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Changing public accountability mechanisms in the governance of Dutch urban regeneration*

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ABSTRACT

Contemporary urban planning dynamics are based on negotiation and contractual relations, creating fragmented planning processes. On the one hand, they trigger technocratic forms of governance, which require the ‘legal instrumentalisation’ of planning in a piecemeal approach ensuring legal certainty. On the other hand, these processes require flexibility to enable easy, fast and efficient forms of implementation due to the increasing involvement of private sector actors in urban development. This article unravels the influence of these conflicting dynamics on the fundamentals of urban planning practices by focusing on changing public accountability mechanisms created through contractual relationships between public and private sector agencies. Dutch urban regeneration has demonstrated changing governance principles and dynamics in the last three decades. Representing instrumental and institutional measures, we connect accountability mechanisms to these changes and argue that they ‘co-exist’ in multiple forms across different contexts. This article embeds this evolution in wider theoretical discussions on the changing relationships between public and private sector actors in urban governance relative to the changing role of the state, and it addresses questions on who can be held accountable, and to what extent, when public sector actors are increasingly retreating from regulatory practices while private sector actors play increasingly prominent roles.

KEYWORDS

Public accountability; urban regeneration; the Netherlands

1. Introduction

This article challenges the critical literature on entrepreneurial urban governance and market-oriented regulatory restructuring, which often comes to simplified conclusions regarding private sector involvement in urban development and its consequences (Haque, 2001; Ranson, 2003; Rhodes, 1994). These forms of urban governance, it is...
often argued, depict a ‘significant deficit with respect to accountability, representation, and the presence of formal rules of inclusion or participation’ (Swyngedouw, Moulaert, & Rodriguez, 2002, p. 561). Focusing on accountability to the public, which refers to the creation of diverse safeguarding mechanisms to ensure that public services are not compromised for the sake of private sector profits (Forrer, Kee, Newcomer, & Boyer, 2010), frequent concerns are expressed in relation to fading democratic processes in property-led urban development (Healey, 2006; Nappi-Choulet, 2006; Tasan-Kok, 2010). However, the existing literature provides a hazy picture on reasons of diminishing public accountability, lacks explanations on why and how this is happening, and how it is (or is not) codified in the contractual arrangements of planning deals. Accountability, as Peters and Pierre (1998, p. 221) argue, remains a ‘weak spot’ or an ‘unresolved issue’ in the governance literature. Although the definition of public accountability remains ‘fuzzy’ in scholarly literature and carries many open-ended, abstract and broad conceptual meanings, it actually refers to a very concrete institution that exists as a complement to public management as Bovens (2007b) puts it. Bovens, as with some others (Klein & Day, 1987; Dubnick & Romzek, 1998; Lerner & Tetlock, 1999; McCandless, 2001; Pollitt, 2003) sees it as a ‘social relationship’ due to the nature of holding somebody accountable through a relationship in which an accountor (public sector) feels an obligation to explain and to justify its conduct to an accountee (citizens) (Bovens, 2007b).

With the involvement of the private sector in public sector service provisions, this set of social relations changes as responsibilities shift to other involved agencies. Furthermore, when dealing with the private sector, the place of the public sector changes from being the accountor to being the accountee (Figure 2). It means that the social relationship is instrumental to measure whether responsibilities are fulfilled.

Consequently, the nature of public accountability becomes a complex chain of relations, with involved actors having diverse roles and linked relations within their own entity. In the era of contracting and sub-contracting, the public sector operates as both accountor and accountee (Figure 3).

Correspondingly, we understand public accountability in this article as being dynamically linked relationships between accountors and accountees. These relationships are

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Figure 1. Accountability relationship between public sector and citizens.
guaranteed by instruments and measures that aim to control the conduct of the accountor by the accountee, to which we refer as accountability mechanisms. Since we are concentrating on the consequences of private sector involvement in urban development, we will focus on accountability mechanisms created in contractual relationships between the public and private sector agencies in the delivery of specific types of urban development, namely in urban regeneration projects.

Urban planning literature provides some interesting theoretical discussions on public interest (Alexander, 2002; Campbell & Marshall, 2002a, 2002b; Innes, 1995) but the concept of public accountability has been mainly studied and operationalized by public administration scholars (Bouwman, van Thiel, van Deemen, & Rouwette, 2018; Bovens, 2007a, 2007b; Bovens, Schillemans, & Hart, 2008; Erkkilä, 2007). As a result, the term has an abstract meaning in planning scholarship and is not often operationalized through empirical research. This article aims to fill the gap by providing an analysis of actual contractual agreements to decipher the changing nature of accountability mechanisms by focusing on the entrepreneurial governance of urban regeneration in the Netherlands. Contracts in urban regeneration projects are used as planning tools to regulate actions of the actors involved by specifying the obligations and defining penalties for inappropriate behaviour of each contractual party (Atkinson, Tasan-Kok, et al., 2015; van den Hurk, 2015). As part of the piecemeal or fragmented experience of contemporary urban planning, they regulate the involvement of private sector actors in large-scale urban regeneration projects by forming ‘pockets of micro-regulation’.

Figure 2. Accountability relationship between private and public sectors.

