Regulatory Governance and the Modern Organizational State:
The Place of Regulation in Contemporary State Theory

Volker Schneider
Universität Konstanz, Germany
Volker.schneider@uni-konstanz.de

Paper to be presented at the workshop on The Politics of Regulation,
29-30 November at the Universitat Pompeu Fabra, Barcelona.

1 Introduction.................................................................................................................. 2
2 The Theory of the State between Conflict and Integration.......................................... 3
3 Governance and the theory of state............................................................................ 11
   3.1 Social differentiation and the variety of governance mechanisms .......................13
   3.2 Governance by policy networks .........................................................................18
4 Regulation as a Form of Political Governance .......................................................... 21
5 Autonomous regulation: the fragmentation of the modern organizational state....... 27
1 Introduction

Regulation is an old but increasingly necessary mode of social coordination and political intervention into societal processes. In modern industrial societies regulatory policies are applied to almost all societal sectors - from agriculture to health and environment up to the multifaceted domain of new technologies. Regulators may be central governments, public administrations, specialized committees and even private associations or organizations. In the context of economical and political globalization, it is in particular the American type of regulation by independent commissions which has spread around the world and is in the process of becoming “the model” of political regulation on which almost all advanced capitalist countries are converging.

The central question of this paper is how regulation is related to other modes of social coordination. Thus, the paper will first deal with questions of governance in general before analyzing the regulative mode. The paper will show that the theoretical problem of regulation as a specific mode of governance can be placed at the intersection of the theory of the state and governance theory.

The paper first outlines the theoretical landscape of state theory and the role of various forms of political governance that are related to the different theoretical perspectives. In a next step I will demonstrate that regulation is a very specific mode of governance which emerged in the US at the turn of the century contrasting sharply with traditional administrative guidance. I will argue that regulation co-evolved with the modern organizational state at a certain level of functional differentiation. This governance mode seemed to be a solution in a situation where political control resources were increasingly dispersed within the different administrative organizations/ agencies of the public sector as well as between the public and the private sector. The paper will also address the differences between American and Europe in terms of the evolution of political governance. We find significant differences in the relations between state and society on the one hand, and the level of administrative development on the other.
2 The Theory of the State between Conflict and Integration

During the last decade the concept of governance has undergone a remarkable upswing. It has developed from sporadic use in disparate scientific communities to one of the new areas of theoretical growth. In the meantime, it has also penetrated into a number of academic fields and sub-disciplines, and is also increasingly influencing political practice at the national and international level (for overviews see Koimann 2002, Rhodes 1996). The secret of its success is clearly due to its conceptual vagueness and interpretative flexibility. It is – with interchangeable meanings - compatible with a wide range of social theories and research programs. In this analysis, the concept of governance will be used in a neo-structuralist perspective with the central thesis of this paper being that governance theory is a structuralist variant of the theory of the state, or more general, a structural and institutional theory on the various forms of social organization.

The theory of the state has a long tradition and refers to one of the most basic research problems of political science and political sociology (for overviews see Jessop 1977, Jürgens 1990, Lehmann 1988, Lenski 1966, Knoke 1981 and Skocpol 1985). Its basic question is why and how complex societies succeed in establishing various central mechanisms of control and coordination. As Tainter (1988: 33-34) and many others convincingly argue, there are – despite the undisputed variety of this field – basically two main schools of thought which may be labeled as conflict and the integration theories. The major “classical” contributions to the conflict school have been made by Morgan, Marx, Engels, and to the integrationist view by Hegel, Spencer, Durkheim, and Parsons. Whereas conflict theory assumes that the state is based on diverging social interests, integrationist theories assume that the state emerged not from the goals and intentions of individuals and subgroups, but from general functional requirements of society. Integration theory emphasizes 1\ shared, rather than divided social interests; 2\ mutual advantages instead of dominance and exploitation; 3\ consensus, not coercion; and 4\ societies as integrated systems rather than stages or arena for power struggles. In this perspective the state is comprised of a complex of governing institutions established to coordinate and integrate the disparate parts of complex societies (Tainter 1988).
However, both schools may be subdivided according to their analytical level into macro or micro analytical perspectives (for a recent meta-theoretical discussion of this topic see Bunge 1998, 2000). In a macro-analytical, holistic perspective, the state emerges out of the needs and interests of ruling classes or political elites, and is mainly an instrument of these large social classes to maintain their privileged position. In this perspective the state is neither an actor in its own right nor does it possess its own will: instead, it is an apparatus which the ruling part of society can willingly make use of. This elementary view can be identified in diverse Marxist and elite-theoretical variations of the theory of the state.\footnote{Within Marxism the interpretations of Engels and Lenin in particular are the clearest expression of the instrumentalist model. In Engels’ “Origins of the Family, Private Property, and the State” the state no longer appears to be representative of the common interest as in Hegel’s works, rather the “form [...] in which the individuals of the ruling class make their common interests valid”. As such it is “... without exception the state of the ruling class and in all cases basically a machine to hold down the oppressed, exploited class” (Engels 1884: 180 and 314).}

Within western Marxism these approaches were generally written off as “instrumental” because the state and politics are generally attributed too little autonomy (Gold et al. 1975).

In a micro or meso perspective of conflict theory, however, the machine-like entity of the state may be dissolved into a multiplicity of conflicting groups and factions or even concrete individual and collective actors. In this perspective, the state is primarily seen as a stage or an arena, in which different power struggles take place. The underlying idea – understanding politics as a specific form of carrying out interest conflicts – had its origins in English Enlightenment philosophy. One of the paramount thoughts was that the state only constitutes the framework or space, in which socio-political conflicts are carried out in a civilized form. From this point of view the state itself is considered to be a kind of arena in which these battles take place. A “state will” does not exist per se, but instead is dissolved in a spectrum of individual interests, which can only be aggregated to an “interest of the state”.

