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Transnational Transformations of Governance

Transnational Transformations of Governance

The European Union and Beyond

Inaugural lecture

delivered upon accession to the office of
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at the University of Amsterdam
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by

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*Mevrouw de Rector Magnificus,
Collega's en vrienden,
Dames en heren,*

Transnational Transformations: The Emergence of Experimentalist Governance

Far-reaching transformations in the nature of contemporary governance are underway, within and beyond the nation-state. They can be observed across multiple levels and locations, from the reform of local public services such as education and child welfare to the regulation of the global trade in food and forest products. At the heart of these transformations is the emergence of what may be called 'experimentalist governance', based on framework rule-making and revision through recursive review of implementation experience in different local contexts. Although robust examples can be found in many jurisdictions, including the United States, the epicenter of these developments is the European Union (EU), where experimentalist governance processes of this type have been introduced across a wide range of policy domains over the past 15 years. These innovative governance processes have not only facilitated the extension of European integration into new, politically sensitive fields; in many policy areas, they have also enabled the EU to produce high-quality, revisable rules capable of broad application across a diverse polity of 500 million inhabitants and 27 member states. In this inaugural lecture, I will analyze the properties of these experimentalist governance processes, explore their development within the EU, and open up new research questions about their practical influence within the member states and beyond the Union's borders.

In the most abstract and general terms, applicable to private firms as well as public institutions, experimentalist governance can be defined as a recursive process of provisional goal-setting and revision based on learning from the comparison of alternative approaches to advancing them in different contexts.¹ (I use 'recursive' here in the sense familiar from mathematics and computer science, whereby the output from one procedure or sequence of operations becomes the input for the next, and the procedure in question is reapplied to itself.) In public rule-making, experimentalist governance in its most devel-

oped form involves a multi-level architecture. This multi-level architecture comprises four interdependent elements, organized as an iterative cycle. First, broad framework goals and metrics for gauging their achievement are provisionally established by some combination of 'central' and 'local' units, in consultation with relevant civil society stakeholders. Examples of such framework goals, to which I will refer in this lecture, include 'good water quality', 'safe food', and 'sustainable forests'. Second, local units are given broad discretion to pursue these goals in their own way. But, third, as a condition of this autonomy, these units must report regularly on their performance and participate in a peer review in which their results are compared with those of others employing different means to the same ends. Where they are not making good progress against the agreed indicators, the local units are expected to show that they are taking appropriate corrective measures, informed by the experience of their peers. Fourth and finally, the goals, metrics, and decision-making procedures themselves are periodically revised by a widening circle of actors in response to the problems and possibilities revealed by the review process, and the cycle repeats.²

Governance processes organized according to these principles may be considered experimentalist in a philosophical sense, derived from American pragmatists like John Dewey. They are experimentalist because they systematically provoke doubt about their own assumptions and practices; treat all solutions as incomplete and corrigible; and produce an ongoing, reciprocal readjustment of ends and means through comparison of different approaches to advancing common general aims.³ These governance processes may also be considered a form of what my collaborator Charles Sabel has called 'directly deliberative polyarchy'. They are *deliberative* because they use argument to disentrench settled practices and open for reconsideration the definitions of group, institutional, and even national interest associated with them. They are *directly deliberative* because they use the concrete experience of actors' different reactions to current problems to generate novel possibilities for consideration rather than buffering decision-makers from mundane experience, the better to elicit their principled, disinterested response to abstractly posed problems. And these governance processes are *polyarchic* because they oblige their constituent units to learn from, discipline, and set goals for one another.⁴

Experimentalist governance architectures of this type have become pervasively institutionalized in the EU across a broad array of policy domains. These stretch from regulation of energy, financial services, and competition through food and drug safety, data privacy, and environmental protection to justice and internal security, anti-discrimination, and fundamental rights. They take a variety of organizational forms, including networked agencies, councils of national regulators, open methods of coordination, and operational coopera-

tion among front-line officials, often in combination with one another.⁵ Governance architectures with similar properties are also widespread in the US, both in the reform of public services like education and child welfare, and in the regulation of public health and safety risks, such as nuclear power, food processing, and environmental pollution.⁶

