

Urban Governance and Local Democracy
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I. Citizen orientation as Leitmotif for the modernisation of Public Sector activities.

In traditional bureaucratic thinking citizens only appear as owners of (fundamental) rights against the state, as addressees resp. applicants for administrative acts, i.e. prohibitions, allowances or permissions or as participants in public planning processes. In these contexts citizen orientation was intended to achieve fundamental state principles like democracy, rule of law or the social state.

The introduction of principles of private management in public administration in the framework of the (in Germany so-called) new steering model (new public management) brought the perspective of the citizen as customer and the service orientation in the authorities.¹ But the roles of the citizens can't be reduced only to that of customers. Public administration is not able to deliver all services and fulfil all tasks for the community on its own. In many fields the functions of state and municipalities can only be accomplished by a collaboration of state and citizens. Citizens play an important and vital part in community development, organised or non-organised. The role of the state in modern doctrine is to coordinate all the activities of public actors, especially of different authorities, and private actors like citizen groups, non-governmental organisations or associations for the sake of the common good. This is called Governance or on the local level Urban Governance.²

In principle citizen orientation and citizen participation are generally welcomed. If citizens contribute to the carrying out of public affairs, soundness and quality of administrative work are increasing as well as legitimacy, acceptability and identification. Some scholars even spoke in favour of citizen-controlled administration or called citizen orientation a performance driver.³ Others,

¹ Christoph Reichard: The "New Steering Model" and the citizen, German Journal of Urban Studies, Vol. 41 (2002), No. 2; www.difu.de/index.shtml?publikationen/dfk/en

² John, Peter: Local Governance in Western Europe. – London 2001; Goss, Sue: Making Local Governance Work. – London 2001; Bovaird, Tony, et al: Developing Local Governance Networks in Europe. – Baden-Baden 2002; Cars, Göran, et al: Urban Governance, Institutional Capacity and Social Milieux. – Aldershot 2002; Haus, Michael et al. (eds.), Urban Governance and democracy: leadership and community involvement, London, u.a. 2005; Denters, Bas; Rose, Lawrence E.: Towards Local Governance? In: Comparing Local Governance. Trends and Developments. Ed.: Denters, Bas; Rose, Lawrence E. – London 2005, p.246-262

³ Hill, Hermann: Kommunikation als Herausforderung für Staat und Verwaltung. In: Lean Administration. Die Krise der öffentlichen Verwaltung als Chance. Ed.: Steger, Ulrich. –

however, saw a danger of "citizen participation without citizens".⁴ In some studies researchers came to the conclusion that only a few unorganised citizens participated in public planning and decision making processes.⁵ This is partly due to the fact that their interests and potentials are not appropriately addressed. If administrations don't take the concerns of citizens seriously or if they have no chance to influence decisions, citizen participation might only be understood as a show-event and become thus the cause of a sense of helplessness and frustration. Sometimes public servants also lack self-confidence and/or mistrust citizens when working together.⁶

This is why we need special quality requirements for "good citizen participation".⁷ Varied forms of citizen participation need a different framework and adequate approaches. Citizens take distinct roles in private and public life and are in different ways involved and engaged in public affairs. There is not "the" (typical, standardised) municipality, equally we can not assume "the" (typical, standardised) citizen. Therefore it is a wrong approach to try to include all citizens using all forms of participation in all political fields. A balance sheet of democratic activities⁸ can provide a survey with different forms of participation, their use and their impact.

II. Democratic Authorisation

According to the German Constitution (Article 28, paragraph 2) responsible decisions of the own affairs of the local community can only be taken by the elected council. In exceptional cases a decision can be sought by binding referendum. Between these two fundamental forms of democracy – representative and direct democracy – different forms of collaborations among citizens and cooperation with the administration have been developed,

Frankfurt, New York 1994, p.49–66 (53); Banner, Gerhard: Von der Ordnungskommune zur Dienstleistungs- und Bürgerkommune. In: Der Bürger im Staat 1998, p.179-186

⁴ Gsänger, Matthias: Politisches Handeln und politischer Prozess. In: Lokale "Agenda 21" Prozesse. Eds.: Heinelt, Hubert; Mühlich, Eberhard. – Opladen 2000, p.101–118 (115)

⁵ Bogumil, Jörg; Holtkamp, Lars: Local Governance. und gesellschaftliche Integration. In: Governance und gesellschaftliche Integration. Eds.: Lange, Stefan; Schimank, Uwe. – Wiesbaden 2004, p.147-166 (160); Gabriel, Oscar: Die Bürgergemeinde als neues Leitbild der Kommunalpolitik – Anspruch und Wirklichkeit. In: Die regierbare Stadt. Eds.: Schuster, Wolfgang; Murawski, Klaus-Peter. – Stuttgart 2002, p.139-169

⁶ Hill, Hermann: Stabile Partnerschaft: Bürger und Verwaltung. In: der städtetag 2/2002, p.29–31; Bogumil, Jörg et al.: Das Reformmodell Bürgerkommune – Berlin 2003, p.87

