

DEMOCRACY AND PROSTITUTION

Deliberating the Legalization of Brothels in the Netherlands

HENDRIK WAGENAAR

Leiden University

Netherlands Institute for the Study of Crime and Law Enforcement

This article discusses democratic deliberation as a core element of public administration in today's decentered world of governance. The juxtaposition of hierarchy and deliberation in policy networks is illustrated with the case of the legalization of brothels in the Netherlands. The case shows that despite distrust and conflict, the actors managed, through deliberative elements in negotiations, to attain the transformation of the prostitution sector into a regular business sector. However, the use of a deliberative implementation strategy did not preclude the emergence of negative, unintended consequences. The success or failure of the deliberative process is sensitive to its design, particularly the issue of who is included and excluded. A deliberative, collaborative approach to policy implementation has the potential to optimize social and cognitive capital. This is seen as a precondition for the constant, painful redesign of policies in the face of conflict and contingency that characterize successful policy implementation.

Keywords: *deliberative democracy; policy networks; policy implementation; prostitution policy*

In today's world of decentered governance, governments that intend to effectuate policies have to tread a fine line between command and cooperation. Governance, roughly understood here as the formation, design, and implementation of public policy, now occurs in parallel arrangements—hierarchies, markets, and self-governing networks—of policy actors. Policy actors, both in civil society and on regional and local levels of government, display a lessened acceptance of hierarchical governance (Pierre & Peters, 2000). The net effect for the traditional agencies of the state has been a reduced capacity to control and steer events toward the goals of

ADMINISTRATION & SOCIETY, Vol. 38 No. 2, May 2006 198-235

DOI: 10.1177/0095399705285991

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government.¹ Government is just one of many actors in influencing events in the public domain, often without sufficient power to exert its will decisively over other actors. Policy is not so much the result of concerted action by government agencies but the more or less unforeseen result of the interactions of a range of societal actors (Rose & Miller, 1992). Governance in today's political landscape tends to be disjointed and indeterminate.

The policy literature has framed this shift in state-society relations in terms of policy networks (Hay, 1998; Rhodes, 1996; Smith, 1993). Actors, both inside and outside government, are loosely organized in networks that are specific to a particular policy area. The practice of policy making through networks is the product of ideal and convenience. It reflects a widely shared democratic desire to increase the influence of civil society over policy making. However, a genuine desire of government actors to broaden the decision making or implementation process by involving the parties that are affected by a policy goes hand in hand with the participants' realization that they are dependent on each other to realize their objectives (Hajer & Wagenaar, 2003, p. 11). They need to exchange resources (money, information, expertise) to achieve their objectives, to maximize influence over outcomes, and to persuade others not to use their power to obstruct policy progress (Rhodes, 1996, p. 658). In networks the coordinating mechanisms are cooperation, trust, and dialogue, in addition to bargaining and negotiation.

It is often thought that networks, although fulfilling a widespread desire for democratic involvement, are nevertheless weak on conflict resolution and goal setting. This realization has led policy practitioners to search for means in negotiating policy networks, skills aimed at facilitating constructive interactions among policy actors. Broadly speaking, the governance literature suggests two different approaches to network management, an instrumental and a deliberative approach (Rhodes, 2000). The instrumental approach takes the political center and its objectives as its point of departure and its standard of success. The central argument is that to be effective, networks, although they allow for civil society input in the policy process, must in the final analysis be subservient to the government's goals (Pierre & Peters, 2000). The government tries to steer the goings-on in a network of policy actors to achieve an a priori policy outcome. The standard of success is the speed and efficiency with which this outcome is attained. To this end, a government actor has a choice of two broad management strategies. The first aims at process management and involves such techniques as moving toward shared problem formulations,

bargaining, consultation, and mediation between conflicting parties. The second focuses on the network's architecture and thus, by implication, on the balance of power and influence in the network. It involves such techniques as managing access to networks, changing the rules of the game, and redistributing resources (Kickert, Klijn, & Koppenjan, 1997). With instrumental network management, it is as if government has conceded the limits to its authority, while at the same time it proclaims that it is still willing to assert its special position to exercise as much influence as possible over other policy actors. Government may not be the central actor, but it certainly is the focal actor (Pierre & Peters, 2000, p. 269; Rhodes, 2000, p. 72).

Although government actors, to accommodate the limits to their influence in the network society, frequently use these techniques, the instrumental approach to policy implementation in self-organizing, inter-organizational networks runs up against a number of well-known obstacles. Often actors in policy networks have considerable obstruction power and are willing to use it when they feel that their interests are in danger. Most democratic countries have low thresholds for starting a legal procedure against an unpopular policy proposal. This, in combination with a tradition of civil disobedience in most European countries, has led in some cases to endless stalling of controversial policy projects. Second, actors may simply refuse to cooperate any further and leave the network.² Third, the original policy situation may be too adversarial for any network management techniques to have much effect. Actors may harbor so much mutual distrust and hostility that any attempt at cooperative interaction is doomed from the start, and a policy stalemates. Fourth, policy problems may be so complex and changing that they simply defy central government's attempts at understanding, let alone control, of the issue (Dryzek, 1990, chap. 3; Innes & Booher, 2003, p. 36; Torgerson, 2003, p. 125). A number of analysts have observed that because of its propensity to simplify system complexity, the administrative sphere tends to deny the challenge of complexity and radical uncertainty in the tightly coupled social-technical systems of advanced industrial society (Dryzek, 1990; Hajer & Wagenaar, 2003, p. 10; Torgerson, 2003). They then argue that the best bet for coping with dynamic complexity is to create discursive settings that allow diverse interests and perspectives to have a voice in dealing with the problem (Axelrod & Cohen, 1999; Dryzek, 1990; Innes & Booher, 2003).

Fifth, instrumental approaches to network management run the risk of several kinds of unrecognized bias. For example, the urge of a powerful actor to control access to the network or to lay down certain ground rules

that regulate mutual interaction may result in the systematic exclusion of important participants. In particular, nonorganized, economically disadvantaged groups tend to get excluded from policy networks because they do not master the proper social codes or do not recognize their interests or experiences in the network's discourse or because the network's members privilege a different kind of speech (Dryzek, 2000; Torgerson, 2003; Young, 1990). The result is that intentionally or unintentionally, these groups are effectively silenced by seemingly neutral network management techniques. The issue of exclusion is particularly significant in the light of the earlier-mentioned dynamic complexity of many policy problems. In these cases, as we will see in this article, the experience and local knowledge of excluded groups may mean the difference between successful and failed policy implementation (Fischer, 2000).

Finally, instrumental network management raises issues of democratic governance in the context of the modern liberal state. Part of the need for the greater involvement of citizens and other social actors in collective problem solving stems from the recognition that many policy problems involve identity issues. This is not confined to lifestyle issues but includes all issues where communities and their practices are affected by a policy measure (Hajer, 2003a, p. 89). An exclusive focus on instrumental outcomes—often programmed into administrative relationships in the form of outcome or performance indicators—misses this dimension of policy making entirely, often resulting in unexpected resistance from affected groups. As Hajer (2003a) argues, as such affected groups then mobilize themselves to participate directly in the implementation of a policy, the traditional sequential order of policy following politics becomes reversed, with policy making being constitutive of politics.

POLICY IMPLEMENTATION AS DEMOCRATIC DELIBERATION?

Today, the governments of many advanced liberal democracies struggle with the issue of how to acknowledge the desire of citizens to be actively involved in the solution of collective problems beyond the periodic vote in the ballot box (King & Stivers, 1998). In this light, instrumental network management is a flawed compromise between two incompatible desires: the desire of state actors to uphold the capacity for command and control on one hand and the need to expand the democratization of society along the dimensions of franchise, scope, and authenticity of

deliberation on the other (Dryzek, 2000, p. 29).³ Thus, the deeper question that is raised by the spread of policy networks is if bargaining and compromise can be replaced, or, perhaps less ambitiously, augmented, by the democratic desire for some form of reasoned public deliberation between government actors and those who are affected by their policies. For, as Bohman (1998) puts it,

The attraction of deliberative democracy for many was precisely its promise to go beyond the limits of liberalism and to recapture the stronger democratic ideal that government should embody the “will of the people” formed through the public reasoning of citizens. (p. 401)

Democratic theorists frame this problem as a question of institutionalization: Is it possible to make liberal institutions such as parliament, representation, majority rule, but also (and for the purposes of this article, particularly) public administration and policy networks, more deliberative rather than a priori declaring them unsuitable for more participatory democracy (Bohman, 1998)?

