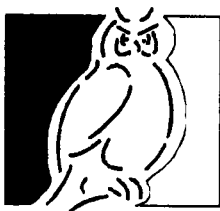


EUROPEAN COMMISSION

FORWARD STUDIES UNIT

Evolution in Governance:  
What lessons for the Commission?  
A First Assessment

Notis Lebessis  
John Paterson



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**WORKING PAPER, 1999**

# Evolutions in Governance : What Lessons for the Commission ? A First Assessment

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Notis LEBESSIS & John PATERSON\*

Over the past year, the Forward Studies Unit, in collaboration with external experts, has been engaged in a project which has considered the issue of *governance*<sup>1</sup>. The principal objectives of this project are:

- (a) to situate the present and future activity of the Commission in the broader context of the transformation of modes of governance in democratic societies - a transformation which involves both the role of public actors and the methods available to them; and
- (b) to assist the Commission in understanding the implications of this ongoing transformation and to anticipate future developments in order that it can clarify its role and better adapt its methods to this context.

The research has potential implications both for the methods employed by the Commission in its relations with external actors as it develops and elaborates European policies and for its methods of internal organisation.

This report introduces (I) the background to the project and its aims as well as (II) the interpretive framework that has been employed. It also outlines (III) what has been learnt so far and the possible implications for the Commission as well as (IV) presenting the possible next steps of the project. It is aimed at Commission staff and at external participants who, it is hoped, will take part in the next stages of the project. It should allow them to pick up the thread of the project so far and thus to participate more fully. It is also aimed at those to whom the Forward Studies Unit reports to inform them of the progress of the project so far. It is possible to begin reading the report at (III) and to return to the first two parts as required.

The research has been based on a seminar, meeting periodically throughout the year, which has brought together representatives of the services of the Commission (involved in European public policies, inter-institutional relations, horizontal co-ordination and the management of human resources) with researchers from the domain of the philosophy of law and of political and administrative science. A summary of the meetings of the seminar appears in the Appendix to this report.

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\* Notis LEBESSIS is Adviser in the Forward Studies Unit of the European Commission.

Dr John PATERSON is a Senior Lecturer at the School of Law, University of Westminster, London, formerly of the Centre for Philosophy of Law, University of Louvain.

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# 1 Introduction

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The motivations for this project are both general to the question of governance in contemporary society and particular to the Commission. The European Union (and the Commission in particular) finds itself criticised with regard to a perceived lack of popular accountability - the so-called democratic deficit. This criticism relates to a perceived increase in detailed regulation emanating from the Commission which appears to impose global homogenised standards which take little or no account of national or local conditions. Significantly, this perceived increase coincides with a deregulatory thrust in some countries which, at least rhetorically, claims to shift power away from bureaucracies and towards specific contexts.

Most often, an unfavourable comparison is drawn between the situation at the national level and that at the European level regarding opportunities for accountability. At the national level, attention is drawn to the fact that parliaments are democratically accountable at periodic elections and ministers are personally responsible (in terms of the possibility of resignation) for the functions which they carry out. At the European level, in contrast, it is pointed out that the Parliament has a comparatively weak role despite being democratically elected and largely unknown Commissioners and their officials wield power for which they are seemingly unaccountable to citizens.

While this characterisation contains elements of truth, it also masks important facts about transformations in the capabilities of *government* at the national level and about the development of new modes of *governance* which transcend traditional territorial limits in response to changing circumstances. National governments and the institutions of the European Union (most notably, the Commission) are implicated in these developments in ways which are not adequately accommodated by the concepts and forms of parliamentary democracy. The challenges presented by contemporary society in terms of complexity, diversity and interdependency mean that these traditional forms are stretched beyond their limits and that new forms begin to emerge. In the context of such challenges, judging the new forms (including Commission methods) by the standards of the old is inappropriate and risks hindering the development of modes of governance adequate to the range and magnitude of problems confronting contemporary society.

There is, therefore, a need to examine these developments in the light of an interpretive framework which is less restrictive than the traditional model of representative democracy in order that the features of new modes of governance which offer the potential for improved effectiveness and accountability can be described and understood. Only with such an understanding can their further development be encouraged in ways which improve the legitimacy of public authorities such as the Commission.

## 1.1 Transformations of Governance

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The transformations in government action and the development of new modes of governance can be traced through the following steps.

### 1.1.1 Government action is increasingly in difficulty

Government action at the national level appears increasingly to meet difficulties in attaining results which correspond to the expectations of society. These expectations, presented as explicit political goals and democratically endorsed, finally appear beyond reach in many cases. As a consequence, the credibility and the legitimacy of governments and of institutional actors who take part in social regulation are adversely affected - a problem perhaps manifest in a general reduction in political party and trade union membership and in declining electoral participation coupled with an increase in alternative representative forms such as lobby groups and interest groups.

### 1.1.2 A growing awareness of social complexity

These difficulties confronting government action are increasingly understood in terms of a social situation which is more complex than traditional explanations and methods recognise. At the societal level, for example, there is awareness of a differentiation in terms of perspectives and of values. Many contemporary problems (such as exclusion, poverty, immigration, job insecurity, environmental issues, etc.) and many contemporary regulatory domains (such as telecommunications, transport, financial markets, etc.) are now seen to transcend territorial boundaries as well as the boundaries of the traditional competencies of government and of single domains of expertise. Both the rapidity of change and the increased understanding of the interconnections among different domains render linear causal explanatory models and single disciplinary approaches insufficient. Nevertheless, structural reforms of public actors aimed at dealing with these circumstances on occasion meet with some resistance.

### 1.1.3 The paradigms of government action are in crisis

As traditional forms of government intervention come into question, so too do traditional forms of democratic representation and the formulation of social objectives. Recent returns to market-based strategies in some jurisdictions (deregulation) are a reaction to the crisis of the interventionist welfare state which nevertheless run the risk of repeating the process which rendered the welfare state necessary in the first place. At a theoretical level, therefore, the entire process of government action is under reconsideration - the production, justification and application of norms, the issue of democratic legitimacy and the role of public actors - as are the models of rationality which have underpinned the liberal state, the welfare state and more recently the deregulation movement. This process does not exist solely at the level of theory, however, but is crucially informed by contemporary practical developments in response to current problems and in anticipation of an increasingly complex, interconnected and thus uncertain future.



#### **1.1.4 New modes of governance are emerging**

At the level of practice, government action is in a state of transformation. There is a tendency to speak of changes which bring government closer to the citizen, which can better hear and understand societal concerns, which can improve transparency and accountability. Among the most obvious developments are: decentralised regulation and the disengagement of the state associated with the increased use of independent administrative agencies; decentralisation and delegation of responsibilities to replace previous hierarchical and centralised command structures; and Citizen's Charter-style initiatives. Alongside these transformations - driven by governments, even if some are inspired by the practices of private organisations - other developments are evident. As mechanisms for associating actors, both public and private, they represent pragmatic responses to social problems and new modes of governance or of co-ordination of collective action. Many of these developments represent a transcendence of traditional modes of government action. Alongside representative democracy, new forms of interest and expert representation are emerging. This in turn calls for a new conceptual vocabulary which can both adequately describe these developments and provide them with a normative foundation for the direction of future action.

In short, it is by no means the case that the situation at the national state level in terms of democratic representation and of effectiveness is as healthy as is often contended in terms of the model of parliamentary democracy. To the contrary, there is a growing awareness that the ever wider control and monitoring functions claimed by centralised national governments are at odds with their actual abilities and that these functions are being diffused among an ever more complex array of actors who defy description in terms of this traditional model. But while these new modes of governance lack accountability in these terms, their development is often testament to their technical effectiveness and efficiency as well as their flexibility in comparison with the traditional organs of government. Similarly, there is a recognition that these new modes constitute alternative forms of representation and, thus, may offer the potential for accountability in other ways.

## 1.2 Governance and the Commission

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### 1.2.1 The experience of the Commission

The Commission is by no means on the periphery of these developments but is rather directly implicated in them. In a certain sense, one can see the European Union and the Commission as a response by the Member States to the problems of complexity and governability. As a promoter of European policies, the Commission has become the focus of attention for an extraordinary range of interest and lobby groups especially since the Single European Act. In this way, it has become involved in and helped to establish some of the new modes of governance mentioned above which mobilise and co-ordinate affected actors, experts and representative bodies in networks which are frequently organised along the lines of interest rather than on the basis of territory or nationality. As the partner of national, regional and local administrations with whom it shares the responsibility for the implementation of policies, it has come into contact with the difficulties which these government actors are experiencing in terms of both material and cognitive resources. It is, thus, aware that the criticism of a lack of accountability and transparency which is often leveled at the Commission with regard to the implementation of European policies may often have as much if not more to do with shortcomings and difficulties at the national, regional and local levels. It is aware also, therefore, of a need to address problems on the basis of the co-ordination of all of these levels.