⁷ Kopatz, Michael; Troja, Markus: Partizipation und Nachhaltige Entwicklung als Herausforderung für die "Bürgernahe Verwaltung". In: Reformziel Nachhaltigkeit. Ed.: Kopatz, Michael, Berlin 2003, p.95–130 (144,122); Holzrichter, Elke: Stärken-Schwächen-Analyse. In: Bürgerorientierte Kommunen in Deutschland – Anforderungen und Qualitätsbausteine. Ed.: Pröhl, Marga, u.a. - Gütersloh 2002, p.287–296; Sinning, Heidi; Wiedenhöft, Katrin: Evaluation kommunaler Beteiligungskultur. In: Verwaltung und Management 2003, p.299-303

⁸ Reinert, Adrian: Lokale Demokratie–Berichterstattung – ein Instrument zur Selbstevaluation. In: Bürgerorientierte Kommunen in Deutschland, (see ft.note 7) p.158-170; Lokale Demokratiebilanz. ,Ed.: Bertelsmann Stiftung. – Gütersloh 2003

sometimes described as cooperative democracy⁹ or further reaching democratic experimentalism.¹⁰ These forms have been put in practice in many municipalities, but they are voluntary, they depend on the engagement of the participants and they have no binding consequences.

According to the traditional legal view, established and often confirmed by the German Federal Constitutional Court, citizen participation is only legitimised in preparing decisions or giving advice to the council.¹¹ Nobody, but the elected council is authorised to make final decisions that are binding for the people living in that municipality. The right to carry out state authority needs the authorisation by the totality of the citizens given in the election. The new forms of urban or local governance, collaborations and networks are not legitimised in this way by the totality of citizens. Only those people who are interested or concerned work together, access, structure and decision-making processes are not transparent, the responsibility for decisions and the accountability (to whom?) are not clear. Thus there is a lack of democratic authorisation.¹²

But this legal view causes in practice a dilemma: People who are engaged in these forms of democratic experimentalism yield their time and their knowledge. They offer active citizenship to the community, but the impact of their work is without direct consequences. Their opinions may be picked up by the council, but they may be seen as not really relevant as well. This can cause disappointment and frustration and weaken democratic engagement in the future. Thus the state loses democratic potential. On the other side those groups and networks of citizens are only accidentally composed. They often represent the people who are directly affected, but not the totality of the citizens. Can they really take decisions in the name of the common good that are binding for the whole of the community? Can they substitute or replace the decisions of the elected council?¹³

⁹ Bogumil, Jörg: Kooperative Demokratie – Formen, Potentiale und Grenzen. In: Bürgergesellschaft, soziales Kapital und lokale Politik. Ed.: Haus, Michael. – Opladen 2002, p.151-166; Banner, Gerhard: Die drei Demokratien der Bürgerkommune. In: Adäquate Institutionen: Voraussetzungen für „gute“ und bürgernahe Politik? Ed.: Armin, Hans Herbert von. – Berlin, 1999; p.133-162 (150)

¹⁰ Sabel, Charles F.: A Quiet Revolution of Democratic Governance: Towards Democratic Experimentalism. In: Governance in the 21st Century. Ed.: OECD – Paris 2001, p.145 – 178; Healey, Patsy: Creativity and Urban Governance. In: DiSP 158 (2004), p.11-20

¹¹ Ausführlich Sommermann, Karl-Peter: Kommentierung zu Art. 20 GG. In: Das Bonner Grundgesetz, Kommentar. Hrsg.: Starck, Christian, 4. edition. – München 2000, Rdn.170ff.; the traditional jurisdiction criticizing Bryde, Brun-Otto: Die bundesrepublikanische Volksdemokratie als Irrweg der Demokratietheorie. In: Staatswissenschaften und Staatspraxis, 1994, p.305-330

¹² John, Peter; Cole, Alistair: Policy Networks and Local Political Leadership in Britain and France. In: The New Politics of British Local Governance. Ed.: Stoker, Gerry. – London 2000, p.72–90 (87); Michels, Ank: Improving democratic governance – Citizen participation in urban policy-making. Paper, presented in the EGPA conference, study group 7, Oeiras/Portugal 2003; Stoker, Gerry: Transforming Local Governance. – London 2004, S. 209; Stewart; Murray: Collaboration in multi-actor governance. In: Urban Governance and Democracy, 2005, (see note 2) p.149-167 (162)

¹³ Hill, Hermann: Integratives Verwaltungshandeln – Neue Formen der Kommunikation und Bürgermitwirkung, 1993, p.973-982 (979)

This discussion shows that traditional democratic doctrine doesn't really apply to practical problems of democracy experienced in the daily life of municipalities. Therefore we need a new legal view of democracy that is able to cope with such problems and to match constitutional and practical aspects.

Some scholars see in a new judgement of the German Federal Constitutional Court a careful opening up of its traditional principles relating democracy from a more formal to a more pluralistic understanding of legitimacy and to more substantial and evolutionary view of democracy.¹⁴ This can point out the direction in which a further development of local democracy may be possible.

III. Transformation of Local Self-Government

Before a new concept of joining traditional and modern forms of democratic legitimacy can be elaborated on, some trends and shifts in local self-government must be analysed. There are three main trends: The change of the substance of local decision making, the change of the decision making power of the elected council and the change of the role of the citizens. These changes lead to a transformation of local self-government and require new approaches to democratic control and legitimacy.

Local affairs as the matter of local self-government have become increasingly vague. This goes for the principle of territory, the principle of universality and the separation of community affairs and private concerns. Local affairs tend to extend in regional contexts, regional aspects overlap with local interests and decisions. Citizens not only live in one municipality, they fulfil their needs for working places, shopping, sports, culture and leisure facilities in several municipalities all over the region.¹⁵ Because of this interweaving of interests local councils cannot decide on local affairs as if their community were an island. They have to consider different and mutual influences.

