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Sustainable development using urban governance instruments

Dr. Verena Baerenbrinker

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University of Glasgow, School of Law

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ABSTRACT

This thesis examines the relationship between sustainable development and urban governance and the implementation of sustainable development with urban governance instruments in spatial planning and planning law in the United Kingdom and in Germany.

The enquiry focuses on social segregation as a challenge for urban development. It is argued that segregation is not a new phenomenon, but a problem that has aggravated over the last years. Segregation and the lack of social cohesion lead to socially perforated cities which suffer from inequalitites between their different neighbourhoods. This leads to the question of effective urban planning process control: Which legal instruments should be used to tackle the problematic implications of urban development, including the segregation and exclusion of whole urban districts? New governance approaches combine area-based policies with an integrated urban development policy.

The thesis shows that the most important condition for effective legal process control of urban development however is a guideline for desirable results. It focuses on the concept of sustainable urban development as the guiding principle for contemporary urban development. It is argued that sustainable development focusses on the three pillars of an equal relation between the protection of the environment and a just society by means of a social economic development and good governance. It is also stated that the problem of the concept of sustainable development on the international level, the European level, and on the national levels is that it often lacks mandatory obligations on policy and decision makers with really meaningful consequences.

The biggest challenge for sustainable development in the next years will be its operationalisation. An effective implementation of the approach requires a translation of its objectives into specific actions for specific places. Therefore the thesis reviews urban governance as a useful approach to sustainable development. It is shown that the implementation of governance networks can increase both effectiveness by means of problem-solving capacity and the legitimacy of governance in terms of democratic participation and accountability.

The relationship between sustainable development and urban governance is illustrated with the examples of the New Deal for Communities programme in the UK and the Social City Programme in Germany. Both instruments supplant

traditional top down-polity models with governance instruments when it comes to the implementation of sustainable development in deprived areas.

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Dr. Verena Baerenbrinker
Berlin, June 2011

DECLARATION

I declare that this thesis is the result of my own original research. It has been composed by me and has not been submitted for any other degree at the University of Glasgow or any other institution.

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Signature

Chapter 1   Introduction

Ever since the process of globalisation accelerated, cities all over the world have had to face two major problems: How can social and spatial deprivation and societal and spatial fragmentation be resolved or at least be mitigated? And how can (local) economic growth, interregional and possibly international competitiveness and new employment opportunities be achieved without forgetting about the necessity to protect the environment?

These two questions are inter-linked and lead to the core of this thesis. The topic of this thesis was motivated by the detection that sustainable development and urban governance are both strongly discussed topics in legal and sociological literature but their connection is still mostly unexplained.[1] Sustainable development is understood as the foundation of a modern urban development policy. At the same time, the implementation of urban governance structures into urban development policies is gaining popularity and importance. The Territorial Agenda of the European Union even states that urban governance is a condition for sustainable urban development.

The thesis focusses on the assumption that sustainable development and urban governance should be inter-linked to give an answer to the two questions which were raised above. It tries to give an answer to the question why governance is so important for sustainable development and how this connection is demonstrated in new legal instruments in different approaches of planning law. The combination of the concepts of sustainable development and urban governance is, as it will be shown, a possibility to meet the challenges of both social and spatial deprivation and fragmentation as well as the goals of growth and ecomonic welfare.

The thesis starts with an introduction into the challenges of urban development. Chapter 2 focusses on reasons and implications of social segregation and exclusion. The thesis looks at social consequences of urban development within Europe only. Chapter 3 examines the concept of sustainable development. It mainly reviews the scoping documents within the European Union, especially the Leipzig Charter and the Territorial Agenda of the European Union. Chapter 4 looks at urban governance whereas Chapter 5 shows possibilities in the United Kingdom and in Germany in which instruments for urban development benefit from the combination between the concept of sustainable development and urban governance.

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[1] In this context, the term governance has to be understood as network governance, describing the complex patterns of interorganisational collaborations and informal social networks. See C. Ansell, 'The Networked Polity: Regional Development in Western Europe' (2000) 13 Governance: An International Journal of Policy and Administration 304.

Chapter 2   Challenges in urban and city development

Due to the worldwide population growth and urbanisation, the 21st century can be referred to as "urban century". People continue to move from rural areas to urban areas to look for jobs and better living conditions. Until 2050, about 75 per cent of the world population are going to live in cities rather than in rural areas. It was in 2007 for the first time that more people were living in cities than in villages. Around 2025, 88 per cent of the total world population will be living in urban areas.[2]

This development has impacts upon social structures, economic capacities, ecological questions and social cohesion[3] between cities and within cities. In this section, the consequences of the continuing urbanisation, particularly the phenomenon of segregation[4] as a consequence, are examined. The focus is on social segregation in growing cities only. Social segregation appears to receive continuous political and scholary attention. It is a topic that is prominent on many urban policy agendas. The primary aim of the second chapter is to provide an overview of tendencies in current urban development as well as the reasons and the impacts of social segregation.

2.1   Segregation – a not so new phenomenon

Cities have always played a central role in economic and technological development. A city's prospering economy is attracting new citizens. But, due to the rapid growth, cities can hardly cope with the large number of new inhabitants. The process of urbanisation causes gigantic ecological, economic, and social problems. The consumption of ressources and the amount of traffic and environmental pollution is rising, socially deprived areas or brownfields in inner-city areas and in the outskirts are growing. This is not a problem of developing countries only, but a development which can also be seen in many European cities. Paris with its so-called Banlieus and Glasgow with its Gorbals district are only two examples. These districts are characterised with a high level of segregation. Segregation levels in Europe are generally still quite moderate, especially compared to the level of segregation in the

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[2] D. Thorns, *The transformation of cities: Urban Theory and Urban life* (1st edition, Palgrave 2002) 1. Most of the world's population is going to live in megacities with more than 10 million citizens such as Lagos, Bangladesh, and Dakar. But the trend of growing cities is also evitable in Europe: 80 per cent of the European population is currently living in cities and around 60 per cent of European cities already have more than 50,000 inhabitants.

[3] Social cohesion usually comprises shared norms and values, social control, social solidarity, and a strong bonding with the residential area. See R. van Kempen, R./G. Bolt, 'Social cohesion, social mix, and urban policies in the Netherlands' (2009) 42 Journal of Housing and the Built Environment 457; A. Kearns/R. Forrest, 'Social cohesion and multilevel urban governance' (2000) 37 Urban Studies 995; for critique see D. Robinson, 'The search for community cohesion: Key themes and dominant concepts of the public policy agenda' (2005) 42 Urban Studies 1411.

[4] The term segregation refers to the physical separation of certain groups, for example ethnic or religious groups.

United States, but the difference is not absolute.[5] Segregation and the lack of social cohesion lead to socially perforated cities which suffer from inequalitites between their different neighbourhoods.

The heterogeneous development of different urban districts, which is caused by growing economic and cultural differences within the population, is leading to socially deprived areas. Because of this development, German sociologist Hartmut Haeussermann already diagnosed the "cities' crisis".[6] According to Haeussermann, the crisis is the consequence of aggravated and correlated disparities in and between cities and less possibilities of urban development policy to control this development and to reset deprived areas to a cohesive and socially integrated development.

Segregation describes a development that "sorts population groups into various neighborhood contexts and shapes the living environment at the neighborhood level".[7] Segregation is not a new phenomenon. In fact, it has been discovered and researched since the beginning of systematic social research in the 19th century. There have always been, and there will always be, socially deprived urban districts. However, eroding welfare state systems and continuing migration into the cities despite the absence of vital and buoyant labour markets have lead to noticeably stronger socially exclusionary tendencies in many European countries. Therefore the problems and the consequences of segregation have gained increasing attention over the last decades. Segregation, social exclusion, and social polarisation within cities are key questions in current urban debates. These problems are affecting social cohesion within cities. There is evidence of detrimental effects and consequences of segregation on outcomes like education, crime, and health.[8] As the thesis will discuss later, solutions for this problem are connected with the necessity of effective urban administration. Which strategies turn out to be successful is dependent on the individual city: Cities need tailored strategies to solve the social, economic and ecological problems that are related to urbanisation. Having said that, the chapter will now focus on both the reasons and the implications of segregation.

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[5] S. Musterd, 'Social and ethnic segregation in Europe: Levels, causes, and effects' (2005) 27 Journal of Urban Affairs 331; G. Bolt, 'Combating residential segregation of ethnic minorities in European cities' (2009) 24 Journal of Housing and the Built Environment 397.

[6] H. Häußermann/D. Läpple/W. Siebel, *Stadtpolitik* (1st edition, Edition Suhrkamp 2008) 183.

[7] I. Kawachi/L. Berkman, *Neighbourhoods and Health* (1st edition, Oxford University Press 2003) 265; H. Häußermann/W. Siebel, *Stadtsoziologie* (1st edition, Campus Verlag 2004) 139; J. Friedrichs, *Stadtsoziologie* (1st edition, Leske und Budrich 1995) 79.

[8] M. Shaw/D. Dorling/G. D. Smith, 'Poverty, social exclusion, and minorities' in M. G. Marmot/R. G. Wilkinson (eds.), *Social determinants of health* (1st edition, Oxford University Press 2005) 196; D. R. Williams/C. Collins, 'Racial Residential Segregation: A Fundamental Cause of Racial Disparities in Health' (2001) 116 Public Health Reports 404.

2.2 Segregation and exclusion – reasons and implications

There are various reasons for segregation. Since this thesis focusses on the effects of social segregation only, the phenomenons of ethnic or religious segregation will not be discussed. It will also concentrate on passive, forced segregation which means that citizens cannot decide independently where they want to live but are forced to choose between a few areas. The decision where to live is usually linked to financial resources and the situation on the housing market within a city. Segregation has several implications on urban development and citizens which will be discussed in a second step.

2.2.1 Reasons for segregation

Segregation is very evident in growing cities and caused mainly by the economic change. Social segregation is conditional upon three circumstances: an above-average unemployment of inhabitants, the moving of more prosperous citizens to better districts (social mobility), and the influx of less prosperous citizens into empty flats in less desirable districts. Its is therefore a result of social inequalities due to dissimilar opportunities and preferences within a city.[9] Basically, segregation exists when social and spatial differences exist within a town. The level of segregation comes as a result of propinquity and homophily, the preference of people to associate with others that are similar (for example regarding social class, age, race, and lifestyles) to them. The relation between propinquity and homophily shows that the decision in which part of a city someone wants to live is linked to the question where he can find others who share the same lifestyles and opinions. This decision is then compared to the individual's financial possibilities. In general one can say that the more homogeneous a part of a city becomes, the less are the chances for cross-group interaction. It has been shown that deprived areas are urban areas with the highest concentration of social problems, as indicated by poverty and unemployment figures.

2.2.2.1 Deindustrialization

Segregation is also promoted by the process of deindustrialization and its consequences for the labour market. Due to the decreasing importance of manufacturing industries and the increasing importance of the service sector, the labour market has changed significantly.[10] Many less educated employees have already lost their mainly manual jobs. The shift has had and still has negative consequences on less educated workers: Deindustrialization has made enterprises more specialised, they are nowadays mainly looking for highly qualified employees.

