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*Peter Herrmann: Locating Shifts of Governing and Governance –
Theoretical Background Considerations and Framing the
Political Case Studiesⁱⁱ*

Peter Herrmann

Locating Shifts of Governing and Governance – Theoretical Background Considerations and Framing Political Case Studies^{1/2}

Cosimo's power was everywhere; as a foreign envoy to the city remarked: 'It is Cosimo who does everything... Without him nothing is done.' Yet his power was also elusive; he was not the government, merely the power behind I, and such power was difficult to oppose or eliminate.
(Paul Strathern: *The Medici. Godfathers of the Renaissance*; London: Pimlico; 2005: 115)

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¹ For some of the thoughts I am indebted to *Lotti Ryberg-Welander*, University of Stockholm and interesting discussions with her. Not less important had been intensive conversations on different occasions with *Prof. Dr. Hans F. Zacher*, Max Planck Institute for Foreign and International Social Law, Munich. Though we probably fundamentally disagree on many opinions made known by this contribution in political terms, I could gain much from what he taught me with respect to a holistic approach that needs to be employed in respect to assessing contemporary political questions. Finally, I want to thank *Mario Ricceri* from *Eurispes* in Rome – however, my thanks to him are in his capacity as a friend from Florence and the way he allowed me to experience for another time the greatness of history.

² It is especially in considerations like the following that the limitations of Eurocentrism have a far-reaching effect – and all I can do about it is to acknowledge my ignorance, asking for forgiveness.

I. Theory of Government in the Perspective of a Philosophy of Law

Introduction

As general introduction into the topic I want to locate the development of governing patterns in terms of centralisation and decentralisation. However, I do not want to talk about decentralisation by looking at the institutional development. Rather, the aim is here to provide an insight in a wider understanding, allowing in the second step to gain a clearer understanding of current issues of central debates. In brief, we find a developmental pattern from a highly centralised power – the power in the hand of god – to dispersed power – in the hand of numerous secular leaders as large landlords, princes etc. – to a power that is centralised in the hands of the emerging state that is then internally differentiated according to certain rules of the separation and division of power.

After actually remaining for quite a while structurally unchanged, a development characterised in terms of changes of governments and their propria – we see a more recent development of a new phase of dispersion: going hand in hand with a huge historical re-shuffle in terms of reordering power without changing the holders of power, we find a new debate on the ‘state’ as a specific entity of political steering, reconsidering

- * interests to be taken into account and
- * instruments to be employed.

State and Society – The Independent Dependent

Pointing on the ‘state as instrument of political steering’ means as well that we have to keep one crucial momentum in mind – often forgotten or even denied; moreover, although it is in political science today rarely explicitly dealt with: the state – in whichever form – is very much a reflection of economic processes and a means of their coordination and dealing with the different dimension of the economic processes. Despite the direct translation of economic power into political processes or control mechanisms there is a deeper dimension to it: it is the dimension of a specific adequacy of political structures with respect to economic aspects of societal development. Although there is of course a certain independence of political processes, there is nevertheless a fundamental dependence between them and moreover a determination by the economy. As *Frederick Engels* stated:

According to the materialist view of history, the determining factor in history is, in the final analysis, the production and reproduction of actual life. More was never maintained either by Marx or myself. Now if someone distorts this by declaring the economic moment to be the only determining factor, he changes that proposition into a meaningless, abstract, ridiculous piece of jargon. The economic situation is the basis, but the various factors of the superstructure – political forms – political forms of the class struggle and its consequences, namely constitutions set up by the ruling class after a victorious battle, etc., forms of law and the reflections of all these real struggles in the mind of the participants, i.e. political, philosophical and legal theories, religious views and the expansion of the same into dogmatic systems – all these factors also have been bearing on the course of the historical struggles of which, in many cases, they largely determine the form. It is in the interaction of all these factors and amidst an unending multitude of fortuities (i.e. of things and events whose intrinsic interconnections are so remote or so incapable of proof that we can regard them as non-existent and ignore them) that the economic trend ultimately asserts itself as something inevitable. Otherwise the application of the theory to any particular period of history would, after all, be easier than solving a simple equation of the first degree.

(Engels, Frederick: Letter to Joseph Bloch in Koenigsberg; London, 21 [-22] September 1890; in: Karl Marx. Frederick Engels. Collected Works. Volume 49:

Engels: 1890-92; London: Lawrence&Wishart, 2001; 33-37; here: 34 f. [emphasis in original]

To some extent this can be formulated as paradox – and perhaps even as one of the fundamental paradoxes of modernisation: Developing more and more a ‘rationalised system’, a system dealing on grounds of reason with human relationships – and thus applying the guiding principle of enlightenment – we face at the very same time the fact that this rationality is increasingly serving the interest of groups of people that follow very specific and particularistic orientations. In the first instance we have to think of class interests in economic terms. But subsequently other ‘groups’ and ‘group interests’ play a role as well: religion, rural-urban orientations, gender, ethnicity, professional orientations and many more – part of this had been indirectly mentioned in the quote from the letter of *Engels*.

Then again – remember this quote: You see that these interests are in the last instance though possibly very indirect – linked – to the economic basis which means again that we are entering an endless and complex recursive cycle of which the elements can only be understood if we accept the dominant meaning of the contradictions as characteristic moments of the **process**.

From Devine to Secular Steering – Shifting the Contradiction

It is not the aim to go into the details of the historical development – and actually it can be left open from where we actually would have to start: from a centralised power or from dispersed power.³ We are not interested in the initial setting up of power structures but more in the development – if you want to say so: not hen or egg, but growth of the chicken.

Decisive for the development is then the increasing secularisation of power and the dealing of human beings not only as executing power but as well increasingly as doing so as part of an intended and conscious matter. This comprises not only the actual execution of power but as well its justification. This is getting very clear when we look at the development of law which is becoming increasingly a reflexive mechanism, being fertilised and developed further from its own sources. Of course, this has to be qualified in terms of the societal totality that is constituted as economically driven process – requested and made possible by economic developments. In any case, law is decreasingly derived from sources outside of society and instead the decision is one which is taken into society: the development from natural law to contractual law.

However, this is in the main body at least of European law traditions a paradox development insofar as we are confronted with developments in opposite directions.

a) On the one hand with a process of **socialisation** on the grounds of law – what *Arthur Sutherland Maine* said to be

the movement of the progressive societies [as] a movement from Status to Contract.

(Maine, Arthur S.: Ancient Law. Its Connection With the Early History of Society, and Its Relation to Modern Ideas [1864]; Foreword by Lawrence Rosen; Tucson: University of Arizona Press; 1986: 165)

b) On the other hand with the fact that exactly this contractualisation is fundamentally **individualist** in its structures as contracts are shaped by

- An agreement of free will, between two free/formally equal parties
- Mutual obligations
- Mutual benefits
- Limited to the obligations expressed in the contract

(Lotti Ryberg-Welander, Lotti: Legal Technics. A structure of legal rationalities. Presentation University College of Cork, Department of Applied Social Studies; 15.1.2007 – see abstracts for William-Thompson Lectures at <http://william-thompson.ucc.ie>)

What is exciting if we look at it in a wider historical perspective: before the this discourse could emerge there was another discourse, very much employed by the question of natural law and the following question: if we take the distinction common for ancient Greek philosophy between nature (*physis – φύσις*) and custom (*nomos – νόμος*) we are confronted with the paradox that custom is of course somewhat ‘non-natural’ in the sense of being man-made.

³ Monotheism developed relative late; however, though not on a high level, personal power over a specifically defined space stood in a way early against the multitude of gods.

So, in a way we can say that we are now concerned with a dialectical process of individualisation through socialisation and vice versa, socialisation through individualisation whereas before we had been employed by the dialectics between nature and human beings or formulated even more harshly: between god and man.

The Succession of Rationality

Historically, this second major developmental step, the shift to the second dialectic meant that the 'new state' generated a new organisational pattern, being based on the new legal patterns of a secular system, directly linked not least to economic processes of man-made production:

- * long-distance trade, requiring navigation,
- * industry, involving control over in the widest sense natural processes and laws (including the opening towards machinery of different kind of means of production)
- * services, occupying the need of controlling human behaviour.

It is worth to mention en passant, that the latter was as well a very general matter of controlling human behaviour for the sake of a now in all areas – including the area of farming – needed legitimately controlled workforce. The increasing technisation of the different facets of workforce could not be left to a workforce that was entirely controlled by god. Rather, necessary was a workforce that was to the same degree controlled by humans, as it had been the case with regard to the processes of production. – Metaphorically – and well proven in various studies on this topic – it can be seen in three steps.

- * The individual farmer was solely depending on the course of seasons, climate and course of the day – and the power of god. All this had been largely uncontrolled and hugely controlling; moreover, by and large it had been a discretionary power. This had been reflected in *Max Weber's* assessment

The validity of a social order by virtue of the sacredness of tradition is the oldest and most universal type of legitimacy. The fear of magical evils reinforces the general psychological inhibitions against any sort of change in customary modes of action. At the same time the manifold vested interests which tend to favour conformity with an established order help to perpetuate it.

(Weber, Max: Economy and Society. An outline of interpretative sociology; Eds.: Roth, Guenther/Wittich, Claus; Berkeley et al.: University of California Press, 1968/1978: 37)

- * The farm worker, still depending on these conditions but as well on a 'guiding and organising power' – to continue with the words of *Max Weber*:

Conscious departures from tradition in the establishment of a new order were originally almost entirely due to prophetic oracles or at least to pronouncements which were sanctioned as prophetic and thus were considered sacred.

(ibid.)

This implied the power of representing god's power in the world and the translation of his/her will into secular language: for instance as 'invention of time' – the artificial structuration of natural processes by human power.