Figure 3. Linked accountability relationship between private and public sectors and citizens.
The pockets of micro-regulation that we reveal in the contractual agreements of Dutch urban regeneration projects show shifting accountability mechanisms over time. They display a shift from a top-down to a bottom-up approach in urban governance, and micro-level instead of macro-level forms of control. Furthermore, they reverse the usual power logics in relation to public accountability (Bovens et al., 2008; Mulgan, 2003) and shape new forms of power in this fragmented landscape of actions, as public sectors act as accountees to the private sector and simultaneously as accountors ensuring their responsibilities to citizens. Partnership agreements with private sector actors are generally associated with democratic deficits (Shaoul, Stafford, & Stapleton, 2012) and accountability channels are criticised as being grey, non-formalised and non-transparent, leading to the erosion of democratic mechanisms and processes in entrepreneurial forms of urban governance (Raco, 2014; Ryan & Walsh, 2004; Swyngedouw et al., 2002; Wacquant, 2008). However, based on our analysis, we argue that accountability mechanisms do not disappear or diminish; in fact, they ‘co-exist’, as Poulsen (2009) also demonstrates, in multiple forms across different contexts. The Netherlands has been witnessing the creation of new contractual relations between public and private sector actors, in which accountability is guaranteed in new ways. Accountability mechanisms are complex as they appear in a manifold manner and involve many actors in each project. The result is a dynamic (sub-standardised) landscape of responsibilities (Tasan-Kok, Atkinson, & Refinetti Rodrigues Martins, 2018). Although we observe a tendency in contracts towards ensuring the performance of contracting parties rather than safeguarding political and democratic accountability allowing more direct dialogue with citizens, there is not a clear-cut shift with regards to changing democracy, legitimacy, and the depoliticization of the contemporary state.

This article commences with a literature review tying the concepts of contractualism and public accountability together and highlighting the gap in literature on how accountability is operationalized through diverse instrumental/institutional measures that we call ‘accountability mechanisms’. We then outline the methods used for the analysis that builds the foundation for the two sections that follow. First, we analyse the changing nature of Dutch urban regeneration, and second, based on contracts from selected projects, we explore the fragmentation of accountability mechanisms. We conclude with a discussion on contributions and implications, demonstrating how changing responsibilities between public and private parties form new accountability mechanisms with the involvement of private sector actors in urban development.

2. Accountability mechanisms in contractual urban governance

Changing forms of governance have been transforming urban planning towards a process based on negotiation and contractual relations, which draws on a wide variety of managerial instruments (Pierre, 1999). Consequences include the fragmentation of administrative authority in cities, the breakdown of hierarchical and bureaucratic relationships and a weaker coordination of new development initiatives; hence an overall fragmentation of planning processes. New Public Management (NPM) as a local administration model emerged with alternative conceptual frameworks, reframing value-based normative policy concepts such as public interest or public value (Kelly, Mulgan, & Muers, 2002). Transformation of the public sector is also identified as ‘corporate forms of governance’
(Guthrie, 1993), which refers to changing philosophy, structure, processes and orientation of the public sector since the early 1980s (Parker & Guthrie, 1993). Peters and Pierre (1998, p. 228) argue that in this system traditional channels of accountability have been replaced by several different processes of control mechanisms, which they label as ‘stakeholderism’ and ‘consumer choice’, illustrating an entrepreneurial shift in public administration.

The issue of accountability has long been a topic of both political and academic debate dating back to the Athenian city–state (Held, 2006), where it referred to a ‘democratic politics of virtue’ on how people should behave (Atkinson, Tallon, & Williams, 2015). Today, accountability refers to control mechanisms that are claimed to increase administrative performance, enhance integrity of public governance, and render perceptions of trustworthiness and transparency with citizens (Bouwman et al., 2018). In an increasingly property-led planning environment where urban development is shaped through projects, contractual relations establish accountability mechanisms between the state, local governments, and private sector actors in line with regulation that secures accountability of the responsible actor. As opposed to an abstract and complex understanding of general public accountability, these pockets of micro-regulation translate accountability into something more concrete and tangible. This results in new forms of ‘contractual packaging’ (Bentley & Rafferty, 1992), and breaks responsibilities into ‘deliverable units’ in urban development projects (Raco, 2014). We refer to these deliverable units of responsibilities in this article as ‘accountability mechanisms’.

Public accountability contains particular elements of control (Erkkilä, 2007, p. 6). Politicians and public officials are held to account in terms of explaining and justifying their actions and decisions to a wider public by means of formal institutional mechanisms as well as informally through media (Atkinson, Tallon, et al., 2015). Private sector companies are held accountable to deliver services or outputs to the public sector in an agreed format, manner, budget and time frame through contracts. In recent years there has been a shift towards controlling performance, where accountability operates in relationship to outputs, targets and ‘customers’ (Atkinson, Tallon, et al., 2015). In this structure, concrete goals defined by the contracts and their attainment are easier to control, but it becomes more difficult to comprehend the overall public goals and responsibilities as a whole. Therefore, local governments are put in a situation where they are not able to see the forest for the trees due to many monitoring and control tasks and other contractual duties.

Contrasting the expectation that the public sector should be fully responsible for its duties and held accountable for all of its actions, control-oriented accountability measures such as process control, transparency and performance measurements point out a new era (Dubnick & Frederickson, 2011). The instrumentalisation of planning, in this era of contractualism, provides legal certainty on the one hand and flexibility on the other to enable easier, faster, and more efficient implementation by involving private sector actors in urban development processes. The co-existence of accountability mechanisms complements the regulatory regime that fosters a sense of responsibility and obligation among actors in the domain (Dubnick, 2010). Moreover, as Willems (2014) points out, many different processes of accountability take place at the same time involving a diversity of actors who demand different kinds of information. They can co-exist (Poulsen, 2009) and this sedimentation of processes can occur through cooperative or adverse combinations, establishing complex accountability scenarios in particular periods and contexts.
A first step toward gaining a better understanding of this complexity is to carefully examine various mechanisms of accountability. Accountability mechanisms are used here in reference to the tools and techniques used for achieving accountability. They refer to the devices that serve to secure actions, results or intentions for which people are accountable (Goodin, 2003, p. 365), are often applied over a limited period of time and can be tangibly documented and repeated (Ebrahim, 2003). An accountability mechanism can be recognized in a relationship where a contractual provision marks a concrete rule, which, as Bovens (2007a, p. 450) puts, requires an actor to explain and justify a code of conduct about which a forum can pose questions and pass judgment, and which may cause the actor to face consequences. Our definition follows Bovens’s (2007a) understanding of accountability as a relationship, which has been applied in recent empirical studies (see e.g. Kang & Korthals Altes, 2015; Willems & Van Dooren, 2011). Different aspects of accountability mechanisms are listed in the previous scholarly work related to accountability, which will support the operationalization of concepts in the next section.