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[9] J. Friedrichs, *Stadtsoziologie* 79.
[10] D. Thorns, *The transformation of cities: Urban Theory and Urban life* 5.

Less educated employees find themselves without any chance to keep their jobs or to find new jobs. Therefore they become unemployed. This development results in a polarised income structure (growth both at the top end and at the bottom) within cities and society.

2.2.2.2 Gentrification and the process of downward-filtering

This development has consequences for urban development and the population structure within cities. It is one of the reasons for inequalitities within a city area: Citizens with little or with no income are struggling with increasing living expenses in growing, prosperous cities. They cannot afford to rent or even buy a flat in a nice area with a good reputation, but have to move to more affordable areas, which are usually less desirable non-renovated inner-city neighbourhoods or subsidised housing areas from the 1960s or 1970s. On the other hand, once inner-city areas are renovated, they attract affluent tenants who are able to pay higher rents than the current, less prosperous tenants who are therefore forced to move to the areas mentioned above.[11] This process is called gentrification. Gentrification includes an upward-filtering of districts that are getting inhabited by more prosperous citizens. Gentrification has been referred to as "the rehabilitation of working-class and derelict housing and the consequent transformation of an area into a middle class neighbourhood".[12] The social upgrading of urban districts causes problems for poorer groups of citizens who used to live in these districts. The pay gaps within the cities lead to divided social townscapes with highly sought-after (gentrificated) residential areas and deprived areas. Deprived areas become vessels for poor and less educated citizens. Social exclusion and segregation are implications of this development. According to Mansel and Heitmeyer, individuals and households gathering in these areas may include people with only general education, large families, single mothers who are not going back to work, and citizens from an immigrant background.[13] This leads to the so-called downward filtering process, which means that the residential area moves from a high or medium quality (linked to formerly wealthy or middle-income residents) to lower quality because new, less prosperous residents cannot spend or are not willing to spend any money on maintaining their properties and the public areas.[14] Citizens in these areas become excluded from the city's prosperity and its positive economic development. Exclusion and segregation are the most evident

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[11] C. Hartman, 'Displacement: A not so new problem' (1979) Social Policy 22.

[12] N. Smith/P. Williams, *Gentrification of the City* (1st edition, Unwin Hyman 1986) 1; see also R. Atkinson, 'The hidden costs of gentrification: Displacement in central London' (2000) 15 Journal of Housing and the Built Environment 307.

[13] J. Mansel/W. Heitmeyer, *Precarity, Segregation, and Poverty in the Social Space*, Difu Working Paper 12 2009 <http://www.difu.de/node/6960> accessed 21 May 2011.

[14] B. Bluestone/M. Stevenson/R. Williams, *The Urban Experience: Economics, Society, and Public Policy* (1st edition, Oxford University Press 2008) 431.

social implications of growing cities. The economic development of cities is also affected by these implications. Social security contributions are rising and cause problems for public finance. The implications of segregation are various.

2.2.2 Segregation and exclusion: New challenges for urban planning

Many cities have to deal with the socio-spatial outcomes and implications of segregation, polarisation, and exclusion. Spatial and social exclusion of a part of the citizens threatens the city's indivisibility and is a task for spatial cohesion. The impacts of segregation can be illustrated with an image of the city's townscape consisting of several different worlds that are lying impermeably next to each other. The city is like a mosaic of impermeable districts. Due to this development, citizens are focussing their lives on their own district and diminish social relationships to their spatial envi ronment only.[15] The area of living is becoming the only area of social relations. The following section of the thesis will pay attention to the effects of segregation.

As mentioned above, segregation is not a new phenomenon in urban development, but it has become a more serious problem recently. Before the implications of the deindustrialisation and the demographic change became obvious, prosperous, middle-income and less prosperous families might not have lived in the same districts, but they still lived closely together. With the gaining popularity of suburbs (suburbanisation)[16] however, residential segregation started to become more prevalent. This is a development which is contradictory to the ideal of an open society in which all citizens should have the same chances in life and in which equal opportunities regarding cultural and religious matters should be provided for everyone. Segregation is contradictory to the model of an open and equal society.

2.2.2.1 Districts of poverty and exclusion

Due to structural changes and increasing structural unemployment, many employees, particularly those with migration background and few education, lose the central, in most of the cases the only, personal and economic connection to the social majority. Unemployment has consequences for the especially affected urban districts.

Residents in deprived areas are affected by various exclusion processes, which sometimes compound each other. They are affected economically, because they have

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[15] R. van Kempen, R./G. Bolt, 'Social cohesion, social mix, and urban policies in the Netherlands' (2009) 42 Journal of Housing and the Built Environment 457.
[16] D. Thorns, *The transformation of cities: Urban Theory and Urban life* 178.

no access to the labour market. They feel insurmountable barriers between them and political or public welfare organizations. Stigmatization and discrimination also lead to a loss of self-confidence and moral integrity. Furthermore social isolation and life in a closed milieu in deprived areas destroy the links and connections to the normal majority society.

Because of the economic development, the potential of conflict in these districts rises. A climate of social descent develops which leaves a lot of citizens with the feeling to be extradited to a more and more unfriendly environment. It leads to an environment of conflicts which can not be solved with spontaneuous processes of communication or verbal argumentations only. This is why a lot of deprived areas report intra-community conflicts. These crippling conditions in deprived neighbourhoods lead to widespread dissociation and conflicts, for example between locals and foreigners or between generations. The consequences are overstrained neighbourhoods which are characterised with lower tolerance towards different deviated behaviours. This might cause increasing crime rates, too.[17] Due to this development, social networks in these districts tend to be unreliable and less effective.[18]

A basic assumption is that the spatial concentration of social disadvantages within an area aggravates problems like unemployment, crime, low education level or health problems. These contextual effects are aggravated by the assumption that social contacts of people living in deprived areas are usually more or less limited to their immediate environment which once again underlines the importance of contextual neighbourhood effects. Due to a lack of social capital in the deprived areas, an important individual ressource that can otherwise open up employment opportunities and improve one's chances on the labour market is missing. Because of the gathering of less prosperous citizens without prospects, everyday life in those urban districts is characterised by a forced coexistence of different lifestyles and attitudes; it is an environment where social problems are gathered. As a result, those quarters and their citizens are excluded from urban development.

2.2.2.2 Lack of prospects

Economic change also leads to social changes. Precarity due to long-term unemployment also means social insecurity. This culminates in prejudices against

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[17] R. Atkinson, 'The hidden costs of gentrification: Displacement in central London' (2000) 15 Journal of Housing and the Built Environment 307.
[18] R. van Kempen, R./G. Bolt, 'Social cohesion, social mix, and urban policies in the Netherlands' (2009) 42 Journal of Housing and the Built Environment 457.

citizens living in deprived areas. The citizens find themselves in a situation where their opportunities are impaired by stigmatization processes. It causes existential crises and raises barriers to social participation. It also leads to a loss of social relations at work and in private. Affected citizens cannot bear the feeling of having failed to acquire enough skills to "survive" in the current employment situation. They understand themselves as losers of modernisation. This feeling is fueled by the constructional environment in deprived areas: Public buildings and infrastructure facilities are often neglected. Furthermore, as the traditional Welfare State is weakened due to financial restrictions, States and communities have to cut on housing benefits, (rental) subsidies, and costs for social housing.[19] This contributes to the deprived citizens' loss of self-esteem. They do not feel any responsibility for their district and are lacking any bond with it.

Segregation has impacts on the political situation in deprived areas. The moving of better-off inhabitants also means the exit of political voice (*Hirschman*).[20] According to statistics, up to three quarters of segregated areas do not vote in elections. This can be either because they are not allowed to vote, for example because they are citizens with an immigrant background, or because they are politically apathetic and think that they cannot change anything anyway. They are politically disillusioned. Therefore political representation of deprived areas is rather weak.[21] Due to this development, the deprived area's downward spiral is accelerating, leading to segregated and excluded urban districts and further to fragmented cities which are lacking indivisibility. It is a spiral of decline and physical disorder. The area and their citizens become socially excluded.

2.2.2.3 School segregation

Social segregation in schools has been widely discussed in the United Kingdom and in Germany in recent years. The term school segregation describes the uneven distribution of adolescents from different socio-economic backgrounds across schools.[22] In England, this discussion was linked with the launch of both the 1988 Education Reform Act and the White Paper on Education which was published in

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19 The Telegraph website, 'Housing benefit cuts risk social segregation, MPs warn' http://www.telegraph.co.uk/news/uknews/8217249/Housing-benefit-cuts-risk-social-segregation-MPs-warn.html accessed 21 May 2011.
20 A. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (1st edition, Harvard University Press 1970) 100.
21 R. Atkinson, 'The hidden costs of gentrification: Displacement in central London' (2000) 15 Journal of Housing and the Built Environment 307.
22 S. Jenkins/J. Micklewright/S. Schnepf, 'Social segregation in secondary schools: How does England compare with other countries?' (2006) ISER working paper 2006-2, 5 < http://www.law.ox.ac.uk/published/OSCOLA_4th_edn.pdf> accessed 21 May 2011.

2005.[23] Both papers promote a greater parental choice and a greater independence of schools.

The implications of segregation are particularly problematic for adolescents who are raised in deprived areas. Families with school-aged children are especially keen on having a good neighbourhood. They are very sensitive when it comes to making decisions about where they want to live because they are worried about unknown and unwanted influence on their children. Parents are also afraid of a low level of education in schools. They fear that their children might not get the best education when they have to go to school with children from less prosperous families, maybe with migration backgrounds. Bearing in mind that education has become even more important than ever before for good job opportunities, this fear is a key factor for school segregation. Therefore middle-class, more prosperous families leave heterogeneous residential areas and move to better inner-city districts or to the suburbs. According to Jenkins/Micklewright/Schnepf, the level of social school segregation is, among others, highest in Germany, being a country with a secondary school system with separate academic and technical school tracks.[24] Scotland however is a country with a relatively low school segregation index, whereas England is among the countries with a relatively high school segregation index.

Everyday life of adolescents who are left to live in socially deprived areas is characterised by unemployment, the lack of prospects, resignation, and apathy. Young residents often develop a deviant culture because their environment offers them few representatives of normal live. They lack positive role models who show them how to live a normal live, including going to work, being ambitious, and taking part in cultural activities, and are influenced by the social interactions they experience in their everyday life. Due to the lack of positive role models, adolescents turn to the neighbourhood's peer groups for guidance (negative social learning).[25] These peer groups can be of religious or ethnic background. Because of this process and the area's homogeneity, these adolescents develop anti-social behaviour patterns that differ from age-appropriate patterns but are common in the deprived area. This does not facilitate the integration process, but aggravates social exclusion. At the same time associations, clubs, and churches are constantly losing influence in deprived areas. Peer groups set the dominant values and norms for the deprived

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[23] Ibid. 5.
[24] Ibid. 8.
[25] Impacts of peer groups are described by A. Vignoles and others, *The relationship between ressource allocation and pupil attainment: a review* (Centre for the Economics of Education, London School of Economics and Political Science 2000).

area.[26] By adapting these values, adolescents assure to be accepted within their district.

