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How Governance can still be successful

Paper for the Workshop

„Governance for Sustainable Development: Steering in Contexts of Ambivalence, Uncertainty and Distributed Control“

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Content

1. Introduction: Why governance is so difficult

The difficulties of steering or governing societal and economic processes seem to be overwhelming. Indeed, the historical record of successful attempts is short, and the record of failure embarrassingly long. What is even worse is the fact that science has so far been unable to satisfactorily conceptualize processes of governance. There seems to be no single approach able to direct efforts to cope with present and future governance challenges. Of course, we all know that we have to take into account institutions with the restrictions they impose and the options for action they offer. We should furthermore study the most important actors and their interests and orientations for action. This is standard for political scientists. However, if we analyse known approaches to steering and control we already notice their extensive neglect of processes of denationalisation (see Dose 2003, 32 ff.). Similarly, these approaches have little idea of how to cope with the different forms of uncertainty as well as resistance to attempts at governance. In addition, there has thus far been no explanation of how to integrate the costs of reaching a settlement into concepts of policy design. What is more, political science has thus far not delivered a notion for analysing societal problems even though this is an old and pressing request of scholars of policy science (Ingraham 1987, 611). Because of this lack of systematic analysis, naturally no one has analytically tied up abstract categories of societal problems with instruments of governance, even though again, experts on governance have demanded this (Peters 2000, 2). Sarcastically put, one could argue that this would not help much because we only possess systematic knowledge of very few instruments that have been analysed for coping with environmental problems.

In this contribution, I will argue that by being much more systematically informed about the specific situation (analytical type of societal and environmental problem, prospective settlement costs, and institutional setting[1]) we could look for the suitable instrument of governance. This "instrument shopping", however, only makes sense if we have a much better knowledge of the instruments at hand. We therefore need a systematic and comparative analysis of the instruments of governance, which offers information on their specific prerequisites and their capacity to cope with analytically processed societal problems. Moreover, a set of evaluative criteria will make the instrument choice more transparent and conscious.

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1 That we have to take into account the institutional settings if we want to analyse politics and the possibility of steering is quite obvious for most scholars of political science. Therefore, I do not elaborate on this. See however for an analysis of the German multilevel governance situation Dose 2005.

These claims are very easily made but remain difficult to respond to. However, in my paper I will show how we can be more successful in doing the "business of governance". I will sketch out an outline for successful governance, solving many of the mentioned conceptual problems and having systematically analysed a greater set of governance instruments[2].

Fulfilling these claims, I will by and large follow the outline given by Voß et al. They point to some "fundamental preconditions" of the classical steering paradigm that are unfortunately not given in the real world (Voß et al. 2005: 5). At least they are precarious. The authors indicate three facts making steering quite difficult:

- the ambivalence of goals,
- the uncertainty of knowledge for steering, and
- a lack of power to steer the world into a sustainable state.

Indeed, governance would be much easier (and more boring) if we were not confronted with these governance problems. And although I believe that we will not be able to solve them completely, we do in fact have mechanisms at hand that can help us to deal with these problems. In order to make these mechanisms work, however, we must employ them skillfully and should be ready to accept the openness of the political process. More concretely, I will argue that the ambivalence of goals can only be decided upon politically, and not scientifically. Science can, however, provide criteria for assessment in order to help organize a transparent and responsible decision-making process. The uncertainty of knowledge is a real challenge for governance. By both broadening the understanding of uncertainty and differentiating it, I will show in which cases there are solutions and in which cases we simply have to accept uncertainty. Finally, the somewhat unfavorable distribution of power must be analyzed and taken into account when designing policies for sustainable development.

The basis for my consideration is a definition of governance stressing the functional aspect. In some agreement with Michael Zürn (1996, 30; cf. also Mayntz 2004, 67), governance can be viewed as the attendance of matters being perceived as public with the aim to increase common weal – irrespective of the steering actors involved (cf. König 2005, 1462). They can be either public or private, although according to my understanding a public actor has to be involved in at least a slight way. This governance

2 The prerequisites for instrument shopping were originally laid down in some four hundred pages. I will therefore focus on the most important aspects of my "New Governance" approach yet without neglecting the necessary overall coherence. My approach is suitable for the guidance or analysis of almost any process of governance.

definition is much different from older “steering” concepts since such definitions did not consider denationalization processes (see Dose 2003, 32 ff.). However, it also differs from the rather narrower conception of governance originally related to transaction cost economics and governance-mechanisms such as markets and hierarchy (Williamson 1985). While at the forefront of this approach was the idea of minimizing transaction costs and simultaneously safeguarding against opportunism (Williamson 1985, 32), this main line of analysis was later abandoned and the number of governance-modes was increased (Streeck/Schmitter 1985; Hollingsworth/Lindberg 1985). However, these governance mechanisms were not made in order to help design good steering. Indeed, they are too abstract to guide any steering processes (cf. Lange/Schimank 2004, 23; Trute et al. 2004, 470). Thus, in contrast to the old steering conception bound to the nation state, and in keeping with a distinction to the narrow conception of governance and its emphasis of governance-mechanisms, I do talk of “New Governance”. This is in line with the more recent contentions of modern American and European political scientists such as Pierre and Peters (2000) and Salamon (2002), the latter being the architect of the “New Governance”-diction and accentuating the tools of government.