In addition to the question of the Commission's relations with external actors in this context of complexity, the question of its internal organisation also arises. On the one hand, the Commission has tended to reproduce the functional models established by national administrations (demarcation of competencies, methods of action, tendency towards centralised solutions). On the other hand, it has also encountered, perhaps to a greater extent than national administrations, the dominant characteristics of modern societies (diversity, complexity, interdependency, uncertainty) which challenge the functional approach. There is thus a tension between the Commission's functional organisation and the undoubted complexity of the situation it confronts. This tension has given rise to a need for the Commission to develop modes of internal organisation which seek to transcend the limits of specific functional domains.

### 1.2.2 Examples of its response

The experience of the Commission has, then, led it to adopt or develop methods both as regards its relations with external actors and as regards its internal co-ordination which can better accommodate complex interdependent problems. The environment provides a useful example of the ways in which such problems impact on the methods of governance. Most obviously, this particular problem has stressed the need for policies to be integrated. Many policies, such as those relating to transport, energy and agriculture, have direct effects on the environment and the attainment of objectives which are desirable in terms of transport, of energy or of agriculture may produce effects which are detrimental to the environment. There is a need, therefore, to move from *sectoral* to *horizontal* policy-making. The Commission has responded to this need for integrated policies by such methods as the requirement for *a priori* impact analysis, etc.

Similarly, a complex problem such as the environment demonstrates the limits of traditional approaches to regulation where policies were seen to be founded on stable models upon which detailed regulatory programmes could be established and implemented. The constant production

of new (and often contentious and contradictory) information about environmental issues, however, renders this approach to regulation obsolete. There is a need, then, to move from a *rigid and top-down* approach to regulation to a *flexible and inclusive* approach. An example of a response to this type of problem at the European level can be seen in the 'new approach' to technical harmonisation and equally in the increasing importance of wide consultation at all stages of the policy process.

The same feature of complex problems also calls for the implementation of ongoing monitoring and evaluation procedures. In the field of the environment such a response can be seen in the requirement for each DG to evaluate regularly its environmental performance. More generally, such a response is evident in the generalised use of revision clauses in new policies, in the establishment of monitoring committees and in the emphasis placed on evaluation in the *Sound and Efficient Management 2000* initiative.

In general, the emergence of complex problems highlights the limits of the Commission's policy-making and executive abilities and in the field of the environment, for example, it is significant that it has recently begun to stress the need to seek ways of *co-ordinating* the resources and abilities of actors at lower levels both for the generation of information and for the implementation of policies in a context where it has found that its existing tools under the Treaty are inadequate.

The *Better Lawmaking* initiative of recent years focusing on how the Commission is implementing the principles of subsidiarity and proportionality also testifies to a certain transformation in the forms of governance employed at the European level and to the need to develop and diffuse them more widely. This initiative seeks to achieve the benefits offered by such methods as consultation by *Green Papers*, which aim to inform the legislative process more adequately, and *Framework Directives*, where means of implementation are left for lower level decisions. It also seeks to encourage the *regular revision of legislative instruments*, the *better targeting* of legislative objectives, consideration of *alternatives to regulation* and concern with *better accessibility to legislation*.

First steps, then, have been taken at the European level in meeting the challenges of a more complex policy context. The extent of the innovation involved in these methods, however, has not always been fully appreciated and thus not fully described and assessed - not least because the categories with which political and administrative realities are normally described derive from traditional paradigms and national frameworks. The need, then, is to carry out this description and assessment in order to understand fully the potential benefits and potential problems which attend these new methods both in terms of effectiveness and of accountability. The outcome of such a process has implications for the legitimacy of European policies in the context of complex differentiated societies and of complex interdependent problems.

### 1.3 The Aims of this Project

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This project, then, aims essentially to achieve three things:

- (a) to understand better 'where we are', that is to say to situate the present and future action of the Commission in the broader context of the transformation of modes of governance evident in democratic societies;
- (b) to understand better 'where we are going', that is to say the ways in which this context and the governance methods appropriate to it will evolve; and
- (c) to consider the broad implications for the Commission in terms of its role and its methods.

It is usual to describe the Commission as having three primary functions: the guardian of the Treaty; an initiator of European policies; and a certain executive role. It is already clear from what has been said in the foregoing sections that both the context within which the Commission carries out these functions and the means by which it does so are changing in ways which traditional political and administrative forms and concepts are hard put to encompass. But if these familiar forms and concepts are at or beyond the limits of their explanatory power, can we be sure that we are sufficiently aware of the implications of our current actions? What does it mean to have these functions in the current context?

If we understand the current context to require the taking into account of more perspectives, then what will be the important tasks for the Commission? What specific tools and competencies will it require? These are questions which will, of course, become more pressing in the context of enlargement.

In short, if new modes of governance mark such a step change from the standard understanding of the regulatory process, what will be the implications for the Commission in terms of each of its functions? What will it mean to be the guardian of the Treaty, an initiator of European policies and to have an executive role when the implementation of policy in terms of the Treaty may be by means of more diffuse, decentralised and flexible structures of norm production and application? The answer to that question will be a new definition of the principle of subsidiarity.

Nor are these questions which affect only the Commission in itself, but also its relationships with other European institutions - notably the Parliament, the Committee of the Regions and the Economic and Social Committee, all of which have varying representative roles which may take on renewed and enhanced relevance in this context.

Attempting to answer these questions will help the Commission to develop a clearer vision of its role and the methods by which it can fulfil it in such a way as to improve both its external legitimacy and its internal motivation.

## 2 An Interpretive Framework

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These departure points have helped to delimit the field of interest and the problematic from the outset. The consequent research has:

- (a) posed a working hypothesis on the evolution of governance; and
- (b) engaged in a process to test this hypothesis based on the work of a seminar which has met periodically throughout the year.

In other words, an interpretive framework which attempts to describe and account for the emergence of new modes of governance has been proposed. This in turn has been confronted with practical experience from a number of European jurisdictions in order that its value (both descriptive and normative) can be assessed. A summary of the meetings of the seminar appears in the Appendix to this report.

### 2.1 Its Theoretical and Empirical Roots

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The working hypothesis upon which the project has proceeded incorporates theoretical advances in the domains of the theory of language and of communication, of political philosophy and of the human sciences. It describes the development of western democratic societies on the basis of the distinctive types of rationality which have underpinned the different stages of development. The progression traced is from the classical liberal state, through the interventionist welfare state, to the situation evident in more recent years that is commonly referred to as the crisis of the welfare state. The rationality underpinning the classical liberal state can be described as *formal* with the state providing a legal framework within which individuals could contract freely. The welfare state, by contrast, has been characterised by *substantive* rationality. Here the state has intervened in ever more areas of social life to correct the market failures of the liberal state, to guarantee minimum standards of living, to protect workers and consumers and so on. This intervention has proceeded on the basis that the organs of government have the cognitive and material resources and abilities to understand and resolve the problems of society - in other words, that public actors can define problems, determine their scope, formulate modes of action, implement them and achieve predicted desired results.

As the claims of government and the expectations of society have grown, however, the limits of the interventionist state have become all too evident and a situation of crisis has been reached. One response to this crisis has been deregulation which can be seen in these terms to represent a return to formal rationality. This approach sees the problems of the welfare state in terms of inefficiencies and inadequate incentives and attempts to address them with market-based solutions. The possibility of a vicious circle here is all too evident.

*By contrast, the working hypothesis of this project suggests that this crisis is one of rationality and that both formal and substantive approaches must be transcended if such a vicious circle is to be avoided. Whereas both of these approaches have faith ultimately in the application of reason to discover, understand and control the causal relations that make up physical and social reality, the working hypothesis, based on procedural rationality, highlights the fact that this is inevitably a process of a construction of reality. As a result, all models of reality must be understood to be inherently contingent and unstable.*

*Accepting this to be the case means that there is no single universal model of reality and equally no means by which we could eventually arrive at a definitive version of reality. This, however, does not mean that we are left without hope. From experience, it is clear that agreement and shared meanings are possible. But a mutual acceptance of the contingency of models and a mutual striving to understand the models upon which others operate improves the value of reality constructions. Equally, this cannot be a one-off process. The contingency and constructed nature of models of reality mean that they are inherently unstable and must be continually open to modification. In other words, they must be continually open to the possibility of learning. As a consequence, the emphasis shifts away from improving information and action based on a dominant model, as in formal and substantive rationality, and towards a concern with the adequacy of the procedures by which different models are exposed to each other, that is confronted with their own contingency and encouraged into a posture of collective learning. In this way, what is universal is less the content of models than the procedures which develop this understanding of contingency and the need for learning.*

The hypothesis, therefore, seeks to demonstrate the limits of formal and substantive rationality as a means of freeing the debate about government action from these constraints. It goes on to examine new practices in social regulation unbound by traditional concepts and looks for evidence of developments which indicate a practical response to the limits of the classical liberal and welfare states. Thus, in particular, it is interested in such practices as broader consultation; negotiated rule making; independent administrative authorities; judicial review of administrative action; innovative regulatory forms in the domain of the environment and the control of technology; and the increased use of evaluation and audit mechanisms.

