



## Modern Politics in Animal Welfare: The Changing Character of Governance of Animal Welfare and the Role of Private Standards

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**Abstract.** Political scientists generally agree that there has been a change in the political arena of modern societies: a shift from government towards governance, a process often referred to as political modernization. Some evaluate this development as positive, allowing for more direct democracy and more effective policymaking, whereas others are concerned about democratic legitimacy and accountability. This article examines whether the rise of private standards in animal welfare politics does provide a good example of political modernization, and whether it indeed creates a more democratic and more effective mode of policymaking. Using the framework of political modernization, we examine whether the collaboration of retailers and non-government organizations (NGOs) in developing private standards in Europe, and especially in the Netherlands, can be interpreted as a new political arrangement involving a new coalition of actors, a new discourse about animal welfare, and new rules of the game. Our analysis of these private animal welfare standards confirms, and challenges, the assumptions often made about the modernization of politics. Our analysis shows that private standards have indeed replaced the implementation of stricter animal welfare legislation. The collaboration of retailers with NGOs and farmers' unions may be interpreted, to some extent, in terms of more direct political participation by citizens and stakeholders. However, given the powerful position of retailers in the European food market (a power that transcends massively that of farmers, consumers and citizens), there is also a clear need to analyse carefully the social, economic and legal consequences of this governance shift, which gives private actors regulative authority without them being bound by the democratic rules that serve as a check on whether state regulation serves the common good.

### Introduction

Animal welfare is a significant policy issue, notably in Europe where citizens, governments, producers and traders are making efforts to protect animals from unfriendly farm practices (Buller and Morris, 2003; Bayvel, 2004; Thiermann and Bab-

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cock, 2005). The globalization of animal production and trade has, however, made animal welfare a global issue (Bayvel, 2004; Thiermann and Babcock, 2005; Fraser, 2008). In the context of (inter)national discussions about the regulatory options for animal welfare, the traditional national regulatory tools (such as legislation) are challenged by trade liberalization and governments' international commitments. Stricter national animal legislation may weaken the competitiveness of national production in the world market, as it generally implies extra production costs (Eurogroup for Animal Welfare, 2000; WTO, 2000; Horgan and Gavinelli, 2006). Equally, imposing domestic legislation on imported products may lead governments into trade conflicts since it is unclear how non-trade concerns, such as animal welfare, should be accommodated within the World Trade Organization (WTO) legal framework (Blandford and Fulponi, 1999; Hobbs et al., 2002a).

The case of Europe provides a fruitful platform for exploring the regulatory evolution of animal welfare governance. Animal welfare receives more legislative attention in Europe than in any other region (Van Horne and Achterbosch, 2008). Europe has a comprehensive body of legislation aimed at ensuring the welfare of farm animals during farming, transport and slaughter (Blandford and Fulponi, 1999). But increasingly animal welfare measures are being enacted by non-state actors. Several European supermarkets, non-government organizations (NGOs) and industries are involved in joint initiatives to protect animal welfare (Blandford and Fulponi, 1999; Veissier et al., 2008). The engagement of private actors in developing measures that address societal concerns is not an exclusive feature of animal welfare governance. Non-state actors are involved in a similar fashion in several policy fields: such as forestry (Forest Stewardship Council), fisheries (Marine Stewardship Council), food safety and food quality (GlobalGap, Tesco's Nature, Carrefour's guarantee of origin) and Third World producers (Max Havelaar). Some scholars (e.g. Cashore et al., 2007) suggest that the engagement of private actors with emerging social concerns may well be explained by a frustration with failing (inter)national governments and public policies. However, there are also other explanations. Ransom (2007), for instance, identifies the rise of private animal welfare standards as a case of institutional isomorphism, with standards being adopted as a result of the institutional pressures from other organizations (e.g. WTO, OIE,<sup>1</sup> competing food retailers). In contrast to many studies, which view the emergence of animal welfare standards as a response to the failure of the state or a response to consumer demands, Ransom's analysis (2007) emphasizes how isomorphism, which involves coercive, mimetic and normative processes, may provide a better explanation of the emergence of private (animal welfare) standards. While this approach is relevant to understanding how organizations influence each other, and why some develop private standards, it has a limited value for understanding the political implications of the engagement of non-state actors in animal welfare governance. The latter is what this article focuses on: we want to advance our insights into what the emergence of private standards means for animal welfare politics and how it interrelates with changes in the policymaking process.

The pursuit of improvements on the welfare of farmed animals by means of private standards reflects the on-going reorganization of policy processes that derives from the changing interrelations between state, market and civil society. The emergence of new formal and informal institutional arrangements between state and non-state actors and the emergence of new policy instruments such as private standards has been described in most political science literature as shift from government to

governance. The notion of 'governance shift' draws attention to the new set of self-governance and co-governance mechanisms, involving state and non-state actors, which has been developed alongside traditional government regulation. Among the emerging governance mechanism are the private scheme standards. In legal terms, private scheme standards is conceived as a regulatory instrument known as soft law or private regulation (Boström and Klintman, 2006; Henson, 2008). In political science they are referred to as innovative policy instruments (Arts, 2002; Cashore, 2002; Newell, 2009; Wouters et al., 2009).