2. Ambivalence of goals – a problem to be solved politically

Sustainable development was famously defined in the Brundtland Report as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs” (World Commission on Environment and Development 1987, 54). While advocates of environmental protection had initially emphasized the ecological goal, they now had to broaden their target system. Since that time, they had also to take into account a social and an economic goal. Economic prosperity and solidarity in modern societies has become, alongside environmental conservation, a legitimate aim for public and private actors alike. It is obvious, however, that in political reality these goals had already had a substantial influence on public policy (Voß/Kemp 2005, 3). Economic interests, in particular, have always been of great importance. Thus, it was not a new endeavor to have more than one goal to consider. What was in fact new was twofold: Firstly, there was the task of designing a long-term structural change in the social and economic system of modern societies (see Federal Office for Spatial Development (ARE) 2005, 2). For the sake of future generations, present generations should not consume more of the capital stock (World Bank, 1994) than is concurrent with a level of economic, social and ecological consumption that is affordable in the long run. And secondly, the developed world was called upon to consider the essential needs of developing countries. Yet there was more to the concept of sustainable development than just the mitigation of absolute poverty. People in the developing world should also

have a chance to fulfill their "legitimate aspirations for an improved quality of life" (World Commission on Environment and Development 1987, 54). This is justified as also being of interest to developed countries, since "[a] world in which poverty and inequity are endemic will always be prone to ecological and other crises" (World Commission on Environment and Development 1987, 54). As a result, environmental protection can be considered as the overarching goal of sustainable development[3], and this holds true across generations and different countries. Certainly, in the public debate we can observe a totally different interpretation of sustainable development which stresses the equal value of each of the three goals (see even Wissenschaftliche Dienste des Deutschen Bundestages 2004; Federal Office for Spatial Development (ARE) 2005, 1). This rather twisted perception illustrates that goals are more or less victims of political and economic interests. This, however, is not some sinister conspiracy. It is simply everyday politics. The decision by the Brundtland Commission to put environmental protection at the top of the list of goals also was a political decision. Naturally, the commission had excellent arguments but framing the goals as they did was not a scientifically proven truth.

Summing up, we have to consider two facts: Firstly, contradictory goals have been part of political and social life for quite some time. One might even add that we have a well-established tradition in coping with trade-offs (see Dose 2004, 124). Secondly, goals must be determined politically. I will elaborate on this second aspect a little further.

In democratic political systems, particular institutions are in command of setting the rules. This is the task of the legislature[4] and of course *not* of science. The task for science, however, could be to help predict the consequences of certain politically-reached decisions. Moreover, science can evaluate these decisions against particular assessment criteria. If some of these criteria are absolute, science has the duty to indicate this. For instance, the German constitution recognizes the principle of averting dangers, i.e. any law and any action of public administration has the obligation to prevent dangers. This does not only encompass state action but also the action of third parties. Therefore, according to Art 2 II of the German constitution the legislator is called upon to formulate laws in a way that ensures they are amenable to the protection of the right to life and the inviolability of the person (BVerfGE 49, 89, 142). Naturally, parliament has a reasonable leeway to decide whether this is the case (BVerfGE 56, 54 (80 ff.). However, if

3 I am very well aware of the different interpretations of sustainable development, e. g. the three pillar basic model of sustainability (see for an excellent overview Keiner o. J.).

4 This does not mean that the parliamentary decision should not be accompanied by elements of participatory democracy (Renn et al. 1995). However, there are also limits for a reflexive partizipatory democracy (Dose 2004, 137).

violation of this provision is obvious from the beginning the criterion becomes very strong.

If the principle of averting dangers is met, there are many further criteria for assessment, for example those of cost efficiency, dynamic efficiency, accuracy (will there be null effects or perverse effects?), financial burden, compatibility with parallel steering activities, administrative costs, overall concept (is the governance measure part of a promising concept?) and necessary steering knowledge (Dose 2005, 236 ff.). Quite naturally, we observe multiple trade-offs between these assessment criteria. There is hardly a policy that scores highest on all criteria. Yet, this is not at all necessary. What is needed are criteria which make obvious how a policy will probably work. Legislators and everybody else can decide what they prefer. For example, do they want to have more cost efficiency or more accuracy? Or is it more important to produce dynamic efficiency? Could the principle of averting dangers be violated if the steering knowledge is insecure and if a governance instrument is employed which requires a high degree of this knowledge? Thus, the criteria for assessment help to select the appropriate governance instrument. Furthermore, the selection is rendered transparent and open to criticism by the affected constituency. To reach this end, science can be helpful, but not in dictating the presumably right goals or criteria for assessment. In western democracies, the legislator is the only right institution to decide on legitimate policies.