Furthermore we have to ask the question, whether all municipalities have to produce all the necessary services or whether it is possible and useful to produce some services at a central place and only deliver them locally. New

¹⁴ Bundesverfassungsgericht (Federal Constitutional Court), Amtl. Entscheidungssammlung (Official Documents), Vol.107 (2002), p.59-103 (91 ff.); Hanebeck, Alexander: Bundesverfassungsgericht und Demokratieprinzip – Zwischen monistischem und pluralistischem Demokratieverständnis. In: Die Öffentliche Verwaltung 2004, p.901-909 (908); Jestedt, Matthias: Demokratische Legitimation – quo vadis? In: Juristische Schulung 2004, p.649-653 (653)

¹⁵ Auf dem Weg zur Stadt 2030. Ed.: Bundesministerium für Bildung und Forschung (BMBF). – Berlin 2003, p.26; to „Loss of Congruence“ see also Scharpf, Fritz W.: Interdependence and Democratic Legitimation. In: Disaffected Democracies. Ed.: Pharr, Susan J.; Putman, Robert D. – Princeton, New Jersey 2000, p.101-120 (106); Low, Murray: Cities as Spaces of Democracy: Complexity, Scale and Governance. In: Spaces of Democracy. Ed.: Barnett, Clive; Low, Murray. – London a.o. 2004, p.129-146; Skelcher, Chris: Jurisdictional Integrity, Polycentrism, and the Design of Democratic Governance. In: Governance: An International Journal of Policy, Administration, and Institutions 2005, p.89-110

developments in electronic government offer the possibility to do so, e.g. shared services and networks of delivery.¹⁶

We shouldn't reduce our understanding of local communities to the jurisdictional body and its authorities and thus fade out the social and political potentials of the municipal society.¹⁷ It is necessary to use and bring into action private and societal interests for the accomplishment of public affairs. The role of the active citizen should therefore develop from a mere stakeholder position to an authorised representative for the public interest. Thus individual benefits could be combined with engagement for the common good.¹⁸

A second field of transformation is represented by the change in the decision making power of the elected council that is more and more weakened or even partly de-legitimised. The authority of the elected council is not only bound to the borders of the municipal territory, but also fixed to the election periods. On the contrary the living space of the citizens, the complexity of their life events and their horizon of interest and responsibility reach beyond these spatial and temporal frontiers and are oriented on holistic and sustainable perspectives. The interests of the mandators and the range of the mandate given by the election are diverging and tend to disintegrate. Further de-legitimising effects are: light polling, mistrust because of party policies, clientele orientation or personal interests of some politicians¹⁹ as well as the increase of conflict management processes like negotiation by third persons because of loss of trust in council decisions.

Amending laws to the municipal codes have further weakened the decision making power of the elected councils. The mayor being directly elected by the citizens can confront the council with this authorisation and even put it under pressure with citizen participation. The opposition can use citizen groups by making them propose a motion for the agenda of the council's session or ask for

¹⁶ Lenk, Klaus: Perspektiven für eine neue Verwaltungsorganisation durch E-Government. In: Verwaltungsinformatik als Modernisierungschance. – Berlin 2004, p.134-153; Hill, Hermann: Transformation of the administration by e-government, German Journal of Urban Studies, Vol. 45 (2004), No. 2; www.difu.de/index.shtml?/publikationen/dfk/en/

¹⁷ Heinelt, Hubert: Governance auf lokaler Ebene. In: Governance – Regieren in komplexen Regelsystemen. Ed.: Benz, Arthur. – Wiesbaden 2004, p.29-44 (35); Walther, Uwe-Jens: Ambitionen und Ambivalenzen eines Programms. Die Soziale Stadt zwischen neuen Herausforderungen und alten Lösungen. In: Soziale Stadt – Zwischenbilanzen. – Opladen 2002, p.23-43 (40)

¹⁸ Schuppert, Gunnar Folke: Assoziative Demokratie. Zum Platz des organisierten Menschen in der Demokratietheorie. In: Politische Beteiligung und Bürgerengagement in Deutschland. Eds.: Klein, Ansgar; Schmalz-Bruns, Rainer, Bonn 1997, p.114-152 (123); Wollmann, Hellmut: The Civil Community („Bürgergemeinde“) in Germany – Its Double Nature as Political and as (Civil) Societal Community. In: German Journal of Urban Studies, Vol. 41 (2002), No. 2, www.difu.de/index.shtml?/publikationen/dfk/en unterscheidet zwischen gemeinwohl-orientierten (public regarding) und privatnützigen Aktivitäten (private regarding)

¹⁹ Kodolitsch, Paul von: The Debates about Citizen and Local Government – a "Neverending story"? German Journal of Urban Studies, Vol.41 (2002), No.2; www.difu.de/index.shtml?/publikationen/dfk/en

a direct citizen decision (referendum). Thus the council's decision can be influenced and a loss of power and independence occurs.²⁰

New Public Management has also contributed to a weakening of the council's position. Outsourcing and contracting out of services partly obstructs the overall control of the council.²¹ Customer-surveys carried out by the administration bypass the representation of the citizens by the elected council, a new model of "customer democracy" evolves when public servants adjust their behaviour directly to the needs of their customers. Benchmarking with other municipalities gives rise to standardised services and drives back political aspects leading to municipal specification.²² Last, but not least the decision making power of the council suffers from decreasing financial means and provisions coming from the state and national level.