There are reasons to be skeptical of an outright affirmative answer to this question. Reduced to its core meaning, deliberative democracy rests on the ideal of public reason: the free public exchange of arguments among equal citizens (Bohman, 1998, p. 402). To serve as legitimization for political decision making, public reason must be regulated by the ideal of communicative rationality. That is, it must be free from deception, self-deception, strategic behavior, and the willful or inadvertent domination of some groups through the exercise of power (Dryzek, 1990, p. 14). The outcomes of such authentic public dialogue are believed to be twofold. First, the parties involved go beyond the self-interest that is typical of the preference aggregation of representative democracy and instead are able to focus on the common good. And second, decisions that are thus arrived at are decisions that everyone can accept or at least not reasonably reject (Bohman, 1998, p. 402).⁴ As can be inferred from this formulation, the idea of deliberative democracy is precariously balanced on the razor’s edge of the normative and the practical. From a normative perspective, the direct democratic involvement of citizens and other social actors requires not only that they are able to relinquish self-interest and focus on the common good but also that epistemically speaking, decisions that are arrived at by deliberative procedures are better than those that are the outcome of traditional, centralized decision procedures (Estlund, 1997, p. 174). In practice, this often means that epistemic criteria are conflated with procedural arrangements; that is, if only the proper, fair procedure is followed,

this will automatically result in outcomes that are both fair and epistemically right.⁵

From an empirical perspective, authentic public deliberation of equal citizens encounters a number of obstacles. The general critique is that this form of direct involvement of citizens in policy discourse is impractical and unrealistic. Perhaps it works in small town meetings, but it certainly has no place in the large, complex institutions that form the administrative and bureaucratic apparatuses of the modern nation-state. In addition, the nature of contemporary liberal society and its problems severely challenges democratic deliberation as a practical ideal. Bohman (1996, p. 18) lists three such challenges: deep social inequalities that threaten the public character of deliberation, cultural pluralism (including ideological conflict) that endangers deliberation with intractable, irresolvable conflicts, and social and technical complexity that threatens to overwhelm public deliberation by citizens and make it irrelevant (for deep pluralism in public administration, see also Wagenaar, 2002b). So, from a policy perspective, it is, ironically, the very nature of policy implementation in modern liberal societies that threatens the possibilities of successful public deliberation.

The tension between control and democratization in policy networks is particularly acute for enlightened public officials who want to engage in more deliberative forms of policy implementation. Because of their closer proximity to citizens and their hands-on experience with the complexities of real-world social problems, they recognize the need to include the groups who are affected by the proposed policy. Yet such officials face a number of problems in realizing this desire. First, public administrators who engage in deliberative problem solving are highly constrained by the institutional routines, legal rules, bureaucratic power differentials, and demands of the (national and international) economic environment that determine the reach of their mandate (Dryzek, 1996; King & Stivers, 1998; Wagenaar, 2002a, p. 243). Also, deliberative democracy sits uneasily with the bureaucratic ideals of the administrative ethos, such as efficiency, economy, and impartiality in service delivery, virtues that citizens expect from their public agencies (Denhardt, 1989; du Gay, 2000, p. 2). Moreover, their privileged position in the network may be more an impediment than aid to effective problem solving. The requirement of authenticity that is one of the defining elements of democratic deliberation requires a willingness by government actors to relinquish control over such crucial issues as problem definition, ground rules of communication, and use of resources. In practice, this means that the deliberative process may drift

away from the preconceived goals of the administrator and the agency she or he represents or that the parties who are engaged in the deliberative process redefine their interest, goals, perceptions, or even values. In such situations, public officials are tempted to use their privileged position in the network to employ strategic means, such as agenda management or selective use of information, to either move toward a preferred position or stay clear from an (from their point of view) unattractive outcome. These obstacles have led some commentators to conclude that the critical voice of direct democracy can best be heard outside the sphere of the state in dispersed, informal public discourses in civil society (Dryzek, 2000, p. 29; Torgerson, 2003).⁶

So what can we conclude about the democratic potential of dispersed policy networks? How realistic is a call for more real involvement of social actors in the implementation of policy programs? At first blush it seems that we are better off to be realistic, if not downright pessimistic, about the feasibility of enhanced decision making through public deliberation. If we descend from the abstract world of democratic theory to the concrete, everyday world of policy making and public administration, we observe that policies frequently evolve in a context of vested interests, social antagonisms, structural inequalities, mutual prejudices, and distrust of the state (Forester, 1999; Hajer & Wagenaar, 2003). In addition, the dynamic complexity and institutional scale of many social problems are widely believed to constrain deliberative arrangements (Bohman, 1996, p. 152). And finally, it seems difficult, if not impossible, for state actors to engage in true authentic public deliberation. In such an environment, it might seem a better option for public officials and administrators to rely on trusted methods of issuing guidelines and directives and to engage in negotiations and bargaining with key actors who are in a position to thwart or obstruct a policy initiative (Geul, 1998). Democratic deliberation is then either confined to carefully designed fora, such as citizens' juries or deliberative polls, where public officials and citizens discuss narrowly circumscribed issues under strict procedural guidelines, or a spontaneous, unstructured, and messy societal discourse that proceeds through public debate and social activism (Hendriks, 2002). According to this bleak view, deliberative democracy in the real world of policy making seems caught between irrelevancy and disengagement.⁷

I believe that this conclusion is not only unattractive but also unnecessary. It is unattractive because it rules out the possibility of reasoned public deliberation in precisely those situations where it is needed most. In a world of decentered government, citizens and social organizations are

usually confronted with the state's intentions when they find themselves the voluntary or involuntary subjects of some government-sponsored implementation effort. Usually, driven by the urge to protect their interests, distrust in government, and the possibility of conflict with other participants in the implementation game, social actors do not a priori look favorably on the state's policy initiatives or their fellow citizens' roles in them. In a pluralistic society, the risks for policy controversy or deep frame conflict are considerable (Schön & Rein, 1994). It needs no comment that it is precisely in these situations that a feasible form of public reason might have the largest impact on the common good.

The pessimistic conclusion of the preceding paragraph is also unnecessary because, contrary to the conclusions of some democratic theorists,⁸ concrete examples of successful democratic deliberation in real-world political environments have been documented. Without going into detail at this place, I just mention the work of Sabel, Fung, and Karkkainen (2001) on local deliberation on complex environmental issues, of Fung and Wright (2001, 2003) who, in their *Real Utopias* project, have brought together numerous successful instances of what they call "empowered participatory governance," and of the critical planning theorists who have given us many well-documented examples of "deliberative practitioners" who, in an environment of conflict, prejudice, and political maneuvering, nevertheless manage to introduce public reason in the work of planning (Forester, 1999; Fung & Wright, 2003; Healy, Magalhaes, Madanipour, & Pendlebury, 2003; Innes & Booher, 2003; Sabel et al., 2001). The importance of these studies is threefold. First, they are precisely the kind of careful, ethnographic, theory-driven case studies whose absence Bohman (1996, 1998) laments. Second, they delineate the conditions—institutional, financial, and communicative—that favor (or hinder) deliberation in real-world policy situations, thereby painting a realistic picture of the possibilities and limits to public reason in situations that count. And finally, these studies document and conceptualize the kinds of effects, both substantive and in terms of democratic process, that might be expected of democratic governance. In the remainder of this article, I will return to some of the findings of these studies in discussing my case.

I will pursue the question of the feasibility of public democratic deliberation in policy networks by describing a case of policy implementation in the Netherlands in which administrators attempted to involve the actors who were the target of the policy. The question that is central in the analysis of the case is this: Is it possible—and if so, in what ways—to introduce

reasoned public deliberation in a dispersed policy environment in which state and civil society actors interact in unpredictable ways and that is characterized by pluralism, conflict, high social complexity, and lack of trust? This question rests on two deeper questions about policy making in a pluralistic, democratic society. The first concerns the process and epistemic dimensions of democratic deliberation: Does the introduction of deliberative elements in policy processes assist in bringing about effective policy implementation in a fragmented, complex, and pluralistic society in which state actors can no longer expect to impose their wills on societal actors who are affected by their policies? Can deliberative dialogue be an answer to the problem of policy implementation in the network society? The second concerns the outcomes of public policy: To what policy effects, both intended and unintended, does the introduction of deliberative elements in policy implementation lead? All three questions hover around some key issues in institutional reform in democratic policy making in advanced liberal societies: To what extent do the real-world institutions of policy making that are characterized by conflict, structural inequalities, dynamic complexity, and fragmentation allow for democratic deliberation? In particular, to what extent is state influence conducive of, or an obstacle to, effective democratic deliberation, collaborative dialogue, and direct influence of citizens and other societal actors?

The case involves the implementation of the legalization of prostitution in the city of The Hague. The case is interesting as prostitution is at first sight a rather unpromising subject for deliberative policy implementation. Both the contested nature of the issue and the initially hostile attitude of some of the affected parties to the legislation would make successful implementation difficult in any case and is certainly expected to impose severe constraints on authentic deliberation in this situation. Nevertheless, as I will argue, the implementation of the Brothel Act in The Hague shows that some form of authentic, collaborative, democratic deliberation is possible even in contentious, antagonistic policy situations. Paradoxically, this required some innovative management by state actors of the interactions in the network. However, the case also demonstrates that although the introduction of deliberative elements in the implementation process was effective in dealing with social conflict and evolving policy complexities, it did not make the parties involved immune from the law of unintended consequences.⁹

DECRIMINALIZING PROSTITUTION: THE LEGALIZATION OF BROTHELS IN THE NETHERLANDS

On October 1, 2000, Dutch parliament passed a law that legalized the ownership and exploitation of brothels.¹⁰ This remarkable case of moral politics was the culmination of 20 years of debate about prostitution among legal scholars, feminists, prostitution activists, and a small group of enlightened parliamentarians. In the debate, a distinction was made between prostitution and its social control on one hand and an assortment of criminal activities, such as the sexual exploitation of juveniles and trafficking in women, that although frequently associated with prostitution, were not regarded as being a necessary or intrinsic part of it on the other. It was argued that law enforcement should focus on the criminal corollaries of prostitution instead of the activity itself. The result was a gradual frame shift in ideas about the legal regulation of prostitution. Prostitution and its exploitation were to be decriminalized. Prostitution proper should be subject to administrative law that regulates the operation of sex establishments and labor law that regulates the working conditions of prostitutes. Criminal law, the original province of the regulation of prostitution, was to be restricted to the obviously criminal activities that accompanied prostitution, particularly prostitution by vulnerable groups such as juveniles and illegal immigrants. Barring criminal activity, the state had no business in the transactions that occurred between women (or men) and their clients. The law, as it was finally enacted by Dutch parliament, had three broad goals: to emancipate the prostitute and improve her or his position vis-à-vis the owners of sex establishments, to make the prostitution scene transparent and open to monitoring, and to combat criminal activities associated with prostitution.

