Ronde Venen and Uithoorn – Platform Amstelland was initiated and is best described as a public forum where people in the Amstelland region could shape the future of the region. The task at hand was to make a new connection between the cultural heritage, the current qualities and the latest needs of the region. Platform Amstelland had to generate a vision for the Amstelland region that extends to the year 2033.

The FA project has a surprisingly international twist as it was one of the projects with which the municipality of Amsterdam participated in the European working association called SAUL (Sustainable and Accessible Urban Landscapes)[16]. SAUL is a transnational action, research and development initiative to explore the role of socially inclusive spaces in the sustainable development of metropolitan regions. This transnational partnership approach is seen as the starting point for promoting a radical new planning culture in North West Europe that acknowledges that people, not planners, hold the key to the socially compatible design, use and management of sustainable landscapes.

According to SAUL project manager Clive Fox,

> *'SAUL is responding to the fact that dramatic economic and social changes over the past few decades have permanently altered Europe's metropolitan regions and their landscapes. The future lies in socially inclusive urban spaces which will balance the economic, environmental and social needs of our metropolitan regions. I believe fundamentally in the renewal of the public role in planning and that the route to achieving this lies in a partnership approach between planners and local people, which is being increasingly recognized at Government level throughout Europe.'*
> (Fox 2003, March 23)

The participation of the municipality of Amsterdam in SAUL was opportunistic in the sense that it hitched a ride when the opportunity presented itself. In contrast to many of the projects that were initiated within the SAUL context, the Amstelland project was already in progress. However, because the Amstelland objectives fitted almost one-on-one with SAUL intentions and objectives, the FA project was one of two projects that the municipality of Amsterdam selected as part of its SAUL input.[17]

The future of Amstelland is under pressure and the FA process addresses this problem. The participation in SAUL, and the character of the FA process itself, stress the necessary input of local

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[16] This transnational partnership project was part-funded by the European Union's Interreg IIIb programme for North West Europe (NWE) and is the development face of the project New Urban Landscapes Interreg IIc. Interreg III was an EC Community Initiative to promote transnational co-operation on spatial planning by encouraging harmonious and balanced development of the European territory. The overall aim was to ensure that national borders are not a barrier to balanced development and the integration of Europe and to strengthen co-operation of areas to their mutual advantage. The Initiative ran from 2000 to the end of 2006. The overall objective of Interreg IIIB was to contribute to a more cohesive, balanced and sustainable development of the European territory, and the North West Europe (NWE) area in particular, through an innovative and integrated approach to transnational co-operation in redesign of metropolitan urban landscapes. It takes into account Community Policy priorities such as the Trans European Networks and the recommendations of the European Spatial Development Perspective.

[17] The Dutch State Forest Service (Staatsbosbeheer) was hired to deal with the project administration and to co-ordinate the international contacts between the different international partners. This can be regarded as an administrative win–win situation for the reason that the spatial planning department of the municipality of Amsterdam did not have the resources to enter in such a labour-intensive international co-operation, while at the same time SBB was presented an opportunity to broaden its range of activities. Before 1998, SBB was the responsibility of the Ministry of Economic Affairs, Agriculture and Innovation (EL&I). Since 1998, SBB is commissioned by the Dutch government and manages 260,000 hectares of nature at the behest of the national government.

stakeholders in designing the future of Amstelland. As such, the success of the FA is made dependent on this input as it assigns crucial value to this input. However, we should also realize that this problematic future has been addressed before in different initiatives. To understand the FA initiative in relation to other initiatives, it is necessary to discuss the FA process within the governance context of Amstelland. This helps to put the chosen strategy – which emphasizes public input – in perspective.

6.3 GOVERNANCE IN AMSTELLAND

CONFLICTING AMBITIONS

In the case of Amstelland the ambition sounds simple: Amstelland should remain green and open. However, as we see in the national planning document Nota Ruimte (Ministerie van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer 2004), Amstelland is typified as a buffer zone and is protected to prevent the merging of still separate parts of the city. However, although national, provincial and municipal authorities subscribe to the ambition to preserve the open character of the Groene Hart, there is growing pressure from other legitimate claims such as housing, industry, economy and transport. Ironically, these claims are advocated by the same administrative authorities. Municipalities may argue that, to keep the community economically viable, new industrial sites are necessary, or that new housing sites are inescapable to facilitate a population whose living standards are changing. The pressure on Amstelland and the Groene Hart is significant because the Randstad that surrounds the region is ready to burst and spill over into its rural neighbour.

Next to this Janus-faced challenge of realizing conflicting goals, Amstelland is confronted with the challenge to tackle a new function: the harbouring of water. Due to plate tectonics, the whole of the Netherlands is tilting slightly to the west, and soil subsidence remains a problem in the peat lands in the west. This situation is intensified by the expectation that sea levels will rise and rainfall will increase under the influence of global warming, which results in extra pressure on our current system of water protection. The challenge is thus 'how to live with water' instead of 'fighting against it' (Needham 2007, p. 94). This challenge is incorporated in the national *Besluit Ruimtelijke Ordening* (Spatial Planning Decree) and the international European Water Framework Directive. Municipalities are now legally obliged to consult with Water Boards on the hydrological consequences when they prepare a new municipal plan. Instead of looking for new technological solutions, part of the answer is sought in so-called 'retention areas' that can be deliberately put under water to temporarily relieve the stress on existing dykes and sluices and guide water away from urban centres. This is a radical change in water policy and has significant consequences for spatial policy.

Amstelland may thus be an example that typifies the high ambition the Dutch have regarding land use (see, for example, Wetenschappelijke Raad voor Regeringsbeleid 1998; Needham 2007). We also see that it entails layered ambitions that involve different stakeholders at different levels of administration

MULTI-LEVEL AND MULTI-ACTOR GOVERNANCE

The Netherlands is a decentralized unitary state, which means that the public powers are distributed between national, provincial and municipal authorities. Although this is a hierarchical system, national policy regarding land-use planning does not trickle down automatically to lower

BOX 6.2 STATUTORY PLANNING AGENCIES AND THEIR PLANNING TOOLS

MUNICIPAL AUTHORITIES

Municipal authorities have 'direct' influence on the use of land within their jurisdiction by means of the legally binding **land-use plan** (bestemmingsplan) and the **building permit** (bouwvergunning). A land-use plan regulates changes to the way land is used. New developments are tested against the land-use plan and need a building permit issued by that same municipality. Municipalities may also develop a municipal **structure plan** (structuurplan) that sets out desired future developments, but it has very few legal consequences.

PROVINCIAL AUTHORITIES

The provincial authorities have very few 'direct' ways of controlling spatial developments and their influence is mostly indirect. A province may make a provincial **structure plan** (streekplan). This plan binds the province to act in accordance with its own plan, but it does not bind others. However, the province has considerable political and legal force in that it can regulate the actions of others. For instance, new municipal land use plans are not legally valid until the provincial authorities have approved of it. In the structure plan, the province regulates how it will give or withhold that approval. The structure plan has also other significant consequences for land use policy in that the structure plans must include the land re-adjustment schemes (landinrichtingsplannen) and the delineation and implementation of the national ecological network.

NATIONAL GOVERNMENT

The national government can lay down its spatial planning policy in **projects of national importance** and **national spatial planning key decisions** (planologische kernbeslissing – PKB) that include structure plans (structuurschema, structuurschets) and national policy documents. A key decision says what the national government will do to implement that aspect of spatial planning policy and co-ordinates (if relevant) the actions of national government departments. With these key decisions, the national government not only co-ordinates its own actions but it also indicates what it wants provinces and municipalities to do. When the government makes a key decision in the form of a project of national importance, it has direct consequences for the provinces and the municipalities as it automatically overrides the existing municipal plans.

The information given is applicable under the Wet op de Ruimtelijke Ordening (WRO – Spatial Planning Law) that was applicable to the Future Amstelland process. Under the revised Wet ruimtelijke ordening (Wro) that took effect in 2008, all three planning agencies are to make indicative **structure plans** that present a 'vision'. Besides these structure plans, all three agencies may make an implementation plan (municipal land-use plan, provincial imposed land-use plan, national project plan). In this new situation, all three agencies have now *direct* influence on land-use planning and can issue building permits. With this new situation, the municipality has lost its monopoly on the building permit and, with that, its powers to obstruct top down policy by provincial and national authorities.

(source: Needham 2007)

administrative levels. Spatial policy is not made at the national level after which the provincial and municipal levels mechanically work it out in more detail. In theory, there is a hierarchy where the policies of lower level authorities need to fit those of higher authorities; in reality, all three statutory planning agencies work on spatial policy at the same time (see box 6.2).

The twelve provincial authorities are responsible for the spatial planning that exceeds municipal boundaries. By means of provincial structure plans, provincial authorities aim to direct the planning activities of the individual municipalities. Besides this indirect influence, the provinces are required to have a Provincial Spatial Planning Committee that mediates between the national, provincial and municipal layers of government regarding issues of spatial planning. Regional co-operation can also be facilitated or enforced under the Joint Provisions Act (Wet Gemeenschappelijke Regelingen).

However, the provinces do not have a strong tradition of decisive action (see Peters 2007, and Van Schendelen 1997). In theory, a higher authority can always override lower authorities. These hierarchical powers are however seldom applied, as most of the time the custom of co-ordination by consultation prevails (Needham 2007). Furthermore, because many problems in the Netherlands cross the jurisdictions of individual municipalities and because their solutions need an integrated approach, regional co-operation is advocated more and more in many policy fields and is even preferred over central decision-making. With regard to Amstelland, regional cooperation is key.

REGIONAL GOVERNANCE: FUTURE AMSTELLAND PLACED IN PERSPECTIVE

Amstelland is not a clearly defined area. Geographically, it refers roughly to the area enclosed by the towns of Amsterdam, Amstelveen, Uithoorn, Vinkeveen and Nichtevecht; however, administratively its delineation depends on the issue/problem that is being addressed and which administrative actors participate in a particular endeavor.

In the FA project, the municipal authorities of Amsterdam, Ouder-Amstel, Abcoude, Uithoorn and Amstelveen form a coalition; however, when we refer to, for example, Rural Amstelland (*Groengebied Amstelland*) and Re-adjustment Amstelland (*Herinrichting Amstelland*), this refers to different administrative partnerships with a different legal status even though they address the rural landscape and similar functions such as agriculture, nature, landscape and recreation.

Rural Amstelland (*Groengebied Amstelland*) is a partnership of the province Noord-Holland and the municipalities of Amstelveen, Amsterdam, Ouder-Amstel and Diemen. The coalition creates and maintains recreational areas and hiking, cycling and horse-riding routes. The total area the coalition manages is about 4000 ha. Re-adjustment Amstelland (*Herinrichting Amstelland*) finds its origin in national policy. Under the national *Landinrichtingswet* of 1985, provincial authorities are mandated to decide on spatial allocation and relocation of spatial functions and uses. For these re-adjustments, the formal consent of affected landowners is not required. Re-adjustment Amstelland is such a project that foresees in a better arrangement of the agricultural, recreational, environmental and cultural functions of Amstelland (see Centrale Landinrichtingscommissie 1992).

FA is one initiative among many and is not particularly exclusive in wanting to tackle a number of interrelated problems. In contrast to Re-adjustment Amstelland and Rural Amstelland, the FA process is not the result of a legal obligation. FA is not exclusive in wanting to create an integrative vision for the region either. FA is different in that it tries to develop a vision in co-operation with the different municipal authorities, the inhabitants of the regions and those that have an interest in Amstelland.

The FA process can be seen as an example of decentralization and deregulation with a focus on concrete actions, which are core principles in the Nota Ruimte (see Ministerie van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer 2004). The aim of the central government to place the responsibility for regional development with the lower authorities and the stakeholders in the region is here put into practice. The municipality of Amsterdam, which is the initiator of the FA process, has jurisdiction over only just a fraction of the region, whereas most of Amstelland falls under the jurisdiction of the municipalities of Amstelveen, Abcoude, Ouderamstel, de Ronde Venen and Uithoorn.

The implicit objective of FA is to go one step further than existing plans as current agricultural practices are not seen as a given. In comparison to the statutory spatial plans, the vision that comes from the process has no legal status, and cannot force parties to act accordingly.

To summarize, the governance of Amstelland is complex. Many authorities have a mandate in Amstelland, but none have absolute power. If an authority – whether it be national, provincial or municipal – has an ambition, then it cannot but look for cooperating partners. FA is one of many initiatives in which authorities try to reach the objectives they have with respect to the Amstelland region. In the case of FA, we see that the achievement of this ambition depends not only on the cooperation of different municipal authorities, but more so on the concrete input of their constituency. This was input that the FA process was purposively designed to facilitate.

6.4 THE FUTURE AMSTELLAND PROCESS

FA is a combined initiative of the municipalities of Abcoude, Amstelveen, Amsterdam, Ouderamstel, de Ronde Venen and Uithoorn. However, it was the municipality of Amsterdam that initiated the process that was ultimately backed-up with support from adjacent municipalities. With finances available from national means (GIOS – *Groen in en om de stad*) and municipal rural funds, the municipal authorities of Amsterdam decided to start a project that was aimed at tackling the problems in Amstelland. This is remarkable as the national and provincial authorities are officially responsible for rural policy that transcends the individual jurisdictions of municipalities. As Amstelland falls under the jurisdiction of more than one municipality, the Amsterdam authorities would be mingling in the responsibilities of other municipalities as well. Given that existing planning documents were not in agreement regarding the future developments of the Amstelland region, a first objective was to determine mutual agreement regarding this future development.

First, the Amsterdam planning department chose to approach the agrarian community in Amstelland to probe whether the agrarians were willing to participate.[18] Because most of the land is possessed by the agrarian community, and the Amsterdam municipal authorities have

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[18] In Amstelland, about 130 farmers are active. Half of them are fulltime farmers and own 80 to 90 % of the land in Amstelland. (Timmermans, personal communication, 2007, January 18)

only limited authority in Amstelland, the project was assumed to fail without their support. The assumption was that, if the agrarian community had a positive view of the idea of cooperation, the municipal authorities would subsequently follow. Therefore, on an evening in 2002 in the town of Oudekerk, four scenarios were presented to the agrarian community (see box 6.3). These scenarios originated at the planning department of the municipality of Amsterdam and were presented to the agrarians, who were asked if they were willing to cooperate in filling in the future developments of Amstelland.

According to the FA project coordinator, one of the reasons why the agrarian community took a positive view of the project was the foot and mouth epidemic of 2002. This event affected many farmers both personally as well as economically. This affected their willingness to discuss their common future and explore new business ideas (Timmermans, personal communication, 2007, January 18). The fact that the municipality was willing to invest financially in these developments proved decisive as well (see Van Bree 2004). Once the agrarian community proved willing to participate, it was a conscious choice to engage and organize only those municipalities that had jurisdiction in Amstelland. The Amstelland 'steering group' consists of the administrative representatives from these towns. The idea was that, with participants such as the provincial authorities and Rijkswaterstaat (the executive arm of the Dutch Ministry of Infrastructure and the Environment), too many substantial interests had to be heard before a common course was determined. By keeping the set-up of the process low-profile, the dynamics of the process would not be slowed down, or even clouded, by too many conflicting claims or interests. Thus, despite the top-down initiative by the planning department of the municipality of Amsterdam, the FA process was set up with a bottom-up character that depended on local ideas and initiatives.

BOX 6.3 FOUR PERSPECTIVES ON THE FUTURE OF AMSTELLAND

Autonomous development: This scenario was not used to deliberate on but portrays the situation if no new incentives are implemented. It was used to portray the problematic current situation.

Amstelland in agrarian hands: the agrarian sector is seen as an important actor in the design and use of the Amstelland landscape. This scenario explores the sensible facilitation of agricultural use to assure an agrarian use in Amstelland.

Landscape park: In this perspective, agricultural practice is no longer seen as the main economic driver behind the developments in Amstelland. The historic peat bog landscape will be the point of departure, but new forms of management will be explored. The openness of the landscape remains the key point, and further urbanization is not wished for.

Amstel estate: Controlled urbanization at the periphery of Amstelland is explored to realize a definitive delineation and to generate funds to strengthen and maintain an open landscape that is future-proof.

In 2002, under the administrative lead of the Steering Group Future Amstelland, Platform Amstelland was initiated and is best described as a public forum where all stakeholders in Amstelland – ranging from agrarians, inhabitants, recreational users, etc. – could come together to shape a future vision for the Amstelland region. The task at hand was to make a new connection between the cultural heritage, the current qualities and the latest needs of the region. Platform Amstelland had to generate a vision for the Amstelland region that extends to the year 2033. The four different scenarios that were presented to the agrarians were worked out in more detail and provided the starting point of an elaborate participatory process.

The four scenarios were used as points of orientation and served to challenge the participants to explore different solutions to the perceived problems in the region. The four scenarios were introduced in three short sessions. These sessions were organized in such a fashion that opposing views were discussed in an open and friendly manner. Instead of government officials presenting different views, a theatre group was brought in to portray the different scenarios. It had the freedom to give a sharp expression of each view, which might have led to hostile responses if they were expressed by government officials. The responses to these presentations were fine-tuned in an organized debate. The four scenarios were discussed in different groups in which diverse interests were represented. This meant that, for example, the agrarian scenario was discussed with farmers as well as other parties, which resulted in a discussion that required people to support their views with arguments. During the first evening, about 80 participants took part in the process compared to 200 participants during the last session. In total, about 1000 participants (meetings and website) participated in the Platform.

Ultimately, the FA process resulted in a rather conservative vision that stresses the importance of the cultural and historical landscape of Amstelland with agricultural practices as a main facilitator.

> *'The Steering Group is of the opinion that the cultural historical landscape of Amstelland is invaluable. There is a growing need of the urban, nature minded and recreational dwellers for landscapes with identity close to the city. Amstelland is the result of centuries of urban–rural interaction. The Steering Group considers it desirable to preserve this identity and to facilitate the experience of this landscape. The identity of Amstelland cannot be separated from its agricultural use.'*
>
> (Stuurgroep Amstelland 2004 – *translated from Dutch*)

Subsequently, project proposals could be submitted by anyone who was interested. The steering committee evaluated these projects and assembled a list of those projects that were in line with this strategy. Ultimately, the vision was matched with a development plan that entails a list of projects (see box 6.4), in line with the vision on the future, and which could start within the concurrent administrative period.

As mentioned at the beginning, the FA project generated a vision that can be typified as rather conservative, as its focus remains predominantly agrarian and fails to incorporate the water-harbouring challenge. The project coordinator was aware that this strategy was ultimately a short-term strategy that did not deal adequately with the challenges that lie

BOX 6.4 EXAMPLES OF SELECTED PROJECTS (SOURCE: STUURGROEP AMSTELLAND 2004)

Ultimately, the Steering Group Amstelland selected 16 projects out of 133 project proposals that are to benefit the execution of the Future Amstelland vision. Below, four typical examples are presented.

project 5 Amstelland Fund
Study into the feasibility of a fund with which agrarians are compensated for the safeguarding and management of the agrarian cultural landscape.

project 19 Elzenhoven
Strengthening the cultural historical identity by rebuilding the historical peat shed Elzenhoven.

project 34 Canoe and ice-skating routes
The creation of shorter and longer routes for both canoeing and ice-skating by means of reconstructing physical barriers, such bridges and crossings.

project 125 Creation of network of open-house farms
This network enables recreational users to visit operational farms and familiarize themselves with the agricultural practices in Amstelland.

ahead. For this reason, projects were selected that had the potential to act as a catalyst to introduce new developments that address these challenges. At the same time, no projects were selected that might inhibit these developments. For example, one of the ideas generated by the farmers in the region was the introduction of power-generating windmills, an idea that was explored with the hired help of a consultancy agency. The Amstelland steering committee deemed the windmills to be incompatible with the cultural historical appearance of Amstelland. Although this idea is compatible with a broadening of agricultural practices and the ambition of strengthening the financial position of the agricultural community in Amstelland, it did not fit the wished-for character of Amstelland. By overseeing the selection procedure, the municipal authorities kept control over the outcome of the FA process.

6.5 LEGITIMACY IN AMSTELLAND

FA is not, like Re-Adjustment Amstelland, the result of a legal obligation, but had a rather opportunistic start in that it benefitted from surplus funds and the willingness of local farmers to discuss their own future in relation to that of Amstelland. The FA initiative thus did not need to live up to formal external legal obligations, nor could it benefit from legal power to realize certain outcomes. However, the FA initiative did have self-imposed rules and objectives that needed enactment and realization. Although these are self-imposed, they became formal with the initiation of FA and were further endorsed by the participation of the municipality of Amsterdam in the SAUL initiative. It is also from within this international cooperation that criticism regarding the legitimacy of the FA initiative can be found and justified.

REFLECTIONS OF INTERNATIONAL PARTNERS

This chapter opened with the statement that the FA process suffers a lack of output and input legitimacy. This is a conclusion that we can distil from critical remarks that were provided by international partners (see Van Bree 2004) with whom the municipality of Amsterdam participated in the international project SAUL. The joint (transnational) planning group (JPG) formed for Amsterdam, which includes members from the SAUL partners, including London, Saarland, Frankfurt/Rhein-Main, Nordrhein-Westfalen, the Grand Duchy of Luxembourg and the municipality of Amsterdam, drew conclusions along two lines. One set of conclusions focuses on the proposed spatial strategy; the other concerns the issue of citizen participation in the process. In relation to the chosen spatial strategy, the JPG concludes that it is ultimately a short-term strategy; the economic position of the agricultural community remains uncertain and the strategy does not address the water-harbouring objective of the region. Consequently, the sustainability of the developed vision is questionable. In fact, a rather conservative strategy is chosen. Regarding the participatory process, the JPG concludes that, although the process has proven to be successful in bringing people together and creating mutual understanding, the urban population was underrepresented or even absent during the process. With respect to this limited participation of the urban population in the planning process, the JPG wonders how this has affected the overall outcome of the Amstelland process (Van Bree 2004).

With their observations, the JPG reflected indirectly on the legitimacy of the Amstelland process. In terms of the theoretical account presented in chapter 5, these observations can be understood as issues of output and input legitimacy. With respect to output legitimacy, the conclusion of the JPG questions the *outcome* of the process in realizing the goals as established at the beginning of the Amstelland process – developing a vision and a plan of action, tackling the problematic economic position of the rural community, creating a vision/strategy for the entire region, and dealing with new objectives such as the water management for the region. What the JPG observes is that the actual *outcome* does not meet the goals as set out at the beginning of the FA process, and as a result the wished-for *outcomes* are not guaranteed on basis of the developed vision.

The observation that the urban population has been underrepresented or was even absent during the process can be seen as an issue that addresses first of all *input* legitimacy, but also *throughput* legitimacy. The participation of a certain stakeholder group is a matter of input legitimacy, as it relates to the direct involvement of stakeholders in decisions that affect their lives; however, it is also a matter of throughput legitimacy, as it refers to the inclusiveness, openness and accessibility of the process. Consequently, the question how this lack of input and throughput has affected the output of the process – a rather conservative approach – becomes very relevant (see matrix 6.1).

BROADER PERSPECTIVE

We can ask of authorities to exercise their power legitimately; thus, to act according to the rules, which are based on shared justifications with their constituency, and which can count on acts of consent. In the Netherlands, these rules, justifications and acts of consent are derived from democracy. As we have seen in chapter 5, this involves *rule of* (input)*, rule by* (throughput) and *rule for* (output) the people.

Below, the description of the FA process, as presented in the previous section, is further analyzed, which enables a more encompassing reflection regarding the legitimacy of the FA process. The input, output and throughput faces of legitimacy are addressed separately. In § 6.6, legitimacy is evaluated integrally by answering the revisited research questions of § 5.7.

Input-oriented legitimacy refers to the reflection of the interests of involved participants in the formulation of politics and policy through direct, representative, participative, deliberative or other means. The absence of urban input in Platform Amstelland could thus be interpreted as a lack of input legitimacy. However, it must be said that the design of the process facilitated the input of all interested parties. Nevertheless, the project coordinator for FA recognizes that the urban community was underrepresented amongst the approximately 1000 participants (Timmermans, personal communication, 2007, January 18). In contrast, 60 out of the 120 farmers living in Amstelland participated in the Amstelland platform. The project coordinator puts some of the blame for the underrepresentation of Amsterdam urbanites on the fact that 'Amstelland' lacks identity: it is not as close to the hearts of the Amsterdam urbanites as the Amsterdam Forest or the Noorderpark, which speak to the imagination of most people.

The project coordinator recognizes the limited direct input of the urbanite in the participatory track of the FA process and the role the urbanite might have had in the FA process.

> *'A direct debate could have started between the farmer and the Amsterdam urbanite. The city has certain demands and profit can be had if supply and demand meet. The demand from the city is often different than most agrarians suspect. If the urbanite had been present it could have given a different "colour" to the meetings.'*
>
> (Timmermans, personal communication, 2007, January 18)

Thus, although the design of the FA process facilitates (rules) and promotes (justification) a broad input, we can place reservations regarding the input legitimacy of FA on basis of the absence of *direct* urban participation (consent). Although the reflection of interests, which is at the core of i*nput-oriented legitimacy*, is most easily associated with direct input, it can also be secured through representation. In the case of FA, the project coordinator points to the task of the municipal authorities to represent all interests. Here, this is exemplified through the final say that the steering committee had in the selection procedure of the projects that were submitted to effectuate the generated vision. However, we could also interpret this as part of securing output legitimacy

Output-orientated legitimacy relies on the effective promotion of the common welfare of the constituency in question. Arguably, the control over the selection procedure by the steering committee contributes to this challenge. Nevertheless, the *output product* – the conservative vision – fails to incorporate the pressing issue of water harbouring, and it remains to be seen if the conservative vision is the keystone in securing the wished-for *output outcome*: an open, accessible, green Amstelland. At the same time, we see that, despite the current conservative output, the *impact* – public support – is high, thus contributing to the output legitimacy of the FA process.

> *'The planning department of the municipality of Amsterdam is actually a design department. In contrast, FA is not so much a design as it is a process and certainly should not be understood as a definitive vision. It is a process that should evolve gradually, but with purposive steering and focusing of the discussion. The FA process should be seen as a long-term effort. Now that the SAUL project has come to a close in Amstelland, the actual FA process has not. The five participating municipalities have vowed that Amstelland should remain a green open agrarian landscape that is rich in cultural history. Future financial means for rural policy will be fitted within this program.'*
> (Timmermans, personal communication, 2007, January 18)

Judging from this quote, the actual behaviour of participating authorities contributes to the realization of effectiveness with respect to the challenge Amstelland is facing. As such, it is a measure of consent regarding the power that is enclosed in the generated vision, and in the overall goal of safeguarding the appreciated open character of Amstelland.

