

## MODES OF GOVERNANCE AND THEIR EVALUATION

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**Abstract.** The term governance has made an impressive career from the early 1990s onwards. It has developed into a catchword and focal point of an ever-growing number of studies in social and political sciences. Notwithstanding this development, we still lack a clear understanding of the concept. This paper seeks to address these deficits in two ways. On the one hand, a distinction is suggested between different ideal type patterns of governance that are characterized by a specific division of competencies between state and society. On the other hand, the appropriateness of different patterns is assessed by taking account of institutional and problem structures as well as normative criteria for the evaluation of governance success. As will become apparent from these considerations, any arguments and demands regarding a retreat or demise of the state, as they can often be found in the literature, are highly questionable. The state will continue to play a central role in governance, regardless of challenges to its internal and external autonomy.

**Keywords:** Governance, Good Governance; globalization, regulation

### 1. Introduction

The term governance has made an impressive career from the early 1990s onwards. It has developed into a catchword and focal point for an ever-growing number of studies in social and political sciences. Many social and political scientists – for reasons of marketing and visibility – now define themselves as students of governance, although they are doing nothing else than ‘old-fashioned’ analysis of public policy or public administration. For similar reasons, university departments rename their master and bachelor programs in order to ensure their ‘legitimacy’, embracing dominant discourses and myths of their institutional and political environment (DiMaggio and Powell 1991).

At the same time, governance is used as a ‘magic formula’ – often in connotation with the attribute ‘good’ – in political speeches and documents both at the domestic and international level. As is often the case with new buzz-words, there is hardly any consensus regarding its meaning and concrete applicability.

The definition of 'governance' and 'good governance', if any, varies from case to case. It might actually be the malleability of the concept and its highly vague and open nature that account for its rapid international diffusion and appeal to social scientists as well as practitioners.

In addition, the lack of a common understanding of the meaning of governance can be traced to the fact that the concept is used not only in an analytical way, but also in a normative sense (Doornbos 2001). The analytical discourse basically centers on the dichotomy of 'governance versus government'. The basic objective is to arrive at a better understanding of the different ways in which power and authority relations are structured in different constellations.

However, in the scientific and political debate, there is often a close linkage between analytical and normative perspectives on governance. Instead of a mere description and explanation of emerging patterns of state-society relations, the focus is on normative ideas and beliefs regarding the instruments, processes and structures of public policy-making and administration. How shall the society be governed? To what extent shall the provision of public goods and services be a task of the state? In which ways should private actors be incorporated into the formulation and implementation of public policies? In short, 'governance' and 'good governance' have been applied in connotation with normative objectives regarding the general relationship between state and society.

### *1.1. Governance versus government*

First, there is a tendency to use governance in order to indicate a reduced or restricted role of the state. In this sense, governance is contrasted with government. Advocates of this interpretation typically adhere to the idea that the reliance on market principles, private self-regulation or the broad participation of private actors in policy-making is a more promising and effective way of steering than governmental intervention. The concept of governance, in this case, is deliberately promoted as an alternative to classical patterns of supposedly ineffective and inefficient state intervention.

The promotion of governance along these lines is particularly pronounced where the limits of the hierarchical state appear to be especially severe, namely in constellations of external challenges to the authority of the nation state. It is generally argued that the economic and technological changes discussed in the context of 'globalization' have significantly reduced the steering capacities of the nation state. In particular, both the internationalization of markets and the emergence of transnational information and communication networks challenge the autonomy and effectiveness of national governments in defining and providing public goods – a function classically associated with the nation state (Cerny 1995, Kobrin 1997). Economic and technological interdependencies have created a range of problems that exceed the scope of national sovereignty, and that can therefore no longer be sufficiently resolved by the unilateral action of national governments (examples include the regulation of electronic commerce or the protection of

intellectual property rights on digital information). Moreover, the emergence of globally integrated markets might pose new challenges for the regulation of domestic problems. More specifically, the increasing economic integration is putting pressure on governments to redesign national regulations in order to avoid regulatory burdens that restrict the competitiveness of domestic industries (regulatory competition).