While the arena perspective may be found in a number of theoretical approaches – including the interpretation of the state as a field of power struggles (e.g. Poulantzas 1971), the clearest expression of the arena perspective is provided by pluralist theory. Pluralist theo-
eries of the state have their early roots in Germany (see Dreyer 1993), but they attained scientific prominence in the United States with the best known names doubtlessly being Bentley (1967) and Truman (1971). In this perspective politics and political development are considered to be an endless struggle between interest groups. The state itself is regarded thereby as an interest group in its own right or as a passive neutral arbiter, who solely registers the group pressure from outside and adjusts its decisions like a referee according to the shifting balance of group forces. State action is then “… actually the equilibrium reached in the group struggle at any given moment, and it represents a balance, which the contenting factions or groups constantly strive to weight in their favour” (Latham 1952).

In the most extreme form of pluralism theory, institutional arrangements do not have any weight or effect themselves, but are merely an expression of the balance of forces. In this view, state constitutions are often nothing more than the embodiment of “actual power relations put on paper”, as Ferdinand Lassalle described in his famous speech.2: This basic view was also adopted by Bentley, conceiving forms government, law and constitutional structures as a mere expression of group pressure.3

The other camp in the theory of state consists of integration theories. These also can be subdivided into macro and micro perspectives. In neither variant is the state an expression of the will of pluralistic or singular societal interests, but the functional expression of integration requirements for the society as such. State action here is now longer motivated by subjective motives, but rather by objective requirements and systemic effects. Within holism, too, some variants can be identified: 1/ the functional approaches within neo-marxist theorizing (which in part have also been described as “state derivation”), 2/ structure-functional concepts of sociological system theory.

2 “You see, my lords, a king whom the army obeys and the guns – that is a piece of constitution! [...] These actual power relationships are written down on a piece of paper. [...] Constitutions are not originally questions of law, but questions of power.” (Lassalle, quoted by Uexküll 1974: 102)

3 Bentley evidently “believed that the state had actually ceased to exist or, to put it more harshly, that the state was always an illusion. For him, nothing more than the arguments and influences of
Structure-functional and system-theoretical approaches can be considered to be a reaction to the legalist, juristic theory of the state which dominated during the first half of the 20th century. In political science the most prominent authors of this theoretical perspective were Parsons (1971), Easton (1953) and Almond/Powell (1966). In their efforts to pinpoint the true forces working beneath the formal political structures, state actions have been analyzed less as concrete motives of action of political subjects, but rather abstractly as “objective” necessities and vital functional tasks for social reproduction. From this angle one no longer spoke of the “state”, but rather of the “political system”, which in accordance with was conceived as societal subsystem specialized in a certain spectrum of functions. As Mayntz (1982) correctly criticized, from this perspective public policy reduced itself to “problem solving processes” and state activity was explained according to this interpretational framework – first through the existence of systemic problems and needs and secondly from the assumption that the state or the political system represent some kind of social “self-regulation machine”, which is supposed to solve problems that arise.

As already mentioned, this basic framework can also be found in some neo-Marxist political theories. The general functionalist starting premise is only modified to the extent that the “system” is conceived as capitalist, in a specific way “form-determined”. The state operates as a kind of “fictive all-around capitalist” (ideller Gesamtkapitalist), who must uphold not just the society as such, but its capitalist structure. State interventionism is explained both as an expression of functional needs of the accumulation and reproduction process of capital. The general requirements of capital accumulation such as basic infrastructure, a functioning legal system and legitimization mechanisms are tasks that cannot be carried out by individual capitalists (due to their narrow-mindedness in terms of competition), but instead require the mentioned all-around-capitalist to maintain the capitalist system as such thanks to systemic imperatives. In this perspective various forms of state action - from educational policies via social policy to environmental policy – only fulfill the objective in this

interests existed politically, which (of course) in turn incorporated the interests of different public corporate bodies” (Mackenzie 1970: 100).
scheme of providing for the accumulation and legitimation needs of the capitalist society and thereby stabilizing the system on a long-term basis.⁴

Functionalist modes of explanation have been criticized for a long time from the perspective of science philosophy (Hempel 1965). The critics pointed out in particular the tautological and teleological content of this basic framework. Typical are such cases in which public policies are only explained through their effects, which they must produce in maintaining the system without revealing the specific mechanisms or social forces through which these effects come about (Elster 1982: 458; Bunge 1998, 2000).

There are a number of approaches that responded to this criticism by aiming to some form of meso or micro foundation of integration mechanisms through the identification of specific structural components and specific operations by which integration is achieved. One of these variants is the structuralist approach, which must be distinguished from structure-functionalism in that it emphasizes the structurizing effects of social relations, without simultaneously referring to objective necessities or functional imperatives. Structure refers on the one hand to the empowerment of certain capacities or developments, on the other hand to the limits and restrictions which are implied in structural relationships (Schneider 1997).

From the structural perspective the state or a political system appears both as a structured arena as well as a structured actor to the extent that the actions of this unit are considered to be determined or shaped by the various structural arrangements which the action units are embedded in. In the institutionalist version of this approach, structures are largely equated with institutional rule systems. Whereas in conventional institutionalism such rule systems have been reduced for the most part to constitutional provisions, laws and other juristic norms, in recent variants of neo-institutionalism informal rules and institutional mechanisms are also implied in the concept of institutional arrangements. A further danger of the

---

⁴ Even critical functionalists such as Offe (1972) and Habermas (1973) used this scheme at that time. They only distinguish themselves from regular functionalists in their view that the functionalist scheme should prove that the political-administrative system cannot fulfil these functional imperatives due to internal capacity limits and restrictions.
pure institutional approach was that actors’ idiosyncracies and situational aspects often were blended out as if actors were “programmed” by institutional rule structures. Not until the 1980’s was this somewhat “over-institutionalized” view combined with elements of the conflict perspective, which could be interpreted as a form of “enlightened institutionalism” (Scharpf 1984).