3. Analyzing accountability mechanisms: approach, methods, and data

The first part of our analysis concerns defining governance trajectories in Dutch urban regeneration since the late 1980s. Using path analysis as a method helped us to define these trajectories, which are patterns of change that are not necessarily defined by a single event but several processes of change forming path-dependent deterministic patterns (Tasan-Kok, 2015, p. 2186). The three dominant trajectories that we identify provide the framework for the second part of the analysis, in which we focus on the actors, democratic mechanisms of accountability, and the diversity of accountability measures in contractual agreements illustrated by case studies in each trajectory. The trajectories are marked by a changing role of the state and corresponding involvement of private sector actors in urban development, corresponding to the neo-liberalization of the traditional Dutch welfare state which brought a shift towards entrepreneurial and market-driven municipal governance; a shift towards a more flexible, contractual planning regime; and a shift toward capital-intensive and institutionalised property market dynamics. We were able to link the defined urban regeneration trajectories to specific accountability mechanisms as we will discuss in detail in the next section.

As a third step in our analysis, we categorized the accountability mechanisms based on literature, which allowed us to define four categories that we explain below in order to investigate the selected contracts to see whether there are certain patterns (for instance, the use of similar accountability mechanisms) in each trajectory of governance. Accountability mechanisms are studied in each of the three identified governance trajectories through contracts (four in each trajectory) to ensure analytical variation (Seawright & Gerring, 2008). The selected contracts were designed between the late-1980s and 2017, and contained binding clauses in projects which: (1) included a significant role for private sector actors; (2) had a mix of economic, social, and sometimes environmental objectives; and (3) covered a minimum area of five hectares (as a principle of scale). By means of these selection criteria that we used to define and analyse our case studies, we sought to create a comparative sample representing high-impact developments in the Netherlands across several decades. To uphold confidentiality, project names have been erased but more detailed information on contract types can be found in Appendix 1.
All contracts were subjected to a structured, focused comparison (King, Keohane, & Verba, 1994).

Using the contracts, we first investigated the actors involved in the contracts in terms of their roles in the accountability mechanisms; and second, we analyzed the provisions based on a categorization of four types of accountability mechanisms to see the change of their nature in different trajectories of governance of urban regeneration and diversity within the measures used in them (in section five). This categorization revolves around the nature of accountability provisions, which is one way of distinguishing types of accountability (2007a, p. 461). Of the four categories, the incentive-based (Girth, 2014; Goodin, 2003; Schedler, 1999) and performance-oriented accountability mechanisms (Bovens, 2007a) are connected to NPM-based accountability, which is focused on goal achievement and performance. The other two, management-oriented (Bovens, 2007a) and democratic accountability mechanisms (Ebrahim, 2003), are connected to the accountability that is geared toward transparency, dialogue, and process.

Incentive-based accountability mechanisms aim to maintain contract accountability through sanctions and rewards (Girth, 2014; Goodin, 2003; Schedler, 1999). Sanctions (or penalties) are particularly critical tools to hold parties accountable (Girth, 2017), and can be formally incorporated in contracts, for instance, as a prescribed fine, legal action, contract termination, ban from future contracts, and performance-dependent payment. Performance-oriented accountability mechanisms focus on the reporting of project results – which could relate to the planning process as well as its outcome – and on keeping track of how well project partners behave relative to the arrangements made in the contract they signed (Bovens, 2007a). Ebrahim (2003) mentions performance evaluations and financial reports and disclosures as examples of this type. Management-oriented accountability mechanisms are about the internal workings of a project team or setting and focuses on the coordination and organization of the relationships and communications between project partners in terms of the management structures and plans that are used (Bovens, 2007a). Rather than a distinct final result this type of accountability mechanism looks at courses of action (Ebrahim, 2003). Accountability mechanisms tie together matters of legitimacy and transparency relative to the world outside the project organization. Therefore, we recognized these types of mechanisms in our data when contractual provisions discussed topics such as external communication and the participation of, and dialogue with, citizens and other actors that were not officially involved in a project. In our analysis we operationalize the accountability mechanisms through certain indicators that we defined based on previous studies as presented in Table 1. In addition, in order to find the accountability mechanisms that are provided in Table 1, we undertook a special ‘discourse analysis’ where we coded the accountability duties in the contracts’ text to highlight who was held accountable for each mechanism, i.e. who was the accountor: the public sector actor, the private sector actor, or both (see the results of this analysis in Table 2).