The above quote also indicates that it is the design of the process that realized this output, which brings us to the throughput dimension of legitimacy. *Throughput-orientated legitimacy* is able to fortify both the input and output faces of legitimacy. However, the source of *throughput-orientated legitimacy* is not the predetermined will of individuals or their representatives, but rather the process of its formation. Whereas participation from an input perspective is desired for its intrinsic value and from an output perspective for its instrumental value, throughput legitimacy requires participation for its constructive value (see § 5.4). Participation can facilitate the clarification of problems and possible solutions. This is in line with the ambition of the FA process and the SAUL partnership in which it participated. Although the FA process did not lack output and outcome ambition, the emphasis was not placed on the outcome of the process, but on the process itself. The planning department of the municipality of Amsterdam started from the knowledge that there is a wealth of governmental plans and objectives that have clear outcomes envisaged – thus depending on output-based legitimacy – but also from the fact that there is no shared approach in tackling the problems perceived in Amstelland – thus arguably a low throughput-based legitimacy, because there is no shared route of discovery. Therefore, the municipality of Amsterdam chose to invest in the process rather than the outcome; it realized that present output legitimacy based on an official mandate is not enough to obtain the necessary *impact* (public support) in achieving the necessary *outcome* (envisioned results). On top of that, the municipal authorities of Amsterdam have only limited authority in the Amstelland region. This necessitates a procedural approach that facilitates cooperation and mutual exploration of both problems and solutions. However, despite the conscious steps that were taken regarding participation and representation, direct urban input was absent, thereby undermining the idea of a mutual discovery of problems and solutions.

We see that legitimacy is a complex phenomenon. Legitimacy can be ascribed to different dimensions. In the case of Amstelland, all nine dimensions can be elaborated upon; however, in the case of FA, we can argue that the emphasis is placed on the throughput dimension, which has consequences for the output legitimacy of the FA process (see matrix 6.1). In the next section, legitimacy will be evaluated integrally by answering the revisited research questions of § 5.7.

Matrix 6.1 Main characteristics of the nine positions of legitimacy

Three faces		Input legitimacy		Throughput legitimacy	Output legitimacy
Three dimensions	Rules	Open to local stakeholders and municipal authorities. Substantive issues and their representatives are initially left out.		Amstelland needs protection, but the 'how' is open to debate. Therefore a deliberative process is required.	Creation of a vision for Amstelland up until 2033 that will guide new developments (products)
	Justification	Local stakeholders need room for expression		Local input is needed to clarify both problems and solutions	Amstelland should remain open and green (outcome)
	Consent	+ 1. The local farmers; 2. Municipal authorities; 3. 1000 participants	– Absence urbanite	Farmers, municipal authorities and other stakeholders prove willing to participate	Vision is shared by important players who act accordingly (impact)

6.6 REFLECTIONS

In chapter 5, legitimacy is presented as an activity. Rather than using the concept of legitimacy solely as an evaluative model – which is a valid and common view – legitimacy is best perceived procedurally. In a democratic context, the legitimacy of an authority can be present ex ante through elections, rules and regulation, but the post-normal condition requires continuous creation of legitimacy. Arguably, we have seen an example of legitimacy production in Amstelland. Not being able to rely on the authority of a single municipality or on the existing policies or visions for Amstelland, a collaboration of different municipal authorities undertook an explorative process that has set a course for future actions in Amstelland. The FA case study thus provides valuable insights into the second research question: What are the major issues or problems with regard to legitimacy in Dutch nature conservation practices? So what can we learn from the FA initiative? What are the major issues concerning producing legitimacy in Amstelland?

MAJOR ISSUES

From an ex post evaluative point of view, the major issue in the case of FA is related, as the analyses of the JPG pointed out, to output deficiency. It goes without saying that the conservative vision is in sharp contrast to the challenges that Amstelland faces. However, it depends on your perspective and subsequent arguments whether this is problematic or not. Based on the analysis presented in this chapter, two approaches to this evaluation seem at least justified. The first deals with the different rationales behind the three faces of legitimacy production and the second takes into account the underrepresentation of direct urban input, which unavoidably influences both the throughput and output face of legitimacy production.

The first approach questions the problem of the conservative vision in light of the rationale that underlies the chosen strategy. The generated vision is indeed conservative if you compare it to the challenges that Amstelland is faced with. However, these challenges have been formulated by national, provincial and local authorities, not by local inhabitants. These authoritative challenges draw their legitimacy from the representative mandate that these authorities have in solving society's problems. However, the FA authorities also realize that local support and input is necessary to address the challenges that need to be faced. To square these different requirements, a conscious choice was made to set aside some fundamental concerns with which the region is confronted, such as the water-harbouring task. Knowing that such issues have a polarizing effect, the emphasis was placed on a more deliberative approach that depends on the involvement of local stakeholders and that allows for a more open-ended process. Thus, arguably, the choice to place emphasis on the involvement of local participation is warranted for its constructive and instrumental value, and not especially for its intrinsic value, in ultimately securing a wished-for output. This nicely illustrates how intimately the three faces of legitimacy are linked: input is necessary for securing output, especially if there is disagreement regarding ultimate outcomes or when these are so ambitious that both consensus and effort of affected parties is necessary in defining and realizing these outcomes. From this perspective, the conservative vision provides a 'reality check' with respect to what the local community deems important.

However – here the second approach comes into play – we may also argue that, if the input and throughput faces are constructive to securing output legitimacy, both the 'quality' of the input and throughput faces is imperative to an eventual effective outcome. The observation of the JPG that the urbanite has been largely absent during the FA process problematizes this aspect. Despite the design of the process, a limited 'direct' input was realized. Consequently, the limited representation in the 'throughput' face mode affected the outcome, which is conservative in light of the challenges that municipal, provincial and national authorities identify, and which ultimately needs to be dealt with.

TRADE-OFFS?

With respect to the second research question, we may ask ourselves if we can observe procedural legitimacy production in Dutch nature conservation. If so, can we observe choices – conscious or not – for a specific mode legitimacy production, where a different mode seems applicable as well?

The FA process can be described as an effort to produce legitimacy in which a number of trade-offs are visible. Arguably, the first trade-off is one between output legitimacy and input legitimacy. The steering committee of FA does not act on the basis of existing plans and visions, which could legitimate actions that do not necessarily require direct input from their constituency, but ventures in an open-ended process in which direct input of the local stakeholder is necessary to generate a vision and action plan that can count on necessary *impact*. They first investigated the willingness of local agrarians, as their support was seen as a potential catalyst for administrative compliance. The choice for this course of action is based on the assumption that, without local support, the execution of existing plans and visions is not feasible. This should be seen as an act of producing legitimacy.

A second trade-off can be distinguished between input legitimacy and output legitimacy. The municipality of Amsterdam depends on a certain amount of output legitimacy, as they have made conscious choices on who is to provide input. The first step taken in this process was to contact the farmers in Amstelland and to explore their willingness in participating. Once they proved willing to cooperate, adjacent municipalities were approached. The province of Noord-Holland and Rijkswaterstaat were initially left out of the process to prevent substantive issues entering the discussion. The water-harbouring task for which Rijkswaterstaat bears responsibility foresees a solution to an imminent problem that will be to the benefit the general population, but that, according to the project coordinator, could limit the willingness of locals in participating and providing bottom-up input into the process. Thus, the process was not started by examining existing conceptions of the common good, captured in the substantive issues that are embedded in the plans and policies of, for example, Rijkswaterstaat and the province of Noord-Holland; instead, the 'people' were given the opportunity to develop a vision for Amstelland.

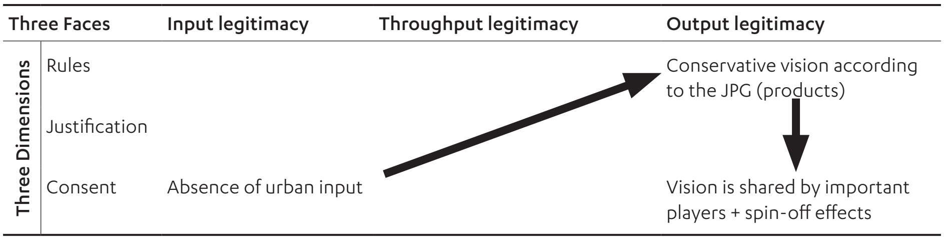
The third trade-off is one between throughput and output legitimacy and equates with the control that the steering committee has regarding the selection procedure of submitted proposals. This thereby secures those projects that not only fit within the developed vision but also prevent unwished-for developments in light of the problem analyses that underlie the FA process. The FA process was initiated with the assumption that current agricultural practices are faced with a precarious future. By keeping control over the selection procedure, the steering committee could secure an *outcome* that reflected both the FA process as well as its hoped-for results. Nevertheless, the vision remains conservative.

The vision is conservative and fails to incorporate some of the more substantial issues, but it remains to be seen if this automatically means that the envisaged outcome – an Amstelland that retains its characteristic appearance and is able to withstand outside forces – is unrealistic. What we see as well is that the investment in input and throughput has positive consequences on the output side of legitimacy, as the impact it had is noteworthy (see matrix 6.2). The fact that important players have worked together fruitfully and came to an agreement provides fertile soil for further collaboration on issues that are more substantial. Moreover, it is important to realize that the FA process is one of many initiatives that address the current and future development of Amstelland. As such, the more participatory approach of the FA process stands in contrast to the more authoritative processes such as Re-adjustment Amstelland.

GOVERNANCE?

The trade-offs between the different faces of legitimacy, as ascribed above, seem necessary with respect to the governance dimension of FA. Governance as opposed to government implies collaboration between different authorities and stakeholders as a result of processes such as

Matrix 6.2 Positive impact in Amstelland



Three Faces		Input legitimacy	Throughput legitimacy	Output legitimacy
Three Dimensions	Rules			Conservative vision according to the JPG (products)
	Justification			
	Consent	Absence of urban input		Vision is shared by important players + spin-off effects

globalization and decentralization. The latter is relevant to the Amstelland region. More and more responsibility for the realization of spatial objectives is placed with provincial and municipal authorities. However, as we have seen in the case of Amstelland, spatial challenges transcend municipal boundaries. In the FA case, the organizing municipality of Amsterdam has only limited authority in Amstelland and is dependent on the shared effort of adjacent municipalities to address the problems in Amstelland. Aware of its limited authority, the municipality of Amsterdam considered a procedural approach necessary. Thus, next to the constructive reasons that legitimate a procedural effort – as participation can facilitate the clarification of problems and possible solutions – the procedural approach also served the instrumental goal of securing a certain outcome and impact.

The FA initiative was initiated at the municipal level, but addressed a problem that transcended the single municipality both authoritatively and geographically. In the next chapter, an example is presented of a societal problem for which from the outset a national top-down initiative was implemented, but that ultimately asked for local and provincial modifications: the case of wintering geese.

7

WINTERING GEESE IN THE NETHERLANDS

7.1. INTRODUCTION

In November 2003, the Dutch Minister of Agriculture presented the Policy Framework Fauna Management (PFFM): the next phase in almost half a century of managing wild geese populations in the Netherlands. In the 1970s, geese were put on the international and national policy agenda due to the alarming decline in wild populations as a result of excessive hunting; however, at the beginning of the 21st century, the cause of concern is not their threatened survival, but their success at it. The international and national initiatives taken from the 1970s onwards have proven to be so successful that Dutch wild geese populations have increased by a factor of ten, which has dramatically increased damage to local agricultural crops. The mounting costs of indemnification and the growing distress of the agricultural community confronted with wintering geese populations led to the development of the PFFM. The PFFM aimed at (i) providing the agricultural community with a durable solution while at the same time (ii) safeguarding the geese populations and (iii) keeping the costs of indemnification in check.

The PFFM can be seen as representative of the many nature conservation practices in the Netherlands. It is characterized by international and national goals and responsibilities, different levels of administration and a multitude of actors with their own specific interests. The coordination and distribution issues that surface throughout the policy process at different administrative levels raise strong legitimacy requirements! The case of wintering geese provides an excellent opportunity to gain insight into the problems and possibilities of legitimacy production in what is clearly a multi-level, multi-agent and, ultimately, a highly controversial arena of policy-making and policy implementation.

This chapter builds forth upon the second chapter of the volume 'Legitimacy in European Nature Conservation Policy' (Keulartz and Leistra 2008). The timeframe studied in that chapter runs from November 2003 up until April 2006 (see Leistra et al. 2008). However, since the publication of the volume, not only has my understanding of the concept of legitimacy evolved, which was presented in the previous chapter, but also the situation regarding geese in the Netherlands has changed. For these reasons, I have chosen to elaborate on the case of the wintering geese in two ways while keeping the studied timeframe and case-study description unchanged. First, the analyses of legitimacy (§ 7.5) has been complemented with the conceptual understanding of legitimacy as presented in chapter five. Second, in the epilogue (§ 7.6), the implementation of the PFFM is placed in perspective of the problem of summering geese that emerged in 2011. Further, insofar as the future has caught up with the original text, some minor changes were made to prevent inconsistency with the account presented in the analyses and epilogue.

In this chapter, I will illustrate some of the problems and possibilities of legitimacy production. I will do this by analyzing this case study with the conceptual insights of the previous chapters and by providing an answer to the revisited research questions as presented in § 5.8. The structure of this chapter is straightforward. In § 7.2, the problem of wintering geese is introduced. § 7.3 discusses the implementation of the PFFM. In § 7.4, provincial differences are analyzed by discussing the problem of wintering geese in the provinces of Friesland, Brabant and Limburg. In § 7.5, the PFFM is mirrored to the conceptual notions of the previous chapters. The final paragraph (§ 7.6) consists of an epilogue that places the problem regarding wintering geese in perspective of more recent events.

7.2 WINTERING GEESE

For centuries, geese have been attracted to the Dutch delta. The delta's geographical location has always been an important node in the transnational networks of migratory birds. It provides safe sleeping areas on the larger lakes and sandbars, and plenty of food, which is available on agricultural lands and salt marshes. In 2004, 1.5 million wild geese, half of all wild geese wintering on the European continent, wintered in the Netherlands (Sanders et al. 2004), which emphasizes the responsibility of the Netherlands in protecting wild geese populations.

Today's flourishing geese populations can be attributed only partly to the geographical conditions of the Netherlands. In the late 1960s, the geese populations started to show clear signs of decline as a consequence of excessive hunting. In the context of increasing environmental awareness among Dutch policy-makers and environmentalists, the Dutch government took the initiative, in the late 1970s, to launch a supra-national agreement at the EU level to provide migratory birds with a larger number of safe havens that could help sustain their numbers. This initiative was highly successful. The EU Birds Directive of 1979 was one of its immediate outcomes, but the Habitats Directive of 1992 and the African Eurasian Migratory Waterbird Agreement of 1999 can also be seen as building upon this first legislative activity. The protective regime, which was established in the Netherlands and surrounding countries from the 1970s onwards, resulted in a significant recovery of the wild geese populations in Western Europe, where most of the once decimated populations increased by a factor of ten. Emblematic of this success is the Graylag goose (Anser anser). With an average wintering population size of 10,000 in the 1960s and 100,000 in 1990, the population grew to 244,000 geese in 2002 and showed no sign of decline in growth (Koffijberg et al. 1997; Van Roomen et al. 2004), which makes the population's recovery undeniable.

While the protective regime resulted in a recovery of the geese populations, it also led to increasing problems for the agricultural community, which had to deal with the growing populations that foraged on their lands. For example, in 1975, a reserve was established on the island of Texel to tackle the problem of increasing damage to agricultural crops by Brent geese. In this reserve, Brent geese were allowed to forage freely without disturbance, whereas outside these reserves they were allowed to be dispelled. This so called 'stick and carrot' method allowed the farmers on the island to chase geese off their lands (the 'stick') to the reserve specially managed for the then vulnerable Brent geese (the 'carrot').

However, ever since the 1970s, the agricultural damage inflicted by geese has been steadily increasing. One cause of this is the expanding population of geese. However, the intensification of the cattle-farming industry, which led to an increased demand on the existing grasslands (Groot Bruinderink 1987), also had an impact. The 1990 policy document 'Space for geese' (Ministerie van Landbouw, Natuurbeheer en Visserij 1990b) addressed this emergent problem and sketched out how the Netherlands had been dealing with wild populations of wintering geese in the previous decades. This strategy implied (i) emphasizing the international responsibility in protecting wild geese, (ii) indemnifying all damages to agricultural practices and (iii) encouraging regional cooperation in the protection of the more vulnerable populations, which lead to the establishment of several reserves including the one on Texel. However, in the

1990s, the geese populations increased in size even more and consequently so did the costs of indemnification. Although all costs were compensated, the frustration of the agricultural community remained, as they had to increase their efforts in dispelling geese before being eligible for remuneration (Ebbinge et al. 2003).

The success of the protective regime in the Netherlands started to attract increasing attention from Dutch MPs, who feared increasing costs. From 1990 up until 2002, a total of €35 million was spent as a result of wildlife damage. Of this damage, 85% was credited to water birds, with geese as the major wrongdoer, causing €23 million (65%) in damage. The species Greylag goose (Anser anser), White-fronted goose (Anser albifrons) and the Eurasian wigeon (Anas penelope) were responsible for 53% of all damage (Ebbinge 2003).[19] In 2002, the annual total for these three species amounted to a little over €2 million, €500,000 more than in 1996 and a stunning €1.5 million higher than in 1990, while no end to its rise appeared imminent (Ebbinge et al. 2003). This situation climaxed in 2003 when members of the House of Representatives filed a motion that left nothing open to interpretation and called for a re-opening of the hunt on the three most harmful species in order to contain future costs. That motion was at the same time a motion of distrust regarding the twelve Dutch provinces in dealing adequately with wildlife damages. The Flora and Fauna Act (FF Act) of 2002 adjudges the provincial authorities responsible for dealing with wildlife damage. This responsibility is in line with the Decentralization Agreement of 1995, which was established between the national government and the Interprovincial Consultative Body (the organization representing the twelve Dutch provinces), and which aims at policy that is attuned to regional characteristics and problems. The controversy concerning the distribution of responsibilities in November 2002 is remarkable since the motion was filed and adopted just months after the FF Act took effect. Although the hunting of these species is not prohibited under the Birds Directive, Cees Veerman, the Dutch Minister of Agriculture at the time, deemed a re-opening of the hunt inconsistent with the character of the international responsibility of the Netherlands. He argued that the twelve provinces should be given enough time to implement the FF Act correctly. However, the concern of increasing costs proved to be real when, in 2003, the total amount of damage caused by the above species amounted to a total of €4 million (Faunafonds 2004). This was twice the amount of the previous year and the minister was urged to take action once again.

7.3 POLICY FRAMEWORK FAUNA MANAGEMENT

The pressure on the Minister of Agriculture to take action ultimately resulted in the Policy Framework Fauna Management (PFFM) in November 2003, which introduced the next chapter in geese policy in the Netherlands. The consultation process that led up to the PFFM involved a large number of public and private agencies, ranging from farmers' representatives to environmental associations. The PFFM stressed the overall responsibility of the central

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[19] From now on, the species Graylag goose, White-fronted goose and the Eurasian widgeon will be referred to as 'geese'. Although the widgeon is not a goose, the PFFM is also focused on reducing the cost that widgeons account for. Within the policy documents and related correspondence references, the term 'wintering geese' refers to these three species.

government, but at the same time committed the other parties involved to enact locally what was being decided centrally; further, it endorsed them to take part in the committee that was to aid and advise the minister during the implementation process. Concerning the issue of rising costs, it was decided that the provinces would demarcate 80,000 hectares, most of which is farmland, as special foraging areas for wintering geese. Only within the boundaries of these foraging areas will farmers have the right to indemnification for damages and other costs. As such, a farmer located in an established foraging area can expect to be compensated for crop damage and will receive a management fee and an additional bonus to stimulate participation. Although the exact amounts were not formally agreed upon and varied between arable farming lands and pasture lands, a farmer could expect a total of about €250 per ha per year when participating in the PFFM (Ebbinge 2004, February). Outside these areas, farmers would be allowed to dispel wintering geese and to shoot them if necessary to prevent crop damage; however, they could no longer rely on indemnification, even if their efforts proved to be fruitless. By limiting the surface area that falls under the indemnification plan, the Ministry of Agriculture hoped to provide wintering geese with enough food and space to fulfil its international obligations, while at the same time restricting its seemingly endless financial obligations. While formerly all of the Netherlands was, at least in principle, a foraging area for migratory geese, under the PFFM only a small part of the Netherlands will provide a safe haven for these birds. This large-scale 'stick and carrot' strategy assumes to provide sufficient surface area and to succeed in binding the wintering geese to these intended foraging areas.

Initially, the PFFM included three phases of implementation with rather strict time-paths. During the first phase, the provinces were given the task to create the legal possibility to dispel and, if necessary, hunt foraging geese, while locating the most suitable areas for demarcation. Compensation for damages would be paid only if sufficient precautionary measures had been taken. This would take until October 2004. During the second phase, the provinces were supposed to appoint enough foraging areas to fulfil the quota given to them by the Ministry of Agriculture. This was to be finished by June 2005. Subsequently, in order to fulfil formal requirements, the decision to appoint certain locations as foraging areas had to be formalized in 'Nature Area Plans'. From this time on, the farmers within a foraging area could apply to Subsidy Schemes Agricultural Nature Management (SAN) as a collective. By formally anchoring the foraging areas in the provincial Nature Area Plans and developing the SAN subsidy packages, part of the costs involved in the management of foraging areas are now being passed on to the EU. SAN packages are co-financed by the EU through the European Agricultural Fund for Rural Development (EAFRD). Whereas earlier the costs were predominantly a burden of the Dutch taxpayer, this new strategy entails a shared financial responsibility in protecting 'European nature' in the Netherlands. To be eligible for this co-financing, the packages need to be approved by the European Commission. The European Commission will test the subsidy schemes to see whether these do or do not entail unfair income support to Dutch farmers. However, upon presentation of the PFFM, the SAN packages were not yet fully developed and consequently could not count on the approval of Brussels, resulting in an uncertain message regarding the amount of the actual subsidies.

In the autumn of 2004, it still looked as if everything was on schedule. According to a report by the Ministry of Agriculture to the Dutch parliament, nine of the twelve Dutch provinces would succeed in appointing their quota before the end of that year. However, it soon appeared that the ministry had been too optimistic. A number of MPs became aware of huge resistance to the top-down approach by the farmers as well as by the provincial authorities. The resistance was fuelled by the numerous uncertainties that the PFFM contained upon presentation. The uncertainty regarding the actual SAN packages, disagreement about the actual amount of the subsidies, the absence of Brussels' approval and the fear that participation in the PFFM would lead to permanent restrictions to their agricultural practices caused farmers throughout the Netherlands to protest against the appointment of their enterprises as foraging area. The fact that many farmers saw their farms being established as foraging areas on planning documents without having been consulted increased their resistance even more. The provincial authorities, responsible for the actual demarcation in their province, were equipped only with an incomplete story and therefore were incapable of quelling the fears of the local farming communities. As a result, the authorities increasingly turned to the Ministry of Agriculture to take over responsibility.

Clear signs were already given within the first phase of the implementation of the PFFM by both the agrarian community and the twelve provinces that the implementation process was going to be problematic. In response, the Dutch House of Representatives stressed the need to secure local support, implying a replacement of the traditional Dutch top-down approach by a more collaborative approach in which local agents were invited to contribute to a collective solution that could meet a greater level of local commitment than could authoritative solutions.

The new focus on public support did not alter the initial timeframe. When in November 2004 the need for local support became explicit, the deadline of June 2005 was maintained. The Minister of Agriculture emphasized the importance of meeting this deadline, as it would be followed by the official SAN application procedure. If this deadline was not met, farmers who were willing to participate in the PFFM would have to wait another year before they would be able to apply for SAN packages, which meant another year without co-financing with EU money. The minister also stressed the necessity of the success of a swift implementation of the PFFM, as the costs of compensation had increased to €7 million in 2004. However, in 2004, the SAN packages still had not been approved by Brussels. This can prove to be problematic, as the success of the PFFM, and not to forget the affordability of this framework, depends on the approval of Brussels. No approval means no co-financing. An effect of this is that the costs of the PFFM, which by 2006 were estimated at €14 million a year, will be hard to justify. This is considerably more than any of the yearly indemnified sums, which is surprising since the ever-increasing costs of indemnification were the mainspring of the strategy set out in the PFFM. The justification of this sum must apparently be found in the assumption that with the PFFM in place (i) the agricultural community is offered a durable solution, (ii) the population of wintering geese is safeguarded and (iii) the now fixed costs are being co-financed by the European Community. This, however, remained to be seen!

The change described above, from what can be characterized as top-down policy to a more participatory approach, represented a shift from more substantive sources of legitimacy to procedural ones. This shift was forced upon the Ministry of Agriculture by the fact that, through its own policies, as we discussed above, it had changed the political setting from a coordination game into a zero-sum game. As the German sociologist Fritz Scharpf has argued, the legitimacy requirement of different types of collective decisions is strongly related to their contentiousness (Scharpf 2004). Least contestable, according to Scharpf, are so-called 'pure coordination' games. Since all participants have an equal interest in solving coordination problems and are indifferent to the actual solution, the decision does not transgress individual interests and hence is not in need of legitimacy. Much stronger are legitimacy requirements in the case of so-called 'dilemma' games, such as the famous prisoners' dilemma, in which the binding force of collective courses of action is severely weakened by the availability of opportunistic choice options. While the collective benefit is maximized if all agents pursue the same course of action, individual benefits are highest if the individual agent reneges on his promises. In order to minimize opportunistic behaviour, a credible 'shadow of hierarchy' is required (Scharpf 1997), which is itself in need of legitimation. The strongest requirements pertain to so-called 'zero-sum' games. Each and every decision in such a context implies a redistribution of resources from some agents to others. In the other two games it can be argued that the decision ultimately serves the enlightened self-interest conditions even of the losers; however, no such strategy is available in the case of zero-sum games. In the case of wintering geese in the Netherlands, it seems that we can speak of a zero-sum game. However, to the potential participants it was not automatically clear when you stand to win or lose. By participating, or by not participating?!

7.4 PROVINCIAL DIFFERENCES

In the following section, the process of implementation is discussed in three of the twelve provinces. Due to ecological/agricultural differences, the attractiveness of different parts of the Netherlands to the wintering geese populations varies. The PFFM takes this into account, as the distribution of the 80,000 hectares is based on so-called 'geese days' (the number of geese multiplied by the number of days the geese are present in an area). Most provinces have been allotted a quota between 1000 and 10,000 hectares. These quotas, in fact, give not only a good indication of the respective contribution of each province to the convergence of the problem at the national level, but they also give an indication of the perceived problem at the provincial level. It should be obvious that the problem in Limburg, which has been allotted a quota of 600 hectares, is of a totally different order than that of the province Friesland, which has been assigned the largest quota (30,000 hectares). Limburg, Friesland and Brabant (see Fig. 1) are chosen to highlight the regional differences and the consequences these have for implementing a uniform national policy to heterogeneous regional situations. The dissimilarities in the allocation of the 'geese' problem, and the history of dealing with this situation in different contexts, prove to be important in the success of the implementation of the PFFM.

LIMBURG

Where most provinces were struggling to get their quota assigned, Limburg proves to be the only province where the initial top-down approach was successful and managed to comply with

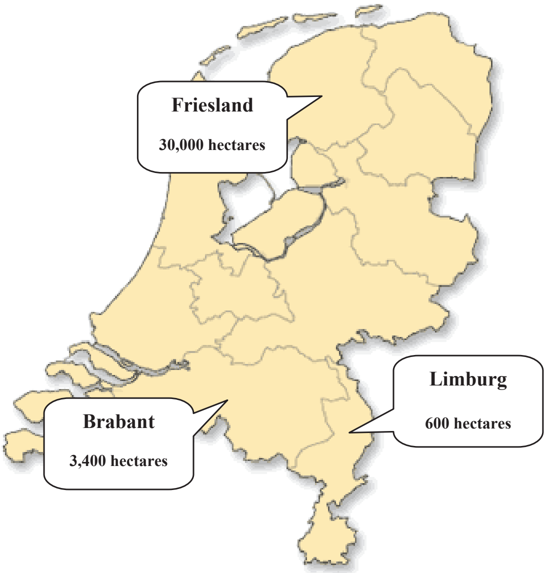


Fig. 7.1 Three provinces under investigation

relatively little effort and resistance to all requirements of the PFFM. This success needs to be understood in relation to the perceived problem of wintering geese in Limburg.