To put some flesh on these bones and give you the flavor of what I am talking about, consider the EU Water Framework Directive (WFD) and its Common Implementation Strategy (CIS). This legislation was adopted in 2000 after years of intense negotiation and replaces seven detailed prescriptive directives from the 1970s with a single, broad, overarching regulatory framework.⁷ The directive aims to improve the quality and sustainability of water resources across the EU through integrated management of river basins, while requiring member states to achieve ‘good status of water quality’ by 2020. The concept of ‘good water status’ is left explicitly open-ended, with the methods, tools, metrics, and values for its assessment to be developed through the implementation process. The WFD also requires member states to ‘encourage the active involvement of all interested parties’ in its implementation, particularly in the ‘production, review, and updating of...river basin management plans’.⁸

Central to the implementation process is an institution not formally envisaged in the directive itself: the Common Implementation Strategy (CIS). Conceived by national Water Directors and agreed by the European Commission, the CIS is designed to help member states implement the WFD and avoid regulatory conflicts arising from incompatible approaches. Its primary outputs are non-binding technical guidance documents, such as indicators and values for measuring water quality and defining ‘good’ water status. These are supposed to be ‘developed in a pragmatic way based on existing practices in member states’, embodying best available knowledge, and are conceived as ‘living documents’ subject to ongoing review and updating. But member states are also obliged to submit regular reports on the implementation of the directive, including both river basin management plans and programs for monitoring water status. The Commission in turn produces its own regular implementation reports, including reviews of EU water status, surveys of member state plans, and proposals for future improvement, all of which draw on scoreboards and benchmarks developed through the CIS.⁹

Not only the outputs of the CIS, but also its organizational arrangements are ‘regarded as provisional and subject to revision in the light of experience’. CIS activities more generally feed both directly and indirectly into revisions of the WFD. Thus, legislative proposals for new ‘daughter’ directives are developed ‘in a spirit of open consultation’ through multi-stakeholder expert advisory fora, with representatives from NGOs, industry associations, and outside experts, as well as from national authorities and the Commission. CIS guidance

documents may also be given legally binding status by the Commission, subject to approval by member state representatives under ‘comitology’ procedures for scrutinizing use of its delegated regulatory powers.¹⁰

In both the EU and the US, experimentalist regulation of private economic activity typically seeks to work through public oversight of firms’ own experimentalist governance processes or to induce their development where they do not already exist. This approach responds to the widely acknowledged failures of ‘command-and-control’ regulation in a turbulent, fast-moving world. In such a world, fixed rules written by a hierarchical authority become obsolete too fast to be effectively enforced on the ground, and the resulting gap between rules and practice is bridged by an unaccountable proliferation of discretionary waivers and exceptions. The alternative approach is to build on and monitor firms’ own error detection and correction mechanisms by requiring them to develop systematic, verifiable plans for identifying and mitigating possible hazards in their operations in light of available knowledge about safety failures in similar settings.¹¹

A well-documented example is the worldwide diffusion of Hazard Analysis of Critical Control Points (HACCP) systems for ensuring food safety. These systems replace historic command-and-control methods based on periodic ‘poke-and-sniff’ inspections of finished products for compliance with minimum health standards. HACCP, by contrast, is a process-based approach, whereby firms are required to analyze their entire production chain for potential hazards; identify critical points where contamination may arise; develop a testable plan for controlling and reducing such hazards; monitor its implementation, verify the results, and take remedial action to correct any performance shortfall. Public authorities review the adequacy of these plans and verification procedures. They may then require their revision to meet rising health and safety standards established by the best performers, although the precise regulatory arrangements vary widely. Increasingly, too, such regulation extends beyond individual firms to require full traceability of products throughout the supply chain.¹²