In view of this constellation, national governments frequently try to establish international regimes in order to maintain their capacity to address social and political problems that extend beyond the parameters of national sovereignty. Indeed, the number, relevance, and regulative activities of international regimes have grown steadily over the past few decades (Zürn 1998). Notwithstanding these developments, there is a strong discrepancy between economic and political integration; i.e., international political coordination and harmonization is not up to the problems that are emerging from economic and technological challenges. The gap between political and economic internationalization, which is particularly pronounced in areas characterized by a high demand for international regulation on global ecological problems, for example, or global financial markets, or the Internet, can be traced to the fact that the development, formulation, and implementation of international policies is generally a highly time-consuming and complex process. As a consequence, the project of global 'governance without government' (Kohler-Koch 1993, Rosenau and Czempiel 1992, Young 1997) is a reflection of a rather unbalanced development. The successful constitution of transnational markets coincides with the inability of governments to address social and political problems that are emerging from economic integration, both at national and international level.

Against the backdrop of these uneven developments, recent studies emphasize potential governance contributions from private actors that might compensate for the decreasing capacities of national governments for providing public goods. In this context, governance contributions must not necessarily be restricted to those types of private actors whose explicit organizational objective lies in the provision of certain public goods, such as humanitarian or environmental organizations (Etkins 1992, Princen and Finger 1994, Willets 1996). Rather, private governance contributions or even 'private authority' (Cutler et al. 1999) might emerge from a more diverse array of private actors, such as business associations (Ronit and Schneider 1999) or multinational companies (Sell 1999, Sinclair 1994, Spar 1999).

However, challenges to the sovereignty and hence steering capacity of the nation state are not only restricted to external factors, but might also emerge from within the political system. Increasing functional differentiation and organization of modern societies yields a loss of internal sovereignty of the state. As a consequence, the formulation and implementation of public policies can no longer rely on merely hierarchical decisions by public actors, but must be based on softer techniques, such as bargaining, moderation and coordination (Grande 1993: 51). Hence, the sharing and intermeshing of powers of public and private actors in the so-called policy networks has been identified as a central characteristic of 'modern

governance' (Kooiman 1993). Traditional patterns of hierarchical government are increasingly abolished in favor of a complex division of labor between public and private actors which is no longer based on hierarchy but on cooperation and horizontal coordination between state and society.

### 1.2. Good governance

A second tendency in the application of governance as a normative principle can be observed in discussion about 'good governance'. Here the focus is to a lesser extent on the relations between state and society, but on the state structures and institutional arrangements designed to ensure accountability and due processes of law-making and its application (Doornbos 2001: 96). The principle of 'good governance' has been advocated in particular by international organizations, such as the World Bank. The guiding motive behind this development was the establishment of state-society relations and market mechanisms in developing countries that conform to the standards of Western liberal-capitalist systems. By invoking the principle of conditionality, these countries should be induced to adopt governance patterns that were globally seen as the most effective and efficient.

It is obvious, however, that the more or less abstract reference to Western standards hardly allows for a clear and unambiguous definition of what 'good governance' actually means. As any student of comparative politics will immediately acknowledge, Western democracies vary to a great extent in the organization and interaction of state and society. There is no Western 'gold standard' of how to design structures, processes and practices of 'good governance'. It is therefore hardly surprising that we still lack a generally accepted definition of this concept.

On the one hand, as is the case with all normative judgments, the result depends on the measurement rod that is applied. What is defined as 'good' or 'bad' is crucially affected by the selected assessment criteria. On the other hand, a sound judgment on the appropriateness of governance patterns can hardly be made without reference to the specific institutional context and the problem constellation which might vary from case to case and from country to country.

### 1.3. Remaining questions

In the following, I will try to address the deficits and 'blind spots' in both the analytical and normative discourse on governance. With respect to the analytical discourse, the central problem refers to the fact that we still lack a clear conception and understanding of different *patterns* of governance. Although it is generally accepted that governance refers to constellations of increasing involvement of private actors in the formulation and implementation of public policies, partially even coinciding with a retreat of the state, it is rarely acknowledged in the literature that the concrete division of labor and power between state and society might follow different patterns. It is a central objective of this article to develop analytical criteria to identify and classify these differences.

Analytical classification, however, can only be seen as a first step in order to arrive at well-grounded suggestions on the appropriateness of different governance patterns; i.e., their effectiveness and efficiency in order to achieve political objectives. Addressing this issue entails two analytical steps. On the one hand, we have to be clear about the standard against which appropriateness shall be assessed. As will be shown, the evaluation might differ, depending on whether the assessment rests on decision-making capacity, implementation effectiveness or democratic legitimacy of different forms of governance. On the other hand, appropriateness will be affected by the specific context in which political decisions have to be taken, including not only the given institutional structures and traditions of a country, but also the peculiarities of the problem at hand.