I should make a last point in respect to the ambivalence of goals. Because the political system is the place where policies are decided upon, a marginal analysis of fractions of goals would be rather unrealistic. One can not weigh one tenth of the principle of averting dangers against one fifth of administrative costs. The currency in which these decisions are measured is not subtle enough for such a task. Bargaining between multiple interests is much cruder. In real political life compromises must always be taken and they are led by bargaining and veto power and not so much by ranked goals or criteria for assessment. The latter can only reveal the future consequences of the policies discussed.

3. Solving social and ecological problems instead of curing the symptoms

Whereas I do insist that goals have to be decided on politically by the legitimate legislator, I suggest an analytically overriding and all important purpose of governance. It should always try to solve the real social and ecological problems instead of just curing the symptoms of a problem. This might be the most important criterion for assessment of a policy. How can we reach the overwhelming aim of really solving the problem at hand?

The New Governance approach that I propose makes good use of welfare economics for the analysis of social and ecological problems. The aim is to be able to assign empirical problems to analytical categories which help us to single out the adequate governance instrument or combination of tools to solve those real societal and ecological problems. In order to complete the endeavor of linking problems to instruments in a second step, the tools have to be analyzed and classified according to their ability to help solve the analytical problems at hand. Figure No. 1 shows the basic affiliation between social and ecological problems, the analytical problem categories and some selected instruments.

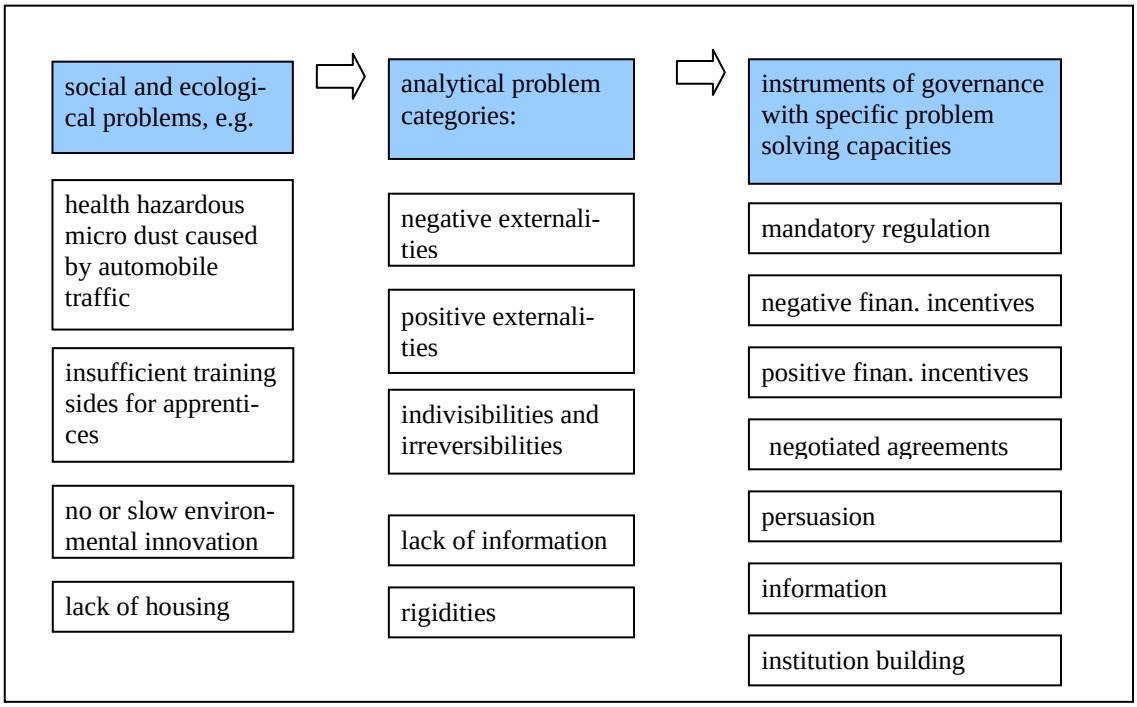

Figure No. 1: Social and ecological problems, analytical problems categories, and instruments of governance

What is still missing in figure No. 1 is the actual connection between the societal problems, the analytical problem categories, and the respective instruments for adequately solving these problems. In order to proceed further, in the following I will define and discuss the analytical problem categories.

