

# The European Union and Its Lisbon-Strategy: Current Transformations of the Modern European State and Dynamics of Change in Public Law

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## **Abstract**

To describe and analyze the lasting development of the European Union (EU) it seems very fruitful to look for its strategy how to forming out a community of member states based on the fundamentals of the rule of law and a powerful institutional architecture. With regards to this the theory of reflexive modernization enables us to understand the interaction between the stability and the dynamics within the reform processes leading to the treaty of Lisbon and the revised written law, creating a “new governmentality” with severe consequences for the community. As one of them there arises a common European model of Public management on the background of starting an European administrative compound. Another consequence refers to the growing importance of public values as a worthwhile component within the Europeanization of civil service law introducing good leadership with special regards to the human resources development within the EU.

**Keywords:** Lisbon-Strategy, Reflective Modernization, New Governmentality, Modernization of Law, EU-Public Management Model, European Public Administration Compound, Civil Service Development within the EU

## I . Rethinking State and Law: Reflexive Modernization and Consequences to the Institutional Architecture

### A. Current Transformations of the Modern European State

In the member states of the European Community (EC) and also in Germany we are currently facing a very intensive transformation of state.<sup>1</sup> It is characterized by effective governance, that means the decentralization of discretionary and organizational competences as well as the assignment of ultimate responsibility. In this way the modern nation state is changing its face in Europe in the context of globalization and Europeanization concerning politics, law, economy and society.<sup>2</sup> In addition, an essential redefinition and a reevaluation of public tasks as well as of forms and instruments of the public service provision of the state contribute to this process.<sup>3</sup>

The extent of the public sector changes as well. This happens quantitatively and qualitatively by the “privatization” of the state, the liberalization of its services as well as by the deregulation of public tasks.<sup>4</sup> Furthermore, new tasks arise from the state’s acting as a “regulatory state” resp. as a “warranty state”.<sup>5</sup> As a consequence of this development, which is only outlined here, the internal structures of the state and its law transform. Finally, in its acting the state is subject to an “economization” by introduction of “New Public

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1. TRANSFORMATIONEN DES STAATES? LEIBFRIED (Stephan & Zürn, Michael eds., 2006).

2. Zielonka, Jan, Europe as Empire. The Nature of the Enlarged European Union 127 (2006).

3. *Governance in the Twenty-first Century. Revitalizing the Public Service* in book title? (Peters, B. Guy & Savoie, Donald J. eds., 2000).

4. Porter, Tony, The Private Production of Public Goods: Private and Public Norms in Global Governance, in: COMPLEX SOVEREIGNTY: THE RECONSTITUTION OF POLITICAL AUTHORITY IN THE 21<sup>ST</sup> CENTURY 217 (Grande, Edgar & Pauly, Luis W. eds., 2005).

5. Christensen, Jørgen Grøennegard, *Regulierung im Interesse des Gemeinwohls. Eine kritische Bilanz*, 4(1) der moderne staat. Zeitschrift für Public Policy, Recht und Management 167-187 (2011); Bohne, Eberhard & Bauer, Christian, *Ansätze einer verhaltens- und vollzugsorientierten Regulierungstheorie unter besonderer Berücksichtigung der Energiemarktliberalisierung*, 110 Jahrbuch des Umwelt- und Technikrechts 211 (2011).

Management”.<sup>6</sup> Moreover, its structures coalesce stronger than ever before with the structures of society. At the same time, its instruments are redetermined (“New Modes of Government”).

## B. Basic Assumptions for a Theory of “Reflexive Modernization”

These current transformations, especially their support by the Lisbon Treaty<sup>7</sup> are empirically evident. The European unification process demands for rethinking the state. Consequently the dynamics of change in government are accompanied by a rationalization of public law.<sup>8</sup> An example for its developing structure in the member states of the EC and also in Germany are new public values and new rules for human resources development in the public services.<sup>9</sup>

Less clear is, however, the theoretical classification and evaluation. So, on the one hand the view is held that the transformation of state implies the end of democracy and of modern state and that the transition to a “global state”, a “postmodern state” or to a “postmodern empire” could be observed.<sup>10</sup> On the other hand, there is the assumption all this would probably involve a process of “defibering” the democratic constitutional state and the state of intervention by widely constant basic structures.

These estimations are followed by analyses of the public sector reform diagnosing its internal modernization and at the same time its regulation by the state. By this perspective the transformation of state mirrors above all the optimization of the regulatory capacity of the modern state whose social

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6. Bohne, Eberhard & Bauer, Christian, *Ansätze einer verhaltens- und vollzugsorientierten Regulierungstheorie unter besonderer Berücksichtigung der Energiemarktliberalisierung*, 110 Jahrbuch des Umwelt- und Technikrechts 209-317 (2011); Bohne, Eberhard & Bauer, Christian, *Ansätze einer verhaltens- und vollzugsorientierten Regulierungstheorie unter besonderer Berücksichtigung der Energiemarktliberalisierung*, 110 Jahrbuch des Umwelt- und Technikrechts 209-317 (2011).

7. Streinz, Rudolf, Ohler, Christoph & Herrmann, Christoph, *Der Vertrag von Lissabon zur Reform der EU*, 3. Auflage (2010).

8. STRUKTUR UND WANDEL DES VERWALTUNGSRECHTS (Fehling, Michael & Grewlich, Klaus W. eds., 2011).

9. AUSBILDUNG FÜR DIE ÖFFENTLICHE VERWALTUNG (Schrapper, Ludger ed., 2011).

10. Guéhenno, Jean-Marie, *Das Ende der Demokratie* (1994); HARDT, MICHAEL & NEGRI, ANTONIO *EMPIRE* (2000); COOPER, ROBERT, *THE BREAKING OF NATIONS. ORDER AND CHAOS IN THE TWENTY-FIRST CENTURY* (2003).

conditions are changing rapidly.<sup>11</sup> The public administrative law as a mode of control of the modern state partly follows these assumptions with its development as far as internal affairs are concerned as well as towards society.<sup>12</sup> However, the cornerstones of a theory of the administrative state, which all those assumptions are based on, cannot be identified clearly. Or in other words: the empiric-descriptive characterization of the transformation of the state so far has only contributed single pieces of jigsaw to a currently still hazy overall picture of a transformed governmentality.<sup>13</sup>

Therefore, the discussion about the state with its implications for the development of public administration as well as for the character of public law faces the task of having to specify its theoretical and terminological foundations in order to adequately comprehend and to evaluate the current transformations of political governance on the one hand and the rule of law respectively the administrative perspectives linked with these transformations on the other hand. In this way, understanding the reflexive modernization of the state and its implications to the institutional architecture is a prerequisite for an appropriate comprehension of the developments in Germany's public administration and of those in other EC-member states.<sup>14</sup>