This most southern province of the Netherlands is the least attractive to wintering geese. The 600 hectares allocated to Limburg are by far the smallest quota and are less than 1% of the total 80,000 hectares needed for the wintering geese. Comparing the 600 hectares with the 30,000 hectares allocated to Friesland, it is evident that the perceived problems at the national level are not due to the size of the wintering populations and remunerated damages in Limburg. When confronted with the PFFM, Limburg immediately complied by assigning foraging areas on the basis of inventory data. No prior consultation took place, and once the locations were delineated, the planned areas were open to public review according to the Dutch Administration Act. A number of negative reactions forced the Limburg authorities to convene an information meeting where farmers were introduced to the PFFM and were given the opportunity to react to its content. This meeting was followed by negotiations between the provincial representatives, Vogelbescherming (Birdlife the Netherlands) and representatives of the agricultural community, which resulted in an amendment of the initial demarcation of the areas. As soon as the foraging areas were delineated, the areas were incorporated into the nature area plans of the province in accordance with the second stage of the PFFM. As the provincial authorities were able to comply with this timeframe, Limburg could now wait until the approval of the SAN packages by Brussels and start contracting the participating agrarian communities for periods of six years.

Judging from the relatively low resistance in Limburg to the top-down approach and ease of implementation, the level of politicization is apparently not high enough for the fairness of the policy to be contested. The relatively little resistance to the provincial top-down approach could easily be amended by a 'procedural' effort. The decision of who is to 'gain' – those 'who participate and receive subsidy – and those who stand to 'loose – those who do not participate and have to make an effort in chasing geese away but receive no subsidy – was largely made by the provincial authorities. As indicated, this strategy proved to be unsuccessful in other provinces and led to a change of strategy: delineation on basis of support.

FRIESLAND

Friesland is by far the most important geese province in the Netherlands and has decades of experience in handling the growing geese populations. With a quota of 30,000 hectares, 37% of the total land dedicated to the wintering geese, it should be clear that the perceived problem is most urgent in this province. Whereas in Limburg geese are just one of the wildlife species that cause damage to agricultural crops, geese are the major culprit in Friesland and have been so for the past couple of decades. Under the 'Space for geese' policy (Ministerie van Landbouw, Natuurbeheer en Visserij 1990b), Friesian farmers were constantly occupied with scaring away geese in order to qualify for indemnification. This meant, with an ever-increasing geese population and the almost exclusive agricultural character of the Friesian landscape, driving geese to what is in effect their colleague's and neighbour's land. This was not considered to be a solution, but just a continuous relocation of the problem. Moreover, the situation gave rise to heated disagreements about the total amount of compensation between the affected farmers and those responsible for the taxation of the damages. This ultimately led to a situation where the agricultural community was developing a negative attitude towards the geese, which worsened the relationship between the agricultural community, conservation agencies and the general population (Ebbinge et al. 2003).

On the initiative of several farmers, a breakthrough was made in 1996 when opportunities were explored with the Fauna Fund (the organization responsible for compensating wildlife damage) to initiate experiments with a focus on harbouring wintering geese. These experiments were, in fact, very similar to the current PFFM and entailed clear guidelines of how much compensation a farmer could expect when the farmer would tolerate the geese on his land. Not only would this approach generate clarity about the amount of compensation, but geese would also be left to graze freely on the lands of participating farmers without being scared away and thus without relocating the problem. The main difference between the 1996 policy and the PFFM is that, in 1996, the farmers outside the protected areas, still suffering damages, were compensated. Under the PFFM, this would not be the case! Although the above arrangements did not remedy all problems and frustrations, Friesland is now able to look back on 10 years of positive experience with conservation measures. In fact, geese associations have been established within the agricultural communities and are new and cooperating partners in dealing with the wintering populations. As a result, the relationship between the agricultural community and the authorities in Friesland has improved (Ebbinge et al. 2003).

Besides the positive experiences with the geese arrangements, Friesland has also had negative experiences regarding the top-down implementation of the National Ecological Network in the mid-1990s, which required the establishment of 550 hectares of nature reserve on agricultural grounds in Gaasterland (see also chapter eight). The top-down plans infuriated the agricultural community, and official maps delineating the reserve had the effect of a red rag to a bull. The resistance was enormous and stretched beyond the agricultural community to the general public, when it finally reached a deadlock. Only after the intervention of a group of 'wise men' were negotiations opened that ultimately led to an abandonment of the initial plans of expropriation and long-term management by conservation agencies. Instead, the agricultural community was made responsible for the realization of ecological goals by means of short-term contracts (Kuindersma and Kolkman 2005), even though the ecological successes are contested (cf. Joustra 2001; De Molenaar et al. 2005; De Molenaar et al. 2006; Selnes et al. 2006).

Equipped with the lesson learned that top-down policy and 'substantive' scientific arguments are not enough to legitimize and guarantee efficacious policy, the provincial authorities in Friesland were able to choose a strategy that was quite different from the other Dutch provinces. Almost immediately after the Ministry of Agriculture presented its plans, a top-down approach was deemed unacceptable and an alternative 'procedural' approach was taken. The chairmen of the geese associations – the new and cooperating partners – were invited for an informative meeting. Instead of presenting plans for implementation, the chairmen were asked to reflect upon the requirements of the PFFM and look for possibilities of implementation. However, the chairmen declined the challenge of establishing the foraging areas in their community, as they did not want to be held responsible within their own community for a government policy that entailed so many uncertainties. The uncertainties of the future consequences and possibilities of their agricultural practices were a cause for concern, but also the sizes of the subsidy packages had still not been determined. As a result, the provincial authorities slowed down the process, as they realized that, without a clear message and without public support, the PFFM had no chance of success in Friesland.

When public support became an issue on the national agenda in the autumn of 2004, the provincial authorities were ready to take the next step. As the provincial organization was not equipped to arrange a large-scale process of delineation based on public support, BoerenNatuur (Farmer and Nature), an organization representing the interests of the agricultural and private nature conservation organizations, was contracted. This process was preceded by a clear message from the provincial authorities: foraging areas would not be assigned without support from the community and participation would not bring about future restrictions to agricultural practices. BoerenNatuur arranged for several meetings in each potential area, focused on information and education, to gauge ultimately the support in each area. In addition to the presence of wintering geese, the potential of each location was assessed on basis of the presence, or possible establishment, of agrarian and public nature management organizations such as the geese associations. In this respect, Friesland profited once more from the already established network of actors involved in geese management and the positive experiences from the past ten years. The next step was the delineation of a proposed foraging area by each community, accompanied by a request from that specific community to participate in the PFFM.

This process proved to be very successful, and the 30,000 hectares allotted to Friesland were exceeded by 20,000 hectares, resulting in a sum total of 50,000 hectares. Where most provinces were struggling to get their quota assigned, Friesland was now faced with the task of reducing its 50,000 hectares to 30,000 hectares. Friesland again contacted the geese associations, this time to discuss reduction. A short feedback process ultimately led to a delineation of 30,000 hectares. Only in the tougher decisions where the communities were not able to downsize the areas themselves did the provincial authorities step in and base their decision on 'substantive' arguments: inventory data and damage figures.

The PFFM represented a shift from a pure coordination game without distributive consequences to a zero-sum game with evident distributive effects, where farmers within the foraging areas stand to gain and those outside the foraging areas stand to loose. After all, participation in the PFFM is supposed to provide a farmer with a durable solution, which entails clarity about the amount of indemnification. The farmer outside the established foraging area, although able to dispel visiting geese, gets no indemnification when suffering damages. It appears that the participatory process in Friesland succeeded not only in finding support for 30,000 hectares but also in making clear that, when a farmer is located within these 30,000 hectares, he stands to gain.

BRABANT

Brabant was assigned a quota of almost 3,400 hectares, which is considerably more than Limburg, but just a tenth of the amount that Friesland has been assigned. Although the frustrations of the agricultural community in Brabant are similar to those of their colleagues in Friesland, the provincial authorities in Brabant did not perceive the distribution problem as their colleagues at the national level do. This is illustrated by the reluctance of the Brabant authorities to adopt the PFFM. For example, in 2004, the Brabant authorities chose not to adopt the first phase of the PFFM and deemed a re-opening of the hunt while searching for suitable foraging areas not in compliance with international obligations. With this choice, they took responsibility for the task that was assigned to them under the FF Act and offered to indemnify farmers during the first phase of implementation while locating suitable foraging areas. The compensated losses amounted to €50,000 that year and illustrate the relatively small contribution to the politicization of the problem at the national level. In fact, the need for a 'distributive' solution was not perceived in Brabant, but Brabant was forced under the PFFM to make its contribution to this solution by assigning 3,400 hectares.

Similar to the approach of the Limburg authorities, the foraging areas in Brabant were selected on the basis of ornithological inventory data and damage figures. However, it soon became apparent that scientific arguments were insufficient to convince farmers and their collective organizations to participate in the implementation of the PFFM. All 120 reactions to the intended plan were negative and a 'Limburg-like' quick fix seemed not only unwanted but also unrealistic. The resistance to the plan was enormous, especially in the west of Brabant. In this part of the Netherlands, in contrast to most other areas, geese cause the most damage to arable land. Farmers on arable land not only experience income loss due to crop damage, but also need to take active action to restore the damage and ensure a continuing crop rotation. Moreover, the damages to arable land are less predictable, depict a more erratic character and are, in general, more substantive than damages to pasture lands. A spokesperson for the agricultural organization representing farmers' interests, the same organization that subscribed to the PFFM upon presentation, alleged that the provincial authorities made a mistake by delineating foraging areas in the west of Brabant. His message was that in the west of Brabant they would keep resisting the PFFM. Both the subsidy packages for arable lands and the perceived sole responsibility of the agricultural community in dealing with wintering geese are contested. The spokesperson argued that the burden should not be borne only by the farming community, but ought to be distributed equally among all large property holders, such as the state-owned Forestry Corporation and the private non-profit Conservation Foundation. In October 2004, the provincial authorities in Brabant decided to postpone the process of delineating foraging areas and, together with the provincial authorities of Friesland, they set the precedent for a motion of parliament that resulted in a strategy of implementation on the basis of support.

In view of this resistance, the provincial authorities nullified their initial plans and set up a deliberative consultation process instead. The professed aim was to secure local support within nine prior assigned areas. However, representatives from two of these areas already communicated such clear negative signals that support was highly unlikely to be forthcoming. In the seven other areas, the plan was to set up a structure of two consecutive meetings with the farmers to dispel uncertainties (first) and to come to a collective decision (second). This is an approach similar to that of the process initiated by the contracted BoerenNatuur in Friesland, but with an obvious difference in participating actors and their responsibilities. Brabant clearly could not profit from a network of actors, specifically focussed on managing wintering geese, that has developed over the past decades in Friesland. The meetings in Brabant were organized by the provincial authorities and were chaired by a representative of the agricultural organization. What was striking about the meetings that were attended during this research was the scepticism and aggressiveness of the audience vis-à-vis the representative of the province. While most of the farmers who were interviewed subscribed to the overall aim of the Fauna Management Framework, the inability of the province to answer concrete questions, which were related to the indemnification of costs and damages as well as their duration, did nothing to dispel the suspicions on the side of the farmers that the state would renege on its promises. The Brabant authorities were clearly handicapped by the incompleteness of the PFFM for which they tried to find support, although by this time the Minister of Agriculture had officially announced that participation in the PFFM would not have negative consequences for future practices.

Meetings in Brabant were held in only three of the nine initially selected areas. The main reason for this was lack of time, caused by the deadline of June 2005. Since that deadline was rapidly approaching, the provincial authorities, under strong pressure from the Ministry of Agriculture, which served as process manager, issued the order to speed up the process. Thus, instead of setting up face-to-face meetings with those involved, the farmers in question were sent a brochure that covered all the information the Brabant authorities deemed necessary, while the process of co-decision-making was reduced to the official codetermination process surrounding provincial plan-making. As a result, Brabant earmarked only 1600 hectares in just two of the nine initially selected areas as foraging areas. In only one of these areas was the deliberative procedure followed to create collective support.

STATE OF AFFAIRS IN APRIL 2006

In April 2006, the Minister of Agriculture reported back to the House of Representatives of the Dutch parliament with the message that 100,000 hectares had been made available for wintering geese. It appeared that the demarcation of the foraging sites had been successful and that the PFFM had managed to generate enough support in the twelve provinces. However, some critical remarks need to be made on the situation. The 100,000 hectares are, in part, the result of the initiative of the nature conservation agencies that delineated 40,000 hectares in their care as nature reserves. This is an extra effort that will not add to the costs of the PFFM, as these agencies are financed through other means. Although the 60,000 hectares demarcated by the provinces can be regarded as a success in light of the initial resistance to the PFFM, we must, however, not forget that the procedural remedy to the initially top-down approach was focused on acquiring support in prior delineated areas *ex post*. Under the assumption that farmers within the foraging areas stand to gain, which is evidently the perception in Friesland, an attempt was made to convince the resistant agricultural communities in the other provinces that they too stood to gain by participation in the PFFM. This means that farmers who are delineated as being outside the foraging areas have not, in fact, had a voice in the distributive solution that could affect their lives. It is not unthinkable that those initially left out of the process start to realize that they do indeed stand to gain when located in a foraging area, especially when the effort to dispel the wintering populations proves to be unfruitful and to cause damages that are not compensated.

Although 100,000 hectares have been delineated and the PFFM has taken effect, it did not end the discussions regarding wintering geese. The SAN packages were still not approved and, until they are, the PFFM is not financed by EU money. Consequently, the €14 million for compensatory damages will have to be paid by the Dutch taxpayer. Most of the provinces have assigned their quotas and have, as a consequence, distributed their financial means. Only provinces such as Brabant, which did not succeed in appointing its total quota, had room to manoeuvre in delineating its total quota allotted when the larger agricultural community becomes convinced that participating means benefiting, rather than losing when left out. The other provinces, with the exception of Friesland, might be confronted with an agricultural community that demands participation in the PFFM, but will have no financial room for extra delineation.

7.5 ANALYSES

WHAT IS THE LEGITIMACY PROBLEM?

Although the PFFM builds on decades of experience with protecting wild geese populations and the damages these populations inflict, the solutions presented in the PFFM radically increased the legitimacy requirements for the policy in question. Noteworthy about this policy shift is that, in terms of Scharpf's analytical distinction presented earlier in this chapter, the new policy represented a shift from a pure coordination game without distributive consequences to a zero-sum game with evident distributive effects. The material presented here also provides some backing for Scharpf's (2004) claim that not each and every decision raises similar legitimacy requirements. Under the earlier policy, all farmers stood to gain while the taxpayer was footing the bill. In other words, there were real and immediate gains for those directly involved and only small and diffuse costs that were being distributed among a large number of anonymous taxpayers. The effect was a low level of politicization and hence very lax legitimacy requirements. Under the new policy, on the other hand, some farmers stand to gain while others stand to lose, even though perceptions varied whether or not participation within the PFFM is considered beneficial. As such, there have to be good reasons for the losses of the one and the gains of the other in order to overcome the power of the losers to obstruct. Thus, policies concerning wintering geese remained largely uncontroversial as long as each and every farmer could claim indemnification. The situation changed when the state altered its policy to a distribution regime, which, in fact, introduced scarcity. This situation of scarcity is best illustrated by the situation in Friesland where support was found for 50,000 ha, whereas the provincial authorities only had 30,000 ha to distribute. This confronted the provincial authorities with the task of making choices regarding which farmers stood to gain, by participating in the PFFM, and which farmers were excluded.

As the case of Brabant illustrates, the legitimacy challenge is more than a distributive challenge. The many uncertainties embedded in the PFFM resulted not in a questioning of the actual distributive challenge and outcome, but in a contestation of the overall PFFM. In terms of the conceptual framework presented in chapter 5, we can identify the actual PFFM as the *policy product* that provides the framework for addressing the distributive problem. This output-oriented strategy aims at an acceptable and effective solution that (i) provides a durable solution to the agricultural community while at the same time (ii) safeguards the geese populations and (iii) keeps the costs of indemnification in check. However, the limits of rationality (exemplified by the many scientific and practical uncertainties embedded in the proposed solutions, combined with a multitude of actors who have different core interests) created a situation in which not the actual distributive outcome was challenged, but the PFFM itself that seeks to provide that outcome. Although the PFFM was communicated in that it was to provide a durable solution to the agrarian community while safeguarding the populations of wintering geese and keeping the costs of indemnification in check, fear of other potential policy outcomes (such as restrictions in future land use and insufficient enumeration) stood in the way of a policy impact that was to make the PFFM a success in its initially communicated form. Thus, no matter where you were located, inside or outside the foraging sites, the perception was that you stood to lose.

Although the initial resistance to the PFFM points to a potential problem of delegitimation, it should not necessarily be interpreted as a sign of a policy that lacks legitimacy. The PFFM provides for a redistribution of resources from some agents to others. Unpopular policy or decisions are not improbable in these situations, even if these envisage providing an often necessary and urgent remedy to societal problems. However, the intended policy outcome forms in principle the justification of the authority that is exercised by means of the PFFM. This authority is legitimated as long as the PFFM realizes the three objectives. Consequently, in this case, we can speak of a *legitimacy deficit*, as the justifications in the terms of concrete policy outcomes are questioned and contested; this was exemplified by the withdrawal of consent by both agrarians and provincial authorities regarding the nationally initiated PFFM. Nonetheless, the PFFM tries to provide a solution to a distributive problem, but lacks clarity with respect to practical and financial outcomes and includes scientific uncertainty that lies at the foundation of the PFFM.

We may now ask ourselves if we have seen evidence of procedural legitimacy production in Dutch nature conservation. If so, can we observe trade-offs between the different modes of legitimacy production? In answering the above questions, we need to be sensitive to the governance character of Dutch nature conservation. Chapters 3 and 4 have shown us that shifts in governance imply shifts in legitimacy. For this reason, we may also ask ourselves if can we observe shifts in governance. If so, how do these shifts in governance affect legitimacy?

In order to answer the above questions, the three provinces under investigation are discussed in terms of the analytical framework.

LIMBURG

In the case of Limburg, the geese problem is almost non-existent. Consequently, the national distributive solution of the PFFM did not raise too many eyebrows among the provincial authorities and the agricultural community. It was therefore relatively easy to comply with the PFFM.

In other words the legitimacy of the PFFM was not contested. The 'rules' of the PFFM were followed. Moreover, the PFFM finds its origin in accepted democratic and political procedures. It is the product of these authoritative procedures. Additionally, its justification in terms of the envisioned outcomes is uncontested in Limburg and consent was given through cooperation in the implementation of the PFFM by both provincial authorities and affected farmers.

Matrix 7.1 Legitimacy in Limburg

Three faces		Input legitimacy	Throughput legitimacy	Output legitimacy
Three dimensions	Rules			No problem = Legitimate authority
	Justification			
	Consent			

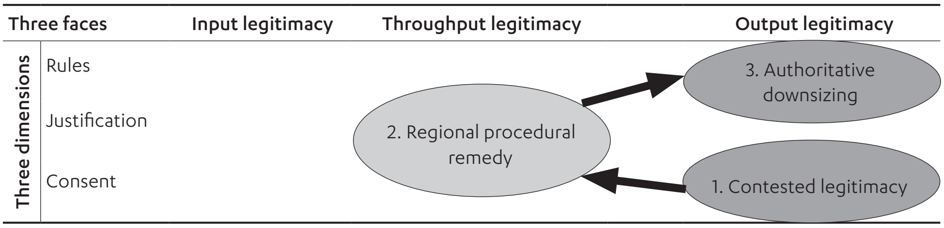
FRIESLAND

In Friesland, we see that the provincial authorities had less faith in sufficient output legitimacy of the decreed PFFM. Equipped with the lessons learned from the Gaasterland experience and their sound working relations with the Friesian geese associations, they objected to the national output-orientated strategy and tried to implement a throughput-based approach within their province. Instead of implementing the PFFM, assuming that the PFFM had enough legitimating force as the Limburg authorities did, the Friesian authorities investigated whether or not the farming community shared the nationally perceived 'justifications' of the PFFM that could count on 'consent' by cooperation of the farming community in the implementation of the PFFM. However, the invitation of Friesian authorities to the chairmen of the geese associations to take shared responsibility for the implementation was declined. The uncertainties enclosed in the PFFM made that its justification was contested and that consent by means of participation could not be counted upon. As a result, the Friesian authorities slowed down the implementation of the PFFM. This slowing down should also be interpreted as a withdrawal of consent. Not only the agrarian community but also the provincial authorities had little faith in enough support for the PFFM. Only after the call for public support by the House of Representatives, as a result of the nationwide protest, could the procedural approach of the Friesian authorities be implemented.

Although the goals and deadlines of the PFFM remained intact, the guarantee that if support could not be found the PFFM would not be implemented provided enough leeway with which BoerenNatuur could search for shared justification and work on consent among the different geese associations. Ultimately, that process provided enough flexibility in which the agrarians could find enough support for the implementation of the PFFM. We see that the throughput remedy in which farmers could decide collectively whether or not to participate was successful. Because it was so successful, the Friesland authorities relied on their authority to rule in the tougher decisions where the communities were not able to downsize the areas themselves. In this case, the authorities could fall back on an output-based strategy in which they could make decision on the basis of 'substantive' arguments: inventory data and damage figures.

In the case of Friesland, we see a process that we could interpret as the production of legitimacy. Throughput initiatives were needed to implement what is essentially an output-orientated policy. Remarkably, the throughput remedy was effective despite the unchanged rules and justifications of the PFFM. The output remedy was thus mostly effective in eradicating and elucidating the uncertainties of the PFFM.

Matrix 7.2 Legitimacy in Friesland



BRABANT

The legitimacy of the PFFM was contested in Brabant from the beginning. In contrast to the Friesland authorities who questioned the top-down character of the PFFM, the Brabant authorities questioned the *rule* dimension of the initial phase of the PFFM that foresaw a re-opening of the hunt. The provincial authorities refused to re-open the hunt on geese – an act of delegitimation – because they questioned the legal validity of the nationally imposed PFFM, as a re-opening of the hunt would be in conflict with international obligations. The provincial authorities justified their withdrawal of consent by the legal mandate they have under the FF Act.

Matrix 7.3 Legitimacy in Brabant from the perspective of the provincial authorities

Three faces		Input legitimacy	Throughput legitimacy	Output legitimacy
Three dimensions	Rules			Contested
	Justification			
	Consent			

However, the provincial authorities saw themselves necessitated to participate in the following phases of the PFFM in order to share the responsibility for future claims for financial compensation due to wintering geese. As the Brabant authorities could not rely on a network of geese associations as in Friesland, the provincial authorities chose a similar strategy to that in Limburg by preselecting suitable areas on the basis of inventory data and subsequently informing the involved farmers. However, it was now the agrarian community that withdrew consent by opposing the proposed plans. The procedural remedy that was undertaken to counteract the resistance to the top-down policy proved to be both successful as well as unsuccessful. The characteristics that allowed for a productive process in Friesland were not present in Brabant, but, more importantly, were also not allowed to develop. Whereas input legitimacy relies on the actual participation of stakeholders in processes of consultation and decision-making, throughput legitimacy asks for more extensive requirements regarding communication, structure and organization that are in tune with the contingent character of the perceived problem. The procedural throughput attempt to gain support and secure legitimacy *ex post* that proved successful in Friesland was only partially successful in Brabant. The time constraint of the deadline, the uncertainties of the PFFM and the lack of a network of actors to fall back on proved to hinder the process of acquiring support and, hence, to hinder the production of legitimacy by throughput mechanisms.

Although the provincial authorities were aware of their responsibility in implementing the PFFM, they did not want to assign the areas without the support of those communities that are ultimately responsible for its success. We have seen that the need for a distributive solution was not perceived at the provincial level, but the national strategy required active involvement. At the same time, the provincial authorities had been given little or no means to communicate about the PFFM to gain support. The announced strategy of gaining support, articulated at the national level, proved to be understood by the agricultural communities in Brabant as lip service. Ultimately, and under pressure from the deadlines, the provincial authorities opted for an *input* remedy by allowing individual farmers to decide for themselves whether or not to participate in the PFFM, giving them a direct say in the transference of their autonomy in exchange for the benefits that are enclosed in the PFFM.

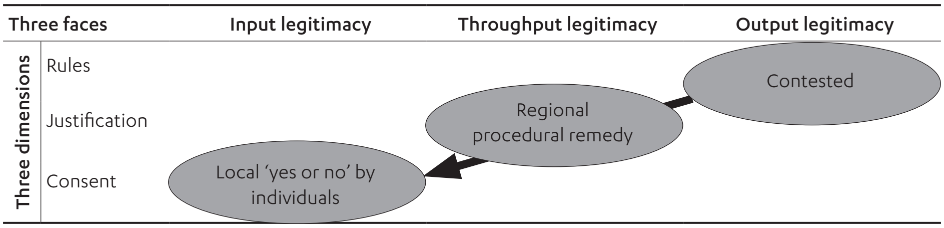
We see that, in Brabant, the three faces of legitimacy production are present; however, it is questionable if this is an example of how legitimacy should be produced. After the call for public support, just as in Friesland, the original goals and deadlines embedded in the PFFM remained unchanged, leaving little room for the thorough exploration that one associates with throughput legitimacy. It is not surprising that the throughput remedy in Brabant failed. Unlike Friesland, they apparently could not profit from an elaborate network of participants that were accustomed to dealing with the problem of wintering geese. So the time restraints and the particular agricultural circumstances in Brabant hampered a successful attempt to acquire legitimacy by means of an exploratory process. Furthermore, the ultimately chosen input remedy can be questioned from an output perspective on legitimacy. Allowing the individual autonomy of some farmers to prevail over what is seen as an effective solution for a societal problem – even though it is contested – hampers output legitimacy. The proposed and decreed solution – even given its contested character – is now bound by the will of some, whereas the outcomes of the above process – the implementation of the PFFM or an alternative – affect society at large.

In terms of shifts between the different modes of the production of procedural legitimacy – input, output and throughput legitimacy – the case of wintering geese in the three discussed provinces is enlightening. What started out as a policy that largely leant on output legitimacy was over time confronted with a need to install more demanding forms of procedural legitimacy, namely throughput and input legitimacy. Although the output-orientated PFFM is in itself the product of procedural efforts – as the PFFM is the result of a consultative process with different organizations representing conservationists, farmers and hunters at the national level – its contested outcome asked for more procedural effort at the provincial and regional level. However, we have also seen that, due to different conditions and problem perceptions of the three studied provinces, the actual contestation of the PFFM and the possible procedural remedies differ considerably.