To explore the on-going transformation of animal welfare policy in a way that contemplates the new practices of governance we apply the framework of 'political modernization'. Originally developed in studies of environmental policy and ecological modernization (Mol, 1995), the framework of political modernization may also be applied to other domains (Arts et al., 2006), including animal welfare. It is a useful framework to explain the occurrence of new policy practices and development of new arrangements in relation with broader structural changes in politics and society at large. A short introduction to 'governance shift' and political modernization is presented at the beginning of the article. Next, the article brings an overview of the evolution of animal welfare policies in Europe, indicating the most salient periods in terms of governance shift. The next section explores the on-going transformation in animal welfare policymaking in Europe (and especially in the Netherlands) by focusing on the emerging coalition of actors, the rules of the game, the distribution of power and resources, and the discourses surrounding animal welfare. The article then explores the potential consequences of modern governance for the democratic processes of policymaking before concluding by discussing the significance of private governance for international trade.

### **Governance Shift and the Renewal of Policy Arrangements**

Over the last decade, the notion of *governance shift* has become a widely used and popular concept in policy studies. Although used slightly different in every study, it has at its basis some generally accepted core ideas, assumptions and propositions (Van Tatenhove and Leroy, 2003; Walters, 2004; Arnouts and Arts, 2009; Arnouts et al., 2011). According to Rhodes (2007), governance shift refers to a *new* process of governing, a *changed* condition of ordered rule and *new* method of governing society. Walters (2004, p. 31) describes it as a change in the 'mechanics of governing'. In most publications, this change is depicted as a threefold trend that embraces: a move beyond the 'classical/traditional' model of state-led government; the development of formal and informal institutional linkages between governmental and other actors (known as a 'policy network'); and the blurring of boundaries between state, market and civil society (Rhodes, 2007; Arnouts and Arts, 2009). These trends result in the increasing participation and influence of non-state actors – such as NGOs and business – at all levels of policymaking (Arts, 2002). As a consequence, doing politics is no longer the exclusive privilege of the representatives of state institutions.

This is part of a broader process in which a constellation of 'sub-politics' (Beck, 1992) is emerging alongside state-centred politics. Outside the formal political sphere of action, private actors are making use of innovative arrangements to 'sub-politically' rule or alter some policy domains. This gives rise to different modes of governance, such as self-governance and co-governance, which are challenging, transforming and complementing traditional steering mechanisms (Mol, 2003, Van

Tatenhove and Leroy, 2003; Van Leeuwen and Van Tatenhove, 2010). Examples of these new governance tools include public–private partnerships, voluntary agreements, covenants and soft law. These new governance tools are described, with some enthusiasm, as being more effective, more participatory and, hence, more directly democratic than traditional hierarchical government (Swyngedouw, 2005; Arnouts and Arts, 2009). But there are also concerns since these new forms challenge the traditional position and monopoly of the state as the primary source of regulatory authority (Walters, 2004; Pattberg, 2005).

Some scholars have theorized governance – as an arrangement of governing beyond the state – as representing a political shift towards government without the state (Rhodes, 1996; Stoker, 1998). Others conceptualize it in terms of political modernization that creates a new role for the state but does not imply its complete withdrawal (Mol, 2003; Arts et al., 2006; Arnouts et al., 2011). Political modernization refers to processes of ‘structural conditioning’ that renews policy arrangements and implements a new style and practice of governance. The policy arrangement approach is a useful tool for obtaining insights into how these structural processes of change are reflected in new policy practices (Arts et al., 2006; Arnouts et al., 2011). We use this approach to explain the changes in the animal welfare policy domain in Europe in terms of its content and organizations based on four analytical dimensions. The first dimension focuses on the *actors* involved in a policy domain and the *coalition(s)* they form with each other. The second dimension deals with the *power relations* between actors, where power constitutes the ability to mobilize *resources* in order to influence policy outcomes. The next dimension involves the *rules of the game* in terms of formal procedures for establishing policy. Finally, the fourth dimension explores the enacted *discourses* of the actors involved: their views, values, narratives, definitions of problems and approaches to solutions. However, before analysing the changes in each of these dimensions, we present a brief overview of the recent evolution of the animal welfare policy domain in Europe.

### **The Animal Welfare Policy Domain in Europe**

In the early days of animal welfare policy, regulations were predominantly implemented by state agencies. Today, however, the progressive emergence of private standards suggests that animal welfare is changing from a state-centred to a market-centred policy domain. In this section we present a brief overview of the development of European animal welfare policy, highlighting those periods that are most indicative of this transformation.