An analysis of the transformation of state, which has only been sketched out here, may - for this purpose - refer to the development of state and law in the modern nation states of Western European shape and in East Asia. According to the explanations of systems theory the transformations linked with this development are subject to the coerciveness of reflexive modernization as a never-ending process. Phenomena on this path are precisely not an epochal break with the political form of governing, with its law or with the executive authority of state ("Power-Rules-Administration"). Through centuries the transformations of state always rather appear to be further steps within the process of internal transformations of the modern state itself. So

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11. Bohne, Eberhard & Bauer, Christian, *Ansätze einer verhaltens- und vollzugsorientierten Regulierungstheorie unter besonderer Berücksichtigung der Energiemarktliberalisierung*, 110 Jahrbuch des Umwelt- und Technikrechts 209 (2011).

12. STRUKTUR UND WANDEL DES VERWALTUNGSRECHTS (Fehling, Michael & Grewlich, Klaus W. eds., 2011).

13. DEAN, MITCHELL, *GOVERNMENTALITY. POWER AND RULE IN MODERN SOCIETY* (1999).

14. Grande, Edgar, *Reflexive Modernisierung des Staates*, 1(1) der moderne staat. Zeitschrift für Public Policy, Recht und Management 7 (2008).

far, these changes may have a sincere quality. But more important is that also the contemporary modern state will be again and again confronted amidst his “life” with new challenges from the side of changing societies. The answer is always the same: The question is to modernize the state, its rules and its apparatus, namely the reflected reorganization of political authority.<sup>15</sup>

The theory of reflexive modernization of state<sup>16</sup> shows as a result, that the current transformations in the EC do not indicate an end of the modern state or the transition into a post-modern type of political authority.<sup>17</sup> Rather, these changes must be interpreted as internal transformation of the modern state itself and its government, including public law and with implications to the public administration.

### **C. Principal Aspects of Current Changes in the State’s Institutional Architecture**

However, what pushes ahead the process of flexible modernization of state? Three aspects can be stated, giving an explanation about the transformation of the state as a recent impetus to rationalize government, law and public service. On the one hand processes of individualization in societies<sup>18</sup> and the increase of social, financial and technical risks<sup>19</sup> are in the centre of consideration. Within the process of modernization risks and potentials of self-endangerments are increasing on a hitherto unprecedented scale. The scientific-technical progress endangers modern societies’ basis of life. On the other hand the transition to a “risk society”<sup>20</sup> also means an increasing

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15. Grande, Edgar, *Reflexive Modernisierung des Staates*, 1(1) der moderne staat. Zeitschrift für Public Policy, Recht und Management 7(9) (2008).

16. Beck, Ulrich & Bonß, Wolfgang & Lau, Christoph, *Theorie reflexiver Modernisierung -Fragestellungen, Hypothesen, Forschungsprogramme*, in DIE MODERNISIERUNG DER MODERNE 11 (Beck, Ullrich & Bonß, Wolfgang eds., 2001).

17. SØERENSEN, GEORG, THE TRANSFORMATION OF THE STATE: BEYOND THE MYTH OF RETREAT (2004).

18. RISKANTE FREIHEITEN - INDIVIDUALISIERUNG MODERNER GESELLSCHAFTEN (Beck, Ulrich & Beck-Gernsheim, Elisabeth eds., 1994).

19. BECK, ULRICH, WELTRISIKOGESELLSCHAFT - AUF DER SUCHE NACH DER VERLORENEN SICHERHEIT (2007).

20. Beck, Ulrich, *World Risk Society and the Changing Foundations of Transnational Politics*, in COMPLEX SOVEREIGNTY: RECONSTITUTING POLITICAL AUTHORITY IN THE 21<sup>ST</sup> CENTURY

individualization. A corresponding push of a hitherto unknown extent and dynamic is taking place above all in the Western industrial societies, but also in the East Asian “tiger economies”. People are separating themselves from their families’ social networks. They are more on their own and they want to depending on their own individual fortune on the labor market with all risks, chances and contradictions.

Moreover, the impacts of globalization accelerate the process of reflexive modernization.<sup>21</sup> The border-crossing character of economic transactions and risk spreading – as e.g. in the case of the debt crisis – devaluates the ability of the nation state’s institutions to respond. So the question is how the mentioned forces of transformation will influence the state’s institutional architecture. Not only the increased civilizing risks will widen the state’s range of tasks; at the same time the fundamentals of public law for example in the energy sector and its implementation as well as the exercise of duties change.<sup>22</sup> The individualization of lifestyles influences professional life and that results in citizens’ stronger demands to new forms of political participation. It leads to higher appreciation of social self-control. In addition, globalization of economy, politics and society challenges the state’s institutional architecture and territorial organization in favor of supra-national and regional cooperation for development. Special consideration is required on this cooperation processes at several levels.<sup>23</sup>

From this portfolio of dimensions of change the following three base lines of the transformation of the modern state in Germany and in the EC are in the focus of interest: On the one hand there is the far-reaching transformation of public tasks and its newly regulated implementation. Consequential pressure of change on the public administration including its decentralization as well as the development of an European administrative compound is obvious. Here, above all, the attention is turned to the prevention of risks as well as to

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Grande 22 (Edgar & Pauly, Louis W. eds., 2005).

21. Leggewie, Claus, *Die Globalisierung und ihre Gegner* (2003).

22. Bohne, Eberhard & Bauer, Christian, *Ansätze einer verhaltens- und vollzugsorientierten Regulierungstheorie unter besonderer Berücksichtigung der Energiemarktliberalisierung*, 110 Jahrbuch des Umwelt- und Technikrechts 209-317 (2011).

23. Grande, Edgar, *Reflexive Modernisierung des Staates*, 1(1) der moderne staat. Zeitschrift für Public Policy, Recht und Management 13 (2008).

the developing prevention state. Its characteristic is the institutionalized civil security architecture.<sup>24</sup>

On the other hand, the political decentralization of tasks in the modern state within the framework of its european (and global) networking also requires a new architecture of multi-level governance, i.e. beyond the nation state.<sup>25</sup> Finally and thirdly, the question arises how the public responsibility management of the transformation of state is able to handle the arising challenges of an implementation of various post-bureaucratic paradigms, including popular forms of managerialism (“New Public Management”) within the public administration.<sup>26</sup>

#### **D. “New Governmentality”: Empirical Consequences for Public Law and Administration**

The process of individualization in societies, the prevention of risks and the “europeanization” of law have already been forcing the reorientation of public law and administration not only in Germany. A new view of the national administrative state in the EC, that could be called “New European Governmentality”, is developing. It includes the precedence of european law and the development of EC-agencies as supra-national public administration under its guidelines.

