
Governing by Commission: A Way to More Effective Governance or a Loss of Democratic Accountability?

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Abstract

The growing interest for the role of think tanks and other institutions offering political advice can be seen as part of the increasing relevance of governance as opposed to government. The different forms of political advice, its relevance for the decision-making process, and its normative implications have gained widespread academic attention. In Germany, think tanks not being as common and influential as in other countries, the discussion has been focused upon other institutionalized forms of political consultancy. The first and second Red-Green governments led by Gerhard Schröder provide rich empirical data on the functions and effective results of different types of non-permanent commissions which are installed by the government. The empirical findings show that the effect of these commissions goes beyond the provision of political advice. The normative discussion in the light of different theories of democracy leads to the conclusion that the commissions' effects on democratic legitimacy and participation are ambivalent: Possible gains on the side of the output-legitimacy are accompanied by drawbacks on the side of the input-legitimacy. Commissions do widen the chances of participation but they do not meet the demands of political equality and deliberative democracy.

1 Introduction

The different forms of political advice, its relevance for the decision-making process, and its normative implications have gained widespread academic attention. In Germany, this discussion has been particularly stimulated by the first and second German government led by Gerhard Schröder. Think tanks not being as common and as influential as in other countries like the United States, other institutionalized forms of permanent and temporal political consultancy have fostered the debate on the role political advice can and should play. Especially non-permanent commissions installed by the government as an instrument to prepare political decisions and/or to negotiate policies with private actors have become popular and raise questions concerning their practical relevance and their effect on the legitimacy of the democratic decision-making process. Schröder's so-called Council-Republic ('Räte-Republik') has been seen either as a means to come to a broad societal consensus to allow for necessary fundamental reforms (Steinmeier 2001) or as a threat to parliamentary democracy and the principle of political accountability (Papier 2003).

The use of commissions as a means of governing can also be discussed under the question of the implications of a changing role of the state often marked by the term of "Governance" (Benz 2004: 14). As the research on the many different bodies providing political advice or serving to prepare political decisions has not agreed on one coherent typology so far, I will, firstly, outline a typology of commissions. Secondly, I will present empirical findings which provide an answer to the question under which conditions and to what extent commissions have relevant influence on the decision-making process. Finally, I will discuss the effect of commissions on the legislative process in the light of different theories of democracy.

2 A Typology of Commissions

Neither governmental commissions nor other informal forms of institutionalized political advice or negotiations between the government, the governing majority in parliament, the opposition, and private actors are new phenomena or peculiar to the German political system. Corporatist negotiations between the state and interest groups have been taking place for decades. But the composition of the individual commissions and the reason for their existence differ. As a result, the scientific research has come up with various classifications based on the formal status (Gross 1999; Unkelbach 2001) or on a set of criteria which includes the permanent or non-permanent character, the mandate and the composition (Siefken 2006: 560). Other authors concentrate on the structure, the mode of arguing and the type of policy the respective commission deals with (Sebaldt 2004: 190).

The following typology of commissions is based on the role of commissions within the constitutional framework and their composition because applying these criteria we come to a differentiation adequate for the following normative discussion of the effect of commissions on the input- and the output-dimension of democratic legitimacy (Schmidt 2003). The typology only includes commissions that are formed by the government and in which actors from outside the government participate, be it from the private sector or public sectors outside the government (Blumenthal 2003: 9-10). It concentrates on temporary commissions that are created for a certain purpose. Permanent commissions do exist in a broad range of political fields but their effect on the political process is often less obvious because they act as purely advisory bodies. Their creation follows different rules and aims, their character is often less political. Therefore, they do not raise the same normative questions as do the non-

permanent commissions discussed in this paper. The same is true for expert commissions called into being by the parliament because they remain under parliamentary control. Their political effect is limited by the antagonism between governing majority and opposition and normally does not go further than opening up the parliamentary discourse, fostering parliamentary consensus, and preparing parliamentary decisions (Altenhof 2002: 337, 339f.).

The first type of commission follows the principle of pluralistic corporatism which means the inclusion of organized interests both in the older form of tripartite corporatist arrangements and in the more recent form of including interest groups from various spheres of the society (Czerwick 1999: 424). The aim of such commissions consisting of representatives of the state and of interest organizations is to provide a forum for negotiations and consensus-seeking on future projects of legislation and/or the implementation of existing laws. The idea is to integrate the affected parties in order to either diminish their resistance against planned measures or find a negotiated way out of a deadlock. In some cases the agreement may include self-obligations of the private actors which cover questions that either lie outside the competence of the state or take the place of binding regulations. The underlying reason for the government to choose this strategy is the vanishing steering capacity of the state especially in the field of economic policy. Therefore, the appearance of this kind of commission is part of the overall tendency towards less hierarchical modes of governing and more participation of private actors, i. e. the growing relevance of governance as opposed to governing (Benz 2004: 19). Pluralistic corporatism is also linked to the idea of achieving better political results and improving legitimization by enhancing participation (Czerwick 1999: 424f.). On the other hand, these commissions raise criticism as such informal decision-

making procedures may have a negative effect on the political accountability of parliament and government.

