

## Interuniversity Attraction Poles 5/16:

**The Loyalties of knowledge.** The positions and responsibilities of the sciences and of scientists in a democratic constitutional state

*Progress report 2002*

### 1. DESCRIPTION OF THE WORKPACKAGES

#### Work Package 1: Prototype Researches taking the Web as the Main Territory to Explore

This work package has for its ambition to explore the possibilities of the Web in creating both researchers and students' appetite for « patchwork » or « mosaic » approaches, and the corresponding habits, knowing how to relate with different disciplinary fields. The first part of the experimentation is meant to address IAP co-workers themselves, and then, to include students and allow for interaction with interested citizens. This ambition implies the conception of a web-site designed in a way which would catalyze interactions. This has been done since spring in close collaboration with web-site designer Didier Demorcy. A first experimental version (for IAP co-workers) is now ready, and will promote two “non disciplinary” demands : a presentation of texts put on the web emphasizing its relevance outside of its disciplinary field and a device leading to associate different texts and contributions with a process of production of open (non disciplinary) questions and problematics, those questions being themselves apt to “follow up” reformulations. This same structure will also be proposed to the “open version” of the site, which will be produced after this experimental one has been tested.

#### *Staff working for workpackage 1*

Prof. dr. I. Stengers (promoter), Prof. dr. J.C. Grégoire (co-promoter), prof. dr. S. Gutwirth (promoter, network coordinator), Ir J.-F. Desaedeleer (doctoral student IAP, started 1 January 2003), prof. dr. E. Zaccai (senior scientist, IGEAT), prof. dr J. van Helden (senior scientist), dr M. Gilbert (postdoctoral researcher), D. Demorcy (designer website)

#### Work Package 2: Conceptual research into the relations between knowledge and power

During 2002 this workpackage was mainly worked upon by Nathalie Trussart. Her work has followed simultaneously two main directions.

First, a conceptual elaboration of Michel Foucault's historical and theoretical analyses of power and knowledge, specifically in his books and papers published between 1973 and 1984. Second, analysing the role of the notion of gene in different contexts: molecular biology manuals, political decisions, group of citizen's claims, industrial's line of reasoning as each produces a distinct and specific exemplification of power/knowledge.

These two paths were interconnected. The result of the first one is a very rich, complex and detailed schema of the multiple entanglements between process of power, process of

knowledge and process of individuation that define a specific society in time and space. The second path has already offered a perfect field of experimentation to put to the test and to expand Michel Foucault's art and manner. This already enabled Natalie Trussart to intervene in a very suggestive and demanding way in the redaction of two papers by Prof. Isabelle Stengers on biology and evolutionary biology, and on the divergence between experimental and human sciences.

A first approach on these problematics was presented to the all IAP network on the 14<sup>th</sup> September 2002. The questions and discussions created the opportunity to make the frame more precise. The writing of a first paper is in process. It will concern the requirements Michel Foucault decides to satisfy in order to construct his contextual studies on power and knowledge. It will be communicated to the other members of the IAP through the Website. In parallel, it will be presented in a seminar at the University of Brussels (ULB).

Beside those theoretical researches, her location within the section of agronomy offers Nathalie Trussart the chance to share the day-to-day life of experimental and field scientists. In order to maximise the benefit of this situation, she made an interview of the professor Jean-Claude Grégoire, who is a partner in the IAP and president of the section.

*Staff working for the work package 2*

Prof. dr. I. Stengers (promoter), Nathalie Trussart (Phd student, scholar in philosophy for the IAP, full time since July 2002)

**Work Package 3: Transformations in science policy**

An important ground work has been done with Noortje Marres (from Holland) and Sylvie Lupton (INRA-France) and the 'politics of risks and nature' (Geneviève Teil and Elizabeth Rémy) on what could be called the shift from "matters of fact" to "matters of concern". What has been especially important is the impossibility of locating this shift in the traditional debate over proceduralism versus substance. Using again Walter Lippmann's argument –especially in the *Phantom Public*- and through the crucial web design work of Marres, it is clear that the public supposed to be mobilized for each matter of concern, is largely a phantom if, that is, we keep the older representation of a unified body politic exerting its sovereignty through its representatives. But it is not because the requirement for a *substantial* interest in the matters of concern is moot that the respect for *procedures* is sufficient to obtain assent or at least benign indifference. This is where Marres argument is so important for our common project: *issue* politics is obviously a mixture of private and public, of procedure and substance. The difficulty then is to detect, through the web and quantitative tools what are the signs –as Lippmann- calls them that may allow the phantom public –pressed by time, uninterested in the precise content, unable to gain the expertise that the only insiders would have possessed- to nonetheless detect which of the contending parties are moving into accommodation –there is no public good in this perspective which would be 'expressed' by some farther seeing specialists. As we had anticipated in writing the proposal, the situation is very much the same as an extended *science policy*, where basic questions raised before in the secret of bureaucratic cabinet –which areas of research to finance? For how long? With what proof of possible success?— have now become shared by the public –public being understood as the ad hoc associates to a specific issue not as the 'populus romanus' interested equally, fully informed and equally important in all the issues. What we have been testing over these months is

whether there exists a public virtual space which can be drawn and designed to make this extended science policy visible.

Ground work around the question “From matters of fact to matters of concern” – several articles and chapters of the catalog for an exhibition Making Things Public are in preparation which are the direct result of this project.

Scientific controversy web designs is being pursued at the Ecole des mines, in Harvard (History of science) and at Amsterdam (Gerard de Vries’ chair through the work of Marres and Rogers).

A connection has already been made between web crawlers and ResoLU™ in order to map scientific controversy and the network being produced which represents the ad hoc associated network.

*Staff working for workpackage 3:*

Prof. dr. Bruno Latour (Promoter European partner), Noortje Marres (PhD doctorate), Sylvie Lupton (part time post doctoral fellow).

#### **Workpackage 4: Study of a scheme to evaluate biosecurity in connection with GMO's**

One has to take account of the institutional changes within the FUL - which is not a project team but only an associate research team. Nevertheless, the FUL is responsible for WP 4 and 5. Concerning WP4, a solution has been found, which consists in increasing the cooperation between the FUL and the ULB: the ULB accepts to share a researcher working on his PhD (J-F DE SAEDELEER). De Saedeleer will work for both teams; he started to work in January 2003. His first contacts with the Belgian State Biosafety Committee were encouraging. The consultation of the files on experiments with GMO's will support the research.