## 2.2 Its Proposals

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On a more normative level, the hypothesis thus advances the notion of the emergence of a new mode of democratic regulation which rests on proceduralisation of the production and the application of norms, and more generally, of the co-ordination of collective action and the modes of structuration of collective actors. This mode of regulation does not substitute the foregoing substantive modes but rather represents an attempt to increase their potential by *achieving a better linkage between systems of knowledge: bureaucratic, expert, social, etc.*

In the context of complexity, of the pluralisation of explanatory models, of interdependency and of uncertainty, the centralised and *a priori* formulation of public problems (let alone solutions) as supposed by substantive rationality is rendered difficult. Coupled with the consequent difficulty of organising collective action on the basis of standardised norms, this situation suggests the creation of opportunities for the formulation of problems which brings together all affected actors in settings where there is the possibility for collective or mutual learning - in other words, the *contextualisation of the production and the application of norms.*

Procedural regulation thus affects the procedures of participation of collective actors in these instances, from the definition of public problems and of objectives, through the development of principles and mechanisms of action, up to their evaluation and the possibility of redefinition and reformulation. *It involves affected actors in clarifying the presuppositions and hypotheses that they bring to a particular issue, the mutual critique of those positions, the consequent possibility of their evolution and thus of collective learning.* The fact that this is not a one-off, unilinear process but rather one that involves the ongoing re-examination of the context and its reinsertion

into the process (*a feedback loop*) means that the limitations of substantive rationality can be avoided.

There is no longer any assumption that government organs can themselves adequately define problems, formulate solutions and implement them. Nor is there any assumption that simple prior consultation with a limited set of dominant actors together with expert input is sufficient to supplement the activities of the organs of government. Instead there is a recognition that the entire regulatory chain must be opened up in a process which in its attempt to involve and engage the resources of all affected actors at all stages can have profound effects on both accountability and effectiveness. By seeking in this way to ensure that democracy genuinely becomes a process of knowledge production by and with those for whom that knowledge is deployed to serve and equally involving those actors in its deployment, the basic parliamentary legitimacy and the effectiveness of government action can thus be reinforced by proceduralisation in the form of the contextualisation of the production and application of norms.





### 3 Clarifications and Findings

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The outcome of the project so far has been generally to confirm both the situation which motivated the exercise and the interpretive framework which sought to describe and account for the emergence of new modes of governance which are better adapted to this new context in terms of their effectiveness and in terms of the opportunities they offer for accountability.

The discussions which have been an integral part of the project, allowing Commission personnel to confront external experts in law and administration with their own experience, has also enabled the Commission's involvement in these transformations of governance to begin to be clarified - its current position, the possible evolution of its role and methods and the broader implications.

#### 3.1 The New Context for Government Action

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A general theme running through the various interventions by external experts taking part in this project has been the context of complexity, diversity, interdependence and uncertainty within which government action must now operate. All pointed to a situation of increasing complexity in which the most pressing problems of society appear beyond the reach of the political programmes and the bureaucratic administrative bodies which have traditionally been deployed to resolve them. All pointed similarly to an increasing awareness of the interdependency and multiple connectivity of such problems which leads to new difficulties of co-ordination for public actors. Problems of transport, for example, are now seen also in terms of problems of environmental protection, public health and regional development to name only a few. Similarly, urban issues involve a complex mix of such questions as housing, planning, policing, drugs policy among many others which is by no means easy to define in advance, is dynamically evolving and represents a considerable challenge to the control assumptions of traditional government actors.

In conjunction with this increased complexity and interdependency, the presentations by the various external participants also revealed the importance of a growing awareness of the different perspectives and values that can be brought to bear on these problems. At the political level, this diversification of values threatens to render the notion of the general will which underpins the traditional models of democratically representative government redundant. At the level of government action, such a diversification of perspectives or of systems of knowledge similarly threatens the unilinear expert models upon which regulatory programmes have traditionally been based. At the extreme, such a situation leads to problems of radical uncertainty, already evident, for example, in certain aspects of environmental policy or even in the recent crisis surrounding mad cow disease.

The net result of this situation is that the model of representative democracy and the bureaucratic state upon which government action has traditionally been founded is increasingly inadequate to cope with both the scale of the problems confronting it and with the emergence of new governance arrangements. As pre-existing modes show signs of strain, new arrangements are introduced, either as part of a government response or more spontaneously, which associate affected actors on a more context-specific basis. These arrangements often do not conform to standard assumptions about accountability or about how effectiveness is to be achieved. Thus, they may often seek, for example, to engage context-specific expertise or values in the production

and application of rules rather than imposing them from above on the basis of expert models prevailing in the bureaucracy.

Developments such as these mark a break with the position where representatives are democratically elected, formulate broad policies in legislative chambers and oversee their detailed implementation by bureaucratic government departments. Instead, the process of policy formulation and implementation is increasingly a more collective effort with public actors playing a more enabling role - neither imposing a particular understanding of the problems to be tackled nor of the means by which they might be resolved. And yet, despite this undoubted shift, the rhetoric of national politics frequently continues to insist on the validity of the forms and concepts of representative democracy with the primacy of periodic elections and the ability of politically-led, bureaucratic government to formulate both problems and solutions.

One result of this rhetorical insistence on the validity of the model of representative democracy is that the Commission, as a promoter of European policy and as the partner of national administrations in its implementation, is frequently portrayed as lacking legitimacy in terms of that model. The current context within which government action must operate, as revealed in the various presentations during this project, indicates, however, that the Commission's position should not solely or necessarily depend upon an assessment in terms of such forms and concepts as periodic election or of the centralised implementation of standardised solutions. Rather, in this context, the Commission, in common with other public actors, must be considered in terms of its ability to adapt its role and its methods to the nature of the situation it confronts.

In the next section, we will consider this evolution of role and method. For the present, it becomes clear that *the contemporary context presents both a challenge and an opportunity to the Commission*. The *challenge* consists in overcoming objections to its actions based on a model of legitimacy that is increasingly at odds with the reality of governance at all levels and in continuing to adapt its role and the methods it deploys to the context of complex, interdependent problems, diverse perspectives and uncertainty. The *opportunity* consists in harnessing and further encouraging the emergent reality of new modes of governance at other levels in order that these can be integrated into the process of the formulation and implementation of European policy. The *prize* is greater technical effectiveness, new opportunities for accountability and thus the improved legitimacy of European action. If attained, this outcome has the significant advantage that it offers genuine accountability rather than the increasingly symbolic form available under the model of representative democracy.

## 3.2 New Modes of Governance

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### 3.2.1 A new constitutive role for public actors

The working hypothesis or interpretive framework with which this project began proposed that new modes of governance represent the emergence of a procedural rationality which seeks to account for and resolve the difficulties encountered by the formal rationality of the classical liberal state and the substantive rationality of the interventionist welfare state (see especially the interventions by Lenoble & De Munck).

By examining practical developments in a number of European jurisdictions (notably France, Germany and the United Kingdom), the usefulness of this interpretive framework has been tested. In all cases, evidence was presented of an emerging and developing situation in which the standard model of the state and its actors is profoundly challenged. This was evident across a range of issues, such as environmental policy and health and safety, and throughout the process of regulation from the definition of problems through the implementation of mechanisms of action to the evaluation and reformulation of policies.

In place of the notion of bureaucratic authorities formulating and implementing rules on the basis of politically defined programmes, new arrangements emerge which indicate a transformed role for public actors and see them deploying methods other than those which have traditionally been found in the administrative toolbox, such as centrally defined and generalisable detailed prescriptive rules founded on stable expert models.

Thus, during the project, examples of *new regulatory forms* were shown which shift responsibility away from the administrators who previously took policy and detailed decisions. These examples arise in cases where the previous prescriptive approach has been shown to be inadequate by the emergence of unforeseen events. Such circumstances call into question both the expert models which underlie the regulatory regimes and the ability of bureaucratic departments to prescribe in sufficient detail in situations where complexity and interdependency produce a degree of uncertainty which renders the linear causal model of regulation helpless. In such situations, associated in particular with such issues as the control of technology (see Paterson) and environmental protection (see Ladeur), *public authorities begin to adopt a role of encouraging and supporting procedures in specific contexts which associate the different stakeholders. These procedures aim at one level to harness the variety of expertise which is available in each situation - expertise which under traditional regulatory forms is often unrecognised. Similarly, they aim by their inclusive and transparent nature to ensure a legitimate production of rules - the fact that all stakeholders are involved means that there is a greater chance of different perspectives being considered, of collective learning and of assurance that concerns have been addressed. Lastly, by encouraging a context-specific and inclusive application of these rules which similarly seeks to engage the different stakeholders, these procedures aim to improve effectiveness as well as openness to new information and emerging problems which in turn leads to improved flexibility and the ability to integrate the demands of other policies. The public authorities in such circumstances, in addition to their role of encouraging and supporting these procedures, frequently take on an auditing or oversight role which seeks to ensure the ongoing adequacy of the procedures and the attainment of collective objectives by the means agreed. In sum, public actors take on a role of developing and encouraging constitutive policies.*

