Building regulatory enforcement regimes

Comparative analysis of private sector involvement in the enforcement of public building regulations

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Proefschrift

ter verkrijging van de graad van doctor
aan de Technische Universiteit Delft,
op gezag van de Rector Magnificus prof. dr. ir. J.T. Fokkema,
voorzitter van het College voor Promoties,
in het openbaar te verdedigen op maandag 9 maart 2009 om 12.30 uur
door

Johannes Jan VAN DER HEIJDEN

bouwkundig ingenieur

geboren te Brouwershaven

Dit proefschrift is goedgekeurd door de promotoren:
Prof. mr. dr. J. de Jong, Technische Universiteit Delft
Prof. ing. A.F. Thomsen, Technische Universiteit Delft

Samenstelling promotiecommissie:
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Building regulatory enforcement regimes. Comparative analysis of private sector involvement in the enforcement of public building regulations
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Thesis Delft University of Technology, Delft, the Netherlands

Design: Cyril Strijdonk Ontwerpbureau, Gaanderen
Printed in the Netherlands by: Haveka, Alblasserdam

ISBN 978-1-58603-985-1
NUR 755

Nantucket! Take out your map and look at it. See what a real corner of the world it occupies; how it stands there, away off shore, more lonely than the Eddystone lighthouse. Look at it – a mere hillock, and elbow of sand; all beach, without background. There is more sand there than you would use in twenty years as a substitute for blotting paper. Some gamesome wights tell you that they have to plant weeds there, they don't grow naturally; that they import Canada thistles; that they have to send beyond seas for a spile to stop a leak in an oil cask; that pieces of wood in Nantucket are carried about like bits of the true cross in Rome; that people there plant toadstools before their houses, to get under the shade in summer time; that one blade of grass makes an oasis, three blades in a day's walk a prairie; that they wear quicksand shoes, something like Laplander snow-shoes; that they are so shut up, belted about, every way inclosed, surrounded, and made an utter island of by the ocean, that to their very chairs and tables small clams will sometimes be found adhering, as to the backs of sea turtles. But these extravaganzas only show that Nantucket is no Illinois.

Herman Melville, *Moby Dick*

Contents

Acknowledgements

Trained as an architect and having some experience "in the field" I started a PhD project on building regulatory enforcement at Delft University of Technology. This was a little less than four years ago – April 2005. I soon found my knowledge and experience was lacking to address this topic properly. I felt that in order to be able to answer the questions posed I had to address these from a public policy point of view – keeping my technical knowledge and expertise in mind, of course. This meant however that I had to catch up with quite some strands of literature from this field. Here I wish to thank Johan den Hertog and Kutsal Yesilkagit, both Utrecht University, the Netherlands for their invaluable advice, guidance and discussions on regulation and compliance literature, which resulted in Chapter 3. I furthermore wish to thank William Baer, University of Southern California, USA and Neil Gunningham, Australian National University for discussing draft versions of the framework and typology introduced in Chapter 4.

Then, I owe much dept to all those who have joined interviews in the Netherlands, Australia and Canada. I wish to thank all these people for agreeing to interviews and providing me with invaluable information and their personal experiences with the various building regulatory enforcement regimes. Without their assistance I could not have collected the data which I needed to actually gain insight in the enforcement of building regulations in daily practice, presented in, especially, Chapters 6 and 7. To protect their anonymity I cannot, unfortunately, personally thank my interviewees. Still, I wish to say that I was truly overwhelmed by their help and support. Particular thanks to Greg du Chateau for all his support when I visited Australia. Thanks to Phillip Chunn & Associates, Planning SA, and the Queensland University of Technology for administrative support in Australia.

In the last four years I have discussed parts of my work with a variance of scholars. These discussions have inspired me and challenged me to strengthen my position and findings. I particularly wish to thank (in random order): Benjamin van Rooij and Ron Visser, Leiden University, the Netherlands; John Braithwaite, Australian National University; David Levi-Faur, Hebrew University of Jerusalem, Israel; John Brady, Anglia Ruskin University, Cambridge, UK; Rolf Johansson, Royal Institute of Technology, Stockholm, Sweden; Rob Imrie, King's College London, UK; Tony Porter, McMaster University, Hamilton, Canada; Pieter Hooijmeijer and Mark Bovens, Utrecht University the Netherlands, and all those anonymous reviewers at different international journals who commented on my manuscripts. Special thanks to Peter Conroy, Stephen Pope, and Don Johnston for their editorial comments on my papers. In particular I wish to thank Peter May, University of Washington, Seattle, USA, who has become my mentor in this project. Peter was a tremendous host when I visited U Dub, and is great source of inspiration. Thanks to Stephen Dunn for taking care of all my ICT issues in Seattle.

It goes without saying that I am grateful to my supervisors Jitske de Jong

and André Thomsen. It was invaluable to have supervisors I could turn to with truly any issue that crossed my path.

OTB Research Institute for Housing, Urban and Mobility Studies, together with the Dutch Ministry of Housing, Spatial Planning and the Environment; Bouwend Nederland; the City of The Hague; and, Stichting Bouw Research supplied a generous budget which made it possible for me to visit Australia and Canada. Vereniging BWT Nederland provided superb administrative support. Here I wish to express my gratitude to all these organizations and those working there for supporting my research. Thanks to Henk, Frits, and all other present and past colleagues at DWK. Special thanks to Lorraine for proofreading the thesis and Dirk for taking up editorial matters.

Last, but not least, thanks to friends and family for understanding that I so often made the tradeoff between you and my work in favor of the latter. And to Gwen, for inspiring me and for always being there.

1 Introduction

There is a great deal we know about the future, and a great deal we don't know about the past

David Lewis[1]

At the turn of the millennium the Netherlands was shocked to find major issues with the enforcement of public building regulations. On the 13th of March 2000 a fireworks factory exploded in the city of Enschede. The explosion destroyed 450 houses and damaged 1500 more. 22 people died and over 900 were injured. In the same year on new year's eve a fire broke out in a pub in the city of Volendam. 14 people did not survive this fire, over 180 were injured – most of them maimed for life, most of them under 25 years of age. On the 24th of April 2003 a balcony snapped of a recently occupied condominium building in the city of Maastricht. A married couple on a lower balcony was crushed under the rubble. Then, on the 11th of July 2006 a recently occupied multi-use building in the nation's capital Amsterdam was evacuated due to danger of collapsing. 190 people were housed elsewhere for seven months, 27 shops, some offices, and a library were closed for the same period. These are but a few examples of a series of likewise incidents.

The occurrence of these incidents made Dutch politicians, and more broadly Dutch society, aware that something was wrong: compliance with building regulations appeared to be not up to the mark – whatever the mark. From governmental inquiries (see Chapter 2 of this book for an extensive overview) it became clear that the responsible authorities, municipal building control departments (BCD), were unable to enforce building regulations on a level that would ensure building safety. Solutions were sought in streamlining BCDs processes and procedures, ministerial oversight onto BCDs, and the introduction of alternative enforcement procedures – aiming at more efficient and effective enforcement processes. The latter with the introduction of certified private sector inspectorates as an alternative for traditional BCDs. Under the new situation a hybrid form of governance was introduced in which public and private sector actors are involved in the enforcement of public building regulations. This thesis deals with such public and private sector involvement in building regulatory enforcement regimes.

1.1 Private sector involvement in building regulatory enforcement

In the Netherlands, like in many other countries, most construction work requires a building permit. In order to obtain a building permit an application

1 Lewis, D., 1979, Counterfactual Dependence and Time's Arrow, *Nous, 13*: 455-476.

has to be made with the BCD having jurisdiction. The 'ideal' traditional building regulatory enforcement process is as follows: application is made by submitting an application form to the BCD, completed with design documentation such as drawings and calculations, and paying necessary fees. Upon receipt this documentation is assessed to check compliance with zoning and building regulations – the former drawn up by local authorities, the latter by the national government. If this assessment provides convincing evidence that the building when built according to the design documentation will comply with regulations, a building permit is issued. Upon receipt of a building permit the applicant may start construction work. During construction the BCD carries out a number of on-site inspections to assess if the building is built according to the building documentation that was ground for issuing the building permit – and thus built to the building regulations. These inspections are carried out since construction work cannot be fully assessed once a building is finished: much is concealed behind walls, ceilings and floors. Finally, upon completion of construction work, the BCD is notified and the assessment process is administratively finished.

As illustrated, however, Dutch BCDs were found unable to carry out these assessment tasks to a level that would guarantee certain public interests – and cover the scope of the Dutch building regulations, in terms of public safety, health and sustainability.

The solution sought to these issues in the introduction of private sector involvement in building regulatory enforcement is not unique to the Netherlands. Since roughly the 1980s comparable initiatives have taken place in countries such as Australia, the United States, Canada, New Zealand and parts of Europe. Variance amongst these countries is found in differences in enforcement tasks and responsibilities that are delegated to private sector actors and traditional BCDs (see Chapter 4 of this book). For instance, in the Netherlands private sector actors are only allowed to assess design documentation leaving all other tasks a sole responsibility of the BCDs, whereas in some Australian jurisdictions private sector actors may assess design documentation, issue building permits and assess construction work.

Furthermore, the introduction of private sector involvement is not unique to building regulatory enforcement. Comparable private sector involvement introduced for similar reasons – government failure, and/or expected effectiveness and efficiency gains – can be found in policy sectors from tax-regulation to waste-regulation (see Chapters 3 and 4 of this book for a discussion). Following these developments, private sector involvement in regulatory enforcement has gained increasing attention from scholars in the fields of political science and public policy.

From these works it is learned that private sector involvement in regulatory enforcement may result in an increase in responsiveness to legitimate demands, or compliance with regulations, with the same or lower costs; effec-

tiveness and efficiency gains. But, bringing in the private sector might at the same time result in a decline of equity, credibility, or accountability. Authors have come to the conclusion that making changes to regulatory governance inevitably implies making tradeoffs between such policy goals. Furthermore, variance amongst regime designs may result in variance in regime consequences (see Chapters 3 and 4 of this book for a discussion).

These appear valuable insights as well for private sector involvement in the field of building regulations: with the introduction of private sector actors not only intended consequences are to be expected. When introducing private sector involvement also unintended consequences should be anticipated for. However, private sector involvement in the enforcement of building regulations has attracted little scholarly attention. Even more notable, building regulation seems generally to be a neglected subject in studies on regulation (May and Burby, 1998: 162; McLean, 2003: 50).

1.2 Aim of the study

In this thesis I analyze consequences of private sector involvement in building regulatory enforcement. My aim for doing so is two-fold. First, I aim to add to knowledge on governance reform in general, and specifically add to knowledge on governance reform in building regulatory enforcement. Since building regulatory enforcement has had little attention from regulatory scholars, it may be that possible directions in which building regulatory enforcement could be developed have been overlooked; or that impacts of future developments, such as private sector involvement, may, ex-ante, be discussed based on experiences in other policy sectors. As such, it may be of interest to analyze if existing knowledge from other policy sectors can be applied to building regulations and their enforcement.

Second, private sector involvement has been introduced in building regulatory enforcement regimes across the world, yet little is known about the consequences of such governance reform. By actually analyzing real life cases in Australia and Canada I aim at partly filling up this knowledge gap. Furthermore, since different governments have introduced different regimes, it is of interest to analyze if, and if so which differences in regime design result in different regime consequences. This may provide insight into what reforms constitute improvement of regulatory enforcement regimes – valuable knowledge to governments that are seeking to reform their building regulatory regimes, as is for instance the case in the Netherlands.

1.3 Premises on policy consequences

Regarding the consequences of private sector involvement in building regulatory enforcement I draw up a number of premises. First, although policy goals are often vague, conflicting or not stated at all, I assume that one of the main goals of building regulation is building safety – in a broad sense that covers structural safety, occupational safety, and environmental safety. This makes building safety an intended outcome of building regulatory policy. Second, building regulatory enforcement ultimately aims at compliance with building regulations; thus adding to the goal achievement of building regulation. Given the nature of the construction process, building regulatory enforcement is, in general, introduced as preventive action. However, the outcomes of preventive actions are often hard to measure (Sparrow, 2008: 126-127). I assume therefore that a focus on the outcome of building regulatory enforcement – compliance, and ultimately building safety – will result in empirical difficulties. Third, the outputs of these preventive actions – such as construction work assessments – may result in a variety of impacts on targeted problem parameters – such as building owners, designers and builders – as well as side effects (cf. Sabatier, 2005: 28). I assume that these impacts are related organizational and behavioral change, which affects the achievement of policy goals. I furthermore assume that although it is difficult to gain insight into the actual outcome of building regulatory enforcement, insight can be gained in its impacts. Throughout this thesis, therefore, my focus is on outcome, output and especially on impacts of regulatory reform. I use the term policy consequence as an umbrella term for policy outcome, output and impacts. Fourth and final, although compliance with building regulations may be the ultimate goal of building regulatory enforcement; additional goals are set to the regulatory enforcement process. These goals relate to, for instance, the efficiency, transparency and legitimacy of this process. Yet, such additional goals might conflict and might hamper regulatory goal achievement (Stone, 2002).

1.4 Problem definition

I have already introduced the notable absence of studies of building regulation in the regulatory literature. Notable, as the construction and operation of buildings has a major impact on our lives. Most people in modern societies spend much of their time in and around buildings each and every day. Moreover, with increased urbanization, it is expected that in the future more and more people will live in an urban setting – a built environment. It is assumed that by the middle of the century more than two-thirds of the world's population will be urban (Castells, 2002: 549; UN, 2005).

Then, the construction industry and related sectors have a large impact

on our lives as they form one of the main economic activities in every western nation. They account for about 15 percent of each country's gross domestic product (Seaden and Manseau, 2001: 183). And, much economic activity, for instance the production of goods and services, is performed in or around buildings.

Furthermore, the construction, maintenance and use of buildings also have a major impact on the natural environment – and thus on our own lives, but perhaps even more so on future lives. The construction and operation of buildings contribute to the extraction of fossil fuels and minerals; the use of generic resources; waste generation; and air, noise, land and water pollution, both on a local and global level (Liyin *et al.*, 2006: 243-244). Each year, globally, 40 percent of all energy and 16 percent of all water is consumed for the construction and operation of buildings. Furthermore, each year, globally, 25 percent of all raw timber and 40 percent of all raw stone, gravel and sand is used to construct buildings (Roodman and Lenssen, 1995). In Europe[2] 48 percent of all waste originates from the construction and demolition of buildings (EEA, 2007: 279). Considering all of the above, the built environment appears to be a challenge, but it may also provide opportunities to solve issues, on a global and local level.

Governments worldwide have taken up this challenge through a variety of strategies; one of these strategies is building regulation. However, the traditional implementation and enforcement of building regulations through local governments has resulted in similar problems worldwide. To solve these problems governments have introduced or seek to introduce private sector involvement in the enforcement of building regulations. As a result hybrid forms of regulatory governance arise in which public and private sector actors are delegated certain tasks and responsibilities in the enforcement of public building regulations. This "hybridization" appears a worldwide trend, yet little is known about the consequences of such governance reform. The problem addressed in this thesis therefore is formulated as: *Worldwide private sector actors are, or will be, involved in building regulatory enforcement and are delegated certain assessment tasks, with differences amongst jurisdictions. This implies a change from traditional public governance regimes towards hybrid forms of governance. However, little is known about the actual policy consequences of such governance reform.*

2 The fifteen 'old' European Union and the European Free Trade Association countries: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom.

1.5 Research questions and structure

Based on the problem stated, the main research question is: *What are, given underlying policy goals, adequate structures for regulatory enforcement of public building regulations, when enforcement tasks and responsibilities are delegated to public and/or private sector parties?*

Following on from the aims of this study the research question is broken down into two groups of sub-questions. The sub-questions of the first group are related to gaining insight into what governance reforms are expected to constitute improvements in regulatory enforcement regimes; and to contributing to knowledge on building regulations and building regulatory enforcement:

1.1 What lessons can be learned from analyzing insights in governance reform from other policy sectors and to what extent can these be applied to building regulation?
1.2 Which are the main structures of regulatory governance in which tasks and responsibilities regarding building regulatory enforcement are delegated to public and/or private sector actors?
1.3 What are the expected impacts of private sector involvement in building regulatory enforcement?

The second group of sub-questions is related to providing insight into the actual consequences of private sector involvement in building regulatory enforcement. The sub-questions are:

2.1 What impacts have occurred after the introduction of private sector involvement in building regulatory enforcement regimes in different jurisdictions? And, how?
2.2 What regime characteristics are related to what specific impacts? And, how?

1.6 Research approach and methodology

In this thesis different research methods are used to address the questions posed, though, the overall outline of the research-design draws heavily upon Dunn's *Public Policy Analysis* (2003), Silverman's *Interpreting Qualitative Data* (1993, see also 2001), and Brady and Collier's *Rethinking Social Inquiry* (2004). I limit myself here to briefly discussing the research approach and methodology used to address the research questions.

The core of this thesis consists of public policy analysis: an evaluation of existing policy in order to gain a better understanding of the involvement of the private sector in the enforcement of public building regulations, and to gain insight into possible consequences of such governance reform. Follow-

ing on from Dunn (2003) public policy analysis may be understood as a process that consists of the following phases: structuring of policy problems; the forecasting of expected policy consequences; the monitoring of observed policy consequences; the evaluation of policy performance; and the recommendation of preferred policies. Throughout the thesis I follow these phases.

First, problem structuring is regarded an important step towards finding the right direction of possible solutions to perceived problems (Dunn, 2003: Chapter 3). The brief discussion at the beginning of this chapter indicated that problems in Dutch building regulatory enforcement are an example of issues in regulatory governance worldwide – as is the solution chosen to solve these issues. In Chapter 2, I explore the boundaries of these issues. This chapter may be understood as an explorative investigation of the policy problem addressed in this thesis. It aims to introduce the reader to the backgrounds of the policy problem and its recurrence amongst countries and policy sectors.

Then, the next phase of public policy analysis I address in this thesis is forecasting policy consequences. As discussed, as a solution to issues with building regulatory enforcement, worldwide private sector involvement is introduced. However, little is known about the outcome of such governance reform in this particular policy sector. In order to be able to gain a better understanding of such governance reform I pay profound attention to reviewing literature on related topics and related problems. My aim for doing so is answering subquestion 1.1, 'What lessons can be learned from analyzing insights from other policy sectors and to what extent can these be applied to building regulation?'. I do so in Chapter 3, by discussing general notions on *enforcement strategies*; a term which is often used to describe tactical choices made by enforcement agencies and the type of actions these agencies take (e.g. Hawkins, 1984; Kagan, 1994; May and Burby, 1998). Notions on the *quality of law*; which focus on the question of whether legislation will lead to compliance (e.g. Bardach and Kagan, 1982; Griffiths, 2003; Seidman, 1984). Notions on *enforcement styles*; a term which is often used to describe the relationship between the inspector and inspected (De Bruijn *et al.*, 2007; Hutter, 1997; Kagan, 1994). And finally, notions on *enforcement actors*; contemporary regulatory literature identifies a wide range of possible parties that can be involved in enforcement, such as governmental agencies, corporate organizations, professional bodies and public interest groups (e.g. Gunningham and Grabosky, 1998).

Subsequently, since private sector involvement is introduced with variances amongst jurisdictions, different consequences may be expected from such variances (cf. Stewart and Ayres, 2001). Especially these variances may be understood as 'powerful engines of causal analysis' (Levi-Faur, 2004: 178). In order to be able to typify variances and draw up expectations on possible consequences of different variances it may be helpful to systematically distinguish a number of dimensions or common traits of governance reform (cf. Adam and Kriesi, 2007: 33-35: Munck, 2004: 111; Ostrom, 2007: 25-26; Supiot,

Figure 1.1 Phases of public policy analysis in relation to the chapters of the thesis

Policy analysis phase	Research approach	Chapter and research question/aim
Problem structuring	Explorative analysis	**Chapter 2**: Introduction into the backgrounds of the policy problem and its recurrence.
Theory		
Forecasting consequences	Literature review	**Chapter 3**: What lessons can be learned from analysing insights in governance reform from other policy sectors and to what extentcan these be applied to building regulation? **Chapter 4**: Which are the main structures of regulatory governance in which tasks and responsibilities regarding building regulatory enforcement are assigned to public and/or private sector actors? And, what are the expected impacts of private sector involvement in building regulatory enforcement?
Methodology		**Chapter 5**: Explain which methodology and methods are used to collect and analyse data, and why.
Empirical research		
Policy monitoring	Case study research	**Chapter 6**: What impacts have occurred after the introduction of private sector involvement in building regulatory enforcement regimes in different jurisdictions? And, how? (Australia) **Chapter 7**: What impacts have occurred after the introduction of private sector involvement in building regulatory enforcement regimes in different jurisdictions? And, how? (Canada)
Policy evaluation	Comparative policy analysis	**Chapter 8**: What regime characteristics are related to what specific impacts? And, how?
Conclusions		
Recommendation		**Chapter 9**: What are optimal structures for regulatory enforcement of public building regulations, when enforcement tasks and responsibilities are assigned to public and/or private sector parties?

2007: xi; Van Waarden, 1992: 32). This is required to answer sub-question 1.2, 'Which are the main structures of regulatory governance in which tasks and responsibilities regarding building regulatory enforcement are delegated to public and/or private sector actors?'. And, in order to be able to answer sub-question 1.3, 'What are the expected impacts of private sector involvement in

building regulatory enforcement?'. I take up these questions in Chapter 4.

Following on from this, the next phase of public policy analysis I address is monitoring policy consequences. Monitoring policy consequences is understood as the analytical procedure to produce information about the causes and consequences of public policies (Dunn, 2003: Chapter 6). This phase is addressed to answer sub-question 2.1, 'What impacts have occurred after the introduction of private sector involvement in building regulatory enforcement regimes in different jurisdictions? And, how?'. In Chapters 6 and 7 I discuss a number of case studies that I carried out in Australia and Canada (based on, Munck, 2004; Yin, 2003). The case studies are explorative in nature. Following on from Dunn (2003: Chapter 6) the case studies are based on a series of in-depth interviews and an analysis of secondary data.

Subsequently, I take up evaluating policy performance. Following on from Dunn (Dunn, 2003: Chapter 7) this phase of public policy analysis has a strong focus on determining the worth or utility of a policy or program, to some individual, group or society as a whole. The data obtained in the previous phase provide the basis for this evaluation. Since these data are obtained in cases that are characterized by differences in private sector involvement in building regulatory enforcement, the data provide me the opportunity for a comparative analysis. I do so in Chapter 8, aiming to answer sub-question 2.2, 'What regime characteristics are related to what specific impacts? And, how?'

Finally, the last challenge to take up in the public policy analysis process is the recommendation of preferred policies. Based on the previous phases insight is obtained which may provide an answer to the problem identified. I address this phase in the concluding Chapter 9.

To conclude, the major part of the research presented in this thesis is based on public policy analysis. The different phases of public policy analysis are addressed in the different chapters of the thesis – Figure 1.1 illustrates the phases in relation to the chapters of the thesis. Yet, as the reader will have noticed I have not yet discussed the contents of Chapter 5. In this particular chapter I address to some extent the methods used to obtain the empirical data on the Australian and Canadian cases that I present in Chapters 6 and 7, and the method I use to comparatively analyze the different cases in Chapter 8. The aim of Chapter 5 is to explain which methodology and methods are used to collect and analyze data, and why.

1.7 Limitations

As with all research, my study is limited by the research design and the choice of fieldwork locations. The reader has already noticed that I only present empirical data from developed countries – the Netherlands, Australia and Canada. The reader will furthermore find that my theoretical approach and the dif-

ferent illustrative examples introduced in the text also strongly focus on developed countries. As such I can be criticized for having a narrow view. Yet, it is not my aim to draw conclusions on the possible impact of my study on regulatory regimes in developing countries. And, following Haines (2003), I question if studies like the one I present in this book should have such an aim. Given the understanding that ideas travel from context to context and are translated when implemented in a new context (Czarniawska-Joerges and Sevon, 1996), I expect that the differences in context of regulatory regimes between developed countries and developing countries are too large to extrapolate findings from the former to the latter (Haines, 2003).

Then, in this research I study the impacts of regulatory enforcement regimes after their implementation. I pay less attention to why the regimes have been implemented; and I pay little attention to why the particular regimes have been designed the way they are. As such I do not draw conclusions on issues such as institutional isomorphism (cf. DiMaggio and Powell, 1983), or the policy process that possibly resulted in the implementation of the regulatory enforcement regimes that are the units of my empirical analysis (cf. Sabatier, 2007b).

My work, and especially the theoretical framework presented, can be criticized for focusing on national, regional and local government reform only. This is indeed true. I do not pay attention to transnationalization of governance (Djelic and Sahlin-Andersson, 2006); for instance, the attempts of the European Union to harmonize building regulations in different European countries. Nevertheless, I expect that my work has value to such research since I expect that the concept of regulatory enforcement regimes can be adapted to suit the analysis of transnational governance as well. I pay more attention to this in Chapter 4.

Another point of criticism could be my focus on public sector and private sector actors only. Again I have to agree this is one of the limitations of the work presented. Yet, the reader will notice that what is regarded as a 'hybrid form of governance' is often a combination of public and private, and sometimes third sector actors, which have tasks and responsibilities regarding regulation and enforcement (e.g. Van den Heuvel, 1994; Husye and Parmentier, 1990; Price and Verhulst, 2005; Price and Verhulst, 2000; Rees, 1988). My particular focus on public and private sector actors has to do with the topic chosen: the trend in government reform in building regulatory enforcement appears to be the introduction of private sector actors in the enforcement process. Other sector actors are simply not involved in this trend. Nevertheless, I expect that the concept of regulatory enforcement regimes can be adapted to suit the analysis of complex hybrid forms of governance that consist of public, private and third sector actors. I return to this point in Chapter 4.

This brings me to a further limitation that can be related to the topic chosen: I only discuss regulatory reform regarding the enforcement of building

regulations. It might be questionable to what extent my discussion and findings can be extrapolated to other areas of public policy. I base my theoretical framework and the concept of regulatory enforcement regimes on general theories from the fields of political science and public policy. I therefore expect my findings can be generalized more broadly to other areas of public policy as well, but the empirical test of this proposition must wait.

Finally, a last limitation to this research I wish to state. In Chapter 4 I present a typology of regulatory enforcement regimes. The reader will find that I only analyze three out of five types discussed in Chapter 4. The reason is that a point of departure of this study is private sector involvement in the enforcement of public building regulations. A second point of departure was government involvement in regulatory enforcement. As such the fourth and fifth type discussed in Chapter 4 fall outside the scope of the empirical study of this book. I do however introduce these two types for analytical purposes.

2 Problems in building regulatory enforcement[3]

[The government is] not reproached for introducing excessive regulations but for a failure to enforce them.

Hans Boutellier[4]

Worldwide governments have been and are changing the regulation of the built environment. With respect to building regulatory enforcement, reforms generally implicate local government reform and the introduction of alternative building regulatory enforcement regimes. In this chapter I briefly discuss this international trend. The aim of this chapter is to introduce the reader to the backgrounds of the policy problem addressed in this thesis by structuring the problems in building regulatory enforcement that have led to changes in building regulatory regimes, and to gain insight into the 'solutions' chosen. I start by discussing a 'telling case' (McKeown, 2004: 153): changes in Dutch building regulatory enforcement. I then continue by discussing the trend towards private sector involvement in international building regulatory enforcement regimes more generally. The questions motivating this chapter are: *To what extent does the Dutch experience of dealing with building regulatory enforcement reflect wider international trends in this area? And, how can problems in this area be structured; and, especially, be specified?*

Following on from Dunn (2003: Chapter 3), it is expected that problem structuring is an important step towards finding a right solution to perceived problems. Dunn splits problem structuring into four independent phases: problem sensing, problem search, problem definition and problem specification. In this chapter I follow Dunn's methodology. I start by applying this methodology to the telling case; later I shift my focus to the mentioned international trend in building regulatory enforcement and other policy sectors.

2.1 A typical case: problems in Dutch building regulatory enforcement

On the 24th of April 2003 a balcony snaps off a recently occupied condominium building in the City of Maastricht, the capital of a Dutch province. Falling down the balcony drags along the four lower balconies under it. At that time the owners of one of the condos, an elderly couple, happen to be outside on their fourth floor balcony and get buried under 50 tons of rubble. They are killed instantly (De Volkskrant, 2003).

3 This chapter is based on: Van der Heijden, J., H. Visscher and F. Meijer, 2007, Problems in enforcing Dutch building regulations, *Structural Survey, 25 (3/4)*: 319-329.

4 Boutellier, H., 2005, *The Safety Utopia Contemporary: Discontent And Desire As to Crime And Punishment*, Dordrecht, Kluwer Academic Publishers: 43.

Within two days after the accident the Dutch media points towards the municipal building control department's (BCD) staff as having neglected to carry out assessment tasks (NRC, 2003). On the third day after the accident a newspaper (De Telegraaf, 2003) reports that one of the occupants of the condominium building had asked the work-foreman of the project, some months before the accident, if she could place a 200 kilo flowerpot on her balcony. According to the newspaper: 'He replied with "I wouldn't do it if I were you". He clearly did not trust that structure'. Then, roughly two weeks after the accident the municipality of Maastricht opens up its dossier on the particular building. Journalists find – and report – that the technical details of the balconies and calculations that would prove their structural safety are missing. They also find that reports on on-site construction assessment carried out by the municipality's building authority are absent. According to the alderman responsible for housing, this lack of assessment reports does not surprise him as 'the municipality does not inspect during construction, but looks after it' (Cobouw, 2003a).

Meanwhile, different investigations are carried out to indentify how this accident could have happened in a building as new as this one. The Public Prosecutor investigates if penal activities were carried out. The Dutch Ministry of Housing, Spatial Planning and the Environment investigates if rules were breached. And, contractors and suppliers hire an expert institute to investigate if their work or products were at fault. The latter finds that while the building was under construction the particular technical design of the balconies was changed at least five times, 'not taking into account the structural aspects too much' (Cobouw, 2003b). From the research by the Ministry (VROM, 2003b) it is learned that the municipal building authority lacked information to assess building plans against Dutch building regulations. It is furthermore learned that the building is not built according to the building permit issued by the municipality – as was already found by the expert institute. It appears the municipal BCD noticed these deviancies. However, municipal inspectors have not made reports on their inspections and thus overall insight in the actual municipal inspection process is lacking. The only notes found on this inspection process can be summarized as: 'no comments' (*ibid*.: Chapter 8). Nevertheless, the Ministerial report concludes that not only the municipal building authority was at fault, also the designer, engineer, developer and constructor involved are. The Ministry however does not make statements on who is to blame for what, but leaves this to the Public Prosecutor.

The Public Prosecutor brings in an independent research institute – TNO, an organization that is also involved in the development of Dutch standards – to analyze the accident. Based on their findings the Public Prosecutor sees grounds to prosecute three organizations involved: the main contractor, an engineering firm, and a consulting firm – prosecution of the municipal BCD is not an issue as it is legally not responsible for its assessment or issued per-

mits. The three firms are charged with 'criminal negligent homicide'. Finally, almost four years after the accident, the actual lawsuit is started (NRC, 2007) and the Public Prosecutor demands fines: € 90,000 for the contractor and the engineer; € 40,000 for the consulting firm involved. During the lawsuit the different defendants point towards each other for making mistakes and claim not to have played a substantial part in the series of errors that has led to the final accident (Zibb.nl, 2007). On the 13th of March 2007 the court imposes a fine of € 20,000 on the engineering firm due to substantial negligent conduct. Although the court holds the opinion that the accident occurred also due to both the contractor's and the consulting firm's conduct, these firms are not imposed a fine (Het Juridisch Dagblad, 2007).

Problem sensing: a series of construction related incidents shows that something is wrong

A number of likewise construction-related incidents at the beginning of the 21st century, some fatal as well, sent local building control straight to the top of the Dutch political and public agenda. Investigations into these incidents revealed that various municipalities were consistently neglecting to perform adequate building checks, that there were shortcomings in the issuance of building permits, and that the allocation of responsibilities between the administrative and building control authorities in the municipalities was not clearly enough defined (Commissie Alders, 2001; VROM, 2002a; VROM, 2002b; VROM, 2003a; VROM, 2003b; VROM, 2004; BZK, 2002; Gemengde Commissie Gevaarlijke Stoffen/Risicobeleid, 2005; Commissie Oosting, 2001; OVV, 2006). The reports concluded that the government should play a stronger role in policing the regulations and that a clearer distinction was needed in task allocation. Also, many reports stated that the Dutch regime of building regulations had become too complex and that the problems might be solved by deregulation.

Yet, in the last two decades of the 20th century, the Dutch government's view on building policy was already reshaped by deregulation as part of a mission to enhance freedom – including freedom of design; accord equal legal status and protection to all citizens; and, ease the burden on industry and administrative bodies. Various legislative and regulatory amendments were passed to achieve these aims but the desired effects were only partly realized. Other European countries have reshaped their building regulatory regimes via deregulation as well (Meijer and Visscher, 2006). However, a major difference between the Dutch and other European regimes is the monopolistic status of local BCDs. In the Dutch regime BCDs have retained their role as the party with the main responsibility for assessing building plans and full responsibility for granting permits. This is a contrast to some other European countries who have witnessed a shift towards different regimes involving various players (*ibid.*). That said, in the Dutch context initiatives have been underway for

some time now to involve private players in the building assessment process (Visscher *et al.*, 2003).

Problem search: changing regulations, tied enforcement

The Dutch government's first formal involvement in building and housing stemmed from the need to improve public health (Coronel, 1872; KIVI, 1855). The result was the Housing Act of 1901, which placed the responsibility for public housing policy squarely with the government and the responsibility for implementation with the local municipalities. This legislation gave the municipalities the freedom to draw up their own building and housing regulations, and to introduce their own control and inspection measures. Accordingly, a situation evolved in which building regulations in one municipality could differ radically from building regulations in another. Interestingly, no legal obligations were established with respect to building control (De Vreeze, 1993). This 'solution' was chosen as a happy medium between municipal autonomy and rule from above (Boogman, 1988: 340). It was not until the Act was amended in 1921 that building control became obligatory at municipal level; the municipalities, however, were free to choose the means of implementation. The Act was once more changed in 1931; however, after World War II, the architect De Ranitz (1948) wrote that the amendments of 1921 and 1931 had had very little effect on the quality of the building inspectorate: 'the organization of the building inspectorate in particular [is] in many municipalities still incapable of meeting the requirements, though steady progress can be observed' (*ibid.*: 3 – my translation).

World War II was an important factor in the run-up to government involvement in the building sector. Building plans had been tightly centralized during the war to optimize the success of the reconstruction efforts (De Vreeze, 1993). Delays occurred in projects that were set up with the specific aim of easing the urgent housing shortage in the post-war years. The government decided to tackle the housing shortage by introducing amendments to make the building legislation more uniform and nationally applicable. Furthermore, all parties in the building sector needed better legal protection. It was to this end that the Housing Act was drastically amended in 1961, but the municipalities still had considerable freedom. In 1965 the Association of Netherlands Municipalities produced its model building by-law with the aim of establishing a nationally acceptable minimum standard for housing and other buildings. The specifications were expressed as far as possible in functional terms; specific requirements and descriptions from previous models were avoided. The model was not mandatory, but most municipalities adopted it as a building by-law. As the model allowed the municipalities to grant exemption from requirements and to add further requirements of their own, each municipality was more or less free to draw up its own local (individual) building by-law; and this is what happened. But such actions seemed to go against the origi-

nal intention of the model: to introduce uniformity into the municipal building by-laws, thereby improving (local) legal protection for parties in the building trade. The form and application of the building regulations were obstructing rationalization, renewal and (cost) optimization in the building chain (Scholten, 2001).

The government tried to end this situation by focusing, from the 1980s onwards, on standardizing and deregulating the building regulatory framework. Superfluous rules and regulations had to be dropped – particularly on the technical requirements of housing – and the building regulations themselves had to become more uniform. Nevertheless, almost no judgments were made on the enforcement of these regulations. A so-called 'Deregulation Action Plan' (*Marktwerking, Deregulering, Wetgevingskwaliteit*) submitted to the House of Representatives in 1983, which more or less marked the start of deregulation in the building sector. It was hoped that deregulation would ultimately increase freedom, improve legal security, stimulate equality of status for members of the public, and ease the burden on businesses and government (Tweede Kamer der Staten Generaal, 1983). The action plan also described how the government's proposals for improvement could be incorporated in a Building Decree (Van Overveld, 2003: 11). Under a ministerial ordinance this Building Decree would set out all the technical requirements for existing and new constructions and thus automatically lead to unity and transparency in the building regulations. This Building Decree set out the minimum standards that a plan had to meet in order to get a building permit. It also set minimum standards for existing constructions, as far as possible in the form of performance requirements. It further contained functional descriptions, which indicated the purpose of the requirements, and a threshold value which indicated the required performance level and referred to a calculation method based on nationally accepted norms and standards. Finally, buildings were divided into three categories: permit-free, light-permit obligatory and normal-permit obligatory. At enforcement level statutory limits were set for the control of building permit applications. Despite all of this, the Building Decree of 1992 only partially reflected the goals in the policy plan to deregulate the building sector. An evaluation of the Building Decree by the Ministry of Housing, Spatial Planning and the Environment (VROM, 1996) revealed that the building sector favored a systematic approach and endorsed the principle of performance levels. However, it also emerged that the envisaged simplicity was being obstructed by a complex reference system of norms and ministerial arrangements and by the legal wording of the regulations. Local building control departments also responded to the changes (Meijer *et al*., 1995): the statutory limits and the division of the buildings into three categories were experienced as having an influence on processing time and on pre-application consultancy

A need for further deregulation coupled with reports about the incompre-

hensibility of the building regulations and incompatibility with other legislation prompted a revision of the Housing Act. The new version came into effect along with the (re-worked) Building Decree 2003 on 1 January 2003. It was hoped that the Housing Act and the underlying ministerial ordinance would lead to more customer-friendly and comprehensible building regulations (Damen, 2003). Building Decree 2003 differed in form and content from Building Decree 1992. One significant innovation was the introduction of 'table legislation', i.e. sets of tables determining the sub-sections which apply to parts of a building with one and the same intended use (Van Overveld, 2003: 17). There was no question of actual deregulation via the amendments: Building Decree 2003 comprises more sections (regulations) than Building Decree 1992 and pursues even more goals: health, safety, usability, energy saving and environmental conservation (although the latter has not yet been incorporated in regulations).

Summarizing, it may be stated that during the one hundred years or so that the Housing Act has been in force, the building regulatory regime has been changed to suit topical issues and goals. However, as building regulations became more detailed and more uniform, almost no legal changes were made to the enforcement regime: the responsibility for building assessment still lies mainly with the municipalities and implementation is still to be established in clear rules. According to Section 100 of the Housing Act, a municipality only has to make provision for a local BCD, it does not necessarily have to establish one. Section 100 was supposed to pave the way for departmental cooperation amongst different municipalities, or the incorporation of private parties in the system. Yet, almost all municipalities still have their own BCD, whose size depends on the size of the municipality. Furthermore, these local BCDs are scarcely responsible, if at all, for carrying out their enforcement tasks (Drion and Schueler, 2005). Remarkably, in 2004, the Minister of Housing, Spatial Planning and the Environment stated that building control by these departments cannot be accorded absolute significance in the sense that an intended building plan complies totally with all the regulations. The building permit application only has to prove that, on the basis of the provided documents, compliance is plausible (Tweede Kamer der Staten Generaal, 2004: 10).

Problem definition: local government's statutory building assessment does not ensure building safety

Under the present Housing Act, municipalities are required to assess permit applications for new developments against the Building Decree, issue building permits, and assess construction work. As some insight into the actual enforcement process may give the reader a better understanding of the subject, I first introduce some terms of the building regulatory enforcement process before I continue this problem definition phase.

If someone in the Netherlands wants to build or alter a building, or more

generally, wishes to carry out construction work, in most cases a building permit and a planning permit are necessary – this situation is comparable to many other countries such as the USA (Booth, 1996), Canada (Hansen, 1985), Australia (Lovegrove, 1991a) and different European countries (Meijer *et al.*, 2003). In this discussion of the building assessment process I will focus on the building permit process and additional processes only.

In order to obtain a building permit, an application has to be submitted to the local BCD – depending on the type of construction work or its location, application sometimes has to be submitted to a higher authority, such as the provincial government. Application can be made through a standardized form, which has to be handed in with necessary documentation on the planned construction work – for instance, design drawings, calculations, and material detailing. Upon receipt of the application form, necessary documentation and fees a municipal official will assess the supplied information against applicable regulations – the Building Decree. If this assessment results in sufficient conviction that the building once built will not violate regulations[5], a permit is issued. A building permit can be issued "under conditions", which means that construction work may be started, though alterations have to be made to the design to guarantee compliance with regulations.

After the building permit is issued, construction work may be started. During construction work municipal officials will assess the work under construction. This is done by visiting the site and visually inspecting the construction work. Site inspections are formally carried out during certain stages of the construction work. Again, during these inspections it can only be assessed that the construction work does not violate building regulations. Since the inspections are spot checks only and as the inspections are carried out mostly visual, not everything can be inspected – for instance, much of a construction work is concealed in concrete or behind cladding.

Once construction work is finished, the construction process is formally finished by an announcement of the building permit owner to the BCD. Under the Dutch regime the construction process is not formally finished through issuance of a legal document, which is the case in many other countries – often referred to as an occupancy permit (cf. Hansen, 1985; Lovegrove, 1991a).

The Dutch Ministry of Housing, Spatial Planning and the Environment monitors the performance of these tasks. Starting from 2003 a special ministerial inspectorate has investigated and reported the performance of Dutch

5 This might appear to be a cryptic way of stating that the building plan shows compliance with regulations, however, the building plan does not prove compliance. The building plan is a reproduction of how the building should be built. The actual construction works – the bringing together of materials and skills – determines if the building will be built according to plans.

municipal BCDs. The reports provide insight into the quality of local building assessment. Three overview reports give an impression of the situation in the period 2003-2006 (VROM, 2005; VROM, 2006; VROM, 2007). They show that, in this period, only 12-21% of the municipalities adequately assessed building permit applications; and only 7-11% adequately assessed construction work. Furthermore, these reports revealed that information which is needed for assessing various requirements of the Building Decree was missing from 45% of new-building files for 2003 and from 27% for 2004 – no information was presented in later years. In addition, the Building Decree was found to be (partially) breached by approximately 8% of the files for 2003 and 17% of the files for 2004. Finally, the reports state that in 2003 and 2004 no (visible) checks were performed for the various elements in the Building Decree in 69% and 47% respectively of permit applications. Large discrepancies were also found in the caliber of the checks performed by the different municipalities – the building assessment process in the "Maastricht balcony case", illustrated before, appears not to be an exception within Dutch building regulatory enforcement.

In short, in the early years of the 21st century many municipal BCDs were not fulfilling their building assessment responsibilities on a level commensurate with criteria set by the Ministry of Housing, Spatial Planning and the Environment. No clear view was offered of the underlying causes; yet, the overview reports do carefully state that a lack of resources, particularly with respect to staff, led municipal BCDs to make certain choices that make full control impossible. It seems, however, that the local government is not always consulted on these choices as responsibilities are not always clearly established. Lack of expert knowledge and disagreement with the building regulations are other reasons why enforcement is not always adequate. The inspectorate reports indicate that almost 65% of all Dutch municipalities – especially those with fewer than 30,000 inhabitants – seem to suffer from both qualitative and quantitative understaffing. The understaffing seems to be in line with previous notions: in 2003 the municipalities had made known through the Netherlands Association of Building Inspectorates that they were unable to fully monitor adherence to the building regulations: '100% supervision is beyond our capability!' they exclaimed (VBWTN, 2003 – my translation).

Problem specification: organization and daily practice

The various reports were unable to clearly explain why municipal building authorities appear unable to perform building control on a level that would ensure building safety. The reports by the ministerial inspectorate do not identify specific causes either, but view the problem in more general terms. To identify the possible causes and to get insight in the state of daily practice in Dutch building regulatory enforcement I carried out a field study. Twenty-seven municipalities participated in the study, which consisted of a series of

semi-structured open interviews and a questionnaire focusing on the time spent on different control tasks, which was sent to the municipalities before the actual interviews – in Appendix A an overview of interviewees is provided. The pool of interviewees consisted of municipal BCD managers and inspectors. The field study had the characteristics of a survey; following methodology by Fowler (2002). The field study has been reported elsewhere (Van der Heijden *et al*., 2006), therefore I restrict myself here to the main insights.

The field study enabled me to gain insight into the actual building assessment process. Understaffing was generally told to be the principal problem in monitoring compliance – qualitative and quantitative. Both the workload at BCDs and the nature of work were told to be key problems. The workload at most local building authorities was told to be too high for the present staff, but the content of the work also appears to require a wide range of qualified specialists who are able to perform building plan assessment and construction work assessment in such a way that building safety would be guaranteed. As building authorities, especially in smaller cities, only have a limited personnel budget, generalists are preferred to specialists.

The different BCDs deal with assessment in different ways. There is no national standard, but some assumptions on Dutch statutory building assessment can still be made. First of all, a moderate number of interviewees reported that they carry out enforcement in a way that appears related to the responsive regulation philosophy (Ayres and Braithwaite, 1992, see Chapter 3 of this book). One of the interviewees illustrated this by explaining that inspectors notify clients on breaches with the law 'in a friendly manner' when they first find this breach and try 'to end the violation through consultation or a mutual arrangement.' If this does not result in compliant behavior the inspector will take 'a formal and strict administrative stance' and the issue will be strictly dealt with as an offence. In another municipality and interviewee summarized their approach as: 'talk, summon, smack!'

Second, interviewees generally stated that safety and health requirements are the main focus of building assessment in their municipality. Usability and energy-saving requirements, laid down in the Building Decree, do not appear to be pursued widely. It emerged that applications for frequent-building activities – defined as activities with maximum building costs of € 50,000, mostly house adjustments or improvements; 80% of all applications concern frequent-building activities – are checked in basic terms only; meaning that only the completeness and quality of application documentation is assessed.

Third, the BCDs appear to work with an informal prioritization in relation to the expected risks of a building plan, which is roughly based on building costs. The higher the building costs of a proposed construction, the more severe it will be assessed. In some municipalities this results in situations in which minor construction work – often relatively low-cost housing alterations – are not assessed at all.

Fourth, as the interviews progressed, it became clear to me that BCD staff treats different applicants in different ways. And a certain worker bias appeared to exist (cf. Lipsky, 1980: Chapter 8). There is a clear distinction between the way non-professionals and professionals – e.g. housing associations, architects, advisors and building contractors – in the building sector are treated. Non-professionals seem to get more help, more instruction and more advice prior to and during the building control process than professionals. Professionals are expected to know their way around and manage their own difficulties. 'That's what they [the professionals] get paid for' appeared to be the justification for the difference in attitude to the different applicants made by a moderate number of interviewees. Also, BCD staff appear to treat the professionals they know differently from the professionals they do not know – reputation is important (cf. Bardach and Kagan, 1982: Chapter 9). The work – both design and construction – of professionals with a good reputation at the BCD appears to be assessed less deeply than the work of professionals with a poor reputation at the BCD, some interviewees mentioned. Again, risk estimation seems to determine the level of enforcement. This risk estimation was said to be based upon the reputation that a professional has built up in the course of his[6] dealings with the BCD. Like the risk estimation based on building costs, the risk estimation based on reputation is not formal policy.

A final factor is the way BCDs value the possibility of consultancy prior to application. Pre-application consultancy apparently enables the authorities to steer conceptual plans, thereby sparing the applicant potential non-compliance problems and giving him more certainty about the outcome of the control process – the applicant is told where the plan does and does not comply with the regulations and where it should be altered. Another argument in favor of pre-application consultancy is that it shortens the processing time. Processing time of pre-application consultancy was not actually recorded by any departments forming part of this survey, but some interviewees reported that it could be significant. Though pre-application consultancy was valued by the different interviewees, it should be noted that it is not formal Housing Act policy.

To conclude this Dutch case for now, from my field study I found that understaffing, both quantitative and qualitative, was indeed regarded as one of the major causes to the problem defined as 'statutory building assessment does not ensure building safety' – here building safety is used in a broad sense. Moreover, as the size of a municipality roughly determines the size of its BCD, understaffing was especially noticeable in municipalities with fewer than 30,000 inhabitants – roughly 65% of all Dutch municipalities. A cause neglected in prior research might be the historically developed municipal autonomy

6 It goes without saying that wherever I use 'his' or 'he' in this thesis, this can be read as 'her' or 'she' as well.

from the national government and the inability of local BCDs to keep up with the many changes in the building control framework over the years. The field study revealed that municipalities still seem to focus mostly on the original goals of the Housing Act and therefore do not cover many of the amendments made throughout the years. Then, the field study revealed another issue as well: unequal treatment of applicants and parties involved in the assessment process due to non-formal prioritization of permit applications. Finally, from the analysis of the specific incident in Maastricht it can be learned that construction-related incidents point to more than only shortcomings in statutory building assessment: somewhere in the design and/or construction process errors appear to have been made which may eventually have caused these incidents. The building sector itself appears unable to guarantee a safe built environment, which only underlines the need for governmental intervention. A different attitude to the attainment of policy goals in the building sector – such as integrated quality assurance, or a better knowledge and understanding of building regulations – could be another important step in tackling some of the problems addressed.

2.2 Typical, or not? Worldwide problems in regulatory enforcement

On the 2nd of April 2002 the roof over the Dining Room at a South Australian golf club collapsed – the roof had been built seven years before. At the time of the collapse 60 to 80 women were in the room. The State Coroner reports: 'As a result of the collapse [two women] sustained fatal injuries. (…) Several emergency services workers placed themselves at considerable risk to enter the building and determine whether there were any survivors. Several other women sustained substantial injuries, and many others were understandably shocked and distressed' (Chivell, 2005: i). Approval for the roof was issued under conditions by the local building authority. It was found that 'The City did nothing to enforce compliance with the condition[s]' (*ibid*.: iv) and the conditions were not complied with: 'neither the builder nor the architect, engineer, software designer, truss manufacturer, roof contractor, roof tiler or Local Government authority took any responsibility for the overall integrity of the roof structure' (*ibid*.).

On the 23rd of May 2004, within a year after its inauguration, Terminal 2E at the French airport Charles de Gaulle collapsed. It was reported that: '[five] victims were crushed beneath slabs of concrete, metal and glass which fell from the roof of the departure lounge in terminal 2E' (BBC news, 2004). The structural design of the terminal was carried out by the contractors and checked by both the architect and an independent international certification agency in 'the normal French way' (Engineering News Record, 2005). From an inquiry

into the accident it was found however that the collapse was not only 'initiated by the failure of a portion of the roof due to poor workmanship' but also by 'deficiencies in [the] design' (Starossek, 2006: 116) – deficiencies that should have been found in the "double" assessment process.

In 2005 Japanese society was shocked to find a scandal in the building industry (The Japan Times, 2005). Under the new regulatory enforcement regime private sector actors were allowed to carry out statutory building plan assessment. A systemic problem with this regime was exposed after an architect's confession of falsifying structural integrity data on matters of earthquake resistance. It was found that this particular architect had since 1998 falsified data in at least 71 of 208 designs he was involved in; and it was feared that similar cases by other architects would be found (BBC news, 2005). Remembering the devastating earthquake in Kobe, 10 years before, the government carried out an in-depth inquiry into the scandal. If only because of the forced closure and the forced demolition of dozens of constructions in Tokyo – affecting hundreds of families and organizations – the impact of this scandal appears severe (The Yomiuri Shimbun, 2005).

In 2006 a comparable issue was found in the City of New York. In 1995 the City initiated self-certification to ease permit procedures (Davis, 2007a; Davis, 2008). Under the new regime architects and engineers are allowed to conform that their plans are compliant with applicable law, instead of applying for a building permit. In 2006 it was found that one architect was skirting height restrictions by mislabeling floors as mezzanines. It was found that this architect 'proved to be the tip of the iceberg' (Davis, 2007b) and from an audit by the City carried out in 2006 it was found 'that 57 percent of the self-certified new building plans that year failed to comply with codes' (*ibid*.).

On the 2nd of January 2006 the roof a 1970s-built German ice-rink collapsed under a heavy snow-load. It took three days to recover all 15 bodies – amongst which were 12 children – from the remains of the building; in addition, over 30 people were injured (Der Spiegel, 2006). From the trial on this accident it can be learned that none of the different parties involved – designer, municipality and the check-engineer, who was responsible for assessing the building – took up their responsibilities for the structural integrity of the ice-rink's roof (Der Spiegel, 2008). It appears that both the designer and the check-engineer were aware of the roof's violation of building regulations, while the municipality did not fulfill its duty to have the building inspected on structural integrity (*ibid*.).

On the 29th of January 2006, four weeks after the German ice-rink collapsed, an exhibition hall collapses in Poland, killing 66 people and injuring 160 (the Independent, 2006). Once more it seems the origins of the accident have to be sought in actors being aware that the construction is not in compliance with regulations, but approving the structure to be built and used (Cmielewski, 2007).

I could, unfortunately, go on an on with snapshots like this. In fact, building collapses, or construction related incidents, have been the topic of a variance of scholars' work (e.g. Levy and Salvadori, 1992; Petroski, 1994; Wearne, 2000). It is not my aim to do so. I introduced these examples to stress that construction worldwide still is not without risk – even though construction is often highly regulated. Worldwide building regulations appear to be violated, or at least stretched, for a variance of reasons – and often not on purpose. The snapshots introduced here illustrated maybe the most severe impacts of these violations: casualties and human suffering. Building regulation and enforcement of building regulations appears therefore necessary to keep the different players involved on track and to protect public, but also private interests.

Problem specification (1): public bureaucracies are not the most efficient way of organization

I restrict myself in the remainder of this chapter to specify the problems sensed. I do so by opening up the problems discussed towards more general literature on regulation and regulatory enforcement.

Regulatory enforcement through local government agencies has been analyzed by a variance of authors (cf. Bardach and Kagan, 1982; Osborne and Gaebler, 1992; Sparrow, 2000). In general it is found that enforcement through local government agencies often results in inadequate, over-regulated, slow and costly enforcement processes (*ibid.*). Likewise issues were found in building regulatory enforcement in developed countries all over the world. The Dutch case and international cases discussed before are but a few examples; reports on building regulatory enforcement in the United States (Listokin and Hattis, 2004; NCSBCS, 2000), different Australian states (PC, 2004), and different Canada provinces (Barrett Commission, 1998) present a likewise scene. This overview of problems in international building regulatory enforcement does, however, not imply that such problems would not occur if regulatory enforcement was carried out by other agencies or organizations. I will explicate this proposition by first paying attention to organization of regulatory enforcement through public agencies and then to the actual enforcement, or inspection work, as I presuppose the problems stated comes from both.

According to Weber, the most (technical) efficient and rational mode of organization to guarantee the 'legitimate order' is through 'the purely bureaucratic type of administrative organization' – a bureaucracy (Weber, 1964 [1921]: 337). Weber's ideal-type bureaucracy is characterized by the idea of the legitimate order from which comes a set of strictly defined impersonal rules[7] that set administrative organization. As Merton (1957: 196, emphasis in original)

7 Impersonal as they apply to all individuals likewise – class, religion or income is of no importance. Furthermore, rights and duties cannot be sold, bought or inherited.

puts it: 'the generality of the rules requires the constant use of categorization, whereby individual problems and cases are classified on the basis of designated criteria and are treated accordingly.' These rules furthermore define the hierarchy of the organization, the rights and duties of the individuals working in the organization and their jurisdiction. Furthermore, Weber's ideal-type bureaucracy is characterized by its authority, which comes from the idea of the legitimate order; a structuring of communication by keeping files; and a continuous fulfillment of the duties, which comes from its impersonal rules (Merton, 1957: 195-197; Mouzelis, 1968: 16-17; Stinchcombe, 1959: 183-187; Weber, 1964 [1921]: 329-341).

The term bureaucracy in our days is often related with red tape; public officials who are protecting their 'patch', or 'turf warriors'; and gridlocked, non-client-friendly, slow-moving government bodies (Eggers, 2005; Sparrow, 2000). Bureaucracy is sometimes even regarded as a synonym for government (Richards and Smith, 2002: 279). Solutions to solve issues that are considered to arise from bureaucracy are then often expected to be found in deregulation[8] and privatization. However, following organization theorists, all modes of organization are bureaucracies (Williamson, 1996: 17) and 'hierarchy is the basic organizing principle for all complex social systems' (*ibid*.: 38). It thus appears not to be bureaucracy that has to be changed as such, but the origins of the negative impacts that appear to go hand in hand with public bureaucracies. The popular notion that 'the private enterprise is more efficient than public bureaucracies' must be questioned (Wilson, 1989: Chapter 17). As a government's efficiency cannot be determined as society's expectations of government – realizing social goals such as accountability, equity, redistribution of income and wealth; and especially for building regulations: ensuring public safety and public health – cannot be measured. Thus, when making the choice between public or private organization, the issues to bear in mind are which social goals are to be sacrificed when considering competitive democratic values such as efficiency, equity, accountability and authority (*ibid*.: Chapter 19).

Note furthermore that, as Lipsky argues, one of the difficulties faced by pubic bureaucracies is an increase in demands and utilization when services and availability are expanded: the easier, or cheaper, it is to obtain public service the more people will make use of it (Lipsky, 1980: 33-35).

Problem specification (2): the 'good building inspector' does not exist

Yet, not only the organization of regulatory enforcement through (local) government agencies appears to stand in the way of efficient enforcement of

8 Note here that some state that deregulation can better be understood as 'reregulation' and 'liberalization' used to reshape governmental control in order to find 'new ways of raising government revenue and designing new mechanisms of policy implementation' (Vogel, 1996: Chapter 2).

building regulations. The mere enforcement tasks themselves might very well be a part of it. Bardach and Kagan (1982) illustrate the difficulty of being a 'good inspector' (see also, Lipsky, 1980: 13-25). On the one hand the inspector has to be flexible and lenient, provide information on how compliance can be reached, should have trust in regulatees, grant violators time to come in compliance, and maybe even overlook violations that pose no serious risk (*ibid*.: Chapter 5); on the other hand the inspector has to enforce all regulatory requirements, penalize violations, and treat all regulatees likewise (*ibid*.: Chapter 2).

Then, the enforcement of building regulations might in general be complicated due to their often high technical nature and their broad variance. To enforce regulations of even a small single family house an inspector should be able to assess structural safety and fire requirements; heating, ventilation, electrical and plumbing requirements; building envelope requirements; and, due to the understanding of the built environment's impact on the natural environment, sustainability and durability requirements. The inspector should furthermore be able to assess both building plans and construction work against these requirements. All this knowledge and these skills are needed to check 'but' a small single family house, imagine what knowledge and skills the inspector needs to hold when he would be required to work not only on that small family house, but at the same time on a multi family condominium tower, a shopping mall, and a multi million euro office building – which in practice seems to be often the case (as was told by my Dutch interviewees, but see also Chapters 6 and 7 of this book). The building industry, on the contrary, is a highly specialized industry in which a broad variance of architects, engineers, consultants, developers, and contractors all have their own specialization and carry out their own task within the building process.

The 'good building inspector' would need to be able to make the right tradeoff between rigid punishment of offences and a more consulting and flexible attitude; should be a multi-talented individual with a broad knowledge of building regulations and experience with construction; and, be able to deal with a variance of projects, and thus a variance of clientele. Such building inspectors are hard, if impossible, to find (cf. Barrett Commission, 1998: Chapter 2; CICE, 1989: Chapter 5; Van der Heijden *et al*., 2006: Chapter 4).

2.3 A typical case (2): changes in Dutch building regulatory enforcement

Both unsatisfactory results from attempts to deregulate the Dutch building regulatory regime and the series of construction related incidents might well be reason that initiatives have been taken to change the Dutch building regulatory enforcement regime. The national government, municipal BCDs, and

private sector organizations work together on alternative regulatory enforcement regimes which are hoped to improve the effectiveness and efficiency of building regulatory enforcement. Two of these, both with a focus on building plan assessment, have recently been implemented; the third is a 'fundamental review' of the Dutch building regulatory enforcement regime and should, currently[9], be viewed as advisory only.

The first is a Building Decree assessment process that can be carried out by certified private sector actors, which is an equivalent alternative to municipal building plan assessment. The regime relies on certification of private sector individuals in order to allow them to carry out building plan assessment. In cooperation with private sector representatives the Dutch Ministry of Housing, Spatial Planning and the Environment has drawn up a draft assessment guideline in which requirements for processing certificates for building plan assessment are specified. These requirements focus on general education of private sector actors, compulsory professional development, quality systems, assessment procedures and documentation.

However, to a certain extent the draft assessment guideline gives private sector surveyors freedom on how to meet these requirements, which might lead to issues of accountability or equity[10] if different surveyors choose to use a different assessment procedure. In order to monitor the accountability of the regime, private sector actors are audited regularly by a private organization under supervision of the Dutch Ministry of Housing, Spatial Planning and the Environment. Building regulations as such have not been changed. Private sector actors have to be independent and are not allowed to have any direct or indirect financial, legal or equitable interest in the work or have any relationship whether personal, professional, commercial or financial, with the applicant or its builder. They are furthermore not allowed to be involved in the design or construction of the work being undertaken. The regime was officially implemented in September 2007 (De Groot, 2007).

The second initiative, by the Netherlands Association of Building Inspectorates, is a software based tool that should ensure that building permit applications are assessed in a transparent process and that a clear division exists between the responsibilities of the policymakers and the policy enforcers (Van Leeuwen, 2006) – a tool that fits with the ever-increasing computerization in society (Kling, 1996). Using the tool, the results of the assessment process are recorded in uniform reports, which show that a building permit application has been properly assessed. The central element in this assessment tool is a matrix, built up from building types and assessment items in which the level of assessment is laid down for each match of building type and item.

9 August, 2008.

10 Terminology is explained in Section 4.4.

Four levels were chosen for this matrix; the lowest level meaning only a light inspection has to be carried out, the highest level meaning a full and thorough inspection has to be carried out. The higher the level of assessment, the longer and more detailed the list of questions. Building types or building elements that were expected to be more complex or might cause a high risk to society were given a higher lever of control than building types or building elements that were expected to be less complex or might cause a low or no risk to society – which makes the tool fit in the ever-increasing 'riskification' of society (Beck, 1992).

The Dutch Ministry of Housing, Spatial Planning and the Environment agrees upon the use of the assessment tool as being sufficient for guaranteeing an adequate level of statutory building assessment if certain specified risk-levels are followed. The municipal executives have responsibility for deciding to follow these minimal levels or to upgrade these levels. BCDs are then responsible to carry out building assessment according to the levels as decided by their municipal executives. Overall, the tool can be understood as a logical outcome, or formalization of the present BCDs' daily practice, which, as described previously, is already strongly based on risk reduction. Yet, as the Dutch Building Decree outlines all aspects and elements that have to be controlled, the instrument described divides the Decree in easy manageable chunks and might well put pressure on the goals and range of the Decree.

The third and final initiative to change the Dutch building regulatory enforcement regime should be viewed from the political awareness of issues in Dutch building regulatory enforcement as has been discussed previously. Assigned by the government an advisory committee, under leadership of a former Minister of Housing, Spatial Planning and the Environment, describes in broad outlines the preferred future design of the Dutch building regulatory enforcement regime (Commissie Dekker, 2008). Since this advice might be taken up by the Dutch government, I briefly introduce the main characteristics of the advice given.

In their advice, the advisory committee proposes to repeal municipal involvement in building plan assessment. In order to obtain building approval a future aspirant-building owner should 'prove that the proposed building plan has been integrally inspected on compliance with building regulations and that sufficient guarantees have been organized to integrally and continuously control the construction process' (*ibid*.: 21 – my translation). Nevertheless, governmental interference in a construction process should remain a possibility when regulations are violated. The committee is not clear on how the aspirant-building owner should prove compliance with regulations and control of the construction process. Nevertheless, the committee advised to set up a number of inquiries to explore different possibilities. It appears the committee prefers a move towards more private sector involvement through certification – I assume a wide variance of certification has been thought

of, such as certified designs, certified construction processes, and certified building inspectors; through the up-skilling of different parties in the building design and construction process by raising knowledge and skills through education and continuous professional development programs; and finally, through the implementation of a legal inspection of a finished construction, prior to occupancy, which could result in documentation that shows compliance with building regulations. As already indicated, such a final document is currently nonexistent in the Dutch case.

