

‘Soft’ public values in jeopardy

Reflecting on the institutionally fragmented situation in utility sectors

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Abstract

The value chain in the provision of utility services has been unbundled to allow for liberalization. Reforms created a highly fragmented institutional landscape introducing new actors, a more heterogeneous actor constellation and extra policy levels. This resulting fragmentation holds risks. The safeguard for one value potentially harms other values. We show the risks that concern the more ambiguous, less operationalized, ‘soft’ public values. To achieve the more ambiguous values under the fragmented conditions, we suggest a remedy that allows for ambiguity and fits the current fragmentation.

Key words

Public values, Utility sectors, Institutional fragmentation, Process management.

Utility sectors and public values

Roads, dikes, energy supply and drinking water supply, to name a few utility sectors, are critical for the functioning of modern societies. They are not only key in delivering essential services. They are the precondition for wider development of a country or region. Without good utility sectors, regions will remain peripheral in economic, social and cultural terms (vd Woud, 2007).

Public values are thus intrinsic to utility sectors. They are the vehicle through which important public values are delivered, e.g. public health (sanitation); safety (dikes) and mobility (roads and railways). And utility sectors are the precondition for the achievement of public values such as sustainability (e.g. green energy supply); economic and social development (roads, electronic communications, public transport etc.). Our take on public values in this article addresses the more substantial public values as properties of utility services (De Bruijn and Dicke 2006).

For a long time, mainly public monopolists were in charge of utility sectors: the energy companies, the telecom providers, the drinking water companies were all in public hands (Ten Heuvelhof, 2006). But in the last two decades, the state is no longer the sole provider and owner of utility services. In most countries, modes of liberalization and privatization have been introduced. Some sectors are completely privatized (e.g. electronic communications in the Netherlands, drinking water supply in the UK and New Zealand, airports in Australia) and in other sectors some degree of competition or liberalization is introduced (e.g. trains and energy supply and drinking water supply in the Netherlands; flood protection in the UK).

The variety of the institutional arrangements for utility sectors is enormous. Some countries prefer the model of public ownership and concessions to private

companies (France); other countries have chosen for complete privatization of most utility sectors (e.g. UK and New Zealand). In many countries, competition is introduced by separation of infrastructure and service provider (railways and energy in The Netherlands) but other countries opt for integration of the physical infrastructure and service provision.

Despite this variety in institutional arrangements, all these modes of liberalization and privatization have in common that utility sectors are now placed at a distance from the state. And it is precisely this distance that put public values right in the centre of public debate and academic research and policy analysis. How can public values that are critical for the functioning of society still be achieved under these new conditions? How can public health still be guaranteed if drinking water is provided by private companies? Who will make sure that long term investments in roads and railways are made by private parties? How is long term reliability and availability guaranteed by private energy providers?

This article focuses on a specific consequence of liberalization and privatization of utility sectors: institutional fragmentation. Despite the many forms and shapes and modes of the regime change, they have in common that the number of actors has increased, and so has the diversity and the levels on which decision making takes place. The reason for this focus on institutional fragmentation is that the realization of public values under conditions of liberalization and privatization may be a challenge in it self. But the solutions and instruments that are proposed to achieve the public values under these new conditions are even further challenged by institutional fragmentation: how can regulation of the reliability of an energy network be effective if different suppliers and subcontractors are involved? This article thus focuses on the relation between institutional fragmentation on the one hand, and

realization of public values in utility sectors on the other. More specifically, we are concerned with the realization of ‘softer’ public values that cannot easily be put in contracts since they are non-quantifiable and only visible on the very long term.

Our hypothesis is that institutional fragmentation will make some values softer, whereas it will make other public values harder. In the meanwhile, the trade-offs between them are increasingly left over to the soft or hard nature of values. In other words, the risks for soft public values need our particular attention now when thinking about safeguarding public values in the new institutional landscapes of the utility sectors.