It can be seen, then, that these new modes of governance have implications for all stages of the regulatory chain. Where there was previously only *prior* consultation with a limited set of actors in the context of unilinear regulatory schemes, there is now often *ongoing* consultation with a wider and unrestricted set of actors in the context of a regulatory approach which is inherently

more flexible and responsive (see Thoenig). Consultation is in this way no longer a means of informing preordained stable expert models upon which public policy is built but rather a means of testing the appropriateness of those models and of modifying and even of replacing them if necessary. A consequence of this appreciation of the inherent instability of expert models has been a modification of the approach to the evaluation of public action. Where previously evaluation took the form of the application of expert methods to test the attainment of centrally defined objectives, there is increasing evidence of a participative or inclusive approach to the entire process. Thus, not only are the objectives of evaluation agreed in a collective process involving relevant stakeholders, but even the methodologies to be employed are open to collective decision (see Perret). The result of such an inclusive approach to all stages of the process of regulation is frequently improved effectiveness associated with an enhanced understanding of the nature of problems, a consequently more realistic setting of objectives and the harnessing of social systems of knowledge and values which make up the regulated area in both the production and the application of rules (see Hood & Dunsire). The legitimacy of the rules produced in such a manner is also enhanced as there is better understanding of and improved confidence in the process of production.

A consequence of these transformations in modes of governance is that it no longer seems appropriate to speak of a *regulatory chain* because there is no longer a unilinear chain of events making up the process of regulation. Rather there is a *regulatory process* which inherently involves feedback loops which reintegrate new information about the regulatory context into the process of formulating and applying rules. Procedural modes of governance understood as such systems clearly offer improved flexibility and adaptability over traditional regulatory forms.

To be clear, *these modes of governance do not imply that the location of ultimate responsibility for decision making is changed or made less certain*. Rather the process by which stakeholders are involved in collective learning means that the substance upon which decisions are based is enhanced in terms of democratic accountability and the likelihood of acceptance and effectiveness is accordingly increased. *Nor is the responsibility of public actors diminished by procedural modes of governance*. Instead, it is increased as they must ensure the openness and adequacy of the procedures aimed at collective learning and co-ordinated action.

In such a context, therefore, the role of the Commission is being transformed. We can begin to see the ways in which its functions of guardian of the Treaty, as an initiator of policy and as an executive body must be understood in a situation where the traditional model of regulation is evolving. From a situation in which the ability to determine policy and to control outcomes *centrally* is assumed, the role becomes one of controlling the *contextualisation* of the production and application of rules - that is, a constitutive role. Thus, *greater emphasis comes to be placed on clarifying the issues and enabling the participation of stakeholders; on maintaining a long-term strategic vision and integrating policies while encouraging the collective development of objectives; on seeking to engage broader contextual expertise rather than assuming a monopoly of expertise; on developing mechanisms for achieving the necessary participation; and on developing those mechanisms in such a way that ongoing evaluation and revision is encouraged in the light of new information or emergent problems*.

### 3.2.2 Key features of new modes of governance

This, then, is a statement in rather general terms about the implications for the Commission of the current context within which public authorities must operate. To a certain extent, the project so far has served to confirm and systematise general ideas we may have had about this context and the interpretive framework has helped to clarify an understanding about what is involved in the emerging modes of governance associated with it. The project has also helped to identify key features through illustrations of emerging modes of governance and through discussion between external experts and Commission personnel. These key features will serve to help us focus more precisely on the themes which will be of relevance for the Commission as it considers its existing role and methods and the ways in which these might evolve and be developed in a context in which there is evidence of a transformation of modes of governance.

- (a) Procedural modes of governance rest first of all on the *guaranteeing of participation of stakeholders*. The effectiveness and accountability (and thus the ultimate legitimacy) of government action in the context of contemporary society depends more and more on the constructive inclusion of the plurality of points of view, of interests and of values. Public authorities do not have a monopoly on the means necessary to define adequately and deal effectively with collective problems. The content of public action aimed at the attainment of collective objectives cannot, therefore, be pre-established outwith the context of application and other than with the collective involvement of stakeholders.
- (b) A consequence of this inclusive approach is that, if legitimacy is to be enhanced, *stronger and better organised actors must not be unduly advantaged*. Thus, account must be taken of any inequality of resources and compensation offered by public authorities. This compensation could take the form of legal guarantees of involvement or the provision of material resources. The provision of cognitive resources may also be appropriate in order to assist actors to specify their understandings and points of view upon which collective learning could be based.
- (c) This understanding of the process of regulation in turn implies that the *implementation of eventual solutions is not a one-off exercise* but rather inherently includes the putting in place of evaluative and revision mechanisms so that there is sufficient flexibility to accommodate emergent problems, new information and new stakeholders as well as the need to integrate other policies in the process of collective learning.
- (d) In the contemporary context, *public authorities must, therefore, seek to encourage both collective participation and reflexivity*. In this process, such authorities must not restrict the field of action at the outset and must *escape from the constraints of the institutional (bureaucratic/expert) construction of both problems and solutions*. There must, therefore, be a general concern with supporting lower level participation rather than with imposing solutions from a higher level. Only in this way can perceptions change to reflect a fuller understanding of collective problems and only in this way can procedures produce collectively valid outcomes based on the points of view and understanding of all interested actors.
- (e) *There is a need, then, to achieve collective learning*. This process consists in the mutual critique of the perspectives and values which different actors bring to a problem - a result achieved, for example, by obliging actors not only to explicitly formulate their positions but also to explain the effects of those positions on other actors and other aspects of the problem. Actors must, in other words, be required to demonstrate the coherence of their constructions, not only in terms of their initial positions but also in terms of the positions of

others which have emerged as part of the process of collective learning. *The role of the public actor then becomes one of regulating the process of collective learning.*

- (f) The solutions arrived at by means of these contextualised modes of governance must also be considered within the broader framework of the general principles of law and of other problems and solutions - that is, *there is a requirement for systemic coherence*, for the mutual integration of policies. This can be achieved within contextualised systems of the production and application of rules by ensuring a certain openness to potential conflicts and interdependencies - an openness which can be enhanced, for example, by recourse to experts who advise on the broader context (as opposed to providing solutions as in the substantive model); the involvement of other public actors (thus transcending the demarcation of competencies); obligations of openness and transparency; processes of collective decision making; ongoing evaluation; and judicial review.
- (g) A fundamental aspect of procedural modes of governance is, then, that *the control aims of government action are redirected from substantive outcomes to the establishment and support of participative programmes*. While public authorities must always be concerned with the attainment of objectives, they need to understand them in the context of procedural rationality which transforms them into collectively-generated and inherently mutable goals which are expressions of a contextualised will rather than a general will increasingly understood to be more symbolic than real.
- (h) *Procedural modes of governance imply neither a change in the location of ultimate responsibility for decision making nor a diminution of the responsibility of public actors*. Decisions are now taken on the basis of processes which are open, inclusive and contextualised, and public actors have an increased responsibility to ensure the adequacy of the procedures by which collective learning and co-ordinated action can be achieved.

There can be no doubt, then, that procedural modes of governance represent a considerable challenge for public authorities in terms of commitment and resources. While the evidence presented during this project indicates that these modes often appear in response to obvious (sometimes catastrophic) failures of pre-existing forms, there were also suggestions that outwith situations of crisis there is often institutionalised inertia as regards a shift to new regulatory structures. In many contemporary contexts, however, the potential for crisis situations is such that the radical reappraisal of the forms of government action is not a luxury option but rather a pressing need. *The lesson of past experience is that unless the rigid demarcation of competencies and the monopolistic approach to representation is addressed, public authorities in many contexts may well find themselves forced into such a radical reappraisal with the reality of crisis as the backdrop.*

We have seen some evidence of the ways in which the Commission already deploys governance methods which seek to overcome some of the difficulties it encounters in its role at the European level. How do these now appear in the light of the understanding gained from the initial stages of this project?

### 3.3 Implications for the Commission: A First Assessment

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A common factor running through the work of this project, then, has been that *the process of the production and application of norms in society is changing*. An understanding is emerging that the top-down approach based on expert models and functional bureaucracies is inadequate. We can no longer approach problems on the assumption that there is a unique correct way in which to understand them - they are more complex and more interdependent than such an assumption allows. In place of the previous approach, therefore, a model is developing of the *contextualised production and application of norms* which stresses the need to consider problems in context, to incorporate the different perspectives and values held by different stakeholders and to accommodate the possibility of new information and emergent difficulties. This model has implications for all the stages of the process of governance from the formulation of problems and solutions, through the implementation of mechanisms of action, to their evaluation and revision.