Recent examples for commissions following the principle of pluralistic corporatism are the Alliance for Jobs, which represents the traditional form of tripartite corporatist arrangements (Schröder 2003: 107f.; Siegel 2003: 148f.), and the bilateral negotiations between the Red-Green government and the atomic industry which led to an agreement about the long-term abandoning of the use of nuclear energy in Germany.

The second type of commission is characterized by its composition mainly of experts in the respective field of policy. At first glance, they seem to be pure instruments of consultancy and therefore may not raise any criticism from the perspective of democratic theory. The government seeks to gain expertise, which is not present within the administration, and may be interested in fostering public discourse on the subject in question. Recent examples are the 'Wehrstrukturkommission' which held its meetings in 1999/2000 under the chair of the former German president Richard von Weizsäcker and outlined perspectives for the reform of the German army, and the Süßmuth-Commission which dealt with immigration policy and presented its report of more than 300 pages in July 2001. Two other commissions, which were installed to design reform concepts for the labor market and the social insurance system (Hartz-Commission, Rürup-Commission), show that this kind of commission can only rarely be composed without the participation of groups affected by the coming policy. Therefore, its effect is not limited to pure political advice. It may also aim to involve interested groups. In this case, these commissions raise the question of participation and political accountability in almost the same manner as pluralistic corporatist negotiations do. Regarding the advisory function, the effect commissions have on the political process becomes interesting as soon as the government declares its willingness

to implement the recommendations unchanged – ‘1:1’ as Schröder stated concerning the reform-concept for the labor market presented by the Hartz-Commission.

The third type of commission which is often discussed in this context and meets with criticism especially from the perspective of constitutional law are informal consensus talks between governing majority and opposition in order to overcome the deadlock which often results from differing majorities in the lower (‘Bundestag’) and upper chamber (‘Bundesrat’) of the German parliament. These partly institutionalized informal negotiations are not subject of this article. They are inherent in the German political system, which is characterized by joint decision-making (‘Politikverflechtung’; Scharpf 1994: 59), and are deeply rooted in the constitutional setting. In this case, the necessity of negotiations between government and opposition is not in question, it is rather a question of timing and of the formal or informal way of decision-making as part of the chancellor’s leadership style (Helms 2005: 80). From the perspective of democratic theory a mostly informal way may be questionable in the light of the principle of transparency and/or clear democratic accountability but the government’s choice is either negotiation or non-decision (Czada 2000: 44). The participants of these talks come almost exclusively from the formal political institutions, sometimes including representatives from the party organizations. Experts may be asked for advice but their influence is very limited as was clearly demonstrated by the proceedings of the recent commission on the reform of the German federal system which failed to reach a consensus mainly due to political self-interest of the actors involved (Lhotta, Höffken, Ketelhut 2005: 40).

3 Governing by Commissions: Empirical Findings

As mentioned above, the first and second Red-Green governments led by Gerhard Schröder provide rich empirical data on the functions and effective results of different types of commissions. In the following section I will examine the composition and the effect of the first and second type of commissions on the political process from an empirical point of view. I will try to outline the criteria which were applied to choose the experts from the broad range of academic institutions and more policy-orientated think tanks.

Estimates of the number of commissions called into being by the Schröder government vary due to the lack of reliable and complete data and because of the divergent typologies mentioned above. Siefken (2006: 562) counts 26 commissions installed by the first and second Red-Green government. Other estimates go up to 32 (Dyson 2005: 228), not counting the over 100 permanent advisory bodies which are installed by different laws or administrative decisions (Bundesministerium für Familie, Frauen, Jugend und Senioren 2002: 11). I will therefore not give a full overview but concentrate on examples that stand for different combinations of the principle of pluralistic corporatism and expertise, differing political circumstances, and practical consequences. I will try to outline some general conclusions about the relevance of commissions and consensus talks which then form the basis for the following normative discussion.

Typical examples of negotiations following the concept of pluralistic corporatism are the Alliance for Jobs ('Bündnis für Arbeit') and the consensus talks about abandoning the civil use of nuclear power. In the first case, some of the issues in question were outside the competences of the federal government: Wage bargaining is not subject to

regulation from the state but lies exclusively in the hand of the trade unions and the employers' organizations. Other issues – like the deregulation of the labor market – were highly disputed between trade unions and employers' organizations and within the Social-Democratic party. Therefore, one of the aims of the Alliance was to create an atmosphere of mutual understanding in order to make possible fundamental reforms, which would otherwise have been combated from either side. By involving the trade unions in the decisions Schröder was able to overcome possible resistance from the left wing of his party. Although the talks within in the Alliance for Jobs went on for more than five years its results were of minor practical relevance (Siegel 2003: 172; Schröder 2003: 138). Major questions of labor market regulation and unemployment benefits were transferred to the Hartz-Commission which was formed in spring 2002 and presented its final report only weeks before the general elections in September 2002.