In the following, we will first describe the difference between hard and soft public values. In third section, we analyze the relation between institutional fragmentation on the one hand, and the realization of soft public value on the other. The realization of soft public values in a context of institutional fragmentation is the fourth paragraph of this article. In this final section, we describe the process which can help to realize soft public values specifying the possible roles for government under these new conditions.

This article is a conceptual piece, based on the experiences the authors have as researchers and policy analysts and policy advisors in the field of Dutch infrastructures, such as railways, dikes, roads, sewerage, electronic communications, drinking water supply, and energy provision. The article does not discuss the normative stance on the desirability of liberalization or privatization, nor does it evaluate the success or failure of liberalization and privatization. This article treats liberalization and privatization as ‘given’: most countries have indeed undergone liberalization and privatization in the last two decades creating new conditions for the

achievement of public values. In this article, we seek to develop new strategies to mitigate public value failure under these new conditions.

Hard and soft public values

Public values tend to be 'soft'. Various scholars describe the nature of public values as intrinsic, thus, essentially non-quantifiable (Bozeman 2007). For example, we cannot reasonably count 'quality of life', 'equal allocation of goods and services' or 'social cohesion among citizens'. Intrinsic values are often said to be a matter of emotions rather than knowable facts (Wagenaar 2002). Correspondingly, 'hard' scientific studies have been reluctant towards using and developing these qualitative concepts, traditionally.

Therefore, we start conceptualizing public values as ambiguous and contested. At a high level of abstraction, they can count on general approval (cf Bozeman's distinction between the public interest- public values; 2007), but as soon as a value has to be operationalized in norms a debate may arise between the actors concerned. Although there is no dispute between advocates and opponents of 'safety' or 'public health', when a concrete plan or project has to be implemented, the prioritization of public values becomes contested. How much do we want to pay for innovation? Is protection of the environment worth it when it diminishes affordability and security of supply? The condition of realizing multiple public values simultaneously may imply painful trade-offs that are not only highly subjective and political, but even hard to oversee at all (Steenhuisen and Van Eeten 2008).

Yet, public values are not equally contested and ambiguous. Therefore, we dichotomize a dimension to specify the nature of different public values in terms of ‘hard’ and ‘soft’ characteristics.

Criteria for softness

Typical soft values are ‘protection of the environment’, ‘customer service’ and ‘quality’. Examples of hard values are ‘efficiency’ and ‘affordability’. We identify five interrelated characteristics for ‘soft’ values (see also Box 1). ‘Soft’ public values are characterized by:

- (1) *Low visibility*. When the lights go out, a sense of urgency is immediately created and ‘security of supply’ will rise in priority. But other values are less visible, e.g. the incremental wear and tear of physical assets is generally less visible and may understate the priority for maintenance. The same is true for long term safety. If dikes are not well maintained, the public value failure (Bozeman 2007) is not visible today; it will only become visible in case of a flood or near-flooding.
- (2) *Poor ability to operationalize*. Some public values are well represented in norms, e.g. the minutes of interruption in drinking water supply or energy supply. Other values are hard to count or to measure, such as ‘innovation’, ‘sustainability’ or ‘safety’. In this respect, Dörner (1989, p. 50) distinguishes a group of ‘negative’ values that are safeguarded by *preventing* instead of realizing directly what is desired. Examples are safety and security of supply. Dörner points out that these values are not easily operationalized. As values remain vague, different actors will employ this term in their advantage, with

different and often conflicting interpretations. When a value is easy to operationalize, this value gains in visibility.

(3) *Low enforceability.* The safeguarding of some values might appear hard to enforce. This problem can be a result of poor operationalizeability, but it can also result from poor governance. For example, when it is not clear what ‘good service’, ‘safety’ or ‘punctuality’ is, it is hard to enforce. The non-enforceability contributes to the risk of public value failure, but only when this public value runs counter the intrinsic motives of the company providing the good or the service. The protection of privacy, for example, does not only concern a public value, but also involves an intrinsic competitive advantage for banks: the banks with the best score in this respect will gain clients. When public values and company interests run parallel, enforceability is not highest priority. In cases however where the public values and the business imperative conflict, enforceability is key.