*As a result, if the Commission wishes to improve the effectiveness and accountability of its action and its capacity of anticipation, then it needs to consider its approach to certain aspects of governance*. All of these have implications for its general ability to achieve a contextualisation of the process of the production and application of norms and ultimately they all point to a need for the Commission to consider its ability to operate as a body which can *animate collective action or networks of actors*. Significant among these is its engagement in such processes as *consultation* with and the *participation* of stakeholders. Equally, the ways in which it seeks to *transcend the limits of segmentation* which restrict the ability to accommodate different perspectives are important, as are the ways in which it attempts to *improve reflexivity* generally in the process of governance.

While we have noted the development of methods by the Commission which seek to improve the contextualisation and reflexivity of its action, *it is of great importance to realise that this approach represents in many cases a clear change in the rationality underlying the process of governance from substantive to procedural*. ***This means that such methods do not represent an accessory to the process of governance but are in fact fundamental to it***. The implications for the Commission, therefore, take the form of a challenge and an opportunity. ***The challenge is to understand the context in which it operates and the methods which it employs in terms of this new rationality***. The opportunity (indeed the responsibility) is to employ this understanding so as to assist in the diffusion of these methods and thus contribute to an enhanced European democracy and the effectiveness of governance at all levels.

#### 3.3.1 Participation

A key feature of what we have discovered is the need to ensure the adequate participation of stakeholders in the process of governance. Seeking to achieve such participation has a number of aspects. Firstly, it is necessary to *ensure that all stakeholders are identified*. The best organised and informed will present themselves, but what about those who are not organised or well-informed but whose stake in the issue under consideration may be considerable? Then, it is necessary to *ensure that all can participate meaningfully* in the process. Once again, the best organised and informed stakeholders will have the material and cognitive resources available in order to ensure that their point of view and their interests are presented to advantage. The question arises, however, as to how the perspective of stakeholders who lack those resources can be adequately presented. Related to the previous point, it is a question of *ensuring some measure of equity in the process*. Not only, therefore, must the less advantaged be supported but also the

better organised may have to be subjected to certain constraints and obligations - for example, regarding the disclosure of information to which they have privileged access. Lastly, *the participation cannot be a one-off event* but rather must be an ongoing process which both continues to engage with previously identified stakeholders and remains open to the possibility that new ones will emerge.

It is clear that the Commission, particularly through a variety of mechanisms of consultation, already attempts to ensure the adequate participation of stakeholders. It is a question, however, of asking how these mechanisms measure up in terms of identifying all stakeholders and enabling their meaningful, equitable and ongoing participation in the policy process. Furthermore, it is necessary to ask if and how these mechanisms allow the crossing of functional lines.

### 3.3.2 Transcending segmentation

It is also important for the Commission to consider the way in which it understands the policy process. The need to accommodate different perspectives and the realisation that single-disciplinary approaches are not adequate to a complex context present a challenge to any segmentation of approach by governance actors. Thus, *the functional divisions of public actors must give way to a multi-disciplinary approach*. This is not to say that functional lines are dispensed with, but rather that it is necessary to ensure that mechanisms are in place which can assist a transcendence of these lines. In this way, different expert domains can be confronted with other perspectives so that their understanding of the extent and nature of problems can be enhanced. *In addition to this, there is the question of how expert perspectives are confronted with those of other actors - also across functional lines*. There is consequently a need for governance actors to consider the development of 'constitutive policies' which can allow this mutual confrontation of perspectives.

The Commission clearly already takes steps to achieve a measure of transcendence of functional divisions and it will be a question of discovering the extent to which it is successful in the development of constitutive policies. This will assist in outlining which tools will be necessary to achieve this confrontation of perspectives.

### 3.3.3 Contextualised implementation

In addition to these questions of participation and constitutive policies, the issue of the implementation of policies and the application of norms arises. The understanding of the process of governance provided by procedural rationality indicates that implementation and application are no longer achieved by the top-down imposition of detailed prescriptive rules by bureaucratic public actors. For the Commission, of course, this understanding of implementation has never been entirely appropriate since it has always had to take account of the greater gap between the rules the European Union has formulated and the context and the means by which they will be applied. This is due to the diversity of jurisdictions in which rules must be applied and to the lack of a strong executive capacity on the part of the Commission. This fact has led it already to develop methods which can better deal with this gap and to some extent this has led to a transformation of the ways in which rules are formulated and implemented. It is possible to see in the new approach to technical harmonisation, to however limited an extent, some attempt to contextualise the formulation and implementation of rules. An interpretive framework which indicates that the contemporary context in which public authorities must operate demands a more thoroughgoing contextualisation of this process is, therefore, clearly of considerable interest to the Commission inasmuch as it can both improve the formulation of rules and their implementation by engaging all administrative levels and stakeholders in the process. More specifically, it would seem that *public authorities can both seek to harness existing social mechanisms of norm*



*production and encourage their development. The public actor thus remains interested in substantive outcomes but now seeks to define and achieve them via context specific collective processes.*

It will be a question of attempting to determine the problems and the opportunities which exist in this regard. And it will be a question of investigating the degree of contextualisation in these terms already achieved by certain regulatory methods employed by the Commission (such as framework directives, negotiated regulation, etc.) and of considering the potential for the further development of this sort of approach to the production and application of norms.

### 3.3.4 Reflexivity

An integral part of the procedural understanding of governance, and thus implied in what has been said above about participation, constitutive policies and the application of norms, is the notion of reflexivity. Taking complexity, diversity, interdependency and consequent uncertainty seriously means that *the process of governance must include mechanisms which can accommodate new stakeholders, information and problems*. These mechanisms must be flexible so as not to produce a too restricted view of anticipated emergent issues. They must also be sufficiently active as to achieve the timely and appropriate reinsertion of these issues into the process of the production and application of norms so that the regulatory schema is well adapted to the context. *The principal means of achieving this end is by mechanisms of evaluation and monitoring*. Indeed to a great extent, policy can only be understood by such evaluation and monitoring which can discover what is actually happening as opposed to relying on what is supposed to happen when a policy is implemented. It is important to realise, however, that *procedural rationality has implications also for the way in which these practices are understood*. It is not primarily a question of applying an expert model to a particular policy context and carrying out an evaluation on the basis of that model. It is clear from what has been said above that if the context can change in terms, for example, of the stakeholders or in terms of the nature and extent of problems to be addressed, then a fixed model may rapidly be overtaken by events. Similarly, if a diversity of perspectives and of values are possible in relation to any given context, then an expert model may have limited relevance for many stakeholders. Procedural rationality suggests, therefore, that unless evaluation is also opened up - both as regards methods and objectives - to a process of collective definition and application, it increasingly risks producing information in a closed domain with little appreciation of what matters in the areas it applies to. Instead *a participative approach to evaluation seeks to engage the area under evaluation in the process itself - both in defining what ought to be evaluated and how that should be done. It seeks also to transcend the limits of expert domains involved in evaluation by engaging these also in a collective process with regard to objectives and methodologies*. While not, thereby, dispensing with expert opinion, such an approach can assist in rendering evaluation both more accurate and more acceptable.

The Commission already practices all forms of evaluation (*ex ante*, ongoing and *ex post*) but the questions are: To what extent does it rely on expert forms? How are the different administrative levels and other stakeholders involved in any given policy area included in the process of evaluation? To what extent can its methods be said to be participative as outlined above?

### 3.3.5 Co-ordinating networks of actors

If one were to attempt to summarise the implications for the Commission of this way of understanding the context and the methods of governance in terms of procedural rationality, then it would seem that *its role and methods must be considered in terms of its need to operate with networks of actors*. These networks must be understood as being potentially constituted of national, regional and local administrative actors, private sector actors organised according to a

variety of criteria and possibly transcending territorial and functional boundaries, and actors who challenge straightforward definition in terms of public or private sector. Similarly, these networks may be relatively fixed or they may be dynamically changing and they may have a relatively long duration or they may be more ad hoc arrangements. *The ability of the Commission to operate with these networks depends not only on its ability to understand and enter existing networks but also on its ability to encourage their development and co-ordination to meet particular challenges.* While elements of hierarchy remain in a network conception - the Commission, for example, must always take a Europe-wide view - their co-ordination also involves important horizontal aspects in which different perspectives and values can be mutually confronted and tested in a process of collective learning.

It will be a question, therefore, of looking to see whether tools can be defined which can help to identify stakeholders, co-ordinate their participation and ensure the flexibility required to retain an openness to the possible emergence of new stakeholders and to the reformulation of questions.