This is dysfunctional for young residents' integration into majority society. Since social problems are quite contagious, the influence of these peer groups may have long-lasting consequences on the adolescents' life chances. They develop a close identification with their district and its citizens' specific territoriality behaviour. These children are often unable to obtain skills needed for success in school, education and also in life ("soft skills"). This becomes evident when these adolescents are searching for jobs or apprenticeship training positions. Therefore they are often cut off from life opportunities in the rest of the city. Statistics show that children from socially underprivileged families more rarely obtain higher school qualifications. This is especially the case for boys and young men who usually have a stronger bond with peer groups. Evidence for this relationship and impacts of social school segregation was given in the Programme of International Student Assessment (PISA), an international survey sponsored by the Organisation for Economic Cooperation and Development (OECD). The prejudices against citizens in these areas are also likely to lead to fewer prospects for adolescents entering the labour market after finishing their compulsory education. Like their parents and comparable with a vicious circle, these children seem to be condemned to have a future without prospects. Research has also shown that long-term effects of neighbourhood disadvantage in early childhood, for example the negative effets of poor schooling, are stronger than short-term effects in later life.[27]

Therefore schools have to be of utmost importance when it comes to changes in spatial planning. They play an important role as a development context that is independent from the residential neighbourhoods. They can constitute an overlapping context for the adolescents. Since adolescents adopt role models quite easily, it is important to see schools as a place where they can meet other children from different backgrounds. Due to the lack of positive rolemodels, schools in these city areas play an important role not only as places of education but also as places where children can learn soft skills. School catchment areas can complicate school life since they lead to homogeneous schools. The conditions in schools in deprivaed areas are very difficult for schools and teachers. Day-to-day school life is characterised by a high fluctuation of pupils, unfit parents who are struggling with their educational duties

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[26] See K. Kintrea/J. Bannister/J. Pickering, 'Territoriality and disadvantage among young people: an exploratory study of six British neighbourhoods' (2010) 25 Journal of Housing and the Built Environment 447 for a study about the problems and impacts of territoriality with a case study of, amongst others, Glasgow.

[27] A. Reupold/R. Lippelt, *Germany's Education System and the Problem of Dropouts: Institutional segregation and programm diversification* (1st edition 2011) 171.

due to health problems, economic difficulties or social problems, and language barriers.[28] Children with hardly any knowledge of English find it hard to follow the lessons. Since the parents might not speak English fluently, the communication between teachers and parents is nearly impossible. Because of these conditions wealthier parents leave these areas to enable their children to go to schools in more homogeneous districts. The higher the level of school segregation is, the more it leads to greater inequalities in later-life outcomes.

2.3 Conclusion

Economic and social changes lead to social inequalities in and between cities, particularly in the areas of employment, interpersonal and social relationships and also regarding general welfare rights. They manifest themselves in deep-seated socio and spatial structural changes. This development results in increasing polarisation of the city with upwardly and downwardly mobile urban districts; an effect which is called sociospatial segregation.

This chapter underlined that segregation is not a new phenomenon for urban development, but a phenonmenon which has gained a new gravity and importance. It is fueled by the economic structural change, which has lead to a high unemployment of less educated employees. Dependent on rent levels and availability of affordable housing cities are increasingly dichotomizing into low-income, socially disadvantaged neighbourhoods and privileged areas. Because of rising rents poorer households are forced to move to less desirable urban districts which are stigmatized as deprived areas or, even worse, as no go areas. Living in these areas make these citizens excluded citizens; they are excluded from the majority society. The "bad" area of residence also has a negative influence on the chances of citizens on the job market or in schools. Households which are wealthier usually move away from disadvantaged deprived areas, either in the interests of their children because of the critical situation mainly in schools or to escape the generally tense and slightly aggressive atmosphere in the neighbourhood.

School segregation is becoming an increasingly serious threat to urban cultural and social integration. It threatens social cohesion and the indivisibility of cities. Segregation reduces opportunities in society for citizens who live in deprived areas. It was also pointed out in this chapter that social segregation can result in residents' incomplete and insufficient participation in society in terms of labour market and also in the areas of education, culture, and politics. Overall spatial concentration of

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[28] U. Meyer/U. Schuleri-Hartje, 'Schule und Bildung im Stadtteil' (2003) 12 Soziale Stadt info 2.

low-income households due to segregation has to be qualified as a highly problematic issue of nowadays urban development.

A colourful and vibrant urban life includes mixed communities in which people from different countries, with different backgrounds, and different lifestyles are mingling in societal melting pots.[29] The process of gentrification that strives for equal districts however avoids such a vibrant city life. It threatens the sustainability of community networks. According to *Atkinson*, it should not be the only move in urban development to encourage affluent households to move into central inner-city areas, but also to care for the possible consequences of this influx in terms of gentrification.[30]

This development leads to the question of effective urban planning process control: Which legal instruments should be used to tackle the problematic implications of urban development, including the segregation and exclusion of whole urban districts? New governance approaches combine area-based policies with an integrated urban development policy. The most important condition for effective legal process control of urban development however is a guideline for desirable results. The question is, which concept of urban development should be followed. Chapter 3 focusses on this question and introduces the concept of sustainable urban development.

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[29] G. Bolt, 'Combating residential segregation of ethnic minorities in European cities' (2009) 24 Journal of Housing and the Built Environment 397; B. Goodchild/I. Cole, 'Social balance and mixed neighbourhoods in Britain since 1979: A review of discourse and practice in social housing' (2001) 19 Environment and Planning D: Society and Space 103; L. Veldboer/R. Kleinhans/J.W. Duyvendak, 'The diversified neighbourhood in Western Europe and the United States: How do countries deal with the spatial distribution of economic and cultural differences?' (2002) 3 Journal of International Migration and Integration 41; R. van Kempen, R./G. Bolt, 'Social cohesion, social mix, and urban policies in the Netherlands' (2009) 42 Journal of Housing and the Built Environment 457.

[30] R. Atkinson, 'The hidden costs of gentrification: Displacement in central London' (2000) 15 Journal of Housing and the Built Environment 307.

Chapter 3   The concept of sustainable development

The analysis of urban development in the last couple of years has been strongly influenced by the term sustainable development. Sustainable development is often understood as being able to make a vital contribution to current and future urban development. Challenges for urban development include the impact of changing conceptions of the scope and responsibilities of urban governance, the need for urban regeneration and urban policies which are able to tackle socio-spatial segregation and exclusion in post-industrial cities.

The concept of sustainable development has gained great currency in International, European and many domestic laws since the 1980s when it was articulated as a principle of international policy. It is one of the most vibrant topics in the development of law and has become accepted as the guiding principle for contemporary urban development.

As defined most famously by the Brundtland report[31] in 1987, sustainable development is "development that meets the needs of the present without compromising the ability of future generations to meet their own needs".[32] Since then sustainable development has become a catchphrase in discussions about future urban development. It gathered strength from a variety of International and European declarations, conventions, and negotiated agreements. This chapter reviews the concept of sustainable development.

3.1   Sustainable development in International law

Sustainable development is actually not a totally new concept. Its origin can be traced back to the German forest industry in the 18th and 19th centuries.[33] At this time the concept was evolved as a response to the devastating effects of the over-exploration of forests and tried to save a regular supply of timber as well as to preserve the native functions of forest.

Sustainable development has been on the agenda of different international conferences. It is an example of the precautionary approach in international law.[34] The definition of sustainability which is commonly used today harks back to the so-

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[31] The so-called Brundtland report was published by the Brundtland Commission (formally known as World Commission on Environment and Development).

[32] WCED, *Our common future* (1987) 24.

[33] K. Freerk Wiersum, '200 years of sustainability in forestry: Lessons from history' (1995) 19 Environmental Management 322.

[34] M. Geistfeld, 'Implementing the Precautionary Principle' (2001), New York University School of Law Public Law and Legal Theory Working Paper Series Working Paper 33 Fall 2001, 1 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=289146 accessed 21 May 2011.

called Club of Rome report, which was issued in 1972,[35] and, of course, to the Brundtland report from 1987. The development of the approach of sustainable development was first pushed by the ecological development that became particularly critical in the 1980s when the humanity's demand on the earth's natural living ressources exceeded the planet's ecological limits. This development has continued up till today and it will probably continue in the future. The climate change, loss of biodiversity, and the failure to meet the basic needs of human beings worldwide, like fresh drinking water, are the consequences of this development[36].

3.1.1 Brundtland report

The Brundtland report was the initial spark for the success of the sustainable development concept. The report aimed to place environmental issues firmer on the political agenda and wanted to discuss environment and development as one *single* topic. It raised social justice issues, such as the fight against poverty, and put them on the agenda.[37] Therefore it represents a balancing of competing interests which shows that sustainability does not focus solely on environmental issues. The Brundtland report addressed the challenge of a balance between environmental protection and the social development.

3.1.2 Definition of sustainable development

It seems to be common scholary opinion that there is not *the* general definition of sustainable development. Instead the term is quite difficult to be tied down in analytic terms. This is also the reason why jurists have been grappling with the relevance of sustainable development to international law since the mid-1980s.[38] Even though sustainable development is rarely referred to as an emerging principle of international law in its own[39], it is more suitable to qualify sustainable development as a policy objective and political concept which is step by step gaining more legislative background and has gained a lot of influence on the development and interpretation of International and European law.

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[35] Club of Rome, *The limits to growth* (1st edition, Rororo 1972).
[36] A. Ross, 'It's time to get serious – why legislation is needed to make sustainable development a reality in the UK' (2010) 2 Sustainability 1101.
[37] Ibid. 1106.
[38] J. Ellis, 'Sustainable development as a legal principle: A rhetorial analysis' (2008) Faculty of Law and School of Environment McGill University 1 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1319360> accessed 21 May 2011.
[39] See separate opinion of Justice Weeramantry in the Case Concerning the Gabcikovo-Nagymaros Project (Hungaria v. Slovakia) (1997), [1998] 37 ILM 162 at 204; J. Ellis, 'Sustainable development as a legal principle: A rhetorial analysis' (2008) Faculty of Law and School of Environment McGill University 4.

The definition given in the Brundtland report is the first and still the most generally accepted and most often-quoted definition of sustainable development, even though it is quite a broad definition. This thesis follows a broader understanding of sustainable development, which means that sustainable development is resting on the three pillars of economic development, environmental protection, and social development.[40] This approach of sustainable development focusses on respecting the limits of the environment, ensuring a just and strong society, and achieving a stable and sustainable economy. These three issues have to be adjusted and equally considered which means that none of them can be considered without regard to the others. A pursuit to one of these subjects must be constrained by the impacts on the others; there is no absolute priority for any of the pillars.[41]

For the purpose of this thesis the question, whether sustainable development can be qualified as a legal principle, will not be discussed because this discussion does not have any influence on the connection between sustainable development and urban governance.[42] The following section reviews the development of sustainable development in international law.

