Oppositie Merel de Groot, Democratic effects of Institutional Reform in Local Government… December 2009

Dear Candidate,

Valorisation seems to be one of today’s academic buzz-words, pointing at the need for scientific research to also have an added value outside of the scientific arena, especially in business and government practise. In your new job at the Ministry of the Interior and Kingdom Relations, on a personal basis you are probably already actively involved in valorisation of your research.

What I want to present you with is probably better described as brain-picking. As I simply want to know what the relevance of your research may be if we jump from Political Science to Law. To that end I have two questions; one on the concept of representative democracy and one on lessons for future legal reforms.

Firstly, in explaining responsiveness (on p. 36-37) you point at the distinction between two concepts of representative democracy. The *collectivistic* concept, regards representation as ‘a sorry substitute’, and holds that representatives should, as delegates, make the best of it by trying to express what their voters want. The *individualistic* tradition however, regards representation as a ‘sine qua non’, and holds that representatives should act as trustees, focussing on the general interest.

The latter view is popular with a considerable number of Dutch academic lawyers, especially in view of the principle of non-accountability of councillors to their voters, in Dutch known as the ‘zonder last of ruggespraak’ rule, which they consider a ‘sine qua non’ to enable the necessary jump from the private to the general interest. For one thing this would mean that apart from *listening* to voters, councillors should spend a great deal of time in *explaining* to voters, especially why on some occasions their private interest must give way to the general interest. This is something that you mention, in reference to Pitkin.

The other important thing is that, quite apart from interacting with voters, from a general interest perspective it is necessary that councillors interact with each other, as professional trustees, collectively setting up a constructive dialogue on political issues and making a serious attempt at arriving at shared opinions, expressed by the council as such.
In doing so, the council may even be more successful in shifting the balance against executive dominance. In this sense, the individualistic tradition also becomes important to accountability. A council in which members invest in convincing each other, will have a stronger position against the Board of M&A. And maybe your presumption, on p. 194, of not spending more time on responsiveness and accountability but spending time better, could refer to more internal debate within the council so as to be a stronger party both in steering and controlling the Board.

Do you share the opinion that the distinction between the collectivistic and individualistic views on representation may also be relevant to the issue of accountability, particularly with regard to interaction within the council, or the collective level of accountability?
And do you share the view that perhaps your forth proposition – that it is a good thing that councillors care more about their voter’s opinions than about their fellow councillors opinions – would be less ‘populist’, had it also stressed the importance of ‘explaining’ and of councillors taking each other’s opinions seriously?

The second question pertains to your advice, finally on page 198 & 199, on how to go about institutional reform, if you want to be successful in bringing about behavioural change. Although I was pleased to read that ‘changes in formal rules matter’, it almost seems as if these changes must come with ‘interactive consulting’ and ‘website-supported’ innovation programmes, such as in the case of the 2002 LGA.
In my most traditional legal mindset I hope to be able to somehow retain the belief that Law can also make a change simply because the Law says so…. sometimes indeed by aiming for a selective exit, ….and not merely on the more or less educated willingness of the players themselves.
For the sake of the research in legal design I wonder, does your conclusion on the need for supplementary measures only apply to institutional reform and if so, why?

Hopefully your answer can avoid a practice of legal design as ‘writing on water’. Should this not be brain-picking, but valorisation, then a fee for your answers would have been in place. The merit of today’s setting is that a payment would be inappropriate, but that it still serves your best interest to provide me with the best possible answer. As a further incentive I may add that of course I would like to compliment you on your research, but in my academic tradition this is something that should not
precede your performance here and now. So I welcome your thoughts on my questions.