- * The transfer of power to human beings, being themselves – in and by their inherent and independent rationality – the source of legitimacy is a further step. Here we can find two important statements *Max Weber's*, pointing on different reflections of this shift of legitimacy:

The pure type of legitimacy based on value-rationality Natural Law. The influence of its logically deduced propositions upon actual conduct has lagged far behind its ideal claims; that they have had some influence cannot be denied, however. Its propositions must be distinguished from those of revealed, enacted, and traditional law.

(ibid.)

However, going further, and promoting the shift from pure reason to positive thinking (see *Herrmann, Peter: European Social Model – Existence, Non-Existence or Biased Direction. Public Lecture February 23rd, 2007 at the Convention Centre of the Middle East Technical University, Ankara; forthcoming*), *Max Weber* sees the emergence of a new form of legitimacy.

Today the most common form of legitimacy is the belief in legality, the compliance with enactments which are formally correct and which have been made in the accustomed manner.

(ibid.)

Niklas Luhmann coined the phrase of legitimacy by procedure – a view that is of relevance in regard of the second type of legitimacy. In any case, what developed was a system of political power(s), ideologies and social life, highly rational in terms of its organisational structure and mechanisms of division of power.

The underlying pattern of modernisation – as social process – is then minted by the structural contradiction of the increasing knowledge about and ‘manageability’ of nature on the one hand and the at the same time growing alienation in terms of the socially defined usage of this knowledge on the other hand. It has to be emphasised that this alienation is fundamentally a social process. In this context it is interesting that already Roman law strictly distinguished between ownership on the one hand and on the other hand the ‘technical appropriation’, i.e. the knowledge of using and utilising something.⁴

All this is reflected in a general push towards scientification and rationalisation – common at the time considered as emergence of modernisation. This is the era of scientific progress,⁵ the time when *Nicolaus Copernicus (1473-1543)*⁶ concluded that it is the sun, rather than the earth which is the centre of the solar system. Paradoxically, the human being, now not being the centre of existence anymore, gained additional power. The consciousness of not being favoured by nature and an eternal power of god, encouraged and even necessitated to accept responsibility. In other words, this quantum leap provoked striving for a rational order. Major progress had been made in science, in philosophical and social thinking and the definition of human responsibility. *Galileo Galilei (1564-1642)*, *Martin Luther (1483-1546)*, early urban planning in Italy under *Pope Sixtus V (1521-1590)* already in the 16th century, the founding of the *Bank of Amsterdam (1609)*⁷ and the Jesuit-founded *Bank of England (1694)*, and as well the foundation of the first insurances (*Lloyd’s starting business around 1688*) but as well the uncertainty and scepticism as for instance expressed in *Giovanni Boccaccio’s (1313-1375) Decameron (written between 1349 and 1351)* and still much later (*1605 and 1615 respectively*) *El Ingenioso Hidalgo de Don Quijote de la Mancha* by *Miguel de Xervantes Saavedra (1547-1616)* – all this being just some highlights of the era, in a way all marking the same *Zeitgeist* which mirrored the fundamental objective contradiction.

(1) Renaissance as such evolved to some extent from the contradiction of rationality and ‘old beliefs’ – the rebirth of the ancient world with its ideology, however combined with patterns emerging from the Medieval. Here, the ancient sense for nature, for physis as (*physis – φύσις*) did not relate primarily to custom (*nomos – νόμος*) but was combined with art and knowledge. Taking the Medieval background as historical status quo then, we can see the tension between the bonds to early mysticism, however we can interpret that as well in a more ‘positive’ way: as the beginning of science: Alchemy is both of this: the retarded system of belief in mysterious powers, witchcraft etc. and at the same time the emergence of scientific chemistry.

Actually, knowledge frequently proved highly important as well in arts – expressed in the perspective of *Albrecht Duerer* who defined the artist as observer and creator.

This is of course obvious when it comes to famous architectural works as for instance by *Filippo Brunelleschi* – at the time when he built the *Basilica di Santa Maria del Fiore*, the cathedral of Florence, the jury actually did barely trust that it would be possible to realise the plan the architect submitted. And what is remarkable, indeed, is that *Brunelleschi* combined his scientific insight, needed from the perspective of construction, with the deep sense for beauty and artwork.

Filippo’s scaffolding was put up with such intelligence and skill that it completely belied what people had been saying before, because the masons stood there, working safely and drawing up materials, as securely as if they were on solid earth.

⁴ I reflected on this in earlier works – and actually without being aware of this important legal distinction and the reflection in Roman law – as the different modes of appropriation (see for instance *Herrmann, Peter: Society and Organisation. Sociological Theory of Organisations [Gesellschaft und Organisation. Zur soziologischen Theorie von Organisationen]; Egelsbach/New York: Hänse-Hohenhausen, 1993; and: The Organisation. An analysis of the Modern Society [Die Organisation. Eine Analyse der modernen Gesellschaft]; Rheinfelden/Berlin: Schäuble, 1994).*

⁵ A broad overview on developments in ‘science’ can be found for instance in *Gribbin, John: Science. A History 1543-2001; London et altera: BCA. Allen Lane; 2002*

⁶ The dates here and in the following are taken from *www.wikipedia.org - 15/07/06; 5.43 p.m.*

⁷ See for an interesting contribution on the founding of this first central bank: *Quinn, Stephen/Roberds, William: The Big Problem of Large Bills: The Bank of Amsterdam and the Origins of Central Banking (August 2005. Federal Reserve Bank of Atlanta: Working Paper 2005-16; directly for historical data: 45f. - <http://www.frbatlanta.org/filelegacydocs/wp0516.pdf> - 09/07/06; 1.14 p.m.)*

(*Vasari, Giorgio: The Lives of the Most Excellent Painters, Sculptors and Architects, first published in 1550 in Florence, and revised and extended for a second edition in 1568: I-154 – from: <http://easyweb.easynet.co.uk/giorgio.vasari/brunell/brunell.htm>*)

Not less important was the role of science in the fine arts. *Paul Strathern* writes for instance with respect to *Donatello's* statue of *David*:

Once again, there was a major scientific aspect to this works of art. It was the first free-standing bronze sculpture to be produced in over a millennium, and as such represented the discovery of a lost knowledge; its casting alone was a technical achievement. Previously statues had been created for niches in buildings, or as architectural embellishments, rather than as complete objects in themselves; and the fact that this sculpture is to be seen in the round also required further scientific understanding. Donatello's David is a work of great anatomical precision, requiring more than a passing knowledge of this subject. The adolescent podginess softening line of the rib bones, the slightly protuberant stomach, the swivel of the hips and the lined skin on the forefinger clutching the sword all indicate an eye for physiological detail. Yet at the same time there is no denying that this is the statue of a particular individual.

(*Strathern, Paul: The Medici. Godfathers of the Renaissance; London: Pimlico; 2005: 110 f.*)

(2) It was at this time, that actually many 'social inventions' had been made and that social issues actually became a matter of consideration of explicit and statutory steering. *Juan Luis Vives (1492-1540)* can be put forward with his work on *De Subventionem Pauperum*; as said, it had been around this time as well that we find early town planning and the massively and systematically development of social entrepreneurship.

(3) Far more important, however, is a development that massively and systematically secularises political power. Hand in hand with the emergence of the economically powerful traders as the 'German'⁸ *Fugger*, the 'Italian' *Medici* and others, there was on the other hand the development of a differentiated and 'rational' power structure. Taking the example from above, expressed in the quote on *Cosimo Medici*, the contradictions can be made clear: the continuation of the 'absolute power' in factual terms went hand in hand with the development of a rational way of ruling. As contestable as *Niccolò Machiavellian's The Prince* is – and as much as this piece is fortunately contested and had been so already in early times – as evident is, that it had been an early masterpiece in thinking systematically about establishing a rational system of governing. And as obvious as the separation of power between legislative, judicative and executive, as laid down by *Charles de Secondat, Baron de Montesquieu*, was opposing *Machiavelli's* approach, they had been both at the beginning of a certain development of belief, laying grounds for a specific way of political thinking.

And here we can come back to what had been briefly explored earlier:

- * As much as legal thinking drifted away from the hierarchical order – natural law as matter of regulating
 - the direct relationship between god and individual and
 - the relationship between human beings and their common relationship to god – to the positive order as mainly reflected in the Roman law tradition and its expression in positive law, now being primarily a matter of people, i.e. individuals regulating their own relationship under the 'guidance and coordination of the state'⁹
- * as much as political ruling now shifting from representing the 'divine good' on earth towards regulated contracts between individuals.

However, one should not forget that many of these developments, though changing quite fundamentally the mode of accumulation and the accumulation regime, did have an ambiguous and contradicting effect on the life of ordinary people: (a) this remained in many regards unchanged, (b) it

⁸ Inverted commas are here and with respect to Italy used as we are in actual fact not at all dealing with any concepts of national reference. The then 'internationalism' went hand in hand with localism.

⁹ Seen in this light, common law tradition, as it determines up to today the legal system especially of *United Kingdom of Great Britain and Northern Ireland* is not much more than a strand of retardedness, not fully following the modernisation of the legal system as described and analysed by *Arthur Sumner Maine* in his tour de force on *Ancient Law* (see *Maine, Arthur S.: Ancient Law. Its Connection With the Early History of Society, and Its Relation to Modern Ideas [1864]; Foreword by Lawrence Rosen; Tucson: University of Arizona Press; 1986*)

worsened in other areas, not least with regard to accommodation,¹⁰ and improvements took a long time to actually realise for the mass of the people.

(4) In terms of territoriality, it is only here – in the late Renaissance and modernity emerging from there – that we see the early beginnings of the nation state. An economy that was able to and in need of overcoming borders given by nature, had to refine borders in an artificial way: the nation state as replacement of natural borders of fields; the turnpike at the frontier, replacing ditches and grove.