As these examples suggest, the proliferation of experimentalist governance processes across different sectoral and institutional settings can be understood as a widespread response to a secular rise in environmental volatility and complexity over the past few decades. Some of this can be linked directly to globalization, such as the problems of managing transborder common-pool resources like water or of ensuring the safety of imported food and other products as they move through transnational supply chains. In other cases, the transnational connection is only part of the story, as with the accelerating pace of technological innovation, which has undermined the effectiveness of ‘command-and-control’ regulation in many industries, or the diversification of

household and family structures, employment patterns, and populations which have reduced the effectiveness of standardized public services in fields like education and child welfare. But whatever the precise combination of transnational and domestic factors, the resulting increase in *strategic uncertainty* has overwhelmed the capacities of conventional hierarchical management and principal-agent governance in many settings. The foundation of principal-agent governance is monitoring of conformity to fixed rules and detailed instructions by subordinate agents, incentivized through positive and negative sanctions – rewards and punishments, in ordinary language. In a world where ‘principals’ are uncertain of what precisely their goals should be and how best to achieve them, they must be prepared to learn from the problem-solving activities of their ‘agents’. Hence ‘principals’ can no longer hold ‘agents’ reliably accountable by comparing their performance against predetermined rules, since the more successful the latter are in developing new solutions, the more the rules themselves will change.¹³

Experimentalism diverges in four key respects not only from conventional hierarchical governance, but also from other contemporary reform movements focused on reinforcing principal-agent relations, whether from the top-down, as in New Public Management (NPM), or from the bottom-up, as in devolved or ‘interactive’ governance. First, experimentalism is based neither on a sharp separation between policy conception and administrative execution as in conventional hierarchical governance and NPM, nor on their fusion in the hands of local communities or citizens’ councils as in interactive governance.¹⁴ Instead, it is based on the reciprocal redefinition of ends and means through an iterated, multi-level cycle of provisional goal-setting and revision. Second, experimentalism is neither centralized nor decentralized, but instead depends on centrally coordinated learning from local experimentation. It thereby combines the advantages of forms of governance often believed to have incompatible virtues. Third, experimentalism is neither bureaucratic nor informal, but instead flexibly formalized, involving well-defined rules and procedures that are periodically revised in light of experience, thereby giving structure to apparently fluid practices of ‘network governance’. Finally, accountable behavior in experimentalist systems does not entail compliance with a predetermined rule, as in principal-agent governance. Instead, it entails providing a good explanation for choosing one way of advancing a common project, in comparison with alternatives pursued by other similarly placed units, and proposing consequent measures for self-correction and improvement.¹⁵

Such ‘dynamic accountability’, which anticipates the transformation of rules in use, offers a potentially effective response not only to contemporary challenges of strategic uncertainty, but also to longstanding legitimacy deficits of

principal-agent governance within the nation-state itself.¹⁶ For it is an open secret of the modern administrative state that neither legislatures nor courts have ever fully succeeded in controlling the discretionary exercise of delegated bureaucratic authority in complex technical fields such as regulation and service provision. By obliging administrative authorities to justify their choice of rules publicly, in light of comparable choices by similarly placed peers, the dynamic accountability of experimentalist governance allows old and new political actors of all kinds to contest official proposals on the basis of much richer information about feasible alternatives than has been traditionally available. In this way, experimentalist governance processes, though not intrinsically democratic in themselves, have a potentially democratizing destabilization effect on domestic politics, especially in transnational settings such as the EU. But whether the potential participants make use of the possibilities thus created, and what effects this may have on public decision-making if they do, remain empirical as much as theoretical questions.¹⁷

