

Bound Governance (Procedure)

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The mainly used type of coordination has not been dealt with in traditional governance discussion: *bound governance (procedure)*. I am going to deal with this governance type concerning its functional logic, its types and its challenges in the 21st century.

1. Functional Logic

The term *procedure* colloquially is used in a broad way. According to Wikipedia, *procedure* may refer to:

- Medical procedure
- Instructions or recipes, a set of commands that show how to prepare or make something
- Standard Operating Procedure, a step-by-step instruction to achieve a desired result, used in industry and military
- Legal procedure, the body of law and rules used in the administration of justice in the court system, including civil procedure, criminal procedure, administrative procedure
- Parliamentary procedure, a set of rules governing meetings
- Procedure in computer science, also known as function, routine, or subprogram.¹

In contrast following Luhmann (1969), the social scientist term *procedure* more specifically focuses on characteristics of legal procedures according to the ideal types of criminal and civil procedure as well as parliamentary procedure. Crucial characteristics of a procedure in this sense are reduction of complexity and acceptance of its results. That is, procedures are to be displayed as special systems of action including certain autonomy.²

Corresponding with Luhmanns concept, I consider a procedure as a process of coordination pointing at a decision that includes a double structure of binding (*Bound Governance*): 1) The participants accept the rules of a procedure; accordingly they are bound to these rules and to the procedures' results; that is, the participants have to respect a procedure as an independent process of its own. 2) The rules of a procedure (as well as its representatives) are bound to fundamental ethical requirements of civil modernity, equal opportunity and freedom of action for all operative involved actors. This double structure corresponds to the differentiation of two assigned levels, rule level and operative level:

- On rule level, the objective of a procedure, its role structures with certain requirements and rights of the involved actors, the procedural phases and the criteria of success are regularized. Forcing and protecting those rules lies in the interest and in the responsibility of the community of all participants. This community may immediately hold its responsibility. In contrast, often it appoints special rule actors like judges, referees, administration or special

¹ <http://de.wikipedia.org/wiki/Verfahren>; 12.11.2012

² Luhmann, Niklas (1969): Legitimation durch Verfahren, Frankfurt a.M. (Suhrkamp); see also: <http://sozialtheoristen.de/2008/07/15/legitimation-durch-verfahren-niklas-luhmann-1969/>

policies to conduct the procedure in a competent, effective and efficient way, and to protect it in its independence. Beyond, rule actors are to represent the procedure in a distinct manner.

- On operative level, within procedures' rules, all involved participants do act according to their individual aims with principally equal opportunities, self-responsible and free. In the consequence of this way of behaving, diverse relations and patterns of interaction may come into existence, particularly competition.

Rule level and operative level have to match with each other and have to be linked with each other by valid regulations; operative actors, however, must not exert decisive influence on the rule level, at least during a current procedure. Vice versa, rule actors must not pursue operative interests in a current procedure. Insofar there is a strict must of division between the superior rule level and the operative level of a procedure; otherwise an institutional short circuit would eventuate.³

This structure is much more complex and demanding than one-dimensional power, for instance absolute monarchy, dictatorship or battle about power up to warfare. While in a power structure simply the more powerful actor wins, in a bound governance structure (procedure) interaction is bound to generally accepted rules. Within the shelter of those rules, interactive success is operationalized and evaluated according to valid rule criteria. That's why there is a certain tension between bound governance and power of operative actors. On the other side, bound governance implies peculiar potentials of a common good. It

- ensures a peaceful exertion of conflicts, fosters and protects peaceful coexistence,
- ensures equal opportunity and freedom of action, and beyond does have motivational effects,
- promotes the development of self-setting, self-relatedly operating functional systems, a fundamental process of welfare fostering differentiation.⁴

Bound Governance precisely points at using and stimulating those effects. Therefore it's no wonder that procedures have become the central form of coordination in the civilized modernity and they constitute a great perspective of its further development.

2. Types

Starting from the outlined logic, certain criteria may be differentiated, motives of participation, characteristics of level hierarchy, complexity, and purity of procedures.

2.1 Criteria of analysis

2.1.1 Motives of participation

Participation in bound governance proceedings may be based on intrinsic or extrinsic motivation. In the second case, spontaneous or forced participation is possible.

³ Corresponding with the image of an electric short, where different elements of an electric circuit join each other without resistor inducing a slowly or sudden break-down of the circuit. First time I used the image in: Prittwitz 2001: Die dunkle Seite der Netzwerke. Strategien gegen Vermachtung und Korruption: http://www.volkervonprittwitz.de/die_dunkle_seite_der_netzwerke.htm

⁴ Luhmann did not explicitly deduce the concept of autopoietic, self-referential partial systems from procedures, but as a general function of systemic coping with complexity (Luhmann 1984); nevertheless I assume that he was very conscious about the linkage between procedures and functional differentiation.

