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**THE RISE OF 'NEW' POLICY INSTRUMENTS IN COMPARATIVE
PERSPECTIVE: HAS GOVERNANCE ECLIPSED GOVERNMENT?**

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THE RISE OF ‘NEW’ POLICY INSTRUMENTS IN COMPARATIVE PERSPECTIVE: HAS GOVERNANCE ECLIPSED GOVERNMENT?

Governance is a term in good currency, but there are still too few detailed empirical analyses of the precise extent to which it has or has not eclipsed government. This article explores the temporal and spatial characteristics of the governance transition by charting the deployment of new policy instruments in eight industrialised states and the European Union (EU). The adoption and implementation of (‘old’ and ‘new’) policy instruments offers a useful analytical touchstone because governance theory argues that regulation is the quintessence of government. Although there are many ‘new’ environmental policy instruments (NEPIs) in these nine jurisdictions, this article finds that the change from government to governance is highly differentiated across political jurisdictions, policy sectors and even the main instrument types. Crucially, many of the new policy instruments used require some state involvement (i.e. ‘government’) and very few are entirely devoid of state involvement (i.e. pure ‘governance’). Far from eclipsing government, governance therefore often complements and, on some occasions, even competes with it, although there are some cases of fusion. Future research should therefore explore the many complex and varied ways in which government and governance interact in public policy making.

Academia is awash with neologisms, none more pervasive than - or as apparently important as - that of 'governance'. Stoker (1998, p. 18) claims that it provides a new 'reference point which challenges many of the assumptions of traditional public administration'. Even critics concede that it has achieved a 'paradigmatic orthodoxy' in British political science (Marinetto, 2003, p. 597). Despite its widespread use, doubts persist about whether such a broad portmanteau term can be fashioned into a coherent analytical concept and, by implication, a cumulative research programme (Marinetto, 2003). To be fair, the governance 'turn' has generated much theorising, but there is still surprisingly little comparative empirical work. There is, however, a growing appreciation of the need to move beyond theorising and conduct more detailed empirical testing (Eberlein and Kerwer, 2004, pp. 122, 136; van Kersbergen and van Waarden, 2004, p. 165; Kjær, 2004, p. 204; Kooiman, 2003, pp. 4-5; Marinetto, 2003, pp. 605-6). This should, Flinders (2002, p. 55) maintains, 'allow analysts to more completely comprehend the response and capacity of nation states to govern in a more globalized and networked environment.'

Further empirical investigation could certainly help to arbitrate between some of the more extreme claims made about the extent and/or timing of governance. Thus, Rhodes (1996, pp. 652-3) claims that governance is synonymous with 'a *change* in the meaning of government; a *new* process of governing; or a *changed* condition of ordered rule; or the *new* method by which society is governed' (emphasis added). By contrast, Pierre (2000a, p. 5) is more circumspect in arguing that government endures in the new era of governance, but its form and function vary in several important respects. Bache (2003), Davies (2002) and Pemberton (2003), all arrive at strikingly similar conclusions about the centrality of government control over UK education, urban and economic policy respectively. Knill and Lehmkuhl (2002) make broadly the same point in relation to EU policy-making.

Examining governance empirically

If analysts want to research empirically the contested claim that (traditional forms of) government have increasingly given way to (new modes of) governance then one obvious starting point is with some baseline definitions. However, there is no universally accepted definition of governance; there is not even a ‘consensus on which set of phenomena can properly be grouped under the title of ‘governance’’ (van Kersbergen and van Waarden, 2004, p. 165). Hirst (2000), for example, offers five different interpretations, Rhodes (1996) six, and Kersbergen and van Waarden (2004) no less than nine! Kooiman (2003, p. 5) understandably concludes that ‘[w]e are still in a period of creative disorder concerning governance.’

This article’s main aim is not to explore, let alone empirically assess, all these definitions. Instead it aims to introduce more ‘creative order’ into the debate by identifying useful analytical touchstones which should enable researchers to differentiate various forms of governance from government when carrying out empirical research. But what device best captures empirically the essence of the apparent governance transition across a wide range of industrialised countries and the European Union (EU)? Eberlein and Kerwer (2004, p. 127) have argued that it may not be useful to search for an ‘empirical measuring stick’ crudely to measure the amount of governance, although they do concede the need for more focused empirical inquiry. After all, the popularity of the term governance derives from ‘its capacity – unlike that of the narrower term “government” – to cover the whole range of institutions and relationships involved in the *process of governing*’ (Pierre and Peters, 2000, p. 1) (our emphasis).

If we therefore want to examine the process of governance (i.e. when non-state actors do more societal coordination for themselves) empirically, then we ought to preserve the conceptual breadth of the term, while simultaneously gaining the analytical precision needed to assess empirically any relevant temporal, spatial and sectoral patterns. We therefore identify a

touchstone of governance i.e. a relatively simple analytical device that allows empiricists to distinguish ‘new’ modes of governance from ‘old’ forms of government. One promising candidate is, we will argue in this article, the instruments that policy makers in different jurisdictions select to achieve their policy goals.¹ In their analysis of British governance, Richards and Smith (2002, p. 279), argue that it ‘is not what the state does that is different, but *how* it does it’ (emphasis added). One of their main findings is that while policy goals have stayed the same, the ‘way they [i.e. policy instruments] are used and the use of different forms of control have changed the way the state operates’ (*ibid.*). Like these and many other analysts, we start from the proposition that the deployment of so-called ‘command-and-control’ regulatory policy instruments is the quintessence of government (Pierre, 2000b, 242). By contrast, the governance literature argues that ‘new’ (or what are sometimes labelled ‘softer’) instruments, have become much more widespread (for more details, see: Jordan *et al.* 2003b). Crucially, these are assumed to allow social actors more freedom to coordinate amongst themselves in pursuit of societal goals, with far less (or even no) central government involvement.