2.4 Typical, or not? (2) Worldwide changes in regulatory enforcement

As a solution to the often indentified 'crisis in government' Osborne and Gaebler (1992: 309) advocate a 'market-oriented government'. These authors argue that the government should become more 'entrepreneurial' (*ibid*.: 20-22) and the debate on how to solve the issues that are considered to come from bureaucracy should no longer focus on 'public versus private' but on 'monopoly versus competition' (*ibid*.: 79-81). Competition in regulatory enforcement has been advocated by different scholars. Early advocates of 'private enforcement of law' (Becker and Stigler, 1974; Landes and Posner, 1975) assumed that competitive private sector enforcement would lead to more compliance with public regulation against the same costs of monopolistic or public enforcement – the 'biggest bang for the regulatory buck' modern day regulatory scholars would say (e.g. Gunningham, 2002: 5; Sparrow, 2000: 34). This, as competition rewards innovation – improving quality, keeping down costs – and thus provides an incentive for innovation (Osborne and Gaebler, 1992: 82-92). Innovation furthermore makes organizations adapt to changing circumstances, which is sometimes regarded as the economic problem of society (Williamson, 1996: 119). Osborne and Gaebler introduce their oft-cited idea of a government that should steer instead of row (1992: 28): a government that sets the course of civil society through regulation, but leaves implementation and execution to civil society if possible. Braithwaite (2000) takes the idea one step further and points out that a strong state serves both individual and public interests (the steering), when it implements and administrates regulation where needed (the rowing that cannot be done by the civil society itself) combined with market-oriented alternatives where possible (the steering and rowing that can be done by markets and communities in civil society).

This idea of a government that does more steering and less rowing fits in a trend of 'governance' (Jordan *et al*., 2005). Governance is then regarded as 'a new process of governing' (Rhodes, 1996: 653), characterized by, amongst others, a 'changing relationship between government and non-government actors as they interact to steer society using different policy instruments' (Jor-

dan *et al*., 2005: 494). Governance thus becomes 'an exercise in assessing the efficacy of alternative modes (means) of organization' (Williamson, 1996: 11). The question, of course, is: which (alternative) mode of organization is needed? This question is taken up by a variety of governments. As I illustrate in Chapter 4, worldwide the typical solution to problems in building regulatory enforcement is the introduction of the private sector in building regulatory enforcement regimes. Private sector involvement in building regulatory enforcement must however not be regarded as the Holy Grail. Although not much research has yet been carried out in this field, two illustrative examples might be worth mentioning: England and Wales, and New Zealand.

First, England and Wales; private sector involvement in England and Wales was introduced in the late 1990s in order to enhance applicants' freedom of choice. Under the new regime these applicants can choose between public and private sector involvement. The public and the private sector have to compete for clientele. From studies on consequences of the changes it can be learned that the competition between local government authorities and private sector agencies results in economic pressures that might 'have a deleterious effect on the quality of inspections' (Baiche *et al*., 2006: 280). A study by Rob Imrie (2004) amongst building regulatory inspection officers in England and Wales gives notable insight into these officers' daily practices. According to Imrie (*ibid*.: 431), inspection officers use harsh enforcement means and penalties as a last resort. This is due to a competitive regime under which contractors can decide to use another building control department or private sector agencies to carry out the control function. The possibility of losing a client appears to be a strong restriction – a negative incentive – on the building control department's freedom of choosing a formalistic style: 'I'm not going to put my men's job on the line', as one officer put it (*ibid*.).

Second, New Zealand; a study on the building assessment regime in New Zealand shows a worst case-scenario, which Peter May addresses as 'The Saga of the Leaky Buildings' (2003). In a relatively short period of time, the New Zealand government made two major changes in building regulation. The first was a change in the actual building regulations from prescriptive to performance-based regulation, the Building Act of 1991. The second was the introduction of (competitive) private sector building inspections. The Act provided broad objectives and details for verifying compliance, but it did not specify requirements for on-site construction assessment (May, 2003: 392). The building regulatory reforms in New Zealand embraced 'the faith in the market and limited government intervention' (*ibid*.). At the same time, the development market changed: there was a strong increase in the demand for domestic buildings and consumers started to prefer so-called "Mediterranean style" homes characterized by plaster and adobe finishes (*ibid*.: 392-393). The competitive marketplace responded by shifting from commercial to domestic development and started building with cost-efficient and low-maintenance

building materials. In the wet climate of New Zealand, the combination of regulatory changes and changes in the development market led to problems with the weathertightness of buildings (*ibid*.: 393): moisture crept through the cladding of the newly built buildings into the structure resulting in 'cracking and eventually the partial or total collapse of the building.' It is suggested that up to 18,000 homes and numerous multi-unit buildings have been affected in this "Leaky Building Crisis". Two major inquiry reports (Hunn, 2002; Yates, 2003) state that a combination of issues – amongst which, a lack of performance criteria; a lack of standards that could serve as acceptable solutions; differences in building plan approval between jurisdictions; local public authorities carrying out a harsher enforcement style than private sector agencies; the freedom of developers to choose between jurisdictions and enforcement agencies – led to a 'race to the bottom in building approval standards' (May, 2003: 395).

2.5 Conclusion and discussion

In this chapter I have illustrated that in our modern society building and construction still comes with many risks. And even though the built environment is highly regulated, accidents still occur, sometimes fatal to occupants of buildings or workers at construction sites. These accidents often gain broad media attention, which sometimes results in the public's concern with the overall safety of 'their' built environment and the role the government has in guaranteeing this safety. I have furthermore illustrated in this chapter that regulation of the built environment and especially the enforcement of building regulations – building codes – has raised vast political awareness in developed countries all over the world. As a result, building regulatory enforcement has been subject to major changes since, roughly, the early 1980s; and in many countries still is, or will be subject to change. I additionally illustrated that both the problems underlying regulatory reform and the solutions chosen have been the topics of many studies in regulatory governance – though, as I will illustrate in the following chapter, building regulation has had little attention of regulatory scholars yet.

In this chapter I have analyzed problems that appear to come with the enforcement of public building regulations through governmental agencies. The questions motivating this chapter were: To what extent does the Dutch experience of dealing with building regulatory enforcement reflect wider international trends in this area? And, how can problems in this area be structured; and, especially, be specified? These problems have been identified as: enforcement through local government agencies can result in inadequate, over-regulated, slow and costly enforcement processes. The problems have been specified as: *public bureaucracies are not the most efficient way of organiza-*

tion; and: *the 'good building inspector' does not exist*. The problem appears twofold: a problem of organization of regulatory enforcement, and a problem execution of regulatory enforcement.

The problems were structured by discussing a typical case: Dutch building regulatory enforcement. By discussing more general problems with regulatory enforcement through local government I have stressed that the problems found in the Dutch case appear to recur all over the world. As does the solution chosen in the Dutch case: private sector involvement. I have however stressed as well that the public and private sectors are fundamentally different and have specific strengths and weaknesses. I have also stressed that private sector involvement must not be pursued as the Holy Grail in building regulatory enforcement. Private sector involvement appears, as illustrated with the examples from England and Wales and New Zealand, to come with a price; and it might be debated what is a proper price. A further point made in this chapter are the actual enforcement tasks – building plan assessment, building permit issuance, assessment of construction work, follow-up enforcement tasks, and occupancy permit issuance – and the difficulty an inspector faces to carry out these tasks in a "good" manner. I stress once more that these problems will not be unique to public inspectors but may be equally experienced by private sector actors.

Blindly introducing private sector involvement therefore does not seem to be a solution to the problems defined and specified in this chapter. The problems are complex and mutually interplay. I expect that in order to come to a solution to these problems this complexity and mutual interplay should be kept in mind. An 'ideal' building regulatory enforcement regime should combine the strengths of public and private organization with the strengths of inspectors, or more generally, actors involved in or subject to building regulatory enforcement. It has to be accepted, though, that making certain choices in order to gain these strengths implies choosing the weaknesses as well.

As a better understanding of building regulation might help to finding solutions to the problems discussed in this chapter I shall discuss four major debates in regulatory literature in the following chapter, Chapter 3. These debates focus on the quality of law, enforcement strategies, enforcement styles, and enforcement actors.

3 Towards a better understanding of building regulation[11]

Political fights are conducted with money, with rules, with votes, and with favors, to be sure, but they are conducted above all with words and ideas.

Deborah Stone[12]

In ancient Egypt, King Hammurabi (ca. 2000 BC) had a clear vision on rules and rule breaking. His set of 284 laws, known as the Code Hammurabi, is regarded as one of the oldest preserved codes in the world. The code sets, among others, rules regarding a builder's duties and responsibilities towards his client (King, 2004: 21): 'If a builder builds a house for some one, and does not construct it properly, and the house which he built falls in and kills its owner, then that builder shall be put to death.'

Although often referred to when discussing particular cases of building regulation (e.g. Baum, 2005; Bondy, 2003; Visscher, 2000), it is questionable if this code should be perceived as a point of departure for present day building regulation in developed countries. It appears more credible that present day building regulation has its origins in the 19th century when changes in society, due to the industrial revolution; the urgent need to house a growing number of immigrants; and scientific insight into the link between unsanitary conditions and public health, gave governments reasons to increase their involvement in the building industry – see, for instance, the development of early building regulations in England (Ash and Ash, 1899; Emden, 1885); the United States (Gould, 1895); the Netherlands (De Ranitz, 1948; De Vreeze, 1993; Kocken, 2004); and France (Risler, 1915).

From the 19th century on, regulation has been adapted to suit contemporary needs and, worldwide, present day building regulation covers a broad range of topics, such as safety, public health, amenity and sustainability – see, for instance, present day building regulations in the United States (ICC, 2006), Australia (ABCB, 2004), Canada (NRCC, 2005) and different European countries (Sheridan *et al*., 2003). The implementation and the enforcement of regulations has also been subject to change and, as I have discussed in the previous chapter, the current trend is the introduction of private sector involvement in former governmental enforcement regimes in countries such as Australia (ABCB, 1999), Canada (BCMH, 2007), New Zealand (Hunn, 2002; Yates, 2003) and parts of Europe (Meijer and Visscher, 2006). And as I argued in the previous chapter, it is expected that this private sector involvement in building regulatory regimes will only expand in future years.

It is therefore rather strange that building regulation appears a neglect-

11 This chapter is based on: Van der Heijden, J and J. de Jong, forthcoming, Towards a better understanding of building regulation, *Environment and Planning B*.

12 Stone, D. A., 2002, *Policy Paradox. The art of political decision making*, New York, Norton: 34.

ed subject in the studies of regulation (cf. May and Burby, 1998: 162, McLean, 2003: 50); but also in the studies in the field of urban planning and design. From a survey of a random sample of five leading magazines[13] from journals in 'the Construction and Building Technology category' I learned that out of roughly 2800 articles published between 1997 and 2007, only 15 were on the topic of building regulations, taking the discussion beyond that of case or 'best practice' descriptions. However, even in these 15 papers almost no attention was paid to generalizing findings to regulatory literature.

A better understanding of building regulations might help to comprehend the consequences of the changes that have been and will be introduced in building regulatory regimes worldwide. It might help furthermore to evaluate and compare these regimes and as such provide valuable information to governments that face the challenge of changing their building regulatory regimes.

In this chapter, I discuss four debates that appear to recur in regulatory and enforcement literature. Debates that I have already briefly introduced in the introduction to this book: the quality of rules and regulations, enforcement strategies, enforcement styles, and enforcement actors. At question in this chapter is: *What lessons can be learned from analyzing insights in governance reform from other policy sectors and to what extent can these be applied to building regulation?*

I start this chapter with a brief discussion on the need for regulation and enforcement as perceived in the field of law, the field of economy, and the field of sociology. I then continue with the different debates mentioned. By doing so, I hope to come to a better understanding of building regulations, their ongoing transformation and their enforcement.

3.1 The need for regulation and enforcement

The need for regulation and enforcement is a topic of research in many academic fields as is the need for government to steer society. It would be far beyond the scope of this book to deal with these issues exhaustively, but a brief introduction might assist a better understanding of building regulations and as such serves the goal of this chapter.

In general, scholars in the *field of law* often refer to the writings of John Locke, Charles Montesquieu and Jean-Jacques Rousseau as the basis for modern western states and their governments (Van den Heuvel, 1994; De Meij *et al*., 2004). The separation of power between the legislative, the executive and

13 Building Research International; Environment and Planning B; Structural Safety; the Journal of Safety Research; and the Journal of Construction Engineering and Management.

the judiciary; a model of checks and balances; and law as a contract between humans are therefore key features of modern states[14]. Different roles and responsibilities are stated and the idea of power is introduced. Power can be defined as 'the rate of the induction of behavior in others' (Jacques, 1976: 39) and authority is needed to execute power. Authority thus can be perceived as 'an attribute of a social role which gives the incumbent the right to exercise power within socially established limits, and to apply positive or negative sanctions (rewards or punishments) to others depending upon the quality of their behavior' (*ibid*.).

In general, scholars in the *field of economics* state that governments exist for three reasons. 'Firstly, they establish and maintain property rights. Secondly, they provide and maintain mechanisms for allocating scarce resources. Thirdly, they implement arrangements that redistribute income and wealth' (Parkin *et al*., 2005: 308; but also, Witztum, 2005). Regulation is divided into 'social' and 'economic' regulation (cf. Baldwin and Cave, 1999: 44-48; Crandall, 2003; Rasmusen, 2005). Regulation then may be understood as 'both a constitutive element of capitalism (as the framework that enables markets) and the tool that moderates and socializes it (the regulation of risk)' (Levi-Faur, 2005: 14). Again, different roles and responsibilities are stated and the idea of power is introduced: an organizational or administrative structure is needed to implement regulations and enforcement. The government is authorized to do so. However, the government should not hinder economic growth and a classic consideration in the science of economy is that government does (Smith, 1978 [ca. 1750-1770])[15].

In general, scholars in the *field of sociology* often refer to the writings of Max Weber as a basis for how modern governments and regulation can be understood (Burns and Flam, 1987; Parsons, 1951). Weber looks upon sociology as a science 'which attempts the interpretive understanding of social action in order thereby to arrive at a causal explanation of its course and effects' (Weber, 1964 [1921]: 88). Social action is considered action 'insofar as, by virtue

14 John Locke (1632-1704) advocated government checks and balances and a separation between legislative and executive powers – the so-called 'Civil Society'. The task of the government then is to protect the basic laws of humans. Charles Montesquieu (1689-1755) advocated a separation of powers as well, yet, in a tripartite system: separation of the legislative, the executive and the judiciary – the so-called 'Trias Politica'. Through checks and balances between these 'authorities' the concentration of power was to be prevented. Jean Jaques Rousseau (1712-1778) advocates a 'Social Contract' and considers law as a voluntary contract between human beings in which the general will of the people as a whole, the common or public interest, exceeds the private interests of individuals. This in order to guarantee individuals against subordination to the wills of others.

15 Adam Smith advocated so-called 'laissez-faire' or free market economics and argued that governments' interference hindered industrial expansion and created inefficiency; an 'Invisible Hand' would steer the free market (Smith, 1978 [ca. 1750-1770]).

of the subjective meaning attached to it by the individual (or the individuals) who is acting, takes account of the behavior of others and is thereby oriented in its course' (*ibid.*). Social action then is considered to be oriented on people's belief in the existence of a 'legitimate order' (*ibid.*: 124). When compliance with such an order is maintained because disobedience might be sanctioned by an authorized body, either physical or psychic, that aims at forced compliance or punishment of non-compliance, such an order is called 'law' (*ibid.*: 127). The government is understood to be the administrative staff of a state, which maintains 'a claim to the monopoly of the legitimate use of physical force in the enforcement of its order' (*ibid.*: 154). In other words, regulations, or a rule regime, are a 'source of expectations', a means of communication and a guideline for social action (Burns and Flam, 1987: 55).

To conclude this brief introduction, in the fields of law, economics and sociology, rules are regarded as needed both to protect and steer individuals and society. Rules work across time and space (Giddens, 1984: 25-26). Rules are made functional through regulation (Supiot, 2007: 129) Regulation can thus be understood as a guideline for the course of social action and interaction – to make it predictable (Burns and Flam, 1987: 55). Enforcement is needed to monitor and if necessary discipline regulatees' conduct – enforcement is needed to affect the legitimate order (e.g. Giddens, 1984: 18; Weber, 1964 [1921]: 126-153). Taking all this together, the whole of regulation and enforcement can be understood as a 'regulatory regime' (Hood *et al.*, 2001; May, 2007):

> 'A [regulatory] regime comprises an institutional structure and assignment of responsibilities for carrying out regulatory actions. The institutional structure is made up of rules that prescribe expected behaviors or outcomes, standards that are benchmarks against which compliance can be measured, a mechanism for determining the degree of regulatory compliance, and sanctions for a failure to comply with the rules' (May, 2007: 9).

3.2 The search for 'optimal' regulation

Regulation and enforcement has been a topic of many regulatory studies and many theories have been drawn up (for an extensive overview, see Baldwin and Cave, 1999). Analyzing this search for 'optimal' regulation might help to gain a better understanding of changes in the field of building regulation. It would be far beyond the scope of this chapter to provide a complete overview of these studies and theories; I will therefore focus on introducing four major debates in regulatory literature as these seem to me most valuable for gaining a better understanding of building regulation.

The word 'optimal' may be disputable, since it can mean a variance of things to a variety of people. Here I use this particular term following on from Gunningham and Grabosky (1998: 25-31) who use it as a 'convenient short-

hand' (*ibid*.: 27) when starting up their analysis of different forms of regulatory governance. Note that the term 'optimal regulation' is sometimes used in regulatory literature to refer to a condition under which best outcome may be expected given the understanding that a 'perfect' condition is a utopian dream (Baldwin and Hutter, 2008: 83; DeMarzo *et al*., 1998: 609).

3.2.1 The quality of rules and regulations

A topic in the debates on the quality of rules and regulations is whether rules will lead to compliance (e.g. Bardach and Kagan, 1982; Griffiths, 2003). Characteristics analyzed are adequacy, feasibility, legal certainty and adaptability (Van Rooij, 2006: 32-43). As the reader will notice from further reading, these characteristics overlap the three discussions introduced in the sections on enforcement strategies, styles and actors.

Adequacy signifies the extent to which the formal goals of regulations are fulfilled when these are being complied with (Hoogerwerf and Herweijer, 2003: 28). Adequacy furthermore signifies that sanctions of regulations should be compelling (Van Rooij, 2006: 33). Compliance is generally considered to come from the regulatee's fear of the consequences of non-compliance; the regulatee's insight that compliance serves the personal interest; and the regulatee's insight that regulations are legitimate and therefore have to be complied with (Burgstaller, 2005; see also, Kagan and Scholtz, 1984). One of the issues with building regulations is, however, that some goals are not aiming at making things happen, but at making things not to happen. Structural and fire safety requirements, for example, often aim at incident prevention. Yet, how to measure incidents that do not occur? This is a general issue with regulation that aims at prevention of harms (Sparrow, 2008: Chapter 6). A consequence might be that regulatory agencies are being accused for costing too much, whilst not producing much measurable output (*ibid*.).

Feasibility signifies the regulatee's ability to comply with regulations (Scholz, 1984: 391-392). The regulatee's ability to comply might be limited due to a physical or economic inability to do so, or due to non-familiarity with the regulations (Greer and Downey, 1981; Prinsen and Vossen, 2003). Also the regulatee's willingness to comply with regulations seems an important aspect (Van Erp, 2005; May, 2004). Regulatees are sometimes regarded as calculating actors who react or respond to regulations based on issues such as the chance of getting caught when breaking rules, or the chance of being disciplined if caught (LEEC, 2004; Prinsen and Vossen, 2003; Scholz, 1984). Feasibility also signifies that regulations can be enforced (Van Rooij, 2006: 37). Enforcement agencies have a limited capacity and therefore not all action can be supervised. Furthermore, some rule breaking is easier to detect than other (Gunningham and Grabosky, 1998; Kagan, 1994), particularly in the case of building regulation, this appears to be a relevant issue as controlling building reg-

ulations often demands specific technical knowledge or the right timing for inspections as much construction work is 'covered up' behind walls, ceilings and floors.

Adaptability signifies the regulations' ability to be adjusted to specific actual and future circumstances (Van Rooij, 2006: 40). It is argued that more open regulations give the regulatee the freedom to find a cost-efficient way of complying with regulations (Bardach and Kagan, 1982). In terms of performance-based building regulations, this has been one of the reasons for introducing this type of regulation in many countries (Meacham *et al.*, 2005). Adaptation also signifies the regulators' ability to adjust enforcement to specific circumstances (Van Rooij, 2006: 42). This issue will be dealt with more extensively in Sections 3.2.2 and 3.2.3.

Certainty, finally, signifies there is little misunderstanding of what the regulations mean and how they are enforced (Bardach and Kagan, 1982: Chapter 3; Van Rooij, 2006: 38-39; Scholz, 1984: 386-387), in the light of performance-based building codes, again a relevant issue in building regulation. To increase competition and support innovation, many countries around the world have moved from prescriptive building regulations towards performance-based building codes (Meacham *et al.*, 2005). The traditional prescriptive regulations prescribe how regulations must be complied with, for instance: 'Ceiling heights must be not less than 2.4 metres in a habitable room.' Commonly prescriptive regulations are criticized for being inflexible and inefficient (Deighton-Smith, 2008: 50). A typical feature of performance-based building regulations is: 'the explicit statement of goals and objectives that reflect societal expectations and desires, along with functional statements, operative requirements and in some cases performance criteria, which are to be used to demonstrate that goals and objectives have been met' (Meacham *et al.*, 2005: 92). For instance, if the objective is 'to safeguard the occupants from injury or loss of amenity caused by inadequate height of a room or space', then a prescriptive code would state that 'ceiling heights must be not less than 2.4 metres in a habitable room'; whilst a performance-based code would state that 'a room or space must be of a height that does not unduly interfere with its intended function' (examples from ABCB, 2002).

Note that the introduction of performance-based regulation implies a move away from technical norms towards legal norms. The former 'draws its force from the scientific knowledge of an object it intends to put to use'; the latter 'draws its force from shared faith in the projected realm that the norm aims to realize' (Supiot, 2007: 149). The regulatory focus is no longer on how compliance is reached, but that compliance is reached. The danger in this type of regulation may lie in its highly complex nature (Spence, 2004: 401); a missing link between regulation and methods to test compliance or unclearness to regulatees on how to reach compliance (Deighton-Smith, 2008: 51); and, the overall accountability of the regime (Meacham *et al.*, 2005: 101-102).

This since it is left to regulatees to prove that compliance is reached. These findings seem to be underpinned by a comparative study on building safety in New Zealand and fire safety in the US (May, 2007). From this study, it was found that evaluation criteria to assess performance were missing; government agencies responsible for compliance assessment were lacking expertise to carry out enforcement; and accountability of the systems were questioned due to issues in professional judgment and the exercise of professional judgment.

A solution to potential issues with performance-based regulation is sometimes found in adding 'deemed-to-satisfy' or 'deemed to comply' provisions to performance-based codes (for example in Australia, ABCB, 2002). Provisions that include examples of materials, components, design factors, and construction methods, which, if used, will result in compliance. Yet, some argue that in practice regulatees often are unwilling to depart from such provisions because these at least state how to reach compliance. Such behavior undermines the rationale for performance-based regulation and in practice implicates a move back to prescriptive regulation.

3.2.2 Enforcement strategy

The term *enforcement strategy* is often used to describe tactical choices made by enforcement agencies and the type of actions these agencies take (Bardach and Kagan, 1982; Hawkins, 1984; De Bruijn *et al*., 2007; Kagan, 1994; May and Burby, 1998). Tactical choices mostly refer to issues such as allocating resources, setting targets and monitoring outcomes (Mueller, 2003: Chapter 16). Types of action mostly refer to issues such as sanctions and incentives (Kagan, 1994).

Tactical choices

Setting targets and monitoring policy outcomes is often regarded a difficult task in daily practice. Goals motivating regulations often appear to be 'plural, conflicting or vague' (Herweijer, 1987: 181), or are not stated officially at all (Dunn, 2003: 135-137). Outcomes are often impossible to measure. For building regulation, a policy goal might be structural safety and the prevention of fatal construction-related incidents. But when to measure an incident? Much policy does not supply a number of units of output, or targets; and therefore efficiency of the agency implementing that policy is difficult, if not impossible, to monitor (Mueller, 2003: Chapter 16).

Types of action

Sometimes, division is made between deterrence-based strategies and compliance-based strategies (e.g. Hawkins, 1984; Scholz, 1984). These two strategies may be understood as a behavioral perspective of regulation (for an over-

view of behavioral perspectives, see Feldman and Lobel, 2008: 166-167). The deterrence-based strategy aims at deterring non-compliance prior to the law being broken (Reiss, 1984) or aims at sanctioning non-compliance after the law has been broken (Hawkins, 1984); the consequences of non-compliance have to be feared (e.g. Ogus, 2002). A central hypothesis within this strategy forms the notion that the higher the chance of getting caught breaking the law and/or the higher the sanctions if the law is broken, the less willing people are to break it (Coolsma and Wiering, 1999). Critics of this strategy state that it is ineffective and expensive, it brings about problems with enforcement and it aims too much at end-of-pipe solutions (e.g. Fairman and Yapp, 2005: 493) The model is also said to be prone to regulatory capture when a too close relationship between regulator and regulatees comes into being (Baldwin and Cave, 1999: 36-37).

The compliance-based strategy aims at the spontaneous obedience of regulations (Hawkins, 1984; Kagan, 1994) and aspires to maximum effectiveness of public means and activities by encouraging those features that bring about spontaneous obedience and weakening those features that bring about non-compliance (Parker, 2000). Spontaneous obedience is considered to proceed from feelings of moral disapproval about breaking the law (Tyler, 1990).

Instead of using negative incentives, such as fines and penalties, compliance can also be reached through positive incentives. According to this positive incentive approach, compliance can be influenced by deploying grants or subsidies (Baldwin and Cave, 1999: 41-42). The advantages of this strategy are said to be a low risk of capture; regulatees have a choice between the costs of non-compliance and the benefits of compliance; regulatees are stimulated to reduce harassment as much as possible, down to zero if possible, instead of to a prescribed level. Nevertheless, the model is also said to have disadvantages: regulations based on incentives are often very complex; incentive regimes work indirectly and might therefore react too late; it is difficult to measure the actual effect of the incentive; and public concern may arise as to why some harmful action is nevertheless being accepted.

A special variety of incentive-based regime is the link between insurance premiums to performance records; so-called insurance-based incentives (Baldwin and Cave, 1999: 53-55). In this model, insurance can be obtained if compliance with regulations is proved. This model is said to have the same advantages and disadvantages as the incentive-based regime, yet, Baldwin and Cave stress the question of whether a choice has to be made for public or private actors providing insurance. Private sector regulators might discriminate between the insured, which could mean certain policy goals are not secured. This variety is sometimes considered to have considerable potential in building regulatory enforcement; especially as insurances can be used in various ways (Comerio, 2004: 411; Spence, 2004: 401). For instance, compliance with regulations might be a precondition to obtaining an insurance policy, or

the proof of holding an insurance policy is made a condition for obtaining a building permit – a situation that exists in France (Baccouche and Elias, 1998).

Mixing strategies

Under a traditional regime, the government sets regulations and enforces these. The most traditional structure is a command-and-control regime based on negative incentives (e.g. Kagan, 1984). This regime has, however, been subject to much criticism as it is considered to be liable to capture and is likely to result in over-regulation. Compliance standards furthermore are difficult to set and difficult to enforce (Baldwin and Cave, 1999: 36-39). Critics of this regime therefore promote alternative regimes in which different strategies are used; preferably a mix of strategies (e.g. Hawkins, 1984; Hawkins and Thomas, 1984; Parker, 2000; Reiss, 1984; Shapiro and Rabinowitz, 2000; Tyler, 1990). For a critique on this criticism see Latin (1985).

A ground-breaking move away from the traditional command-and-control regime can be found in Ayres and Braithwaite's model of *responsive regulation*. Ayres and Braithwaite (1992) state that rejecting punitive regulation is naïve, though, total commitment to it might lead to unnecessary employment of means. Based upon prior empirical research in pharmaceutical companies and coal mining companies by Braithwaite (1984, 1985) and Australian business regulatory agencies by Grabosky and Braithwaite (1986) the authors of the responsive regulation model state that a strategy based upon punishment as first choice is unaffordable, unworkable and counterproductive (Ayres and Braithwaite, 1992: 26). Instead of aiming at compliance through deterrence-based strategies, the authors promote the use of different, less punitive and less restrictive, strategies and preferably mix different strategies: 'the trick of successful regulation is to establish a synergy between punishment and persuasion' (*ibid*.: 25). Responsive regulation differs from the traditional command-and-control regime in what triggers a regulatory response and what this response will be (*ibid*.: 4). The relation between controller and subject and the controller's ability to choose between different sanctions is regarded the strength of this model (Ayres and Braithwaite, 1992; Braithwaite, 2002).

Concentrating on risks

From the 1980s onwards, risk reduction is given a more and more important role in discussions on regulation and a shift towards so-called risk-based regulation can be perceived (Hood *et al*., 2001; Hutter, 2005). The emergence of this enforcement strategy has been addressed in a number of studies (e.g. Baldwin and Cave, 1999; Baldwin *et al*., 2000; Braithwaite, 2000; Sparrow, 2000; Ten Heuvelhof, 2006). Risk is often defined as 'the probability that a particular adverse event will occur during a given period of time, or result from a particular challenge' (Baldwin and Cave, 1999: 138). Risk-based regulation aims at setting standards, collecting information, influencing and changing behavior

(Hood *et al.*, 2001), and aiming enforcement resources at those subjects that create greatest risk (Baldwin, 2006) – note that difference can be made in violation and damage risks (Ten Heuvelhof, 2006), detaching the potential damage of non-compliant behavior from the chance a regulatee shows non-compliant behavior. Risk-based regulation differs from traditional regulation, because it is not based upon the input of an activity – prescribing what to do, or which standards to meet – but based upon its output – the risk it causes. Another difference between traditional regulation is its non-deterministic character: traditional regulation aims at reducing non-compliance to zero, whereas risk-based regulation accepts that risks do exist and that some risks are inevitable, but tries to reduce these risks to a minimum (Seiler, 2002).

Risk-based regulation is said to have both advantages and disadvantages. It is often perceived as more effective and efficient, as priority is given to certain enforcement activities; and as more legitimate, as certain choices are more analytically-based (Hutter, 2005). Nevertheless, these choices are particularly viewed as the down-side of risk-based regulation, as it is impossible to determine a risk objectively (Baldwin and Cave, 1999: 142; Baldwin *et al.*, 2000; Hutter, 2005). In addition, the analytical approach of defining risks, by combining chance and effect, may therefore give a false sense of security (Rothstein *et al.*, 2006). Furthermore, such a false sense of security may be strengthened when the model is 'too literally and slavishly believed in' (Hutter, 2005: 13) and, once risks are determined, the model might be blind for new risks (Baldwin, 2006). Finally, it is questionable if risk-based regulation has to be experienced as an (other) enforcement strategy or 'a methodical tool into which political judgments may be explicitly incorporated' (Flüeler and Seiler, 2003: 228); a tool for allocating resources. Some critics even warn of such tools for risk-regulation, and related risk-management, becomes a 'cult' of standard setting (Durant, 1998: 73).

3.2.3 Enforcement style

The term *enforcement style* is often used to characterize an inspector's behavior towards a regulatee (Hutter, 1997; e.g. Bardach and Kagan, 1982: 72). In regulatory literature, a wide variety of possible enforcement styles are described. Based on the responsive regulation philosophy (Ayres and Braithwaite, 1992), these styles seem to fit on a sliding scale that is defined by a consulting, facilitative approach at one end and a rigid, legalistic approach at the other end. A wide-ranging mix of enforcement styles that fit on this scale has been described by different authors (for an overview, see May and Wood, 2003).

Authors appear to have different opinions regarding the actual effect of an inspector's enforcement style on the compliance behavior of the regulatee (May and Wood, 2003; Nielsen, 2006). From research by May (2004) on compliance with building regulations by building contractors in the US home build-

ing industry, it is concluded that negative compliance motivations are influenced by inspection practices[16], whereas affirmative motivations are mostly influenced by attitudes and beliefs of regulatees and by their knowledge of the rules. For example, a facilitative style fostered affirmative motivations while detracting from negative motivations and a formalistic style detracted from affirmative motivations – no evidence was found for the influence of a formalistic style on negative motivations. Important conclusions drawn from this research are the insight (and empirical proof) that different compliance motivations can be addressed to get compliance; that the role of the inspector does influence compliance motivations; and that compliance motivations are also being influenced by the possible loss of reputation among peers.

These first two conclusions appear partly to underpin the strength of the responsive regulation model. However, from the research in the US home building industry, it was found (May and Wood, 2003: 135) that 'homebuilders learn to roll with the punches and do little to adjust their compliance behavior when faced with different enforcement styles.' Furthermore, from empirical research in the agricultural sector (May and Winter, 2000; Winter and May, 2001), it is learned that fair and regular controls offer more perspective than varying enforcement styles, thus backing some of the strengths that Ayres and Braithwaite ascribe to their model of responsive regulation. It is also learned that sanctioning has a turning-point, after which counter-productive effects are gained: more sanctioning will encounter resistance. This said, an overly informal relationship between controller and subject could bring about negative results when the possibility to sanction is not being used (*ibid.*).

Strategy or style?

As the reader might have noted, the terms 'enforcement strategy' and 'enforcement style' are closely related. In literature they often overlap or blend (cf. Kagan, 1994). As stated above, in this thesis I use strategy to describe the tactical choices and the type of actions enforcement agencies take; and style to characterize an inspector's behavior towards a regulatee.

Advantages and disadvantages are, as illustrated above, ascribed to both different strategies and different styles of enforcement. Enforcement agencies, and especially those allotted with inspection tasks as building regulatory enforcement agencies have, are very similar to 'craft organizations' and 'coping organizations' (Wilson, 1989: 165-171). For these types of organizations, or agencies, the effectiveness of their efforts relies heavily on their 'key operators' – the inspectors; but their outputs – the inspections – or their impact on

16 Negative motivations are were shown to be mostly influenced by inspection practices; affirmative motivations were shown to be mostly influenced by the regulatee's attitudes, beliefs and their knowledge of the rules (May, 2004: 61).

outcome – compliance with regulations – is hard to observe, if at all.

Note that the behavior or attitude of an inspector does not always correspond with the strategy or philosophy of his agency (May and Burby, 1998). This understanding that a 'street-level bureaucrat' might act different from his agency's organizational philosophy (Lipsky, 1980: 84) strengthens the problem specification, discussed in Chapter 2 of this book, in an 'organizational' and a 'personal' component.

3.2.4 Enforcement actors

What has not been addressed yet is the agency's or inspector's background. Implicit enforcement has been ascribed as a task for public agencies and public inspectors. However, as has been discussed already in Chapter 2 and as will be illustrated comprehensively in Chapter 4, many examples of private sector involvement in the enforcement of building regulations exist. Important differences can be found between private agencies and public agencies (Wilson, 1989: 169). A first is that private agencies must survive by attracting clients and contributors – note that a public agency sometimes 'must cope with a clientele not of their own choosing' (*ibid*.). A second is that private agencies face fewer constraints in using or disposing of capital and labor than public agencies (*ibid*.: Chapter 7). Bearing in mind these kinds of differences, it could be argued that the public and private actors and agencies have different strengths and weaknesses, which might make them more or less suitable for carrying out certain building regulatory enforcement tasks. This brings us to the fourth and final discussion in regulatory literature that I would like to introduce: enforcement actors.

The term *enforcement actor* is used to indicate the actors and agencies that carry out the actual enforcement tasks. An influential work in which the idea of enforcement actors is addressed was published in 1998 by Gunningham and Grabosky: *Smart Regulation*. In their work, Gunningham and Grabosky divide the regulatory process into parties, roles and interactions (Gunningham and Grabosky, 1998: Chapter 3). The focus on the possibility of different parties in the process has, in particular, been a move away from the traditional idea on regulatory regimes that, according to Gunningham and Grabosky, considered the regulatory process to be too much of 'a dance between two participants – government and business' (*ibid*.: 93).

The key to the smart regulation philosophy is to have those actors involved in the regulatory process that are best fit to enforce regulations. Sometimes this may be through traditional public agencies; sometimes through self-regulatory or co-regulatory initiatives in which private sector actors enforce their own body; sometimes through third parties, such as consumer interest groups that act as 'surrogate regulators' (*ibid*.: 106). However, from extensive empirical research (*ibid*.: 137-372), it is established that involving 'surrogate regu-

lators' is more efficient when large companies are involved and when non-compliance is easy to notice in these participants and parties. For instance, for an ordinary citizen it might be easy to notice violation of planning regulations when a building is built where it is not supposed to; yet, violation of technical building regulations when the wrong type of glazing is used might be hard or even impossible to notice as that same citizen does not have the necessary technical knowledge or experience to do so. Griffiths' 'theory of the social working of legal rules' underpins the idea that compliance with regulations not only comes from professional bodies enforcing regulations, but that other actors have a strong influence on compliance motivation as well (Griffiths, 2003).

Yet, although Gunningham and Grabosky, and others ascribe much potential value to surrogate controllers, for instance 'whistle-blowers' that report misconduct in their own firm or branch (Rothschild and Miethe, 1999), some find less potential. Feldman and Lobel (2008) for instance find that the likelihood of surrogate controllers reporting violations to (external) government agencies depends on: the type of violation; the impact reporting this violation may have to the surrogate controller; and, the background of the violator.

Private sector involvement in regulatory regimes: self regulation, or co-regulation?

The notions of 'surrogate controllers' and self-regulatory or co-regulatory initiatives in the regulatory process are not unique as such. Ayres and Braithwaite (1992) and Braithwaite (1982, 1984, 1985) already noticed 'public enforcement of privately written rules' and 'publicly mandated and publicly monitored private enforcement of those rules' (Ayres and Braithwaite, 1992: 116). Based on these insights, Ayres and Braithwaite introduce the concept of 'enforced self-regulation' (Ayres and Braithwaite, 1992: Chapter 4, Braithwaite, 1982). Within this concept, a government body is overseeing the process of self-control; and government and individual companies make agreements on compliance. These individual companies have to determine if regulations are being complied with and have to set up protocols to deal with the non-compliance.

In regulatory literature, self-regulation is often considered to be the opposite to traditional command and control regimes and the two are frequently regarded as the limits of a continuum or sliding scale of regulatory regimes (Price and Verhulst, 2000;, Sinclair, 1997). Self-regulation is said to have both advantages and disadvantages (cf. Ayres and Braithwaite, 1992: Chapter 4; Baldwin and Cave, 1999: 124-133; Fairman and Yapp, 2005; Griffiths, 2003: 57; Gunningham and Grabosky, 1998: 52-56). Relevant expertise and knowledge of the 'own' body, and specialist technical expertise are seen as major advantages of self-regulation. It is considered that a self-regulatory organization knows more about its sector than a public authority ever could. Furthermore, self-regulators are considered to have more easy access to those under con-

trol and can get the information they need at a lower cost. Finally, organizations are considered to show a high level of acceptance as they are subject to 'their own' rules.

Conversely, mandate claims are seen as problematic; the introduction of individuals or organizations that have no democratic legitimacy with which to exercise enforcement makes it hard to justify that the public interest is being served. Also, the accountability of self-regulators seems to be questionable: the risk of capture might weaken the model, as do both the potential lack of public belief in the scheme and the possible exclusion of organizations that are not part of the self-regulatory model. Furthermore, given that in real estate development large amounts of money are at stake 'it can be concluded that the real estate sector lends itself very well to an entwining of regular and irregular activities' (Nelen, 2008: 751). And, 'the real estate business seems, perhaps more than most other lines of business, vulnerable to corrupt practices' (Broeders and Hakfoort, 1999: 110). Such insights may indicate that this particular sector is less fit to full self-regulative initiatives (again a "telling case" can be found in the Netherlands, see, Dohmen and Verlaan, 2004). Finally, the economic circumstances that might stimulate companies to implement self-regulation and the knowledge and willingness within an organization to implement self-regulation might be lacking. Nevertheless, in terms of management and efficiency, different authors claim that self-regulation, or a certain type of self-regulation, and formal legal systems work best when they are combined (for an overview, see Doyle, 1997: 35-42).

The concept of self-regulation is, however, comprehensive, and an unambiguous definition seems difficult to make. Self-regulation can, in a broad sense, be considered to take place when a group of firms or individuals exercise control over its own membership and their behavior (Baldwin and Cave, 1999: 125), but often with a certain amount of government concern (Gunningham and Rees, 1997: 365). But then: what is the amount of control needed to call it *self*-regulation? This question seems to have been an ongoing debate in regulation literature for some time now, with a number of authors participating (e.g. Van den Heuvel, 1994; Husye and Parmentier, 1990; Price and Verhulst, 2005; Price and Verhulst, 2000; Rees, 1988). Most authors draw up a number of sub-models or types of self-regulation based on a certain degree of private sector involvement in enforcing public regulations. However, the range of this 'certain degree' is a broad one as it starts straight where command-and-control ends and continues to the point of no external governmental involvement at all – a continuum. The different in-between models or types do not all cover the same range of private sector involvement, have varying definitions and are sometimes given the same, or likewise names when having dissimilar characterizations. Due to this lack of cohesion in self-regulatory literature, it seems difficult to compare the sub-models or types. In Figure 3.1 this lack of cohesion is illustrated by placing some authors' typologies on a continuum.

Figure 3.1 Continuum of regulatory regimes

Author(s)	Regulatory regime							
	C and C	Self-regulation (SR)/co-regulation						Voluntarism
	Governmental involvement only	More governmental than non-governmental involvement ◄					► More non-governmental than governmental involvement	
Rees (1988)					mandatory partial SR	mandated SR[1]		voluntary or total SR
Huyse *et al.* (1990)		incorporating	concerted action	sub-contracting[2]				
Heuvel (1994)			covenants or contracting		conditioned SR	replacement SR		pure SR
Price *et al.* (2005)			mandated SR		sanctioned SR		coerced SR[3]	voluntary SR

1) A likewise type is described in DeMarzo *et al.* (2005).
2) A likewise type is described in Schulz and Held (2004).
3) Likewise types are described in Baldwin and Cave (1999: 126), Lenox (2006), and Sinclair (1997: 535).

Nonetheless, when taking a look at key-features, it seems possible to split up the mentioned continuum in a rough categorization: sub-models or types that are characterized by more government involvement than non-government involvement and sub-models or types that are characterized by more non-government involvement than government involvement. In Chapter 4 I shall work towards a more sophisticated typology.

To conclude this overview, I make two minor notes. The first, different authors refer to 'no government involvement' as voluntary self-regulation, pure self-regulation or total self-regulation (Price and Verhulst, 2000: 9; Rees, 1988: 10-11; Van den Heuvel, 1994: 150-151). I propose to drop the term self-regulation in these 'voluntary', 'pure' or 'total' situations, as these appear to me to be pleonasms of terms and concepts (cf. Andrews, 1998: 31). Is a situation in which private actors enter self-regulation without any government involvement not inherently 'voluntary'? I have therefore used the term voluntarism to specify the other end of the continuum in Figure 3.1. Note that the idea of private actors, who voluntarily enter self-regulation, is under debate. So-called 'voluntary initiatives' are sometimes criticized as still being influenced by government interference. For instance, private organizations may wish to delay or prevent approaching government regulation, and therefore react to the implementation of this regulation by 'voluntary' initiatives (Baldwin and Cave, 1999: 126; Sinclair, 1997: 535). Others claim that private organizations' 'voluntary' choice of self-regulation stems from these organizations' enforcement-minimizing or wealth-maximizing behavior (Decker, 2007).

Second, the field in between the two ends of the continuum is filled with a wide variance of sub-models. Self-regulation in these specific sub-models is regarded as either a contract between government and private actors on enforcing the public regulations; an agreement between government and private actors on achieving compliance with public regulations; or an agreement between government and private sector actors on reaching public goals set by the government. Often these distinct types are used interchangeably. It is questionable whether the term self-regulation is accurate to describe these situations as the government engages directly in the self-regulation process. I agree with Gunningham that these situations may be more properly termed co-regulation (Gunningham and Grabosky, 1998: 55). In the next chapter, Chapter 4, I will use this term to indicate the in-between field on the continuum.

The role of oversight in regulatory regimes

The enforcement of rules itself is also generally regulated and enforced (Cohen and Rubin, 1985; DeMarzo *et al*., 2005; Fairman and Yapp, 2005; May, 2007). To avoid confusion between these two forms of enforcement, I will refer to the enforcement of enforcement as *oversight* (Cohen and Rubin, 1985: 176; DeMarzo *et al*., 2005).

As discussed, in order to make regulation work, it has to be enforced. Enforcement tasks are often not carried out by the agency that has drawn up regulation. Regulatory enforcement tasks and responsibilities are delegated to other actors or agencies, with variance amongst possible regulatory regimes (see Figure 3.1). However, the actor or agency that has been delegated these tasks and responsibilities might lack an incentive to behave according to these delegated tasks – for instance carry out enforcement tasks effectively and not abuse authority. In order to monitor the enforcement actor's conduct and in order to provide this incentive the actor that delegated tasks and responsibilities may instigate oversight and take disciplinary measures when issues are found. This definition of oversight comes close to what some regard as 'bureaucratic accountability' (May, 2007). I take up discussions on accountability in Section 4.4.

The impact of the regulatee on regulatory enforcement

Between the lines some attention has been paid to the impact of the regulatee on regulatory enforcement. Regulatory enforcement implies multilateral relationship between enforcement actor and regulatee (cf. De Bruijn *et al*., 2007: Chapter 1). The former influences the latter's behavior and visa versa. Furthermore, the enforcement actor is likely to base his strategy and style on experiences with a number of regulatees – and likewise, the regulatee bases his behavior on experiences with different enforcement actors (*ibid*.). Then, the enforcement actor relies heavily on the information provided by the regulatee

– and the latter will mostly have an information advantage over the former (Baldwin and Cave, 1999: 12). Futhermore, over time the regulatee might learn to adapt to the enforcement actor's strategy and style, and as a consequence show strategic behavior (De Bruijn *et al.*, 2007: Chapter 3; May and Wood, 2003: 135) – and likewise, enforcement actors might learn to adapt to the regulatees behavior (De Bruijn *et al.*, 2007: Chapter 4). To conclude this short intermezzo on the regulatee's impact on regulatory enforcement: 'The real world is dynamic: [regulatees] can move. They can adopt different positions at different times or on different issues' (De Bruijn *et al.*, 2007: 36). From these authors findings it might be learned that 'ideal' regulation and enforcement should hold some flexibility to adapt to such movements.

3.3 Conclusion and discussion

This chapter bears the ambitious title 'Towards a better understanding of building regulation'. Treating the subject exhaustively would have implied writing a large volume on many regulatory scholars, concepts, terms, and theories from the field of political science and public policy. That was not my aim, and others have done it before (e.g. Baldwin and Cave, 1999). I have made an attempt to briefly introduce some major current discussions on studies of regulation. In this chapter, we have seen that different discussions take place simultaneously in studies on regulation. And I have introduced what I consider to be the most eminent: the quality of rules and regulations, enforcement strategies, enforcement styles and enforcement actors. Not only do I consider these to be the most eminent debates, I also consider these as the 'ingredients' of a 'policy mix' and will use these as such in the following chapter.

In the introduction of this chapter I wondered why building regulation appears an overlooked topic in regulatory literature. From discussing concepts and terminology that are generally used in regulatory literature, it became clear that the four debates discussed can easily be applied to the subject of building regulation – and that the analysis of building regulation might add to these debates. To put this in other words, building regulation does not appear to be an 'outlying case'. It might very well be that building regulation does at first sight look highly technical and therefore has had a deterring impact on regulatory scholars. The debates in regulatory literature on the other hand might have looked less applicable to scholars in 'the Construction and Building Technology category'. Whatever the issue, it appears to me that both fields of research and literature can add to each others discussions.

In general, it can be concluded that regulations are needed to guarantee both individual and public interests. Regulation serves as a guideline for the course of social action and interaction – to make it predictable (Burns and Flam, 1987: 55). From this point of view, building regulations can be under-

stood to be 'manuals' on how to build buildings; manuals that have been drawn up in order to make construction predictable. As such, the oft criticized highly technical contents and the wide variance of topics of building regulations can be understood to be necessary exactly because construction has become such a highly technical undertaking. And since construction is expected to become more sophisticated[17], building regulations may concurrently become more specialized – and thus, in spite of all kinds of deregulation initiatives, the volume of building regulations is more likely to grow than to shrink.

Then, in order to make regulation work, it has to be enforced. As such it can be concluded that an ideal enforcement regime achieves full compliance with regulations. Yet, additional goals of an enforcement regime may be that the costs of enforcement should be reasonable or that like cases should be treated likewise. But what are 'reasonable costs'? And what is a 'likewise treatment'? Here one might end up in debates over definitions. It is not my aim to join such debates, but to provide insight in the tradeoffs that are so often a consequence of these additional goals. For example, prescriptive regulation might be easier to enforce than performance-based regulation as compliance criteria are clear, it will not stimulate permit applicants to come up with innovative solutions. Or, command and control enforcement might give authorities a theoretical possibility of full political control, it is however costly and time consuming for both enforcer and regulatee. Or, competition between the public and private sector might result in a relatively cheap enforcement procedure for permit applicants involved, at question is: what are the downsides – if any?

I take up my aim of providing insight in the consequenses of different regulatory enforcement regimes in the remainder of this thesis, but let me first discuss some of the conclusion that can be drawn from this chapter.

Based on the notions on the quality of law some issues addressed in Chapter 2 are strengthened. Given that parts of building regulations and building regulatory enforcement aim at prevention of incidents, regulatory agencies might face the difficulty of accounting for their actions. Incidents cannot be measured when they do not occur and as a result outcome cannot be measured. This is an issue faced by municipal building control departments (see Chapter 2), but might very well be an issue that private sector agents will face when they are involved in building regulatory enforcement. Another notion on the quality of law relates to performance-based building regulations. It might be expected that performance-based building regulations on the one hand enhance adaptability of the regulations, but on the other have

17 See articles in journals from 'the Construction and Building Technology' category on new materials, products, and processes (e.g. Algin and Turgut, 2008; Arslan, 2007; Von Hauff and Wilderer, 2008).

a negative impact on the certainty of regulations: it might become unclear to enforcers, but also to regulatees subject to regulations, to evaluate or indicate compliance with regulations. The New Zealand and US cases discussed once more stress the need for evaluation criteria to assess performance requirements. Too much freedom due to too loose performance criteria might undermine the goal of building regulations: guaranteeing both individual and societal interests.

From the notions on enforcement strategies it became clear that full compliance with building regulations is difficult to measure. This indicates that building regulatory regimes hold an implicit risk: uncertainty of compliance. Based on the notions on enforcement strategies it might be expected that enforcement based on positive incentives has a more positive influence on a regulatee's willingness to comply than enforcement based on negative incentives. Incentives such as, for example, a permit fee reduction might very well persuade building permit applicants to involve specialized actors in the application process. Mixing strategies and responding to actual circumstances instead of strictly following protocols appears the most ideal enforcement strategy for the enforcement of work under construction. By using risk based strategies for making decisions on enforcement measures it is expected that limited resources can be implemented to result in maximum impacts or outcome: 'the biggest bang for the regulatory buck' regulatory scholars would say (e.g. Gunningham, 2002: 5; Sparrow, 2000: 34).

Based on the notions on enforcement styles it might be expected that a facilitative enforcement style has a more positive influence on a regulatee's willingness to comply than a formalistic style: as experienced, for example in the US and Dutch cases discussed in this and the previous chapter, inspectors experience that 'consulting' is more likely to result in compliance than 'policing'. A too formalistic style was however found to result in negative effects and from the notions on responsive regulation it seems that inspectors should have a 'stick' at hand – and use it – when needed. The strength of harsh sanctions, even when these are not imposed, should not be underestimated: 'Paradoxically, the bigger and the more various the sticks, the greater the success regulators will achieve by speaking softly' (Ayres and Braithwaite, 1992: 19). Furthermore, the use harsh means a final resort fits in the current development of criminal justice (Boutellier, 2005: 101).

Based on notions on enforcement actors it might be expected that a mix of public and private sector inspectors will result in the most ideal building regulatory regime. Issues were found when only public or only private sector involvement was implemented. Note that competition for clientele between the public and the private sector, as illustrated in the England and Wales and New Zealand cases introduced in Chapter 2, appears to result in issues with enforcement as the loss of clientele might be a negative incentive to the inspection agencies involved.

4 Regulatory enforcement regimes[18]

It is also an open question whether hybrids are adequately characterized as intermediate forms between the end-points of market and hierarchy, or must be assumed to form a separate type in their own right

Niels G. Noorderhaven[19]

From Chapter 2 it became clear that in reaction to problems in regulatory governance, governments seek to involve the private sector in the enforcement of public building regulations. This trend was found in other policy sectors as well and was found to have central focus in research on governance reform. In practice, such private sector involvement has led to a large degree of variance of alternatives for regulatory enforcement in which tasks and responsibilities are arranged between public or private sector parties: hybrid forms of governance (see for discussions on 'hybridization of governance', Brandsen *et al*., 2005; Elsner, 2004; Evers, 2005; Lang, 2001; Lehmkuhl, 2008; Noorderhaven, 1995).

Involving the private sector in regulatory enforcement has consequences. Governments often seek, or hope to find gains in effectiveness and efficiency (cf. Aguilera and Cuervo-Cazurra, 2004; Christensen and Laegreid, 2007). Private sector involvement then is expected, and sometimes found, to increase responsiveness to legitimate demands, or compliance with regulations, against the same or lower costs (cf. Baldwin and Cave, 1999: 126; Gunningham and Grabosky, 1998: 52). However, bringing in the private sector might result in unintended impacts, such as a decline of equity (cf. Burkey and Harris, 2006: 618; Lefeber and Vietorisz, 2007), credibility (cf. Baldwin and Cave, 1999: 130) or accountability (cf. Hodge and Coghill, 2007; May, 2007).

Analyzing different real-life arrangements is however complicated since a large variance of alternatives exists. Furthermore, different governments worldwide have labeled their arrangements of regulatory governance in different ways. As a result, different labels have been used to describe similar arrangements, and similar labels have been used to describe different arrangements – and as has been illustrated in Chapter 3, scholars tend to do the same. Here it may aid to identify the distinctive characteristics of these arrangements, which need to be considered in further comparative policy analysis. The development and use of a general framework may help to do so (cf. Ostrom, 2007: 25-26).

18 This chapter is partly based on: Van der Heijden, J., 2009, International comparative analysis of building regulation: an analytical tool, in: *International Journal of Law in the Build Environment*.

19 Noorderhaven, N. G., 1995, Transaction, Interaction, Institutionalization: Toward a dynamic theory of hybrid governance, in: *Scandinavian Journal of Management*, 11: 44.

Once developed, such a general framework may aid to identify different domains of arrangements of regulatory governance that show homogeneity within the domain, but heterogeneity amongst the domains. Such an approach may help to assess causality amongst homogeneous and heterogeneous arrangements of regulatory governance – which is one of my aims, see Chapter 1. The establishment of a typology of arrangements appears a useful tool to delimit domains (cf. Munck, 2004: 111).

The aim of this chapter is to draw up a general framework and use this as basis for establishing a typology of arrangements of regulatory governance in building regulatory enforcement. The questions motivating this chapter are: *Which are the main structures of regulatory governance in which tasks and responsibilities regarding building regulatory enforcement are delegated to public and/or private sector actors?* and: *What are the expected impacts of private sector involvement in building regulatory enforcement?*

I start this chapter by discussing a concept introduced briefly in the previous chapter: regulatory regimes. I then introduce the concept of regulatory enforcement regime as a heuristic framework to identify characteristics of regulatory arrangements and a tool for comparative policy analysis (cf. Munck, 2004; Ostrom, 2007; also, Supiot, 2007: xi; Van Waarden, 1992: 32). I continue by establishing a typology of regulatory enforcement regimes – 'pure' and hybrid forms of governance – based on this general framework and illustrate these with examples from literature on building regulation. Finally, the chapter concludes by stating expectations of the different regulatory regimes introduced, which will be a point of departure for the empirical research presented in the second part of this thesis.

4.1 Regulatory regimes

Chapter 3 can briefly be summarized as: in order to make regulation work, it has to be enforced (cf. Giddens, 1984: 18; Supiot, 2007: 129; 168; Weber, 1964 [1921]: 126-153). The whole of regulation and enforcement as a 'means for achieving regulatory goals' can be referred to as 'regulatory regime'. The term regulatory regime is used by a range of authors in public policy and political science. Many authors however do not define the term and only give implicit insights into what they mean[20]. Yet, comparing works of different authors makes key elements appear. When, for example, the works of Scott (2003) on privatization of public corporations or state owned enterprises in developed countries; Bruzelius *et al*. (2002) on rules regulating the construction and operation of specific mega infrastructure projects in which public and private sector

20 The "definition" provided by Peter May (2007), quoted Chapter 3, is an exemption.

parties work together; Cheyne (2002) on waste management in EC law; Moran (2001) on business regulation in Britain; Hodge and Coghill (2007) on accountability when privatization is sought as solution to public policy problems; James (2000) on governance reform by the UK government; and Christensen and Laegreid (2007) on regulatory reform in Norway, are compared, these key elements are: an organization of actors, who have tasks and responsibilities regarding the operationalization of regulations, and the relations between these actors. Note that some regulatory scholars, although they do not use the term regulatory regime, use similar elements when building analytical models for comparative policy analysis. For instance, Gunningham and Grabosky (1998: Chapter 3) make a division in parties, their roles and their interactions; and Midttun (2005) builds his models with actors, their roles and their exchanges.

Some authors though have focused on the concept of a regulatory regime itself and do make clear how they use the concept. Valuable work on regulatory regimes as analytical tool for comparative policy analysis was carried out by Hood, Rothstein and Baldwin (2001, cf. Levi-Faur, 2006: 514-520). These authors define regulatory regimes in two dimensions (Hood *et al.*, 2001: 21): first the elements that form a control model – 'gathering information, ways of setting standards, goals, or targets, and ways of changing behavior to meet the standards or targets'; and second, the instrumental and institutional elements of the regulatory regime: its context – 'the backdrop or setting in which regulation takes place' – and its content – 'the policy settings, the configuration of state and other organizations directly engaged in regulating the risk, and the attitudes, beliefs, and operating conventions of the regulators'.

The elements Hood, Rothstein and Baldwin describe appear to relate to the major debates on regulatory enforcement that I discussed in Chapter 3: enforcement strategies, enforcement styles and enforcement actors. Furthermore, as has also been discussed in Chapter 3, influential works on governance reform (Ayres and Braithwaite, 1992: Chapter 4; Gunningham and Grabosky, 1998: Chapter 6) advocate that more efficient and effective regulatory governance involves a policy mix of enforcement strategies, enforcement styles, and enforcement actors. Which proportions of these ingredients in a mix will lead to more effectiveness and efficiency however still gives much food for thought (cf. Decker, 2007; Nielsen, 2006; Sparrow, 2000). Here Hood, Rothstein and Baldwin's (2001) concept of regulatory regimes as analytical tool to study different arrangements of public and private sector parties, the mixes, in the enforcement of regulations appears to be a concept of practical use and thus a concept to follow.

As stated in the introduction of this chapter, it is my aim to draw up a general framework to distinguish distinctive characteristics of arrangements of public and private sector involvement – 'pure' and hybrid forms of governance – in the enforcement of building regulations; and use this general framework to establish a typology of building regulatory enforcement regimes. I take the

development and contents of rules and regulations for granted in this thesis and do not address the question why different governments choose to introduce different policies, or regimes, when facing issues – may they be different or comparable issues. Within the regulatory regime I pay attention to the enforcement of regulations only. To indicate this specialization I will therefore use the term regulatory enforcement regimes, which I use to indicate the organizational structure of actors that have tasks and responsibilities regarding the enforcement of regulations, the relations between these actors, and the relation between the organizational structure and its context – all elements of system theory (cf. Von Bertalanffy, 1950: 155-157; Burns and Flam, 1987: 10-13; In 't Veld, 1992). Note that this approach comes close to what some define as governance:

> 'Governance is about a set of arrangements that are used to adopt and implement public decisions. It embraces structures, processes, players and their interrelationships, rules, control, enforcement and accountability mechanisms, incentives and in general all elements bearing on decisions in the public sphere' (Longo, 2008: 194).

4.2 Regulatory enforcement regimes: a heuristic tool for comparative analysis

The general framework builds on different levels of responsibilities. These levels relate to the debates on regulatory enforcement introduced in Chapter 3. As discussed, elements from these debates have been used by other scholars as well when comparatively analyzing regulatory regimes (cf. Gunningham and Grabosky, 1998: Chapter 3; Hood *et al.*, 2001: Chapter 2; Midttun, 2005). The element at the top-level is the arrangement of tasks and responsibilities regarding setting regulations – denominated *regulation*. Within this thesis it is taken for granted that regulations in this level are set by governmental actors. This therefore leaves out hypothetical possibilities of private rules that are being enforced by public agencies (cf. Rees, 1988: 10-11).

The element at the middle level is the arrangement of tasks and responsibilities regarding setting standards for enforcement. The topics of this level are criteria that have to be met in order to be allowed to enforce regulations, and oversight of enforcement – enforcement itself is often enforced as well; to avoid confusion in terminology I will refer to the enforcing of enforcement as *oversight* (cf. Cohen and Rubin, 1985: 176 – see also Section 3.2.4). This level is termed *enforcement criteria and oversight*.

The element at the lowest level is the arrangement of responsibilities regarding the actual implementation or execution of enforcement tasks. The topics of this level are the relationship between enforcer and regulatee, and the enforcement style used. This level is termed *execution of enforcement*. On

Figure 4.1 Levels of responsibility

Level	Actors	
	Public sector	Private sector
Regulation (arrangement of tasks and responsibilities regarding the setting of regulations)	–	–
Enforcement criteria and oversight (arrangement of tasks and responsibilities regarding the setting of criteria to enforcement and oversight of enforcement)	–	–
Execution of enforcement (arrangement of responsibilities regarding the actual carrying out of enforcement tasks)	–	–
	Regulatee	

Symbols

X responsible actor

I indirect responsible actor

D direct responsible actor

→ external supervision

↻ internal supervision

the different levels in the framework tasks and responsibilities can be allocated to public and private sector actors.

These basic elements, which could no doubt be further refined and analyzed, provide the essential structure of the framework, which I use to develop a typology of building regulatory enforcement regimes in Section 4.3. The levels of responsibility are represented in Figure 4.1. Note that the framework introduced has by no means theory status. I look upon it as a heuristic tool which serves a cognitive purpose and allows for more systematic comparative analysis of regulatory policies and practices – for instance, the typology of regulatory enforcement regimes that will be introduced in the remainder of this chapter and applied in Chapters 6, 7 and 8.

In the framework, the empty cells can be allocated with the symbols presented in Figure 4.1; the cells will be completed when I define the different types of regulatory enforcement regimes in the next part of this chapter; but first I will discuss some aspects of the framework.

The actors within the model are of course individuals, but as these are mostly members in the role of organization-representative, the actors can also be considered organizations. As such the actors can be considered public or private sector organizations or individuals. The actors' relations are based on enforcement and oversight – both relations of supervision. Their activities are related to enforcement and oversight tasks – actors therefore have tasks and responsibilities. The concept of responsibility is disputed and the term is interpreted differently in different fields of science, and also within the field of public policy itself (cf. Bakker and Yesilkagit, 2005; Barnard, 1938: Chapter 17; Bardach and Kagan, 1982: Chapter 11; Dubbink, 2003; Dunn, 1990). I therefore briefly introduce and examine the concepts of direct and indirect responsibility – terms used in the disputes mentioned – for these are of importance to the regulatory enforcement regimes.