Intrinsic procedures are motivated by themselves – a category of procedures that can be made clear by the ideal type of sporting games: Whoever wants to do some sports (for instance soccer, basketball, volleyball, tennis), participates by free will and consensually with his/her partners. Main motives are delight in playful moving, tension and recreation, collectively undergoing, in short, delight in a sporting game itself. Accordingly all rules and forms of organization point at maximizing joy in sports. In that bag are not only strictly equal and equally used rules of the game for everyone, but also the try to organize sports in an optimal way, so to make sporting processes transparent for players, rule actors, and the public, as well as to build leagues with opportunities to go up and down with the implication that similarly strong players play against each other.⁵

Sport distinctly fosters common goods: Not only participate players usually highly motivated and committed; sport also encompasses hygienic, psychological and, in the end, economic moments of welfare. Eventually sport fosters a peaceful, civil coexistence in a striking way, as measured by the structural diversity of modern societies. In doing so, at least in principle, all disparities of gender, race, religion, social status, and age are relativized through the equality of all players in a match. Insofar, in a fascinating way, sport links people with each other much more than to divide.

This institutional arrangement has developed in a cultural process through thousands of years, particularly in the age of civilized modernity. Starting from religious rituals, later on increasingly divided from them, games have been standing for equal opportunity, high motivation and extremely high attraction for the public (*bread and games!*). To the degree playful elements developed in a culture, opportunities to a peaceful, civil coexistence have come up. Games, therefor, are a fundamental cultural historic prerequisite for building an open world society.

Extrinsically motivated, in contrast, are externally instrumental procedures. At those procedures with voluntary participation and procedures with forced participation may be differentiated:

- Voluntary participation is given in diverse procedures, for instance redistribution procedures, participation procedures, qualification procedures, law-making procedures, electoral procedures, and lotteries. By participation in those procedures actors try to get advantages, at least in the long range.
- Also the significance of forced procedures, for instance criminal procedures, is usually conceded by all participants, including culprits. Differently from voluntary procedures, here different benefit expectations are given. So actors who have to calculate to be punished tend to avoid the procedure. However, also forced procedures have to include opportunities for all participants, such as opportunities of self-defending and self-presentation.

Extrinsic procedures with voluntary participation as well as procedures with forced participation do have a long tradition that can be traced back through thousands of years – see for instance the development of Roman Right about 1000 before Christ. In the Middle Age, however, they lost tremendously of their significance, and started flourishing not before the civilized modernity.

2.1.2 Hierarchy

In principle, there is a hierarchic relation between rule level and operative level of procedures; however we have to differentiate strong and low forms of procedural hierarchy. So in criminal

⁵ In the rational of complete transparency, the use of any disposable techniques is consequential, such as the use of electronic assessment media. Obstruction of this usage usually results from special interests of mighty power groups, such as organizations of referees.

proceedings where in rule actors dispose at the power of decision as well as sanctioning power, there is strong hierarchy. Also in procedures under private law, decisions are made on rule level. Those procedures, however, mostly end in flows of properties amongst the involved parties, and the involved rule actors see their contribution more in stimulating plea agreements between the involved parties.

Arbitration processes operate with a rule level institution, the independent arbiter. This institution presents a conciliation award that has strictly to be followed by all involved parties. The award gets binding force only if both operative parties accept it; therefore it has no absolutely forcing power. Accordingly there is a lower hierarchy between rule level and operative level than it is in criminal proceedings. In mediation processes, finally, the mediator disposes about nothing but stimulating functions whereby the conflict parties themselves have to agree with each other. That's why we should talk about a very flat hierarchy in mediation processes.

A similar constellation is given in games where the community particularly tries to fulfill immediate wishes of the participants (example: games with kids). Here, certainly, rule safety is a point; special wishes and demands of the kids, however, often are in the fore-ground. In hard sporting competitions, in contrast, usually there is strong hierarchy – see for instance the option of referees to exclude players because they broke rules (yellow and red-cards). That is: The degree of rule hierarchy does not correspond with the differentiation between intrinsic and extrinsic procedures.

2.1.3 Complexity

Traditionally, procedures are understood as coordinated processes of decision-making, starting from a certain point of departure and ending in a certain decision. This pattern can be applied to any procedure, for instance games, examination procedures, evaluation procedures (having certain results), political elections with a certain electoral result, or legal procedures of law-making with a certain law text as result. Procedures of this type, however, often are parts of bigger decision-making processes. So in each season of German soccer league 34 matches (17 home matches, 17 return matches) are held, whose result in sum constitutes the decisive result of the season with qualifications to European club competitions, come-down (relegation) and promotion. That is: Not the single game is decisive, but the combination of 34 games. Hence we can speak of a combined procedure. Other examples of this procedural type refer to proceedings of examination and evaluation. In any case, the outlined principles of procedures are valid in any partial procedure as well as in the encompassing combination of them.