Altogether there is a growing diffusion and dilution of the representative legitimacy scheme.²³ These developments on the local level don't occur in isolation. Similar developments can be found on state level when democratic structures are undermined by different sorts of cooperation and overlapping competences among public and private partners. There is also the incorporation of decision blocks from outside the parliamentary sphere. All these developments can break the seamless legitimacy chain from the totality of citizens to the final decision. If public services are privatised there are different forms of citizens' influence and protest which are then often focussed on multi-national corporations.²⁴ If these services are delivered by state or municipal bodies decision making, participative and reactive processes are in general restricted to traditional forms.

A third field of transformation besides the substance and the power of local decision making can be found in the changing role of the citizens themselves as owners or holders of the municipal body²⁵. If the traditional theory traces back

²⁰ Bogumil, Jörg; Holtkamp, Lars; Kißler, Leo: Modernisierung lokaler Politik. Auswirkungen auf das kommunale Entscheidungssystem. In: Status-Report Verwaltungsreform. Eine Zwischenbilanz nach zehn Jahren. Ed.: Jann, Werner, u.a. – Berlin 2004, p.64-74

²¹ Wollmann, Helmut: Is Germany's Traditional Type of Local Self-Government Being Phased out? *German Journal of Urban Studies*, Vol. 41 (2002), No.1, www.difu.de/index.shtml?/publikationen/dfk/en

²² Mehde, Veit: Zwischen New Public Management und Democratic Renewal – Neue Entwicklungen im britischen Kommunalrecht. In: *Verwaltungsarchiv* 2004, p.257-279 (266,277)

²³ Lübke-Wolff, Gertrude: Europäisches und nationales Verfassungsrecht. In: *Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer (VVDStRL)* Vol. 60, 2001, p.246-289 (281)

²⁴ Roth, Roland: Participatory Governance and Urban Citizenship. In: *Participatory Governance in Multi-Level Context*. Ed.: Heinelt, Hubert, et. al. – Opladen 2002, p.75-82 (80)

²⁵ Schmitter, Philippe C.: Participation in Governance Arrangements: Is there any reason to expect it will achieve „Sustainable and Innovative policies in a Multi-level Context“? In: *Participatory Governance*. Ed.: Grote, Jürgen R.; Gbikpi, Bernard. – Opladen 2002, p.51-69 (62); Heinelt, Hubert: Achieving Sustainable and Innovative Policies through Participatory Governance in a Multi-Level Context: Theoretical Issues. In: *Participatory Governance in a Multi-Level Context*, *ibid.*, p.17-32 „From Citizens to Holders and Back“; Slaton, Christa Daryl; Arthur Jeremy L.: *Public Administration for a Democratic Society*:

democratic legitimacy to the totality of the citizens this legitimacy chain needs a certain degree of conformity of the people as such.²⁶ In reality, however, we witness an increase of differences and single interests. Economical, ecological, societal and cultural developments as well as the technological turn have lead to *"new types of citizenship"* and even require a *"re-composition and rescaling of citizenship"*²⁷. In this context it is significant that the German Federal Constitutional Court in its latest judgement again emphasizes that behind the theory of people's sovereignty lies the idea of the free self-determination of a single person.²⁸ In processes with a potential for conflicts the problem is always the perception of social reality which may differ greatly from one person to another. So we have to give everybody a voice and we need mutual respect and learning.²⁹ The gaps which result from the fragmentation of interests and the variety of perspectives can hardly be bridged by conform or uniform processes designed to form democratic will and making a democratic decision. On the contrary new forms of deliberative democracy³⁰ are necessary.

In general uncertainty, complexity, variety and dynamics are identified as conditions for state acting. In view of many topics, many goals, many interests and many perspectives as well as many actors and arenas a variety of arrangements is necessary. Therefore we need forms of regulation and controlling that meet this variety on one side and on the other side use it as a resource for democratic decisions.³¹ *"Old political systems do not have enough capacity to yield the policies necessary for dynamic local economies in an age of rapid change."*³²