Prostitution proper, the sale or purchase of sexual activities, has been legal in the Netherlands since the early 20th century. It was the exploitation of prostitution either in a brothel or behind a "window" that was legally prohibited. Nevertheless at the time the law passed parliament, it was estimated that the Netherlands had 510 sex clubs, 620 establishments that exploited windows (ranging from one to dozens of windows), 300 escort services, and a similar number of other sex establishments (e.g., massage parlors or couples' clubs; Vereniging, 2001, p. 10).¹¹ In these establishments, an estimated 6,000 women were working per day (Stichting, 2000).¹² Although most sex establishments are concentrated in the four largest cities (Amsterdam, Rotterdam, The Hague, Utrecht), they certainly are not restricted to these, with lively prostitution scenes existing

in some of the smaller provincial towns. In most cases, these sex establishments were subject to what is generally known in the Netherlands as a pragmatic policy of "regulated tolerance" (Haveman, 1998, p. 318). Although formally prohibited by law, municipal authorities and public prosecutors, in the name of public interest and a certain skepticism with regard to criminal law as a solution to social problems, used their discretionary power to refrain from the prosecution of owners of sex clubs and window brothels, as long as they refrained from blatant infractions of the law and gross violation of public order (Brants, 1998, p. 624). In some cases, municipal authorities were able to establish informal working relationships with the owners of sex establishments, creating an embryonic licensing system that was maintained through mutual agreement and cooperation.¹³ However, as no formal legal basis for these agreements existed, enforcement proved to be difficult and toothless. Toleration policies were unable to prevent serious problems of public safety in the prostitution areas and the exploitation of women, particularly immigrant women, in some sex establishments. In practice, regulated tolerance often amounted to administrative neglect.

As in most cases of policy formation, almost all energy and attention went into the legal maneuvering and political jockeying that were necessary to create a working majority in Dutch parliament for the law. Implementation was an afterthought. Moreover, as is common in the Dutch decentralized unitary state, implementation of the law was largely devolved to towns and cities (Andeweg & Irwin, 2002). Administrators in the city halls of Dutch municipalities do not consider prostitution an attractive policy issue, however. Nevertheless, in terms of ambition, legalizing brothels amounts to a heroic policy intervention. The operational goal of the brothel law is nothing less than the transformation of an economic sector that has operated for many decades on the social and ethical margins of society into a regular business sector. Activities that were considered semilegal at best now have to be integrated into the institutional core of the Dutch legal-administrative system. It is no wonder then that almost 3 years after parliament passed the brothel law its implementation has proceeded very unevenly. Although 95% of municipalities indicate that they have adapted the general local statute by including rules regulating the exploitation of sex establishments and/or a fully developed licensing system, the situation is much more uneven with regard to the actual granting of licenses or the enforcement of the licensing system. Moreover, the reality underneath the numbers varies considerably from one municipality to another. Although some cities or towns have secured a coopera-

tive working relationship with the sex business in the development and operation of a licensing system, implementation in other towns has not yet started or has stalled in bitter acrimony between town administrators and owners of sex facilities. In these latter cases, as some observers have noted, town administrators have usually tried to impose rules unilaterally on reluctant owners or have overexerted their administrative powers, only to see their efforts fail in court.

PROSTITUTION POLICY IN THE HAGUE

In his famous manifesto for a policy science of democracy, Harold Lasswell (1951) argues for a “contextual orientation” as a central feature of the analysis of public policy. In such a contextual orientation, “inquirers would continuously question, test and revise the images of ‘self-in-context’ that . . . inescapably guide action and inquiry” (Torgerson, 2003, p. 113). So, what was the context of prostitution for the policy makers in The Hague? How did the world of prostitution present itself to them in relation to their purpose to implement the legalization of brothels?

The Hague is the seat of the Dutch government. Both houses of parliament meet there, and all the large ministries and countless associations have their offices in the city. The Hague has a large prostitution sector that includes most types of prostitution. At the time that the brothel law was passed, the city had 685 windows, hundreds more than on the fabled Wallen, the red light district of Amsterdam. The windows were concentrated in three areas and owned by only a few powerful owners. There were a couple of dozen clubs and a designated zone where (mostly addicted) prostitutes walked the streets.¹⁴ The window areas in particular created many public safety problems. It is estimated that between 4,000 and 6,000 clients a day visited the four streets where the windows were concentrated. As prostitution constitutes a 24-hour economy according to police officials, this large number of clients created serious problems for the inhabitants of the prostitution neighborhoods. Residents complained of constant noise and traffic nuisance of cars cruising through the narrow streets, shouting in the streets, clients who urinated in people’s doorways, a generally threatening atmosphere, much criminal activity of drug addicts and pimps, and frequent muggings of clients. Six to 10 times per year, turf fights between rivaling drug dealers led to shooting or stabbing incidents in the streets, some of them with deadly results. Police officers admit that enforcement was decidedly suboptimal. As one of the police

officers says: "It had evolved into a distinct subculture. At some point the situation had deteriorated so much that we only went in with three or four officers simultaneously. Even my colleagues didn't feel at ease there."

The legalization of sex establishments posed a number of challenges to the city administration of The Hague:

A highly fragmented police and municipal apparatus. All matters regarding crime and public safety in a municipal jurisdiction are handled by the so-called triangle of the mayor, the police, and the DA's office. In addition, the Municipal Medical Service, the building inspection office, the fire squad, and an assortment of service agencies, some public, some private, all dealt in one way or another with prostitution without much coordination. At the same time, years of regulated tolerance had led to a de facto abnegation of responsibility among city officials for controlling and enforcing prostitution policy.

A lack of information about prostitution among policy makers. Both police officials and club owners have remarked that administrators have little understanding of the prostitution business. Also, those working in the sex business complain that administrators often approach them with considerable prejudice.

A high level of associated crime, both external and internal to prostitution. Drug-related activities and street crime belong to the first category; the gross exploitation of illegal immigrants or juveniles to satisfy the clients' taste for exotic sex experiences, and trafficking in women, belong to the latter. The association of prostitution with highly visible crime gave the issue an immediate urgency to city administrators.

A large, entrenched, well-organized, and well-capitalized prostitution sector. This sector formed a powerful adversary. Prostitution in The Hague was a closed market in which ownership was distributed among a handful of owners. Owners were unwilling to give up the prerogatives and power they had obtained over the years by operating outside the legal order. Although informal contacts between owners and city officials existed, these were, compared to the situation in some other cities, characterized by antagonism and distrust.

The long-standing marginality of the sector. This aspect of the prostitution scene had several consequences for policy development. First, the sector was accustomed to managing its own affairs. Members of the prostitution sector lived in a world of self-designed rules and behavioral codes. Also, prostitution is a cash economy in which large sums of money that are concealed from the tax office circulate. As one police officer observed, "It's a different world. These are rogues. In a frank moment they will say,

‘We’re only in it for the money.’” Second, apart from a difference of interests and values, the self-chosen social isolation of the prostitution sector made it difficult for administrators and prostitution bosses to communicate. For example, the pragmatic, highly personal, approach of members of the prostitution sector to solving interpersonal conflict made them expect immediate results from their negotiations with the city administration. Initially, they had no experience with, and no patience for, the slow and protracted institution building to which the legalization of their sector amounted, often misinterpreting the administrators’ actions as a breach of confidence.¹⁵

The conclusion is that in implementing the legalization of sex establishments, a fragmented, rivalrous, police and municipal apparatus faced a powerful and highly distrustful adversary that, after decades of operating outside the legal order, was unwilling to give up its lucrative practices. In addition, the widely disparate communication styles of the two camps made it very difficult for them to communicate in an effective, constructive manner. How did the city administration in this situation go about in designing a licensing system? In answering this question, it is important that we get a realistic view of the options that were available to the city at the time.

At first blush, the series of challenges to the implementation of the brothel law makes the case not particularly promising for a politics of collaborative dialogue and authentic deliberation. Moreover, even in times of changing state-society relations, regulating prostitution is still seen by most citizens as constituting one of the core tasks of the classical, liberal night watchman state. In the domain of crime and law enforcement, the state, backed up by criminal law and relying on its law enforcement and judicial systems, is expected to simply assert its authority over citizens who infringe the law. Yet city administrators in The Hague agreed from the beginning that dialogue and mutual cooperation should be the key ingredients in the implementation of the brothel law.