3.1.3 Earth Summit 1992

The Brundtland report lead to the United Nations Conference on Environment and Development (UNCED), also known as Earth Summit, in Rio de Janeiro in 1992. As a result of the Earth Summit, the over 30,000 participants from all over the world endorsed sustainable development in two documents: the Rio Declaration in Environment and Development[43] and Agenda 21[44]. The Rio Declaration is a statement of 27 principles for sustainable development. The Agenda 21 is an action plan for the implementation of sustainable development.

3.1.3.1 Soft law

Both the Rio Declaration and the Agenda 21 are legally non-binding documents (soft law).[45] The term soft law is used for instruments which do not have any legally

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[40] See also para 4 Johannesburg Declaration on Sustainable Development, World Summit on Sustainable Development 2002; J. Porritt, 'The standing of sustainable development in government' (2009) 10 <http://www.forumforthefuture.org/files/standing-of-sustainable-development-in-government.pdf> accessed on 21 May 2011.
[41] J. Ellis, 'Sustainable development as a legal principle: A rhetorical analysis' (2008) 3.
[42] See Ibid. 2 for this question.
[43] Rio Declaration on Environment and Development, U.N. Conference on Environment and Development (UNCED), U.N. Doc. A/CONF.151/5/Rev. 1, 31 I.L.M. 874 (1992).
[44] UNCED, Agenda 21, U.N. Doc. A/CONF.151.26 (1992).
[45] G. Beaucamp, *Das Konzept der zukunftsfähigen Entwicklung im Recht* (1st edition, Mohr Siebeck 2002) 80. Other famous soft law documents are the Universal Declarations of Human Rights and General assembly resolutions.

binding force or whose legally binding force is somehow "weaker".[46] They are "quasi-legal" oder "law-like".[47] Soft law instruments are agreements or normative statements which are placed in non-legally binding, political instruments like declarations, resolutions, programs of action or recommendations.[48] Most of those documents set out expressly in their titles that they are non-legally binding documents.

Nevertheless their missing legally binding force, soft law-instruments, for example the Rio Declaration as a consensus declaration and the Agenda 21 as an action plan, usually have potential to be (partly) transferred into hard law. Looking at sustainable development, it is implemented in the European Law and in different domestic legislations. Sustainable development is also part of several international law treaties that explicitly refer to it, for example the Kyoto Protocol (Article 2). Soft law can become binding law by repetition and incorporation in binding international and national legal instruments, for example in subsequent treaties. It can also lead to binding rules at the end of an evolution of state practice (customary law).[49] Soft law is also faster to adopt and it can be changed more easily.[50] States seem to forgo treaty-making processes and prefer the implementation of soft law instruments because treaties can take very long due to constitutional barriers or political barriers. A political declaration like the Rio Declaration however does not need formal ratification. The absence of a need for formal ratification also allows the participation of non-state actors and international institutions, for example non government organizations (NGOs), in the process of drafting, the adoption, and the monitoring of non binding documents. Furthermore soft law has the necessary flexibility to enable the international community to approach problems requiring common international approaches, just like sustainable development. In sum, soft law instruments are very important for the development of the international law, even though it is not a source of international law in the sense of Article 38 of the Statute of the International Court

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[46] G. Shaffer/M. Pollack, 'How hard and soft law interact in international regulatory governance: Alternatives, complements and antagonists' (2008) Inaugural Conference, Geneva, July 15-18, 2008, Society of International Economic Law Online Proceedings Working Paper No. 45/08 2 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1156867&rec=1&srcabs=1426123> accessed 21 May 2011; K. W. Abbott/D. Snidal, 'Pathways to Cooperation' in E. Benvenisti/M. Hirsch (eds), *The impact of International Law on International Cooperation: Theoretical Perspectives* (2004) 50; K. W. Abbott/D. Snidal, 'The Concept of Legalization' (2000) 54 International Organization 38.

[47] D. Shelton, 'Soft law' in D. Armstrong (ed), *Routledge Handbook of International Law* (1st Edition, Routledge Chapman & Hall 2009) 68.

[48] Ibid. 68.

[49] Ibid. 68; G. Shaffer/M. Pollack, 'How hard and soft law interact in international regulatory governance: Alternatives, complements and antagonists' (2008) 3; J. Gersen/E. Posner, 'Soft Law' (2008) The Law School The University of Chicago Public Law and Legal Theory Working Paper No. 213 18 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1113537> accessed 21 May 2011.

[50] See G. Shaffer/M. Pollack, 'How hard and soft law interact in international regulatory governance: Alternatives, complements and antagonists' (2008) 11; K.W. Abbott/D. Snidal, 'Pathways to Cooperation' in E. Benvenisti/M. Hirsch (eds), *The impact of International Law on International Cooperation: Theoretical Perspectives* (2004) 50; J. Gersen/E. Posner, 'Soft Law' (2008) 18.

of Justice (ICJ) which directs the ICJ to decide cases primarily through applying treaties and international custom and secondly based on general principles of law. In this context, soft law can also be seen as a strength of weak ties since compliance with it often reaches high rates since compliance is expected within the signing states.[51] Concerning this matter, states are free to use political pressure to induce others to alter their policies and to stick to agreements the others have accepted.

3.1.3.2 Rio Declaration and Agenda 21

By agreeing to the Rio Declaration and Agenda 21, states agreed to foster sustainable development, understood as a balanced relationship between environmental protection, economic development, and social development.[52] The name of the conference, Conference on Environment *and* Development, already suggests its concerted efforts to integrate environmental, economic, and development issues. The Rio Declaration affirms the anthropocentric premise of development that every human being is "entitled to a healthy and productive life", but only "in harmony with nature" (Principle 1 Rio Declaration). Development is included in Principle 3 Rio Declaration which states that "the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations." This stresses the need for a balance between long term economic growth, development, and environmental protection. Other prominent principles stated in the Rio Declaration are the sovereign authority of national states to use their own natural resources by means of environmental protection (Principle 2 Rio Declaration) and citizen participation in the process of government decisionmaking. The latter one is of utmost importance for urban development. The Rio Declaration also states in Principle 4 that the core of sustainable development has to be a three pillar system: "In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it." Thereby, the declaration gives a direct response to the failures of a model which is focussed on development only and clarifies that sustainable development has to be understood as balanced economic development, social development, and environmental protection – three pillars, which have to be considered equally. They objectives need to be seen as complementary rather than opposing each other. Social development and environmental protection have to be seen together, because social development can be hampered by environmental degradation, for example water pollution. Regarding economic development, its

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[51] D. Shelton, Soft Law in D. Armstrong (ed), *Routledge Handbook of International Law*, 68; J. Ellis, 'Sustainable development as a legal principle: A rhetorial analysis' (2008) 5.
[52] Critical K. Bosselmann, *The principle of sustainability - Transforming Law and Governance* (1st edition, Ashgate Publishing 2008) 35.

progress is generally supported, but only with the contraint that sustainable development requires responsibility and care for environmental protection. Thus, all three pillars are connected with each other. This approach acquires integrated decisionmaking, which means that none of these pillars should be treated seperately from the other two ones. This is to ensure that social, environmental, and economic objectives are considered equally and simultaneously.

Agenda 21 is the comprehensive political action program for sustainable development. It is a detailed and broad commitment of the signing states to foster the implementation of sustainable development and tries to translate the principles of sustainable development into concrete policies and actions. The agenda is to a great extent based on the Rio Declaration's 27 principles. The Commission on Sustainable Development (CSD) monitors and assessed the implementation of Agenda 21.[53]

Agenda 21 stresses that most of implementation work has to be done in the individual states. Therefore it called for all participating countries to develop their own national sustainable development strategies. According to Agenda 21, such a strategy should include "a coordinated, participatory and iterative process of thoughts and actions to achieve economic, environmental and social objectives in a balanced and integrated manner at the national and local levels."[54] These requirements for sustainable development strategies underline the strong procedural side of sustainable development: It is aims at transforming policies into participatory arenas and wants to improve the integration of policies from different sectors and government levels, for example from the International level to the European level, national, regional and local levels. This is already a hint towards establishing governance.

The agenda consists of 4 sections and 40 chapters in total. The first two sections tackle social and economic issues as well as conversation and management of natural ressources. A very important topic is poverty. In the third section, Agenda 21 describes the role of certain groups in sustainable development, for example women, NGOs, and business. The most important and challenging fourth section comes with a detailed program for the provision of financial and technical ressources to countries which need help, for example for capacity building. Agenda 21 also focusses on human settlements, highlighting that human settlements are of utmost importance for sustainable development. The objective for human settlements is to improve the economic, social, and enviromental quality which can include topics like water

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[53] 38.11 and 38.13 Agenda 21.
[54] UNDESA – United Nations Department for Economic and Social Affairs, *Guidance in preparing a national sustainable development strategy: Managing sustainable development in the new millenium* (Accra 2001) 8.

supply, waste management, and sanitation (see 7.4 and 7.35 Agenda 21). The actual situation, as described in Chapter 2, is determined by huge gaps between rich and poor within cities and between cities. Urban fragmentation and deprivation are not accordable with the conclusions of sustainable development because deprivation means that the social pillar is not fulfilled at all. Therefore, Agenda 21 issues human settlements as important for sustainable development. Each section of Agenda 21 describes the factual basis for recommended actions, their objectives and targets, the specific actions government and other actors should take, and also the entities that are asked to fund and support these actions. With this approach, Agenda 21 provides context-specific meaning for sustainable development.

The Rio Declaration and Agenda 21 also call explicitly for an improvement of national and international governance. They both speak repeatedly of the need and importance for extended citizen participation. This is very important for the difficult challenges of sustainable development (see Principles 20-22 Rio Declaration). Thus, implementation of sustainable development requires to allow meaningful public participation. This also means that actions should be delegated to the level where they can be planned and forced best. In most cases, problems are best addressed at the local level, because sustainable development and its requirements are understood best in the specific places where people live. Other problems, like air pollution or social welfare, need concerted national action plans which are concretised with local action. This is already a step towards urban governance network structures which will be focussed in the following chapter.

3.1.4 United Nations Conference on Human Settlements 1996

The need for sustainable development, understood as three pillars of economic development, social development, and environmental protection, is strengthened in the outcomes of the United Nations Conference on Human Settlements (UNCHS, Habitat II), which was convened in Istanbul in 1996. The main documents of Habitat II are Habitat Agenda, which can be seen as an action plan for future sustainable development, and the Istanbul Declaration. Both documents stress the importance of new partnerships for sustainable development, like partnerships and cooperations between the state on local and national levels, partners of the third sector such as NGOs, and the private sector.[55] These networks are supposed to lead to a greater empowerment of communities and thus to a more successful implementation of the principles of sustainable development.

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[55] D. Thorns, *The transformation of cities: Urban Theory and Urban life* 207.