As will become apparent from the following considerations, any arguments and demands regarding a retreat or demise of the state, as they can often be found in the literature, are highly questionable. The state will continue to play a central role in governance, regardless of challenges to its internal and external autonomy. This statement is not only based on the insight that the state disposes of crucial steering resources (monopoly of power, capacity to enact and enforce legally binding rules) that are not accessible to other actors, but also the fact that the governance capacity of private actors is significantly affected by complementary activities of the state.

To elaborate on my argument, I proceed as follows: In section two I will develop different ideal types of governance patterns, based on the distinctive combination of public and private governance capacities. In section three I will address both institutional and problem-specific factors affecting the appropriateness of different governance patterns, while section four deals with different criteria for the normative evaluation of governance success. The final section will summarize the results and draw general conclusions.

## 2. Four ideal types of governance

When developing a typology of different patterns of governance, it is important to emphasize that for this purpose the term governance is defined in a rather broad way, including all modes of co-coordinating individual action, such as hierarchies, networks, associations or markets. Its meaning is not restricted to specific types of social coordination; namely, attempts at collective problem solving outside of hierarchical frameworks.<sup>1</sup> In this context, governance capacity refers to the formal and factual capability of public or private actors to define the content of public goods and to shape the social, economic and political processes by which these goods are provided.<sup>2</sup> This concern with the structural capacities of governance,

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<sup>1</sup> A more restrictive definition of governance is used, for instance, in the studies of Czempel and Rosenau 1992, Kooiman 1993, Rhodes 1997.

<sup>2</sup> Another conceptual approach to analytically cope with different dimensions describing the context for the provision of public goods distinguishes between provision, production, and consumption (McGinnis 1999b:3f. and other contributions in McGinnis 1999a).

however, is not meant to neglect the strategic dimension, i.e., questions of conflict and power in the politics that influence how public goods are defined and provided.

The following characterization of four ideal types of governance constellations is based on a distinction along two dimensions, namely, the participatory structures and the degree of legal obligation shaping regulatory activities. While in reality one might often observe a more variegated picture than is offered by ideal types, they still have the virtue of providing a standard against which real world systems can be compared and potential differences explained.

Moreover, in developing this typology, I fully acknowledge the insight that ‘modern governance’ (Kooiman 1993) can hardly be understood in terms of either purely public or purely societal activities (Braun 2000), but that it is characterized by complex interdependencies and exchange relationships between public and private actors. In view of the organizational complexity of modern societies and the increasing supranational and international interdependencies, policy networks are regarded as dominant and functionally adequate governance arrangements (Kenis and Schneider 1991, Mayntz 1993, Rhodes 1997). Rather than challenging this perspective, the following distinction between the ideal type governance constellations basically seeks to highlight distinctive characteristics and properties of such networks. To label these distinctive characteristics, I refer to a specific mode of regulation in the interaction between public and private actors (Knill and Lehmkuhl 2002).

Table 1. Four ideal types of governance.

		Cooperation of public and private actors	
		Low	High
Degree of legal obligation	High	Interventionist regulation	Regulated self-regulation
	Low	Private self-regulation	Co-regulation

Source: Knill 2003:65

### 2.1. Interventionist regulation

The label ‘interventionist regulation’ refers to constellations which reflect the classical scenario underlying public goods theory, namely the limited governance capacity of private actors in view of an underlying incentive structure, which can only be compensated for by external power; i.e. it requires the hierarchical intervention of the state (assuming, of course, the existence of corresponding capacities among public actors). Although this scenario does not exclude the involvement of private actors, the overall responsibility for the provision of public goods lies with the state; so does the power to decide on the content of public goods and the institutional form for providing them.

As revealed by the global wave of public sector reforms since the 1980s, hierarchical governance does not automatically imply that public goods are primarily provided by the state. This technocratic perspective of the *interventionist*

*state*, which was a dominant concept until the mid-1970s, has increasingly been replaced by the *regulatory state* (Majone 1994). The provision of public goods and services has basically been left to the market, the role of the state being confined to defining the rules and incentive structures of private actors in such a way that socially desirable outcomes are achieved. This ‘rolling back’ of the state, as a result of deregulation, privatization, and administrative reforms, has changed the functional role of interventionist regulation: it no longer provides public goods; instead, it enables them to be provided. Paradoxically, these developments have contributed to strengthening rather than weakening the hierarchical position of the state (Wright 1996).

In general, this pattern is also characterized by a hierarchical relationship between public and private actors, with the state intervening ‘from above’ into society through highly detailed and legally-binding requirements; i.e. on the basis of clearly defined rules and regulations which have to be complied by the public and private actors addressed (command and control).