What could be the reasons for choosing a dialogical approach? After all, not every town and city went this route in the implementation of the brothel law. One reason was the city’s earlier experience with the prostitution sector during the period of regulated tolerance in designing an embryonic licensing system. The city had always made informal arrangements with the sector to contain at least the largest excesses in prostitution-associated crime and public nuisance, and as a result, a small measure of social capital had emerged in the relations between city officials and sex bosses. Second, for several reasons, a policy of unilaterally imposing a

new regulatory model on the sector was risky. The sector would certainly challenge the system in court, and the chances for defeat in court, or at the very least long delays in the implementation of the system, were not merely theoretical.¹⁶ Given the seriousness of the public safety issue and the pressure of activist citizens who lived in the prostitution areas, this was an unacceptable option to the city administration. In the end, the sector did go to court several times, but, as we shall see, it was in a situation that was much more favorable to the city administration.

Also, as we will see, the city's ambitions went further than just the design and enforcement of a licensing system. From the very beginning, licensing was seen as part of a broader policy of urban renewal in which regulating and containing prostitution, among other things by reducing the number of windows, was a central element. If the city wanted to avoid a serious enforcement deficit down the line, it needed a minimum of cooperation from the sector itself to attain these goals. Finally, city administrators were aware of the identity dimension of the issue and the diminished acceptability of hierarchical policy making that came along with it. The brothel law was now, formally at least, a regular business sector. Although the actual people operating in the sector had not changed, city officials felt that they now had the moral obligation to deal with the sector as any other regular business sector:

We already knew in '98 that we had to work towards a legalization of the sector. I know, these are the same boys and girls, but according to the law it is now a legal business sector. That means that you have to communicate this as a government. You need to demonstrate this in the way you approach them. (interviewed police officer)

IMPLEMENTING THE BROTHEL ACT: STRUGGLE AND CONFLICT

Whoever speaks with sex establishment owners in The Hague is likely to engender a litany of complaints about the city administration: The city has unilaterally imposed strict and unreasonable regulations on the sector. It cannot be trusted, as it does not keep its word. It operates with a hidden agenda. It has little understanding of the business of prostitution. And, administrators are prejudiced about those working in the sector. At first it seems that despite the good intentions of city officials, the implementation of the brothel law in The Hague is an example of traditional top-down policy making with little or no regard for the preferences of the parties who

are affected by the policy. A more careful analysis of the implementation process reveals a different picture, however.

The creation of a licensing and monitoring system in The Hague had all the characteristics of a prolonged, and at times bitter, struggle. Yet on closer inspection, we can discern a process in which some of the main actors consciously tried to reason with each other about the design of a feasible, legalized prostitution sector in the city. Being aware of the aforementioned context of challenges and constraints, the city administration used a two-pronged approach. First, it purposely sought the involvement and cooperation of the main actors both inside and outside the administrative apparatus. As one of the leading participants put it,

The . . . thing I did was to find out which parties were involved in this. Then I asked myself which of those parties has which responsibility? And how can I involve those parties, or mobilize them to get them to cooperate with the solutions? (police officer)

He then continued to list the parties that were involved: the city, the police, the DA's office, citizens, the sex workers, and the club owners. Next, a platform was set up of city officials, owners, administrative agencies, and service providers to discuss impending regulation and other measures.

The second element in the implementation process consisted of the formulation of a number of core values that were bound together into what the police official called a vision.¹⁷ The core values were formulated as responsibility, integrity, and public safety. The emphasis on responsibility followed from the earlier-mentioned lack of cooperation among actors in the prostitution field and their unwillingness to follow up words with deeds. Each participant in the process thus had to become aware of her or his specific responsibility. The city administration, for example, is responsible for zoning and building ordinances, public safety, and housing. Likewise, a facility owner is responsible for "what happens in his business facility" and "the effects on the neighborhood of his club's appearance" (police officer). The police officer in charge of the licensing effort used the platform for prostitution policy to explicitly formulate responsibilities to prevent their denial or evasion by reluctant or unwilling actors. In a comment on the club owners' responsibilities that he meant to apply to all participants in the process, the police officer said, "You have to define what his responsibility is, so that you can call him to account. If he shirks his responsibility, then you have to tackle him on this, call him to account." But knowing their specific responsibility is not enough; actors also have to be aware of their reciprocal responsibilities, their mutual

dependencies, in operating a safe and transparent prostitution sector.¹⁸ The actions, or lack thereof, of one agency or facility owner will affect those of others actors in the network. Each actor thus has to be aware of her or his role in the totality of the problem:

I found it very important to write down what everyone's responsibilities were and what elements were part of that. But I found it particularly important to formulate what binds these responsibilities to each other. . . . I am willing to invest, but I will make my investment dependent upon yours. If you don't go along, then I won't either. (police officer)

And, the important thing is "to feel coresponsibility for the totality of the problem. I can't emphasize that enough" (police officer).

The core value of responsibility was explicitly formulated and written down to force actors to commit themselves to it. The necessity of this can be inferred from the reactions of the other participants in the process: "In the beginning I met a lot of . . . not exactly resistance, but amazement, yes, let me call it amazement, that I wrote down what was whose responsibility in the first place" (police officer). Responsibility also was the key argument in the prolonged fight over the presence of a caretaker or manager at sex facilities during hours of operation. The issue itself seems unimportant and hardly worth going to court over, but behind it hides the much more explosive and controversial issue of labor relations in sex facilities. Both owners and prostitutes feared that authorities would interpret the continuous presence of a manager at the facility as constituting a formal employer-employee relationship in terms of fiscal law.¹⁹ This, in turn, would have large fiscal consequences for both parties. As one of the officials of the mayor's staff explained,

This is an issue that has been discussed many times with the sector, also in many court proceedings we have had over this. The owners argue that they only rent out rooms and that they don't want to be held responsible for what happens in a facility. That they also don't want to be held responsible for the presence of illegal ladies. The city disagrees with this position and argues that they are indeed responsible for what happens in the facility in terms of the city's General Local Ordinance. That means that you offer the opportunity for prostitution and those buildings are only meant for prostitution, so don't say we only rent out rooms for those rooms can only be rented for prostitution and not for the purpose of student housing, for example. So in that sense the city holds the owner indeed responsible for what goes on there. They often argue, "We don't have an authority relationship over the prostitutes, so we cannot be held responsible." There is a lot of jurisprudence now that suggests that the presence of an authority relationship is

irrelevant in this respect. For, the simple fact that you offer opportunity for prostitution on your premises and that you are the owner implies responsibility for what happens there. (city official)

City authorities were unyielding at this point, although they compromised in the end, after long negotiations, on the question of who exactly needed to be present. Instead of the owner herself or himself, the latter could appoint a caretaker or business manager.

The values of public safety and integrity were less controversial, although no less important. City officials and owners of window facilities came to agree that increased safety would be beneficial for all parties. As most public nuisance and street crimes occurred in the nightly hours between 1:00 a.m. and 6:00 a.m., the police, following a suggestion of concerned citizens, proposed closing hours for brothels and windows. After some initial resistance, owners concurred with this proposal. They also partly financed the placement of cameras in the window areas. Integrity, finally, was—somewhat situationally and idiosyncratically—defined by city officials as a combination of solidarity (standing by the other) and consistency (the willingness to follow up words with actions). Integrity in this sense served two functions. It counteracted the culture of fragmentation and disengagement that, as we saw, characterized the city's approach to prostitution in prelegalization days. It was also seen as a response to the sometimes intimidating communication style of the owners. In the face of a powerful, astute adversary, city officials stressed that they had to be willing to back each other up. City officials have to present one face to the external world. "Fighting is something you do internally" (police officer). Consistency also followed from the streetwise character of brothel owners and prostitutes. It is a fact of experience among police officers and city officials that brothel owners are rarely impressed by authority and will exploit every regulatory loophole. As one police officer put it, "You have to be consistent. If you summon someone three times and no action follows, then the street says, particularly with these kind of people, 'Oh, why bother.'" With hindsight, it can be said that by creating a deliberative platform that was guided by an implementation vision that emphasized responsibility, integrity, and public safety, the city administration engaged in constitutional politics (Hajer, 2003a, 2003b). That is, it created a policy format that transgressed traditional institutional boundaries with the purpose of binding state and nonstate actors in one integrated network that allowed them to collaborate and develop social and intellectual capital (Healy et al., 2003).

The result of these struggles, negotiations, and court proceedings during a period of roughly 2 years has been the design and implementation of a series of operational policy instruments. The city now possesses a licensing system that consists of a procedure for obtaining and renewing a license to own and operate a sex facility, plus a monitoring and enforcement regime. To prevent the emergence of a market for brothels, licenses are tied to owners instead of buildings. Enforcement procedures and associated sanctions are clearly formulated and communicated. For example, the presence of an illegal immigrant on the premises will result in an official warning the first time and 1 month closure the second time. This procedure is attenuated by the principle of reasonable blame. This means that if the owner could not in any reasonableness have known that the papers of someone working in her or his facility were false, she or he would not be liable for closure. A third policy instrument is a protocol for violence against the police officers who inspect sex facilities. Most cities also have an ethics protocol to protect monitoring officials against the moral hazard of visiting a sex facility. Finally, the development of these instruments went hand in hand with the development of legal jurisprudence for their successful implementation. Most of these instruments were untested in Dutch administrative law. For example, the very definition of a sex facility had to be argued before court to allow police officers to be able to enter a facility for monitoring purposes. In addition, the city has set in motion, with the grudging cooperation of the owners, the legal and administrative process to reduce the number of windows by more than a third.