Experimentalist Governance in the EU

Experimentalist governance can be understood as a machine for learning from diversity. It is thus especially well-suited to heterogeneous but highly interdependent settings like the EU. There, local units face similar problems and can learn much from each another's efforts to solve them, even though particular solutions will rarely be generalizable in any straightforward way. In this sense, experimentalism transforms diversity from an obstacle to integration into an asset for its advancement. If strategic uncertainty is one scope condition for experimentalist governance, then another is a polyarchic or multi-polar distribution of power, where no single actor has the capacity to impose her own preferred solution without taking into account the views of others. Because the EU has had to face problems of rising strategic uncertainty under conditions of deep internal diversity and firm polyarchic constraints, it appears to have found its way to experimentalist solutions more quickly and consistently than other polities.¹⁸

Contrary to a widespread misconception, experimentalist governance in the EU is not confined to policy fields where the Union has weak competences and produces mainly non-binding guidelines, action plans, scoreboards, and recommendations. Instead, recent research by other scholars and myself has shown that the experimentalist architecture of framework rule-making and revision outlined earlier is also well-developed in domains where the EU has extensive legislative powers. Examples include energy, telecommunications, financial services, competition, data privacy, drug authorization, food safety,

environmental protection, and anti-discrimination rights.¹⁹ In many of such cases, the EU's experimentalist decision-making architecture regularly results in the elaboration of revisable standards mandated by law and the enunciation of new principles which may eventually be given binding force, as in the WFD and CIS. In others, the ensuing changes may only influence the behavior of national administrations, with no immediate impact on the legal framework of the EU itself.

Either way, however, dynamic accountability in EU experimentalist governance does not operate through moral suasion or 'naming and shaming' alone. Participation in its processes and respect for its outcomes are underpinned by an ensemble of devices that may be called destabilization regimes: mechanisms for unblocking impasses in framework rule-making and revision by rendering the current situation untenable while suggesting – or causing the parties to suggest – plausible and superior alternatives. Some of these mechanisms operate directly, like the requirement to provide public justification for disagreements over scientific risk assessments in EU food safety, or the right to challenge the handling of individual cases by national authorities in the new European Competition Network, which extends horizontally to other members of the network as well as vertically to the Commission.²⁰ Other destabilization mechanisms, like the penalty default, work indirectly. Rather than obliging the parties to deliberate, the central authority creates stiff disincentives for refusal to do so, by imposing rules sufficiently unpalatable to all parties that each is motivated to contribute to an information-sharing regime that allows fair and effective regulation of their interdependence. In a world where standard rule-making produces such unpredictable consequences as to be unworkable, the easiest way to generate penalty defaults is to engage (threaten to) in traditional rule-making. A well-documented example can be found in the EU energy policy. There the Commission has periodically threatened to invoke its delegated regulatory and competition law powers to spur member states and private actors to cooperate in framework rule-making.²¹

Yet even where such destabilization regimes draw on official authority to induce participants to explore novel possibilities and respect the outcome of informed deliberation, they cannot be assimilated to the conventional idea of a 'shadow of hierarchy', whereby delegated negotiation among private actors takes place against the backdrop of unilateral public regulation. For under conditions of strategic uncertainty, the hierarchical authorities are no longer credibly able to take over the regulatory functions directly, while the regulated parties cannot precisely calculate what they would gain through bargaining compared to the alternative outcome that would be imposed by the authorities themselves. Instead, it is precisely the patent unworkability of official solutions – the unattractiveness of rules made by traditional hierarchical means – which

makes the mere threat of imposing them so effective a device for inducing the parties to deliberate in good faith. The experimentalist architecture of EU governance is not ‘soft law’, but neither is it traditional ‘hard law’ of a form derivable from principal-agent rule-making.²²