Though only germinating, it is here where we find what *Michael Zuern* and *Stephan Leibfried* later would call TRUDI, the modern idea of the state, namely

a multi-functional state that combines the Territorial State, the state that secures the Rule of Law, the Democratic State, and the Intervention State

(Zuern, Michael/Leibfried, Stephan: A New Perspective on the State. Reconfiguring the National Constellation; in: European Review, Vol. 13, Supp. No. 1, 1–36 [2005]: 1–36; here: 3)

Law – Reflecting on Human's Relationship to Reality

In brief and as a kind of summary we can get an overview of the entire development by looking at some main issues of legal thought – only a rough guide will be provided, as questionable as any tourist guide under such title which can bring us through to places and through spaces, however not allowing us any kind of real experience and possibly misleading us by pointing out important features, however distracting our attention from other important issues.¹¹ And this rough guide will only be given by some definitions and major defining moments.

* Natural law can be seen as a 'legal system', built on the principle of a natural and/or divine order.

Although centring for example in the theory of *Andrea Alciato* on the 'solitary man', it is concerned with the social being rather than with individuals as such because 'he is led by nature itself to the society of other men and association with them' (*Connan, F.: Commentariorum Juris Civilis Libri X; Paris 1558: 19v-20r; quoted in: Tuck, Richard: Natural Rights Theories. Their Origin and Development; Cambridge: Cambridge University Press 1997/1998: 37*). In this sense as in general, natural law concerns the regulation of the triangle: god/nature – individual – other individuals.

* Roman law, as mainly written and systematically developed civil law was fundamentally concerned with the relationship between individual people, leaving god outside of the relationship and being initially

by the Roman jurist Q. Mucius Scaevole ... classified into four main divisions: the law of inheritance, the law of persons, the law of things, and the law of obligations.

(Berman, Harold J.: Law and Revolution. The formation of the Western Legal Tradition; Cambridge/London: Harvard University Press, 1983: 136)

* Then, positive law can be seen as basis and at the very same time outcome of Roman law, characterised especially by the following features:

- the clear distinction between the legal right of control (ownership) and the actual ability of using something¹²
- the classification of contractual systems, though all being concerned with the relationship amongst individuals, differentiating between vending, work, rent and service)
- the differentiation between persons, things and actions (*personae, res, actiones*).

Although being formulated by individuals on the basis of dialectical principles, it had been very much considered as being statutory law. As such, it was at the very same time regulatory law, aiming on (a) ex ante provision of 'legal instruments' (thus being not least a means of predictability and accountability) and (b) in a way reducing the instruments on their formal character, and

¹⁰ Which is especially remarkable as it had been an era of blossoming architectural progress.

¹¹ Another matter in question is that the following presentation is overly pointed, not reflecting the actual complexity. Finally, though for many of us in social policy and in other social sciences as philosophy, sociology, social work etc. terms from legal science seem to be rather 'positive', clearly defined and rather incontestable, this is different if seen from our perspective in legal science itself. All terms used are in legal science by no means clear and unambiguous.

¹² From a sociological perspective see *Herrmann, Peter: Developing a Methodology Based on the History of Ideas for Social Professions – The Meaning of the Founding of the State. Meta-Theoretical Perspectives for Developing a Methodology for an International Approach; New York: Nova; forthcoming*

reducing their function largely on providing a formal framework for actions of individuals, by and large disregarding their substance.

A section, quoted from *Thomas Hobbes' De Cive* shows in a comprehensive way the relevance of the distinction with regard to the constitution of the 'general social' on the one hand and the state on the other hand. Moreover, the careful reader will easily detect that the borders between the different arrays are floating, however strictly following the prevailing patterns of how power is distributed.

It is most manifest by what hath been said, that in every perfect city, that is, where no citizen hath right to use his faculties at his own discretion for their preservation of himself, or where the right of the private sword is excluded; there is a supreme power in some one, greater than which cannot by right be conferred by men, or greater than which no mortal man can have over himself. But that power, greater than which cannot by men be conveyed on a man, we call absolute. For whosoever, hat so submitted his will to the will of the city, that he can, unpunished, do any thing, make laws, judge controversies, set penalties, make use at his own pleasure of the strength and wealth of men, and all this by right; truly he hath given him the greatest dominion that can be granted.

(Hobbes, Thomas: The Citizen. Philosophical Rudiments concerning Government and Society; in: Hobbes, Thomas: Man and Citizen (De Homine and De Cive); Ed.: Gert, Bernard; Indianapolis/Cambridge: Hackett Publishing Company, 1991: 180 ff.)¹³

* Seen in this light, we come across another apparent paradox: power shifts away from direct collective forms of regulation as they had been characterising for instance common law (see below), instead establishing a strong regulatory power in form of the state. However, at the same time this *Leviathan*, as *Thomas Hobbes* called it and as it was a focus of political and philosophical debates of the time in different contexts, was very much camouflage as it lost a fundamental element of the preceding system, namely the direct social dimension. In other words, the state, seemingly a strong and regulatory social instance, was not much more than an individual amongst others. And as such, it was of course open as an ally: an instrument and representation of the strongest individuals of the given society. – The underlying problem is, of course, that this state is seen as being established

not in the mutual good will men had towards each other, but in the mutual fear they had of each other.
(ibid.: 113)

This cannot be developed in depth. In any case it is important to acknowledge the specific tension. *Hobbes* is insofar right as all states hitherto had been and are based on the principle of classes; however, he actually argues the other way round and states that the fear is based not on inequality but exactly on the opposite: on equality. Thus, we have to consider for further analysis indeed as well the constitution of civil society as expression of the fundamental contradiction of society in general – in short

Civil society, in its opposition to the political state, is recognised as necessary, because the political state is recognised as necessary.
(Marx, Karl: On the Jewish Question [1843/44]; in: Karl Marx. Frederick Engels. Collected Works. Volume 3. Marx and Engels 1843-1844; London: Lawrence&Wishart, 1975: 146-174; here: 155)

This means as well that we have to revisit the question of public and private (*see some preliminary remarks in Herrmann, Peter/Nyhan, Maria: Odi et amo – Women's Health under Strain in a male-dominated world. A Sustainable way out in: Herrmann, Peter (ed.): Citizenship revisited – threats or opportunities of shifting boundaries; New York: Nova Science, 2003: 89-122*).

* Though there is some confusion, frequently classifying Roman law as part of common law (*cf. Berman, o.cit.: 456*), the more specific interpretation of common law points on major differences. Looking at the term in a definitional perspective, suggests for example the following:

common law
n. the traditional unwritten law of England, based on custom and usage, which began to develop over a thousand years before the founding of the United States.
The best of the pre-Saxon compendiums of the common law was reportedly

¹³ *Hobbes* reflects on this as well in his *Leviathan* in chapter XXVI, titled *Of Civill Lawes* (*Hobbes, Thomas: Leviathan; introduction by K.B. Minogue; London/New York: Dent/Dutton, 1973: 140 ff.*)

written by a woman, Queen Martia, wife of a king of a small English kingdom. Together with a book on the 'law of the monarchy' by a Duke of Cornwall, Queen Martia's work was translated into the emerging English language by King Alfred (849-899 A.D.). When William the Conqueror invaded England in 1066, he combined the best of this Anglo-Saxon law with Norman law, which resulted in the English common law, much of which was by custom and precedent rather than by written code. By the 14th century legal decisions and commentaries on the common law began providing precedents for the courts and lawyers to follow. It did not include the so-called law of equity (chancery), which came from the royal power to order or prohibit specific acts. The common law became the basic law of most states due to the Commentaries on the Laws of England, completed by Sir William Blackstone in 1769, which became every American lawyer's bible. Today almost all common law has been enacted into statutes with modern variations by all the states except Louisiana, which is still influenced by the Napoleonic Code. In some states the principles of Common Law are so basic they are applied without reference to statute.

(Hill, Gerald/Hill, Kathleen: The People's Law Dictionar; Publisher Fine Communications

(<http://12.170.132.252/default2.asp?typed=common+law&type=1&submit1.x=0&submit1.y=0&submit1=Look+up> - 11/03/07; 8:17)

Interesting is that at least the emphasis, if not even the entire definition changes. Whereas on the one hand the emphasis is on the 'people's law' dimension, the law setting role following the direct negotiations of people concerned, we find on the other hand the emphasis of the regional aspect and the limited reach in space, time and, indeed, as well the limitation on the individual case – the latter orientation is getting clear in the following quote.

Traditional law of an area or region; also known as case law. The law created by judges when deciding individual disputes or cases. The body of law which includes both the unwritten law of England and the statutes passed before the settlement of the United States.

(The 'Lectric Law Library's Lexicon On Common Law <http://www.lectlaw.com/def/c070.htm> - 11/03/07; 8:18)

Especially the following two aspects are meaningful in a general perspective.

- First, common law is not statutory law. This means not least that it is not (necessarily) drawn up by legal experts. Instead, it is thought to be 'people's law'. This, of course, can and has to be contested or at least qualified. In strict sense it had been law that had been set by the ruling class. However, what makes it to people's law – and this was actually more the claimed meaning – is that it had not been thought to be 'expert knowledge'. It was not considered to be developed as matter of a political body in the strict sense nor was it seen as matter of a professional body, developing a fixed volume of rules.¹⁴ And similarly, it had not been meant as being a set of rules of which the implication would then be 'controlled' by a specialised professional body.
- As such, it was considered not as regulatory body, but as regulating instrument. This meant as well that this control was very much an ex-post-instrument. The rules of regulation had been characteristically seen as process: rules building up on each other, emerging though not towards a regulatory body but emerging towards an ever tightening net of precedents – it is the case law which is entirely dependent on antecedent legislation whereas the Roman law, though of course knowing precedents as well, only makes relatively spare use of them.

Legal Perspectives and the State I

Comparing the different legal perspectives – and keeping in mind that law, whichever form it takes, is not independent in itself, but an expression of the state which itself is in its political and juridical form both a means of self-regulation¹⁵ and of ruling the society in the interest of this 'total national capital'¹⁶

¹⁴ See the next point on the non-regulatory character.