2.1.4 Purity

Lotteries are usually considered to be the purest type of procedures (without any human manipulation) – a form of governance that has been well known in the ancient democracy of Athens and that is finding again use in our times.⁶ See for instance the use of lotteries in the recruitment of personal equipment and in managing distribution conflicts. Lotteries have also been proposed as a means of fostering democracy in the European Union by arguments of strictly equal opportunity, larger heterogeneity and a better representation of the people.⁷ They, indeed, do not open up

⁶ Aleatoric from Latin *alea = dice*

⁷ Hubertus Buchstein coined the concept of *aleatoric democracy* and made some proposals of usage, such as the proposal of building a house of lots in the European Union. See: <http://www.boell.de/stiftung/akademie/akademie-repraesentative-partizipatorische-und-aleatorische-demokratie-13243.html>

operative freedom of action, and accordingly have no peculiar potentials of performance and innovation. Hence I consider them to be nothing but a particularly pure form of equal opportunity, but no pure procedure in the sense of bound governance.

This pure procedure has, in contrast, to comply with all basic requirements of bound governance, that is general acceptance of rule demands, disconnectedness of rule level and operative level, protection of equal opportunity and free action: The more completely and reliably these requirements are fulfilled, the purer the procedure... Real types of that are fair sporting game, fair criminal processes as well as protected democratic elections.

We should speak of mixed procedures, on the other side, once operative actors are subject to certain rules of a procedure, but they are able to influence those rules before or even during a current procedure. An example is the legal opportunity for the British government to determine the date of parliamentary elections: Also the party at power, has to comply with the electoral procedure with open chances of success, but the opportunity to influence the date of the elections increases its chances to win. An even bolder example of what a mixed procedure means is the way political actors deal with financial political issues in the European Union (*Euro crisis*): Indeed, the member states underlie valid EU right, but the representatives of strong EU member states often change valid rules at least in a certain delay.

The area of mixed procedures, however, is no big one, because to the degree the independence between operative level and rule level disappears, the rationale of calling a process *procedure* diminishes. Instead we should speak of a farcical procedure, so for instance if a ruling government is able to one-sidedly influence and control the vote-counting in an election. Also if strong actors have the power to exclude possible competitors out of the spectrum of eligible parties and persons, there is the transition to a farcical procedure.

2.2 Types

Procedures in the sense of Bound Governance can be ordered according to the outlined criteria of analysis (categories) as intrinsic, voluntarily extrinsic or forced, more or less hierarchical, simple/combined, pure, mixed, or farcical. In practice, mostly nominal procedures of different functional areas are differentiated.

2.2.1 Nominal procedures

Nominal procedures, such as criminal proceedings, private procedures, arbitration and mediation, examination and evaluation procedures, electoral and law-making procedures, can be ordered according to the outlined criteria. The result is a group of strong procedures (criminal, examination procedures, democratic elections) that is conducted with strong hierarchy of rule actors and in a relatively pure manner, a middle group with voluntary participation, middle hierarchy and pure or mixed character (private pleas, evaluation, arbitration, law-making), and mediation as a weak procedure (voluntary, low hierarchy, combined, mixed) – see table 1:

Table 1: Feature combinations of nominal procedures

		Motives of participation	Rule Hierarchy	Simple / Combined	Purity
Strong	Criminal Proceeding	Zwang für Angeklagte	Strong	Simple	Pure mit Modifikationen
	Examination Proceeding	obligatorisch or Voluntary	Strong	Kombiniert	Pure
	Democratic Elections	Obligatorische Durchführung Beteiligung Voluntary, selten Pflicht	Strong	Simple	Pure
Middle	Private Law Procedure	Voluntary/Forced	Middle	Simple	Pure or mixed
	Evaluation	Obligatory/ Voluntary	Schwach	Kombiniert	Pure or mixed
	Arbitration	Voluntary	Middle	Simple/ Option Kombi	Pure or mixed
	Law-Making Procedure	Voluntary	Low	Simple	Pure or mixed
Weak	Mediation	Voluntary	Low	Simple/ Option Combination	Mixed

Criminal procedures that are about grave breaches of regulations build an ideal type of public procedure. Corresponding with the necessity to sanction those breaches in an adequate way (with ordering, deteriorating, eventually also curing effects), the participation in those procedures is forced. A modification of strict level division is the essential role of a mixed actor type between rule level and operative level, the prosecutor that is to pursue public interests in a criminal process. Apart from this criminal proceedings show all general characteristics of procedures. So are the material and procedural norms of criminal proceedings generally accepted, and all involved actors are free to behave as they want within their respective roles (culprit, attorney, judge and so forth). Even procedures of this type have to be strictly independent and open in their results. With this institutional arrangement criminal procedures form a fundamental mechanism of civil coordination that strongly differs from uncivil processes, such as lynching, martial law shooting, power-loaded asymmetric decision – the ruling cast, class, status, or religion decides about marginal groups or persons – and mobbing.