Looking at one of the few agreements with visible practical consequences the lack of commitment reached within the Alliance for Jobs becomes obvious (Schröder 2003: 136f.; Siegel 2003: 182f.). In summer 1999 a declaration on vocational training was drawn up. But even concerning this limited issue, the Alliance had no lasting effect. Two years later, the insufficient number of training positions was back on the agenda. In July 2004, a more binding agreement was signed outside the Alliance for Jobs, between government and employers' organizations only. Although the situation on the market for vocational training improved slightly, there was much debate on whether the employers did fulfill the obligations their organizations had made. This dispute proves the problem of compliance because the employers' organizations were not able to force their member firms to keep to the agreement.

The second major example of the strategy of solving conflicts by negotiation instead of regulation by law is the

consensus on nuclear energy ('Atomkonsens'). The consensus talks led to a treaty which was signed by the government and by the firms owning nuclear power plants. Although this agreement had visible effects – the first nuclear power plant was shut down in November 2003 – it was not welcomed unanimously. Members of the Red-Green coalition argued that by unilaterally amending the legislation on atomic energy an earlier end to the use of nuclear power in Germany would have been achievable and that the price the government paid was too high. Supporters of the consensus argued that in this case the energy-producing firms would have brought the case to court and would have had a good chance of winning. Apart from these reactions, the treaty proved its stability in the following years. Its relevance is rooted in the fact that on the one hand it provides a stable basis for the further use of nuclear power and on the other hand it paves the way for an end of all nuclear power plants in the foreseeable future.

As we can see from these two examples, consensus talks between the government and private actors may lead to an agreement if both sides are ready to compromise and are able to guarantee the fulfillment of the agreement. Whether this kind of interaction between public and private actors increases the government's freedom of movement or not will be discussed in more detail further on. One crucial condition is that all stakeholders who have resources of any kind to contribute to the solution of the problem can participate and that both sides in the negotiations are able to guarantee the fulfilling of the obligations.

Looking now at expert commissions that are asked for advice, the first interesting fact is that not a single one of these commissions was formed purely with the idea of gaining academic or practical expertise but also incorporated an element of pluralistic corporatism. To what degree these two principles were mixed did not decide whether a commission proved successful or not in the terms of its

recommendations being implemented. Among the successful examples there are commissions which primarily followed the model of pluralistic corporatism as well as commissions which consisted mainly of experts. Even the Hartz-Commission, which is often cited as the most influential commission in that it helped Schröder to increase his autonomy from both interest groups and his party (Dyson 2005: 234), did not rely solely on academic expertise but included representatives of groups which would be the object of the reform. The main difference from consensus talks was that these trade unionists were not chosen by the organizations and did not act as formal representatives of their respective union. Hartz himself was allowed to choose the other members of the commission. He selected persons out of the so-called modernizers from within the trade unions whose position was close to his ideas (Dyson 2005: 235). The key factor that made the success of the Hartz-Commission possible was the fact that the range of positions and ideas was limited. This becomes clear when we look at the Rürup-Commission which dealt with the reform of the system of social insurances and failed in presenting results for most of the issues in question (Dyson 2005: 242f.). This commission consisted of more than 26 experts, representatives of interest groups, and politicians and mirrored a broad range of more or less incompatible reform concepts.

From the empirical findings we can further draw the conclusion that a commission is more likely to succeed if the issue is limited and the talks can take place without permanent media coverage of the ongoing proceedings. The already mentioned Hartz-Commission managed to prevent public reports about internal debates and disagreements and presented its final statement unanimously (Dyson 2005: 235). In a similar way the commission on mergers and acquisitions developed guidelines for a new law that entered the government's draft legislation. This commission consisted

almost exclusively of representatives of parties affected by the legislation, accompanied by experts from the administration. Even the Rürup-Commission showed its ability to produce relevant ideas in one distinct sector. While most of its final report remained highly disputed, a relevant part of its recommendations for the taxation of pensions and for retirement provisions entered legislation.

The Hartz-Commission and the commission on mergers and acquisition had something in common which helps to explain their relative success: In both cases the cause for the appointment of the commission was a political problem which gained great importance and was seen as a major issue following a public scandal. In the case of the Hartz-Commission, reports on false statistics published by the Federal Employment Services triggered strong criticism and the need for reform. In the second case, the fact that Vodafone took over Mannesmann fostered a public debate about regulations against hostile takeovers. The urgent need for reform is a decisive factor which opens a window of opportunity. Academic and practical advice, especially if it is presented unanimously, can help the government to overcome resistance within the parliamentary parties of the governing majority as well as of other veto players.