3.1.5 Critique of the concept of sustainable development

Over the past 25 years the concept of sustainable development has emerged gradually into a key policy objective for international and European bodies, and national governments. But it is still a somehow "unknown" concept. According to A. Ross "there seems to be very little understanding or coherent thought about what exactly sustainable development means"[56]. This leads to the conclusion that the concept of sustainable development needs further refinement.[57] Refinement takes time and needs to be done in step-by-step. However, the concept of sustainable development itself has proven its resilience and its acceptability as a policy tool.[58] Sustainable Development involves a long-term process of change. This process needs a strategy that includes broad participation from representatives of governments, civil society and the private sector. Only a broad participation can ensure that the concept of sustainable development is accepted and approached with maximum effort. This already adumbrates the question of operationalisation of sustainable development by means of an effective transition toward it all over the world and at all levels of polity. An operalisational approch is urban governance which is subject of chapter 4.

3.2   Sustainable development in European law

The objective of this part of the thesis is to investigate the implementation of sustainable development in European law.

Sustainable development is implemented in several ways in European law: in primary law, secondary law and in verious documents, declarations and various negotiated agreements. The process of European integration and cohesion is increasingly considered as the integration of the European territory, by means of the merging of cities and regions. This is especially triggered by intensive co-operation processes the member of the European Union.

The implementation of sustainable development in European law is also driven by the awareness that it is no longer possible to achieve a future-oriented urban development in one nation only without considering neighbour states. As it was already shown for international law, sustainable development needs integrated decisionmaking and implementation proceses. Therefore a general European guideline for sustainable development is needed.

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[56] A. Ross, 'It's time to get serious – why legislation is needed to make sustainable development a reality in the UK' (2010) 2 Sustainability 1109.

[57] R. Jain, 'Sustainable Development: differing views and policy alternatives' (2003) 4 Clean Technologies and Environmental Policy 197.

[58] A. Ross, 'It's time to get serious – why legislation is needed to make sustainable development a reality in the UK' (2010) 2 Sustainability 1111.

3.2.1 Treaties

Sustainable development was first mentioned in the Amsterdam Treaty which came into force in 1999. Since the Lisbon Treaty has come into force at 1 December 2009 sustainable development is part of both the Treaty of the Functioning of the European Union (TFEU)[59] as well as the Treaty on European Union (TEU).[60] Both the TEU and the TFEU lack a concrete definition of sustainable development. Article 11 TFEU stresses that environmental protection must be integrated into the definition and implementation of the union policies and activities "in particular with a view to promoting sustainable development". Thus, Article 11 TFEU peremptorily points out that sustainable development is understood as a triangle between the three pillars economic development, social development, and environmental protection, not as an absolute protection of the environment. It is a horizontal integration clause which ensures that sustainable development is integrated into all policies and activities of the European Union.[61] Furthermore Article 14 (1) TFEU nominates the challenge of "promoting social and territorial cohesion" as one of the provisions with general application within the European Union. Article 9 TFEU is a horizontal social clause and states that "in defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health." Its objective is to strengthen the social dimension of the European Union. This emphasises the impact of social segregation and exclusion on the political agenda. The clause provides a strong mandate to mainstream social policy objectives in policies and initiatives. It also recognizes that questions of the social dimension of sustainable development are, as well as the other dimensions of sustainable development, cross-cutting tasks which touch all policy areas.

Recital 9 of the TEU and Article 3 (3) (2) of the TEU also underline the importance of a sustainable development triangle. They point out that sustainable development consists of well-balanced economic growth, competitive social market economy, and a high livel of environment protection. Article 3 (3) (5) TEU requires the Union to "contribute to the sustainable development of the Earth". Article 37 of the EU Charter of Human Rights also stresses sustainable development as a general principle of the European Union.

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[59] Consolidated Version of the Treaty on the Functioning of the European Union OJ C 115/49 (9.5.2008).
[60] Consolidated Version of the Treaty on European Union OJ C 115/13 (9.5.2008).
[61] The purpose of a horizontal clause is that the European Union and all its bodies are required to apply it in all policies, proposals, and actions. See F. Schorkopf, 'Art. 9 AEUV' [Article 9 TFEU] in M. Nettesheim (ed.), *Das Recht der Europaischen Union. Kommentar* [European Union Law. Commentary] (Beck 2010) para 6.

3.2.2 European Spatial Planning

Spatial planning plays an important role for the implementation of the concept of sustainable development within regions and cities in the European Union. Notwithstanding the absence of formal competencies for spatial planning in the Treaties, European Spatial Planning has become reality.[62] It is mainly influenced by several EU competencies that have an impact on spatial planning, such as the European Structural Funds whose initiatives like URBAN I, URBAN II and URBACT have had gread influence on spatial development and urban development within the European Union. They represent a way of counteracting spatial, social, economic, and environmental divergences within the EU (cohesion) and recognise the economic, social and environmental diversity of the European Union territory. The policy field of European spatial planning gained attention when the inter-governmental document European Spatial Development Perspective (ESDP) was launched in 1999.[63] Among the countries who sustained and promoted the ESDP process significantly are Germany, the Netherlands and France.[64]

3.2.3 Negotiated agreements of the member states

In order to ease the implementation of sustainable development and its legal nature, informal ministerial meetings of European ministers for urban policy take place regularly. The launch of the ESDP in 1999 was the first important outcome of these meetings. The ministerial meetings aim at common European approaches to sustainable development and try to set a reference framework for sustainable development with negotiated agreements.

The negotiated agreements of the member states, which are all qualified as soft law documents, provide comprehensive and coherent frameworks to deliver sustainable development into changing European cities. They focus on economic prosperity, social inclusion ,and environmental protection as the three pillars of sustainable

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[62] R. Atkinson, 'EU Urban policy, European Urban Policies and the Neighbourhood: An overview of concepts, programmes and strategies' (2007), Paper presented at a EURA conference – The Vital City, Glasgow, September 12th – 14th 2007, 3 <http://www.eukn.org/E_library/Urban_Policy/EU_Urban_Policy_European_Urban_Policies_and_the_Neighbourhood_An_overview_of_concepts_programmes_and_strategies> accessed 21 May 2011.

[63] European Commission, *ESDP European Spatial Development Perspective – Towards balanced and sustainable development of the territory of the European Union* (Luxembourg 1999) 1 <http://ec.europa.eu/regional_policy/sources/docoffic/official/reports/pdf/sum_en.pdf> accessed 21 May 2011; A. Faludi/B. Waterhout, *The Making of the European Spatial Development Perspective. No masterplan* (1st edition, Routledge Chapman & Hall 2004) 144; R. Atkinson, 'The emerging 'Urban Agenda' and the European Spatial Development Perspective: towards an EU urban policy?' (2002) 9 European Planning Studies 385.

[64] A. Faludi, 'Spatial planning traditions in Europe: their role in the ESDP process' (2004) 9 International Planning Studies' 155; for the UK perspective see M. Tewdwr-Jones/K. Bishop/D. Wilkinson, ''Europsceptisism', political agendas and spatial planning: British national and regional planning policy in uncertain times' (2000) 8 European Planning Studies 652.

development, but also on stronger democracy and more effective local leadership. Since 1990 the ministers of the member states of the European Union responsible for urban development have worked on common political demands and negotiated agreements. They formulate guidelines according to which the member states' national urban development policies should be oriented. All documents aim at contributing to sustainable urban development. They also emphasize the necessity of new forms of governance, such as horizontally and vertically integrated methods at all levels from the European level down to the national, regional and local levels. Furthermore they strengthen the role of the cities.

The ministerial meetings of Rotterdam (Rotterdam Urban Acquis, 2004) and Luxembourg (2005) continued the implementation of the general objectives of European spatial development policy as they have been developed since the launch of the ESDP in 1999. They marked the beginning of a new understanding of spatial and urban development policy. This process lead to the adoption of the Territorial Agenda of the European Union and the Leipzig Charter on sustainable European cities in 2007. They continue this implementation process and lead it towards European Territorial Governance. This means the beginning of a new, participation-based idea of planning in the European Union. The following part reviews the Bristol Accord of 2005 first and continues with a review of the Leipzig Charter and the TAEU.

3.2.3.1 Bristol Accord

The Bristol Accord was signed in the Informal meeting of the Federal Ministers of Building and Urban Development of the European member states in Bristol in December 2005. It laid the groundwork for a European spatial planning policy.[65] It was based on the Rotterdam Urban Acquis from 2004 and aimed at a common European approach to sustainable cities.[66] In the Bristol Accord, the EU member states agreed on a common definition of sustainable communities as "places where people want to live and work, now and in the future."[67] Following the Rotterdam Urban Acquis, the Aalborg Charter and Agenda 21, the Bristol Accord refers to a threedimensional understanding of sustainable development. The Bristol meeting especially focussed on the necessity of an integrative approach towards sustainable development which is connected with the procedural side of sustainable development as introduced in Agenda 21.

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[65] See http://www.rfsustainablecities.eu/IMG/pdf/Bristol_accord_cle55c32d.pdf.
[66] See No. 2 Bristol Accord.
[67] Part I Bristol Accord.

3.2.3.2 Informal meeting in Leipzig 2007

The informal meeting under German EU Council Presidency took place in Leipzig in May 2007. The key policy issue of the meeting in Leipzig has been "Strengthening European cities and their regions – promoting competitiveness, social and territorial cohesion in Europe and in its cities and regions". The meeting's outcomes, the Leipzig Charter and the TAEU, try to apply sustainable development in concrete terms to the spatial development of cities, regions, and urban neighbourhoods. Thus they lead to a further concretion of sustainable European spatial planning. The Leipzig Charter and the TAEU provide an integrated approach towards a consolidation of spatial and urban planning and development policy. This takes into account that spatial and urban development can only be promoted effectively in a polycentric European perspective. This approach is called European Territorial Governance (No. 17 TAEU). European Territorial Governance leads to a new understanding of the role of cities as central actors for sustainable European spatial and urban development. Because of the cities' specific importance, their necessities, requirements, and objectives have to to be taken into account whenever policies are being drawn up at any level of European, national, regional, and local politics.[68] This is a key element of both the Leipzig Charter and the TAEU. While the Leipzig Charter focusses on strategies for a sustainable development, the TAEU, which has to be understood as a comprehensive document, concentrates on giving advice for an integrated European spatial development policy.

3.2.3.3 Leipzig Charter

The Leipzig Charter includes strategic and coordinated approaches towards sustainable urban development. To achieve the objective of sustainable development, the EU member states agreed on common principles and strategies. The Charter's most important objectives are the strengthening of integrated programmes for urban development (Preamble Leipzig Charter), and the development of specific strategies for deprived areas in the urban context. This development must be based on a three pillar image of sustainable development (Declaration of the Ministers, II).