Arguably, the legitimacy deficit of the PFFM is due to a lack of reflexivity on the part of the parties responsible for the PFFM. Despite the best intentions on the part of the Ministry, the PFFM contained so many practical and financial uncertainties upon presentation that increasing resistance during its implementation is hardly surprising. What is surprising is that this could happen as the recent shift of strategy, as set out in the policy report 'Nature for People, People for Nature', suggests a more bottom-up approach that is 'strongly anchored in the hearts of the people and in the decisions of citizens, entrepreneurs, social organizations and local authorities' (Ministerie van Landbouw, Natuurbeheer en Visserij 2000:18).

The shifts in modes of legitimacy production that we can observe in this particular case are mostly reactions to failed output attempts rather than conscious choices to produce legitimacy from start to end. They are shifts that were also moderately successful as a result of strict deadlines. What seems crucial is the ascendance of a certain measure of reflexivity on the side

Matrix 7.4 Legitimacy in Brabant from a farmer's perspective



of public authorities and policy-makers. For only if the limits of rationality are fully recognized – because of planning failures or because of bottom-up resistance – and hence a search for knowledgeable agents is initiated with whom the burden of governance could be shared is there a shift from substantial to procedural legitimacy to begin with. Only if procedural modes of legitimacy production have become predominant will it be possible to observe contemplated shifts between input, output and/or throughput legitimacy.

Because the shifts in legitimacy production have been reactive rather than proactive, it is difficult to speak of conscious trade-offs between the different modes of legitimacy production. Two such trade-offs can be observed in the case of the material presented above. First, because of time constraints, the provincial authorities in Brabant replaced the deliberative consultation process by a much more minimalist and formal consultation procedure. As such, this was a shift from throughput legitimacy to input legitimacy. Second, in Friesland, a similar shift was made from throughput to output legitimacy. This happened under different circumstances. In Brabant, the shift was forced by 'national' constraints, whereas in Friesland only in the tougher decisions where the communities were not able to downsize the areas themselves did the provincial authorities step in and base their decision on 'substantive' arguments: inventory data and damage figures.

CAN WE OBSERVE SHIFTS IN GOVERNANCE? IF SO, HOW DO THESE SHIFTS IN GOVERNANCE AFFECT LEGITIMACY?

If the case of wintering geese in the Netherlands is anything to go by, we see that Dutch nature policy-making occurs in a multi-level governance setting, albeit to a lesser extent and in different guises than is generally thought. While conventionally described as a process whereby national regulatory agents are increasingly restricted in scope and depth by supra-national polities and agents such as the EU, we see that, in the case of wintering geese, national authorities remain in control of content and strategy. Nevertheless, the case of wintering geese possesses an international dimension. First of all, Natura 2000 is present in the background. This is so because the Birds and Habitat Directives have been translated into national legislation. The Flora and Fauna Act (FF Act), which took effect in April 2002, deals with the protection of wild species, whereas the amended Nature Protection Act, which took effect on 1 October 2005, provides the legal framework for the protection of habitats. With the implementation of these acts, adequate national legislation should exist to offer enough guarantees for the protection of European nature in the Netherlands. The FF Act serves as the legal framework within which the PFFM is assessed. Second, the EU played its part through the EAFRD, as the SAN packages are co-financed by the EU. The strict deadline that was upheld by the ministry was tuned to the application date for EU co-financing.

The governance character of the case of wintering geese is especially apparent within the national context. We have seen that different actors at the national, provincial and local level all play their part. Even though the PFFM fits a more traditional top-down-oriented style of government in that it tries to provide a top-down and clear-cut solution to a national problem, we can also observe a variety of different practices within the different provinces as a result of its contested character. In this particular case, we see that a legitimacy deficit at the output side has led not only to a shift in legitimacy requirements but also to shifts in governance. These shifts in governance affect the legitimacy requirements of policy, as they influence the chain of responsibility regarding the formulation and realization of policy and its intended output. What we see moreover is that especially the throughput requirements in Brabant were not allowed to develop under pressure of output-orientated requirements.

Although the Ministry of Agriculture could have been more in tune with the sentiments in the field, the apparent lack of reflexivity could also be ascribed to the 'multilevel' conditions of this particular case. We have seen that, although the Ministry of Agriculture has taken the initiative in defining the solution to the problem, the provincial authorities are legally responsible for dealing with wildlife damage. This new strategy in which the Ministry of Agriculture proposes and enforces action, but leaves the implementation to lower administrative bodies, can explain, to a certain extent, the lack of reflexivity. The redistribution of responsibilities seemed to have created a transient situation where the different actors are probing to find out who is responsible for what. The situation in Brabant is elucidating in this respect, as the Brabant authorities resisted implementing the first phase of the PFFM; instead, they referred to their mandate, and thereby questioned the legitimacy of the national authorities. However, the provincial authorities ultimately decided to delineate foraging areas in a top-down process, as the PFFM would provide the only means of indemnification provided for by the national government. The Friesian authorities are the exception to the rule and never initiated a top-down attempt, aware of the resistance this approach would cause.

7.6 AN EPILOGUE

Ready for the war on geese

F*armers, bird watchers and nature conservationists agree.*
In summer there are too many geese. In five years half of them have to be gone.
(Van Lieshout & Kleyn 2011, May 7)

A CHANGE OF SEASONS

By now it is 2011 and a new chapter of managing geese in the Netherlands has been opened. The cause is once again a thriving geese population. However, it is not the wintering geese that are the culprits, but now the geese that stay in the summer. The situation seems familiar: the favourable circumstances of the Dutch delta, combined with a protective regime and an abundance of food provided on agricultural land now also result in a thriving summering population that causes damage. This time around not only agricultural practices suffer but, as summering geese are also breeding geese, they also cause damage to conservation areas. The ecological damage may consist of a combination of overgrazing reed beds, the dispelling of other breeding bird species and the eutrofication of ecological sites. Moreover, the increased population is also considered a danger to air traffic safety (Vogelbescherming 2011, May 3).

A different season, a different problem and thus a different situation! Organizations that had difficulty seeing eye to eye with respect to the wintering problem now have a common problem. This new situation brings together a diverse group of organizations: representing hunters, farmers, private property owners and conservationists. In the beginning of May 2011, they organized themselves in what they call the 'G-8', or Geese 8 (see Ganzen-8 2011). In the formulated solution to the problem that they presented to national and provincial authorities, they stress the importance of the Netherlands as a safe haven for wild populations of geese. However, they also agree that the increased population causes too much concern and needs to be reduced in size to the level of 2005. In that year, the number of summering geese totalled about 100,000 individual birds. Concretely, this means a reduction of 50% of the population: a reduction that is to be realized by shooting and gassing summering geese.

As could be expected, this envisaged solution does not sit well with all. Not only the plan itself has received a lot of criticism but also the organizations taking part in the G-8 have received negative reactions. Especially Nature Monuments and the *Netherlands* Society for the Protection of Birds have been criticized heavily by other nature and animal welfare organizations. The criticism given focuses not only on ethical reservations regarding the mass killing of geese, but also addresses the perceived lack of insight in the ultimate causes of the problem at hand (see, for example, Comité Dierennoodhulp 2011). The argument is that killing geese does not address the cause of the thriving success of the geese population and thus does not provide a durable solution. This criticism is also shared by the provincial authorities that are ultimately responsible for handling wildlife damages in their provinces. The province of Groningen, for example, does not intend to comply with the plan of reducing the geese population by shooting. Although they agree with the analyses of the problem, the Groningen authorities do not subscribe to the suggested solution (see Gedeputeerde Saten Provincie Groningen 2011, July 12). It is also remarkable that the Royal Dutch Hunters Association, partner in the G-8, has decided for the same reasons to step out of the G-8. Being the major contributor to the proposed solution of shooting geese, they feel confronted with too strict guidelines that inhibit their perception of what is considered a decent hunting practice. On top of that, there is the fear of reputation damage due to hunting activities in the height of summer. As result, the G-8 has become the G-7 and, consequently, goes on without the partner responsible for the practical implementation.

TURNING THE PAGE

A new chapter has been opened and time will tell how the story unfolds. Ironically, although the nuances are different, the story unfolds similarly to the case of wintering geese as discussed in this chapter. The need for a durable solution is evident, and damages and costs need to be controlled while safeguarding the wild populations of geese. However, also here the post-normal condition prevails in which facts are uncertain, values are in dispute, the stakes are high and decisions are deemed urgent. So what to do? What is best? Who is to decide? Who should be involved? These are, I believe, all relevant questions. All questions that ask for legitimacy!

LOOKING BACK

With this new chapter opened, one might almost forget about an older chapter: that of the PFFM. In 2011, the PFFM is fully functioning. However, not exactly as was envisaged. By now 80,000 hectares serve as foraging sites and farmers in all provinces participate in providing a safe haven for wintering-foraging geese. However, is the PFFM a success and/or has it been legitimate? With respect to the former question, an evaluation of the PFFM between 2005 and 2008 draws us to a negative answer (see Zee & Verhoeven 2009).

The PFFM had as intended policy outcome three objectives: (i) providing the agricultural community with a durable solution while at the same time (ii) safeguarding the geese populations and (iii) keeping the costs of indemnification in check. It seems that only the second objective was realistic. The evaluation tells us that the PFFM did not have a negative effect on the wintering populations. The population of wintering geese is still increasing. However, the growth is declining and the expectation is that, in the next 10 years, there is enough capacity in the assigned foraging sites to harbour the wintering population. The costs, however, are a different story. Whereas the rising costs were the cause for political concern, we see that the already high estimated costs of the PFFM have reached €17 million each year – almost double the costs prior to the PFFM. This is to a large extent due to the fact that geese do not stay only in the specially reserved foraging sites. In fact, in the evaluation we read that 60% of the geese population is harboured within the foraging sites (Ministerie van Landbouw, Natuur en Voedselkwaliteit 2009), thus leaving 40% of the population that is foraging elsewhere. With 40% of the geese not staying in these areas, the damage to agricultural crops outside the foraging sites is still significant. With €4.5 million in the winter of 2007/2008, it accounted for almost 30% of the total cost that amounted to €17.4 million (Melman 2009). So next to the fixed costs for the PFFM (the costs for indemnification within foraging sites), the costs of indemnification outside these areas remain. This is remarkable, as the PFFM set out to fix the costs by concentrating on the foraging sites.

We also have to be critical with respect to the durability of the solution that the PFFM tries to provide. Although in the evaluation we can read that the participating farmers are content with the functioning of the PFFM, we also see that the foraging sites are not effective and the costs are much higher and are expected to increase to a staggering €28 million in the winter of 2014/2015 (Guldemond et al. 2010) under the current policy. Therefore, it is not surprising that a continuation of the strategy as set out in the PFFM is questioned. Although the G-7 might be in favour of continuation of a policy based on foraging sites, within the provincial organizations there is discussion regarding its cancellation after the contracts under the PFFM end in 2013 (see Gedeputeerde Staten Provincie Groningen 2011, July 12). To make things more complex, the problems regarding summering geese are, not surprisingly, intertwined with those regarding wintering geese (Van der Jeugd et al.2006). Because the PFFM creates a situation of a guaranteed food supply for wintering geese, it also provides a perfect basis for geese that stay year round. Moreover, we have seen that wintering geese do not stay within the assigned foraging sites, and thus can profit from the food that is available both within and outside these sites. An almost paradise-like situation perhaps?

HOW ABOUT LEGITIMACY!

Most solutions have a contingent character. Situations change, new problems arise and, consequently, solutions are needed. Nevertheless solutions need to be effective. Or better said, authorities that claim legitimacy need to be effective. We have seen that what constitutes effectiveness is not a fixed given. The PFFM tried to provide an effective solution by means of foraging sites, assuming that geese would forage mainly within these areas and that damage outside these foraging sites would be kept to a minimum and be the sole responsibility of the farmer. It is safe to say that the PFFM has not proved effective. Does that mean the PFFM lacks legitimacy? The central message of chapter 5 is that legitimacy is best conceived as something that needs production, rather than something that requires assessment in hindsight. The argument is that many of the problems that we are facing have a post-normal character for which it is difficult, if not impossible, to formulate an ultimate decision, as facts are uncertain, values are in dispute, the stakes are high and decisions are deemed urgent. Legitimacy thus needs to be an activity rather than evaluative concept. However, this also means that the contingent and post-normal condition needs to be taken seriously. Despite the input and throughput efforts, one could ask if this is the case when the PFFM is concerned.

8

CONTESTED NATURE(S)

8.1 INTRODUCTION

The problem with assessing and evaluating nature conservation practices, whether it is in terms of legitimacy or in more practical terms, is that their ultimate output is often envisaged beyond the duration of a specific practice. If we take the wintering geese as discussed in chapter 7 for example, what is it that we should evaluate? Is the fact that 80,000 ha have been appointed as special foraging areas a sign that the policy has been effective? When we read the background material to this specific policy, the *output* of 80,000 ha serves not merely the purpose of designating 80,000 ha. The ultimate effects (outcomes) are to keep the costs in check *and* to continue the protection of geese that winter in the Netherlands. We can evaluate the delineation and the costs, but the effects on the wintering population can be evaluated only over time. This is especially true now that, with the problem of summering geese, a new chapter has opened. A similar line of reasoning applies to the Future Amstelland process that has been discussed in chapter 6. Do we evaluate the process on the basis of the vision (output product) that was produced or on the effects that it envisages (outcomes)? In the case of Amstelland, it seems more clear-cut. The goal was to generate a vision, and this is more easily evaluated than long-term effects that need to be awaited. However, in the case of Amstelland, the need for a new vision was based on the perception that change is necessary. That change is necessary because a continuation of current land-use practices is not viable and those practices do not provide enough buffer to outside changes that affect the valued appearance of Amstelland. The new vision that was produced through a large participatory process resulted in a shared but rather conservative vision. The vision will not hamper future developments that are not in line with the conservative outlook; however, whether it will incite other developments is not automatically a given. Whether the appearance of Amstelland will remain unchanged for the future is dependent on much bigger forces than the Amstelland process; however, the authorities that try to manage those forces have also taken part in the Amstelland process and have made clear once again that Amstelland should remain open and keep its characteristic appearance. Therefore, the process may be seen as a stepping stone in the right direction but, as said, its ultimate effects cannot be evaluated.

Legitimacy of nature conservation depends not only on short-term goals easily identified within the duration of a specific practice, but more so on the long-term effects that transcend that practice. This is so, because these long-term goals are often the justification of the specific practice in the first place. These long-term effects thus need to be studied as well. In this chapter, I will focus on two practices that are well known examples of Dutch nature conservation. These two cases are the Oostvaardersplassen (OVP) in Flevoland and Gaasterland in Friesland: two very different nature areas in the Netherlands, but with a lot of similarities that make a comparison very interesting.

With the spotlight on these two areas, we come closer to what is considered to be or has to become real nature in the Netherlands: the National Ecological Network (NEN). Although both areas are part of the NEN, their shades of green differ significantly. The OVP is, despite its location, its history and its former intended designation as an industrial estate, one of the most natural areas in the Netherlands and has functioned as a testing ground for many of the ideas that form the foundation of the NEN. In contrast, Gaasterland is an area with a predominantly agrarian character and a long cultural history. Gaasterland was to contribute to the NEN with a darker shade of green, but, as a result of growing resistance, a different approach was sought that resulted in a different designation than initially planned. Both the OVP and Gaasterland provided valuable lessons for nature management in the Netherlands and have a long enough history to enable us to reflect upon their contribution to the overall goals and legitimacy of Dutch nature policy. For the OVP I take into account the timeframe from 1968 - at that time the Flevopolder was declared dry - up till 2012, when the consultancy body on the management of the OVP called for more involvement of farmer representatives and local inhabitants. The timeframe studied for the Gaasterland case runs from 1990 - the time the concept of the NEN was presented - up till 2005 when a midterm evaluation was published that addressed the progress of the realization of new nature by local farmers in Gaasterland.

In the next two paragraphs, I will introduce both areas and their position within Dutch nature policy. In § 8.4, the two cases will be placed in perspective by comparing the two with the specific focus on output legitimacy.

8.2 OOSTVAARDERSPLASSEN

SETTING THE SCENE: A STORY LIKE A FAIRYTALE

> *'With the natural developments in the Oostvaardersplassen we went up a mountain and nothing else but the summit awaits us. The summit has not been reached, but the new perspective that the climb up till now has given us on the world of nature is fascinating. We have come a long way, but do we dare to go any further/higher? The answer in this vision is: yes.'*
>
> (Staatsbosbeheer 2008)

This is the opening paragraph of the management vision of the OVP. Confronted with such an enthusiastic opening, one cannot but conclude that the OVP must be a special place. In the book 'Oostvaardersplassen: New Nature Below Sea Level', one can draw a similar conclusion, as the story of the OVP is depicted as a fairytale (Wigbels 2001 p. 6). It is a fascinating description, as a fairytale can be described as a 'once upon a time' story, often portraying fictional creatures that act in far-fetched scenarios that often have a moralizing message. Although the story of the OVP is a contemporary tale, the analogy is quiet striking.

First of all, the story of the OVP is remarkable because of its location and current 'land use'. Today the OVP is a nature reserve of about 5600 ha. The area is located in the Flevoland province and is wedged between the cities of Lelystad and Almere. This is nothing special, as long as you are not aware of the fact that the Flevoland province lies in its entirety below sea level and consists of polders that have been reclaimed from the sea. This is seen as astonishing mostly by people from abroad rather than by the Dutch themselves. The fact that the OVP is a nature reserve rather than an industrial site is probably more amazing to the Dutch. Given the characterization of Dutch land use as highly ambitious, but also highly competitive (Needham 2007), it is astounding that the area now has a designation of 'pure' nature, whereas its intended use was 100% industry. Whereas today many functions are combined in one spot, even in nature areas and forests, where conservation, recreation, landscape and timber production coincide, the OVP focuses predominantly on conservation. Thus, it is a remarkable location, where nature dictates its appearance. We are confronted with a dark shade of green. The reason why the OVP is now a nature reserve and not an industrial site involves another aspect that makes the OVP a remarkable place: its 'natural' development.

Once the polder was declared dry in 1968, the OVP area was not cultivated immediately. Some initial activities were undertaken to facilitate future cultivation, such as the sowing of reed by plane. Reed has the capacity to evaporate a lot of water and thus facilitates the further draining of the polder. As a result, a marshy landscape began to evolve in the lowest area, which soon developed into a perfect habitat for plant and bird species associated with a more natural landscape. Over time, the 'fictional' creatures of this tale entered the scene. Bird species such as the great bittern, the spoonbill, the marsh harrier and the white-tailed eagle settled as breeding birds. All of them were very rare or, in the latter case, even absent in Dutch nature up until the developments in the OVP.

Comparing the OVP to a fairytale is thus understandable. Given the character of Dutch land use, we can speak of an unlikely scenario in that the OVP was assigned a significant different and contrasting designation than was initially planned. The appearance and return of many bird species provide for the 'fictional' characters in this tale. The principles that can be distilled out of this tale should be clear as well, as they have been incorporated into the moral fibre of national and international conservation practices. The OVP has proven to be an important test case for Dutch nature conservation, and its lessons of natural development and the role of ecological stepping stones have been implemented outside the OVP. The developments in the OVP laid the foundation for the concept of the NEN and subsequently Natura 2000.

The thing with morality is that it challenges us to define what is right and, consequently, to act accordingly. In the case of the OVP, this meant creating additional grassland! The natural developments in the OVP not only were acknowledged as valuable, but were also seen as processes that could and should be facilitated with human help. This help was focused on facilitating the processes that the Greylag geese, catalyst in these events, have set in motion (see Vera 1988 and Wigbels 2001). The Greylag geese from all over Europe that chose the OVP to moult during May and June grazed the marshland vegetation to such an extent that closed reed beds turned into open waters; until then, this was something that only human management had been assumed to be capable of (Vera 1988). The resultant mosaic of open waters and marsh vegetation facilitated countless wild animal and plant species. The effect of Greylag geese grazing was that other wild species of plants and animals were able to establish themselves and survive in the area. However, Greylag geese spend only a short period of time in the marshland. Most of the time they graze on dry grassland. Without that grassland, the natural process of grazing the marshland would not take place. The marshland ecosystem then collapses and, after the Greylag geese have gone, a cascade of events would result in many plant and animal species disappearing (Vera 1988). Therefore, the idea arose to create grassland adjacent to the marshland.

Because seasonal farmland grazing supposedly would lead to a continuous battle between farmers and geese, the option proposed was to develop an inclusive ecosystem (see Vera 1988). To mimic natural conditions, Heck cattle, Konik horses and red deer were introduced in the OVP. Heck cattle and Konik horses were deemed suitable replacements for their extinct ancestors the Auroch and Tarpan, respectively. The idea was that the natural characteristics of these species could then be redeveloped by allowing the animals to live in the wild and become undomesticated. Both breeds were selected in order to develop grassland through the natural process of year-round grazing. Year-round grazing provides a much greater variety of animal and plant species than can be found on short grassland that is characteristic of seasonal farmland grazing. Red deer and the spontaneously settled roe deer would then complement the natural marshland ecosystem that the OVP is to mimic. The different feeding strategies of the different species prevent any single type of vegetation from becoming totally dominant. The large herbivores are seen to play a key role in maintaining biodiversity and shaping and constituting the wished-for shade of green (see Wigbels 2001, Staatsbosbeheer 2008).

In 1983, 1984 and 1992, respectively, 34 Heck cattle, 20 Konik horses and 57 red deer were introduced in the OVP (Wigbels 2001). In the meantime, they have reproduced considerably. In October 2011, around 350 Heck cattle, 1150 Konik horses and 3300 red deer dwelt in the area (see Cornelissen & Kuipers 2012). Both the Heck and Konik population belong to largest wild cattle and horse populations in Europe (Keulartz 2009a).

The OVP now covers an area of about 6600 ha and there are serious, but highly contested, plans to create a so-called robust ecological corridor of about 2000 ha to connect the OVP with the Veluwe, an area of about 90,000 ha of sandy soil. Hereby building forth on the idea and practice of the NEN.

CONTESTED NATURE

Despite the fact that the OVP has the luxury of not having to take into account other forms of land use, we see that the developments within the OVP are contested. This is not because of conflicting uses of land, but because there are conflicts in how to deal with the large herbivores that inhabit the OVP.

One of the greatest challenges to cope with in the near future will be the population development of the herbivores in relation to availability of vegetation (both qualitatively and quantitatively), in addition to the habitat required for migratory birds. Due to the constant increase in grazing intensity, there is always the risk of food shortage. The number of ‘small grazers’ (especially geese) is still very high, while the herds of horses, cattle and deer have grown considerably over the past years. It seems that the carrying capacity of the area has reached its limits: the condition of the animals, and especially of the Heck cattle, declines in the winter and the early spring, which results in growing numbers of starving animals. The State Forest Service (Staatsbosbeheer), the manager of the OVP, does intervene for the sake of animal welfare on the basis of the so-called predator model. If an animal’s behaviour reveals that its death is impending, it is shot. In the past decade, this situation several times provoked fierce protests, ranging from local people to the national parliament.

To understand the ongoing controversy over introduced large herbivores in the OVP, Keulartz and colleagues point us to two different frameworks that people use when they look at animals (see Keulartz et al. 1998; Keulartz 2009). Most animal ethicists and animal protectionists adhere to a zoocentric perspective, in which animals primarily count as individuals. On the other hand, most nature conservationists and ecologists adopt an ecocentric perspective, in which animals are considered as part of a complex whole, such as populations, ecosystems or biotopes. From a zoocentric point of view, the emphasis is on the welfare, health and integrity of the individual animal. Ecocentrists, on the other hand, stress values such as naturalness, diversity and freedom, and they favour a hands-off policy with respect to animals. Animal welfare ethicists and activists are preoccupied with domesticated and captive animals such as laboratory animals, production animals and pets, whereas ecocentrists are preoccupied with wild animals such as red deer, roe deer and wild boar.

The problem with the Heck cattle and Konik horses in de OVP is that they do not seem to fit in one of these two frameworks (Keulartz 2009a). This is understandable, as these species are all domesticated; thus, as a result, most arguments deal with the question of whether or not we can speak of *wild* animals. Not surprisingly, those with a zoocentric perspective tend to see the animals and their welfare as our responsibility. This is in contrast to those who adopt an ecocentric perspective: in this case, the animals are preferably seen, ethologically and ethically, as the same as other wild animals in that area.

In 1998, researchers from the Applied Philosophy Group at Wageningen University released a report in which they tried to overcome the deadlock in the debate between advocates and opponents of the Dutch State Forest Service's policy in the OVP (see Keulartz et al. 1998). Their conviction was that the impasse could be broken by complementing the two opposing frameworks with a hybrid middle ground: they proposed to enact a new principle, that of 'respect for potential wildness' (Keulartz et al. 1998 p. 43). This new ethical concept was launched explicitly with the pragmatic intention to overcome the deadlock in the debate between advocates and opponents of the Dutch herbivores introduction programme (see also Keulartz 2009). The idea is that introduced animals do not simply cross a distinct dividing line between culture and nature: 'they don't walk from domestication into the wild, that is, from a moral domain of individual care to one of concern for the ecological whole. They gradually move from a thoroughly cultural context to one that is increasingly natural' (Keulartz 2009a, p. 42). By emphasizing the *potential* aspect of wildness, the principle acknowledges that de-domestication is a dynamic process with an uncertain and unpredictable outcome. It is a process that asks for input from both ecologists and animal ethicists.

This applied philosophical *input* was incorporated in the document 'Ethical guidelines. Guidelines for dealing with self-reliant animals on land managed by the State Forest Service' (Tramper 1999). This document was composed with the further *input* of a working group consisting of experts in the fields of animal behaviour, population zoology, law, animal welfare, ethics, pathobiology, veterinary science and nature management. Using the conceptual framework of chapter 5, we can identify these ethical guidelines as a *policy product* that provided the guidelines for management in the OVP by the State Forest Service.

However, despite acting according to these guidelines, public and political commotion escalated in the winter of 2004/2005. In that period, 14% of the Konik horses died, as did 22% of the red deer and 34% of the Heck cattle. Because of the commotion that this caused and the subsequent call for appropriate measures, the Minister of Agriculture, Nature and Fisheries was forced to act. The minister, who officially is accountable for the operational management of the State Forest Service, asked two national councils for further advice and input: the Council for Rural Areas (Raad voor het Landelijk Gebied) and the Council for Animal Affairs (Raad voor Dierenaangelegenheden). The Council for Rural Areas advised the minister to accept periodical reductions in animal welfare as a consequence of ecological management (Raad voor het Landelijk Gebied 2005). This type of management should be optimized by improving the predator model and by expanding the area available for the animals. The council also advised the minister to improve the public communication of this type of ecological management. The Council for Animal Affairs fiercely opposed these conclusions (see Raad voor Dierenaangelegenheden 2005). It was of the opinion that the carrying capacity of the area had been substantially exceeded and that management had failed. The council's chairman even compared the situation to that of a concentration camp. According to the council, this type of 'animal experiments' should be abandoned. The total population should be reduced to 1500 animals by shooting animals in small numbers all year round and selling the meat for consumption. It would possibly be best to remove the cattle and horses and use only deer to graze the area. Also, anti-conception should be considered.