The establishment of the Brambell Committee in 1965 by the British government marks the beginning of a European animal welfare policy domain (Mench, 1998; Buller and Morris, 2003; Ransom, 2007; Veissier et al., 2008). This committee attempted, for the first time,<sup>2</sup> to look beyond the prevention of cruelty to animals and elaborated the concept of animal welfare (Woods, 2011). The Committee was established in the wake of the publication of the book *Animal Machine* by the British journalist Ruth Harrison in 1964. This book exposed the poor conditions under which farm animals were raised, and accused producers of placing profitability above animal welfare considerations. The author also questioned the quality of the food derived from animals raised under these conditions. The Brambell report initiated the debate on suffering and the behavioural needs of animals (Mench, 1998) and gave rise to the idea of ‘five freedoms’ for animals. This concept was later refined by the Farm

Animal Welfare Council (FAWC), the United Kingdom government's advisory body on farm animals; today the 'five freedoms' serve as a guideline for governmental and commercial policies for animal welfare (FAWC, 2009).

In the following decades there was an increase in public regulation, with the establishment of specialized public institutions and an increase in national and supranational legislation to implement minimum standards to ensure animal welfare in modern livestock systems (Mench, 1998; Appleby, 2003; Veissier et al., 2008). In several European countries governmental departments were created to work specifically on animal welfare policies. These include the FAWC (Farm Animal Welfare Council) in the United Kingdom and the RDA (Raad voor Dierenaangelegenheden)<sup>3</sup> in the Netherlands. In addition, several European governments implemented animal welfare laws: the United Kingdom in 1968, Sweden in 1988, and the Netherlands in 1992. Supranational public policies also emerged including: the 1968 EU Convention for the Protection of Animals during International Transport, the 1976 EU Convention for the Protection of Animals Kept for Farming Purposes, and the 1979 EU Convention for the Protection of Animals for Slaughter. A significant change in European law regarding animals occurred 1997 with the inclusion of an animal welfare protocol in the Treaty of Amsterdam. Notably, this protocol refers to animals as sentient beings, a significant change considering that animals figured as commodities in the previous treaty.

Another important period started with the outbreak of several farm animal epidemics, specifically bovine spongiform encephalopathy (BSE) and the discovery of a variant of Creutzfeldt-Jacob disease (vCJD)<sup>4</sup> in 1996. The BSE crisis undermined consumer trust in food safety but also in the government and public systems for controlling food safety (Latouche et al., 1998; Guivant, 2002; Oosterveer, 2002, 2005). In an attempt to recover their credibility in these areas, national and European policymakers implemented more stringent policies. The significance of these policies in the context of this article is that they led private actors to become more actively engaged in regulating farm animal welfare (Hobbs et al., 2002b; Maciel, 2009). This move was motivated partly by the inclusion of business responsibility in European legislation of food safety, alongside the UK's notion of the 'due diligence' defence (Hobbs et al., 2002b). The 'due diligence' defence protects actors from liability if they can prove to have done their utmost to avoid causing damage.<sup>5</sup> This leads food companies to establish systems to demonstrate that they take sufficient measurements and precautions to assure that the food they purchase, handle and sell is safe for human consumption (Vuylsteke et al., 2003; Henson and Humphrey, 2010). They began to introduce various private scheme standards or quality assurance schemes, which have proliferated rapidly ever since. The introduction of these private voluntary production schemes marks the beginning of a gradual and on-going shift towards private governance.

Today, food retailers play a very important role in food governance (Lang and Heasman, 2004) and retailers are constantly expanding the range of animal-friendly products on their shelves, thereby contributing to the diffusion of animal welfare measures throughout the meat production chain (Buller, 2010). Animal welfare concerns have become part of the corporate social responsibility agendas of many food companies, to the extent that corporate brands include animal welfare criteria specifically (Buller and Roe, 2011). Animal welfare appears as a component within the following retail brands: Natural Choice of Tesco (UK), Filiere Qualité of Carrefour (FR), Naturama of Esselunga (IT) and puur&eerlijk of Albert Heijn (NL). All these



examples are private standards schemes that are led by the retailer, acting alone or in cooperation with an NGO. The collaboration between these two private actors reflects another major change in policymaking on animal welfare. In the past, most NGOs tried to influence policymaking by means of educational campaigns about ethical issues in livestock production that were aimed at consumers. Nowadays, the work of many NGOs entails lobbying and awards. For instance, Compassion in World Farming (CIWF) has run the Compassionate Supermarket Award, the Most Improved Supermarket Award and the Best Volume Retailer Award since 2000 (CIWF, 2007). These biennial awards are based on a survey of British supermarkets, which tracks their commitment to improving the lives of farm animals. Some NGOs even engage in regulatory activities and developing private standards. For example, the (British) Royal Society for the Prevention of Cruelty to Animal (RSPCA) created the Freedom Food Scheme, and Dierenbescherming (the (Dutch) Society for the Protection of Animals) has designed the Beter Leven quality scheme. This scheme will be discussed further in the next section alongside an exploration of the extent to which these developments can indeed be interpreted as a shift from government to governance.