IV. International developments

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- Instilling Public Trust through Greater Collaboration with Citizens. In: e-Transformation in Governance. Eds.: Mälkiä, Matti et al. – Hershey, London 2004, p.110-130 (111)
- ²⁶ Scharpf, Fritz W.: Interdependence and Democratic Legitimation. In: Disaffected Democracies. Ed.: Pharr, Susan J.; Putman, Robert D. – Princeton, New Jersey 2000, p.101–120 (103)
- ²⁷ Roth, Roland: Participatory Governance and Urban Citizenship. In: Participatory Governance in Multi-Level Context. Ed.: Heinelt, Hubert, et.al – Opladen 2002, p.75-82, (p.79); Saretzki, Thomas: Technological Governance – Technological Citizenship? In: Participatory Governance in Multi-Level Context, Ed.: Heinelt, Hubert, et. al. – Opladen 2002, p.83-105
- ²⁸ Entscheidungen des Bundesverfassungsgerichts (Federal Constitutional Court, Official Documents) Vol.107 (2002), p.92; Hanebeck, Alexander: Der demokratische Bundesstaat des Grundgesetzes. – Berlin 2004, p.84
- ²⁹ Wewer, Göttrik: Vom Bürger zum Kunden? Beteiligungsmodelle und Verwaltungsreform. In: Politische Beteiligung und Bürgerengagement in Deutschland, (see note 18) p.448-488 (466)
- ³⁰ Dryzek, John S.: Deliberative Democracy and Beyond. – Oxford 2000; Deliberative Policy Analysis. Understanding Governance in the Network Society. Eds.: Hajer, Maarten H.; Wagenaar, Hendrik. – Cambridge 2003; Deliberation and Decision. Eds.: Aaken, Anne van, et al. – Aldershot 2004
- ³¹ Hill, Hermann: Good Governance – Konzepte und Kontexte. In: Governance Forschung, Vol. 1. Ed.: Schuppert, Gunnar Folke. – Baden-Baden 2005, p.220-250 (230), Kooiman, Jan: Governing as Governance. – London a.o. 2003
- ³² John, Peter; Cole, Alistair: Policy Networks, (see note 12), p.82

Some approaches that often recur in the international discussion are related to the concept of Urban resp. Regional Governance. The so-called Regulation Theory deals with the interplay of economic development and forms of regulation of the society presuming a linkage of economic, socio-cultural and political-administrative sub-systems.³³ Some authors quote Antonio Gramsci and his integrative understanding of the state who defines civil society and the dominant relations of power within as part of the extended state.³⁴

Closely related with the governance approach is the Urban Regime-concept which gained importance mainly in the United States.³⁵ It deals with political arrangements of actors from the public sphere and private enterprises that try to get influence on political decision making processes. It is noted critically that *„the regime concept can only explain certain aspects of governance; it illuminates the relationships and exchanges between public and private, rather than defines how a city is governed... Business is one set of actors among many, is itself fractured, and has various allegiances, either to national politics or to parties of various political colours“*.³⁶

In the United Kingdom new approaches to democratic control and cooperation are discussed under the term of “community governance”³⁷. On one side they deal with the division between national level and local level and the evolution of a local identity, called “New Localism”,³⁸ on the other side they ask, which role the elected council can play in the context of the various actors. For all reasons you have to pay attention to *“the importance of locality”* and *“the uniqueness of*

³³ Fürst, Dietrich: Regional Governance zwischen Wohlfahrtsstaat und neo-liberaler Marktwirtschaft. In: Demokratien in Europa. Eds.: Katenhusen, Ines; Lampring, Wolfram. - Opladen 2003, p.251-267 (256); Painter, Joe; Goodwin, Mark: Local Governance After Fordism: A Regulationist Perspective. In: The New Politics of British Local Governance, (see ft.note 12); p.33-53; Stiens, Gerhard: Regionale Regulation und faktische Auflösung überregionaler Raumordnung? In: Informationen zur Raumentwicklung 9/10.2000, p.517-535

³⁴ Winter, Jens: Regulation und Hegemonie in nach-fordistischen Zeiten. In: Fit für den Postfordismus? Eds.: Brand, Ulrich; Raza, Werner. – Münster 2003, p.196-216 (203)

³⁵ Harding, Alan: Regime Formation in Manchester and Edinburgh. In: The New Politics of British Local Governance, 2000, (see note 12); p.54-71; Mossberger, Karen; Stoker, Gerry: The Evolution of Urban Regime Theory. In: Urban Affairs Review 2001, S. 810-835; Stone, Clarence N.: Looking Back to Look Forward. Reflections on Urban Regime Analysis. In: Urban Affairs Review 2005, p.309-341

³⁶ John, Peter; Cole, Alistair: Policy Networks (see note 12); p.84

³⁷ Clarke, Michael; Stewart, John: The Local Authority and the New Community Governance. In: Regional Studies 1994, p.201-219; Sullivan, Helen: Modernisation, Democratisation and Community Governance. In: Local Government Studies 2001, p.1-24; Sullivan, Helen: Community, Governance and Local Government: A Shoe That Fits or the Emperor’s New Clothes? In: British Local Government into the 21st Century. Eds.: Stoker, Gerry; Wilson, David. – London 2004, p.182-198; Sommerville, Peter: Community governance and democracy. In: Policy & Politics 2005, p.117-144

³⁸ Stoker, Gerry; Wilson, David: Conclusions: New Ways of Being Local Government. In: British Local Government..., (see note 37) p.247-263 (252); Pratchett, Lawrence: Local Autonomy, Local Democracy and the ‚New Localism‘. In: Political Studies 2004, p.358-375

*place*³⁹ i.e. the constellation of the actors may differ from municipality to municipality. The elected council should have the “*power to lead and frame action*”,⁴⁰ but “*whereas local government leadership was always difficult, local governance leadership requires almost super-human skills*”.⁴¹

John Stewart⁴² defines as a specific feature of the elected council that it is a “*multi-contact authority*” with more relations to different actors than any other organisation. This gives an outstanding position to the council. It is not allowed to understand its role only as an agency for providing services, but above all as a political institution. “*Leadership in community governance*” involves a concern for the area, a readiness to work in many different ways, the realisation of community resources and the closeness to citizens and their communities, so that the authority in choice and voice reflects their concerns”. Stewart emphasises: “*Each authority has to find its own route in response to its own publics... Greater citizen participation does not turn the role of the elected representatives into that of delegate. The public do not speak with one voice, but with many, and the role of the elected representatives is to seek to reconcile or to balance those views in political judgement.*”