Similarly as in criminal proceedings, rule level and operative level have to be divided in examination procedures and evaluation procedures: The examiners respectively evaluators can take their function

in an adequate way only if they are independent from interventions or other forms of influence by their candidates. The same holds for electoral proceedings in the meaning of democratic elections: organization, vote counting, and control of voting have to be out of the power of single candidates; necessary are a generally accepted electoral law, secret ballots, and transparent ballot counting and ballot calculation. If all involved parties, starting from these preconditions, accept the electoral results, also elections are very effective procedures of coordination. They stimulate, as any bound governance procedure, performance and public welfare.

According to these patters also other procedures may be typologically localized (see table 1).

2.2.2 Other procedures

Typical structures and functions of procedures are not only to be seen in nominal procedures, but also in many other areas, such as games and sports, science, economy and politics.

Game

The ideal typical game is intrinsically motivated. Above all in sporting games, strong rule hierarchy and distinct purity of procedures are usual. Also informal competitive formats, for instance quiz games, sing competitions and other informal competitions in broadcast and television show these characteristics. Game formats of this kind, indeed, oscillate between intrinsic motivation and diverse extrinsic motivation helps up to money prizes of millions of euros/dollars – a fact that has stimulated the development of an informal market amongst heavy hitters as well as amongst unknown bodies.

Markets: Procedural combinations?

Establishing procedural flowers in the transition area between game and market leads to the question how far markets generally constitute bound governance procedures. The answer to this question turns out differentiated: If we define a market as the encounter of supply and demand leading to the formation of prizes, we have to state different types of markets, dependent on the preconditions of market power on both sides (see table 2):

Table 2: Diverse markt forms: Combination of characteristics

	Motives of Participation	Rule Hierarchy	Simple/Combined	Pureness
Anonymous Competitive Market (Polypol)	Voluntary to Forced (through scarcity)	Strong bis Middle	Combined	Pure
Oligopolistic Market (Supplier Cartel – Many Buyers)	Voluntary to Forced	Middle to weak	Combined	Tendency to mixed until to Farcical Procedure
Monopolistic	Voluntary to	Weak to Missing	Combined	Tendency to

Market (One Supplier – many buyers)	Forced			Farcical Procedure
Oligopson (cartel of buyers – many suppliers)	Voluntary to Forced	Middle to weak	Combined	Tendency to mixed until to Farcical Procedure
Monopson (one buyer – many supplier)	Voluntary to Forced	Weak to Missing		Tendency to Farcical Procedures

All of these market forms build combined processes of coordination. The actors participate voluntarily, indeed, corresponding with the preconditions of scarcity up to practical constraints. Apart from these similarities there are some deep differences with regard to rule hierarchy and purity: While anonymous competitive markets in principle constitute procedures wherein the involved actors behave according to jointly accepted rules of equal opportunity and free action, this character of procedure vanishes in oligopolistic and monopolistic markets: Here a superior power of suppliers exists, resulting from natural conditions and/or power strategies like building cartels – see for instance the case of rare earth elements and the cartel of German electricity suppliers. This supremacy induces a fundamental change of market conditions where suppliers are able to manipulate and control market rules.

Massive distortions of market procedures also arise by consumer cartels (oligopsons) or in markets with only one consumer (monopsons). In those cases, for instance in the relationship between a national state and a brunch of firms that try to sell their arms technology products, regular economic competitive procedures loose of significance towards other structures and logics, particularly the battle about network power and forms of corruption.

These market forms practically appear in diverse degrees and combinations, wherein distinct procedural variations are possible. So incomplete information and relevant costs of transportation and communication modify anonymous competitive markets (Example: You buy your bread around the corner, even if it is more expensive there). Taking into consideration all those grades and modifications, yet fundamentally two-level procedures are to be differentiated from processes of simple power extortion.

Democracy as combined Bound Governance

The fundamental significance of procedures, particularly electoral and law-making procedures, for democracy catches our eyes. General, immediate, free, equal ballots are fixed requirements in countries that demand to be democracies. Also parliamentary law-making and other political-institutional processes of coordination, such as change of governments or building a new government, have to comply with strict demands of bound governance. Once procedures of that kind are missing in a political system or they are manipulated by powerful actors (example ballot-rigging by the governmental party or regionally powerful networks), no democracy does exist.

Because single democratic procedures cater to single decisions, but are combined by repetition as well as by diagonal combination, democracy should be considered as combined bound governance: The public is entitled to choose and to vote out its parliamentary representation, that in unlimited

sequence and combined with diverse other bound governance procedures, that imply principal equal opportunity and freedom of choice and action. These rights and the fair and free procedures founded on them, therefore, are basic for the possibility and functioning of democracy.

Democracy of that kind is not unprotected against substantial attacks; it is rather able to effectively fight against attempts to strive for unlimited power and rule. Because democracy is, in the end, combined bound governance, it issues and energetically battles attacks against the principle of equal opportunity and freedom. Prerequisites of this battle are a sound general law-system, a sound effective state and a sensible public. That's why democracy can be indicated and measured by an index comprising the status of civil rights, the status of political rights and the degree of effective state governance.