The Leipzig Charter incorporates the results of the previous informal ministerial meetings, in particular the Lille Programme (2000), the Urban Acquis, and the Bristol Accord. The charter defines joint objectives and possible solutions to sustainable development issues. Its objective of integrated programmes for

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[68] I. Naylon/P. Schneidewind/G. Tatzberger, *Follow-up der Territorialen Agenda und der Charta von Leipzig– Ein europäisches Aktionsprogramm für Raumentwicklung und territorialen Zusammenhalt* (Brussels 2007) iii <http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/territorialagenda-leipzig_charter_/TerritorialAgenda-Leipzig_Charter_de.pdf> accessed 21 May 2011.

sustainable development shows that the EU member states have recognized social exclusion and social segregation as the most challenging tasks for sustainable development. As pointed out in Chapter 2, deprived neighbourhoods are one of the major challenges for sustainable development and territorial cohesion. This development demands a policy of social integration and integrated programmes to reduce inequalities or fragmentations, and to prevent further social exclusion. Solutions for this challenges can only be found in integrated programmes for urban development, in which not only public, but also private actors, such as citizens, participate. Therefore integrated development should be applied throughout the EU and an appropriate framework has to be established on a national and European level in order to apply integrated development.

With the Leipzig Charter, the attending ministers agreed upon new policy-oriented strategies for the improvement of the life situations of citizens in disadvantaged urban areas. Deprived urban areas must increasingly receive political attention within the scope of an integrated urban development policy which includes the economical, social, and environmental dimensions. It also includes strategies for deprived areas. These strategies should be encouraged with the European structural funds. The Leipzig Charter supports Governance strategies to continue a sustainable development (Preamble Leipzig Charter). This underlines the paradigm shift towards a European Territorial Governance.

3.2.3.4 TAEU

The TAEU is a common policy paper which aims at mobilising the potentials of European cities and regions and at utilizing Europe's territorial diversity for sustainable economic growth and more jobs. It was prepared by initiative of the Members States together with relevant territorial stakeholders. The TAEU is understood as the launch of a new understanding of urban planning and urban development which aims at vital and economically wealthy European cities.[69] Besides the adoption of an evidence-based policy approach, it particularly brings the aspect of territorial governance and territorial cohesion into discussion.

According to Chapter I No. 4 TAEU the term 'territorial cohesion' should be understood as a permanent process of political, organisational, and technical cooperation between all actors of spatial development. This definition shows that the objective of territorial cohesion is not a clearly defined objective rather than a permanent process of cooperation between actors from different levels. The cooperation process is called 'territorial governance' (Chapter I No. 5 TAEU). The

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[69] K. P. Schön/W. Selke, 'Territoriale Agenda der EU – ein Ansatz für ein neues Planungs- und Entwicklungsverständnis in Europa' (2007) Informationen zur Raumentwicklung 435.

TAEU stresses the importance of preserving the regional diversity of the EU which should be protected in the further course of the EU integration process. Regional diversities mean regional identities which should be seen as valuable assets for the process. The concept of territorial cohesion was adopted as an independent common objective in the TAEU, before it was introduced into the Lisbon Treaty.

The approach of European territorial governance changes the role of cities within the context of the process of implementation of sustainable development. So far, cities have played a rather limited role in the European multi-level governance. But the growing urgency of social and economic problems within and between cities has lead to a changed perception of cities. As it was already insinuated in the first negotiated agreements of the EU member states and also in the EU's green and white papers, the EU and the national member states see cities as key policy making partners in the implementation process of sustainable development.[70] This bears in mind that appropriate solutions for societal problems can only be found in the areas where the problems occur. Therefore a strong participation of local authorities, citizens, and local institutions is necessary. It also reflects the general recognition that cities and areas do not exist in isolation from wider social or economic context originating in the national, European or global spheres.[71] The TAEU promotes the model of polycentric development with strong cities. With its call for an improvement of urban governance, the TAEU recognizes the need to facilitate and to integrate the development directions, and to ensure an active engagement of citizens in them.

Both the Leipzig Charter and the TAEU set area-based initiatives policies for deprived neighbourhoods on their agendas. A solution to this problem requires the development of an integrated and comprehensive approach which needs to re-integrate deprived areas into the wieder context of the city. This can be achieved by implementing new governance structures.

3.3   Domestic law: The concept of sustainable development in UK and German law

The concept of sustainable development is not only a European or international topic but has also gained influence on national agendas. This section of the thesis reviews the implementation of sustainable development in German law and in UK law.[72]

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[70] R. Atkinson, 'EU Urban policy, European Urban Policies and the Neighbourhood: An overview of concepts, programmes and strategies' (2007), Paper presented at a EURA conference – *The Vital City*, Glasgow, September 12th – 14th 2007, 3.
[71] Ibid. 2.
[72] The thesis can not provide a comprehensive overview of policies in these two countries.

Both countries' initial approaches to sustainable development were largely non-legislative which has slightly changed over the years, especially in planning systems. The main question is whether sustainable development is just a rhetoric political theme or already a legal rule with the character of a general duty. It then shows that there is still a lot of legal work to do in both countries, especially regarding the introduction of sustainable development strategies with mandatory obligations on policy and decision makers with meaningful consequences in and outside the courts.

3.3.1 Germany

Sustainable development has gained influence on German law. There are mainly three different types of sustainability references in law on the constitutional or sectoral level: terminologically explicit references, terminologically implicit references, and references without any terminological reference but with direct or indirect affect on sustainable development.

Planning law, zoning law or regional planning acts are examples for terminologically explicit references (for example § 1 (5) (1) Federal Building Act (Baugesetzbuch); § 1 (2) (1) Regional Planning Act (Raumordnungsgesetz)). They refer explicitly to sustainable development with the use of the terms "*sustainable* urban development" or "*sustainable* land use development". These acts offer a guideline to development and can be understood as framework law for concrete implementation in cities and communities. But they do not offer any direct implementation rules or instructions which means that the priority setting, if and how sustainable development is supported, remains a mainly political decision. Another example for a teminologically explicit reference is Article 20a of the Federal Constitution that includes the protection of the natural living basis and natural ressources, the responsibility for future generations, and protection against risk precaution. However, Article 20a of the Federal Constitution is a complex, but also an undetermined task for legislature which is why there are only limited possibilies for juridical enforcement. Probably the most important acts for sustainable cities include §§ 171-171f BauGB. They enable the cities to use different instruments to ease the implementation of sustainability and to harmonize the "three pillars".

Article 20 of the Federal Constitution is an example of a terminologically implicit reference to sustainable development. The article include principles like the social state principle. The law of waste management or the Water Ressources Act also include implicit references to sustainable development.

Labour market law or tax law do not include any terminological reference to sustainable law but they have an affect on it because they are part of the legal framework in which the development takes place.

These examples show that sustainable development is only partially implemented explicitly in law. It is mainly used as a legal term and barely as a legal principle. It also lacks a common definition. It would also be helpful if there were concrete guidelines and mandatory obligations for implementation. At the moment the implementation of sustainable development in German law is not completely sufficient. But it can be prognosed that the implementation level will be improved due to the progressing development on the European level and the growing importance of ecologial sustainability.

3.3.2 United Kingdom

An important stepstone for the acknowlegdement of the concept of sustainable development in the UK was the Sustainable Development Strategy "Securing the Future" which was published in 2005.[73] In the same year, a second UK strategy entitled "One future – different paths: UK framework for Sustainable Development" was published jointly by all the administrations in the UK.[74] Both strategies establish the twin and equal goals of living within environmental limits, which have to be protected, and providing a just society by means of a sustainable economy and good governance. These strategies can be understood as a lens through which all new legal and other proposals have to be viewed. The UK framework for Sustainable Development is described by Swanson et. al. as "a navigational tool for identifying priority sustainability issues, prioritizing objectives, and co-ordinating the development and use of a mix of policy initiatives to meet national goals".[75]

Each of the UK strategies has been subject to review by the House of Commons Environmental Audit Committee.[76] It came to the conclusion that more than 100 public bodies had introduced statutory responsibilities for sustainable development according to the sustainable development strategy. But the review also showed that there was considerable variation between the public bodies regarding both the effectiveness and the interpretation of those duties. The review also offered recommendations on how sustainable development could be mainstreamed across government.

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[73] The UK Strategy for Sustainable Development – Securing the Future; Department for Environment, Food ans Rural Affairs (DEFRA) (London 2005). Note that this strategy mainly pertains England.
[74] One future – Different paths: The UK's Shared Framework for Sustainable Development; Department for Environment, Food and Rural Affairs (DEFRA) (London 2005).
[75] D. Swanson and others, *National Strategies for Sustainable Development: Challenges, Approaches and Innovations in Strategic and Co-ordinated Action* (1st edition, International Institute for Sustainable Development 2004) 41.
[76] S. Cussons, *Review of Statutory Sustainable Development Duties* - Report by the In House Policy Consultancy commissioned by Defra and the Sustainable Development Commission (2006); Sustainable Development Commission UK (SDC), *Sustainability Development Action Plans (SDA) Progress Reports – The Sustainable Development Commission's Key Findings* (London 2008); see also Sustainable Development – A Review of Process by the Scottish Government, Sustainable Development Commission (Scotland); Edinburgh, 2008.

Due to these efforts, the UK framework for sustainable development is relatively modern and progressive.[77] But the UK has the same problem as Germany: The framework for sustainable development lacks a legislative foundation as well as influence.[78] It also lacks mandatory obligations which are imposed on policy and decision makers. In the UK, the concept of sustainable development mainly appears in statutes as a legal objective or a procedural obligation.[79] This can be compared with the German approach of sustainable development in planning law and zoning law. So far both countries have procedural obligations only for specific regimes or for certain public authorities. The obligation of sustainable development in planning law for example is only an obligation for planning authorities. But there is no general sustainable development duty which addresses all government actors. This leads to a lack of legitimacy and authority regarding the implementation process of sustainable development and to insufficient conditions for a comprehensive implementation of the concept.[80] Its recognition is more a political recognition and acceptance than a legal one.[81]

3.4 Conclusion

In the last decades it turned out that a future-oriented urban development can only be assured if the states adopt the concept of sustainable development. This becomes even more important bearing in mind that cities are the places where the majority of the world population will be living in the future. The concept of sustainable development focusses on the three pillars of an equal relation between the protection of the environment and a just society by means of a social economic development and good governance. There should be no trade-off between the pillars. The most often quoted definition of sustainable development emanates from the Brundtland report from 1987.

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[77] A. Ross, 'It's time to get serious – why legislation is needed to make sustainable development a reality in the UK' (2010) 2 Sustainability 1107.
[78] Ibid. 1101. Note that there is a statutory duty to produce a sustainable development scheme in Wales under the section 79 of the Government of Wales Act 2006.
[79] It is argued whether the UK approach to sustainable development can be qualified as a legal rule which provides a framework for decision-making, see A. Ross, 'Why legislate for sustainable development? An Examination of Sustainable Development Provisions in UK and Scottish statutes' (2008) 20 Journal of Environmental Law 35.
[80] According to Freeman, legitimacy is when the public accepts decisions without having to be coerced; J. Freeman, 'Private Parties, public function and the real democracy problem in the new administrative law?' in D. Dyzenhous (ed), Recrafting the Rule of Law – The limits of legal order (1st edition, Hart Publishing 1999) 31.
[81] A. Ross, 'It's time to get serious – why legislation is needed to make sustainable development a reality in the UK' (2010) 2 Sustainability 1103.