(4) *Long term.* Immediate problems create a sense of urgency. Problems that play on the long term (e.g. protection of the environment, innovation, accessibility and availability of the utility in the long term) may have a harder time to gain support. For example, large investments need a long time before their merits can be judged. This uncertainty increases the risk that long term values are postponed.

(5) *Contested.* There are many factors contributing to the contestedness of values, e.g. multiple actors often hold different perceptions about values and their prioritization over one another. But they may also differ about the need for achieving this public value. In water management for example, there have been numerous plans that raised conflicting opinions and expertise as to the

Dutch are still safe behind the dikes or whether there should be a huge invest program for updating the dikes (Commission Veerman 2008). The same is true for sustainability of the energy network. There is a lack of consensus between the relevant actors (the Ministry of Economic affairs, political parties, energy companies, the network manager and the regulator) as to what sustainable energy supply should be (nuclear energy or wind energy?) and in what pace or scale the transition towards renewable energy should be made, as the Energy Report and the following reactions by scientists, energy companies showed (Ministry of Economic Affairs, 2008).

It is not only content that is contested. Actors may use separate incompatible operationalizations of a value; there can be a lack of consensus whether a value should be labeled public or private: is agriculture a private value since it is a sectoral value, or is it a public value since this sector is vital for society as a whole? Moreover, critical events may temporarily wipe out the dispute about public values: after a flooding, for example, investments in safety measures are easier to implement than in decades without floodings.

The contestedness of a value makes it harder to raise consensus for the realization of this value, especially when large sums are involved in achieving this public value. Thus, our claim is that a high degree of contestedness contributes to the risk that a public value will not be achieved. These chances slim further when the value is propagated by fragmented advocates.

From the analysis above, we formulate five criteria that contribute to the softness of a public value.

Box 1: Characteristics of hard and soft public values

Hard public values	Soft public values
Visible	Invisible
Operationalizeable	Non-operationalizeable
Enforceable	Non-enforceable
Short term	Long term
Consensus	Contested

Of course, the degree of ‘softness’ is not an intrinsic and static feature of public values. Instead, the degree of ‘softness’ of public values depends on their context. Values can transform from hard to soft, and vice versa. They can be hard and soft simultaneously at different levels or from different actor perspectives. A value may be visible for one actor while other actors do not recognize it. Values may have consensus on a strategic level while being highly contested on an operational level. Besides institutional fragmentation, technological innovations, changing societal preferences, advancing knowledge or incidents may change the degree of softness, too. In response to accidents or events, for example, values advance to the political agenda. Values usually become harder as they politicize. Thus, the label ‘hard’ and ‘soft’ should be seen as situational and time specific instead of an inextricable property of values.

Institutional fragmentation and hard and soft values

The institutional fragmentation holds risks for the realization of public values in several ways. The underlying reasoning is that the transaction chain is split up into separate transactions. Actors involved in the beginning of the transaction chain (e.g.

ministry and the network manager) prioritize different values than the organizations that are involved in the implementation. How can these values that are thought to be important in the beginning of the transaction chain be realized, when these actors are not involved in the implementation?

A specific problem arises with regard to regulation. Scholars have frequently warned that fragmentation denotes the problem of incoherence, as the regulatory state falls apart into ‘splintered arenas’ (WRR 2008). As a consequence, the isolated safeguard for one value potentially damages other values. Studies on ‘multiple principals problems’, for example, discuss a variety of ways in which competing regulatory principals interact and affect each other undeliberately (i.e. Waterman and Meier 1998, Martimort 1999, Dixit 2002, Mattli and Büthe 2005, Miller 2005, Coen 2005).