IMPLEMENTING THE BROTHEL ACT: VALUE ARTICULATION AS EMERGENT COORDINATION

The question that is central in this section is to what extent the implementation process as described in the preceding section can be characterized as deliberative. Or, to put it differently, to what extent does the implementation approach of The Hague's city officials represent the reinvention of politics, the change in policy practices that signifies the constitutional politics of democratic reform (Hajer, 2003a, 2003b)? The process by which the licensing system was designed and implemented certainly conforms to the conflictual give and take that Forester (1999), Innes and Booher (2003), and Bohman (1996) so convincingly describe. But to what extent do we encounter the "careful exploration of goals and ends" and the "subtle but real recognition of other parties" of

genuine deliberative governance (Forester, 1999)? Has there really been the open, reciprocal cooperation and the slow formation of institutional capital that we see in the literature on democratic governance? And what was the role of the local administration in this? Did it unilaterally impose its agenda on the other participants or succeed in coopting them, as Dryzek (2000) fears it will, or did government officials make a positive contribution to democratic governance, as Pierre and Peters (2000) say they can and should? By way of an answer, I suggest that we let ourselves be guided by the features of deliberative governance that are suggested by some of the authors who have provided detailed descriptions of real-world examples of democratic deliberation, such as Forester, Innes and Booher, Healy et al. (2003), and Fung and Wright (2001, 2003). These rich, careful descriptions of what it takes to mobilize the experience and local knowledge of ordinary citizens and other social actors in situations of conflicting interests and structural power differentials to arrive at collective learning and the solution of concrete problems, will help us to conceptualize democratic deliberation in real-world settings. In my analysis of the prostitution case, I will focus in particular on Fung and Wright's (2003) analytic description of empowered participatory governance, but, where relevant, I will also draw on the work of the other authors mentioned.

For the purposes of this article, Fung and Wright's (2003) description of empowered participatory governance has two advantages over other empirical analyses of democratic governance: It describes democratic governance according to its structural characteristics (and not just by its outcomes), and it incorporates government actors in its theorizing about democratic participation. In the introduction to a collection of papers that describe a number of experiments in democratic governance in widely different settings, the authors summarize what these experiments have in common by listing a set of characteristics and a set of design properties. Fundamental to all these experiments, according to the authors, are "(1) a focus on specific, tangible problems, (2) the involvement of ordinary people affected by these problems and officials close to them, and (3) the deliberative development of solutions to these problems" (p. 15). The last characteristic implies that problem solving is deliberative when the parties involved take each others' positions serious and generate group choices after due consideration (Fung & Wright, 2001, p. 19). By loosely applying these principles to our case, they will provide an open conceptual framework for assessing the deliberative nature of the implementation of the brothel law in The Hague. What we see, by way of summary, is that there was a continuous focus of all participants on the concrete problem of

how to design and implement a licensing and monitoring system, that there was restricted bottom-up participation in addition to a certain measure of network management by city officials, and that the deliberative nature of the decision-making process, in terms of reciprocal listening and collective choices after due consideration, is embedded in an environment of conflict.

Limited bottom-up participation. City officials took considerable efforts to include many of the actors who were involved in the implementation of the brothel law. The inclusion of the various administrative agencies is explained by the context of bureaucratic fragmentation in which the licensing system had to be designed and implemented. But, from the very beginning, one of the parties most affected by the policies, the facility owners, was involved in extended talks about the design of regulation and other policy measures. Although the city set the agenda so that the problem-solving process was not completely open, facility owners had extensive input at all times and often saw their ideas and suggestions honored by adjustments of proposed regulations. This allowed for the “variety of experience and knowledge offered more by diverse field operatives, than by distantly and narrowly trained experts” that Fung and Wright (2003, p. 16) see as one of the benefits of direct participation of societal actors on political decision making. Neighborhood residents were not represented in the permanent platform but communicated regularly through a separate channel with the mayor’s staff about their concerns (citizen activist).²⁰ Prostitutes were also not directly involved in the platform; they were represented through various service agencies that dealt with prostitutes.²¹ In the final section, I will discuss the implications of this omission.

Deliberative problem solving and practical orientation. The focus throughout the process was at all times practical. For example, city officials refrained from moralizing about prostitution per se. City officials and owners agreed that prostitution is an intrinsic part of city life. City officials also accepted the fact that owning and managing a brothel was from now on a legal enterprise. Yet the city’s abstention from moralizing did by no means imply a retreat from morals. Although their efforts were focused on the practical work of designing a licensing and enforcement system and formulating measures to limit the number of windows and reduce street crime, in the execution of these tasks city officials drew clear demarcation lines between acceptable and unacceptable behavior from clients and brothel owners. As one police officer put it,

Prostitution is of all times. So I'm careful to express moral opinions about it. You deal with morality only in cases of brute exploitation or in cases where juveniles are involved. Then, I think, citizens, and also clients, should have an opinion about that. But it's not to me to have an opinion about paid sex.

As we saw earlier, throughout the implementation process, city officials asserted the values of responsibility, integrity, and public safety. But why did they assert values instead of, for example, formal rules backed up by enforcement or inducements? With hindsight it can be concluded that an intricate relationship existed among the city's emphasizing of certain core values, the continued pragmatic focus of the discussions in the platform, and the participants' attempts to introduce deliberative elements in the implementation process. Let us unpack this subtle and important relationship. First, in demarcating deliberation from bargaining and negotiation, Fung and Wright (2003) state,

In deliberative decision-making participants listen to each others' positions and generate group choices after due consideration. In contemplating and arguing for what the group should do, participants ought to persuade one another by offering reasons that others can accept. Such reasons might take forms like: we should do X because it is the "right thing to do," "it is the fair way to go forward," "we did Y last time and it didn't work." (p. 17)

They then take pains to point out that a deliberative policy-making style does not require consensual or harmonious relations:

This ideal does not require participants to be altruistic or to converge upon a consensus of value, strategy, or perspective. Real-world deliberations are often characterized by heated conflict, winners and losers. The important feature of genuine deliberation is that participants find reasons that they can accept in collective actions, not necessarily one that they completely endorse or find maximally advantageous. (p. 17).²²

Second, the transformation of brothels into a regular business sector is a prime example of what Maarten Hajer (2003b) calls an institutional void. The novelty of the legalization challenges confronted policy makers with a situation in which "there are no clear rules and norms according to which politics is to be conducted and policy measures are to be agreed upon" (p. 175). Time-proven administrative rules, routines, and practices that will predictably and reliably result in feasible solutions were simply lacking in this case. In such a situation, actors not only attempt to arrive at favorable solutions for particular problems, but they also "negotiate new

institutional rules, develop new norms of appropriate behaviour and devise new conceptions of legitimate political intervention” (p. 176). In addition, in the prostitution case, the state found itself not only in an institutional but also in a legal and moral void. Little jurisprudence that could guide administrators in the design of the licensing and monitoring system existed. Moreover, prostitution was formally declared legal, but that did not yet make it acceptable to the larger public. The legal redefinition of the exploitation of prostitution into a regular economic activity did not go hand in hand with a similar moral redefinition.²³

In a situation such as this, values such as responsibility and integrity were key elements in constructing a communicative space that allowed for the open exchange of arguments and reasons. By asserting key values, city officials drew clear demarcation lines that divided the morally and institutionally ambiguous policy field into an area in which authentic dialogue could occur and an area in which the full force of law applied. So, for example, framing the presence of management in sex facilities during hours of operation in terms of the owners’ responsibility for the well-being of prostitutes, clients and the neighborhood opened up possibilities for deliberatively working out solutions that were acceptable to all parties. On the other hand, the presence of juveniles in sex facilities fell beyond the demarcation line of what was morally acceptable and was therefore nonnegotiable. Stating values, in other words, frames the terms under which certain groups (well-meaning owners) will be included in the process of democratic deliberation and others (owners who exploit juveniles or victims of trafficking in women) will be excluded.

In fact, we may guardedly conclude that value articulation is a strategy for network management that is particularly attuned to a collaborative, deliberative approach to collective problem solving. Value articulation, in other words, collapses the distinction between network management and democratic deliberation by reframing the former in terms of the latter. In more general terms, collaborative dialogue does not preclude one of the parties to manage or guide the process as long as a number of requirements have been fulfilled. First, both the tools and direction of the management process, and the decision to assign increased steering capacity to one of the parties, must themselves have been agreed on deliberately. And second, the managing actor (usually government) must at all times be willing to share decision-making power and engage in authentic dialogue with the other parties without a preliminary or hidden agenda. This kind of collaborative management that is based on a foundation of trust and social capital effectively balances the advantages of traditional network man-

agement and democratic deliberation. In a situation of conflict and complexity, it may make the deliberative process both more effective and efficient by giving one of the parties in the network (temporarily and agreed on by all) augmented decision-making capacity that allows her or him to cut through a temporary stalemate in the negotiations. In addition, it tailors deliberative dialogue to the institutional reality of everyday governance in which state actors play a constitutionally mandated central role. Value articulation, in other words, can be seen as a form of open, emergent coordination in situations of dynamic complexity and fragmented control.