Within the literature mentioned direct responsibility is regarded as primary responsibility of an element (actor) in a system (regime) for its actions and effects resulting from these actions. Indirect responsibility is considered as

purely a discretionary responsibility regarding the regime as a whole; meaning, setting the regime's conditions. An indirect responsible actor has had direct responsibility at an earlier point in time and has this responsibility since passed on or delegated to another actor and/or has only had responsibility for providing for the regime as a whole. For example, an actor that had responsibility for implementing enforcement, but has delegated authority to do so to another actor, still can be held responsible for this delegation. This actor, while not required to act, is not entirely released of its duty and, should the need arise, might be called upon to act at some point in future. A series of failures within the system might also be reason to call upon these actors to be directly responsible again (Barnard, 1938: Chapter 17; Johnson and Ioeger, 2001).

Then, the relations of supervision in the regulatory enforcement regimes are divided into external and internal supervision. External supervision is looked upon as the authority of an actor to supervise another; internal supervision is looked upon as supervision an actor has over its own membership and behavior. Finally, a particular actor in the framework is the 'regulatee', the legal person or body that is subject to regulations at issue.

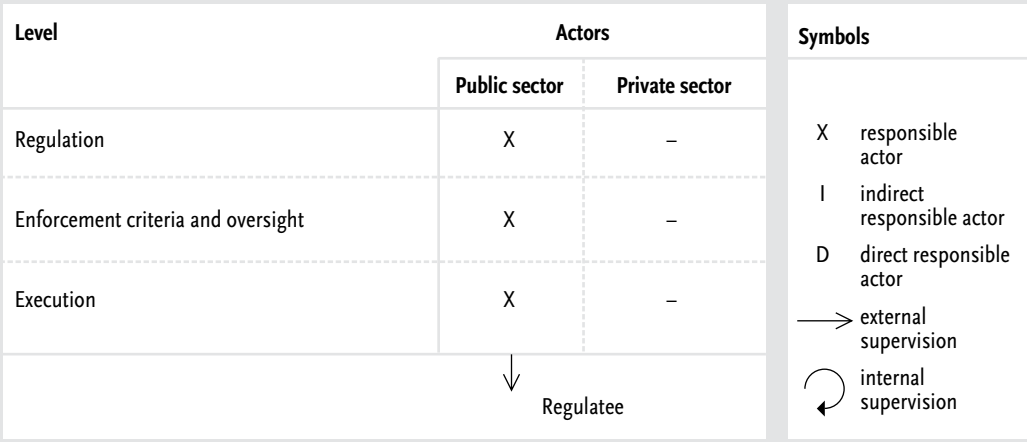
The typology of regulatory enforcement regimes that will be described in the next part of this chapter is based on the framework.

4.3 'Pure' and hybrid forms of governance in regulatory enforcement

The typology of building regulatory enforcement regimes, that I introduce in this section, shows a gradual shift from a regime in which all responsibilities and tasks regarding enforcement are allocated to public sector actors to a regime in which all responsibilities and tasks regarding enforcement are allocated to private sector actors – a continuum, comparable with the one presented in Figure 3.1. This will be done by starting to allocate all tasks and responsibilities to governmental actors, a traditional public set-up, and then shifting these duties and responsibilities one by one, and level by level, to private sector actors. In total I distinguish five regulatory enforcement regimes: public, prescribed co-regulation, conditional co-regulation, substitute co-regulation, and private. I use the term co-regulation to indicate hybrid situations in which both the government and the private sector are combined within a regime (cf. Brandsen *et al.*, 2005; Elsner, 2004; Evers, 2005; Gunningham and Grabosky, 1998: 55; Lang, 2001; Noorderhaven, 1995). The limits of the continuum of regulatory enforcement regimes are 'pure', non hybrid forms: a 'pure' public sector regime and a 'pure' private sector regime; the in-between types are hybrids.

The regimes should be considered to be final normative models; the regimes present an analytical 'final stage' of regulation and enforcement, not a blueprint of how to get there. The regimes will be exemplified with systems

Figure 4.2 Public regime



of building control in developed countries, such as Canada, the United States, Australia, the Netherlands, the United Kingdom, and France. Cases presented are illustrative and have no explanatory objective. In order to illustrate the building regulatory enforcement regimes I have selected cases from journal papers, governmental reports and when necessary additional information was sought on websites of regulatory agencies mentioned. Furthermore, propositions on expected regime consequenses are made based on research in other fields of public policy and political science.

4.3.1 Type 1: 'pure' public regime

The first type, the 'pure' public regime, can be compared with a traditional command and control regime as discussed in Chapter 3: all responsibilities for setting building regulations; setting rules and criteria to enforcement; overseeing enforcement; and the execution of enforcement lies with governmental actors. An enforcement relationship exists between enforcer and regulatee and an oversight relationship might exist between or within governmental bodies. Figure 4.2 represents the public regime.

In the enforcement of building regulations, regimes like these can be found in many European countries (Meijer *et al.*, 2003) and in parts of the USA (Schmit, 2001; LaFaive, 2001), Australia (ABCB, 1999) and Canada (Hansen, 1985) as well. However, true 'pure' public regimes appear to become extinct: as the different illustrative examples in this chapter will show, when introducing the private sector in building regulatory enforcement, the pure public regime type is not replaced with another type but often supplemented with it. For instance in the telling case presented in Chapter 2, the former pure public Dutch regime is supplemented with a regime in which private sector actors can also carry out a number of enforcement tasks. Under the new situation permit applicants have the choice to choose between the public and private sector involvement in building-plan assessment.

From analyzing the former pure public Dutch regime I learned, as discussed in Chapter 2 (see also, Van der Heijden *et al.*, 2006), that municipalities car-

ry out their legal tasks – building-plan assessment, construction work assessment, issuing permits – in varying ways: process times, charged fees, and assessment criteria differed in such a way that a 'national process' could not be identified. Overall I found that smaller municipalities, allocated with small building control departments, were insufficiently equipped to assess complex building works; and some smaller municipalities made clear that some legal tasks – especially assessment of buildings under construction – were not carried out at all.

These findings are partly in-line with general criticism towards pure public regimes, or command and control regimes. Critics of this strategy state that it is ineffective and expensive, it brings about problems with enforcement and it aims too much at end of pipe solutions (cf. Fairman and Yapp, 2005: 493). The regime is said to be prone to regulatory capture when the relationship between the regulator and the regulatee becomes to close (Baldwin and Cave, 1999: 36-37). Furthermore, the regime might be subject to legalism (*ibid*.: 37-38) when the proliferation of rules leads to over-regulation which may strangle competition and entrepreneurship in the market. Subsequently, the setting of standards is difficult since public goals can often not be expressed in technical standards, and the enforcement of regulations might be difficult or expensive due to a too high complexity of these rules (*ibid*.: 38-39). The advantage of a regime like this, from the public sector's point of view, is that the government holds full political power (*ibid*.: 35).

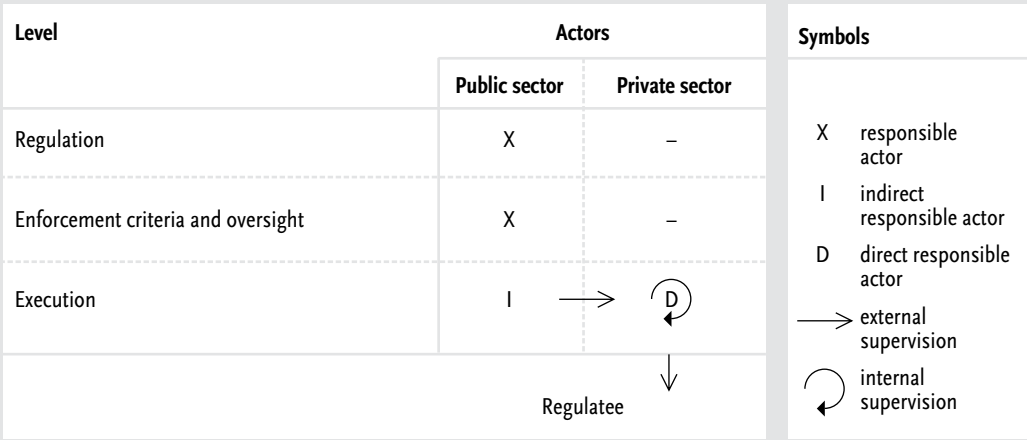
4.3.2 Type 2: prescribed co-regulation regime

Prescribed co-regulation is characterized by a government that takes full responsibility for setting regulations; and setting standards to and overseeing enforcement. Execution of enforcement is delegated to private sector actors. Within the regime, governments can contract out enforcement, or enter into agreements with private sector actors – covenants – yet, the private sector actors have to meet certain precisely described participation and administration criteria in order to be allowed to enforce the regulations. By doing so, governmental actors have indirect responsibility for the execution of enforcement.

An enforcement relationship exists between enforcer and regulatee and an oversight relationship might exist between or within governmental bodies. Extra supervisory relationships, oversight, arise at the execution level: in order to assure its own responsibilities the indirect responsible governmental actor might want to supervise contracts or covenants with the private actors, or might want to supervise fulfillment of participation and administration criteria; and internal supervision might exist within private and/or third sector actors. Figure 4.3 represents prescribed co-regulation.

Occasionally this hybrid-type is found to result in net gains in effectiveness compared to a 'pure' public regime. Ayres and Braithwaite (1992: 104), for

Figure 4.3 Prescribed co-regulation



example, find that 'corporate inspectors are better trained and tend to achieve a greater inspectorial depth'; and Baldwin and Cave (1999: 126) note that corporate bodies 'can usually command higher levels of relevant expertise and technical knowledge than is possible with independent regulation'. This hybrid-type is furthermore found to result in net gains, again compared to a 'pure' public regime, in technical efficiency – efficiency gains due to a different approach private or third sector actors might have to enforcement tasks, sometimes referred to as x-efficiency (cf. Leibenstein, 1966). Gunningham and Grabosky (1998: 52), for example, state that private sector involvement in a regulatory regime 'offers greater speed, flexibility, sensitivity to market circumstances, efficiency, and less government intervention than command and control regulation'.

An illustrative example of a covenant, or agreement, between private and public actors regarding achievement of compliance with building regulations within the execution level, is the case of the Johns Hopkins University and the building authority of Howard County in the US (Loesch and Hammerman, 1998). These actors came to agreement on the University's continual in-house alterations that are required to meet research goals. In order to overcome issues such as time delays due to traditional permit review processes, the University entered into an agreement with the County on compliance with building regulations and a so-called Master Building Permit was drawn up. The agreement relies on a prescribed quality assurance model, including procedures for design and construction approval reviews based on the building regulatory framework, and a prescribed in-house supervision model to certify alterations have been carried out according to approved plans. Occasionally the County carries out unannounced inspections and audits. According to Loesch and Hammerman (1998) this agreement has benefits for both the University, as it no longer suffers loss of time due to traditional plan review and approval processes, and the County, as it saves resources.

Yet, not only gains are ascribed to this hybrid-type. The introduction of private sector involvement might introduce potential conflicts between private and public interests (cf. DeMarzo *et al.*, 2005: 688; Gunningham and Grabosky,

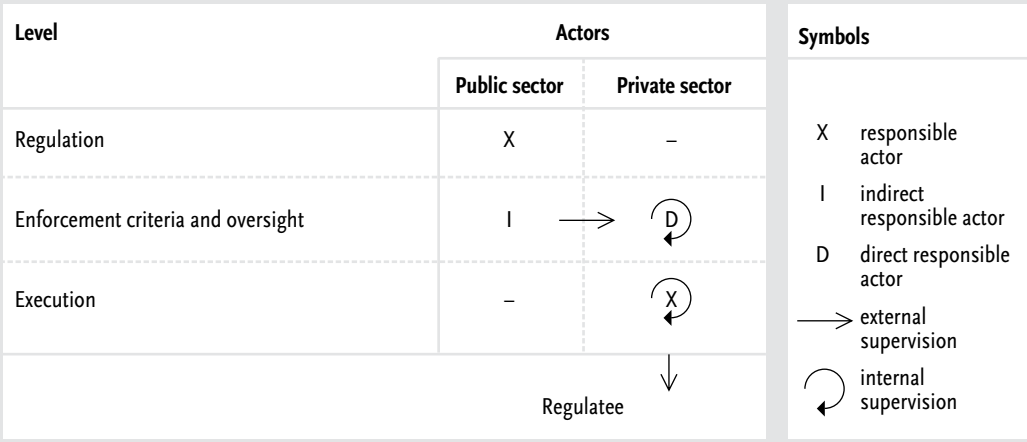
1998: 52; Hodge and Coghill, 2007); and especially competition for clientele might make the regime liable to regulatory capture (cf. Baldwin, 2005: 129-130; Scholz, 1984: 401). As a result an additional layer of supervision or oversight might be needed to monitor the enforcement by private sector actors, which could lessen the effectiveness and efficiency gains (cf. Cohen and Rubin, 1985).

Examples of regulatory capture have already been introduced in Chapter 2: the cases of the German check engineers and the Japanese architects, who are allowed to carry out building-plan assessment. For example, German private check-engineer may act in the name and on behalf of public authorities and as such are allowed to verify and certify if design and structural work shows conformity with legal requirements (Meijer *et al*., 2003: 98). Qualification requirements are laid down in the building regulatory framework as are administration requirements (Zander, 2005). The check-engineer is fully responsible and liable for controlled and inspected structures (*ibid*.). From the court case discussed in Chapter 2 however issues with the overall accountability of this regime due to a lack of oversight became clear: the check-engineer can easily hold back essential information.

Another consequence of this regime might be a loss of liability. This since a conflict might arise when the directly responsible actor does not take up its responsibility. To what extent then is the indirectly responsible actor to blame? And, to what extent can the indirect responsible actor be held responsible? An issue comparable with 'the problem of many hands' (Thompson, 1980). Furthermore, when tasks and responsibilities are not clearly defined within the regime, overlapping tasks might result in liability issues. This was found to be an issue in the Canadian City of Vancouver.

I dwell upon the Vancouver regime more elaborately in Chapter 7, but here I wish to use the case as an example of liability issues that might arise from the introduction of a prescribed co-regulation regime. The City of Vancouver has set up a regulatory enforcement regime, the Certified Professional Program, in which an individual can apply to become a Certified Professional (CP). To become a CP, an individual has to meet criteria set and overseen by the City. Once a CP, the individual is allowed to enforce public building regulations – but only for complex construction work. The City of Vancouver has laid down protocols for building-plan assessment, site controls and final inspections to steer the work of a CP (OHCS, 2007). The City oversees furthermore each enforcement task carried out by a CP and the final decision on compliance with regulations is by the City's building officials. From an analysis of the CP program (Richmond, 1999) it was learned that processing times shortened due to the introduction of the CP program. However, liability appears to be a concern (*ibid*.: 6) as the City's role might be unclear. On the one hand the CP program relieves the City partly from assessing building-plans; on the other the City is still responsible for issuing permits. Liability issues might rise if the City approves a building-plan or faulty CP documentation.

Figure 4.4 Conditional co-regulation



Then, a doubling of tasks could furthermore mean a loss of allocative efficiency (Leibenstein, 1966: 392-397; Lipsky, 1980: 77): welfare maximization could be optimized if unique resources would be used for unique goals. For instance, in the example of the City of Vancouver the municipal building official has to carry out a number of administrative tasks in order to issue a permit based upon a CP's inspection report – tasks that are partly also carried out by the CP. The advantage of this partial doubling of tasks is that the City keeps considerable control over the CP's enforcement process.

A final issue that might be a consequence of this regime is a loss of credibility. This might be a result of accountability issues, which might make the general public less willing to trust private sector enforcers (cf. Baldwin and Cave, 1999; 130). Especially when the media pays much attention to issues with private sector involvement, as has been illustrated in Chapter 2, the public's trust appears difficult to gain.

4.3.3 Type 3: conditional co-regulation regime

Conditional co-regulation is characterized by a government that takes full responsibility for setting regulations. Responsibility for setting criteria for and overseeing enforcement is left to private sector actors, yet conditions are placed on this setting of criteria for and overseeing enforcement by the government. Thus, the government has indirect responsibility and private sector actors, when participating, have direct responsibility for the level 'enforcement criteria and oversight'. As such, the government outlines conditions and leaves it to private sector actors to fill in the conditions set, for example with participation and/or administration criteria. Responsibility for execution of enforcement lies solely with private sector actors.

An enforcement relationship exists between enforcer and regulatee and an oversight relation might exist between the indirect responsible governmental actor and the direct responsible private sector actors. Furthermore, supervision relationships, oversight, might exist between or within private sector actors. Figure 4.4 represents conditional co-regulation.

This hybrid-type is sometimes found to result in net effectiveness and technical efficiency gains compared to a 'pure' public regime, as was the previous type discussed – prescribed co-regulation (see also, DeMarzo *et al*., 2005; Lenox, 2006; Schulz and Held, 2004). As with the previous type, this hybrid-type is furthermore found to result in accountability and credibility issues. Examples of this hybrid-type were found in Australia, New Zealand and different European countries.

An example to illustrate a covenant between the government and private sector within the conditional co-regulation regime is the case of the so-called P-mark in Sweden (Anneling, 1998). The P-mark model is a certification regime developed by a Swedish government body, *Statens Planverk* (SP), in cooperation with the building industry, insurance companies and other interested parties. Under this regime, manufacturers can be certified for the construction of prefabricated detached houses. The P-mark implies that a product meets requirements stated in laws, standards or established regulations. Performance criteria and certification criteria have been drawn up by the cooperative. Performance criteria relate to the Swedish building code. Certification criteria relate to the quality system of the manufacturer and in-factory compliance assessment; test methods have been drawn up to verify compliance (Horvat and Fazio, 2005). Twice a year SP carries out an unannounced inspection at the factories; and annually five percent of all finished houses are inspected by SP as well.

Then, in the Australian state of Victoria consumers are allowed the choice of engaging a municipal building control surveyor or seeking the same service from a private building control surveyor – a so-called private certifier. I will discuss this regime here as an example to illustrate issues that might rise from the introduction of conditional co-regulation; in Chapter 6 I discuss this particular regime based on my own empirical research. In Victoria the public and private sectors have to compete for clientele (VCEC, 2005); and, private certifiers and municipal building surveyors have the same responsibilities and are allowed to carry out the same tasks. Private certifiers have to meet criteria set by the Building Practitioners Board, an independent regulatory agency whose stakeholders represent private sector organizations. This Board also oversees the private certifiers' practices, but is administratively supported by a ministerial department in doing so: a "public-private partnership". From reviewing inquiries I found that the regime's accountability is considered an issue (VCEC, 2005: 82): private certifiers are often considered to be subject to commercial pressure and conflicts of interests, which sometimes might result in cutting corners. Though, compared to other Australian regimes under which private certifiers are overseen by public agencies, the background of the Building Practitioners Board is regarded as an advantage in the regime's model of oversight (PC, 2004): they might have a better knowledge of the field than public agencies. This reasoning appears consistent with

findings by Baldwin and Cave (1999: 127) who note that private sector regulators 'with their easy access to those under control, experience low costs in acquiring the information that is necessary (…) and enjoy the trust of the regulated group' (see also, Bardach and Kagan, 1982: 219; Gunningham and Grabosky, 1998; 44-47).

Examples of similar 'competitive relationships' between the public and private sectors have been discussed in Chapter 2: the introduction of private inspectors in Great Brittan (Baiche *et al*., 2006; Imrie, 2004) and New Zealand (May, 2003). In both cases the competition between the public and the private sector was found, as discussed in Chapter 2, to result in unintended and unwanted consequences.

A building regulatory enforcement regime that seems to differ from these examples, when viewed from the outside, but which has a similar set-up, can be found in France. The French building regulatory framework is characterized by the significance of insurance. The French building regulatory framework stipulates compulsory insurance for different actors when a client and a builder enter into a contract; all parties involved, including the owner, vendor and developer must take out this insurance covering the presumed liability in the Civil Code. This compulsory insurance has a run-off period of ten years and covers issues such as structural elements, electrical and other installations (Baccouche and Elias, 1998; Meijer *et al*., 2003). Insurers often require technical inspection – building controls – by a private technical inspection body as a condition for issuing insurance policies. Duties and responsibilities regarding technical inspection are laid down in the Spinetta Law. The *Centre Scientifique et Technique du Batîment* (Scientific and Technical Centre for Building), a non-governmental organization, supervises the work of these technical inspection bodies. Within the French regime, local governments have limited enforcement tasks. These are restricted to building-plan control, environmental conditions, zoning and town planning issues (Baccouche and Elias, 1998). Yet, as has been illustrated in the second chapter of this book, the French regime does not appear to be flawless.

Another issue that might come from this regime type is a loss of equity. Service provision may not be equally accessible for different groups, or groups may not be equally subject to enforcement. General notions that bringing in the private sector in a regulatory enforcement regime might result in such a decline of equity are made by Burkey and Harris (2006). In the Australian case introduced above, it was found that private certifiers seem to 'cream' the market (cf. Bailey, 1988: 304; Stoker, 1998: 23) leaving municipalities with the more difficult and less profitable jobs (VCEC, 2005, 82). As Wilson (1989: 169) already noted: municipal agencies often 'must cope with a clientele not of their own choosing' whereas private sector actors can choose their clientele.

A final issue that might be a consequence of this hybrid-type is a loss of

credibility. This for the same reasons as under the previous regime type, though possibly strengthened by a general public's rejection of the private sector's attitude of creaming.

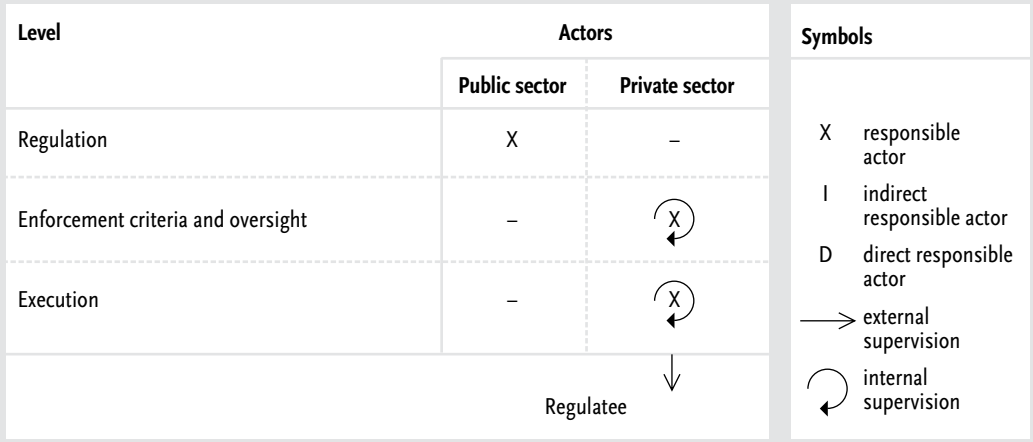
4.3.4 Type 4: substitute co-regulation regime

Substitute co-regulation is characterized by a government that takes full responsibility for setting regulations but responsibility for setting criteria for and overseeing enforcement and responsibility to execute enforcement is left to private sector actors. The regulations are not actively enforced, unless private sector actors take responsibility for setting criteria for and overseeing enforcement and execute enforcement – however, as regulations exist they still can be enforced under liability law. Private sector actors might see it in their own interest to enforce regulations, for instance to reduce risks of free market trade; to distinguish from other actors; because they expect a governmental enforcement framework to be put into action if they do not take action themselves; or private sector actors might take responsibility for enforcement as they feel the need to guarantee particular public rights (cf. Baldwin and Cave, 1999: Chapter 10). If done, an enforcement relationship may exist between enforcer and regulatee and supervisory relationships, oversight, might exist between and within private sector actors. Figure 4.5 represents substitute co-regulation.

What in regulatory literature is referred to as 'going beyond compliance' or 'win-win situations' might be the consequence of this hybrid-type (cf. Ayres and Braithwaite, 1992: 98; Gunningham and Grabosky, 1998: 413-422).

This hybrid-type appears a popular structure for different kinds of private sector related initiatives, such as assessment tools and certification programs that have the intention 'to reach beyond the mere requirements of building codes' (Horvat and Fazio, 2005: 76). For example, the Building Research Establishment Environmental Assessment Method (BREEAM), an environmental assessment method for buildings, developed in the UK in the 1990s. BREEAM is developed by BRE (Building Research Establishment); a subsidiary company owned by a trust in which members represent specific sets of interests, such as built environment professionals and contractors. BREEAM establishes benchmarks for environmental performance by rating buildings on a four-point scale. Assessments are carried out by independent assessor organizations that are licensed and trained by BRE. Assessment criteria are partly based on the English and Welsh Building Regulations (BRE, 2006). After assessment, a certificate declaring the rating is issued; yet, as the certificate has no legal status it can only be used for promotional purposes (Horvat & Fazio, 2005). Versions of BREEAM and similar tools have been or are being developed for Hong Kong, Australia, Canada and the US (cf. Cole, 1998; Cole, 2000; Crawley and Aho, 1999).

Figure 4.5 Substitute co-regulation



The downside of the regime is that the government loses its grip on the actual impact regulations have. Outcome cannot be steered by means of enforcement by governmental actors. Doyle (1997: 42) assumes that different forms of regulation and regulatory enforcement 'work best when they co-exist; that is, two-tier regulation is more likely to be superior to [single-tier regulation]'. I expect, based on these notions, that substitute co-regulation will work best when supplementary to one of the previously described regimes – either 'pure' or hybrid forms of governance.

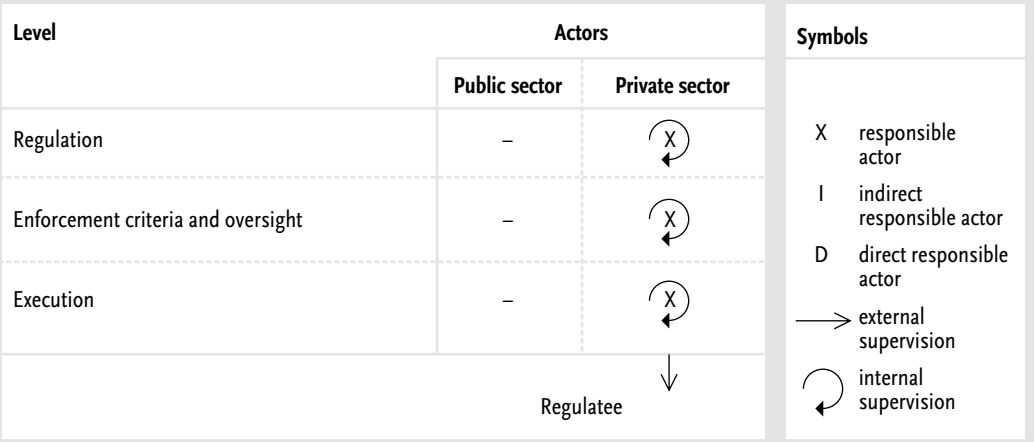
An example of such two-tier regulation can be found in the recently introduced 'hidden defects insurance' in the Netherlands. The goal of the insurance is covering costs that might result from hidden defects that have their origin in the construction of the building, but that show up after occupation – insuring these risks was impossible before the introduction of this insurance (Van den Berg and Overtoom, 2006). The supplier of this insurance, a private insurance company, requires an independent private actor to control work during design and construction and require a document of approval once the building is finished. The grounds for these control tasks are Dutch building regulations as set by the national government, the Building Decree, and if necessary, supplementary European norms.

A final downside of this regime, trusting enforcement fully to liability law might result in long and sometimes costly enforcement processes for those who feel harmed (Bardach and Kagan, 1982: 10). Furthermore, full reliance on liability law within building regulatory enforcement might result in situations where non-experts have to make decisions on highly technical regulations. As Peter Huber (1988: 153-161) illustrated, this might result in unwanted consequence such as a risk-averse attitude of manufacturers towards innovative design solutions.

4.3.5 Type 5: 'pure' private regime

The final regime is characterized by the absence of government involvement. It is left solely to private sector actors to set and enforce building regulations;

Figure 4.6 Private regime



yet, if done so, these will not be statutory. Private sector actors might find it is in their own interests to set up and enforce regulations, or take responsibility to guarantee certain public interests by setting and enforcing regulations. If done, there may be an enforcement relationship between the enforcer and regulatee and a supervisory relationship, oversight, between and within non-governmental actors. Figure 4.6 represents the private regime.

Note that from a purist point of view I might not have introduced this model as it conflicts with a basic principle that underlies the other regimes: 'within this chapter it is taken for granted that the regulations are set by the public sector'. Yet, as my aim was to introduce models that cover the continuum illustrated in Figure 3.1, I felt the need to present the final model as well. Furthermore, as the regulatory pendulum seems to swing between the limits of public command and control regulation, and voluntary private initiatives that benefit the public (cf. Sparrow, 2000), it may be hypothesized that what is currently regarded as public interest, for example guaranteeing certain sustainability issues of the built environment may, in the future, be regarded as private interest.

Private regimes guaranteeing interest in the built environment have been described (Bunz *et al.*, 2006; Cole, 2000) and often show strong similarities with the assessment tools and certification programs introduced under the substitute co-regulation regime; differing from these only as the initiatives do not refer to public building regulations.

Other examples can be found in regulations drawn up by private sector agencies to harmonize issues that have not been regulated through public regulations. In the Netherlands the national organization for standardization (NEN), a private sector company, provides guidance when parties enter into an agreement on products, procedures or processes and publishes these agreements (NEN, 2006). Once the agreement is set it is called a standard – these standards can be considered as private sector regulations. NEN has been so successful in developing standards that many Dutch public building regulations refer to NEN standards as minimal technical requirements that have to be complied with.

Note that this type of private sector regulation through the International Organization for Standardization (ISO) has a strong grip on the building industry worldwide[21]. The well-known ISO 9001 and ISO 14000, both a generic set of requirements for implementing a management system, the former on quality, the latter on environmental issues, appear to have a particularly strong impact on the construction industry worldwide (Ball, 2002; Chini and Valdez, 2003; Pheng and Wee, 2001; Walker, 2000).

4.4 Expectations about regime impacts: tradeoffs between different policy goals

From the discussion of different types of regulatory enforcement regimes it is learned that the potential consequences of the different regime types vary. Intended impacts such as an increase in effectiveness and efficiency were reported, whilst at the same time unintended impacts such as a decline of equity, integrity, credibility, liability and accountability were mentioned. Tradeoffs appear to occur between such policy goals, but before I discuss such tradeoffs let me first introduce which evaluation criteria I use throughout the remainder of this thesis – and why.

4.4.1 Evaluation criteria

Policy evaluation requires evaluation criteria. In policy analysis there is, however, no general agreement on which evaluation criteria should be used to analyze and evaluate policy or policy instruments successfully, or what criteria should be satisfied in order to rate that policy or those instruments as 'successful' (Bovens *et al.*, 2001: 25-32; Gunningham and Grabosky, 1998: 25-32; Rowe and Frewer, 2000; Runhaar *et al.*, 2006). Generally, 'effectiveness', 'efficiency' and 'equity' are used (see Gunningham and Grabosky, 1998: 26), to which criteria such as 'democracy', 'integrity', 'legitimacy' (Bovens *et al.*, 2001: 25-32), 'political acceptability', 'accountability' (Gunningham and Grabosky, 1998: 25-32), 'adequacy', 'responsiveness' or 'appropriateness' (Dunn, 2003: 258-268) are added. To some extent, the criteria overlap (*ibid.*). These evaluation criteria can be divided into two groups: acceptance criteria and process criteria. The former relate 'to the potential public acceptance of a procedure' – criteria such as accountability, democracy, political acceptability and equity; the latter relate 'to the effective construction and implementation of a pro-

21 ISO is a network of national standards institutes worldwide. ISO itself is a non-governmental organization; its members might be private sector agencies, as is the Dutch NEN, or public sector agencies, as is the SCC, the Standards Council of Canada. Nevertheless, ISO does not set public regulations.

cedure' (Rowe and Frewer, 2000: 11)[22] – basically, effectiveness and efficiency. The acceptance criteria appear related to what I have referred to as unintended consequenses, the construction and implementation criteria to what I have referred to as intended consequences.

Whichever combination of criteria is chosen, none shall be exhaustive – and each shall be disputable. Here it is up to the researcher to 'draw a line somewhere' (Stone, 2002: 14). Yet, where to draw this line is given the object of evaluation, of course, not fully arbitrary (cf. Bader and Engelen, 2003: 385). Following on from Gunningham and Grabosky (1998) I have chosen to focus on the commonly used criteria for analyzing regulatory policy: effectiveness, efficiency and equity. Given the particular involvement of private sector actors into this regulatory policy – and issues that may rise from such involvement – I have added accountability to these criteria. Accountability mechanisms are generally regarded as needed to monitor the conduct of, and if necessary discipline actors involved (Mulgan, 2000a).

Effectiveness – an increase in effectiveness is, besides an increase in efficiency, often the main reason to introduce private sector involvement in building regulatory enforcement regimes. Effectiveness is generally regarded as 'to whether a given alternative results in the achievement of a valued outcome (effect) of action' (Dunn, 2003: 224). Yet, within this broad definition the outcome of a policy may be valued but not intended – the policy may have triggered a series of events to occur, which resulted in the actual valued outcome, without having the outcome as aim[23]. Giddens' notion on intentional action may clarify this point, Giddens characterizes 'intentional' as 'an act which its perpetrator knows, or believes, will have a particular quality or outcome and where such knowledge is utilized by the author of the act to achieve this quality or outcome' (Giddens, 1984: 10). This notion brings me to a narrow definition of effectiveness, which I use: it indicates to what degree goals of a policy are accomplished (cf. Bovens *et al*., 2001: 29).

Efficiency – in a broad sense efficiency may be used to indicate optimal use of resources. Difference can be made in technical, or *x-efficiency* and *allocative efficiency* (cf. Leibenstein, 1966). This distinction is introduced to distinguish between the underlying factors that make a certain solution more efficient than the other. X-efficiency relates to a difference in motivation or technical approach (*ibid*.: 407-408); allocative efficiency relates to the use of unique resources for unique goals (*ibid*.: 392-396). X-efficiency assesses which is the best program to meet a specific objective. Allocative efficiency measures the

22 Rowe and Frewer (2000) appear to have mixed up terms and definitions on page 11 of their journal article. From the article's abstract and the remainder of their text it becomes clear they meant to use terms and definitions as I present them here.

23 An issue of cause, effect, and causality – see Chapter 5 for a discussion.

extent to which programs improve overall social welfare (Pignone *et al*., 2005).

Equity – 'treat like cases alike' is a broad definition of equity, but what are "like cases"? And what is "alike"? (cf. Stone, 2002: Chapter 2). With the introduction of private sector involvement in building regulatory enforcement a situation might arise in which different groups of enforcers – the public and the private sectors – have different capabilities and, accordingly, carry out regulatory enforcement differently. Furthermore, with the introduction of private sector involvement a situation of creaming might arise and, accordingly, different groups of regulatees might then be treated differently. Following on from these assumptions, I treat equity in this thesis as criterion to evaluate if regulatees in building regulatory enforcement have access to a comparable level of service delivery; and if different enforcement actors carry out enforcement tasks in a comparable manner irrespective of the regulatee's background.

Accountability – accountability is a criterion that has gained increasing attention in policy evaluation. Yet, like the other criteria it is being disputed what the criterion actually means (for overviews, see, Mashaw: 2006; Mulgan, 2000a; Schedler, 1999). From reviewing this literature it becomes clear that accountability is a term that is difficult to define. Interestingly, in 2007 two articles by two different prominent authors were published in which the concept of accountability is disentangled and a typology of accountability types is provided. The first paper is by Peter May (2007), the other is by Mark Bovens (2007; also, Bovens, 2005). Bovens structures his article around three types of questions he finds relevant when addressing accountability. The first: what is meant by accountability? The second: what types of accountability are involved? And, the third: how should accountability (arrangements) be assessed? Here I remain to these questions.

Disentangling accountability: what is meant by the term?

In his paper May addresses regulatory regimes and accountability. May does not provide a specific definition of the term. Note here that May particularly looks upon *regulatory* accountability and not accountability in a more broad sense, which is 'broadly concerned with holding officials responsible for their actions' (May, 2007: 9). To May regulatory accountability 'concerns abuse of public authority, assurance that public resources are being appropriately used, and learning that facilitates pursuit of improvements'; and he considers accountability as 'a necessary but insufficient condition for increasing regulatory effectiveness' (*ibid*.: 11). Other conditions needed for such effectiveness are 'such things as the appropriateness of the policy design, the mix [of] instruments that are used and quality of implementation' (*ibid*.).

Notably, Bovens in his paper makes a separation between broad and narrow accountability (2007: 449-454) – note here that Bovens discusses *public* accountability, but generally uses the term without this adjective. Bov-

ens finds that in a broad sense accountability 'often serves as a conceptual umbrella that covers various other distinct concepts, such as transparency, equity, democracy, efficiency, responsiveness, responsibility and integrity' (*ibid*.: 449). Bovens furthermore notices that in American scholarly literature accountability is often interchangeably used with 'good governance' (*ibid*.); and it is here that 'the other conditions' May addresses as needed for regulatory effectiveness come to mind. Bovens continues his articles by addressing accountability in a narrow sense: 'Accountability is *a relationship between an actor and a forum, in which the actor has the obligation to explain and justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences*' (*ibid*.: 450, italics in original). To Bovens an essential element of narrow accountability is the possibility of sanctions (*ibid*.: 451). Bovens notes that 'there is a fine line between accountability and control' (*ibid*.: 453) and from both authors' introductory discussions it appears that exactly this fine line signifies the difference in their views. Bovens' narrow accountability includes disciplinary actions; May's regulatory accountability does not per se.

What types of accountability are involved?

Both authors continue their discussions by introducing a typology of accountability – May refers to this as different levels of accountability (May, 2007: 11), Bovens as types (Bovens, 2007: 454). May refers, amongst others, to the works of Mashaw (2006) and Romzek (e.g. Romzek and Dubnick, 1987) as providing the fundamentals for his typology. Mashaw draws up a number of questions on accountability (2006: 126): who is to give account, to whom, how should account be given, about what, based on which standards, and what are the rewards and sanctions. Romzek and Dubnick introduce a typology of accountability systems (1987: 229): political, legal, bureaucratic/administrative, and professional accountability. These are the types that May addresses as well.

Bovens also refers to the work of Romzek and Dubnick as one of his sources of inspiration, and draws up similar questions as Mashaw that underlie his typology (Bovens, 2007: 454-455): who should give account, to whom and about what, and, why does the actor feel compelled to give account? Especially the latter question leads, according to Bovens, to 'classifications based on the nature of obligation, for example *obligations* arising from a hierarchical relationship, a contractual arrangement or which have been voluntary entered into' (*ibid*.: 455 – emphasis in original). Bovens thereupon makes a distinction in political, legal, administrative, professional, and social accountability.

So far not much differences in fundamentals and types. Yet, when reviewing the descriptions of the types diverging perceptions become clear. Table 4.1 provides an overview of the different types and the authors' perceptions.

When comparing both authors' perceptions it becomes clear that some dif-

Table 4.1 Accountability types and authors' perception

Type	May (2007: 11-13)	Bovens (2007: 455-457)
Political accountability	**Relevant issues**: ability and willingness of elected official to learn about shortfalls in regulatory regimes and to make necessary adjustments. **Concerns**: lack of responsiveness from elected officials **Accountor**: higher ranking officials, external review by public interest groups, trade groups, media, and political groups. **Accountee**: elected officials. **Solution**: -	**Relevant issues**: - **Concerns**: - **Accountor**: higher ranking officials, voters, media, political parties. **Accountee**: elected officials. **Solution**: -
Legal accountability	**Relevant issues**: fairness and appropriateness of rules. **Concerns**: regulatory capture, and reasonableness of rules and standards. **Accountor**: higher ranking officials, public interest groups, public representatives. **Accountee**: elected officials involved in regulatory designs. **Solution**: transparent regulatory processes.	**Relevant issues**: formalization of social relations and greater trust in courts than in parliaments. **Concerns**: - **Accountor**: courts. **Accountee**: - **Solution**: legal scrutiny, based on detailed legal standards, prescribed by civil, penal, or administrative statutes, or precedent.
Bureaucratic/ administrative accountability	**Relevant issues**: answerability in the implementation of regulatory provisions. **Concerns**: abuse of (delegated) authority by inspectors, regulatees should be held accountable and disciplined for non-compliance. **Accountor**: higher ranking officials, principal that delegated authority. **Accountee**: regulators, inspectors and regulatees. **Solution**: bureaucratic controls/monitoring based on checklists.	**Relevant issues**: integrity and legality of public spending, and its efficiency and effectiveness. **Concerns**: fraud, abuse of (delegated) authority by inspectors and controllers. **Accountor**: public and independent supervisory authorities/audit offices, ombudsman. **Accountee**: inspectors and controllers. **Solution**: financial and administrative scrutiny, often on the basis of specific statutes and prescribed norms.
Professional accountability	**Relevant issues**: achieving regulatory ends. **Concerns**: regulatory abuse. **Accountor**: professional peers. **Accountee**: regulators, inspectors and regulatees. **Solution**: exercising professional judgment, internalised norms and peer pressure.	**Relevant issues**: - **Concerns**: - **Accountor**: professional associations and disciplinary tribunals. **Accountee**: public managers. **Solution**: monitoring and enforcement by professional supervisory bodies on the bases of peer review, binding codes and standards for acceptable professional practice.
Social accountability	-	**Relevant issues**: - **Concerns**: lack of trust in government. **Accountor**: public interest groups, charities, public in general. **Accountee**: public agencies and managers. **Solution**: institution of public reporting and establishment of public panels.

- = not mentioned in article, or no information in article on the authors' perception on the specific topic.

ferences relate to the authors' differing points of departure: May's focus on regulatory accountability and Bovens' focus on public accountability. Another issue here may be the authors' background: May an American scholar in the field of political science, Bovens a Dutch scholar in the field of public administration. However, some differences remain, to me, inexplicable; for instance, the major difference in perceptions on legal accountability. As Julia Black (2008: 139) so expressively explained: 'commentators on regulation and governance (…) are sometimes separated by a common language. So some preliminary "definitional throat clearing" is required to avoid misunderstandings'. I agree with both authors that the sub-terms make more sense than using 'accountability' as an umbrella term, therefore I use the following terms, based on both authors discussions:

Political accountability: the relationship between elected officials and the general public, in which elected officials have the obligation to justify their conduct. Through public interest groups, political parties and the media questions are posed regarding these elected officials' responsiveness to regulatory shortfalls and their willingness to implement amendments. Ultimately the judgment comes through votes.

Legal accountability: the relationship between civil or administrative courts and regulatees, in which regulatees have the obligation to justify their conduct. Questions are posed regarding the regulatees compliance with legislation, and judgment comes through penalties or other sanctions. On a far less sweeping level legal accountability may be effectuated through liability mechanisms (cf. Bardach and Kagan, 1982: Chapter 10; Dubnick, 2003: 417-421; Huber, 1988: Chapter 5). It is generally assumed that 'liability's principal role is that of deterring accidents by giving incentives for preventive measures' (Faure and Hartlief, 1998: 705).

Administrative accountability: the relationship between a principal that delegated authority to an actor, in which the actor has the obligation to justify its conduct. Through oversight by this principal or a representative of this principal questions are posed regarding the actor's integrity. In broad terms integrity might be understood as behaving according to official duties – the antithesis of 'abuse of office' and 'corruption' (cf. Armstrong, 2005: 1; Skelcher, 2005: 93); or, behaving in alignment with one's words or deeds (Iltis, 2001: 323; Simons, 2002: 19). Given the delegation of tasks and responsibilities in the regulatory enforcement regimeks, I use a more narrow definition of integrity: behaving according to and in alignment with delegated duties. Accountability mechanisms here may be understood as monitoring such integrity and providing pressure on actors to maintain integrity (cf. Bamberger, 2006: 400; Dubnick, 2003: 407). Such pressure then comes through the possibility of disciplinary measures.

Professional accountability: the relationship between an organization or association of professionals and their members, in which the members have

the obligation to justify their conduct. Through monitoring by the organization or association of professionals, or their representatives, on the basis of peer reviews questions are posed regarding the members compliance with the organization's or association's codes and standards for acceptable professional practice. The judgment comes through the withdrawal of the members' membership.

Social accountability: the relationship between public or private sector organizations or their representatives and the general public or their representatives, in which the former may feel need to justify their conduct. Through giving account the former may aim at gaining trust, or strengthening the trust invested in them by the latter. I use the wording "may feel the need to" instead of "has the obligation to" here on purpose, since I look upon this type of accountability as included into the first three types. A lack of trust is ultimately the judgment – and a lack of trust may strengthen shortfalls in the other accountability types (cf. Sztompka, 1999: 87). Trust is often related to the believability of information provided (for a literature overview, see, Rieh and Danielson, 2007). This believability, or credibility, is influenced by (*ibid*.: 311): general assumptions, third party information, simple inspections, or overtime first-hand experiences. Credibility consists of the "trustworthiness" and "expertise" of those providing information (e.g. DeZoord *et al*., 2003; Nesler *et al*., 2006).

How to assess accountability?

Bovens introduces three perspectives to evaluate the effects of accountability arrangements. The first perspective focuses on the openness of an arrangement to actually control those who have executive power. The second perspective focuses on the incentives for those who have executive power to refrain from abuse of authority. The third perspective focuses on the learning effects of the arrangement. These three perspectives can be partly related to May's paper. As already discussed, to May regulatory accountability concerns the abuse of public authority, the use of public resources, and learning (May, 2007: 11). Yet, from both authors' works it can be learned that assessing accountability should not be taken lightly.

May uses a rather practical "hands on" approach by assessing accountability shortfalls in different regimes. Bovens describes accountability deficits. I aim at gaining insight into the impact private sector involvement has on the various types of accountability discussed above.

Not included evaluation criteria

To conclude, I have chosen to include effectiveness, efficiency, equity and accountability as evaluation criteria. I have also chosen not to include a number of criteria. Most eminent are 'democracy', 'legitimacy', 'political acceptability', 'adequacy', 'responsiveness', and 'appropriateness'. To me these are criteria

that are more suitable either to evaluate the policy process (see for a number of theories, Sabatier, 2007b) that precedes the implementation of a policy, instrument, or, in this thesis, a regulatory enforcement regime; or to evaluate the implemented policy, instrument, or regime from a normative point of view.

4.4.2 Tradeoffs

As illustrated, the implementation of new building regulatory enforcement regimes appears to have resulted in tradeoffs amongst different policy goals. To some extent such tradeoffs have been addressed in literature. Scholz and Wood (1999), for example, expect that tradeoffs between efficiency and equity are inevitable. This classic "big tradeoff", in short, implies that in political sphere all people are equal, whilst in the economic sphere differences amongst people that optimize resource allocation prevail (cf. Bader and Engelen, 2003: 388-389). Related to this big tradeoff recurring tradeoffs discussed in literature are efficiency versus accountability (e.g. Mulgan, 1997: 106), freedom versus equality (cf. Stone, 2002: 128-130), accountability versus enterprise (e.g. Short *et al*., 1998: 153), or safety versus freedom (Boutellier, 2005: Chapter 2). All these tradeoffs appear to address that depending on which goal is chosen, some people or groups lose, whilst others gain (cf. Stone, 2002: 62).

Based on the typology of regulatory enforcement regimes introduced and illustrative examples discussed, expectations can be stated on probable regime impacts. To start, despite the "big tradeoffs" discussed in literature 'seem to imply some sort of tragic choice between one of two equally legitimate principles' (Bader and Engelen, 2003: 384) I expect that: *differences in regime design result in different regime impacts, and tradeoffs can be balanced through regime design*. To be more specific, based on literature discussed in this chapter and Chapter 3 I expect that: *private sector involvement results in intended impacts such as gains in effectiveness and efficiency; and, at the same time, private sector involvement results in unintended impacts such as a decline of equity and accountability. Private sector involvement, furthermore, is directly related to these impacts: more private sector involvement results both in more intended and unintended impacts*. Note that intended impacts shall often imply advantages, whilst unintended impacts may imply both advantages and disadvantages.

Expectations about advantages of private sector involvement

The effectiveness of a regime might gain from the deployment of technical experts in specific technical inspections, which may result in a greater inspectorial depth – for instance a private sector inspector that has specialist knowledge of power plants, versus a municipal BCD generalist when assessing the construction work of a power plant. I expect that greater inspectorial depth results in better regulatory goal achievement since more deviations

may be detected, which then can be solved.

Comparably, I expect a gain in technical efficiency, *x-efficiency*, from private sector involvement for a number of reasons. First, since private sector actors and agencies may have a different motivation to carry out assessment – more work may result in more income, where at a municipal BCD income is not, or lesser, a goal. Second, given that private sector actors may be better able to specialize in certain construction works, experience between public and private sector actors may differ. Private sector actors may be able to carry out certain assessments more efficient than public officials. Third, private sector actors and agencies may encounter less administrative procedures than their public counterparts. However, such efficiency gains of private sector involvement may be undone when the enforcement tasks and responsibilities overlap between the sectors. A doubling of tasks – for instance when a municipal building official issues a building permit based on a private sector inspector's assessment documentation and has to take some time to get familiar with the documentation, or process the information into the municipal's format – may imply a sub-optimal allocative efficient deployment of resources.

Finally, I expect strengths from private sector accountability models in the conditional co-regulatory regime.

Expectation about disadvantages of private sector involvement

The introduction of private sector involvement may result in a decline of equity when private sector actors can choose their own clientele. The ability of private sector actors to specialize in a certain service or to deliver a service faster might give the private sector a competitive advantage over the public sector. Using this advantage may result in a situation in which the private sector 'creams' the market for profitable jobs, restricting the less profitable job owners to make use of their service, which may result in a situation in which like cases are not treated alike.

Introducing private sector involvement holds potential of a decline in accountability – distinction may be made in political, legal, bureaucratic, professional and social accountability. I expect that declines in accountability can be traced back to: if oversight on actors' conduct is not strong enough, and/or if disciplinary measures are not strong enough or not taken, the incentive to maintain integrity may not be strong enough. Private sector involvement holds a potential of integrity issues when private sector actors have to make choices between their own private interests – making profit, keeping business going – and guaranteeing public interests – carrying out regulatory enforcement. An undermining of integrity may result in a decline of private sector actors' credibility, which in turn may strengthen other accountability issues. Furthermore, I expect a decline of accountability when tasks and responsibilities overlap between private and public sector actors – accountability relationships then might get blurred.

4.5 Conclusion and discussion

In this chapter I used elements from the major debates in regulatory literature, discussed in Chapter 3, to build a general framework that can be used for comparative policy analysis of regulatory enforcement. I used the framework to draw up a typology of regulatory enforcement regimes. Based on illustrative examples and notions from regulatory literature I discussed possible regime impacts of such regimes. The ultimate challenge of such propositions is an empirical inquiry. In the second part of this thesis I take up this challenge.

As the reader will have noticed, the regulatory enforcement regimes introduced are normative models, ideal-types. Real life cases will prove to be complex, as the illustrative examples have shown. In reality a wide arrangement of actors can be involved in the regulatory enforcement regimes: trans-national governments; national, regional and local governments; industry players; insurance companies; certification and audit organizations; consumer interest groups; and so on. All together these actors make up the organizational field in which the regulatory enforcement regime functions (cf. DiMaggio and Powell, 1983). Due to the complexity of real life cases, the specific actors involved cannot be set a priori but must be defined on the basis of empirical investigation (*ibid.*: 148). When analyzing more complex forms of governance, for example transnationalization, actors can be added to the schemes introduced – i.e. adding additional columns. It should furthermore be noted that the normative types introduced are limited by a focus on regulatory regimes in developed countries. Its application might be less valuable for developing countries (cf. Haines, 2003). Note furthermore that in reality, as the illustrative examples have shown, often different regimes are implemented side by side, which might result in different relationships between actors within these regimes.

Nevertheless, given the complexity of reality, the strength of the general framework and the typology of regulatory enforcement regimes will lie in its use for comparative analysis of regulatory governance, and especially hybrid forms of governance. The brief discussion on impacts of some of the examples that I have used to illustrate the typology, underlines a notion I discussed in the introduction to this chapter: 'involving the private sector in regulatory enforcement has consequences'; both intended and unintended impacts, and both advantages and disadvantages may be expected. The challenge for governments when choosing to implement a certain regime therefore appears to make the right tradeoff; to compensate the disadvantages with advantages.

5 Empirical research and methodology

The principal problems facing the comparative method can be succinctly stated as: many variables, small number of cases

Arend Lijphart[24]

A main goal of the research presented in this thesis is the explanation of consequences of regulatory enforcement regimes. As discussed in Chapter 4, I focus on tradeoffs between policy goals such as effectiveness, efficiency, equity, and accountability. A central aim of my research is to indentify how a certain regime design relates to certain events. The word event here is used as umbrella-term to cover causes and consequences, or 'that [which] can cause and be caused' (Lewis, 1973: 558).

As my aim is to provide in-depth understanding of how and why specific events, or combinations of events are related, I have chosen a qualitative based intensive research approach. Such intensive research typically focuses on a small number of cases, and the researcher examines these in depth (cf. Ragin *et al.*, 2003). Quantitative based scholars have long criticized such a qualitative research approach as being sub-optimal or only applicable when one wants to explore the topic of interest to get a brief impression of the field of interest (for an overview see, Collier *et al.*, 2004a; also, King *et al.*, 1994). And, unfortunately, the discussion of differences associated with either tradition has often resulted in defensive reactions and criticism to and fro between scholars of both traditions (cf. Mahoney and Goertz, 2006).

Fortunately, most quantitative and qualitative methodologists appear to have come to an end in their debates on 'rightness and wrongness' of each others tools; and current debates in this field have a strong focus on how characteristics of tools from various fields can be used to strengthen other tools (e.g. Brady and Collier, 2004; Mahoney and Goertz, 2006; Ragin *et al.*, 2003; Sekhon, 2004). One of these debates is on studying causal order in qualitative research (cf. Mahoney, 2008; Ragin and Strand, 2008) and the opportunity small-n policy studies provide for causal assessment (Steinberg, 2007). Small-n studies, as the name indicates, focus on a small number of cases. Too few for carrying out quantitative research; but enough to formulate generalizations (Ragin *et al.*, 2003: 324) or valid causal explanations (Steinberg, 2007: 183). My empirical research has characteristics of a small-n policy study.

The aim of this chapter is to explain which methodology and methods are used to collect and analyze data, and why. In this chapter I discuss the methodology I use for carrying out empirical research, and I introduce the methodology that I use in Chapter 6, 7 and 8 to obtain and analyze the data. Since much has been debated about causes and effects, I start this chapter by brief-

24 Lijphart, A., 1971, Comparative Politics and the Comparative Method, in: *The American Political Science Review, 65*: 685.

ly introducing what I mean with the terms *cause* and *causation* as this has some impact on my approach. I then introduce the cases and methodology used for selecting cases. Next I introduce the design of the case study and the methods used to collect data. I continue with discussing methodology I use to analyze data in Chapters 6 and 7. Subsequently I address the methodology I use to comparatively analyze and evaluate the cases in Chapter 8.

5.1 Cause and causation

It would be beyond the scope of this book to discuss causes and causation to a great length, but some definitions are useful to comment on here (for lengthy discussions on the topic, see Bennet, 1987: Choi, 2007; Fearon, 1991; Lewis, 1979; Lombard, 1990; Paul, 1998; Ramachandran, 1997; Swain, 1978). Following on from David Lewis' classic paper on causation, a *cause* here is understood as: 'if *c* and *e* are two actual events such that *e* would not have occurred without *c*, then *c* is a cause of *e*' (Lewis, 1973: 563 – emphasis in original). For instance, if private sector involvement (*c*) and integrity issues (*e*) occur in a new regime, but these integrity issues (*e*) would not have occurred in the old regime without private sector involvement (c) whilst all other events would be the same – ceteris paribus – then private sector involvement could be regarded as cause of integrity issues.

However, reasoning the other way around the absence of *e* whilst also *c* is absent in the old regime, might result into the conclusion that *e* causes *c* (*ibid*.: also, Swain, 1978). In order to 'solve' this problem David Lewis (1973: 563) states that to conclude that *c* is a cause of *e*, to conclude causation, the causal chain which relates *c* to *e* should be transitive[25]: 'one event is a cause of another if there exists a causal chain leading from the first to the second'. A causal chain then is understood as event *c* resulting in event d_1, event d_1 resulting in event d_2, and so on, until event d_x results in event *e*. To summarize a number of discussions on this topic: a time-order is included (see also, Bennet, 1987; Lewis, 1979; Paul, 1998).

Together with notions on intended and unintended outcomes – an outcome is intended if it is caused by an act that aims at that outcome, while an outcome is unintended if it is caused by an act that did not aim at that outcome (see Chapter 4) – I come to the evaluation criteria introduced. Evaluation of the building regulatory enforcement regimes that are the focus of my empirical research provides some challenges. Not only are the evaluation cri-

25 Interesting here is that Ulrich Beck (1992: 34) notes that in the risk society 'the past loses the power to determine the present. Its place is taken by the future, thus, something non-existent, invented, fictive as the 'cause' of current experience and action'. The present à la Beck has become an effect of the future.

teria under debate as discussed, the measurability of these criteria appears an issue as well (cf. Dunn, 2003: 258-268; Gunningham and Grabosky, 1998: 27-28). How to measure criteria such as "effectiveness" and "accountability"? The criteria only "exist" between actors – individuals and/or organizations – and are maintained by their actions only (Giddens, 1984: 2). Thus no objective value can be given to these criteria. Similarly, how can criteria such as "effectiveness" and "efficiency" be measured? Given the understanding that policy goals are often vague or conflicting, and sometimes not stated at all (Hoogerwerf and Herweijer, 2003), what is it the researcher should measure? And, especially regarding the enforcement of building regulations, through regulatory enforcement it can often only be found that a building plan or a construction work is not designed or constructed in contravention to regulations – full compliance cannot be assessed (see Chapters 2 and 3). Yet, it may be possible to observe differences over time. Especially when events have intentionally been changed, aiming at intended effects. My approach is to observe such differences.

In Chapter 4 I have introduced and defined the evaluation criteria I use throughout this thesis. In the remainder of this chapter I discuss how I observe and compare the consequences of the different building regulatory enforcement regimes in Australia and Canada. In short: I focus on the consequenses of private sector involvement in different building regulatory enforcement regimes – both intended and unintended. Here time-order allows me to compare the "old" situation with the "new" – no private sector involvement versus private sector involvement. My focus is not so much on what is the cause of private sector involvement – for instance, government failure – but what are the observed consequences of private sector involvement. The actual consequences are input for the comparative analysis.

5.2 Monitoring policy consequenses – a multiple case study

'Monitoring is the analytical procedure used to produce information about the causes and consequences of public policies. Monitoring, since it permits analysts to describe relationships between policy-program operations and their outcome is as the primary source of knowledge about policy implementation' (Dunn, 2003: 277). Following on from Dunn, monitoring is about policy outcome. In the area of this study the intended outcome of building regulation is building safety in a broad sense. Yet, as already discussed, building regulation is often implemented as a preventive action; and the outcome of preventive actions is hard to measure (Sparrow, 2008: 126-127). Dunn appears helpful here since he makes a distinction between policy output and policy impacts (see also Sabatier, 2005: 27-28). Policy outputs are the goods, services or

resources received by target groups and beneficiaries – for instance, prior to permit application advise, construction work assessment, or building permits. Policy impacts are actual changes in behavior or attitudes that result from policy outputs – for instance, more adherence to building regulations as a result of stricter assessment. I assume that insight can be gained in the changes in outputs and impacts as a consequence of a change in policy – for instance, an increase in prior to permit application advise; a decrease in processing time; or a change in permit applicant's or inspector's behavior. I furthermore assume that policy impacts are related to policy outcome (cf. Sabatier, 2005). My focus therefore is on changes in policy impacts as a consequence of private sector involvement in building regulatory enforcement.

In Chapters 6 and 7 I discuss the impacts of new building regulatory enforcement regimes in Australia and Canada. The main characteristic of these new regimes is the introduction of private sector involvement. As I expected that the nuances of different contrasting regimes and the actual implementation process of 'new' regimes will provide insight in possible differences in policy impacts, I have chosen a case-study design for my research (cf. Brady and Collier, 2004: part 3). As case-study research might be prone to criticism on the generalisability of findings (*ibid.*: also, Flyvbjerg, 2004; Silverman, 1993: 161) I have chosen a multiple case-study design for my research (Yin, 2003)[26]. Within this type of research, multiple cases are analyzed in order to obtain insight into the phenomenon of study. Cases should be selected so that they predict similar results, a literal replication, or contrasting results, but for predictable reasons, a theoretical replication (see also, Munck, 2004).

When choosing cases a balance may be sought between predictable similar and predictable contrasting results. Since, see Chapter 4, my expectation is that *differences in regime design result in different regime impacts*, I aimed at finding cases that showed differences and similarity in regime type and similarity in regime environment. This resulted in a set of selection criteria. The main criterion for selecting cases was private sector involvement in the enforcement of building regulations – the phenomenon of study. Other criteria were variance and similarity in regime design; the time the regime was introduced; and a largely comparable regime environment.

I introduced variance and similarity in regime design as criterion to, following on from Yin (2003), be able to gain insight in both literal replication – to what extent do similarities in regime design result in similar impacts?; and theoretical replication – to what extent do differences in regime design result in different impacts?

The major reason to introduce the time, or year, a regime was implemented

26 Note however Flyvbjerg's (2004) discussion on how, or when even single case studies may be appropriate to generalize findings.

is that I am interested in the changes that occurred due to the introduction of new regime types. To be able to do so I needed specific data for my comparative analysis: data on changes due to the implementation of new regimes in different cases. A longitudinal comparison of cases in which new regimes have been introduced is a way of gaining such data (Seeliger, 1996). Since I expected that I could not find a number of cases in which the old situation would be similarly documented, which I then could use as point of departure – as I discussed in Chapter 2, building regulatory enforcement has not gotten much attention in regulatory literature yet – I decided to get this information from the people in the regimes (Silverman, 1993). I therefore selected cases that have been introduced in the 1980/1990s expecting that the growing pains of the regimes have been overcome, but still much knowledge of both the old regimes and the new regimes could be found on the regulatory shop floor: many people who work under or are affected by the new regime did so under the old as well.

I introduced a largely comparable regime environment as criterion to preclude, to some degree, contrasting results due to the influence of, for instance, cultural differences; major differences in building regulations; or, different approaches of regulatory enforcement between cases. This is without doubt the most difficult and disputable criterion for qualitative research (see a broad range of discussions in Brady and Collier, 2004).

5.2.1 The cases

I selected five cases in Australia and three cases in Canada from secondary accounts based on a desk-study. I selected these cases since all showed private sector involvement in the enforcement of public building regulations. Furthermore, from these secondary accounts I found that in Australia and Canada the cases showed similarity and variance in regime design amongst cases. Yet, the regime environment of the cases shows a high level of similarity: comparable government and judicial system (Dickerson and Flanagan, 1998; Jackson and Jackson, 2003); comparable structures of building regulatory enforcement regimes; comparable impact of the building industry on GDP; comparable level of urbanization; and finally, a comparable approach towards privatization of former government-owned industries. Table 5.1 provides an overview.

I expected that limiting the number of countries in which I would carry out research also lessens potential differences in regime environment[27]. This

27 I expect that when I had focused on, for instance, eight European cases, cultural and institutional differences between the cases (each case would then be a country), which in addition all have their own specific and often largely differing building regulations (cf. Sheridan *et al.*, 2003), would have a strong impact on outcomes observed. I question if such research then could have moved beyond mere cases descriptions.