Meanwhile, changing political circumstances reduced the effect of other commissions the intent of which was to foster public debate and to open up the chance for new policies. This was the case when the draft legislation on immigration and integration inspired by the report of the above-mentioned Süßmuth-Commission was delayed due to disagreements within the governing majority and the veto-position of the opposition in the 'Bundesrat'. As far as its composition is concerned the Süßmuth-Commission is a paradigmatic example of how the government tried to put the opposition under pressure by inviting a prominent member of the party to preside the commission and by including interest groups which are traditionally closer to the CDU than to the

SPD. When the commission began to work in July 2000, public opinion was much more in favor of immigration because of the need for qualified personnel and a slightly improved situation on the labor market. This had already changed when the commission presented its report in July 2001. Once the legislative process was under way, the growing awareness of international terrorism changed the perspective on immigration and made the government underline the aspect of security more than ever before. Concepts for a multicultural society and a more open immigration policy lost ground, which marginalized the relevance of the Süßmuth-Commission for the details of the legislation. Nevertheless, some observers argue that during the Red-Green government a change of paradigm took place in immigration policy that covered all parties and major societal groups (Vogel, Wüst 2003: 274). If that is the case, the commission may have contributed to this process and we can conclude from this example that sometimes the effect of commissions does not lie in concrete recommendations that are implemented but in a contribution to the public discourse on policies.

A closer look at the members of different commissions shows that apart from representatives of organized interests like trade unions, employers' organizations and other groups relevant to the policy field concerned, we come across certain names more than once. Mr Rürup is one well known example but also Mr Berger from Roland Berger Consultants was asked for advice several times. What we do not see is the regular participation of think tanks as institutionalized forms of political advice although in some cases they accompanied both the process of policy formulation and implementation (cp. Thunert and Eichhorst/Betterman in this volume). Expertise is mainly provided by universities and their specialized institutes. Apart from the principle of pluralistic corporatism that strives to include all parties affected, there is no clear pattern

discernible in the choice of experts. Personal acquaintance with either the chancellor or one of his ministers and long-term experience in political consultancy as member of permanent advisory bodies seems to play an important part in the selection of the individual members. The Hartz-Commission shows that other decisive criteria are distinctive scholarly and/or political orientations. The clue to the composition of the commissions lies in the main goal the government pursues: If broad societal consensus is the aim, participants come from the opposition, major societal forces like the Churches, trade unions, and employers' organizations. If the aim is to develop guidelines for the solution of a clearly marked political problem, a smaller commission with a limited range of ideas is formed. Even the Rürup-Commission does not contradict this rule. The size of the commission and the range of positions within was a result of internal diversities within in the government.

Finally, I would like to draw attention to the policy fields in which we can observe the use of consensus talks and of commissions: Most examples come from the field of economic and social policy where the need for reform has been seen as outstanding during both legislative periods. At the same time, in these policy fields the steering capacity of the state has been in question for more than a decade. But we also witness the use of commissions in other policy areas which can be labeled as referring to societal issues and basic normative questions: This includes the commission on migration and integration as well as the national council on ethics ('Nationaler Ethikrat') and other commissions dealing with different aspects of the German past.

The differentiation between the pluralistic corporatist model that is based on the inclusion of the parties concerned, and the expert-model searching for scientifically based or practical advice is not as clear in reality as in the definition. But we can still make a distinction according to the purpose of the commission: either it is the solution of a problem by

involving the affected parties and depending on their commitment; or it is a political concept which is afterwards to be implemented by legislation or by administrative decisions. The practical relevance of both, commissions and negotiations, may range from finding a binding political solution to complete failure.

4 Governing by Commissions: Normative Implications

The normative judgments of commissions are as ambivalent as the empirical findings about their relevance. Using commissions and corporatist consensus talks as a means to prepare political decisions is seen as part of an overall tendency towards informalization and deparlamentization (Schulze-Fielitz 1984; Morlok 2003). Judgments formulated on the basis of constitutional law criticize that these informal procedures undermine the constitutional law-making process to a degree that the formal process loses its substance because the main political decisions are made before the parliament starts dealing with the issue (Papier 2003: 8). Bypassing parliament, these informal procedures undermine the core principles of representative democracy: political accountability, transparency and public debate, and participation.

4.1 Political Accountability, Transparency and Public Debate

Representative democracy is based on the idea of the temporary authorization of parliamentarians and members of government. Political accountability is possible because the mandate can be withdrawn in the next general election. But

this requires that the incumbents can be made responsible. If a growing number of informal bodies is involved in the decision-making process it becomes unclear who stands for which policy. The complexity of the political process and the large number of potential participants and veto-players makes it easier for incumbents to hide their personal responsibility.