In the framework of his PHD, Jean-François De Saedeleer takes part at seminars concerning sociology of science at the Fondation Universitaire Luxembourgeoise.

*Staff working for workpackage 4*

Prof. dr. F. Mélard (co-promotor), prof. dr. J-C Grégoire (co-promoter), prof. dr. I. Stengers (promoter), prof. dr. E. Zaccai (senior scientist, IGEAT), Ir. J-F Desaeleer (PhD student)

#### **Workpackage 5: Study of multidisciplinary research schemes for public action**

As explained in the proposal this WP consists in a reflexive work on different other research actions that imply pluridisciplinary cooperation in the public sector. During this first year the work has consisted in a reflexive work and discussion on the developed cooperation between local actors, social scientists and engineers around a « siting » project of low level radioactive waste. This reflexive work has tried to analyse this cooperation/onfrontation process as a socio-technical laboratory that progressively transformed both the technical concept of deposit and the socio-political criteria of evaluation of security. It appears that engineers and local actors have quite different, even opposite, criteria of evaluation. But this process does not consist in a habermasian deliberation on criteria but rather in an interactive process of rebuilding the technical concept in order to make it fit with the criteria that were emerging in the deliberation. Specific attention is given to the equity question in the following sense : the deliberation process, when extended to local population, media, is a process that, while being democratically organised (in a procedural sense), implies symbolic violence. It can be assumed

that these symbolic interactions induce autoexclusion of certain persons that are not in position to assume these discussions and choices in the course of their personal or collective life. This puts light on the problem of what means democratic procedure in such context.

The second research activity consisted in the preparation of the evaluation of a consensus conference organised by the King Baudouin Foundation on genetic tests. We were asked to follow and assess this Consensus Conference that will be organised in 2003.

*Staff working for workpackage 5*

Prof. dr. M Mormont (promoter), prof. dr. F M elard (co-promoter) et G. Verjans (parttime researcher)

**Workpackage 6: The relationship between law and science from the perspective of law and legal theory**

The research of Mireille Hildebrandt was focused on man as seen by law (relevant in both wp 6 and 8). She finished and defended her Ph.D thesis *Meaning and Concept of Punishment and the Principle of Trial before Punishment* cum laude in October 2002. In this she developed a historical, anthropological and conceptual analysis of punishment on the basis of an action-theory of (legal) norms. Together with this she developed an interdisciplinary theory of the (criminal) trial, starting from the germanic 'thing' and related forms of process in other societies without a state. Also part of the thesis is an extensive history of ideas relating the 'fair trial' of art. 6 ECHR to the historicity of the 'rechtsstaat'. For this project the action-theory of (legal) norms could be very relevant since it relates the ratio of trial and process to the historical context of the democratic constitutional state and thus supplies tools for conceptualizing a rule of law that encompasses science and technology.

The findings of this research (an interwoven phenomenology of punishment and trial) have been fruitfull for a critical analysis of mediation in criminal matters (presented in a lecture at Groningen University). This research demonstrates a relational conception of man as seen by law and could produce new ways of incorporating mediative practices into the rule of law. It might be necessary to develop a less hierarchical conception of law if the relationships between science, technology, policy-making and adjudication are to be part of a new system of checks and balances.

The interdisciplinary theory of legal process has been fruitfull for a first exploration of the procedures that have been developed in the Netherlands and Europe in terms of participatory Technology Assessment (pTA). Further research will be done, relating these type of procedures to the historicity of the 'rechtsstaat', starting from the open texture, counterfactual, indeterminate nature of the concept of the 'rechtsstaat'. The relationship between pTA and the constitutional democratic state could be institutionalized in terms of the legal and political principle of precaution.

Concerning the relationship between science and law, Hildebrandt designed a complex case-study for first-year law students at Erasmus University Rotterdam about causality and liability. The case-study demonstrates the inappropriateness of a physicalist *conditio sine qua non* conception of causation in law, and thereby questions the different paradigms regulating the practices of science and law. It was used within the context of a compulsory course in legal theory, aimed at reflecting the interdisciplinary nature of law (both as a discipline and as a practice) as described in the handbook *Meesterlijk recht* of M.A. Loth and A.M.P. Gaakeer (The Hague: Boom 2002). In 2003 a similar case-study will be composed that exposes the

confrontation of law and science in court in an even more direct manner by taking the position of the expert-witness in court as its central problematic.

Concerning this work package Laurent de Sutter investigated two main axes. The first consisted in negotiating a possible conceptual dialogue between the challenges of the present project and previous research of the researchers collaborating in work package 6-9. Having studied the relationship between law and art Laurent De Sutter analysed concepts such as 'network', 'legal system', 'text', 'doctrine', etc., in the light of modern and contemporary artistic practices. The link between these practices and the scientific practices as described by Serge Gutwirth in relation to law, is obvious. In both cases law seems to abandon its conceptual grasp on the matter, allowing the actors of the concerned field to dominate legal practice. From his attempt to articulate concepts, Laurent De Sutter drew the conclusion that the concepts currently used in legal theory, theory of state, legal philosophy, etc., might be 'epistemic obstacles' that prevent a clear outlook on what is 'new' in the current state of affairs concerning both GMO's and 'correlated man'. According to Laurent de Sutter what is at stake, are borderline-situations that should be analysed by way of a whole new conceptual apparatus. The second axis of research concerned the definition of a positive program of research, together with both the other legal work packages, and the preoccupations of the sociological, agronomical and philosophical work packages. The researchers of WP 6 to 9 decided to start by generating interesting questions, rather than taking the present state of affairs for granted. Two orders of questions were defined: (i) questions relating to positive law, in particular concerning the institutions involved with GMO's: the Agence Fédérale pour la Sécurité de la Chaîne Alimentaire (by Laurent De Sutter), the Comité belge de bioéthique (by Daniel de Beer); (ii) sociological questions in relationship to the notion of "legal practice", through discussion of Bruno Latour's, *La fabrique du droit: Ethnographie du Conseil d'Etat*, Paris, La Découverte, 2002. The first group of questions emphasises the challenge of the law: to create order while installing a "critical dimension". The second group of questions raised the problem of the "political ground" of legal practices.