We argue that the risks of institutional fragmentation particularly put the more ambiguous, less operationalized public values in jeopardy. ‘Softer’ public values generally suffer defeat when confronted with ‘harder’ public values, as will be illustrated abundantly below. We discuss the risks to soft public values along two important contexts of fragmentation: more policy actors and more policy layers (see also WRR 2008). Examples are drawn from our previous research in multiple utility sectors.

More and more heterogeneous actor constellation

In general, privatization and liberalization imply that the number of players involved in infrastructure planning, investment and service provision increases. For example, the separation between infrastructure and service introduced new actors. The promotion of free competition led to many new entrants as well. The number of train

companies in the Dutch rail industry, for example, increased from one to more than thirty in twelve years, the same development is true for telecom companies. In other sectors, we have seen a decrease in service providers, e.g. energy and drinking water companies, as a result of mergers and fusions.

The most relevant point here is not the *number* of actors that has increased, but the heterogeneity of the actor constellation. With liberalization and privatization, regulators have been introduced, public and private investors, contractors and sub contractors. Consumers have organized themselves in ngo's, for example for train passengers.

Consequently, the chance that these actors disagree how to realize and operationalize values also increases. In a fragmented environment, the parties are unlikely to hold uniform views on this issue and this dynamic may be a source of dispute and opposition. In the rail sector, for example, different train companies hold a different view on how to contribute to a smooth traffic flow on a system level. The main train company Dutch Railways is also much more interested in this value compared to small train companies. Such differences in perception make the value soft, its operationalization contested and its enforceability problematic. This responsibility for a continuous and smooth flow of trains used to be in one hand but is now dispersed over many different train companies and the infrastructure manager. Practically, when actors are able to shift the blame of delays to others, this creates barriers for any advocate to enforce this value. In general, values requiring system coordination, either operational or strategic, become softer in a fragmented situation.

Another risk is that the multi-actor setting incites all stakeholders, including many new ones, to harden their value, propagating their own single issue. This is different from the situation in which the public monopolist was responsible for

providing a trade off between all public values. At present, the environment inspection will propagate the value of sustainability; the economic regulator will push for a lower bill for the consumer. In the energy sector, the European legislation and international treaties (Lisbon agenda) push for sustainability, whereas the national regulator mainly steers on the height of the bill for the household (WRR 2008, Chapter 5). Thus, increasingly, values become advocated by specific actors, both in a regulatory and an operational setting. Eventually, these values compete with each other and the trade-off among them increasingly takes place in an inter-organizational setting.

The main risk of this single-issue approach is that this hardening further mobilizes bias against values that resist hardening, compromising the soft values possibly without directly recognizing them. In the rail industry, for example, fair capacity distribution has been formalized and made transparent to cope with the new fragmented conditions. To balance the different claims for capacity, they are hardened in economical terms. The economical comparisons of alternatives gain influence in this decision process. Harder values can be made explicit, but softer values cannot.

In the process of rail capacity distribution again, the economic arguments for efficient maintenance easily overrule the economic arguments of train companies to serve their passengers, mostly because maintenance is much more expensive. Other values, such as a smooth traffic flow, are even much harder to operationalize. The question, for example, is how much resilience operators need, as capacity demands rise, to be in control when disturbances happen. As the required resilience tends to be contested, invisible and not operationalized, much more concrete capacity demands easily shade the contribution of resilience to the smooth traffic flow. The

consequences of a fuller network for the necessary safety risks operators may need to take are neither insightful. The more trains use the train network, the higher the chance on unpredictable situations and train drivers run larger risks when overlooking a red signal. But this risk is a so-called rest risk and quite hard to see and, thus, to account for in the restraining of harder values.

In the meanwhile, many other values do not face the problem of softness. Particularly the new entrants, such as contractors or real-estate developers, bring in their interest to increase efficiency and to maximize profit which is a very ‘hard’ interest. Privatizing airports, for example, may trigger substantial expansions of the airports while taking the often ‘softer’ values of the surrounding municipalities and their secondary infrastructures for granted (Riet 2008).