At the same time in the age of globalization international administrative organizations like the OECD and the participation in their work are gaining also more importance. There are for example, to name but a few, the “World Trade Organization”, the “International Monetary Fund” or the “World Bank”. In as much as different fields of the global economy are governed on international level, not only the national state is restricted considerably, but for the nation states the law and management of these international organiza-

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24. Pitschas, Rainer, *Sozialrechtliche Regulierung des privatrechtlichen Versicherungswesens*, in WIRTSCHAFT – VERWALTUNG – RECHT. FESTSCHRIFT FÜR ROLF STOBER ZUM 65. GEBURTSTAG 300 (Kluth, Winfried, Müller, Martin & Peilert, Andreas eds., 2008).

25. Pitschas, Rainer, *Public Administration in a Global Setting and the Rule of Law*, 11(1) Zeitschrift der Koreanisch-Deutschen Gesellschaft für Sozialwissenschaften 483-505 (2001).

26. Pitschas, Rainer, *Public Administration in a Global Setting and the Rule of Law*, 11(1) Zeitschrift der Koreanisch-Deutschen Gesellschaft für Sozialwissenschaften 498 (2001).



tions becomes more and more important.<sup>27</sup>

Moreover, an europeanization of public administration is taking place within the framework of the European Community. For a long time we have known the border-crossing administrative cooperation, which is based on european law and which has to do with the joint administration of joint projects and joint budgets. In the more recent past and as a consequence of the creation of european administrative agencies, this has been complemented by something like an European Administrative Structure Policy. In addition, in the age of globalization the contacts between administrations all over the world take on greater significance. Although the administrative structures are still shaped by national administrative traditions, meanwhile, based on reflections about european public law and administration, supra-national administrative law-standards have been developed, which have their impact on the nation states.<sup>28</sup> In this way the european countries are trying to increase the efficiency of public regulation and to develop new institutional structures. As far as the administrative architecture is concerned, national traditions are increasingly combined with international experience.

The same applies to the increase of preventive administrative tasks in “risk societies”. For the prevention state the development of an administrative type, which we classify as “risk administration”, is significant. It shows specific forms of acting and procedures, according to a specified risk law.<sup>29</sup> Finally the individualization of lifestyles and its consequences of growing self-regulation of societies result in new forms of organization of the citizens’ political participation by means of “political decentralization”.<sup>30</sup>

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27. Perkins, Dwight H., *Public Administration and the State in the Global Economy of the 21st Century*, in KOREA IN THE ERA OF POST-DEVELOPMENT AND GLOBALIZATION: TASKS OF PUBLIC ADMINISTRATION 135 (Chung-hyun Ro ed., 1996).

28. Wagener, Guy, *Das EPAN-Netzwerk der Zusammenarbeit der öffentlichen Verwaltungen der Europäischen Union und die Lissabon-Strategie: Vom Bürokratieabbau zur Innovation*, in DIE ZUKUNFT DES ÖFFENTLICHEN SEKTORS 187-199 (Hill, Hermann ed., 2006).

29. Scherzberg, Arno, *Risikosteuerung durch Verwaltungsrecht*, 63 Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer 214-263 (2004).

30. Pitschas, Rainer, *Neue Öffentlichkeit und “Local Governance” im Zeitalter der politischen Dezentralisierung – Aktualisierungsbedarfe der Kommunalverfassungen in Deutschland*, in ENTWICKLUNGSLINIEN DER VERWALTUNGSPOLITIK 67 (Ziekow, Jan ed., 2007).

## **II. No Farewell to the “Bureaucratic Paradigm” of Public Administration**

### **A. Dynamics of Change in Government: Requirement of Public Management Different to “Managerialism” and Old Fashioned Bureaucracy**

Contemporary critiques of traditional government in Germany and in the other member states of the EU are based on the understanding of “old public administration” as law bounded and uninvolved in policy, hostile to discretion and to citizen involvement and narrowly focused on efficiency in implementing public war. Its essence was the design and defence of a largely self-serving bureaucracy, following the guidelines of a technocratic, one-best-way “science of administration” and – above all – profoundly anti-democratic.

So in Germany and at the same time in Great Britain, the Netherlands and step by step in all other European Community-States there was no doubt about the necessity to modernize state, law and public administration by reflecting the challenges of Globalization and other factors.<sup>31</sup> But especially in the heart of Europe we may identify in a wide opposition to the international trend the precedence of legally founded strategies over only economically based concepts. It is Germany which follows in his own manner a path of institutional development, which devised law bounded bureaucracy to ensure democratic accountability. Although the government is supposed to provide the same services as it does now using business principles, there remains a strong link to the Weberian bureaucratic paradigm with its reliance upon the rule of law – that means public law in harmony with the roots of traditional bureaucracy.<sup>32</sup>

#### **1. Modernization of Public Law and Administration as a Concept of Rationalization**

If we look more precise to the German concept of administrative moderni-

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31. 2 Bogumil, Jörg & Jann, *Werner Verwaltung und Verwaltungswissenschaft in Deutschland* 261 (2009).

32. König, Klaus, *Moderne öffentliche Verwaltung* 735 (2008).

zation, we may recognize the conviction that modernising state and administration is first of all an administrative-cultural process shaped by tradition and founded on law, requiring the development of an inherent model of searching for a new paradigm in the line of historical experience and the rule of law.<sup>33</sup>

One of the characteristics of this process is the strategy of rationalization inwards and privatization and deregulation outwards. Accordingly, a distinction can be made between the modernization of the state as a change in the relationship between citizen and state on one hand; on the other hand there is modernization in a more narrow sense, which mainly deals with the domestic structures of the German administrative system and intends to include entrepreneurial patterns into public administration. This forms the basis of the so-called “new steering model” which is first and foremost in use in the administrations of municipalities and towns. This model and concept is based on the idea that administration is being changed according to the model of enterprises acting in the private sector and that the administrative action is subject to a market-similar concept. In the transition from bureaucracy to entrepreneurial management the citizen faces an agency as “Enterprise” and himself as the “customer”.

This is the reason why local government nowadays has changed into a service enterprise. The underlying orientation toward the customer and quality is being promoted organisationally by creating decentralized institutions of efficiency and responsibility. The control of these “accountability centres” that have to produce efficiency on a set budget by individual responsibility of a public servant is achieved by modernizing some pillars of the administrative law and with the aid of the judicial system.