*Staff working on workpackage 6:*

Prof. dr. S. Gutwirth (promoter, network coordinator), L. De Sutter (full-time PhD student), dr. M. Hildebrandt (parttime postdoctoral researcher)

### **Workpackage 7: The legal status of knowledge and information**

Nicolas de Sadeleer has published in law reviews (*Journal des tribunaux de droit européen*, *Revue du marché commun*) a number of articles on GMOs patentability and experimentation as well as the legal status of the precautionary principle in international and European Community law. Those articles have been discussed in informal fora in the VUB with other researchers. D. De Beer worked on the litigations concerning the use of GMO's (criminal, public, commercial and civil law). There are connections with topics of wp4. He was particularly interested by the role of the experts and the third parties. He studied the role of patents at the international level (WTO) and at the regional level (European Community).

*Staff working on workpackage 7*

Prof. dr. S. Gutwirth (promoter, network coordinator), D. De Beer de Laer (parttime researcher), Prof. dr. N. de Sadeleer (senior scientist) and Wim Schreurs (assistant faculty of law, VUB)

### Workpackage 8: Correlated man and man as seen by law

The epistemological research into concept and meaning of subject/object and action/interaction that forms the basis of the thesis of Hildebrandt (see wp 6) has been fruitful in an exploration of 'human rights as preconditions for intercultural society' - within the broader context of comparative law and European integration. This research demonstrates a relational conception of man as seen by law, moving beyond comparison by mere juxtaposition. It may be that correlated man will emerge as a nexus of transnational and crosscultural profiles that need to be checked and balanced by a legal framework that is based on a renewed conception of identity and subjectivity. For this renewed conception the writings of Don Ihde on the philosophy and phenomenology of the technosciences seem salient, as he develops a concept of an embodied and situated subject and avoids utopian as well as dystopian conceptions of technology.

In the course of 2002 Gutwirth has joined a proposed Network of Excellence (NoE) on the Future of Identity in Information Society (FIDIS), which strives for a subsidy of the European Commission. The network consists of renowned research institutes from all over Europe, comprising both technical and legal expertise on identification-technologies and the related problematics of privacy. In the meetings of the network in 2003 the network took over Hildebrandt's suggestion to take 'profiling' as one of the topics for cooperation. Profiling can be described as the collection of data, left as traces on the internet and/or ambient intelligence devices - it seems closely linked to the idea of correlated man.

#### *Staff working on workpackage 8*

Prof. dr. S. Gutwirth (promoter, network coordinator), dr. M. Hildebrandt (parttime post doctoral researcher), W. Schreurs (assistant, Faculty of law, VUB)

### Workpackage 9: Mathematical practices, statistics, and society

As the project works inductively, starting from two transversal themes (biotechnology & foodsecurity and correlated man), Karen François and Hans Comijn developed some principal questions as to the origins of the problematics of food security and correlated (wo)man. They feel the project should render explicit certain principal questions. See f.e. the work of Stengers who lets the interesting prevail over the objective. The main questions that have been elaborated upon concern concepts like representation, democracy, expertise and decisionmaking.

The outline of research they have set for themselves within this workpackage could be summarized as follows:

- Map different concepts of **causality**. How is the concept used by scientists, statisticians, lawyers, people in the street, how is it taught to students? (Together with Wp 2, 3, 8)
- **Mathematics**. How to bridge some of the gap between **internal an external philosophy of math**? What can be the position of math in a finitist philosophy, what can be the position of math in the project concerning the two transversal themes? (Working together with members of the Centre for Logics, History and Philosophy of Sciences, VUB)
- **Mathematics and statistics: application** (working together with Wp 10, 11, 12, 13) **and education**. Do statisticians deal only with internal problems (Genesis of statistics, status

of correlation, causality, significance, probability, interpretation, objectivity, etc.) or is there interest in external problems (quantification of (wo)man, statistical proof for penal law, risk groups, preparation of policy, commissions, etc.). How is statistics taught in biogenetics, social science, criminology, psychology, law, math, etc. at different educational levels.

- Develop a **method** to map these different considerations (web, interviews, manuals, text analysis, cultural differences in anthropology...) (Work together with members of Wp 3).

#### *Staff working on workpackage 9*

Prof. dr. Jean Paul Van Bendegem (co-promoter) Hans Comijn (full-time PhD student since March 2002) Karen Francois (full-time PhD student since October 2002 )

### **Workpackages 10, 11, 12 and 13**

The research in the four different workpackages can't be strictly separated. Our parallel approach is general and specific, and proceeds bottom up as well as top down. Each researcher explores general literature concerning the four wp's.

The **general** approach is specified according to the different disciplines and affinities of the involved researchers. The research questions in the Workpackages are treated for current social sciences and social scientists/experts (by drs. V. Smet); current natural sciences, *in casu* current agrobiotechnological research and *dito* scientists/concerned experts (by dr. D. De Waele); current animal rights/animal ethics and legal scientists/concerned animal welfare experts (by dr. G. Cazaux); and the development between 1910 and 1930 of moral tests in continental Europe (facultative, by J. Verplaetse).

This **specification** of the general approach is highlighted in the choice of different case studies:

1. The 'Marion Van San' case concerning the research on juvenile delinquency of migrants, formulated as the relationship between ethnicity and crime, ordered in September 1999 by the Minister of Justice for the Federal Government of Belgium, done by Marion Van San (by V. Smet).
2. The 'GMO' case with two items: ongoing debates (e.g. in the federal Chamber of Deputies on 12.05.02) concerning the release of GMO's, and more specific concerning the labelling of foods and fodder containing GMO's and the possible upheaval of the 1998-moratorium on the introduction of GMO's in Western Europe (by D. De Waele).
3. The 'Beastly markets' case concerning undercover filming by the animal rights organisation GAIA during July-October 2000 of treatment of cattle at cattle markets in Anderlecht and Ciney (by G. Cazaux).
4. The socio-ethical context of morality tests, embracing two main categories: the testing of moral 'motives' and the testing of 'morality range' (by J. Verplaetse).

### **Workpackage 10: Questions concerning the independence of scientific experts**

The 'Van San' case:

After an analysis of the case and of the various criticisms made by social scientist, politicians and immigrant organizations, specific questions were formulated concerning the relations between social science, policy and government.