The problem of the concept of sustainable development on the international level, the European level, and on the national levels is that it often lacks mandatory obligations on policy and decision makers with really meaningful consequences. One could almost state that a lot of governments are at kind of an impasse in their implementation of sustainable development.[82] The concept requires to consider how it should be integrated into everyday legal and policy decisions and actions. It also needs to have a rule how decisions have to be made, requiring a particular way taking into account the different factors of sustainable development and introducing certain priorities. Furthermore, the implementation process needs to be more consistent. This development can be supported by legislation. Therefore a legislative model to support the implementation of sustainable development is needed. This model should also include procedural obligations to enforce a change towards urban governance structures. Making sustainable development a legal rule with specific legislation could also have an impact on the perception of the concept within the population: It would have a symbolic and educational impact and prove evidence of the importance of sustainable development.[83] Above all, a legally implemented concept of sustainable development would not be subject to electoral periods, which means that a solely policy based model of sustainable development could be changed and redefined with every change in government. This already happened in the Scottish transformation process of sustainable development.[84] The transformation process from a policy based concept of sustainable development to a legally implemented one should be accompanied by monitoring obligations and regular reviews to ensure consequences for failure in the transformation and implementation.[85]

The biggest challenge for sustainable development in the next years will be its operationalisation. An effective implementation of the approach requires a translation of its objectives into specific actions for specific places. Therefore integrated decisionmaking processes, which are of utmost importance for strategies for sustainable urban development, need to be combined with profound processual changes: from top-down steering to bottom up structures and a focus on the local levels with high citizen partizipation. Urban governance as a useful approach to sustainable development is reviewed in the following chapter.

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[82] J. Dernbach, 'Navigating the U.S. transition to sustainability: Matching national governance challenges with appropriate legal tools' (2008) 44 Tulsa Law Review 93.
[83] A. Ross, 'It's time to get serious – why legislation is needed to make sustainable development a reality in the UK' (2010) 2 Sustainability 1105.
[84] Ibid. 1108.
[85] Possible legislative options for sustainable development are discussed by ibid. 1112.

Chapter 4   Urban Governance

As shown in Chapter 2, some cities have experienced a continuous decline in population and economic growth over the last decade. This leads to a profoundly changed perception of the role of cities. On the one hand growing, wealthy cities are engines for economic growth, centres of cultural and technological creativity, and human development. On the other hand however, the growing problem of social exclusion within and between cities minimises opportunities for sustainable development. The specific situation of cities has become more evident over the last decade and needs to be taken into account when thinking about ways to implement sustainable development strategies. The development encompasses major structural, economic, and social changes. The concept of sustainable development provides an approach to solve these problems. But sustainable development is not only a political concept, it also includes a strong procedural element that was pointed out in Agenda 21 and particularly in the EU member states negotiated agreements.

The OECD stated that: "Good governance and sound public management are preconditions for the implementation of sustainable development policies".[86] The Sustainable Development Commission (SDC) also maintained in its work that sustainable development needs to provide an operational tool which should, among others, consist of rules for policy making, certain management systems, and procurement.[87] This shows that sustainable development and urban governance have to be combined for sustainable cities. The approach to sustainable development is the model of European Territorial Governance as seen in the TAEU and the Leipzig Charter. The term governance refers to "horizontal structures of cooperation between public and private actors".[88] It describes new forms of processes and collaborations being implemented to establish norms, develop codes of behaviour, solve problems, and resolve disputes. This chapter gives an introduction into urban governance and shows how it works.

This chapter will show that the concept of urban governance offers a way to future-oriented urban development. It will also be argued that the use of the term governance does not simply indicate an extension of the analytical frame underlying the theory of political steering.

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[86] Organisation for Economic Co-operation and Development (OECD), *Improving Policy Coherence and Integration for Sustainable Development: A checklist* (Paris 2002) 2 <http://www.oecd.org/dataoecd/60/1/1947305.pdf> accessed on 21 May 2011.
[87] J. Porritt, 'The standing of sustainable development in government' (2009) 28.
[88] R. Mayntz, 'Common Goods and Governance' in A. Héritier (ed), *Common Goods - Reinventing European and International Governance* (1st edition, Rowman & Littlefield 2002) 15.

4.1 Governance – an interdisciplinary concept

Network governance and the re-allocation of authority have gained the attention of a large and still growing number of scholars in economics, political science, sociology, international relations, law, and public policy and administration. Thus, there is hardly a discipline in which governance does not play an important role. One could almost say that the concept has experienced a meteoric rise. One of the reasons for this rise is probably the function of governance as an interdisciplinary crossconcept. It has the ability to couple different disciplinary discourses, for example law with sociology and political science. It have been above all international relations scholars who begun to extend theories of international regimes and international politics to political decentralization within states.[89] In a very broad definition, the term governance is used "to describe structures and practices of coordination and control without a sovereign power, i. e., an institution competent to make and enforce binding decisions ("governance without government")".[90] Thus, the concept generally relates to network decisionmaking to address common problems, such as social segregation.

In general, all disciplines can benefit from an interdisciplinary discourse, even though the law seems to be suspicious about this kind of discourse because law is characterised by the normative and a dogmatic approach.[91] The career of the governance approach is not completely trouble-free. Like any other new social or legal theory, which receives significant attention in expert groups, governance also tends to attract criticism. Some of the critique will be analysed in this chapter. It will examine the impact of new forms of governance in theory and its implications for practice.

4.2 Paradigm shift towards Urban Governance

Efforts to develop new approaches in law are usually related to societal phenomena or changed circumstances. The discussion about governance is a perfect example for that assumption. Against the background of urban planning, demographic and economic structural changes as well as the breakdown of the welfare state have to been seen as deep-going changes for states and societies.

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[89] A. Benz, 'Governance – A Political Science Perspective', in D. Jansen (ed), *New Forms of Governance in Research Organizations* (1st edition, Springer 2007) 3.
[90] Ibid. 4.
[91] W. Hoffmann-Riem, 'The potential impact of social sciences on administrative law' in M. Ruffert (ed), *The transformation of administrative law in Europe* (1st edition, Sellier: European Law Publishers 2007) 203.

4.3.1 The approach of steering

The approach of steering generally asks for the requirements of successful political leadership. It is a form of direction which involves bipolar dimensions of those who govern and those who are governed.[92]

The concept is linked to the question how societal developments can be influenced by political and administrative decisions. This insinuates that an optimism about the possibility of causing certain effects through legal and administrative instruments is inherent to the concept of steering – an optimism that can hardly by generally shared, given the dynamics of the high complexities of everyday life in a globalised world and the pressure of the progressing europeanisation. These influences lead to uncertainities within the prospected chain of events that cannot be predicted. The basic concept of steering is a concept of linear causation which differs strictly between the object of steering and its subject on the one hand and the action of steering and its success on the other hand. It aims at normatively desired effects and tries to avoid non-desired consequences using mostly hierarchical forms of coordination (top down-steering). Jurisprudencial steering is usually meant to be indirect steering meaning that the legal system provides a legal framework which contains of certain forms of types of decision, actions, forms of organisations or different sorts of procedures. These forms are available as molds for administrative action. The approach of steering is an actor-centered concept in which state actors are central actors. The strict separation and dichotomy between the parts of the steering chain enables the political leader to discover problems within the chain, for example a problem with the chosen steering instrument. Therefore the key question of the concept is: Who is steering whom?

Urban reality however has developed in a way in which decisions cannot always be tracked in a linear causation anymore due to the progress of networks of local, regional, national, and international actors and institutional arrangements. The cognitive premises and contemporary governance have changed. There is a strong tendence to reject strong dichotomies between state and society.[93] This leads to a change of roles which is particularly visable in local politics where one can see a growing overlapping between public and private sector. State authority is dispersed away from central government, upwards to the supranational level, downwards to subnational jurisdictions (regional or municipial), and sideways to public-private (tripartite) networks. Because of that, the relationship between state and society has become polycentric and mutually dependent. The subjects and objects of steering can

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[92] J. Kooiman, *Governing as governance* (1st edition, Sage Publications 2003) 115.
[93] C. Ansell, 'The Networked Polity: Regional Development in Western Europe' (2000) 13 Governance: An International Journal of Policy and Administration 303 <http://www.unc.edu/depts/europe/conferences/mlg/papers/ansell_c.pdf> accessed 21 May 2011.

no longer be clearly distinguished. Furthermore, the frontiers between the different scales of political and legal actions slightly disappear. Due to the process of europeanisation certain problems cannot only be dealt with by one country on its own anymore. Above all, the progressing europeanisation and globalisation have lead to a loss of governments as the central overall controlling body. The role of the state has changed to an empowering state who is empowering his citizens.[94]

An example for the blurring of dichotomies between state and society is urban development. The necessity of sustainable urban development cannot only be fulfilled by one country, the problems of growing cities and growing social inequalities and disparities need to be diminished by groups of countries. Governments seem to have a lower capacity to insulate their economic and societal challenges. The negotiated agreements between the EU member states and their decision for a polyrational urban and spatial planning are a good example for europeanized cooperation in this field of politics. The concept of European Territorial Governance requires them to stick to the concept of sustainable urban development which needs to be transferred into the scale of local politics where it will be implemented in concrete actions. This development leads to a paradigm shift towards governance in which the focus of analysis is on structures and institutions.

4.3.2 Approaching governance

The approach of governance offers a strengthened perspective towards networks, processes and informal agreements. It is motivated by an emphasis on the complexity, interdependence, and fragmentation of globalised development and tries to give an answer to specific problems of multilevel, multiorganisational or intergovernmental coordination and cooperation.[95] (Multilevel) Governance[96] as a new approch focusses on the question of conceiving the "how" of administering and governing. The governance approach concentrates on observable interactions in administrative law and is about the perception of the plurality of governmental and private actors. Even though the governance concept was not confined to the urban sphere, the development of governance structures has been particularly palpable in cities. This is enforced by the growing importance of cities within European Territorial Governance. The urban sphere of governance, described as urban governance, is in the focus on this thesis.

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[94] Ibid. 303.
[95] Ibid. 304.
[96] Multilevel governance „describes the dispersion of authoritative decision making across multiple territorial level", see L. Hooghe/G. Marks, *Multi-level governance and European integration* (1st edition, Oxford 2001) xi. The model can be transfered to any other kind of multiple levels.