This article analyses the overall pattern of change in the European Union (EU) and seven of its member states, namely Austria, Finland, France, Germany, Ireland, the Netherlands and the UK. These jurisdictions therefore cover a relatively wide range of different European states in terms of size, state (or ‘government’) traditions and preferences for policy instruments. The addition of Australia also helps to assess whether similar dynamics of change are present within a highly developed, but non-EU state. Our analysis focuses on the environmental policy sector because it is inherently *regulatory* in nature (Weale, 1992), although regulation inevitably has distributive and redistributive consequences. We show that regulation was the preferred environmental policy instrument in all nine jurisdictions in the early 1970s, but that ‘new’ environmental policy instruments have become much more common. Environmental policy represents a ‘critical’ case in this respect because it is not a field in which we would reasonably

expect new instruments to flourish. On the contrary, the strong legacy of government by regulation in the environmental policy field since the late 1960s would make any widespread and consistent shift to new environmental policy instruments (NEPIs) all the more significant. As there is already a rich literature which explores the main drivers of NEPI use (Golub, 1998; Jordan, Wurzel and Zito, 2003b; Knill and Lenschow, 2000), we mainly focus on the main patterns of uptake in order to explore what these reveal about the contours and pacing of any governance transition.

The remainder of this article is structured as follows. Part Two explores some of the different definitions of the terms ‘governance’ and ‘government’, and emphasises the most important areas of (dis)agreement. Part Three briefly defines NEPIs. Part Four makes a preliminary attempt to assess the different forms in which governance is appearing by relating these to the traditional instruments of policy (i.e. regulation) using a simple typology. Part Five, documents the overall pattern of instrument use in the nine jurisdictions throughout the period of modern environmental policy (i.e. since c.1970). Finally, Parts Six and Seven draw together the main threads of our argument and look forward to the next phase of empirical research on governance.

On government and governance

Governance is not a new term (Pierre and Peters, 2000, p. 2), but its popularity has undoubtedly grown in the last decade. The Shorter Oxford English Dictionary defines ‘to govern’ as to guide, direct or steer society. Political scientists used to treat governance as a synonym for government (Stoker, 1998, p. 17), but recently the majority consider them to be analytically distinct terms. Recently, Bevir and Rhodes (2003, p. 45) defined governance as ‘a change in the nature or meaning of government.’ However, moving beyond this set of broad definitions makes it very apparent that different branches of the social sciences employ their own,

somewhat distinct interpretations (Kjær, 2004). Indeed, different branches of political science appear to use it rather differently. Thus, scholars of international relations tend to explore the international drivers and manifestations of governance in a global society that has never experienced world government (Rosenau, 1992, pp. 8-9), whereas comparativists are normally preoccupied with understanding what governance implies for the internal attributes and functions of 'the state' *qua* government. Significantly, for comparative empirical work, most of the interpretations identified above are not precise enough to differentiate new modes of governance from traditional forms of government. In order to overcome this problem, our article focuses on 'new' and 'old' policy instruments as analytical touchstones in order better to differentiate between governance and government, while at the same time subjecting this distinction to comparative empirical analysis.

In spite of these disagreements, there is relatively widespread agreement on a number of basic points. First and foremost, most scholars associate governance with a decline in central governments' ability to steer society. According to Stoker (1998, p. 17), governance refers to the emergence of 'governing styles in which the boundaries between and within public and private sectors have blurred.' Pierre and Peters (2000, pp. 83-91) contend that the state is losing its steering ability as control is displaced: upwards to regional and international organisations such as the EU; downwards to regions and devolved localities; and outwards to international corporations, NGOs and other private or quasi-private bodies. Stoker (1998, p. 26) claims that governance marks a 'substantial break from the past.' Rhodes (1997, p. 47) argues that it provides a new 'operating code' for British government. Other commentators are much less assertive in their claims (see above), but while the precise importance of governance is often left tantalisingly undefined, in most accounts its significance is nonetheless implied.

Second, much of the recent governance literature emphasises the growing importance of multi-level government structures such as the EU for the spread of ‘new’ modes of governance (Hooghe and Marks, 2003). This literature has gained a boost from the publication of the European Commission’s White Paper on European Governance (CEC, 2000). However, its analytical focus is quite diffuse; it also focuses mainly on the EU level without giving sufficient attention to the ways in which ‘new’ modes of governance are implemented at member state level and below.

Third, and more controversially, governance and government are often (and most notably in the older political science literature) regarded not as discrete entities, but two poles on a continuum of different governing types (Finer, 1970). If the extreme form of government was the ‘strong state’ in the era of ‘big government’ (Pierre and Peters, 2000, p. 25), then the equally extreme form of governance is an essentially self-organising and coordinating network of societal actors (Schout and Jordan, 2005). Crucially, such networks are said to ‘involve not just influencing government policy but taking over the business of government’ (Stoker, 1998, p. 23). They are ‘self-organizing’ in the sense that they actively resist government steering Rhodes (2000, p. 61). To use Osborne and Gaebler’s (1992) popular distinction between ‘steering’ (setting policy goals) and ‘rowing’ (delivering those goals through the selection and use of instruments), they steer as well as row. Luhman (1982) goes even further with his claim that ‘autopoietic’ or ‘self-referential’ governing systems render ineffectual any attempts made by central government to steer society.