Experimentalist governance is neither ubiquitous nor universal in EU policy-making. But over the past 15 years, its diffusion across a wide and growing array of policy domains has facilitated the extension of European integration into complex, politically sensitive fields. These include issues close to the heart of national sovereignty like justice, security, social inclusion, and fundamental rights.²³ In many policy areas, the adoption of experimentalist governance architectures has also supported the production of up-to-date, revisable rules for protecting public interests within integrated markets which are equal if not superior in quality to those of other developed democracies. Noteworthy examples include data privacy, environmental protection, food safety, and regulation of hazardous products, where knowledgeable observers agree that the EU has become a global leader, overtaking the US. A conspicuous case in point is the 2006 REACH regulation. This requires for the first time the registration, evaluation, and authorization of all chemicals placed on the market in significant quantities, based on regularly updated environmental, health, and safety standards, and comprehensive provision of relevant and available information by the manufacturer. Other widely discussed examples include recent European directives on hazardous substances, electronic waste, automobile recycling, and cosmetics safety.²⁴

Many countries outside the EU, including China, have taken innovative EU measures in these fields as models for their own domestic regulation, although enforcement obviously varies widely. Much of this external emulation of the EU’s revisable framework rule-making is driven by its extraterritorial application to foreign exporters seeking access to the European market, a point to which I shall return shortly. But it also has a significant voluntary dimension, as in the case of US states like California, Massachusetts, and Maine, which have overhauled their own legislation to incorporate new standards and data generated through REACH into the regulation of chemical hazards on an ongoing, continuous basis.²⁵

Experimentalist Governance in Action

Most research on experimentalist governance in the EU has understandably focused on the origins, development, and operation of its distinctive rule-making architecture at a European level. Despite its theoretical emphasis on the recursive interplay between framework rule-making and decentralized imple-

mentation, there has been little detailed empirical work so far on the influence of experimentalist processes on national (and subnational) governance in different policy domains. The main exception, to which I have contributed, concerns the operation of the Open Method of Coordination (OMC) in fields such as employment promotion, social protection and social inclusion, research and development, and education and training. The OMC was inaugurated at the Lisbon Summit of March 2000 as a new approach to EU governance based on benchmarking progress towards common European goals, guidelines, and indicators; peer review of national plans for achieving them; and organized mutual learning. Actual OMC processes as they subsequently developed in different policy areas varied considerably in their organization, often including only fragmentary elements of the governance architecture defined at Lisbon. Empirical analysis of the OMC is extremely challenging for a variety of reasons. Foremost are the methodological difficulties of assessing the causal impact of an iterative process based on collaboration between EU institutions and member states, without legally binding sanctions. There is no space here for anything approaching a full discussion of the literature, which is both voluminous and controversial. My own conclusions from a decade of empirical research on the OMC in action are that its national influence, effectiveness, and democratizing destabilization effects depend in part on the organizational design and governance architecture of the different processes. They depend especially on the arrangements for joint goal-setting, national planning and reporting, peer review and mutual learning, and involvement of non-state and subnational actors. But they also depend on the integration of different OMC processes into national policy-making and their creative appropriation by domestic actors within and beyond government, which vary considerably across as well as within countries.²⁶

Other experimentalist governance processes in the EU, as we have seen, diverge from the OMC in the extent to which the rules they produce may become legally binding, even if the sanctioning mechanisms used to support their implementation also differ fundamentally from conventional hierarchical enforcement. Yet similar considerations may nonetheless be relevant to empirical assessment of the practical influence of these processes on policy-making and administration in the member states. Thus, a recent report from the Irish National Economic and Social Council (NESC) argues that Ireland's relationship with the EU has been most successful where its policy-making institutions have been well attuned to effective European processes of experimentalist governance and have adopted a similar problem-solving approach domestically. Key examples include environmental protection, food safety, and employment rights. There Irish agencies have developed world-class systems of standard setting, monitoring, and recursive learning in close interac-