4. Understanding Dutch urban regeneration through changing trajectories

The planning system in the Netherlands has a long history of strong state involvement at different levels of governance, and is therefore prominently known as a ‘planners’ paradise’ (Faludi & van der Valk, 1994). Yet, based on the principles of negotiation, consensus-
seeking and coalition building, Dutch planning has been moving away from a restrictive, plan-led system toward fragmented, flexible and project-led approaches (Buitelaar, Galle, & Sorel, 2011; Nadin & Stead, 2008). Private sector parties have become deeply involved in

<table>
<thead>
<tr>
<th>Concept</th>
<th>Operationalization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incentive-based accountability</td>
<td>Contractual provision on (1) a sanction. Examples: fines, legal actions, contract terminations, bans from future contracts, performance-dependent payments (Girth, 2014, 2017; Schedler, 1999).</td>
</tr>
<tr>
<td>Performance-oriented accountability</td>
<td>Contractual provision on (1) goals that need to be achieved and (2) how the processes towards these goals or the products promised should be monitored, controlled, and reported. Examples: performance indicators, performance measurement, monitoring systems, reporting guidelines (Bovens, 2007a; Ebrahim, 2003).</td>
</tr>
<tr>
<td>Management-oriented accountability</td>
<td>Contractual provision on (1) the internal management of a project team that (2) focuses on the coordination and organization of (3) the relationships and communications between project partners. Examples: supervisory boards, committees, management structures, management plans, management quality, internal communications protocol (Ebrahim, 2003).</td>
</tr>
<tr>
<td>Democratic accountability</td>
<td>Contractual provision on (1) coordination and communications relative to (2) actors and activities external to the project organization and (3) focused on aspects of legitimacy and transparency. Examples: participation, dialogue, voice, relationship to representatives and citizens, external communications protocol (Ebrahim, 2003).</td>
</tr>
</tbody>
</table>

Table 1. Operationalization of accountability mechanisms.

<table>
<thead>
<tr>
<th>Concept</th>
<th>Operationalization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incentive-based accountability</td>
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</tr>
</tbody>
</table>

Table 2. Overview of the change of accountability duties.

<table>
<thead>
<tr>
<th>Accountability type</th>
<th>Accountor</th>
<th>Relative to accountability type</th>
<th>Relative to all accountability mechanisms</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Period 1 (%)</td>
<td>Period 2 (%)</td>
</tr>
<tr>
<td>Incentive-based</td>
<td>Both public and private actors</td>
<td>16,7</td>
<td>33,3</td>
</tr>
<tr>
<td></td>
<td>Private actor</td>
<td>75,0</td>
<td>54,2</td>
</tr>
<tr>
<td></td>
<td>Public actor</td>
<td>8,3</td>
<td>12,5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Performance-oriented</td>
<td>Both public and private actors</td>
<td>40,9</td>
<td>19,7</td>
</tr>
<tr>
<td></td>
<td>Private actor</td>
<td>36,4</td>
<td>39,3</td>
</tr>
<tr>
<td></td>
<td>Public actor</td>
<td>22,7</td>
<td>41,0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Management-oriented</td>
<td>Both public and private actors</td>
<td>49,0</td>
<td>37,8</td>
</tr>
<tr>
<td></td>
<td>Private actor</td>
<td>17,6</td>
<td>25,6</td>
</tr>
<tr>
<td></td>
<td>Public actor</td>
<td>33,3</td>
<td>36,7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Democratic</td>
<td>Both public and private actors</td>
<td>55,6</td>
<td>57,1</td>
</tr>
<tr>
<td></td>
<td>Private actor</td>
<td>44,4</td>
<td>28,6</td>
</tr>
<tr>
<td></td>
<td>Public actor</td>
<td>0,0</td>
<td>14,3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Median</td>
<td></td>
<td>19,0</td>
<td>23,3</td>
</tr>
</tbody>
</table>

Total
initiating, designing, financing, constructing, and maintaining projects based on contractual relations, particularly in large-scale urban regeneration projects. The three governance trajectories that we define in Dutch urban regeneration depict particular relations between public and private sector actors, whose relationships are regulated by accountability mechanisms through private-law agreements. The trajectories refer to: (1) strong state involvement in urban regeneration; (2) private sector-led regeneration; and (3) risk-reducing piecemeal regeneration.

The first trajectory encompasses regeneration projects that are characterized by strong state involvement, predominantly occurring in a period from the late 1980s to the early 2000s in the form of public sector-led, one-off developments. A special feature of the Dutch planning system had long been the extensive and profit-oriented involvement of public bodies as land developers, besides the more passive regulation of land use through plans. The former can be considered a type of entrepreneurial governance even before the involvement of private actors (Louw, van der Krabben, & Priemus, 2003). Yet, through financial cutbacks in central government transfers in the 1980s, municipalities increasingly ‘experimented with self-management, contract management and related forms of business-like practices’ (Hendriks & Tops, 1999, p. 202). Shifting towards the principles of NPM, public-private partnerships arose as the public sector needed more involvement from private investors in large-scale urban (re)development (Hendriks & Tops, 1999, p. 137). Particularly the regeneration of deprived areas emerged as a key policy objective, exemplified by the 1994 Big Cities Policy, which did not only set a new benchmark for integrating policy sectors, but also triggered the development of increasingly flexible partnerships instrumentalised through contractual agreements between multiple actors (Andersen & van Kempen, 2003). Additionally, national policies deregulating land use and the housing markets in the 1990s (Engberink & Miedema, 2001) placed growing emphasis on market parties, and new commercial actors emerged in the property development landscape (van der Krabben & Jacobs, 2013).

Regeneration projects in the first trajectory include examples such as Kop van Zuid in Rotterdam, Oostelijk Havengebied in Amsterdam, and Eemkwartier in Amersfoort. These projects involved private parties and depended on private (international) capital, but were still pursued in line with the interventionist tradition with the public sector initiating, preparing and controlling the development (Engberink & Miedema, 2001). Typically, municipalities prepared the land before selling it to private parties, and in line with the principles of active land policy, also bore the associated risks. A variation of this public land development model is the building claim model, in which private landowners sold their land to the municipality, who would service it, and then sell it under the condition that the initial private land owners were granted the right to buy the land serviced. Furthermore, some of the ventures in the first trajectory classify as so-called ‘Key Projects’, which took place within the frame of particular planning objectives of the national government (Spaans, Trip, & Van der Wouden, 2013).