Looking back, many underestimated public values have lacked a powerful advocate for quite a while. For some public values, there are structural obstacles to become a political issue or, one step further, to put the issue into contracts or procedures. Some public values lack quantitative indicators to base standards on. For example, the accessibility of trains and stations for people with reduced mobility is a highly multi-faceted public value, because of the high variety of ways in which people can be reduced in their mobility. For the blind, this value used to be specified in the prescription of information in braille. This appeared no solution for the many visually impaired passengers who were not able to read braille. Realizing accessibility is relevant in very many detailed aspects of trains and services. This public value needs to be ingrained in the organization and cannot be fully prescribed in rules and norms.

In the gas sector, the dominant steering on price for households by the regulator may hamper investments in long term capacity: the national gas company proposed the idea of the Gas roundabout, meaning that the Netherlands would become

the international hub for gas trade and transport. This plan implied major investments in infrastructures. The industry claimed that these investments would improve the long term availability and capacity for the households. The Dutch energy regulator, however, questioned whether households would benefit from this large investment program and the regulator decided that these investments would burden the captive user too much. The short term value of the height of the bills was given priority over long term investments in capacity.

Thus, one risk is that some public values by nature become softer, triggering trade-offs between values based on their softness instead of their criticality. A second risk is that stakeholders are increasingly incited to harden their own (public) interests in a fragmented environment. Some values, however, are not suitable or able to be hardened.

Underneath both these risks our argument is that trade-offs become less managed in the new fragmented setting. The exact trade-offs with soft values become increasingly subjective and disputable. The fragmented actors are less inclined to recognize values of others and, accordingly, do not need to know as long as these values are softer than theirs. Instead of managing these trade-offs, the involved actors are incited to harden their interests separately. Many new actors are particularly focused on a limited set of values and on the short term gain. Moreover, they are often not familiar with the informal trade-off practices that used to deal with the many interdependencies between public values. The ultimate risk is that trade-offs increasingly become an automatic outcome of the relative softness among interacting values.

More policy levels

The introduction of regulation also involved a separation between regulatory and operational functions in many sectors (Larouche 2008), creating an extra layer of oversight. Various new oversight bodies emerged such as sector specific regulators, price regulators, safety boards and inspection authorities. The new regulatory environment increasingly consists of advocates or guardians, each for a rather limited scope of values, assuring them in norms, procedures or new measures.

Without questioning the direct effectiveness of these regulatory bodies, they may affect other values for reasons that lay beyond their intentions. For example, the Minister of Economic Affairs compelled a 'smart meter' to be newly installed to show customers their use of electricity on a continuous basis. Experts predicted a 10% reduction of electricity consumption, including its positive effects on the electricity bills (Brugh 2008). Simultaneously, this meter compelled the network companies to invest about three billions. The Dutch Advisory Board on Administrative Burdens alarmed that this smart meter increases the administrative burden with 1.2 billion Euro (Haan 2008), whereas another policy aimed to decrease this burden. In the initiating phase of a new project, given the fragmented regulatory interests, administrative burdens are often neither visible nor sufficiently advocated.

In another example, the Inspection Authority of the Ministry of Transport compelled a new safety procedure for passenger trains to depart with all doors closed. This new procedure caused small dispunctualities at each departure, accumulating to an impact of 1.5% less punctuality on a yearly basis (BCG 2005). Nobody predicted these effects on punctuality beforehand. Although punctuality was hardened in concrete norms and enforced with many sanctions, punctuality still appeared soft in an operational context.

The European and international context is increasingly important for the day to day operations in utility sectors. At present, there are no European regulators for the utility sectors, but the international cooperation between the national regulators is increasing rapidly (see WRR, 2008, Chapter 4) leading to firm institutionalization of norms (Groenleer, 2006). Besides European regulation, European legislation is an important factor in defining public values and ways to achieve them. In water management for example, the Water Framework Directive requires an investment of huge sums (RIVM, 2008).