Gerry Stoker⁴³ points out: “*From the community governance perspective co-ordination through bureaucracy is joined by co-ordination through regulation at arm’s length, contracting through the market, responding to interest articulation and developing bonds of loyalty or trust*”. In his “*Networked community governance model*” “*local government’s job (is) to facilitate the achievement of community objectives. Its role is to lead the debate, develop shared visions and help to ensure that appropriate resources – both public and private – are found and blended together to achieve common objectives.*” On the other side he also refers to problems that are caused by networks with regard to equal possibilities of access and the adjustment of responsibility and accountability: “*Networked governance offers a challenging perspective to traditional theories of democracy... Democracy is justified first and foremost as a protection for the individual... The protection of individual rights is seen as a necessary but not a sufficient guide to democratic practice in the twenty-first century. We need also to move beyond the still valuable but limited contribution of formal representative democracy driven by occasional elections. Democracy is more than a safety valve to protect our basic rights. It has the potential to provide the basis for learning, to drive the search for collective solutions to complex and shared problems. Networked governance provides the frame on which a more extended exchange between governors and governed can be built... As Hirst argues ,Democracy in this sense is about government by information exchange and consent, where organized publics have the means to conduct a dialogue*

³⁹ John, Peter; Cole, Alistair: Policy Networks,(see note 12) p.82 f.; Stewart, John: The Nature of British Local Government. – Basingstoke, u.a. 2000, p. 253 „The impact of Locality”

⁴⁰ Sullivan, Helen: Modernisation, Democratisation..., (see note 37), p.18

⁴¹ John, Peter; Cole, Alistair: Policy Networks, (see note 12), p.86

⁴² Stewart, John: The Nature of British Local Government. – Basingstoke 2000, p.362, 272,279,287

⁴³ Stoker, Gerry: Transforming Local Governance. – London 2004, p.24,26,165,207 ff.

with government and thus hold it to account'. The issue is not the subjection of all decisions to majority approval." We read further: *"In the democratic system the participation of all is not required; rather its defining characteristic is its openness to all."*

In the Netherlands there is in the context of the concept of "interactive policy making" also a discussion about the role of the politicians in this process.⁴⁴ They are asked to initiate and enable such processes and to assure their quality, but as it is argued, an institutional link between the interactive processes and the formal urban decision making processes is often missed. This link is taken as crucial in order to prevent the interactive process of becoming meaningless and useless.⁴⁵ Even when interactive policy making often appears as "top down participatory arrangements" or as an "democratisation from above" this approach can cause positive impacts on democracy.⁴⁶ The method of interactive policy making has also been adopted by the European Commission. The Commission will use this approach to evaluate existing policies and carry out open consultations about new initiatives.⁴⁷

The democratic legitimacy of the European Union is a recurring topic in public law and political science. *"European integration theory can be seen as a special case of democratic network governance. Today there has been little connection between these two streams of investigations. However, discussions of 'multilevel governance' and 'multilevel policy' are beginning to build bridges between the two fields."*⁴⁸ Arthur Benz⁴⁹ suggests, instead of concentrating mostly on the strengthening of parliamentary power, to use the specific sources

⁴⁴ Klijn, Erik-Hans; Koppenjan, Joop F.M.: Rediscovering the Citizen: New Roles for Politicians in Interactive Policy Making. In: Public Participation and Innovations in Community Governance. Ed.: McLaverty, Peter. – Aldershot 2002, p.141-164 (155); Esselbrugge, Monique: Citizenship and Policy-Making in the Netherlands: The limits of an interactive approach. In: Citizens and the New Governance. Ed.: Rouban, Luc. – Amsterdam, a.o. 1999, p.89-101; Esselbrugge, Monique: Interactive Policymaking and the Primacy of the Dutch Parliament: In Search of New Roles for its Legislative Function. In: Managing Parliaments in the 21st century. Eds.: Falconer, Peter, et al – Amsterdam, p.59-65; de Vries, Michael S.: Interactive Policy-Making in Local Governance: An International Comparison. In: Developing Local Governance Networks in Europe, (see note 2),p.91-106; Mayer, Igor; Edelenbos, Jurian; Monnikhof, René: Interactive Policy Development: Undermining or sustaining democracy? In: Public Administration 2005, p.179-199

⁴⁵ Edelenbos, Jurian: Institutional Implications of Interactive Governance: Insights from Dutch Practice. In: Governance: An International Journal of Policy, Administrations Institutions 2005, p.111-134

⁴⁶ Akkerman, Tjitske, et al: The Interactive State: Democratisation from Above? In: Political Studies 2004, p.82-95

⁴⁷ Hill, Hermann: Verwaltungskommunikation und Verwaltungsverfahren unter europäischem Einfluss. In: Deutsches Verwaltungsblatt 2002, p.1316-1327 (1321 f.)