Placing government and governance at the opposite ends of a theoretical continuum is, however, unlikely to be sufficiently sensitive to pick up changes in the form and function of governance.ⁱⁱ

In what ways might governance and government interact along this continuum of types? Drawing on Eberlein and Kerwer (2004, p. 136), there are at least four possible forms of

interaction: they could *complement* one another without actually merging; they could *merge* with one another; they could *compete* and conflict with one another; or one could eclipse or actively *supplant* another. For the sake of convenience we label these four potential forms of interaction *co-existence*, *fusion*, *competition* and *replacement* respectively. This article examines the extent to which these four types of interaction appear in the pattern of instrument use in and across the nine jurisdictions.

Fourthly, to investigate these interactions, we focus on ‘new’ environmental policy instruments (i.e. new forms of governance). We have already noted the strong tendency in the political science literature to associate government with (traditional form of) regulation, whereas governance is often seen as becoming manifest in the appearance of ‘new’ policy instruments (Zito *et al.* 2003). Heywood (2000, p. 19), for example, regards the ‘ability to ‘make law (legislation), implement law (execution) and interpret law (adjudication)’ as the ‘core functions’ of government. For Richards and Smith (2002, p. 279): ‘government *is* bureaucracy, legislation, financial control, regulation and force’ (emphasis added). Governance, by contrast, is characterised by a growing use of non-regulatory policy instruments such as NEPIs. These are proposed, designed and implemented by non-state actors, sometimes working alongside state actors, but sometimes also independently. We explore the various forms that this may take in the next section. There is a surprisingly strong measure of agreement on this fourth point. Thus, international relations theorists such as Rosenau (1992, p. 4) claim that governance equates to policy ‘goals that may or may not derive from legal and formally prescribed responsibilities and do not necessarily rely on police powers to overcome defiance and attain compliance.’ Meanwhile, domestic politics scholars such as Stoker (1998, p. 17), often claim that the very ‘*essence* of governance is its focus on governing mechanisms *which do not rest on recourse to the authority and sanctions of government*’ (emphasis added) (see also, Pierre (2000b, p. 242).

To summarise, our article examines how far the interaction between different types of ('new' and 'old) policy instrument, yields new analytical insights into the interaction between (new modes of) *governance* and (traditional forms) of *government*. It is beyond the scope of this article to explore the empirical implications of the presence of different instruments types in each for the overall balance between 'state steering' and 'societal self-governing'. Instead, we focus on what the policy instrument choices in different jurisdictions say about the changing roles of state and societal actors in the governance transition (see also, Knill and Lehmkuhl, 2002).

Governance by 'new' policy instruments

Having identified our analytical touchstone and described some of the possible forms of interaction, we now look more closely at the form and function of the distinct types (and sub-types) of policy instruments. Howlett, (1991, p. 2) defines these broadly as the 'myriad techniques at the disposal of governments to implement their policy objectives'. The literature describes many types of 'new' policy instruments, including benchmarking, co-regulation, voluntary codes of conduct and negotiated agreements (Zito *et al.* 2003, p. 509). The environmental policy literature further distinguishes between traditional regulatory instruments, the mainstay of environmental policy going back as far as the late 1960s (see above), and 'newer' instruments, or NEPIs (Knill and Lenschow, 2000; Jordan *et al.* 2003a). Our analysis, concentrates on four main sub-types of NEPI, namely market-based instruments (MBIs), eco-labels, environmental management systems (EMS) and voluntary agreements (VAs). The remainder of this section, defines these instrument types while referring to definitions put forward by international bodies (such as the OECD), before discussing how far they embody features of 'governance' and or 'government'.

Market based instruments

MBIs ‘affect estimates of costs of alternative actions open to economic agents’ (OECD, 1994, 17). The OECD distinguishes between four main types: eco-taxesⁱⁱⁱ (including charges and levies); tradable permit systems;^{iv} subsidies (including the granting of fiscal incentives to less polluting products and/or activities); and deposit-refund schemes. Because of space constraints, our analysis focuses only on the more popular eco-taxes and tradable permits (OECD, 1999b). International databases show that the total number of MBIs used in OECD countries has grown strongly since the early 1970s, as has the diversity of sub-types.

Eco-labels

Eco-labels mainly rely on moral suasion; they provide consumers with information about the environmental impact of their purchasing decisions. The OECD (1999a) differentiates between three subtypes: externally (i.e. essentially state) verified, multi issue schemes (Type I); unverified self-declaratory schemes (Type II); and single issue schemes (Type III). In comparison to regulation and also some MBIs, eco-labels do not directly steer society. Rather, they seek to harness market forces by encouraging consumers to make more informed purchasing decisions. That said, in markets where green consumerism is very strong, eco-labels may in practice steer producers in ways similar to traditional regulatory standards (*ibid.*).

Environmental management systems

EMSs, such as the EU’s environmental management and audit system (EMAS) and the International Standard Organisation’s (ISO) ISO 14001, encourage industry to behave more responsibly. Although their precise characteristics differ, both systems require member companies to audit the environmental impact of their activities, establish internal management systems to monitor and (where possible) reduce these impacts, and provide stakeholders with a regular statement of their activities. In exchange, the business in question is granted an official

confirmation (or logo) by a competent national authority (as in the case of EMAS) or the ISO (as in the case of ISO 14001), which they can use in their advertising. Although participation in both schemes is, in theory, entirely voluntary, firms are often driven to participate by market pressures. Governments may also encourage participation by linking membership to a lighter regulatory regime.