- Questions were made on the role of the context during the ordering of Van San's research, and whether 'neutrality' is still possible for researchers in this context. Questions arose concerning the independence of this specific researcher, her expertise and the kind of paradigm she is working from. This also brought up the question of what kind of knowledge is relevant for a research on ethnic minorities and crime, why the research question was formulated as the link between ethnicity and crime, and whether the government is capable of formulating scientific research questions themselves.
- Attention is drawn to the dependence of social research(-ers) on governmental financing, and the impact this has on their freedom to choose research topics and further research.

The 'GMO' case:

- In a report, called '*Een eerste verkenning*' ('*A first exploration*') (July 2002) reflections are made about the position of individual scientists in a biotechnology lab, about science or agrobiotechnology and ethics, about the 'arrival' of 'ethics' in natural sciences –*in casu* in biotechnology–, about bioethics and bio-ethical commissions at the hand of *Misère de la bioéthique* (Palermi, 2002) and this, with links to other themes, about socio-biology and '*la nouvelle droite*', about procedures and 'contractual relationships' in biotechnology, and about the for Palermi in bioethical debates necessary 'category of the impossible'.
- An overview is undertaken of the process of evaluation and control for the release of GMO's with the aim of localizing where, what kind of experts, proceed how in this matter. Specific literature, documents and interviews are undertaken with 'preferential witnesses'.
- Concerning the labelling of foods and fodder containing GMO's, an overview is undertaken of the process of negotiation of the labelling criterion of 0,9.

Results of the 'Beastly markets' case:

- We examined the chronology of the 'Beastly markets' case and preliminary investigated which regulations cattle market inspectors have to observe (this pertains to the role of experts in government service).
- Concerning the question how scientific experts, with respect to animal welfare, position themselves in researches, investigations and public debates, we made an overview of the public debate regarding the beastly markets case, using media publications.

### **Workpackage 11: Questions concerning the ethical acceptability of scientific research**

In social sciences, esp. in the 'Van San' case, the following questions are investigated:

- Is it ethical acceptable to investigate the link between ethnicity and crime?
- Can new research be useful if existing academic research doesn't get used?



In agrobiotechnology, esp. in the ‘GMO’ case, the following items are tackled:

- In contrast with human biotechnology developments, an ‘ethical’ acceptability of constructing GMO’s is problematic in agrobiotechnological developments: questions about ‘ethical’ acceptability are interpreted as being questions concerning acceptability on environmental grounds, on grounds of public health, of ‘fair trade’, of sustainable agriculture, etc.
- Conflicts of interests arise between those biotechnological researchers who estimate ‘fundamental’ research always ‘useful’, acceptable, even necessary and other researchers or other actors on the ‘GMO scene’, who incorporate extra-scientific knowledge concerns (e.g. broad societal concerns, environmental concerns, public health concerns, etc.) in the evaluation of this research.

In animal welfare, esp. the ‘Beastly markets’ case:

We outlined the field of those who can be considered as experts with respect to animal welfare, and especially those who portrayed themselves (or were assigned that position by others) as animal welfare experts in this case, as a preparation measure for the next step in the research, i.e. interviewing those key persons in this specific case. During the following interviews (2003), we especially want to focus on the question whether these animal welfare experts take into account the ‘precautionary norm’ or the ‘certainty norm’ in the formulation of their advice, and further what their ethical argumentation is.

### **Workpackage 12:** Questions concerning professional ethics of scientific researchers

In social sciences:

- We are investigating whether researchers have to consider the consequences and the impact their research might have on certain groups or individuals in a society (e.g. chances on stigmatisation, abuse of the results, etc.).
- We investigated the Dutch case Wallage, and the impact of secrecy. Regarding the independence of social scientist we questioned whether a researcher can be asked by their commissioner not to publish their conclusions, and what kind of impact this might have on controllability of social science research and science-based policy. The debate on political correctness and taboo was analysed.

In biotechnology: the absence of a professional ethics as such, will be questioned.

In animal welfare: we made a preliminary outline of the governmental standards that are used in demarcating those who are ‘officially’ considered as animal welfare experts, and asked the respective governmental agencies and the Association of Veterinarians for further information regarding their deontological codes and their specific rules of conduct.

### **Workpackage 13:** Questions concerning scientific inform as an ethical duty

In social sciences, esp. the ‘Van San’ case:

Interviews and literature revealed that the media play an important role in the spreading of information on scientific research, and in making research known or popular. This might have an impact on the knowledge of politicians concerning existing research. It also became clear that researchers sometimes have 'to sell' their research in the media, in order to get funding for further research.

In agrobiotechnology, esp. the 'GMO' case:

Interviews reveal difficulties agrobiotech researchers experience concerning the 'release' of scientific information in situations where commotion can be foreseen. They experience a need to give the scientific information towards other people (in the first place towards 'trustable' colleagues, also to governmental institutions, 'the broad public' via the media, etc.), but they are aware of and are unwilling to 'manipulation' of their 'objective information'. The way scientific information is interpreted or the different ways it can be 'used' in other than scientific discourses, is felt as problematic, and will be investigated in further research.

In animal welfare, the following questions are investigated:

- Is there a gap between the animal welfare expert and non-scientists also involved in this debate?
- What to do when there are conflicting expert's appraisals with respect to a specific case of animal welfare/abuse? These are part of the research agenda for 2003.

*Staff working on workpackages 10-13*

Prof. Dr. K. Raes (promotor), dr. Dani De Waele (postdoctoral researcher), drs. Valérie Smet (PhD student), dr. Geertrui Cazaux (postdoctoral researcher), dr. Jan Verplaetse (postdoctoral researcher)

## II TERMS OF COOPERATION

### Cooperation within the network:

First of all it should be stressed that wp 1 will engender a new way of fruitful interaction within the network: we like to hereby refer to the description of wp's and the website of the IAP-network ([www.imbrogl.io.be](http://www.imbrogl.io.be)). As soon as the website is online we will provide the members of the Follow-Up Committee with a password for a first impression of the site.

Second the interdisciplinary character of the staff of the different teams implies a continuous exchange of perspectives that leads to interaction at a level of analysis that is not usually touched by different disciplines. A general overview of meetings and seminars is given hereunder.