Given this discord, the minister asked for further input. Now a panel of international experts was asked for advice. In June 2006, this International Committee on the Management of Large Herbivores in the OVP (ICMO) published its report 'Reconciling Nature and Human Interests' (ICMO 2006). The ICMO concludes that it is possible to maintain a resilient, self-sustaining ecosystem including large herbivores in the OVP reserve, which is acceptable to animal welfare standards. To achieve this, the committee recommended that access to shelter should be improved, a programme of research and monitoring of herbivore populations should be developed and animals in poor condition without foreseeable chances to survive in late winter should be culled and should not be allowed to die naturally. As such, a middle ground was found to the ongoing controversy.

One could argue that both the report by Keulartz and colleagues and the outcome of the report is an acknowledgement to the conservation practice of the State Forest Service in the OVP. The same can be said of the outcome of a lawsuit that was initiated by the Animal Protection Agency (Dierenbescherming), in which it asks for extra feed to prevent starvation. The court ruled that the Animal Protection Agency provided insufficient evidence that would lead to conclude that a large number of animals would die of starvation (see Gerechtshof 's-Gravenhage 2007, February 15)

With the recommendations of the ICMO taken into account, the State Forest Service presented a renewed vision: 'Beyond the horizon of the familiar' (Staatsbosbeheer 2008). In this *policy product*, the State Forest Service once more tries to provide the justification for their ecological approach. However, a prolonged cold winter in 2009/2010 reduced the condition of animals in the OVP, animals died and substantial numbers had to be culled. Surprisingly – or not – this event raised once more both public and political dismay. This time a news item by *EenVandaag* – a news programme on national public television – aired a confronting visual document, showing starving and drowning animals, animals being shot and the heavy machinery that ultimately disposed of the dead animals (see EenVandaag 2010, March 11). By now a new government was in place and the State Forest Service was now the political responsibility of the Secretary of State concerned with Agriculture, who was forced by both political and public protests to undertake action. Initiated by a debate in Parliament, the Stare Forest Service was ordered to provide for additional feeding of the large herbivores, and the Secretary of State promised to evaluate the implementation of the ICMO's advice. A second committee – ICMO2 – was installed with the purpose to evaluate the management of large herbivores in the OVP and the implementation of the recommendations given by ICMO1 in 2006 and to provide concrete advice on both the short and the long-term management of large herbivores in the OVP and guidance on ethical and ecological issues related to their management (ICMO2 2010).

The committee presented an elaborate list of recommendations that the State Forest Service should implement. The advice of the committee concludes that the OVP can be a nature reserve that fulfils both the ecological goals and the wished-for animal welfare standard. However, the ICMO2 emphasizes that the complete package of recommended measures needs to be implemented. These recommendations include early reactive culling, the creation of additional shelter and connection of the OVP to the Oostvaarderswissel (a 120 m wide track that is to connect the OVP with the Horsterwold, a forested area in the east of the province).

With respect to the governance of the OVP, the recommendation of the IMCO2 was to install a Beheeradviescommissie voor het Oostvaardersplassengebied (a consultancy body on the management of the OVP) that could provide asked and unasked advice. In May 2012, its first yearly report was published (see Beheeradviescommissie voor het Oostvaardersplassengebied 2012). The Sate Forest Service is bound by a covenant with the Ministry of Economic Affairs to accept these recommendations as binding. One of these recommendations is to install a number of complementary committees. These theme-orientated committees address matters such as future water management, veterinary issues and scientific research. The eventual suggestions for change in management that are formulated by these committees will need to be approved by the Beheeradviescommissie.

Currently, the State Forest Service is working on implementing the recommendations of the ICMO2 (see Staatsbosbeheer 2012). It remains to be seen if this forms the final stage of the contested legitimacy of the management in the OVP. Even though the State Forest Service has been successful in early reactive culling – 96% of all deaths can be contributed to reactive culling – the final, but important recommendation of the ICMO2 that foresees the physical connection of the OVP and the Horsterwold is under pressure. The former Secretary of State in the Rutte cabinet indicated that this recommendation would not be implemented, and it remains to be seen if it will.

With respect to predominantly expert input that provided the necessary feedback after issues of controversy, this approach has changed. Next to the often expert-based committees that now provide input for management, the State Forest Service has installed a stakeholder platform to facilitate early on consultation in an open and constructive fashion. The platform includes representatives of Stichting Welzijn Grote Grazers (the Society for the Welfare of Large Ungulates), Vereniging Het Edelhert (the Red Deer Society), Animal Protection, the Royal Dutch Society for Veterinary Medicine and the Bird and Nature Watch Zuid-Flevoland. Although the experiences thus far with this platform are positive, the Beheeradviescommissie recommends including farmers' representatives and local inhabitants as well (see Beheeradviescommissie voor het Oostvaardersplassengebied 2012).

THE OOSTVAARDERSPLASSEN IN TERMS OF LEGITIMACY

In this section, I will place the above analyses against the theoretical framework that was presented in chapter 5. The legitimacy problem with regard to the OVP seems to be structurally located in the output dimension. More precisely, the actual output *outcome* is contested: starving and dying animals in the OVP as a result of the management of the State Forest Service. We can argue that this outcome can count on output legitimacy, as these results can be justified within the bigger picture of a natural ecological system, something that the State Forest Service envisages with its management. However, the public and political protests also exemplify the lack of *consent*-based legitimacy. Thus, overseeing the situation, we can conclude that the basis of the legitimacy problem in the OVP is located in the *justification dimension* of the output face of legitimacy. Even though the State Forest Service acts according to the *rules* that are enclosed in its management plan and vision, we see that the *justifications* of this mandate are not shared broadly in both the public and the political domain, resulting in acts of withdrawal of *consent*. The opponents and proponents of the management in the OVP base their views on different rules and, as a consequence, draw upon different sets of justification. The State Forest Service operates within the legal societal framework of what is deemed good nature management while dealing with a new and experimental area. It sees the herbivores as part of a natural ecosystem that includes the dying of weaker animals. The justifications of its management are thus to be found in this 'shade of green'. Others, such as the Animal Protection Agency, contest the outcomes of these practices – suffering and dying animals – and argue that the introduced herbivores are not wild animals and therefore should be treated as regular livestock. This view is juxtaposed to the idea that the animals in the OVP are to be seen as wild animals. Because there is no clear legal framework for how to deal with introduced large herbivores it is not surprising to see that the opponents draw upon law and regulation regarding animal welfare.

We have seen that the actual outcome has been scrutinized several times during the past 15 years despite different attempts to restore the legitimacy of the management of the OVP. In

Matrix 8.1 The problem of legitimacy in the OVP

Three Faces		Input Legitimacy	Throughput Legitimacy	Output Legitimacy
Three Dimensions	Rules			The State Forest Service has official mandate based on politically approved management plans
	Justification			The idea of a naturally managed ecosystem that allows for the starving and dying of large number of animals is contested
	Consent			Lawsuits and both political and public protests as a result of the actual outcome of the management of the OVP

each of these cases, public and political protests called for a change in management. We should understand these protests as a call for input: a right in having a say in how management in the OVP should be conducted. Interestingly, with the exception of the recently installed stakeholder platform, the input and throughput remedies that followed relied solely on expert input.

The approach as presented in the report of Keulartz and colleagues (1998) is first of all expert input, but it should also be seen as a contribution to the strengthening the throughput legitimacy of the existing situation. Instead of reasoning from fixed positions and existing rules and regulations, which were not able to provide satisfactory solutions, the emphasis is placed on trying to find a hybrid middle ground that does not base itself on a black-and-white distinction between nature and culture. Although this applied philosophical input was incorporated with other expert advice in the 1999 ethical guidelines (Tramper 1999), acting according to these guidelines could not prevent the political and public dismay following the starvation of animals during the winter of 2004/2005. Once again the output legitimacy was contested, and once more the status and management of large herbivores was the principle dispute.

The first ICMO started from the notion that an ecological management could be combined with animal welfare. Their recommendations were the result of an exploratory process in defining concrete advice by which the State Forest Service could legitimate its future management. This advice was formalized in the vision from which the opening quote of this paragraph was borrowed. As we have seen, the output legitimacy was contested once more, and a second ICMO was asked to provide input to suggest both management strategies and underlying justifications.

Each of the expert interventions described above provided new *rules* and *justifications* for future management of the OVP. Interestingly, both the ecological ideal as well as animal welfare have been taken into account in such a way to do justice to both principles. Each intervention has led to more encompassing recommendations for management.

The OVP literally is a testing ground for new ideas and practices. This is especially apparent as a shared idea of how to frame and ultimately manage the OVP is missing. Existing *rules* did not provide any foundation for a clear management approach and, as the *justifications* of both opponents and proponents were based on conflicting sets of assumptions, rules and regulations, the outcomes of the management of the State Forest Service were contested. Although

Matrix 8.2 Different remedies in procedurally restoring legitimacy

Three Faces		**Input Legitimacy**	**Throughput Legitimacy**	**Output Legitimacy**
Three Dimensions	Rules			1 Ethical guidelines 2 New management plans on basis of ICMO reports
	Justification		Search for new foundation for new vision and outcome	Intended outcome: a natural managed ecosystem without unnecessary animal suffering
	Consent	Consecutive input of philosophers, experts, and committees		The future will tell

they can now base its actions (justification) on the recommendations of the ICMO2 report, it remains to be seen whether this provides enough legitimacy. Given the recommendation of the newly installed Beheeradviescommissie to install extra theme-orientated committees and a broad stakeholder platform, the Beheeradviescommissie begs to differ: it recognizes the necessity of a continuous input into the testing ground of Dutch nature conservation, which emphasizes the throughput phase of legitimacy production.

8.3 GAASTERLAND

SETTING THE SCENE: A DIFFERENT TALE

The story of Gaasterland[20] is a different tale all together, despite the many similarities it has with the OVP. Both are located within the NEN and both have a different designation than what was initially planned. However, they have a different shade of green. Whereas the OVP represents one of the darkest shades of green we know in the Netherlands, which stands in stark contrast to its history and its planned industrial use, Gaasterland exists as a lighter shade of green, that of agricultural managed nature, a shade of green that is much lighter than the shade of green that was planned initially.

In contrast to the flat and open character of the rest of Friesland, the Gaasterland area is a rolling (for Dutch standards) and forested landscape. The differences in topography are due to its location on a clay bank that is located between the IJsselmeer and the Slotermeer. It is a rural area that does not harbour any large cities or towns. A large part (7700 ha) of the total ground surface (9500 ha) of the municipality of Gaasterland-Sloten is used as agricultural land. For the largest part, it is in use as pasture land for dairy farms. A little over 1200 ha has a nature designation, mostly forest, that was planted by the Dutch State Forest Service around 1900 and by the nobility that acquired most of the land in Gaasterland in the 18th and 19th century. This resulted in an attractive but, for Friesland, atypical landscape that is much liked by recreational users.

Whereas the developments in the OVP have laid the foundation for the NEN, those in Gaasterland are the direct result of the NEN policy. The nature policy of 1990 in which the concept of the NEN was introduced had direct consequences for the Gaasterland region. In contrast to the past, the focus was no longer on just the preservation and management of existing nature but also on the development of new nature. A total of 150,000 ha of new nature needed to be established. Agricultural lands were to be acquired and to be placed into the management of the nature-management organizations such as the State Forest Service, Nature Monuments (Natuurmonumenten) and the twelve provincial landscape organizations. In addition to the task of newly acquiring ground for nature, 100,000 ha of agricultural grounds were to keep their agricultural designation; however, on these locations, management contracts could be agreed upon with the aim of a more nature-friendly management (see Ministerie van Landbouw, Natuurbeheer en Visserij 1990a).

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[20] Together with the municipality of Nijefurd, the municipality Gaasterland-Sloten forms the area known as Gaasterland. In this study, when I refer to Gaasterland, I refer only to the municipality of Gaasterland-Sloten, as it is in this municipality that the `Experiment Gaasterland' (the object of my investigation) took place.

The first step in the realization of the NEN is the concrete delineation of the locations and management areas to be acquired. Although the Ministry of Agriculture had already indicated a broad delineation, the concrete delineation was a task entrusted to the twelve provinces. The ‘gross-NEN’, as the broadly delineated area was called, was three times as large as the envisaged ‘net-NEN’. Within this framework, the provinces could delineate the definitive NEN. In Gaasterland, 3000 ha was delineated as gross-NEN; this meant that, in 1990, when the nature policy plan was presented, 1000 ha of net-NEN, new nature, was to be delineated in Gaasterland (Kuindersma and Kolkman 2005).

In 1991, the Ministry of Agriculture came to an agreement with the twelve provinces regarding the allocation of the number of hectares over those provinces. However, the delineation was a troublesome process in all of the twelve provinces. The delineation had to be finished in 1996, and this time frame appeared to be not feasible. In 2000, only 83% had been delineated. The acquisition and realization of the NEN slowed down. Part of the reason was that the acquisition of locations could, in principle, be carried out only through voluntary cooperation (Kuindersma and Kolkman 2005).

Friesland had to delineate a total of 14,500 ha of new nature. To the dismay of the ministry, a flexible solution was created for 5500 ha. These 5500 ha were not supposed to be fixed, but could be flexibly appointed through management agreements (so-called ‘vliegende hectares’), where farmers agreed to manage their lands in a ‘nature friendly’ way. This left the province with a delineation target of 9000 ha. On 9 November 1993, the provincial authorities reached an agreement with the agricultural organizations on the delineation in Friesland. The agreement held that a total of 6700 ha new nature were to be established on existing agricultural land. The remaining 2300 ha would be realized through management agreements. The new nature was to be established in southeast Friesland, de Blauwe Zone and Gaasterland.

It took the provincial authorities a further 5 years to come to an agreement with the agricultural organizations regarding the delineation of the hectares of new nature in the province of Friesland. For Gaasterland, the provincial authorities and the agricultural organizations agreed upon 550 ha of new nature, to be established on existing agricultural land. This was a considerable decrease compared to the 1000 ha that had been included in the ministerial plans. This proved to be a cumbersome process and at that time the concrete delineation was not yet realized. This was to be put into effect through a partial revision of the provincial spatial plan. It was during this phase that the resistance to the plans suddenly intensified and achieved an effect. Thanks to the research of Kuindersma and Kolkman (2005), that process has been described in detail. In the section below, their analysis is used to describe the contested character of both the proposed and realized shades of green in Gaasterland.

CONTESTED NATURE

In Friesland, the delineation of productive agricultural lands met with a lot of resistance. The process was followed with suspicion by provincial politicians and local farmers alike. However, although the 550 ha of Gaasterland were included in the new provincial spatial plan, the nature claim drew little attention.

The plans for 550 ha of nature development in Gaasterland were presented to the region on 20 March 1995. The plans were based on the agreement between the provincial authorities and the agricultural organizations. Provincial officials, local agrarian representatives and the nature-management organizations were given the task to make concrete plans for 550 ha in Gaasterland. The local community had not been involved up to that time. Farmers were aware of the plans for nature development in their region, but up to the meeting in March 1995 they either did not give it much thought or were under the impression that the effects could be overcome.

Up until the informative meeting in March 1995, there was little or no resistance from within the region. This changed as the meeting progressed. During the meeting, the farmers were confronted with a plan that was visualized on a map. Individual farmers were confronted with the fact that their land was marked as new nature. The meeting ended in a high-strung atmosphere, during which a chair was flung in the air and the provincial alderman was pulled by his tie.

Farmers and citizens from Gaasterland organized themselves in the 'Initiative Group Concerned Gaasterlanders' (IVG – Initiatiefgroep Verontruste Gaasterlanders) action group. Billboards with slogans arose in the fields throughout Gaasterland, which drew a lot of local national and international media attention. The IVG organized a referendum with which they managed to reach 75% of the population and of which 75% indicated that they were negative towards the provincial plans. The period of protest was marked with an aversion towards everything that was associated with nature. Even a local caretaker of the Fryske Gea (an organization dedicated to the protection of nature in Friesland) was threatened. The province and the municipality halted the plans, although the provincial authorities did not want to question the 550 ha, as these were already a compromise compared to the target of 1000 ha and the deal that included flexible hectares that the ministry reluctantly accepted. The representatives of the Friesian farmers' organization FLTO initially did not want to question the deal that was made with the province. Questioning the agreement could mean raising again the delineation issue in the whole province. Persisting with this view resulted even in the resignation of the local representatives of the FLTO who were replaced by persons who could count on the trust of the local community.

In May 1995, the provincial representatives and the IVG re-opened the discussion and tried to come to a solution; however, although the province was willing to withdraw the existing plan and discuss alternative delineation, it was not willing to discuss the 550 ha: these remained a fixed objective.

The protest of the Gaasterlanders successfully reached national politics. On 12 September 1995 a meeting was held on the Structuurschema Groene Ruimte (SGR) in the Dutch Senate. This plan anchors the NEN in Dutch spatial policy. A group of people from Gaasterland took this opportunity to protest against the plans in The Hague. This was preceded by written correspondence, so that all senators were aware of the resistance in Gaasterland. The result was that the meeting was dominated by the Gaasterland situation and most senators adopted a critical attitude towards the plans in Gaasterland. The Minister of Agriculture at that time was prepared for the discussion and, preceding the meeting, had visited Gaasterland to become acquainted with the situation. His response to the raised issue was of great relief of the region. The minister, who had just published the 'Dynamics and Innovation Memorandum'

(Ministerie van Landbouw, Natuurbeheer en Visserij 1995), in which the minister pleas for more involvement of agrarian and private nature management, side-stepped the established procedure for NEN delineation and the official mandate of the Friesian provincial authorities and proposed an experiment. This experiment emphasized local responsibility for both the management of nature and defining the wished-for quality of that nature. The designated 550 ha would not be open for discussion, but the way in which they could be managed was. The option proposed aimed at thoroughly exploring the possibilities of the private and agrarian management in Gaasterland. Thus, expropriation and management by nature conservation agencies as a management strategy was set aside.

Although the message of the minister was well received in Gaasterland, the process still proceeded slowly. The IVG and local representatives were now working together in the NEN committee. The discussion focused on the content of the experiment. The nature objective and the fixed delineation of 550 ha in Gaasterland were abandoned, but the 550 ha of new nature would not be open for discussion.

Because the process was still cumbersome, the province decided to break the impasse by installing a committee of ‘wise men’ who could count on the support of all parties involved. Members were chosen so that all interests would be represented. This committee of wise men ultimately concluded that the implementation of the NEN was perceived as a top-down initiative and led to a polarization between the involved parties; that the approach was one-sided and had no relation with the economic development and the social cultural history of the region; that the region was given insufficient space and time to develop its own vision; and that the possibilities of agrarian or private nature management should be explored. Furthermore, the Gaasterland committee of wise men has recommended that the NEN committee should involve all parties in an open process during the development of the plan. Also, a steering committee should be established for the exchange of information. The ministry, the provincial authorities, the municipal authorities and the nature-management organizations as well as a representative of the NEN committee should take a seat in this forum under the supervision of an independent chair. On the basis of this analysis, the Gaasterland Committee had drawn up seven principles for a different approach, where more emphasis was needed to be placed on agricultural nature management.

The advice of the committee of wise men had a profound influence, and the provincial authorities ultimately accepted all recommendations. One of the recommendations was that the NEN committee (IVG and FLTO) should have full responsibility in writing an action plan, after which it should be implemented. The involvement of other parties, such as the nature-management organizations, would also be left to the NEN committee. The NEN committee accepted the challenge and, in September 1997, it started its initial activities. An elaborate consultation preceded an action plan that focused not only on agrarian nature management but also on tourism and local products and environment. During this process, which was characterized by numerous negotiations between the provincial authorities regarding the specifics of the action plan, it became clear that the province could not return to its initial plans.

An advisory board was established with an independent chair and representatives from the Ministry of Agriculture, Nature Management and Food Quality, the province, the municipality, Dienst Landelijk Gebied (DLG; The Government Service for Land and Water Management) and the State Forest Service. This committee was chosen with care, and all members had a leading position within their own organization and could count on the trust of the NEN committee. Because the composition of the advisory board was an issue of debate, the advisory board had its first meeting only in January 1998. The advisory board had some significant influence, although it did not have an administrative character nor was its mandate of an evaluating nature. It was on its advice that the experiment in Gaasterland started working with a so-called 'nature standard/yardstick'. At first, the NEN committee was somewhat reluctant to agree to the principle of a measuring standard. However, the advisory board convinced the committee that the system in which it could be held accountable also worked in its favour. The measuring standard provided a system of accountability and a goal to strive for. It would also give the committee the opportunity to show that it took the task seriously. In the spring of 1999, the action plan was finalized. The execution of the action plan became the responsibility of Bosk & Greide, an organization for private and agrarian nature management that was specifically established to enact the Gaasterland experiment.

MIDTERM EVALUATION

In 2018, the Gaasterland experiment will come to an end. By that time Bosk & Greide needs to have realized 550 ha of new nature in Gaasterland. In 2006, the lack of progress made within the experiment was reason to evaluate the experiment half way down the line and to look how to progress. The midterm evaluation of the experiment by De Molenaar et al. (2006) is mildly optimistic, and they made a distinction between the quantitative and qualitative aspects of the experiment thus far. The reason for optimism stemmed from, despite the slow and cumbersome start of the project, the quantitative goals that had been reached thus far. It can be expected that the credits required will be reached by the end of the experiment in 2018. Some quotas of certain categories, such as meadow-bird management, have already been attained. Others (such as wooded-bank management) progress slowly, but the expectation is that all quotas will be met.

Whereas there is optimism regarding the quantitative goals, there is some reservation regarding the qualitative goals that are inherent to the quantitative goals. At a third of the duration of the experiment, the conclusion is that the outcome does not ensure higher quality and also that the expectancy of more quality in the duration of the experiment is low. Although it cannot be expected that the qualitative *outcome* is on the same footing with the initial plans for Gaasterland, the midterm results do not sound hopeful. This observation in Gaasterland is in line with other reports on agricultural nature management (see, for example, Kleijn et al. 2001).

While we can place critical comments on the outcome of the Gaasterland experiment, the findings regarding the *impact* sound far more positive. The process evaluation of Kuindersma and Kolkman draws some very positive conclusions in this respect. For one, we see that there is an observable cooperation between Bosk & Greide, nature-management organizations and authorities, which has improved over the years. Furthermore, all parties involved are increasingly aware of the mutual dependence regarding the more difficult nature objectives and packages, which increases the willingness to cooperate. Although a sustainable working relationship is still missing, the need for such cooperation is increasing and the experiences of the past years make

EXPERIMENT GAASTERLAND –'NATUURMEETLAT' (NATURE MEASURING STANDARD)

In the Experiment Gaasterland, the region is given responsibility for the target of 550 ha of new nature. In contrast to the earlier plan, the emphasis has shifted from expropriation and management by nature organizations to agrarian and private nature management by the local community.

The measuring rule provides a system of accountability and a goal to strive for. This 'yardstick' system works on the basis of credits that can be obtained by realizing nature goals. For the nature goals with a lower ambition, a minimum of one credit/ ha can be obtained and a maximum of 10 credits/ ha for the goals with a higher ambition. The higher the ambition – the higher the number of credits. The nature objective in Gaasterland has been achieved when a total of 5600 credits have been obtained. The nature that is realized through this system should be able to compete with the initial 550 ha under the management of the nature organizations. In addition, agreements were made regarding the minimal and maximal score of each of the different management strategies in the system.

Category	Minimal score	Maximal score
Meadow-bird management	1045	1705
Botanic management	825	1375
Plot-edge management	220	330
Arable-land management	220	330
Wooded banks and belts	220	330
Forest	605	1045
Heather	220	330
Wetland management	220	330
Winter-guest management	385	715
bonus	-	-

(Kuindersma and Kolkman 2005)

one hopeful that this will be followed up. Overall, the acceptance of nature management has increased in the past years, and it seems that there is now a greater willingness to strive for more ambitious nature objectives (Kuindersma and Kolkman 2005; De Molenaar et al. 2006).

GAASTERLAND IN TERMS OF LEGITIMACY

In this paragraph, I will place the above storyline against the theoretical framework that was presented in chapter 5. A distinction is made between the situation before (matrix 8.3) and after (matrix 8.4) the Experiment Gaasterland. What is clear from the description above is that

Matrix 8.3 The legitimacy problem of 550 ha new nature

Three Faces		Input Legitimacy	Throughput Legitimacy	Output Legitimacy
Three Dimensions	Rules	Nature quality is governmental responsibility		Nature Policy Plan and subsequent wheeling and dealing foresee 550 ha of new nature ↓
	Justification	NEN is necessary to prevent further degradation of nature in the Netherlands	↗	The foreseen outcome of nature managed by conservationists is contested → thus, no realized outcomes, asconsent is missing
	Consent	Nature Policy Plan is the product of the political process and has been adopted by Dutch Government		Fierce protests! ↑

the plans for the provincial delineation of the NEN are a dynamic process. There are many entry points in this storyline to pick up a reflection on the legitimacy of what takes place in Gaasterland. A policy process that becomes implemented according to plan is, in most cases, just a paper reality. In real life, processes are being adjusted, timelines are tuned to new insights and goals alter as new information becomes available. It is safe to say that, in a complex society with different visions and ideas of what is necessary, a certain flexibility is necessary. Not only to be effective, also to be legitimate. The process in Gaasterland is no exception. It has proven to be a dynamic process where effectiveness and legitimacy have been key issues of concern.

When we consider the specific focus on legitimacy, all faces and dimensions are relevant; however, the issue of legitimacy became especially problematic on 20 March 1995 when concrete plans for the Gaasterland area were presented to the region. There had been concerns regarding what was still a rather abstract conception of the NEN, but up to that specific point in time the process could be seen as a ‘regular’ responsive process that lived up to the legitimacy requirements. Up until that specific day, years of wheeling and dealing had already taken place. First, the ministry came to an agreement with the provinces regarding the distribution of hectares in each province. Subsequently, the provincial authorities were given the task for concrete delineation. All this time, national and provincial authorities acted on basis of the nature policy plan of 1990 (*rules* and *justification*). We could argue that, up until March 2005, the input and throughput legitimacy were not (extremely) problematic. Concerns regarding inclusivity, responsiveness and transparency – issues of input and throughput legitimacy – were addressed in the process where representatives from the provincial authorities, the agricultural organizations and nature-management organizations developed a plan for 550 ha of new nature in Gaasterland, even though the ministry objected to the *output* of this process, as the 550 ha agreed upon were only half the target which the ministry in conjunction with province had agreed upon.

Matrix 8.4 Experiment Gaasterland – procedural remedy

Three Faces		Input Legitimacy	Throughput Legitimacy	Output Legitimacy
Three Dimensions	Rules	Nature policy plan asks for realization of NEN and asks of provinces to realize new nature under the auspices of the local community	Increased emphasize on the process. Gaasterland is given the opportunity to come up with own strategy and solution	Experiment Gaasterland sets ground rules and end goals
	Justification	New approach is based on the recommendations of the committee of 'wise men'	Local farmers and private parties	Quantity is realized but quality is lacking
	Consent	Expert input recommend bottom-up input of local community	New approach is supported by most authorities, interest groups and locals	New coalitions and increased trust

While the decision taken by the provincial authorities and the agreement reached with the agricultural representatives are fully in line with the established rules and regulations, the underlying principles were questioned by the minister. After the successful protest of Gaasterland reached national politics, we see that the Minister of Agriculture can be seen as questioning the second dimension of legitimacy (*justification*) and re-defining the first (*rules*). The choice to portray the Gaasterland situation as a situation that deserves an experiment, to see whether the set nature objectives could be reached by means of agrarian management, was one of the first expressions of a shifting focus in the realization of the NEN, where an emphasis is placed on more private and agrarian management.