International Regimes

International regimes, for instance international security regimes, economical regimes, or environmental regimes, have been defined by Stephen Krasner as *implicit or explicit principles, norms, rules, and decision-making procedures around which actors expectations converge in a specific issue-area*.⁸ According to this definition are decision-making procedures around which actors expectations converge a basic regime element. So far, international regimes may be considered as bound governance. Indeed, there are mixed procedures because the involved (*operative*) actors dispose, at least in an early phase of regime constitution, at some rule power – see the negotiation of regime rules, the planning and conduct of monitoring and the evaluation of implementation by the participating national states. That's why international regimes are a precarious mixture of bound governance elements and elements of rule battled governance forms, such as bargaining and arguing. As realistic this construction may be in the realm of international relations, as precarious it is, to see for instance in the case of the extremely vulnerable and inefficient international climate regime.

3. Challenges

Despite its positive effects in diverse areas, bound governance is challenged through counter models of one-dimensional power, rule breaking, silent forms of dissolution and functional challenges.

3.1 Counter models of one-dimensional power

First attempts of bound governance can be traced back through thousands of years, so to Mesopotamia, old China and the Greek Roman antiquity; fair and free procedures, however, have got their break-through only since the Enlightenment, particularly in the second half of the 20th century. This role as historic green horn strengthens if bound governance is challenged through counter-models of one-dimensional power:

- Forms of autocratic rule, such as monarchies, authoritarian and totalitarian systems, pose relatively simple counter models to bound governance. Not only the practical use of those models, but also open or latent forms of admiring them imply a challenge of bound governance. That particularly holds for right wing extremist forms of thinking and organization. Because right wing extremism favors a distinctly asymmetric order of society

⁸ Krasner, Stephen 1983: http://books.google.de/books/about/International_regimes.html?id=FSIDAAAIAAJ
<http://de.wikipedia.org/wiki/Regimetheorie>

(leader-system, racism, may be with estates based elements), it idealizes power structures and makes its goals absolute, that is, it acts by means of violence, whereby terrorism and war are a logic consequence.

- There are also tensions between religion and bound governance: a) Religious faith matters often comprise statements of transcendental predetermination; that's why decision-making processes with open courses and open results seem to be impossible or irrelevant. b) Religion favors patterns of power and submission instead of free choice and free action through faith matters of absolute divine power and the hierarchical representation of this power. c) Religious social models and values often (not always) are distinctly asymmetric. So women and children dispose at weak or no own rights according to paternalist religious concepts; that's why there is no equal opportunity. d) Religions usually are based on absolute, invariant text foundations (fundamental texts); processes of change, therefore, may be related, in the best case, on new forms of interpretation, but not on the texts themselves. That's why it is no surprise that fundamentalist movements and fundamentally motivated terrorism considers bound governance structures as enemy up to fighting against any form of free life (for instance music and games).
- Left wing extremism programmatically exceeds the concept of equal opportunity towards models of material equality. Also this movement makes its objectives absolute and often operates violently – against propagated ideals of humanity. That may end in complete abolishment of any freedom; insofar it does not differ from right wing extremism and religious fundamentalism.
- Even in over-complex situations, such as hardly predictable menaces of public good, one-dimensional systems of power and rule seem to be superior (direct, fast action, no resistance). Once societal and political processes are considered as sequences of alert situations (may be through images of enduring war), simple power systems seem to be legitimated towards bound governance. Also too fast transitions to strategies of warfare or warmongering are attacks against bound governance. Finally, the general extension of war-games and the extension of war patterns on bound governance processes – see head words like *economic war*, *press war*, *soccer war* – do challenge bound governance.
- An implicit counter model to self-responsible bound governance is the flight into anonymity and its socio-political idealization: If individual and/or collective responsibility is, for instance in the Internet, abolished, no binding to generally accepted juridical titles or procedures does exist. Hence rumors and mobbing up to symbolic forms of stoning (shit-storm etc.) become a consequential option, in short, loss of civilization.

3.2. Rule breaking

Forms of rule breaking challenge bound governance less in principle, but systematically too: Once the separation between rule level and operative level has been broken, a procedure does lose its performance and function for common well-being. This process may be mediated through diverse mechanisms, such as fraud (doping, ballot-rigging), theft, network power, corruption, violence and organized crime.

3.2.1 Fraud/Theft

Fraud is any deception pointing at getting an illegitimate advantage. The term is not only used in reference to proprietary offences, but also to deceits under corporate law (forgeries, criminal deals,

fraudulent bureaucracy, fraudulent bankrupt, criminal offences against tax office and social assurance, tax fraud, offences against consumers, fraudulent advertisement, prize changes). Also beyond, so in science (rigging of research results, plagiarism, buying of academic titles), in sports or in personal relations (adultery), actors *betray*.