### Promoters meetings:

31<sup>st</sup> January 2002

inaugural meeting promoters-OSTC staff (OSTC-building)

first promoters meeting (VUB)

agenda: financing/subsidies FUL, launching of the research activities

17<sup>th</sup> June 2002 (VUB)

agenda: brainstorm session about concretization of the research cooperation

### General network meetings:

28<sup>th</sup> February 2002 (VUB)

first general network meeting

agenda: conceiving website Wp1

17<sup>th</sup> May 2002 (VUB)

presentation/lecture Nicolas de Sadeleer:

précaution et sciences

14<sup>th</sup> September 2002 (VUB)

exchange of research-findings

2003:

- 5<sup>th</sup> February 2003 (ULB) (minutes in Annex I)
- 23<sup>rd</sup> May (planned in UG)

### VUB seminar:

- Weekly meetings for the VUB-staff (wp 6, 7, 8 and 9) from May till July 2002 to exchange perspectives on the themes of the project, explaining the intellectual background

and possible contributions from all the members of the VUB staff. Nicolas de Sadeleer gave a presentation for the entire network-staff in June.

- Weekly sessions for the pre-docs of the VUB (wp 6,7,8 and 9) from October 2002 till January 2003. The meetings cultivated a Socratic discussion - initiated and facilitated by Hildebrandt - of several texts of Gutwirth, Latour and Callon, Lascoumes and Barthes plus two detailed presentations of De Sadeleer on the legal aspects of GMO's and intellectual rights.

Jean Paul Van Bendegem and Gustaaf Cornelis (VUB), and Koen Raes (UG, Editor in chief of *Ethiek en maatschappij*) took the initiative to publish a special issue of *Ethiek en maatschappij* on the subject of the ethical responsibility of scientists (cf. *infra sub* publications).

At the UG 'internal' meetings of the UG-researchers were held on the three case studies and themes. Questions they have in common were discussed and different approaches were made visible. These meetings will be continued. At the IAP general network seminar of September 2002, the research on wp's 10-14 was sketched and affinities became clear with the work of other IAP-members, esp. N. Trussart (ULB, work on Foucault, the gene concept), N. de Sadeleer (VUB, GMO's and precaution principle), S. Gutwirth and M. Hildebrandt (VUB, 'Correlated man as seen by law'), and the group of J.-P. Van Bendegem (VUB, statistics). First attempts of cooperation were outlined and will be worked out in 2003.

The report called '*Een eerste verkenning*' (July 2002, D. De Waele) was made available for all other IAP researchers. In contacts with individual IAP-researchers of the UG and the VUB, comments were made and taken into consideration for further research.

### **Cooperation outside the network**

Wp 2, (Stengers and Trussart) work on controversy about genetic determinism and the concept of biological evolution with French Inserm researcher Pierre Sonigo.

Wp 3 (Latour) works in close cooperation with Noortje Marres and Gerard de Vries from Holland and with Geneviève Teil and Elizabeth Rémy (see the description of wp 3)

Wp 5 (Mormont, Mélard) works on consensus conferencing with the Koning Boudewijnstichting on genetic tests.

Wp 7 (De Sadeleer) De Sadeleer gave a conference 30<sup>th</sup> May on the legal status of the precautionary principle. Conference 'sur l'éthique et la complexité socio-technique' organised by the Université catholique de Louvain and the Lille University, in a seminar organised by E. Zaccà (wp 4)

Wp 6 and 8 (Hildebrandt, De Sutter, Gutwirth) Gutwirth co-organised the international conference *Epistemology and methodology of comparative law in the light of European Integration* (Brussels, October 24-26, 2002) hosted by the Katholieke Universiteit Brussel, the European Academy of Legal Theory en the Vrije Universiteit Brussel. He was member of the organizing committee, member of the scientific committee and chair (together with P. De Hert) of the *Working group human rights* (October 25 pm & 26 am). He presented a paper together with Paul De Hert "The effects of globalization and Europeanization upon human rights".

Gutwirth participated in an expression of interest in the FIDIS-proposal for a NoE-subsidy of the EC (see description wp 8).

Hildebrandt held a lecture for the PhD-student-network at Groningen University on 'Mediation and criminal law' on 11<sup>th</sup> March 2002 by Hildebrandt; she and De Sutter both presented a paper on 'Human rights as preconditions of intercultural society' at the Conference on *Epistemology and Methodology of Comparative Law in the Light of European Integration*, and Hildebrandt participated in a seminar of the Catholic University of Leuven and the VUB on Anthony Duff's *Punishment, Communication and Community* by Hildebrandt. Also she attended a stakeholder-conference on food-genomics at the Rathenau-institute (pTA) in The Hague and held introductory meetings with several staff-members and the director of the institute to discuss terms of possible cooperation.

On 12<sup>th</sup> May 2003, the ULB will organize a conference and debate on implications of GMO, with (among others) JC Grégoire, Jean-François Desaedeleer, and Edwin Zaccāi participating.

During our networkmeeting in February 2003 we have planned two colloquia on the transversal themes of the project, to be held at the end of 2003 (GMO's) and in the course of 2004 (correlated man).

### III LIST OF PUBLICATIONS:

#### WORKPACKAGE 2

(appearing in 2003)

- STENGERS (I.) (with Sonigo P.), *L'évolution*, coll. "Mot à mot", Paris, EDP Sciences, 2003
- STENGERS (I.) , "Le dix-huit brumaire du progrès scientifique", to appear in *Ethnopsy*, 2003
- STENGERS (I.) , "Penser les sciences par leur milieu", to appear in *Rue Descartes*, 2003
- TRUSSART (N.), "Enjeux socio-politiques de l'agronomie : De la logique institutionnelle à une éco-logique" (récit de Jean-Claude Grégoire, recueilli et mis en écriture par), J. Moriau and M. Puig de la Bellacasa, *Savoirs qui comptent ... Fragments d'une université en transformation*, forthcoming.

#### WORKPACKAGE 4

ZACCAÏ (E.), "De la prévention à la précaution, et réciproquement", *Ethique Publique*, automne 2002, vol. 4, n°2, p. 23-39.

#### WORKPACKAGE 5

MORMONT (M.), "Qualité et action publique", *Pyramides*, nr. 5, printemps 2002, pp. 13 – 37.

MORMONT (M.), "L'expertise en questions", Collectif, *L'expertise en questions. Domestiquer l'incertitude dans la société du risque*, Bruxelles, PIE-Peter Lang, 2002.