Table 5.1 Comparison table Australia – Canada

Characteristic	Australia	Canada
Government system (Dickerson and Flanagan, 1998; Jackson and Jackson, 2003)	Federal, in which tasks and responsibilities are divided amongst the federal government and state governments. Territories are fully under control of the federal government.	Federal, in which tasks and responsibilities are divided amongst the federal government and provincial governments. Territories are fully under control of the federal government.
Judicial system (Dickerson and Flanagan, 1998; Jackson and Jackson, 2003)	Based on British common law.	Based on British common law (some exceptions apply in the province of Quebec).
National building code	Yes, but model legislation only. Yet, all states and territories have accepted the National Australian Building Code (BCA).	Yes, but model legislation only. Yet, all provinces and territories have accepted the National Building Code of Canada (NBC).
Responsible for building regulation	State governments in states; and federal government in territories.	Provincial governments in provinces; and federal government in territories.
Responsible for building regulatory enforcement	State governments, who have delegated authority to municipalities; and federal government in territories.	Provincial governments, who have delegated authority to municipalities; and federal government in territories.
Construction industry share of GDP	Average of 5.5% between 1982 and 2000[1]; 6.6% in 2007[2].	Average of 5.5% between 1995 and 1999[3]; 6.3% in 2007[4].
Geographic concentration of population (2003)[5]	Overall, 55% of the population lives in predominantly urban regions; and 64% of the population lives in 10% of the regions with the highest number of people.	Overall, 53% of the population lives in predominantly urban regions; and 61% of the population lives in 10% of the regions with the highest number of people.
Approach to privatization and privatized sectors (Özkaya and Askari, 1999)	'Driven by the need to reduce budget deficits as well as by the public agreement that the benefits of competition within an industry outweigh any advantages of monopolistic government ownership' (*ibid*.: 1099). Privatised sectors: a broad range of industries, including airlines, transport, banking, finance, gas, power, and telecommunication.	'Canada started its privatization program (...) to reduce its budget deficits and the burden of its national debt' (*ibid*.: 1100) Privatized sectors: a broad range of industries, including airlines, petroleum, telecom, railways, power, and fishing.

1) http://www.abs.gov.au/Websitedbs/c311215.nsf/20564c23f3183fdaca25672100813ef1/5c89e8ba6b196dcaca256b60002oa1db!OpenDocument – accessed 2 October 2008.

2) http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/5206.0Jun%202008?OpenDocument – accessed 2 October 2008.

3) http://www.abs.gov.au/Websitedbs/c311215.nsf/20564c23f3183fdaca25672100813ef1/5c89e8ba6b196dcaca256b60002oa1db!OpenDocument – accessed 2 October 2008.

4) http://www.statcan.ca/english/freepub/13-010-XIE/2008002/tables-en.htm#gdp – accessed 2 October 2008.

5) http://masetto.sourceoecd.org/vl=2226926/cl=25/nw=1/rpsv/regions_glance/g01-1.htm – accessed 2 October 2008.

does, of course, not take away that differences between regime environments in jurisdictions within Australia and Canada, and especially between Australia and Canada do exist. Though, when choosing cases in these countries I was strengthened by the presence of a wide variance of comparative research

in different policy sectors in which such regime environmental differences between these countries appears not to be a major issue (cf. Gunningham *et al*., 2003; Hussey *et al*., 2004; Patterson and Rowlands, 2002; Richardson and Lester, 2004; Ryan, 1999; Singh *et al*., 2005).

The Australian cases are the building regulatory enforcement regimes of: the state of South Australia, the state of Victoria, the state New South Wales, the Australian Capital Territory, and the state of Queensland. The 'new' regimes in these cases were introduced in the 1990s. I have not included the two remaining Australian states, West Australia and Tasmania, as these were on the brink of introducing private sector involvement when selecting my cases and thus no knowledge could be gained from experience with it. I have only included one out of two Australian Territories since a similar regime has been introduced in both – my funding restricted me to visiting only one Territory.

The Canadian cases are the building regulatory enforcement regimes of: the City of Vancouver, the province of Ontario, and the province of Alberta. The new regimes were introduced in the 1980s in Vancouver, between 2003 and 2006 in Ontario, and the 1990s in Alberta. These cases appear the only ones in Canada in which private sector involvement has been introduced in building regulatory enforcement regimes.

Although 'pure' public regimes are present in both Australia and Canada, I have chosen not include these in my set of cases due to both limited research funding and limited research time. My research budget permitted me to spend two months in Australia and two months in Canada. My research aim is to gain insight into private sector involvement in building regulatory enforcement. Including a 'pure' public regime would have meant sacrificing a regime with private sector involvement.

5.2.2 Obtaining, processing and presenting case data

Obtaining data: interviews and additional documentation

My primary instrument for collecting additional case information was a series of semi-structured in-depth interviews based on an interview protocol with a series of open-ended questions (Dunn, 2003: 367-368; Silverman, 1993: Chapter 4). Following on from Dunn I have carried out a user survey analysis to involve multiple stakeholders that are affected by the new regimes. Interviewees were selected using snowball sampling (Longhurst, 2003). I started this snowball sampling by addressing representatives from different organizations – ministries, BCDs in major cities, architects associations, engineers associations, builders associations. In an introductory e-mail I explained my research and my wish to carry out interviews with different stakeholders. I asked these representatives who they thought I should interview within their organization, and which other organizations and/or people I should address. If names were

provided I then addressed these organizations/people. I repeated this procedure until contacts started cross referring to each other or to each other's organizations. This sampling resulted in a pool of interviewees from various backgrounds; most having experience with both the old and the new regime in practice. In Australia 56 persons joined in 46 interviews; in Canada 47 persons joined in 37 interviews. In Appendices B and C, I present a brief overview of interviewees – organization; current position; and experience with old, new, or both regimes. In Appendices D and E, I have included the basic outline of my interview questionnaires (based on, Dunn, 2003; McCracken, 1988).

I carried out the Australian research in March and April 2007; and the Canadian research in January and March 2008. On average interviews took 90 minutes. Interviews were recorded and transcribed in a structured interview report and sent to the interviewees for validation and comments (cf. Fielding and Fielding, 1986). Based on the validated interview reports I drew up a research report on facts, the data from the different interviews, and sent this to the interviewees for comments and observations. In order to check the consistency of my interviewees' responses and to get an indication of how the interviewees reacted to each others statements, I attached an additional questionnaire to the research report – 15 statements the interviewees were asked to react to, based on a four-point forced Likert-scale. I have included the information from the additional questionnaire and the additional information gained from my interviewees' comments and observations in my data-set. In Appendices F and G, I present these additional questionnaires. I received 27 filled out questionnaires from the pool of Australian interviewees, and 23 from the pool of Canadian interviewees[28]. The data provided after the interviews showed similarity with that during the interviews.

As can be found from comparing the pool of Australian interviewees with the Canadian pool, I have included scholars in the former but not in the latter. I have done so in Australia as I expected that scholars at Universities could provide valuable insights as they look upon the research topic from an academic perspective. I found however that scholars, who had experience with the research topic, gained this experience from working in the field. Their experience was considered as 'old' or not 'representative anymore' by the majority of these scholars. Scholars could however often provide me with valuable information on reasons motivating the introduction of a new regime; the educational requirements set to actors in the regulatory enforcement regimes; and, courses and training provided by their institutions.

28 In both countries I sent the questionnaire and two reminder e-mails. I got little information on reasons why a number of interviewees decided not to fill out the and return the questionnaire. Some interviewees, who made statements on not filling out the questionnaire, let me know that they thought the statements were too slanted or offensive.

I have not included scholars in the Canadian research as they were not mentioned as 'key-actors' during the snowball sampling. Based on my Australian experience I assumed that adding scholars to my pool of interviewees had been valuable for gaining insight on the training of different actors in the regulatory enforcement regimes. In Canada unions and associations appear to have strong influence on this training. As a result I could obtain valuable information on the educational requirements set to actors in the regulatory enforcement regimes and courses and training provided from representatives of unions and associations. To conclude, I assume that not including scholars in my Canadian pool of interviewees has little impact on the information obtained between the two pools of interviewees.

From comparing the interview questionnaires it can be learned I added an extra question to the Canadian questionnaire, question 12 on the interview questionnaire: If you were allowed to change anything in the regime, what would it be and why? I added this question as an additional check of the interviewee's consistency of answers to one of the main-questions of the interview.

The overall outline of the questionnaire is based on four main-questions: Why was the regime introduced?; How does the regime operate in daily practice?; How is the regime evaluated?; and, Why are goals that underpin the regime (not) achieved? I assumed that the answers to the first three main-questions could be validated based on secondary data. However, the fourth main-question regards the interviewee's opinion about the new regime. Validating answers to the sub-questions related to this fourth main-question would therefore be difficult. I assumed that asking roughly similar 'opinion' questions at different times during the interviews would provide me with a 'check' on the consistency of an interviewee's answers about his opinion. Given the notion that interviewees might try to 'game' an interview (Longhurst, 2003; McCracken, 1988) they might as well be influenced by the unfolding of the actual interview – interviewees might feel more at ease with the interview setting; might get a better understanding of the actual subject of the interview; or, might remember or share more information based on preceding questions[29]. The long in-depth interviews therefore provided me with a structure to build in different checks and balances.

Then, the final instrument for collecting additional case information was collecting and analyzing existing research reports on the subject (Dunn, 2003). This data was obtained from different (governmental) inquiries in Australia (e.g. Allan, 2002; KPMG, 2002; PC, 2004; VCEC, 2005) and Canada (e.g. BCMH, 2007; SCCA, 2003; OHCS, 2007; BRRAG, 2000; Province of BC, 1996; Province of BC, 1994; Hemson Consulting, 2008; Cerminara, 1995; Calgary, 2003). Contrary

29 Insights I gained during the series of interviews I carried out in the Netherlands – see Chapter 2 of this book.

to my expectations I could not obtain extensive quantitative data that would strengthen the experiences shared by the interviewees. Little to no records appear to be kept on, for instance, building permits issued by the public and private sector; process times; oversight actions; and the like.

Processing data: coding

I have processed the data by means of a systematic coding scheme (cf. Seale and Silverman, 1997). I used three rounds of coding, from rough to fine – primary, secondary, and tertiary codes. Primary codes had to do with the characteristics of the interviewee and the items of the research questions. For instance, a municipal official was coded '0-public', a private sector actor was coded '1-private'; this in order to be able to trace patterns in data provided by public and private sector representatives.

Then secondary codes, if I posed the eighth question, 8a, "What is the most serious obstacle in achieving objectives of the building regulations, and why?" answers were roughly coded obstacle and most serious. Secondary codes are derived from the literature presented in Chapters 3 and 4. For instance, I expected that answers on the eighth question could be related to issues such as 'accountability', 'equity', and 'credibility'. Tertiary codes were introduced during interviewing and coding process. For instance, after a number of interviews I found that interviewees repeatedly referred to issues such as 'conflict of interest' or 'commercial pressure', these then became tertiary codes to code similar answers. Finally, during coding I found that some statements could not be coded with the tertiary codes derived during interviewing. I coded these 'other' and introduced a new code when a pattern appeared to exist between a number of statements coded 'other'. In Appendix H a list of codes can be found.

By coding the data I was able to tread pieces of information in a comparable and systematized manner. Furthermore, coding 'anonymizes' data from the interviewee, which prevents treating some interviewees statements as more valuable than others based on, for example, the interviewee's position or the 'relationship' that might exist between me, the interviewer, and the particular interviewee.

To analyze obtained data I have used qualitative data analysis software, the computer program 'Atlas.ti', to run queries. By using this program I was able to systematically explore my data and gain insight into 'repetitive' and 'deviant' experiences shared by the interviewees. It furthermore gave me insight into recurrence of these experiences – i.e. the number of people that shared similar observations. Without adding value to this recurrence I wish to share these insights as it might add to the validity of the data I present in Chapters 6, 7 and 8. To give insight in the repetitive and deviant experiences I use the word 'general' to indicate similar statements or answers amongst over 75% of the interviewees; 'majority' to indicate 50-75% similarity; 'moderate' to indicate 25-50% similarity; and 'little' or 'some' to indicate less than 25% similarity.

Presenting data: retrospective longitudinal comparison and between-case comparison

In Chapters 6 and 7 I present, respectively, the Australian and Canadian cases. The central aim of these chapters is to gain insight into which impacts occurred due to the introduction of new regulatory enforcement regimes, and how these impacts occurred. In these chapters I present observations. Observations can be defined as 'a single piece of data that constitutes the value of a variable for a given case' (Collier *et al.*, 2004b: 250).

I structure the data in Chapters 6 and 7 by first discussing observations I identified within the individual cases. Since I aim at comparing the situation prior to private sector involvement with the current situation of private sector involvement, a longitudinal comparison appears an obvious approach – comparing data from the old regimes with data from the new regimes. Yet, I only had the chance of obtaining data in the current situation. Comparable data from the old regimes is hardly available. In order to be able to compare the new situation with the old situation I not only included questions on the new regimes in my questionnaire, but also on the old regimes and especially on observed changes. The data I collected and presented should therefore be understood as partly retrospective. Difficulties with retrospective data – the difficulty of 'remembrance of things past' – have been discussed elsewhere (e.g. Henry *et al.*, 1994: 92-93; Silverman, 1993: 15). I have chosen to overcome these difficulties, as discussed above, by interviewing a wide range of key-actors from a wide range of organizations. Furthermore, I only present retrospective data when this adds to the longitudinal comparison. Where possible I remain focused on presenting observed changes[30] or observations on the current situation.

I continue Chapters 6 and 7 by discussing the different impacts that have occurred in the different regulatory enforcement regimes within each country. This between-case analysis can be understood as pattern matching (cf. Mahoney, 2000). I include this as an intermediate phase – between monitoring and evaluating cases – in order to reduce the possible influence of differences in regime environment between the countries onto the impacts of the cases, and thus the analysis. My strategy for doing so is ordinal: I aim to rank the presence of impacts in a regime into different categories (cf. Mahoney, 2000: 399). I keep these categories relatively simple though: *improved* or *declined* compared to the status quo ante, or *not traced*; and, when within a set of cases relatively more improvement or decline is traced I refer to this as *more improved* or *more declined*.

30 Changes that are observed by an interviewee or a group of interviewees; not the changes that could be derived when comparing the retrospective observations – memories – from one interviewee with observations on the current situation from another interviewee. When I turn to the latter I indicate this.

Table 5.2 Impacts and regimes – illustrative example

Impact	Regimes (types and cases)				
	Prescribed			Conditional	
	Case 1	Case 2	Case 3	Case 4	Case x
Effectiveness					
Efficiency					
Equity					
Accountability					

++ = more improved, + = improved, – = declined, -- = more declined, x = not traced

I apply this ranking to visualize tradeoffs between the different regime impacts. Table 5.2 presents a format I use for this purpose. As discussed in Chapter 4, I expect to find intended impacts as gains in effectiveness and efficiency; and, unintended impacts as issues with equity and accountability; where possible I make a division between the different sub-types of accountability introduced.

5.3 Evaluating policy performance – comparatively analyzing the cases

In Chapter 8 I present the next phase of policy analysis: evaluation. I do so by relating policy impacts to regime characteristics, and link information about impacts with the values of different stakeholders (Dunn, 2003: 358-364).

In Chapter 8 I take up this evaluation by comparatively analyzing the different cases. The main method I use to gain insight into the different impacts and regime characteristics is Qualitative Comparative Analysis (QCA). QCA has a focus on how causes and impacts relate (Ragin, 1987: Ragin, 2000; Ragin *et al.*, 2003). The causes here are the regime characteristics – design and environment. Since QCA is a novel method, some readers might be unfamiliar with it. Here I briefly introduce the method; in Appendix I, I discuss the method more extensively.

Qualitative comparative analysis

QCA is based on Boolean algebra, which means that causes and consequences – outcome, output, and impacts – are regarded as either 'present' or 'not present', or either 'true' or 'false'. Taking together all case-characteristics, a case is defined by a combination of 'present' and "not present" characteristics and consequences. The first step in QCA methodology is to convert the case data in such abstract representations in so-called *truth tables*. In Table 5.3 I present a truth table for the following example. Imagine two painters – two cases. Both have green paint on their pallet after mixing a number of other colors – green here is the outcome. From analyzing their boxes of paints it becomes clear that the first painter could have mixed blue, red, and yellow; whilst the other's box only contains blue and yellow – the paints here are possible causes of the outcome. The first combination of possible causes may be presented as: 'blue present', 'yellow present', and 'red present'; the second as

Table 5.3 Truth table

Painter	Causes (paints in paint box)			Outcome
	blue	yellow	red	green
Painter #1	present	present	present	present
Painter #2	present	present	not present	present

'blue present', 'yellow present', and 'red not present'.

The next step is Boolean minimization. This Boolean minimization builds on combinatorial logic (Ragin *et al*., 2006: 45). The logic reasoning behind this process is that when two sets of combinations of causes are the same except for one cause, which is present in one combination and not in the other; and these two combinations of causes result in the same outcome, then that varying cause can be eliminated from the combination (Ragin *et al*., 2006: 46). Since red is present in one set and not in the other, whilst the outcome of the sets is the same, the use of red can be eliminated as cause of the outcome 'green'. From this undertaking it has become clear that in QCA the presence of a cause has the same logical status as the absence of a cause (Ragin *et al*., 2006: 45). It is the combination of present and absent causes that matters.

Another advantage of QCA is that it provides not only to include knowledge on absence of causes in the data set, but also to trace missing links between causes, or unknown outcomes based on counterfactual analysis; and include plausible data for the missing data (Ragin, 2004). Here another example might be in place. Imagine a third painter. This painter's box contains red and yellow, but not blue. The painter has not yet mixed the paints – the outcome is unknown. If previous research has shown that the combination of red and yellow does not result in green – a counterfactual – this information may be included in the data-set. In QCA possible combinations of causes that lack empirical findings are referred to as *remainder* (Ragin, 2004: 4).

Finally, in this somewhat oversimplified example a limited number of possible causes and only one outcome are used. With three colors of paint eight combinations are possible – note that all colors 'not present' is a possibility as well. However, the more causes the more possible combinations – the formula to calculate the number of possible combinations of causes is 2^k. It goes without saying that more potential causes and more cases makes such analysis more complex. On the website www.fsQCA.com free QCA software can be downloaded, which may assist the researcher in carrying out complex analyses.

5.4 Summary and discussion

The aim of this chapter was to explain which methodology and methods I used to collect and analyze data, and why. Let me briefly summarize and discuss this here. I have chosen an intensive qualitative approach for my research since my aim is to provide a nuanced insight and in-depth understanding of how and why a specific event, or combinations of events are related. My aim in this thesis is not to provide insight in how often these events,

or combinations of these events, are related. A more quantitative research approach would then have been a more obvious choice.

The major part of my empirical research is a multiple case study and a comparative analysis of case findings. The strength of such an approach lies in the possibility to trace patterns of events, causes and impacts, within the pool of cases under analysis. The major tool for gaining case-data is the structured interview. It goes without saying that interviews do provide the researcher with an extraordinary insight into and richness of data on the unit of analysis that could not be obtained from other techniques such as surveys or archival analysis (cf. Seale *et al.*, 2004; Silverman, 1993; Yin, 2003). Yet, every method of data collection has its disadvantages as well; and so has the structured interview. Most severe criticism towards interviews may be found in the argument that the researcher only obtains subjective viewpoints, or anecdotes, often from a limited number of interviewees. This is true, but it should not be a reason not to carry out interviews.

As I have discussed throughout this chapter, when designing the interview process and searching for interviewees, when actually interviewing, and when analyzing research data, I have aimed to overcome this subjectivity by 'objectifying' the interview data as much as possible, without losing the value of the interview data – which in the end exactly is its subjectivity. I have done so by building in checks and balances in my interview questionnaire; by building in a number of validation rounds in my interview process; by interviewing a large number of people from different backgrounds; by recording interviews and processing data in transcripts; by methodically coding and processing my interview data, using computer-aided tools; by using triangulation techniques and validating my data based on secondary data; and by presenting the richness of my interview data by giving insight into 'deviant' and 'repetitive' experiences shared by my interviewees. The data I present are the insights provided by the most knowledgeable 'data holders' around: the actual people involved in, and subject to the new regulatory enforcement regimes.

Then, in order to gain insight into which impacts have occurred due to the introduction of private sector involvement in the Australian and Canadian cases I first present a longitudinal comparison in Chapters 6 and 7. In these chapters I also present a brief between-case comparison in order to be able to trace patterns from private sector involvement in each country. This whole process can be understood as moving back and forth between data and theory (cf. Mahoney and Goertz, 2006: 242; Sabatier, 2007a: 325). In short: I combine a deductive and an inductive approach to identify causal-process observations. To actually relate causes and impacts in the evaluative Chapter 8, I use QCA methodology. QCA builds on combinatorial logic (Ragin *et al.*, 2006: 45). To me QCA can also be understood as building on *disruptive logic*. If in a hypothetical situation a truth table could be fully filled with all possible combinations of causes resulting in positive effects, analyzing such a truth table would result

in the finding that all causes individually resulted in the outcome – all causes would be sufficient but not necessary for the outcome. However, the presence of combinations of causes not resulting in expected effects – no presence of the expected impacts – and the absence of certain combinations of causes is a disruption of such a 'perfect' truth table. The effects of this disruption can be analyzed through combinatorial logic and provides insight in the causes of this disruption – the real world of the cases analyzed.

Does this mean QCA has no weaknesses? Certainly not; it has at least two weak points. The first may be found in a potential of too slavishly applying the possibility to include remainders – missing data – in the data set. When doing so the researcher has to be able to give account for the use of such remainders. The second may be found in the use of categories – the causes and impacts. In QCA categories are used as nominal-scale measures: 'present/true' or 'absent/false'. There is no variation between these extremes[31]. In practice however the researcher may find that a cause or impact is more present in one case and less in another (cf. Sekhon, 2004). For instance, the presence of the cause "private sector involvement" may signify private sector involvement in plan assessment only in one case and private sector involvement in different assessment tasks and permit issuance in another. The impact of both cases may be efficiency gains, which could mean a time saving of two weeks in one case and a 10% cheaper permit procedure for the applicant in the other case. Again it is to the researcher to account for the use of the categories and the measuring of data.

To conclude, an intensive qualitative research approach provides a richness of data, which gives the opportunity to getting in depth understanding into the degree to which certain causes and impacts are present in a set of cases and how and why these causes and impacts differ across cases. Qualitative methods and tools such as QCA are as little 'magical' as quantitative methods and tools such as data mining by using software such as SPSS (Westphal and Blaxton, 1998), as long as the researcher applying these tools has an understanding of what he is doing. In my research: I trace events, causes and impacts; and, aim at giving insight in the relationship between these.

31 However, when using fuzzy set QCA the introduction of ordinal interval scales is a possibility (Ragin, 2007).

6 Regime change in Australian building regulatory enforcement[32]

In the end it's all paperwork and paperwork doesn't say much about the quality of a building…

Architect in interview

In 1993 building regulatory enforcement in the Australian state of Victory was reformed. Building permit applicants were given the choice to seek service at the municipal building control department (BCD) – as had been the traditional way of applying for a permit – or to seek the same service from a so-called private certifier. Other Australian states and territories followed this example. Yet, every state and territory introduced a slightly different regime.

In this chapter I present my exploration of different building regulatory enforcement regimes in Australia. By actually analyzing different building regulatory enforcement regimes that are characterized by private sector involvement I aim at partly filling up the knowledge gap on such private sector involvement (see Chapter 1). I start by briefly introducing the policy process motivating the introduction of private sector involvement in Australian building regulatory enforcement. I continue by discussing the five cases that are the subject of analysis in this chapter. Subsequently I evaluate the different regimes based on both primary data – interviews – and secondary data – existing government reports, published papers, and information from relevant websites. As discussed in Chapter 5, I make a division between a longitudinal comparison and a between-case comparison to analyze the cases. In this chapter the former is presented to gain insight in the impacts of the new regimes in Australia. At question is: *What impacts have occurred after the introduction of private sector involvement in building regulatory enforcement regimes in different jurisdictions; and, how?* Here the accent is primarily on the current situation in the different Australian regimes, and less on the situation prior to private sector involvement. In the conclusion of this chapter I discuss the tradeoffs that have occurred in the Australian regimes. This discussion provides the initial impetus for the comparative analysis of both the Australian and the Canadian cases that I present in Chapter 8.

6.1 Towards private sector involvement

In Australia the regulation of safety, health, and amenity of people in buildings are deemed the responsibility of the states and territories (ABCB, 2002). The Commonwealth Government has nevertheless drawn up advisory building regulations with the introduction of the performance-based National Aus-

32 This chapter is based on: Van der Heijden, J., 2008, *Competitive enforcement. Comparative analysis of Australian building regulatory enforcement regimes*, Amsterdam, IOS Press.

tralian Building Code (BCA). Currently all states and territories have adopted the BCA, most adapting it to suit local geological and environmental needs through state and territory variations. Each state and territory therefore has its 'own' Building Code, though based on the BCA with minor variations.

Responsibility for enforcement of the Building Code lies with the state and territory governments. Traditionally most states have passed on many of their building regulatory powers to their municipal Councils, which effectively enacted their own building regulatory regimes by way of council by-laws (Lovegrove, 1991a; Lovegrove, 1991b), whereas territorial governments set up their own building enforcement departments. Until the mid-1990s this resulted in a situation in which land use, planning, development and building regulations were enforced by BCDs only – pure public regimes. During the 1990s private sector involvement through certified building control made its entry within Australian building regulatory enforcement (ABCB, 1999: Chapter 7; PC, 2004). The Commonwealth Government played a strong part in introducing private sector involvement through the implementation of the National Competition Policy (NCP). The key objective of NCP was to develop a more open and integrated Australian market, to limit anti-competitive conduct and to remove the special advantages previously enjoyed by government business activities, where it is in the public interest to do so. The building industry had central focus in this policy.

Yet, the Australian top-down introduction appears to be preceded by a bottom-up movement. In general the interviewees mentioned that prior to the introduction of private sector involvement BCDs were cumbersome, non-proactive, monopolistic, and sometimes having a bad name due to slow application processing times and dictatorial employees (comparable issues with those discussed in Chapter 2 of this thesis). BCDs were furthermore said to be insufficiently qualified to carry out specialized assessment and as a result the development sector demanded a better and faster service (see also, KPMG, 2002; PC, 2004; VCEC, 2005). Private surveyors started to carry out building permit assessment, which BCDs started to accept as complying with building regulations. Nevertheless, regulations had to be amended in order to allow private surveyors to issue building permits, carry out on-site inspections and issue occupancy permits. Through the NCP this was supported.

The first jurisdiction that actually opened up its building regulatory enforcement regime was the state of Victoria in 1993 (Nassau and Hendry, 1997). Other jurisdictions followed and currently all jurisdictions have introduced private sector involvement or are considering introducing it. Yet, private sector involvement is introduced with differences amongst jurisdictions, whilst the same elements are used. These elements are enforcement tasks; rules and criteria to be allowed to carry out enforcement tasks and oversight; and the actual building regulations – see also Chapter 4.

Table 6.1 Pool of interviewees

Interviewees' background	Interviewees' role in regulatory enforcement regime*			
	Set criteria and carry out oversight	Carry out enforcement	Subject to enforcement	Other
Public official	14	10		
Private sector representative	2			
Private certifier		9		
Architect/engineer			6	
Builder/contractor/developer			7	
Other professions			1	
Scholar				7
Total	**16**	**19**	**14**	**7**
Total number of interviewees: 56				

**) See Figure 4.1*

6.2 Case selection and interviewees

In Chapter 5 I discussed in great detail the selection of cases and interviewees; here I limit myself to a brief summary. The division of tasks and responsibilities between the public and private sector is different in each of the five cases discussed in the remainder of this chapter. As I had to limit the number of cases due to a restricted research budget, I have selected cases that showed differences in regime design and long term experience with the regime. The cases selected are: South Australia, Victoria, New South Wales, the Australian Capital Territory, and Queensland.

The unit of analysis in the remainder of this chapter is the regulatory enforcement regime. In order to gain insight into the experiences with the new regimes in the cases, I carried out a series of interviews with interviewees from various backgrounds. Most interviewees (> 90%) had experience with both the old and the new regime in practice. In Table 6.1 I present a brief overview of interviewees – see also Appendix B.

Additional data was obtained from different (governmental) inquiries in Australia (e.g. Allan, 2002; KPMG, 2002; PC, 2004; VCEC, 2005). Contrary to my expectations, I could not obtain extensive quantitative data that would strengthen the experiences shared by the interviewees. Little to no records appear to be kept on, for instance, building permits issued by the public and private sector; process times; oversight actions; and the like.

Overview of regulatory enforcement regimes

Let me briefly introduce the organization of public and private sector involvement in the five jurisdictions that are the focus of the multiple-case study. In all jurisdictions a variance of enforcement tasks can be carried out by private certifiers, which are overseen by different types of organizations. These enforcement tasks can also be carried out by municipalities, which have additional responsibilities such as keeping records of construction and the responsibility for planning and land zoning assessment (cf. NSW Government,

2007: 96-97). The amount of private sector involvement is the main difference between the regimes.

The first regime type, currently implemented in South Australia (OCBA, 2006; PlanningSA, 2001), New South Wales (OFFT, 2004; UTS, 2007), the Australian Capital Territory (ACTgovt, 2005) and Queensland (BSA, 2006; QLDgovt, 2002) fits in with what I have referred to in Chapter 4 as *prescribed co-regulation*: private sector actors are only allowed to carry out specific enforcement tasks overseen by a public authority. This public authority also sets the entry and participation criteria private sector actors, private certifiers, have to meet in order to be allowed to carry out enforcement tasks. In all regimes these criteria are: education, experience and insurance. Three cases show particular characteristics. First, in South Australia private sector actors are only allowed to carry out building plan assessment. This case shows comparisons with 'consultancy'. However, the regime differs from consultancy as regulated private sector actors are authorized to carry out statutory enforcement tasks and make binding decisions (cf. Saint-Martin, 2000: 48). Second, the Australian Capital Territory's case differs from the other cases analyzed as most enforcement tasks can only be carried out by private certifiers. Third, in Queensland private certifiers have to take up follow-up enforcement tasks when non-compliance is found, such as sending warning letters and if necessary bringing offenders to court. In all other cases analyzed private certifiers hand over follow-up enforcement tasks to a public authority – often the local BCD.

The second regime type, currently implemented in Victoria (BCV, 2003; BCV, 2005), fits in with what I have described in Chapter 4 as *conditional co-regulation*: private sector actors are allowed to carry out all statutory assessment tasks and are allowed to issue permits – legal property rights. Private sector actors are furthermore involved in oversight and the regime design. This latter responsibility is taken up by the Building Practitioners Board (BPB) – an independent regulatory agency whose stakeholders represent private sector organizations. The BPB advises on the private certifier's registration criteria; the Minister for Planning sets the criteria. The BPB is also authorized to oversee the private certifiers' conduct and ability to practice and the BPB has authority to discipline private certifiers, which includes cancellation or suspension of registration and issuing fines. The BPB is administratively supported by the Building Commission (BC), which is a statutory governmental organization funded through a building permit levy. At present, the BPB investigates complaints and audits private certifiers. The BPB also has authority to oversee the work of building practitioners, such as contractors, and discipline these when non-compliance is found. As it might clarify the differences between the regimes when seen side by side, I present an overview of the key features in Table 6.2.

In Table 6.2, I keep to the three levels that form a regulatory enforcement regime. I have described these levels as: responsibilities regarding setting reg-

Table 6.2 Key-features in the different regimes analyzed

Tasks	Responsibilities (regime types and cases)									
	Prescribed								Conditional	
	South Australia		New South Wales		Australian Capital Territory		Queensland		Victoria	
	pu	pr	pu	pr	pu	pr	pu	pr	pu	pr
Setting building regulations	X		X		X		X		X	
Setting rules to and overseeing enforcement	X		X		X		X		X	X
Regulatory enforcement process:										
- building plan assessment	X	X	X	X		X	X	X	X	X
- building permit issuance	X		X	X		X	X	X	X	X
- on-site assessment of construction work	X		X	X		X	X	X	X	X
- follow-up enforcement tasks	X		X		X		X	X	X	
- occupancy permit issuance	X		X	X	X		X	X	X	X

pu = public sector responsibility; pr = private sector responsibility

ulation; responsibilities regarding regulating and overseeing enforcement; and, responsibilities regarding the implementation of enforcement. To the latter I have added the enforcement tasks of private certifiers. In the following sections I look upon the experiences with the different regime types.

6.3 Longitudinal comparison

6.3.1 South Australia (SA)

South Australia has introduced, relatively, the most conservative regime (OCBA 2006; PlanningSA, 2001). All tasks relating to building regulatory enforcement can be carried out by municipalities; a few can be carried out by private sector actors. Private sector actors can be licensed and registered as private certifier by Planning SA, a state governmental agency, which has set entry and participation criteria to private certifiers: be accredited by the Australian Institute of Building Surveyors (AIBS) – a private sector organization; have relevant experience; and hold professional indemnity insurance. Private certifiers are overseen by Planning SA through complaints investigation. Future plans are to introduce auditing. Planning SA has authority to discipline private certifiers, but has no authority to discipline BCDs. Contractors are required to hold a business license in order to carry out work; this license is provided by another government agency than Planning SA.

Private certifiers are proportionately liable[33] for work that is carried out

33 Proportionate liability is a legislated requirement by which, under certain circumstances, a person whom a court finds is liable for another person's damages can only be required to pay a proportion of the total amount of damages for which they are held by the court to be personally responsible. Huber provided an illustrative discussion on different forms of liability (Huber, 1988: Chapter 5).

based upon their involvement in a project with a limitation period of ten years. Private certifiers are only allowed to:

- assess building plans; and,
- issue a building consent if from assessing building plans compliance with regulations is shown. This consent is not a building permit that gives approval to commence building. Building permits are issued by BCDs after administration of the building consent.

Case findings

In terms of assessment about 70% of all applications are processed by private certifiers under the new South Australian regime. In general, interviewees stated that the preference for private certifiers comes from the level of service they provide – greater speed, more availability, more specialization – and relationships they have built with clients. Little consistency was found in a perceived change in the level of compliance with building regulations after the introduction of the new regime. Following the previously mentioned notion of Gunningham and Grabosky (1998: 52) on a gain in technical efficiency, or x-efficiency, due to private sector involvement in regulatory enforcement, it might be assumed that specialized private certifiers will reach a greater inspectorial depth. Some reference was made to perceived downsides of the South Australian regime. A private certifier referred to the private certifiers' assessment process as 'a cog in a large governmental machine'. Here it was stressed that permit issuance by the municipal building authority might undo the time-gain of private sector involvement. This doubling of tasks may diminish efficiency gains – a sub-optimal allocation of resources.

Some interviewees mentioned another perceived downside of the South Australian regime: a decline of legal accountability. This since conflicts might rise when a municipality issues a permit based on incorrect private certifiers' assessment documentation. Some interviewees made clear that this is the reason why municipal officials often recheck the private certifiers' inspection reports. BCDs in South Australia have to accept private certifiers' inspection reports, and should issue a permit when this report states compliance.

Subsequently, private certifiers were generally said to be subject to commercial pressure due to the client-contractor relationship they enter into. Representatives of the private sector generally mentioned that private certifiers are strong enough to deal with these pressures; a majority of representatives of the public sector however fears that private sector actors 'bend to their client's will'. In general, agreement existed amongst interviewees that a strong model of oversight, preferably auditing, is needed to hold the different players to account. Currently such a model of administrative accountability is not in place in South Australia. A state official mentioned:

> A number of the certifiers said to me they would be very happy when the auditing comes

> in. To them it's an issue of competition; being on a level playing field. (...) From the way they see it, there are some certifiers that are cutting too many corners. Doing things they don't think are correct. And auditing would expose those. They have actually lost clients, they have lost people to another certifier who... is a bit more generous or a bit more lax in the way they [carry out assessments].

Then, a majority of the interviewees made reference to private certifiers' preference for major – profitable – assessment jobs. A moderate number of interviewees, generally public sector representatives, stated that private certifiers have less of a preference for small construction work and type-specific applicants – the non-professionals: 'moms-and-pops who built once or twice in their lives'. It has to be noted that both under the old and new regime fees the BCDs are allowed to charge are legally set, whereas private certifiers have freedom to set fees. BCDs' fees for minor construction work often do not cover the costs of the assessment work; assessments of major works have to cover losses. Private certifiers were generally said to charge lower fees for profitable major construction work than municipalities, and higher fees for type-specific or minor construction work – creaming. The same state official said:

> What you quite often find is that that twenty percent [of assessment work that is dealt with by] the Council will normally be composed of the small works: house extensions, alterations, and small structures – those sorts of things. (...) The private certifiers don't want to know [the small works], because they're too messy and fiddly, and [they] would charge exorbitantly if you insisted them on doing [the small works]... They really don't want the work.

However, a private certifier made clear:

> It is not that we don't like to do [the small works]. We're doing anything if there's a dollar at. But the way fees are based on area... If someone is doing a fifty square meter house addition and the Council therefore has to do it for a hundred dollars; we just can't do it for a hundred dollars.

This creaming might result in a loss of equity. BCDs in South Australia are responsible for enforcement of building regulations. If municipal building control authorities lose profitable jobs to private certifiers and have to assess loss-making minor jobs – due to legalized fees – they face a loss of revenue. This loss is made up by general revenues from general taxes: the individual who involves private certifiers faces a speedier and cheaper assessment process than under the old regime, but the general tax-payer might face an increase in burden. Then, municipalities lose well trained staff to private sector agencies as these appear to provide better terms of employment: 'municipalities have become the breeding grounds of cadets' a municipal official mentioned. Further-

more, some reference was made to the group of non-professionals, the moms-and-pops, distrusting the credibility of private sector actors.

Finally, although a majority of interviewees valued the criteria set to private certifiers as sufficient, it was mentioned that the regime might overall profit from more stringent regulation and enforcement of contractors and tradesmen. It was expected that if professionals in the building industry were better trained in building regulations their work would show more compliance with building regulations. Introducing such requirements may however imply that barriers are put up, which makes it difficult for builders to enter the market, or to move between different jurisdictions when criteria differ amongst jurisdictions (cf. Arnold, 2005; Evenett and Hoekman, 2005).

6.3.2 New South Wales (NSW)

In New South Wales (OFFT, 2004; UTS, 2007) private sector actors can be accredited as private certifier by the Department of Planning's Building Professionals Board (BPB) – a state governmental agency, which has set entry and participation criteria: have a certain level of education and experience, and hold professional indemnity insurance. Private certifiers are overseen by the BPB through complaints investigation and auditing, as are BCDs. The BPB has authority to discipline private certifiers, but not to discipline BCDs.

Private certifiers are proportionately liable and have the following enforcement tasks:

- carry out both building plan assessment and on-site construction work assessment;
- issue building permits and occupancy permits;
- issue compliance certificates relating to inspections at critical stages of construction work to confirm compliance with the regulations; and,
- carry out enforcement tasks through issuing a notice of proposed order. The private certifier however cannot take follow-up action such as issuing a formal order; this is the local Council's duty – mostly carried out by the BCD. The private certifier must give notice to the local Council of the issuing of the proposed order; the Council then decides whether or not it proceeds to issue an order.

Case findings

As in the South Australian regime a wide majority – 60 to 80% was mentioned – of all building projects are assessed by private certifiers in New South Wales. The preference for private certifications was said by a majority of interviewees to come from familiarity between a private certifier and its clients; the high level of service private certifiers provide – speed, qualified people – and the possibility to negotiate with a private certifier on fees and service. The preference for BCD involvement was said to come from lack of awareness or

familiarity with private certification; traditional confidence in BCDs; and lack of private certifiers in less urban areas, which gives applicants no choice but to go to the BCD. An architect explained her preference for private certifiers:

> Some of the private certifiers do it better, because they are more qualified and better specialized. They would deal in specialized areas, whereas Council has to deal with everything; so Council officers come across stuff that they don't know about. (...) Like an alternative isolation, a lot of Council employees would not be in a position to deal with it and understand it. But as government they have to. (...) Government would be better, generally, at take the trail and making sure that you show, generally, [compliance]. The accredited certifiers that I come across, and the ones that are doing it well (...) they are harder than Council ... and that's what makes them good [certifiers].

And an architect from another firm explained:

> With [private involvement] it has become much faster. (...) They will do all the paperwork before the [zoning permit] is issued by the Council. Then, as soon as you get all those papers together [the private certifiers] issue the [building permit]. Whereas with Councils they tend to do nothing until the [zoning permit] is issued. It's a real timewaster I think. We rarely would use the Council for a [building permit]. Only if you feel there's a political advantage, you would use the Council.

Interviewer: Political advantage?

> You've got to remember that Council employees see private certifiers as obstructing their jobs. So if you want to get in at the right side of the Council than you sort of... but I have to say, we rarely use the Council. They're just too cumbersome.

Private certifiers were furthermore expected to work faster, keep more flexible working hours, and have more experience and skills. Private certifiers were also said to prefer profitable jobs from professionals in the industry over less profitable jobs from moms-and-pops. BCD surveyors were expected to be more discrete as they are independent from their clients. Some interviewees noted that BCD employees may however feel less responsible for their work as they are part of a larger body, whereas private certifiers are personally responsible and liable for their work. BCD employees might therefore feel protected as being part of a larger organization – there is a difference in mentality between BCD employees and private certifiers some interviewees indicated. Some interviewees mentioned that rivalry exists between the public and private sectors, resulting in unintended impacts. A BCD official made clear:

> When we all worked-on under local government control (...) there was a lot more sharing of knowledge and skills and it worked a lot better. Now there seem to be these two

> groups (...) and there's definitely a split between the two groups. The Council certifiers aren't happy to pass on their experiences and knowledge at a professional level to the private people.

The main objections to private sector involvement that were generally named by the interviewees were commercial pressure on the private certifier and, related, conflicts of interest if the private certifier depends on its clients. Private certifiers were sometimes regarded as having a business-driven attitude, instead of one based on guarding the public interest. Integrity issues may rise when a choice between private and public interests has to be made. A council official illustrated this as follows:

> I have a problem with the builder, or applicant paying the certifiers. One is that certifiers then are reliant on that person for their income. And they feel obliged to maybe give that person something which may not be legal. In other words they give them a dispensation from the code, or maybe overlook something that is obviously wrong because they feel pressure from that person. (...) My suggestion is that instead of paying the construction fees to the private certifier, it should be paid to a fund and then the fund pays the certifier. (...) Then the private certifiers wouldn't feel they have to give favors to person who is paying them. They would be in a stronger role to enforce the rules, because it wouldn't matter how much pressure they apply to their clients to get something done because the money is paid by a third party.

In order to hold private certifiers to account a governmental agency, the Building Professionals Board, was recently established to oversee the work of both private certifiers and municipalities. A majority of interviewees agreed upon the need of auditing, though, like in the other cases analyzed the current model of auditing is mostly a random check on certifiers' processes.

Finally, some comments were made, as with the previous regime, on criteria set to contractors and tradesmen: interviewers experienced such criteria were lacking. The overall effectiveness of regulations might increase when contractors and tradesmen would be stronger regulated and enforced. And some interviewees mentioned a perceived lack of trust from ordinary citizens in private certifiers' integrity.

6.3.3 Australian Capital Territory (ACT)

Under the current Australian Capital Territory (ACT) regime (ACTgovt, 2005) only private sector actors can be involved in building plan assessment and construction work assessment. In the ACT private sector actors can be licensed and registered as building certifier[34] by the ACT Planning and Land Authority (ACTPLA) – a territory governmental body, which has set entry and participation criteria: be accredited by the Australian Institute of Building Sur-

veyors (AIBS) or the Institution of Engineers Australia – both private sector organizations; have relevant experience and hold professional indemnity insurance. Building certifiers are overseen by ACTPLA through complaints investigation, disciplinary inquiries, issuing of license demerit points that might lead to disqualification of licensees or other license sanctions, and infringement notice offences or referral to the ACT Director of Public Prosecutions for prosecution of offences.

Private certifiers are proportionately liable and have the following enforcement tasks:

- carry out both building plan assessment and on-site construction work assessment;
- issue building permits and completion certificates – which only show that the work has been carried out according to the regulations, but does not state – as an occupancy permit does – that the building complies with regulations and can as such be occupied. The assessment of finished construction prior to occupation and the issuing of an occupancy permit, in practice a formal procedure, can be executed by the public sector only; and,
- carry out limited enforcement tasks through issuing a stop work notice. The building certifier however cannot take follow-up action as this is the responsibility of ACTPLA. The private certifier has to give notice to ACTPLA on the issuing of the notice; ACTPLA then takes over enforcement tasks.

Case findings

Since under the ACT regime clients have no choice but to go to private certifiers, all assessment work – with the exemption of some governmental construction – is carried out by private certifiers. However, for a short period of time after the introduction of private certification clients in the ACT had the choice between involving the BCD or seeking service from private certifiers. According to some interviewees, during this 'in-between period' clients preferred private certifiers for reasons comparable to those found in the other regimes analyzed.

Contrary to the other regimes analyzed, the oversight model used was said to be a minor issue, if an issue at all. A governmental agency audits the private certifiers' work – both on process and content. But the major advantage was said to come from the relative small number of private certifiers that work in the ACT. A private certifier explained:

34 Different terms are used throughout Australia to address private sector inspectors: private certifier in South Australia, New South Wales and Victoria; building certifier in the ACT; and, accredited building certifier in Queensland. For reasons of convenience I refer to all as private certifier.

> It is working very well here because the fact is that Canberra is a small community[35]. (...) If I certify something I can ask somebody else [for peer review]. I think that's very important and this is one of the things that can get lost in the private system. In the government system we all worked in the same office and were able to bounce issues off to each other. Whereas now in the private system, because it is also competitive, and of course you get one certifier competing against another per project, there won't be that keen and discussing the merits of the project and how it should be checked.

Comments were made regarding the identity of the building controller in the ACT since the general public's perception appears to be that government involvement in building control would be better than the current private sector involvement. The government is expected to be more independent, more credible, than private certifiers. Furthermore, building control surveying is not seen as a profession, such as architecture or engineering are. The same private certifier observed:

> There's a perception amongst the public that the government always does things better. Because of the independence. And most people out there in the community, especially the home owners, are still convinced it is still a government function.

From analyzing this particular case I found that compared to the other regimes analyzed in Australia, the ACT case can be classified as a 'deviant case' (Lijphart, 1971: 692). The value of this particular case therefore lies in its possibility to tone down propositions that I could derive from analyzing the other cases; or to strengthen these propositions through modification based upon the ACT case findings (*ibid.*).

6.3.4 Queensland (QLD)

The regime in Queensland is highly comparable with the regime in New South Wales (BSA, 2006; QLDgovt, 2002). Private sector actors can be licensed and accredited as accredited building certifier by the Building Service Authority (BSA) – a state governmental agency, which has set entry and participation criteria: have a certain level of education and experience, and hold professional indemnity insurance. Within Queensland this professional indemnity insurance is supplied by the government, whereas in the other jurisdictions insurance is supplied by the private insurance industry. Private certifiers

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35 The City of Canberra roughly covers the whole ACT.

36 Joint-and-several liability is a common law requirement under which a person found by a court to be partly liable for another person's damages, can be required to pay any amount of the total damages which any other party also found to be liable proves unable to pay.

are overseen by the BSA through complaints investigation and auditing. The BSA has authority to discipline private certifiers.

Private certifiers have joint-and-several liability[36] for work that is carried out based upon their involvement in a project and this liability has no run-off period. The certifiers have the following enforcement tasks:

- carry out both building plan assessment and on-site construction work assessment;
- issue building permits and occupancy permits;
- issue compliance certificates; and,
- carry out enforcement tasks, including prosecution.

Case findings

Under the new regime, a majority of the interviewees made clear, a preference exists for private sector involvement – a majority of permit applications, 60-80%, is processed by private certifiers. Reasons for this preference were comparable as in the other regimes analyzed, as a state official illustrated:

> [Private certifiers] just provide a better seamless service. They are more client focused, and I hate the term, but they are more of a one-shop-stop. (...) In essence that's what it is... and availability.

Like the other regimes analyzed, the private certifiers' integrity was generally mentioned to be an issue. Commercial pressure and potential conflicting interests were mentioned as main grounds for these integrity issues. Private certification was then considered as a purely commercial, money-driven activity and private certifiers were sometimes considered to protect their personal rather than public interests. The potential of clients to shop around for a private certifier that suits their need was mentioned a major issue by a moderate number of interviewees. Furthermore, in Queensland the private certifier has an obligation to enforce, which might include instituting proceedings against offenders – in all other regimes analyzed private certifiers were not obliged to do so, but only have to hand over the case to the relevant authority, which then takes up follow-up enforcement tasks. Yet, a private certifier in Queensland who takes this measure has to pay for the trial himself. To avoid ending up in expensive lawsuits private certifiers take provisions in contracts to stay out of court issues by making it possible to end the contracts. If a contract is ended, the client has to search for a new private certifier or turn to the BCD having jurisdiction. Finding another private certifier is hindered since other private certifiers know that 'something is wrong' when a client moves to another private certifier halfway a project. The obvious choice then is to turn to the local BCD, which then finds a difficult case to solve and often has difficulty in obtaining assessment documentation from the initial private certifier.

Finally, and this again is a particular characteristic of the Queensland regime, private certifiers are subject to joint-and-several liability. A moderate number of interviewees made clear this has made private certifiers risk-averse. Consequently, private certifiers appear to prefer 'prescriptive' deemed-to-satisfy solutions to innovative alternative solutions and advise their clients to focus on such 'traditional' prescriptive solutions – advice here means: not accepting alternative solutions. An architect explained:

> [Private certifiers] are very concerned about their personal indemnity insurance. (...) And this is probably one of the side objectives... they tend to be very conservative in a lot of their approaches because they don't want to get into trouble, or be penalized if they do anything wrong. (...) If he [a private certifier] makes a mistake, gets fined it comes out of his personal indemnity insurance and his premiums go up, or he can even be... and they are talking about substantial fines, like thirty thousand dollars for the first offence.

Some interviewees noted that since the insurance is mandatory, the 'good guys' suffer because of the 'bad guys' as fees get raised when many pay-outs have to be made across the industry. A representative of the Housing Industry Association said:

> In the early days there were a lot of aggressive private certifiers out there that pushed the system to the boundaries, which then produced some insurance issues that came together with a bad cycle in the insurance industry [HIH collapse in Australia and international insurance market after 9/11] so a lot of private certifiers had a lot of trouble to get insured. That made them quite conservative in their approach. (...) It has been interesting to watch the cycle go from sort of being very aggressive and risky, I suppose, in their approaches into now being kind of conservative in what they do as the market settles down.

More than in other jurisdictions, builders were mentioned as an obstacle as it is often them who choose the private certifier, or 'advise' a client to choose a certain private certifier. Clients are therefore often not aware which private certifier they have chosen, as the builder takes provisions in the contract to include a certain private certifier. As in the other regimes, private certifiers were furthermore said to prefer profitable jobs from professionals in the industry, than less profitable jobs from moms-and-pops.

In order to monitor the private sector actors' work a public agency, the Building Service Authority, audits the private certifiers. As in the other regimes analyzed the audits appear process based and a moderate number of interviewees shared the opinion that auditing based on the private certifiers processes would not improve private certifiers' integrity. Private certifiers were experienced as being subject to commercial pressures and conflicting interests. A typical quote from a private certifier here illustrates this issue:

> There's a lot of pressure on the private certifier to circumvent the system, to speed up the process. As an example I think typically most ... when somebody sits down to judge the feasibility of a project they draw a line in the sand somewhere in the future, a year or two or three year in advance. And they say that at the end of May we must start construction on site. So the feasibility and the planning and preliminary design and discussions with Council start. Design and redesign starts to take place. And that period of time elongates until just before construction is about to start when they finally decide that they going to come to their private certifier to get a building approval. Now, the developer and the engineer and the architect have had twelve months, two years, three years to go over all the design and redesign that they're familiar with; the client's expectations; what the goals and objectives are for the building; how many people are going to occupy it; and what the use of the building is. And a week before construction is supposed to start on site they lob eight inches of plans and paperwork on your desk and say: 'We need this next week.' (...) And the reason is they've booked the plant and machinery and materials to arrive on site. And if they drop that date, if they're going any further than that they starting to lose profits. They're not going to build the building in time, so that means they don't get rent for the occupancy. And so for every day over they lose so many tens of thousands of dollars. In their mind, if they don't start on that date it is costing them money and the feasibility of the project is going down the toilet all the time. And because they come to you last in the chain they see you as the hurdle to get over before they can start construction. And if you find any faults in the design at that late state of the process, you are the worst bastard under the sun. You cost 'm their money, you cost 'm their time. 'Who do you think you are? We don't even need you in this process. We've got these top architects; they know what they're doing. And you are just this lowly building inspector. And I wouldn't even come to you if it wasn't necessary. So what are you going to do for me? I'm paying you good money to do this and I need my plans approved by then.' There's a very large percentage of the development community out there that sees us rubber-stampers. We rubber-stamp plans and we drop a decisionnaire and how long can that take, really?

Finally, some comments were made, as in the other regimes, criteria set to contractors and tradesmen: interviewees experienced such criteria were lacking. Some interviewees furthermore mentioned a perceived lack of trust from ordinary citizens in private certifiers. Also, some interviewees mentioned that due to private sector involvement the former 'loopback' between municipalities and State government has been lost: since municipalities are less involved in building assessment they are less aware of general issues. Private certifiers were experienced to have a different, and sometimes less, interest on reporting issues to the State government than BCDs have. Under the new regime the State government might therefore have lost their feeling with the field and might be less able to take correct measures to solve issues that play 'at ground level'.

6.3.5 Victoria (VIC)

In Victoria (BCV 2003a; 2003b; 2005) all tasks relating to building regulatory enforcement can be carried out by both private sector actors and BCDs. Private sector actors can be registered as private certifier by the Building Practitioners Board (BPB) – an independent regulatory agency whose stakeholders represent private sector organizations. The BPB advices on private certifier's registration criteria; yet, the Minister for Planning sets these. The criteria are: have the required level of education and experience and hold a policy for professional indemnity insurance as prescribed by the regulations. The BPB is also authorized to oversee the private certifiers' conduct and ability to practice and the BPB has authority to discipline private certifiers, which includes cancellation or suspension of registration and issuing fines. At present the BPB investigates complaints and audits private certifiers. The BPB is administratively supported by the Building Commission (BC), which is a statutory governmental organization funded through a building permit levy – the combination of the BPB and the BC may be understood as a 'public-private partnership'. Contractors in Victoria have to be registered by the BPB. The BPB also has authority to oversee the work of building practitioners, such as contractors, and discipline these when non-compliance is found. The BPB has no authority to discipline BCDs, neither has the BC.

Private certifiers are proportionately liable and have the following enforcement tasks:

- carry out both statutory building plan assessment and on-site construction work assessment;
- issue a building permit when from assessing building plans compliance with regulations is shown;
- issue an occupancy permit when from assessing the construction work and the finished building compliance with regulations is shown; and,
- carry out enforcement tasks through issuing of a series of 'enforcement orders' – written notices that, according to the responsive regulation 'enforcement pyramid of sanctions' (Ayres & Braithwaite 1992: 35-38), with each follow-up order imply a more harsh means of sanctioning. Non-compliance with an enforcement order may result in prosecution. The private certifier, however, cannot carry out prosecution itself, but refers the case to the BC, which from that point takes over enforcement tasks.

Case findings

In terms of assessment about 75% of all building permits are issued by private certifiers under the new Victorian regime. In general the preference for private certifiers is considered to come from the relationship private certifiers can build up with their clients; the high level of service private certifiers provide – speed, specialization; broader knowledge; and accessibility. Some

interviewees added to these reasons that BCDs might still be suffering from the stigma of being cumbersome and their employees being non-proactive. As with the other regimes, I found little consistency in a perceived change in the level of compliance due to private sector involvement under the new regime. Again here it could be assumed that the private certifiers' ability to specialize in certain complex building types might result in more inspectorial depth in those projects. Two private certifiers, in different interviews, made clear:

> [Compliance has improved] I think for the simple reason that you get the most appropriate building surveyor for the project with the private system; the private system shows the best compliance. That's not to say that the Council guys aren't good enough. If someone would say to me: 'Hey, check a house', I'd probably struggle; and if they would say to me: 'Hey, check a hospital' I wouldn't have a problem. And if we [the private certifier and the Council employee] swop around it probably be the same thing.

> It is difficult to measure any difference in the level of compliance, however I consider with the acceptance of private certification by the building industry and with the introduction of registration and audits of building certifiers and other practitioners, the new robust nature of the approval process would have contributed to its efficiency and a higher level of compliance.

Like in the other regimes analyzed equity was regarded an issue. Private certifiers in the Victoria appear to prefer major construction work to minor or type specific construction work – creaming. As a result private certifiers take up the profitable jobs and leave BCDs with the loss-making jobs. General taxes may be applied to counterbalance these. Furthermore, some interviewees mentioned that non-professionals perceive that the municipal building authority is the place to go to when it comes to applying for a building permit. This particular group appears to distrust private sector actors. A Building Commission employee explained:

> Personally I think there is a perception from the general consumer, the general house owner, that the Council is the place to go. Councils consider they still have a role in the building industry for maintaining information and building permit collection area and service. From an ordinary public point of view, a lot of people still perceive Council is the appropriate place to get certification.

Commercial pressure was generally mentioned as a possible obstacle on different levels. First, as it is believed that private certifiers might be less fanatical about acting in the public interest than BCD surveyors; private certifiers are considered to keep a business point of view in mind. Second, client binding might be a risk when a private certifier becomes too dependent on a client or a small number of clients – to keep his client, a private certifier might

choose to cut corners. Third and finally, it was noted that competition might erode standards as margins are small. A director of a consultancy agency mentioned:

> We're a very competitive industry. (...) So people are always looking for ways to get an edge. (...) I think boundaries are being stretched and sometimes being breached. (...) People think they can get away with it.

In general it was mentioned that a model of oversight is needed to deal with these issues. Oversight is part of the new Victorian regime: the Building Practitioners Board (BPB) has authority to monitor and discipline private certifiers. However, a majority of the interviewees looked upon this model as insufficient. Most critics of oversight focus on the auditing model: not only is the number of audits criticized as being too few – private certifiers interviewed recall being audited once every seven to ten years – but the audits are criticized for having too much focus on procedures. It was found that audits were not focusing on the content of building permits issued and controls performed on-site, but on ticking boxes and following procedures. A private certifier explained:

> The lack of reliability of the auditing system makes people in the field [building control surveyors and builders] feel pretty safe.

And a BCD official expressed his view as:

> The auditing is a joke. One of the problems is that is easy to nail somebody for something that is easy [to find]. It is hard to know if someone has done something wrong when it is hard to find what is wrong. (...) I've once filed a complaint against a private certifier who made a major mistake. Then [the auditors] come up and say: 'Oh, look he didn't sign that form, we've got him!', or 'He didn't lodge on a certain day, we've got him!', or 'He didn't do this or that...'. I look at this plan that doesn't comply and have someone to technically check it. But that never happens. (...) They don't tackle the hard things.

A moderate number of interviewees made clear that private certifiers seem to fear the measures the insurance industry can take even more than the measures the BPB can and does take: if a complaint against a private certifier is lodged it might take up to several years before the process of investigation is finished and often the penalty is relatively low. Baldwin, Hutter and Rothstein's (2000: 9) notion that 'Private or public insurers may operate to control risks by imposing conditions on the supply of insurance cover and by using economic incentives, such as deductibles, to encourage proper risk-reducing behavior', appears suitable on the Victorian regime as well (cf. VCEC 2005: 250). Measures taken by the insurance industry are often an increase of the

Table 6.3 Impacts and regimes

Impact	Regimes (types and cases)				
	Prescribed				Conditional
	South Australia	New South Wales	Australian Capital Territory	Queensland	Victoria
Effectiveness	+	++	++	++	++
Efficiency	+	++	++	++	++
Equity	-	-	x	-	-
Administrative accountability	-	-	x	-	-
Legal accountability	--	-	-	--	-
Social accountability	-	-	-	-	-

++ = more improved, + = improved, – = declined, -- = more declined, x = not traced

private certifiers' insurance policy fees if an insurer has to pay out because a private certifier holding a policy is found responsible for some error. And, when insurers have to pay out often, because of repetitive issues, all private certifiers' fees are raised. Insurance fees thus appear a strong incentive, maybe even a stronger incentive than audits or disciplining powers an oversight body has – a federal official made clear this is a national issue.

Finally, a major advantage of this regime that a majority of interviews mentioned is the authority the BPB has to discipline contractors. Certified professionals hand over enforcement tasks to their own statutory body when noncompliance is found. As the contractor is often the certified professional's client, the private certifiers experience to be backed up by the BPB when it comes to follow-up enforcement. Nevertheless, a moderate number of interviewees made clear that stronger regulation of contractors and tradesmen could possibly raise the level of compliance with building regulations.

6.4 Summary and discussion: tradeoffs

The main question addressed in this chapter is: what impacts have occurred after the introduction of private sector involvement in building regulatory enforcement regimes in different jurisdictions; and, how? Throughout the chapter I discussed the impacts of private sector involvement in five Australian jurisdictions – based on the evaluation criteria discussed in Chapter 4. By combining these impacts insight may be gained in the tradeoffs that have occurred. In Table 6.3 I present these tradeoffs for the regimes analyzed. In this table I rank the impacts on an ordinal scale: improved or declined compared to the status quo ante. If a case shows relatively more improvement or decline I indicate this as well in Table 6.3.

In all regimes analyzed private sector involvement was said to have resulted in x-efficiency and effectiveness gains – data from additional questionnaires confirm these findings, see Appendix F. If choice exists a preference appears to exist for private sector involvement (cf. EI, 2002: 26; NSW Government, 2007: 115; VCEC, 2005: 82). Furthermore, the new regimes are considered to have encouraged a cultural change in the industry and to have encouraged

parts of the industry, especially building surveyors, to up-skill (PC, 2004: 221; VCEC, 2005: 82). Even more, the introduction of competitive private sector involvement was sometimes regarded to have improved BCDs' service delivery: in order to be able to compete with private sector actors BCDs took over characteristics of the private sector (which confirms other research findings, e.g. Price, 2007: 1149-1150). Nevertheless, a majority of interviewees in the regimes stated that private certifiers are better able to specialize than their municipal counterparts, and are therefore better suited to assess complex building development (cf. EI, 2002: 40). In all cases analyzed, private sector involvement was generally said to have made the assessment process more streamlined and resulted in time savings for applicants (cf. FRG, 1999: 82; KPMG, 2002: 3-4; PC, 2004: 221). It has to be noted that in all regimes reference was made to the absence of criteria to contractors and tradesmen, whereas architects and engineers were regarded as well-regulated professions. Better regulation of actors in the construction industry – the contractors and tradesmen – was considered to potentially result in more compliance with building regulations. The exemption is the ACT where this critique was not expressed – I assume due to the level of regulations set to contractors and tradesmen in the ACT (cf. OFFT, 2004).

Here gains appear to be related to the amount of private sector involvement in the execution of enforcement tasks – the more involvement the more gain. In all regimes analyzed private certifiers have the same tasks and responsibilities with exemption of the South Australian and Queensland regimes. In South Australia private sector actors are only allowed to carry out building plan assessment, but are not allowed to issue permits or to carry out construction work assessment. The x-efficiency gain is partly undone by a doubling of tasks; and the effectiveness gain is partly undone when work that was carried out by a specialized private certifier is taken over by a non-specialized municipal official later on in the enforcement process. In South Australia this doubling of tasks is strongest. Then, in Queensland private certifiers have to take up follow-up enforcement tasks. As discussed, private certifiers include provisions into their contracts, which prevents them from ending up in expensive trials. Furthermore, the local BCD that has jurisdiction might end up with a difficult case if a private certifiers breaks up his contract and the client moves to the BCD.

Despite these intended impacts, the introduction of private sector involvement in Australia has resulted in unintended impacts as well: equity issues and a decline of different accountability types were mentioned during the interviews. Equity issues relate to the level of service provided by private certifiers and BCDs and the availability of this level of service to all regulatees. From analyzing case findings it became clear that private certifiers deliver a higher level of service than BCDs. It furthermore became clear that a natural split between professionals and non-professionals in the building indus-

try has occurred: the former choosing private sector involvement in regulatory enforcement, the latter choosing BCD involvement. Here both the cost of assessment as the trust in the assessor appear influential; yet, some indication was found that private certifiers regard non-professionals as a more difficult group to deal with and prefer working with professionals. Case findings indicate that non-professionals are sometimes excluded by private certifiers from their assessment process – at least by the costs of assessment. Here it may be argued that a level of service is not equitable available to all regulatees.