In the light of this criticism, the effect of negotiations between the state and interest groups is extraordinarily problematic because negotiations of this kind that may even result in formal agreements binding the government reduce the role of parliament to ratification. It is limited to the choice of either acceptance or refusal. (Papier 2003: 8) There is no more room for further compromises or for amendments to the outcome of the negotiations. As a result, members of parliament are made responsible for political decisions that were made outside their sphere of influence. This line of constitutional critique can be met by the fact that the formal right to decide, to pass the law, cannot be taken away from parliament. Therefore, governments may choose between two strategies: Either they include parliamentarians in the negotiations to improve the acceptance within the parliamentary party or they try out how far the parliamentary party is willing to go. The second strategy may work in the short term and concerning single issues but in the long run it bears the risk of undermining the loyalty of the members of the governing majority to their elected government. The first strategy may also have negative implications as the participation of experts from within the parliamentary party can tighten the hierarchical structure and thereby reduce the parliamentary party's political flexibility and creativity (Schüttemeyer 1998: 334f.).

The situation of the parliamentary party becomes more difficult in the case of non-decision. If the government promises private actors not to pass a certain law the parliamentary party still has the formal right to initiate

legislation but this would be a strong proof of distrust between government and supporting parliamentary party and, as a consequence, does not offer a real alternative to accepting the will of the government (Grimm 2001: 493). In the 7 years of Red-Green government we had a handful of cases where self-binding agreements with the private economy were chosen by the government as an alternative to legislation: concerning vocational training as mentioned above, prices for pharmaceuticals, and the improvement of gender equality in private companies. In all cases, the government's decision remained disputed within the governing majority for years. But the parliamentary parties of the governing majority did not go as far as drafting legislation themselves.

The second type of commission – as an advisory body consisting mainly of experts – seems to be less problematic in the light of political accountability. But even this instrument carries some possible negative implications: Modern administrations can rely on a broad range of expertise either from their own personnel or from permanent advisory bodies. Therefore, the main use of non-permanent commissions is not to gain knowledge inaccessible to the administration but to present known facts and concepts with a new legitimization in order to make the implementation more likely (Papier 2003: 8). The real aim is to produce pressure on the opposition, on the governing majority itself, on other veto-players. When the government announces its will to implement the recommendations of a commission unchanged this can be seen as an effort to transfer political responsibility to the experts. Thereby, the government strives to free itself from the need to give reasons for the respective policy. The efficiency of this strategy is confirmed by the example of the Hartz-Commission but, even in this case, the parliamentary parties influenced details of the legislation (Dyson 2005: 236f.).

Broadly speaking, commissions do not overrule political accountability in so far as the initiative rests with the government and the constitutionally fixed procedures of law-making guarantee the formal involvement of parliament. In other words, “the constitutional supposition of authorship and accountability” remains with the democratically legitimized constitutional institutions (Morlok 2003: 70, own translation). Nevertheless, the role of parliament may be challenged: As mentioned above, parliamentary influence can be reduced to the task of formal ratification which takes place after the policy has been fixed in informal negotiations and commissions and the issue has been under public scrutiny. This potentially invalidates the role of parliament as a forum for public debate on different policies, for the justification of the chosen option, and for public criticism of the opposition (Grimm 2001: 146). When a political decision is based on a consensus between governing majority and opposition and/or is founded on the aura of impartial expertise political controversy as the basis for representative democracy may be concealed (Scharpf 1993: 29f). As a result, political competition loses momentum and the relevance of elections is diminished (Grimm 2001: 147).

4.2 Participation: Common Good and Self-Interest

A second strand of normative criticism is based on the fact that both types of commissions offer limited possibilities of participation and are not open to the general representation of interests. Thereby, they endanger the principle of equal interest representation and political equality. Negotiations between the state and private actors, in particular, offer an additional chance of participation for all actors included in the process: as voters, they can choose their representatives, as affected parties they can articulate their needs in direct interaction with the government (Grimm

2001: 147). As shown in the section above, the participation of affected parties is a guiding principle of the preparation of decisions by commissions. Normally, the choice of the participants is dependent on the resources the respective groups or persons can offer. Thus, commissions of both types intensify the general problem of unequal representation of interests caused by differing organizing and articulating power. Furthermore, negotiations tend to favor solutions that benefit the contracting partners at the expense of excluded interests (Benz 1998: 206). When it comes to expert commissions, the problem of interest representation may not be as prominent but, even in this case, the criteria for the selection of members may be contingent, depending rather on the personal preferences of the person who chooses from the wide range of experts than on the state of the art or other comprehensible criteria.