The situation changed in the early 2000s, a period characterized by change, the restructuring of the planning system and the adoption of more pragmatic planning approaches, defining our second trajectory as being approximately between 2000 and 2008. Many projects initiated during that time belong to the second trajectory, representing private sector-led regeneration with the state taking on a rather facilitating role. Policy changes and legislation at both the supranational and national level enhanced this trend.
legislation and policy, which had repeatedly been critical about the hybrid role of Dutch public authorities in the active land development process, increasingly favoured contractual role divisions in which private sectors steer the development process (Heurkens & Hobma, 2014).

Examples of projects following the second trajectory include Belvédère in Maastricht, Binckhorst in The Hague, and Strijp-S in Eindhoven. They often follow a joint-venture model, in which the municipality establishes a private vehicle with one or more private sector partners. This entity gathers plots of land, prepares the site and sells it for the actual development, with public and private shareholders sharing costs and risks. Importantly, a few projects such as Chassépark in Breda and Eemkwartier in Amersfoort were initiated in the late 1980s or early 1990s but were slightly ahead of their time as two of the first joint-ventures in the Netherlands, illustrating how the different trajectories do not fit neatly into specific time periods. Following the crisis, a number of joint-ventures have been dismantled as private sector partners backed out of the partnerships (e.g. Belvédère, Binckhorst), and others have been subject to significant organizational changes (e.g. Suytkade in Helmond). Next to joint-ventures, concessions became increasingly popular as development models in the mid-2000s. In large-scale schemes such as Nieuw Stappegoor in Tilburg, Oud IJmuiden in Velsen, and Waterfront in Harderwijk, practically all the land, tasks, responsibilities, and risks were transferred to private sector consortia that would redesign and redevelop areas merely on the basis of predefined specifications, with hardly any interference from the municipality.

The third trajectory includes regeneration projects in which private sector actors still play a major role, but that follow a step-by-step, piecemeal regeneration approach closely connected to the reduction of risk, which has been a major incentive for planning changes in recent years. Economic turmoil following the 2008 financial crisis and a major reform to the Dutch Spatial Planning Act in 2008 reshuffled powers, responsibilities and expectations between governmental layers (Gerrits, Rauws, & de Roo, 2012). With the intent to simplify governance, speed-up planning procedures and stimulate proactive, ‘hands-on’ and development-oriented planning, these changes enhanced the flexibility of planning procedures to accommodate private sector interests. At the same time, they provided municipalities with more ‘options for public cost recovery, for guiding development and for the provision of public goods’ (Buitelaar, 2010, p. 355) even if land is privately owned. For example, before 2008 the inclusion of social housing in new projects where municipalities were not landowners was solely based on voluntary agreements (Valtonen, Falkenbach, & van der Krabben, 2017). Following the 2008 crisis, it has been argued that the conventional approach of active municipal land policy, integration, and comprehensiveness is not appropriate anymore due to a setting of increased uncertainty (Buitelaar & Bregman, 2016). Active land policy has likely reached its limits (Heurkens & Hobma, 2014) as it requires long-term public investments (OECD, 2017, p. 100). In 2010, the Dutch Parliament adopted the Crisis and Recovery Act (Crisis en Herstelwet), which reduced formal procedures to continue market activity in times of economic downturn (Engberink & Miedema, 2001). While the property markets increasingly welcomed institutional investors (e.g. property funds, pension funds) to reduce risks, spatial development strategies have shifted from supply-driven to demand-driven dynamics, mainly based on capital-intensive developments to secure the financial success of new generation projects. In this structure, public sector actors have been seeking to reduce risks by taking on
smaller projects and phased development resulting in more fragmented urban regeneration practices. In comparison to the other two trajectories, regeneration projects following the third trajectory are more susceptible, tolerant, or even attracted to flexibility. They encompass a variety of blurred organizational structures within each development and include projects such as Buikslootserham and Cruquiuseiland in Amsterdam, Havenkwartier in Deventer, and Piushaven in Tilburg. This process toward more flexibility and development-led planning in the Netherlands is expected to continue with the planned implementation of the new Environment and Planning Act (Omgevingswet), which aims to integrate 20 existing acts into one key act – for the sake of simplicity and flexibility to market parties (Korthals Altes, 2016).

The three trajectories of urban regeneration illustrate the growing fragmentation of the comprehensive governance system. Government actors are no longer automatically the commissioners of the land that is developed. To ensure guardianship of public values in spatial plans and the realization of these plans, they need to close deals with private sector partners. Vice versa, private sector partners likely need planning consent or assistance from the state regarding the construction of off-site and on-site infrastructure. Governments still use public regulations to steer urban development, such as land-use plans and environmental permits, but public-private agreements have become popular planning tools, and they are typically laid down in a series of contracts. Not only are we observing a rise in contractualism in terms of the existence of contracts that regulate the relationships between public and private sector parties in urban regeneration, but the loosening of regulatory umbrella frameworks. How do these shifts in governance of urban regeneration relate to the accountability mechanisms established by the accountees (public sector) through contracts to control the conduct of the accountors (private sector)?