Subsequently, municipalities noted that their regulated environment prevents them from fully competing with private certifiers (NSW Parliament, 2002: 112-113): 'a level playing field does not exist for Councils'. A loss of revenue and resources, due to the introduction of private certification, might in the long term erode the quality of the BCD service delivery, which might endanger their ability to secure the public interest and serve the public. Changing the rules of the 'game' by introducing competition between the public and the private sector, but restricting the public sector as it was prior to private sector involvement, appears to have placed municipalities in a subordinated position[37]. This appears to be an impact of all cases analyzed, with exemption of the ACT regime where no choice exists between public and private sector involvement.

Declines in accountability relate to bureaucratic, legal and social accountability types, discussed in Chapter 4. Regarding administrative accountability interviewees expressed concerns over oversight on the private certifiers. Within the regimes analyzed most criticism was expressed towards these oversight models' focus on private certifiers' enforcement processes, instead of the content of their work. Such auditing is often regarded as too weak to bring awareness into the sector (cf. NSW Government, 2007: 96-97, 103; NSW Parliament, 2002: 113; PC, 2004: 207-208). Private certifiers either do not fear being audited as the audits are mostly based on process, or do not fear the consequences of audits might discrepancy be found. Audits appear highly ritualized in the cases analyzed and the actual impacts of audits are vague (cf. Power, 1999). Generally, auditing was regarded as needed to monitor private certifiers' integrity. In all regimes integrity issues were mentioned as potential impact of private sector involvement. Private certifiers were generally considered to be subject to commercial pressure and conflicts of interest (cf. Allan,

37 It is nonetheless questionable if it is the municipal BCDs' role to compete with private certifiers in a level playing field. As with many forms of social regulation, building regulations are introduced to guarantee certain public interests. As such, municipal BCDs simply are different players in building regulatory enforcement than private certifiers: municipal BCDs are not expected to make profit, but are expected to guarantee those public interests (cf. Wilson, 1989: Chapter 17).

2002: 33; NSW Government, 2007: 98-99). It is notable that a moderate number of interviewees from all cases valued oversight in Victoria as being superior to oversight in other cases. I could however not find evidence that the actual audits implemented and punitive measures taken in Victoria indeed resulted in less integrity issues, or improved administrative accountability compared to the other regimes. Here is may be that communication of oversight by the BPB and the BC through a monthly magazine has a positive reputation building effect.

A decline of legal accountability relates to overlapping tasks and responsibilities between public and private sector actors and the model of joint-and-several liability in Queensland. In all regimes the government is still indirectly responsible for the regulatory enforcement regime. Questions might rise who is ultimately to be held responsible for private sector involvement: the private sector actors carrying out enforcement tasks, or the public sector for delegating these tasks? In Queensland this is strengthened since the prevailing model of joint-and-several liability places considerable liability on actors, even when they have minimal direct or indirect involvement in a project. Under the Queensland regime municipalities thus keep liability, even when they are not directly involved in a project. Also in South Australia the issue is strengthened, since municipalities may be held liable for issued permits based on private certifier's assessment documentation.

Finally, a potential decline of social accountability appears related to a perceived lack of trust from the general public in private certifiers. From analyzing case data it became clear that a large part of potential clientele, roughly all non-professionals in the building industry, still prefers and seeks public sector involvement in statutory building assessment. It appears this group does not trust the private sector actors' credibility. This finding does not appear to be related to a certain regime type; though, I did not trace it in the ACT regime. I assume this comes from the absence of choice between involving either public or private sector actors in regulatory enforcement. At the same time however, the professionals in the building industry appear to regard private certifiers as more credible than municipal BCDs.

7 Regime change in Canadian building regulatory enforcement

Over here [in Alberta] they call us Communists, whereas in the east [of Canada] they see us as consumer-protection

public official in interview

In the early 1980s the City of Vancouver, in the Canadian province of British Columbia, reformed its building regulatory enforcement regime. Private sector actors – architects and engineers – were given the opportunity to be involved in building regulatory enforcement. Currently, private sector involvement in building regulatory enforcement is implemented in a small number of provinces and individual municipalities in Canada. Contrary to the situation in Australia where the Commonwealth Government played a strong part in reforming building control through a national policy, in Canada the federal government is not involved in the implementation and enforcement of the National Building Code (NBC). Historically there is no special Ministry on the federal level which is responsible for, or takes responsibility for this issue. Through the National Research Council of Canada the NBC is developed, updated, and published, yet neither this organization nor any agency at federal level sees it as its task to provide guidance on how to implement or enforce the NBC to the provinces and territories or municipalities.

In this chapter I present my exploration of different building regulatory enforcement regimes in Canada. By actually analyzing different building regulatory enforcement regimes that are characterized by private sector involvement I aim at partly filling up the knowledge gap on such private sector involvement (see Chapter 1). I start by briefly introducing the policy process motivating the introduction of private sector involvement in Canadian building regulatory enforcement. I continue by discussing the three cases that are the subject of analysis in this chapter: the City of Vancouver, the Province of Ontario, and the Province of Alberta. Subsequently I evaluate the different regimes based on both primary data – interviews – and secondary data – existing government reports, published papers, and information from relevant websites. As discussed in Chapter 5, I make a division between a longitudinal comparison and a between-case comparison to analyze the cases. In this chapter the former is presented to gain insight in the impacts of the new regimes in Canada. At question is: *What impacts have occurred after the introduction of private sector involvement in building regulatory enforcement regimes in different jurisdictions; and, how?* Here the accent is primarily on the current situation in the different Canadian regimes, and less on the situation prior to private sector involvement. In the conclusion of this chapter I discuss the tradeoffs that have occurred in the Canadian regimes. This discussion provides the initial impetus for the comparative analysis of both the Australian and the Canadian cases that I present in Chapter 8.

7.1 Towards private sector involvement

The responsibility for building regulation in Canada resides with the provinces and territories – except for federal government property and aboriginal lands. The provinces did not take up this authority until late in the 1890s, but instead of establishing province-wide regulations, they delegated the power to write building bylaws to their incorporated municipalities, which resulted in a multiplicity of regulations being developed over time as each municipality tried to deal with its own needs (Legget, 1965).

As a result a patchwork of municipal bylaws came into existence. As in many other countries, see for instance the description of the development of building regulations in the Netherlands in Chapter 2 and Australia in Chapter 6, this patchwork made it very difficult for designers, product manufacturers and contractors to conduct business in more than one region. It furthermore stood in the way of the implementation of federal programs supporting housing and other construction (*ibid*.).

In order to overcome these issues the federal Department of Finance asked the National Research Council of Canada (NRC) in 1937 to develop a model building code that could be adopted by all municipalities in Canada. This resulted in the publication of the first National Building Code (NBC) in 1941, which is updated every 5 years (Hansen, 1985). As in Australia the NBC is advisory regulation only. The code comes to effect only after provinces and territories implement these within their own jurisdiction. Currently most provinces and territories have.

Enforcement of building regulation remains a responsibility of local authorities. Until the mid-1990s this resulted in a situation in which land use, planning, development and building regulations were enforced by local Councils only – if enforced at all. Though, due to issues with municipal enforcement or the absence of enforcement, some provincial governments appear to have tightened their grip on building regulatory enforcement, or appear to be trying to do so (cf. BCMH, 2007; Short, 2005; SCCA, 2006; OHCS, 2007; BRRAG, 2000; Barrett Commission, 1998). Different initiatives were taken, one of which is private sector involvement.

The introduction of private sector involvement in Alberta appears to be a top-down initiative by the Provincial government (SCCA, 2003). The Provincial Accreditation regime was introduced with the implementation of the Safety Codes Act in 1993. Prior to the introduction of this regime the major municipalities enforced building regulations in their jurisdictions through their own BCDs. Outside the major municipalities regulatory enforcement was taken up by the Province. With the introduction of the new regime the provincial government withdrew from actual enforcement tasks. In order to enhance the quality of regulatory enforcement the accreditation regime was introduced – under the new regime all actors involved in regulatory enforcement have to be

accredited. To guarantee building regulatory enforcement would be carried out in the minor municipalities as well, private sector involvement was introduced. Some interviewees mentioned that these minor municipalities lobbied for private sector involvement as they did not want to, or could not take up responsibilities for the enforcement of building regulations within their jurisdictions.

The introduction of private sector involvement in Ontario appears a top-down initiative by the Provincial government as well (BRRAG, 2000; Short, 2005). In order to streamline the permit process, improve safety standards, and to increase municipal accountability the so-called Bill 124 was implemented (BRRAG, 2000: Appendix 5; Hemson Consulting, 2008). The bill uniformly applies to all municipalities in southern Ontario. Through Bill 124 an option was introduced to contract out plan reviews and inspections to external private sector actors – so-called Registered Code Agencies (RCAs). Under the new regime BCD officials have to pass mandatory examinations on the Building Code. The new regime was introduced between 2000 and 2006 in reaction to, as a moderate number of interviewees made clear, slow and sometimes 'unskilled' permit processes, red tape at the municipal level, and unfair liability exposure of municipalities – under the old regime, municipalities were regarded as 'the deep pocket'[38] when time came to pay for the remediation of building failures. It was noted by some interviewees that top-down here does not mean that Bill 124 was a 'pure' provincial government initiative. A provincial official noted that 'the entire Bill 124 initiative originated with industry and municipal stakeholders working with the Ministry's building and development branch.'

The introduction of private sector involvement in Vancouver is a special case. The City of Vancouver was granted its own Charter by the crown. As a result Vancouver is allowed to implement regulations and enforcement that are different from the other municipalities in the Province of British Columbia (cf. Donnely, 2000). Private sector involvement was introduced in Vancouver as a top-down initiative in 1981 (CPP, 2003; Barrett Commission, 1998). The catalysts of this implementation were, as observed by some interviewees, the collapse of a shopping centre and a large strike of public officials in the 1980s. Yet, it was mentioned as well that at the same time the City had a problem with staffing – both qualitative and quantitative – and the building industry was putting pressure on the City to speed up processes. The CP Program was introduced to increase the level of compliance by combining BCD officials' skills and knowledge with that of experts in the field.

38 Under joint-and-several liability municipalities can be held responsible for their involvement in a building project. Even when an actor has little involvement in a construction project, joint-and-several liability permits claimants to hold each actor fully responsible. As municipalities are often the most prosperous actors, they are regarded 'the deep pocket' in such cases.

Table 7.1 Pool of interviewees

Interviewees' background	Interviewees' role in regulatory enforcement regime*		
	Set criteria and carry out oversight	Carry out enforcement	Subject to enforcement
Public official	13	11	
Private sector representative	3		
Private inspector		5	
Architect/engineer			5
Builder/contractor/developer			6
Other professions			4
Total	**16**	**16**	**15**
Total number of interviewees: 47			

**) See Table 4.1*

7.2 Case selection and interviewees

In Chapter 5 I discussed in great detail the selection of cases and interviewees; here I limit myself to a brief summary. The division of tasks and responsibilities between the public and private sector is different in each of the five cases discussed in the remainder of this chapter. As I had to limit the number of cases due to a restricted research budget, I have selected cases that showed differences in regime design and experience with the regime. The cases selected are: Vancouver, Ontario and Alberta – to my knowledge these are the only regimes with private sector involvement in Canada.

The unit of analysis in the remainder of this chapter is the regulatory enforcement regime. In order to gain insight into the experiences with the new regimes in the cases, I carried out a series of interviews with interviewees from various backgrounds. Most interviewees (> 90%) had experience with both the old and the new regime in practice. In Table 7.1 I present a brief overview of interviewees – see also Appendix C.

Additional data was obtained from different (governmental) inquiries in Canada (e.g. BCMH, 2007; SCCA, 2003; OHCS, 2007; BRRAG, 2000; Province of BC, 1996; Province of BC, 1994; Hemson Consulting, 2008; Cerminara, 1995; Calgary, 2003). Contrary to my expectations, I could not obtain extensive quantitative data that would strengthen the experiences shared by the interviewees. Little to no records appear to be kept on, for instance, building permits issued by the public and private sector; process times; oversight actions; and the like.

Overview of regulatory enforcement regimes

In all jurisdictions a variance of enforcement tasks can be carried out by private sector actors, which are overseen by different types of organizations. These enforcement tasks can also be carried out by municipalities, which have additional responsibilities such as keeping records of construction and the responsibility for planning and land zoning assessment. The amount of private sector involvement is the main difference between the regimes.

Table 7.2 Key-features in the different regimes analysed

Tasks	Responsibilities (regime types and cases)					
	Prescribed				Conditional	
	Vancouver		Ontario		Alberta	
	pu	pr	pu	pr	pu	pr
Setting building regulations	X		X		X	
Setting rules to and overseeing enforcement	X		X		X	X
Regulatory enforcement process:						
- building plan assessment	X	X	X	X	X	X
- building permit issuance	X		X		X	X
- on-site assessment of construction work	X	X	X	X	X	X
- follow-up enforcement tasks	X		X		X	X
- occupancy permit issuance	X		X		X	X

pu = public sector responsibility; pr = private sector responsibility

The first regime type, currently implemented in Vancouver (CPP, 2003) and Ontario (Hemson Consulting, 2008; Short, 2005) fits in what I have referred to in Chapter 4 as *prescribed co-regulation*: private sector actors are only allowed to carry out specific enforcement tasks overseen by a public authority. This public authority also sets the entry and participation criteria private sector actors have to meet in order to be allowed to carry out enforcement tasks. In all regimes these criteria are: have relevant education, have relevant experience and hold professional indemnity insurance. The cases show particular characteristics. First, in Vancouver private sector actors are only allowed to carry out building plan assessment and construction work assessment of complex building works. Clients can choose which private sector actor to involve – the City of Vancouver strongly advises permit applicants to involve CPs in complex construction works. Second, in the Province of Ontario, municipalities can enter into contracts with private sector actors. Clients do not have a choice of which private sector actor is involved in their work.

The second regime type, currently implemented in the province of Alberta (SCCA, 2003; SCCA, 2004; SCCA, 2006), fits in what I have described in Chapter 4 as *conditional co-regulation*: private sector actors are allowed to carry out all statutory assessment tasks and are allowed to issue permits – legally binding rights. Private sector actors are furthermore involved in oversight and the regime design. This latter responsibility is taken up by the Safety Codes Council (SCC) – an independent statutory authority, which consists of private sector stakeholders. The SCC advises on the private sector agencies' registration criteria; the Minister for Municipal Affairs sets the criteria. The SCC is also authorized to oversee the private sector agencies' conduct and ability to practice and the SCC has authority to discipline private sector agencies, which includes cancellation or suspension of registration. The SCC is administratively supported by the Ministry of Municipal Affairs. The SCC is funded through a building permit levy. At present, the SCC investigates complaints and monitors private sector actors – but relies on the Ministry of Municipal Affairs' manpower to do so. As it might clarify the differences between the regimes when seen side by side, I present an overview of the key features in Table 7.2.

In Table 7.2, I keep to the three levels that form a regulatory enforcement regime. I have described these levels as: responsibilities regarding setting regulation; responsibilities regarding regulating and overseeing enforcement; and, responsibilities regarding the implementation of enforcement. To the latter I have added the enforcement tasks of private sector agencies.

7.3 Longitudinal comparison

7.3.1 Vancouver

The City of Vancouver has introduced a regime which allows registered architects and engineers to become a Certified Professional (CP) and in that position carry out enforcement tasks on behalf of the City. The CP Program applies to complex building work only, but the City has permitted non-complex building works to proceed under the CP Program through a separate equivalency process. All tasks relating to building regulatory enforcement can be carried out by the City's BCD as well.

The involvement of a CP does not relieve the applicant or builder from the involvement of the City. A CP is only allowed to assess building plans and construction work on behalf of the City. The City oversees the work of a CP; issues permits; and inspects construction work on a regular basis. The City of Vancouver will issue a building permit within a week after the CPs provided sufficient proof of a building plan complying with regulations (cf. CPP, 2003) – though some interviewees made clear that this time-frame is often stretched since 'wrinkles have to be worked out'. Without CP involvement the permit process might take up to twelve weeks. Generally the involvement of a CP was mentioned to be more expensive than involving the City in the assessment process, but the time gain appears to make up for the additional costs. To promote people using CPs, the City can give a permit fee reduction of 40% (cf. CPP, 2003). A moderate number of interviewees made however clear that in practice this permit fee reduction is often not granted. Reasons not to grant the permit fee reduction were said to come from the City's additional involvement in the CP's assessment processes.

The CP Committee, a joint effort of the City and the architects' and engineers' associations, runs the CP registration scheme, provides CP training and exams. Passing the exam; taking continuous professional development; payment of registration fees; and being registered as a professional architect or engineer is required to obtain the CP registration. The architects' and engineers' association have set requirements to their registered members: education, experience and insurance. These Associations oversee their members and have authority to discipline their members. The City of Vancouver has authority to monitor CPs and can issue a complaint at the CPs' Association.

An important aspect of the Vancouver regime are so-called Letters of Assurance. Professionals involved in building design have to sign a Letter of Assurance which clearly states that they take responsibility for those parts of work they are involved in – including the CP. Within the Vancouver regime no criteria are laid down to contractors. Note that no official qualifications apply to municipal building inspectors.

As registered architect or engineer the CP has joint-and-several liability for work he or she is involved in. The CP is allowed to:

- assess building plans and is required to coordinate communication with the City's BCD;
- assess on-site construction work and is required to update the BCD monthly on the project's process; and,
- issue documentation which states that the building plans, or the finished building comply with the building regulations. This documentation is not a building permit that gives approval to commence building, or occupy a completed building. Building and occupancy permits are issued by the City of Vancouver after administration of the CP's documentation.

Case findings

Interview accounts indicate that in terms of assessment approximately 90% of all complex construction work is assessed by Certified Professionals (CP) under the new regime. In general it was expected that clients would choose CP involvement as the CPs are able to provide a higher level of service, and especially a more speedy and flexible regulatory enforcement process than their municipal counterparts. Furthermore, general reference was made to BCD officials advising applicants to choose CP involvement when applying for a building permit for a complex project. A moderate number of interviewees mentioned a difference that appears to exist in the way CPs and municipal building officials carry out their tasks. The CP is trained in designing a building that complies with regulations, the building official is looking at what is not complying with the building regulations. An engineer clearly expressed this as:

> It might be more a 'following rules for the sake of rules' attitude for some [municipal building officials]. Certified Professionals might have a more broad view and a better understanding of the important issues in the process.

A majority of interviewees shared the opinion that the introduction of CPs has resulted in more compliance with building regulations – yet, no actual proof of these claims could be provided. In general the requirements set to authorize CPs were regarded as 'realistic'. Some interviewees regarded CPs as better qualified to assess building plans and construction work than their municipal counterparts. However, some interviewees recommended introducing

'on-site inspection experience' as requirement to the CP Program – it should be noted that the CP course program has a module on field review. A City official illustrated this by stating 'one cannot get on-site experience from textbooks'. Overall, the regime appears to have gained from the CPs ability to provide a more technical efficient assessment process, which may have resulted in a greater inspectorial depth.

A majority of the interviewees especially valued the training program provided by the City to train architects and engineers in order to become CPs. This training can be taken by other actors in the industry as well and this is apparently being done, though space for non-CPs is limited. As a result the general knowledge of building regulations was said to have improved in the building industry – both in the private sector and in the public sector. Yet, this improvement of knowledge appears only to have occurred regarding the design of buildings and not to have occurred regarding the construction of buildings – contractors and workmen appear not to have skilled-up (cf. Barrett, 2004). Since new buildings are in great demand, lesser skilled contractors and workers still can make a decent living some interviewees noted.

A moderate number of interviewees mentioned that setting requirements for builders would strengthen the regime. Under the current regime no requirements are set for contractors, and as a result, a provincial official made clear: '[someone] buys a pick-up truck and a hammer and becomes a builder (…) and they rely on the quality of the building inspector for safety issues.'

Another aspect of the new regime, which was generally valued, is the introduction of Letters of Assurance. These Letters were not specifically introduced because of the CP Program, but more commonly to clarify tasks and responsibilities of the different actors involved in the building and enforcement process. Different actors in the process have become more aware of their responsibilities and liabilities, which according to a moderate number of interviewees has resulted in more compliance with building regulations and fewer issues with accountability. By signing a Letter of Assurance the specific professional states that he has worked in compliance with regulations. The introduction of these Letters of Assurance was said to have crystallized responsibilities.

An overlapping of tasks and responsibilities in regulatory enforcement was sometimes seen as an issue of the Vancouver regime. Although the Letters of Assurance clearly state the responsibilities of a CP, City officials and CPs appear to have a different interpretation of their own and each others' responsibilities. This might result in liability issues should an incident occur.

Under the regime, a CP can join the design team from the start of a project, and sometimes even is the architect or engineer of the work. The CP has a coordinative and an advisory role in the design team. The CP is responsible for communication with the City. In this role the CP assesses the building plans and work under construction, but the CP is required to communicate with the City during the assessment process. A CP can be considered an inter-

mediary between the design-team and the City (cf. BCMH, 2007). The City does not lose revenue to CPs as they still charge fees, comparable with those under the old regimes, for the building regulatory enforcement process – for issuing permits and overseeing the work of CPs. Most non-complex building works – the 'moms-and-pops jobs' – are assessed by City officials, as was the situation prior to the CP Program. This doubling of tasks in which City officials partly repeat parts of CPs work can be considered to result in a loss of allocative efficiency. After all, the City could spend their time on processing other work. Yet, the City officials' oversight on CPs ensures that the City has considerable control over the work of CPs. This is regarded as 'a necessary check and balance to the system', a public official clarified.

The double function of some CPs, being both designer of a building plan and enforcer of the building regulations, might, according to some interviewees, result in conflicting interests[39]. A moderate number of interviewees however experienced no potential of conflicting interests. These interviewees valued the oversight models of the CP Program and made clear that the City's oversight on the CPs work makes CPs aware of their responsibilities.

CPs are subject to two models of oversight. First, every project assessed by a CP is overseen by City officials. CPs have to follow prescribed procedures, which include formal meetings with City officials. If from these meetings, or from re-assessment of building plans or construction work, discrepancies in the CPs work are being found, the City can start up a three-step process of action. Each step follows the former: a formal meeting with the CP; then a letter to the CP with a copy to its professional association; and finally, a formal complaint to its association. Another measure that can be taken is to send the application through normal City review. The refund then is lost and the CP's client will face a longer assessment process.

Second, as registered architects or engineers CPs are subject to oversight by their own associations as well – professional accountability. These associations will carry out an investigation after receipt of a complaint – which can be lodged by, amongst others, the City and clients of the CP. The associations have powers to discipline their members. Then, a moderate number of interviewees made clear that CPs value their cooperation with the City. Some CPs said that they can use a City official as the stick that is sometimes needed to gain compliance. 'In the case of difficult and powerful developers, the City can be an ally of the professionals', a CP made clear.

To conclude, the CP Program was generally experienced as a positive addi-

39 Note that specific conflict of interest provisions have been included in the CP Program. Self-assessment of their own work is not regarded as conflict of interest situation. Conflict of interest in the CP Program relates more to the misuse of authority for private gain (see for an extensive discussion on these topics, Rothstein and Teorell, 2008).

tion to the City's building control department. The City does not have to maintain a large and specialized staff; peaks in permit applications can be leveled out; assessment of minor construction work can still be carried out as under the old regime; and, due to CP involvement, the City reduces its liability exposure as the more complex – the more risky – buildings are being assessed by other actors. A former Chief Building Official of Vancouver said:

> It's not competition; it's working side by side. (...) Vancouver has had the [CP] Program for so long now that it has been found that the initial fears did not materialize.

These initial fears came from municipal building officials who feared losing their jobs to private sector actors. These fears still appear to live amongst building officials in other British Columbian municipalities, some interviewees mentioned. However, some municipalities have already introduced a comparable CP Program (BCMH, 2007). Another initial fear came from the possibility the CP Program provides of having architects or engineers in the role of designer and enforcer. As discussed, a moderate number of interviewees however made clear that the different forms of oversight in the regime guarantee the CPs' integrity.

7.3.2 Ontario

Under Bill 124 mandatory exams on the Building Code were introduced for officials at municipalities. Also assessment processes were reregulated: mandatory time-limits were introduced for both building plan assessment and construction work assessment; building permit forms were standardized; permit fees have to be set on a 'cost recovery' basis; and, annually a report has to be published on the departments' income through fees and costs (Hemson Consulting, 2008). Furthermore, under Bill 124 the option to contract out work to private sector actors was introduced – so-called Registered Code Agencies (RCAs). Finally, Bill 124 sets requirements to designers and engineers.

RCAs can be involved in building plan assessment and construction work assessment. RCAs have no authority to issue permits or to undertake prosecutions. These tasks have remained with the municipalities. Under the intentional scheme permit applicants, or their representatives, would be given the freedom to retain their own RCA. However, the municipalities feared this would result in conflicting interests, some interviewees made clear (cf. Short, 2005: 9). A representative of the Ontario Building Officials Association stated:

> We were concerned an independent builder could have someone working for him, he's paying him, they review his plans, and bring them in rolled up and we have to issue a permit without opening them up. We were concerned that that's the fox looking after the henhouse scenario. And we lobbied to have that removed.

As a result the regulations were changed and under the current regime only municipalities can enter into contracts with RCAs. Yet, despite these regulatory changes, still the danger of conflicts of interest was recognized (cf. Short, 2005: 9). This resulted in another amendment of regulations and conflict of interest provisions were taken up. Nevertheless, municipalities still feared to be 'the deep pocket' might liability issues rise due to a RCA's malpractice. To resolve this issue, legislation has been changed once more in order to grant municipalities immunity for the acts of RCAs (Short, 2005: 14-15) – still, disputes have again risen on the effects of this provision some interviewees made clear. Furthermore, municipalities may face monitoring costs and difficulties in setting up complex contracts (cf. Savas, 2002: 89-91; Van Slyke, 2003: 296-297).

RCAs have to meet the same criteria as municipal officials in order to be allowed to carry out assessment tasks. Both RCAs and municipal officials must complete a legal/process examination based upon the building regulations. In addition to this examination, the program requires that some RCAs and municipal officials successfully complete a technical examination that corresponds to their category of qualification. RCAs and municipal officials have to file their qualification information to a provincial government department. Finally, RCAs and municipal officials have to maintain their qualifications over time under a regular review cycle; RCAs have to hold professional indemnity insurance. The province has authority to monitor both RCAs and municipalities.

RCAs have joint-and-several liability for their involvement in a work and have the following enforcement tasks:

- assess building plans and construction work; and,
- issue plan review certificates, change certificates, and final certificates.

Case findings

From the interviews I learned that the possibility to involve RCAs in the enforcement of building regulations is hardly being used (cf. Hemson Consulting, 2008). Interviewees were generally aware of this situation, and some interviewees even mentioned that currently only one municipality has involved RCAs – a minor municipality in Ontario; unfortunately I could not get in contact with this municipality. Still this case appears of value for further analysis, since the reasons for non-involvement of private sector actors in regulatory enforcement may strengthen the understanding of possible impacts of certain regulatory enforcement regimes. Furthermore, the regime change consists of more than private sector involvement only. This case thus appears valuable to gain deeper insight into the impacts of other aspects of regime change – e.g. upscaling of inspectors skills through mandatory exams; and, a possible more streamlined permit process.

A majority of interviewees indicated that at the municipal level there is a

lack of trust RCA involvement. This was said to be the main reason why RCAs are not being contracted by municipalities. Although the original structure of RCA involvement was changed in order to grant municipalities immunity for the work of RCAs (Short, 2005: 14-15), still the potential of conflicting interests was named by some interviewees as reason not to involve RCAs. Though, not all interviewees shared these opinions and some made clear that the actual lack of experience with RCAs might result in some apprehensiveness at the municipalities.

Furthermore, the Ontario Building Officials Association pleas against RCA involvement, as it is expected that RCAs would imply that building officials lose their jobs – which confirms findings in previous research (e.g. Price, 2007: 1151). Finally, RCA involvement is regarded to potentially result in a decline of legal accountability. This when a municipal BCD issues a permit based on an inaccurate building plan or construction work assessment by an RCA (cf. Hemson Consulting, 2008: 19). Especially under the model of joint-and-several liability minor involvement in a project may have major consequences. Here a finding from a governmental inquiry, that was sometimes referred to as catalysts of the RCA regime, is of particular interest:

> 'Increasingly municipalities are paying damages assessed to other parties simply because the other parties do not have adequate liability insurance. Where the municipality is found even 1% liable, it may end up paying a much greater portion because of [the] so-called "1% rule". Municipalities have therefore become favorite targets because of their deep pockets' (Cerminara, 1995: 17).

Notably, for some interviewees in Ontario a general disfavor of private sector involvement in regulatory enforcement might exist after the Walkerton drinking water incident in which seven people died and over 2000 got ill. It is sometimes pointed out that one of the major causes for this incident was the role of private sector inspectors in inspecting and reporting the water quality (cf. Holme, 2003).

Also, in order to be able to involve RCAs municipalities do have to make amendments in their local by-laws. Some interviewees said that this is generally not being done, which makes RCA involvement even more difficult. The provincial government has authority to carry out oversight of the regulatory enforcement regime. The Province has no authority to discipline municipal BCDs – an essential aspect of the accounting relationship, disciplining, is missing. Currently oversight – e.g. monitoring or auditing – is hardly carried out, but some interviewees looked upon the legal appeal model as oversight. Applicants can appeal to a provincial government agency if they have a dispute with a BCD on the assessment process or on the permit issued. Appeal processes can be started to reactively control players in the regime; these processes however often consume much time and resources (cf. Bardach and Kagan, 1982: 10).

But not only municipal actions and fears stand in the way of private sector involvement in Ontario's building regulatory enforcement regime. Insurance appears to play a major part as well. One of the requirements for RCAs is to hold professional indemnity insurance. Some interviewees mentioned that obtaining and holding such insurance is difficult in Ontario. This may be because insurance companies wish to know what type of work the aspirant-RCA will get involved in before supplying an insurance policy, but the aspirant-RCA is required to hold an insurance policy to obtain work – a 'catch 22'.

This said, the requirements for RCA organizations to become registered and insured may also be too high, some interviewees said. To provide RCA service, an organization has to be able to provide all levels of engineering – a holistic approach. Not many organizations in Ontario have this capability and therefore joint-ventures should be formed if organizations wish to become an RCA. However, due to potential liability issues organizations appear to be less willing to form joint-ventures.

Here the aim to improve the regime's accountability by introducing strict entry criteria appears to conflict with the aim to improve the regime's efficiency since these strict criteria restrict RCA participation. The introduction of the strict criteria, a provincial official made clear, came from 'the need to avoid coordination and information sharing problems arising from the situation of many private inspection firms reviewing plans or construction [of the same project].' And, although such strict criteria were implemented some interviewees would like to see even stricter criteria – especially regarding on-site construction work assessment. A Chief Building Official made clear:

> After a year of being out of high school, having written a number of exams, having taken courses – it wouldn't even take a year – you could potentially have a nineteen year old person in the government that is qualified to do plan reviews, to do inspections, and having never set foot on a construction site. And that to me is an atrocity... it is trouble waiting to happen.

Yet, the provincial qualification criteria are only set as minimum requirements some interviewees made clear. Municipalities can set their own criteria for staff – the Ontario Building Officials Association has introduced a voluntary certification program, which includes educational and skill requirements. Some other interviewees however mentioned that under the current regime it already is very difficult to find employees that meet the qualification criteria. Higher criteria were expected to aggravate these difficulties, or even gridlock the regime.

Then, as discussed, the regime change consisted of other aspects as well. Generally the introduction of qualification criteria was valued by the interviewees. Architects and engineers were regarded as being more aware of building regulation under the new regime, and as a result the building plans they

submit appear to meet, at least, application criteria. This results in a faster plan assessment process. Though, this can be considered a 'paper advantage', as some interviewees mentioned, since under the old regime submitted building plans that met application criteria could be assessed within time-frames as well. Some interviewees made clear that also the level of code compliance has improved. Some interviewees furthermore experienced that the introduction of qualification criteria to municipal officials has resulted in a more homogeneous permit assessment process throughout the province. However, a moderate number of interviewees made clear this is not the case, and still much variance exists between different municipalities and individual municipal officials (cf. Hemson Consulting, 2008). The power delegated to the municipalities ensures they have great freedom to establish their own processes and procedures. As a result major differences exist between the municipalities.

Another aspect of the new regime, valued by some interviewees, is the mandatory process time-limits municipalities have to meet. However, some interviewees made it clear that municipalities have found a way out of meeting time-limits by introducing an obligation to the permit applicant, to state that the plans submitted do or do not meet permit application requirements. If the applicant states these do not meet the requirements, municipalities are allowed to by-pass the time-limits; if the applicant states the plans do meet the requirements but the municipality finds they do not, the municipality may issue a fine and finds a reason to by-pass the time-limits. Officials from different municipalities however made clear that these fines are not a general rule. Furthermore, they noticed, Provincial legislation provides for the exclusion of applications from the time limits, when applications are not complete. This said, some interviewees made clear that this is an on-going issue in Ontario. Municipalities find many permit applications are 'incomplete or obviously incorrect' but must review the application. Much time then is put into plan assessment and outlining of all deficiencies 'even when there is no possibility that the project could ever be constructed'.

Less valued is the departure from an original intention of changing the building regulatory enforcement regime in Ontario: introduction of skill requirements to builders (cf. BRRAG, 2000; Cerminara, 1995). A moderate number of interviewees made clear that the current regime could have been strengthened by requiring builders to meet certain criteria. Under the current regime there are no requirements for builders to show that they are competent to do their work, no requirements for insurance, and no requirements for liability. It appears that the builders have lobbied against the implementation of these requirements, as a Chief Building Official made clear:

> The contractors are smart in a way and realized early on that qualification wasn't the issue. It was liability. And if they were required to be knowledgeable, or qualified, that would effect their level of responsibility. So, they [were against], not so much the qualifi-

cation, but the insurance. They [were against] the qualification but it was because of the cost of insurance that would be associated with being qualified.

7.3.3 Alberta

In the province of Alberta a regime has been introduced under which all agencies, including municipalities, have to be accredited in order to be allowed to carry out building regulatory enforcement tasks (cf. SCCA, 2003; SCCA, 2004; SCCA, 2006). The Safety Codes Council (SCC) is responsible for the accreditation scheme. The SCC is an independent statutory authority, self-funded through a permit levy; and consists mainly of private sector stakeholders. The Ministry of Municipal Affair's Safety Service provides administrative support to the SCC. The combination of the SCC and the Safety Service may be understood as a 'public-private partnership'.

Within the province of Alberta, municipalities can choose to take up responsibility for the enforcement of building regulations. If they choose to take up this responsibility, municipalities have to be accredited according to the Provincial Accreditation regime. Once accredited municipalities have another choice: holding an own staff for building regulatory enforcement, or hire an accredited private sector agency to carry out these tasks. In the latter situation the municipality enters into a contractual relationship with an accredited private sector agency of their choice.

If a municipality chooses not to take up responsibility for the enforcement of building regulations the provincial government is – indirectly – responsible for this regulatory enforcement. To ensure building regulations are enforced in these areas, the SCC maintains a relationship with a number of accredited private sector agencies. When an aspirant builder wants to apply for a building permit in such an area, he can choose from these accredited private sector agencies to involve in his project.

In order to become accredited a municipality or accredited private sector agency has to provide a Quality Management Plan to the SCC, which states how the municipality or accredited private sector agency will carry out regulatory enforcement. Once accredited private sector agencies and municipalities are allowed to carry out all assessment tasks and issue permits. SCC has authority to audit both private sector agencies and municipalities, and has power to discipline violators. Contractors are not regulated.

Note that this structure implies three possibilities for regulatory enforcement. First, a municipality takes up responsibility for regulatory enforcement and does so through a municipal BCD – this option is taken up in the major municipalities. Second, a municipality takes up responsibility for regulatory enforcement and does so by contracting out regulatory enforcement to private sector agencies – this option is taken up in smaller municipalities. Third, a municipality does not take up responsibility for regulatory enforcement but leaves this to

the SCC – this option is taken up in rural jurisdictions mostly. Although I could not obtain specific numbers on how many municipalities took up which possibility, it appears that the latter option is the least chosen: out of 365 municipalities in Alberta about 290 are accredited in the areas 'building', 'plumbing', 'electrical'and 'gas'; and about 315 are accredited in the area 'fire'.

Private sector agencies have joint-and-several liability for their involvement in a work and have the following enforcement tasks:

- all: building plan assessment; permit issuance; on-site construction assessment; follow-up enforcement tasks; and issuance of occupancy approval.

Case findings

A majority of interviewees valued the introduction of the new regime, and a moderate number of interviewees expect compliance has become better. Especially in minor municipalities and remote areas, these interviewees said, compliance might have become better as under the current regime building regulatory enforcement is carried out in these areas. For the larger municipalities little has changed, some interviewees mentioned.

Some interviewees made negative comments on the choice municipalities have to be accredited. These interviewees would welcome a regime under which municipalities are required to take responsibility for regulatory enforcement, but are given the possibility to enter into contracts with accredited agencies to have these carry out the actual enforcement tasks. Financial relationships under such a regime would then exist between the municipality and a permit applicant, and between the municipality and an accredited private sector actor. It was expected that under such a regime municipalities would be better to steer on the quality and number of inspections delivered by accredited private sector actors, although this would mean more municipal involvement. Yet, these interviewees mentioned, strengthening the municipalities' involvement in building regulatory enforcement might result in liability issues would an incident occur. Under the current regime municipalities already worry about their liability when they involve accredited private sector actors, some interviewees made clear. Even more, due to the model of joint-and-several liability municipalities fear liability issues from any involvement in building regulatory enforcement. A city official's statement on advising applicants on how to reach compliance is characteristic:

> The problem with advising is liability. The lawyers will advise us: 'Don't go advising people on solutions – it's up to them to come up with solutions.' But in practical manner... if you're out on a job site and if you can just see [that something is wrong] you go, from the goodness of your heart, try to help someone.

The concept of private sector involvement through accredited private sector actors was supported by a moderate number of interviewees. Accredited pri-

vate sector actors were understood to have experience with and knowledge of building regulations. Accredited private sector actors were also valued as they can specialize in certain building types. It has to be noted that not only private sector involvement in the new regime is regarded as cause for better compliance with building regulations. Different players in the building industry appear to have become more aware of regulatory enforcement now that building regulations are enforced in all areas. There is a clear enforcement hierarchy in place under the new regime. The higher chance of being found in violation with regulations could be an incentive to comply.

Furthermore, under the new regime new training programs were introduced for different players in the building industry. Some interviewees noted that a better understanding of building regulations throughout the industry has had a positive impact on compliance. Different parties in the industry – including municipalities – were experienced as more professional under the new regime. The new regime was found to have resulted in more educated and experienced enforcers than under the old regime. At the Safety Codes Council it was mentioned:

> Before you could go from hammering nails to inspecting buildings. Now there is compulsory training.

Questions were however raised with private sector involvement as well. A moderate number of interviewees pointed out that accredited private sector actors appear to have a different approach to regulatory enforcement than their municipal counterparts – this in spite of the SCC's efforts to equalize processes, for instance through handbooks (SCCA, 2004). For accredited private sector actors regulatory enforcement is a business and at a certain point in the enforcement process an accredited private sector actor has to look at this business from a profit point of view. As a result accredited private sector actors might be less responsive to deficiencies and might try to save money on restricting the number or the quality of inspections, a moderate number of interviewees said.

According to these interviewees this difference in approach, or attitude, is most evident in situations where follow-up enforcement tasks have to be carried out to gain compliance with building regulations. For instance, after a violation with regulations has been found, the offender will be requested to bring the work into compliance. In order to check if the work has actually been brought into compliance, the inspector should return to the construction side. However, as accredited private sector actors conclude contracts based on a specified number of inspections it was said that re-inspection of work is often not carried out by accredited private sector actors: 'When agencies don't get paid they don't do it', a provincial official made clear. This issue was clarified further by a municipal official:

> Our criticism on the private industry is that, because of time constraints, they sometimes say to the builder 'correct and proceed'. And on lesser issues that is what our inspectors will do, but on more significant issues we'll say 'correct and call us back'. And as a result of that... trying to do a fine balance between 'correct this and call us back' versus 'correct this and proceed' we probably, in many cases, do sixteen or seventeen inspections on a house. And that includes gas and electrical and mechanical and building [envelope]. But that's way in excess of one inspection per major activity [as the private inspectors do]. So on a house [private inspectors] might cut the inspections back to five or six inspections and in some case the [private] inspector will overlap the duties. In some cases the [private] inspector will do both building and plumbing. (...) So they might hit a house only once or twice and then it's finished.

But also in less evident situations differences appear to exist between accredited private sector actors and their municipal counterparts; for instance training new staff. Within municipalities, some interviewees made clear, new staff is trained and overseen by senior staff for a period of time; whereas accredited private sector actors want to get their people 'into the streets' as quick as possible.

Another situation might be the overall help non-professionals in the building industry get. Some interviewees made clear that a difference can be made between different groups of applicants: 'moms-and-pops' and professionals. The former 'need more assistance' as they are unfamiliar with the building process. The latter are expected to be familiar with the process and might get less assistance from municipalities, a provincial official made clear: 'We have les pity on the pro's.' However, interviewees generally did not experience differences in the way these groups were treated by accredited private sector actors. So-called creaming appears not to occur in the regime since private sector actors have to work with both 'moms-and-pops' and professionals.

The difference in attitude between public and private sector inspectors made a moderate number of interviewees question the overall integrity of private sector actors. Some interviewees added that the integrity might also be weakened in those areas where applicants can choose between different accredited private sector actors – the areas where the SCC has entered into contracts with private sector actors. If an accredited private sector actor is known in the business to be harsh, builders might not want to involve this particular actor some interviewees feared.

Another issue mentioned is the provincial government's dependence on a small number of accredited private sector actors. When the regime was introduced, it was expected that accredited private sector actors would become small agencies – one or two men offices – that would be scattered around the province. It turned out that due to competition a small number of large agencies exist – these bought out the smaller agencies. With only a small number of agencies in the field the provincial government faces difficulties

to 'steer' these agencies' behavior. The strongest measure the provincial government can take is withdrawing their license, which in practice means that the accredited private sector agency has to quit working. However, taking an accredited private sector agency out of the regime would imply that building regulatory enforcement would no longer be carried out in parts of the province. A provincial official wondered: 'What would we do if [the accredited private agencies] close their doors?'. This issue is strengthened because accredited private sector agencies sell a package of enforcement tasks up-front to their clients. Taking out an agency would therefore also mean that their clients lose their money.

Under the new regime the Safety Codes Council has authority to monitor municipalities and private agencies and has power to discipline accredited private sector actors – an administrative accountability model. In practice the Safety Codes Council monitors municipalities and accredited private sector actors every second year and can withdraw the accredited private sector actor's license – this was sometimes referred to as auditing. A moderate number of interviewees looked upon this model as insufficient. Especially as auditing is carried out on a low frequency and audits appear to be process audits only. These interviewees made clear that audits should focus on content, not on process only. Then, when violations are found from monitoring accredited private sector actors, these should be penalized some interviewees made clear. Currently the Safety Codes Council appears to be too lenient when it comes to disciplining accredited private sector actors. As a result private sector involvement might get a bad name: 'A handful makes us all look bad and drag us all down' an accredited private agency's representative stated.

Furthermore, it was noted by some interviewees that the regime would be strengthened when contractors would be stronger regulated and enforced. Now issues with contractors have to go through court which can turn out to be time-consuming for the participants involved. Another change that would be welcomed by a moderate number of interviewees is more consistency in enforcement and interpretation of the codes. As in the other regimes analyzed, regulatory enforcement is carried out differently by every municipality and accredited private sector actor, but also by every single inspector.

Next, a notable insight on the private agencies was provided by some interviewees. After the introduction of the new regime, the provincial government stimulated their own building officials to start private agencies. In the early years of the new regime therefore most private agencies were run by former public officials. Although private actors, these former officials were regarded as being used to carrying out qualitatively sound inspections. Interviewees shared the opinion that these former officials would carry out their work in a similar way as accredited private sector actors – they still shared the ethical standards of public officials. After a number of years ownership changed;

Table 7.3 Impacts and regimes

Impacts	Regimes (types and cases)		
	Limited		General
	Vancouver	Ontario	Alberta
Effectiveness	++	x*	+
Efficiency	++	x*	+
Equity	x	x*	x
Administrative accountability	x	x*	-
Legal accountability	--	x*	-
Social accountability	x	x*	x

++ = more improved, + = improved, – = declined, -- = more declined, x = not traced

**) As a consequence of the, in general, absence of RCA involvement in the Ontario regime.*

and 'real' private actors took over. With this change also a change in attitude appears to have come into existence, which was regarded to have resulted in integrity issues. 'Safety made way for money' an accredited private agency's representative mentioned.

Finally, regulatory enforcement in the major cities – e.g. Calgary, Edmonton and Lethbridge – through municipal BCDs was generally valued positively by different actors in the building industry. Due to a large staff BCDs appear to be able to keep process times reasonable and hold experience needed. The mandatory accreditation guarantees a certain level of expertise – comparable with that of private sector agencies and their staff. Furthermore, the major municipalities appear to keep contact with the different actors in the building industry to sense what is going on. A 'proactive approach towards the construction industry' was repetitively mentioned.

7.4 Summary and discussion: tradeoffs

The main question addressed in this chapter is: *What impacts have occurred after the introduction of private sector involvement in building regulatory enforcement regimes in different jurisdictions; and, how?* Throughout the chapter I discussed the impacts of private sector involvement in three Canadian jurisdictions – based on the evaluation criteria discussed in Chapter 4. By combining these impacts insight may be gained in the tradeoffs that have occurred. In Table 7.3, I present these tradeoffs for the regimes analyzed. In this table I rank the impacts on an ordinal scale: improved or declined compared to the status quo ante. If a case shows relatively more improvement or decline I indicate this as well in Table 7.3.

In both the Vancouver and the Alberta regime the introduction of private sector involvement was said to have resulted in x-efficiency and effectiveness gains due to private sector actors' ability to specialize – no secondary data is available to validate these claims. The gains appear most evident in the Vancouver regimes where CPs appear to have become 'complex project specialists'. In Alberta accredited private sector agencies can be considered to be more of a substitute for municipal BCDs, giving them less chance to spe-

cialize as CPs can. Gains were not identified in Ontario since RCAs are hardly involved in any building projects.

However, bringing in the private sector has resulted in unintended impacts as well: a decline of different accountability types was mentioned during the interviews. Notably, contrary to the Australian cases equity issues were not mentioned. In Vancouver this may be an unintended impact of making a formal split in groups of permit applicants: CPs are only allowed to process complex building works – some exemption apply though, as has been illustrated. Complex building work is often carried out by professionals in the building industry and is due to its scale often more profitable to assess, than minor construction work. In other situations this might have led to CPs creaming these profitable jobs and leaving the City with the less profitable jobs. An advantage of this formal split for the City itself is that it does not have to keep a specialized staff and that it can focus fully on the non-professionals needs and wishes in statutory building assessment. Then, in Ontario and Alberta private sector actors have little choice which regulatees to work with. In Ontario the municipal BCD enters into a contract with RCAs; and in Alberta private sector actors either enter into a contract with a municipality or the provincial SCC.

As in the Australian regimes analyzed (see Chapter 6) the gains appear to be related to the amount of private sector involvement in the execution of enforcement tasks – the more involvement the more gain. And similarly as in the Australian regimes overlapping of tasks may undo efficiency gains. In the Vancouver regime the City has considerable control over private sector actors. However, this control comes with a price: a loss of allocative efficiency, since City officials are actively involved in every CP project.

A decline of accountability was mentioned regarding bureaucratic, legal and social accountability types, discussed in Chapter 4. Regarding administrative accountability interviewees expressed concerns over oversight on private actors' conduct. In Vancouver these issues were generally mentioned as a potential danger, but not as an actual impact. The checks and balances through municipal oversight on CPs work was valued as a positive aspect of this regime. Note here that this public oversight is strengthened by private oversight on CPs from their trades' associations. In Alberta the accountability model was regarded as insufficiently applied – a too low frequency of auditing and the lack of disciplinary measures taken.

In all regimes a decline of legal accountability was mentioned by a moderate number of interviewees. In cases analyzed the government is still indirectly responsible for the regulatory enforcement regime. Potential problems were mentioned due to overlapping tasks and responsibilities. Furthermore, the model of joint-and-several liability was mentioned an issue by a majority of interviewees. Lengthy discussions on joint-and-several liability within the Canadian regimes are reported (e.g. Barrett Commission, 1998: Chap-

ter 2; Cerminara, 1995: 17; CHBA, 2001: 3), in which the main issue comes to municipalities being the 'deep pocket' in claim cases. In the Vancouver regime a solution is sought in the introduction of the Letters of Assurance. In Ontario municipalities are granted immunity for the acts of RCAs. Still a moderate number of interviewees questioned if the City of Vancouver and the municipalities in Ontario will stay out of court should an incident due to private sector assessment result in a case. Liability appears a lesser issue in Alberta since municipalities can choose to not to take up responsibility for building regulatory enforcement. Yet, those municipalities in Alberta who entered into contracts with private sector actors might face liability issues should an incident occur.

Finally, a potential decline of social accountability was referred to in Alberta only. Vancouver's relatively stringent oversight models – CPs are overseen by both the City as their trade associations – was expected to ensure CPs integrity and strengthen their credibility. In Alberta a moderate number of interviewees observed that a difference in attitude towards regulatory enforcement appears present between the public and the private sectors. Private sector actors were regarded to look upon regulatory enforcement as doing business, which may result in integrity issues. Credibility issues as a result from this attitude were however not mentioned.

8 Comparing regulatory enforcement regimes

Science may be described as the art of systematic over-simplification
Karl Popper[40]

In Chapters 6 and 7 I discussed private sector involvement in respectively Australian and Canadian building regulatory enforcement regimes. In these chapters my focus was identifying the impacts of private sector involvement – a longitudinal comparison of the present situation with the former 'pure' public regimes. When comparing the key-characteristics of the regimes analyzed it becomes clear that the regimes show many similarities and differences. For instance, the design of the South Australian regime is closely related to the Vancouver and Ontario regime; and the Victorian regime shows almost a similar design as the Alberta regime. When comparing the impacts of the regimes it becomes clear that the regimes partly resulted in similar impacts. Yet, also differences are found when comparing regime designs and impacts. This may indicate that certain regime characteristics, or combinations of characteristics foster particular regime impacts. In this chapter I pay more attention to these similarities and differences between the regimes and how these are related to regime impacts. The question motivating this chapter is: *What regime characteristics or combinations of characteristics are related to what impacts; and, how?*

In order to answer this question I review the propositions on regime impacts introduced in Section 4.4 and discuss my empirical findings. I start by first identifying the regime characteristics that may be related to specific impacts traced. Then I further analyze which combination(s) of characteristics relate(s) to these impacts – where necessary I apply QCA methodology as discussed in Chapter 5. Finally, I draw conclusions.

8.1 Characteristics of the regimes

The different characteristics of the regimes have been discussed to some length in Chapters 6 and 7. Following on from Lijphart (1971: 690) I restrict myself here to simplification of these characteristics in order to be able to further analyze my data.

Following on from QCA methodology a truth table can be drawn up to present the different cases as raw data matrices. Table 8.1 presents a complete truth table of all key characteristics that together make up the regimes analyzed and impacts traced. Since all regimes analyzed consist of a unique combination of key characteristics, each row represents an individual regime. For instance, the Queensland regime is represented as a case in which:

40 Popper, K.R. & W.W. Bartley, 1982, *The Open Universe. An argument for indeterminism*, Totowa, Rowman and Littlefield: 44.

Table 8.1 Truth table

Case	Key-characterstics								Impacts					
	Regime design					Environment			O1	O2	O3	O4	O5	O6
	Execution			C&O	Relationship									
	T	P	F	O	R	D	B	L						
South Australia	0	0	0	0	1	1	0	1	1	1	1	1	1	1
New South Wales	1	1	0	0	1	1	0	1	1	1	1	1	1	1
Australian Capital Territory	1	1	0	0	-	1	1	1	1	1	0	0	1	1
Queensland	1	1	1	0	1	1	0	0	1	1	1	1	1	1
Victoria	1	1	0	1	1	1	1	1	1	1	1	1	1	1
Vancouver	1	0	0	0	0	1	0	0	1	1	0	0	1	0
Ontario	1	0	0	0	0	1	0	0	-*	-*	-*	-*	-*	-*
Alberta	1	1	1	1	0	1	0	0	1	1	0	1	0	1

** As a consequence of the, in general, absence of RCA involvement in the Ontario regime – see Chapter 7.*

T = assessment task, some (0) or all (1); P = permit issuance; C&O = level criteria and oversight; O = public oversight agency (0) or public-private oversight agency (1); R = competitive relationship (1), or complementary relationship (0); D = criteria for architects and engineers (designers); B = criteria for contractors and tradesmen (builders); L = joint-and-several liability (0) or proportionate liability (1); 0 = no/absent, except where otherwise specified; and, 1 = yes/present, except where otherwise specified.
Impacts: O1= effectiveness gains; O2 = efficiency gains; O3 = equity issues; O4 = administrative accountability issues; O5 = legal accountability issues; O6 = social accountability issues.

- private sector actors are allowed to carry out all assessment tasks, therefore the characteristic 'assessment tasks' (T) is coded '1' – a '0' means *not* allowed to carry out all assessment tasks;
- private sector actors are allowed to issue permits, therefore the characteristic 'permits' (P) is coded '1' – a '0' means *not* allowed to issue permits;
- private sector actors have to take up follow-up enforcement tasks such as prosecution, therefore the characteristic 'follow-up enforcement tasks' (F) is coded '1' – a '0' means that follow-up enforcement tasks *do not* have to be taken up;
- private sector actors stand in a competitive and not a *complementary relationship* with BCDs, therefore the characteristic "relationship" is coded '1' – a '0' means a complementary relationship;
- private sectors are overseen by a public agency, therefore the characteristic 'oversight agency' is coded '0' – a '1' means a *public-private* oversight agency;
- designers, such as architects and engineers, have to meet certain legal criteria to be allowed to carry out their profession and/or that these criteria are enforced, therefore the characteristic 'criteria for designers' (D) is coded '1' – a '0' means that such criteria and/or the enforcement of these is *absent*;
- builders, such as contractors and craftsmen, do not have to meet certain legal criteria to be allowed to carry out their profession and/or that these criteria are *not* enforced, therefore the characteristic 'criteria for builders' (D) is coded '0' – a '1' means the *presence* of such criteria and/or the enforcement of these;
- a model of joint-and-several liability applies, therefore the characteristic 'liability' is coded '0' – a '1' means that a model of *proportionate liability* applies;

Furthermore, the impacts of the cases are represented in Table 8.1 as well.

When an impact was traced as present, this is coded '1'; when an impact was not traced, this is coded '0'; and, due to the absence of data in the Ontario regime this case is coded as '-'.

8.2 The relationship between regime characteristics and intended impacts

In Section 4.4 I stated expectations on regime impacts. My overall expectation was that private sector involvement results in intended impacts such as gains in effectiveness and efficiency; and, at the same time, private sector involvement results in unintended impacts such as equity issues and a decline in accountability. I furthermore drew up the expectation that private sector involvement is directly related to these impacts: more private sector involvement results both in more intended and unintended impacts.

Effectiveness

Measuring an increase or decrease in compliance with building regulations is complex, since building plan and on-site construction work assessment often only provides reasonable information that the building design and construction work do not violate building regulations – full compliance is difficult to measure (see Chapter 3). Still, a majority of interviewees' accounts and returned additional questionnaires indicates a perceived gain in compliance due to private sector involvement compared to the former 'pure' public regimes. Interviewees and secondary accounts discuss the advantages of private sector actors' ability to specialize (cf. EI, 2002: 40) and prior research finds that greater inspectorial depth is gained due to such specialization (cf. Ayres and Braithwaite, 1992:104; Baldwin and Cave, 1999: 126). Here it should be noted that municipal building control departments (BCD) often have a limited number of staff, but has to be able to deal with all assessment work provided. This makes that BCDs often hold staff that has general knowledge instead of specialist knowledge. Assuming that generalists lack knowledge to carry out an in-depth assessment of a complex construction work – for instance a hospital – it may be argued that a specialist is better able to assess such a complex construction work and finds more deviations, if present. If found, such deviations can be adjusted and a higher level of compliance is gained.

Interviewees indicated that especially assessment tasks – building plan assessment and construction work assessment – influence effectiveness gains. These are the characteristics that were regarded as providing the possibility to specialize; permit issuance is regarded a general administrative task; and, follow-up enforcement – such as issuing warning letters, or instituting proceedings against offenders – were regarded as legal tasks. Both these administrative tasks and legal tasks are not related to the particular skills of

private sector actors. Case findings suggest that in the South Australian and the Albertan regimes effectiveness gains have less impact than in the other regimes analyzed. As Table 8.1 illustrates, the South Australian regime is the only regime in which private sector actors are not allowed to carry out all assessment tasks, but building plan assessment only. In Alberta, however, private sector actors are allowed to carry out all assessment tasks. This implies there may be another characteristic of the regime related to the impact traced. In Chapter 7 I argued that this particular difference in impact is related to Albertan private sector actors' lesser ability to specialize than private sector actors in the other regimes analyzed. In Alberta private sector agencies often replace municipal BCDs and therefore the strength of private sector involvement – specialization – might not be fully utilized.

A question remains: does the relationship between the public and the private sector in the regimes analyzed influence the effectiveness gains; and does regime environment matter? In Appendix J, I apply QCA methodology on the data collected. From this analysis it becomes clear that the relationship between the public and the private sector has little to no impact on effectiveness. Yet, regime environment appears to influence effectiveness gains: private sector inspectors who are allowed to carry out all assessment tasks in combination with strong criteria set to designers has most positive impact on effectiveness gains. More knowledgeable designers – architects and engineers – may be expected to supply designs that either show more compliance than less knowledgeable designers, or at least show more compliance with application criteria. An oft expressed complaint during the interviews was that designers just hand in anything, irrespective of criteria set to applications. Meeting these application criteria would make it easier for inspectors to assess work. The same reasoning may be applied to builders – contractors and tradesmen: an oft expressed critique was that builders lack knowledge and experience. Regulatory requirements to this group – entry criteria to professions and ongoing professional development – were regarded as needed to make the regulatory enforcement regime more effective. Also here skills appear to be related to regulatory effectiveness. As has been noticed before: the day-to-day effectiveness of regulatory measures strongly depends on the training an diligence of practitioners in the field (Gunningham et. al., 2003: 1).

Efficiency

Closely related to these effectiveness gains are efficiency gains. From the interviewees' accounts and secondary data analyzed I learned that private sector involvement made the assessment and permit process more streamlined and resulted in time savings for applicants. Australian interviewees generally and a majority of the Canadian interviewees agreed that private sector involvement has resulted in efficiency gains compared to the former 'pure' public regimes. Again here case findings suggest that the private sector actors'

ability to specialize has a positive impact on efficiency: more experience with a certain construction type may result in a speedier assessment process since the inspector knows 'where to look and what to look for'. Yet, a difference in incentives and administrative procedures was mentioned as well. The private sector actor might be willing to speed up a process when this results in more income, whereas a municipal BCD charges fixed fees and pays out its staff a fixed salary. Furthermore, the private sector actor might face less time delays in administrative procedures or channels.

Time delays were found an issue in the South Australian regime. In South Australia interviewees mentioned a loss of allocative efficiency due to overlapping tasks. Particularly the passing on of assessment documentation to municipal building control departments was regarded as a loss of the advantages of private sector involvement. The loss here is the reduction of process time gains realized by private sector actors. Yet, also the actual doubling of administrative tasks may be regarded as a loss of allocative efficiency, and following on from Leibenstein (1966) it may be argued that welfare maximization could be optimized if unique resources would be used for unique goals. In addition, in the South Australian regime different actors are involved in the different stages of the enforcement process. It could be argued that knowledge on the project gained in an early stage of the process may be lost when passing on the project to another actor, and that resources are lost when this latter actor has to regain this knowledge in a later stage of the process.

In the other regimes analyzed also a less optimal allocation of resources was traced. Like the South Australian regime, the Vancouver regime appears most disadvantaged by overlapping tasks, since in this regime private sector actors cannot issue a permit but have to pass their documentation on to the City of Vancouver's BCD. The remaining Australian regimes only show overlapping of administrative tasks when a private certifier reports issued permits to the local building control departments. Here it may be assumed that future ICT tools can reduce such overlapping of administrative tasks to a minimum (see for discussions on ICT and public service delivery, for instance, Ancarani, 2005; Beyon-Denis, 2005; Saxena, 2005).

The questions that remain are: does private sector involvement in follow-up enforcement influence efficiency gains? Does the relationship between the public and the private sector in the regimes analyzed influence the x-efficiency gains? And does the regime environment influence efficiency gains? In Appendix K, I apply QCA methodology on the data collected. From this analysis it becomes clear that private sector involvement in follow-up enforcement, such as issuing warning letters or instituting proceedings against offenders, does not impact efficiency. Here it may be argued that this particular phase of regulatory enforcement differs from assessment and therefore requires different skills. Given most private sector actors background, technical engineers, these actors may be expected to have more ability to specialize in a certain

technical enforcement tasks than in legal follow-up enforcement tasks. Then, regime environment seems to influence efficiency gains for the same reason as effectiveness gains: more knowledgeable designers and builders may carry out work that either shows more compliance or is easier to assess. Finally, from the analysis it remains unclear if, and if so, how the relationship between the public and private sector influences efficiency gains.

These findings partly contradict my proposition, since the relationship between private sector involvement and effectiveness and efficiency gains appear less directly related and less far reaching than I assumed. Based on this analysis I conclude:

> Private sector involvement in building regulatory enforcement regimes is likely to result in effectiveness and efficiency gains. Case findings suggest that efficiency gains are primarily to be expected from private sector involvement in assessment tasks, such as building plan and construction work assessment. A relation appears to exist between these tasks and gains: the more assessment tasks private sector actors are involved in the more gains are to be expected. Here the strength of private sector involvement comes from specialization in technical assessment tasks. Then, case findings suggest that efficiency gains are primarily to be expected from private sector involvement in both assessment tasks and permit issuance. Again a relation appears to exist between these tasks and gains: the more tasks – both assessment and permit issuance – private sector actors are involved in the more gains are to be expected. Here the strength of private sector involvement comes from both specialization in technical assessment tasks as in keeping the enforcement process to a minimal number of actors: overlapping of tasks was found to have a negative impact on efficiency. Then, a certain tipping point appears to exist after which more private sector involvement does not add to an improvement in efficiency: private sector involvement in follow-up enforcement tasks – such as issuing warning letters, or instituting proceedings against offenders. Furthermore, criteria set to designers and builders may add to both effectiveness and efficiency since work from more knowledgeable designers and builders is expected to either show more compliance, or to be easier for inspectors to assess. Finally, the relationship between public and private sector actors in a regime does not appear to have an impact on effectiveness.

Notably, case findings also suggest that private sector involvement has resulted in a professionalization of BCDs, which in its turn results in effectiveness and efficiency gains. In order to keep up with their private sector counterparts, BCDs adopt the qualities that are ascribed to private sector actors: a moderate number of interviewees experienced a move towards a better provision of services by BCDs since the introduction of private sector involvement (PC, 2004: 221; VCEC, 2005: 82), which strengthens findings recently reported by Price (2007) who finds an increase of quality of public agencies' service delivery under competition. Not only was this professionalization mentioned in the Australian regimes, case findings suggest this was al-

so an impact in the Ontario regime were private sector is currently but a potential competitor.