Another important critique of the teleological and tautological content of the functionalist model can be seen in French Marxism. Here the structuring of human actions was generalized even more abstractly. Unlike in institutionalism, where the structuring effects are related to empirically observable institutional restrictions, structuralism primarily analyzes deeply anchored positions and topological areas of the social structure. This basic idea of French structuralism had been used by Althusser and Poulantzas to reformulate a type of Marxist social and political theory, where modes and relations of production functioned like a “grammar for action”. A central thought thereby was that the actions of social actors should no longer be reverted back to their subjective will, but rather to structural imperatives determined by their relational position (Althusser/ Balibar 1971: 242; for a heroic attempt, to transform this perspective into a general theory of society and the state see Fossaert 1977ff).

In Poulantzas’ view, which is one of the most broadly discussed variants of structuralism in political science (see Easton 1990 for this evaluation), the state appears as an apparatus which - despite being ruled by a dominating class- still represents a condensation of the power relations which includes not only the dominant class but a whole spectrum of classes and class fractions. However, unlike in pluralist theory, the power relations between the various class actors were not seen as based on subjective interests, but instead derived their structural position the relational field that is constituted by a combination of different modes of production within a concrete social formation. In addition, a historical sedimentation of these power relations in the institutional system of the state is assumed to exist. State action is therefore not seen as a direct expression of power relations as in pluralism or instrumentalism. Instead social forces that ultimately shape political action are derived in
broken form from social structure and the structural density and institutional resistance of the state. (Poulantzas 1971).

While structuralists have formulated some important critiques with regard to instrumentalism, functionalism and pluralism, their own perspective creates some additional difficulties in theory development. A major problem is that the forces of structuration are somewhat overstated. Individual and collective action appears to be nothing more than an ensemble of structurizing effects, while voluntaristic instincts based on free will and subjective perception are completely eliminated from the analytical picture. To assume that structural restrictions narrow the playing field of individual action to the extent that the freedom of choice, strategic and tactical behavior completely vanish, would mean that human actors are to be treated as consciousless machines.

In the 80’s a whole bunch of approaches have been developed in response to, on the one hand, the criticism of determinism, but also to the juxtaposition of micro and macro-analysis. The various rational or public choice approaches that combine some elements of pluralism and institutionalism certainly fit into this theoretical movement. However, approach that have combined the specific versions of system and action theory or structuralism and individualism seem to be more significant. Examples are Boudon’s (1979) and Coleman’s (1990) “individualist structuralism”, but also Mayntz’ and Scharpf’s “actor-centered institutionalism” (Mayntz/Scharpf 1995, Scharpf 1997) and some variants of historical institutionalism in which social actors have some autonomy.

What these quite heterogeneous approaches have in common is that they emphasize that social actors

- have relative autonomy (e.g. in their perception of and in weighting preferences) but at the same time

- are embedded in multilayered institutional arrangements and societal structures.

Most of these approaches employ a multilevel perspective of social analysis in stressing that not only individual actors but, in particular, large organizations are playing an increas-
ingly important role in political life. On the most general level, some of these approaches
could be considered to be theoretical combinations of pluralism and structuralism, or, more
generally phrased, of conflict and integration perspectives. With their focus on actors as
(largely) autonomous social entities, however, they add an important analytical dimension.

A good example for this idea is provided by the neo-corporatist approach of policy-
bargaining (Lehmbruch/Schmitter 1979, Schmitter/Lehmbruch 1982). In this perspective
policy-making essentially is conceived as a bargaining process between highly organized
interest groups and relatively autonomous state authorities. Public policy as a form of state
action is thus explained to be a bargaining outcome between the state and a small number
of powerful organized interests who enjoy strong power positions in societal sub-sectors
(e.g. formal and factual representation monopolies; sanction capacities to ensure the com-
pliance of their members). Corporatist policy-making thus is a combination of specific in-
stitutional and structural arrangements: Firstly it is assumed that the different actors decide
(more or less) rationally, and secondly that the institutional framework shapes the action of
participants in the political arena in that way that they do not merely act in accordance with
their pure individual interests, but also integrate group or public interests when calculating
their actions. The corporatist model thus presumes a highly structured political arena in
which there is no competition between the different, hierarchically arranged interest asso-
ciations. The interest associations themselves are largely autonomous towards their mem-
bers, thus only partially dependent on their financial and other forms of support. The inter-
and intra-organizational arrangements are understood as a framework allowing for com-
promised corporatist agreements to appear as rational for the respective individual and cor-
porate actors. An important condition for this is that the state authorities be dependent on
the cooperative behavior and support of a limited number of private interest organizations

5 From the process perspective, corporatist politics appears as a specific style or strategy of policy-
making. In the interest of an effective and frictionless implementation of policies the authorities
responsible for a political program allow a group of private organizations who can severely posi-
tively and negatively influence the success of a policy to participate in the preliminary stages of
policy-formulation. In doing so, private organizations are granted a “quasi-public status” (Offe
1981) which in fact allows them access to the legal resources and authoritative positions of the
state.
in the implementation of an intended policy. It is also essential that they be prepared to incorporate these organizations into the decision-making process – in exchange for their cooperation in the implementation of a policy. The requirement on the part of interest associations is the availability of resources through which a certain policy can be advocated in its own interest domain, whether it be through control or the compliance of its membership or through pure interest mediation by technical or operative details on the so-called “implementation front”

Corporatist arrangements can even lead to a situation where state intervention is no longer necessary, if interest associations completely take over the task of attacking problems or the production of collective political goods in the defense of an unpopular state interventionist policy (Streeck/Schmitter 1985: 96).