Next, as the regulatory (and political) layer constantly tries to harden values, dispute raises with the operational layer. A major blackout made security of electricity suddenly became a much softer value than expected recently. In response to the blackout, Dutch politicians put forward their desire to increase the security of supply for municipalities at the end of a branch of the main network. Conversely, the industry strongly argued that this reliability was already acceptable, despite the blackout. Accidents and events are frequently framed, first in the media and later in Parliament, as an instant prove that a value is 'not safeguarded'. The utility companies invest much time and effort to shake off these regulatory reflexes to prevent undesirable trade-offs in their view, but the raised concerns and tumultuous distrust do not always allow them. In these situations, given the increased distance between regulation and operation, there is less room to discuss the soft nature of values. In the meanwhile, hardened values, pushed through on politically urgent moments, may 'colonize', in terms of Power (1997), operational resources and push out the soft values.

In other words, the multi-level setting holds the same risk that hardening mobilizes bias against values that resist hardening. There are many more examples to give. In the electricity sector, the regulatory incentives for short term performance are

much more intensive than performance for long term values. The distribution network companies are mainly accounted for yearly, or more frequent, performance standards. Efficiency regulation has direct financial consequences for the company through the regulated tariff system which proved very successful in the past eight years. Long term security of supply, in contrast, is expressed in self-imposed investment plans to provide for 'enough capacity' and 'optimal security of supply' in the coming six years. These requirements exert relatively low influence as they remain without clear operationalization, without obligations as well as without direct financial consequences for the company. Without disputing the realization of public values here, the hard nature of efficiency regulation undeliberately incites companies to push away the realization of longer term values by the industry.

A final example is the non-discriminatory use of rail infrastructure. This value is hardened for various strategic reasons. The infrastructure manager legitimizes its independent role in the industry by regulating this value. Train companies are granted the 'hard' inalienable right to use the planned rail tracks after the planning process as to offer reliable services to their customers. Moreover, to secure fair competition, a specialized Transport Office oversees this non-discriminatory use of rail infrastructure once more. In practice, this uncontested value pushes away other values. The inalienable right for train companies to use their assigned rail tracks prohibits the infrastructure manager to change the plans round again, when there are reasons for doing so in response to disturbed circumstances or unexpected deterioration of the rail tracks. A chock-full but delayed intercity should wait for an empty but punctual local train. The procedure is that the infrastructure manager may propose an alternative plan, but train companies are not obliged to give up their assigned rail tracks. Particularly the new companies operating local trains tend to claim their right of way

without recognizing the softer total of passenger interests from a system perspective. In contrast to the non-discrimination principle, how to serve passenger interests is neither operationalized nor sanctioned in such an intense way inside the infrastructure manager. As a result, passenger interests are constantly vulnerable in conflicts with non-discrimination. Some passenger interests, as for high-speed trains, may make it to the political agenda and lead to specific rules that prioritize these trains. In practice, however, these hardened right-of-way rules further withdraw priority for other passenger interests again that remain soft.

Interim conclusion

A common contention is that ‘soft’ values suffer defeat from ‘hard’ values. We showed that the emerged institutional fragmentation in utility industries increases the risks of undeliberate trade-offs between soft and hard public values. The trade-offs between them are increasingly left over to the soft or hard nature of values. In the meanwhile, the fragmentation has the effect that some values become softer and other values harder. Therefore, the risks for soft public values need our particular attention when thinking about safeguarding public values in the new institutional landscapes of the utility sectors.

Realizing soft public values under conditions of fragmentation

Our remedy against the soft values in jeopardy treat the current fragmented context as well as the ambiguous nature of values as given. We contrast our remedy with the straightforward solutions to turn back fragmentation, what we consider not opportune, or to harden these soft values.