The aim of this occurring rationalization and the simultaneous introduction of entrepreneurial management techniques to get something like a public management was to increase the economical viability of public administration on one hand (“more efficiency”); on the other hand it was hoped that the quality of public administration activities would increase according to the expectations of the citizens (“more quality”). As a consequence for the employees in the public sector target- and performance-agreements have drawn up. Such a contract management wants to set guidelines or targets using them to

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33. König, Klaus, *Moderne öffentliche Verwaltung* 729 (2008).

achieve the administrative activities and thus ensure their quality.<sup>34</sup>

Target agreements and benchmarking are also introduced by public law between individuals and authorities as well as a new structure of efficient administrative centres in order to introduce competition-like dealing within public administration. After all, the aspiration is the strict functional separation of politics and administration on all levels: The first one is merely meant to be responsible for the strategic targets, in other words the “what” of the perception of responsibility, whereas the administration is responsible for the operative part of fulfilling responsibilities, in other words for the “how” of acting.

## 2. Rationalization as a Multi-Level Process

In this way, considerable rationalization successes have been achieved. Post-bureaucratic forms of public service become more significant; the transition from a bureaucratic performance model to a new decentralized management concept as an answer to the individualization of society and the challenges of globalization is recognisable. This way the efficiency and economical viability of German authorities has been increased. Their attention to service orientation has been advanced.<sup>35</sup>

In the areas of organization one stage of development is the organisational achievement of independence of administrative bodies (“outsourcing”) under the influence of european public law. For example, there are created institutions like “agencies” on the national and the european level, following the anglo-american model.<sup>36</sup> Alongside is the set up of flat hierarchies and the transition to a public service management that stresses the individual but lawful bounded responsibility of employees for a decentralized resources budget.

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34. Aulehner, Josef, *Zielvereinbarungen im öffentlichen Recht, in Wege gelebter Verfassung in Recht und Politik*. Festschrift für Rupert Scholz zum 70, 451-466 (Pitschas, Rainer & Uhle, Arnd eds., 2007).

35. Pitschas, Rainer, *Civil Service System Reform in Germany, in CIVIL SERVICE REFORM AND PROJECT IN THE FUTURE* 35-71 (Kim, Joong-Yang/Korea Institute of Public Administration ed., 2006).

36. Kirste, Stephan, *Das System der Europäischen Agenturen*, 102(2) *Verwaltungs-Archiv* 268-284 (2011).

In addition to this the process structures have also changed to a large extent.<sup>37</sup> Here the modernization efforts concentrate initially on the duration and lengthiness of administrative processes, especially when it comes to constitutional approval. In reducing legal regulations, environmentally-, business- and structurally-related examinations are expedited. Instead, the investigating boards of examiners are now acting within set deadlines; after these – set by procedure law - have expired, interim approvals are in force. Beyond it, the administrative process is linked to a legal determined dialogue- and project-management. While the former tightens up communication processes between administration and citizens, the latter means the administrative responsibility to fulfil a defined task within a limited period of time. All in all, these improved process structures of public management in the housing of changing public law now make sure that a stronger business process aimed at getting a result prevailing upon bureaucratic slowness, while at the same time taking back the proceeding regulatory connection.<sup>38</sup>

The outlined stages of development finally correspond to the changes in personnel structures of the public service. Generally speaking, what these are all about is to accomplish the work of the human resources in line with the above mentioned structural changes. Accordingly, suitable concepts of personnel planning, mobility, paying and development are introduced. In other words: a specific human resources management is increasingly valued by “europeanized” civil service law.<sup>39</sup> It strives for:

- The gradual deepening of a service awareness
- The development of specific incentives to adopt decentralized responsibility
- The preparedness to increased mobility
- The introduction of a contract management.

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37. Kahl, Wolfgang, *35 Jahre Verwaltungsverfahrensgesetz – 35 Jahre Europäisierung des Verwaltungsverfahrensrechts*, 30(8) Neue Zeitschrift für Verwaltungsrecht 449 (2011).

38. Schneider, Jens-Peter, *Strukturen und Typen von Verwaltungsverfahren*, in GRUNDLAGEN DES VERWALTUNGSRECHTS, BAND II, § 28 S. 523 – 624 (Hoffmann-Riem, Schmidt-Aßmann, Eberhard & Voßkuhle, Andreas eds., 2008).

39. Voßkuhle, Andreas, *Europäisierung des öffentlichen Dienstes*, in WEGE GELEBTER VERFASSUNG IN RECHT UND POLITIK. FESTSCHRIFT FÜR RUPERT SCHOLZ ZUM 70. GEBURTSTAG 189-201 (Pitschas, Rainer & Uhle, Arnd eds., 2007).

In the centre of the latter are target agreements between the managers and their employees that state how certain results of work can be achieved in shorter time constituting supportive measures in accordance with better payment by incentives and the individual development perspectives of the employees.<sup>40</sup>

### 3. External Rationalization: Reduction of the Public Sector

The reconstruction of the state functions (“external rationalization”) has also moved forward considerably in relation to society and citizens. To mention just a few examples: the first is the reduction of state duties in the areas of the postal service and telecommunications. The required services are now being carried out as a private-sector activity by companies like “Deutsche Telecom” that emerged from the special capital funds of the former German Federal Postal Services. It obviously has to be noted that in the transition from a state business to the free-market-economy, competition is being created and promoted. On the background of our constitution and the European Competition Law this responsibility is still being considered as a governmental duty; as a result in Germany an appropriate regulatory authority has been set up.<sup>41</sup> The same is in the financial sector.<sup>42</sup>

Accompanying this reduction of the public sector, numerous preventive measures have been transferred to it in order to safeguard technical, social and public “security” in the so called risk society. In the area of “interior security” for example, the Federal Government and the States in Germany have given authority to let the private security service providers participate to a far greater extent than previously in guard and protection duties. The security business, therefore, is considered as a helping body to maintain the preven-

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40. Aulehner, Josef, *Zielvereinbarungen im öffentlichen Recht, in Wege gelebter Verfassung in Recht und Politik*. Festschrift für Rupert Scholz zum 70, 451-466 (Pitschas, Rainer & Uhle, Arnd eds., 2007).

41. Bohne, Eberhard & Bauer, Christian, *Ansätze einer verhaltens- und vollzugsorientierten Regulierungstheorie unter besonderer Berücksichtigung der Energiemarktliberalisierung*, 110 Jahrbuch des Umwelt- und Technikrechts 242 (2011).