Fraud immediately implies the exploitation of trustful victims (see fraudulent theft, rental nomads). That is, cheaters do stand in a zero-sum relation to participants in good faith. How to see in the cases of shop theft, assurance fraud, or tax fraud, theft and fraud may also aim at collective actors, whose representation of common goods cannot easily be recognized. Fraud, theft and even robbery may be idealized as legitimate opposition if a ruling procedure is seen to be illegitimate (Robin Hood syndrome). Different from one-dimensional power, bound governance is based on the principal approval of all involved participants; that's why cheating an assurance or the state, indirectly, is an offence against the public. Even swindling in an exam is an aggressive act a) towards other participants who relatively fall back, b) towards the examiners and lecturers (betrayal of confidence), c) towards the generally accepted procedure (breaking).

A crook always, often not recognizable, breaks a trust based procedure. The more self-evidently valid rules of a procedure are taken for granted and the more precisely those rules are conceived, the more likely is it to talk about fraud in cases of deviant behavior. That is, the development and increasing assertion of differentiated procedures, in tendency, correspond with the proof of cheating. The fact that no cheating at all has been established need not express rule complying behavior; often there is simply no procedure to establish fraud.

An area-specific form of fraud in competitive sports, particularly in classical sports of biophysical benchmarking (such as weightlifting, athletics, or swimming) consists in doping, the use of not allowed means to improve performance. Resulting from doping a classical dilemma of trust (Prisoners dilemma) does arise: Because no athlete can be safe of not being cheated by doping of competitors, he/she will *dope just to be on the safe side* – with the consequence of producing even more doping pressure on other athletes....

Risks of fraud do obviously exist in procedures of political significance, such as anonymous elections, if no strong normative bounds and/or institutionalized controls prevent ballot rigging. Political lies and cheating is sometimes also an object of public debate; speaking of fraud, however, does not regularly belong to politics – possibly explainable through the fact that different perceptions of truth are usual in pluralistic political processes.

3.2.2 Network power

Networks need not to be a menace for bound governance structures – see for instance familial networks as long as requirements of bound governance are respected. Once network power circumvents and/or undermines requirements of institutional separation, for instance the independence of a judge, it works, however, as an offence against bound governance: Network members wrangle not only illegitimate personal advantages, but also discredit the procedure, whereby its acceptance and performance decrease or even break down.

3.2.3 Corruption

Corruption is a characteristic form of institutional short circuit: Involved participants buy illegitimate procedural advantages or certain rule decision from certain rule actors. This illegitimate bargain may

be conducted by the means of money or by payment in kind, such as flights, holidays, *red light radiation*, promotion, employment or illegitimate linkage of decisions. It is a kind of criminal rule-breaking if the involved actors are aware of the illegality of buying advantages in a procedure; in contrast if bound governance structures are only weakly developed or if they are hardly valid through common rule-breaking, corruption is considered as marginal sin, normality, or even as defensible acquired rights. Such a social culture of bargains between operative actors and rule-actors implies a structural institutional short circuit. It creates local optima for the immediately involved actors at general public's charge (global optima). Requirements of bound governance that protect commonality, by that even interests of minorities and interests of weak majorities are to be protected, are undermined. Fundamental demands of a modern society, such as being open for developments to come, performance motivation, performance, and institutionally based trust, fail.

The principal bargaining logic of networks corresponds with the logic of corruption insofar as different areas are linked with each other and its products are made fit for bargaining: According to the internal logic of networks, corruption seems to be nothing but exchange. For actors that are willing to bribe somebody or to take bribes, networks, vice versa, form a kind of embedment. This particularly applies to closed, informal, stable networks that are able to create independent network worlds where corruption can go on without any problem.⁹ Based on corruption networks diverse lucrative activities may be initiated and cultivated. Two of those activities are insider dealing and betting manipulation.

3.2.4 Violence

Today we consider violence as illegitimate physical or psychical violation. That means a clear offence against requirements of bound governance because the right of equal opportunity and freedom of action is limited or even abolished by the exertion of violence. That's why violence not only hurts certain victims but the general order.

3.2.5 Mafia networks and organized criminality

All outlined forms of rule-breaking combine in forms of Mafia networks and organized criminality. Here networks are formed and extended in order to undermine valid procedures by fraud and corruption wherein violence is systematically used as a potential means. That's why organized criminality constitutes a kind of counter pole to bound governance.

3.3 Processes of dissolution

An even more unimpressive challenge of bound governance is latent processes of dissolution. Those precarious processes often are not at all noticed, sometimes even idealized as win of flexibility and efficiency.