3  Governance and the theory of state

Within the two-dimensional map outlined above, theory development can be seen as a kind of criss-cross walk though the theoretical landscape between conflict and integration, on the one hand, and macro and micro analysis, on the other hand (see figure 1). In this picture the governance approach would occupy a middle area, in which the analysis dominantly proceeds at the micro and meso level and conflict and integration aspects are systematically combined.

>> insert figure 1 about here <<

In order to locate the governance approach in this theoretical landscape, it is useful to take a look at the etymological roots of the word governance. Governance, based on the verb “to govern”, is derived from the Latin word “gubernare” which means to “steer” something, e.g. a ship. The Latin word is a translation of the Greek word “kybernân” or “kybernetes” which largely has the same meaning. “Kybernetes” was first used by Plato in the sense of "the art of steering” or "the art of government". It is this word which inspired Norbert Wie-
ner in 1948 to use it as a name for the new science of control and communications in living beings and machines i.e. “cybernetics” (Wiener 1968). Interestingly, one of the very first cybernetics mechanisms was used to control the speed of the steam engine invented by James Watt in 1788. It was called a “governor” and had been guided by the principle of negative feedback. As Mayr (1971) convincingly shows, this strongly influenced the idea of market regulation in the works of Adam Smith.

The notion of governance in the social sciences emphasizes this cybernetic perspective in the analysis of processes of societal control and self-regulation (for this argument see Kenis/Schneider 1995). But in contrast to systems theory’s use of cybernetic ideas during the 1960s, current governance theory makes every effort to avoid functionalist explanations through the meso- and micro-foundation of social and political processes by combining institutionalist or structuralist and actor-centered approaches.

Governance theory thus tries to decompose and reconstruct the variety and complex combinations of institutional devices and mechanisms by which societies control and regulate economic, political and technical processes. In contrast to traditional system theory, governance theories do not take the efficient functioning of integrative forces for granted, but attempt to specify the various factors and conditions that inhibit or promote integration. The special configuration of these institutional arrangements implying differences in performance constitute the core *problematique* of these approaches.

On a more abstract level, a governance mechanism may be defined as an institutional arrangement of interconnected “sensing” and “acting” devices by which a social system in question is held within an area of “desired states” (e.g. a stable region or an equilibrium) and by which undesirable situations are avoided. If a “problem” is defined as the difference between a desired state and the status quo, the function of governance, in the last instance, is “problem-solving”. In other words, governance is the operational system of rules or modality according to which societal states of affairs or events are controlled. Control is un-
derstood as a sub-procedure of governance⁶, in which a given state of affairs is actually determined of attained, whereas governance refers to the whole feedback mechanism by which the difference between a desired state and the status quo is detected in order to enable a society to reproduce itself and keep its “state of affairs” in a viable range. Governance theories thus try to explain the institutional devices and resources by with which human actors are (individually and collectively) enabled to observe and define societal problems while in turn mobilizing individual and collective resources to solve collective problems.

### 3.1 Social differentiation and the variety of governance mechanisms

To understand the variety of governance mechanisms, it is instructive to use some basic ideas of the theory of social differentiation. It seems that human society has created three different modes of societal control in its historical development.

1/ Market governance: In this kind of societal control the allocation of resources and determination of social states emerges out of the interactions of many actors with many different interests and preferences. Actors are free to contract according to their utility functions and "tastes". The market-economic determination of a given social state or event thus reflects the simultaneous expression of all different preferences by effective demand. The capacity to control a given object is thus dispersed among a large number of actors.

2/ Political governance: In the political mode of societal control social states or events are determined *qua* political decisions that unilaterally reflect the will of the political sovereign (the king, the dictator, the people.). The functioning of this kind of societal control depends on the capacity of the sovereign to turn its decisions into practice. The capacity to control the object of control thus depends on the capacity to decide and act as well as the related resources of the "sovereign", i.e. his ability to impose his preferences.

⁶ This means that the ability to determine the outcome of an event or to determine a given state is called "control".
3/ Ideological governance: In this mode of societal control social states or events are neither determined by the aggregation of individual preferences nor by the imposition of preferences by a powerful societal actor, but by prescriptive norms and belief systems beyond the immediate control of societal actors. The control capacity in this mechanism is inextricably hidden in implicit rules and norms which all social actors are subject to. The most important empirical manifestation of this kind of societal control is religion.

The emergence and coexistence of these different modalities of societal control must be seen as a result of societal differentiation. Initially, individuals were submitted to a prescriptive, divine social order. The first societal differentiation resulted in a separation between religion and political power. The Reformation in the 15th century was the most important step towards this separation. Macchiavelli's recipes for successful power strategies can also be understood as an indicator of the emergence of a new societal domain in which social events were no longer determined by religious norms but merely by the logic of political power.

In a further phase of societal differentiation, the "market economy" emerged as an institutionalized order, in which individual actors were emancipated from all kinds of imposed preferences (religion, political power) and became free to follow their own interests. In a long-term perspective one could imagine that the societal development consisted in a "great transformation" towards increasing market control. However, in contemporary society, where market coordination plays a prominent role, the other two control mechanisms still coexist and are even functionally interdependent:

1/ Some desirable goods and social conditions cannot be provided by market governance alone;

2/ Some negative effects (externalities) of market governance are socially destructive;

3/ The "rules of the game" in market governance cannot be provided by market governance itself.
The specificity of political governance consists in its particular mode of societal control. Political governance is based on the unilateral determination of a societal state of affairs *qua* decision or "will" of a central authority - independently of the way this decision has been formed (i.e. by dictatorship or by different forms democratic decision-making). Political control, however, also supposes that the deciding authority has enough power to implement its decision.