Voluntary agreements

The European Commission has adopted the following generic definition: ‘agreements between industry and public authorities on the achievement of environmental objectives’ (COM (96) 561 final, p. 5). Börkey and Lévèque (1998) provide a more specific typology, that distinguishes between: negotiated agreements; public voluntary schemes; and unilateral commitments. *Negotiated agreements* are formal contracts negotiated between industry and public authorities, whose aim is often to address quite specific environmental problems (e.g. emissions of a certain type of pollutant). They may or may not be legally binding, but normally their contents are revealed to the public. *Public voluntary schemes* (PVS) are normally established by public bodies like the ISO and the EU, which define certain performance criteria and other membership conditions. Some EMS discussed above could also be defined as PVS. *Unilateral commitments*, which are widespread in Austria and Germany, consist of more general statements and promises made by individual companies and/or industry associations. Many of the recent corporate social responsibility activities of large companies such as Shell, also fall into this category.

Policy instruments: A simple typology

To simplify our presentation, Figure 1 provides a typology of this complex array of subtypes on the basis of who (or what) determines the ends and means of policy. While it focuses on their theoretical (or ‘textbook’) characteristics rather than their actual use ‘in context’, it does start to

reveal both the extensive overlap between the main sub-types and, by implication, some of the potential difficulties of clearly distinguishing government from governance. For instance, forms of regulation are found in three of the four cells (i.e. regulation can be used in a very hierarchical fashion, but in almost all states at least some issues are normally negotiated between the regulator and the regulated). The definitions of instrument sub-types are also not entirely discrete: for instance, many EMSs could be defined as public voluntary schemes (i.e. voluntary agreements).

Insert Figure 1 here >>>>>

By now it should be apparent that government and governance (at least as the existing literature defines them) are actually much more intertwined than is implied by some governance theorists (see above). In fact, closer examination reveals that the extent of the blurring between the two categories is even more substantial than Figure 1 suggests. At its heart, the governance debate is essentially about where society is steered from. Thus, under a ‘government’ approach, society is steered by central government, whereas in a ‘governance’ model, ‘society actually does more self-steering rather than depending upon guidance from government’ (Peters, 2000, p. 36). Figure 2 re-casts the contents of Figure 1 accordingly.

Insert Figure 2 here >>>>>

Both Figure 1 and 2 identify two important functions that need to be fulfilled when instruments are used: the determination of the *means* of policy (i.e. for us, the instruments of policy) and the determination of the ultimate *ends* to be achieved (i.e. the policy objectives). To suggest that a transition to governance is occurring, does not necessarily imply that both these functions are changing at the same time. But in general, ‘government’ is found in the top left cell of Figure 2

and the further we travel towards the bottom right cell, the more important societal self organisation and steering (i.e. governance) becomes. We have already noted that many scholars assume that society is undergoing just such a shift.

On closer inspection, government features in all four cells. It also has some role to play in relation to all four instrument types. So, to take VAs as an example, only unilateral commitments are actually instruments of ‘self organising’ governance, because they offer businesses an entirely voluntary means of communicating with their stakeholders. Negotiated agreements normally involve so much state activity that they actually sit closer to the government end of the continuum of governing types referred to above. Similarly, some EMSs involve, or are closely allied to, regulation, whereas others do not. Eco-labels are commonly regarded as relatively unintrusive policy instruments, but in reality only Type II schemes formally constitute ‘self organising’ governance. The dynamics that that emerge around these different combinations have been explored by, for example, Cashore (2002). The other two sub types involve the state and/or the EU acting as a supporter, a verifier or a referee of the labelling system. Finally, neither eco-taxes nor tradable permits are devoid of government involvement: government is commonly involved in designing, initiating and overseeing them. In short, they are not entirely ‘self organising’ either.

So far, we have not looked in detail at how these four instruments types are actually used in the nine jurisdictions, less still the interaction between them. Nevertheless, it is already clear that the neat theoretical distinction between governance and government is, in reality, rather blurred, even when the empirical focus is on something as seemingly straightforward as policy instruments. This can also be seen from the fact that regulation is, as some commentators claim, often strongly associated with government, but is by no means limited to it. New and more interactively determined forms of regulation actually exhibit many features of

governance. In the following sections we explore the interactions *between* governance and more traditional instruments of government in more empirical detail, and offer a more detailed assessment of the temporal, spatial and sectoral patterns of NEPI ‘in context’, in order better to comprehend the nature and extent of that blurring.

Instruments of environmental governance: patterns of use

Table 1 provides a summary of the distribution of NEPIs across the eight countries in our sample and the EU.^v Rather than populate the cells with numbers,^{vi} we have decided instead to offer a more qualitative weighting. The descriptors indicate the popularity of a given instrument in each jurisdiction relative to the other eight jurisdictions, rather than to some absolute baseline.^{vii}

Insert Table 1 here >>>>>

Three things are immediately apparent. First, all nine jurisdictions have adopted at least one form of NEPI. To that extent, governance has become more dominant. Thirty years ago only a small number of countries had adopted NEPIs, while the majority relied upon regulation. Today, even the least innovative countries (in our sample, Ireland and Australia) have adopted some NEPIs, although regulation remains important and/or dominant in all nine jurisdictions. Second, although NEPIs are everywhere more popular, they are more popular in some jurisdictions (e.g. the Netherlands, Germany and Finland) than others (e.g. Austria, Australia and Ireland). There are also important cross-sectoral variations which are explored below. Third, no jurisdiction is enthusiastic about all the new instruments; even ‘leaders’ have shunned certain types of new instrument (e.g. tradable permits in Germany and Finland; eco-labels in the Netherlands; eco-taxes in the EU). Furthermore, some countries are extremely enthusiastic

about a particular type of NEPI (e.g. tradable permits in the UK; EMSs in Australia), but exhibit little or no interest in the rest.