¹⁵ The state as 'ideal personification of the total national capital' or 'ideal collective capitalist'.

¹⁶ Suggested as 'general interest'.

– allows importantly to look now at the state from the perspective of law. From here, the following assignments can be made.

1) Taking the modern understanding of the state, natural law can actually be seen as reflecting a non-state. It would be even wrong to say it is any kind of ‘state of god’, although the understanding of what is lawful is actually thought as being defined by the will of god. That it is nevertheless justified to speak of a non-state is due to the fact that god is not a ruler; the other way round, the idea is – and it is really the idea, an idealist suggestion or ambition – that humans strive for their own ‘realisation in god’. That this is not limited to ancient societies can clearly be seen when we are for instance looking at the work of *Jean Jacques Rousseau* – though not looking at god, he orients on the absolute realisation of the individual in nature as much as *Georg Wilhelm Friedrich Hegel’s* absolute idea.

2) This changes fundamentally with the orientation on the applicability of Roman and positive law. Here we have contractual systems that are nothing else than the reflection of an individualist system, namely the modern state. The separation of property (ownership) from usage (capability), though only much later translated into capitalism as in itself coherent structure of a though – fundamentally contradicting – system,¹⁷ is the basis for establishing an elementary individualist system. This means that we are actually depending on an artificial social instance, namely the state in the modern sense. Though this state had of course not been set up immediately as modern state, it bears from the outset the fundamental contradiction of being suggested to act as social regulator, however, itself being only considered as *legal person*, as legal person. – It is from here, from the legal person of the state, where possibility and necessity of TRUDI (*see p. 8*) arises. Separation of powers, a rational system of administration etc. are all to be seen in connection with matters of dealing with relationships of individuals.

Governance – Refining the Social?

It had been clear throughout history of the modern state – though barely acknowledged – that this state bears some fundamental weakness. Basic issues had been mentioned: the difficulty of dealing with the public and the private; the fact that it had been dealing with social issues despite the fact that it had been itself a – though in a very specific sense – individual; the claim of representativeness though it systematically undermined the rules for such representativeness; the division of rights despite the claim of being a universalistic entity *et altera*.

The new governance debate claims to answer these difficulties, however remaining by and large on a superficial and formal level.

A general definition of governance is given by *Bob Jessop* who sees it as

as the reflexive self-organization of independent actors involved in complex relations of reciprocal interdependence, with such self-organization being based on continuing dialogue and resource-sharing to develop mutually beneficial joint projects and to manage the contradictions and dilemmas inevitably involved in such situations. However, there are several aspects which should not be pushed aside.

(Jessop, Bob: Governance and Metagovernance: On Reflexivity, Requisite Variety, and Requisite Irony, published by the Department of Sociology, Lancaster University, Lancaster LA1 4YN, UK, at <http://www.comp.lancs.ac.uk/sociology/papers/Jessop-Governance-and-Metagovernance.pdf> [2002]: 1)

The *European Commission’s White Paper* on Governance defines governance as set of *rules, processes and behaviour that affect the way in which powers are exercised at European level, particularly as regards openness, participation, accountability, effectiveness and coherence.*

(Commission of the European Communities: European Governance. A White Paper; Brussels, 25.07.2001 . COM[2001]428: 8)

It states that

Five principles underpin good governance and the changes proposed in this White Paper: openness, participation, accountability, effectiveness and coherence. Each principle is important for establishing more democratic

¹⁷ Probably a valid terminological grasp of an unsustainable antagonistic system.

governance. They underpin democracy and the rule of law in the Member States, but they apply to all levels of government – global, European, national, regional and local.

(ibid.: 10)

On the instrumental level, several mechanisms are relevant in this context, actually representing a wide range from changes and moderations in semi-formal systems to entirely new structures, developed in order to match newly evolving multilevel structures of the emerging European state. An example for the first can be seen in the different degrees and ways of the *European Parliament*, but as well the *Committee of the Regions* and the *Economic and Social Committee* are exercising influence (assent procedure, co-decision, consultation procedure, own opinions etc.). New structures would be on the one hand organisations as especially *EAPN* and the *Socialplatform*, organisations that had been specifically set-up by the *European Commission* in order to have

- * a calculable partner for negotiations
- * a ‘centralised provider of decentralist information’ and
- * a link for distributing information directly to citizens

The tightrope walk of these organisations between being an affirmative ‘extended loop of the laces from Brussels’, especially of the *European Commission*, and a process kicking against the goads is tight and dangerous, not least because of the increasing distancing between the different activity (and thus knowledge) levels. It is not only the fact of following European agendas but going hand in hand with this we find as well the alienation between NGO-professionals and those who are actually working on the ground. As *Gertraud Dayé*, up to recently secretary general of *EURAG (European Federation of Older Persons)* stated in an e-mail to the author:

It is not onkly the Brussels-based representatives of NGOs, but I see more and more the difference between the (in part well-paid) employees of large NGOs and thiose who work at grassroots-level. These employees of NGOs, nearly having a status like officials are in deed far away from reality, if they work in Brussels of for instance in Germany or Great Britain.

The Social Platform would be well advised to mind that ‘new faces’ are not solely recruited from the group of junior-emplyees of the member organisations (coming directly from University); instead they should be recruited as well from real grassroots NGOs from the member states – with experiences one can only gain at the grassroots level in the countries themselves.

(Dayé, Gertraud: mail to the author; 15/03/07; 8:52)

(see in general Herrmann, Peter: Politics and Policies of the Social in the European Union – Looking at the Hidden Agendas; New York: Nova, 2006).

Another example for new structures and mechanisms is the various *Community Agencies* – such an agency

is a body governed by European public law; it is distinct from the Community Institutions (Council, Parliament, Commission, etc.) and has its own legal personality. It is set up by an act of secondary legislation in order to accomplish a very specific technical, scientific or managerial task, in the framework of the European Union’s ‘first pillar’.

(http://www.europa.eu/agencies/community_agencies/index_en.htm - 15/03/07; 9:33)

There are several aspects linked to this. First, we find a process which shifts responsibility away from the democratically controlled mechanisms of the political process as it should follow not least the principal of the separation of power, democratic elections limitation of the period of being in power etc. Second, many of these organisations are nevertheless politically controlled, usually following the principal of tripartite structures and at the same time guaranteeing the rights of member states to be represented. This means (a) that a large bunch of interests is actually left out and (b) these organisations are located in the tensional field of social partners on the one hand and Commission as supranational body on the other hand. Third, we see a huge shift of responsibility into a direction of supposedly neutral policy meaning on ground of ‘evidence based practice’.

Finally and most important as new mechanism we find since recently the Open Method of Coordination (OMC). It is a mechanism that works without providing a legal basis for intervention and obliging member states to certain actions or decisions. The mechanism can be briefly grasped by the following.

The OMC provides a new framework for cooperation between the Member States, whose national policies can thus be directed towards certain common objectives. Under this intergovernmental method, the Member States are evaluated by one another (peer pressure), with the Commission's role being limited to surveillance. The European Parliament and the Court of Justice play virtually no part in the OMC process.

The open method of coordination takes place in areas which fall within the competence of the Member States, such as employment, social protection, social inclusion, education, youth and training.

It is based principally on:

- jointly identifying and defining objectives to be achieved (adopted by the Council);

- jointly established measuring instruments (statistics, indicators, guidelines); benchmarking, i.e. comparison of the Member States' performance and exchange of best practices (monitored by the Commission).

Depending on the areas concerned, the OMC involves so-called 'soft law' measures which are binding on the Member States in varying degrees but which never take the form of directives, regulations or decisions. Thus, in the context of the Lisbon strategy, the OMC requires the Member States to draw up national reform plans and to forward them to the Commission. However, youth policy does not entail the setting of targets, and it is up to the Member States to decide on objectives without the need for any European-level coordination of national action plans.

(Europa

glossary

http://www.europa.eu/scadplus/glossary/open_method_coordination_en.htm

15/03.07; 9:46)

The one moment which makes it particularly interesting had been described on another occasion (see briefly below page 15; more in Herrmann, Peter: *European Social Model – Existence, Non-Existence or Biased Direction Public Lecture February 23rd, 2007 at the Convention Centre of the Middle East Technical University, Ankara; available in the sideways-section of the website <http://william-thompson.ucc.ie>*) – the remarks there had been more concerned with how the OMC fits in the overall European governance processes. However, there is another dimension that makes this method particularly interesting, namely the obligation of member states to enter a dialogue with the various stakeholders. The *Conclusions of the Lisbon Summit* in March 2000 state

38. A fully decentralised approach will be applied in line with the principle of subsidiarity in which the Union, the Member States, the regional and local levels, as well as the social partners and civil society, will be actively involved, using variable forms of partnership. A method of benchmarking best practices on managing change will be devised by the European Commission networking with different providers and users, namely the social partners, companies and NGOs.

(Presidency Conclusions. Lisbon European Council, March 23/24, 2007 - http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/00100-r1.en0.htm 15/03/07; 10:04)

What is actually decisive when we look at the OMC from a broader perspective of political science, investigating processes of refining the social in the context of governing, is that we see a shift in the definition of the private and public and with this of the demos (see on demos as well below). With all necessary sceptical hesitation, we can see in these patterns a further shift of bringing closer together what Tom H. Marshall analysed as three categories of rights as, namely civil, political and social rights (see Marshall, Tom H., 1950: *Citizenship and Social Class*; in: *Citizenship and Social Class*; Tom H. Marshall/Tom Bottomore; London et altera: Pluto Press 1992: 8-17). However, too much optimism is out of place. What actually develops is not so much a qualitatively and quantitatively wider public. Rather, we have to face the development of a new, in itself rather closed public, not least to be characterised by its specific expertise. – The undeniable danger is that the new demos, rather than being characterised by rights, trust, public spirit, public discourse and solidarity, is now characterised by expert knowledge. Democracy is consequently redefined as matter of evidence-based policy making.