Market governance, in contrast, is the determination of a given state of affairs by the competitive aggregation of interests by a multiplicity of actors where all transactions are voluntary, and no side is able to force the other to agree. Thus, in principle market governance does not imply implementation problems. Market decisions involve at least two decisions in the execution of transactions. On the one hand, this is the offer, on the other this is the acceptance of the offer. In other words: Market transactions involve voluntary transfers of resources between actors on the basis of reciprocity. This is, however, only thinkable in a situation of partial conflict of interest when interest realization is not mutually exclusive.

The detailed conditions and functional logic that govern market transactions are a major theme in recent economic theories of governance. Most of them are inspired by the idea of the market as a societal coordination mechanism, but they challenge the view that markets emerge spontaneously and that market coordination will work under all conditions. Some of these approaches stress the fact that pure market coordination is only feasible and efficient in the exchange of rather simple goods (e.g. homogenous and perfectly divisible), whereas the exchange of complex goods will only work under additional institutional constraints. The emergence of political mechanisms within the economical realm such as hierarchical integration within and between firms (e.g. specific forms of vertical and horizontal integration), long term contracts, industrial networks, and diverse forms of common and public property as well are seen as institutional substitutes for market coordination, when this form of governance is either completely ineffective or at least inefficient in specific environmental contexts.
In a systemic perspective, such non-market-forms are seen as institutional responses to specific risks and frictions related to certain technical and economic systems. In particular, transaction cost theory tries to predict which coordination form – markets or hierarchies, or mixtures - performs better with respect to different criteria. These may be resource allocation, innovation and adaptation in a given environmental context in light of varying production and transaction costs (Williamson 1985).

One of the most ubiquitous governance structures is hierarchy or “formal organization”. In more general and abstract terms, organizations are institutional devices by which collective action is transformed into “corporate action” (Galbraith 1967, Coleman 1974, 1990). This concept goes back to Commons (1961), one of the founders of institutional economics, who distinguished between two forms of concerted action: the corporate and the regulative mode. In the corporate form, individual actors create a new corporate body entrusted with the right to act and negotiate within a specific area in the name and interests of the founders or members. Individual action is thereby excluded in that specific area. Within the regulative mode, actions are still taken by individual actors, but they are committed to abide by specific rules, laws or norms that restrict their actions. Individual action is not excluded, but is limited.

Corporate action as an institutional innovation has several advantages:

4/ The integration of contractual networks between resource owners into pools of resources under a single authority minimizes transaction risks and therefore leads to the stabilization of cooperative relations. Multiple chains and networks of individual transactions are condensed into a few solid contract relations between the corporate actor and its different “agents”. Hereby cooperation is disentangled from fluctuating situational constellations and put on a “long-term basis”.

5/ The nearly unlimited specialization possibilities are a further advantage of corporate action. Unlike real people, who always must satisfy a spectrum of basic needs and thus pursue several “interests” simultaneously, organizations can concentrate on highly specialized goals and functions. This allows for a concentration of forces into
the pursuit of established goals, which would otherwise be out of reach (Mayntz 1997a: 40-69).

6/ Corporate action allows for a sort of practical and cognitive parallel processing, which is extremely difficult for individuals. The corporate actor can internally differentiate tasks and divide processing routines into sub-procedures. Thereby, the cognitive restrictions of humans, who tend to be serial problem solvers, can be overcome collectively (Simon 1983).

7/ Last but not least the combination and amalgamation of resources in corporate actions multiplies the capacities of individual action to a degree that reaches dimensions of size and scope, which many of the great industrial and technical projects could not be explained without (Chandler 1990).

Based on these advantages, the corporatization and the dominance of organizations in modern society is neither an accident nor a kind of conspiracy. A series of structural pressures created the “society of organizations” that dominate the economy, politics and society of our time (Coleman 1974, 1990, Simon 1991, Perrow 2002). In this process, the modern state transformed itself into an “organization state”, as formulated by Mackenzie (1971) in a status report on the discipline. The way these organizational sectors and the interactions between private and public organizations are structured, however, is still influenced by historical and structural differences between political systems. Whereas Laumann and Knoke (1987) have shown in their impressive analysis of the health and energy policy domains that there is a huge variety and number of formal organizations involved public policy in the US, studies on European policy-making emphasize the centralized and concentrated character of interaction patterns between state organizational, associational hierarchies and large party organization. Some European democracies therefore have been described both as “organized” (Olsen 1983) or “negotiated” (Lehmbruch 1996). In a governance perspective, this secular transformation had important consequences which will be dealt with in the next section.
3.2 Governance by policy networks

Growing societal differentiation, interdependence and the proliferation of corporate actors is changing the relations between state and society. This results in a complex distribution pattern of resources for political control between public and private organizations. Growing specialization and interdependencies require more and more specialized knowledge and other "control devices". The complexity involved in these interdependencies is best illustrated the effects on a train time schedule when one main connection is changed. This kind of intervention requires total knowledge of all connections in the network. This entails that the entire time table be rearranged so that the system of operation is not jeopardized (for this metaphor see Forsthoff 1971).

Growing societal complexity makes state intervention increasingly difficult and creates the need for more and more differentiated information and control resources, which the government is unable to create on its own. Since, on the other hand, these resources are more and more concentrated outside the public realm within powerful private organizations (firms, associations), the functioning of political control by government policies today is unthinkable without the cooperation and support of non-governmental societal actors.

If we assume that these actors primarily do not act altruistically, cooperation and support presupposes some kind of reciprocity. The governmental authorities get support from these organizations (through information, monitoring and loyalty etc.) only if they offer something in exchange. For instance, this could be access to public savings or to sovereign rights (legislation, public status etc.) originally reserved for the government, or concessions in regulatory interventions.