It is often tried, as described above, to convert the inherent ambiguity of values into non-ambiguous operationalizations but not without risks. There will always be soft values left over that require more sensible trade-offs. Striving for strict and explicit performance regimes may even cause perverse effects (cf de Bruijn, de Bruijne and Steenhuisen 2008). It may generate conflicts. It deprives public values of all dynamics. It becomes more difficult to make new trade-offs between public values when circumstances change. It may be impossible to use new opportunities that present themselves. In other words, public values are frozen in norms, but the underlying value remains fluid in the meanwhile.

Instead, we consider the need to treat public values as inherently ambiguous. The ambiguity of public values is not only a given, but preserving this ambiguity is desirable from a normative perspective. Elsewhere, two of us show how ambiguity *enables* actors with very opposite perceptions opinions to start a process that brings them to cooperate while coping with the ambiguity (cf Dicke, Steenhuisen and Tijink 2007). If opposite opinions of public value definitions need to be fully negotiated before cooperation can start, it may take much more effort and time for cooperation to become balanced and productive. A process tries to approach tries to approach consensus on public value definitions without necessarily reaching it. Maybe the involved actors will disagree on definitions, but agree on safeguarding mechanisms. Maybe at first they will disagree about both, but will nevertheless end up with an agreement by compensating each other on other issues. The process will thus result in *negotiated public values* and *negotiated safeguarding mechanisms*. In the next section, we further elaborate on this ‘soft’ solution for realizing soft public values in the institutionally fragmented setting.

Process management as a remedy for soft values in jeopardy

How can a process approach contribute to safeguarding soft public values? In general, in a process actors might negotiate on the definition of a public value, the way the public value should be safeguarded and each actor's contribution to the safeguarding mechanisms: who will do what in order to safeguard the public value.

A process approach can be positioned against a hierarchical, command and control-like approach, common to governmental oversight bodies assigned by law to protect a certain public value. Command and control would imply that government defines soft public values unilaterally and imposes safeguarding mechanism upon a utility sector. In most cases one might seriously doubt the efficacy of this strategy. In a multi-actor setting, government simply does not have the power to govern unilaterally.

If a shift from hierarchy to a process of interaction is necessary, the question is how such a process might get shape and what different roles governments might take. We will briefly discuss these questions.

How do these processes get shape?

A first way of using the process approach is the most simple one: governments might consult market parties before they decide upon public value definitions and safeguarding mechanisms. These parties can put forward their opinions and government can subsequently take actions. For example, in The Netherlands, the Minister of Public Transport agrees on an annual 'vervoersplan' that Dutch Railways, currently by far the largest provider of passenger rail services, draws up. In this plan, multiple performance standards for public values are set and insight is given in how to attain them. This plan is the result of a process of consultation. Multiple consumers'

associations, representing a wide variety of interests, are consulted in the process of making this document before it reaches the Minister. These iterative consultations address a much richer content and broader focus than the exact performance standards. This is the most basic way processes contribute to the safeguarding of soft public values. It will be clear that this only works if there is a certain degree of consensus between the market parties and if these parties partially depend upon government. In a world of dissensus and strong interdependencies between government and market parties, this approach will probably not work.

The alternative to consultation is negotiation. This is what we see in many utility sectors: governmental agencies negotiate with a utility sector on hard and soft public values. The percentage of green electricity to be delivered by the electricity sector might be the result of a negotiation. In many cases an issue like this will be coupled to other issues, e.g. government making space available for wind energy parks.

A second way of using this approach has to do with the role of government. Government might keep at bay of the process and focus on creating an institutional context, in which the process should develop. Another Dutch example: a few years ago the national government needed to conclude a new service level agreement with Dutch Railways. Two issues were high on the agenda and created much public unrest: the 'quality of service' of Dutch Railways and a possible increase of ticket prices. It proved to be very difficult to define quality of service in an unambiguous way because the different societal players had completely different opinions on what this definition should be. Instead of imposing a definition and a safeguarding mechanism, the minister allowed these actors to negotiate on these issues. If they reached

agreement, the minister promised to formalize this, which created a strong incentive for the parties involved to come to an agreement.