42. Pitschas, Rainer, *Neue Öffentlichkeit und “Local Governance” im Zeitalter der politischen Dezentralisierung – Aktualisierungsbedarfe der Kommunalverfassungen in Deutschland*, in ENTWICKLUNGSLINIEN DER VERWALTUNGSPOLITIK 61-81 (Ziekow, Jan ed., 2007).

tive fight against crime and defend against terrorism or public order offences in public-private-partnership with the state. At the same time we may see here the development of a certain risk administration.<sup>43</sup>

Another example for reducing the public sector is the appointment of self-responsibility of private enterprises for the protection of environment that has been introduced in recent years. In this connection, it remains to notice, that the participation of groups of society in pollution control is promoted in trying to accomplish the concepts and enforcement of objectives of the ecological policy. For example: the economical law of the ecological cycle and waste disposal which came into force in 1996 grants the producers and owners of waste the possibility to perform the duties of waste disposal as their own responsibility. The formerly predominant public waste disposal, therefore, becomes a real “waste economy”.

Finally it should be pointed out that social welfare in Germany is more and more competition-orientated. Here the shift of state responsibility toward private initiatives during the course of the past few years is also comprehensible. A clear example for this is the legal health insurance, which has institutionalised a competition for members and their contributions. This does not, however, constitute a general “privatisation” of the social insurance. But the legal health insurance considers itself to be introduced as the supplier and the one that makes demands on the markets of health services. The new direction being set for the future is the fusing of private and legal health insurance and their dismemberment in single competitive enterprises.<sup>44</sup>

## **B. The “New” German Governmentality: Public Management in the Framework of Public Law and Revised Bureaucracy**

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43. Pitschas, Rainer, *Frei – sozial - auch sicher? Sicherheit als Rechts- und Verfassungsprinzip im Wandel zur “neuen Staatlichkeit”*, in VERWALTUNGSWISSENSCHAFT UND VERWALTUNGSPRAXIS IN NATIONALER UND TRANSNATIONALER PERSPEKTIVE 296 (Magiera, Siegfried, Sommermann, Karl-Peter & Ziller, Jacques eds., 2008).

44. Pitschas, Rainer, *Sozialrechtliche Regulierung des privatrechtlichen Versicherungswesens*, in WIRTSCHAFT – VERWALTUNG – RECHT. FESTSCHRIFT FÜR ROLF STÖBER ZUM 65. GEBURTSTAG 305 (Kluth, Winfried, Müller, Martin & Peilert, Andreas eds., 2008).

The outlines of a “new” governmentality in Germany begin to appear before this background, in which effectiveness and efficiency of law and public administration have gained a far higher standing than previously.<sup>45</sup> State reform and modernization of public law today are intended to lead administrative acting closer to the market and to strengthen managerial ability in public service systems. So at present the independent image of the law bounded Public Manager emerges. He forms the opposite to the “organisational ruler” of traditional bureaucracies who has acted according to the ideal type created by Max Weber, but also to the “managerialism” from the US point of view. As a result, today it seems in contrast, the post-bureaucratic administration has come to the fore. The “efficient administrative state” is the model, which is leading the ongoing modernization of public administration under the rule of law.<sup>46</sup>

Therefore, in Germany post-bureaucratic forms of organisations exist amongst others in the preferred development of project management and teamwork within the up to now lasting hierarchical structures of the ministerial- and local administration.<sup>47</sup> Furthermore, the previously substantial administrative bodies have been reduced on all administrative levels and have been decentralized in a new manner. In this way the main objective of modernization, which is “service orientation towards the citizens” and at the same time the making of a connection with the citizens’ commitment, is implemented. The simultaneous transformation of governmental and local administrative institutions into agencies and outsourced private enterprises, working in public management networks and in a field of multi-level governance, holds another large proportion of the changes into a post-modern type of government. This applies to postal operations, to the entire telecommunications sector, the railway and also, but mainly on the regional and local level, to the hospitals and also previous economical enterprises of the municipalities. Even the German Federal Armed Forces have created a privatized enterprise for procuring military equipment.

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45. Bailey, David, J., *Governance or the Crisis of Governmentality? Applying critical state theory at the European level*, 13(1) *Journal of European Public Policy* 16-33 (2006).

46. Pitschas, Rainer, *Public Administration in a Global Setting and the Rule of Law*, 11(1) *Zeitschrift der Koreanisch-Deutschen Gesellschaft für Sozialwissenschaften* 491 (2001).

47. 2 BOGUMIL, JÖRG & JANN, WERNER *VERWALTUNG UND VERWALTUNGSWISSENSCHAFT IN DEUTSCHLAND* 259 (2009).



Altogether far-reaching changes of the decision-making processes in public administration, of its organisational structures, the administrative procedures and its personnel structure – all of them embedded in public law - can be noted. Accompanied by this is the often budget-controlled production of services. Even the audit offices have been included into this change. They move from “courts” to “auditing organizations”.

A third line of development is made clear by the now widespread use of information technology in authorities and the transition to using this in constituting “data warehouses”. Meanwhile a new level of information is achieved for decision-making and communication amongst them and also with the citizens. This also shows a deep change of the structural conditions of public administration in Germany as a result of re-thinking the state: “The whole machinery is changing”. So, the real outcome of these changes is a new governmentality, including the following components:

- (1) The previous efforts in Germany show that modernizing the state is not only about saving money; at the same time they aim to have a better performance of the administrative activities in the context of a dynamic change of public law under the auspices of the European law development.
- (2) If we look at the process of changes, a partnership-governance and new publicness seems to emerge from clientele- and customer-orientated modernization and performance improvements on the side of administration. But the crucial question is whether the citizens’ expectations of quality have been met by this increase of “performance”. The trust of individuals in the efficiency of public actions – has it been strengthened by this?
- (3) Until now an on-going change of law and administrative structures can be noticed in Germany. However, the unsolved question is at present, whether it really is about a change of administrative structures in Germany or is it caused by deeper initiatives by the EU? That, nevertheless, requires wide awareness of the cultural dimension of public law and institutional development.

- (4) Finally, it is to learn, that after twenty years of reforms in Germany there are not many visible results, although we can notice some evidence of improved customer satisfaction and some “Re-Inventing Government” in our way.<sup>48</sup> That shows the continuing value of the “bureaucratic paradigm” to the preservation of civil society. Or in other words: Stable institutions facilitate orderly change even under the auspices of the risk society.