3.3.1 Deficits of operationalisation

Bound governance needs to have clearly operationalized rules. Once those rules are dissolved or completely abolished (*deregulation*) – see the financial sector since the 1980ies –, procedures lose their coordinative effects because a) the subject cannot be recognized any longer (loss of

⁹ Prittwitz 2001: Die dunkle Seite der Netzwerke. Strategien gegen Vermachtung und Korruption: http://www.volkervonprittwitz.de/die_dunkle_seite_der_netzwerke.htm

competence), b) decisions are no longer possible through the weakness of operationalization, c) significant rules of the procedure are not valid at all. In the case of the international financial sector, the consequence was and is an unprecedented exploitation of real economy and tax payers by mighty financial actors as well as a complete reversion of economic legitimation and functionality towards a primacy of financial economy.

The development of rules in particularly attractive sports such as football or tennis is the exact counter piece to this fatal trend. Here the clear decidability of game situations is in the focus. That includes the establishment that once made decision of referees are valid in any case, transparency as complete as possible (big crowd, television transmissions, increasingly also to be seen within the stadium), and finally the operationalization of rule decisions as precisely as possible. So in tennis, meanwhile electronic means of evaluation are used to decide if the ball was in or out. In football (soccer) the number of referees has been increased, and meanwhile the usage of electronic goal cameras is discussed. Similar developments can be established in figure skating and in artistic gymnastics.

3.3.2 Transition to bargaining processes

A second tendency of dissolution is marked through catch words, such as *the negotiating state*, *cooperative right*, *dealisation*, and *public private partnership*. In all these processes the hierarchy between rule level and operative level is diminished or even abolished, usually argued by cost-saving, overload of state institutions, increasing of flexibility and efficiency:

- *Negotiating state* means, for instance in processes of concession, the transition from sovereign dealing with applicants to a relationship of giving and taking between state and private actors. Arguments for this transition go to the fact that private actors can give public administration and government essential know how, network contacts and other advantages. Consequently decisions come hardly about according to criteria of bound governance, but rather in processes of networking and bargaining.
- *Cooperative right* and *dealisation* point at the fact that court proceedings are conducted more and more as bargaining processes between the involved parties and, above all, between culprits and state prosecutors/judges. With the main argument of reducing time and costs, an agreement between the parties is intended what for often a minimized admission of guilt by the culprit does serve. With those farcical procedures existing differences of power and income strengthen because at that above all payable actors come into question – a thwarting of bound governance.
- *Public private partnership* issues a partnership collaboration between public and private actors in investment projects, particularly projects of public service tasks.¹⁰ Background for the arising of this concept is the increase of public debts and the intensified search for new financial resources for public investments. This way of handling financial problems does not immediately attach bound governance processes because public institutions act as nothing but investment vehicle; in the consequence of PPP practices, however, private actors often find a privileged access to state norm building and decision-making procedures. Insofar PPP

¹⁰ PPP is a government service or private business venture which is funded and operated through a partnership of government and one or more private sector companies
http://en.wikipedia.org/wiki/Public%E2%80%93private_partnership (29.11.2012)

has to be considered as partial overtaking of state competences by single private actors, a contradiction to fair bound governance.

3.3.3 Transition to argumentative power battle

Also the transition from bound governance to forms of an argumentative power battle lowers the differentiation between rule level and operative level towards one level of interaction. This transition mostly goes on less peacefully than the transition to bargaining processes, that often in latent forms.

A first subtype of this transition consists in the confrontation of expertise and counter expertise. At that operative opponents try to build and to instrumentally use different fractions of rule actors, for instance experts, jury med/women, judges in a court proceeding, in their interests. That is, the struggle on the operative level is extended to the rule level; experts, hitherto actors on the rule level, are latently becoming also operative actors, may be financed by operative core actors. The power relation between rule level and operative level go into reverse: Operative actors win so much power that they exceed their operative status. The prize of this power win is a loss of bounding ability of procedural rules and rule actors up to a massive decrease of decidability and performance of a procedure. Instead of an institutionalized procedure with the demand of deciding in objectively way, an argumentative power battle between all involved actors does arise.

A second variant of this transition arises once operative actors develop and activate counter power towards the rule actors and possibly towards the valid rules. This, for example, results from opportunities of exam participants to complaint against the selection of exam topics or the way an exam is conducted. A form of counter power of operative actors is also the – mostly anonymous – inquiry about contents of education and examination as well as about the quality of a lecture. The effects of that change are complex: Once evaluation is no longer a one-sided competence of rule actors towards operative actors but a reciprocal process, not only performance and failures of operative actors, but also performance and failures of rule actors are at disposition. The teaching respectively examining actors will therefore try to adapt their performance to evaluations that have already happened or are to be expected – an intended learning process.

What, however, if the operative actors give disincentives? So at least academically weak actors tend to reducing performance requirements as far as possible, that is, to evaluate tough teachers less positive than soft teachers. At least the anonymous evaluation of courses/exams by operative actors will in tendency make pressure to diminish performance requirements, respectively to increase the level of grades.¹¹ Beyond, personal criteria may get excessive weight in anonymous evaluations: Whoever feels treated unfair by a teacher or does not agree with a given personal statement, and hence is angry about the teacher, will give it to him/her in an anonymous inquiry!