8.3 The relationship between regime characteristics and unintended impacts

Equity

Not only intended impacts and gains were identified from private sector involvement in the Australian and Canadian building regulatory enforcement regimes. As expected, unintended impacts and disadvantages were traced as well. To start, case findings suggest a decline of equity – 'treat like cases alike' – due to a competitive private sector involvement in the Australian regimes. From analyzing the cases it became clear that in building regulatory enforcement a broad distinction into two groups of regulatees can be made: professionals in the building industry such as developers, contractors, architects, and engineers; and non-professionals in the building industry, ordinary citizens or the frequently mentioned 'moms-and-pops'. The former group is professionally and frequently involved in construction works and building regulatory enforcement; the latter group is more personally and occasionally involved in construction work and building regulatory enforcement. This broad distinction resembles Marc Galanter's typology of regulatees in legal systems and as his expressive terminology, which clearly points to the distinctive characteristics of the two groups, is applicable to the respective groups as well: 'repeat players' and 'one-shotters' (Galanter, 1974: 97). Subsequently, a broad distinction may be made into the type of work provided by these groups: the repeat players are generally involved in major and often more complex construction works; the one-shotters are generally involved in minor and often less complex construction works. Major jobs are by and large more profitable to assess than minor jobs. Furthermore, Australian municipal BCDs face regulated fees under which the assessment of minor jobs is loss-making, whereas profitable fees for major jobs have to cover these losses. Besides, the regulatory restrictions for municipal building control departments regarding fees and the requirement to process all work supplied whereas private sector actors may choose who to work with. This led to a criticism from Australian municipalities that 'a level playing field does not exist for Councils' (NSW Parliament, 2002: 112-113).

From the interviewees' accounts and secondary data analyzed I learned that the Australian private certifiers cream the market for profitable jobs and leave less profitable jobs to municipal BCDs. This finding confirms other research (Bailey, 1988: 304; Hawkesworth and Imrie, forthcoming 2009; Stoker, 1998: 23). In itself creaming does not appear to be a negative effect of the particular Australian regimes. As the interviewees' accounts clarify, private cer-

tifiers have specialized in certain types of construction work and supply specialized service, sometimes even for a lower price than their public counterparts do. This makes private certifiers the obvious choice when planning to construct a certain type of work. Furthermore, their specialized service may result in a more effective and efficient assessment process: both the private certifier and his client gain – gains that, for example, were also identified in the Vancouver regime.

Yet, the *combination* of competition between private certifiers and their public counterparts, and the private certifiers' attitude to cream the market appears to have resulted in a decline of equity. Interviewees' accounts illustrated what I have referred to as a 'natural split' between the groups of regulatees: frequent-players involve private sector actors, one-shotters municipal BCDs. Since case findings suggest that private sector actors provide a more effective and efficient service – see the above discussion – it appears the one-shotters face a lower level of service delivery than the frequent players (cf. Morgan and England, 1988: 981; Starr, 1987: 135). The frequent-players, preferred by private certifiers, appear to gain from private sector involvement: the quality of service delivery appears no longer 'available on the basis of need [but] limited to those who can pay' (Abramovitz, 1986: 259).

This particular situation appears not to exist in the Canadian cases as a result of a different relationship between the public and private sectors. Under the Vancouver regime, for example, the 'natural split' did not occur as a result, but was made when implementing the new regime. By making this split it appears that the City of Vancouver has rightly estimated their own and the private sector's strengths. It could be argued that a similar situation may arise when private sector involvement is taken up more generally in Ontario: municipal BCDs stay involved in the work of one-shotters and enter into contracts with private sector agents to have the latter involved in the works of frequent players. In the Albertan regime equity issues appear forestalled by requiring private sector agents to take up all clientele – a distinctive characteristic that is normally ascribed to public sector organizations (Wilson, 1989: 169). In the Canadian cases not so much the creaming attitude of private sector actors has been averted, but creaming at the expense of municipal BCDs and one-shotters.

On the side, one could argue that equity issues traced in Australia are not an equity issue *per se* but an issue of willingness to pay. Yet, case findings suggest that this decline of equity may be worsened. Now that choice exist between municipal BCDs and private sector actors the frequent players move to the private sector – they show 'exit' behavior (cf. Hirschman, 1970). This leaves BCDs with assessing minor construction works that are often provided by one-shotters. BCDs face a decline of revenue and often resources when well-trained staff moves over to the more profitable private sector agencies. As a result BCDs might, in the future, be less able to deliver serv-

ice on a required level. Under the current situation this appears to have led to a situation in which assessment is not equitably available to all regulatees, on the long term this situation may be worsened when BCDs end up in a spiral of losing revenue and resources. Furthermore, the one-shotters may have little possibility to oppose against this situation since their possibilities to do so are little. The frequent-players have larger 'voice', but have no incentive to use it since they have moved to private sector involvement (cf. Hirschman, 1970: 45-46). Yet, 'voice', as Hirschman argues, only is effective when the possibility of 'exit' is present (*ibid.*: 80). The Albertan case provides an illustrative example of a lack of 'exit' possibilities – both for the regulatees as the provincial government.

Accountability

Interviewees mentioned a decline in different accountability types. My case data falls short for an in depth discussion of political accountability, however some discussion of findings is possible[41]. The Ontario case suggests a potential decline in political accountability given that the building industry requires private sector involvement in regulatory enforcement, but the municipal building control departments through their association effectively lobby against it. Here public officials at provincial level appear to give in to the municipalities and not to the building industry – which represents a part of their electorate. In all other regimes the introduction of the private sector was identified as a 'bottom-up' initiative, instigated by the building industry. It may be argued that in these regimes elected officials responded to this industry's needs – following on from Bovens (2007: 465-466) it could be argued that the accountability model offers sufficient feedback to elected officials to learn from. Yet, equity issues discussed above and other accountability issues discussed below may in the long-term result in demands from certain interest groups, or from the public in general. This may hold a potential decline of political accountability when elected officials cannot or do not respond.

Issues with legal accountability were mentioned by some interviewees regarding lawsuits. If a case would ultimately result in a lawsuit this was considered a time-consuming process, which can turn out expensive for the complainant (cf. Bardach and Kagan, 1982: 10). Yet, more criticism was expressed by a moderate number of interviewees regarding liability issues that may occur due to overlapping tasks and the model of joint-and-several liability. In general liability law was regarded as an incentive needed to maintain the private sector actors' integrity (cf. Faure and Hartlief, 1998: 705). However, overlapping tasks might blur who is liable for what: 'the problem of many hands' (Thompson, 1980). Especially the Vancouver and South Australian cases are illustra-

41 Note however that these conclusions are related to the policy process.

tive here. In these cases private sector actors may assess building plans, but the municipal BCD is responsible for permit issuance. At question is: to what extent is the BCD responsible when a permit is issued based on a faulty private sector actor's assessment? Then, under the model of joint-and-several liability Canadian municipalities face severe liability risks when having but little involvement in a construction project – municipalities are regarded as 'the deep pocket' under this liability model (cf. Cerminara, 1995: 17; Huber, 1988: 79). Subsequently, in the Queensland regime the model of joint-and-several liability was experienced to have made private certifiers risk averse. Private certifiers were experienced as less willing to accept 'risky' alternative solutions – whilst the possibility to use alternative solutions was introduced in the new performance-based building regulations to enhance innovation (cf. Huber, 1988: 156). These findings strengthen critical notions on issues with performance-based regulations discussed in Section 3.2.1. Then, strengths were mentioned regarding the Letters of Assurance in the Vancouver regime, since these not only clearly state which tasks and responsibilities come to which actor in a construction project, but also since physically signing of such a letter provides proof that the actor is, or at least could be, aware of its responsibilities.

Issues with administrative accountability were mentioned by a majority of interviewees in all regimes, with exemption of Vancouver. Making and holding private sector actors accountable for carrying out delegated tasks was one of the most serious obstacles interviewees mentioned (cf. Mulgan, 2000: 87). Generally this related to two issues. First, the oversight models, auditing in general, were experienced to focus too much on private sector actors' enforcement processes instead of the content of their work. This finding strengthens research by Power who notices that audits have become 'rituals of verification' which provide 'comfort' instead of 'proof' (Power, 1999: 38) that work is carried out according to and in alignment with delegated tasks. Second, the lack of consequences from such auditing was generally regarded as bringing in too little awareness. This finding underlines that an essential part of the accountability relationship is the possibility and use of disciplinary action (cf. Mulgan, 2000: 555-556). As said, Vancouver appears the exemption here. In this particular regime the different checks and balances – Certified Professionals are overseen by both the City as their professional associations – was regarded as maintaining the private sector actors' integrity and credibility. Then, closely related to accountability and oversight, integrity was mentioned a major obstacle by a majority of the interviewees as well. Questions were raised on the integrity of private sector actors when a choice has to be made between their own private interest and guarding the public interest. Here the main difference described in literature between the public and private sectors (e.g. Supiot, 2007: 176: Wilson, 1989: Chapter 17) manifests itself most clearly: the sectors have different goals – and interviewees experienced this as such. Overall, it can be concluded that the administrative accountability arrange-

ments analyzed do not offer enough incentives to have preventive impacts (cf. Bovens, 2007: 465).

Strengths of and issues with professional accountability were mentioned. Especially the Vancouver regime indicates strengths. One of the requirements to become a Certified Professional in this regime is membership of the architects' or engineers' association. These associations require their members to meet certain criteria regarding education, experience and insurance. Furthermore, these associations monitor their members and take disciplinary measures when necessary. Here expected strengths from such private sector oversight – peer reviews on compliance with the associations' codes of conduct – were observed. Yet, the question that remains is: does private sector involvement in the oversight of private sector enforcement actor's conduct influence these actors' integrity in the other regimes? Here my data falls short to apply QCA methodology. Since I subdivide the concept accountability, different impacts interplay and QCA appears not suitable to address multiple interplaying impacts in one analysis. Yet following the underlying principles of QCA a better understanding of impacts traced may be gained.

Integrity issues were reported in regimes that were characterized by both 'public-private' and 'public' oversight bodies, and by both 'competitive' and 'complementary' relationships. Although my data has shortcomings for applying QCA methodology, this shortcoming appears to hold an implicit finding as well. The situation of a public-private oversight agency has not yet been broadly reported upon. Much oversight literature discusses public or private oversight bodies, but not 'public-private partnerships' (e.g. Cohen and Rubin, 1985; DeMarzo *et al.*, 2005; Power, 1999; Bekkers *et al.*, 2003; Van Thiel *et al.*, 2004). Following on from such discussions, strengths may be – and were – expected from private oversight bodies (Baldwin and Cave, 1999: 127; Gunningham and Grabosky, 1998: 44-47) but were not found in the regimes characterized by 'public-private partnerships'. Here I assume that the strengths of private oversight – for instance, easy access to information, or trust of the regulated group – are undone by the 'bureaucratic accountability' model implemented in the regimes analyzed. Accountability measurement is still based on external controls, instead on internalized norms and peer pressure (cf. May, 2007: 12). This appears to undo the expected strengths of the regime type 'conditional co-regulation'.

Finally, a decline of social accountability was mentioned. The credibility of the public and private sectors was criticized in a moderate number of interviews. When reviewing the interviewees' accounts and secondary data analyzed it becomes clear that credibility is interpreted differently by different interviewees and in different inquiries. Yet, especially in the Australian regimes it was explicitly stated that ordinary citizens – the one-shotters – have more trust in municipal BCDs than in private certifiers. At the same time however, professionals in the building industry – the frequent players – appear to have more trust in private certifiers than their municipal counter-

parts. This different perception of credibility might be related to exactly the plural meaning of the concept itself. Sometimes it is argued that credibility consists of 'trustworthiness' and 'expertise' (e.g. DeZoord *et al.*, 2003; Nesler *et al.*, 2006). In the Australian regimes it may be that one-shotters value the trustworthiness of municipal BCDs, while at the same time frequent players value the expertise of private certifiers. The creaming attitude of private certifiers here may strengthen the ordinary citizens' distrust in private certifiers, whilst the 'stigma', built up in the past, of municipal BCDs being cumbersome and having an almost dictatorial attitude may strengthen the professionals' distrust in these departments. This reasoning can also be applied on the Vancouver case, where the credibility of Certified Professionals was found to be a minor issue. Here the restricted choice between public and private sector involvement – the absence of competition – in building regulatory enforcement appears an answer to the different groups' needs. To finish this discussion on credibility, in the Alberta regime credibility issues appears to be related to a low trustworthiness of private sector actors as a result of a relatively large freedom to implement processes and procedures.

These findings partly contradict my proposition, since the relationship between private sector involvement and unintended impacts appears less directly related than I assumed. Especially the relationship between the public and the private sectors appears of influence. Based on this analysis I conclude:

> Private sector involvement in building regulatory enforcement regimes is likely to result in equity issues when introduced in competition with the public sector. A complementary relationship is less likely to result in equity issues. Then, a decline of administrative accountability is to be expected when an accountability model has a too strong focus on assessing processes and when no disciplinary measures are taken when issues are found. Professional accountability models may strengthen a regime, it has however limits. Not so much the introduction of private sector involvement in oversight, but a different approach the private sector might have towards oversight appears related to maintaining integrity. Finally, a decline of social accountability is to be expected from the introduction of private sector involvement: the general public may be less willing to trust private sector involvement. A competitive relationship in combination with a creaming attitude of private sector actors might strengthen the general public's distrust. At the same time however, professionals in the building industry might have more trust in the expertise of private sector actors than in the expertise of public sector actors. These different groups have different needs in building regulatory enforcement.

8.4 Conclusion and discussion

In this chapter I have comparatively analyzed the eight building regulatory enforcement regimes discussed in Chapters 6 and 7. The question underlying

this analysis was: What regime characteristics or combinations of characteristics are related to what impacts; and, how? My point of departure for answering this question were the different propositions on the regimes and impacts made in Chapter 4. From comparatively analyzing the regimes I was able to draw conclusions on the specific impacts traced. Yet, also a number of more general conclusions may be drawn from this comparative analysis.

First, as expected the introduction of new regulatory enforcement regimes in Australia and Canada has resulted in tradeoffs amongst different criteria. However, the findings suggest that tradeoffs are less inevitable than is sometimes argued (e.g. Scholz and Wood, 1999). Tradeoffs can be balanced by regime design and regime environment. Furthermore, this analysis has added valuable insight to existing knowledge: minor differences between regulatory enforcement regimes may result in major differences in impacts. For instance, within the South Australian regime private sector actors are not allowed to issue permits, whilst in the other Australian regimes private sector actors are. Case findings suggest that the South Australian regime gained less efficiency compared to the former pure public regime than the other Australian regimes analyzed. Prior comparative policy analysis has often focused on regimes that show major differences in regime design and regime environment. Such research then often finds that these major differences in design and environment result in notable differences in impacts. Yet, that also minor differences amongst regimes – in design and environment – may have a severe impact on impacts challenges a 'custom' in public policy: the copying of 'best practices' from other policy sectors or jurisdictions (Sparrow, 2008: 8). Such copying is sometimes referred to as 'mimetic behavior' (DiMaggio and Powell, 1983: 151-152), or following 'the herd' (Levi-Faur, 2002: 18-20) and indicates that organizations, such as governments, often try to solve issues within their own jurisdiction by implementing policies that in other jurisdictions have proven to result in desired impacts. Given the information available on such 'exotic' policies and given the 'proof', copying these policies is sometimes regarded as rational (Levi-Faur, 2002: 11): 'If old regimes are no longer effective or acceptable, and the designs of new governance regimes are costly, drifting along the new trajectory and following the new conventions might be the most rational thing to do.' However, policies are often not literally copied from one context to another: minor adjustments are needed or desired to make an 'exotic' policy suit to local circumstances – as the brief discussions on the move towards private sector involvement in Australian and Canadian building regulatory enforcement indicated (see also, Czarniawska-Joerges and Sevon, 1996). This research has shown that such minor adjustments may have a major impact on the consequences of a regime and therefore raises questions on such copying behavior. Policy makers – and regulatory scholars alike – should not blindly focus on best practices or other 'exotic' policies when changing existing regimes. Attention should be paid to possible implications of adapt-

ing best practices or 'exotic' policies to suit to local circumstances.

Second, regulatory enforcement regimes are dynamic and impacts appear to change over time. Case findings suggest that relationships arise between private sector enforcement actors and their clients. These relationships influence the impacts of the regimes. On the one hand relationships between enforcers and their clients were experienced as improving efficiency; on the other hand relationships were experienced as undermining accountability. These findings confirm earlier notions on adaptive behavior by regulatees (cf. De Bruijn *et al*., 2007). Yet, the regimes' impacts are also influenced over time by, for example, changes in ownership of private sector agencies or amalgamation of a large number of small agencies into a small number of large agencies. Here it becomes clear that the 'real world' is not only dynamic because regulatees and enforcement actors adapt to each others behavior; it is also dynamic because of changes in enforcement organizations.

Third, two particular regime characteristics that I had not involved in the heuristic models introduced in Chapter 4 appear to be related with certain impacts: the amount of *assessment tasks* and the *relationship* between public and private sector enforcement actors within a regulatory enforcement regime. The analysis suggests that the former is related to intended impacts – effectiveness and efficiency; while the latter is related to unintended impacts – such as equity issues and a decline of accountability types. Note that only competition *between* the public and private sector appears related to these unintended impacts. Case findings suggest that competition *amongst* private sector actors within a regime results in more specialization of private sector actors and strengthen effectiveness and x-efficiency gains, supporting assumptions of early advocates of 'private enforcement of law' (Becker and Stigler, 1974; Landes and Posner, 1975), and at the same time confirms prior findings on a decline of accountability types due to such private sector enforcement of law (cf. Hawkesworth and Imrie, forthcoming 2009; May, 2003).

Fourth and final, case findings suggest that the differences between particular regime types introduced in Chapter 4 have little impact on differences in the occurrence of tradeoffs. Here it becomes clear that the regime types introduced are ideal types only. The actual regimes analyzed showed to be more complex than these ideal types. For instance, the main difference between the 'prescribed co-regulation' and 'conditional co-regulation' types is the division of tasks and responsibilities in the level 'enforcement criteria and oversight': pure public in the former and a 'public-private partnership' in the latter. The regimes analyzed met this criterion and I divided the regimes as such: the Victoria and Alberta regimes as 'conditional co-regulation' the other regimes as 'prescribed co-regulation'. Yet, the expected advantages of 'conditional co-regulation' – an improvement of accountability – were not found present in the Victoria and Alberta regimes due to a 'bureaucratic accountability' model – the Victoria and Alberta regimes appear to be close related to the 'prescrip-

tive' type. At the same time representatives of private sector organizations were said to be consulted prior to the implementation of the other regimes analyzed – which gives these regimes some characteristics of the 'conditional' type. Then, I have overseen the impact of the possibility of allowing or not allowing private sector actors to issue permits on the actual regime impacts. The typology introduced in Chapter 4 might gain from adding this possibility to the types.

9 Conclusions

> *Like the public inspectorate, the private inspectorate also tends to occupy an outsider or even a pariah status in its relevant social niches.*
>
> Eugene Bardach and Robert Kagan[42]

In the introduction of this thesis I briefly discussed a move towards a hybrid form of governance in Dutch building regulatory enforcement. This hybridization is characterized by the introduction of a regulatory enforcement regime in which public and private sector organizations have enforcement tasks and responsibilities. Yet, as illustrated, this appeared a telling case for a global trend: private sector involvement is or has been introduced in building regulatory enforcement regimes worldwide. Furthermore, the introduction of private sector involvement and hybridization of governance structures is, as I discussed in Chapter 2, a trend in different policy sectors. Following this trend, governance hybridization, and more generally governance reform has gained an increasing attention from regulatory scholars. My thesis contributes to this research field.

Throughout this thesis I studied such governance reform in building regulatory enforcement by addressing the research question: *What are, given the underlying policy goals, adequate structures for regulatory enforcement of public building regulations, when enforcement tasks and responsibilities are delegated to public and/or private sector parties?* My aim for doing so was two-fold. First, I aimed to add to knowledge on governance reform in general, and specifically add to knowledge on governance reform in building regulatory enforcement. Second, worldwide private sector involvement has been introduced in building regulatory enforcement regimes, however little was known about the impacts of such governance reform. By actually analyzing real life cases in Australia and Canada I aimed at partly filling up this knowledge gap.

Based on this twofold aim the main research question was broken down into a number of sub-questions. In this concluding chapter I summarize the findings of my research. I start by bringing together the main results of the different chapters as they relate to the particular research sub-questions posed in the introduction, Chapter 1. Following, I draw up a number of policy implications. I continue by drawing up some conclusions on the contribution of this research to literature on governance reform in more general terms. I conclude this chapter with plans on future research.

42 Bardach, E. & R.A. Kagan, 1982, *Going by the book: the problem of regulatory unreasonableness*, Philadelphia, Temple University Press: 219.

9.1 A better understanding of building regulation

In the introduction I discussed the notable absence of building regulation in regulatory literature. Notable since related policy sectors, such as occupational health and safety or the natural environment, have gained much scholarly attention. In order to gain a better understanding of building regulation I presented a review and synthesis of regulation and enforcement literature in Chapter 3. Note that my main focus is on enforcement literature, since the aim of this study is gaining insight in the impact of private sector involvement in building regulatory enforcement. I look upon enforcement here as all measures taken that aim at gaining adherence to building regulations.

It is customary to review this regulatory and enforcement literature in a more or less chronological order (e.g. Baldwin and Cave, 1999; Van Stokkom, 2004). Such literature reviews then start with discussing *command-and-control* regulation, then often move to *self-regulation* initiatives, discuss responsive and *smart regulation*, and conclude by discussing *risk based regulation*. I have chosen to review this literature from a different point of view and not address the strengths and weaknesses of the individual models, but to address major recurring debates on the characteristics of the models. My reason to choose this approach relates to the analysis of problems in building regulatory enforcement discussed in Chapter 2. From this analysis I concluded that merely replacing one organizational structure with another could hardly be expected to result in a solution to issues found – 'public bureaucracies are not the most efficient way of organization' and 'the "good building inspector" does not exist'. Yet, by analyzing the characteristics of the models described in literature I aimed at gaining a better insight in what actually constitutes an organizational structure of regulation and enforcement and how this relates to the topic of my study. The debates addressed are: the quality of law, enforcement strategies, enforcement styles, and enforcement actors.

9.1.1 Insights and lessons from other policy sectors

Question 1.1: *What lessons can be learned from analyzing insights in governance reform from other policy sectors and to what extent can these be applied to building regulation?*

Based upon the literature review discussed in Chapter 3 I drew up a number of lessons that can be applied to building regulation. First, based on notions from discussions on the quality of law insight was gained in performance-based building regulations. Such regulations may on the one hand be expected to enhance adaptability of the regulations and therefore stimulate innovative solutions. On the other hand this particular type of regulations may have

a negative impact on regulatory certainty. It may become unclear to enforcers, but also to regulatees subject to these regulations, how compliance with regulations can be evaluated or indicated. An important insight since many countries made a move towards performance-based building regulations.

Then, from the notions on enforcement strategies it became clear that building regulation holds an implicit risk: uncertainty of compliance. It is impossible to fully assess a construction work – building plans only show how the work is supposed to be constructed; during construction an inspector cannot be present to inspect each and every action taken; and, once finished much is hidden behind walls, ceilings and floor. Therefore different enforcement strategies appear needed to gain compliance. Here the main insight relates to using different strategies in the different phases of the enforcement process: positive incentives during the building-plan assessment phase, in combination with a 'responsive regulation' based approach during the construction phase may result in the most ideal enforcement strategy.

Subsequently, based upon previous work on enforcement strategies it may be expected that a facilitative enforcement style is more likely to result in compliance than a formalistic style – 'consulting' is more likely to result in compliance than 'policing'. Nevertheless, the possibility to 'police' may invest inspectors with the authority needed to gain compliance. This latter lesson is an important insight given that notions on enforcement actors indicate that an optimal organization of building regulatory enforcement most likely consists of both public and private sector actors. It may, however, be difficult to grant private sector actors the authority to 'police' which could weaken their actual impact on gaining compliance. Note furthermore that regulatees are sometimes found to adapt to enforcement actors' strategies and styles. Such adaption, and related strategic behavior, might over time weaken compliant behavior.

Finally, a conclusion already implied by Chapter 2, the 'good' building inspector does not exist. Construction is a complex undertaking. Building regulations are in general multifaceted due to their often high technical nature and their broad range. Furthermore, a broad variety of actors is involved in the construction process, such as architects, engineers, contractors, tradesmen, developers, ordinary citizens, and governmental agencies. All having their own skills, knowledge, experience, and interests in the construction process. The 'good' building inspector must therefore not only be able to know the regulations, and be able to enforce these effectively – hold the right technical skills; he[43] also should hold a variance of social skills and be able to communicate with all actors involved. The problems that are so often relat-

43 As already indicated before, it goes without saying that wherever I use 'he' or 'his, this can be read for 'she' or 'her' as well.

ed to public inspectors (see Chapter 2) hold an implicit risk of recurring in private sector enforcement of building regulations.

9.1.2 A typology of regulatory enforcement regimes

Question 1.2: *Which are the main structures of regulatory governance in which tasks and responsibilities regarding building regulatory enforcement are delegated to public and/or private sector actors?*

In Chapter 4 I introduce a typology of building regulatory enforcement regimes and illustrate these with examples from a variance of developed countries. The regimes are based upon the characteristics of the models discussed in Chapter 3 and fit on a sliding scale that is limited by a pure public regime on one side and a pure private regime on the other side. The in-between regimes show hybrid forms of governance in which enforcement tasks and responsibilities are delegated to both public and private sector actors. The regimes are characterized by a three level structure in which tasks and responsibilities can be delegated to public and/or private sector actors. The regimes identified are:

- *Public regime*: all responsibilities for setting building regulations; setting rules and criteria for enforcement; overseeing enforcement; and the execution of enforcement lies with governmental actors. This 'pure' public regime used to be implemented in many countries, but has often been supplemented with private sector involvement.
- *Prescribed co-regulation regime*: a government takes full responsibility for setting regulations; and setting standards for and overseeing enforcement. Execution of enforcement is delegated to private sector actors. Within the regime, governments can contract out enforcement, or enter into agreements with private sector actors – covenants – yet, the private sector actors have to meet certain precisely described participation and administration criteria in order to be allowed to enforce the regulations. Examples of this regime type were found in the US, Europe, Canada, and Australia.
- *Conditional co-regulation regime*: a government takes full responsibility for setting regulations. Responsibility for setting criteria for and overseeing enforcement is left to private sector actors, yet conditions are placed on this setting of criteria for and overseeing enforcement by the government. Examples of this regime type were found in Australia, New Zealand, Canada, and different European countries.
- *Substitute co-regulation regime*: a government takes full responsibility for setting regulations. Responsibility for setting criteria for and overseeing enforcement, and responsibility to execute enforcement is left to private sector actors. The regulations are not actively enforced, unless private sector actors take responsibility for setting criteria for and overseeing enforce-

ment and execute enforcement. This hybrid-type appeared a popular structure for different kinds of private sector related initiatives, such as sustainability assessment tools and certification programs

- *Private regime*: absence of governmental involvement. It is left solely to private sector actors to set and enforce building regulations; yet, if done so, these will not be statutory. Examples were found in private norms as reference in public regulations, such as norms drawn up by the transnational organization ISO.

9.1.3 Expectations about regime impacts

Question 1.3: *What are the expected impacts of private sector involvement in building regulatory enforcement?*

Based on the literature review discussed in Chapter 3 it was expected that the introduction of new arrangements of regulatory governance implies making tradeoffs between different goals. Based on the discussion on regime types in Chapter 4 a comparable conclusion was drawn: where private sector involvement was introduced in building regulatory enforcement regimes, both intended and unintended impacts were found. The former relate to gains in effectiveness and efficiency; the latter relate to equity issues and a decline of different accountability types. I stated the overall expectation that differences in regime design result in different regime impacts; and, that tradeoffs can be balanced through regime design.

The effectiveness of a regime might gain from the deployment of technical experts in specific technical inspections, which may result in a greater inspectorial depth – for instance a private sector inspector that has specialist knowledge of power plants, versus a municipal building control department's (BCD) generalist when assessing the construction work of a power plant. Greater inspectorial depth may result in better regulatory goal achievement since more deviations may be detected, which then can be solved. Comparably, gains in technical efficiency, x-efficiency, may be expected from private sector involvement for a number of reasons. First, since private sector actors and agencies may have a different motivation to carry out assessment – more work may result in more income, where at a municipal BCD income is not, or lesser, a goal. Furthermore, given that private sector actors may be better able to specialize in certain construction works, experience between public and private sector actors may differ. Private sector actors may be able to carry out certain assessment tasks more efficient than public officials. Finally, private sector actors and agencies may encounter less administrative procedures than their public counterparts. However, such efficiency gains of private sector involvement may be undone when the enforcement tasks and responsibilities overlap between the sectors. A doubling of tasks – for instance when

a municipal building official issues a building permit based on a private sector inspector's assessment documentation and has to take some time to 'get familiar' with the documentation, or process the information into the municipal's format – may imply a sub-optimal allocative efficient deployment of resources.

The introduction of private sector involvement may result in a decline of equity when private sector actors can choose their own clientele. The ability of private sector actors to specialize in a certain service, or to deliver a service faster might give the private sector a competitive advantage over the public sector. Using this advantage may result in a situation in which the private sector 'creams' the market for profitable jobs, restricting the less profitable job owners to make use of their service, which may result in a situation in which like cases are not treated alike.

Introducing private sector involvement holds potential for a decline in accountability – distinction was made in political, legal, bureaucratic, professional and social accountability. The expectations regarding a decline of accountability types all lead back to: if oversight on actors' conduct is not strong enough, and/or if disciplinary measures are not strong enough or not taken, the incentive to maintain integrity may not be strong enough. A decline of integrity may result in a decline of private sector actors' credibility, which on its turn may strengthen issues in other accountability types. Furthermore, accountability issues were expected when tasks and responsibilities overlap between private and public sector actors – accountability relationships then might get blurred.

9.2 Insight in governance reform in building regulatory enforcement

In order to gain insight into the impacts of private sector involvement in building regulatory enforcement I have analyzed a number of cases from Australia and Canada – respectively a set of five and a set of three cases. Australia and Canada were of particular interest. In both countries a set of building regulations is drawn up by the respective national governments. Implementation and enforcement of these regulations is the responsibility of state, territorial and provincial governments. These have, both in Australia and Canada, all accepted the national building regulations, but enforce these all through slightly different regulatory enforcement regimes. Per country this gave me the chance to, in a largely comparable regime environment, analyze if differences in regime design result in different impacts. Furthermore, since the countries are highly comparable on different institutional levels I had the chance to analyze if difference between the two sets of cases resulted in different impacts and if similarities between the two sets of cases resulted in similar impacts –

it provided me with the chance to partly detach the policy sector from its national context (cf. Levi-Faur, 2004: 181-182).

9.2.1 Monitoring private sector involvement in building regulatory enforcement

Question 2.1: *What impacts have occurred after the introduction of private sector involvement in building regulatory enforcement regimes in different jurisdictions? And, how?*

By monitoring private sector involvement in the two sets of cases a part of the expectation was confirmed: private sector involvement in building regulatory enforcement regimes resulted in both intended and unintended impacts. Overall, private sector involvement has improved the effectiveness and efficiency of the regulatory enforcement process, but private sector involvement comes with a price: a decline of equity and accountability was observed.

In the Australian set of cases I found that private sector actors were clearly preferred by professionals in the building industry. This preference came from private sector actors' ability to specialize in certain construction works and the level of service they provide – x-efficiency gains. Compared to the situation prior to private sector involvement, this deployment of specialized inspectors may have resulted in an improvement in compliance with building regulations due to their ability to gain a greater inspectorial depth. At the same time, however, major criticism was expressed to commercial pressures on the private sector actors; the potential tradeoff these actors have to make between guarding public interests or their own private interests; and finally, a too process-based type of oversight on the private sector actors – a potential decline of accountability. Furthermore, the private sector was experienced to cream the market for profitable jobs; and municipal BCDs experienced a loss of revenue and resources – a potential decline of equity. Note that these findings confirm existing knowledge on governance reform in other policy sectors as discussed in Chapters 3 and 4 (see also the next section).

What my analysis of Australian cases added to such knowledge is that the advantages of private sector involvement generally appear to come to those involving private sector actors, often professionals in the building industry; the private sector enforcement actors themselves; and municipalities for not having to hold a large staff. The disadvantages of private sector involvement in general appear to be passed on to the society as a whole. General taxes are deployed to fund oversight; to maintain BCDs; or to pay out when public agencies become the 'last man standing' in liability cases.

Then, also in the Canadian set of cases I found that private sector involvement has resulted in comparable intended and unintended impacts. For comparable reasons as in the Australian set of cases private sector involvement

in Canada was told to have resulted in an improvement of effectiveness and x-efficiency and a decline of accountability. However, I found less indication that unintended impacts were passed on to the society as a whole. This may have to do with the differences in relationships between public and private sector actors in the regulatory enforcement regimes: a competitive relationship in Australia, a complementary relationship in Canada.

Furthermore, in both sets of cases the regimes' environment was experienced as influencing the regimes' impacts. Especially criteria set for designers – architects, engineers – to hold a certain level of knowledge on building regulations was experienced to have positively influenced compliance. Furthermore, the model of joint-and-several liability was experienced to make private sector actors and municipalities risk-averse. This was sometimes found to have a negative impact on innovative design solutions when private sector actors were reserved in approving innovative building designs or construction work, or on municipalities' involvement in a construction project – and thus the chance to end up in claim cases – due to accepting private sector actors' assessment documentation as grounds for issuing a building permit.

9.2.2 Evaluating private sector involvement in building regulatory enforcement

Question 2.2: *What regime characteristics are related to what specific impacts? And, how?*

From evaluating the cases I found that private sector actors appear better able to specialize in complex construction works than their public counterparts. Such specialization is expected to result in a greater inspectorial depth, which may on its turn result in more effective assessment (cf. Ayres and Braithwaite, 1992; 104, Baldwin and Cave, 1999: 126; Bardach and Kagan, 1982: 219). Case findings suggest that only assessment tasks – building plan assessment and on-site construction work assessment – influences such effectiveness gains, since these are the particular tasks where the private sector actors' specialization is utilized. Permit issuance is regarded an administrative task, which gains less from the private sector actors' specialization.

Furthermore, private sector involvement was generally regarded as having streamlined the building regulatory enforcement process. Processing times have gone down which in return resulted in time and money savings for applicants. These advantages were experienced to come from differences in approach of their work between public and private sector actors. Furthermore, case findings suggest that most efficiency gains may be expected when private sector actors carry out all assessment tasks and issue permits. Delegating more tasks – for instance, issuing warning letters, or instituting proceedings against offenders – to private sector actors was not experienced

as resulting in more efficiency gains. This adds to the oft cited 'enforcement pyramid' (Ayres and Braithwaite, 1992: 35) that a certain *tipping point* may be expected after which private sector involvement does not increase effectiveness or efficiency gains to enforcement processes. Notably, case findings also suggest that private sector involvement has resulted in a professionalization of BCDs, which on its turn results in effectiveness and efficiency gains.

Subsequently, in Australia a clear situation of 'creaming' was identified: private sector actors clearly prefer to be involved in the more profitable major construction works that are provided by professionals in the building industry (cf. Bailey, 1988: 304; Hawkesworth and Imrie, forthcoming 2009; Stoker, 1998: 23). At the same time the professionals in the building industry show 'exit behavior' and generally choose private sector involvement in their construction projects (cf. Hirschman, 1970). In itself creaming does not appear to be a negative effect of the particular Australian regimes – in the above discussion it was after all argued that certain strengths of private sector actors resulted in effectiveness and efficiency gains. Yet, the *combination* of competition between private certifiers and their public counterparts, and the private certifiers' attitude to cream the market appears to have resulted in a decline of equity. Under the new regimes BCDs face a decline of revenue and often resources when well-trained staff moves over to the more profitable private sector agencies. As a result BCDs might, in the future, be less able to deliver service on a required level. Under the current situation this appears to have led to a situation in which assessment is not equitably available to all regulatees, on the long term this situation may be strengthened when BCDs end up in a spiral of losing revenue and resources. Note that this particular situation appears absent under the Canadian regimes, possibly due to the complementary relationship between public and private sector enforcement actors within a regime. Not so much the creaming attitude of private sector actors has been averted, but creaming at the expense of municipalities. For example, in Vancouver this choice for a complementary relationship has resulted in a situation under which Certified Professionals assess complex works, and the City of Vancouver's BCD non-complex jobs.

Then, a decline of different accountability types was mentioned by interviewees. The major criticism expressed towards private sector involvement in building regulatory enforcement regimes was commercial pressure on private sector actors and, related, potential conflict of interest situations. In general, oversight was regarded as needed to monitor and guarantee enforcement actors' conduct. However, in the cases analyzed exactly this oversight was criticized and shortcomings in administrative accountability were mentioned by a majority of interviewees in all regimes, with exemption of Vancouver. Making and holding private sector actors accountable for carrying out delegated tasks was one of the most serious obstacles interviewees mentioned (cf. Mulgan, 2000b). Generally this relates to two issues. First, the oversight mod-

els, auditing in general, were experienced to focus too much on private sector actors' enforcement processes instead of the content of their work. Second, the lack of consequences from such auditing was generally regarded as bringing in too little awareness. This finding underlines that an essential part of the accountability relationship is the possibility and use of disciplinary action (cf. Mulgan, 2000a: 555-556).

Other accountability issues mentioned relate to legal, social, professional and political accountability. A potential decline of legal accountability was mentioned regarding liability law – and especially the model of joint-and-several liability. This particular model was experienced as making private sector inspectors risk averse, which may stand in the way of accepting innovative building designs. As has been discussed in Chapter 3, the introduction of performance-based building regulations exactly aims at such innovation. Here the combination of different policy instruments appears to conflict. Furthermore, the model of joint-and-several liability was experienced as making municipalities the 'deep pocket' when claim cases result in pay outs (cf. Cerminara, 1995: 17; Huber, 1988: 79). In Ontario, for instance, this appears one of the reasons why municipal BCD representatives lobbied against private sector involvement. Again here it may be concluded that different policy instruments conflict – and the combination of the instruments results in unintended impacts: in Ontario private sector involvement does not catch on.

Issues in social accountability were mentioned regarding the credibility of both the public and private sector. Here it appears that different groups of regulatees have different needs in the building regulatory enforcement process: the professionals in the construction industry, such as developers, contractors, architects, and engineers; and the non-professionals in the construction industry, the 'ordinary moms-and-pops'. I borrowed terminology from Marc Galanter (1974: 97) to address these groups: the former as 'repeat players' who are involved in similar building enforcement processes over time, the latter as 'one-shotters' who are involved in these processes occasionally. The repeat players were found to need expertise and specialist knowledge; the one-shotters were found to need guidance and assistance in the regulatory enforcement process. The differences in needs were found to have resulted in differences in preferences: repeat players appear to prefer private sector involvement for their expertise; one-shotters appear to prefer public sector involvement for their trustworthiness. This finding underlines discussions on credibility that the concept may consist of 'trustworthiness' and 'expertise' (e.g. DeZoord *et al.*, 2003; Nesler *et al.*, 2006) and adds to such discussions that credibility is experienced differently by different groups of regulatees.

Strengths of and issues with professional accountability were mentioned. Especially the Vancouver regime indicates strengths. Here the double layer of accountability models – administrative accountability through the City's oversight on the Certified Professionals and professional accountability through

oversight on the Certified Professionals by their professional associations – was experienced to bring in effective checks and balances and improve accountability. Yet, the expected strengths from 'public-private partnerships' overseeing private sector involvement in the Victorian and Albertan regimes were not observed. Here I argued that the strengths of this partnership were undone by adhering to a 'bureaucratic accountability model'. Accountability measurement is still based on external controls, instead of internalized norms and peer pressure (cf. May, 2007: 12).

Finally, my data falls short for an in depth discussion of political accountability. Yet, the Ontario regime indicates a potential decline of political accountability since elected officials appear not to respond to a part of their electorate – the building industry representatives that strive for private sector involvement. In the other regimes equity issues and the above discussed declines in different accountability types may ultimately result in a decline of political accountability when elected officials are unable or do not want to respond to such issues.

9.3 Policy implications

One of my aims for carrying out the research presented in this thesis was to provide more insight in building regulation, and especially in private sector involvement in building regulatory enforcement regimes to those involved in policy making and implementation. In the introduction of this thesis I stated that an ideal building regulatory enforcement regime aims at achieving building safety. Throughout this thesis it became clear that this goal may be reached through a variance of regulatory enforcement regimes, which all have their strengths and weaknesses. It became furthermore clear that policy makers often aim at reaching additional goals: for instance, effective enforcement, efficient procedures, or equal service delivery. However, tradeoffs between such additional goals might rise when reforming a regulatory enforcement regime. As expected, 'the optimal' regime does not exist and it appears more useful to focus on characteristics that constitute improvements to regulatory enforcement regimes.

In this section I first generally highlight the policy relevance of the research presented and then pay particular attention to the telling case discussed in the introduction and Chapter 2, the Dutch case.

9.3.1 General policy implications

The analysis has shown that the move towards private sector involvement in building regulatory enforcement regimes may very well improve building regulatory enforcement. It appears the greatest hope lies in a combination of

public sector and private sector actors within a regime – a hybrid form of governance. The two sectors both have their particular strengths which appear to meet the needs of a certain group of regulatees. The public sector appears to meet the needs of 'one-shotters' – guidance and trustworthiness; the private sector appears to meet the needs of 'frequent players' – availability, speed and expertise.

Depending on the objective of reforming building regulatory enforcement regimes, certain regime characteristics are advisable. If the objective is to improve effectiveness and efficiency it is advisable to make room for private sector involvement. If done so, private sector involvement is expected to result in most efficiency gains when private sector actors are involved in assessment tasks and permit issuance.

However, fully replacing the public sector by the private may result in unwanted impacts. If an additional objective of a building regulatory enforcement regime is to provide guidance and assistance, or relatively cheap access to one-shotters it is advisable to either maintain public sector involvement in the enforcement process, or to subsidize a part of private sector involvement for assisting this particular group. Yet, since case findings suggest that one-shotters appear to have more trust in public sector actors, maintaining this sector's involvement might be preferable to subsidizing. In addition, a worker bias for one-shotters appears to exist amongst public sector actors. Interview data suggests that public sector actors have more sympathy for these one-shotters, than for frequent players. An unequal treatment of regulatees might result from this worker bias (cf. Lipsky, 1980: 108-115).

Such a combination of public and private sector involvement implies a relationship between the different sectors. Here the research findings indicate that a complementary relationship is advisable to a competitive relationship – I stress once more that I have only addressed a competitive and a complementary relationship; other relationships may exist. Under such a relationship it is advisable to have private sector involvement for frequent players and public sector involvement for one-shotters. Case findings indicate that this separation results in an improvement of the regime because the strengths of both sectors are optimally employed. Furthermore, a strict separation of tasks and responsibilities may prevent accountability issues to arise.

Then, making and holding the different actors in the regime accountable through oversight is an advisable approach to keep a finger on the pulse of the regime. Furthermore, measures need to be taken when issues are found. Here a dilemma emerges: oversight should reach beyond randomly analyzing different actors' enforcement processes, but such action is costly and doubts may be cast on the accountability of such oversight itself. To escape a potential 'inflationary spiral of escalating trust in nth order guardians' (Power, 1999: 135) a move away from a strict 'bureaucratic accountability' model (cf. May, 2007: 12) appears necessary. For instance, potential strengths of 'pro-

fessional accountability' may be put to use through encouraging peer pressure, benchmarking, and internalized norms – such as professional codes of conduct. Also, the insurance industry may hold a strong incentive to actors involved in the possibility to adjust premiums or cancel policies (cf. Baldwin and Cave, 1999: 52-55). I briefly touched upon such accountability models, but my research findings remain vague on what accountability model facilitates best results. The combination of a bureaucratic and professional accountability model supplemented with Letters of Assurance in Vancouver, nevertheless, showed hopeful results. Case findings furthermore suggest that a potential danger lies in governmental dependency on a small number of private sector actors. Taking the necessary actions when issues are then found – for instance removing a private sector actor from the regime – may be hindered when this implies that enforcement becomes fully absent in a particular region or place.

Yet, not only attention should be paid to enforcement actors. Case findings suggest that more adherence to regulations may be expected from a better understanding of building regulations and building regulatory enforcement. Following on from case findings it is advisable to ensure and maintain this knowledge, for instance by requiring a certain level of education for designers – architects and engineers – and builders – contractors and tradesmen – and required ongoing professional development. In addition, when implementing different policy instruments it should be taken into consideration that certain combinations work better than others. For example, given the difficulty of enforcing performance-based building regulations it is questionable if these are most suited to combine with private sector enforcement of these regulations. As some findings from the Australian cases indicate, performance based building regulations and private sector involvement – both introduced aiming at improvement – appear to conflict (cf. May, 2007).

To continue, a danger of backsliding lies in changes that happen over time. Regulatees might learn to adapt to the new enforcement actors' enforcement style (cf. De Bruijn *et al.*, 2007: Chapter 3; May and Wood, 2003: 135). At the same time however, the new enforcement actors might, again over time, adapt to regulatees' behavior (De Bruijn *et al.*, 2007: Chapter 4). Then, time holds a danger as well for enforcement actors and regulatees becoming too intimate. Case findings suggest, for example, a danger of conflicting interests when a private sector actor becomes dependent on a small number of clients. Subsequently, over time ownership of private sector enforcement agencies might change. Case findings suggest a danger of backsliding when ownership moves from former public officials that started an agency to new owners who do not have a background as public official. In such cases it was mentioned that new owners had a more businesslike attitude and that 'safety makes way for money'. These findings only strengthen the need for supervision – not only when a regime is recently implemented, but continuously over time.

Finally, possibly the most important implication to policy makers is that

minor differences in regime design may result to major differences in regime impacts, both intended and unintended. This finding warns for the danger of copying best-practices to other places and contexts than were they originated (cf. Czarniawska-Joerges and Sevon, 1996): minor changes made to an 'exotic' best-practice in order to make it suit to local circumstances may undo expected impacts. Following best-practices should be treated with care when implementation of a best-practice implies making such changes.

9.3.2 Specific implications for the Dutch case

As discussed in Chapter 2, building regulatory enforcement in the Netherlands has been subject to recent amendments and may be subject to some sweeping future changes. The recent amendments relate to the implementation of a risk based assessment tool used by Dutch municipal building control departments (BCD) and the introduction of certified private sector inspectors who are allowed to assess building plans only. A possible future change may come from an advisory committee that proposes fully to abolish municipal involvement in building plan assessment (Commissie Dekker, 2008).

The first initiative aims at improving building regulatory enforcement's effectiveness and efficiency by allocation of resources based on a construction project's possible risk. When reviewing this initiative based on the research presented it may be expected these aims will be met. More complex construction projects are regarded a higher risk than less complex construction projects and as such the former get more attention during the assessment process than the latter – note however that exactly this division based on risks may conflict with notions of equity (cf. Sparrow, 2000: 25). Yet, this risk based tool may be most successful in larger municipalities that hold a large BCD staff. Minor municipalities face a major issue: a lack of qualified staff to assess different types of construction work. Here it would be advisable to either introduce private sector involvement to the regime in general, or to set up large public sector BCDs that exceed, or combine municipal BCDs into district BCDs (cf. Mans, 2008: 48-49).

The second initiative aims at improving building regulatory enforcement's effectiveness and efficiency by applying external expertise. When reviewing this initiative based on the research presented it may be expected these aims will be partly met. Partly, since case findings suggest that only involving private sector involvement in a restricted amount of enforcement tasks – plan assessment only in the Dutch case – and leaving all other tasks to the public sector might, partly, undo potential efficiency gains. Here it would be advisable to grant more tasks to such private sector actors, thus fully utilizing the strength of such private sector involvement.

The third initiative aims at improving building regulatory enforcement's effectiveness and efficiency by shifting all tasks and responsibilities to the

private sector. When reviewing this initiative based on the research presented it may be expected that these aims will partly be met. Only partly, since case findings suggest that a combination of public and private sector involvement in a building regulatory enforcement regime shows best results. This particular initiative remains vague on how private sector involvement should be implemented in a future regulatory enforcement regime. Here the research findings presented may be a point of departure for Dutch policy makers.

9.4 Contribution to regulatory literature

The research presented in this thesis fits in studies on governance reform. General theories and insights from such studies have been applied to gain a better understanding of governance reform in a particular policy sector: building regulatory enforcement. By doing so more knowledge is gained on governance reform in building regulatory enforcement, and also on governance reform more generally. A number of conclusions from this study may especially add to literature on governance reform.

First, my analysis made clear that in practice private sector involvement often comes as an addition to a 'pure' public regulatory enforcement regime and does not replace it. Under new situations a certain relationship arises between public and private sector actors. Based on the examples discussed in Chapter 4 and the Australian and Canadian regimes analyzed I expect that this relation between different actors influences the impacts of the regimes. Based on my analysis of case findings I conclude that a competitive relationship strengthens unintended and negative regime impacts such as a decline of equity and accountability.

Second, minor differences in regime designs may result in major differences in regime impacts. Prior comparative policy analysis has often focused on regimes that show major differences in regime design. Such research then often finds that these major differences in design result in notable differences in impacts. I chose a set of cases that shows minor differences in regime design and regime environment, which gave me the opportunity to analyze if, and if so how such minor differences work out. Case findings suggest that such minor differences in regime design also result in notable differences in impacts. This finding stresses the care that should be taken on relating too broad regime characteristics to regime impacts (cf. Lijphart, 1971: 687). Furthermore, this finding challenges the 'rationality' (Levi-Faur, 2002: 11) of copying 'best practices' from other policy sectors or jurisdictions – sometimes referred to as 'mimetic behavior' (DiMaggio and Powell, 1983: 151-152) or following 'the herd' (Levi-Faur, 2002: 18-20). However, policies are often not literally copied from one context to another: minor adjustments are needed or desired to make an 'exotic' policy suit to local circumstances – as the brief

discussions on the move towards private sector involvement in Australian and Canadian building regulatory enforcement indicated (see also, Czarniawska-Joerges and Sevon, 1996). My research shows that such minor adjustments can have a major impact on the impacts of a regime. Regulatory scholars – and policy makers alike – should not blindly focus on best practices or other 'exotic' policies when changing existing regimes. Attention should be paid to possible implications of adapting best practices or 'exotic' policies to suit to local circumstances. An important insight given the current move towards rewarding 'best practices' and setting these as examples for others (Braithwaite *et al.*, 2007: Chapter 10).

Third, my study furthermore indicates that especially tasks granted to different sector actors may be used to fine-tune a regulatory enforcement regime, but that a certain tipping point may exist after which no more additional advantages should be expected – this may provide a valuable addition to the oft cited enforcement pyramid (Ayres and Braithwaite, 1992: 35). Overall, the study confirms that tradeoffs between different policy goals are inevitable when making regulatory changes (e.g. Ogus, 2004: 43; Stone, 2002; Wilson, 2008: 200; Winter, 2005: 7), such as introducing private sector actors in regulatory enforcement. However, the study showed that some tradeoffs are less inevitable than is sometimes assumed (Scholz and Wood, 1999). In addition, my study indicates that to reach major changes in regime impacts, not necessarily major changes in regime design are needed – the logical other side of the same coin.

Fourth, not only regime design influences the regime impacts, the regime's environment has a major impact as well. In the Australian and Canadian cases private sector involvement was often but an aspect of a range of policy measures taken to address compliance issues. Additional measures taken related to upskilling knowledge at both the designers' and builders' level – the architects, engineers, contractors, trades people and the like. Case findings suggest that such measures indeed have a positive impact on compliance. As Giddens (1984: 175) notes: 'Compliance may depend more on mechanisms of conscience than of fear of any action'. Compliance here could then be understood to come from routine instead as well as morale – and maybe even more from routine (*ibid.*). Changing conscience and routine in the regime's environment might therefore be a fruitful attempt to gain compliant behavior.

Fifth, accountability is a complex issue. Based on the works of Peter May (2007) and Mark Bovens (2007) I defined different sub-types to address this issue – political, legal, bureaucratic, professional, and social accountability. The definitions may be disputable and the content of the terms could no doubt be further refined and analyzed, yet by actually distinguishing different levels of accountability some insight is gained into strengths and weaknesses of different accountability models, and how different accountability models may strengthen each other.

Finally, based on the literature reviewed in Chapters 3 and 4 I expected to find notable differences in impacts between cases fitting the 'prescribed co-regulation' and cases fitting the 'conditional co-regulation' regime types. This as the main difference between these types is a different approach towards oversight – pure public in the former and a 'public-private partnership' in the latter. Following on from prior research (e.g. Baldwin and Cave, 1999: 127; Gunningham and Grabosky, 1998: 44-47) I expected to find less integrity and accountability issues in the conditional-type than in the prescribed-type due to private sector involvement in oversight. However, advantages ascribed to such private sector involvement appear to be undone in the regimes analyzed since only the actors have changed but not the 'bureaucratic accountability' model. This finding stresses the need to look beyond 'labels' in comparative policy analysis. As discussed, from analyzing regulatory literature I found that governments and scholars tend to label arrangements of regulatory governance in different ways. As a result, different labels have been used to describe similar arrangements, and similar labels have been used to describe different arrangements. The multiple meaning of such labels complicates comparative policy analysis when it remains unclear what actually constitutes the particular arrangement, as this example once more shows[44].

9.5 Future research

A number of empirical and theoretical questions have risen during the research that may be grounds for future research. Here I highlight five topics.

First, I have applied a variance of methods and methodology to address the research questions posed (see Chapter 5 for a discussion). Overall these methods proved helpful. Yet, some issues remain. The main issue is the use of Qualitative Comparative Analysis (QCA). I have applied this methodology as it appeared a useful tool for comparing and relating key-characteristics of the regimes to regime impacts. However, the method is restricted exactly by these key-characteristics. The problem with comparative policy analysis, as Arend Lijphart already noticed in 1971, is: 'many variables, small number of cases' (Lijphart, 1971: 685). From my analysis I found that many key-characteristics could not be a-priori distinguished, but came 'along the way'. QCA is often illustrated (Ragin, 2004; Ragin, 2007; Ragin *et al*. 2006; Ragin *et al*., 2003;

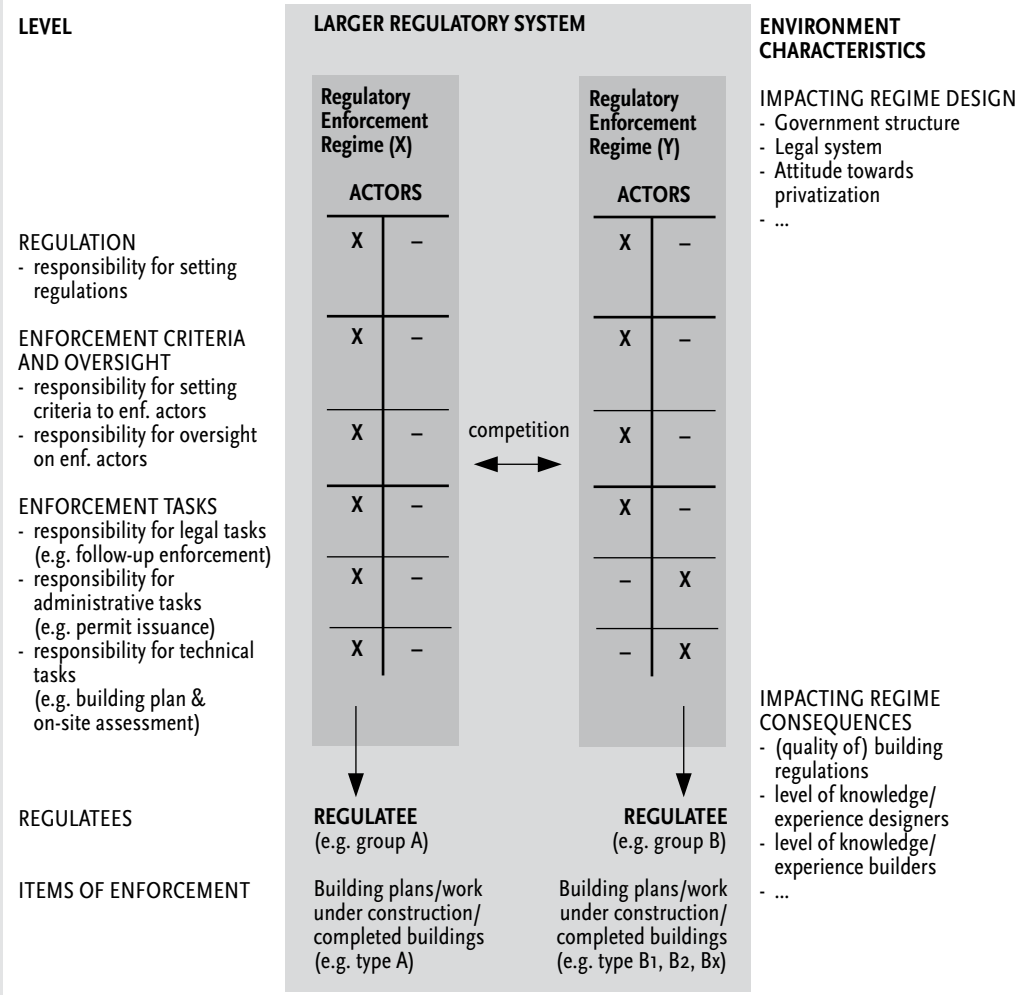
44 Another example may be found in the label 'certified', often used the construction sector, is illustrative here. As discussed in Chapter 4 this label can mean anything from 'certified' building materials based on public regulations, via in-house alterations in a university that are 'certified' based on self-inspection, to 'Certified' Professionals that assess building plans and construction work on behalf of a local government, and buildings that are voluntary 'certified' in order to rank their environmental performance.

Ragin and Strand, 2008) with rather perfect data-sets showing a relative small number of key-characteristics, four or less, and a relative large number of cases, ten or more. For such data QCA appears perfectly applicable. The method falls short with less perfect data-sets. The method falls short as well for interplaying impacts. Future research may add data to the data-set presented in this thesis and may provide a chance to strengthen findings on relations between different key-characteristics and regime impacts.

Second, from reviewing regulatory literature it became clear that legal pluralism might very well be the key to 'optimal' regulation (cf. Ayres and Braithwaite, 1992; Gunningham and Grabosky, 1998). Yet, pluralism may imply a various amount of regulatory regimes that are characterized by different types of regulation, enforcement strategies, enforcement styles and enforcement actors. Current research often focuses on one of the major debates throughout a number of regulatory regimes or periods of time – in this thesis, for example, I paid most attention to different types of enforcement actors in different regime types. To gain a better understanding of the impacts of legal pluralism more empirical insight in different combinations of enforcement actors, enforcement styles, enforcement strategies and types of regulations is needed. For example, a topic for further research might be whether a certain type of building regulations, for instance prescriptive regulation, system-based regulation, or performance-based regulation (see May 2007), performs best when enforced by private or public sector regulators – or a combination of these. Another topic for further research might be whether private sector inspectors use a more responsive regulation based enforcement style (see, for examples, Ayres & Braithwaite 1992; Nielsen 2006) than their governmental counterparts. Again another topic may be which accountability model works best when enforcement actors apply a responsive regulation based approached. Here it may be difficult to oversee the relationship between enforcer and regulatee when this relation becomes (too) informal. The concept of regulatory enforcement regimes presented in Chapter 4 provides a wealth of possible combinations.

Third, the concept or regulatory enforcement regimes proved a helpful tool in comparative policy analysis. However, I found I have overseen two major aspects which may make the tool more applicable to empirical research: the *type* of enforcement tasks and the *relationship* between public and private sector actors within the regimes. Enforcement tasks may be distinguished in inspection tasks, administrative tasks – for example building-plan assessment and issuing building permits – and legal tasks – such as issuing warning letters, or instituting proceedings against offenders. When adding this distinction to the regimes the lower level 'execution' can be separated in 'inspection tasks', 'administrative tasks', and 'follow-up enforcement tasks'. This separation may help to further analyze small differences amongst regulatory enforcement regimes. Future research may prove if such a distinction adds to

Figure 9.1 Heuristic model for analysing building regulatory enforcement



the concept; and future research may assess if more distinctions at other levels are needed – yet too much distinction may make the tool inapplicable.

Then, the presence of both public and private sector actors at the same levels of a regime complicates its applicability as an analytical tool. It is furthermore questionable if these actors really have presence in the same regime or if different more or less autonomous regimes stand side by side in a larger system. At question then is if a relationship exists between actors in a regime, or if a relationship exists between autonomous regimes in such a larger system. Future research may focus on the impacts of such combinations of regimes in a larger system. Another topic for further research might be the actual relationship: what other relationships exist, and how do these influence the impacts of regimes? Then, also different groups of regulatees and regime environment characteristics may be included in a more complex

heuristic model. Figure 9.1 provides an illustration of such a more complex heuristic model for analyzing building regulatory enforcement in which two regulatory enforcement regimes, X and Y, stand side by side in a certain relationship – more regimes within a larger regulatory systems are imaginable, but would unnecessarily complicate the figure. I used the New South Wales regime to fill in the cells of the regulatory enforcement regimes.

Fourth, it almost goes without saying that future research may prove to what extent the concept of regulatory enforcement regimes is applicable in other policy sectors than the one addressed in this thesis – building regulatory enforcement. Such research may provide a better understanding of private sector involvement in regulatory enforcement: are certain impacts of private sector involvement specific to particular policy sectors, or do certain impacts recur more generally? Furthermore, future comparative analysis may focus on countries that show more variance in both regime types and regime environments. The former to gain more insight in impacts of the different types of regimes introduced; the latter to gain more insight in how and what characteristics of regime environments may influence the regulatory enforcement regimes.

Fifth, throughout the thesis it became clear that private sector involvement in regulatory enforcement may result in a decline of accountability. Both regulatory literature and empirical findings indicate that different 'models' can be applied to make and hold different players accountable. Yet, what accountability model generates best results remains at question. Future research may provide a better understanding into this question. A topic of future research could, for example, be if a 'professional accountability' model generates better results than a 'bureaucratic accountability' model or how the strengths of such models may be combined within building regulatory enforcement regimes (cf. Bovens and 't Hart, 2005; 261).

Finally, given the plurality of goals of building regulations – amongst others, a safe, healthy and sustainable built environment – future research may focus on what type of enforcement regime guarantees particular goals best. For instance, a number of environmental assessment tools exist that aim at classifying buildings based on their environmental performance, see Chapter 4. Through its visibility such classification is expected to encourage consumers to demand and developers to build buildings that may move beyond the mere 'bottom' of regulatory sustainability requirements (Horvat and Fazio, 2005: 76). Future research may question if such regimes actually result into a move beyond these 'bottom' requirements and if such regimes may also work for goals such as public safety and public health.