### C. Modernization of State and Law in the EU – Towards a Common European Model of Public Management

Modernization of state and public law does not – as in the sense described above – proceed at the same speed in all EC-states. For example, they are on the state level hardly familiar with German Federalism and its public administration that is essential for us.<sup>49</sup> It is ultimately based on the idea of political decentralization of the modern state, in which the times of the classical centralized state are finally over, as we learn from France.<sup>50</sup> Instead of this, the EC neighbours of Germany want to rather acquaint themselves with the concept of “regions”, as the examples of Belgium and Italy show. Regional peculiarities appear, moreover, in Europe in respect of the administrative development within the Middle- and East-European states. They formerly had shared the fate of the now East German Federal states, namely to have been subjugated as a socialist state to a unique rationality of governmental actions.<sup>51</sup> From there, the modernization of state and administration requires in these countries for the time being initial steps, for example the setting up of

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48. OSBORNE, DAVID & GAEBLER, TED *REINVENTING GOVERNMENT: HOW THE ENTREPRENEURIAL SPIRIT IS TRANSFORMING THE PUBLIC SECTOR* (1992).

49. BENZ, ARTHUR, *Verflechtung der Verwaltungsebenen*, in *ÖFFENTLICHE VERWALTUNG IN DEUTSCHLAND* 165-184 (König, Klaus & Siedentopf, Heinrich eds., 1996/1997); BEESON, MARK, *Rethinking regionalism: Europe and East Asia in comparative historical perspective*, 12(6) *Journal of European Public Policy* 969-985 (2005).

50. KUHLMANN, SABINE, *Dezentralisierung in Frankreich. Ende der “Unteilbaren Republik”?*, 1(1) *der moderne staat. Zeitschrift für Public Policy, Recht und Management* 201-220 (2008).

51. PITSCHAS, RAINER, *From Command Economy to Market Economy: The Influence of Administrative and Government Reforms. The Case of the Middle and Eastern European States*, in *COMMAND ECONOMY TO MARKET ECONOMY. RESTRUCTURING AND TRANSFORMATION* 138-156 (Jain, R. B. ed., 2000).

successful self-government within the regions. Beyond this, the requirements of internationalising public administrations show, for example, that they must be connected with the rules of the “World Trade Organisation (WTO)” or similar organisations. They are concerned with the economical-, environmental- and patent administrations of the participating member-states.<sup>52</sup>

More than that, the Europeanization of public law and administration has a special standing within the context of the EU.<sup>53</sup> Here it is mainly all about the administrations’ co-operation during the emergence, decision-making, application and enforcement of European law with its impact to the national level. Joint challenges appear, especially in view of the national civil service, for example concerning leadership in the context of Quality Management. Dealing with these challenges shows common trends, which are on one hand to make the civil service more flexible and on the other hand to strengthen the ability to support the administrative units, responsible for European integration, in managing and co-ordinating the implementations of the objectives set in the Europe agreement about the necessary public law. Different options are in existence for this, naturally. Germany follows, also in this respect, at the same time its own strategy.

Nevertheless, the outlines of an “European Administrative Structural Policy” are recognisable, which initially – and relying on the emerging European administrative law – starts off at the coherent meaning of renewal the cooperation process by creating an administrative compound. This effort is familiar looking to the external European administrative cooperation, like, for example, the “China-Europe Public Administration Programme” or towards the former French colonies and also within the framework of the development aid-cooperation (“European partnership” with developing countries). Even if the former concept of European administrative cooperation does not suggest a distinctive inner dimensionality, but instead a strong brittleness, it becomes, nevertheless, gradually apparent that the EC has a growing ability to develop,

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52. Pitschas, Rainer & Gomez, Sofia Martinez, *Influence of World Trade on Developing Countries under the Framework of the World Trade Organization*, in *HANDEL UND ENTWICKLUNG IM ZEICHEN DER WTO – EIN ENTWICKLUNGSPOLITISCHES DILEMMA* 15-20 (Pitschas, Rainer ed., 2007).

53. Streinz, Rudolf, Ohler, Christoph & Herrmann, Christoph, *Der Vertrag von Lissabon zur Reform der EU*, 3. Auflage (2010).

shape and transform on the basis of a dynamical change of law a coherent formed administrative structural policy in its domestic area.<sup>54</sup>

It is not far from one's thoughts to suspect, that the Union will use this ability, still to be refined, to introduce a joint European public management according to the concentrated interaction between national and european administrative procedural law and administrative organisational law. Occasionally this is already happening, as verified, for example, by the development of european agencies. The result will be an european public administration compound.<sup>55</sup>

### **III. Public Values and Human Resources Development in the Core of State's New Governmentality**

#### **A. Reflexive Modernization and Values of Public Service**

The process of restructuring the institutional architecture of the modern state and especially modernizing of the public service<sup>56</sup> is confronted with two major challenges, connected to each other. On the one hand there is a worldwide struggle between the law bound administration and the entrepreneurial spirit of leading public organizations like private enterprises. With regard to this and in contrast to the international debate on Public Management I want to adhere to the fact, that Public Administration within the EC is not only an enterprise of serving and protecting the public, but also a government organization, which follows the rule of law and which is entrusted the management for the public and common good. The sources of this understanding are the Theory of Justice in a democracy (Rawls) and the modified Weberian Theory of bureaucracy. Therefore we have to reconcile the traditional law determined public service with those challenges arising from new approaches

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54. EUROPÄISCHES VERWALTUNGSVERFAHRENSRECHT (Hill, Hermann & Pitschas, Rainer eds., 2004).

55. Weiß, Wolfgang, *Der Europäische Verwaltungsverbund* (2010).

56. Pitschas, Rainer, *Civil Service System Reform in Germany*, in *CIVIL SERVICE REFORM AND PROJECT IN THE FUTURE* 35-71 (Kim, Joong-Yang/Korea Institute of Public Administration ed., 2006).

based on private sector experience and on enforcement of democracy and the dynamics of change in public law. .

Therefore we should take careful account of the value implications of modernizing the state, its law and public service.<sup>57</sup> If we do so, we will notice on the other hand that there is a struggle on Ethics in Public Service because of Administrations, which become less bureaucratic and more entrepreneurial. They seem to loose the values of political neutrality and professionalism. This is namely a real danger for those administrations which become politicised. In any case ethic performance and morality of the bureaucracy is of special importance. To avoid the loss of values inmidst the conflict between the minimal and the social state or the political and the professional administration, it needs to remember at the “old” values of a traditional public service, like political neutrality or fairness, and to bring them in an all-day code of conduct with the “new” values arising from new approaches to organizing and managing public organizations. Or in other words: The success of public sector reforms is not at least a question of taking careful and systematic account of their value implications.