It is important to see that the intrusion of the exchange or bargaining into the political domain is not just an additional facet of modern politics and policy-making, but also leads to a fundamental transformation of political governance and functional and institutional profile of the state (Scharpf 1992). The growing organization of society could not continue without structural consequences. With the progressive accumulation and concentration of resources on the level of corporate actors the relationship between state and society was fun-
damentally altered. The most important change was that the state no longer was juxtaposed to an atomized society, but instead was increasingly dealing with organizational intermediaries in its social interactions and frequently even with peak organizations as “social heavyweights”. From the overlapping standpoint of “the social organization of the society, the political power resources to govern of modern societies concentrated less and less on the state, but instead increasingly dispersed themselves among social organizations as well (Kenis/Schneider 1991).

With the “society of organizations”, the original concept of representative democracy also evolved in a more corporate-intermediary direction. In representative relationships, full-scale social organizations – along with the office-holders in parliamentary representative bodies – increasingly became the focus of attention. The entire state decision-making process was progressively distorted by the party apparatus, administrative and associational bureaucracies (Bobbio 1987). Modern representation developed into a system in which organizations transformed into the real citizens. Burns (1999) described this development in allusion to the well-known definition by Abraham Lincoln as “governance of organizations, by organizations and for organizations.”

It would be faulty to interpret this as a process of “pluralistic disbandment of the state”, as this has been misunderstood both by the left as well as the right side. Political power only becomes more polycentric as social forces now appear in a more concentrated form. This led to a situation in which the state was “obliged to divide its power with the organized social forces” (Forsthoff 1971: 123-124). On the other hand, the parliament as an assembly of the individual public representatives is increasingly controlled by the party apparatus and is becoming more dependent on the state’s executive bureaucracy.

At the same time, it would also be off-key to interpret this process as the “refeudalization” of political power. The state indeed maintains its monopoly of power, but in functionally differentiated societies effective solutions to problems are no longer thinkable with repressive means alone. Through the mobilization of the relevant political resources the state is increasingly dependent on the participation of non-state actors and thus their willingness to
cooperate. This cannot be forced upon actors, but instead can only be conveyed by ex-
change and negotiation processes.

Thus, contemporary public policy is only possible through a hybrid mixture of public and
private organizations cooperating in the formulation and implementation policy programs.
This trend has clearly been emphasized in the literature on policy networks
(Kenis/Schneider 1991; Mayntz 1995). This has become particularly evident in the system-
atic-empirical stock taking of such arrangements, where it has been shown that a realistic
understanding of public policies cannot merely limit itself to the interactions between par-
ties and parliament laid out in the constitution, but must also take informal actors such as
public administration, private associations and many other categories of social actors into
consideration (e.g. businesses, research institutes, think tanks, etc.). Many of these organi-
zations participate in the production of public decisions although they do not hold a con-
stitutional mandate for doing so.

The structural basis of this form of interaction is resource dependency: Interest associations
provide services which the state can hardly do without. They deliver not only information,
but support the state in political economy measures, by convincing their members of the
necessity of such measures and cooperating (Forsthoff 1971: 123). In corporatism theory, in
particular, the various support relations have been discussed extensively. This also includes
rule production and the private production of associational orders within the framework of
self-regulation (Coleman 1998). This type of private-public interaction has been given spe-
cial attention in the discussion on private interest governments (Streeck/Schmitter 1985).

To summarize, we can assume that the specificity of “political governance” is that societal
states of affairs are determined unilaterally by decisions expressing the unilateral delibera-
tion of the sovereign. Exchange and bargaining processes among large political organiza-
tions, however, lead to the intrusion of market elements into the logic of political control.
This means that the authoritative allocation of values becomes intermediated by exchange
relations. Binding decisions are no longer imposed but instead result from the outcome of
bargaining arrangements.
4 Regulation as a Form of Political Governance

Questions of various forms of state intervention and the identification of regulation as a specific form of governance are the central topic of this section. The starting point is the observation that the core functions of the state always have been a guarantee for external and internal security. But from this functional core the activities of the state broadened into additional areas of “security provision”. Since the 19th century the provision of social and labor security was added, primarily based on the welfare state, and since the 20th century state action proliferated into domains of technological and ecological security (based on the regulatory state). This temporal classification, however, should not imply, that regulation has not emerged until the last century, but emphasizes the dominant types of intervention along the timeline.

As a matter of fact, regulation can be tracked back more than a thousand years. In the Middle Ages it was the standard form of economic coordination. Kings licensed towns, and towns licensed merchants and controlled markets or fairs were subject to regulations. Craft-guilds are a paradigm case of complete economic regulation. These were governed by controlled conditions which entailed defined wages, hours, tools, technology, quality and prices. In the mercantilist era the evolving modern state regulated imports and exports in much detail. The process of industrialization and the rise of modern capitalism lead to an almost complete elimination of regulation (laissez-faire). However, the more the negative effects of this “new natural order of economic affairs” became visible, some regulation entered the economic scene at least with regard to the excesses of capitalist economic growth.

In Britain labor and technical regulation already gained ground in the early 19th century in both the railway sector and in factory legislation. (for an overview see Taylor 1972). A series of factory acts highly restricted the women and child labor (Blaug 1958). For instance the Mines Act of 1842 prohibited all women and boys under thirteen from being employed in the mining sector. This type of intervention has often been used as a paradigm case in state theory and political economy in general to explain the conditions under which the guardian state intervenes into autonomous processes of economical and technical evolution;
(see for instance the German controversy on state derivation). These cases are also robust examples for our understanding of the logic of regulation from a neo-institutionalist perspective.