Appendix A Overview of Dutch interviewees

No.	Organisation	Position
NL001	Municipality of Utrecht	Manager
NL002	Municipality of Tilburg	Manager
NL003	Municipality of Leiden	Manager
NL004	Municipality of Harderwijk	Manager
NL005	Municipality of Wijk bij Duurstede	Manager
NL006	Municipality of Haarlem	Manager
NL007	Municipality of Breda	Manager
NL008	Municipality of Breda	Inspector
NL009	Municipality of Deventer	Manager
NL010	Municipality of Deventer	Inspector
NL011	Municipality of Dronten	Inspector
NL012	Municipality of Rotterdam	Manager
NL013	Municipality of Rotterdam	Inspector
NL014	Municipality of Almere	Manager
NL015	Municipality of Alphen aan de Rijn	Manager
NL016	Municipality of Alphen aan de Rijn	Inspector
NL017	Municipality of Leeuwarden	Manager
NL018	Municipality of Leeuwarden	Inspector
NL019	Municipality of Lelystad	Manager
NL020	Municipality of Helmond	Manager
NL021	Municipality of Helmond	Inspector
NL022	Municipality of Schijndel	Manager
NL023	Municipality of Twenterand	Manager
NL024	Municipality of Groningen	Manager
NL025	Municipality of Goes	Manager
NL026	Municipality of Arnhem	Manager
NL027	Municipality of Emmen	Manager
NL028	Municipality of Zwolle	Manager
NL029	Municipality of Soest	Manager
NL030	Municipality of The Hague	Manager
NL031	Municipality of Delft	Manager
NL032	Municipality of Houten	Inspector
NL033	Municipality of Coevorden	Manager
NL034	Municipality of Coevorden	Inspector
NL035	Municipality of Coevorden	Inspector

Appendix B Overview of Australian interviewees

No.	Organisation	Position	Experience*
A001	AIBS	Representative	both
A002	City of Adelaide	Manager	both
A003	City of Adelaide	Manager	both
A004	Planning SA	Manager	both
A005	University of SA, Centre for Building and Planning Studies	Associate professor	both
A006	AIBS	Representative/private certifier	both
A007	City of Adelaide	Inspector	both
A008	City of Adelaide	Inspector	both
A009	Building surveying consultancy firm (national)	Consultant/private certifier	both
A010	Private Certification firm (national)/ AIBS	Director/representative	both
A011	Building Commission	Consultant	both
A012	Building Commission	Manager	both
A013	Building Commission	Manager	both
A014	Building Commission	Manager	both
A015	City of Dandenong	Manager	both
A016	City of Melbourne	Inspector	both
A017	Private Certification firm (national)	Director/private certifier	both
A018	Law firm (national)	Director	both
A019	Private Certification/consultancy firm	Director/private certifier	both
A020	Building Practitioners Board	Consumers representative	both
A021	Building Practitioners Board	Building surveyors representative	both
A022	Building Commission	Director	both
A023	Private Certification firm	Director/private certifier	both
A024	University of Melbourne, School of Architecture and Building	Senior lecturer	both
A025	Building Commission	Senior technical advisor	both
A026	Australian Building Codes Board	Representative	both
A027	Master Builders Association of the ACT	Director	both
A028	ACT Planning and Land Authority	Inspector	both
A029	NSW Department of Planning, Building Professionals Board	Representative	both
A030	NSW Department of Planning, Building Professionals Board	Representative	both
A031	University of Technology Sydney, Faculty of Design, Architecture and Building	Senior lecturer	both

No.	Organisation	Position	Experience*
A032	City of Sydney	Inspector	new
A033	University of Technology Sydney, UTS Centre for Local Government	Associate Professor	both
A034	Architecture firm	Director	new
A035	Australian Institute of Builders	Representative (national)	both
A036	Australian Institute of Builders	Representative (NSW chapter)	both
A037	Royal Australian Institute of Architects	Representative (national)	both
A038	Architecture firm	Director	both
A039	City of Sydney	Manager	both
A040	City of Sydney	Senior inspector	both
A041	AIBS	Representative	both
A042	Queensland University of Technology, School of Urban Development	Lecturer	both
A043	Queensland University of Technology, School of Design, Faculty of Built Environment and Engineering	Lecturer	both
A044	Architecture firm	Senior associate	both
A045	Master Builders	Representative (national)	both
A046	Private Certification/consultancy firm	Inspector/consultant	both
A047	Building Codes Queensland	Manager	both
A048	Building Service Authority	Manager	both
A049	Building Codes Queensland	Representative	both
A050	AIBS	Representative (Queensland)/ private certifier	both
A051	Architecture firm	Senior associate/Senior architect	both
A052	Architecture firm	Senior architect	both
A053	Housing Industry Association	Representative (Queensland)	both
A054	Private Certification/consultancy firm	Manager/private certifier	both
A055	Queensland Fire and Rescue Service	Manager	both
A056	Queensland University of Technology, Faculty of Built Environment and Engineering	Professor	both

*) *Experience with old, new or both the old and the new regimes.*

Appendix C Overview of Canadian interviewees

No.	Organisation	Position	Experience*
C001	City of Vancouver	CP Program representative	new
C002	British Columbia and Yukon Territory Building and Construction Trades Council	Representative	new
C003	International Brotherhood of Electrical Workers	Representative	both
C004	British Columbia Safety Authority	Representative	both
C005	Private architecture firm	Architect/Certified Professional	both
C006	GHL Consultants LTD	Certified Professional	both
C007	Private engineering firm	Certified Professional	both
C008	Private architecture firm	Architect/Certified Professional	both
C009	Home Builders Association, Calgary Region	Representative	both
C010	City of Calgary	Manager	both
C011	City of Calgary	Manager	both
C012	BKDI architects	Senior associate	both
C013	BKDI architects	Safety codes specialist	both
C014	Resiance Corporation	Manager	both
C015	Resiance Corporation	Representative	new
C016	City of Lethbridge	Manager	both
C017	Safety Services, Ministry of Municipal Affairs, Alberta	Representative	both
C018	Safety Services, Ministry of Municipal Affairs, Alberta	Representative	both
C019	Safety Codes Council	Representative	both
C020	Safety Codes Council	Representative	both
C021	Safety Services, Ministry of Municipal Affairs, Alberta	Representative	both
C022	Private inspection firm	President/inspector	both
C023	Alberta Chapter of the Canadian Home Builders Association	Representative	both
C024	Ministry of Municipal Affairs, Alberta	Representative	both
C025	City of Edmonton	Inspector	both

No.	Organisation	Position	Experience*
C026	Ministry of Municipal Affairs and Housing, Ontario	Representative	both
C027	City of Toronto	Manager	both
C028	City of Toronto	Inspector	both
C029	Private inspection firm	Principal/inspector	both
C030	Residential Construction Council of Central Ontario	Representative	both
C031	Municipality of Port Hope	Manager/inspector	both
C032	City of Vaughan	Manager/inspector	both
C033	Building and Safety Policy Branch, Ministry of Forests and Range and Minister Responsible for Housing, BC	Representative	both
C034	Building and Safety Policy Branch, Ministry of Forests and Range and Minister Responsible for Housing, BC	Representative	both
C035	Building and Safety Policy Branch, Ministry of Forests and Range and Minister Responsible for Housing, BC	Representative	both
C036	BC Homeowner Protection Office	Representative	both
C037	BC Homeowner Protection Office	Representative	both
C038	Association of Professional Engineers and Geoscientists of BC	Representative	both
C039	City of Vancouver	Representative	both
C040	City of Surrey	Manager/inspector	both
C041	Natural Resources Canada	Representative	both
C042	National Research Council	Manager	both
C043	Building Constructing Trades Department	Representative	both
C044	City of Ottawa	Manager/inspector	both
C045	City of Ottawa	Manager	both
C046	Morrison Hershfield Ltd	Inspector	both
C047	Canadian Home Builders Association	Representative (national)	both

**) Experience with old, new or both the old and the new regimes*

Appendix D Outline interview questionnaire Australia

Introduction

1a What do you think about the quality of the building industry in [jurisdiction]?

1b To what extent is a certain development perceivable in the building industry?

Why was the new regime introduced?

2 Preceding this interview I have send you a short overview, my perception, of the [old and new regime] in [jurisdiction]. To what extent is this a proper description?

3a Why was the [new regime] introduced?

How does the regime operate in daily practice?

3b What changes have occurred due to the [new regime]?

5a To what extent can [local government] interfere in the [private sector] assessment process?

5b And to what extent do [local government]?

6 What are the differences in objectives between the [old regime/public sector regime] and the [new regime/private sector regime]?

7a Into what extent can acceptable evidence be found of the achievement of regulatory objectives?

7b Could you state websites, research reports, articles that might be of help to my further research?

9 To what extent is building control performed equally amongst different groups?

10 To what extent is building control performed equitably by different the different sectors? (public and private sector enforcement actors)

12 Which are the statutory responsibilities at building control level [for both municipal and private sector actors]?

How is the regime evaluated?

4a Do applicants show preference for either [public or private sector involvement]?

4b If so, why?

11a How are the different enforcement actors (public and private) overseen by [different levels of government]?

11b To what extent is this oversight realistic?

Why are goals that underpin the regime (not) achieved?

1c Why is building control needed in [jurisdiction]?

8a What is the most serious obstacle to achieving objectives of the building regulations? Why?

8b What is the second most serious obstacle to achieving objectives? Why?

8c [If interviewee mentions more objectives, try to have these ordered.]

Close interview

13 Are there any things you think I have missed in this interview, or is there anything you wish to add?

Appendix E Outline interview questionnaire Canada

Introduction

1a What do you think about the quality of the building industry in [jurisdiction]?
1b To what extent is a certain development perceivable in the building industry?

Why was the new regime introduced?

2 Preceding this interview I have send you a short overview, my perception, of the [old and new regime] in [jurisdiction]. To what extent is this a proper description?
3a Why was the [new regime] introduced?

How does the regime operate in daily practice?

5a To what extent can [local government] interfere in the [private sector] assessment process?
5b And to what extent do [local government]?
6 To what extent has compliance (with building regulations) changed after the introduction of [the new regime]?
7a Into what extent can acceptable evidence be found of the achievement of regulatory objectives?
7b Could you state websites, research reports, articles that might be of help to my further research?
9a To what extent is building control performed equally amongst different groups?
9b To what extent is building control performed equitably by different the different sectors? (public and private sector enforcement actors)

How is the regime evaluated?

3b Do applicants show preference for either [public or private sector involvement]?
3c If so, why?
4a What are the criteria to be allowed to enforce building regulations? (for both public and private sector actors)
4b Are these criteria realistic? (qualitative and quantitative)
10a What are the statutory responsibility and liability of different enforcement parties? (public and private sector actors)
10b Are these realistic?
11a How are the different enforcement actors (public and private) overseen by [different levels of government]?
11b To what extent is this oversight realistic?

Why are goals that underpin the regime (not) achieved?

1c Why is building control needed in [jurisdiction]?

8a What is the most serious obstacle to achieving objectives of the building regulations? Why?
8b What is the second most serious obstacle to achieving objectives? Why?
8c [If interviewee mentions more objectives, try to have these ordered.]
12 If you were allowed to change one thing in the new regime, what would it be? And why?

Close interview

13 Are there any things you think I have missed in this interview, or is there anything you wish to add?

Appendix F Additional questionnaire Australia

Statements	Interviewees replies in %(*)				
	++	+	-	--	X
1. Private certification and conflicts of interest go hand in hand due to commercial pressure	19	41	7	30	4
2. Municipal building control and conflicts of interest go hand in hand due to political pressure	15	15	26	33	11
3. Private certification made building regulatory assessment more effective – compliance with regulations has improved	19	41	26	11	4
4. Private certification made building regulatory assessment more efficient – the process has sped up	56	40	0	4	0
5. Private certification has not sped up building development as it is just a small private part in a large public system	15	19	22	44	0
6. Competition amongst private certifiers erodes standards	19	33	19	26	4
7. Private certifiers are subject to clients will	11	33	19	26	11
8. The thin line between controlling and consulting gets crossed by private certifiers	11	48	26	15	0
9. Rivalry exists between private certifiers and local council employees	22	44	15	7	11
10. Local councils use planning regulations to regain grip on building control	37	37	15	7	4
11. Private certifiers dislike small jobs such as assessing applications for alterations, house extensions and fences	26	15	37	7	15
12. In present, State supervision on private certifiers is a joke	19	26	26	22	7
13. In present, it is registration/licensing, complaint investigation and auditing that makes private certifiers comply with regulations	15	37	30	11	7
14. In present, it is the private certifiers business-like attitude that makes them comply with regulations	11	52	15	7	15
15. Private certifiers are more risk-averse than their local council counterparts	11	56	19	7	7
16. Private certifiers prefer deemed-to-satisfy solutions to alternative solutions	7	30	30	15	19
17. Performance-based codes are difficult to control	26	33	30	7	4
18. Local Council employees hide behind their public body, the local council, when it comes to taking responsibility	11	11	33	26	19
19. The introduction of private certification gave insurance companies too much influence on building regulations	11	15	41	26	7
20. The introduction of private certification gave insurance companies too much influence on building control	19	41	7	30	4

**) ++ = strongly agree; + = agree; – = disagree; -- = strongly disagree; X = no opinion. (The 'no opinion' category was included as option for interviewees when they either had no experience with the statement or did not want to express their response to a statement. It was explicitly stated that the 'no opinion' category did not correspond with a 'neutral' category.)*

In total 27 interviewees (48%) filled out and returned the additional questionnaire.

Appendix G Additional questionnaire Canada

Statements	Interviewees replies in %(*				
	++	+	-	--	X
1. Private sector involvement (PSI) and conflicts of interest go hand in hand due to commercial pressure	13	44	25	19	0
2. Municipal building control/assessment and conflicts of interest go hand in hand due to political pressure	0	31	44	25	0
3. PSI made building control/ assessment more effective – compliance with regulations has improved	13	50	19	13	6
4. PSI made building control/assessment more efficient – the process has sped up	6	56	19	13	6
5. PSI has not sped up building development as it is just a small private part in a large public system	6	31	25	19	19
6. Competition amongst PSI agencies erodes standards	19	25	25	19	13
7. PSI agencies are subject to clients will	19	38	25	13	6
8. The thin line between controlling and consulting gets crossed by PSI agencies	13	44	25	19	0
9. Rivalry exists between PSI agencies and local council employees	13	38	19	13	19
10. Local councils use planning regulations to regain grip on building control	6	50	6	19	19
11. PSI agencies dislike small jobs such as assessing applications for alterations, house extensions and fences	13	44	6	13	25
12. In present, provincial supervision on PSI agencies is a joke	13	38	13	19	19
13. In present, it is registration/licensing, complaint investigation and auditing that makes PSI agencies comply with regulations	6	63	19	6	6
14. In present, it is the PSI agencies' business-like attitude that makes them comply with regulations	0	50	31	19	0
15. PSI agencies are more risk-averse than their local council counterparts	13	38	13	13	25
16. Municipalities liability is a major issue with PSI	25	38	19	6	13
17. Objective-based codes are difficult to control	19	38	0	19	25
18. Local council employees hide behind their public body, the local council, when it comes to taking responsibility	0	44	25	19	13
19. The introduction of PSI gave insurance companies too much influence on building regulations	6	19	25	13	38
20. The introduction of PSI gave insurance companies too much influence on building control	13	19	13	19	38

**) ++ = strongly agree; + = agree; – = disagree; -- = strongly disagree; X = no opinion. (The 'no opinion' category was included as option for interviewees when they either had no experience with the statement or did not want to express their response to a statement. It was explicitly stated that the 'no opinion' category did not correspond with a 'neutral' category.)*

In total 16 interviewees (34%) filled out and returned the additional questionnaire.

Appendix H Codes used to analyze data

Primary codes	Secondary codes	Tertiary codes
0 – Public	Accountability	Accreditation/Licensing/Registration
1 – Private	Auditing	Additional planning regulations
2 – Public/private	Credibility	Alternative solutions
Additional information	Effectiveness	Bottom up
Criteria	Efficiency	Change
Development building industry	Equity	Changes after permit
Difference public private	Integrity	Cheaper
Enforcement	Liability	Client binding
Enforcement power	Private interest	Client focus
Extra	Public interest	Client shopping around
Introduction private sector	Responsibility	Commercial pressure
Introduction regime	Responsive regulation	Commercial/large domestic
Most serious	Self-regulation	Competition
Obstacle		Conflict of interest
Oversight		Consistency planning/building
Other		Contact private actor
Preference		Continual professional development
Private sector		Contractor advises control
Process		Cooperation
Public sector		Cut costs
Quality building control		Deskilling
Quality building industry		Differences between provinces
Quote		Experience
Realistic?		Generally good
Regulations		Get what you pay for
Role government		Good
Second most serious		Independent
Supervision		Insurance industry

Primary codes	Secondary codes	Tertiary codes
Website		Insurance policy
		Insurance power
		Introduction trouble
		Investigate complaints
		Leaky condo
		Less good
		Likewise
		Line design/consult
		Lodge complains
		Loss public info
		Minor construction work
		More expensive
		Natural split
		Negative
		Ordinary citizens
		Other
		Perceived development in industry
		Personal responsibility
		Political pressure
		Public monopoly
		Public/client understanding system
		Risk averseness
		Rivalry public/private
		Service
		Set lowest common denominator
		Specialisation
		Suburbs/countryside
		Supply information
		Support
		Top down
		Unclear
		Victoria

Appendix I Qualitative Comparative Analysis (QCA)

From tracing and portraying the tradeoffs in Chapters 6 and 7 it became clear that the impacts in most cases were related to different possible combinations of causally relevant conditions. For instance, a tradeoff between public and private interest might result from a combination of (A) competitive private sector involvement, in combination with a lack of (B) strong oversight by (C) governmental oversight agencies, which oversee (D) a small group of private sector actors. The same tradeoff might result from (A) competitive private sector involvement, in combination with (B) strong oversight by (E) private sector oversight agencies which oversee (D) a large group of private sector actors. The notion that there are multiple causal paths to the same outcome is sometimes referred to as equifinality (Mahoney and Goertz, 2006). And within qualitative work equifinality implies that limited number of causal paths can lead to an outcome; the strength of small-n studies is that these causal paths can be identified (*ibid*.).

Qualitative Comparative Analysis (QCA) appears a valuable tool to identify such causal paths in small-n studies. In Chapter 8 I apply this method for analyzing my data. The method is however rather novel and might be unknown to my readers; therefore I have decided to address some pages to it. In this appendix I aim at providing more insight in the particular methodology as an addition to the brief discussion in Chapter 5. Note that I use the term outcome here in a different way than discussed in the introduction of this thesis. This has to do with the use of the particular term by most of the authors I refer to in this appendix. The term here covers both the term impacts and outcomes as discussed in the introduction.

Necessity and sufficiency

Before I discuss QCA methodology let me briefly discuss the concepts of necessity and sufficiency of causes. Sufficiency is considered when a cause 'by itself (…) can produce a certain outcome'; necessity is considered when a cause 'must be present for a certain outcome to occur' (Ragin *et al*., 2006: 20). In practice sufficiency and necessity are considered jointly as often, if not always, 'a cause works together with other causes to produce an outcome. It is the larger combination that generates the outcome' (Mahoney, 2008: 418). To explain this matter further, in the example stated above, a lack of oversight (B) is necessary for the tradeoff introduced, but not sufficient. Whereas private sector involvement (A) is sufficient for the tradeoff introduced, but not necessary; given certain background conditions private sector involvement may or may not result in the tradeoff introduced (cf. Steinberg, 2007: 186). Since cases are configurations of necessary and/or sufficient causes that together result in certain outcomes, a question that rises is: which configurations of causes do result to what outcomes? The methodological tool that is applicable to this question in small-n studies is Qualitative Comparative Analysis, or QCA, since the focus of QCA is on how causes and outcomes relate (Ragin, 1987; Ragin, 2000; Ragin *et al*., 2003).

Boolean algebra

QCA is based on Boolean algebra, which may need some explanation. Boolean algebra – also known as the algebra of logic or the algebra of sets – was developed in the late 1830s by George Boole (Whitesitt, 1961). As QCA only relates to a number of aspects of Boolean algebra (Ragin *et al.*, 2006: 41-52) I limit myself to discussing these only (based on, Ragin, 1987; Ragin, 2000; Ragin *et al.*, 2006; Ragin *et al.*, 2003).

Boolean algebra can be understood as algebra of two values, for instance: 0 and 1; or, false and true; or, absent and present. In QCA, variables – the causes and the outcomes – are represented as false or absent by a '0' and true or present by a '1'; nominal-scale measures. As a result, in Boolean logic negation switches a variable from 1 to 0, or from 0 to 1. Meaning that when in the above example private sector involvement (A) is a variable, the case has a Boolean score of 1 when private sector involvement is present; and a Boolean score of 0 when private sector is absent. Another way of illustrating presence and absence is the use of uppercase and lowercase letters. Uppercase then presents presence (e.g. 'PRIVATE SECTOR INVOLVEMENT', or 'A') and lowercase then presents absence (e.g. 'private sector involvement', or 'a').

Then, so-called truth tables are used to present raw data matrices. After recoding the data into nominal scale-measures the data can be sorted out into the different combinations of the independent variables – the causes. Following on from this, each combination of independent variables – the causes – is assigned an output value: a score of 0 or 1 on the dependent variable – the outcome. Truth tables have as many rows as there are logically possible combinations of values on the causes – the independent variables. With three independent variables the truth table contains 23 = 8 rows, with four independent variables 24 = 16 rows; and, with *k* independent variables 2^k rows.

For convenience of visual comparison, or presentation of the data, those combinations of causes that were not present in the cases are left out of the presented truth table. Furthermore, as the focus of this method is not on finding a frequency of combinations of causes that results in an outcome – this is left to more quantitative methodology – there is no reason to include repetition of instances where combinations of causes led to a certain outcome or not. At issue is if a certain combination of causes – which characterizes the case – was found to result or not to result in a certain outcome. The number of instances can however be included in the truth table to remind the reader that a certain row is not a single case, but a similar combination of causes found in different cases that resulted in the presence or absence of the same outcome. In Table I.1 I present such a truth table based on the above example. In the table I visualize ten hypothetical cases in which a combination of the causes (A) private sector involvement; (B) strong oversight; (C) governmental oversight agency; and (D) large group of private sector actors may or may not have resulted in the hypothetical tradeoff (Tr1) 'public versus private interests'.

Table I.1 Hypothetical truth table

	Causes				Outcome	Number of instances
	A	B	C	D	Tr1	
row #1	1	1	1	1	1	1
row #2	1	1	1	0	1	2
row #3	1	1	0	1	1	1
row #4	1	1	0	0	1	1
row #5	1	0	0	0	0	1
row #6	1	0	1	1	1	1
row #7	1	0	1	0	1	1
row #8	0	1	0	1	1	1
row #9	0	1	0	0	1	1
	All other possible combinations of causes (7)					

A: private sector involvement
B: strong oversight
C: governmental oversight agency
D: large group of private sector actors
Tr1: hypothetical tradeoff "public versus private interests"

From this example it becomes clear that the tradeoff 'public versus private interest' within the pool of cases analyzed might be a result of the combination (row #1) 'the presence of private sector involvement, and the absence of strong oversight, and the presence of a governmental oversight agency, and the presence of a large group of private sector actors' since in one case this combination was found to have resulted in the tradeoff; next, the tradeoff might in this example as well be a result of the combination (row #2) 'the presence of private sector involvement, and the presence of strong oversight, and the presence of a governmental oversight agency, and the absence of a large group of private sector actors' since in two cases this combination was found to have resulted in the tradeoff; or the tradeoff might be a result of the combinations of causes in row #3, or row #4, or row #6, or row #7, or row #8[1].

Such a notation of combination of causes can more clearly be represented as:

$$Tr1 = A*B*C*D + A*B*C*d + A*B*c*D + A*B*c*d + A*b*C*D + A*b*C*d + a*B*c*D + a*B*c*d \quad (1)$$

Equation (1) represents the Boolean model for the hypothetical case study presented in Table I.1. In this equation the * symbol represents combined causes (the logical AND); the + symbol represents alternate combinations of causes (the logical OR); the = symbol indicates sufficiency and implies a logical if-then statement; uppercase letters indicate the presence of a cause; and lowercase letters indicate the absence of a cause.

1 The tradeoff was not found in one of the 10 hypothetical cases, which is indicated by the 0 under outcome in the truth table in row row #5. The combination of causes in this case is not of interest to further analysis.

Table I.2 Illustration of QCA simplification

Rough data from truth Table I.1	First round of simplification	Second round of simplification
row#1: A*B*C*D	row#10 (row#1+row#2): A*B*C	row#20 (row#10+row#15): A*B
row#2: A*B*C*d	row#11 (row#1+row#3): A*B*D	row#21 (row#10+row#18): A*C
row#3: A*B*c*D	row#12 (row#1+row#6): A*C*D	row#22 (row#11+row#13): A*B
row#4: A*B*c*d	row#13 (row#2+row4#): A*B*d	row#23 (row#12+row#14): A*C
row#6: A*b*C*D	row#14 (row#2+row#7): A*C*d	row#24 (row#15+row#19): B*c
row#7: A*b*C*d	row#15 (row#3+row#4): A*B*c	row#25 (row#16+row#17): B*c
row#8: a*B*c*D	row#16 (row#3+row#8): B*c*D	
row#9: a*B*c*d	row#17 (row#4+row#9): B*c*d	
	row#18 (row#6+row#7): A*b*C	
	row#19 (row#8+row#9): a*B*c	

Boolean minimization – first phase

After presenting the data in a truth table and representing the combination of causes and outcomes in Boolean models, these Boolean models may be logically simplified (Ragin, 1987; Ragin, 2000) – also referred to as the first phase of Boolean minimization (Ragin *et al*., 2006). The goal of logical simplification is to specify those combinations of causes that resulted in a certain outcome – potential necessary and sufficient causes are eliminated (*ibid*.; see also, Mahoney, 2000; Mahoney, 2007). The process of simplification starts by '[comparing] rows with each other and simplify them through a bottom up process of paired comparison' (Ragin *et al*., 2003: 333). Rows are combined when they differ on one cause only. The logic reasoning behind this process is that when two combinations of causes are the same except for one cause, which is present in one combination and not in the other; and these two combinations of causes result in the same outcome, then that varying cause can be eliminated from the combination (Ragin *et al*., 2006: 46). After the elimination of this particular cause a simpler expression remains. It is sometimes possible to carry out a second, or more rounds of simplification. The most reduced combinations of causes are referred to as prime implicants.

In Table I.2 I present such simplification. I use again the example illustrated in Table I.1. From Table I.2 it becomes clear that in this example two rounds of simplification were possible. It becomes furthermore clear that the bottom up approach of QCA might result in a wider range of combinations for which an outcome is true, than the rough data presented in the truth table.

From this example it becomes clear that the tradeoff "public versus private interest" can be minimized to the reduced Boolean equation:

$$Tr1 = A*B + A*C + B*c \quad (2)$$

Equation (2) indicates that within the set of hypothetical cases analyzed the tradeoff 'public versus private interest' results from the presence of private sector involvement in combination with the presence of strong oversight in a case; or, the presence of private sector involvement in combination with the presence of a governmental oversight agency in a case; or, the presence of strong oversight in combination with the absence of a governmental over-

sight agency in a case[2]. Presence of one or more of these three prime implicants in a case resulted in the tradeoff[3].

Let me, taking the risk of being over-comprehensive, explain one of the prime implicants. The combination of causes in both row#1 and row#2 both resulted in the tradeoff (Tr1). The combination of causes in row#1 and row#2 are similar except for the presence of a large group of private sector actors (D) in row#1, and the absence of a large group of private sector actors (d) in row#2. Because both combinations of causes resulted in the same tradeoff the presence or absence of a large group of private sector actors in these two cases has no impact on the tradeoff. 'Large group of private sector actors' can thus be eliminated from the combinations of causes, and the simplified combination of causes can be represented as: A*B*C (row#10). The same can be done for row#6 and row#7. The simplified combination of causes of these rows can be represented as A*b*C (row#18).

The next step of simplification can be carried out, because the new row#10 and the new row#18 both result in the same tradeoff (Tr1), since these are simplified combinations of causes in row#1, row#2, row#6 and row#7; and the combination of causes in row#10 and row#18 are fully similar, except for the presence of strong enforcement (B) in row#10 and the absence of strong enforcement (b) in row #18. In these two simplified combinations of causes strong enforcement has no impact on the outcome. 'Strong oversight' and can thus be eliminated from the combinations of causes, and the new combination of causes of these rows can be represented as A*C (row#21). This simplified combination of causes can not be simplified further using this process. This most simplified combination of causes therefore is one of the prime implicants.

From this undertaking it has become clear that in Boolean analysis the presence of a cause has the same logical status as the absence of a cause (Ragin *et al*., 2006: 45). It is the combination of present and absent causes that matters. The absence of, for instance, a large group of private sector actors does therefore not mean the presence of a small group of private sector actors[4].

If the researcher has the opinion that 'small group of private sector actors' might be a cause of a tradeoff then this cause has to be included in the truth table.

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2 Note that intuitively some combinations of causes might appear to be inaccurate, but this is due to the hypothetical set up of the case study. In order to be able to explain the possibilities of QCA while using one relatively simple case, I had to make some sacrifices to the representation of reality of the hypothetical case study.

3 Note that this finding does only tell us that these are only the combinations of causes that resulted in the tradeoff in this particular set of cases. It does not say anything about the probability these combinations of causes will result in the same outcome in any other case that is not included in this particular set of cases.

4 However, when using fuzzy set QCA the introduction of ordinal interval scales is a possibility (Ragin, 2007).

Table I.3 Prime implicant chart

Prime implicants	Original combinations of causes (see Table I.1)							
	row#1	row#2	row#3	row#4	row#6	row#7	row#8	row#9
	A*B*C*D	A*B*C*d	A*B*c*D	A*B*c*d	A*b*C*D	A*b*C*d	a*B*c*D	a*B*c*d
A*C	X	X			X	X		
A*B	X	X	X	X				
B*c			X	X			X	X

Boolean minimization – second phase

Prime implicants might seem to be a more specific representation of the combination of causes that resulted in an outcome in a certain case. In fact, they are and they are not.

Prime implications are a simplification since they represent the minimal combination, or combinations of causes that are related to an outcome in a set of cases. They are not a simplification since prime implicants represent a larger group of cases than the original rough combination of cases. For instance, the original combination A*B*C*D only represents the combination of causes that made up the case represented in row#1. The prime implicant A*C represents all cases that share the combination A*C, these are the cases represented in row#1, row#2, row#6 and row#7. A case can be understood as a specific subset of a prime implicant (Ragin *et al.*, 2006: 48). It has to be kept in mind that the simplification process used in QCA does not eliminate cases, but potential causes. And this makes prime implicants applicable for another process of minimization.

Given the understanding that prime implicants represent a number of cases, the researcher might be interested to find the essential prime implicants that, within the particular set of cases, resulted in the outcome. In order to gain this insight a second phase of Boolean minimization can be carried out (Ragin *et al.*, 2006: 45). Again I illustrate this process by using the same examples. As has been illustrated, the prime implicant A*C represents the cases in row#1, row#2, row#6 and row#7. Then, the prime implicant A*B represents the cases in row#1, row#2, row#3 and row#4. Finally, the prime implicant B*c represents the cases in row#3, row#4, row#8, and row#9. Thus, row#1, row#2, row#3 and row#4 are represented by two prime implicants.

Following on from the discussion on necessity and sufficiency, this presence of multiple prime implicants in a single row, indicates that the prime implicants found, are not all essential to the outcome. The goal of the second phase of Boolean minimization is to trace the logically minimal – essential – set of prime implicants that are needed to take up all original combinations of causes (Ragin *et al.*, 2006: 49). A so-called prime implication chart can be used for this process. In a prime implication chart the original combinations of causes are linked to the prime implicants. In Table I.3 I have done so for the example used throughout this chapter.

From analyzing the prime implicant chart it can be learned that only two prime implicants are needed to take up all original combinations of causes: A*C and B*c. The prime implicant A*B can therefore be eliminated from the set. The final most simplified Boolean equation to describe combinations of

causes that, within the particular set of case, resulted in the tradeoff "public versus private interest" is:

$$Tr1 = A^*C + B^*c \quad (3)$$

Equation (3) simply states that a tradeoff between public and private interest occurred, within the set of cases, when private sector involvement is combined with a governmental oversight agency; or when strong oversight is combined with the absence of a governmental oversight agency.

In this example no cause is either necessary or sufficient. Such causes are sometimes named INUS causes, in which the acronym INUS stands for: 'the so-called cause is, and is known to be, an insufficient but necessary part of a condition which is itself unnecessary but sufficient for the result' (Mackie, 1965: 246, in: Mahoney, 2008: 418 – emphasis in original)[5].

Missing links between cases and causes; and missing cases

In order to explain QCA methodology I have used a relatively simple and somewhat 'perfect' example. I had a moderate number of cases; a small number of causes; all of these cases were known to result or not result in the tradeoff; the cases showed a variance of combinations of causes; and all causes were known to be present or absent in each case – i.e. in the truth table all rows could be fully filled, with exemption of the 'other possible combinations of causes', see Table I.1. Since I expect my cases to result in less 'perfect' data – fewer cases; more causes, and thus more 'other possible combinations of causes'; and possible missing data for some combinations of causes and cases – I discuss some options QCA methodology offers to dealing with more complex cases and missing data.

In QCA possible combinations of causes that lack empirical findings are referred to as remainder (Ragin, 2004: 4). Remainders may be valuable to the process of Boolean minimization. For instance, the absence of data on the cause (D) large group of private sector actors in row#1 – A*B*C in stead of A*B*C*D – in the truth table illustrated in Table I.1, would in the simplification process, represented in Table I.2, imply that row#10, row#11 and row#12 could not be formed. Not having these simplifications would in the second round of simplification imply that row#20, row#21, row#22 and row#23 could not be formed. As a result the most simplified Boolean equation possible based on the data available would be:

$$Tr1 = A^*B^*d + A^*C^*d + A^*b^*C + B^*c \quad (4)$$

5 In the expression Tr1 = A*C + B*C, C is necessary but not sufficient; in the expression Tr1 = A*C, both A and C are necessary but not sufficient; in the expression Tr1 = A + B*C, A is sufficient but not necessary; and finally, in the expression Tr1 = A, A is both necessary and sufficient (see also Ragin *et al.*, 2006: 51-52).

QCA allows the researcher to review missing data based on counterfactual analysis and include plausible data for the missing data (Ragin, 2004). However, this inclusion of plausible data should not be treated lightly. Data can only be included if based on existing knowledge it seems plausible that the inclusion of a plausible cause it can be reasoned an outcome will or will not occur. For example, the missing data (D) in row#1 may be replaced with plausible data if based on existing knowledge I can argue the tradeoff 'public versus private interest' will or will not occur if in row#1 – ceteris paribus – the presence of a large group of private sector actors is included[6]. Based on the work of Marwell and Ames (1979, 1980) and Carpenter (2007) it may be argued that group size has no impact on the occurrence of the tradeoff 'public versus private interest' when combined with the other causes identified in a case and represented in row#1. I may thus include the plausible data (D) presence of a large group in row#1.

In QCA the same reasoning is employed to replace 'other possible combinations of causes' that have not been empirically tested in the set of cases. In the example represented in Table I.1, data on outcomes of seven possible combinations of causes, seven possible cases, could not be included since this data was not present in the hypothetical case study; for instance, the combination a*b*C*d – a possible combination of: no private sector involvement, in combination with the absence of strong oversight, the presence of governmental oversight and the absence of a large group of private sector actors. If I would be able to argue that this combination of causes does or does not result in the tradeoff, I am allowed to include this missing case. Again this arguing must be done based on existing knowledge. And again I could do so, since based on my own study of the enforcement of Dutch building regulations (Van der Heijden *et al*., 2006, see also Chapter 2 of this book) it may be argued that this combination does not result in tradeoff 'public versus private interest'.

Using remainders in QCA in the simplification process is referred to as labeling remainders as 'don't care' combinations. Not using remainders is referred to as labeling remainders as 'false' (Ragin, 2004)[7]. And since the use of counterfactual analysis is debated by proponents and opponents of this method of reasoning (for a brief insight in this reasoning, see for instance: Bennet, 1987; Choi, 2007; Lambard, 1990; Ramachandran, 1997) I stress once more an important point made by Ragin (2004) that remainders may only be used in the simplification process if the researcher has a well-founded argument to do so.

Using QCA software in Boolean minimization

6 Note that I do not have to analyze the plausible outcome of row#1 when – ceteris paribus – the absence of a large group of private sector actors (d) is included. I have information on such a combination of causes – row#2.

7 This should not be confused with representing a cause or outcome in the truth table as true/present (1) or false/absent (0).

On the website www.fsQCA.com free QCA software can be downloaded. The software has a number of applications; I discuss however one application I use in Chapter 8, since this application might need some explanation.

In the example I used throughout this chapter, I could apply Boolean minimization by hand. This since the number of causes did not result in an inconvenient number of possible combinations of causes and cases – the rows in Table I.1 combined with the 'other possible combinations of causes'; and the number of causes did not result in an inconvenient simplified combinations number of simplified causes during the simplification process – the rows in Table I.2. However, when more causes are identified in the case study, the number of possible combinations of causes in the truth table and prime implicant chart expand exponentially. The formula to calculate the number of possible combinations of causes in the truth table is 2^k – in which *k* refers to the number of causes; and in prime implicant chart the formula is 3^k (Ragin *et al*., 2006: 43). For instance, when six causes are identified – for example, the four that have been used throughout this chapter and two new possible causes: (E) strong liability and (F) compulsory exams on regulatory knowledge for architects and engineers – these six causes result in 64 possible combinations of causes in the truth table, and 729 possible combinations in the prime implicant chart. QCA software can be applied to compute the prime implicants.

The easiest way to do this is to label the positive case study findings – those that resulted in the outcome – as 'true' and all other data in the truth table – all negative case study findings and all remainders as 'false'. The software then calculates the prime implicants parallel with what has been done in Table I.2. The software does furthermore provide the researcher the possibility to analyze remainders. An enormous opportunity since, in the given example of 6 causes, it will not be hard to imagine that the researcher may face difficulty to counterfactually analyze all, or even a part of all remainders. With 10 cases and 6 causes, the number of 'other possible combination of causes' in the truth table will be at least 54 (26 – 10); or, would the collected case material miss data on the presence of causes, the simplification process would not result in finding the essential combinations of causes – see the discussion above.

To solve this issue the hypothetical essential combinations of causes can be calculated by assuming that all remainders can in fact be counterfactually 'proved'. Positive case study findings are again labeled as 'true', remainders are labeled 'don't care' and all other data in the truth table as 'false'. The software then calculates the most simplified prime implicants possible. Yet, these most simplified prime implicants are hypothetical only.

Ragin (2004) refers to these two approaches of finding prime implicants as limiting a continuum of complexity and parsimony. In which the easy way of computing prime implicants leads to most complex prime implicants – though less complex than the original truth table data! – and results in the limits of

complexity on such a continuum; whereas the hypothetical prime implicants are the limits of parsimony. Such a continuum can be illustrated as:

A*B*E*f +	
A*C*d*f +	A*f +
B*c*D	c

This continuum indicates that based on the case findings and by not accepting remainders as 'don't care' data, the simplified Boolean equation is:

$$Tr1 = A*B*E*f + A*C*d*f + B*c*D \quad (5)$$

The continuum furthermore indicates that based on the assumption that hypothetically all remainders could be counterfactually 'proved', the hypothetical most simplified Boolean equation is:

$$Tr1 = A*C + c \quad (6)$$

Again, we have to remember that the simplified combinations of causes do cover more cases than complex combinations of causes. As such the hypothetical 'combination' A*f covers, amongst others, the combinations A*B*E*f and A*C*d*f.

The following step of this approach is 'to specify intermediate solutions and to evaluate them with respect to counterfactuals they incorporate' (Ragin, 2004: 19). Let me clarify this by discussing the middle combination of causes mentioned in the complex Boolean equation (5): A*C*d*f. Simplifying this combination implies eliminating possible causes from the combination. However, since we know that in the hypothetical most simplified Boolean equation (6) the combination A*f is present these causes can not be removed from the middle of combination causes mentioned in the more complex equation (5). This leaves me with counterfactually analyzing if either (C) the presence of a governmental oversight agency or (d) the absence of a large group of private sector actors can be eliminated from the middle combination of causes mentioned in complex Boolean equation (5).

Based on the work of Marwell and Ames (1979, 1980) and Carpenter (2007) it may be argued that group size has no impact on the occurrence of the trade-off 'public versus private interest' when combined with the other causes identified in the middle combination of causes mentioned in the complex Boolean equation (5). Therefore I argue this cause can be eliminated.

Finally, although much research has been carried out on governmental oversight (see Chapter 3 and 4 of this book), it remains unclear if the absence of a governmental oversight body when combined with the other causes identi-

fied in the middle combination of causes mentioned in the complex Boolean equation (5) will not result in the tradeoff 'public versus private interest'. I therefore do not eliminate this cause; the most simplified prime implicant therefore becomes: A*C*f.

If this process is repeated onto the first and last combination of causes mentioned in the complex Boolean equation (5) an intermediate set of prime implicants may be indentified. On the continuum of complexity and parsimony this can be illustrated as:

A*B*E*f +	A*E*f	
A*C*d*f +	A*C*f	A*f +
B*c*D	B*c	c

The final step to take is to trace the essential prime implicants that resulted, when present in a case, into the tradeoff. This can again be done by drawing up a prime implicant chart – see above.

Appendix J QCA analysis, effectiveness gains

Table J.1 Truth table

Case	Key-characteristics				Impacts	
	Regime design		Environment		O1	O1a
	Execution	Relationship				
	T	R	D	B		
South Australia	0	1	1	0	1	0
New South Wales	1	1	1	0	1	1
ACT	1	0	1	1	1	1
Queensland	1	1	1	0	1	1
Victoria	1	1	1	1	1	1
Vancouver	1	0	1	0	1	1
Alberta	1	0	1	0	1	0

T = assessment task, some (0) or all (1); R = competitive relationship (1), or complementary relationship (0); D = criteria for architects and engineers (designers); B = criteria for contractors and tradesmen (builders); O1= effectiveness gains; O1a = effectiveness gains, more presence (1), less presence (0); 0 = no/absent, except where otherwise specified; and, 1 = yes/present, except where otherwise specified.

Table J.2 QCA simplification for outcome O1

Rough data from Table J.1	First round of simplification	Second round of simplification
row #1: t*R*D*b	row #6 (1+2): R*D*b	row #6: R*D*b
row #2: T*R*D*b	row #7 (2+4): T*R*D	row #11 (7+10): T*D
row #3: T*r*D*B	row #8 (2+5): T*D*b	row #12 (8+9): T*D
row #4: T*R*D*B	row #9 (3+4): T*D*B	
row #5: T*r*D*b	row #10 (3+5): T*r*D	

Abbreviations: see Table J.1.

Table J.1 includes the data used to analyze the questions: does the relationship between the public and the private sector in the regimes analyzed influence the effectiveness gains; and does regime environment matter?

Following on from QCA methodology discussed in Chapter 5, the first phase in analyzing the data presented in Table J.1 is the simplification of the data. Table J.2 illustrates this simplification process. In this table row#1 represents the South Australian regime; row#2 represents the New South Wales and the Queensland regimes; row #3 represents the ACT regime; row #4 represents the Victoria regime; and row #5 represents the Vancouver and Alberta regimes. From this simplification process it becomes clear that in the cases analyzed effectiveness gains are related to – see Table J.3:

Table J.3 Prime implicant chart for outcome O1

Prime implicants	Original combinations of characteristics				
	t*R*D*b	T*R*D*b	T*r*D*B	T*R*D*B	T*r*D*b
R*D*b	X	X			
T*D		X	X	X	X

T = assessment task, some (0) or all (1); R = competitive relationship (1), or complementary relationship (0); D = criteria for architects and engineers (designers); B = criteria for contractors and tradesmen (builders); O1= effectiveness gains; O1a = effectiveness gains, more presence (1), less presence (0); 0 = no/absent, except where otherwise specified; and, 1 = yes/present, except where otherwise specified.

Table J.4 QCA simplification for outcome O1a

Rough data from Table J.2	First round of simplification	Second round of simplification
row #1: T*R*D*b	row #5 (1+3): T*R*D	row #9 (5+*8): T*D
row #2: T*r*D*B	row #6 (1+4): T*D*b	row #10 (6+7): T*D
row #3: T*R*D*B	row #7 (2+3): T*D*B	
row #4: T*r*D*b	row #8 (2+4): T*r*D	

T = assessment task, some (0) or all (1); R = competitive relationship (1), or complementary relationship (0); D = criteria for architects and engineers (designers); B = criteria for contractors and tradesmen (builders); O1= effectiveness gains; O1a = effectiveness gains, more presence (1), less presence (0); 0 = no/absent, except where otherwise specified; and, 1 = yes/present, except where otherwise specified.

$$O1 = R*D*b + T*D \qquad (1)$$

Equation (1) indicates that within the set of cases analyzed effectiveness gains were found when a regime was characterized by either

- the combination of a competitive relationship, with strong criteria set to architects and engineers, and the absence of such criteria to contractors and tradesmen; or,
- the combination of private sector inspectors who are allowed to carry out all assessment tasks, in combination with strong criteria set to architects and engineers.

Equation (1) assumes a certain impact of a competitive relationship on effectiveness gains. Yet, when including the presence of these effectiveness gains – outcome O1a, 'more' presence or 'less' presence –into the analysis the following simplification process can be carried out – see Table J.4. In this table row#1 represents the New South Wales and the Queensland regimes; row #2 represents the ACT regime; row #3 represents the Victoria regime; and row #4 represents the Vancouver regime. From this simplification process it becomes clear that in the cases analyzed 'more' efficiency gains are related to:

$$O1a = T*D \qquad (2)$$

Equation (2) indicates that within the set of cases analyzed 'more' effectiveness gains were found when a regime was characterized by the combination of private sector inspectors who are allowed to carry out all assessment tasks, in combination with strong criteria set to architects and engineers. When comparing equations (1) and (2) it becomes clear that the combination of T*D has more impact onto the effectiveness of a regime than the combination of R*D*b.

Appendix K QCA analysis, efficiency gains

Table K.1 includes the data used to analyze the questions: does the amount of tasks influence the X-efficiency gains? And: does the relationship between the public and the private sector in the regimes analyzed influence the X-efficiency gains?

Following on from QCA methodology discussed in Chapter 5, the first phase in analyzing the data presented in Table K.1 is the simplification of the data. Table K.2 illustrates the simplification process. From this simplification process

Table K.1 Truth table

Case	Key-characteristics				Impacts	
	Regime design				O2	O2a
	Execution			Relationship		
	T	P	F	R		
South Australia	0	0	0	1	1	0
New South Wales	1	1	0	1	1	1
ACT	1	1	0	0	1	1
Queensland	1	1	1	1	1	1
Victoria	1	1	0	1	1	1
Vancouver	1	0	0	0	1	1
Alberta	1	1	1	0	1	0

Abbreviations: T = assessment task, some (0) or all (1); P = permit issuance; C&O = level criteria and oversight; R = competitive relationship (1), or complementary relationship (0); D = criteria for architects and engineers (designers); O2 = x-efficiency gains; O2a = X-efficiency gains: more presence (1), less presence (0); 0 = no/absent, except where otherwise specified; and, 1 = yes/present, except where otherwise specified.

Table K.2 QCA simplification for outcome O2

Rough data from Table K.1	First round of simplification	Second round of simplification
row #1: t*p*f*R	row #1: t*p*f*R	row #1: t*p*f*R
row #2: T*P*f*R	row #7 (2+3): T*P*f	row #9: T*f*r
row #3: T*P*f*r	row #8 (2+4): T*P*R	row #12 (7+12): T*P
row #4: T*P*F*R	row #9 (3+5): T*f*r	row #13 (8+10): T*P
row #5: T*p*f*r	row #10 (3+6): T*P*r	
row #6: T*P*F*r	row #11 (4+6): T*P*F	

Abbreviations: T = assessment task, some (0) or all (1); P = permit issuance; C&O = level criteria and oversight; R = competitive relationship (1), or complementary relationship (0); D = criteria for architects and engineers (designers); O2 = x-efficiency gains; O2a = X-efficiency gains: more presence (1), less presence (0); 0 = no/absent, except where otherwise specified; and, 1 = yes/present, except where otherwise specified.

Table K.3 Prime implicant chart for outcome O2

Prime implicants	Original combinations of characteristics					
	t*p*f*R	T*P*f*r	T*P*F*R	T*P*F*R	T*p*f*r	T*P*F*r
t*p*f*R	X					
T*P		X	X	X		X
T*f*r					X	

Abbreviations: T = assessment task, some (0) or all (1); P = permit issuance; C&O = level criteria and oversight; R = competitive relationship (1), or complementary relationship (0); D = criteria for architects and engineers (designers); O2 = x-efficiency gains; O2a = X-efficiency gains: more presence (1), less presence (0); 0 = no/absent, except where otherwise specified; and, 1 = yes/present, except where otherwise specified.

Table K.4 QCA simplification for outcome O2a

Rough data from Table K.1	First round of simplification
row #1: T*P*f*R	row # 5 (1+2): T*P*f
row #2: T*P*f*r	row # 6 (1+3): T*P*R
row #3: T*P*F*R	row # 7 (2+4): T*f*r
row #4: T*p*f*r	

Abbreviations: T = assessment task, some (0) or all (1); P = permit issuance;
C&O = level criteria and oversight; R = competitive relationship (1), or complementary relationship (0);
D = criteria for architects and engineers (designers);
O2 = x-efficiency gains; O2a = X-efficiency gains: more presence (1), less presence (0); 0 = no/absent, except where otherwise specified; and, 1 = yes/present, except where otherwise specified.

is becomes clear that in the cases analyzed X-efficiency gains are related to – see Table K.3:

$$O2 = t^*p^*f^*R + T^*f^*r + T^*P \quad (3)$$

Equation (3) indicates that X-efficiency gains were found when a regime was characterized by either

- private sector actors who are allowed to carry out building-plan assessment only – and no other tasks – who had to compete with their public counterparts for clientele; or,
- private sector actors who are allowed to carry out all assessment tasks and issue permits; or,
- private sector actors who are allowed to carry out all assessment tasks, but are not allowed to take up follow-up enforcement tasks, and who stand in a complementary relationship with their public counterparts.

Equation (3) assumes a certain impact of a competitive relationship on efficiency gains, but also not allowing private sector agents to take up follow-up enforcement tasks appears relevant for X-efficiency gains. Yet, when including the presence of these X-efficiency gains – outcome O2a, 'more' presence or 'less' presence – into the analysis the following simplification process

Table K.5 Prime implicant chart for outcome O2a

Prime implicants	Original combinations of characteristics			
	T*P*f*R	T*P*f*r	T*P*F*R	T*p*f*r
T*P*f	X	X		
T*P*R	X		X	
T*f*r		X		X

Abbreviations: T = assessment task, some (0) or all (1); P = permit issuance; C&O = level criteria and oversight; R = competitive relationship (1), or complementary relationship (0); D = criteria for architects and engineers (designers); O2 = x-efficiency gains; O2a = X-efficiency gains: more presence (1), less presence (0); 0 = no/absent, except where otherwise specified; and, 1 = yes/present, except where otherwise specified.

can be carried out – see Table K.4. From this simplification process it becomes clear that in the cases analyzed 'more' X-efficiency gains are related to – see Table K.5:

$$O2a = T^*P^*R + T^*f^*r \quad (4)$$

Equation (4) indicates that within the set of cases analyzed 'more' efficiency gains were found when a regime is characterized by either

- private sector actors who are allowed to carry out all assessment tasks and issue permits, and who stand in a competitive relationship with their public counterparts; or,
- private sector actors who are allowed to carry out all assessment tasks, but are not allowed to take up follow-up enforcement tasks, and who stand in a complementary relationship with their public counterparts.

Summary

Building regulatory enforcement regimes

Comparative analysis of private sector involvement in the enforcement of public building regulations

Jeroen van der Heijden

In this study I analyze consequences of private sector involvement in building regulatory enforcement regimes. My aim for doing so is to add to knowledge on governance reform in general, and specifically add to knowledge on governance reform in building regulatory enforcement – building regulation appeared to be a neglected topic in regulatory literature. The analysis of a variance of Australian and Canadian cases adds to existing knowledge on governance reform; provides insight in what reforms constitute improvements to regulatory enforcement; and especially, shows how differences in regime design relates to differences in regime impacts.

The problem addressed in this study is formulated as: *Worldwide private sector actors are, or will be, involved in building regulatory enforcement and are delegated certain assessment tasks, with differences amongst jurisdictions. This implies a change from traditional public governance regimes towards hybrid forms of governance. However, little is known about the actual policy consequences of such governance reform.*

Based on the problem stated, the main research question motivating this study is: *What are, given underlying policy goals, adequate structures for regulatory enforcement of public building regulations, when enforcement tasks and responsibilities are delegated to public and/or private sector parties?* The core of this study consists of public policy analysis: an evaluation of existing policy in order to gain a better understanding of the involvement of private sector involvement in the enforcement of public building regulations, and to gain insight into possible consequences of such governance reform. Following on from Dunn (2003) public policy analysis may be understood as a process that consists of the following phases, which I follow throughout this study: structuring of policy problems (Chapter 2); the forecasting of expected policy impacts (Chapters 3 and 4); the monitoring of observed policy impacts (Chapters 6 and 7); the evaluation of policy performance (Chapter 8); and the recommendation of preferred policies (Chapter 9).

In Chapter 2, I structure perceived problems in building regulatory enforce-

ment to gain insight into the 'solutions' chosen. This is in order to introduce the reader to the backgrounds of the policy problem addressed in this thesis. The problems have been identified as: enforcement through local government agencies can result in inadequate, over-regulated, slow and costly enforcement processes. The problems have been specified as: *public bureaucracies are not the most efficient way of organization; and: the 'good building inspector' does not exist*. The problem appears two-fold: a problem of organization of regulatory enforcement, and a problem execution of regulatory enforcement. The problem of organization is found in other policy areas as well (Bardach and Kagan, 1982; Osborne and Gaebler, 1992; Sparrow, 2000). And in many policy sectors private sector involvement is seen as the solution to all kinds of government failure. Yet, the oft sought for solution, private sector involvement, appears, as illustrated with examples from England and Wales and New Zealand, to come with a price; and it might be debated what is a proper price. A further point made in this chapter are the actual enforcement tasks – building plan assessment, building permit issuance, assessment of construction work, follow-up enforcement tasks, and occupancy permit issuance – and the difficulty an inspector faces to carry out these tasks in a 'good' manner. In Chapter 2 I stress that not only public inspectors will face these difficulties; private sector actors might as well. I draw up the proposition that to improve a building regulatory enforcement regime the strengths of public and private organization should be combined with the strengths of inspectors, or more generally, actors involved in or subject to building regulatory enforcement. It has to be accepted, though, that making certain choices in order to gain these strengths implies choosing the weaknesses as well.

In Chapter 3, I aim at gaining a better understanding of building regulation. The aim of this chapter is to link regulatory literature to building regulation, since the latter policy sector appears to be overseen in regulatory literature (May and Burby, 1998: 162; McLean, 2003: 50). In Chapter 3 I discussed four major debates in regulatory literature: the quality of regulation, enforcement strategies, enforcement styles, and enforcement actors. I have deliberately chosen not to focus on a chronological discussion on models in regulatory literature – from command-and-control models, via self-regulatory initiatives to risk-based tools – to gain insight in the strengths and weaknesses of the different characteristics of these models. Based on the discussion of the four debates I drew up a number of lessons that can be learned from existing literature.

In Chapter 4, I introduce a typology of building regulatory enforcement regimes and illustrate these with a variety of examples. The regimes are based upon the characteristics discussed in Chapter 3 and fit on a sliding scale that is limited by a pure public regime on one side and a pure private regime on

the other side. The in-between regimes show hybrid forms of governance in which enforcement tasks and responsibilities are delegated to both public and private sector actors. The regimes are characterized by a three level structure in which tasks and responsibilities can be delegated to public and/or private sector actors.

Based on the typology of regulatory enforcement regimes introduced and illustrative examples discussed, I state expectations on possible regime impacts. To start, although 'big tradeoffs' discussed in literature 'seem to imply some sort of tragic choice between one of two equally legitimate principles' (Bader and Engelen, 2003: 384) I expect that: *differences in regime design result in different regime impacts, and tradeoffs can be balanced through regime design*. To be more specific, based on literature discussed in this chapter and Chapter 3 I expect that: *private sector involvement results in intended impacts such as gains in effectiveness and efficiency; and, at the same time, private sector involvement results in unintended impacts such as a decline of equity and accountability. Private sector involvement, furthermore, is directly related to these impacts: more private sector involvement results both in more intended and unintended impacts*. Note that intended impacts shall often imply advantages, whilst unintended impacts may imply both advantages and disadvantages.

In order to 'test' these propositions I carried out case-study research in Australia and Canada. But before discussing these case studies I introduce the cases and research methods in Chapter 5. I selected five cases in Australia and three cases in Canada from secondary accounts based on a desk-study. I selected these cases since all showed private sector involvement in the enforcement of public building regulations. Furthermore, from these secondary accounts I found that in Australia and Canada the cases showed similarity and variance in regime design amongst cases. Yet, the regime environment of the cases shows a high level of similarity.

In order to obtain case-data I carried out a series of interviews in both countries. I selected interviewees using snowball sampling. This sampling resulted in a pool of interviewees from various backgrounds; most having experience with both the old and the new regime in practice. In Australia 56 persons joint in 46 interviews; in Canada 47 persons joint in 37 interviews. My main research tool was a structured interview questionnaire with open-ended questions. The overall outline of the questionnaire is based on four main-questions: Why was the regime introduced?; How does the regime operate in daily practice?; How is the regime evaluated?; and, Why are goals that underpin the regime (not) achieved?

I have processed interview data by means of a systematic coding scheme. To analyze obtained data I have used qualitative data analysis software, the computer program 'Atlas.ti', to run queries. By using this program I was able to systematically explore my data and gain insight in 'repetitive' and 'deviant'

experiences shared by the interviewees. It furthermore gave me insight in recurrence of these experiences – i.e. the number of people that shared similar observations.

In Chapters 6 and 7, I respectively discuss the data obtained in Australia and Canada. The main difference between the Australian set of cases and the Canadian set of cases is the relationship between the public and private sectors in a regulatory enforcement regime. I refer to these relationships as competitive in Australia and complementary in Canada.

In Chapter 8, I comparatively analyze the data obtained. From this data analysis it became I found that private sector involvement in building regulatory enforcement regimes is likely to result in effectiveness and efficiency gains. Case findings suggest that efficiency gains are primarily to be expected from private sector involvement in assessment tasks, such as building plan and construction work assessment. A relation appears to exist between these tasks and gains: the more assessment tasks private sector actors are involved in the more gains are to be expected. Here the strength of private sector involvement comes from specialization in technical assessment tasks. Then, case findings suggest that efficiency gains are primarily to be expected from private sector involvement in both assessment tasks and permit issuance. Again a relation appears to exist between these tasks and gains: the more tasks – both assessment and permit issuance – private sector actors are involved in the more gains are to be expected. Here the strength of private sector involvement comes from both specialization in technical assessment tasks as in keeping the enforcement process to a minimal number of actors: overlapping of tasks was found to undo efficiency gains. However, a certain tipping point appears to exist after which private sector involvement does not add to efficiency. Private sector involvement in follow-up enforcement tasks – such as issuing warning letters, or instituting proceedings against offenders – does not appear to add to efficiency gains. Furthermore, criteria set to designers and builders may add to both effectiveness and efficiency gains since work from more knowledgeable designers and builders is expected to either show more compliance, or to be easier for inspectors to assess. Finally, the relationship between public and private sector actors in a regime does not appear to influence effectiveness gains.

However, private sector involvement in building regulatory enforcement regimes is likely to result in equity issues when introduced in competition with the public sector. A complementary relationship is less likely to result in equity issues. Then, a undermining of administrative accountability is to be expected when an accountability model has a too strong focus on assessing processes and when no disciplinary measures are taken when issues are found. Professional accountability models may strengthen a regime, it has

however limits. Not so much the introduction of private sector involvement in oversight, but a different approach towards oversight from this sector appears related to maintaining integrity. Finally, a decline of social accountability is to be expected from the introduction of private sector involvement: the general public may be less willing to trust private sector involvement. A competitive relationship in combination with a creaming attitude of private sector actors might strengthen the general public's distrust. At the same time however, professionals in the building industry might have more trust in the expertise of private sector actors than in the expertise of public sector actors. These different groups have different needs in building regulatory enforcement.

In Chapter 9, the results of this study are summarized and discussed. In this chapter furthermore the policy implications of this study and ideas on future research are presented. It can be concluded that:

First, tradeoffs between policy goals – such as effectiveness, efficiency, equity and accountability – are to be expected when reforming regulatory governance (cf. Ogus, 2004: 43; Stone, 2002; Wilson, 2008: 200; Winter, 2005: 7). Yet, my study indicates that such tradeoffs are less inevitable than sometimes assumed (Scholz and Wood, 1999): regime design can balance tradeoffs.

Second, effectiveness and efficiency gains may be expected from private sector involvement from utilizing strengths: technical skills. Additional allocative efficiency gains may be expected from keeping the enforcement process to a minimum of enforcement actors – but this is not a strength of the private sector per se. The research adds to the oft cited 'enforcement pyramid' (Ayres and Braithwaite, 1992: 35) that a certain tipping point may be expected after which private sector involvement does not increase effectiveness or efficiency gains to enforcement processes.

Third, when aiming at improving regulatory enforcement by delegating tasks and responsibilities to public and/or private sector actors, the greatest hope lies in a combination of public sector and private sector actors within a regime – a hybrid form of governance. Both sectors have their own strengths which meet the needs of different groups of regulatees. The public sector meets the needs of ordinary citizens who are incidentally involved in regulatory enforcement: guidance and trustworthiness. The private sector meets the needs of professionals in the building industry who are frequently involved in regulatory enforcement: availability, speed and expertise.

Fourth, both the public sector and the private sector have their own weaknesses as well, which relate to inappropriate use of public resources and abuse of authority. Oversight appears needed to monitor different players' integrity and make and hold these accountable for their actions. Furthermore, measures need to be taken when issues are found. Here a dilemma emerges: oversight should reach beyond randomly analyzing different actors' enforcement processes, but such action is costly and doubts may be cast on the

accountability of such oversight itself. Here the greatest hope appears to lie in a combination of different accountability models – e.g. political, legal, bureaucratic, professional, and social accountability; though, my research findings remain vague on what model of oversight facilitates the best results.

Fifth, a relationship between the public and private sectors arises when these are both involved in a regulatory enforcement regime. Case findings suggest that a complementary relationship is preferable to a competitive relationship since the latter appears to strengthen unintended and unwanted regime impacts. This study therefore challenges advocates of 'private sector enforcement of law' (cf. Becker and Stigler, 1974; Landes and Posner, 1975; Osborne and Gaebler, 1992) who aim at competition in regulatory enforcement. Note however that my study indicates that competition amongst private sector actors is preferable since it provides 'exit' possibilities to clients.

Sixth, close related to the above finding it may be concluded that regimes are dynamic. Findings suggest that only regulatees and enforcement actors adapt to each other's behavior over time (cf. De Bruijn *et al.*, 2007); also enforcement organizations change over time. Some negative impacts resulting from such changes – a change of ownership that changes an organization's aim from 'safety to money'; or, the amalgamation of private sector organization which makes the government too dependent on a small number of organizations – once more strengthens the need of oversight: not only after the introduction of a new regime, but continuously over time.

Seventh, minor differences in regime designs may result in major differences in regime impacts. This finding challenges the 'rationality' (Levi-Faur, 2002: 11) of copying 'best practices' from other policy sectors or jurisdictions – sometimes referred to as 'mimetic behavior' (DiMaggio and Powell, 1983: 151-152) or following 'the herd' (Levi-Faur, 2002: 18-20). However, policies are often not literally copied from one context to another: minor adjustments are needed or desired to make an 'exotic' policy suit to local circumstances (cf. Czarniawska-Joerges and Sevon, 1996). My research shows that such minor adjustments can strongly affect the impacts of a regime. Attention should be paid to possible implications of adapting best practices or 'exotic' policies to suit to local circumstances. Furthermore, my study indicates that in order to reach major changes in regime impacts, not necessarily major changes in regime design are needed – the logical other side of the same coin.

Finally, regime environment influences regime impacts as well. Case findings suggest that measures taken related to upskilling knowledge at both the designers' and builders' level – the architects, engineers, contractors, trades people and the like have a positive impact on regulatory compliance. A focus on changing or strengthening habits and customs at practitioner level may provide an alternative to changing regulatory enforcement regimes.

These findings can be applied both in future research as in policy practice.

The study presented, supplied a useful tool for comparative policy analysis of regulatory governance. Furthermore, the set of evaluation criteria applied, and especially the different accountability subtypes (based on Bovens, 2007; May, 2007) may provide handles for future research. Then, policy makers may find the findings presented and conclusions drawn helpful when facing the difficult of reforming regulatory enforcement through involving the private sector to meet certain policy goals. This study does not present a blueprint of how to reach certain goals, it has however provided a wealth of insights into a, formerly, neglected topic in regulatory literature: the enforcement of building regulations.