3.1 Analytical problem categories

It is impossible to link all theoretical and perceivable societal problems to the instruments of governance that promise to solve them in the best way. We should therefore look for analytical categories able to encompass all the societal problems which we observe in the real world. I suggest employing a modern welfare economics approach that

can help generate such abstract problem categories. The more traditional public goods approach of welfare economics originating in the work of Samuelson (1954: 387) and Musgrave (1973: 52 ff.) would not have helped any further in this point. Diagnosing a public good situation (Baumol/Blinder 1982, 540), i.e. diagnosing non-excludability and non-depletability, might indicate a market failure and thus might very well justify public activities to provide these public goods. However, this approach does not give any hints on how to solve societal and ecological problems. We should therefore seek a more differentiated approach able to provide the necessary analytical starting point for linking problems to instruments. This requirement can be met by the aforementioned more modern approach of welfare economics. It diagnoses market failure if some problems occur. They are externalities, incomplete divisibility of production factors with the existence of irreversibilities, imperfect information and imperfect adaptability to changes (Fritsch et al. 1999). Public policy should try to internalize externalities, to overcome indivisibilities and irreversibilities and to reduce imperfect information and lacks of adaptabilities. Consequently, we have to search for instruments which are able to do the respective job. The assumption is that different abstract governance problems require different instruments. To show this we have to take a closer look at these abstract categories of governance problems. In the following I will focus on externalities and imperfect information.

Externalities

We can define externalities as occurring when an activity generates positive or negative side effects which are not compensated by any payment or any other equalization. We can differentiate three different kinds of externalities. Firstly, there are the kind of externalities which we are familiar with from the debate on environmental problems (cf. Baumol/Oates 1988, 7 ff.), e.g. when a producer pollutes the air or the water. In so doing, the producer externalizes some of the costs of his/her production on the environment. These costs become very obvious when somebody else has to clean the water from the pollution before they can use it. The economic consequence of externalities is a price too low and a supply too high compared with an allocative optimum. Secondly, externalities can be observed across different regions. Regional spill-over effects occur if a problem generated in a certain region also affects a neighboring region. The general difficulty in this situation is the incapability of the region hit by the externality to control the action in the jurisdiction of the first region. Here again the classical example stems from environmental politics (see Esty/Mendelsohn 1998, 225 ff.). A dangerous emission can hardly be fought if it stems from a neighboring country. The argument holds also for security issues. If organized crime operates from outside your borders but within your country then it produces externalities. This subgroup of externalities is the

analytical problem which the global governance debate rests upon (Rosenau 1995; Reinicke/Deng 2000).

Thirdly, externalities can occur in an intertemporal manner if costs are shifted to future generations. This might be the case if oil reserves are depleted excessively or if biodiversity is endangered. These intertemporal externalities, which can also be interpreted as "unrepresented contingencies of future generations" (Just et al. 2004, 617), are difficult to estimate. Therefore, any decision to internalize this subgroup of externalities depends on a high degree of uncertainty, and one generally even higher than the one of decisions concerning the other two groups of externalities. Thus, we can only ask for governance action pointing in the right direction. It is impossible to fully internalize the externalities (Baumol/Oates 1971, 42 ff.).

Imperfect information

In order to be able to assess and process all signals of the market, all actors must have complete information (see Johansson 1991, 68). However, most of the time some or even all of the relevant actors are only partially informed. As a consequence they must decide on the basis of incomplete information, something which increases the possibility of "wrong" decisions being taken. To proceed any further we must differentiate between ignorance and uncertainty. We talk of ignorance if the relevant actors do not possess the necessary information, even though such information does exist. It merely has to be obtained. However, different actors experience varying problems in obtaining the information they need to make "proper" decisions. These are the cases of asymmetrical ignorance which very often produce adverse selection problems (before a contract is signed) or moral hazards (after a contract is signed). As Akerlof (1970) has convincingly shown, adverse selection leads to low quality products. If one wants to avoid this, information input or institution-building are the governance instruments best suited. Moral hazard stems from hidden actions of one of the contract partners. Especially if contracted behavior cannot be properly controlled, i.e. if the action is hidden, there is always the hazard that the contract partner who is difficult to control will shirk (Justet al. 2004, 512). By way of illustration, the case of a typical insurance situation is very often referred to. The argument is that somebody who is insured will be less careful than somebody who is not insured because the not insured person has to pay her damage herself while the insured person gets his damage paid by the insurance company (see Maddala/Miller 1989, 603). It is also conceivable that the damage was done deliberately in order to receive money from the insurance company. One way to cope with this problem is to raise the insurance contribution for every payment to the insured. Then the notified damage is taken as the information that the insured is not a careful person. However, it would be much better to know this in advance.