Legal Perspectives and the State II

3) Continuing from the two points in the first section on *Legal Perspectives and the State* (see page 10) on the perspectives on the state from natural and from Roman/positive law tradition, the question is if any perspective can be given on the suggested emergence of the non-state. One perspective could mean to return to natural law – in reality actually in many cases implicitly the practiced pattern. Frequently found developments that can be seen as something like a new renaissance; the return to considerations of ‘values’ and the emphasis of traditions, the simple critique and rejection of developments that are senselessly captured under the heading of modernisation ... – all this is not much else than a revival of ‘natural law non-states’. And of course, as such they carry the mark of Cain which leads to impracticability of such kind of political guidelines. They are distinct states of nature and make reference to nature; however, they do not allow any consistency within the reality of social life.

An alternative seems to be the revival and generalisation of common law. This, of course, opposes the experiences and the standards of the state, as we know it. But actually it is such divert from reality that is required if the traditional state loses in actual fact so much power and legitimacy as it is frequently claimed.

Are the claims justified? If this is the case, can we find a legal mechanism that allows an appropriate answer? ‘Appropriate answer’ would mean at least that it is (a) sufficient in dealing with steering the contradictions, (b) allows real democracy, i.e. influencing, controlling but as well negotiating and negotiating processes, (c) can be translated into legal provisions and regulations and (d) reflects the status of society as specifically structured entity. Importantly, it has to be work on a clear understanding of citizenship, as such being concerned with an explicit conceptualisation of demos. – Actually it is striking that we find many debates on citizenship but the question of the demos is rarely addressed. Initially, *δημος* refers to the people, more concrete to the common people (commoners). Such interpretation includes that there is no explicit link established between any rank and title. However, going back to ancient Greek, from where the concept of demos stems (see *Aristotle’s Politics*; see for various information on this subject as well <http://www.stoa.org/projects/demos/home>), an indirect link is made to the ‘citizens’, i.e. those people who are ‘full members’ of the community. In other words, whereas we find exclusion of people beyond the border, there is no direct differentiation of power inside of the ‘accepted’ people, the citizen. It is important to recognise this and to accept that this was to some extent complete democracy. i.e. *demos*: people – *kratos*: rule. To accept this, means to point on a serious structural limitation of the concept of democracy if derived in this way as this understanding of demos, as open as it seems to be on the first sight, depends on a closure, on a high degree or even absolute homogeneity. Under such circumstances it is actually more or less simple and straightforward to arrive at the five substantive components that are commonly seen as essential and that had been already mentioned above, namely rights, trust, public spirit, public discourse and solidarity.

It is in particular the latter point that deserves special attention. Before it had been suggested that common law tradition, as it determines up to today the legal system especially of United Kingdom of Great Britain and Northern Ireland is not much more than a strand of retardedness, not fully following the modernisation of the legal system as described and analysed by *Arthur Sumner Maine*. Important is to see such a statement as being concerned with the fact that there are two different ‘forms’ or ‘levels’ of social developments, the one being highly institutionalised, the other being concerned with immediate contacts, the immediacy of producing and living and consuming (though possibly conflicting) commonality. Then, common law is not delivering on the advanced level of development but remains on the preceding level. This means as well that there is a lack of living to the full the opportunities of providing sufficient security for development of further socialisation. As democratic and open such common law may be as community law, it seems to be difficult to accomplish requirements of societal juridical systems on this basis.

However, it has to be seen at the same time that this critique should not be seen one-sided, as negative assessment. The lack of advancement entails at the same time a positive moment, namely the lack of a fundamental division of society. In other words the thesis is that common law is only possible outside of class societies, formulated the other way round: common law cannot be smoothly applied in a society that is structurally inhomogeneous.

Trying to summarise this, we are in common law concerned as well with a non-state (as the state is class-based); but different to the situation under natural law, we are now existing under differentiated social conditions, now differentiated not in terms of the hierarchical order of a god or nature existing outside of society and an inside of togetherness. Rather we are now looking at a system that is

internally differentiated into systems of distinct modes of regulation and density of regulation. From here, governance, suggested as open mechanism of regulation, simply fails as far as it is employed to deal with mechanisms of continuously closed structures of regulation within subsystems. In this context it is interesting that frequently modern 'states' and 'states to be' put forward claims of being communities – we may think of the earlier *European Economic Community (EEC)* or the stronghold of mixing the ideology of community with nationality (see *Martin Geoghegan, Martin: Social movements, community development and the discourse of national community: an analysis of popular 'progressive' mobilisation in Ireland; in: Herrmann, Peter: N.N.; forthcoming*).

And it is this shortcoming and internal contradiction that leads in practice to a new level of closing the supposed open systems. At least at a tentative level we can see that governance processes, set up on large scale levels – *World Bank, United Nations, European Council, European Union* etc. – are in actual fact pretty much closed systems. This does not mean that there is no difference to systems of traditional representative democracy; on the contrary, the supposed openness actually capsizes into a new status-based closure – though it may be questionable, if we can speak of re-feudalisation in strict terms, we have at least the merging and rather uncontrolled power of an economic and political elite. Though opening the government system as such, the governance orientation does not open the structural mechanisms of decision-making. In other words, in a society being fundamentally based on the mechanisms requiring the state, namely relations of individuals defined by their individual contractual relations – based on the four principles mentioned by *Lotti Ryberg-Welander* and which had been referred to as 'individualising contractualisation' (see page 7), namely

- * an agreement of free will, between two free/formally equal parties
- * mutual obligations
- * mutual benefits
- * limited to the obligations expressed in the contract

– neither natural nor common law principles can be applied. In short, the problem of any law is to find a way to regulate or assess individual dissent while at the same time it has to deal with the structural dissents of the given society. And this is true as well for the political process and decision-making. Equality and accessibility with regard to political processes cannot be achieved by opening these processes without overcoming the structural inequalities in foregoing fields. Actually, despite some obvious advantages of the proposed new governance structures, there is an inherent shortcoming of a new obscurity. This is not concerned with the increased complexity of processes. Instead, the problem is that there we are confronted with a mere unmanageable obscurity of inequalities of power and accessibility and at the same time the denial of any inequality. On the one hand, we have the ongoing differences between the traditional system of policy-making and the 'new open structures' – it is not always clear where actually the power lies, what the competencies of the one and of the other are. Then we find different layers within the open structures – different as much as the old structures are coined by inequalities in terms of the representation of certain cleavages. Direct representation, indirect representation, the economic strength and local nearness, the kind of mandate and other s play a role. In parallel to the regional centre-periphery model as proposed by *Immanuel Maurice Wallerstein* with respect to capitalism we find a similar pattern in respect to political processes. A relatively small elite resides in the centre as well of the open processes, controlling access and building a border around the second circle of power structures. The Open Method of Coordination and its congenials emerge to semi-public spheres of trading political expertise

dominated by a new class of high civil servants and EU officials

(Hemerijk, Anton: Joining Forces for Social Europe. Reinventing the Lisbon Imperative of 'Double Engagement'; Lecture to the Conference 'Joining Forces for a Social Europe', organised under the German Presidency of the European Union during the first half of 2007, in Nuremberg, 8/9 February 2007: 14¹⁸)

This means at the same time that the fundamental pattern of politics as private contractualism remains untouched. Actually the semi-openness is insofar dangerous as it suggests a public sphere that does not exist; and at the same time it undermines the control mechanisms of the currently still dominant system with its separation of powers.

¹⁸ Quoted is the version as distributed during the conference; there is a slightly different version available on the Internet at <http://www.eu2007.bmas.de/EU2007/Redaktion/Englisch/PDF/2007-02-08-kraefte-buendeln-presentation-netherlands.property=pdf;bereich=eu2007,sprache=de,rwb=true.pdf> - 1.3.2007; 22:48

Coming back to the use of the term of the new obscurity this can well be linked to *Juergen Habermas'* notion of such obscurity insofar he links this to the emergence of a new perspective on time. He states

Since the end of the eighteenth century, history has been conceived as a process that is world-encompassing and problem-generating. Time in that process is thought of as a scarce resource for the future-oriented mastery of problems left us by the past. Exemplary periods in the past that the present might have been able to use without hesitation for orientation have faded into insignificance. Modernity can no longer derive the standards it uses for orientation from models offered by other epochs. Modernity sees itself as dependent exclusively upon itself – it has to draw on itself for its normativity. From now on the authentic present is the locus in which innovation and the continuation of tradition are intertwined.

(Habermas, Juergen: The New Obscurity: The Crisis of the Welfare State and the Exhaustion of Utopian Energies; in: The New Conservatism. Cultural Criticism and the Historian's Debate; ed. And translated by Shierry Weber Nicholsen; introduction by Richard Wolin; Cambridge: Polity Press, 1989: 48-70; here 48 f.)

With this, the control of time is becoming an increasingly important factor – and this means that the centre-periphery question gets a new dimension, namely the underlining of the importance of the nearness to power. This increasing importance of time for policy making means that governance is advantageous only for those who can control time, who 'have time'; and this again means that the supposed openness is the openness of the Pandora box, a political process open to greed, vanity, slander, envy, pining – those characteristics that had been released. The hope that Pandora locked in her container, is today however released as well, taking the form of illusion and Kafkaesque fights against windmills.

One testimony of this can be seen in the increasing number of cases that are decided by the (national and European) High Courts – cases where the policy makers failed to provide clear determinations. Other moments of such a diversion of power can be named by pointing on the arbitrariness of access on the one hand, and the increasing bureaucratic 'control' of access in the name of accountability – up to recently getting access to the *European Parliament* followed a very uncomplicated, rather informal procedure. Today, it is only possible for insiders, thus establishing another circle of political elite in the centre.