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*Such an understanding of the context and methods of governance has implications for the role of the Commission - traditionally expressed in terms of its three functions of the guardian of the Treaty, an initiator of policy and certain executive responsibilities. Its role in these circumstances will depend on its ability to engage in the process of the contextualisation of the production and application of norms. That is to say that it will depend on its ability to encourage the identification of stakeholders and their participation in the policy process; to overcome the limits of segmentation both in its internal operations and in its relations with external actors; to encourage and support the contextualised implementation of policy; to ensure reflexivity in the policy process; and to achieve the co-ordination of networks of public and private actors at all levels. This understanding sheds light on which services the Commission must provide to society in seeking to fulfil its three functions. What specific tools will it require? How must its existing tools evolve and which new ones will be needed?*

## 4 Possible Next Steps

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In the light of this question, a number of the Commission's methods which manifest a certain *procedural potential* present themselves as being fruitful for more detailed study. Among these are methods of consultation, partnership, horizontal co-ordination and evaluation. By examining these methods *in terms of a procedural understanding of governance*, it may be possible to perceive the shortcomings and limits of current practices, to deepen our understanding of the main issues and to discern the specific tools which are essential to the Commission in this context. In addition, certain more general themes will be considered which both overarch and interpenetrate these methods such as the role of other European institutions and the Commission's relationship with them. The way in which these next steps might be taken include the following: examinations of the methods identified followed by meetings of the seminar at which the outcome of these examinations can be discussed; and interventions by external experts on the more general themes. This is, however, an open and flexible process and both the issues to be studied and the means of doing so may be adapted to what emerges as the process continues.

### 4.1 Consultation

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Consultation is a process by which the Commission can inform itself about a policy area, inform stakeholders about and involve them in the process and, in general, legitimise the production of policy. Among forms of consultation employed by the Commission, *Green Papers* are of particular interest because they appear to be the most open *a priori* and thus the most likely to possess attributes relevant to the complex context described above. In this regard, they appear to offer the opportunity to cross functional lines, to identify new stakeholders and generally to transcend the rigidities which can attend the more institutionalised consultation processes such as consultative committees, expert groups and consultation with professional or territorial representative groups. In situations where new problems have emerged or where it is seen as appropriate to reconsider the problematic of a given domain, *Green Papers* are of particular relevance. The most recent Better Lawmaking report, for example, is enthusiastic about the existing and future use of this form of consultation as a means of stimulating debate and of gaining knowledge. But how does it measure up when considered in terms of procedural rationality - that is, in terms of identifying stakeholders and in encouraging their meaningful and equitable participation? What can be done to avoid consultations taking place only with a group of influential actors who may not necessarily be representative of the stakeholders in a given situation? What steps can be taken to guarantee the credibility of the consultation process in the eyes of the stakeholders? What can be done to transform consultation from a centralised process of information gathering into a process of collective learning?

In addition, the aim of trying to clarify the specific tools required for consultation can also be informed by considering the *experience of agencies*. There has been a trend towards the emergence of such agencies at the national level in Europe and more recently also at the European level. While this development has been a response to complexity by delegating responsibility to a body with greater expertise and also a response to a desire to remove executive functions further from political control, it is the enhanced possibilities for consultation which these agencies offer which is of particular interest. Since the longest experience with them has been in the United States, it appears appropriate to see whether that experience can enlighten our understanding of

the more recent European developments. What has happened in terms of encouraging more direct modes of participation. What can it tell us about the emerging European trend? How is the future of relations between the new European agencies and other European institutions and interest groups envisaged? How is their political and legal control envisaged? Is it necessary to have a European equivalent of the American Administrative Procedures Act? What are the implications for the role of the Commission?

## 4.2 Co-ordination of networks

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Contextualisation of the action of the Commission rests also on its *partnership* with other actors. This is the case, for example, with the *structural funds* for the implementation of programmes in which European, national, regional and local actors are involved along with other social and economic actors. This mode of organisation of collective action has the potential to allow the co-ordination of European action with the interests, needs and capacities in particular contexts insofar as the definition of projects and of means of implementation is an inclusive collective process. In other words, this represents the basis of a *constitutive approach* by the Commission where the concerns of different levels are confronted with each other in a dialectical process throughout all stages of the regulatory chain in a way which holds out the prospect of encouraging the transcendence of national, regional and local constraints. Lower level objectives can thus be put in perspective and articulated with wider national and European objectives. The far-reaching and ambitious aims of this approach mean that it can yield important information about the nature and limits of the specific tools which the Commission can employ as a Governance actor.

This is of particular relevance to the broader question of the role of the Commission as *an animator of networks of actors*. The multitude of administrative levels and of stakeholders involved in European government action raises questions of co-ordination which will have even greater significance in an enlarged and more diversified Union. The coherence of this action will, therefore, depend increasingly on the quality of the co-operative relations which the Commission forges with these actors and the relationships which it fosters and encourages among them. In particular, this must be understood in terms of procedural rationality. Can we seek to outline the specific means and competencies which the Commission will require to perform this role? What is the extent of what is possible? What are the limits and the obstacles? Where do opportunities lie?

### 4.3 Evaluation

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The reflexivity inherent in the new modes of governance implied by procedural rationality appears to be addressed by the Commission in the *various forms of evaluation* which it carries out. Given the wide experience it has gained in this regard and given that it has recently undertaken an initiative to develop more widely in its services *a culture of evaluation* (SEM 2000), what can we learn about the practicalities of reflexivity from studying Commission practices? From comments made during the meetings of the seminar, there is an apparent preference for traditional types of evaluation and an apparent reluctance to consider any shift away from such an approach. While much evaluation is inspired by the need to render accounts and to manage resources efficiently, there are increasing questions about its relevance beyond fairly technical domains and thus about the strength of its connection with the context. If evaluation is, therefore, carried out on the basis of methodologies and assumptions which are not shared by other stakeholders, then its value must be in doubt. As a consequence, participative evaluation must be favoured which involves different levels of stakeholders. What are the practical considerations in trying to develop participative forms of evaluation? Is it an idea which seems attractive in theory but difficult in practice? How can the perspectives and expectations of different levels of actors be accommodated? What can be learned from the experience of the Commission in the circumstances where it has already tried to develop such forms of evaluation? Concerns also arise about any lack of communication between different domains in carrying out evaluations which leads to the question of horizontal co-ordination in general.

### 4.4 Horizontal Co-ordination

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The contextualisation of the production and application of norms means that the need for systemic coherence becomes increasingly important and there is, therefore, a need also to ensure the horizontal co-ordination of action. The need to move from a position where an administrative department operates on the assumption that its construction of problems and solutions is uniquely valid to a position where it accepts that the models held by other departments may be of value in building its understanding leads to a recognition that efficient co-ordination depends more on *collective learning* than on decisions taken at the end of the policy-making process.

The Commission has already taken steps to encourage the anticipation of impacts of new legislative proposals on other areas and the integration of policies in general. These include *inter-service consultation*, *Task Forces*, the establishment of *co-ordination units*, the setting-up of *inter-service groups*, and the requirement for *a priori impact and cost benefit analysis* to be carried out. By examining experience with these procedures, it will be possible to see the conditions under which they produce the opportunity for internal debate and collective learning - and the ways in which they may require to be enhanced by new guarantees.

## 4.5 Related issues

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The transformation of modes of governance cannot but affect *the role of other European institutions* - such as the Parliament, the Committee of the Regions and the Economic and Social Committee. Their roles must, therefore, also be considered in terms of the revised understanding which this transformation implies for consultation, evaluation and control and for the new forms of representation and organisation of collective action. How will this influence the nature of the Commission's relationship with these other actors? Regarding the Parliament in particular, in what ways could a role be achieved which would involve improved deliberative opportunities, long-term strategic objectives, better integration of policies and ensuring the enhanced accountability of other governance actors?

The perspective on the role and methods of the Commission offered by procedural rationality raises questions of *what it is in future that the Commission will control and which means it will have to employ to achieve this control*. Already it appears that the focus for the Commission must be on mechanisms which can mobilise and harness the capabilities of stakeholders in given contexts - that is to say, a second order control. In considering the methods of the Commission described above and in seeking to clarify the implications of a procedural understanding of the context of governance, it should be possible to begin to *outline the key tasks of the Commission* in this regard, *the resources and competencies it will require* and the limits of what can be achieved.

The methods and questions presented here have been put forward because they appear at first sight to be most relevant to the themes which have emerged from the project so far. If, however, other issues emerge as the project proceeds, these too could be considered.

## 5 Summary of the Meetings of the Seminar

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Two meetings of the seminar (one given jointly by Jacques Lenoble and Jean De Munck of the Centre for the Philosophy of Law and a second by Jacques Lenoble alone) were devoted to the evolution of the modes of governance and of the conceptions of rationality which correspond to them, from the liberal state to the welfare state and its crisis, and the introduction of the hypothesis of proceduralisation. They were followed by presentations of illustrative cases of the difficulties facing traditional modes and the characteristics of procedural modes of regulation. Three meetings dealt with the recent evolution of government action in several European countries (Germany - Karl-Heinz Ladeur of the European University Institute, Florence and the University of Hamburg; France - Bernard Perret of the Conseil scientifique d'évaluation, Paris; and the UK - John Paterson of the Centre for the Philosophy of Law). The participants could thus familiarise themselves with the principal elements of the hypothesis, measure its capacity to account for the evolution of governance at the national level and make the link with their experiences within the Commission. The next few pages present a summary of these presentations together with an outline of the discussions which followed them.