Uncertainty[5], in contrast to ignorance, cannot be reduced to zero. It can be reduced through additional information or by research; it can not, however, be eliminated or even accurately estimated. Research and development processes are a very good example of processes characterized by uncertainty since one never knows exactly what the result of the respective activities will be. Sometimes they can be very successful, while at other times they can result in no progress at all. Because research and development processes are unique, it is impossible to estimate the probability of success or failure. What can be successful, however, is reducing the probability of failure by inputs of information or by bringing partners together who possess complementary information.
Besides these two kinds of imperfect information discussed by welfare economics there are some reflections on strategic uncertainties undertaken by political scientists (Czada 1998: 72, 76 ff.). They encompass actors unable to predict the decisions and actions of other relevant actors. As has already been shown, strategic uncertainty very often goes hand in hand with asymmetrical ignorance. Hence – at least theoretically – in these cases it can be reduced to zero, and thus we could also talk of strategic ignorance. Strategic uncertainty or ignorance can be lessened by providing the missing information – either directly, if possible, or by building institutions which can help to provide the information or substitutes for it, e.g. trust.

3.2 Linking analytical problem categories to governance instruments

The analytical value of abstract problem categories is only fully apparent if the categories are linked to governance instruments. The question is which tool of governance can remedy the analytical problem appropriately, rather than just curing the symptoms? According to my own understanding, an appropriate or "problem-adequate" instrument should lessen the analytical problem, i.e. externalities must be reduced in the direction of internalization, indivisibilities and irreversibilities should be retrenched. A lack of information should be overcome through the input of additional information or by bringing complementary information together through institution building. Similar thoughts hold for rigidities. They must be reduced. Not all governance instruments have the same potential to lessen analytical problems, however. Therefore, I have elsewhere analyzed the most important tools of governance (Dose 2005, 249 ff.). One of the aspects studied was their ability to solve the analytical problems. Thus I linked the problem categories to the governance instruments. I will present some of the results of this analysis in figure No. 2. In so doing I will focus on externalities and information problems.

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5 I do not talk about risk. Risk is according to Frank H. Knight (1921, 197 ff.) denoted by probabilities. Therefore, if one knows the risk of a measure one can calculate the expected utility (see Johansson 1991, 139 ff.).

category of analytical problem	cause adequate governance instrument
negative externality, not regional	• substantive rules • obligations to notify • requirements of official permission • negotiated agreements • negative financial incentives • information and counseling (if the externalities are caused by ignorance) • persuasion • steering by forming and building organizations • inducing networks
negative externality, regional	• regimes • persuasion • inducing networks
positive externalities	• positive financial incentives • public production and supply • inducing networks
ignorance	• substantive rules (duty to inform, rules for warranty of quality and liability) • obligations to notify • requirements of official permission • information and counseling • steering by forming and building organizations • neocorporatist concertation • inducing networks
substantive uncertainty	• neocorporatist concertation • inducing networks • regimes
strategic uncertainty	• substantive rules • obligations to notify • requirements of official permission • negotiated decision-making when implementing substantive rules • negotiated agreements • neocorporatist concertation • inducing networks • regimes if at the time there are regional externalities

Figure No. 2: Categories of analytical problems and related instruments of governance

Figure No. 2 highlights that in most cases there are more than one or two governance instruments which are adequate for the respective analytical problem. Therefore, one might wonder whether the analysis was helpful in singling out the right instrument? I would answer this question with a clear 'yes'. The analysis can already prevent decision-makers from choosing the wrong instrument. For instance, very often positive incentives are taken if we diagnose uncertainty. However, positive incentives are absolutely the wrong instrument to deal with uncertainty. Substantive uncertainty cannot be reduced by putting money into the system (Johansson 1991, 142). It can even be detrimental if, for example, the public actor does not possess any better information than the private actor (Staudt 1988, 223). In this case, money induces the private actor to do what is presumably the wrong thing. Subsidizing the nuclear power industry is a particularly prominent example. However, there are many further examples of this kind of detrimental steering (Dose 1993, 415 f.).

Another example of the power of the method developed so far can be presented by studying the idea of subsidizing the installation of micro dust filters in the exhausts of diesel automobiles (see Dose 2006). Very obviously, micro dust produces negative externalities. However, there is no way to internalize negative externalities through subsidies. This holds at least for a perspective put forward by Pigou and becomes most evident by employing the "polluter-pays" principle. Therefore, working with positive financial incentives, i.e. subsidizing the installation of filters, is no problem-adequate measure to negative externalities. It is, of course, a measure not inducing any resistance from private actors.

Certainly, the welfare economics-led analysis of societal problems still leaves numerous instruments that must be taken into account. This is a valuable advantage because there are more aspects to consider than only the fit with the respective societal problem. First of all it is important only to employ instruments of governance for which the prerequisites for success are given. For instance, without a well organized and functioning civil service it does not make much sense to select substantive rules as governance instruments, since these rules must normally be implemented. While this factor of success is taken as given in most developed countries, it cannot be expected to be so in less developed countries. The same consideration holds true for negative financial incentives since they are not at all self-implementing. It must be controlled that everybody pays the correct amount of tax, i.e. the amount of tax that corresponds with, for example, the amount of polluting-emission he/she emits. Even if one decides to work with the instrument information and counseling, it helps very much if one knows something of the structure of preferences, is be able to formulate ones message clearly and understandable, is credible and the aspired change in behavior must be in the interest of the addressee (for an overview see Dose 2005, 431 ff.). In conclusion, depending on the cir-

cumstances, some of the governance instruments which had theoretically been problem-adequate can be singled out because the factors for success were unfavorable.