In short, just as there were enduring differences in the way that traditional instruments of environmental policy (i.e. mainly regulation) were applied in the past (e.g. Vogel, 1986), there appear to be subtle, but important, differences in the utilization of NEPIs today. The next section therefore looks at how the nine jurisdictions use each individual instrument, to ascertain if this offers a better insight into the interaction between government and governance of instruments (i.e. is it one of *co-existence*, *fusion*, *competition* or *replacement*?).

Market-based instruments

The Nordic countries, the Netherlands and France introduced charges and levies on water and air pollution as early as the mid-1970s. Germany adopted a wastewater levy in 1978, but this was not fully implemented until the early 1980s. By contrast, the UK did not adopt environmental taxes until the early 1990s, Australia is an even more recent convert and Ireland has barely started.

In general, the ‘followers’ are now beginning to catch up with the initial ‘leaders’ as MBIs are more widely applied (EEA, 2000). However, the gap between the wealthier Northern and poorer European countries persists and, on some criteria, may even be growing (CEC, 2000). Thus, the pioneers have now proceeded to more sophisticated MBIs (such as ecological tax reforms and emissions trading), whereas the followers are still employing first generation MBIs such as simple effluent taxes and user charges.

The range of MBIs used has also evolved. In the 1970s, cost recovery charges dominated, but in the 1990s policy makers began to experiment with ‘second generation’ approaches involving

hypothecation (CEC, 2000, p. 16). In our sample, Austria (e.g. landfill taxes), Finland (e.g. the oil waste levy), Germany (e.g. the duty on mineral oils) and the UK (e.g. the landfill tax) formally ' earmark' the revenue from environmental taxes to various 'good' causes. Ecological tax reform is the most sophisticated form of eco-taxes. Again, there are clear leaders (the Netherlands, Finland, France, Germany and the UK all adopted significant ecological tax reforms in the 1990s) and followers (Australia, Austria and especially Ireland). Tradable permits, originally developed in the USA, are still relatively uncommon in the EU. In our sample, only the UK and the Netherlands have successfully adopted them, although all the member states are now implementing an EU-wide scheme covering greenhouse gases (see below).

Finally, the overall pattern of use is highly differentiated across the various sub-sectors of environmental policy. Some sub-sectors, such as fuels, road transport, energy consumption and waste are relatively heavily populated by MBIs, whereas in the agricultural sector there are hardly any, although at one stage Austria adopted a fertilizer tax (CEC, 2000, p. 12). In Europe, eco-taxes are now commonly used across a large swathe of different sectors (although the aforementioned sectors are covered more extensively than others), whereas the use of tradable permits has largely been limited to reducing greenhouse gas emissions (OECD, 2001).

Eco-labels

The German government adopted the world's first national eco-label scheme in 1978. Austria (1991), Australia (1992), France (1992), and the Netherlands (1992) eventually adopted their own schemes. Ireland and the UK are the only states that rely upon the EU's eco-label scheme, which has a very low profile among most producers and consumers in the EU. By 2003, only 158 EU eco-labels had been awarded across 15 Member States, in stark contrast to the 4,000 or

so national eco-labels issued under the German national scheme. However, the French, Dutch and, to a lesser degree, the Austrian schemes, all suffer from relatively low adoption rates.

As with VAs, each eco-label scheme has its own peculiar national characteristics. Thus, the Austrian, Dutch and French labels all place relatively greater emphasis on lifecycle analysis than the German scheme. The various schemes even address different issues, depending on local priorities. Thus, Austria pioneered an eco-label for tourism; the Netherlands was the first to award labels to certain types of foods and flowers; Finland regards forests as an important issue; and Australia emphasises energy use.

Environmental management systems

In contrast with the previous three sub-types, environmental auditing was (at least initially) 'self organised' by industry. It first developed in the USA, primarily as an internal management instrument, but was soon adopted by governments and international bodies as an instrument of public policy (the EU's EMAS scheme was established in 1993; ISO 14001 appeared in 1996). As originally designed, these two schemes were somewhat different. However, in 2001, the European Commission re-launched EMAS to make it more compatible with the ISO's scheme, whilst preserving its superior environmental credentials.

>>> *Insert Table 2 here*

These differences are reflected in the relative adoption patterns (see Table 2). Austria and Germany completely dominate the EMAS scheme; together they account for c. 70% of all the registered sites. Germany and Austria also dominate the league table of ISO 14001 certifications in the EU, but there are a number of other countries where certification is popular. Currently, the total number of EU registrations under the EMAS scheme is just under 3,700 as

opposed to nearly 20,000 certifications under ISO 14001. In effect, a pronounced (although by no means uniform) shift is underway in Europe from a soft ‘new’ instrument (EMAS) to an even softer and even ‘newer’ instrument, namely ISO 14001. As with the other three types of NEPI, the way in which EMSs are interpreted and applied is also intrinsically different. For instance, some countries offer government incentives to firms that adopt an EMS and some do not. Germany even offers a financial incentive (i.e. a government subsidy) to those firms that join EMAS in preference to the ISO 14001 scheme.