### **Toward a New Animal Welfare Policy Arrangement**

The concept of a policy arrangement allows one to distinguish analytically between the content and the organization of a policy domain. The organizational aspect is analysed along three dimensions: 1. the actor coalition involved, 2. their power relations and resources, and 3. the rules of the game that regulate their behaviour. The content of a policy arrangement is analysed as an additional dimension that regards 4. the policy discourse enacted (Arnouts et al., 2011). Applying this analysis to animal welfare politics reveals the following features. In the early years of animal welfare policy, the policy arena was dominated by state agents, the main and most powerful actors and non-state actors could exercise influence through elections and lobbying elected representatives (Arts et al., 2006). Recently, however, the general process of political modernization has allowed for non-state actors to participate directly and be actively involved (e.g. Mol, 2000; Van Tatenhove and Leroy, 2003; Arts et al., 2006). This has offered opportunities for the collaboration of new and sometimes unexpected coalitions. Indeed, in the case of animal welfare, many actors who previously were in conflict now approach each other, and there are a number of examples where NGOs and businesses have turned from confrontation to collaboration.

The awards system run by CIWF, mentioned above, that gives 'good' supermarkets positive publicity (instead of calling out the 'bad' ones) is one example. The collaboration of the Dutch animal protection organization (Dierenbescherming) with major Dutch food enterprises is another. In 1988, Dierenbescherming and VanDrie, the world's largest veal producer, began to work together in developing a new, animal-friendly veal production programme. The production of 'baby beef' is a highly contested animal welfare issue because the animals – veal calves – are kept in conditions that severely restrict their movement and strictly control their diet, to obtain the desired white colour and soft structure of the meat. Together these actors have come up with a programme to enhance the welfare of veal calves. The agreed points include an enriched diet to prevent anaemia, and group housing to allow greater mobility and group interaction. This led to the introduction of a new product on the

market – pink veal meat. This meat was expected to be considered more acceptable by Dutch consumers because of the more animal-friendly production circumstances but still meeting the expectations of a tender meat quality of Italian consumers, who constitute the most important market for Dutch veal. Veal producers were actively involved in establishing these regulations, which ensured their support and commitment to the scheme.

Looking for partners who are willing to work towards change by developing a common definition of problems as well as looking for solutions is a vital step in establishing a stable policy arrangement and a coalition that may be expanded. Here, again, the collaboration between Dierenbescherming and VanDrie provides an interesting example. The partnership, which was initially based on knowledge exchange and advice, has expanded through the years with the inclusion of supermarket chains and the development of a large range of standards for various farm animal products (VanDrie Group, 2013). The scheme is now known as Beter Leven (Better Life) (Dierenbescherming, 2013). It is owned by Dierenbescherming and functions in the following way: the NGO compiles a list of criteria for the welfare of a given farm animal species; farmers and meat industries interested in having their product certified as welfare friendly ask to be evaluated against those criteria. The NGO awards producers between one and three stars (according to their performance against the criteria), which are published on the packaging of the products sold in the participating supermarkets.

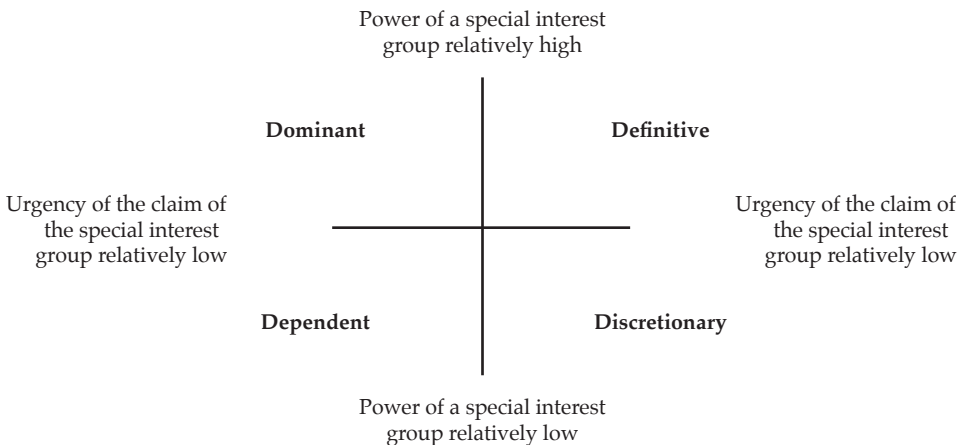
Another Dutch example of multi-actor collaboration for raising the welfare of farm animals is Rondeel (Roundel) (World Poultry, 2010). It is a circle-shaped layer house for chickens that was developed through close cooperation between public and commercial agencies. This type of alternative housing was designed with a view to balancing public acceptance, the well-being of the farmer and the welfare of the birds. The Rondeel concept is the result of a government project that was launched in 2003. It involved livestock specialists from Wageningen University Research, farmers, Dierenbescherming, consumer organizations and the Albert Heijn supermarket chain. Rondeel eggs are sold in a seven-piece pack made of coconut fibre and are sold exclusively by Albert Heijn. Albert Heijn also launched a new corporate brand in 2009: AH puur&eerlijk (AH Pure and Honest). AH puur&eerlijk consists of five different categories of products that have been 'produced, grown or sourced with extra care for people, animals, nature or the environment' (Ahold, 2010, pp. 18). Compliance with these standards is certified by an external organization, which in the case of animal products is the Dutch NGO Dierenbescherming.