After having paid attention to the prerequisites for employing the instruments, in a next step the criteria for assessment already mentioned can be employed in the selection of the appropriate governance instrument. For example, if we are in a situation in which we must be aware of a direct danger to human life, we have to choose an instrument that will be immediately effective with high reliability, for example a substantive rule to shut down a factory emitting poisoness fumes. In this case any further criteria for assessment are not very important. They gain relevance if the principle of averting dangers is met. If, for instance, the problem is to reduce the overall amount of carbon dioxide (negative externality) there is leeway for selecting the appropriate governance instrument by taking into account many criteria. If cost efficiency is the main point, one could take negative incentives (tradable emission permits or taxes) or one could decide on negotiated agreements (less cost effective), substantive rules (hardly cost effective, depending on the concrete programming) or plain persuasion (cost effective only by chance). Finally, if the steering knowledge is quite low in a problem area of interest, governance instruments that need a high degree of this knowledge should be avoided. For instance, in order to employ negative financial incentives one should at least have an idea of the approximate price elasticity of the demand for the taxed commodity or resource. Trying to approach the tax rate suitable for the sought environmental state in an iterative process, as Baumol/Oates suggest (Baumol/Oates 1971, 45), is often not feasible due to political resistance. Possibly it is feasible to overcome such resistance once, making good use of open policy windows or a strong majority in parliament. But except in unusually favorable or “lucky” circumstances this will not work twice or a third and a fourth time.

Admittedly, we are also confronted with situations denoted by irreducible uncertainty. And since this is a strong challenge for governance – as already indicated by Voß et al. (2005, 8 f.) – I will elaborate on this in a little more comprehensive way. First of all, concurrent with Voß et al. (2005, 9) I would argue that complex dynamics which we cannot foresee are not typical in many governance situations. Furthermore, very often we could know much more than we actually do about the steering contexts and the future impacts of our behavior. As Dienel and Renn (1995, 117) put it, most of the time we could have better knowledge than the knowledge we actually apply. This can be demonstrated with the example of chlorofluorocarbons (CFCs). At the time of their invention they appeared to be the ideal refrigerant. They were not inflammable, not poisonous, nor did they smell. And yet it later became apparent that CFCs ruin the highly important stratospheric ozone layer. It might appear as if we had no chance of knowing better than we actually did. And yet we could have. Already in the 1930s we could have

overcome the apparent “no-knowledge” since there was already a partial knowledge about the detrimental effects of CFCs (see Wehling 2001, 465 with reference to; Böschen 2000, 41 ff.). Probably, sometimes not knowing has to do with not wanting to know or with not trying hard enough to get to know. Of course, science can contribute to this process by collecting and systemizing the available knowledge. This also holds in respect to the institutional knowledge of governance.

While we should keep in mind that very often we could do better, there are evidently situations in which we simply cannot overcome our lack of knowledge. For instance, if we have to decide upon which is the appropriate threshold value for a chemical in environmental protection law, we cannot know for sure at which exact level human life and health will be protected. And yet in situations like this we do take decisions, even though we only have insufficient knowledge (Beck 1996, 302). This might justifiably be criticized, but it would arguably be even worse not to pass the environmental protection law in question in the first place. And again, these decisions are reached politically, always taking into account not only the goal of protecting human health or nature but also other conflicting goals, such as the international competitiveness of the industries affected (Mayntz 1990, 141 ff.; cf. Preuß 1994, 532; Dose 1997, 141; Scherzberg 2004, 229, 231, 233). After all, government has a long and more or less successful tradition of deciding in a state of uncertainty. As already indicated, such decisions are always decisions on the basis of values (see Mayntz 1990, 141 ff.; cf. Beck/May 2001, 249). One of these values is represented by the maxim that the greater the potential for damage is, the more far-reaching and comprehensive the strategy to prevent it should be (Preuß 1994, 529). An inherent residual risk has yet to be taken. This is deemed to be the socially adequate price for the advantages of modern civilization (Breuer 1978, 834 ff.; critically Murswiek 1988, 330 f.; Preuß 1994, 536, 541). A more recent conception points to the fact that we also face “second order risk”, that is the possibility of miscalculating a potential damage and therefore doing the wrong thing. In order to cope with the respective detrimental effects of regulation law must always anticipate its own impacts. If the anticipated negative impacts of regulation grow bigger than the anticipated impacts in the state of no regulation, the border line for regulation is crossed (Scherzberg 2004, 222 f.).