5. Understanding changes in accountability mechanisms

Writers on the critical left lament the demise of public accountability in the neo-liberal era (Peters & Pierre, 1998; Rhodes, 2015; Swyngedouw et al., 2002), and from a public administration perspective, Hodge and Coghill (2007, p. 697) argue that the privatized state is characterized by ‘lower political accountability’ and increased managerial and market accountability, which are typical characteristics of entrepreneurial local governance systems. In other words, changes towards more entrepreneurial forms of governance with market dependency and private sector involvement create different mechanisms to measure the accountability of the accountor (private sector) defined by the accountee (public sector). Contending that changing relationships between public and private parties trigger these changes, we scrutinize the actors and accountability mechanisms by studying actual contracts from selected projects as explained before. Analyzing contracts gives us the opportunity to better understand how the responsibilities of the private sector are defined in urban development in a market dependent system in the case of urban regeneration projects. This is interesting because instead of commonly agreed norms and values of accountability in urban planning, the responsibilities are defined as ‘accountability duties’ in a contractual relationship in which the private sector is held accountable by the public sector to deliver them. The delivery of the services is controlled through the accountability mechanisms, as we will explore in detail in the coming sections.
5.1. Changing actors and responsibilities in urban regeneration contracts

The analysis of the 12 contracts, each of which we considered to be representative for one of the three governance trajectories, reveals a shift in terms of who is held to account in different trajectories (between the accountor and accountee). Figure 4 illustrates the share of accountability duties (responsibilities) borne by public and private sector actors involved in urban regeneration projects. While an evolution in the percentage of private sector actors being held accountable was expected, the magnitude of the shift is considerable.

In addition, the data shows that there has been an increase in the number of accountability mechanisms that are codified in the contracts. While we counted less than 30 accountability mechanisms on average in contracts belonging to the first trajectory of urban regeneration, in the second and third trajectories this number rose to around 40. Moreover, we observed a shift that consists of four components, which we will explain below.

First, we noticed a change between the first and second trajectories of urban regeneration relative to the accountability borne by the public sector actors involved in regeneration projects. The increase we see here can be explained by the rising popularity of public-private partnerships, as discussed in the previous section. In these partnership deals, (local) governments assumed various (risk-bearing) tasks within the framework of joint-venture arrangements, which evidently came with new or more accountability-related duties. Examples that illustrate this change are contractual provisions that assign administrative, land management, and permit duties to municipalities within joint-venture entities, on behalf of those entities. Moreover, annual (accounting) reports on the progress of projects were generally delivered by municipalities, even though private sector partners had an equal share in these joint-venture arrangements. The most remarkable observation is that municipalities remained in charge of land acquisition and site preparation, as well as the maintenance and operation of acquired land until developments could actually take off – which often took years. This led to situations where public sector partners (i.e. municipalities) ended up with lower returns than the private sector partners,

Figure 4. Overview of who is held accountable (accountors) in urban regeneration projects.
since the latter had the opportunity to buy land from the joint-venture entity, add their own value by developing the land, and then sell it to end users at higher rates (Williams, Van den Hurk, Pereira, & Tallon, 2018).

Second, a remarkable shift occurred between the second and third trajectories of urban regeneration, where seemingly and suddenly the private sector became the accountor, i.e. the one who is held accountable by the accountee (in this case the public sector actor). This development fits the general post-crisis discourse where public sector actors have been reforming their positions and strategies relative to urban regeneration. They have been seeking to move away from risk-bearing roles such as joint-venture involvements, and most importantly they have been pressurizing private sector actors to come forward and take responsibility. The most recent contracts in the dataset provide apt illustrations. For instance, it seems to have become more common for contracts to include a provision that pressures the private sector actor to deliver a product or respect a predefined schedule. Our sample shows several cases of ‘option clauses’, which are provisions that offer the public sector actor an opt-out opportunity if the private sector actor fails to accomplish a task within a prescribed period of time. Option clauses thus put an end to a common problem of urban regeneration projects in which private sector actors obtain development rights and then let land ‘rest’ for a significant period of time while waiting for the most commercially interesting opportunity to arise. As a second illustration we refer to the tendency among contracts to shift a significant amount of risk to the private sector actor. This trend is represented by a considerably different task allocation and an increase in the incorporation of penalty provisions. Particularly contract 12 in our database shifts nearly all project-related risks to the private sector partner, including risks related to land sanitation and plan development. As for penalties, each contract sample in the third trajectory of urban regeneration includes at least one clause that specifically addresses a specific fine (amount in euros) that will be executed in the event of penal behaviour. When comparing the four most recent contracts with their oldest counterparts in the entire sample, the most obvious difference is that the latter contain hardly any penalty provisions. Therefore, they are, arguably, relatively comfortable agreements for the private sector actors.

Third, Figure 1 depicts a gradual decrease of the proportion of shared (i.e. public-private) accountability as codified in contracts. Early agreements often included a significant amount of such shared accountability: contractual provisions often referred to joint decision making, internal consultations, or ad hoc deliberations on issues of all kinds, from communication and reporting to supervision and progress meetings. This goes for both the oldest contracts and the type of contracts used in the second trajectory, which makes sense given the joint-venture structure of the latter. In contrast with these early practices, and as mentioned earlier in this section, accountability has been transferred mainly to private sector actors, particularly in more recent years. A clearer distinction in terms of the task allocation between the different sectors has also appeared in recent years.

Fourth and finally, we noticed a general trend toward more private sector-borne accountability mechanisms transcending the different accountability types that we distinguished. Table 2 provides an overview of the average share (in percentages) of accountability duties during the three different trajectories of urban governance, aggregated by accountability type and accountor, and calculated relative to both each accountability
type, and all accountability mechanisms found in the selected contracts. We measured these duties by analyzing the text of the contracts to see the repeating terms (in a content analysis) that refer to the duties. In order to conduct this analysis, as explained above, we coded the duties defined in the contracts. As can be seen in the table, there are some significant shifts from one trajectory to another in terms of who serves as the accountee for the particular types of accountability. One of the most remarkable shifts is the steep increase of accountability borne by the private sector between the second and third trajectories. There are no patterns where particular accountability types evolve against the general trend.