This remedy to the legitimacy problem in Gaasterland shows many similarities with the solution sought in the OVP, in which the three consecutive faceses of legitimacy production can be distinguished. After expert *input* from a committee of wise men, a throughput solution was proposed in which the local community could explore and develop a bottom-up alternative to initial top-down plans. The *output product* of this process was the Natuurmeetlat, which provided a new set of – self-implied – *rules* to which actions would be measured.

Even though the new formulated policy outcome is tailor-made, a midterm evaluation shows a slowly progressing realization of the formulated outcome, thereby revealing a possible future legitimacy deficit. Whether this will be perceived as problematic remains to be seen, as we can also observe a positive *impact* that results from the Gaasterland experiment. Although the power that was entrusted to the community might not result in the formulated outcome, the midterm evaluation points to increased trust and cooperation between the different actors and stakeholders in the Gaasterland experiment. Thus, this provides a potential fertile base for further and perhaps more ambitious cooperation regarding conservation practices.

8.4 CONTESTED NATURE(S): A COMPARISON

In chapters 6 and 7, two cases were discussed. These two different cases reveal interesting information on which of the three dimensions and faces of legitimacy emphasis is placed. In both the case of the wintering geese as well as that of Amstelland, all three dimensions and faces are important; however, it remains difficult to assess the process in its entirety because of the time frame and envisaged effects of those policies. For this reason, it was especially interesting to reflect upon the developments in Gaasterland and the OVP. Both are part of the NEN and have been around long enough to provide a longer time frame for reflection. Because the OVP has laid the foundation for the NEN and the Experiment Gaasterland has been the direct result of NEN policy, a comparison is interesting. Both areas have resulted in new insights into Dutch nature policy.

The developments in the OVP have presented information that has changed the way we look at nature conservation in the Netherlands. The possibility of proactively creating new nature can be explained by the attitude of the Dutch towards land use and the high ambition that permeates this attitude. This high ambition was translated into the first official Dutch nature policy plan in 1990 and has affected land-use planning throughout the Netherlands, including Gaasterland. The legitimacy problem in the OVP was output-oriented and focused on animal welfare (domestic vs wild). A large part of the discussion that originated as part of the contested outcome can be interpreted as an input and throughput remedy to the perceived legitimacy problem. What is interesting to see is that the State Forest Service is able to continue its wished-for strategy of managing the OVP as a semi-natural ecosystem where the herbovores in the reserve are treated as wild animals, rather than as domestic animals. This situation has been justified by the international committee that was called in to reflect on the matter and the court result of the lawsuit that was filed. The legitimacy problem regarding the output was remedied through these input efforts and the State Forest Service can now justify its past, present and future activities through the new management vision.

The initial plans for Gaasterland were based on the same ecological processes that shaped the OVP. In that sense, the plans envisaged a wished-for outcome that benefitted nature, biodiversity and people. As such, it was legitimized on the basis of the envisaged outcome. As we know, this resulted in resistance and the process was altered and given a new direction: a direction that obtained its legitimacy through deliberation rather than defending an ultimate outcome. This outcome differs significantly from the initial plans, and the nature that is being created is different in ‘quality’ than what was initially planned. Although the outcomes are also contested, they are considered to have a strong legitimacy base that is rooted in the input and throughput dimensions.

The OVP and Gaasterland are two areas that provided valuable lessons for nature management in the Netherlands. Both areas received a different designation than planned: two different shades of green that have two contrasting baselines. There is one that sees man as an integral part of its surroundings and thus nature (Gaasterland), and there is one that holds the absence of human influence as the baseline for real nature (OVP). However, in both cases, a conflict of nature vs culture causes controversy. In the OVP, the issue is focused on animal welfare (domestic vs wild), whereas in Gaasterland conflict is based on land use.

The reason why the OVP was able to act as an exemplary case, and current developments are possible, is that there is no history with the land that was created, a history characterized by humans influencing their surroundings, as was the case in Gaasterland. That the OVP can mimic a natural area is therefore possible in contrast to, for example, Gaasterland, where an intended dark shade of green conflicts with competing nature claims and does not realistically address the region's history.

This raises the question of whether or not output-based legitimacy that envisages darker shades of green in the Netherlands is possible at all. Are ambitious ideas regarding nature conservation that exclude human co-use destined to be diluted through processes of deliberation and co-governance?

Although the management – or governance – of a nature reserve might come across as a clear-cut situation in terms of official responsibility, we see that that the moral jurisdiction over a nature reserve is thoroughly complex and asks for the production of legitimacy as well. Although the State Forest Service has a clear mandate with respect to the management of the Oostvaardersplassen, its moral authority has been contested both publically as well as politically. The Oostvaardersplassen case furthermore demonstrates that the need to produce legitimacy is a 'colour-blind' necessity. In both the darker and lighter shades of green, input, throughput and output legitimacy are necessary to ultimately justify an authority's actions, and the results that it foresees.

9

CONCLUSIONS AND REFLECTIONS

9.1 ONSET

Dutch nature policy and practices deal with different shades of green. These different shades of green are often the object of contestation as we have seen, for example, in the case of the Oostvaardersplassen in chapter 8. These shades of green also need to compete with other legitimate land-use practices, as was exemplified by the case of wintering geese. Consequently, decisions regarding what to favour can be controversial and will meet public and political resistance. This situation is intensified by the multi-level and multi-actor character of nature policy and practices. Different levels of administration and different actors are responsible for the protection of nature in the Netherlands. Additionally, the conservation, management and creation of nature often take place under post-normal conditions. Nature protection is deemed important but is a value-laden enterprise in which objective facts or scientific insights provide no pre-fixed moral bearing. These conditions make legitimacy, of Dutch nature policy and practices, an important area of research.

It is the objective of this study to explain and understand the concept and problem of legitimacy in relation to Dutch nature policy and practices. Furthermore, this study aims to support the realization of legitimate nature policy and practices. To reach the objective of this study, the following questions have guided my search for understanding:

(1) What is legitimacy? Or, how should we understand the concept of legitimacy?

(2) What are the issues or problems with regard to legitimacy in Dutch nature policy and practices?

(3) What characterizes legitimate nature policy and practices?

Because legitimacy deals with situations in which the exercise of power is a matter of controversy, it is necessary to understand the context in which this legitimacy is an issue of concern. The first question thus has prompted a thorough discussion of the context. The character of Dutch nature conservation, the shift from government to governance and the international dimension of nature conservation were discussed in chapters 2, 3 and 4, respectively. These chapters provided the necessary background to which an account of legitimacy was developed in chapter 5.

The theoretical account of chapter 5 provided the answer to the first question and the analytical content to revisit the second question. The conceptual framework developed in this chapter was used to analyze four case studies in chapters 6, 7 and 8. By discussing a participatory process in Amstelland, the national problem of wintering geese in three different provinces and two prominent examples of National Ecological Network (NEN) nature (Gaasterland and the Oostvaardersplassen), four particular sets of answers and insights were given to the research questions.

In this final chapter, the comparison and combination of these insights will be used to address the second and third research question. First, the major insights of chapter 5 are recaptured in the following section. The second research question is addressed in § 9.3. Subsequently, the third question is answered in § 9.4.

9.2 WHAT IS LEGITIMACY ONCE MORE?

Departing from the notion that legitimacy refers to the rightfulness or appropriateness of power and the exercise of that power, we have seen that, in modern-day societies, this rightfulness is imbedded in the concept and practice of democracy. However, democracy takes on different guises that are based on different but complementing values (see § 5.4). Taking into account this multifaceted character of democracy, the account of legitimacy that was presented in chapter 5 distinguishes nine positions that resulted from the combination of Beetham's three dimensions of legitimate power (rules, justifications and consent) and the three modes of democratic legitimacy production (input, throughput and output) (see matrix 5.3).

Beetham's three dimensions of legitimate power proved to be helpful in understanding the different building blocks of the normative 'quality' or 'characteristic' of legitimacy. A statement regarding legitimacy is best perceived as a comprehensive normative perception or assumption regarding the exercise of power within a system of norms, values and corresponding acts of consent. An informed statement regarding legitimacy requires an inquiry into all three dimensions of legitimate power. Strong statements whether power is, or is not legitimate, are therefore best nuanced within this framework. Rules or laws might be breached and supporting beliefs might alter or evolve and consent might be withdrawn, but it is rarely the case that legitimacy fails in all three dimensions to such an extent that the label 'non-legitimate' fits unconditionally.

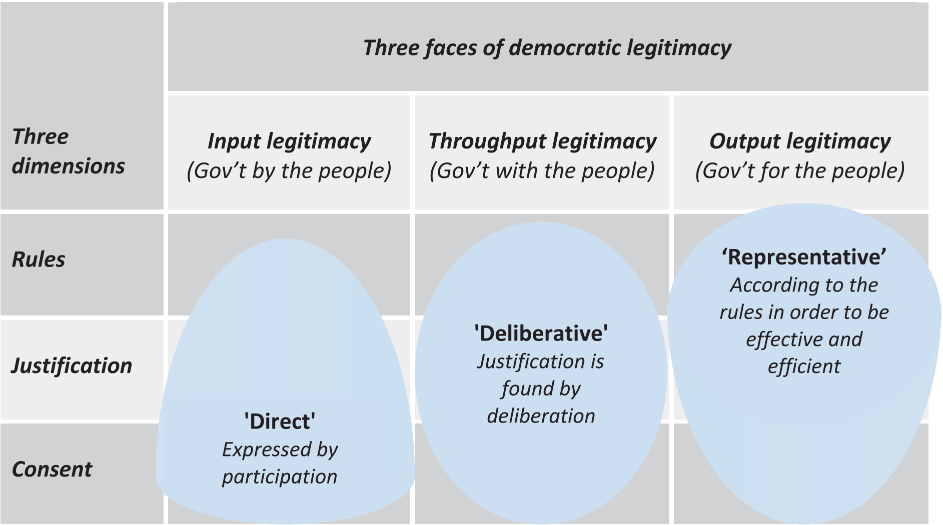
The three modes of democratic legitimacy production provided the structure and content of Beetham's three dimensions. On the one hand, democracy entails government by the people, which implies direct involvement of the demos. On the other hand, representative forums are necessary in democratic societies in order to tackle societal problems effectively and efficiently. However, because we live in a complex world with different values, ideals and problem perceptions, deliberative approaches are necessary in order to get all parties, at different levels of administration, to see eye to eye.

Although input, throughput and output legitimacy all draw upon democracy – in terms of rules, justification and consent – as the source of legitimacy, the three modes of legitimacy production

Matrix 5.4 Nine positions in legitimacy

	Three faces of democratic legitimacy		
Three dimensions	**Input legitimacy (Gov't by the people)**	**Throughput legitimacy (Gov't with the people)**	**Output legitimacy (Gov't for the people)**
Rules	Participation Representation Inclusivity I	Transparent, fair, inclusive Responsive IV	Products outline responsibilities and mandate VII
Justification	Will of the people II	Uncertainty regarding facts problems and solutions V	Outcomes ensure the welfare of the constituency VIII
Consent	Participation III	Deliberation VI	Impacts IX

Matrix 5.3 Three modes of democratic legitimacy production



	Three faces of democratic legitimacy		
Three dimensions	***Input legitimacy*** *(Gov't by the people)*	***Throughput legitimacy*** *(Gov't with the people)*	***Output legitimacy*** *(Gov't for the people)*
Rules			**'Representative'** *According to the rules in order to be effective and efficient*
Justification		**'Deliberative'** *Justification is found by deliberation*	
Consent	**'Direct'** *Expressed by participation*		

place a specific focus on the three dimensions of legitimacy according to different perceptions of democracy (see matrix 9.1). Input legitimacy emphasizes 'government by the people' and is rooted in the tradition of direct democracy; it facilitates the intrinsic value of democracy. Output legitimacy emphasizes 'government for the people' as in the representative tradition. Political choices are legitimate if and because they effectively promote the common welfare of the constituency in question. Because representative democracy relies on the rule of some over many, it is especially important that power is acquired and exercised in accordance with the 'rules' in order to claim legitimacy. Throughput legitimacy is based on the constructive power of democracy. Not the predetermined will of individuals or their representatives but rather the process of its formation is valued. Power is legitimate in that it facilitates deliberation in order to clarify disputes and possible solutions. It emphasizes the second dimension of legitimacy: legitimacy on the basis of shared beliefs or, better, legitimation through a search for shared beliefs.

Whether the form of democracy that is taken up is direct, deliberative or representative, it is 'practiced' at different levels of administration, where often post-normal conditions prevail. Because of this production-orientated character of democracy, addressing legitimacy in Dutch nature conservation policy and practices asks for an approach in which legitimacy is seen as activity. Although the presented conceptual framework brings together three different dimensions of legitimacy production, and thus helps to understand the concept of legitimacy, it does not automatically imply a fixed protocol for legitimacy production. The three different modes of production – input, throughput and output – all play their part in producing legitimacy, but their relation is not prearranged. Producing legitimacy is not as clear cut as it may seem and does not imply going through the three faces or modes of legitimacy production consecutively.

9.3 WHAT ARE THE ISSUES OR PROBLEMS WITH REGARD TO LEGITIMACY IN DUTCH NATURE POLICY AND PRACTICES?

WHAT ARE THE PROBLEMS?

The case studies have illustrated that legitimacy in Dutch nature policy and practices, regardless of the specific shade of green, is questioned. In all case studies, except for the implementation of the Policy Framework Fauna Management (PFFM) in Limburg, where no legitimacy problem was perceived, the point of entry to a discussion on legitimacy was output related (see matrix 9.1). Although we may not conclude that this is representative for other cases in Dutch nature policy and practices, it is also not surprising as it is often the actual or envisioned outcomes that confront people with real life consequences. In the case of Amstelland (conservative vision and action plan) and the Oostvaardersplassen (starving animals), it was concrete outcomes of policy and practice that formed the problem of legitimacy, whereas the outcome-related problems in the case of wintering geese and Gaasterland were related to the envisioned results of assigned foraging sites and a newly developed nature, respectively.

All observed problems are output related, but the context in which the output became contested differs from case to case (see matrix 9.2). The case of wintering geese is especially enlightening because it illustrates that the same policy may lead to different outcomes and impacts, because of specific provincial and local conditions. The PFFM results in compliance (Limburg) but also leads up to two different outcome-related legitimacy problems. In the case of Brabant, where the national geese problem was not deemed relevant, the PFFM was seen as *illegitimate*, as it conflicted with the provincial mandate under the Flora and Fauna Act (FF Act). However, in Friesland, where the geese problem was evident, a withdrawal of consent was due to a *legitimacy deficit*. Both the provincial authority and the geese associations feared local resistance, as the concrete outcomes of the national policy lacked clarity and contained too many uncertainties. Even though the PFFM foresaw in a national solution, the provincial and local conditions differed notably, which ultimately asked for tailor-made input and throughput solutions.

Matrix 9.1 Legitimacy problems

Case study	Problem of legitimacy (upon start)
Future Amstelland	Output deficiency: conservative vision and action plan
Wint. geese Brabant	Output de-legitimation: withdrawal of consent by initial refusal to implement the first phases of the PFFM
Limburg	n/a (no perceived problem)
Friesland	Output de-legitimation – withdrawal of consent by provincial authorities. Refusal of assigned task of implementation of the PFFM due to negative response by geese associations
Oostvaardersplassen	Output de-legitimation: public and political protest regarding the starving of large ungulates in the Oostvaardersplassen
Gaasterland	Output de-legitimation: severe and successful protest regarding the envisioned outcome of expropriation and envisaged nature reserve

Matrix 9.2 Sources of legitimacy problems

Case study	The source of the problem of legitimacy (upon start)
Future Amstelland	Limited input and emphasis on process rather than outcome
Wint. geese Brabant	Illegitimacy: legal validity of the PFFM is questioned. It was not deemed to be in concord with provincial mandate and the FF Act
Limburg	n/a (no perceived problem)
Friesland	Throughput problem: expected resistance to 'top-down' PFFM, due to poor consultation of the farmers who are actually responsible for implementation
Oostvaardersplassen	Both policy and practice allow for starving animals, as it fits the specific shade of green that is envisaged
Gaasterland	Result of poor consultation with the agrarian community that is affected by the proposed plans

Whereas uncertainty regarding the concrete outcomes played an important part in the contestation of the PFFM, the certainty of expropriation in Gaasterland led to an even greater lack of *impact*. Nevertheless, in both the case of wintering geese and that of Gaasterland, it was the premeditated outcome of a national policy, with a high degree of representative mandate that ultimately led to a problem of legitimacy. Too much emphasis on the output dimension, and too little attention for the input and throughput dimension, resulted in a problem of legitimacy.

In contrast, the output-related problem in Amstelland was allowed to develop due to an emphasis on the input and throughput dimension rather than the output dimension. By focussing on the participation of the agrarian community and the development of a vision that could count on a broad impact of its developers, the aimed-for outcome was put under pressure. Ultimately, the vision and action plan are conservative and fail to tackle some pressing issues.

Just as in Amstelland, the concrete outcome in the Oostvaardersplassen case was allowed to develop and lived up to the expectations of the responsible authorities. In this case, relatively few actors were involved in the formulation and implementation of the policy that led to the highly criticized outcome. Given the extent of the *withdrawal of consent*, it might seem surprising that the outcome of starving animals was allowed to develop. However, although that outcome is a logical effect of the envisaged natural ecosystem that the State Forest Service tries to manage, they communicated their practices and legitimated their actions through the 'fairy tale' about a natural ecosystem that did not make that outcome explicit.

In hindsight it is easy to say that some of the problems could have been foreseen and remedied beforehand; however, in all cases in this study, we could argue that the policies and practices build forth on non-contested – and legitimate – policies and practices. Nevertheless, the case studies have shown that legitimacy problems can develop and that they do so at different stages of policy formulation or implementation.

PRODUCING LEGITIMACY … ACTION OR REACTION?

It is one thing to claim that a policy or practice is legitimate, but it is something different to say that legitimacy was being produced. In the former, legitimacy is approached from an evaluative perspective, while in the latter case legitimacy is seen as activity; this is the advocated idea in this research.

Although the presented conceptual framework does not presume a fixed protocol for legitimacy production, the three different modes of production – input, throughput and output – all play their part in producing legitimacy. In order to speak of legitimacy production – successfully or unsuccessfully – all three modes of democratic legitimacy production ought to be considered carefully upon acting.

On basis of this conceptualization of legitimacy, the second research question has been revisited. In order to answer '*What are the issues or problems with regard to legitimacy in Dutch nature policy and practices?'*, we may accordingly ask:

- can we observe the production of legitimacy in Dutch nature policy and practices?
- if so, can we observe trade-offs between the different modes of legitimacy production?

Seen the post-normal character of Dutch nature conservation, it is highly unlikely that a policy will always unfold as it was intended. For example, the follow-up of the problem of wintering geese – that of summering geese – or the public and political resistance to the practices in the Oostvaardersplassen show that policy and practice may evolve into unwished or unexpected situations that require a reorientation on how to act. However, whether this act is a premeditated action or a forced reaction is thus in neither case an automatic act of legitimacy production.

There is a stark contrast between the cases of wintering geese, Gaasterland and the Oostvaardersplassen on the one hand and Amstelland on the other hand. In the first three cases, an output-oriented strategy was dominant, whereas in Amstelland a throughput strategy determined the contested outcome. Arguably, only in the Amstelland case should we speak of a conscious process of producing legitimacy before the problem of legitimacy arose. Although we can also distinguish a wished-for outcome in the Amstelland case, it has proven to be a less rigid focal point. The investment of the Amstelland Steering Group was primarily focussed on a process where local input and support – especially that of the agrarian community – was seen as indispensable for implementation of the aimed for vision and action plan. Thus, although the outcome is far from innovative and fails to address pressing problems, it can count on a high *impact*; this was one of the main reasons to start the project.

If we approach legitimacy as an activity that can be exercised through three different justifiable modes of legitimacy production that can or ought to complement one another, then we may interpret the emphasis of the process in the Amstelland case as a conscious trade-off between output on the one hand and input and throughput on the other hand. Nevertheless, the Amstelland Steering Group remained in charge of the outcome by keeping control over the selection of the projects that followed the generated vision.

In the other cases, we observe reactions rather than actions, as the initiatives taken forcefully followed on the materialized output problems. Whereas the contested output product in the Amstelland case is interpreted by the responsible authorities as a next step in tackling the challenges that Amstelland faces, the contested outputs in the other cases were envisioned end goals. In these cases, the attempts to produce legitimacy afterwards were forced due to a lack of required impact (See matrix 9.3).

Matrix 9.3 producing legitimacy

Case study	Producing legitimacy
Future Amstelland	Action: emphasis on process rather than outcome was conscious choice – except for output control over project selection by initiating municipalities
Wint. geese Brabant	Reaction: (partially failed) input attempt to implement PFFM by broad participatory process
Limburg	n/a
Friesland	Reaction: successful input and throughput remedy, as farmer organizations are given the opportunity to explore possible implementation
Oostvaardersplassen	Reaction: Input remedy by international experts who provide new output (=*policy product*)
Gaasterland	Reaction: Input remedy by mandating agrarian community to realize different shade of green

Certainly the reaction to the output problem in Gaasterland ought to be typified as an attempt to produce legitimacy. Local input was deemed necessary and a process of discovery was allowed to match problem and solution. In Gaasterland, this resulted in a drastically different outcome than was initially planned, and we observe a trade-off or shift from output towards input and throughput legitimacy, as the planned darker shade of green made way for a locally constructed lighter shade of green.

Arguably, we can also speak of the *production of legitimacy* in the case of the Oostvaardersplassen and observe a shifting emphasis from output to input and throughput legitimacy production. During the past 15 years, despite different attempts to restore the legitimacy of the management of the Oostvaardersplassen, we have seen that the actual outcome has been scrutinized several times. In each of these cases, public and political protests called for a change in management. We should understand these protests as a call for input: a right in having a say in how management in the Oostvaardersplassen should be conducted. Interestingly, with the exception of the recently installed stakeholder platform, the input and throughput remedies that followed relied solely on expert input. Given the recommendation of the newly installed Beheeradviescommissie to install extra theme-orientated committees and a stakeholder platform, the Beheeradviescommissie recognizes the necessity of a continuous and broader input into the testing ground of Dutch nature conservation, which emphasizes the throughput phase of legitimacy production.

The case of the Oostvaardersplassen has shown that the production of legitimacy cannot be taken up lightly. Even in the management of the darker shades of green, which does not necessarily require active involvement of locals or other stakeholders, we see that support for the actual practice is necessary. This is even more relevant, as the management depends on or is executed by locals, which is the reality in the case of wintering geese. Here we have also observed the necessity of legitimacy production. Although the output-orientated PFFM is in itself the result of production efforts – as the PFFM is the result of a consultative process with different organizations representing conservationists, farmers and hunters at the national level – its contested outcome asked for more procedural effort at the provincial and local level where farmers needed to be convinced to participate in the execution of the PFFM. In this case, the necessity of having, or investing in, good working relations with local stakeholders has become apparent. Because these were present in Friesland, the attempt to produce legitimacy was successful, even within the rigid output frame that the national authorities kept in place. In Brabant on the other hand, the provincial authorities needed to replace the deliberative consultation process by a much more minimalist and formal consultation procedure. Because the necessary working relations with local agrarian community were not present and were not allowed to develop within the rigid national timeframe, the realization of the PFFM in Brabant was put under pressure. Although it is clear that, with all the best intentions of the provincial authorities, input and throughput remedies were initiated to counter the resistance to the wished-for outcome, we also see that these remedies could not be facilitated properly and were hampered by the strict output control of the national authority. It is therefore difficult to speak of legitimacy production in this particular case.

WHAT ABOUT GOVERNANCE?

The case studies have shown that nature policy and practices is a multi-level and multi-actor endeavour. Especially, the case of wintering geese and Gaasterland show the challenge of producing legitimacy in a multi-level context, while the other cases are all examples of multi-actor governance. Seen the governance character of Dutch nature policy and practices, two more questions were formulated in chapter 5 to aid in the answering of the second research question:

- can we observe shifts in governance?
- if so, how do these shifts in governance affect legitimacy?

These questions are relevant, as shifts in governance often imply shifts in legitimacy. Such a shift was most obvious in the case of wintering geese. Here, an output deficit at the national level led to a shift in governance and consequently affected the legitimacy requirements of the ensuing practices, as the traditional top-down-oriented style of government had to be supplemented by more participatory processes at the provincial level that allowed for significant influence of participating farmers. The fact that the requirements for throughput legitimacy could not develop in Brabant is problematic from a governance perspective. ‘Governance’ as opposed to ‘government’ implies collaboration between different authorities and stakeholders as a result of processes such as globalization and decentralization. These processes may have many causes but are also purposively initiated in the realization that national authorities are limited in what they can do and are highly dependent on other agents for agenda-setting, decision-making and implementation; they act in a shared public space where both problem perception and envisioned solutions are sources of contestation. This is acknowledged by de Decentralization Agreement of 1995, which aims at policy that is attuned to regional characteristics and problems, and the Flora and Fauna Act of 2002, which adjudges the provincial authorities responsible for dealing with wildlife damage. Nevertheless the post-normal character of the problem of wintering geese is not fully recognized, as the perceived necessity to act prevailed over deliberating the facts and values that were in play.

The implementation of the PFFM illustrates that producing legitimacy in a governance context is challenging and asks for a high level of reflexivity regarding the post-normal nature of the perceived problem. In this particular case, the redistribution of responsibilities seemed to have created a transient situation where the different actors are probing to find out who is responsible for what. The reflexivity that is needed to understand such a governance setting is best complemented with a certain degree of courage. Especially the full-out resistance of the Friesian authorities shows that challenging the national output-orientated strategy and investing in input and throughput legitimacy at the regional level ultimately can benefit the foreseen outcome of establishing foraging sites by farmer collectives.

A governance setting thus asks for a fair amount of reflective capacity as well as a certain determination to claim responsibility. Both virtues were also relevant in the governance setting of Amstelland. Although in the case study itself we do not observe a shift in governance, the Amstelland project takes place in a decentralized setting in which provincial and municipal authorities have become responsible for spatial objectives. Interestingly, in the case of Amstelland in which several municipalities have jurisdiction, it is not the province of Noord-Holland that takes the lead, but it is the municipality of Amsterdam that takes initiative. We see that a claim to responsibility in a governance setting asks for justification by means of input and throughput legitimacy. Next to the realization that top-down output-orientated strategies have not provided the answer with which the challenges of Amstelland can be faced, the municipality of Amsterdam is also aware of its limited jurisdiction in Amstelland, which necessitates the production of legitimacy by all three modes available. This governance context asked for a production-orientated approach with an emphasis on input and throughput legitimacy. Thus, next to the constructive reasons that justify a production effort – as participation can facilitate the clarification of problems and possible solutions – in this governance setting a procedural approach also served the instrumental goal of securing a certain outcome and impact.