However, before we conclude that value articulation is an important tool of the state in democratic governance, two caveats must be stated. First, in the final analysis, the state has to convince all actors in an open and reciprocal exchange of arguments of the rightfulness and justness of the asserted values (Cohen, 1996). The moral force of the value of responsibility lies exactly in the circumstance that brothel owners voluntarily agreed that they bear a particular responsibility in the management of sex facilities. Second, and related to the first point, it is critical to the democratic process that the values emerge from the situation at hand. Values such as responsibility, integrity, and public safety are responses to the specific challenges that the legalization of brothels posed to the actors in The Hague. The actors involved perceived them as the logical answer to the contextual constraints of the local prostitution market and to the concrete challenges of legalizing prostitution. These caveats are important in light of the recurrent critique of democratic deliberation as at heart arbitrary and vulnerable to manipulation. Because, as the argument goes, for deliberation to be democratic at all, no one who is involved in it can have the prerogative to constrain the process toward certain preconceived outcomes (Dryzek, 2000, p. 44). One way to constrict the domain of eligible preferences is by specifying in advance the rules and values that determine which arguments are acceptable.²³ This approach has several drawbacks. Some of the parties may perceive a priori principles as arbitrary or as privileging some parties over others. Also, the formulation of abstract principles does not absolve the parties involved to make them operational and functional to the process at hand. As Dryzek (2000, p. 47) makes clear, it is better to learn about values through their application in concrete problem-solving processes than through being told about them beforehand. And finally, it is difficult to specify in advance which values are relevant to a particular concrete policy domain. One somewhat paradoxical lesson of the prostitution case, thus, is that for value articulation to func-

tion as a strategy of network management, the key values that structure the process of deliberation must be endogenous to the process of democratic deliberation itself. In other words, the range of acceptable arguments and outcomes must itself be deliberatively derived. In this way, deliberative efficiency and democratic inclusion need not be antithetical but instead can support and reinforce each other through engaging in the activity of democratic deliberation.

The case gives some indications of how this process of collaborative management might work. For example, the formulation of core values allowed the state to keep the initiative in the implementation process, whereas ensuring agreement on these values opened the decision-making process up for due consideration and persuasion by good reasons. Parties exchanged information and knowledge and changed their appreciation of the position of other parties. Facility owners became more appreciative of the city's concerns for public safety: "It has been a strict policy, but it is now quieter in the neighborhood, we have less public nuisance, and that is just right" (facility owner). They admit that the introduction of closing hours was, after all, and despite their initial resistance, a good idea, as it benefited both citizens and clients. The owners' renewed appreciation of public safety expressed itself in their wholehearted support of, and substantial financial contribution to, the introduction of public cameras in the areas of window prostitution. Similarly, city administrators have become much more knowledgeable and appreciative about the practice of running a sex facility. As a member of the mayor's staff put it, "Running a sex facility is hard work. You need to give it a lot of time and lots of attention. . . . It is not something you can do half-heartedly, on the side." Although trust is still shaky, there has been an increase in social capital. Although quick to criticize, facility owners grudgingly admit that city administrators have listened to their objections against certain proposed regulations and that they are accepted as genuine partners in the implementation of prostitution policy in the city, as the following brief conversation between two facility owners shows:

Owner 1: We have to be honest to ourselves. We are only doing this for 2 years now, which means that you always have start-up problems. I don't think we should say that the city administration did everything wrong. I don't agree with that. If we're objective and honest, then the way that the city succeeded in reducing street crime . . .

Owner 2: . . . is just right.

Owner 1: . . . has been just right. Period.

A similar attitude of guarded optimism can be registered among the police, as the following statement of a police official shows:

Am I pleased with my owners? Yes. It is printed in the newspaper. We have stated it straightforwardly: They're still rascals, if they can pull the rug from under you they won't hesitate, they're only in it for the money, absolutely. And they only go with the flow because they have no choice. But I also have to say that they have a positive attitude. They try to cooperate. They try to contribute ideas, and we really meet on a continuous basis. . . . They have very sensible ideas.

As the foregoing quotes suggest, authentic deliberation does not exclude conflict and a regular recourse to more antagonistic, self-interested modes of social choice. As we saw earlier, city officials never wavered from their preconceived goals of reducing the size of the prostitution sector in the city, quietly proceeding with the dispossession of buildings used for prostitution purposes. Similarly, on several occasions, facility owners went to court to fight the legality of closing hours or the temporary closing down of a sex club after an infraction of the immigration law. With hindsight, it can be argued that administrative court also functioned as a tool of collaborative management, a more neutral and level arena for the resolution of the most intractable conflicts that temporarily superseded the deliberative abilities of the parties involved. City administrators, for example, quickly discovered that in the design and enforcement of the licensing system, they had ventured into a legal no-man's-land where even the very definition of a sex facility was legally unclear. I get the impression from both parties that the owners' willingness (and capacity) to go to court came to be seen as an adjunct to the deliberative generation of solutions. Both parties saw the administrative court as an adjudicating body, a kind of mediator in situations when they were unable or unwilling "to persuade one other by offering reasons that the other party could accept" (Fung & Wright, 2001, p. 19). By going to court, the city was forced to argue its position as convincingly as possible, not just in a legal sense but also in a moral and practical sense. Through its rulings, the court underwrote all or part of the arguments that both sides put forth, sometimes siding with the city, sometimes with the facility owners. Backed up by its authority, the court's rulings became binding, in this way functioning as yet another structuring element in the dialogical transformation of the prostitution sector into a regular business sector.²⁵ The upshot is that value articulation and court involvement allowed the actors involved in the legalization effort to maintain a deliberative space in a context of conflict and strategic

bargaining and the strong position of the state in the implementation process.

Although it is reasonable to conclude that the actors who participated in the platform at times engaged in an open and reciprocal dialogue about how to transform the city's prostitution scene into a regular business sector, the implementation process as a whole shows at best a mixed picture, combining due consideration and persuasion by an open exchange of reasons with intense bargaining and negotiation in a context of fierce conflict. However, as the example shows, conflict and power differentials need not preclude the possibility of collaborative problem solving. In fact, the example shows that within a context of state domination and contestation among the parties involved, a communicative space that allowed the deliberative generation of solutions and the gradual growth of trust among the conflicting parties was created. To this end, we saw that the articulation and upholding of a number of values that answered to particular challenges of the implementation process worked in concert with the involvement of the court to construct and maintain a dialogical space. So the conclusion must be that contrary to what some democratic scholars assert (Dryzek, 2000; Torgerson, 2003), state influence need not necessarily be antithetical to the possibilities of democratic governance. Although state actors run a considerable risk of imposing a technocratic-administrative discourse on a particular societal problem space, thereby smothering the expression of diverse perspectives and interests that is characteristic of democratic governance (Torgerson, 2003, p. 128), state involvement and democratic governance do not by definition exclude each other. Democratic deliberation is not an all-or-nothing affair. This study suggests that even restricted forms of democratic deliberation may result in the increased trust and collaborative generation of solutions that the literature predicts.²⁶ Nevertheless, the study raises several questions about the institutional possibilities of democratic deliberation in a state-controlled policy environment. One of the key questions, the extent to which restricted deliberation leads to the desired process and epistemic effects of increased trust and better decision making, I will address in the next and final section.

CODA: THE EFFECTS AND LIMITS OF DELIBERATIVE POLICY IMPLEMENTATION

Democratic governance is not just process but also outcome. Governments and citizens engage in democratic deliberation because traditional governing strategies (hierarchies, markets) fail to deliver in situations of conflict, pluralism, and system complexity. In these circumstances, a deliberative approach reconnects state and society so that the distributed intelligence among the diversity of actors who are involved is brought to bear on a policy problem (Dryzek, 1990, p. 70; Innes & Booher, 2003, p. 36). Thus, unspoken or explicit expectations of social amelioration are a defining element of democratic deliberation. The legitimacy of democratic deliberation lies as much in the fairness of its procedure as in the epistemic quality of its outcome (Estlund, 1997; Fung & Wright, 2003, p. 25). What then were the outcomes of the legalization policy in The Hague?

The picture is mixed in that it is simultaneously a success and a failure. Collaborative deliberation of city officials and brothel owners has brought about a functioning licensing and monitoring system. Police officials claim that street crime in the prostitution area is now one sixth its prelegalization level. Also, with the introduction of closing hours, public disturbance has decreased. Moreover, as we saw in the preceding section, there is substantive evidence that the deliberative elements in the implementation process changed the mutual perceptions and interaction patterns of the actors who were involved. Informal consultations have evolved into more or less permanent networks, city officials and facility owners agree that the contributions of the others are useful and valuable, and guarded but genuine expressions of mutual trust can be heard among the major actors. Perhaps more important, even the restricted form of deliberation in this case has resulted in the adjustment of preferences that democratic theory both predicts and prescribes. The facility owners' statement that they value the imposed closing hours and the resulting increase in order and safety in the city's prostitution area is a telling example. Thus, deliberation in a policy sector that was hardly favorable to such an approach has produced both positive instrumental and noninstrumental effects.