While regulation is used as a political-economic concept in the current debate with many different connotations (from the most general meaning in a cybernetic perspective to a rather restricted understanding of state intervention by independent regulatory agencies), within the framework of this paper regulation refers to the specificity of the “policy instrument” or the “control resource” by which a process or an activity is governed. Regulation primarily entails using legal rules, whereas other possible instruments of state interventions are money, persuasion and the direct governmental making or provision of a certain good. Using this last instrument is generally what we call “administrative governance”. Whereas “regulative governance” functions through interactions between the state regulators as the subject of regulation and independent social actors as regulatory objects, administrative governance entails that events, processes, and activities are restrained by means of command and control, i.e. by a chain of principal-agent relations. For instance, the provision of an infrastructural good such as a bridge may be exercised by both regulative and administrative action. Regulation would involve the specification of conditions under which a private investor may get a license to build a bridge and to charge travelers for the provision of this infrastructural service. In the administrative mode, however, the bridge is provided by the state itself (e.g. specialized units of the public hierarchy), and the terms of use and the charges may be decided by parliament, the administration itself or some other socio-political decision-making mechanism.

In a more abstract sense, the regulative mode implies that societal states of affairs are determined, achieved or influenced by the definition of the scope of property rights related to

---

7 This, for instance, is implied in the definition of Mitnick (1980) who conceives regulation as “interference of some sort in the activity subject to regulation – it is to be governed, altered, controlled, guided, regulated in some way. Interference involves a diversion from what otherwise would occur (…) Note, however, that the activity itself is not to be replaced, but, rather regulated – the regulation is not part of, or involved in, the activity that is regulated”.

22
the object of regulation. In most cases this implies the imposition of restrictions on private property relations and free contracting, referring to the “bundle of rights”\(^8\) that are related to a given piece of property. In the case of labor regulation, regulatory interventions usually attenuate or restrict the property rights linked to labor as a commodity.

As for labor regulation, the object of regulation in fact is the bundle of rights that are connected to labor as units of transaction which the worker or employee sells to a firm for a wage in the employment contract. In the contract they agree to do what they are ordered to do for a certain period of time and within the domain of the contract. (Simon 1991).

Under laissez-faire conditions this means that the firm owner obtains the right to actually choose to do as he pleases with this resource. When the government imposes restrictions with respect to working hours, age limitations, occupational health, minimum wage, etc., it is in fact shrinking the area in which private property relations and free contracting govern the exchange and use of labor. The starting point and default condition in the regulative is unconstrained private property, which is restricted and “unbundled” by regulation. The effects of regulation are therefore based on an interaction between private property owners and applying their rights of action as well as the various institutional restrictions that limit their control on their action domain.

As for the administrative mode of governance, the starting point is exactly the other way around. In this case, from the very beginning action is based on state or “public” property

---

\(^8\) From perspective of this bundle of rights theory, property rights are not objects but multiple relations among men arising from the existence of scarce goods and pertain to their use. Property becomes a formal institution for control of relationships between people, goods and resources. This basic idea of property as a combination of different rights has its origins in Roman law. It specified several categories of property rights: ownership (the right to use one's property within the limits of law), the right to trespassing (the right to cross another's land), usus fructus (the right to use a thing that belongs to someone else or to rent it to others, but not to sell it or change its quality), usus (the right to use a thing belonging to someone else, but not to rent it, sell it or change its quality), and pawn (the right to keep a thing belonging to someone else but not to use it). The right of ownership contains the following four elements: (i) the right to use an asset (usus), (ii) the right to capture benefits from that asset (usus fructus), (iii) the right to change its form and substance (abusus), and (iv) the right to transfer all or some of the rights specified under (i), (ii), and (iii) to others at a mutually agreed upon price. (Pejovich 1990: 27-28).
over a given good or action. Here the state or the general public have the right to decide – based on a given public decision-making mechanism – what to do or how to use a given object. In abstract terms, social states and events are thus directly determined by administrative decision-making and control, without co-decisions of private property owners. In the case of regulation, political and administrative decisions only restrict and frame the still autonomous actions of private property owners.

Regulation itself can take place with different instruments, whereas regulation by independent regulatory agencies, as it is the standard case in the U.S. is only a special case. As Mitnik (1980: 28) shows, there are quite a number of different modes of regulation which can be used in singular form and in combination:

- Regulation by the common law: Regulatory principles are developed through court decisions and developed form case to case;

- Regulation by statutory control: A legislature or local government passes a law regulating some activity, and the administration enforce the law and monitors its application;

- Regulation by franchise contracts: Central or local governments grant rights to perform certain services for a given time period, and the franchise contract contains regulatory specifications

- Regulation by independent agencies: Within the frame of a law delegating certain decision powers, the independent regulatory commission or administration issues regulations and monitors their application.

The last mode of regulation, which now has become a kind of global model by by spreading around the globe in the last 10 years, did not emerge as a rational construction based on a systematic comparison of advantages and disadvantages of various modes of regulation, but instead reflects incremental decisions and institutional trial-and-error. In most cases the establishment of an independent regulatory commission responded to a crisis or problem with a pragmatic way of dealing with it. In some of the infrastructural sectors (railway,
telecommunications, etc.) where this regulatory form emerged, other forms (administrative governance; regulation by common law, franchise, and statutory control) have also been tried out at several occasions but either were not applicable to the US context or proved to be unworkable: 1/ Nationalization efforts never succeeded because of the strong influence of business on policy making; 2/ Statutory control based on administrative implementation supposed a resourceful and effective public administration that did not exist in the U.S. until the mid 20th century. 3/ The common law type proved to be rather difficult to apply because courts lack specialized technical expertise and can take action in an *ex post* manner.