By transition to a reciprocal evaluation, lectures and exams probably will gain sensibility towards needs of the operative actors; exceeding power manner of rule actors will be restricted. On the other side, the general legitimation and trusted position of rule actors will lose ground in a procedural community. Procedures requiring an independent rule level will become contradictory, and go over into power struggles and bargaining processes.

¹¹ See on the inflation of top grades in numerous scientific areas in Germany:
<http://www.sueddeutsche.de/karriere/noten-roulett-inflation-der-spitzennoten-1.600458>

3.4 Functional challenges: Are democracies capable to long-term responsible action?

Bound governance is, last but not least, challenged in functional terms. That is about whether fundamental dangers for the common good, such as the global climate change, exceedingly increasing state debts and the win of power by financial actors, can be managed based on procedures, particularly through democracies.

If we check the development of global climate policy in the past two decades under this aspect, no specific linkage between action failure and democracy can be stated: It's true, global climate policy is no success story because global emissions of Green House Gases have distinctly increased (about + 50%).¹² In this increase aside of autocratic systems, such as China, Russia and diverse oil states, also the USA, Canada and Japan exhibit a clear increase of emissions, and politically behaved rather as climate political *brakemen*. On the other side, even democracies like Germany and other EU member states stimulated the international climate policy, and meanwhile attained also in their countries some climate political progress.¹³ That's why, political systems founded on procedures respectively democracy do not show a specific inability of action in this political area.

Regarding public debt quota, the comparative record between democratic and (more) autocratic countries turns out distinctly more precarious for the democracies: Indeed, there is a broad spectrum of public dead quota amongst democratic OECD countries, from Japan as frontrunner with 233 % down to New Zealand (a classical democracy) with 35%, and South Korea with 32% in 2011. Comparing classical democracies and other countries, however, a relatively high debt load (quote) of democracies comes to the day light; on the 50 places with the lowest debt quotas (from rank 120 to 171) no democracy at all is to be found. Moreover, the national indebtedness of democratic leader states, such as USA, Japan and Germany has distinctly increased since 1990, while for instance China shows a massive reduction of its public debt quota in the last years (2010: 34%, 2011: 27%, 2012 esteemed: 22%. Even so two European democracies reached a reduction, Sweden (from 54% in 2000 to 36% in 2011) and Denmark (from 60% 2000 to 44% 2011).¹⁴

Facing these data the question comes up whether democracy systematically stimulates the excessive production of public debts. A usual argument goes to the time limited periods of legislature in parliamentary democracies whereby politicians tend to act in relatively short terms of responsibility: Because politicians have to regularly win elections for having the chance to govern they tend to regularly distribute election gifts at tax payers costs – a linkage that in tendency stimulates making public debts in parliamentary democracies. This is exacerbated by the fact that campaigns are often to run in democratic multi-level systems (local, regional, national, supranational) whereby a great part of a legislature period is to be managed under pressure to distribute election gifts.

In terms of bound governance analysis, this precarious connection is an expression of combined reciprocal procedures: Also democratic politicians are well capable to meet long term oriented decisions – see for instance the spreading tendency in the European Union to establish a later start of pensions considering the increasing average life time and the decreasing number of children. This kind of politics however is much harder to sell in a campaign than to distribute election gifts – see for

¹² http://www.iwrpressdienst.de/iwr/CO2-Emissionen_1990-2011 – see also: <http://edgar.irc.ec.europa.eu/CO2REPORT2012.pdf> und <http://www.heise.de/tp/blogs/2/152083>

¹³ See amongst many others: Oberthür, Sebastian/Pallemaerts, Marc (Eds., 2010): The New Climate Policies of the European Union. Internal Legislation and Climate Diplomacy, Brussels: Brussels University Press.

¹⁴ http://de.wikipedia.org/wiki/Liste_der_L%C3%A4nder_nach_Staatsschuldenquote

instance the social democratic chancellor Schröder, who was punished for his Hartz IV policy, that has had noticeable positive effects on Germany's economic competitiveness until now, in the German election of 2005. Politicians that are particularly sensitive for the process, that is power dimension of politics, accordingly tend to target only programs and decisions that are currently capable to get a majority in the public and in parliament, and to present negative consequences of their (non-decisions in a mealy-mouthed way up to forms of data-rigging and escalating *sweet little lies*.

Democracy has to cope with this institutionally founded fundamental problem: Only if opportunistic behavior and respective ways of communication can be made apparent as such, and long term responsible action will become attractive, democracy has a chance to survive. It is high time to think about forms of a long-term responsive design not only in economics and financial sector, but also in politics. Because the sovereignty of the electorate has strictly to be respected, this means above all to intensify the public debate under aspects of long-term responsibility. New instruments of political analysis may be useful to serve this objective, such as the systematic evaluation of political action in a long term perspective.

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