Interventionist regulation can also be observed in cases, in which public actors are neither able to directly provide the public good in question nor to effectively alter the opportunity structures for societal actors in order to ensure the private provision of the good. Knill and Lehmkuhl (2002) refer to this scenario as interfering regulation. Interfering regulation implies that, despite the restrictions on governmental capacities, there will be no retreat of the state. Governments can still use their hierarchical powers to interfere in private activities. They still might be able to ‘disturb’ or ‘obstruct’ private activities that create negative externalities. For example, in numerous domestic decisions, national courts have required that Internet portals ensure either that harmful content is banned from their servers or that the distribution of certain products be prohibited in a specific country. Notwithstanding the fact that such legislation can be easily circumvented by offering the same content from countries with less demanding regulations, such activities might have some regulating influence on the behavior of private actors. Although the impact of such ‘policies of pinpricks’ should not be underestimated (in terms of educating or persuading private actors) governmental interference will hardly be sufficient to provide effective solutions to underlying policy problems.

## 2.2. *Regulated self-regulation*

The pattern of regulated self-regulation, by contrast, refers to constellations in which hierarchical intervention through legally binding regulations is accompanied by more cooperative relationships between public and private actors during the formulation and implementation of public policies. Regulated self-regulation implies that the participation of society takes place on the basis of clearly formalized and institutionalized procedures, although the state still plays a dominant role in the final decision regarding policy content and regulatory arrangements. In this context, the relationship between public and private actors might be arranged in various ways: private actors might participate in policy-making and implementation (public-private partnerships); competencies might be

delegated to private organizations; and regulatory frameworks for private self-regulation might be cooperatively developed.

Notwithstanding the fact that public and private governance contributions are equally relevant in such forms of governance, it is important to emphasize that the overall responsibility for providing public goods still lies with the state. The state plays a central and active role and disposes of powers and resources which are not available to societal actors. In particular, governments may provide important incentives (the state may offer financial support, or delegate power, or it may refrain from direct and potentially less effective state intervention) in order to stimulate and increase the integration and organization of societal interests (Streeck 1994:18, Eichener and Voelzkow 1994, Knill and Lehmkuhl 1998). Moreover, public-private partnerships (or private interest government) take place under the 'shadow of hierarchy' (Mayntz and Scharpf 1995), the state being capable of relying on traditional forms of intervention should there be governance failures (Peters 1998, Weiss 1998:38).

### *2.3. Co-regulation*

The remaining governance patterns, co-regulation and private self-regulation, crucially differ from the previous patterns with respect to two factors: the voluntary character of regulation and the fact that private actors rather than the state play a dominant role in rule-making and implementation. In the case of co-regulation, the definition and application of instruments does not occur on the basis of legally binding regulations, but through negotiations and voluntary agreements between public and private actors. Decisions are not taken unilaterally by public actors and then enforced on society. Rather regulations are the result of bargaining processes, in which both public and private actors participate on an equal standing.

Instead of hierarchical intervention through legally binding instruments, the focus is on cooperation between state and society. On the one hand, it is the objective of these arrangements to allow for the negotiation of cooperative arrangements by including a broad range of public and private actors. On the other hand, a second feature of this pattern of 'joint policy-making' is the objective of replacing hierarchical intervention by voluntary agreements between public and private actors; e.g. industry associations.

### *2.4. Private self-regulation*

While in co-regulation, the definition and implementation of public policies is based on the close cooperation between state and society, these tasks are completely in the hands of private actors in the final scenario of private self-regulation. Similar to co-regulation, governance is based on voluntary rather than legally binding instruments. An example is the declaration of the car industry in many countries to reduce car exhaust emissions to a certain level within a given period of time.



In this scenario, the provision of public goods basically depends on the governance capacity of private actors. Nevertheless, in such constellations states might still play a role in providing complementary governance contributions, hence ‘refining’ and guiding societal self-regulation. For instance, public actors can increase the legitimacy of private governance by officially acknowledging the outcomes of private governance (Ronit and Schneider 1999, Lehmkuhl 2000) or by mediating and moderating between conflicting interests, stimulating the communication and coordination between different actors (Willke 1995). Finally, as shown in recent studies on the role of European business associations in European and international standardization in the information technology and communications sector, the activities of private actors might restrict the role of public actors, in particular of the EU Commission: in this, the latter’s role can be akin to midwifery in the process of associational reform, or it can more directly control cartel-like tendencies that interfere with competition (Knill and Lehmkuhl 1998, Knill 2001).