Furthermore, it would be dangerous to oversee that many of the governance-processes are actually more symbolic politics rather than really decisively determining the direction. – And perhaps this is even good as the search for influence is by and large shaped by what had been mentioned before: patterns of individualist contractualism.

Outlook

In brief and as a kind of summary we can get an overview of the entire development by looking at some main issues of legal thought – and I am well aware of the limitations of such an approach in some regards. My core concern is to introduce an important and by and large neglected aspect into the debate on governance, and with this going very much to the basics.

By looking at the emergence and change of governance structures we usually forget the critical fact that we are dealing with a fundamental tension between status and process that can only be solved by a dialectical process of overcoming the character of the social as being external. With respect to governance, technical proposals of opening institutional structures, increasing the accessibility of 'the system' and even efforts of enhancing discursivity of the communal level may be important steps. However, as long as they do not recognise the fundamental contradictions and the limitations of civil society itself it is rather delusive to hope for a fundamental democratic shift.

II. Governance, New Public Management, Social Quality Development – Perspectives on Contemporary Debates in Policy-Development

Point of Departure

There is obviously a need for reflecting modes of integration – and with this: modes of governing. First, we will use this term of governing in a very general understanding, seeing any activity of deciding on rules that are concerned with a defined legislature and to reinforce their implementation. Taking an even wider – and here probably more suitable – approach, we can make reference to regulation, understanding this as dealing with different interests and aiming on making them compatible with each other and/or finding some kind of (at least temporary) compromise.

Reasons for a need of revisiting are founded in changing political conditions, rapid shifts in economic conditions and altering knowledge structures.

A summary of previous patterns of soci(et)al integration and their development can be given by mentioning the following points.

(i.i.)

The global economic development had been largely asynchrone, thus allowing temporary compensation for imbalances on a global scale. By and large unquestioned migration, so-called developmental aid and the like had been expressions of such patterns. This meant at the same time that central government was actually possible due to the existence of clearly demarcated socio-economic spaces, namely nation states. Such central government units had been causing, maintaining and managing the existence of asynchrone accumulation regimes, thus providing a basic pattern of soci(et)al integration.

(i.ii.)

Another important factor was that up to recently the political acceptance of global injustice had been higher than it is today, and protest could be attributed to moral interpretations rather than political and economic denouncements. – This changed latest – and paradoxically – with the lapse of real socialism and the subsequent systemic competition. This means that though global imbalances are actually increasing, their political acceptance is much lower than it had been the case up to recently.

Taking together, important mechanisms of compensation for national or regional (for instance EU) disintegration by shifting “risks” internationally more and more cease to exist.

(ii.i.)

The previous patterns of national integration at least of Christian societies (and apparently as well Islamic societies) had been very much minted by the principle of subsidiarity – independent of its explicit legal validity. This meant a dichotomisation

- * of social and system integration and with this as well
- * of individual and societal development.

Integration was always meant to be incomplete and accepted to be a matter of individual self-reliance. What is of actual importance here is the fact of the dichotomisation, i.e. a rather clear division of competencies. This meant at the same time that competencies which had been attributed could be handled at least in a relatively clear-cut way – consolidated in an extended version of the classical separation of power.

However, the current high level of directly socialised relationships and the immediate dependence of individual self-realisation and empowerment on social integration are not suitable to continue reliance on such a mode or social and societal reproduction.

(ii.ii.)

The before mentioned pattern was based on and fed into a separation of integration into four apparently independent dimensions, namely

- * socio-economic security
- * cohesion
- * inclusion and
- * empowerment.

Taking an *Eliasian* approach of analysing processes of civilisation, we can see an increasing density of mutual dependence by way of lengthened and at the same time strengthened chains of interdependence. This means that approaches of convertibility of distinct modes of integration fail due to a lack of “compensationability”. The underlying pattern can very much be seen as principal of provision or servicing. The other way round, integration was not dealt with as matter of socialisation; instead it followed very much an individualist vein. As far this pattern made it possible to compensate for disintegration in one area by higher integration in respect of another dimension, the relationship actually turns now around: Disintegration in one area falls short as far as building up opportunities with respect to another dimension are concerned.¹⁹

If we take the Social Quality Quadrangle with the four dimensions mentioned before as point of reference, we are now facing a stage in the development of societies that requires the mutual reinforcement of the different dimensions of the social; at the same time, we are witnessing now the developing divergence of conditionality, i.e. a lack of opportunities to integrate the four dimensions.

Looking at current debates and practices, we have to take a broad understanding of the process of modernisation into account. Though this is in actual fact a delicate task if undertaken with considering the various possible patterns of accumulation regimes and modes of regulation there are for our task at least two fundamental aspects

- * that are arising as two fundamentally different pathways of Western modernisation in the tradition of enlightenment and
- * that have a determining meaning with respect of questions around changing modes of regulation.

These patterns are on the one hand the minting of development by efforts of increasing rationalisation in the understanding of and in connection with specialisation, segmentation and formalisation; on the other hand we find the orientation on a developmental pattern coined by emancipation, public and collective/participative decision-preparation and taking. Several cases of mainstream policymaking are not dealing with this tension, simply claim the one side as only valid orientation or even as the other side being an automatically occurring consequence of the other. Probably is it fair to say that much of the current debate is caused by the fact of recognising tension and trying to deal with it. In concrete terms, much contemporary efforts is concerned with finding any kind of balance between participation, efficiency.

In the following, three examples will be looked at, the first being concerned with the governance orientation of the European Union; the second investigating New Public Management strategies at the national levels; the third will look at the City of The Hague in The Netherlands and the application of an integrated social development approach, applying the theory of social quality in practice. – Here we will only explore the frameworks rather than going into details of case-studies.

Three Strands of Debate

Strategies of Changing Politics – Governance in the European Union

In reconceptualising the public sector, *David Osborne* and *Ted Gaebler* (see *Osborne, David/Gaebler, Ted: Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector; New York: Penguin, 1992*) highlight the following principles:

- * the state has a steering function rather than actually carrying out the individual tasks
- * empowerment of communities rather than service provision
- * encouraging competition

¹⁹ For example discussed as “multidimensionality of poverty”.

- * orienting along missions rather than rules
- * outcome funding rather than input funding
- * customer orientation
- * resource orientation
- * preventive orientation
- * decentralisation
- * market orientation.

Such an orientation seems to provide a valuable framework for analysing developments of the European Union for following reasons.

- * The EU is a “super-state” and as such in particular need of a structure with which it is possible to take over a steering function – the mere seize of the territory, the type of citizenry and the complexity of tasks as part of a political multilevel system make it extremely difficult to apply another approach. From the traditional patterns of governing, only a form of federalist system is thinkable. However, due to the different national traditions and the actually limited power of the European Commission as “executive” a federalist approach would reach soon its limits.
- * Furthermore, the EU as we know it today emerged as part of a historic process which had been from its outset characterised by such pattern of steering rather than governing – already the quantitatively limited staff gives an impression of this fact.
- * Due to the limited competencies enshrined into the Treaties and moreover owed to
 - the ambitious role of the *Commission* as “executive”,
 - the more hesitant role of the *Council* as primary “legislator”,
 - the visionary role of the *Parliament* as driver and controller and
 - the factual political role of the *Court of Justice*,

mission statements had been throughout the EU’s history a widely used means – linking basic consensus with a strong interpretative role of the Commission – strong in particular by utilising decentralised processes of implementation – before it came en vogue to talk of the multilevel process of European governing, I interpreted myself the multilevel process as policy bypassing the nation state (s. e.g. Herrmann, Peter 1993: *EC-Integration and the Paradox of Modernity in: European Integration between Institution Building and Social Process. Contributions to a Theory of Modernisation and NGOs in the Context of the Development of the EU*; New York: Nova Science, 1998).

The list of developing the structural background moments could be continued; however, it should be already clear from here that European governing did never comply with the traditional patterns of the “modern state” and its separation of power, as we know it in particular from *Charles-Louis de Secondat, Baron de La Brède et de Montesquieu*.

Taking this together with the secular facts mentioned before, the European Commission had to look for a way to legitimise the current pattern, making it at the same time more effective – both essential issues for furthering the process of European integration.

It is to be seen in this context that the *European Commission* launched in 2001 a *White Paper* under the Title *European Governance*, already mentioned before.²⁰ It is one step of a wider strategy of systematising changes in the overall political process. Others worthwhile to be mentioned²¹ are

- * the launch of the social dialogue and the far reaching subsequent of the legislative process;
- * the communication on *promoting the voluntary and community sector*;
- * the launch of the civil dialogue;
- * the setting-up and continuation of various “High-Level Advisory Boards” (to mention but a few: *Future Studies Unit* [http://ec.europa.eu/comm/cdp/index_en.htm], *Dominique Strauss-Kahn Round Table*

[http://ec.europa.eu/dgs/policy_advisers/archives/experts_groups/docs/rapport_europe_strauss_kahn_en.pdf], Bureau of European Policy Advisers

²⁰ The White Paper itself has to be seen in a wider context, linked to several studies from the Forward Studies Unit (see http://ec.europa.eu/comm/cdp/gouvernance/index_en.htm); but another important link had been the foregoing face-lift of the integration by tightening the single market strategy (see in this context *Commission of the European Communities: European Social Policy – Options for the Union. Green Paper. COM(93) 551, November 1993*; *Commission of the European Communities: Growth, Competitiveness, Employment: The Challenges and Ways Forward into the 21st Century. White Paper; COM(93) 700, December 1993*; *Commission of the European Communities, 1994: European Social Policy – A Way Forward for the Union. A White Paper. COM(94) 333, July 1994*)

²¹ This is a non exhaustive list.