4. The play of power – analyzing the prospective settlement costs

It is one thing to design a rational or good policy that is problem-adequate and that meets all the prerequisites of successful implementation. It is quite another to achieve public acceptance for such a policy. A very simple way to find out what the constituency thinks about a new policy is to publish it and to observe the reaction. If the rejection is very strong, one very quickly starts rowing backwards. Although often em-

ployed, this way to "scare" the constituency time and again by issuing preliminary ideas is not very favorable. It is much better to know in advance how intensive the resistance against a policy might be. Then it is possible to either modulate the governance instrument in order to lessen the resistance or to be ready to resist any public outcry towards a particular policy.

A promising way to anticipate or predict the public resistance against a policy is to come back to a typology sketched in a first outline by Van Meter and Van Horn (1975, 458 ff.). Their basic argument is that the resistance against a policy depends on the prospective impact of that policy. They tried to appraise this prospective impact by referring to the degree of change involved and by giving a hint to a distinction put forward by Theodore J. Lowi (1964a, 688 ff.; 1964b, 125 ff.; 1978, 178 ff.). Lowi differentiated according to the degree of coercion between distributive, regulative and redistributive policies.[6] However, Van Meter and Van Horn could not remedy a central defect of the distinction formulated by Lowi. They failed to clarify precisely how to assign real policies to the three categories. Up to now this has been a major critique of the differentiation put forward by Lowi. The categories are said to be not mutually exclusive, not selective enough and altogether too simple (Mayntz 1983, 12; Windhoff-Héritier 1983, 353 f.; Linder/Peters 1989, 42). This certainly holds for the older differentiation, although this distinction between policies was of great analytical help. In order to strengthen the analytical value of the typology, three quite simple but powerful standpoints need to be taken (cf. for parts of the proposed change of the perspective Jann 1982, 177, 233, 446 ff.; Windhoff-Héritier 1987, 23 f.; Bovens et al. 2001, 10):

- Imagine you are affected. Take the perception of the persons concerned.
- Look at the isolated measure, *not* at the entire program or law.
- Look at the possible impact, *not* at the intentions of a policy.

After having sharpened the perspective, the next step is to redefine the policies so that they are mutually exclusive. This is done in order to be able to attribute different degrees of resistance against the respective policies. The revised definitions of the old categories are:

- Distributive policies: Money, goods, services, or legal positions are distributed without being aware that perceived rights of other persons are negatively affected. Good examples of distributive policies are the financial support for research and de-

6 In his later work he added constituent policies (Lowi 1972, 300) and constitutional policies (Lowi 1978, 179). These categories are not employed here because they do not provide any analytical advantage for my approach.

velopment, financing hospitals or the construction of universities. Certainly, at closer look, the costs of these distributive policies become obvious. Subsidizing research and development is not free, but the costs are distributed across all taxpayers and are therefore quite diffused. Thus this kind of policy is perceived as distributive by the affected, although a policy analyst would highlight the cost to the taxpayer.

- Regulative policies: Nothing is distributed any longer; instead, restrictions are imposed for the future. However, nothing is redistributed from one group to another. This holds in respect of goods, money, services and legal positions. Above all, regulative policies do not change existing legal positions. However, if such a position does not yet exist, regulative policies can change the conditions for future acting and acquiring of legal positions. For instance, in environmental protection law we know the requirement of official permission if a factory with relevant emissions is to operate. With the respective statutory law no existing legal positions are affected because the applicant has not yet the right to run the site. He filed the application to get the right to do so for the future. Thus, although it is costly to meet all requirements he does not have the impression that something is taken away from him.

- Redistributive policies: If a group of actors is clearly and perceivably taken away a legal position or additional costs have to be incurred, and this is in general given to another group, we can talk of a redistributive policy. A good example of this kind of burden or interference with existing rights is the introduction of a tax on emissions or the supplementary order to modernize or rehabilitate a production site. Up until the new regulation the air was, from the point of view of the emitter, a free good. Emissions could be let into the air without any payment. If a tax is introduced on emitting discharges this must be taken as an infringement of rights previously taken for granted. The same considerations are useful in explaining the redistributive character of supplementary orders to rehabilitate an already existing production site. The factory was already producing when the new order was issued. Suddenly, the “old” technology did not meet the new environmental standards. This again can be perceived as an interference with existing rights.

In some congruence with Lowi's thinking and his key sentence “policies determine politics” (Lowi 1972, 299), we can attribute different scales of resistance to the policy categories. Distributive policies hardly cause any resistance, regulative policies produce resistance of medium scale and redistributive policies trigger a high degree of resistance. Figure No. 3 gives some examples and tries to make the argument more plausible.