In conclusion, the above considerations indicate that governance patterns might vary strongly across countries and policy sectors, depending on the level of legal obligation inherent to political steering activities, as well as the degree of cooperation between public and private actors in policy-making. Moreover, governance by public or private actors should not be seen as exclusive alternatives, but can be seen as mutually reinforcing. In particular, the scenarios of public-private partnership and private self-regulation reveal the mutually reinforcing relationship between public and private governance activities.

### **3. Which model for what season? The relevance of context**

It would be wrong to assume that there is a free choice between the different governance models identified above, regardless of the particular context in which a certain political problem has to be addressed. Governance models can hardly be understood in light of mere ideological orientations or political preferences of the governing party, but have to be understood against the backdrop of specific institutional and political structures which might vary across countries and policy sectors. In other words, there is no governance model for all seasons that yields effective problem solving regardless of the peculiarities of national institutions or the nature of the underlying policy problem.

#### *3.1. Institutional context*

Legal rules, rights, and conventions *structure institutional opportunities* for strategic choice and interaction. By affecting the cost/benefit calculations of the actors involved and by defining a certain distribution of powers and resources between them, the existing institutional structures have an important impact on the capacity for governance by public or private actors. This way, institutions influence the strategies actors employ to achieve their preferences (Knight 1992, Shepsle 1989).

The basic factor affecting the governance capacity of *national governments* is the structural potential for regulatory adjustments that aim at coping with new problem constellations. For instance, economic and technological challenges may imply that public goods can no longer be provided if the existing regulatory arrangements are relied upon. Rather, fundamental regulatory adjustments at the national level might be necessary. Hence, the governance capacity of national governments can be expected to increase with the structural potential for such adjustments. In this context, the reform capacity may vary from country to country and from policy to policy.

The potential for regulatory adjustment depends on the particular institutional arrangements characterizing a country's legal, administrative and political system (Knill 1999). It decreases with the number of formal and factual institutional veto points (Immergut 1992) that affect the opportunities for national governments to initiate and push through institutional reforms against political and societal resistance. The greater the number of veto points, the more a political system is characterized by a federalist structure, multiple-party coalition governments, high ministerial autonomy, corporatist decision-making arrangements, and independent institutions, such as a constitutional court or a central bank (Scharpf 2000). Although the level of reform capacity does not make it possible to predict the timing or the concrete content and direction of regulatory reforms, it indicates the structural potential of national governments to maintain their governance capacity by adjusting regulatory arrangements in light of the challenges emerging from economic internationalization.

These considerations suggest that in political systems characterized by numerous institutional veto points, governments will to a lesser extent be able to rely on patterns of interventionist regulation as it is the case for constellations in which governments are confronted with limited institutional hurdles in order to put through their reform ideas (e.g. in systems reflecting the Westminster-model). In other words, the more governments need to rely on broad political support when developing their policies, the more governance models incorporating private actors into the formulation and implementation of public policies (regulated self-regulation, co-regulation or even private self-regulation) constitute appropriate alternatives.

However, as is the case for public actors, the governance capacity of private actors cannot simply be taken for granted. Rather the participation of private actors in governance itself is crucially dependent on certain institutional preconditions. In this context, the most important institutional factors affecting the governance capacity of private actors refer to their organizational structures. The level of private governance capacity will increase with both the strength and the degree of organization of private actors.

Organizational strength defines the extent to which organizations are able to influence, monitor, and sanction the behavior of their members, i.e. the extent to which the organizations have sufficient autonomy to make decisions on behalf of their members and are capable of ensuring the members' compliance with these

decisions. The level of organizational strength is generally expected to increase with certain organizational properties such as centralization and the degree of organization within a specific domain (Streeck and Schmitter 1981).

The degree of organization refers to the extent to which private actors are organized or willing to contribute to the provision of public goods by private organizations. As shown by Olson (1965), for instance, the size of the group and the extent to which organizations might offer 'selective incentives' for cooperation might play an important role in this context. The degree of organization may have important repercussions for the resources of the actors involved, including financial, personnel, and technological capacities as well as scientific expertise. Examples of effective private governance reveal that – particularly with respect to complex technological problems – private actors have more appropriate resources for developing corresponding solutions than do bureaucracies (Cutler 1999, Knill and Lehmkuhl 1998).

The successful incorporation of private actors into policy-making therefore can hardly be assumed to constitute an appropriate alternative of governance without prior consideration of the organizational structures in which these actors operate. Private self-regulation or co-regulation will hardly work, if the involved associations have no representative monopoly or are not able to ensure the rule-following behavior of their members when it comes to the implementation of regulatory decisions. In other words, private governance is of little help, if societal structures are weakly developed.