(http://ec.europa.eu/dgs/policy_advisers/index_en.htm) and as well the establishment of working groups with a very specific remit as for instance the *High-Level Group* on the Lisbon strategy, chaired by *Wim Kok* [http://ec.europa.eu/growthandjobs/pdf/kok_report_en.pdf];

- * the support (core-funding) of certain “representative bodies” (in particular environmental, developmental and social policy NGOs) as advisory bodies and as multipliers on specific issues;
- * the launch of several subsequent documents, plans and follow-ups from the governance White Paper as for instance the *Communication Towards a Reinforced Culture of Consultation and Dialogue - General Principles and Minimum Standards for Consultation of Interested Parties* by the Commission, the *Communication on European Governance: Better Lawmaking*, the communication on the *Action plan Simplifying and Improving the Regulatory Environment* et altera
- * Finally, the *Open Method of Coordination (OMC)*.

Furthermore, the previous Intergovernmental Conferences had been subsequently replaced by mechanisms mentioned hitherto and by the Convention, employed with drafting a Constitution (a mechanism which had been much opener and at the same time more in control than the previous *Intergovernmental Conferences*). Finally, the so-called *Plan D* has to be mentioned, launched after the failing ratification due to the No-votes in France and The Netherlands – the Plan D’s remit is defined by *Democracy, Dialogue and Debate*.

Taking the definitions of governance from above (*see page 11*), it has to be mentioned that no consistent consensus exists, some taking the concept for a wider understanding of governing, aiming even on overcoming the difference between governors and governed; others understanding it more as an opening of existing government structures in terms of better communication and increased transparency.

Looking at the *White Paper* and even more so looking at the later documents in the context of the *Plan D* makes clear that any strategy that the European institutions focuses very much on the second approach is applied, trying to foster information policy. This is not least linked to a decentralisation though not of policy-making, so at least of information policies. Although information processes are frequently taking the form of consultation processes they lack real moments of opening the structures. The reason for this is in particular to be seen in the fact that the agenda-setting role remains with the Commission or their agents. Another moment of the strategy is to strengthen the character of legislative processes as being what is known in political theory as “loosely-coupled systems”. In concrete it means that European Institutions turn increasingly to applying soft-law mechanisms, leaving it then to member states to concretise centrally defined “directions” into national strategies and law. One example is the Open Method of Coordination which had been already mentioned before (*see 12 and 15*). Another example is that we find increasingly a soft-law application when we look at the relationship of legal acts, adopted by the *Council of Ministers*. *Peter Needergard* compiled from various Commission’s General Reports on the Activities of the European Union the following table.

	1970	1983	1987	1992	1994	1998	2004
Regulations	249	395	458	383	274	202	181
Directives	25	41	40	162	46	27	46
Decisions/Recommendations	71	125	125	189	148	199	221

(*Needergard, Peter: European Union Administration: Legitimacy and Efficiency; Leiden/Boston: Martinus Nijhoff, 2007: 55*)

However, all this means (a) the lack coherence, (b) the lack of assertiveness (and actually accountability at least of central levels) and (c) the opening of politics for uncontrolled influence-seeking. It is questionable if this can be sufficiently compensated by some portions of qualifying generalist approaches by their compatibility with national traditions.²²

²²

See for example the following Key Features of Four State Traditions

	Anglo-Saxon	Germanic	French	Scandinavian
Is there a legal basis for the "State"?	No	Yes	Yes	Yes
State-society relations	pluralistic	organicist	antagonistic	organicist
Form of political organization	limited federalist	integral/ organic federalist	jacobin, "one and indivisible"	decentralized unitary

Coming back to the *White Paper on Governance* and adding to the five principles, mentioned above, the following recommendations can be highlighted.

- * *Structure the EU's relationship with civil society. A code of conduct for consultation will identify responsibilities and improve accountability of all partners. It will enhance dialogue, and contribute to the openness of organised civil society.*
- * *Make greater use of the skills and practical experience of regional and local actors. In the first place, this is an issue for national authorities according to their national constitutional and administrative arrangements. At the same time the Union should make fuller use of the existing potential for flexibility to improve the ways European policies are applied on the ground.*
- * *Build public confidence in the way policy makers use expert advice. The EU's multi-disciplinary expert system will be opened up to greater public scrutiny and debate. This is needed to manage the challenges, risks and ethical questions thrown up by science and technology.*
- * *Support the clearer definition of EU policy objectives and improve the effectiveness of EU policies by combining formal legislation with non-legislative and self-regulatory solutions to better achieve those objectives.*
- * *Set out the conditions for establishing EU regulatory agencies. These agencies can reinforce the effectiveness and visibility of EU law in the eyes of both business and the public by bringing decisions in some of the most complex and technical areas closer to the sectors affected.*
- * *Refocus the roles and responsibilities of each Institution. This should help citizens to hold their political leaders and the Institutions to account for the decisions that the Union takes.*

(Commission of the European Communities: European Governance. A White Paper; Brussels, 25.07.2001. COM[2001]428: 33)

There cannot be any doubt that these measures concern a certain opening of structures and increase transparency. The limits are, however, not less obvious.

- * The agenda setting role remains with the institutions – this entails a very specific responsiveness: to answer means to accept the agenda or to accept being largely ignored. The problem is that the legitimacy of protest is largely reduced as it can now be blocked from within the process.
- * Overcomplexity is a specific problem especially if we look at the fact of transparency, which leaves the burden of availing of relevant information (selection) and systematising the available information. The bulk of information and the requirement of specific knowledge (usually legal knowledge) reduces input or reduces the actors – those who are relevant and those who are able are by no means the same. Governance in this sense requires a very specific kind of professionalisation

Basis of policy style	incrementalist	"muddling through" legal	corporatist legal	technocratic consensual
Form of decentralization	"State power" (US); local government (UK)	cooperative federalism	regionalized unitary state	strong local autonomy
Dominant approach to discipline of public administration	political science/ sociology	public law	public law	public law (Sweden); organization theory (Norway)
Countries	UK; US; Canada (but not Quebec); Ireland	Germany; Austria; Netherlands; Spain (after 1978); Belgium (after 1988)	France; Italy; Spain (until 1978); Portugal; Quebec; Greece; Belgium (until 1988)	Sweden, Norway, Denmark

(Loughlin, J. 1994. Nation, State and Region in Western Europe. In: Beckemans, L. [ed.]: Culture: The Building-Stone of Europe, 2004. Brussels: Presses Interuniversitaires; quoted from: Peters, Guy: Administrative Traditions; December 2000; on: The World Bank Group [ed.]: Administrative & Civil Service Reform; here: <http://www1.worldbank.org/publicsector/civilservice/traditions.htm> - 26.10.2003)

which actually cannot be controlled anymore in substantial terms. The problem is the redefinition of any subject under terms of bureaucratic and procedural requirements.

- * Furthermore we find the reduction of content in order to reduce procedural and informational complexity – see the introduction of (possibly even computer aided) evaluation of responses on very specific questions. Underlying and more fundamental questions – as for instance the understanding of modernisation, of efficiency in relation to which goals etc. – are left out of the process of consultation.
- * The “professionalist” approach reduces the consultation process on bureaucrats and academics rather than opening the way for people with relevant experiences.

Strategies of Changing Policies – New Public Management and Public-Private-Partnerships

It can be said that the second approach to be dealt with here is an “administrative complement” of the more politically oriented governance approach. Whereas the latter focuses in tendency on overcoming the gap between governing body and the people, New Public Management strategies are fundamentally oriented towards two issues, namely the internal structures of public administrations and the relation to third parties. Such relative “shift”²³ is due to internal factors (changes within the administration and the professional understanding of administration), to national traditions and developments of power structures and forms of government and not least to international developments (not least the role played by the World Bank, OECD, IMF etc.). In this sense, looking at global trends has to understand these with their three dimensions: independent national developments and patterns (expressing some kind of secular trend); mutually-reinforcing developments, not least by a build-up learning structure of international exchanges; and finally transnational developments, especially initialised and fostered by bodies as WB, OECD, IMF, EU etc.

The changes are based on several presumptions.

- * The first is the fundamental division between citizen and governing body. The answers on this vary.
 - One option is to literally bridge the gap by including intermediary bodies, as in particular non-governmental organisations and bodies of the civil society.
 - Another answer to overcome the bridge by providing information and introducing administrative procedures that allow easier access.
 - Furthermore, an alternative is to widen relevant bodies. For instance the establishment of advisory boards can be seen as one established mechanism: on specific topics or for specified time-spans people or groups are – as stakeholders – invited for consultations. We can find as well open consultation processes – a since long established procedure is the launch of Green and later White Papers.
- * A second presumption is that the relationship is
 - depoliticised
 - politics do not play a major role in governing but policies are centre-stage – this includes an understanding of an instrumental character of policies, the aims and objectives seen as “pre-defined” and not questionable.

With this, any citizen-status is converted towards a consumer or user; at the same time the governing body loses the position of having mainly a steering function. Instead, the function is now concerned with serving and managing. We see governing bodies as having now an instrumental character.

- * A third presumption is a contradicting assessment of the citizen, on the one hand s/he is empowered, being considered as sufficiently mature, able to take rational decisions. On the other hand, this freedom of decision is only granted in the framework of an individualised citizen, decisions being matters of rational choice.

The major problem is that decisions are segmented to such an extent that actually the genuine character of public goods is questioned. The following distinction of private goods on the one hand and public goods on the other hand is taken as reference.

Purely private goods are defined as those goods and services which are highly divisible and can be (1) packaged, contained or measured in discrete units, and

²³ In this context it is interesting that Guy Peters points on the fact that “the governance debate is ahistorical” (Peters, Guy: *Globalization, Institutions, and Governance*; in: Peters, Guy/Savoie, Donald J. [eds.]: *Governance in the Twenty-first Century: Revitalizing the Public Service*; Montreal et altera: McGill-Queen’s Press, 2000: 29-57; here: 37).