tion with EU framework rule-making and revision. Conversely, the NESC report argues, Ireland has been less successful in its relations with the EU where the Union itself has so far failed to develop effective mechanisms of joint goal-setting, monitoring, and mutual learning, as in the case of fiscal policy coordination. But Ireland has also been less successful where domestic policy-making has failed to grasp the new possibilities offered by EU experimentalist governance. Examples of the latter include not only cases where Irish policy-makers have failed to take EU goal-setting, benchmarking, and monitoring processes as an opportunity for in-depth self-review and reflexive learning (as in banking supervision, biodiversity protection, childcare and employment promotion), or where implementation processes have deadlocked (as in waste management and water quality). They also include cases where the Irish government has seen its task as ‘mere conformity’ with a fixed EU regime, rather than seeking to adapt European framework regulation to nationally specific challenges (as in telecommunications and energy).²⁷ It would be extremely interesting to investigate how far such an analysis of experimentalist governance in action can be extended to other EU member states, including the Netherlands.²⁸ This is a question which would repay systematic comparison across countries and policy fields, and which will be central to my own research agenda in the coming years.

Extending Experimentalism Transnationally

Another frontier of research on experimentalist governance concerns its transnational extension beyond the EU. Experimentalism appears particularly well-suited to transnational domains, where there is no overarching sovereign with authority to set common goals even in theory, and where the diversity of local conditions and practices makes adoption and enforcement of uniform fixed rules even less feasible than in domestic settings. Yet the very polyarchy and diversity that make experimentalist governance attractive under such conditions can also make it difficult to get a transnational regime off the ground. Thus, too many participants with sharply different perspectives may make it hard to reach an initial agreement on common framework goals. Conversely, a single powerful player may be able to veto other proposed solutions even if he cannot impose his own.

One possible way forward, though by no means the only one, is for a large jurisdiction like the EU (or the US) to take the lead in extending experimentalism beyond its own borders, for example by unilaterally regulating transnational supply chains as a condition of market access. As we have already seen, this approach has enabled the EU to expand the geographical scope of its re-

visible framework rules across a growing range of policy fields, through both direct and indirect means. An obvious danger, however, is that such unilateral extension will produce resentment and resistance by regulatory addressees in other countries, unless they are given a voice in shaping the standards they are expected to meet. Such one-sided extension may also denature experimentalism itself by cutting out the feedback loop between local learning from rule application to rule revision. Hence some further destabilization mechanism may be required to unblock this impasse by opening up such unilateral regulatory initiatives to joint governance by affected parties in other countries.

Here the disciplines of the world trading system may prove unexpectedly helpful. World Trade Organization (WTO) rules permit member states to restrict imports in order to protect public health and the environment. But they also require states wishing to restrict imports on these grounds to ensure that their proposed measures are non-discriminatory and proportional to the intended goals, take account of relevant international standards, and consult with their trading partners to minimize the impact on affected third parties.²⁹ These disciplines, when they permit such extensions at all, can thus provide a potential mechanism for transforming unilateral regulatory initiatives by developed countries like the EU into a joint governance system with stakeholders from the developing world, if not a fully multilateral experimentalist regime. This role for the WTO points towards the operation of a more general mechanism, whereby the rules of existing multilateral institutions, though not experimentalist themselves, can nonetheless push unilateral extensions of experimentalism in a more reciprocal direction.

By way of illustration, consider the EU's recent initiative on Forest Law Enforcement Governance and Trade (FLEGT). This innovative initiative is aimed at combating illegal logging, an endemic problem in many developing countries, which depresses prices for legally harvested wood and undercuts the adoption of sustainable forestry worldwide. FLEGT responds to the failure of previous attempts by northern governments to tackle the problem of global forest deterioration by negotiating a binding international convention and imposing unilateral trade restrictions, as well as to the limited take-up of private forest certification schemes in developing countries.³⁰ FLEGT seeks to control exports of illegally logged wood by negotiating Voluntary Partnership Agreements (VPAs) with developing countries to create 'legality assurance' licensing systems. These licensing systems are based on jointly defined standards, regular monitoring and performance review, and benchmarking of alternative approaches to third-party verification. Local civil society stakeholders as well as international NGOs participate both in the definition of 'legally harvested wood' and in monitoring its certification, each of which are explicitly conceived as revisable in light of the other. The EU provides development assis-

tance to build up the regulatory capacity of both public and private actors. Agreements with these experimentalist features have been signed with Ghana, Cameroon, and Congo-Brazzaville, while negotiations are currently underway with Indonesia, Malaysia, Vietnam, and a number of other African countries.³¹