Voluntary agreements

Every EU state has adopted some VAs, but the vast majority are still found in the Netherlands and Germany. By 2002, these two had adopted more than 230 VAs between them. Most VAs are non binding and voluntary, but some states are now experimenting with more formal and binding forms (i.e. negotiated agreements). The same pattern of leaders and followers is also apparent with respect to VAs: in this case France, Germany and the Netherlands pioneered their use, with the rest following.

The intrinsic nature of VAs also varies quite significantly across the nine jurisdictions. In the Netherlands, VAs supplement regulation rather than being an alternative to it (i.e. they *co-exist*). Since the mid-1990s, most Dutch VAs have been adopted in the form of legal contracts or ‘covenants’. In Germany, VAs tend to be non binding, but they are often negotiated ‘in the shadow of the law’ i.e. proposed by industry to pre-empt the imposition of regulation (i.e. a form of *competition*). In Austria, which has a relatively lower number of VAs (all of which are non binding for constitutional reasons), a similar pattern can be observed. In France and Ireland, roughly half of the VAs are binding. VAs are not very common in the UK. Those that exist, tend to be flexible and non-binding. Recently, however, the UK has pioneered the use of policy instrument packages (i.e. *fusion*) that combine VAs, eco-taxes and tradable permits.

Finally, the sectoral focus of VAs is also very uneven: most are found in the energy/climate change, chemicals and waste sectors; very few exist in the agricultural, transport and tourism sectors of any jurisdiction.

Regulation

Despite the ‘frenzy’ surrounding the apparent popularity of new modes of governance (Eberlein and Kerwer, 2004, 125), our empirical research reveals that regulation is still the most widely used instrument of environmental policy. In other words, there has been no wholesale switch to NEPIs, less still a significant, long term process of de-regulation (i.e. *replacement*) either at EU or member state level (Armstrong, 2000; Hèritier, 2002).

We offer some explanations of our own (and some qualifications) in a later section, but three points are worth making here. First, regulation often serves an important support function that cannot easily be performed by other instruments (i.e. *co-existence*). For example, regulations often are used to implement NEPIs, set the rules governing their operation and penalise defectors (see OECD, 2001). Second, in some countries (most notably Austria, Finland and Germany), the public strongly supports the use of regulation to counter serious pollution. In what is in effect a political *competition* between different sub-types of instrument, regulation possesses several highly-prized attributes (see above). Consequently, instead of replacing regulation, NEPIs are more likely to be used to address a set of more specific, new tasks. These include: filling in the ‘cracks’ in the regulatory system (e.g. VAs) (i.e. *co-existence*); dealing with emerging issues such as climate change (e.g. tradable permits) that are not heavily regulated (i.e. *co-existence*); or dealing with issues that are not suited to a regulatory approach (e.g. sustainable consumption etc.) (i.e. neither *co-existence*, *fusion*, *competition* nor *replacement*). Finally, by contrast with the 1970s, the EU is now *the* dominant driver of national environmental policy development in Western Europe (Jordan and Liefferink, 2004).

But curiously, its influence over national instrument selection and adoption remains very weak. For reasons discussed more fully below, it mostly attempts to steer society by issuing regulations, which its member states are compelled to transpose into their own national legal systems. As long as most national environmental policy goals are determined at EU level and regulation remains the preferred implementing instrument, the scope for NEPI use at the member state level will be externally constrained.

Has governance eclipsed government?

This article has shown that the overall pattern of instrument use is strongly differentiated by country, by time period and by sector. The total number and diversity of NEPIs used in the eight countries and the EU has grown, in some cases spectacularly, with environmental taxes, VAs and eco-labels proving especially popular. However, no single type of NEPI is overwhelmingly popular across all nine jurisdictions. In fact, some types of MBI (e.g. tradable permits) have only recently been deployed, while some ‘old’ policy instruments (e.g. subsidies) remain (although they are very much discredited). In some countries, the adoption of NEPIs has been stunningly fast, whereas in others, they are either being adopted much less quickly (e.g. Australia (except ISO 14001) and Austria (except EMAS and ISO 14001)), or barely at all (e.g. Ireland for all subtypes apart from ISO 14001).

If the adoption of NEPIs is employed as a simple touchstone of governance as our initial propositions suggested, then clearly there has been no wholesale and spatially uniform shift from government to governance across our nine jurisdictions. The overall pattern is much more highly differentiated. Crucially, most of our cases could be placed somewhere along the continuum of governing types described above, rather than at the extreme ends. As these spatial and temporal variations are not adequately explored in the existing literature on governance, they are worth closer empirical investigation and theoretical interpretation.

The resilience of regulation

The paucity of some NEPI types can be partially accounted for by national-level factors such as deeply engrained national policy styles, industry opposition and the absence of effective champions (Jordan *et al.*, 2003b; OECD, 2001). These obstacles notwithstanding, analysts must still account for the surprising resilience of regulation across all nine jurisdictions. One obvious explanation is that regulation is often very hard to eliminate once it is in place. To borrow a historical institutional term, it becomes locked into societies as actors adjust their behaviour and expectations around it (North, 1990). Environmental groups in particular believe that regulation morally penalises polluters in a way that tradable permits and voluntary agreements do not. Our research suggests that NEPIs are not replacing regulations (i.e. there is little obvious *replacement*). Rather, NEPIs are being used to plug the gaps in national policy systems or to respond to new, high profile problems such as climate change. After thirty or more years of environmental regulation, there are not many gaps in national policy systems to fill with new instruments. More often than not, they *co-exist* or are *fused* with regulation.