(appearing in 2003)

- MORMONT (M.), "Dialogue local et reconstruction d'un concept technique de dépôt de déchets nucléaires", to be presented in the COWAM Conference, Cordoba, 13-15 March 2003.

#### WORKPACKAGE 6

DE HERT (P.) and GUTWIRTH (S.), "Tijd is rijp voor 'privacy effectrapportage'", *Nederlandse Staatscourant*, Woensdag 16 januari 2002, p. 1 and 8.

HILDEBRANDT (M.), *Straf(begrip) en procesbeginsel. Een onderzoek naar de betekenis van straf en strafproces en de waarde van het procesbeginsel naar aanleiding van de consensuele afdoening van strafzaken* (dissertatie Rotterdam), Deventer, Kluwer 2002.

HILDEBRANDT (M.), "Eenheid en verscheidenheid in de punitieve rechtshandhaving", in: A.M.P. Gaakeer, M.A. Loth (Red.), *Eenheid en verscheidenheid in recht en rechtswetenschap*, Deventer – Rotterdam, Gouda Quint – Sanders Instituut, 2002, p. 171-197.

DE SUTTER (L.), *Figures juridiques de l'art moderne. Penser le droit après la fin des disciplines*, mémoire de DEA de sociologie du droit, Université de Paris II Panthéon-Assas, 2002.

(appearing in 2003)

- HILDEBRANDT (M.) and GUTWIRTH (S.), “Rechtstheorie in de 21ste eeuw: stand van zaken in België en nieuwe trends”, *En toch beweegt het recht*, W. Debeuckelaere and D. Voorhoof (Eds.), *Tegenspraak-cahier 23*, Brugge, Die Keure, 2003, p. 59-66.
- DE HERT (P.) and GUTWIRTH (S.), “Rawls on human rights”, (in preparation) to be published in *Epistemology and Methodology of Comparative Law*, S. Gutwirth, M. Adams and P. De Hert (Eds.), Proceedings of the workshops of the *International Conference on Epistemology and Methodology of Comparative Law* held in Brussels on October 24th - 26th (in preparation, to be published in 2003).
- *Epistemology and Methodology of Comparative Law*, S. Gutwirth, M. Adams and P. De Hert (Eds.), Proceedings of the workshops of the *Epistemology and Methodology of Comparative Law*-conference held in Brussels on October 24th - 26th (in preparation, to be published in 2003).
- GUTWIRTH (S.), “Wetenschappen in de polis : van kortsluiting naar herbronning van de democratische rechtsstaat”, in preparation.
- HILDEBRANDT (M.), “Human rights as preconditions of intercultural society”, (in preparation) to be published in *Epistemology and Methodology of Comparative Law*, S. Gutwirth, M. Adams and P. De Hert (Eds.), Proceedings of the workshops of the *International Conference on Epistemology and Methodology of Comparative Law* held in Brussels on October 24th - 26th (in preparation, to be published in 2003).
- HILDEBRANDT (M.), “De horizontale betekenis van de straf”, *Tijdschrift voor de rechterlijke macht*, 2003-1, p. 14-20
- HILDEBRANDT (M.), “Mediation als strafrecht”, *Delikt en Delinquent*, April 2003
- DE SUTTER (L.), “Beyond Cultures and Traditions : What Europe Can Teach Us”, to be published in *Epistemology and Methodology of Comparative Law*, S. Gutwirth, M. Adams and P. De Hert (Eds.), Proceedings of the workshops of the *International Conference on Epistemology and Methodology of Comparative Law* held in Brussels on October 24th - 26th (in preparation, to be published in 2003).
- DE SUTTER (L.), “Le réseau, un nouveau paradigme juridique? Ce que l'art contemporain apprend à la science du droit”, forthcoming in *Revue interdisciplinaire d'étude juridique*.
- DE SUTTER (L.), “Les limites juridiques de la transgression artistique. A propos de Bernard Edelman et Nathalie Heinich, *L'art en conflits. Le droit et la sociologie à l'œuvre*”, forthcoming in *Droit & Société*.
- DE SUTTER (L.), “De la responsabilité juridique de répondre juridiquement. Réponse à François Ost et Sébastien van Drooghenbroek”, forthcoming.
- DE SUTTER (L.) et GUTWIRTH (S.), Review article about Latours *La fabrique du droit*, approx. 35 p., forthcoming.

## WORKPACKAGE 7

DE SADELEER (N.) and NOIVILLE (C.), “La directive communautaire 2001/18/CE sur la dissémination volontaire d'organismes génétiquement modifiés dans l'environnement : un examen critique”, *Journal des Tribunaux de Droit Européen*, 2002.

(appearing in 2003)

- DE SADELEER (N.), “Le statut du principe de précaution en droit international”, *La protection de l’environnement au coeur du système juridique international et du droit interne. Acteurs, valeurs et efficacité*, M. Pâques (Ed.), Bruxelles, Bruylant, 2003, p. 373-396.
- DE SADELEER (N.), projet de chapitre “Droits de propriété intellectuelle et convention sur la diversité biologique”, N. de Sadeleer et Ch.-H. Born, *Le droit de la biodiversité*, forthcoming.
- DE SADELEER (N.), “Un nouveau principe général de droit communautaire : le principe de précaution”, *Journal des Tribunaux de droit européen*, forthcoming.
- DE BEER (D.), “OGM - De la controverse à la transgression: rupture du dialogue ou processus d'assomption?”, forthcoming.

## WORKPACKAGE 8

GUTWIRTH (S.), *Privacy and the information age*, Lanham – Boulder – New-York – Oxford, Rowman & Littlefield Publ., 2002.

GUTWIRTH (S.) “Privacyvrijheid een voorwaarde voor maatschappelijke diversiteit”, *Eenheid en verscheidenheid in recht en rechtswetenschap*, A.M.P. Gaakeer and M.A. Loth (Red.), *SI-EUR Reeks 28*, Arnhem, Kluwer – Gouda Quint, 2002, p. 95-138.