All in all, we observed an increase in the number of accountability mechanisms in contracts, an increase in accountability duties borne by the private sector as time goes by and generations of projects pass, and a variety of shifts between the different trajectories of urban regeneration. Thus, accountability is constantly in flux. We now turn to discussing the topics of changing mechanisms and fragmentation of accountability.

5.2. Changing accountability mechanisms

In the theoretical section of this article we particularly addressed concerns regarding the deficit of norms and values of accountability in urban governance arrangements characterized by private sector involvement. Following these concerns, and as explained earlier, we conducted a detailed analysis of different types of accountability mechanisms that can be formally incorporated in contracts as provisions. Figure 5 provides an aggregated overview of the usage of different types of accountability provisions. When we looked into the changes in type of accountability mechanisms used (incentive-based, performance-oriented, management-oriented, and democratic) (Figure 5 and Table 2) we observed an increase in the use of accountability mechanisms in total over time, although it is not easy to link the increase in private sector involvement in urban regeneration to the use of particular types of accountability mechanisms in contractual agreements. As detailed earlier, we observed an increase in the number of accountability mechanisms in contracts, and an
increase in accountability duties borne by the private sector through time. While there are different types of control mechanisms in each project, there is one common change in the type of accountability mechanisms used in the contracts over time. The median of the percentages of the amount of these accountability types increased from 19 to 25.6 percent over the three different paths (see Table 2). Thus, there has been some fragmentation, or at least a process of equalization, between the four different accountability types that we defined. As such there has been a small increase in the use of traditionally uncommon accountability types at the cost of initially dominant counterparts, and this is confirmed as the most common type (management-oriented accountability) is slightly less dominant in contemporary contracts than it used to be in earlier ones. However, as we also showed in our analysis above, the new generation joint-venture arrangements came with new and more accountability-related duties. Thus, the results provide ample reason to argue that accountability has always been addressed through diverse mechanisms of accountability, meaning that a ‘colourful’ landscape of accountability types has been part of urban regeneration contracts at least since the late-1980s and fragmentation of accountability measures has always been in the nature of private sector involvement in urban regeneration through contractual agreements. However, it seems that the opaqueness that revolves around who is accountable is partly due to the diversity of measures and tools that both the public and private sector uses to control each other’s actions.

Another interesting outcome specifically concerns democratic accountability mechanisms. When we look at the share of accountability-related provisions on democratic matters, such as external communication, participation, voice, and other ways of dialogue with actors external to a project, these provisions only take up a minor share of the total of references to accountability. A number of contracts do not mention anything about how the respective project communicates or connects to citizens. Half of the contracts address external communication matters; four out of 12 agreements incorporate (brief) notes on participation, voice or dialogue. Against this backdrop, at first sight the data supports the extant literature on the deficiency of democratic notions in private-law agreements between public and private sector actors. However, the low share of democratic accountability provisions in contracts transcends the different governance trajectories; the coded contractual provisions do not put forward any major differences between the three trajectories. Democratic accountability is arguably a topic that is generally not covered in contracts; instead, it is taken care of outside the realm of negotiating and deal making. In that sense, the shift from public sector-borne accountability to private sector-borne accountability in urban regeneration projects cannot easily be linked to the contractual safeguards or incentives that are used to harness democratic norms and values.

Finally, we analyzed the change in accountability measures to see whether increasing fragmentation in responsibilities creates a complex situation as to who is responsible or accountable. We looked for accountability measures in the contracts by making an inventory of provisions on mechanisms that focused on controlling opportunistic behaviour (e.g. penalties, obligations, and liabilities); project management, quality, and timing; information; and communication; democratic processes; responsibilities and ethics; and conflict resolution (Tasan-Kok et al., 2018). These tools are used in contracts for both public and private sector actors to control responsibilities and mitigate risk. The analysis of these control tools brought to the surface the main reason for the perceived complexity: different tools are included and used in each project, including diverse actors and different
shares of authority. Each project contains similar mechanisms yet tailored to the conditions under which the project is realized. Therefore, a diversity of measures is available, which adds to the fragmentation of the responsibilities and to a blurred view on public accountability.

6. Conclusions and discussion

The role of the state in urban development has changed since the late 1980s while new institutions of urban governance inadvertently review issues of power, accountability and democratic legitimacy with the move from command-and-control government to governance, as Hager (2010) argues. Yet, as we demonstrated in this study, the shift from strong state to increasing private sector involvement in urban regeneration does not necessarily mean that accountability is diminished. By discourse and content analysis of the contractual data we showed that accountability has shifted hands between the public and private sector actors, and responsibilities are defined in each project through different measures and tools. In fact, what we are observing is a rise in the number of accountability mechanisms that are included in contracts, confirming Rhodes’s (2015, p. 638) argument that ‘the old craft skills of traditional public administration remain of paramount importance.’ Moreover, the diversity of tools that these actors use to control each other’s actions has increased over time as market parties became more involved in urban regeneration.

Our analysis shows that this diversity, fragmentation and change create a blurred view of public accountability although the mechanisms of accountability are still quite concretely defined in the contracts. As a contrast to the certainty required by contractual relations, arrangements and assemblages of institutions, norms, values and relationships contain a fragmentation of responsibilities. Moreover, the accountability measures that are there to set standards for the evaluation of the behaviour of the public actors, are now also used to evaluate the behaviour of private sector actors who are assuming public responsibilities. While for the public sector the citizens are the end users to be accounted for, in the private sector it is the shareholders whose value should be enhanced and funds should be spent economically (Shaoul et al., 2012).