### 5.1 Mutations of the art of governing: historical and conceptual approach

*Jacques Lenoble and Jean De Munck*

The presentation by Jacques Lenoble and Jean De Munck set out the foundations for the notion of a crisis of rationality underlying difficulties with traditional modes of governance. It did this by putting the present situation in the context of the development of the models of rationality which have underpinned the state. They identified four stages in this development from the *formal* model of rationality, which oriented the conception of law, state and administration in the early democracies, through the *substantive* model of rationality, which underpinned the social or welfare state, to a situation of *crisis* which has characterised recent years in which welfare state intervention has in many cases given way to strategies of deregulation. A final stage of development was proposed in the light of the hypothesis of *proceduralisation* where the crisis of the welfare state is understood as insoluble in terms of a deregulatory return to formalism and which takes seriously the problem of complexity and the impossibility of acting now on the basis of an objective reality. They concluded by citing recent examples which manifest an increasing proceduralisation of the modes of application of rules where *the application becomes simultaneously a process of renegotiation linked to the participation of plural actors*. The contrast with the central production and application of rules is clear as is the contrast with deregulation strategies which rest fundamentally on market assumptions and the formal rationality of the liberal state.

The debate which followed this presentation raised a number of interesting issues about the nature and extent of the hypothesis of proceduralisation which allowed certain points to be clarified and developed. Thus, the normative as well as the descriptive aspect of the hypothesis was emphasised as well as its broad applicability based on its underlying notion of rationality and the inherent legitimacy which this provides. Similarly, its potential at the European level was discussed: its applicability *a fortiori* beyond the national level, its ability to accommodate the diversity of national situations confronting the Commission, the range of issues it might be applicable to, and the implications for the Parliament in the context of this analysis. While many participants accepted positive aspects of the hypothesis (aims such as better participation, better flexibility, better adaptation of rules to contexts, etc. are hardly contentious), some raised doubts relating to its political aim, the risk of further fragmentation and the possibility that examples of apparent proceduralisation could be seen as domination rather than as legitimation.

## 5.2 The Hypothesis of Proceduralisation

*Jacques Lenoble*

There was a further opportunity to discuss the hypothesis at a theoretical level at a second meeting with Jacques Lenoble. In discussing its relevance to the European level, he stressed that responses to the democratic deficit which focused on better representation in the Parliament were inadequate to deal with current and future problems since they were based on the old idea of the general will which was profoundly challenged by complexity and pluralisation. Similarly, notions of centralised control were tied to outmoded models of rationality. Decision making procedures must, therefore, transcend existing models. While there were examples of attempts at the European level to deal with this challenge, these were insufficient insofar as they did not deal with the cognitive aspect of the problem - taking account of the varying readings of the context and reinserting the consequences into the procedure of the production and application of norms. It was suggested that the emphasis on consensus at the European level was a problem since it implied a continuing belief in a coherent substratum which set clear limits on the possibilities of pluralisation and contextualisation - more often than not these limits were cognitive. That said, proceduralisation had nothing to do with complete relativism and was likewise distinct from deregulation - the former of which led to a situation of 'anything goes' and the latter of which believed that the context was such that it could 'guide' action along market lines. Proceduralisation was thus not simply about invalidating models developed under substantive rationality but rather about social co-ordination in a process of collective learning which takes account of the reflexive capacities of different actors. A possible link was made with the notion of active subsidiarity and there was recognition of the need to address the question of possible domination by powerful interest groups. In conclusion, the need was stressed to introduce discursive constraints into procedures which can accommodate differing reflexive capacities and encourage the process of collective learning and social co-ordination.

## 5.3 Transformations of Basic Social Conditions of Government and the Approach of Proceduralisation - The Example of Environmental Policy

*Karl-Heinz Ladeur*

The preoccupations discussed above were evident in the presentation by Karl-Heinz Ladeur where he stated that in the context of the crisis of the welfare state new forms both of knowledge generation and of state action have to be considered. He saw the society emerging from this crisis as characterised by increasing flexibility, as self-organising and with the process of knowledge generation being integrated into the process of decision making. Whereas previously society has operated on the basis of strategies linked to stable models, there is now a realisation that these models are not stable and must themselves be subjected to ongoing evaluation just as much as the outcomes of strategies. Environmental policy was considered by Ladeur as an example of the complexity now confronting the state. Here there is a growing recognition of the inadequacy of stable models and of the potential for the use of procedural strategies. Proceduralisation introduces flexibility also into the decision making process itself as a means of coping with the recognition that the environment can no longer be regarded as a fixed point in equations with stable causal relations or as a repository of given information which can be unproblematically extracted. There is a need for an emphasis on systematic learning. Thus, there is a need for organisational flexibility to allow learning at all levels and to cope with the realisation that decisions must now be taken on incomplete information.

Following this presentation, the debate allowed clarification of the fact that proceduralisation does not imply that norms are simply dispensed with - only that the process of their production and justification is changed. While this prompted the response that talk of a paradigm shift was premature, the point was stressed by Ladeur that the underlying notion of rationality is distinctly different. Nevertheless, while the difficulties of the current modes of governance were accepted



by participants, concern was expressed that proceduralisation risked an increase of confusion among citizens and the possibility of delay in dealing with emergent problems. In other words, whatever the benefits of flexibility, many preferred certainty. This discussion also allowed participants to provide examples of the ways in which the Commission is already behaving in a procedural way, but the question was raised as to whether these examples were a response to complexity or rather to the reluctance of Member States to allow it a more substantive role. Finally, the discussion revolved around the issue of functionalism. While the Commission is organised along functional lines and its procedural developments are, therefore, often functional in nature, procedural rationality is distinct from functionalism. Instead, it transcends functional lines and aims to create collective cognitive mechanisms which allow the contextualisation of the production and application of the norm and the reinsertion of the context into the ongoing process. Such a view of the process of governance has implications, therefore, for the very organisation of the Commission - possibly at the structural level and at the very least in the way in which the different services interact.

## **5.4 The evaluation of public policy as a systematic procedure for the integration of social knowledge with the operation of political and administrative systems**

*Bernard Perret*

The intervention by Bernard Perret on evaluation similarly demonstrated the impact of the crisis of rationality. The positivist assumptions underlying traditional evaluative techniques have been called into question by the evident difficulty of establishing causal connections which in turn has obvious consequences for the use of the results of such evaluation in public policy. This situation has led to the development of new evaluative approaches which place greater emphasis on qualitative and participative methods. In particular, Perret discussed the experience of the Conseil scientifique d'évaluation where the emphasis is placed on the institutional character of evaluation and on the need to contextualise the question of methodology. Thus, while scientific questions are not ignored, they are considered alongside the roles inherent in the functioning of political-administrative systems, as well as the rhetorical elaborations which allow the integration of social knowledge with systems of action. Perret further emphasised that evaluation, even if not used by politicians in making decisions, remains a helpful institutional tool. It introduces within an organisation a mechanism for a process of collective learning.

In the discussion following this presentation, the question was raised as to whether the participation function of evaluation described by Perret was compatible with the others. It was said in response that sometimes there is indeed such a compatibility but that sometimes the divergence between the different representations was too great. That said, an evaluation must always try to reconcile the scientific view of objectivity with that held by other actors. It was suggested also that an obstacle to evaluation within the Commission was its emphasis on results rather than methods - there was simply an overwhelming demand and need for results both internally and externally. Perret suggested, however, that all levels of government - European, national, regional and local - must begin by deciding under what conditions an evaluation will be supported and be useful to all. Otherwise there is a danger of Commission evaluations having no relevance to other levels. Nevertheless, some participants were unimpressed by any notion of evaluation which moved away from a single incontrovertible methodology. The response was that such a positivistic view faced difficulties which could not simply be ignored on the basis that experts knew best. The procedural alternative was not simply some form of negotiation but rather an opportunity for there to be expression of the different types of knowledge one can have about a problem. It is thus both a discussion and a reflection on the complexity of the notion of objectivity. If this can be achieved, it might be possible to deal with problems such as the delay which evaluation can introduce and also the tension which often exists between evaluator and evaluated.

## 5.5 The Hypothesis of Proceduralisation: Developments in Regulation and Politics in the United Kingdom

*John Paterson*

John Paterson examined developments in regulation and in politics in the UK in the light of the hypothesis of proceduralisation. By considering the leading example of the development of the legal approach to health and safety at work in the offshore oil industry, it was shown that a new form of regulation is currently in place which does not fit the traditional models of formal or substantive legal rationality. The new approach which puts the emphasis on the safety management procedures of the industry and creates an auditing role for the regulators is not adequately described either as deregulation or as continuing intervention but rather represents an attempt to come to terms with the crisis of rationality which became so evident following a major industrial disaster. At the level of politics, developments on both the right and left wings were examined which suggest a move away from the traditional models which have characterised political debate in the past. On the right, the deregulation movement's insistence on risk assessment is a significant move away from the previous dogmatic market-based belief that the removal of regulation was best. On the left, the growing interest in the concept of stakeholding represents a recognition that the traditional model of representative democracy needs to be significantly revised in the context of complex plural societies. It was emphasised that a significant contribution of the hypothesis of proceduralisation is in the provision of a vocabulary with which to describe such developments in a way which breaks out of the dichotomy of polarised political rhetoric.