Yet in the end, deliberation has not prevented the emergence of serious, negative, unintended consequences. Observational evidence suggests that sectors of the prostitution market where enforcement is lax, such as the designated streetwalking zone, have seen a sharp increase in the number

of illegal women, mostly from eastern Europe. More perniciously, many of these women are either the victims of traffickers, or they are driven into the hands of unscrupulous middlemen because of their tenuous positions in Dutch society (Bureau Nationaal Rapporteur Mensenhandel, 2002; Dijk, 2002). The upshot is that the exploitation of women by pimps that the law intended to curb has shifted from the clubs and windows to the streetwalking zones and, possibly, escort services and bars. How could this be?²⁷

In their classic "Implementation as Evolution," Giandomenico Majone and Aaron Wildavsky (1984) raise the question if policy implementation can analytically be distinguished from policy formation. Is there something, a plan, a law, to be implemented in the first place, or is implementation nothing more than the continuous give-and-take between involved and affected parties who struggle with a public problem? To view implementation as deliberation suggests the latter, but this short digression on outcomes impels us otherwise. Policies may not have beginnings, but in the final analysis they do have effects. Outcomes, both intended and unintended, both instrumental and processual, shape implementation as much, or more, than do original intentions. In the course of implementing a policy, the potential inherent in policy intention gradually solidifies into routine and result. Yet throughout this transformation of intention into outcome and order, policies drift in a sea of contingency. Outcomes are as much the result of concerted action as of unexpected developments that interact in unforeseen ways with the original policy (Pressman & Wildavsky, 1984; Wagenaar, 1995).²⁸

Majone and Wildavsky's (1984) well-known answer to the question about the nature of implementation is that it is not control nor interaction but evolution. Policy intentions are realized in an ongoing dialogue with the evolving constraints of the situation at hand (p. 176). Policy deliberation, as an attempt to forge collaborative relationships between state actors and civil society, seems particularly attuned to aid this process of discovering and managing constantly evolving complexity. For who has better knowledge of "the constraints under which policy ideas may be expected to operate" (Wildavsky, 1979, p. 176) than the parties who are directly affected by the policy? Yet the deliberative realization of the legalization of brothels in The Hague has not prevented serious negative unintended consequences. What does this mean for deliberation as an evolutionary strategy of policy implementation?

To get an answer, we need to ask ourselves what makes deliberative democracy tick. What is the active ingredient, the added value over hierar-

chy and markets? Careful empirical studies of deliberative collaboration suggest that it is increased social and cognitive capital, increased bonds of trust and new relationships of reciprocity, in addition to a deeper and more inclusive understanding of the complexities of the problem at hand (Healy et al., 2003; Innes & Booher, 2003). Increased social and cognitive capital is important in dealing with outcomes in a contingent policy world. Contrary to what many believe, outcomes are not always obvious to those closely involved with the implementation of a policy. Perturbations to complex social systems rarely add up to straightforward consequences but will more likely result in hard to predict, nonlinear interactions among components of the system (Axelrod & Cohen, 1999, p. 14). For example, effects may be dispersed (geographically or sociologically, as when they are buried in the experience of some affected group) so that they remain invisible to the actors involved. Effects often require interpretation for their full significance to be understood. Performance standards may be inherent to the practices of those involved so that they cannot be specified in advance (Cohen, 1996). Or there may be emotional barriers to seeing negative or unexpected effects. Potentially, deliberative relationships create the cognitive, attitudinal, and emotional preconditions for perceiving negative outcomes.

For example, brothel owners and street-corner workers repeatedly told me that they had warned city officials for the displacement effect I described above. They all agree that their words were not heeded.²⁹ This suggests that the deliberative process around legalization was at least partly flawed. Part of the explanation lies perhaps in the context of administrative bias and control in which the deliberative spaces in The Hague were embedded. As we saw, prostitutes, the first to feel the effects of the new measures, and the group most affected by the new regulations, never had a voice in the deliberative dialogue. This suggests that network design—particularly who's in and who's out—is a crucial factor in determining the success or failure of collaborative dialogue. Generally speaking, actors who possess crucial knowledge of (effects of) the policy process should be included in the collaborative network, but principle flounders on practicality here. For some groups (e.g., the prostitutes), it is difficult to get them to participate in any sustained way in a dialogical process; they effectively self-select themselves out of the process of collective problem solving. In other cases, a particular group might be too hostile to contribute to the collaborative process. Nevertheless, inclusion of stakeholders is such a key element of the epistemic success of democratic deliberation that it should be an ongoing element of network monitoring.

Thus, the conclusion is warranted that the deliberative approach to the legalization of brothels in The Hague was only a partial success. Despite its ability to increase social and cognitive capital among some of the parties involved, it nevertheless turned out to be vulnerable to negative unintended consequences. What does this imply for deliberative strategies of policy implementation? I see two important lessons. One is that the success or failure of the deliberative process is sensitive to its design. Particularly, who's in and who's out is a crucial factor in determining the success or failure of collaborative dialogue. As a matter of principle, actors who possess crucial knowledge of the slice of the world that is the subject of the policy should be included in the collaborative network. But reality does not always accord with principle, as we saw in the preceding paragraph. The best that can be said is that design, similar to management, must itself be seen as deliberative. Deliberative design then is not a one-shot affair, externally imposed on the deliberative process preferably by design experts, but instead an ongoing achievement of the parties who are engaged in the collaborative dialogue. To be effective at all, the design of the deliberative process should be endogenous to the process itself.

Second, deliberative design, as we have seen, is closely tied to policy outcomes. The robustness or vulnerability of the deliberative process depends on the constant monitoring of the openness and reciprocity of the policy dialogue. This requirement becomes particularly acute when policy actors face the law of unintended consequences. Limits to understanding, contingency, the unforeseen interaction of programs in a dense policy space, and the manipulation of government programs by calculating social actors will pull the concerted political action toward negative social consequences (Merton, 1936; Wagenaar, 1995; Wildavsky, 1979). Unforeseen negative outcomes force participants to rethink the assumptions of their policy. This is both difficult and painful to those who are invested in the policy and often results in denial and avoidance strategies. The intimate, shared knowledge of the policy problem at hand and the reciprocal trust among participants in the deliberative process helps in overcoming these barriers to collective learning. Thus, democratic deliberation is not only a normative ideal but above all an essential precondition for safeguarding the social and intellectual capital of democracy in an increasingly complex and unpredictable world.

NOTES

1. In the Netherlands, this has led to a debate about the limits of effective government action and an alleged legitimacy crisis. What is meant here is a crisis of output legitimacy, a persistent inability of the state to attain its own stated goals (Akkerman, 2004). I do not want to discuss the merits of this debate here. I mention it to illustrate the pervasiveness of the belief that traditional instrumental-hierarchical government has run into a wall.

2. Both of these events took place in the long drawn out and ultimately failed attempt to create a deliberative platform to work out the expansion of Schiphol Airport in the Netherlands. Although the government still proceeds with its original policy plans, it has sustained a considerable loss of legitimacy in this case (Wagenaar & Cook, 2003).

3. According to Dryzek (2000),

Democratization . . . is not the spread of liberal democracy to ever more corners of the world, but rather extensions along any one of three dimensions. The first is franchise, the expansion of the number of people capable of participating effectively in collective decision. The second is scope, bringing more issues and areas of life potentially under democratic control. . . . The third is the authenticity of the control . . . to be real rather than symbolic, involving the effective participation of autonomous and competent actors. (p. 29)

4. Warren (1992) adds to this the acquisition of democratic skills, such as a capacity for autonomous judgment, the ability to articulate one's position, an understanding of what binds one to others, and an ability to transcend narrow self-interest, by citizens who are involved in direct, public deliberation.

5. Thus, according to the proceduralist position, procedure-independent standards of rightness are not required. Many democratic theorists believe that this is, to say the least, not self-evident. However, this is not the place to discuss the finesses of deliberative theory. For a classic statement of the relation between procedural and epistemic standards in deliberative democracy, see Estlund (1997).

6. Dryzek (2000) argues that for this reason deliberative democrats should not attempt to work within the institutional structure of the state but instead favor a state that is exclusionary "for exclusion properly arranged can actually benefit democracy" (p. 87). He then points out that in the history of democratization, pressures for greater democracy almost always spring from oppositional groups in civil society.

7. As Bohman (1998) puts it, "Deliberative democracy could become a very robust method for deciding very little. Or, it could also easily become a very weak procedure for deciding too much" (p. 404).

8. Bohman (1998), for example, concludes his excellent review article of deliberative theory with this observation: "For all the sophistication of these discussions of justification, institutional design and feasibility, there is still a surprising lack of empirical case studies of democratic deliberation at the appropriate level and scale" (p. 419). This conclusion overlooks the growing literature in critical planning and empowered democratic deliberation.

9. This case study is part of a larger research project in which I study the implementation of the legalization of sex facilities in the Netherlands. I use a qualitative and ethnographic approach in which I combine in-depth interviewing of key actors in the implementation process (administrators, facility owners, prostitutes, citizens, professionals, experts) with

observation of the prostitution scene and the negotiations between government actors and sector representatives.