GUTWIRTH (S.) and DE HERT (P.), “Grondslagentheoretische variaties op de grens tussen het strafrecht en het burgerlijk recht. Perspectieven op schuld-, risico- en strafrechtelijke aansprakelijkheid, slachtofferclaims, buitengerechtigke afdoening en *restorative justice*”, *De weging van 't Hart. Idealen, waarden en taken van het strafrecht*, K. Boonen, C.P.M. Cleiren, R. Foqué and Th. A. de Roos (Eds.), Deventer, Kluwer, 2002, p. 121-170.

GUTWIRTH, (S.) and SMIS, (S.), eds., *Strafrechtelijke vervolging van ernstige schendingen van de mensenrechten*, Reeks Interuniversitair Centrum Mensenrechten, Antwerpen – Apeldoorn, Maklu, 2002

## WORKPACKAGE 9

*De ethische verantwoordelijkheid van de wetenschapper*, J.-P. Van Bendegem and G. Cornelis (Eds.), *Ethiek & Maatschappij*, jaargang 5, nummer 2, 2002.

VAN BENDEGEM (J.-P.), “Van oude koeien die uit de gracht moeten”, *Ethiek & Maatschappij*, jaargang 5, nummer 2, 2002, p. 29-39.

VAN BENDEGEM (J.-P.), “Ontwerp voor een analytische filosofie van de eindigheid”, *Algemeen Nederlands Tijdschrift voor Wijsbegeerte*, jaargang 95, nr. 1, 2003, p. 61-72.

(appearing in 2003)

- VAN BENDEGEM (J.-P.), “Draaien in cirkels of de relativiteit van funderingen”, *Liber Amicorum Maurice Weyembergh*, Brussel, VUBPRESS, 2003.
- FRANÇOIS (K.), “De noodzakelijkheid of de overbodigheid van ‘De wet van Galilei’” (in preparation).



- COMIJN (H.) and VAN KERKHOVE (B.), “Internal and external philosophy of science” (in preparation).

#### **WORKPACKAGE 10-14**

Working papers:

The IAP-report of D. DE WAELE, called “De verbondenheden van het weten. De posities en verantwoordelijkheden van wetenschappen en wetenschappers in een democratische rechtsstaat. Een eerste verkenning” (July 2002, 66 p. with 2 Annexes)

A first draft of V. SMET on the 'Marion Van San' case (September 2002, 70 p.).

Publications:

DE WAELE (D.), "Philip Polk: *Biologie anders bekeken*" (Book review), *Ethiek & Maatschappij*, nr. 2, 2002, p. 91-94.

VAN DE VIJVER (G.), VAN SPEYBROECK (L.) and DE WAELE (D.), "Epigenetics: A challenge for genetics, evolution and development?", *From Epigenesis to Epigenetics. The Genome in Context*, L. Van Speybroeck, G. Van de Vijver and D. De Waele (Eds.), *Ann. N.Y. Acad. Sci.*, nr. 981, 2002, p. 1-6.

SMET (V.), “Luc Huyse: *Gullivers probleem. Essays over de toekomst van de politiek*” (Book review), *Ethiek & Maatschappij*, nr. 4, 2002, p. 150-151.

(appearing in 2003)

RAES, (K.), 'The social responsibility of scientific experts', The Institute for Prospective Technological Studies Report, vol. 72, 02, 2003, special issue 'Assessing the Impact of Scientific Advice', 3-10

ANNEX 1

**PÔLES D'ATTRACTION INTERUNIVERSITAIRES**  
**INTERUNIVERSITAIRE ATTRACTIE POLEN**  
**INTERUNIVERSITY ATTRACTION POLES**

**PHASE V/16**

**'Les loyautés du savoir'**  
**'The loyalties of knowledge'**  
**'De verbondenheden van het weten'**

**Network seminar**

**WEDNESDAY, FEBRUARY 5th 2003, UNIVERSITE LIBRE DE**  
**BRUXELLES**

**Report of the meeting**

**Present:**

**Isabelle Stengers, Jean-Claude Grégoire, Edwin Zaccāi, Nathalie Trussard, Jean-François De Sadelaer, Sebastien Denis (ULB), Serge Gutwirth, Laurent De Sutter, Daniel De Beer, Nicolas De Sadeleer, Mireille Hildebrandt, Wim Schreurs, Jean-Paul van Bendegem, Hans Comijn, Karen François, (VUB), Dani de Waele, Valérie Smet (UG), François Mélard (FUL)**

**Opening:**

Serge Gutwirth opened with an interesting citation of l'Oreal:  
*2700 chercheurs inventent la beauté de demain*

**Discussion of Isabelle Stengers' 'Cosmopolitiques'**

During the morning-session Isabelle Stengers gave a reply to questions from the team of the VUB, concerning the transversal meaning of several themes of her *Cosmopolitiques* for the project. In the program this was formulated as the question:

*How to link Isabelle's work (especially political and institutional aspects, concept of diplomacy, ...) to law and to the democratic, constitutional state, more specifically in terms of the two transversal themes, correlated man and food security.*

Jean-Paul Van Bendegem introduced this part of the seminar emphasizing that the purpose of this exercise is not to discuss or criticize the texts, but to find a common language and locate the relevance of the special vocabularies that are introduced in the *Cosmopolitiques*.

Isabelle Stengers again emphasized that she was not going to 'present' her *Cosmopolitiques*, but to respond to questions and to identify the feeling of it.

*Cosmopolitiques* hope for a speculative description of practices, using open words (generic instead of general), in a way that evokes an appetite and produces an interest for possibility instead of plausibility. If the use of generic terms succeeds this will lead to pay attention to the different practices in terms of their divergences, not their contradictions [the terminology general/generic is inspired by Whitehead/Leibniz and stems originally from mathematics]

The divergences are not arbitrary: they are related to the *distinction* of practices and give importance to the problem of their boundaries. Importance is a generic term: its meaning is open and distinct in relation to the context of each different practice. Boundaries or definitions of diverse practices are, however, not understood to cut, but to organise. Boundaries decide what is important and not important within a specific practice.

The term plausibility is connected with prediction. Of course prediction can be based on prevailing habits (people are like that, for example they will object in terms of NIMBY, Not in my backyard !). To resist this kind of plausibility is not a matter of escaping these habits, but raises the question how to modify a habit. The speculative interest is a pragmatic one because it is about the kind of situation, of agency which could make possible some change of habits. Plausibility comes close to a determinist conception of practices, while the search for an opening (for possibility) is closer to an ethical conception of practices: it implies a strong but always uncertain, that is speculative, distinction between what a practice indeed needs and how it formulates what it needs.