That a governance situation ought to challenge authorities to claim responsibility also means that authorities should let it go, or at least share the burden of responsibility. This challenge became evident for the national authorities in relation to the implementation of the NEN in Gaasterland and the effectuation of the PFFM, but it has proven relevant in the case of the Oostvaardersplassen as well. Although the management – or governance – of a nature reserve might come across as a clear-cut situation in terms of official responsibility, we see that that the moral jurisdiction over a nature reserve is thoroughly complex and asks for the production of legitimacy as well. Although the State Forest Service has a clear mandate with respect to the management of the Oostvaardersplassen, its moral authority has been contested both publically as well as politically. The Oostvaardersplassen case furthermore demonstrates that the need to produce legitimacy is a 'colour-blind' necessity. In both the darker and lighter shades of green, input, throughput and output legitimacy are necessary to ultimately justify an authority's actions, and the results that it foresees.

9.4 WHAT CHARACTERIZES LEGITIMATE NATURE POLICY AND PRACTICES?

The question 'what characterizes legitimate nature policy and practices?' has guided the more practical aim of this research to ultimately contribute to legitimate nature policy and practices. An answer is formulated by summarizing the findings of this study in six major insights, but the actual contribution of these insights, to the more practical objective, will be modest and limited in scope. This modest and limited contribution is not dictated by a cautious disposition but is encouraged by both the theoretical and practical insights that this study provides.

The theoretical elaboration in chapter 5 shows that democracy, the pillar on which legitimacy in Dutch nature policy and practices is based, can be seen as an institutionalized arena to deal with diversity. It does not dictate ultimate outcomes but facilitates provisional outcomes. The presented conceptual framework emphasizes the contingent character of legitimacy as activity by integrating three different modes of producing legitimacy, which are able to cope with the post-normal domain of nature policy and practices in the Netherlands. Although the theoretical account has proven helpful in analyzing the legitimacy problems in the different case studies, it does not provide a universal design up-front.

The practical insights from the case studies accentuate the absence but also the inappropriateness of a general blueprint. Nevertheless, the theoretical account in combination with the findings from the case studies provide valuable information regarding what it takes to produce legitimacy in Dutch nature conservation and policy. Because legitimacy implies the justified exercise of authority these insights have a normative character. Thus in order to speak of legitimate nature policy and practices, these insights ought to be taken seriously.

(1) Legitimacy is work in progress

The post-normal character of Dutch nature policy and practices requires an active approach to legitimacy. Legitimacy is not automatically guaranteed a priori through official mandates but needs to be re-established continuously in a process where both problem and solution are often contested objects of change. The developments in the Oostvaardersplassen, the shift in attention from wintering geese to that of summering geese and more recent shifts in government policy show the contingency of both problem perception and wished-for solutions.

(2) Producing legitimacy implies control over input, throughput and output

What the theory suggests is manifested in the case studies. Irrespective of the colour of green involved, or the complexity of the governance situation, rule by, rule with and rule for the people needs to be facilitated. The case studies show that, even though an emphasis may be placed on one mode of production, all modes are needed to produce legitimacy.

(3) One size does not fit all

If national problems require local effort and support, the production of legitimacy must take place locally. The case of Gaasterland and that of wintering geese show the necessity of solutions that have local support. The requirements of that support depend on different factors and need to be taken seriously. A national strategy should thus be flexible enough to accommodate very divergent circumstances.

(4) Take throughput legitimacy seriously

Both the shift from government to governance, as well as the shift from normal to post-normal science, requires a serious investment in throughput legitimacy. Not only are problem perceptions and envisioned solutions objects of contestation, a high degree of trust is needed to facilitate the implementation of nature-protection policy measures and to overcome problems and conflict.

It is therefore necessary to invest in long-term communication and cooperation between different stakeholders that are focussed on a process of discovery. The case of wintering geese and Gaasterland show the necessity of organized stakeholder platforms and user associations. These organizations offer opportunities to learn from their successes and to investigate where improvements may be feasible or where drawbacks may occur. A legitimate authority creates and maintains good working relations on practical matters without neglecting the wider social issues at stake. Real impact will occur only if we show real interest in local problems and perspectives.

(5) Take control and let it go

Producing legitimacy in a multi-level and multi-actor context involves several authorities and stakeholders with different mandates and responsibilities. Who has primary mandate is not always evident. However, even when it is, it proves necessary and fruitful to take control and claim authority but also to let go of that authority. The challenge seems to be to take control from higher authorities and release or transfer this authority towards lower authorities and stakeholders. The standpoint of the Friesian provincial authorities regarding the problem of wintering geese and that of the Amstelland Steering Group demonstrate this point. They show that, by investing in input and throughput legitimacy, they can ultimately work on output legitimacy.

(6) A high level of reflexivity is required

What seems essential is the ascendance of a certain measure of reflexivity on the side of public authorities and policy-makers. Even though the above insights do not provide a blueprint they outline the difficult challenge of producing legitimacy. However, to recognize the limits of rationality in concrete practices, to be aware of present and impending legitimacy problems, being able to operate in a post-normal context, all require a capacity to interpret and reinterpret problems, solutions, methods, expectations and actual results. Moreover, this capacity to reflect needs to be practiced in cooperation with others. If the throughput dimension is taken seriously, it requires a collaborative reflection, for only if a cooperation with knowledgeable agents is initiated with whom the burden of legitimacy production could be shared is there a shift from substantial to procedural legitimacy to begin with.

9.5 REFLECTIONS

“Wisdom is knowing what to do next, skill is knowing how to do it, and virtue is doing it.”
David Starr Jordan (1851 - 1931)[21]

“When it comes to nature, I have clear preferences and, if it was up to me, the Netherlands would be woodland! Vast tree-dominated landscapes would stretch from the rolling hills in the south of Limburg all the way up to the Wadden Isles in the north. This is my ideal, my fantasy; this is my favourite shade of green!” Studying, understanding and explaining the concept and problem of legitimacy have not changed that.

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[21] David Starr Jordan was an educator, naturalist and philosopher. He served as the first president of Stanford University in California and was, alongside John Muir, one of the founding members of the Sierra Club.

For those that have managed to read this study cover to cover are probably not inclined to trade in their favourite shade of green in for another either. However, this study might have aided in realizing that there are many shades of green that need to be taken into account in order to speak of legitimate nature policy and practices. Especially those who work, or have the ambition to work, in the field of nature policy and practices are confronted with the challenge of being reflective enough regarding the governance and post-normal setting in which decisions need to be made and actions need to be undertaken. The conceptual framing of legitimacy in this study, the analyses of the legitimacy problems in different case studies, and the six major insights that follow from these analyses can help in this endeavour. Nevertheless, the contribution of this research to the practical challenge of realizing legitimate nature policy and practices is framed as modest and limited.

In the following I will explain this label of 'modest and limited' by reflecting on the (i) implications this study has for policy and practice, (ii) the legitimacy of this study, as it implies to have practical implications, and (iii) the successive task of philosophy. The purpose of this reflection is not to justify a modest and limited contribution, but to explain it in relation to the academic exercise of writing a doctoral dissertation, and subsequently to outline some ideas that can aid a further contribution to the reflective activity that is needed to produce legitimacy.

REFLECTION ON PRACTICAL IMPLICATIONS

Although the conceptual framing of legitimacy, its confrontation with concrete case-studies, and the subsequent insights do not provide a universal design up-front, this study provides a tangible directive for authorities: approach legitimacy as an activity and put to practice a high degree of reflective capacity.

This challenge is right on the mark in perspective of recent developments in Dutch nature policy that will have effects on future practices. The recent Nature Pact (Natuurpact; see Dijksma 2013, September 18) is an agreement between the Ministry of Economic Affairs and the twelve provincial authorities in which the challenges up till 2027 are stipulated. In the realization that the twelve provinces are responsible for the formulation and execution of Dutch nature policy, the challenges leave room for further explication. The need for further concretization is in itself formulated as one of the challenges, as the Nature Pact departs from the idea that nature that is considered rich, attractive and societal valuable, can only be defined and realized in cooperation with societal actors, such as civilians, entrepreneurs and ngo's (see Ministerie van Economsiche Zaken 2013). To realize this ambition the Nature Pact emphasizes the necessity for national and provincial authorities to adopt a facilitating role whilst defining the necessary boundaries.

The Nature Pact thus seems to be in check with the insights this study provides. However, knowing what to do does not necessarily imply one knows how to do it, nor does it imply one does what one is supposed to do. There is thus a significant difference between knowledge, action, and virtue, as Davis Starr Jordan eloquently expressed with the quote that opened this section. This difference is also one of the reasons why the output of this study is described as modest and limited. The knowledge and insights that are elaborated in this study, cannot automatically be translated to concrete actions; the study does not provide a guide how to put the necessary virtues to work. However, knowing how to produce legitimacy, and acting accordingly, is at the core of legitimacy as activity. The supplementary document to the Nature Pact (see Bredenoord et al 2013), published by the Netherlands Environmental Assessment Agency, accentuates this point. The authors do this by emphasizing that the future choices of the twelve provinces will determine whether the challenges, as set out in the Nature Pact, will be met. Further, the report stresses that an important part of the Nature Pact lacks elaboration. The consideration that is given to societal aspects of nature, such as recreation, agriculture and climate regulation, lack clarity, but are considered of importance to the successful realization of the Nature Network (Natuurnetwerk), the successor of the NEN. The authors further hold that only if different functions of nature are successfully combined, and new partnerships are established, the new nature policy will be firmly anchored in society.

Thus although the Nature Pact proves to be in check with the insights that this study provides, its legitimacy needs to be proven in practice, where the stipulated challenges are made concrete by facilitating and making choices regarding which nature is rich, attractive and societal valuable. The challenge for managers and policy makers is thus to be reflective regarding the choices that need to be made between input, throughput and output requirements. The conceptual understanding of legitimacy as presented in this work, the empirical accounts, and the ensuing analyzes, thus can aid in this task, but it is ultimately depended on on-the-job interpretation and implementation.

REFLECTION ON THE LEGITIMACY OF THIS STUDY

Besides the fact that a doctoral dissertation is an academic certification of competence, it is first and foremost a scholarly document that makes an original contribution to knowledge. The objective of an academic work is thus primarily to contribute to academia; to provide new insights and knowledge that are not necessarily of any use. It is an exercise that serves intellectual curiosity. The novel contribution to knowledge of this work is the conceptualization and explanation of legitimacy in relation to Dutch nature policy and practices. It foresees in the theoretical need to define the concept of legitimacy, in order to make possible empirical and normative inquiries.

However, this work is not purely academic. As an applied philosopher I aim to contribute not only to knowledge, but also to contribute to the real-world challenge of producing legitimacy. As set out in the opening chapter, my approach to the concept and problem of legitimacy is inspired by the philosophical pragmatist tradition. I did not try to distance myself from the social world of which I am part. I did not try to undertake a classical philosophical approach in looking at reality by distancing myself from it, defining that same reality from a distance and formulating a truth of what makes power legitimate and, consequently, returning to the world and confronting it with that truth. The objective was to stay connected to the world I live in and come up with a conception of how to understand legitimacy in Dutch nature policy and practices, so that this may serve as a tool to establish legitimacy.

As explained, the knowledge and insights that are enclosed in this work, do not automatically translate to concrete actions, and it does not provide a guide how to put the necessary virtues to work. On the contrary, they leave a lot of room for interpretation. Raoul Beunen argues in his study on the governance of nature (2010, p.156) that this is not a shortcoming of academic (policy) analyses, but is in fact a necessity. He states that it is impossible, and unwished for, to deduce a definite set of policy tools, instruments and guidelines from policy analyses, as the use and functioning of these means depend on particular circumstances which cannot be predicted. Further, policy and practices are best served with thorough analyses of specific processes, on which recommendations, rather that directives, can be based.

As such, Beunen emphasizes both the value as well as the limitation of an academic work. The insights of this study match his analyses. Nevertheless, the theoretical and empirical observations that this study provides made it possible to define normative insights, which consequence are practical implications as legitimacy implies rightful exercise of authority. This works thus claims a degree of output legitimacy. Although this claim to legitimacy consists of six normative insights that emphasize the necessity of sound throughput and input procedures, and leave room for interpretation, they are output directives nonetheless. For if they are followed, they contribute to legitimate nature policy and practices. At the same time, as this study illustrates, a claim to legitimacy does not guarantee legitimacy. Stipulating the rules of the game does not imply that they are being accepted, or that they are being followed. Moreover, this study emphasizes legitimacy as an activity that involves all three modes of production. From this perspective, but also taking into account the sixth insight, it proves worthwhile to reflect upon the role of philosophy in increasing both the legitimacy of Dutch nature policy and practices, and the legitimacy of philosophy itself. For if reflection is crucial to the realization of legitimacy, than surely there is a responsibility for philosophy to take.

REFLECTION ON THE TASK OF PHILOSOPHY

In this final reflection I conclude that if philosophy wants to be of most use to society and its challenges, it needs to be practical rather than applied and academic. Because practical philosophy is focussed on skill and virtue, rather than knowledge and wisdom, its centre of attention is on ‘doing it’ rather than ‘knowing how to’. However, this does not mean that academic philosophy has no further role to play, but it needs to be supplemented with a practical component if it wants to effectively contribute to legitimate nature policy and practices. In the following I will sketch a rough outline how both academic and practical philosophy can further aid the realization of legitimate Dutch nature policy and practices, and why the latter is essential.

Philosophy as an academic discipline may further analyze and understand the moral and practical criteria that are involved in the trade-offs between the three different modes of legitimacy production. This study provides the framework with which these trade-offs can be understood, and provided a first look on the rationale that is involved in the shifts between modes of legitimacy production, but a more detailed focus is necessary to address this task. The enclosed challenge in constructing the framework presented in this study, was to ‘grapple’ the ‘too unwieldy and complex a concept’ of legitimacy in a frontal assault (cf. Weatherford 1992 p. 149 and chapter 5), in order to understand legitimacy in relation to Dutch nature policy and practices. But, in order to fully understand, explain and evaluate the trade-offs that can be made in the production of legitimacy, we may now break the concept down into ‘relatively easily digestible parts' (*ibid*.). The recent Nature Pact, and the policies and practices that will consequently develop, provides philosophy as and applied academic discipline with potentially very interesting case studies in which these trade-offs can be researched in more prospective fashion. Because the Nature Pact first and foremost presents a challenge and opportunity to practice legitimacy as activity, by those responsible for nature policy and practices, it offers an opening for prospective research to aid this concrete and real time pursuit.

In the necessary step from *knowing what to do* to *knowing how to do it* recent philosophical research on ethical deliberation in the field of nutrigenomics (see Komduur 2013) and livestock farming (see Driessen 2012) can prove helpful. But also the concept of Ethical Room for Manoeuvre (ERM) that has been explored for food policies to facilitate a voice to consumer concerns (Korthals 2008), and moral entrepreneurship in the livestock sector (Pompe 2011), is promising. This concept was constructed in order to specify ethical desirable conditions under which identification and weighing of values and their dilemmas can be processed (see Korthals 2008). Furthermore, many philosophical and ethical tools are available that can facilitate reflection with respect to practical dilemmas and challenges (see e.g. Benammar 2004, Benammar et al 2011, Beekman & Van der Weele 2004,)

However, no matter what knowledge, wisdom, insight, method or tool philosophy is able to provide, philosophy ultimately needs to be practical as well. Because *knowing what to do* and *knowing how to do it* need to be followed by *doing it*. The assumption that underlies for example ethical deliberation, the concept of ERM, and many of the ethical tools available, is not only that a wide variety of stakeholders ought to be involved in matters of controversy, but most important that each and every one of them has the capacity to reflect on those matters themselves; a capacity that is of essence in the realization of legitimate nature policy and practices. It is this capacity that practical philosophy aims to elicit and facilitate.

This idea - and practice - of practical philosophy is at its core nothing new. More than two millennia ago, Socrates, through whom Plato articulated his ideas, already challenged us to see philosophy as a necessary complement to an active life (see e.g. Plato 1999). In Plato's dialogues we see how Socrates is involved in conversations in which he challenges his fellow interlocutors to think independently and explore and examine their beliefs and assumptions with respect to concrete situations and experiences. The idea is that knowledge, or practical wisdom, can only be achieved by thinking autonomously (see Van Rossem & Bolten 2002). The more contemporary 'Socratic dialogue' (see e.g. Delnoij & Van Dalen 2003), for which Leonard Nelson provided the theoretical and practical foundations (see Nelson 1992), and the many variations in which it can be exercised (see e.g. Kessels et al 2008) depart from the same confidence that people are able to take responsibility for their own thoughts and are able to analyse and comprehend them in relation to concrete experiences.

Although the Socratic method has been applied successfully in the value-laden domains of law, healthcare and education (see e.g. Delnoij & Van Dalen 2003) it is not so much the method as the virtue that is exercised that holds a promise for the challenge of realizing legitimacy. The inquisitive, non-authoritative and questioning attitude (see Bolten 2003; see also Van Rossem 2001) that is of essence in practical philosophy has a capacity building property when it is put to practice. In other words, practical philosophers do not teach philosophy, but by practicing 'not knowing for certain', have a capacity to instruct how to philosophize (cf Nelson 1922 and Heckman 1981). In this role, philosophy can be of great value to Dutch nature policy and practices as it is in check with the value laden domain in which facts provide no moral bearing, where values conflict, but where decisions ultimately need to be taken.

Each of the philosophical approaches - academic, applied or practical - can make a contribution to legitimacy by facilitating knowledge, methods and capacities. By doing so, philosophy does not only succeed in making a contribution to the legitimacy of Dutch nature policy and practices, but it also succeeds in strengthening the legitimacy of philosophy itself.

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II. SUMMARY

It is the purpose of this study to understand and explain the concept and problem of legitimacy in relation to Dutch nature policy and practices. Further, this study aims to support the realization of legitimate nature policy and practices, by characterizing legitimacy in relation to the theoretical and empirical insights that are elaborated in this research.

Many conceptions of nature are valued. These different shades of green compete with each other and with other land-use for space. It is therefore understandable that decisions regarding what to favour can be controversial and will meet public and political resistance. Legitimacy in Dutch nature policy and practices, the main subject of this study, is therefore important. However, legitimacy is a rather elusive concept that is seldom defined. Nevertheless, most of us are aware of the normative connotation that is enclosed in its meaning. The normative character is focused on the exercise of power or, better said, the just or unjust exercise of power. In our western society, legitimacy is equated with democratic governance and the principles on which it is founded. However, democracy comes in different guises, both in theory and in practice. Nevertheless, there is a call for 'more' or 'better' democracy that is exemplified by two connected shifts. The first is a shift from government to governance, which expresses a decline in top-down planning by state agents in favour of more participatory and interactive policy-making; the second is a shift from normal science to post-normal science, which emphasizes the need to acknowledge nature conservation as a field in which facts are uncertain, values in dispute, stakes high, and decisions urgent. Both shifts ask for more 'democratization' by means of more stakeholder involvement. However, how much involvement is right or enough? 'More' participation might increase the level of direct democracy; it might, at the same time, hinder the representative power of democracy. A critical reflection on legitimacy is thus warranted. To reach the objective of this study the following questions are addressed:

(1) *What is legitimacy? Or, how should we understand the concept of legitimacy?*

(2) *What are the issues or problems with regard to legitimacy in Dutch nature policy and practices?*

(3) *What characterizes legitimate nature policy and practices?*

The approach to the concept and problem of legitimacy is inspired by the philosophical pragmatist tradition. Instead of approaching legitimacy as a philosophical artefact, it is understood and explained within the context in which it appears relevant. This is necessary as no theory of legitimacy is offered idly or accidentally. All theories have a pragmatic or expediential element and appear when the uses of power are matters of controversy.

The first question – *What is legitimacy? Or how should we understand the concept of legitimacy?* – is dealt with in chapter 5. Because context is important, this chapter 5 is preceded by three contextual chapters that discuss the character of Dutch nature conservation (chapter 2), the governance shift (chapter 3) and international examples (chapter 4). These chapters provide the necessary context for the development of the theoretical account of legitimacy in chapter 5 and for answering the first research question. With the insights of chapter 5, the second question – *What are the issues or problems with regard to legitimacy in Dutch nature* *conservation policy and practices?* – is tackled. The theoretical framework is used to analyze four case studies in chapters 6, 7 and 8. These case studies represent different shades of green within diverse governance contexts. The case studies first of all have an explorative character and will illustrate the problem of legitimacy in different contexts. The case studies studied are:

(1) Future Amstelland: central in this case study is the tension between local input and regional challenges that need to be addressed in the future developments of a rural area south of Amsterdam.

(2) Wintering geese: growing populations of wintering geese resulted in increasing costs of indemnification. The implementation of a national plan that foresees in a solution is discussed.

(3) Gaasterland vs. the Oostvaardersplassen: in order to reflect upon long-term goals a comparison is made between two well-known cases in Dutch nature policy and practices.

The case studies are based on desk research, interviews and participant observation.

Chapter 2 discusses the context in which legitimacy is an issue of concern by tackling four questions: *who are we*; *where do we come from*; *where ought we to go;* and *how can we get there?* The answers to these questions reveal something about the identity of Dutch nature conservation, or more correctly, about the identity of the Dutch regarding nature conservation. The answers to the first and the second question show that the Dutch are an ambitious people regarding land use and nature conservation, but that this ambition is multifaceted and reflects a dynamic past with different actors that have different interests. Given this characterization, the third and fourth questions were not answered with resolution; they remain open to debate. Given the post-normal condition, in which facts are uncertain, values are in dispute, the stakes are high and decisions are deemed urgent, it seems difficult or even impossible to formulate the best solution, policy or approach to tackle a certain problem. I argue that this does not mean that any approach will do, or that we cannot make a distinction between different shades of green. On the contrary, the lack of a shared perspective on what is necessary or valuable, albeit on a more abstract level, does not make decisions easier; rather, they are more complex and difficult. Moreover, the prerequisites provided by our democratic society create a challenging situation: we ought to consider the many different conceptions of the common good, whatever that may be or however that may be formulated. As such, an effective policy, and consequently a legitimate policy, should take this diversity into account.

Chapter 3 discusses the shift from government to governance. A closer look at this phenomenon warranted, because this shift implies a transition from hierarchical government control to a system of governance that is characterized by multiple parties at different levels of administration. Governance, seen as an analytical model or as a steering theory, provides us with a perspective that allows us to be sensitive to the many actors that are involved, at different levels, in the realization and alteration of policy. The replacement of government by governance is not per definition something new, but refers to the conceptual need to decouple state and government, as non-state agents are increasingly seen to function as 'government' in the more traditional sense. Furthermore, the demystification of human rationality and actual changes in the levels and places of policy making provide the concept of governance with a relevant perspective to be sensitive to issues of legitimacy.

Legitimacy is characteristically a problem when the prevailing power and authority structures change. A change in authority confronts people with that authority; it might change the underlying conventions, which might trigger close scrutiny of that authority, or it may make people aware of initial implicit acceptance. The governance of Dutch nature shows us exactly that. Shifts in governance require shifts in legitimacy.

In **chapter 4** the Dutch situation is placed in an international perspective. This chapter provides an extensive summary of a volume on legitimacy in EU nature policy. The volume is the result of an international workshop that the Applied Philosophy Group from Wageningen University organized in November 2005. The findings of this workshop have aided the search for understanding legitimacy in Dutch nature policy and practices.

What the international case studies nicely illustrate is that what is considered legitimate at one level of governance is not automatically considered legitimate at another. Good arguments can be given that Natura 2000 and the Birds and Habitats Directives that provide its legal basis are legitimate; they are products that were developed by means of negotiation between the member states that ultimately have to live up to the directives themselves. At the same time, we see that their content is contested, not only on the ground where the diverse constituencies are responsible for the actual implementation, but also at the level of the nation state where directives are the cause of political controversy. As a result, the importance for policy makers of enhancing the democratic legitimacy of their policy plans has increased. However, this shift does not seem automatically to result in a more legitimate nature protection as it has specific drawbacks, such as a representation deficit and contested results. Because of this process character of democracy, a conception of legitimacy is therefore best framed as one of activity, focusing on both results and processes.

In **chapter 5** an answer to the first research question is provided by presenting a conceptual framework of legitimacy. This framework combines Beetham's three dimensions of legitimate power (rules, justifications and consent) and three modes of democratic legitimacy production (input, throughput and output). The framework is developed to facilitate an examination of legitimacy. With the framework, different and tangled problems can be described. Furthermore, the framework facilitates the identification of ways to strengthen the legitimacy of nature policy and practices.

Beetham's three dimensions of legitimate power proved to be helpful in understanding the different building blocks of the normative 'quality' or 'characteristic' of legitimacy. An informed statement regarding legitimacy requires an inquiry into all three dimensions of legitimate power. Strong statements whether power is, or is not legitimate, are therefore best nuanced within this framework. Rules or laws might be breached and supporting beliefs might alter or evolve and consent might be withdrawn, but it is rarely the case that legitimacy fails in all three dimensions to such an extent that the label 'non-legitimate' fits unconditionally.

The three modes of democratic legitimacy production provided the structure and content of Beetham's three dimensions. Input legitimacy emphasizes 'government by the people' and is rooted in the tradition of direct democracy; it facilitates the intrinsic value of democracy and relies on active participation, which emphasizes the third dimension of legitimacy. Output legitimacy emphasizes 'government for the people' as in the representative tradition. Political choices are legitimate if and because they effectively promote the common welfare of the constituency in question. Because representative democracy relies on the rule of some over many, it is especially important that power is acquired and exercised in accordance with the 'rules' in order to claim legitimacy. Throughput legitimacy is based on the constructive power of democracy. Not the predetermined will of individuals or their representatives but rather the process of its formation is valued. Power is legitimate in that it facilitates deliberation in order to clarify disputes and possible solutions. It emphasizes the second dimension of legitimacy: legitimacy on the basis of shared beliefs or, better, legitimation through a search for shared beliefs.

Although the presented conceptual framework emphasizes legitimacy as an activity, it does not automatically imply a fixed protocol for legitimacy production. The three different modes of production – input, throughput and output – all play their part in producing legitimacy, but their relation is not prearranged.

Chapter 6 opens the second part of this study in which the theoretical account of chapter 5 is used to analyze four case studies. In this chapter the legitimacy of a participative process in Amstelland is explored. This process was part of the Future Amstelland project, the purpose of which was to develop a shared vision and action plan for the rural green wedge that penetrates the city of Amsterdam from the south. However, the outcome was criticized by international partners because of limited representation of interests and a rather conservative vision that failed to incorporate pressing issues. Nevertheless, emphasis on input and throughput legitimacy, rather than output legitimacy seems necessary with respect to the governance dimension of FA. More and more responsibility for the realization of spatial objectives is placed with provincial and municipal authorities. However, spatial challenges transcend municipal boundaries. Aware of its limited authority, the initiating municipality of Amsterdam considered a procedural approach necessary. Next to the constructive reasons that legitimate a procedural effort – as participation can facilitate the clarification of problems and possible solutions – the FA case shows that a procedural approach also can serve the instrumental goal of securing a certain outcome and impact.

Chapter 7 discusses the implementation of the 2003 Policy Framework Fauna Management (PFFM) in three different provinces. This policy represents a new phase in almost half a century of managing wild geese populations in the Netherlands. In contrast to earlier initiatives, this policy does not address threatened populations but thriving populations of wild geese. Due to international and national initiatives taken from the 1970s onwards, Dutch wild-geese populations have increased by a factor of ten, which has dramatically increased damage to local agricultural crops. The mounting costs of indemnification and the growing distress of the agricultural community confronted with wintering geese populations led to the development of the PFFM, which foresees in the establishment of special foraging sites. The sites are the responsibility of the residing farmers, for which they receive remuneration. Analyzes of the implementation process in the provinces of Limburg, Noord-Brabant and Friesland exemplify the need for tailor-made solutions if local support is of essence in policy implementation. Furthermore, these tailor made solutions depend on sound throughput procedures that allow for a process of discovery. Additionally, the evolution of the problem of wintering geese into that of summering gees, exemplify the post-normal character of Dutch nature policy and practices, in which it is difficult, if not impossible, to formulate an ultimate decision. The case of wintering geese illustrates the need to perceive legitimacy as activity, rather than evaluative concept. However, this also means that the contingent and post-normal condition needs to be taken seriously.