The discussion following this presentation focused first of all on the issue of quantitative risk assessment as a possible tool in the procedural approach to complex problems. It was stressed that the approach must not be understood positivistically or substantively as productive of unique answers upon which decisions could be taken, but rather as an aid to understanding the concerns of different actors and to reaching collective decisions on the basis of a rational process. Additionally, risk assessment was a tool which inherently demanded an ongoing assessment and reassessment of situations and which opened up the possibility of the redefinition both of problems and solutions. Questions were also raised about the delays which procedural approaches introduced to the decision making process. In response, examples were given (especially of complex technologies) where a lack of delay and of transparency in the decision making process had led to unforeseen complications which in some cases were not only serious but risked undermining the benefits. Running governance on the basis of commercial pressures is understandable and probably inevitable but that simply increases the need for better contextualisation and collective learning. In response to a series of questions about developments in the UK more generally, it was stressed that while the situation was complex and could not easily be characterised with a few categories, there was nevertheless a clear need for an enriched vocabulary based on sound theoretical foundations with which to describe recent developments and to guide future developments. It was stressed that much of what had happened in the UK during the 1980s and 1990s could not simply be categorised as proceduralisation. Rather there was evidence of a desire to transcend the difficulties confronting traditional regulatory approaches. This in many cases led to market based reforms which brought their own difficulties. Of greater interest were more recent developments which sought to capture the benefits of the openness and flexibility brought by market mechanisms while avoiding the attendant problems, significantly without having recourse to centralised bureaucratic methods.

Two further seminars deepened the study of the developments at the national level in two jurisdictions (UK - Christopher Hood and Andrew Dunsire; and France - Jean-Claude Thoenig). By considering particularly the transformations within the administrations in these two countries, the aim was to allow a closer link between proceduralisation and the work of the Commission and a stimulus to consideration of its internal organisation in the context of a complex environment.

## 5.6 Proceduralisation and UK Public Administrative Reform

*Christopher Hood and Andrew Dunsire*

In this presentation, the question as to whether administrative changes in the UK during the past 20 years could be characterised as proceduralisation was considered. After a detailed exposition of the changes, it was demonstrated that it was by no means easy to apply simple categories to such a complex field. In particular, it was suggested that the changes were broadly the result of a desire to create a more managerial approach to public service, but a contradictory trend was noted in the growth of regulation and audit which attended these developments. While Hood and Dunsire preferred a different terminology to proceduralisation, their emphasis on the recognition and harnessing of what they termed societal stabilising mechanisms bore a close resemblance to the contextualisation of the production and application of the norm insisted on by proceduralisation.

In the discussion following this presentation, the need to consider how any reform is viewed by public actors themselves was emphasised. In this regard, it was noted that changes emerging from within the Civil Service tended to be more successful than those imposed from outside. Similarly, where the added empowerment given by reformed structures was perceived by administrators as being undermined by the audit process there tended to be difficulties. The suggestion was also made that the increase in distance between central government and the provider of services could be a way of reducing as opposed to increasing accountability of central government. An interesting aspect of the presentation and the discussion was the observation that there had been rather restricted public interest in the entire question of reform and Hood and Dunsire suggested that academic input and especially that by economists had been the main motor of change.

## 5.7 The Mutations of Public Action in France

*Jean-Claude Thoenig*

This presentation constituted an interesting contrast with that relating to the question of reform in the UK. While the reforms were directed towards aims which would certainly be familiar in the UK, the French approach was to restore the State rather than to introduce private sector principles to the public service. Similarly, while Thoenig characterised the net effect of reform in the UK as an increased centralisation of power, the French experience was rather of decentralisation. This process appears to have been successful insofar as local and regional actors have displayed superior technical and management skills compared with central actors. Importantly, however, the decentralisation has not taken the form simply of a transfer of power to local and regional levels of government. Instead, the boundary between the public and the private sector has been broken down to produce flexible, context-specific solutions to problems where regulation is no longer seen as capable of providing unique and generalisable answers. In such a situation, the State has found a new role in the creation of negotiation opportunities for the multiplicity of actors concerned in given contexts - a role Thoenig describes as constitutive. The emphasis is, therefore, on organisational rules rather than substantive ones and while the State provides legitimacy for the procedure, it does not claim a dominant position as regards the definition of problems and solutions. In such a context, the aim is collective learning and the organisational rules are themselves flexible in order to promote such learning. This in turn requires flexibility from public actors. Interestingly, Thoenig contrasted these French developments with the bureaucratisation and standardisation implied by European integration.

During the discussion following this presentation, the extent of the transformation in France was demonstrated by the fact that even the national budget had become less of a tool in the hands of central government. On the question of constitutive policies, the issue of free-riders was raised - how could all relevant parties be encouraged to take part? Beyond that, how could inequalities of resources be dealt with? It was admitted that there is no single simple answer to these questions.

Rather the answers depend on the context. But they cannot be dealt with by an over-rigid decentralisation but rather by the more flexible type of which recent French reforms are an example. In this regard, it was pointed out that there were many examples within the Commission which demonstrated an awareness of these types of concerns such as the use of consultation. On the other hand, a certain lack of openness and the constraints of the Treaty were seen as obstacles to a fuller development of such an approach at the level of the Commission. The question was also raised as to whether the picture presented by Thoenig meant that a more traditional approach to policy and regulation had been surpassed. Further it was suggested that a high degree of knowledge would be required by the Commission in order to engage in this sort of process. What could the consequences of this sort of transformation at the national level be for the EU? What would the tools of the public actor be in such a context? Could the Commission be the animator of such a process among the Member States? It was recognised that these sorts of developments had profound implications for the organisation of the Commission and, in response, Thoenig stressed the importance of the management of persons, of an internal assessment of the Commission's existing practices of the form described, of an assessment of the developments in the Member States, and of the need for a better idea of what was happening at all levels by means of contacts there - thus, the development and co-ordination of networks.

## 6 List of participants

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Niels	AHRENDT	SG
Christoph	BAIL	DG XI
Thierry	BÉCHET	DG XVII
Gilles	BERTRAND	CDP
Fabienne	BESSONNE	DG XXII
Anastassios	BOUGAS	DG XVI
Philippe	BURGHELLE-VERNET	SG
Paraskevas	CARACOSTAS	DG XII
Michel	CATINAT	DG III
Giuseppe	CIAVARINI AZZI	SG
Jean	DE MUNCK	CENTRE FOR THE PHISOLOPHY OF LAW, UCL
Stefaan	DE RYNCK	DG XVI
Olivier	DE SCHUTTER	CENTRE FOR THE PHISOLOPHY OF LAW, UCL
Pierre	DEUSY-FOURNIER	DG II
Christian	DEWALEYNE	IGS
Nicole	DEWANDRE	DG XII
Andrew	DUNSIRE	UNIVERSITY OF YORK
Claire-Françoise	DURAND	SJ
Luc	DURIEUX	DG XII
Antonio	FIGUEIRA	DGX
John	FITZMAURICE	SG
William	FLOYD	CDP
Pascale	GAUCHER	SG
Klaus	HAUPT	DG XXII
Chantal	HEBETTE	IGS
Anders	HINGEL	DG XXII
Christopher	HÓOD	THE LONDON SCHOOL OF ECONOMICS
Ralf	JACOB	DG V
Thomas	JANSEN	CDP
Marjorie	JOUEN	CDP
Philippe	KERAUDREN	EUROPEAN INSTITUTE FOR PUBLIC ADMINISTRATION
Karl-Heinz	LADEUR	EUROPEAN UNIVERSITY INSTITUTE
Christos	LAZOS	DG XXII
Notis	LEBESSIS	CDP
Jacques	LENOBLE	CENTRE FOR THE PHISOLOPHY OF LAW, UCL
René	LERAY	DG IA
Bettina	LORZ	DG XI
Marc	LUYCKX	CDP
Maurizio	MANCINI	DG IX
Claire	MANDOUZE	DG VIII
Anna	MELICH JUSTE	DG X
Viviane	MEYER	IGS
Ruben	MOHEDANO	DG X
Bernard	MONGIN	SG
Jackie	MORIN	DG V
Michel	PATERNOTRE	SG
John	PATERSON	CENTRE FOR THE PHISOLOPHY OF LAW, UCL
Lucio	PENCH	CDP
Bernard	PERRET	CONSEIL SCIENTIFIQUE D'ÉVALUATION
Roberto	SANTANIELLO	SG
André	SAPIR	DG II
Marie	SASSINE	CENTRE FOR THE PHISOLOPHY OF LAW, UCL
Ingemar	SEGERGREN	DG XX
Claus	SORENSEN	Cabinet Gradin
Alain	STEKKE	DG XIII
Jean-Claude	THOENIG	ECOLE NORMALE SUPÉRIEURE, CNRS
René	VANDERMOSTEN	DG IA
Marc	VANHEUKELEN	DG XIX
Jérôme	VIGNON	CDP
Georges	VLANDAS	DG XVI