In this process of negotiations, the issue of quality of service was coupled to the issues of ticket prices. In the end, the parties had created a package deal, with a number of measures Dutch Railways would take, in order to increase the quality of service. If Dutch Railways managed to do this, it would be allowed to increase its tariffs. Subsequently, the minister inserted this agreement in the service level agreement.

The alternative here is that a government participates in the process itself. This all results in four types of processes: consultation or negotiation and governments as participant or as non-participant in the process. What are the roles governments might take in these processes?

Roles

If government participates in a process, we see three roles:

- One of the parties. Government might be one of the consulted or negotiating parties. It has its own opinion on how a soft public values should be defined and what safeguarding mechanisms are appropriate. It will put forward its opinion and the result of the process will strongly depend upon the negotiation skills of its representatives.
- A balancer. Government might be a 'balancer'. If some soft public values are underrepresented in the arena and other are well represented, government might take a stance in favor of the underrepresented values. Here, the result of the process will also depend upon the skills of the representatives.

- A process manager. Government might manage or facilitate the process. It will invite the actors that should participate, will design an agenda, structure the consultation or negotiation, intervene if needed, et cetera. In most cases this role does not allow government to take an outspoken stance, since a facilitator is supposed to be a more or less neutral player.

If government does not participate in the process, there are three other roles.

- A process architect. This is what we saw in the case of Dutch Railways. Government designed a process, like an architect designing a building. The architecture of the process is about the rules of the game actors should use, in order to reach an agreement. Who will be invited? Who will design the agenda? What if parties reach consensus and what if they do not manage to do so? Inherent to this role is that government might step in to formally codify the result of the process. This makes the process very attractive to the participants. The architecture of the process should guarantee that the result remains within the governments policy framework.
- Interventionist after the process has failed. If a process like the negotiations on the price/quality ratio with Dutch Railways fails, this might be a breeding ground for a more or less hierarchical intervention by government. The parties have had the opportunity to arrange the issue of quality of service themselves. When they would not have succeeded, this would legitimize an unilateral action by government. This is a well known mechanism: a process that failed might create an opportunity for government, if at least government did not participate in this process (De Bruijn and Ten Heuvelhof 2008).

- Designer of The Shadow of Hierarchy. Given this mechanism, government might announce, formally or informally that it will intervene hierarchically if parties do not reach consensus or if the results are inconsistent with public policies. This is called the Shadow of Hierarchy: the announcement casts a shadow over the process. This might of course be perceived as blackmailing but, dependent on how this has been announced, it might also be a strong incentive for the parties in the process to reach an agreement, consistent with public policies.

Many of these six roles can go together. Government might design the process, a politician might create the Shadow of Hierarchy and announce that unilateral intervention are imminent if parties do not reach an agreement. Subsequently, other governmental officials might participate in the process of consultation of negotiation. Given the variety of roles, there are many opportunities for governments to have their impact on the outcome of the process, without ignoring the reason of using the process approach: the ambiguous character of soft public values and the many interdependencies between governments and market parties.

Conclusion

This article identified risks for 'soft' public values due to the conditions of institutional fragmentation, as a by product of the liberalizing and privatizing reforms. The fragmentation brings strategic possibilities for actors to harden their (public) interests and to gain advantages in less surveyable trade-offs that occur in the fragmented multi-actor constellation. This puts public values in jeopardy when they

are non-quantifiable, contested and invisible or only visible on the longer term, in short: soft.

We argued that safeguarding public values is not automatically helped when government enhances governance for some of them. Therefore, we worked out some alternative roles of government that addresses the relative ambiguity of public values: to design and manage a process of interaction. In this process of interaction the fragmented actors try to reach consensus on the public value definitions and safeguarding arrangements. Actors can put forward their opinions on public value definitions. This process allows public values to be contested, ambiguous and fluid over time, thereby, restoring the room to discuss the softness of public values that fragmentation took away.

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