Chapter 8 presents a diptych of two very different shades of green: the Oostvaardersplassen and Gaasterland. Both areas are part of the National Ecological Network but, where the Oostvaardersplassen is assumed to provide for 'real' nature, Gaasterland is an example of agricultural-orientated nature management. Both cases have led to controversy and have influenced the course of Dutch nature conservation policy and practices. The comparison of both cases is used to reflect on how legitimacy relates to long-term goals that are often at the foundation of conservation policies and practices. Both cases demonstrate that the need to produce legitimacy is a 'colour-blind' and ongoing necessity. In both the darker and lighter shades of green, input, throughput and output legitimacy are necessary to ultimately justify an authority's actions, and the results that it foresees.

Chapter 5 provided an answer to the first research question. In **chapter 9** - the final chapter of this study - I reflect upon the second and third research questions in relation to the theoretical and empirical findings of this study and conclude with recommendations that aim to further support the realization of legitimate nature policy and practices. An answer to the second research questions is given by comparing the different insights from the four case-studies. The case-studies have illustrated that legitimacy in Dutch nature policy and practices, regardless of the specific shade of green, is questioned. All observed problems are output related, but the context in which the output became contested differs from case to case. In all cases in this study the policies and practices build forth on non-contested policies and practices. Nevertheless, the case studies have shown that legitimacy problems can develop and that they do so at different stages of policy formulation or implementation. Although the Amstelland case shows that producing legitimacy is preferably done as a conscious act, rather than a forced reaction to surfacing legitimacy problems, the Amstelland case also shows that this does not guarantee legitimacy. The post-normal condition thus asks for a conscious ongoing effort in the production of legitimacy in both 'action' and 'reaction'. The case studies furthermore exemplify the governance condition in which official mandates of different authorities may conflict. Moreover, the case of the Oostvaardersplassen illustrates that if official authority is uncontested, it can still be challenged on moral grounds.

The third research question 'what characterizes legitimate nature policy and practices?' has guided the more practical aim of this research to ultimately contribute to legitimate nature policy and practices. An answer is formulated by summarizing the findings of this study in six major insights. These are:

(1) Legitimacy is work in progress

(2) Producing legitimacy implies control over input, throughput and output

(3) One size does not fit all

(4) Take throughput legitimacy seriously

(5) Take control and let it go

(6) A high level of reflexivity is required

The conceptual framing of legitimacy in this study, the analyses of the legitimacy problems in different case studies, and the six major insights that follow from these analyses can aid in producing legitimacy. Nevertheless, this knowledge based contribution is modest and limited in scope. Although a contribution to knowledge is what is expected of an academic work, the real-life challenge asks for reflective action. In the final reflection I conclude that philosophy can make a further contribution to this challenge of reflective action. Although further academic and applied academic research may aid this real-life challenge, philosophy is of most use when it is practical. Because practical philosophy is focused on skill and virtue, rather than knowledge and wisdom, it has a capacity building property. By doing so, philosophy does not only succeed in making a contribution to the legitimacy of Dutch nature policy and practices, but it also succeeds in strengthening the legitimacy of philosophy itself.

III. SAMENVATTING

VERSCHILLENDE KLEUREN GROEN

REFLECTIES OP DE LEGITIMITEIT VAN NEDERLANDS NATUURBELEID EN PRAKTIJKEN

Deze studie heeft als doel het concept en probleem van legitimiteit te begrijpen en te verklaren in relatie tot Nederlands natuurbeleid en praktijken. Door legitimiteit uit te leggen aan de hand van in deze studie opgedane theoretische en empirische inzichten, wil deze studie bovendien bijdragen aan legitiem natuurbeleid en praktijken.

Welke natuur waardevol en het beschermen waard is, staat ter discussie. Verschillende kleuren groen concurreren om ruimte, zowel met elkaar als ook met ander landgebruik. Besluiten met betrekking tot dit groen zijn vaak controversieel en kunnen daardoor rekenen op publieke en politieke weerstand. Het onderwerp van deze studie, lthet egitimiteit in Nederlands natuurbeleid en praktijken, is dus belangrijk. Echter, legitimiteit is een lastig te doorgronden begrip. De meeste mensen zijn zich bewust van de normatieve lading die in het begrip besloten ligt. Het normatieve karakter betreft immers de juiste of onjuiste uitoefening van macht. In de westerse samenleving ligt legitimiteit besloten in de democratie en de principes waarop zij is gebaseerd. Echter, democratie kent in zowel theorie als praktijk verschillende vormen. Desondanks is er vraag naar ‘meer’ en ‘betere’ democratie. Deze vraag wordt geïllustreerd door twee aan elkaar gerelateerde verschuivingen. De eerste is een verschuiving van *government* naar *governance,* die gekenmerkt wordt door een afname van top-down beleid en planning en een toename van meer participatieve en interactieve vormen van beleid en planning. De tweede verschuiving vindt plaats van normale naar postnormale wetenschap en benadrukt de onzekerheid van feiten, conflicterende waarden, grote belangen en de noodzaak van besluiten. Beide verschuivingen vragen om meer democratie door middel van meer betrokkenheid van belanghebbenden. De vraag blijft echter hoeveel betrokkenheid juist of genoeg is. Meer participatie kan de directe democratie versterken; tegelijkertijd kan zij de representatieve macht die in democratie besloten ligt frustreren. Een kritische reflectie op legitimiteit is dus noodzakelijk. Om dit doel te bereiken worden de volgende vragen onderzocht:

(1) *Wat is legitimiteit? Of, hoe moeten we het concept legitimiteit begrijpen?*

(2) *Wat zijn de vraagstukken of problemen met betrekking tot legitimiteit in relatie tot* Nederlands natuurbeleid en praktijken?

(3) *Wat karakteriseert legitiem natuurbeleid en praktijken?*

De insteek van dit onderzoek is geïnspireerd door de filosofisch pragmatische traditie. In plaats van legitimiteit als filosofisch artefact te benaderen, wordt legitimiteit benaderd vanuit de context waarin zij relevant is. Dit is noodzakelijk omdat een theorie met betrekking tot legitimiteit zelden los van de context waarop zij betrekking heeft wordt geformuleerd. Alle theorieën hebben wel een pragmatisch of praktisch element en verschijnen als het gebruik van macht ter discussie staat.

De eerste vraag – *Wat is legitimiteit? Of, hoe moeten we het concept legitimiteit begrijpen?* – wordt in hoofdstuk 5 behandeld. Hoofdstuk 5 wordt vooraf gegaan door 3 contextuele hoofdstukken die het domein beschrijven waarbinnen we legitimiteit willen begrijpen. In hoofdstuk 2 staat Nederlandse natuurbescherming centraal, in hoofdstuk 3 wordt de verschuiving naar participatieve vormen van beleid besproken en in hoofdstuk 4 wordt de Nederlandse situatie geduid aan de hand van internationale voorbeelden. Tegen deze achtergrond wordt in hoofdstuk 5 een conceptueel kader gepresenteerd waarmee we legitimiteit in Nederlands natuurbeleid en praktijken kunnen begrijpen. De inzichten uit hoofdstuk 5 geven vervolgens de handvatten om de tweede onderzoeksvraag te onderzoeken in vier cases in hoofdstukken 6, 7 en 8. Deze cases vertegenwoordigen verschillende kleuren groen binnen verschillende bestuurlijke contexten. Ze hebben een verkennend karakter en illustreren het probleem van legitimiteit in verschillende situaties.

(1) Toekomst Amstelland - Centraal in deze case staat de spanning tussen lokale inbreng en regionale uitdagingen die opgepakt moeten worden in een landelijk gebied ten zuiden van Amsterdam.

(2) Overwinterende ganzen - In deze case staat de implementatie van het Beleidskader Faunabeheer centraal. Dit beleid moest een oplossing bieden voor de toegenomen populatie van overwinterende ganzen in Nederland en de daaraan gerelateerde onkostenvergoedingen voor agrariërs.

(3) Gaasterland versus de Oostvaardersplassen - Een vergelijking tussen deze twee bekende voorbeelden van Nederlandse natuur wordt gebruikt om te reflecteren op lange termijn doelen die vaak ten grondslag liggen aan natuurbeleid.

Deze cases zijn gebaseerd op literatuurstudie, interviews en deelnemerobservaties.

In **Hoofdstuk 2** staan vier vragen centraal: *wie zijn we, waar komen we vandaan, waar zouden we heen moeten,* en *hoe kunnen we daar komen?* De antwoorden op deze vragen lichten de houding van de Nederlanders ten aanzien van natuurbescherming toe en geven inzicht in de context waarin het vraagstuk van legitimiteit ter discussie staat. De antwoorden op de eerste twee vragen laten zien dat de Nederlanders met betrekking tot landgebruik een ambitieus volk zijn. Echter, deze ambitie kent vele gezichten en heeft betrekking op een dynamisch verleden dat zich kenmerkt door verschillende actoren met uiteenlopende belangen. De derde en vierde vraag kunnen dan ook moeilijk eenduidig worden beantwoord: ze staan open voor discussie. In de postnormale toestand waar feiten ter discussie staan, waarden conflicteren, de belangen groot zijn en besluiten noodzakelijk, is het moeilijk, dan wel onmogelijk, om een ultiem beleid te formuleren dat een definitieve oplossing biedt voor een specifiek probleem. Dit betekent echter niet dat een willekeurig beleid voldoet, of dat we geen onderscheid kunnen maken tussen verschillende kleuren groen. De randvoorwaarden die onze democratische samenleving stelt, creëren bovendien een uitdagende situatie waarin we verschillende ideeën met betrekking tot het algemeen belang in overweging moeten nemen. Een effectief beleid en dientengevolge een legitiem beleid, moet aan deze diversiteit dan ook recht doen.

In **hoofdstuk 3** staat de verschuiving van *government* naar *governance* centraal. Een nadere beschouwing van dit fenomeen is nodig omdat deze verschuiving een verplaatsing impliceert van hiërarchische overheidsturing naar een bestuurlijk systeem dat gekenmerkt wordt door meerdere bestuurlijke lagen waar diverse actoren invloed trachten uit te oefenen op beleid en praktijk. Deze verschuiving is niet zozeer een nieuw fenomeen maar wijst eerder op de conceptuele noodzaak om het fenomeen bestuur los te koppelen van het fenomeen nationale staat, aangezien steeds meer niet-gouvernementele organisaties traditionele overheidstaken vervullen. Verder biedt het *governance* perspectief de mogelijkheid vraagstukken rondom legitimiteit beter te begrijpen.

Legitimiteit staat meestal ter discussie in situaties waar bestaand macht- en autoriteitstructuren veranderen. Een verandering in deze structuren confronteert mensen met die specifieke macht of autoriteit. Hierdoor kan men realiseren deze macht of autoriteit impliciet altijd te hebben geaccepteerd, maar het kan ook leiden tot het ter discussie stellen van die macht. De *governance* van Nederlandse natuur laat in ieder geval zien dat verschuivingen in bestuur verschuivingen in legitimiteit noodzakelijk maken.

Hoofdstuk 4 plaatst de Nederlandse situatie in een internationaal perspectief. Het hoofdstuk is bovendien een uitgebreide samenvatting van een publicatie over legitimiteit in Europees natuurbeleid. Deze is het resultaat van een internationale workshop die de leerstoelgroep toegepaste filosofie van Wageningen University in 2005 heeft georganiseerd. De bevindingen die uit deze workshop naar voren zijn gekomen, hebben geholpen om legitimiteit in Nederlands natuurbeleid en praktijken te begrijpen.

De internationale cases illustreren dat wat gezien wordt als legitiem op één specifiek bestuurlijk niveau, niet automatisch als legitiem worden ervaren op een ander bestuurlijk niveau. Zo kunnen we beargumenteren waarom Natura 2000, en de vogel- en habitatrichtlijn die haar juridische basis vormen, kunnen rekenen op legitimiteit. Het zijn immers zelfopgelegde overeenkomsten. Tegelijkertijd zien we dat de inhoud van de richtlijnen ter discussie staat. Dit gebeurt in de praktijk waar de richtlijnen geïmplementeerd worden, maar ook op lidstaatniveau waar ze tot politieke controverse leiden. Als gevolg wordt de noodzaak van meer democratische legitimiteit gevoeld. Echter, meer directe invloed vanuit de praktijk waar de richtlijn geïmplementeerd wordt, leidt niet automatisch tot meer legitieme natuurbescherming. Zo leidt meer lokale invloed tot een afname van het representatieve karakter van nationale en internationale vraagstukken en leidt het tot omstreden resultaten. Omwille van dit procesmatige karakter van democratie, kunnen we het concept van legitimiteit het beste begrijpen als activiteit, dat zich richt op zowel resultaat als proces.

In **Hoofdstuk 5** wordt een antwoord gegeven op de eerste onderzoeksvraag door het presenteren van een conceptueel kader waarmee legitimiteit begrepen en onderzocht kan worden. Dit kader combineert David Beetham's drie dimensies van legitieme macht (regels, justificaties, instemming) met drie modi van democratische legitimiteitsproductie (input, throughput, output). De drie dimensies van legitieme macht zijn behulpzaam geweest in het begrijpen hoe het normatieve karakter van legitimiteit is opgebouwd. Een onderbouwde uitspraak met betrekking tot legitimiteit vraagt om elk van deze dimensies. Regels en wetten kunnen overtreden worden, justificaties kunnen veranderen en ter discussie staan en de instemming met een specifieke vorm van macht kan worden ingetrokken. Uitspraken met betrekking tot macht kunnen aan de hand van deze dimensies genuanceerd worden, omdat deze drie dimensies zelden tegelijkertijd ter discussie staan.

De drie manieren van legitimiteitsproductie geven vervolgens structuur aan de drie dimensies. Input legitimiteit legt de nadruk op 'regeren door het volk' en is geworteld in de traditie van directe democratie; het voorziet in de intrinsieke waarde van democratie en benadrukt het belang van instemming. Output legitimiteit wordt ontleend aan de representatieve traditie. Politieke keuzes zijn legitiem als zij effectief het algemeen belang dienen van het volk. Omdat representatieve democratie berust op 'regeren namens het volk' is het bijzonder belangrijk dat macht wordt verkregen en uitgeoefend in overeenstemming met de regels. Throughput legitimiteit gaat uit van de constructieve kracht van democratie. Centraal staan niet vooraf bepaalde ideeën en opvattingen van individuen of hun representanten, maar het proces waarin deze tot stand komen. Macht is legitiem als zij in een proces van gezamenlijk overleg voorziet dat zowel problemen als haar oplossingen verheldert. Het benadrukt dus de tweede dimensie van legitimiteit: legitimiteit op basis van gedeelde overtuigingen.

Hoewel het conceptueel kader legitimiteit presenteert als een activiteit, biedt het geen protocol hoe legitimiteit te produceren. De drie verschillende modi spelen een rol, maar hun onderlinge relatie is geen vastgesteld gegeven.

Hoofdstuk 6 leidt het tweede deel van deze studie in, waarin vier cases worden geanalyseerd met behulp van het conceptuele kader. In hoofdstuk 6 staat de legitimiteit van een participatief proces in Amstelland centraal. Dit proces was onderdeel van het Toekomst Amstelland project dat als doel had een visie en actieplan te ontwikkelen voor de rurale groene scheg ten zuiden van Amsterdam. De output van dit proces werd bekritiseerd door internationale partners. De visie werd als conservatief bestempeld en pakt actuele problematiek niet aan. Toch lijkt een nadruk op input en throughput legitimiteit noodzakelijk met betrekking tot de bestuurlijke omgeving van Amstelland. Steeds meer verantwoordelijkheid ten aanzien van ruimtelijke kwaliteit komt bij lagere overheden te liggen. Echter, ruimtelijke uitdagingen overstijgen vaak lokale en regionale verantwoordelijkheid. Bewust van een beperkte jurisdictie in Amstelland, koos de gemeente Amsterdam een procesbenadering. Naast het constructieve argument dat een procesbenadering legitimeert laat de Amstelland case zien dat een procesbenadering ook een instrumenteel doel dient met betrekking tot het veiligstellen van gewenste doelstellingen.

In **Hoofdstuk 7** wordt de uitvoer van het in 2003 gepresenteerde beleidskader faunabeheer besproken. Dit beleid introduceert een nieuwe fase in het omgaan met wilde populaties ganzen in Nederland. In tegenstelling tot eerdere initiatieven staat in dit beleid niet een bedreigde maar een welvarende populatie wilde ganzen centraal. Door de succesvolle initiatieven die sinds de jaren 70 zijn ingezet, zijn de Nederlandse wilde ganzenpopulaties met een factor tien toegenomen. Daardoor is echter ook de schade aan landbouwgewassen dramatisch toegenomen. Deze toegenomen kosten en het groeiend ongenoegen over de situatie bij de agrarische gemeenschap heeft geleid tot het beleidskader faunabeheer dat voorziet in speciale foerageergebieden. Deze worden tegen vergoeding onderhouden door agrariërs en moeten de ganzenpopulaties voldoende voedsel bieden.

De analyse van de implementatie van het beleidskader in de provincies Noord-Brabant, Limburg en Friesland, laat het belang zien van maatwerk indien lokaal draagvlak nodig is voor de implementatie van beleid en praktijk. Bovendien is dit maatwerk afhankelijk van een gedegen throughput fase. Verder illustreert de ontwikkeling van het ganzenprobleem de noodzaak om legitimiteit op te vatten als activiteit in plaats van een evaluatief concept.

Hoofdstuk 8 presenteert een tweeluik van verschillende kleuren groen: Gaasterland en de Oostvaardersplassen. Beide gebieden maken deel uit van de Ecologische Hoofdstructuur, maar daar waar de Oostvaardersplassen willen voorzien in 'echte' natuur, voorziet Gaasterland in agrarisch georiënteerde natuur. Beide cases hebben geleid tot veel controverse en hebben het natuurbeleid en de daarop volgende praktijken beïnvloed. De vergelijking tussen beide cases wordt gebruikt om te reflecteren op lange termijn doelen die vaak ten grondslag liggen aan natuurbeleid en praktijken. Beide cases illustreren dat de productie van legitimiteit een kleurenblind proces is. Ongeacht het type natuur -lichtgroen of donkergroen - zijn input, throughput en output nodig om de activiteiten van een autoriteit en de doelen die zij voor ogen heeft te verantwoorden.

Hoofdstuk 5 heeft een antwoord gegeven op de eerste onderzoeksvraag. In **hoofdstuk 9** - het laatste hoofdstuk van deze studie - worden de tweede en derde onderzoeksvraag beantwoord. Op basis van de theoretische inzichten uit het eerste deel van de studie en de empirische bevindingen uit het tweede deel worden tot slot aanbevelingen gedaan die als steun dienen bij het realiseren van legitiem natuurbeleid en praktijken.

Een antwoord op de tweede onderzoeksvraag wordt gegeven door het vergelijken van de verschillenden inzichten uit de vier cases. Deze illustreren dat legitimiteit in Nederlands natuurbeleid en praktijken, ongeacht de kleur groen, ter discussie staat. Alle bestudeerde problemen hebben een output karakter, maar de context waarin de output ter discussie staat verschilt per case.

Het beleid en de daaropvolgende praktijken in de bestudeerde cases bouwen voort op eerder beleid dat niet eerder serieus ter discussie stond. Toch kan een legitimiteitsprobleem ontstaan. De cases laten zien dat een dergelijk probleem in de verschillende stadia van beleidsvorming en uitvoering kan ontwikkelen. Hoewel de Amstelland case illustreert dat legitimiteit het beste als bewust proces ten uitvoer gebracht kan worden, biedt het geen garantie voor het uitblijven van legitimiteitsproblemen. De postnormale situatie vraagt dus om een continue inspanning legitimiteit te produceren; actief en reactief. De cases laten verder zien dat het vanuit een bestuurlijk oogpunt niet altijd helder is wie het officiële mandaat heeft. Lagere overheden lijken er goed aan te doen controle te claimen ten aanzien van hogere overheden, maar ook om deze weer los te laten ten gunste van regionale en lokale actoren. De Oostvaardersplassen case laat verder zien dat als het officiële mandaat niet ter discussie staat deze alsnog vanuit ethisch oogpunt bekritiseerd kan worden.

De derde onderzoeksvraag - wat karakteriseert legitiem natuurbeleid en praktijken? - heeft het meer praktische doel van dit onderzoek richting gegeven om uiteindelijk bij te dragen aan legitiem beleid en praktijken. Het antwoord op de derde onderzoeksvraag is geformuleerd door de reflecties in deze studie samen te vatten in zes inzichten. Deze zijn:

(1) Legitimiteit is werk in uitvoering

(2) Het produceren van legitimiteit vergt controle over input, throughput en output

(3) Eén oplossing voor alle problemen bestaat niet

(4) Throughput legitimiteit vraagt om een serieuze benadering

(5) Neem controle en laat het vervolgens los

(6) Een hoge mate van reflectief vermogen is vereist

Het gepresenteerde conceptuele kader met betrekking tot legitimiteit, de empirische analyses in de cases en de zes daaruit volgende inzichten kunnen van dienst zijn in de productie van legitimiteit. Toch is deze kennisbijdrage slechts bescheiden en beperkt in omvang. Hoewel een bijdrage aan kennis verwacht wordt van een academisch werk, vraagt de praktijk om reflectief handelen. In de slotreflectie beargumenteer ik dat de filosofie een verdere bijdrage kan leveren aan deze uitdaging. Hoewel wetenschappelijke en toegepast wetenschappelijke bijdragen deze uitdaging kunnen ondersteunen, komt de filosofie het beste tot zijn recht als zij praktisch is. Praktische filosofie richt zich namelijk op het aanleren van filosofische vaardigheid in plaats van het overdragen van opgedane kennis en inzicht. De filosofie draagt op deze manier niet alleen bij aan de legitimiteit van Nederlands natuurbeleid en praktijken, maar ook aan de legitimiteit van de filosofie zelf.

IV. ADVISORY COMMITTEE

MEMBERS	AFFILIATION (AT START OF RESEARCH IN 2004)
Prof. dr. B. Arts	Radboud University Nijmegen
Ir. H. Boeschoten	State Forest Service
Dr. B. van Stokkom	Centre for Ethics Radboud University Nijmegen (CEKUN)
Ir. S. Visser	Kasteel Groeneveld
Drs. A. Wolters	European Centre for Nature Conservation (ECNC)
Dr. H. van der Windt	University of Groningen
Dr. M. van der Zouwen	Wageningen University

V. LIST OF INTERVIEWEES

NAME	ORGANIZATION	DATE
AMSTELLAND		
E. Buijs	Municipality of Amsterdam	23-05-2005
M. Firet	State Forest Service	21-02-2005
G. Timmermans	Municipality of Amsterdam	18-01-2007
WINTERING GEESE		
B. Ebbinge	Alterra WUR	06-03-2006
F. Ensink	Ministry of Agriculture, Nature & Food Quality	21-02-2006
R. Hobbenschot	Province of Friesland	04-04-2006
H. Hollander	Province of Noord-Brabant	10-02-2005
J. Huneker	Association of the Provinces of the Netherlands (IPO)	14-03-2006

VI. CURRICULUM VITAE

Gilbert Ramses Leistra was born in Ermelo on the 27th of October 1974. After completing secondary school at the Marnix College in Ede in 1995, he studied forest and nature management at Wageningen University. He chose a social scientific and philosophical major and graduated on two theses in the fields of communication science and applied philosophy. After graduation in 2002 he worked for one and a half year at the department of nature and landscape of the province of Noord-Brabant. In 2004 he returned to Wageningen University to start a PhD research on the legitimacy of Dutch nature policy and practices; combining his philosophical inclination, education and work experience. The result of this study can be found in this thesis.

After his contract ended in 2008 he started working at Van Hall Larenstein University of Applied Sciences (VHL) as a researcher and knowledge broker for the Green Knowledge Cooperative. These activities revolved around bringing together partners in the fields of education, research, government and practice in innovative knowledge-based projects. Currently, Gilbert is senior lecturer at VHL UAS where he practices philosophy with both bachelor and master students and professionals in the field of forest and nature conservation.

VII. DANKWOORD

Het vergt nog wat reflectie om te doorgronden hoe je van wat gemijmer onder een boom ergens op de Veluwe terecht komt in een situatie waar je schrijft over legitimiteit in Nederlands natuurbeleid en praktijken. Waar het eerste mij gemakkelijk alleen afgaat en waar tijd en ruimte relatieve begrippen lijken te zijn, maakt de tweede activiteit van tijd en ruimte zeer concrete fenomenen die niet alleen je eigen leven gaan bepalen, maar ook dat van anderen. Het zal duidelijk zijn dat ik het schrijven van een proefschrift niet zonder de steun en inzet van anderen had kunnen voltooien. Ik wil hen dan ook bedanken.

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Goed, nu eerst het bos in!

GILBERT LEISTRA
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COMPLETED TRAINING AND SUPERVISION PLAN

Wageningen School of Social Sciences

Name of the course	**Department/Institute**	**Year**	**ECTS (=28 hrs)**
I. General part			
Research Methodology: From Topic To Proposal	MG3S	2004	2.8
Project and Time Management	WGS	2005	1.5
Scientific Writing	WGS	2007	1.5
II. Mansholt-specific part			
Mansholt Introduction course	MG3S	2008	1.5
Mansholt Multidisciplinary Seminar	MG3S	2007	1
'Legitimacy in Dutch Nature Conservation'	International Workshop on Legitimacy in EU biodiversity, Wageningen	2005	1
'Wintering geese in the Netherlands - Legitimate policy?'	PATH conference, Edinburgh	2006	1
'Producing Legitimacy in Biodiversity Conservation - A reflection on European case studies'	ÉSEE conference, Leipzig	2007	1
III. Discipline-specific part			
Complex Dynamics In and Between Eco and Social Systems	CERES/Studium Generale	2004	2.8
Interfaces between science and society	Dutch-Flemish network for philosophy of science and technology	2005	2
Study Group Philosophy	WUR, APP	2005-2007	6
Study Group Governance	WUR	2004-2007	6
Ethical dilemmas for life scientists	MG3S	2005	3
Governance	MG3S	2007	3
IV. Teaching and supervising activities			
Teachers assistant and lecturer in the course 'Boundary Works'	WUR, APP	2005	1
Teachers assistant in the course 'Ethics and Science' (APP20302)	WUR, APP	2005	1
Preparation and Organisation of the International workshop on Legitimacy in EU biodiversity conservation	WUR, APP	2005	1
Co-editor of 'The Legitimacy in European nature conservation: Case-Studies Multilevel Governance' Keulartz, F.W.J. & Leistra, G.R. (eds) International Library of Environmental Agricultural and Food Ethics. LEAF Springer	WUR, APP	2006-2007	1
TOTAL			38.1

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