Second, regulation (and government more generally) often provide(s) an important, but very often neglected, support function as regards NEPI use (i.e. there is significant *co-existence*). Among other things, it often provides formal authority to the agency tasked with designing and implementing a NEPI, and establishes the rules governing its operation. For example, the EU's EMAS system, while formally remaining voluntary, requires member states to take various actions, such as creating an accreditation system and a certification body.

A third explanation is that many environmental policy makers are, in Herbert Simon's apt phrase, as likely to be satisficers as utility maximisers. That is to say, while they recognise that regulation is imperfect, many still regard the case for adopting certain types of NEPI as largely

unproven. Or, to put it slightly differently, when a surprisingly large number of (European) countries are confronted by a pressing and highly visible environmental threat, their first port of call is very often regulation. Their suspicions about NEPIs will doubtless have been confirmed by a recent OECD (2003) analysis, which concluded that the environmental effectiveness of some VAs is highly questionable. In Europe, tradable permitting is still largely unproven as a general policy instrument, although this might well change now that the EU's emission trading scheme is up and running.

The European Union's role

The EU's role in facilitating and/or retarding the shift to NEPIs (and hence governance) is rather more difficult to decipher. We have already noted that regulation remains the mainstay of EU environmental policy in spite of substantial (but differential) NEPI adoption at the national level and the European Commission's White Paper on European Governance. Why is this? Apart from the many questions raised about their transparency and legitimacy, VAs are often technically complex to negotiate across borders, especially when well established large industry associations are absent (i.e. it is telling that the first EU VAs target the chemical and car industries and not retailing, for example). Moreover, NEPIs may also experience potentially serious implementation problems (i.e. how can free-riders be made to comply with voluntary measures?). Until now, a minority of states (initially the UK, but now also Ireland and Spain) have managed to block the Commission's ability to innovate with environmental taxation which, unlike most aspects of EU environmental policy, still falls under the unanimity rule. In fact the EU's reliance on regulation is so deeply rooted that it has to implement many of its NEPIs (such as the eco-labelling, emissions trading and EMAS schemes) using different forms of regulation (i.e. fusion). So, far from being a case of 'new governance' (Hix, 1998), the EU's experience with NEPIs underlines just how strongly constrained it is by member state (i.e. government) preferences.

Conclusions

Evidently, governance and government are not fixed entities, but two heuristic ‘poles’ on a continuum of different governing types. By adopting a relatively narrow empirical focus on environmental policy instruments, our article sheds new light on what is occurring between the poles. Broadly speaking, our nine jurisdictions have, on balance, shifted from a position of ‘government’ to one of ‘governance’ with respect to their use of (environmental) policy instruments. However, the total distance travelled along the continuum by the nine jurisdictions has been surprisingly modest; the overall pattern of change has also been spatially, temporally and sectorally highly uneven. Furthermore, detailed empirical research on NEPIs reveals that very few of the jurisdictions actually started from a position of ‘strong’ government, because ‘new’ instruments were already popular in some of the states as far back as the 1970s. But then again, none of the jurisdictions has yet shifted decisively towards a position of ‘strong’ governance in which NEPI use is essentially ‘self-organising.’ These empirical findings confirm recent claims made about the governance of other policy areas such as the economy (e.g. Pemberton, 2003).

By looking at the way in which policy instruments are actually being used ‘in context’, we have produced a much more finely grained empirical assessment of the precise patterns of change and interaction. Our study has shown that in spite of the political rhetoric about finding less direct forms of state involvement, governments find themselves drawn inexorably into the detailed process of designing, adopting and overseeing the implementing of *all* environmental policy instruments, however supposedly ‘soft’ and ‘new’.

Furthermore, the four categories of interaction noted above, help to place different jurisdictions on the continuum of governing types. Thus, on balance *co-existence* appears to be the most

dominant, although there is some incipient *fusion* (e.g. the UK's policy packages) and *competition*. *Replacement* is conspicuous by its absence from most of the nine jurisdictions despite an overall increase in the number of NEPIs. This raises interesting questions about the long term resilience of regulation. Moreover, there is also a considerable degree of *competition* between different types of NEPI (e.g. VAs and eco-taxes), as well as between 'old' instruments (i.e. regulation) and NEPIs (e.g. VAs).

There are, however, a number of reasons why we should resist the simple conclusion that governance (as defined above) is weak, while government remains relatively strong. First, although regulation undoubtedly retains much of its former important, newer, hybrid forms are nonetheless emerging in most jurisdictions that bear many features of governance (i.e. a variant of *fusion*).^{viii} For example, some authors refer to the development of complementary combinations of different instruments as 'smart regulation' (Gunningham and Grabosky, 1998). Thus in Australia, regulation is becoming more negotiated and 'light handed'; a 'new approach' is being attempted in the EU; and in Finland regulation increasingly serves a 'support function'. Either way, regulation should not (as some commentators have claimed) be rigidly and uncritically associated with government steering.

Secondly, much hangs on how governance is defined. We have relied upon a relatively narrow definition which commands relatively widespread agreement among scholars of NEPIs (i.e. governance) and traditional regulation in the environmental policy field. However, some observers have questioned the association between government and regulation. Majone (1996), for example, argues persuasively that some of the most important drivers of governance, namely privatisation and new public management, actively require *more*, not less regulation. In other words, governance may generate a need for new forms of government. We have identified some examples of this and defined it as *fusion* in the analysis above. There is one

other important point that should be made about the EU's use of softer policy instruments. Héritier (2002), for example, suggests that they are used when the EU's competence to act is contested or weak i.e. they are not necessarily an end-point but often the first step on the road to regulation. Our own research suggests that while policy instruments do seem to provide a useful touchstone for guiding comparative research, they should not be used in a heavy handed manner, especially in multi-level settings such as the EU.