⁴⁸ Skelcher, Chris: Jurisdictional Integrity Polycentrism, and the Design of Democratic Governance. In: Governance: An International Journal of Policy, Administration, and Institutions 2005, p.89-110 (p.91)

⁴⁹ Benz, Arthur: Compounded Representation in EU Multi-Level Governance. In: Linking EU and National Governance. Ed.: Kohler-Koch, Beate. – Oxford 2003, p.82-110; Héritier, Adrienne: Composite democracy in Europe: the role of transparency and access to information. In: Journal of European Public Policy 2003, p.814-833; Kohler-Koch, Beate a.o.: Europäische Integration – Europäisches Regieren. – Wiesbaden 2004, p.215

of legitimacy which offer the parliamentary, governmental and associative representation of interests in a combined model on a European level. According to his concept of "*compounded representation*" democratic legitimacy and authorisation on a European level could be composed out of different sources. Vice versa we have to ask why traditional democratic forms of legitimacy on a local level should not be opened up to new complementary sources in order to create a field for experimentation of new democratic forms. According to latest judgements of the German Federal Constitutional Court different forms and schemes of legitimacy combined could provide a sufficient level of legitimacy.⁵⁰

V. Local Regulation by concept planning and concert orchestration

The former German Chancellor Willy Brandt brought on a sense of new era about to dawn in German Politics when in 1969 he coined the phrase "Lets share more democracy". In the providing and planning state of the Seventies democratisation was mainly understood as the participation in administrative decisions. In the current ensuring or guarantor state, which means that the state doesn't deliver all services itself, but only guarantees the results, we also have to take into consideration the service delivery by private enterprises and the accomplishment of public functions by the citizenry. This requires another democratic approach, a bringing-together of different democratic sources and patterns of legitimacy. The time has come now to dare another democracy and to use the democratic potential of the private and the third sector to re-vitalize the community. The inclusion of private and societal actors represents a mode of "local capacity building" and serves to increase the capacity of the municipality for problem solving and designing the future, it represents quoting from the Article 28 of the German Constitution, the "local regulatory capacity"⁵¹.

Traditional dogmatic approaches to democratic legitimacy only ponder the part the state takes on problem solving; they can't catch the whole complexity of the matter⁵². The metaphor of the legitimacy chain, from the electorate over the parliament to the administrative bodies, in former times often quoted in the judgements of the German Federal Constitutional Court, was only suitable for describing the hierarchically structured central government. The concept of the legitimacy level⁵³ is more appropriate to admit an opening up of democratic theory across the political-administrative sphere. If the principle of democracy includes the aim to optimize⁵⁴ then there is not only asked the right distribution of work and power between state bodies, but also the cooperation between

⁵⁰ Entscheidungen des Bundesverfassungsgerichts(Federal Constitutional Court, Official Documents), Vol.83 (1990), p.72

⁵¹ Walther, Uwe-Jens: Die europäische Stadt als Soziale Stadt? In: Die europäische Stadt. Ed.: Siebel, Walter. – Frankfurt a. M. 2004, p.332-344(342)

⁵² Mehde, Veit: Ausübung von Staatsgewalt und Public Private Partnership. In: Verwaltungsarchiv 2000, p.540-565 (565)

⁵³ Federal Constitutional Court, Official Documents, Vol.83 (1990), p.60,72

⁵⁴ Hanebeck, Alexander: Der demokratische Bundesstaat des Grundgesetzes.- Berlin 2004, p.85; Hanebeck, Alexander: Bundesverfassungsgericht und Demokratieprinzip, (see note 14), p.904

state and society, given by the possibility of compounded transfer and justification of legitimacy, has to be included in this optimising process. Thus different sources and schemes of legitimacy has to be connected in order to create a qualified level of legitimacy.

Local self-government does not exist outside of the state, but - according to Article 28 of the German Constitution - within the framework of the state laws. This is why a democratic opening up of the regulatory competencies of the municipalities is only possible if it is legally authorised by the state law for the municipalities. In a second step a basis and a framework for local democratic processes should be included in the municipal main statute passed by the council. This must be an individual procedure as local contexts and constellations of actors differ greatly. The shape of democratic structures can therefore be a characteristic feature of local identity, too.

An adequate reference model could be the "Charter of Democracy"⁵⁵ known from Hämeenlinna/Finland or the "citizen charters"⁵⁶ that exist in different European states. In some German municipalities there exist regulations for the carrying out of citizen participation, e.g. in the framework of the Local Agenda 21⁵⁷. We could build up on these existing regulations. Thus, by law and statute, a staged and framed legal authorization could be established with a legitimising effect for specific locally orientated democratic procedures and experiments.

A local regulation by concept planning and concert orchestration must cover formal, organizational and procedural, as well as substantial issues. Such an approach includes the control and supervision of democratic procedures as well as the possibility to delegate part of the decision taking authority limited to a certain matter, territory and time. The concept planning results from the responsibility of the elected council for the development of the municipality. By analogy with the concept of Gender Mainstreaming in the future all private and societal actors and contributions should be taken into consideration for this concept planning right from the beginning. In the United Kingdom so-called "community plans"⁵⁸ have been developed that contain comprehensive strategies for promoting the well-being of the area. This "plan of plans" represents an overall concept, a framework and a programme for the design and development of the municipality of the future.