The term 'contraintes' refers to this aspect of practices and is related to the matter of plausibility/possibility. 'Contrainte' is again a generic term. The important point with constraints is that they demand being respected but do not define how they should be respected, that is the meaning they will take. This meaning is thus linked with the question of habit and the (speculative) possibility

of change of habit, while if a constraint and its meaning are conflated, we would define a practice through an identity.

The term 'diplomacy' is used here for a situation in which the plausible outcome of a situation is war (which presumes some equality between the adversaries). The diplomat is looking beyond the plausibility for a possibility of peace as related to invention, and as such should not be confused with pacification. Peace depends on the possibility for modified meaning associated to 'contraintes', making possible articulation when opposition did appear as the only logical outcome.

The term 'obligation' refers to the loyalties of a practice, to the specific way in which a particular practice organizes the non-equivalence of different ways of doing things. Asking practitioners to betray their obligations is something to be avoided. It means war or destruction of their practice, cynism and demoralization. The idea of an ecology of practices is that you cannot enter in a free way into a practice. However you may be able to change habits through an other set of constraints, called "demands" (exigences) : those define how a practice defines its relation with what it depend on in order to fulfill its obligations.

For instance scientists ask that society respects their autonomy. They usually formulate it as the demand 'give us the money and don't tell us what to do'. And if you try to tell it, they may be ready to cheat (re etiquette) because they feel their demand is legitimate, and your interference risks destroying their practice. Now it is possible to accept and respect autonomy, but pay attention to the way scientists easily cross the boundaries of their practice without being aware of the different role they should then take: without being aware that the constraints of the scientific practice don't hold for the civitas. Scientists should be civilized, that is respect the fact that there are other obligations to respect outside their boundaries. It is a change of habit we may work for that as soon as scientists claim they invent or produce things that concern others the border is crossed and a politics-of-in-between must be recognized and organized. Crossing the border from confined to open field research demands negotiating different obligations.

Instead of 're etiquette' of scientific research in order to get hold of big money, scientists may enter the cosmopolitics knowing that the meaning of what they propose to others does not belong to them as soon as they are out of their borders. It means entertaining non pedagogical relations with their outside and learning how to present themselves without insulting/disqualifying/judging others.

This is related to the question of tolerance. There is no problem with tolerance as long as you use it in a way such that you also ask others for tolerance, ask them to tolerate you. The problem begins when practitioners feel that their obligations or habits are simply "rational" ones, that everything would be more simple if everyone did share them: they will tolerate differences but still dream their disappearance. Then the only way they can relate to their outside is "pedagogy", asking others to first understand what they bring in their own terms. This is uncivilized.

In relation to the idea that the *Etat de droit* can only be an *Etat du droit*, Isabelle remarks that this would preclude any speculation (search for possibility). Mireille remarks that a relational conception of law connects very well with the central themes of the Cosmopolitics as a relational conception of law is linked to a counterfactual understanding of its basic concepts, that imply open texture, creating room for possibility beyond plausibility.

In relation to the idea that reification should be avoided, Isabelle holds that reification is the proces of producing new res (reification is an event). However, the reification of correlations is a problem.

In relation to the idea that the way the term 'obligation' is used in *Cosmopolitiques* is very general, while within the law is has a very specific and precise meaning, Isabelle emphasizes that the term is not used in a general but in a generic way. This means that the term will acquire a distinct meaning within each specific pratice, while at the same time this distinct meaning is not the end of it. When speaking of the obligations of lawyers one would - in terms of *Cosmopolitiques* - refer to the loyalties of lawyers that constitute their practice as a distinct practice. And these loyalties/obligations should

never be understood as matters of fact (a closed conception) but as a state of affairs (that implies the possibility of an opening). Isabelle also refers to Latour's book on the practice of law within the French Conseil d'Etat, that demonstrates the *controlled modifications of the 'contraintes'* of administrative law.

In relation to the transversal theme of 'food security' Isabelle remarks that GMO's are getting out of the confinement of the laboratory, while still pretending their autonomy. This calls for the civilization of the scientists. The quantitative changes that are brought about by the introduction of GMO's could lead to a qualitative change of our cosmopolitics. The problem is that all participants in this field are connected to big business and the question is whether the knowledge that is created by the networks in biotechnology is not fragmented up to a point where the sharing and negotiating of knowledge is completely absent.

In relation to the transversal theme of correlated man, one can think of the changes in the public/private realms, caused by high-tech developments like ambient intelligence and internet. Isabelle emphasizes that correlations have many practical meanings depending on their utilization, but that a distinction should be produced anyway between the average man and the correlated man. It is important for us to explore this notion further.

#### ***Presentation of the website and strategy concerning website (presentation ULB-team)***

In the afternoon-session Didier Demorcy presented and explained the construction of the website: Imbroglia. It was agreed that everyone will send his username & password to Hans Comijn, after which the website can be used as a means to exchange texts amongst the researchers of the project. The exchange is organized along the lines of the workpackages on the one hand, and along emerging questions on the other hand.

#### ***Planning and strategy for the first annual report and the follow-up committee.***

Mireille Hildebrandt and Nicolas De Sadeleer explained the obligations of the different workpackages in relation to the annual report. The guidelines of the DWTC and the model-workpackage 7 were discussed. So far the workpackages of wp 2, 6, 7, 8 (partly) and 10-13 have been handed in. Serge, Nicolas and Mireille will sit down together as soon as all reports have been received, in order to see to a coherent report in which the work of different teams within the same workpackage will receive special attention.

For the report to be ready in time, **it is important that the first draft of the workpackages be reported back to Mireille and Nicolas by the 17<sup>th</sup> of February.**

#### ***Agenda for the coming year***

The team of the VUB is organizing a seminar every other Thursday at the VUB, to present and discuss its own research. Several researchers from other teams have been/will be invited to present some of their findings.

An international conference will be organised on GMO's; the initiative will be further developed by the VUB-team (Daniel de Beer, Nicolas de Sadeleer, Karen François, Hans Comijn) in dialogue and cooperation with the other teams

An international conference will be organised on 'correlated man'; the initiative will be further developed by the VUB-team (Mireille Hildebrandt e.a.), in dialogue and cooperation with the other teams.

Mireille Hildebrandt