(2) provided under competitive market conditions where potential consumers can be excluded from enjoying the benefit unless they are willing to pay the price. Purely public goods, by contrast, are highly indivisible goods and services where potential consumers cannot be easily excluded from enjoying the benefits. Once public goods are provided for some, they will be available for others to enjoy without reference to who pays the costs.

(Ostrom, Vincent/Ostrom, Elinor: *Public Choice. A Different Approach to the Study of Public Administration*; in: *Public Administration Review*, Vol. 31, No. 2. [Mar. - Apr., 1971]: 203-216; here: 206)

However, the decisions are now concerned with the privatisation of such public goods by reducing them to their different segments, only leaving a very small scale for such public character. In other words, whenever we speak of privatisation of services or previously “general interest” enterprises it is centrally not about the change of the form of property. Rather, centre-stage is the changed definition of the public and private.

The two last points mentioned are consequently concerned with the challenge of fostering and maintaining decentralisation and devolution on the one hand and on the other hand the social character and overall cohesion. It remains to be said that most contemporary offers fail, simply by concentrating in a very one-sided way on improving information and accessibility. Though complexity is increased by these steps in one way (“information overload”, burden of information selection etc.), the system is beginning to be undercomplex due to a lack of coordination and horizontal consultation. This is getting clear with the major – though artificial – efforts of “mainstreaming” certain policies. After first and fundamentally reducing politics on policies (*several OECD-documents for instance highlight in one or another way the importance of “projects”, see for instance OECD [ed.]: Government-Citizen Relations Country Profiles* [http://www.oecd.org/document/10/0,2340,en_2649_37405_2537482_1_1_1_37405,00.html] *Government-Citizen Relations Country Profile Flanders* [<http://www.oecd.org/dataoecd/53/58/2537569.pdf>]; May 2001), it is necessary to establish ex ante the genuine connection. This means as well that the central question is what the new structures mean in terms of power (re-)distribution (*a point made clear in the analysis of the Danish Government; ibid.: http://www.oecd.org/dataoecd/53/60/2537624.pdf*).

A reasonable overview of the shifts of processes is provided by *John Halligan*:

<i>Dimension</i>	<i>Old Style/Traditional</i>	<i>New Style</i>
Direction	Top-down and bottom-up	Top-down
Mode	Consensual or consultative Compromise and bargaining	Conflictual Directed
Process	Public process/Broadly based	Private process/Narrow elite
Character	Incremental, sectoral and cautious	Comprehensive, systemic, faith in bold ideas
Key advisers	Internal public service advisers	Private sector advisers Ministerial advisers
Implementation	Centralised (decentralised in Scandinavia)	Decentralised
Review mechanisms/Reform initiatives	Commission of inquiry	Task force Ministerial
Review of reform initiatives	Not applicable	Quasi-independent review Parliamentary review
Stance	Reflective	Active/institutional

(Halligan, John: *the Process of Reform in the Era of Public Sector Transformation*; in: Christensen, Tom/Lægreid, Per [eds.]: *New Public Management. The Transformation of Ideas and Practice*; Aldershot: Ashgate, 2001: 73-89; here: 85)

It is useful when looking at New Public Management Strategies not to forget – with *Stephen P. Osborne* and *Kate McLaughlin* – following questions:

- * *the extent to which public management is a nationally specific or a genuinely globally convergent phenomenon;*
- * *the way in which public management research articulates the methodological problems which are derived from its eclectic roots (not least in political science, policy studies and economics), applied focus and multiple levels of analysis;*
- * *the extent to which the NPM is purely a managerialist strategy or is rather a political ideology aimed at the covert restructuring of the state under the misleading guise of neutral managerial reform;*
- * *the extent to which the NPM does provide a coherent paradigm for academic research and enquiry and which challenges the previous public administration paradigm;*
- * *consequently, whether the NPM and public administration are compatible or incompatible models of public management, and whether sustained criticism of the NPM implies a retreat back to the traditional model of public administration and the superiority of bureaucracy;*
- * *whether emerging developments around the world – such as community governance and modernization in the UK, public governance on mainland Europe and look east model in the Pacific Asia region simply offer variants on the NPM or a challenge to its core values; and*
- * *whether the unique nature of accountability within the public and third sectors renders inappropriate the generic management solutions advocated by many advocates of the NPM.*

(Osborne, Stephen P./McLaughlin, Kate: Introduction. From Public Administration to Public Governance: Public Management and Public Services in the Twenty-First Century; in: Osborne, Stephen P. [ed.]: Public Management. Critical Perspectives. Volume I: the foundation of Contemporary Public Management; London/New York: Routledge, 2002: 1-14; here: 6f.)

Strategies of Changing Focus – The Social Quality Approach²⁴

Finally, a rather different approach will be presented, starting from a different angle. Rather than looking for improvements of a basically unquestioned institutionalist government system and a fundamental divide between governing bodies and citizens, it claims to overcome the dichotomy of traditional approaches by taking the mode of soci(et)al integration as point of departure, starting from an understanding of the social as the outcome of constantly changing processes through which human subjects realise themselves as interactive human beings.

To explore this in practice, the Social Quality Approach starts from a triple set of factors, shown in the following table.

Constitutional factors (processes)	Conditional factors (opportunities)	Normative factors (outcomes)
Personal capacity	Social empowerment	Human dignity
Social recognition	Social cohesion	Solidarity
Personal security	Socio-economic security	Social justice
Social responsiveness	Social inclusion	Democratically based citizenship

It is from here, where the concept of policy development takes shape – experiences had been made with employment policies and programmes of urban development of *The Hague* in *The Netherlands*. The decisive moment of the model is that it does not have an ex ante given definition of the aims and objectives of the policy process. It only sets a frame by the goal of improving social quality. This is defined

²⁴ The following relies on the work of the author as senior advisor of the *European Foundation on Social Quality* (see www.socialwuality.org) and not least the documentation of the Foundation's Public Health Project (see *ibid.*).

as the extent to which people are able to participate in the socio-economic, cultural, juridical and political life of their communities under conditions which enhance their well-being and individual potentials for contributing to societal development as well.

(Herrmann, Peter: *Social Quality and the European Social Model. Opening individual well-being for a social perspective*; in: *Alternatives. Turkish Journal of International Relations* 4/4; Published and Edited by Bulent Aras; Istanbul: Faith University. Department of International Relations, Winter 2005: 16-32; here 21 – <http://www.alternativesjournal.net/>; <http://www.alternativesjournal.net/volume4/number4/herrmann.pdf>)

It is from here, that actually an action perspective is developed in order not only

- * to implement a given objective, but as well
- * to define the concretisation of the general objective and
- * to develop the action strategy.

In other words, the needs are defining the entire strategy rather than defining the strategy as means of implementation. The difference is that participation is not oriented on better information and implementation – such an approach always starts from a rather tightly defined agenda. This is different with respect to SQA. Here, it is envisaged to define the agenda by people from and for their own daily-life. For this reason it is important to acknowledge – and support by management – a productive tension between four dimensions, namely biographical development, societal development, systems and communities. It is from here as well that (a) different areas of action – and with it: actors – can be determined and (b) the constitution of the social – and with this the understanding of how to influence the conditional factors – gets understandable as guidance for policy management – the following table gives an overview.

SOCIETAL DEVELOPMENT			
SYSTEMS, INSTITUTIONS, ORGANISATIONS	Access as dimension of socio-economic security in terms of empowerment as <u>personal capability and relationships</u>	Autonomy as dimension of appropriating and utilising resources in order to be capable of <u>actively participating in social relations and actively influencing the immediate and more distant social and physical environment</u>	COMMUNITIES, CONFIGURATIONS, GROUPS
	Participation as dimension of inclusion in terms of empowerment in terms of empowerment as <u>civic rights (comprising of civil, political and social rights)</u>	Control as dimension of cohesion in terms of empowerment as <u>accessibility of the institutional system</u>	
BIOGRAPHICAL DEVELOPMENT			

Concluding remarks

At the end, some individual aspects are worthwhile to be added with respect to public management strategies.

- * Any strategies are split in their orientation. Important is to recognise that the mainstream debate is in terms of policies highly outcome-oriented in individualist terms, they are on the other hand in terms

of politics process oriented – *Niklas Luhmann's* dictum of *legitimation by procedure* applies, saying not much else than *Max Weber* with his elaboration of formal rationality as guiding governing in the modern state.

- * Which way ever we look at the reform processes, we have to ask the fundamental question on the side of the process of modernisation these approaches stand: above (*see page 4*) it had been said that we are facing a paradox of modernisation: a process of comprehensive rationalisation, aiming on holistic approaches versus segmenting rationalisation, based on particularist interests. In terms of political management this is for instance reflected in *Dexter Dunphy's* and *Doug Stace's* distinction between participative (collaboration and consultation) and coercive (directive and coercive) styles (*see Dunphy, Dexter/Stace's, Doug: Under new management : Australian organizations in transition; Sydney: McGraw Hill, 1990*).
- * This links into the view on fundamentally different understandings of the public, the one being its passive, the other its active nature.

In conclusion, the most important issue is for any investigation to understand the public and social, which is underlying the formal structures.

Editorial Note

- i
- The William-Thompson-Working-Paper-Series is edited by the European Social Organisational and Science Consultancy for University of Cork, Department of Applied Social Studies and meant to offer a space for publications of occasional documents. One aim amongst others is to offer a space for publication of work by colleagues of the Department of Applied Social Studies at University of Cork.
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- ii
- The present document is a largely extended version of an earlier paper which had been in this series of working papers under the title Ruling between God, Government and People (*working paper 2*). *Reworking, extension and adding of a second part had been undertaken in the framework of the TEMPUS TACIS programme 25254_2004, funded by the European Commission. At date of publication a version in Ukrainian and/or Russian language is in preparation.*