⁵⁵ Hill, Hermann: Die Bürgerkommune im 21. Jahrhundert. In: Neue Wege in der Kommunalpolitik. Hrsg.: Glück, Alois; Magel, Holger. – München 2000, S. 11-22 (18)

⁵⁶ Promberger, Kurt u.a.: Dienstleistungscharters. Was kann sich der Bürger von der öffentlichen Verwaltung erwarten? – Wien 2001

⁵⁷ Damkowski, Wulf; Rösener, Anke: Auf dem Weg zum Aktivierenden Staat. – Berlin 2003, p.116 ff. for the main statute of the municipality of Dürmentingen

⁵⁸ Cowell, Richard: Community planning: Fostering Participation in the Congested State? In: Local Government Studies 2004, S. 497-518

If we define Governance as the “Quality of the concert⁵⁹” the elected council is in charge of the concert orchestration seen as a coordination regime. The council is meant to act in the sense of a “management of flows⁶⁰” in order to provide the general conditions so that political processes can be developed under the best possible circumstances. Ideally thus a “co-production of policies” emerges. It is conceivable, for example, that the council calls for tenders of democratic decisions about certain projects. Furthermore a process could be started, in which groups or actors define their interests, in analogy to the process that is described in municipal codes for economic activities of the administration. The council could accept applications, make a choice and place the assignment. This would add up to a “democratic outsourcing” to the “free administration⁶¹” of private and societal organisations and groups. However, some pre-conditions for a reliable and binding decision making must be guaranteed, clear responsibility and accountability procedures, e.g. according to a given budget, are required. The council can give out assignments or contracts⁶² and act both as principal and supervisory board. For administrative handling the council could employ an office for democracy⁶³ and co-ordination.

The group or organisation that has been assigned the democratic decision making process usually will be a so-called “single purpose” organisation, whose legitimacy to make substantial decisions results from affection, relation to real life and subject-knowledge. This is why the decision of this group has to be reconsidered and approved in the light of the common good by the elected council. Thus this decision is integrated not only in a procedural, but also in a substantial way in the overall “community plan” which comprises all single policies. Furthermore - according to experiences in New Zealand - a so-called “accountability platform⁶⁴” could be established. This platform could be used by the council to account for the public about the project, the reaching of and the reasons for the decision.

In summary it may be said that there are different strands of democratic legitimacy for this regulated, i.e. staged, framed and delegated way of decision-making: The responsibility for the concept and the orchestration of the concert

⁵⁹ Bovaird, Tony; Löffler, Elke: Evaluating the quality of public governance: indicators, models and methodologies. In: International Review of Administrative Sciences, 2003, S. 313-328 (316)

⁶⁰ Schmidt, Hilmar: Nachhaltige Entwicklung. Die Globalisierung eines Leitbildes. In: Lokale „Agenda 21“ Prozesse. Ed. Heinelt, Hubert. – Opladen 2000, p.67-100 (97)

⁶¹ Schuppert, Gunnar Folke: Assoziative Demokratie (note 18), p.127 unter Berufung auf Lorenz von Stein

⁶² Wohlfahrt, Norbert; Zürker, Werner: Kontraktmanagement – ein neues Steuerungsinstrument der Stadtentwicklung? In: Städte- und Gemeinderat 1996, p.74-79; Fürst, Dietrich: Schwierigkeiten der fachübergreifenden Koordination. In: Politik der Nachhaltigkeit, Ed.: Brand, Karl-Werner. – Berlin 2002, p.179-191; Damkowski, Wulf; Rösener, Anke: Auf dem Weg zum aktivierenden Staat. (see note 57), p.137 ff.

⁶³ Klages, Helmut: Voluntary Civic Engagement in the Local Community. German Journal of Urban Studies, Vol. 41 (2002), No. 2; www.difu.de/index.shtml?publikationen/dfk/en

⁶⁴ Craig, David: Reterritorialising health: inclusive partnerships, joined-up governance and common accountability platforms in Third Way New Zealand. In: Policy & Politics 2003, p.335-352

by the elected council based on law and statute combines input-, throughput- and output-orientated issues⁶⁵.

By this approach of compounded transfer and justification a higher level of legitimacy seems to be achieved as a whole, as compared with the traditional single-handed decision making by the elected council. The pluralistic, composed decision making process is given further legitimacy through the system context provided by the council. The gain of rationality and quality, of legitimacy and acceptance, of identification and responsibility, also with regard to better prospects of implementation of the decision by the groups and citizens that have participated in the decision making process, provides a compensation for the potential deficits in formal democracy⁶⁶. Furthermore such a regulated opening up of democratic decision making could optimise the effectiveness of policy making, and the democratic outcome⁶⁷.

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⁶⁵ Hans, Michael; Heinelt, Hubert: How to achieve governability at the local level? In: Urban Governance and Democracy, Ed.: Haus, Michael, et al. – London, New York 2005, p.12-39 (15)

⁶⁶ Mehde, Veit: Ausübung von Staatsgewalt und Public Private Partnership. (see note 52), p.563: „Die Gemeinwohlsicherung... ist dabei gleichsam die materielle Seite des von der herrschenden Meinung entwickelten formellen Konzepts demokratischer Legitimation.“

⁶⁷ „Der Gesetzgeber darf ein wirksames Mitspracherecht der Betroffenen schaffen und verwaltungsexternen Sachverstand aktivieren, einen sachgerechten Interessenausgleich erleichtern und so dazu beitragen, dass die von ihm beschlossenen Zwecke und Ziele effektiver erreicht werden,“ so das Bundesverfassungsgericht zur funktionalen Selbstverwaltung (to the functional self-administration), see Amtliche Sammlung (Official Documents), Vol.107 (2002), p.59