In sum, determining the extent to which public and private actors will effectively contribute to the solution of public good problems requires a detailed analysis of the particular context that characterizes the strategic constellation underlying the provision of a certain public good. The question then is what patterns of interaction should be developed, given the variations in the governance capacities of private and public actors. For instance, in institutional constellations favored by high governmental, but weak societal governance capacities, interventionist regulation or regulated self-regulation are still the most appropriate ways to address political problems. In case of the opposite scenario (weak government, strong society), by contrast, private self-regulation or co-regulation are more viable alternatives.

The institutional strength of state and society thus constitutes an important aspect that affects the patterns of governance in a certain country or policy sector. As institutional configurations might vary across both sectors and countries, it is highly unlikely that ideological changes or common challenges emerging from globalization and Europeanization yield an overall convergence of governance patterns.

### *3.2. Type of problem*

In addition to the institutional context in which public and private actors operate, the specific constellation of interests in a certain case might significantly affect the appropriateness of different governance patterns. Depending on underlying interest constellations, cooperation between the involved actors might be

more or less difficult to achieve. In the literature on common goods it is generally argued that the peculiarities of an underlying policy problem have a significant impact on the politics involved in providing it. Basically, three distinct constellations are identified: coordination, agreement, and defection. For their part, each of these is characterized by a specific problem in resolving conflicts of interests.

*Coordination problems* arise where there is a relatively strong common interest in the provision of the good and there is agreement on the regulatory solution. Hence, with the cooperation of actors, and, *ceteris paribus*, it is comparatively easy to provide the public good: we can expect that both public and private actors have a high governance capacity.

As soon as international cooperation aims at redistribution, however, it becomes more difficult to achieve agreement between states or collective action between private actors. Generally, such *agreement problems* are characterized by a common interest in the provision of a public good but by disagreement regarding the regulatory solution. In interaction between states, examples of such discord range from the setting of environmental standards in the EU, and issues such as the data privacy agreement between the United States and the EU, to strategic nuclear weapons regimes (Héritier et al. 1996, Farrell 2001, Müller 1993).<sup>3</sup> For private actors, such constellations can typically be observed in problems of technical standardization. To ensure the compatibility and interconnectivity of their products, producers are generally interested in common standards. For reasons of economic competitiveness, however, they might prefer different options, i.e. to try to provide their own product as the 'solution' to which other companies would have to adjust (Schmidt and Werle 1998).

While, in principle, bargaining between actors can still resolve agreement problems, the prospects for both public and private governance are gloomier for *defection problems*. The basic difference between problems of coordination or agreement and problems of defection is that, notwithstanding their common interest in the provision of the good and corresponding cooperation agreements, when there are defection problems the involved actors prefer to free-ride, taking advantage of the contributions of the others. Among states, for instance, the risk of defection might either hamper the emergence of an international agreement as such or cause serious compliance problems. Among private actors, this constellation is the underlying problem of most types of negative market externalities, such as environmental pollution or consumer protection. To reduce production costs, industrial actors choose the collectively and individually suboptimal action, namely, not to contribute to the provision of the public good.

It follows from these considerations that the selection of effective governance patterns crucially depends on the specific constellation of interests shaping a

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<sup>3</sup> Regime analysts with inclinations towards game theory draw a distinction between coordination problems (e.g. battle of the sexes) with stable equilibria and collaboration problems (e.g. prisoners' dilemma, chicken) where equilibria are either suboptimal or absent. In addition, the importance of compliance mechanisms for collaboration problems is emphasized (Levy et al. 1995:284).

certain policy problem. While private self-regulation might work perfectly well for simple coordination problems, it can hardly be expected to yield effective results for problems of defection. In this scenario, collectively rational outcomes can hardly be achieved without strong involvement of the state. Unfortunately, only in rare cases can political problems be resolved by mere communication; rather, in general they constitute constellations of agreement or defection problems which are more difficult to be resolved without the state. A rolling back of the state in favor of private self-regulation thus can hardly be seen as a panacea to increase the effectiveness and efficiency of governance.

#### **4. When is governance good? Criteria for normative evaluation**

While institutional and political context constitute important factors affecting the appropriateness of governance patterns in light of different problem constellations, they do not constitute the only considerations that must inform the choice of governance arrangements. In addition, the decision whether a certain mode of regulation reflects ‘good governance’ or not requires clarity about the normative benchmarks of such an evaluation (Baldwin 1995, Baldwin and Cave 1999:76). When considering the current political and scientific discussion on ‘good governance’, it becomes obvious that these criteria are debatable. The main conflict deals with the question of whether either input or output legitimacy of European regulation should serve as the primary evaluation criterion (Scharpf 1999).