To reinforce FLEGT's effectiveness and extend its geographical scope, the EU has enacted legislation requiring all businesses placing wood products on the European market to demonstrate 'due diligence' in ensuring that they had not been illegally harvested, with full traceability throughout the supply chain. Such due diligence can be demonstrated in three possible ways: (1) possession of an export license under a FLEGT VPA; (2) establishment of a private risk management system, with full traceability, risk assessment, and risk mitigation procedures; or (3) participation in a recognized monitoring scheme, based on independent verification of compliance with local forestry legislation. The European Commission, in cooperation with national authorities, is responsible for determining that recognized monitoring bodies are maintaining effective systems of due diligence against illegal logging, including procedures for remediation of violations.³²

The EU's approach to combating illegal logging appears likely to be accepted as legitimate not only by the WTO but also by developing countries themselves, because it offers them an opportunity to participate in a jointly governed system of legality assurance, while imposing reciprocal obligations on European importers. These EU initiatives are likely to interact productively with parallel efforts to control illegal logging by other developed countries, including the US, which lack some of their experimentalist features, while at the same time reinforcing private forest certification schemes and placing them under public scrutiny. They can likewise be expected to have a major impact on China, now the world's largest trader in wood products, which has signed bilateral coordination agreements with both the EU and the US to reduce illegal logging and promote sustainable forestry in developing countries.³³

FLEGT is just one example of how extension of experimentalist regulation along global supply chains, disciplined by the rules of the world trading system, may stimulate the construction of a jointly governed transnational regime involving a multiplicity of public and private actors from developed and developing countries. But other pathways are also possible, and comparison among them is likely to prove fruitful, within and beyond the EU.³⁴ Extending experimentalist governance transnationally is thus itself an experimental process, on which I propose to focus my research lens in the coming years.

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Ik heb gezegd.

Notes

1. For general overviews of experimentalist governance in private firms and public institutions, see Sabel (2004, 2005); Sabel and Simon (2010); Sabel and Zeitlin (2004, 2008, 2010a); Zeitlin (2011).
2. Sabel and Zeitlin (2008, 2010b); Sabel and Simon (2010).
3. See for example Dewey (1927, 1939). For fuller discussions of the pragmatist roots of experimentalist governance, see Sabel (1994, 2005).
4. For fuller discussions of directly deliberative polyarchy, see Cohen and Sabel (1997, 2003); Sabel and Gerstenberg (2002); Sabel and Zeitlin (2008, 2010a).
5. For extensive examples and detailed case studies, see Sabel and Zeitlin (2008, 2010).
6. For overviews and examples, see Sabel and Simon (2004, 2010).
7. On the Water Framework Directive and Common Implementation Strategy, see Sabel and Zeitlin (2008, pp. 309-310, 315); von Homeyer (2010); and especially Holder and Scott (2006).
8. Barreira and Kallis (2003, p. 102).
9. Holder and Scott (2006, pp. 229-231); von Homeyer (2010, pp. 141-144).
10. Holder and Scott (2006, pp. 231-233, 237); von Homeyer (2010, pp. 144-147).
11. For overviews and examples, see Sabel (2005); Sabel and Simon (2010).
12. For fuller discussions, see Zeitlin (2011, pp. 7-10); Sabel (2005, p. 138); Sabel and Simon (2010, pp. 49-50); Wendler (2007); Demortain (2008); Henson and Humphrey (2009).
13. Sabel (2004, 2005); Sabel and Zeitlin (2008, 2010a).
14. For a systematic analysis of the divergence of experimentalism from the principal-agent assumptions underlying both NPM and interactive governance, see Sabel (2004).
15. Sabel and Zeitlin (2008, 2010a); Sabel and Simon (2006, 2010).
16. For the 'triple deficit' of implementation, learning, and legitimacy in 'classical-modernist' governance, see Hajer (2009, pp. 29-30).
17. Sabel and Zeitlin (2008, 2010a); Sabel and Simon (2004, 2010).
18. On the scope or possibility conditions for experimentalist governance within and beyond the EU, see Sabel and Zeitlin (2008, pp. 9-10, 25-26).
19. In addition to the discussion of these cases in Sabel and Zeitlin (2008, 2010a), see Newman (2010), Posner (2010), Eberlein (2010), Svetiev (2010), von Homeyer (2010), Vos (2010), Dąbrowska (2010), and de Búrca (2010).
20. For these examples, see Vos (2010); Dąbrowska (2010); Sabel and Zeitlin (2010a, pp. 13-14).
21. See Eberlein (2010); Sabel and Zeitlin (2010a, pp. 14-16). For further discussion of penalty defaults in European and American experimentalist governance, see Sabel and Zeitlin (2008, pp. 305-309); Sabel and Simon (2010, pp. 44-45); Sabel and Simon (2006, pp. 407-409); Karkkainen (2006).
22. Thus, for example, the third legislative package for regulating the European electricity and gas markets, which emerged from penalty default-assisted deliberations