Finally, our focus on instruments illuminates interesting temporal, spatial and sectoral patterns of change that have not yet excited the interest of governance scholars. For example, government (as we have defined it) may never have been as prominent in some continental European states as sections of the Anglo-American dominated literature imply (see also Mayntz and Scharpf, 1995). In fact, our research confirms that governance has been around for a good deal longer: there are, for example, several prominent examples of 'self-organisation' to be found in some jurisdictions in the 1970s. The less hierarchical exchange relationships associated with some VAs, for example, are a very long established feature of Dutch, French, German and Austrian environmental policy. Admittedly, we have only looked at a selection of instruments in nine jurisdictions. While we remain mindful of the need for further research, our results should serve to remind us that '[t]he governance perspective.... is date and place specific' (Stoker, 1998, p. 26).

To conclude, policy instruments do offer a means of capturing the changing relationship between government and non-governmental actors as they interact to steer society. Moreover, a tightly defined empirical analysis of their use suggests that governance has not uniformly or comprehensively eclipsed government. In seeking a better understanding of the subtle intermingling of governance and government, we have identified instances where governance has been inserted within government, and when governance actually requires new forms of

government. We also suggest that government may in any case never have been that dominant in some jurisdictions. In this article, we have explored the governance transition through the prism of instrument use in nine jurisdictions. We hope that some of the puzzling findings we have unearthed will inspire others to engage in a more empirically informed debate about the causes and consequences of governance in comparative perspective.

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Figure 1: A Simple Typology of Instrument Types

	The state specifies the goal to be achieved	The state does not specify the goals to be achieved
The state specifies how the goal is to be achieved	Regulation (e.g. linking an emission target to the use of a certain type of technology);fiscal incentives e.g. tax reductions for a less polluting technologies)	Technology-based regulatory standards (e.g. BAT)
Non-state actors specify how the goal is to be achieved	Most negotiated VAs; some MBIs; some regulation (e.g. EQOs)	EMSs; most MBIs; some VAs; eco-labels

Source: based on Russell and Powell (1996).

Figure 2: A Simple Typology of Governance types

	Government determines societal goals (ends)	Society determines societal goals (ends)
Government selects the means of policy	GOVERNMENT: hierarchical steering	HYBRID TYPES
Society selects the means of policy	HYBRID TYPES	GOVERNANCE: society is 'self organising'

Table 1: The Distribution of NEPIs in the Nine Jurisdictions, c. 2000

	<i>Ecotaxes</i>	<i>Tradable permits</i>	<i>Voluntary agreements</i>	<i>Eco-labels</i>	<i>Environmental management systems</i>
<i>Australia</i>	Low	Low	Low	Low	Medium
<i>Austria</i>	Medium	Low	Medium	Medium	High
<i>Finland</i>	High	Low	Medium	High	High
<i>France</i>	Medium	Low	Low	Low	Low
<i>Germany</i>	Medium	Low	High	High	High
<i>Ireland</i>	Low	Low	Low/medium	Low	Medium
<i>Netherlands</i>	High	Medium/High	High	Low	Medium
<i>The UK</i>	Medium	High	Low/Medium	Low	Low/Medium
<i>The EU</i>	Low	Low/medium	Medium	Medium	Medium

Source: based on the data assembled in Jordan *et al.* (2003b).

Table 2: EMAS and ISO 14001 registrations/certifications by country

	EMAS Registrations¹	EMAS registration per million population	ISO 14001 certifications²	ISO 14001 certifications per million population
<i>Australia</i>	n/a	n/a	1,485	82.5
<i>Austria</i>	310	38.5	301	37.4
<i>Finland</i>	41	8.0	750	146.5
<i>France</i>	24	0.4	1,666	28.5
<i>Germany</i>	2,414	29.5	3,700	45.2
<i>Ireland</i>	8	2.2	170	47.0
<i>Netherlands</i>	27	1.7	1,073	69.2
<i>UK</i>	78	1.3	2,917	49.8
<i>The EU</i>	3,695	1.00	19,998	54.5

Notes:

¹As of May 2003

²As of December 2002

Source: based on ENDS (2003, p. 21)

NOTES

ⁱ Policy instruments are, of course, not the only available touchstone available (e.g. Andeweg, 2003), but their deployment is relatively straightforward to track across time and space.

ⁱⁱ We certainly do not wish to give the impression that there is a dichotomy between government governance. To do so, would blind the analyst to what (if anything) might be occurring between the two extremes.

ⁱⁱⁱ For a definition of different sub-types, see OECD (1993, pp. 27-28; 1999b, pp 7-8, p.56).

^{iv} Basically, these establish markets that allow polluters to trade in a limited supply of 'pollution rights' (see also: OECD, 1993, p. 23, and OECD, 1999b, pp 7-8).

^v That is to say, NEPIs which are applicable on an EU-wide scale, rather than those adopted by its member states at the national level.

^{vi} This is actually not terribly meaningful for our purposes, as countries collect data on the basis of different definitions of the same instrument (see text for details). Simple, quantitative measures may therefore obscure more than they reveal (e.g. with eco-labels does one count the number of eco label schemes, the number labels awarded or the total number of products/service groups within a particular scheme?), hence our preference for a more disaggregated, qualitative approach (for details, see Jordan *et al.* 2003b).

^{vii} The Commission was concerned that European companies were shunning EMAS in favour of the more widely recognised ISO standard.

^{viii} We owe this point to Andrea Lenschow.