The analysis showed that there is a diversity of actors, tools and measures for the public and private sector to control each other’s behaviour and mitigate risk. However, the layers of tools and measures for democratic accountability remain thin compared to those that are there to guarantee the success of a project. In the Dutch case, the decrease in the amount of mechanisms used for democratic accountability from the first trajectory (strong state involvement) to the most recent one (risk-reducing piecemeal regeneration) confirms this fact. Measures related to democratic accountability are generally not covered in contracts. It may mean that they are kept out of the ‘institutional’ negotiating and deal making process as Cento Bull and Jones (2006) show in their study of Bristol and Naples where participatory partnerships with communities and businesses were kept outside the formal governmental process. It may also mean that while the public sector’s accountability to citizens is supposed to be safeguarded by contractual agreements, the citizens’ say in these matters is kept out of ‘business deals’. Klijn and Skelcher (2007) argue that private sector involvement in urban development, through what they refer to as ‘governance networks’, offers alternative ways of understanding representative democracy. On the one hand we can see them as new ways of connecting citizens and stakeholders to overcome the
constraints and limitations of representative democracy and party politics as they are ‘flexible and fluid’, which accommodates the ‘new forms of interest representation associated with deliberative practices’ (Klijn and Skelcher (2007); Hajer & Wagenaar, 2003). On the other hand, they are, as Mouffe (1999) also argues, centres of power and privilege that give structural advantage to particular private interests (Klijn and Skelcher (2007); Lowndes, 2001).

As we only looked at accountability mechanisms in contracts, we did not analyse accountability in action. Therefore, in this article we were neither able to reveal organizational influences (e.g. agency culture, managerial discretion) and citizen reflections on participatory measures, nor mechanisms and institutions safeguarding accountability to the public that were not specifically mentioned with regard to the analyzed regeneration projects but that exist in relation to the contracts’ compatibility with municipal, provincial, national and EU regulations. This is an important limitation, because although well-written contracts with specified performance measures are critical first steps toward accountability, ‘they are virtually worthless without vigilant execution’ (Girth, 2014, pp. 317–318). What is not in the contract is as important as what is (Girth, 2014). In other words, the formal accountability relations that involve clearly demarcated, coherent procedures or forums are important, but there could be accountability mechanisms that have not been codified in the contracts but coexist with the ones documented in this article. Lastly, it should be highlighted that contracts can be renegotiated, which is a common practice especially after economic downturns, and adds another layer of complexity to the discussion on flexibility and legal certainty.

To conclude, cities have been increasingly run as businesses and new research is needed to understand how current forms of governance include different forms of contracts and regulations, which in turn define new forms of accountability. In contemporary urban governance, public officials are accountable for making sure that private sector delivery is on time and on budget. However, this creates a ‘checkbox situation’: what the public sector delivers to citizens may be different than what is needed, but the private sector has delivered according to the checkboxes – and nothing else. Therefore, more comprehensive mechanisms of planning and governance are needed to define the general expectations and outputs in reflection of citizens’ interests, by drawing a framework in which the fragmented pieces of this puzzle can be placed.

Note
1. Voice is a passive participation tool in Dutch planning practice (inspraak), where citizens are ‘informed’ about the development through informative sessions or in written form, and are allowed to express their opinion.

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References


### Appendix 1. Information on the case contracts selected for analysis.

<table>
<thead>
<tr>
<th>ID</th>
<th>Contract type</th>
<th>Year</th>
<th>Project type</th>
<th>Respective trajectory of urban regeneration</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Framework agreement</td>
<td>1987</td>
<td>(Part of) Key Project</td>
<td>(1) Strong state involvement</td>
</tr>
<tr>
<td>2</td>
<td>Framework agreement</td>
<td>1991</td>
<td>(Part of) Key Project</td>
<td>(1) Strong state involvement</td>
</tr>
<tr>
<td>3</td>
<td>Framework agreement</td>
<td>2005</td>
<td>Public land development / building claim model</td>
<td>(1) Strong state involvement</td>
</tr>
<tr>
<td>4</td>
<td>Development agreement</td>
<td>2008</td>
<td>Public land development / building claim model</td>
<td>(1) Strong state involvement</td>
</tr>
<tr>
<td>5</td>
<td>Partnership agreement</td>
<td>2004</td>
<td>Joint-venture</td>
<td>(2) Private sector-led regeneration</td>
</tr>
<tr>
<td>6</td>
<td>Partnership agreement</td>
<td>2006</td>
<td>Joint-venture</td>
<td>(2) Private sector-led regeneration</td>
</tr>
<tr>
<td>7</td>
<td>Partnership agreement</td>
<td>2006</td>
<td>Concession</td>
<td>(2) Private sector-led regeneration</td>
</tr>
<tr>
<td>8</td>
<td>Partnership agreement</td>
<td>2010</td>
<td>Joint-venture</td>
<td>(2) Private sector-led regeneration</td>
</tr>
<tr>
<td>9</td>
<td>Development agreement</td>
<td>2013</td>
<td>Post-crisis</td>
<td>(3) Risk-reducing piecemeal regeneration</td>
</tr>
<tr>
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<td>Development agreement</td>
<td>2016</td>
<td>Post-crisis</td>
<td>(3) Risk-reducing piecemeal regeneration</td>
</tr>
<tr>
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<td>2016</td>
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<td>(3) Risk-reducing piecemeal regeneration</td>
</tr>
<tr>
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<td>Development agreement</td>
<td>2017</td>
<td>Post-crisis</td>
<td>(3) Risk-reducing piecemeal regeneration</td>
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