With respect to output factors, particular attention is paid to two aspects: (1) the extent to which a political system has the capacity of taking political decisions in a certain area and (2) the extent to which these decisions are actually implemented and complied with. With respect to input legitimacy, the focus is primarily on the democratic quality of the governance process.

##### *4.1. Decision-making capacity*

A necessary, albeit not sufficient, condition for effective governance is the capability of governments to take a regulatory decision (or to enact a legislative mandate). As already mentioned in the previous section, this capacity can hardly be taken for granted, but varies across different political systems, depending on the specific institutional rules characterizing the decision-making process.

However, the capacity of governments to take political decisions is not only affected by the institutional configuration in which they are operating, but also by the underlying mode of governance. As a general rule, one can expect the decision-making capacity of political systems to increase the more regulatory powers and discretion are delegated to subsequent institutional levels (decentralization) or to private actors. In other words, there exists a close linkage between this capacity and respective levels of discretion and obligation implied by different modes of governance. Consequently, the ability to reach decisions can be expected to be lowest, if governance follows the pattern of hierarchical intervention, with the

prescription of rather detailed and legally binding requirements which affect the interests of many public and private actors potentially resisting the adoption of corresponding decisions.

By contrast, a consensus between conflicting interests and hence the adoption of a certain policy will be less cumbersome and time-consuming the lower the degree of detailed governmental intervention into society 'from above'. For instance, if the actors addressed by a certain decision have no obligation to comply with it, there is a relatively low probability of political resistance. The same scenario can be expected, if decision-making is based on close cooperation and negotiations between government and private actors addressed and affected by a certain policy under discussion.

#### *4.2. Implementation effectiveness*

Good governance not only depends on legislative decisions, but also on the extent to which these decisions are actually implemented and complied with. Generally, implementing agencies or private actors have to take the necessary steps in order to fulfill the objectives spelled out in legislation or underlying agreements in both formal and practical terms. To what extent do the governance modes differ with respect to these aspects?

A specific advantage of hierarchical intervention in this respect lies in the fact that precise and obligatory rules have a higher potential for effective implementation, as the force of law can be used to impose fixed standards or objectives (Baldwin and Cave 1999:35). In the absence of legally binding requirements, by contrast, this 'push-factor' is lacking and compliance rests solely on the 'goodwill' of the implementers. Hence, from this perspective the obligatory approaches (hierarchical intervention, regulated self-regulation) achieve a higher ranking than private self-regulation and co-regulation.

However, 'hierarchical push' is not the only factor affecting the implementation of regulatory approaches. Of similar importance are 'pull-factors'; i.e. aspects which influence the willingness of implementing bodies and policy addressees to comply with regulatory rules. It has been argued that governance patterns that are responsive to the motivations and interests of implementers and the regulated actors contribute to implementing the regulation in question effectively. Analyzing the different modes of governance from this perspective, we find that such patterns are particularly relevant with respect to regulated self-regulation and co-regulation. At first sight, private self-regulation seems to rely positively on pull factors since the incentive to escape top-down regulations induces private regulators to formulate and comply with their own rules. However, this incentive depends on the presence of a coercive threat. If the shadow of the hierarchy is perceived weak, industry may respond to the opposite incentive to cheat. Private actors might implement regulatory rules in a rather light-handed way as the threat of enforcement or later top-down intervention in case of self-regulatory failure is low (Baldwin and Cave 1999: 58).

These considerations suggest that implementation effectiveness will be highest in case of regulated self-regulation. Here, effective compliance is not only driven by hierarchical ‘push’, but also by societal ‘pull’. For all other governance modes, at least one factor is missing. Most problematic in this respect is the pattern of private self-regulation, at least in those constellations in which governmental threats of hierarchical intervention in case of weak compliance constitute no feasible or credible option.

#### *4.3. Democratic legitimacy*

With regard to democratic legitimacy, the focus is generally on questions of due process and accountability of governance patterns. Due process relates to the decision-making and the implementation phase and claims public support on the basis of equal and wide participatory rights granted to and substantive equality provided for those affected by regulatory decisions.