Glasbergen and Groenenberg (2001) suggest several reasons why such coalitions are now emerging. Businesses have an interest in the new economic opportunities that market differentiation (such as private labels) brings. In addition, private labels are also important for building a reputation. Such coalitions are attractive to NGOs as they seem to be more effective in achieving real results than their traditional education and lobbying activities. Each group sees a real benefit from joining forces and exchanging resources within such a policy coalition. The NGOs provide political legitimacy to businesses working with farm animals and their products, while the businesses can develop economic and pragmatic strategies for improving animal welfare (Ingenbleek and Immink, 2010). Returning to the example of Beter Leven, we can say that Dierenbescherming depends upon the readiness of other chain actors to put their standards in practice, while the producers and retailers depend upon Dierenbescherming to validate their trustworthiness and create 'public accept-

ance'. Thus, to some extent, as Arts et al. (2006) state, coalition actors are dependent on each other's resources to achieve policy goals and to strengthen their position in a policy network. The idea of resources is intrinsically linked to the concept of power, which is why, in the operationalization of policy arrangements, power and resources are tied together (Arts et al., 2006). Policymaking is 'a multi-level power game' in which actors need to mobilize resources (e.g. money, knowledge, expertise, reputation, bargaining) to be able to act together to create a desired policy outcome. (Arts and Van Tatenhove, 2004, p. 353).

Ingenbleek and Immink's (2010) study of corporate social responsibility standards in the Netherlands illustrates this aspect well. Drawing upon the concepts of power and urgency<sup>6</sup> derived from stakeholder identification theory and decision process analysis, their study examined four animal welfare standards in the Netherlands. According to their findings, NGOs can acquire four different positions (shown in Figure 1) that are defined by their relative power and the perceived urgency of their claim.

In a case of low urgency, NGOs with little power will be in a position of *dependency*. Ingenbleek and Immink (2010) use the example of minimum standards for pork sold in supermarkets to illustrate this position. Common standards for pork were established by the Dutch retail association without any significant involvement of the animal protection group. By contrast, the NGO holds a *discretionary position* for veal, because of the contested nature of veal and the resultant high urgency of the claim. Whereas in the first example, the NGO needed to rely on the willingness of businesses to implement animal welfare criteria above the legal requirements, in the second example they could use their legitimacy and credibility among consumers to negotiate for higher production standards for veal calves. In cases where NGOs have considerable power, and the claim is urgent, they can gain a *dominant* position. When a new brand of poultry (Volwaard) was being formulated (Volwaard, 2013), the Dutch NGO held a *dominant* position as poultry welfare was a high-profile public issue. Lastly, when negotiating standards for organic pork the Dutch NGO held a *definitive* position because organic production is of interest to many Dutch citizens.



**Figure 1.** Typology of special interest groups involved in formulating CSR standards.



Being in a powerful position also generates the possibility of effectively influencing the policy discourse (e.g. Arts et al., 2006; Liefferink, 2006).

Policy *discourses* constitute an important dimension of a governance arrangement as they reflect the way in which a policy issue, such as animal welfare and its solution, is framed (Ingenbleek et al., 2007). When entering a policy coalition the actors import their norms and values, which eventually affect the formulation of the agreed policy instrument (Liefferink, 2006; Ingenbleek and Immink, 2010). Private policy instruments, such as scheme standards, contain discourses about animal welfare that range from focusing on the credentials of the end-product to a heuristic concern with the naturalness of animal lives. The Welfare Quality® project analysed various examples of private standards and their discourses about animal welfare (Veissier et al., 2008). It identified three main storylines around animal welfare. First, in a large number of private standards, animal welfare was presented discursively as a quality and/or safety component of the end product. These standards usually include animal welfare as one criteria among many regarding quality and safety in farm assurance schemes, and offered little improvement beyond existing legal regulations. Most of the standards within this discourse are designed by retailer or farm associations (Veissier et al., 2008). The second discourse, presenting animals as sentient beings is mainly found in standards designed by NGOs. Because animal welfare is the main (if not the only) goal of the standard, they tend to surpass legislative (national and European) standards. Examples of this category are Freedom Food in the UK designed by the RSPCA and the Beter Leven standard in the Netherlands designed by Dierenbescherming. Third, animal welfare has also been framed as a component of organic production. Organic standards generally prescribe animal welfare practices that are above the level of existing legislative standards but do not focus exclusively on animal welfare; it is included as one of the pillars of organic production. Examples include KRAV in Sweden, Debio in Norway, Soil Association in the United Kingdom, Agriculture Biologique in France, SKAL in the Netherlands, and AIAB in Italy. Besides these three narratives about animal welfare, these arrangements also include two other major discourses. The first is a discourse about political innovation and the changing relationships between state, market and civil society actors, now acting as partners in a coalition for a shared goal instead of as competitors or opponents (Arts, 2002). Second, all three schemes include a discourse of animal welfare as representing added value: an opportunity for market differentiation and additional quality, rather than as being an additional burden to the meat production economy (e.g. Fearne, 1998; Lindgreen and Hingley, 2003).<sup>7</sup>