### **1. The Profession to Indispensable Values of Public Service**

Public service values have been classified in various ways. One of the categories in such classifications are professional values. “Professionalism” in Public service means on the one hand a high degree of competences in delivering quality service. On the other hand professionalism in public administration embodies the responsibility for the specific mode of conduct in the public field of democratic institutions.

Professional values in the sense of competency include such characteristics of high-performing organizations as a focus on the customer’s service, a strong strategic vision, continual benchmarking and performance improvement as well as an emphasis on results in a competitive environment. But

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57. Kim, Pan Suk, *Korean Civil Service System and Civil Service Reform*, in CIVIL SERVICE SYSTEM AND CIVIL SERVICE REFORM IN ASEAN MEMBER COUNTRIES AND KOREA 380 (Kim, Pan Suk ed., 2010); Pitschas, Rainer, *Reforms of Public Administration within the European Union: Why do we need more Ethics in Public Service?*, in TRUSTED GOVERNANCE DUE TO PUBLIC VALUE MANAGEMENT 17 (Pitschas, Rainer ed., 2006).

this classification goes along with the emergence of democratic values like impartiality and the rule of law, but also with ethical values like integrity and fairness. Sure, a few values fall into more than one category; so means “accountability” as both an ethical and a democratic value. And to obey the “rule of law” is as both an ethical and a democratic one. Keeping that in mind, we may identify what it means to democratize bureaucracies and to create citizen engagement in public administration.<sup>58</sup>

## **2. Public Service in a Conflict between Accountability for Results and the Democratic Rule of Law**

Instead of this and in reality public servants seem to be relatively more accountable for results than for the process. But it will be a misunderstanding, to lead for that reason the focus on values as a possible alternative to legal rules, directives and guidelines. On the contrary, restructuring public administration needs communication as a process and rules and institutions which assign fundamental rights and duties, and which determine the proper division of advantages and disadvantages arising from social cooperation. From this point of view the main efforts in modernizing state and law have to be applied to the development of a “public service” in principle, that is, the development of a public sector having its major interest in the creation and safeguarding of a social democracy under the rule of law. This implies making sure of the role of the State in favour of public and common goods.<sup>59</sup> Consequently there has also to be a dichotomy between the public and private sectors and no sector blurring. So the basis for the distinctive character of the governmental and private sectors is as well to be found in legal theory as in economic understanding.

At the same time it is precisely not about the contrast of management and legality because the law of the modern, social and democratic state, founded on the state’s constitution, allows wide areas for effectiveness and efficiency with a specific direction. Rightly it seems to me, therefore, that in Germany

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58. KIM, BUN WOONG & KIM, PAN SUK, *KOREAN PUBLIC ADMINISTRATION. MANAGING THE UNEVEN DEVELOPMENT* 37 (2nd ed., 1999).

59. Christensen, Jørgen Grønnegard, *Regulierung im Interesse des Gemeinwohls. Eine kritische Bilanz*, 4(1) der moderne staat. Zeitschrift für Public Policy, Recht und Management 167-187 (2011).

the concept of modernization is indebted to the motto of the social state, that being not to grant any rights without responsibilities, but conversely to count on behaviour-forming powers of social institutions.<sup>60</sup>

In addition to this for the public service the principles of individualism and fair distribution of goods, which are very fundamental rights in the Constitutional State and also in the Lisbon Treaty, are important. Individual persons ought to be given an opportunity to help the least advantage in society, and the state ought to impose on society the obligation to do so. There should not exist a minimal state.

In front of this background in most of the world's countries only a modified bureaucratic model, as described above, seems to be able to connecting the challenges of the rule of law and the idea of a social state with its public sector organization. That is why there doesn't exist a possibility to pass the bureaucratic administration. And that is why we have to search, more than ever in our European countries, for the right way to modify Max Weber's theory on bureaucracy from the angle of the New Public Management Approach. It's in other words a third way we have to search for, that takes the course between the pure "economization" of public service and the old fashioned bureaucracy of Max Weber.<sup>61</sup>

Therefore, a new democratic Professionalism in public service is unre-nouncable. That is the leading idea of the Europeanization of the civil service in the EC. Its core is first to reconcile traditional (and cultural) public service values with "new" values arising from new approaches to improve the administrative organization and managing public agencies, including democratic ethics based on private sector experience. Amidst them it seems inalienable, to establish Leadership and Management Values like "Personal Public Integrity" (PPI) for the managers as well as the other personnel.<sup>62</sup> For public service

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60. Streinz, Rudolf, Ohler, Christoph & Herrmann, Christoph, *Der Vertrag von Lissabon zur Reform der EU*, 3. Auflage 80 (2010).

61. Lynn Jr., Laurence E., *Bureaucracy and its Crisis in America and Germany: In Defense of the "Bureaucratic Paradigm"*, 1(1) *der moderne staat. Zeitschrift für Public Policy, Recht und Management* 40 (2008).

62. Jørgensen, Thorben Beck, *Public Values in Denmark – their Nature, Stability and Change*, in *DIE ZUKUNFT DES ÖFFENTLICHEN SEKTORS* 207-215 (Hill, Hermann ed., 2006).

has to become to the citizens the state's bastion of trust and Incorruptibility.

## **B. Human Resources Development and Good Leadership**

### **1. Europeanization of Civil Service Law**

If we analyze on this background the current transformations of the modern european state,<sup>63</sup> we are confronted with strategic consequences for the human resources management, which has to attain a correspondent employee-orientation as well as a modified development concept for executives, concerning above all the question of good leadership.<sup>64</sup>

The superior modernization objectives that will be denominated in this context are not only due to the idea of an "efficient State" or other mechanisms of modernization currently used by Anglo-American scholars and practitioners. Rather, these are in the first place instruments of a paramount totality of objectives, which, on its part, refers to the goals and constraints of modernization of public functions in the internal transformations of the state itself.

Instead of this and on the one hand, it is the new definition of the relationship between state and society, in particular the economy, with regard to the global economic and risk development, those belong to the reformatory goals. On the other hand, there is the change of individual and societal values, which causes a new landscape of public law.<sup>65</sup> For this matter, its pluralization, europeanization and internationalization – for example in Germany - and the citizens' expectations of an increased individualized "opened" implementation according to the fundamental rights and liberties of the Lisbon Treaty are to be named as basic directives of internal rationalization. The discussion of these superior modernization approaches reveals several guidelines of a personnel-oriented administrative modernization in the lights

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63. ZÜRN, MICHAEL, *REGIEREN JENSEITS DES NATIONALSTAATES*. 2. AUFLAGE (2005).