Also, the participation of representatives from interest groups as well as that of academic and practical experts provokes negative judgments from the perspective of representative democracy: Unlike members of parliament and government, private actors are not obliged to the common good but to the special interests they represent. Even scholars are not bound in the way elected officials are. Members of parliament and of government are in principle liable to all voters and bound to their consent. Their general obligation is to aspire to the common good and not to work for their private interests (Papier 2003: 8; Hennis 2000: 163f.). In a similar way, representatives of organized interest groups are committed to the goals of the organization and its members. Whether there is a link between the ideas and recommendations of experts and representatives of individual interest groups and the voters' opinions remains an open question. From an empirical point of view, the distinction between holders of public offices, experts and representatives of interest groups may not be as sharp as democratic theory suggests. To presume an unbowed

commitment to the common good would be a highly idealized picture of members of parliament and government. Taking into account that more often than not public office holders act primarily in the interest of their own party, cooperative decision-making with the participation of different interest groups and experts from diverse fields may deserve “the presumption of higher generalizability”(Benz 1998: 218; own translation).

From the arguments discussed so far, we can draw the conclusion that part of the critique which argues from a constitutional point of view overestimates the binding effect of expert advice and underestimates to which degree government has to take into account the will of the governing majority in parliament. Nevertheless, negotiations following the pluralistic corporatist model and expert commissions have a potentially negative effect on the democratic legitimacy of political decisions: Both kinds of commissions intensify the problem of equal chances of participation. Furthermore, consensus as a guiding principle for political decision-making partly contradicts the principle of party competition. Consensus talks which result in binding agreements between the state and private actors can overshadow political accountability. The same is true for expert commissions if their advice is treated as a binding guideline for the government.

This strand of normative judgment focuses on the input-side of political legitimization. It analyzes whether political decisions can claim binding quality because they are the result of “authentic participation” and “will formation” (Schmidt 2003: 162, own translation). From this perspective, the essence of democratic government is the emergence of the final decision out of democratic competition between different concepts and ideas. Broad societal consensus reached in negotiations is not inherent in this model of representative democracy. Rather, the government needs a certain degree of freedom of action and relevant leading

capacity. Decisions should be discussed and made in an open parliamentary process. Politics is to demonstrate its ruling capacity by implementing binding goal-oriented decisions (Papier 2003: 8).

5 Commissions as a way to more effective governance

The steering capacity of the state has been under question for more than thirty years. While the trust in the effect of political planning soon was gone during the 70s, observers turned to the opposite point of view. The growing internationalization and globalization and the process of European integration have limited the nation-states' steering capacity. Since then, governing is no longer seen as a one-sided act of regulation but as a process of bargaining with different private interests. As mentioned above, governance as opposed to government has become the key term for the more cooperative and less hierarchical way of acting of the state. The transformation of the state from the steering center into a moderator can go as far as the willing abstention from the use of compulsory regulation even in cases where the steering capacity remains unchallenged (Voigt 1995: 42; Benz 1998: 204). Involving the affected parties in the process of regulation aims at higher efficiency and effectiveness of political decisions. Veto-players who are offered the chance of early and direct influence may be more willing not to use their veto in a destructive way. By taking on a role of moderator the state can regain some of its steering capacity. Whether this strategy proves successful and veto-players choose a cooperative way of acting depends on the character of the problem, the structure of interests and the institutional setting (Scharpf 2000: 197f., 148f.).

Negotiations between the government and interested parties can take two forms: either the government strives to reach a bilateral agreement with the private actors as was the case when the Red-Green government concluded the treaty on the end of the civil use of nuclear energy. Or the government can act as a moderator or foster a certain agreement between different interest groups. This tripartite strategy was chosen for the Alliance for Jobs and resembles traditional forms of corporatist arrangements. Both forms make use of the self-interest of the private actors in order to come to a negotiated result that is more favorable than any non-agreement. The chance of reaching consensus is higher if the state executive acts in the shadow of hierarchy, i.e. if it has the capacity to threaten the private actors with an enforceable regulation by law which is not in their interest (Scharpf 2000: 329ff.).

The effect of the shadow of hierarchy can explain the different outcomes of the negotiations on vocational training in 1999 and in 2004. In opposition to some factions within the governing majority and in the trade unions, Schröder had declared that he was against introducing a compulsory system of financial transfers from firms that do not offer training positions to those that already do. The goal of this system would have been to finance additional training positions. Therefore, in the 1999 negotiations the government did not have the advantage of the shadow of hierarchy. Five years later, the governing majority brought a draft legislation on financing vocational training into parliament and Schröder signaled that he might oppose such a law no longer if the employer organizations did not manage to offer enough places for vocational training. Under this shadow of hierarchy government and employer organizations came to an agreement that included obligations for the private companies as well as for the government. Since then, the trade unions have been monitoring attentively whether the employers keep their promises while the employers'

organizations have been trying hard to prove that they comply with all parts of the agreement from summer 2004.