The issue of participatory rights refers to the scope of participation in the formulation of regulatory policy by those affected or involved in the implementation. At first glance, it seems to be quite obvious that private self-regulation, co-regulation as well as regulated self-regulation constitute better alternatives than hierarchical intervention with regard to this criterion. These approaches all allow for the incorporation and participation of private actors in the formulation and implementation of public policies.

A closer look, however, reveals that this initial evaluation overlooks the problem of unequal access opportunities. On the one hand and as already emphasized by Mancur Olson, not every societal interest group is similarly powerful. Hence, the opportunities to exert political influence might vary, with economic interest being typically represented much more strongly as is the case for ‘public’ interests like environmental or consumer protection. Participation therefore does not automatically coincide with equality of representation.

On the other hand, participatory patterns of policy-making typically imply a distinction between ‘insiders’ (those actors actually incorporated and consulted in decision-making and implementation) and ‘outsiders’ (those interests to which access is denied). This problem is particularly severe, for instance, in corporatist arrangements of regulated self-regulation. While certain societal actors are granted a representational monopoly, other interests not covered by peak associations are excluded. This problem is even more pronounced in private self-regulation. In this case, there is a high potential that regulation primarily takes into account the interests of actors directly affected (e.g. industry in a certain sector), while the input of the general public (consumers, residents) remains very limited.

From these considerations it follows that in terms of equal participation and access, neither regulated self-regulation nor co-regulation or private self-regulation necessarily constitute superior alternatives to hierarchical intervention. Rather if and to what extent this is the case is crucially dependent on the concrete rules regulating the access of interested actors to policy-making.

With respect to the second dimension of due process, substantive equality, regulatory decentralization and legal discretion (as inherent to private self-regulation and co-regulation) may turn out to be a problem. Discretion opens room for unequal treatment of the regulated inconsistencies within or between policies and distortions of the market due to different local regulatory patterns. The insistence on substantive equality is not uncontroversial, however, as it may go hand in hand with a great insensitivity to the circumstances experienced by those affected by regulatory decisions. Uniform regulation does not take into account different administrative structures, established technologies or problem salencies at subnational levels. Hence, we need to distinguish between regulatory content that requires uniform application given the presence of certain problem types and regulatory content that can be achieved flexibly.

In other words, while decentralization is likely to impact positively on the level of access and participation, discretion does not contribute to substantive equality. The relative importance of this latter criterion, however, varies with the regulatory intent. Second, the choice of steering mechanisms also affects due process. The hierarchical model contributes to substantive equality, while treating the openness of procedures and involvement of stakeholders as secondary; the more cooperative models emphasize openness of the process more than equal outcomes.

Regulators may claim democratic legitimacy even in cases where the public has not been involved in the rule-making process if the people have the possibility to exercise public control over the regulatory authority (accountability). Both parliamentary and direct public control are enhanced by decentralizing regulatory tasks to regional or local public authorities or private actors through the use of discretionary instruments. The fact that in practice this may come at the price of some confusion over the relevant locus of responsibility does not negate its potential to facilitate a higher level of control, especially in a multi-level system. On the other hand, self-regulation is clearly most problematic in terms of public control. Besides the remote sanctioning powers of public authorities, self-regulatory systems risk being captured by groups who are not representative of the general public – or even those affected by the regulation – and are isolated from public oversight.

## **5. Conclusion**

The political and scientific debate on governance and good governance is often characterized by the underlying assumptions that, first, governance to a large extent means that political problems are addressed and resolved by private actors rather than national governments and, second, that this development is basically a good thing as it renders policy-making more efficient and effective. Rolling back the state and leaving the development of public policies and the provision of public services as much as possible to the private sector is sometimes seen as a panacea for the modern state to cope with increasing challenges to its internal and external sovereignty.



In contrast to such claims, this paper argued that the broad attempts to reduce and weaken the role of the state do not constitute a feasible option in many cases, nor will they lead to normatively preferable outcomes. First, it was shown that there is no governance model that works equally well for all constellations. Rather appropriate governance arrangements have to be designed carefully by taking into account the specific institutional and problem structures at hand. Second, these structures, in many instances, indicate the need of a strong involvement of the state, either via classical patterns of hierarchical intervention or through institutionalized forms of cooperation between government and private actors. Modes of private self-regulation hardly constitute a viable alternative to state intervention. Third, the evaluation of different governance modes shows that what is seen as good governance strongly varies with the respective evaluation criterion that is applied. Regardless of the criterion, however, it becomes apparent also at this stage that a simple demise of the state would mean ‘throwing out the baby with the bathwater’. Rather, effective and legitimate governance is crucially dependent upon the involvement of the state.

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