64. Pitschas, Rainer, *Civil Service System Reform in Germany*, in *CIVIL SERVICE REFORM AND PROJECT IN THE FUTURE* 35-71 (Kim, Joong-Yang/Korea Institute of Public Administration ed., 2006).

65. Kahl, Wolfgang, *35 Jahre Verwaltungsverfahrensgesetz – 35 Jahre Europäisierung des Verwaltungsverfahrensrechts*, 30(8) *Neue Zeitschrift für Verwaltungsrecht* 449-457 (2011).



of european public law development.<sup>66</sup>

They entail strategic consequences, which refer to human resources policy, recruitment and development as well as to the design of the work organization in public agencies and of administrative procedures. The discussion of these relationships produces results that can give answers to the initially asked questions. At least the direction becomes discernible as to the needs of adaptation for administrative personnel and executives that result from the base-lines of the modernization of state, civil service law and society. Therefore Government, managerial staff and all public servants as well as personnel representative bodies have to be jointly integrated into the change of public service law and – following its directives – into the wide-spread promotion, coaching and human resources development activities.<sup>67</sup>

## **2. Good Leadership with Special Regards to the European Community Law**

The changes in German civil service which are oriented by this input, result in a fundamental challenge to the human resources management, in particular to the executive personnel. Together with all employees the executives are engaged in a process of learning; they have to prove their ability to simultaneous innovation and preservation in the process of civil service system reform.<sup>68</sup>

But with special regards to the EC the way from an executive manager to a

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66. Voßkuhle, Andreas, *Europäisierung des öffentlichen Dienstes*, in WEGE GELEBTER VERFASSUNG IN RECHT UND POLITIK. FESTSCHRIFT FÜR RUPERT SCHOLZ ZUM 70. GEBURTSTAG 189-201 (Pitschas, Rainer & Uhle, Arnd eds., 2007).

67. Pitschas, Rainer, *Administrative Modernization and Personnel Development*, in 15 THE ANNALS OF PUBLIC ADMINISTRATION RESEARCH 125-149 (The Research Institute for Public Administration/Hanyang University ed., 1997); Chowdhuri, Irene, *Veränderungstendenzen der deutschen Verwaltung als Antwort auf internationale Entwicklungstrends. Herausforderungen an die Managemententwicklung durch Fortbildung*, in PERSONNEL CO-OPERATION IN THE FIELD OF ADMINISTRATIVE PARTNERSHIP WITH THE SOUTH 303-316 (Pitschas, Rainer ed., 1998).

68. Argyriades, Demetrios, *Neutrality and Professionalism in the Public Service*, in DEMOKRATIZATION AND BUREAUCRATIC NEUTRALITY 44-147 (Asmerom, H. K. & Reis, E. P. eds., 1996); Pitschas, Rainer, *Reforms of Public Administration within the European Union: Why do we need more Ethics in Public Service?*, in TRUSTED GOVERNANCE DUE TO PUBLIC VALUE MANAGEMENT 35 (Pitschas, Rainer ed., 2006).

leader requires not only knowledge and abilities. Above all the questions focuses on how in a European public-sector organization like an agency leaders are able to provide direction for the organization by developing the mission, vision and values necessary for its long-term success. They are obliged to implementing the law and monitoring the organization's management system, by motivating and supporting people in the organization and by managing relationships with all stakeholders in general and the political level in particular.<sup>69</sup>

In addition to this a specific feature of good leadership in the public sector is as well in the EC as in the member states the cross-connecting with criteria of the Common Assessment Framework (CAF) which is a total quality management (TQM) tool. It is specifically designed for the development of TQM in public-sector organizations, starting with a self-assessment of their organizational performance. Leadership then means a clear understanding of

- the impact of sectoral public law on the daily work and on the whole organization's management
- the quality model itself, the self assessment process and the impact on the organization
- the different aspects of leadership in the public sector
- how to develop leadership skills in the public sector
- the impact of leadership on the results of an organization.

## VI. Summary

If we reflect about current transformations of the modern European state and the dynamic of change in public law with possible implications to similar phenomena in the Korean administrative state, we need at first a theoretical framework to understand the changes of public authorities in a comparative context and as an answer to several challenges for a transnational bureaucracy. Rethinking of the state and law therefore is peremptory: It needs to get an idea of how the state is reacting to social risks or developments within

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69. Donat, Claus D. & Konzelmann, Lars, *Public Leadership-Kompetenzen für Führungskräfte im öffentlichen Sektor*, in *DIE ZUKUNFT DES ÖFFENTLICHEN SEKTORS* 133-149 (Hill, Hermann ed., 2006).

society. This main instrument to control is the law, implemented by the state apparatus, by that means the public administration.

On this background the paper argues, that the interdisciplinary theory of reflexive modernization should be used to analyze current transformations of the modern state. These indicate necessary changes for government and public law with consequences for the public administration as a process of internal rationalization. The argument is developed in three steps. First, some basic assumptions of the theoretical foundation will be discussed; secondly the main aspects at the current changes in the state's institutional architecture will be outlined as most relevant. Namely the "globalism" is one of the great challenges for the transformation activity pursuing better government, cross-connecting with the "Europeanization" and "internationalization" of Law and its shift in public action by administrators. Another main point seems to be the commitment of citizens in public affairs, not only because they increasingly insist upon equal performance standards in government implementation of law as well as in political participation advancing to public multi-level governance. More than that it is the "individualization" of society which calls for self-regulation and partnership in policy formulation and fixing public service quality. Last not least the modern European state has in consequence of the analyzed changes not only to focus more on empowering public employees to respond to customers and measure results; decisive is the implementation of "human resources" as a strategy of Human Resources Management to promote good leadership in public service on the base of business, democratic, professional and traditional values under the impact of the European law.

All that means no farewell to the "bureaucratic paradigm". We need the economised public management but it is to learn that there exists no way out from the essential path dependence of institutional development on the bureaucratic style; and this means at the same time the obedience to (public) law. In this sense misguided efforts at administrative modernization are doomed to failure. So we have to accept the dynamics of change in government and public law what means to adapt them to public administration within the flexible framework of public law and practice. To concretize this value of "responsive competence" is the major challenge to the old fashioned Weberian model of bureaucracy in Germany and the EC as well as in Ko-

rea. A comparison in strategies of modernization points out, that inmidst the globalization process and the individualization of society attempting to make government function more like a business is worthwhile, but it may also threaten the traditional values for serving the public interest and contradict the forming of a new publicness.

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