- within the Florence and Madrid Fora, does not envisage the replacement of networked governance by conventional hierarchical rule-making, but institutes instead an iterative process for co-designing framework guidelines and network codes involving the Commission, a new European Agency for the Cooperation of Energy Regulators, a European Network of Transmission System Operators, consumer organizations and other stakeholders, which can be made legally binding where necessary through comitology procedures. See European Commission, Directorate-General for Energy and Transport (2009); de Voogd (2010).
23. See for example Monar (2010); Ekengren (2009); Armstrong (2010); De Schutter (2006-7, 2010).
 24. On the EU as a global regulatory leader in these fields, see Newman (2008, 2009); Vogel (2004); Selin and VanDeveer (2006); Schapiro (2007); Schreurs et al. (2009a); Kelemen and Vogel (2010). For good accounts of REACH, see Scott (2009a, 2009b).
 25. Scott (2009b); Newman (2009); Schreurs et al. (2009b); Kelemen and Vogel (2010).
 26. For theoretical elaboration and empirical documentation of these claims, see Zeitlin (2005a, 2005b, 2008, 2009, 2010). For contrasting interpretations, cf. *inter alia* Citi and Rhodes (2007); Kröger (2009). A large but necessarily selective bibliography of published and unpublished research can be found on the OMC Research Forum of the European Union Center of Excellence at the University of Wisconsin-Madison, <http://eucenter.wisc.edu/OMC>.
 27. National Economic and Social Council (2010, especially pp. 3-6).
 28. Studies of EU experimentalist governance in the Netherlands have thus far concentrated primarily on the OMC and cognate forms of policy coordination, with the partial exception of food safety. On the OMC in employment, social inclusion, education, research and development, and eEurope, and the EU Process for the Integration of Third Country Nationals, see Visser (2005, 2009); van Gerven and Beckers (2009); de Ruiter (2010); Bourdrez (2010). On food safety, see van der Meulen and Freriks (2006); van der Meulen (2009).
 29. Weinstein and Charnovitz (2001); Parker (2001); Scott (2004).
 30. On the global campaign against illegal logging, see Cashore et al. (2007); Guéneau (2009); Lawson and MacFaul (2010).
 31. Overdevest (2009, 2010); Brack (2010); Lawson and MacFaul (2010); van der Wilk (2010).
 32. European Parliament (2010). The final version of this legislation was adopted by the European Parliament on 7 July 2010 and was expected to be rubber stamped by the Council of Ministers following a prior political agreement with member states and the Commission. See Murray (2010); Phillips (2010).
 33. Brack (2009, 2010); Lawson and MacFaul (2010); van der Wilk (2010).
 34. For a fuller discussion and other examples, see Zeitlin (2011).

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