Policy	Anticipated degree of societal resistance	Examples
distributive policy	low	• financial incentives for research and development • financial aid for students
regulative policy	medium	• rules to be obeyed when constructing a new house • substantive rules to be obeyed to get a permission to run a new factory
redistributive	high	• introduction of an environmental tax • a supplementary order to modernize a production site • decision to build a storage for nuclear waste

Figure No. 3: Policy categories, corresponding anticipated resistance, and examples

Certainly, it makes a difference if a newly introduced environmental tax is high or relatively small. If it is really small, for instance one euro-cent per liter of petrol, although it is still a redistributive measure it is unlikely that anyone will protest intensively. Thus, it is not sufficient only to look of the presumed impact but one also has to take into account the amount of change involved (cf. Van Meter/Van Horn 1975, 458 ff.). Hence, a redistributive policy aiming at a great change is supposed to face the highest societal resistance. Conversely, if a policy is distributive and aspires only to a minor change, little or no societal resistance should be anticipated.

This analytical tool to anticipate societal resistance can be made good use of in diverse situations. First and foremost, it can predict the settlement costs attributed to the resistance of the actual addressee of a policy, e.g. the payer of an ecological tax. Secondly, it can be extended to actors who, while not belonging to the direct target group of a policy, are affected indirectly. For instance, a cutback on food stamps not only negatively affects those eligible for them but also grocers and farmers since the food stamps are mainly used in grocery stores (cf. Peters 2002, 554). In conclusion, the cutback has a redistributive impact on poor people, farmers, and grocers alike. Thirdly, the tool for analyzing the prospective impact of a policy also helps us to understand multilevel governance. A policy decision taken at one level might not only have an impact on the target group but also on another governance level: for example, if in Germany the federal level were to subsidize microdustfilters for diesel-engines by promoting a law granting an exempt on automobile tax for diesel cars fitted with a microdustfilter. Since the revenue from the automobile tax belongs to the state, any deduction from it must be seen as

a redistributive measure. Therefore, the German *Länder* strongly opposed the idea of financing the subsidies for microdustfilters by a tax exempt from the automobile taxes without getting any compensation for this from the federal level (see in more detail Dose 2006).

5. Summary and conclusions

The history of attempts to steer societal and ecological processes is not only encouraging. Conversely, there are many examples "how great expectations in Washington" - and one might add in many capitals of the world – "are dashed in Oakland" (Pressman/Wildavsky 1973). We cannot afford to let this state of failure determine our future. We must look for ways and means to help sustainable development become a reality. However, thus far the pursuit of governance for sustainable development has suffered from the ambivalence of goals, the uncertainty of knowledge and an unhelpful distribution of power (Voß et al. 2005). These limitations for governance are real and cannot be ignored. What science can do is to develop concepts which help to cope with the situation.

Such a concept is the topic of this paper. At the start I argued that the ambivalence of goals has to be decided politically. I pointed to the democratically-controlled legislature that in democratic systems is in command of deciding on these goals. Science can provide information about the prospective outcomes and impacts of these decisions. Furthermore, through the generation of some evaluative criteria, the decision-making process can be supported. It can also be made more transparent and accountable. However, the criteria for assessment are also twisted in multiple trade-off situations which again demand political decisions.

The main suggestion of this paper is to solve social and ecological problems instead of just curing the symptoms. The New Governance approach suggests analyzing real social and ecological problems by making use of a modern branch of welfare economics. The basic idea is to affiliate real problems with analytical problem categories which can then be linked to instruments with the respective problem solving capacity. On the basis of an intensive study of the most important governance instruments, figure No. 2 presents an assortment of analytical categories and links them to the respective problem-adequate governance instruments. After this first selection level one has to decide for which of the theoretically favorable instruments most of the factors for success are given. Afterwards the number of suitable instruments shrinks even more if the aforementioned assessment criteria are used. One of these criteria is steering knowledge. If it is insufficient to execute a certain instrument one has to look for one that needs less steering knowledge. However, if this does not work one has to decide on the basis of political and dogmatic considerations.

Finally, even if we were able to select the most rational instrument to cope with a social or ecological problem it might be impossible to adopt it due to political resistance. Therefore, an approach for better governance must include an analytic device to anticipate resistance against considered governance measures. While there might be rules of thumb thus far, policy science has not yet developed a workable conception to assess prospective resistance. In political reality, governments have often aggravated resistance from particular constituencies through poorly formulated policies with unfavorable redistributive effects. Often such policies have been withdrawn in the wake of public resistance. Such a poor procedure can be avoided by employing a method spelled out on the basis of Lowi's differentiation of policies. By defining distributive, regulative and redistributive policies more mutually exclusively and by sharpening the perspective from which the differentiation has to be taken, it is possible to attribute differing degrees of resistance to the distinct policies.

To sum up, the short version of the New Governance approach presented here follows five steps: Firstly, analyze the societal or ecological problem. Secondly, look for the problem-adequate instruments. Thirdly, choose from these instruments by examining if the prerequisites of their implementation are given. Fourthly, weigh the probable impact against the evaluative criteria, and finally, decide on the instrument, taking into account if you have the political power to overcome the anticipated political resistance. Following such recommendations will make "instrument shopping" much better and easier than it has been thus far.

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