Samenvatting

Bestuursmodellen voor bouwbeleid

Vergelijkend onderzoek naar het betrekken van private partijen bij het handhaven van publieke bouwregelgeving

Jeroen van der Heijden

Ter inleiding

De beelden die op het journaal en in de krant verschenen waren on-Nederlands. Maar toch. Gele kentekenplaten op uitgebrande auto's, oranje vlaggetjes tussen het puin van ingestorte huizen. Jongeren met verbrande ledematen in een decor van houten trapgevels. Een weggeslagen gevel van een nieuwbouwcomplex waarachter het typisch Nederlandse interieur van een wat ouder echtpaar te bespeuren is. Rijen mensen, uit hun woning gehaald, met niets meer dan een paar dierbare bezittingen die ze in alle haast nog konden meenemen: een paar foto's, wat belangrijke papieren, een klok die al generaties in de familie is. Het zijn sterke beelden. Beelden van de vuurwerkramp in Enschede, de cafébrand in Volendam, het balkondrama in Maastricht, en de ontruiming van het Bos en Lommerplein in Amsterdam. Beelden die voor veel mensen duidelijk maken dat er iets niet in orde is met de kwaliteit en veiligheid van de gebouwde omgeving. En dit zijn slechts vier voorbeelden van een reeks van bouwgerelateerde incidenten.

Met het plaatsvinden van deze reeks van bouwgerelateerde incidenten is de handhaving van bouwregelgeving in Nederland hoog op de publieke en politieke agenda komen te staan. Uit verschillende onderzoeken (Commissie Alders, 2001; VROM, 2002a; VROM, 2002b; VROM, 2003a; VROM, 2003b; VROM, 2004; BZK, 2002; Gemengde Commissie Gevaarlijke Stoffen/Risicobeleid, 2005; Commissie Oosting, 2001; OVV, 2006) blijkt ondermaatse controle op de naleving van regels door verschillende overheden, tekortschieten van deze overheden bij de verstrekking van vergunningen en te weinig scheiding van verantwoordelijkheden tussen verschillende overheden, maar ook te weinig scheiding van verantwoordelijkheden binnen het takenpakket van gemeenten. Uit de onderzoeken wordt geconcludeerd dat de overheid strikter moet gaan toezien op de handhaving van regelgeving. Daarnaast wordt geconcludeerd dat een duidelijk onderscheid gemaakt dient te worden in de verdeling van verantwoordelijkheden. Opgemerkt wordt dat de geconstateerde gebreken zich voornamelijk voordoen bij gemeenten.

Ook worden mogelijke oplossingen aangedragen. Deels worden deze ge-

zocht in het stroomlijnen van de vergunning- en handhavingsprocedures van gemeenten, tweedelijnstoezicht op gemeenten door een speciale afdeling van het Ministerie van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer (VROM), en in de introductie van private partijen in de handhavingsprocedures. Dit laatste in de vorm van gecertificeerde private partijen die bouwvergunningsaanvragen mogen toetsen aan wettelijke regelgeving, het Bouwbesluit. Onder deze vorm is er sprake van een hybride vorm van handhaving: private partijen voeren plantoetsing uit, publieke partijen (gemeentelijke afdelingen Bouw en Woningtoezicht) verstrekken de bouwvergunning en houden toezicht op de uitvoering van bouwwerkzaamheden. Mijn proefschrift richt zich op het betrekken van private en publieke partijen in handhaving van publieke regelgeving en 'hybridisering' van bestuursmodellen.

Doel, probleemstelling en vraagstelling

Het betrekken van private partijen in de handhaving van publieke bouwregelgeving is geen typisch Nederlands verschijnsel. Daarnaast is het betrekken van private partijen in handhavings- en bestuursprocessen niet typisch voor bouwregelgeving. Internationaal en intersectoraal zijn veel voorbeelden te vinden van soortgelijke 'privatisering' als antwoord op het 'falen van de overheid'. Hierbij moet opgemerkt worden dat het betrekken van private partijen de gemeenschappelijke deler is. De wijze waarop private partijen betrokken worden, verschilt tussen landen en soms tussen gebieden binnen een land. Het onderwerp heeft veel aandacht gekregen in (internationale) bestuurskundige en beleidswetenschappelijke literatuur.

Uit onderzoeken naar de gevolgen van deze vorm van privatisering komt naar voren dat het betrekken van private partijen in handhavings- en vergunningsprocedures kan leiden tot effectiviteit- en efficiëntievoordelen (zie ook Baldwin and Cave, 1999: 126; Gunningham and Grabosky, 1998: 52). Echter, gelijktijdig lijken zich tekortkomingen voor te doen in de rechtvaardigheid van de procedures, of de verantwoordelijkheid van betrokken partijen (zie ook Burkey and Harris, 2006: 618; Lefeber and Vietorisz, 2007; Hodge and Coghill, 2007; May, 2007). Binnen de literatuur wordt geconcludeerd dat het wijzigen van bestuursmodellen impliceert dat compromissen gemaakt moeten worden tussen zulke beleidsdoelen (zie ook Ogus, 2004: 43; Stone, 2002; Wilson, 2008: 200; Winter, 2005: 7).

Opvallend is echter dat de handhaving van bouwregelgeving nauwelijks aandacht heeft binnen de (internationale) bestuurskundige en beleidswetenschappelijke literatuur (zie ook May and Burby, 1998: 162; McLean, 2003: 50). Dit terwijl in veel landen dit beleidsveld aan grote veranderingen onderhavig is geweest, of aan veranderingen onderhavig is. Ervaringen uit de beleidspraktijk kunnen beleidsmakers inzicht geven in mogelijke oplossingsrichtingen en uitkomsten en ervaringen uit de beleidspraktijk kunnen bestaande theorieën toetsen en mogelijk aanscherpen. Vanuit dit perspectief is het

doel van dit proefschrift tweeledig. Empirisch richt ik me op het geven van inzicht in de uitkomsten van het betrekken van private partijen bij de handhaving van publieke bouwregelgeving. Theoretisch richt ik me op het toetsen van bestaande theorieën en inzichten over privatisering en hybridisering van bestuur; en het inpassen van het thema bouwregelgeving in dit onderzoeksveld.

Het probleem waar ik mij binnen dit proefschrift op richt, heb ik gedefinieerd als: *Wereldwijd worden private partijen betrokken bij de handhaving van publieke bouwregelgeving. Deze partijen krijgen verschillende taken en verantwoordelijkheden toegedeeld, waarbij verschillen in verdelingen tussen landen en gebieden bestaan. Dit betekent een verandering van traditionele publieke bestuursmodellen naar hybride bestuursvormen. Er is echter weinig bekend over de effecten van zulke publieke bestuursmodellen.*

Volgend uit deze probleemstelling heb ik de volgende onderzoeksvraag gedefinieerd: *Wat zijn, gegeven de gestelde beleidsdoelen, adequate modellen voor het handhaven van (technische) bouwregelgeving, als taken en verantwoordelijkheden worden verdeeld tussen publieke en private partijen?* Het onderzoek heeft een beleidsanalyserend karakter: een evaluatie van bestaand beleid met als doel een beter inzicht te krijgen in het betrekken van private partijen bij de handhaving van publieke bouwregelgeving en om inzichten te krijgen in mogelijke uitkomsten van soortgelijke privatisering. Ik volg binnen mijn proefschrift het standaardwerk van William Dunn (2003) als leidraad voor de beleidsanalyse. De verschillende hoofdstukken van het proefschrift volgen verschillende fases van beleidsanalyse: het structureren van beleidsproblemen (hoofdstuk 2); het doen van uitspraken over te verwachten uitkomsten van beleid (hoofdstukken 3 en 4); het monitoren van beleid (hoofdstukken 6 en 7); het evalueren van beleid (hoofdstuk 8); en het verstrekken van beleidsaanbevelingen (hoofdstuk 9).

Binnen deze samenvatting zal ik per hoofdstuk een korte beschouwing geven van de belangrijkste onderdelen en uitkomsten. Zoals de lezer wellicht heeft gezien, ontbreekt binnen de beleidsanalyse hoofdstuk 5. Dit hoofdstuk richt zich specifiek op de methoden en technieken die ik heb toegepast om data te verzamelen en te analyseren. Ook dit hoofdstuk zal ik beknopt beschouwen in deze samenvatting.

Hoofdstuk 2: Problemen bij het handhaven van bouwtechnische regelgeving

In hoofdstuk 2 structureer ik de problemen rondom de handhaving van bouwregelgeving en de gekozen oplossingen. Het doel van dit hoofdstuk is de lezer inzicht te geven in de gekozen beleidsproblematiek, deze problematiek te plaatsen in een internationaal kader en de beleidsproblematiek te plaatsen in een wetenschappelijk kader. Daarnaast is het doel van het hoofdstuk inzicht te geven in de gekozen oplossingen, deze oplossingen te plaatsen in een internationaal kader en de oplossingen te plaatsen in een wetenschappelijk kader.

Ik begin het hoofdstuk met een uitgebreid verslag van een veelzeggende

case (McKeown, 2004: 153): het balkondrama in Maastricht waarbij twee mensen om het leven kwamen. Aan de hand van nieuwsberichten uit verschillende Nederlandse kranten over en onderzoeksrapportages naar dit incident reconstrueer ik het verloop van de publieke en, in mindere mate, politieke opinie. Vrijwel direct na het plaatsvinden van het incident wordt de gemeente Maastricht en met name de afdeling Bouw- en Woningtoezicht (BWT) door landelijke kranten gezien als hoofdschuldige. Toetsrapportages ontbreken, informatie is zoek, en hier wordt uitgebreid over gerapporteerd. Echter, na jaren van onderzoek door het ministerie van VROM, het Openbaar Ministerie en andere partijen komt naar voren dat verschillende partijen schuldig lijken. Na vier jaar onderzoek en procedures krijgt de betrokken constructeur een boete van ongeveer € 20.000 opgelegd en worden de aannemer en een adviesbureau vrijgesproken. Conform Nederlandse wetgeving kan de afdeling BWT van de gemeente Maastricht niet verantwoordelijk gehouden worden voor haar rol in het vergunnings- en handhavingsproces. Als bekend, deze case is slechts een voorbeeld van de al eerder genoemde reeks incidenten.

Na het bespreken van deze case duik ik terug in de tijd. Ik doe verslag van de totstandkoming van de Woningwet in 1901 en volg de ontwikkelingen van de Woningwet en het Bouwbesluit (de technische bouwregelgeving) tot aan 2003 (waarbij ik me met name baseer op: De Ranitz, 1948; De Vreeze, 1993; Van Overveld, 2003). Op basis van deze bespreking concludeer ik dat ondanks de vele wijzigingen in de Woningwet en het Bouwbesluit de handhaving ervan nauwelijks aan veranderingen onderhavig is geweest. Deze was en is taak en verantwoordelijkheid van de gemeenten, die op hun beurt niet aansprakelijk zijn voor uitgevoerde taken – tenzij er sprake is van toezichtfalen (Drion and Schueler, 2005).

Uit de eerder aangehaalde onderzoeksrapportages kwam een beeld naar voren dat problemen rondom de handhaving van bouwregelgeving vooral bij gemeenten gezocht moeten worden. Echter, deze rapportages geven geen duidelijk beeld over waarom gemeenten problemen ondervinden bij het handhaven van bouwtechnische regelgeving. Om een beter inzicht te krijgen in oorzaken van deze problematiek heb ik tussen 2005 en 2006 onderzoek uitgevoerd bij 27 Nederlandse gemeenten (Van der Heijden *et al*., 2006: hoofdstuk 3 en 4). Uit dit onderzoek komt naar voren dat gemeenten met name te kampen hebben met personele capaciteitstekorten – kwalitatief en kwantitatief. Echter, de op gemeenten geuite kritiek richt zich niet alleen op 'onbekwaam personeel' of onvoldoende personele bezetting, maar ook op 'stroperigheid' van procedures en overmatige regelzucht. Als eerder aangeven, oplossingen gezocht worden in het betrekken van private partijen in het handhavingsproces (Commissie Dekker, 2008; De Groot, 2007).

Na deze beschouwing van de problematiek in Nederland verleg ik mijn blik naar het buitenland. Op basis van een aantal voorbeelden van bouwgerelateerde incidenten in Australië, Frankrijk, Japan, de Verenigde Staten, Duits-

land en Polen laat ik zien dat problemen bij het handhaven van regelgeving niet typisch Nederlands zijn. Vervolgens beschouw ik enkele oplossingen voor de geconstateerde problematiek. Daaruit blijkt dat er sprake is van een trend: hervorming van bestuursmodellen door privatisering in Australië, Canada, de Verenigde Staten en verschillende Europese landen. Echter, deze nieuwe modellen lijken ook niet geheel zonder problemen.

Twee sprekende voorbeelden zijn te vinden in Engeland en Nieuw-Zeeland. Onder het Engelse systeem hebben vergunningaanvragers de keuze om hun aanvraag te laten toetsen door de gemeente of door een private toetser. Onder dit systeem concurreren gemeenten en private toetsers feitelijk om clientèle. Uit onderzoek komt naar voren dat gemeenten minder streng zijn bij het toezicht op de naleving van bouwregelgeving, omdat een te strenge houding mogelijk nieuwe/toekomstige cliënten kan afschrikken. De vraag rijst of dit van invloed is op de effectiviteit van de handhaving (Baiche *et al*., 2006; Imrie, 2004). Een voorbeeld waarbij een soortgelijk competitief systeem volledig uit de hand is gelopen, kan gevonden worden in Nieuw-Zeeland. Aan het begin van de jaren negentig werd in Nieuw-Zeeland een serie wijzigingen doorgevoerd in bouwregelgeving en handhaving. Gelijktijdig werd het bestaande systeem van prescriptieve regelgeving vervangen door prestatie-eisen en werd een systeem van privaat toezicht ingevoerd. Onder het systeem konden zowel private partijen als gemeenten betrokken worden bij de handhaving van bouwregelgeving. Problemen kwamen aan het licht door de zogenaamde Leaky Building Crisis. Door het hele land bleken gebouwen niet wind- en waterdicht te zijn, wat een vernietigend gevolg had voor de veelal houten constructies van woningen en woongebouwen. Uit verschillende onderzoeken kwam naar voren dat ontwikkelaars massaal kozen voor private toetsers omdat deze bouwregelgeving minder streng handhaafden dan hun gemeentelijke tegenhangers, met alle gevolgen van dien (Hunn, 2002; May, 2003).

Vervolgens specificeer ik aan de hand van een literatuurbeschouwing de beschreven problematiek. Enerzijds lijken pure publieke modellen, waarbij alle taken en verantwoordelijkheden aan overheden toekomen, niet de meest efficiënte wijze van organisatie van bestuur (Bardach and Kagan, 1982; Eggers, 2005; Sparrow, 2000). Anderzijds bestaat de 'goede bouwinspecteur' niet (Bardach and Kagan, 1982: hoofdstukken 2 en 5) omdat deze zowel de regelgeving strikt dient te handhaven, iedereen gelijk moet behandelen en elke overtreding af moet straffen, als flexibel en meegaand moet zijn, informatie moet verstrekken, vertrouwen dient te hebben en soms kleine overtredingen over het hoofd moet zien. Zeker binnen het handhaven van technische bouwregelgeving, waarbij niet alleen de breedte van de regelgeving, maar ook de veelheid aan bouwtypen, de verschillende bouwprocessen en de verschillende partijen in het handhavingsproces (o.a. burgers, ontwikkelaars, architecten, aannemers, constructeurs en een variëteit aan adviseurs) het takenpakket van de bouwinspecteur verzwaart, is dit bekende problematiek. Deze pro-

blematiek is niet typisch voor gemeentelijke bouwinspecteurs – ook private bouwinspecteurs zouden deze problematiek kunnen (gaan) ondervinden. Daarnaast hebben de internationale voorbeelden inzicht gegeven in de negatieve aspecten van privatisering van handhavingstaken. Geconcludeerd mag worden dat privatisering van handhavingstaken een oplossing kan zijn voor een deel van de geconstateerde problematiek, maar dat geen blind vertrouwen gesteld kan worden in volledige privatisering. Een optimaal bestuursmodel combineert de sterktes van zowel de publieke als de private sector. Tegelijk zal geaccepteerd moeten worden dat kiezen voor deze sterktes impliceert dat ook de zwaktes van beide sectoren gekozen worden.

Hoofdstuk 3: Naar een beter begrip van bouwregelgeving en handhaving
Ik heb in de introductie al aangegeven dat bouwregelgeving en de handhaving hiervan tot nu toe weinig aandacht heeft gehad in (internationale) bestuurskundige en beleidswetenschappelijke literatuur. Hoofdstuk 3 heeft ten doel een deel van deze literatuur te beschouwen en lessen te trekken die voor de bouwregelgeving en de handhaving hiervan van toepassing zijn. Gelijksoortige literatuurbeschouwingen hebben vaak een chronologisch karakter (zie ook Baldwin and Cave, 1999; Van Stokkom, 2004) en beschouwen dan een aantal bestuursmodellen 'door de jaren heen'. Vervolgens komt dan vaak *command-and-control* aan bod, waarbij alle taken en verantwoordelijkheden bij de overheid liggen; daarna worden vaak zelfreguleringsmodellen genoemd, waarbij private partijen zelf taken en verantwoordelijkheden op zich nemen. Tussen deze twee uitersten blijkt een breed scala aan tussenmodellen te bestaan. Ten slotte sluiten chronologische overzichten vaak af met zogenaamde risicogebaseerde regulering – regelgeving en handhaving op basis van het risico dat iets vormt of veroorzaakt.

Mijn keuze is het behandelen van een aantal debatten uit de bestuurskundige en beleidswetenschappelijke literatuur. Mijn keuze hiervoor is de volgende: op basis van hoofdstuk 2 bleek dat het volledig vervangen van het ene bestuursmodel door het andere niet lijkt te resulteren in optimale oplossingen. Combinaties van verschillende modellen lijken meer voor de hand te liggen. Verschillende onderdelen keren terug in de gedocumenteerde bestuursmodellen. Een beter begrip van die onderdelen geeft mogelijk een beter begrip van de sterktes en de zwaktes van bepaalde oplossingen. De genoemde debatten sluiten aan op deze onderdelen. De debatten zijn: de kwaliteit van regelgeving, handhavingsstrategieën, handhavingsstijlen en handhavingspartijen.

Het debat rondom de kwaliteit van wetgeving lijkt zich vooral te richten op de doelmatigheid van regelgeving (Hoogerwerf and Herweijer, 2003: 28): worden doelen daadwerkelijk vervuld als de regelgeving wordt gevolgd? Verder worden binnen dit debat vragen gesteld over uitvoerbaarheid van regelgeving (Scholz, 1984: 391-392; Van Rooij, 2006: 37; Van Erp, 2005; May, 2004): is het mogelijk de regels na te leven? En: zijn de regels handhaafbaar? Daar-

naast worden vragen gesteld over de duidelijkheid van regelgeving (Bardach and Kagan, 1982: hoofdstuk 3; Van Rooij, 2006: 38-39; Scholz, 1984: 386-387): is het duidelijk wat ermee bedoeld wordt? Ten slotte richt dit debat zich op de flexibiliteit van regelgeving (Van Rooij, 2006: 40): zijn ze aanpasbaar op specifieke actuele en mogelijke toekomstige omstandigheden?

De vragen die binnen dit debat aan de orde komen lijken met name van belang voor de invoering van prestatie-eisen binnen bouwtechnische regelgeving. Waar voorheen technische bouwregelgeving vooral prescriptief was – een exacte omschrijving gaf van hoe men kon voldoen aan de gestelde regel – lijkt internationaal een trend waarneembaar richting prestatie-eisen – niet een exacte omschrijving, maar een beschreven prestatie waar het gebouwde aan moet voldoen (Meacham *et al.*, 2005). Deze nieuwe vorm van regelgeving wordt vaak ingevoerd met als doel innovatie te bevorderen. Echter, de handhaving van dit type regelgeving lijkt aan problemen onderhavig door meervoudige interpreteerbaarheid en onduidelijkheid over het al dan niet voldoen van aangedragen oplossingen aan het geëiste prestatieniveau (*ibid.*).

Het debat rondom handhavingsstrategieën richt zich op keuzen die gemaakt worden door handhavende partijen aangaande de inzet van middelen (Mueller, 2003: hoofdstuk 16) en de acties die genomen worden om naleving te bereiken (De Bruijn *et al.*, 2007; Kagan, 1994). Deze acties worden vaak onderverdeeld in acties gericht op afschrikking en op volgzaamheid (zie ook Hawkins, 1984; Scholz, 1984) – of ongewenst gedrag afstraffen en gewenst gedrag belonen. Binnen dit debat is begin jaren negentig een baanbrekend werk verschenen: *Responsive Regulation* (1992). De idee van *responsive regulation* ('responsieve regulering') is dat succesvolle regulering kan worden bereikt door synergie tussen bestraffing en overreding. De handhaver dient te beschikken over een ruim instrumentarium van handhavingsstrategieën en een ruim instrumentarium van straffen. De omstandigheden maken welke strategie en welke straf worden ingezet om normconform gedrag te bereiken. Binnen de handhaving van bouwregelgeving lijkt met name het belonen van gewenst gedrag door positieve prikkels (subsidies, legeskorting) van invloed te kunnen zijn in de fase van plantoetsing. Korting op leges zou vergunningsaanvragers kunnen stimuleren om professionele partijen te betrekken bij het indienen van een vergunningsaanvraag. Juist omdat volledig toezicht onmogelijk is (veel werkzaamheden 'verdwijnen' in muren, vloeren en plafonds) lijkt een combinatie van positieve en afschrikkende prikkels zinvol voor de fase van uitvoering van bouwactiviteiten.

Het debat rondom handhavingsstijlen richt zich op de relatie tussen de handhavende partij, of de toezichthouder en de justitiabele – de persoon of instantie die aan het recht en daarmee aan toezicht onderworpen is. Handhavingsstijlen kunnen, evenals handhavingsstrategieën, op een continuüm worden geplaatst. Aan de ene kant wordt dit continuüm begrensd door een strikte en formele stijl, aan de andere kant wordt dit continuüm begrensd door

een open en consulterende stijl. Verschillende onderzoeken hebben aangetoond dat de stijl van handhaving van invloed is op de mate van naleving door de justitiabele (May and Wood, 2003; Nielsen, 2006). Echter, auteurs verschillen van mening over hoe verschillende stijlen naleving beïnvloeden. Voor de handhaving van bouwregelgeving lijkt vooral het werk van Peter May (May, 2004; May and Winter, 2000; May and Wood, 2003) van belang. May vindt dat bij een te flexibele en open stijl justitiabelen leren om te gaan met strafmaatregelen en weinig doen om hun werkzaamheden aan te passen. Daarnaast lijkt een te flexibele stijl tegen de handhaver te werken wanneer overgestapt wordt van consulteren naar straffen. Genoemd onderzoek van May richtte zich op aannemers in de Verenigde Staten en agrariërs in Denemarken. Justitiabelen vertonen strategisch gedrag en leren uit eerdere evaringen: de werkelijkheid is dynamisch (De Bruijn *et al*., 2007: 36).

Genoemde inzichten onderschrijven mijn verwachting dat bepaalde problemen rondom het handhaven van bouwregelgeving niet specifiek 'des gemeenteambtenaars' zijn. Enerzijds is het handhaven van bouwregelgeving een complexe aangelegenheid, anderzijds zal de handhaver, of toezichthouder, bestraffend moeten optreden als overtredingen worden geconstateerd. En bestraffend optreden zal over het algemeen niet als positief worden ontvangen door justitiabelen.

Dit brengt me gelijk bij het laatste debat, het debat rondom handhavende partijen. Binnen dit debat wordt de vraag opgeroepen welke partijen het best betrokken kunnen worden bij de handhaving: publieke partijen, private partijen of een combinatie van partijen? Ook binnen dit debat verschijnt in de jaren negentig een baanbrekend werk: *Smart Regulation* (1998). De auteurs van *Smart Regulation* ('slimme regulering') voegen aan de idee van *responsive regulation* toe dat niet slechts de overheid een handhavende rol moet worden toegekend, maar dat ook private of derde partijen, bijvoorbeeld consumentenverenigingen, bij de handhaving van regelgeving kunnen worden betrokken. Betrekken van private actoren en derde partijen zou dan leiden tot meer effectieve en efficiënte handhaving. Gegeven fundamentele verschillen tussen publieke en private partijen (Wilson, 1989: 169) lijkt een combinatie van publieke en private partijen wenselijk binnen een bestuursmodel. In hoofdstuk 3 behandel ik een groot aantal binnen de literatuur beschreven modellen die zich laten plaatsen op, wederom, een continuüm dat wordt begrensd door puur publieke modellen enerzijds en puur private modellen anderzijds. Uit deze modellen komt naar voren dat het betrekken van private partijen zinvol lijkt daar waar kennis of expertise van deze partijen kan worden ingezet bij de handhaving van regelgeving (Braithwaite *et al*., 2007: in het bijzonder hoofdstuk 10).

Hoofdstuk 4: Handhavingsorganisatiemodellen

In hoofdstuk 4 introduceer ik een heuristisch model gebaseerd op de voorgaande theoretische verkenning. Dit heuristisch model heeft als doel op ab-

Figuur 1 Heuristisch model

Niveau	Partij	
	publiek	privaat
REGELGEVING (verdeling van taken en verantwoordelijkheden voor het vaststellen van regelgeving)	–	–
HANDHAVINGSCRITERIA EN TWEEDELIJNSTOEZICHT (verdeling van taken en verantwoordelijkheden voor het vaststellen van criteria aan en toezicht op handhaving)	–	–
UITVOERING VAN HANDHAVING (verdeling van taken en verantwoordelijkheden voor het uitvoeren van handhaving)	–	–
	Justitiabele	

stract niveau de kenmerken van bestuursmodellen die zich richten op de organisatie van handhaving van publieke regelgeving inzichtelijk te maken – ik noem dit handhavingsorganisatiemodellen. Het model kenmerkt zich door een aantal niveaus waarin verantwoordelijkheden in het regelgevings- en handhavingsproces zijn gedefinieerd. De lagen komen voort uit de literatuurverkenning van hoofdstuk 3 en sluiten aan op de vier beschreven debatten. Op basis van de literatuurverkenning kan worden geconcludeerd dat een handhavingsorganisatiemodel zich kenmerkt door de volgende elementen: (1) regelgeving, (2) handhaving van deze regelgeving, (3) eisen die worden gesteld aan deze handhaving en toezicht op de uitvoering van deze handhaving, en (4) partijen die bepaalde taken en verantwoordelijkheden kunnen worden toebedeeld. Verder kenmerken handhavingsorganisatiemodellen zich door een bepaalde structuur van elementen en relaties tussen verschillende elementen. Deze kenmerken (elementen, structuur en relaties) vormen de basis van systeemtheorie (bijvoorbeeld Von Bertalanffy, 1950: 155-157; Burns and Flam, 1987: 10-13; In 't Veld, 1992) – mijn benadering van handhavingsorganisatiemodellen kan daarmee systeemanalytisch genoemd worden. Figuur 1 is een representatie van het heuristisch model.

Op basis van het heuristisch model onderscheid ik in hoofdstuk 4 een aantal typen handhavingsorganisatiemodellen en licht deze toe met een reeks van internationale voorbeelden van handhaving van bouwregelgeving. Van deze modellen beschouw ik er enkele in het vervolg van deze studie.

Het eerste type definieer ik als *puur publiek*. Dit type kenmerkt zich doordat op alle niveaus taken en verantwoordelijkheden aan publieke partijen zijn toebedeeld. Het voormalige Nederlandse model van door de rijksoverheid vastgestelde regelgeving, die door gemeenten gehandhaafd werd, kenmerkte zich als zodanig.

Het tweede type definieer ik als *voorgeschreven co-regulering*. Dit type kenmerkt zich door het betrekken van private partijen bij de uitvoering van handhaving. De voorwaarden waaronder dit mag gebeuren zijn voorgeschreven door publieke partijen en het toezicht op deze private partijen geschiedt eveneens door publieke partijen. Voorbeelden van dit model vond ik onder meer in de Verenigde Staten waar een gemeente afspraken maakt over zelfcontrole op naleving van regelgeving met een universiteit (Loesch and Hammerman, 1998) in Duitsland waar private partijen bouwregelgeving mogen toetsen aan geldende regelgeving, maar onder toezicht staan van publieke auto-

riteiten (Zander, 2005) en in de Canadese stad Vancouver waar architecten en constructeurs onder bepaalde voorwaarden, vastgesteld door het gemeentebestuur, bouwtoezicht mogen uitvoeren onder toezicht van het gemeentebestuur (OHCS, 2007).

Het derde type definieer ik als *conditionele co-regulering*. Dit type kenmerkt zich door het betrekken van private partijen bij de uitvoering van handhaving én betrekken van private partijen bij het vaststellen van criteria aan handhaving en toezicht op handhaving. Ik noem het model conditioneel omdat de overheid condities stelt aan de criteria en het tweedelijnstoezicht. Voorbeelden zijn te vinden in de Australische staat Victoria waar private toezichthouders alle handhavingstaken mogen uitvoeren en onder toezicht staan van een agentschap dat bestaat uit vertegenwoordigers van private partijen, maar administratief ondersteund wordt door een ministeriële afdeling (VCEC, 2005). Een ander voorbeeld is het zogenaamde P-mark in Zweden (Anneling, 1998). Binnen dit model worden, onder certificaat, woningen fabrieksmatig gebouwd en houden private actoren toezicht op dit proces. Er zijn afspraken gemaakt met de rijksoverheid waaraan de woningen en het toezicht moet voldoen. Daarnaast heeft een ministeriële afdeling de mogelijkheid om incidenteel het hele proces te toetsen.

Het vierde type definieer ik als *vervangende co-regulering*. Dit type kenmerkt zich door afwezigheid van overheidsbemoeienis in de twee onderste lagen van het heuristisch model. Private partijen kunnen het in eigen belang zien om bepaalde publieke regelgeving te handhaven. Voorbeelden hiervan vond ik met name in een verscheidenheid aan vrijwillige energie- en milieucertificaten (Horvat and Fazio, 2005). Deze certificaten lijken deels een onderscheidend doel te hebben: gebouwen met een hogere normering zouden zich positief onderscheiden van gebouwen met een lagere of geen normering. De certificering en normering heeft echter geen wettelijke status. Het kan worden beschouwd als een marketinginstrument.

Het vijfde type definieer ik als *puur privaat*. Dit type kenmerkt zich door volledige afwezigheid van de overheid. Voorbeelden zijn wederom te vinden in verschillende energie- en milieucertificaten (Bunz *et al.*, 2006; Cole, 2000), die in tegenstelling tot het voorgaande model niet gebaseerd zijn op publieke regelgeving. Een ander voorbeeld kan gevonden worden in Nederlandse NEN-normen of internationale ISO-normen.

Hypothesen

Op basis van de beschreven handhavingsorganisatiemodellen en de besproken theorieën en onderzoek van anderen in hoofdstuk 3, sluit ik hoofdstuk 4 af met enkele uitspraken over te verwachten uitkomsten van het betrekken van private partijen bij de handhaving van bouwregelgeving. Bij het doen van deze uitspraken beperk ik me tot enkele beoordelingscriteria: effectiviteit, efficiëntie, rechtvaardigheid (*equity*), en verantwoordelijkheid (*accountability*). De

eerste drie criteria worden veelvuldig gebruikt voor het beoordelen van beleid (bijvoorbeeld Gunningham and Grabosky, 1998: 25-32). Het laatste criterium, verantwoordelijkheid, heb ik toegevoegd gegeven de specifieke betrekking van verschillende partijen in de modellen en de verschillende verantwoordelijkheidrelaties die daarmee ontstaan. Met het kiezen van een aantal criteria heb ik er ook voor gekozen om een aantal criteria niet te beschouwen, zoals rechtmatigheid, democratie, politieke aanvaardbaarheid en adequaatheid. Ik beschouw deze criteria als meer geschikt om de totstandkoming van beleid te beschouwen (zie voor een aantal theorieën: Sabatier, 2007b), of om normatieve uitspraken te doen over een bestuursmodel of beleidsinstrument.

Effectiviteit beschouw ik als 'de mate waarin vooraf vastgestelde doelen ook daadwerkelijk worden gehaald' (zie ook Bovens *et al*., 2001: 29). Binnen het criterium efficiëntie maak ik onderscheid tussen technische efficiëntie en allocatieve efficiëntie (zie ook Leibenstein, 1966). De eerste vorm is gerelateerd aan een verschil in werkwijze of motivatie tussen uitvoerende partijen; de tweede vorm is gerelateerd aan het gebruik van unieke middelen voor unieke doelen. Gelijkwaardigheid benader ik als criterium om te evalueren of verschillende justitiabelen toegang hebben tot een gelijkwaardige mate van dienstverlening; en om te evalueren of verschillende partijen handhavingstaken gelijkwaardig uitvoeren onafhankelijk van de achtergrond van de justitiabele (zie ook Stone, 2002: hoofdstuk 2). Verantwoordelijkheid ten slotte splits ik op in vijf subtypen waarbij ik gebruik maak van het werk van Peter May (2007) en Mark Bovens (2007). De subtypen zijn: politieke verantwoordelijkheid, wettelijke verantwoordelijkheid, bureaucratische verantwoordelijkheid, professionele verantwoordelijkheid en sociale verantwoordelijkheid. In alle subtypen is sprake van een relatie tussen twee partijen (individuen of organisaties) waarbij de ene partij de plicht heeft zich aan de andere te verantwoorden en zijn handelen te rechtvaardigen. De andere partij kan vragen stellen (bijvoorbeeld door onderzoek) en een oordeel uitspreken over het gedrag van de eerste partij. Dit oordeel kan een strafmaatregel zijn (Bovens, 2007: 451).

De uitgesproken verwachting is: *verschillen tussen de ontwerpen van handhavingsorganisatiemodellen resulteren in verschillende uitkomsten. Door het ontwerp aan te passen kan gestuurd worden op uitkomsten*. En meer specifiek: *het betrekken van private partijen zal leiden tot beoogde uitkomsten zoals een verbetering van effectiviteit en efficiëntie, maar gelijktijdig tot niet beoogde uitkomsten zoals tekortkomingen in rechtvaardigheid, of de verantwoordelijkheid van betrokken partijen. De mate van privatisering zal direct van invloed zijn op zowel de beoogde als niet beoogde uitkomsten.*

Hoofdstuk 5: Methoden en technieken

In hoofdstuk 5 sta ik uitgebreid stil bij de gehanteerde methoden en technieken die ik heb toegepast om binnen het empirisch deel van mijn onderzoek data te verzamelen en deze te analyseren. In de hoofdstukken 6 en 7 bespreek

ik casestudieonderzoek dat ik heb uitgevoerd in Australië en Canada. De cases zijn de handhavingsorganisatiemodellen in vier Australische staten, één Australisch territorium en drie Canadese provincies. Op basis van een voorstudie heb ik deze cases gekozen omdat daarin private partijen betrokken worden bij de handhaving van bouwtechnische regelgeving, maar het ontwerp van deze modellen tussen de cases verschilt. Echter, de omgeving van de cases toont weinig verschillen: kijkend naar de staatkundige opbouw, de inhoud van bouwregelgeving en de benadering van privatisering zijn Australië en Canada grotendeels gelijk. Daarnaast waren deze cases interessant omdat in de jaren 1980-1990 de oude pure publieke handhavingsorganisatiemodellen zijn vervangen door modellen met privatisering. Bij de case-selectie ben ik ervan uitgegaan dat onder de nieuwe modellen een nieuwe status quo bereikt zou zijn (de ergste kinderziektes opgelost), maar dat tegelijkertijd nog veel kennis over en ervaring met het oude model aanwezig zou zijn. Veel mensen die onder het nieuwe model werken, werkten ook onder het oude model.

Om data over de uitkomsten deze privatisering te bemachtigen heb ik in Australië en Canada een serie interviews uitgevoerd met vertegenwoordigers van ministeries en gemeenten, private toezichthouders, architecten, constructeurs, aannemers en vertegenwoordigers van beroepsverenigingen. Hiermee heb ik getracht informatie te krijgen van partijen die betrokken zijn bij de totstandkoming van de handhavingsorganisatiemodellen, het toezicht hierop en de uitvoering van handhavingstaken, maar ook de partijen die onderworpen zijn aan deze handhaving. De geïnterviewden heb ik geselecteerd middels *snowballsampling* (Longhurst, 2003). In Australië heb ik 46 interviews uitgevoerd, in Canada 37.

De interviews heb ik uitgevoerd aan de hand van een gestructureerde vragenlijst (gebaseerd op Dunn, 2003; McCracken, 1988). De vragen richtten zich in hoofdlijn op: Waarom is het nieuwe model geïntroduceerd? Hoe werkt het model in de dagelijkse praktijk? Hoe wordt het model geëvalueerd? En: Waarom worden de doelen die ten grondslag liggen aan het model wel/niet gehaald?

Op basis van een digitale opname en aantekeningen heb ik elk individueel interview uitgewerkt in een interviewverslag dat ik ter validatie aan de geïnterviewde heb toegestuurd (zie ook Fielding and Fielding, 1986). Op basis van gevalideerde interviewrapportages heb ik vervolgens per case een overzichtsrapportage geschreven. Dit overzichtsrapport heb ik wederom toegezonden aan de geïnterviewden ter validatie. Deze rapportage, aanvullende informatie van geïnterviewden op de rapportages, en aanvullende informatie verkregen tijdens interviews (rapporten, brochures, wetgevingsdocumentatie) vormt de basis van de case-beschrijvingen zoals gepresenteerd in de hoofdstukken 6 en 7. In tegenstelling tot mijn verwachting heb ik nauwelijks kwantitatieve data kunnen verzamelen: cijfermateriaal over bijvoorbeeld verstrekte vergunningen, doorlooptijden en tweedelijnstoezicht is niet of nauwelijks beschikbaar.

Ik heb de data verwerkt op basis van een gestructureerd coderingsschema

(zie ook Seale and Silverman, 1997). Om de data te analyseren heb ik gebruik gemaakt van het computerprogramma 'Atlas.ti'. Het voordeel van het coderen van data en analysesoftware is dat data 'loskomt' van de geïnterviewde. Mogelijke beïnvloeding door de sfeer tijdens het interview of de positie van de geïnterviewde wordt daarmee beperkt. Daarnaast kan het terugkeren van bepaalde observaties, of juist de uniciteit van een observatie in kaart gebracht worden. Hiermee kan de lezer een beeld gegeven worden van de mate waarin bepaalde observaties zijn genoemd. Ik doe dat in de hoofdstukken 6 en 7.

Een specifieke methode die ik hanteer om de cases te vergelijken is *Qualitative Comparative Analysis* (QCA – kwalitatief vergelijkende analyse). Dit om de causale relatie tussen verschillende aspecten van de van handhavingsorganisatiemodellen en de geobserveerde uitkomsten inzichtelijk te maken (zie ook Ragin, 1987; Ragin, 2000; Ragin *et al*., 2003).

Hoofdstukken 6, 7 en 8: Monitoren en evalueren van beleid

Het grootste verschil tussen de set Australische en de set Canadese cases is de relatie tussen publieke en private partijen in het onderste niveau van het handhavingsorganisatiemodel. Ik noem deze relatie competitief in Australië, en complementair in Canada. In Australië is gekozen voor een model waarbinnen private partijen concurreren met gemeentelijke afdelingen 'bouw en woningtoezicht' om clientèle. Binnen de Canadese cases bepalen gemeenten welke taken zij wel en welke zij niet willen of kunnen uitvoeren. De taken die niet door gemeenten uitgevoerd worden, kunnen vervolgens door private partijen uitgevoerd worden.

De case-beschrijvingen in de hoofdstukken 6 en 7 vormen de basis voor de evaluatie in hoofdstuk 8. Ik behandel hier de drie hoofdstukken daarom gezamenlijk en houd me daarbij aan de besproken beoordelingscriteria.

Effectiviteit

Hoewel het effect van handhaving van bouwregelgeving moeilijk meetbaar is (plantoetsen maken slechts aannemelijk dat het gebouwde gaat voldoen aan gestelde regelgeving en uitvoeringsinspecties zijn veelal visueel en steekproefsgewijs) gaf een groot deel van de geïnterviewden in de verschillende cases aan dat de naleving van regelgeving verbeterd is door het betrekken van private partijen bij verschillende handhavingstaken. Deze bevinding is in lijn met eerder onderzoek, waaruit naar voren komt dat gespecialiseerde private toetsers meer kennis en ervaring hebben met bepaalde toetswerkzaamheden en daardoor een grotere 'inspectiediepte' kunnen behalen (zie ook Ayres and Braithwaite, 1992: 104; Baldwin and Cave, 1999: 126). Het verschil tussen de gespecialiseerde private toetser en de gemeentelijke generalist komt hier sterk naar voren.

Geïnterviewden gaven aan dat vooral het betrekken van private partijen bij taken met betrekking tot bouwplantoetsing en toetsing van werkzaamheden

tijdens de uitvoering bijdragen deze effectiviteitsverbetering. Het verstrekken van vergunningen en in gang zetten of uitvoeren van strafprocedures werden niet beschouwd als taken waarbij privatisering bijdraagt aan effectiviteitverbetering. Dit omdat deze taken niet specifiek de (technische) deskundigheid van gespecialiseerde private partijen vraagt.

De relatie tussen publieke en private partijen in het onderste niveau van het handhavingsorganisatiemodel lijkt weinig invloed te hebben op de effectiviteit van het model. Wel komt uit de interviews naar voren dat de effectiviteit van de modellen beïnvloed wordt door eisen die zijn gesteld aan ontwerpende, adviserende en uitvoerende bouwpartijen. In vrijwel alle cases geven geïnterviewden aan dat striktere opleidings- en ervaringseisen aan deze partijen bijdraagt aan een betere naleving van regelgeving.

Efficiëntie

Gerelateerd aan de effectiviteitsverbetering geeft de meerderheid van geïnterviewden te kennen dat de efficiëntie van de modellen verbeterd is door het betrekken van private partijen in het handhavingsproces. Ook hier wordt aangegeven, dat vooral de technische specialisatie van private toetsers bijdraagt aan een hogere efficiëntie van de huidige modellen vergeleken met de voorgaande pure publieke modellen. Met name kortere doorlooptijden en goedkopere toetsprocedures werden gezien als efficiëntieverbetering.

Echter, in tegenstelling tot de effectiviteitverbetering lijkt de efficiëntieverbetering gerelateerd aan zowel het laten uitvoeren van bouwplantoetsing en toetsing van werkzaamheden tijdens de uitvoering als het verstrekken van vergunningen. In de cases waar private actoren slechts toetstaken hebben, gaat mogelijke efficiëntieverbetering verloren door een overlap van taken tussen private en publieke partijen. Om een vergunning te verstrekken zal een aantal administratieve taken die de private toetser heeft uitgevoerd, nogmaals worden uitgevoerd binnen een gemeentelijke afdeling. Evenals onder het vorige criterium werd het in gang zetten of uitvoeren van strafprocedures niet beschouwd als taken waarbij privatisering bijdraagt aan efficiëntieverbetering.

De invloed van de relatie tussen publieke en private partijen in het onderste niveau van het handhavingsorganisatiemodel op de efficiëntie van het model is onduidelijk. Wel komt uit de interviews naar voren dat de efficiëntie van de modellen beïnvloed wordt door eisen die zijn gesteld aan ontwerpende, adviserende en uitvoerende bouwpartijen. In vrijwel alle cases geven geïnterviewden aan dat striktere opleidings- en ervaringseisen aan deze partijen kan bijdragen aan werkzaamheden die eenvoudiger (en sneller) toetsbaar zijn.

Gelijkwaardigheid

Uit de interviews kwam naar voren dat binnen de Australische modellen private partijen met name geïnteresseerd zijn in het uitvoeren van handhavingswerkzaamheden voor professionals in de bouw. Deze professionals zijn vaak

betrokken bij grote, complexe bouwactiviteiten. De overige bouwactiviteiten, voornamelijk klein en minder complex, worden aangeleverd door 'gewone burgers'. De groep professionals is veelvuldig en professioneel betrokken bij handhavingsprocessen, de groep gewone burgers is incidenteel en persoonlijk betrokken bij handhavingsprocessen.

Binnen de Australische modellen zijn gemeenten gebonden aan gereguleerde leges die gevraagd mogen worden voor het uitvoeren van toetsing en verstrekken van vergunningen. Binnen deze modellen zijn de leges die gevraagd mogen worden voor kleine bouwactiviteiten vaak niet kostendekkend en vangen de leges van grote bouwactiviteiten, vaak meer dan kostendekkend, eventuele verliezen op (een situatie die ook in Nederland bestaat, Van der Heijden *et al.*, 2006). Private toetsers richten zich massaal op de winstgevende grote projecten en laten de verliesgevende kleine projecten over aan gemeenten. Een deel van de geïnterviewden was zelfs van mening dat private toetsers kleine projecten niet willen toetsen. Gemeenten ondervinden hierdoor een verlies van inkomsten. Daarnaast ondervinden gemeenten een leegloop van gekwalificeerd personeel naar de private partijen omdat deze betere arbeidsvoorwaarden kunnen verstrekken. Op termijn kan dit ertoe leiden dat gemeenten niet in staat zijn een serviceniveau te leveren dat gelijkwaardig is aan dat van private partijen.

In Canada lijkt minder sprake te zijn van deze situatie, specifiek omdat gemeenten niet hoeven te concurreren met private partijen.

Verantwoordelijkheid

Verschillende tekortkomingen in verantwoordelijkheidsrelaties en verantwoordingsmechanismen (zoals het tweedelijnstoezicht) werden genoemd door een meerderheid van de geïnterviewden. Ik houd me hier aan de indeling naar subtypen beschreven in hoofdstuk 4.

Mijn data geeft beperkt inzicht in *tekortkomingen in politieke verantwoordelijkheid*. Met name in de Canadese case 'Ontario' lijkt sprake van zulke tekortkomingen, daar waar de provinciale overheid zich sterk laat beïnvloeden door een belangengroepering van gemeenteambtenaren die zich tegen privatisering van handhaving keert. Vertegenwoordigers van de bouwsector worden minder gehoord. Op lange termijn kan de provinciale overheid middels verkiezingen afgerekend worden op deze keuze. In de overige cases kan op termijn een gelijksoortige situatie ontstaan wanneer gekozen politici niet reageren op de geïdentificeerde tekortkomingen van de modellen.

Ten aanzien van *wettelijke verantwoordelijkheid* werden vooral tekortkomingen genoemd wanneer taken en verantwoordelijkheden van verschillende partijen elkaar overlappen (is een gemeente verantwoordelijk voor een vergunning verstrekt op basis van onjuiste toetsdocumentatie van een private toetser?) en in het zogenaamde *joint-and-several liability* aansprakelijkheidsmodel. Onder dit model kan elke partij die betrokken is bij een project volledig aansprakelijk

worden gesteld voor problemen die zich binnen het project voortdoen. Tegenhanger van dit model is de zogenaamde *proportionate liability* waaronder partijen slechts deels verantwoordelijk zijn voor hun bijdrage aan een project. De tekortkomingen werden genoemd aangaande de uitwerking van *joint-and-several liability* op gemeenten. Daar gemeenten vaak de meest vermogende partij zijn die betrokken is bij een bouwproject (het toetsen van een bouwplan of het verstrekken van een vergunning wordt wettelijk beschouwd als betrokkenheid) draaien gemeenten vaak op voor de kosten die voortkomen uit schadeclaims: als andere partijen niet kunnen opdraaien voor de kosten, blijven de gemeenten over. Daarnaast werd dit specifieke aansprakelijkheidsmodel gezien als belemmering voor innovatie in de bouwsector. Enkele geïnterviewden gaven aan dat private toetsers een voorkeur hebben voor weinig risicovolle ontwerpen of uitvoeringsprocessen. Sommige toetsers adviseren hun clienten om bekende oplossingen te kiezen, waarbij geen positieve toetsrapportage of vergunning wordt verstrekt als dit 'advies' niet wordt gevolgd. Hier lijken twee beleidsinstrumenten tegen elkaar te werken: enerzijds de introductie van bouwregelgeving gericht op prestatie-eisen om innovatie te stimuleren en anderzijds de introductie van private partijen in het handhavingsproces om handhavingsprocedures te stroomlijnen en te versnellen.

Bureaucratische verantwoordelijkheid betreft het toezicht op het toezicht – tweedelijnstoezicht. Tekortkomingen werden door een meerderheid van de geïnterviewden genoemd aangaande de vorm van dit toezicht, dat vrijwel overal werd uitgevoerd in de vorm van *auditing*. In vrijwel alle cases bleek dit toezicht zich vooral te richten op de processen van private partijen en niet op de inhoud van hun werkzaamheden. Daarnaast werd veel kritiek geuit op de lage sancties, die, als ze al werden opgelegd, naar mening van de geïnterviewden veel te laat werden opgelegd. Deze vorm van *auditing* lijkt vooral een gevoel van controle en veiligheid op te leveren in plaats van zekerheid (zie ook Power, 1999: 38).

Op basis van voorgaand onderzoek had ik verwacht in de cases die zich kenmerken door *conditionele co-regulering* minder tekortkomingen aan te treffen dan in de cases die zich kenmerken door *voorgeschreven co-regulering*. De verschillen in de modellen betreffen de toezichthoudende partij in de middelste laag van het handhavingsorganisatiemodel (zie figuur 1): bij conditionele co-regulering voeren private partijen het tweedelijnstoezicht uit; bij voorgeschreven co-regulering doen publieke partijen dit. Uit voorgaand onderzoek komt naar voren dat private toezichthouders betere toegang hebben tot private partijen en meer vertrouwen genieten dan publieke toezichthouders en daarmee beter in staat zouden zijn tweedelijnstoezicht uit te voeren (Baldwin and Cave, 1999: 127; Gunningham and Grabosky, 1998: 44-47). Uit mijn data blijkt dit echter niet. In hoofdstuk 8 concludeer ik dat dit komt omdat de 'publiek-private' toezichthouder zich beperkt tot een bureaucratisch toezichtsmodel gebaseerd op externe controles en niet tot een professioneel toezichtsmodel dat zich

kenmerkt door beroepscodes en collegiale toetsing (zie ook May, 2007: 12).

Tekortkomingen in *sociale verantwoordelijkheid* lijken vooral tot uiting te komen in de geloofwaardigheid van de handhavende partijen. Binnen de theorie wordt deze geloofwaardigheid vaak gesplitst in 'betrouwbaarheid' en 'bekwaamheid' (bijvoorbeeld DeZoord *et al*., 2003; Nesler *et al*., 2006). Uit de observaties van de geïnterviewden komt naar voren dat de groep 'gewone burgers' vooral de betrouwbaarheid van gemeenten waardeert en de groep 'professionals' vooral de bekwaamheid van de private partijen. Dit lijkt de splitsing in groepen justitiabelen en de relatie tussen de groepen en de toetsende sectoren ('gewone burgers'-gemeenten en 'professionals'-private partijen) te versterken.

Grote uitzondering op de vaak negatief kritisch beschouwde verantwoordelijkheidsrelaties binnen de cases vormt de Canadese case 'Vancouver'. Binnen deze case staan private partijen onder toezicht van de gemeente Vancouver (bureaucratische verantwoordelijkheid) en onder toezicht van hun beroepsvereniging (professionele verantwoordelijkheid). Daarnaast moet elke partij die bij een bouwproject betrokken is, waaronder ook de private toetser, een document ondertekenen waarin wordt aangegeven wat zijn taken en verantwoordelijkheden zijn (wettelijke verantwoordelijkheid). De combinatie van de verschillende verantwoordingsmechanismen werd gezien als voldoende *checks and balances* om de partijen binnen het model verantwoordelijk te kunnen houden voor hun handelingen, zonder dat het model geblokkeerd wordt door overregulering.

Hoofdstuk 9: Conclusies en beleidsaanbevelingen

In hoofdstuk 9 vat ik de resultaten van dit onderzoek samen en bespreek ik mijn belangrijkste bevindingen. Ik beschouw in dit hoofdstuk eerst de verschillende voorgaande hoofdstukken – min of meer zoals ik dat tot nu toe in deze samenvatting heb gedaan. Vervolgens richt ik me op de bijdrage van dit onderzoek aan reguleringsliteratuur en bespreek ik enkele beleidsimplicaties. Ik zal me hier beperken tot deze twee laatste onderdelen.

Bijdrage aan reguleringsliteratuur

Het onderzoek dat ik in dit proefschrift heb gepresenteerd past binnen bestuurskundige en beleidswetenschappelijke studies naar overheidshervormingen en in het bijzonder in studies naar het betrekken van private partijen bij handhaving van publieke regelgeving en publieke dienstverlening. Binnen het proefschrift heb ik veelvuldig stilgestaan bij het inpassen van bouwregelgeving en handhaving hiervan binnen reguleringsliteratuur – het specifieke onderdeel van dit proefschrift onbrak grotendeels binnen deze literatuur. Het onderzoek heeft echter ook inzichten verstrekt die boven de bouwregelgeving uitstijgen en die bijdragen aan studies naar overheidshervorming. Ik zal hier enkele bevindingen bespreken:

- Het betrekken van private partijen bij de handhaving van bouwregelgeving verbetert de effectiviteit en efficiëntie van handhavingsorganisatiemodellen. Echter er lijkt een omslagpunt te zijn waarna meer privatisering van taken en verantwoordelijkheden niet meer leidt tot meer verbeteringen. Dit lijkt een waardevolle toevoeging aan de vaak geciteerde 'handhavingspiramide' (Ayres and Braithwaite, 1992: 35).
- Het betrekken van private partijen bij de handhaving van bouwregelgeving is vaak een aanvulling op een bestaand puur publiek model, niet een vervanging hiervan. Als gevolg ontstaat een relatie tussen de partijen. Uit dit onderzoek komt naar voren dat een competitieve relatie onvoorziene uitkomsten zoals tekortkomingen, in gelijkwaardigheid en verantwoordelijkheid verstrekt.
- Kleine verschillen tussen de ontwerpen van handhavingsorganisatiemodellen leiden tot grote verschillen in uitkomsten. In voorgaand onderzoek zijn vaak modellen beschouwd die grote verschillen in ontwerp vertonen. Ik heb een set cases gekozen die kleine verschillen tussen ontwerpen toont. De bevinding dat kleine verschillen tussen ontwerpen grote verschillen tussen uitkomsten kan opleveren, trekt de rationaliteit (Levi-Faur, 2002: 11) van het volgen van *best practices* in andere landen of gebieden in twijfel. Best practices kunnen vaak niet letterlijk worden overgenomen en kleine aanpassingen lijken noodzakelijk om ze binnen de eigen beleidscontext in te passen, zoals onder meer bleek uit de set Australische cases (zie ook Czarniawska-Joerges and Sevon, 1996). Juist deze aanpassingen kunnen gezochte en verwachte voordelen tenietdoen.
- Het implementeren van nieuwe handhavingsorganisatiemodellen betekent dat compromissen moeten worden gesloten tussen verschillende beleidsdoelen. Echter, deze compromissen zijn minder 'onoverkomelijk' dan soms wordt beweerd (Scholz and Wood, 1999). Daarnaast lijkt mijn studie te wijzen op een andere mogelijkheid: juist door het maken van kleine aanpassingen kunnen grote verschillen in uitkomsten worden bereikt. De andere zijde van dezelfde munt.
- Niet alleen het ontwerp van een handhavingsorganisatiemodel is van invloed op de uitkomst van het model, ook de omgeving waarin het model wordt geïmplementeerd heeft invloed op uitkomsten. Giddens merkte reeds op dat naleving wellicht meer afhangt van gewoonte en routines dan van angst voor bestraffing (Giddens, 1984: 175). Het veranderen van routines in de omgeving van een model lijkt daarmee van invloed op de uitkomsten van het model.
- Verantwoordelijkheidsmechanismen en verantwoordelijkheidsrelaties zijn complexe materie. Het werk van Peter May (2007) and Mark Bovens (2007) bood echter hulpvolle handvatten om deze complexe materie in analyseerbare delen op te splitsen. Deze indeling in subtypen lijkt zinvol voor vervolgonderzoek naar optimale verantwoordelijkheidsmechanismen.

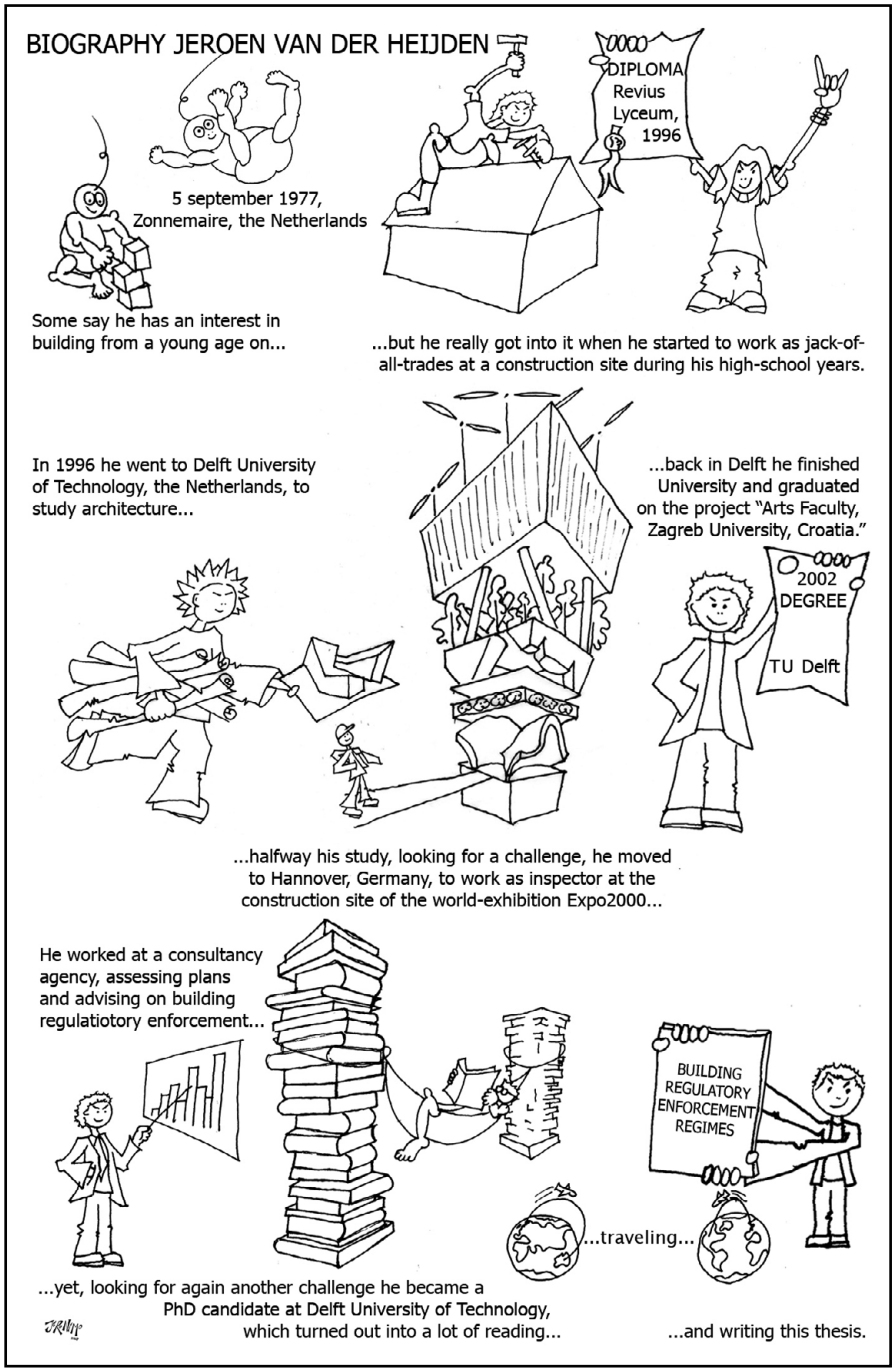
Beleidsaanbevelingen

Het onderzoek dat ik in dit proefschrift heb gepresenteerd heeft inzicht gegeven in verschillende handhavingsorganisatiemodellen. Op basis van dit inzicht doe ik enkele beleidsaanbevelingen:

- Een meest adequaat model lijkt gekenmerkt te worden door de combinatie van publieke en private partijen. De publieke sector lijkt het best aan te sluiten op de vragen en verwachtingen van de 'gewone burger'; de private sector lijkt het best aan te sluiten op de vragen en verwachtingen van de 'professionals'. Het betrekken van private actoren bij de handhaving van publieke bouwregelgeving lijkt zinvol wanneer vooral de technische expertise van deze partijen ingezet wordt.
- Beide sectoren hebben ook hun zwaktes. Tweedelijnstoezicht lijkt nodig om er voor te zorgen dat publieke middelen op gepaste wijze worden besteed en dat autoriteit niet wordt misbruikt. Daarnaast moet ongewenst gedrag tijdig worden bestraft. Echter, hier doet zich een dilemma voor: tweedelijnstoezicht is kostbaar en er kunnen vragen geplaatst worden bij de betrouwbaarheid en integriteit van de tweedelijnstoezichthouder. Om te voorkomen dat toezichtlaag op toezichtlaag wordt gestapeld lijkt een combinatie van verschillende verantwoordingsmechanismen noodzakelijk. Mijn onderzoek geeft onvoldoende inzicht in welke combinatie adequaat is.
- Als publieke en private partijen binnen één model in een bepaalde relatie tot elkaar staan, lijkt een complementaire relatie hoopvoller dan een competitieve. Hierbij merk ik op dat ik alleen deze twee relaties heb onderzocht. Andere relaties zijn wellicht mogelijk.
- Om een model te optimaliseren hoeft het niet volledig aangepast te worden. Kleine verschillen kunnen leiden tot grote uitkomsten (denk hierbij bijvoorbeeld aan toetsing tijdens verschillende ontwerpfases, in plaats van toetsing achteraf). Daarnaast lijken veel verbeteringen in de effectiviteit en efficiëntie van een handhavingsorganisatiemodel gerealiseerd te kunnen worden door aanpassingen in de omgeving van het model. Hierbij kan gedacht worden aan striktere eisen aan bouwprofessionals, zoals scholings-, bijscholings- en ervaringseisen. Handhaving van bouwregelgeving is slechts een onderdeel van het borgen van de doelen van deze regelgeving.
- Het volgen van zogenaamde *best practices* dient met voorzichtigheid tegemoet te worden getreden. Positieve ervaringen uit andere landen, andere gemeenten of andere beleidsvelden bieden geen garanties voor positieve effecten van de *best practice* in het eigen land, de eigen gemeente, of het eigen beleidsveld. De aanpassingen die gemaakt moeten worden om een *best practice* in te passen in het eigen beleidsdomein kan alle verwachte positieve effecten teniet doen.
- Ten slotte, hou rekening met de dynamiek in het veld. Justitiabelen passen hun gedrag aan aan dat van de handhaver. En veranderingen in de private handhavingsorganisaties kunnen leiden tot een andere werkhouding

(bijvoorbeeld een meer winstgerichte houding die mogelijk ten koste gaat van de grondigheid van toetsingen), of een te grote afhankelijkheid van een beperkt aantal grote handhavende organisaties door amalgamatie van kleine organisaties. Dit geeft nogmaals het belang van verantwoordingsmechanismen en tweedelijnstoezicht aan – niet alleen direct na de implementatie van een nieuw handhavingsorganisatiemodel, maar continu en gedurende de hele levenscyclus van het model.

Curriculum Vitae



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It is often assumed that traditional regulatory regimes centered on governmental action will benefit from greater private sector involvement. And, under the catchy phrase 'from government to governance' globally a wide variety of hybrid forms of governance has emerged. However, little empirical insight exists in the actual effects of such hybridization.
The author aims at filling up this knowledge gap. He introduces a heuristic tool for comparative policy analysis, and applies this on a series of case studies. Following different building regulatory enforcement regimes in the Netherlands, Canada and Australia the author explains how different forms of private sector involvement play out in different settings.
The book contains a wealth of scholarly and applied findings. It is insightful in showing different regime types and in suggesting meaningful differences in implementation and potential effects. The book adds both to studies on regulation of the built environment and its enforcement, and to studies on governance reform.

ISBN 978-1-58603-985-1
9 781586 039851

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