10. I use the term *exploitation* here in its neutral meaning of running and managing a business, not in the negative meaning of *to sweat* or *to extort*. In cases when I refer to the negative exploitation of women, certainly a reality in prostitution, I will indicate this by using adjectives such as *brute*, *crass*, *gross*, or *sexual* with *exploitation*.

11. Window prostitution is a typical and highly visible phenomenon that among others made the Amsterdam red light district into the colorful tourist attraction that it is today. The habit of prostitutes to sit behind a window to present themselves to prospective customers was a reaction to the national ban on brothels that was effectuated in 1911. The law left individual women free to provide sexual services for money but prohibited their working in brothels. Many women then decided to work from their own homes by sitting behind their windows to indicate that they were available for prostitution services. Nowadays, entrepreneurs own large numbers of "windows," sometimes up to 100, that they rent out on a daily or weekly basis to women. Most of the large window owners provide additional services to the women such as security control, shared kitchen facilities, and medical services.

12. This number underestimates the actual number of prostitutes working in the Netherlands per day, as it does not include women working for escort services and home prostitution. Gay prostitution is not included either. Because of high mobility among prostitutes it is estimated that between 18,000 to 25,000 women work as prostitutes per year in the Netherlands (Dijk, 2002).

13. Haveman (1998, p. 318) suggests that a strong continuity exists between regulated tolerance and licensing. Several cities had experimented with rudimentary licensing systems under the regime of regulated tolerance.

14. To prevent streetwalking from spreading all over the city, many of the larger cities in the Netherlands have designated an area for streetwalking, prohibiting it outside this area. In most cases, the streetwalking zone has strict operating hours, and the city has invested in secluded parking spaces where prostitutes and clients can withdraw. Sometimes there is some presence of the police during operating hours, mostly to protect the prostitutes from unruly clients. In most of the designated areas, a city-sponsored, low-threshold agency provides services to the women, such as the free distribution of condoms, the provision of food, coffee, and shelter, information about sexually transmitted diseases, and, when needed, referrals to other service agencies.

15. One of the facility owners, who participated in the negotiations with the city government over the licensing system, explained how he had to learn that verbal commitments by policy makers had no value whatsoever. Only commitments that were explicitly recorded in the minutes of meetings were understood by administrators to have binding value.

16. For example, in a highly publicized case, the town of Papendregt was rebuffed in court when it tried to force a facility owner to relocate his establishment from the center of town to a less attractive industrial zone at the outskirts. Many owners came to see this case as paradigmatic for the distant, adversary way municipal administrations dealt with them.

17. As one police officer stated,

Whatever we did was insufficient. I dare to state that whatever happened was more the result of happenstance, or the personal commitment of individual people, than that we acted from a vision, a policy that was supported by an enforcement policy.

18. As Innes and Booher (2003, p. 41) state, collaborative dialogue requires that actors are aware of their mutual dependency.

19. Wage earners are subsumed under a different fiscal regime than are the self-employed. In the first case, the owner-employer, in addition to sales tax, has to pay considerable social security premiums over the employee's gross wage sum. The Tax Office is required by law to investigate the nature of the labor relationship in a business facility on the basis of "facts and circumstances." This means that the Tax Office's assessment may differ from the contractual relationship on which the owner and prostitute have agreed. The main criteria for deciding for the presence of an employer-employee relationship, as opposed to self-employment, are wage payment, the presence of an authority relationship, and the provision of services by employers to employees. When applied to sex clubs, written rules for working hours and clothing etiquette are interpreted as indicating the presence of an authority relationship, even if the women set the fees for their services and the owner only receives rent for the use of the room.

20. Although they were not part of the platform, citizens expressed satisfaction with their communications with the city administration. They felt that their concerns were heard and that their proposals for improvement of the prostitution area were taken seriously (citizen activist). It could also be that city officials were wary of putting sex bosses and citizens in one room. The chairman of the citizen group told me that on at least one occasion facility owners intimidated him after the group had presented a plan for the restructuring of the red light district (although the most powerful owner later apologized to the citizens).

21. I did not get clear answers as to why prostitutes were not involved in the talks. A representative of the prostitutes' union shed some light on possible reasons. She said that for a number of reasons prostitutes are hard to organize. They fear that their anonymity will be compromised. They are used to fending for themselves. Mobility among prostitutes is high (clients desire a fresh face all the time; as a result, earnings begin to drop after a few months). They favor an "exit" style of conflict resolution: "They solve conflicts by slamming doors" (union representative).

22. Cohen (1996) emphasizes that acceptability of arguments in a contested political environment (i.e., acceptability to others who have different interests and hold different points of view) is the core of deliberative democracy:

In an idealized deliberative setting, it will not do simply to advance reasons that one takes to be true or compelling: such considerations may be rejected by others who are themselves reasonable. One must instead find reasons that are compelling to others, acknowledging those others as equal, aware that they have alternative reasonable commitments, and knowing something about the kinds of commitments that they are likely to have. . . . If a consideration does not meet these tests, that will suffice for rejecting it as a reason. If it does, then it counts as an acceptable political reason. (p. 100)

23. Some anecdotal examples illustrate the gap between formal legalization and the generally accepting attitude toward prostitution as expressed in national surveys and its controversial nature at the everyday level. Recently, an alderman in Amsterdam was forced to resign after he admitted to having visited street prostitutes. During the same period, a female member of the city council published her memoirs in which she describes her activities as a prostitute working in clubs. Her book was generally praised in the media, no doubt because it portrays prostitution as slavery. Finally, some of the women whom I interviewed described

how, in trying to get out the prostitution business, they had to conceal their past if they wanted to obtain a regular job.

24. This is a common approach to managing deliberative or interactive processes. It is favored, for example, by Gutmann and Thompson (1996) in their influential book. A similar approach is suggested in influential advice to the government on managing interactive policy making by the Dutch Council for Public Policy (Raad voor het Openbaar Bestuur, 2002).

25. The recourse to the court throws an interesting light on a common argument against democratic deliberation. According to this argument, which I will call proceduralist, fair and binding procedures of adjudication (e.g., elections or courts) are necessary in a liberal democracy because of the theoretical impossibility of reaching conclusive justifications in cases of social conflict. Differently put, democratic deliberation will never attain its own standard of persuasion through reasoned argument because of the extreme difficulty of formulating reasons that are convincing to everyone according to their own cognitive resources and belief systems (Gaus, cited in Bohman, 1998, p. 406). The usual argument against the proceduralist position is that for such procedures to function at all, they require the very agreement on practical norms of fairness that the proceduralists claim is impossible to reach (p. 407). The role that the court played in the deliberations over the introduction of a licensing system seems to vindicate the deliberative argument. Within a deliberative context, such agreement over formal adjudicating procedures was well within reach of the actors involved. Another case of court involvement, in the city of Groningen, brings out in even greater relief the practical validity of the deliberative argument on adjudicating procedures. Although the court ruled in favor of the city, both facility owners and city administrators were so disappointed about the court's arguments that they agreed to appeal the ruling to obtain additional clarification of legal argument.

26. In this sense, the results of this study fit other empirical studies of deliberative experiments that show that state involvement may play a positive role in the institutional stabilization of democratic governance. In fact, according to some authors, one of the key characteristics of democratic deliberation is the transformation of state power. That is, although decision-making power is devolved to local actors, the state remains involved in the process of policy formation in new and different roles. For example, traditional state actors in deliberative policy making organize avenues of accountability and communication from local units to more centralized agencies. Also, the state puts its resources to work to support and facilitate communications among local actors and to make their deliberative networks more durable and authoritative (Fung & Wright, 2001, p. 23; Innes & Booher, 2003; Sabel, Fung, & Karkkainen, 2001).

27. In fact, at the time of rewriting this article (winter 2004), many city administrations had decided to clamp down on the designated streetwalking areas, either closing them altogether (Amsterdam, Rotterdam) or, as in The Hague, restricting opening hours and stepping up monitoring of prostitutes and clients by the police.

28. For example, the decision to waive visa requirements for citizens from Bulgaria and Romania as of January 1, 2002, a decision that evolved from European regulation and that was unrelated to the legalization of sex facilities in the Netherlands, resulted in a sudden inflow of (illegal) women from these countries into the Dutch prostitution market.

29. In one of my first interviews (in 2001) with two prostitutes who had decided to work legally, I was already told that some of their foreign colleagues were now working in bars in the harbor area of Rotterdam. There they lacked the security of a regulated sex facility and often had to accept the "protection" of middlemen. Service providers and policy makers have only now recognized this problem.

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Hendrik Wagenaar is an associate professor of public policy at the Department of Public Administration at Leiden University and a senior researcher at the Netherlands Institute for the Study of Crime and Law Enforcement. He does research and publishes in the areas of postpositivist policy analysis, administrative practice, and policy implementation. He currently researches the implementation of the legalization of prostitution in the Netherlands. He also studies democratic governance and citizen participation in inner-city neighborhoods. Hendrik Wagenaar lived and worked in the United States between 1982 and 1991. He received his Ph.D. in Urban Studies at the Massachusetts Institute of Technology. He also worked as a research associate at the Department of Psychiatry at Harvard University.