Taking into account the high relevance of the shadow of hierarchy for the success of negotiations between government and private actors, it becomes questionable whether this way of governing does in fact enable the government to enhance its range of action. On the one hand, the existence of the shadow of hierarchy means that the state is in principle able to make unilateral decisions to answer the problem in question. On the other hand, negotiations without a shadow of hierarchy are much less likely to end with a compromise that is acceptable to both sides. Nevertheless, talks between the government and representatives of interest groups can have a long-term positive effect. Theories of interaction prove that communications over an extended length of time improve the mutual understanding and the general will to compromise (Scharpf 2000: 233ff.).

However, the problem of inequality remains unsolved: In negotiations between the state and private actors influential interests are more likely to bring their position into the final agreement. Compromises are often found on the basis of the lowest common denominator.

Moreover, the second argument against the use of negotiations as a means of governing also remains untouched: The success of the negotiations and of any agreement depends on the government's ability to fulfill its promises fully and quickly. This reduces the role of parliament to ratification without resistance, which in turn leads back to the judgment that deparliamentization is part and parcel of the cooperative state.

With regard to regaining steering capacity, the effect of expert commissions is also ambivalent: If commissions are meant to have relevant influence on the process of governing they must do more than providing expertise in the way permanent advisory bodies do. The advantage of commissions lies in their capacity to overcome deadlocks. As

mentioned above, Schröder used commissions not only to win the opposition over to his policy but also to neutralize resistance against reforms in the social sector both from the trade unions and from within the Social Democratic party. Like negotiations, commissions can provide a forum for exchange that contributes to a change in the patterns of interaction from an adversary mode to a more constructive and cooperative orientation.

Commissions in which experts play a decisive role rely on arguing rather than bargaining as the modus of interaction. They call for arguments based on knowledge or practical experience and do not allow for pure expressions of partial interests. Independence and impartiality as guiding principles of commissions have an effect not only on the participating actors but also on the following formal legislative process. Yet again, however, the impact of a commission's recommendations depends on its credibility: Unanimous support from the experts is the prerequisite for obtaining the conflict- minimizing effect. Given the growing complexity of political problems and the differentiation of the sciences, agreed recommendations are the exception rather than the rule (Beck 1986: 254f.). This leads back to the question how commissions are composed – whether they reflect a broad range of practical experience and scholarly orientations, as did the Rürup-Commission, or whether they are streamlined like the Hartz-Commission. In the former case, a unanimous result is less likely but any consensus reached by such a commission can claim broader acceptance than that of a commission reflecting only one particular strand of practical and theoretical expertise.

Regarding the steering capacity of the state, the main advantage of commissions of both types is that they can help to avoid conflict and to accelerate the decision-making process. In this light, both types of commissions can be seen as contributors to a change in the character of the state. Governing in the traditional sense of unilaterally passed

binding regulation loses its dominating position to more cooperative forms of governance. This tendency reflects the growing complexity of political problems that calls for enhanced knowledge as well as the diminishing steering capacity of the state. Under certain circumstances both types of commissions as part of a governance structure can, in fact, improve the effectiveness and efficiency of political decision-making and thereby improve the output-legitimacy of the political system. For a concluding judgment of the real effect of any commission on the democratic legitimacy one has to take into account both: the drawbacks on the side of the input-legitimization and the possible gains on the side of the output-legitimacy. Output-legitimacy can be measured by the quality of political decisions: the problem adequacy, the efficiency, and the effectiveness with regard to the common good (Scharpf 1993: 27).

6 Commissions as a way to more participatory governance

The governing capacity of the state is called into question not only from the changing economic and political environment but also from below: within the electorate arises an increased will to participate in the political sphere which calls for the development of new forms of governance (van den Daele/Neidhardt 1996: 14). This phenomenon is especially visible on the local level but goes far beyond. By enhancing cooperation between the state and private actors and by reducing hierarchical approaches governance is seen as the adequate strategy to enable the state to answer this demand (Blumenthal 2005: 1163). Therefore, part of the hope connected with the use of commissions as a means of governing is that the improvement of direct access to the formulation of policies fosters public support and thereby contributes to societal consensus and integration which are

no longer guaranteed by the political parties alone (van den Daele/Neidhardt 1996: 12ff.; Steinmeier 2001: 269). Proponents of this position argue that negotiations between different partial interests and the necessity of reaching an agreement acceptable to both sides increases the chance that the result serves the common good in a better way than the outcome of the political process in the institutions of parliamentary democracy (Scharpf 1993: 40). The hopes associated with (participatory) governance are fundamentally based on conclusions derived from the theory of deliberative democracy (Blumenthal 2005: 1165).