Finally, the entrance of non-state actors into the policy field of animal welfare and their shift from a position of confrontation to one of collaboration reflects a change in the *rules of the game*. The rules of the game determine how policy outcomes are achieved, and which procedures are to be followed (Arts et al., 2006). Private standards differ from legally set public national standards in two ways. First, state policies aiming to protect animals are usually set within the framework of administrative or criminal law (Bloom, 2008). Thus, a breach of public animal welfare standards is framed as an animal cruelty offence or a failure to comply with administrative requirements for farm animals. By contrast, private standards frame animal protection in terms of a voluntary agreement between parties, placing it (in legal terms) in the realm of contract law between non-state actors (Van der Meulen and Van der Velde, 2008). Second, private standards diverge from traditional government regulatory structures by employing a different form of authority for assuring compliance.

While the state uses its sovereign authority to ensure conformity with its regulations, non-state actors use their 'market authority' (Cashore, 2002; Mol, 2010). These two distinct characteristics of private governance are often portrayed as giving it an advantage over public standards (e.g. Fulponi, 2006; Garcia Martinez et al., 2007). They presume that a voluntary commitment increases compliance and, hence, assures better results. In addition, it is argued that private scheme standards are more flexible as they can rapidly adapt in response to new socio-economic opportunities or pressures. In contrast, changes in public regulations take a long time as they require lengthy bureaucratic (inter)national negotiations (Arts, 2002).

The analysis of the four dimensions of policy arrangement leads us to conclude that the practice and institutional organization of the political arena for animal welfare in Europe has indeed changed. Private scheme standards for animal welfare are a clear example of modern policy arrangements. The establishment of new coalitions of actors, the mobilization of resources, the redefinition of rules of the game and the enactment of new animal welfare discourses are all, to a varied extent, embodied in every private standard. Since these private policy instruments are gaining more importance as a complement to (or even replacement of) traditional 'command and control' state instruments (Veissier et al., 2008) we can also consider private standards as a manifestation of political modernization: entailing a shift from primarily state-initiated regulatory strategies towards new styles and practices of animal welfare governance (Van Tatenhove and Leroy, 2003). Such a shift offers new opportunities for using the market to achieve animal welfare, as the examples above have demonstrated. But there are also reasons for concern.

### **The Implications of Market-based Governance of Animal welfare**

The emerging European policy arrangement seems a very promising way to deliver improved animal welfare. Modern governance tools have proved effective in changing the behaviour of actors along the chain (Cashore, 2002; Konefal, 2010) and in pushing standards beyond the minimum legal requirements (Codron et al., 2005). A survey carried out by Fulponi (2006) revealed that 33% of retail-driven animal welfare standards in the EU are significantly higher than state regulations and 50% of them are slightly higher. It has also been argued that private standards contribute to reducing transaction costs, as they promote coordination along the chain (Farina et al., 2005; Henson and Reardon, 2005). Furthermore private standards have no jurisdictional boundaries and so can be implemented at any geographical scale. This characteristic is of particular importance as it enables private actors to act where governments generally lack competence for regulating production processes in third countries. With all these features, it is not surprising that market-based governance is gaining prominence over public regulation (Van der Meulen, 2011). However, there are equally important aspects of private governance that give reason for concern.

Opening up the political process to non-state actors enhances democracy, in theory. Nonetheless, given the current imbalance of power among the chain actors and the undemocratic institutional design of most private standards systems, one may question if political modernization benefits all actors equally. One may also question what sort of standards and rules are likely to be generated in such circumstances. One should not forget that the shift from government to governance is taking place in an economic scenario that favours transnational corporations (TNCs). In many countries food retailing corporations are privileged actors when becoming oligopo-

lies through the process of on-going concentration in this sector (Busch and Bain, 2004; Konefal et al., 2005). This is particularly evident in Europe (Henson, 2008). In Norway, for instance, four retail groups account for 82% of the total grocery market. The Swedish market is dominated by three major organizations that control 95% of the market. In the Netherlands 75% of total food sales take place in supermarkets. Similar scenarios are found in the United Kingdom, where four big retailers dominate the market (Roex and Miele, 2005).