The emergence of the US model of regulation can only be understood in terms of the particular history of the American state – if compared with the political development on the European continent (Grimm 1993). One of the major difference here is the unequal growth of public bureaucracies. Whereas in Europe the modern state emerged on the basis of absolutist rulers and large military bureaucracies (i.e. above all standing armies) a in the 17th century already, a comparable administrative state has not developed in the US until the early 20th century (Woll 1977). A further important difference between continental Europe and the US is that the initial stimulus in administrative growth in the USA was not the bureaucratization of the state sector itself, but instead the origin of large-scale organizations in the private economy which had to be counterbalanced (Mayntz 1962). The centralization and extension of the state administration did not catch on until the late 19th and early 20th century and was stimulated, in particular, by processes of economic concentration.

This development, however, exhibits many aspects of co-evolution, since the growth of the state itself has stimulated in turn, as some theories assume, the growth of societal organizations in particular in the associational sector. The increasing spectrum and density of state intervention and governmental regulation motivated an increasing number of individuals and organizations to create organized interest groups to influence these regulatory processes (Staber 1987). “The historical creation of the liberal democratic state – involving greater structural differentiation, increased control over societal resources, and expanded intervention into the economy and society - was accompanied by a parallel transformation of social segments into organized interest groups” (Laumann/ Knoke 1987: 8).
Although the emergence of the American model of regulation did not follow an encompassing rational plan, the institutional innovation of “independent regulatory agencies” showed a number of advantages: 1/ They generally offer more specialized expertise than parliaments and courts. Combined with enough administrative resources this also enabled effective monitoring and oversight; 2/ By relative insulation from political and partisan pressure, they were better able to develop a continuous and coherent regulatory policy than parliaments; 3/ The fact that a rather small number of decision-makers is involved enables more flexible response to changing economic and technological conditions, and in general, a better capacity to handle a large number of cases than courts or majoritarian institutions such as legislative committees or parliaments.

The advantages at the meso level of social organization, however, seem to have negative a trade-off at the societal macro level. If the number of independent regulatory agencies multiplies, and an increasing number of different societal segments is governed and regulated by their own “nano robot”, the result will be that the political field and the state itself become more and more fragmented if not segmented. In such a system each sectoral regulator is programmed only for the achievement of rather specific political and economic goals, without coordinating mechanisms at the macro level. Each regulator appears as a proper political micro cosmos with particular modes of participation and control (hearings, judicial oversight) and - in most cases – is also equipped with its own resources. All this creates a highly pluralist, fluid and intransparent political space that Heclo (1978) so aptly had described by the concept of “issue networks”.

Interestingly, some of the conditions explaining the rise of the regulatory state in the U.S. also seem apply to the European Union. According to Majone (1999) the rise of regulation to its current importance in Europe may be similarly related to the administrative weakness of this supranational institution. The budget-raising capacity and the administrative power to implement its policies at the national level are comparably weak. It is thus likely that at least at the EU level similar pluralist political structures will emerge as in the U.S. (Streeck/Schmitter 1992).
5 Autonomous regulation: the fragmentation of the modern organizational state

The conclusion is that regulation as a mode of political governance will fit in into the general trend of an increasing autonomization of organizations outside and within the modern state. A consequence of growth and proliferation of independent regulatory agencies is the fact that the state is also being transformed into an “organizational field” (Janning 1998). In German state theory, the latter is often described as a “unit of will” (cf. various legal concepts, but also Simmels approach), an “organization of unified ruling and decisional power” (Böckenförde 1992: 214). However, the growth of largely autonomous public organizations leads to the consequence that this “organized unit of action” no longer remains the “monolithic hierarchy”, as it appears, for instance in the works of Max Weber. He assumed that the relatively autonomous ensemble of administrative bodies summarized under the concept of “collegial administration” is more or less a relict of traditional society and would gradually vanish with the rise of the bureaucratic state (Weber 1972: 575). The starting point was the perception of a quasi-legal centralization and agglomeration of the power of the bureaucracy. The driving force was its technical superiority, e.g. precision, durability and speed. Even if – in a perspective of co-evolution - mutual effects between state and private power were blended out in the works of Weber, he was convinced that a complete bureaucratic centralization would come about at least in the area of public bureaucracy.

These expectations were not fulfilled. In the beginning of the 20th century already, many governments begun to shift parts of the state apparatus into relatively autonomous administrative units. One example of this was the partial disembodiment of the German Reichspost, which received its own budget from the state administration and direct parliamentary surveillance (Schneider 1999). In these terms, the various industrial states experimented with diverse administrative forms. For instance, with the creation of the state enterprise, a relatively extensive autonomization of organizations with the state was reached. According to Galbraith (1967) this strategy was widely applied in particular to the state-owned British industry, to free the concerned sectors from direct parliamentary control: “only by hindering any form of parliamentary intervention could the firm (…) make responsible and quick decisions, which demanded specialized information. For this reason, mining, electricity,
gas, transportation companies, aviation, and other state-owned companies were granted such autonomy.”

Today the public sector is far from constructing a unitary body of action or from operating according to a unified program. Instead, a spectrum of the most diverse forms of organization have emerged in the past decades (Schuppert 1994). In particular, administrative reforms and privatization have spurred institutional differentiation. In this context, one of the rapidly growing areas is the establishment of independent regulatory agencies, which will increase the fragmentation of the modern state even further.

**References**


Mayntz, Renate, 1997b: Soziologie der öffentlichen Verwaltung. 4., durchges. Aufl. Heidelberg : Müller


Schneider, Volker, 1999: Staat und technische Kommunikation. Wiesbaden: Westdeutscher Verlag


Figure 1:

- Holism
- Function
- Conflict
- Integration
- Networks;
- Governance
- Individualism
- Arena
- Instrument