Judgments made on the basis of deliberative democracy generally claim that all decisions which are “discussed in institutions of civic society beforehand meet with broader acceptance and are of better quality and more sustainable” (Leggewie 2002: 41, own translation). But mutual understanding and compromise are more likely when the number of participants is limited and negotiations take place without public attendance (van den Daele/Neidhardt 1996: 27). This means that the aims of widening participation and promoting an orientation towards consensus partly contradict each other (Benz 1998: 206f.; van den Daele/Neidhardt 1996: 22f).

Corporatist consensus talks do not broaden participation to a relevant degree, as the inclusion in the negotiations is limited to a small circle of established influential interest groups or a small group of clearly defined actors like the nuclear energy providing firms. Depending on the configuration of players the role of the state and the effect on the policy-making process may be different: Especially bilateral negotiations between the state and partial interests may lead to a “colonization” of the state by interest groups while in tripartite negotiations negative external effects are less strong but still very likely to occur (Scharpf 1993: 37-39). Only pluralistic policy networks offer relevant chances for the participation of more different interest groups and for

a favorable outcome (Scharpf 1993: 39f.). Looking back at the empirical findings from the Red-Green government under Schröder we see examples of successful negotiations following the bilateral mode (on nuclear energy), partly successful negotiations according to the tripartite model (Alliance for Jobs) but no example of problem solving via negotiations in accordance with the pluralistic model. The pluralistic model does not seem to be applied to negotiations between state and private actors very often. The reason for this is obvious: The goal of such negotiations is to overcome veto-power. Therefore, the capacity to block a decision or to offer valuable resources for the solution decides whether a certain group is included in the negotiations or not (Benz 1998: 206). Wider acceptance of the (prepared) decisions is only gained from the participating actors.

At first glance, commissions seem to be better suited to open up the political process. As mentioned before, the commissions formed by the Schröder government included experts from different fields as well as representatives from a broad range of societal groups, depending on the subject in question. The commission on migration and integration can be treated as proof of the indirect effect of commissions to open the way for a wider acceptance of policies which have been in dispute for decades. But even in this case, inclusion depends on being affected by the problem in question and there is still room for compromise to the disadvantage of groups not included in the commission. Regarding the criteria for choosing experts, we have seen that general guidelines are rare. Rather, here too it is relevant whether a person can offer resources of any kind – be that expertise, reputation or personal acquaintance with members of government. Think tanks which are not yet very common in Germany will need some time to gather such resources.

The range of people included in the different commissions of the second type is much broader than that of those in the first type but it remains questionable whether this

meets the high demands of deliberative democracy. Within the discussion on governance there is a certain strand of research and theory that would see both these phenomena and the additional chances of participation they entail as a way of improving responsiveness as well as the link between the political institutions and the electorate. But whether either type of commission can meet these expectations depends on certain prerequisites. One of the most important conditions may be the type of the conflict concerned. If an issue is highly polarized between the political parties, mutual understanding and cooperative orientations will be inhibited. This explains why Schröder tried to win especially well-known personalities from opposition parties for his commissions. The aim was to foster an impartial way of looking at the problem and possible solutions. This strategy did not work in all cases, however. It did help the commission on integration to gain some relevance for the public debate on immigration but it did not prevent that the concrete suggestions turned into an issue of party competition and did not lead to a new societal consensus on immigration. When we take into account societal pluralism the effect of expert commissions on the acceptance of political decisions remains questionable. Neither do they offer real chances of participation nor can they claim a better representation of society than offered by parliament.

7 Conclusion

Governing by commissions is a – partly successful – reaction of the government to the diminishing steering capacity of the state. Thus, both types of commissions reflect the overall tendency towards a state which fulfills its functions by moderating rather than by steering. The role of commissions is rarely limited to the provision of political advice. In most cases the aim is to bind in private actors and

interest groups which play a decisive role in the respective policy field. Expertise is asked for because of its supporting and legitimizing effect on a chosen policy in the public debate. This leads to the question under which circumstances commissions can be successful: The empirical findings from the first and second Red-Green governments suggest that to a certain degree the composition of a commission may decide over its success or failure. Other factors which contribute to effective governing by commission are the shadow of hierarchy, the unanimous support from within the government, and a broad perception of a need for reform. Apart from their visible results commissions can have indirect effects in that they influence not only the perceptions of their members but also the public debate.

As part of a widespread tendency from government to governance governing by commission contributes to deparliamentization, although this tendency is limited by the fact that the parliamentary parties of the governing majority still hold a veto position based on the parliament's constitutionally fixed right to pass a law. Although commissions do offer wider chances of participation, political equality is not their guiding principle. On the contrary, in most of the cases influential interest groups, established think tanks, and other highly esteemed institutions are given more opportunities of participation. Nevertheless, the negative implications on the input-side of democratic legitimacy should not be overestimated and the gains on the output-side should not be overlooked.

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