This large market share has enabled food retailers to increase their bargaining power in relation to their suppliers (Lang and Heasman, 2004; Konefal et al., 2005; Henson, 2008; Bain, 2010). The unequal power relation between food retailers and suppliers allows the former to arrange governance (of animal welfare) in a way that best serves their interests. Oligopolistic conditions influence the content and the organization of a policy domain, since the actor with the most power (and resources) can influence the three other dimensions of a policy arrangement. Food retailers are more powerful than their suppliers<sup>8</sup> and are in the privileged position of choosing which actors to include in a coalition, which discourses to enact and the rules of the game. Research on the Chilean fresh fruit export industry illustrates this dynamic where ‘a handful of retail giants’ has the authority to establish and enforce standards and rules and, in doing so, determines who can (and cannot) participate in the export chain (Bain, 2010, p. 17). Equally, the Dutch examples of animal welfare governance (discussed above) revolve around the same group of actors: the biggest Dutch supermarket and a Dutch NGO with a moderate approach. NGOs with ‘fundamentalist or radical’ ideologies are marginalized (Mol, 2000, p. 51).

The prevalence of these groups of actors results in a reformist discourse that defines animal welfare in terms of extra product quality, instead of a discourse that aims to abolish animal exploitation (Francione and Garner, 2010). Rather than viewing animal welfare as a goal in itself the discourse frames it as a tool for market differentiation. As such, animal welfare becomes part of a ‘value-engineering’ strategy of food retailers (Veissier et al., 2008, p. 287) aimed at generating a competitive advantage. Konefal et al. (2005) and Henson (2008) explain how private standards allow food retailers to compete on quality rather than on price. When a retailer introduces a quality standard scheme it strengthens its corporate image by associating its name with ethical products. This is most apparent when these quality schemes are coupled with the retailer’s own brand (such as Albert Heijn’s *puur&eerlijk*, Tesco’s *Natural Choice* and Carrefour’s *Filière Qualité*). These are all ethical product lines owned by food retailers that are part of a quality standards scheme governed by the retailer alone or in cooperation with an NGO. Retailers can use these own-brand ethical product lines to present themselves as responsible enterprises dealing with societal concerns such as animal welfare, and thereby build a ‘charismatic authority’ (Fuchs and Kalgagianni, 2010, p. 22). This again raises concerns about the reallocation of authority resulting from the modernization of politics.

Retailer-led governance (through policy formulation and implementation) of social concerns shows a serious democratic deficit (and a complete absence in some scheme standards). Several scholars (e.g. Konefal et al., 2005; Bain, 2010; Marx, 2012) have identified that private governance regimes do not adequately include the fundamental principles of a democratic regime – such as direct or indirect participation, accountability, rule of law, and transparency. Two other principles also seem to be at stake: political pluralism and a separation of powers. While traditionally formulated policy is based on procedures underpinned by political pluralism – through which

alternative policies and preferences are voiced by elected representatives of citizen – private governance arrangements are led by the interests and preferences of the food retailers that have acquired the ‘dominant voice’ (Fuchs and Kalfagianni, 2010, p. 23) through their oligopoly in the food market. Furthermore, whereas the traditional separation of power between legislative, executive and judicial branches preserves a distinction between the democratic elaboration, application and interpretation of rules, the accumulation of these powers in some quality standard schemes reinforces the power of retailers. Hence, it is important to investigate further to what extent private standards schemes provide a clear separation between the auditing personnel and the standard-setting and decision-making personnel? It is worth noting that only very few quality schemes have a well-developed complaint procedure or dispute settlement mechanism (Marx, 2012). These aspects raise concerns about the transition from government to governance, and suggest that it is not an unequivocal step forward for democracy.

Finally, it is important to note that private retail governance, through quality standard schemes, affects a wide range of actors across the globe (Fuchs et al., 2011, 2012). Some of the implications may be beneficial: better payments for suppliers who enhance the welfare of animals and an expansion of consumer choice in animal-friendly products. However, the authority of food retailers to regulate how food is produced, processed and consumed requires close scrutiny. The authority of governments to regulate production and consumption practices derives from the sovereignty of nations and their ability to follow established democratic procedures. These characteristics confer legitimacy to the regulatory acts of a government within its territory. Private governance is not legitimized similarly, but tends to be justified by its ability to provide effective results. Fuchs et al. (2011, p. 359) argue that it is misleading to assess private governance in terms of ‘output legitimacy’, as effectiveness cannot be measured objectively without prior democratic processes that guarantee that (all) affected stakeholders can participate in the definition of an ‘effective outcome’. Following on from this critique, we add that the ability of food retailers to turn non-legally binding practices into contractually binding obligations relies on a different sort of authority than the regulatory authority of state actors to bind parties to undertake (or refrain from) certain actions. Food retailers depend on the support of ‘socially shared legitimacy belief’ (inspired by Scharpf, 2009) since the rules and standards they create rely on voluntary compliance. To gain such social belief, retailers make use of their ‘market authority’ over suppliers and ‘charismatic authority’ over consumers. The way in which retailers exercise these two forms of authority is of interest, although we will limit ourselves here to discussing ‘market authority’, since this provokes much controversy in the area of international trade.

The role of market forces in assuring contractual performance has been theorized by Klein and Leffler (1981), but has gained relevance since with the evolving role of private governance in addressing domestic societal goals that require actions in foreign territories. Animal welfare is one of these cases where a domestic (in this case European) concern requires measures to be taken beyond Europe’s territory (since meat imported from third countries is also available on the European market). As mentioned in the Introduction, the international trade regime places constraints on the traditional regulatory activities of states. By contrast, food retailers operate in an ‘institutional void’ (inspired by Hajer, 2003): there is, at present, no clarity about the relationship between the voluntary standards implemented by retailers and the legal framework of the WTO. Arguments abound on both sides, but the lack

of case law makes it difficult to determine which argument will prevail (Roberts, 2009). While this issue remains unresolved, the proliferation of private standards continues to affect international trade. One could argue that, in a competitive free market, there is no legal issue with European retailers requiring their foreign meat suppliers to comply with private animal welfare standards, as this requirement is embedded in a voluntary commercial agreement between two parties. However, since the global food market is dominated by an oligopoly, this leaves farmers and slaughterhouses with few choices. Either they accept all the conditions imposed by the retailers or they are out of business (Bock and Van Huik, 2007; Wolff and Scannell, 2008). In short, given the 'market authority' acquired by food retailers as a result of global capital concentration, voluntary arrangements become *de facto* mandatory (Busch and Bain, 2004; Hatanaka et al., 2005; Henson, 2008; Wolff and Scannell, 2008; Hobbs, 2010; Hatanaka et al., 2012; Van der Meulen, 2011). The effect is that private regulatory instruments achieve an almost compulsory status in the global food arena, which strengthens our argument about the ambivalent effects of a shift from government to governance. In effect, transnational food corporations have acquired the capacity to act as 'quasi-states' (Busch, 2011), while their actions lack the democratic legitimacy of state actions.

## Conclusion

The article has examined the entry of NGOs and food retailers into the arena of animal welfare politics, and sought to establish the extent to which the changes observed in Europe, and especially in the Netherlands, accord with the modernization of governance practices and styles. Drawing upon political modernization theory, and more specifically the four dimensions of policy arrangement theory, we have analysed the changing roles of state and non-state actors and the emergence of private quality schemes. We conclude that these developments do indeed reflect a modernization of governance arrangements. In addition our analysis showed that this shift towards modernized governance has an ambivalent effect on food policy and actors in the food supply chain.

Although the widening of the political sphere provides new opportunities for non-state actors to actively participate in the formulation and implementation of policies (and thereby potentially increase democratic processes), in reality it has empowered food retailers, elevating them to the status of global food regulators. The application of European private standards in global food markets may bring positive outcomes, such as the diffusion of more stringent animal welfare measures beyond Europe's territory. However, the imbalance of power between food retailers and their suppliers compromises the democratic legitimacy of the way in which private standards are formulated and implemented. As such, we argue, more attention should be paid to the shift from government to governance, especially with regards to the way in which this leads to a reallocation of regulatory authority from sovereign states and towards the power of market dynamics.

## Notes

1. Refers to the World Organisation for Animal Health, which is still be known by its French acronym Office International des Epizooties.



2. Concerns for the treatment of animals can be traced back to ancient Greek philosophy and the writings of Aristoteles. However, from a policy perspective, it seems reasonable to say that a European animal welfare policy domain emerged with the establishment of the Brambell Committee, since specific welfare policy measures began arose from that time onwards.
3. In English: the Council for Animal Affairs.
4. Variant Creutzfeldt-Jakob disease (vCJD) is a rare and fatal human neurodegenerative condition. In contrast to the traditional forms of CJD, vCJD is not related to a gene mutation, but rather to the consumption of meat from cattle infected with bovine spongiform encephalopathy (BSE). This disease in cows — bovine spongiform encephalopathy, popularly called mad cow disease — is thought to have originated from the sheep disease scrapie. This event is linked to animal welfare because, according to some scientific evidence, the animals became infected by BSE through inappropriate feeding.
5. Previous legislation referred to a 'warranty' defence, which required proof of negligence.
6. Power is defined as 'a relationship among social actors in which one social actor, A, can get another social actor, B, to do something that B would not otherwise have done' (Pfeffer in Ingenbleek and Immink, 2010). Urgency is defined as 'the degree to which stakeholder claims call for immediate attention' (Mitchell et al. in Ingenbleek and Immink, 2010).
7. This discourse has its root in a line of thinking that rejects the conflict between economic progress and environmentally responsible firm management. Scholars sympathetic with the tenets of ecological modernization tend to reframe environmental reform by interpreting pollution reduction as a means of enhancing economic competitiveness rather than an extra cost (for more information on ecological modernization see e.g. Mol, 1995; Cohen, 1997; Murphy and Gouldson, 2000).
8. And arguably more powerful than consumers, who may also experience less freedom of choice as a result of retail concentration.

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