Non-state actors have been taken into consideration before new discussions about network governance came up some years ago and the idea of governance is not a completely new idea, as the section about the interdisciplinary development of governance showed. But there is a big difference between former governance and nowadays governance. Earlier, non-state actors appeared either as actors shaping state interests through domestic politics (two level games[97]) or as transnational actors, such as the development from Multi-National Corporations to International Non-Govermental Organizations [INGOs]) lobbying international negotiations or international organisations. Only recently non-state actors have emerged as direct partners of national governments or local municipalities in structures of network governance. New forms of governance are not only weak informal networks without steady organisation or formal decision-maiking patterns that are mainly supposed to do networking, but structured networks with concrete mandates.[98] Their main characteristics are regular participants, long-term commitments, shared goals, and pre-arranged schedules.[99] They have the ability to produce new ways of collaboration because they can fulfil a steering role which includes influence one's behaviour, for example citizens' behaviour in urban development, and set a framework of directions.[100] The latter ability points to the connection between governance networks and law: The law needs to enable networks to set rules by setting a legal framework for their actions.

4.3.3 Paradigm shift

The shift from political steering towards governance means a shift from an actor centered approach to policy-making towards an institutionalist approach, and also from a control perspective to framework law. New governance forms are a stark contract to the classic hierarchical state-centric process. The institutionalist governance approach is dealing with complex regulatory structures combining both public and private as well as network and hierarchical forms of coordination.[101] It

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[97] R. Putnam, 'Diplomacy and Domestic Politics: The logic of two-level games' (1988) 42 International Organization 427.

[98] See H. Tolkki and others, 'Governance in regional development – between regulation and self-regulation' (2010) Public Organization Review 3. <http://www.springerlink.com/content/x467n57373435p71/fulltext.pdf> accessed 22 May 2011; R. Parker, 'Networked governance or just networks? Local governance of the knowledge economy in Limerick (Ireland) and Karlskrona (Sweden)' (2007) 55 Political Studies 113.

[99] H. Tolkki and others, 'Governance in regional development – between regulation and self-regulation' (2010) Public Organization Review 3.

[100] Ibid. 3.

[101] B. Peters/J. Pierre, 'Governance without Government? Rethinking public administration' (1998) 8 Journal of Public Administration - Research and Theory 223.

focusses on horizontal structures of governing rather than vertical structures only.[102] These concepts refer to different aspects of political reality.

The shift from steering to networks also means a reorganisation of patterns of action. The distinction between hierarchy and networks also refers to the structure and modes of coordination between or within organisations. Within hierarchical structures, coordination is achieved through vertically running chains of command which link all levels. In this system higher levels are directing lower levels. In network structures however, coordination is achieved mainly through horizontal forms of organisation.[103] These horizontal forms are combined with vertical forms to ensure the functionality of network structures. The necessity for few vertically running chains of command is called 'shadow of hierarchy'.[104]

Each transformation of administrative law mirrors historical, political, and societal changes. The governance approach bears in mind that political reality has grown above dichotomic structures. New, often hybrid organisations and institutions are founded where public and private sector come together to interact in more or less formal partnerships. This phenomenon is particularly visable in local politics. Here Urban Governance is used. The hierarchic subordinative relationship between state and society is not overwhelmingly valid anymore, but weakened by the growing influence of non-state actors. Certain social problems cannot be solved with hierarchical instruments anymore. They need to be solved in cooperative networks where actors from different sectors collaborate. This is stressed by the fact that problems in deprived areas need specific solutions that are particularly designed for their needs. These solutions can only be discovered with the support of local citizens. Therefore network governance structures have gained popularity, because States and Federal States as well as municipalities alike lack the specific knowledge and expertise to solve increasingly complex problems in urban planning, especially in deprived areas.

This thesis cannot provide a deep-going discussion about the difficult question if governance is a concept that can entirely replace the approach of steering. However, regarding urban development, some problems cannot yet be solved using the

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[102] A. Benz, 'Governance – A Political Science Perspective' in D. Jansen (ed), *New Forms of Governance in Research Organizations* 4.

[103] C. Ansell, 'The Networked Polity: Regional Development in Western Europe' (2000) 13 Governance: An International Journal of Policy and Administration 303Ansell (2000) 303.

[104] The term shadow of hierarchy describes "legislative and executive decisions, in order effectively with the problems they [networks] are supposed to solve" A. Héritiér/D. Lehmkuhl, 'The Shadow of Hierarchy and new modes of governance' (2008) 28 Journal of Public Policy 1; F. W. Scharpf, 'Games Real Actors could Play: Positive and Negative Co-ordination in Embedded Negotiations' (1994) 6 Journal of Theoretical Politics 27, 40.

approach of governance only, because they need hierarchical solutions. Therefore governance is an instrument of law that is complementary to the solution of legal issues and steering. Hierarchy is a prerequisite for administrative and governmental actions. But it will be replaced in some areas by the ongoing progress of governance which is accelerated by the growing number of cooperations between public and private actors. Governance is used when hierarchical instruments are unable to address social problems.[105] The growing share of informal legal instruments such as negotiated agreements of the EU member states also contributes to this development. Thus governance does not mean a totally new approach to understanding reality. Instead it is a concept that designates a modified analytical perspective to complex and somehow opaque courses of events between collective actors and actions. It aims to make these developments more comprehensible.

4.3   Defining Governance

Governance is usually characterised by two main facts. First, forms of governance systematically involve non-state actors such as citizens or private companies. This includes a part relocation of authority from national entities to non-state actors. This becomes increasingliy important whenever governance is used within a context in which decisions are made that directly affect people. It is "a polity-creating process in which authority and policy-making influence are shared across multiple levels of government - subnational, national, and supranational."[106] Urban development is an example for that: Actions in urban development have immediate effect on the living situation in a neighbourhood. But these actions can only be effective if they are tackled together by public and private actors. Therefore governance is also used in urban and spatial development.

Second, new forms of governance must rely on a combination of non-hierarchical and hierarchical forms of coordination. There is an overlap not only between public and private actors but also between cooperation and hierarchy and between formal and informal types of legal actions. Governance takes place when coordination and control occur in horizontal relations between actors from different sectors.[107] This does not necessarily exclude the existence and effectiveness of hierarchical structures. Instead, there is strong evidence that hierarchy is needed to make

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[105] M. Bassoli, 'Local Governance Arrangements and Democratic outcomes (with some evidence from the Italian case)' (2010) 23 Governance: An international Journal of Policy, Administration, and Institutions 485.
[106] L. Hooghe/G. Marks, *Multi-level governance and European integration* 2.
[107] M. Bassoli, 'Local Governance Arrangements and Democratic outcomes (with some evidence from the Italian case)' (2010) 23 Governance: An international Journal of Policy, Administration, and Institutions 487.

horizontal structures work.[108] Political effectiveness and political efficiency of governance modes depend on their link to hierarchy, such as executive or legislative top down-decisions which steer governmental actions. In horizontal 'heterarchical' structures, the hierarchy mode is usually linked with the attending of state actors. They have the power to make top down-decisions whenever the mechanisms of communication and negotiations between collective actors do not lead to promising results (shadow of hierarchy). This credible threat of possibly detrimental legislation plays a crucial role in getting private or other non-state actors to engage in governance modes and to both accelerate and improve the decision-making process. It can also work as an inducement in a way that it exerts pressure on private actors and motivates them to choose the most effective way of solution because the actors would rather opt for their own solution instead of going with the most likely adverse solution prompted by the state. This may avoid stalemates and blockades, and ensure that the status quo does not remain intact because participants cannot find an appropriate result thorugh negotiations. Moreover the shadow of hierarchy can also be seen as a kind of competition between different arenas of decision-making: the horizontal governance arena, and the vertical arenas. This ensures highly effective and sustained processes, too. But a shadow of hierarchy should not only be seen as a threat. It can also ensure, that actors who may not have the power to enforce their requests otherwise, for example private real estate owners, can be empowered and supported. Therefore governance does not mean "governance without government" but "governance with government".[109]

Furthermore governance in the sense of urban governance is also characterised by characteristics of good governance which is meant to be a kind of guideline on how to improve governing in national or international systems.[110] Among other criteria, good governance is participatory, accountable, transparent, and it promotes the Rule of Law. The concept of good governance is also part of the EU law. Article 41 of the Charter of Fundamental Rights[111] gives a right to good administration and the

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[108] Hierarchy could come as legislative majority decisions, as executive decisions or as court rulings. See C. Ansell, 'The Networked Polity: Regional Development in Western Europe' (2000) 13 Governance: An International Journal of Policy and Administration 303; A. Benz, 'Governance – A Political Science Perspective' in D. Jansen (ed), *New Forms of Governance in Research Organizations* 5.

[109] See B. Peters/J. Pierre, 'Governance without Government? Rethinking public administration' (1998) 8 Journal of Public Administration - Research and Theory 223.

[110] However unlike other contexts of governance, good governance is a more normative concept rather than an analytic concept. Its criteria is therefore only supportive to the analytic concept of Urban Governance. Urban Governance should by no means be identified with the definitions of Good Governance, see A. Benz, 'Governance – A Political Science Perspective' in D. Jansen (ed), *New Forms of Governance in Research Organizations* 4.

[111] See also Article 15 TFEU.

European Code of Good Administrative Behaviour[112] which was introduced by the European Ombudsman and adopted by the European Parliament in 2001, provides a more detailed description on how Article 41 of the Charter should work in practice. This approach of the concept of good governance already shows the problem of the term governance. One of the main reservations towards governance is its broadness. The term's broadness however is a typical phenomenon for new concepts in social and legal sciences that cover complex questions, for example the concept of sustainable development. Despite its broadness, governance can be made fruitful in terms of analysing complex patterns for collective actions.

Governance uses the newly phrased term structures of regulation. Structures of regulation can include hierarchy, networks, market, competition or cooperations. They are related to a complex of legally normative programes, relevant procedures, available organisations, and, of course, to rules and interactions of state and private actors.

4.4   Urban governance

The term urban governance describes a policy that is formulated by private and/or public actors in delimited sectoral areas, such as urban planning. Urban governance networks emphasise that the more decentralized jurisdictions are, the better they can reflect the heterogeneity of preferences and necessities among citizens. The approach considers that regionalization has to be viewed as a complementary process in which central state authority is dispersed above and below the national state. As it was already shown in Chapter 2, this is particularly important when it comes to solutions for deprived neighbourhoods. In terms of urban planning, urban governance usually comes as regulated self-regulation which means that it includes policymaking by private actors in a regulatory framework set by legislation. Policymaking is mainly through negotiations. Besides interactions of actors through negotiations, the key characteristics of governance structures are a relatively stable horizontal articulation of interdependent actors, which are thus acting autonomously, and a self-regulatory framework which contributes to questions and problems of common public interest. The self-regulatory framework also sets the normative and cognitive options and limits for negotiations.

As it will be shown in Chapter 5, the German legal instrument of the Social City in Paragraph 171e Federal Building Code (Baugesetzbuch) is a perfect example for this character of urban governance. The state sets a legislative framework, in which the actors of the network for the deprived area can independently search for the best

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[112] European Communites, The European Code of Good Administrative Behaviour, passim.

solutions for specific problems. It triggers the emergence of new modes of governance. This shows that urban governance instruments are usually developed on a national or federal scale in order to address social problems on local scales. Public actors act as network weavers, initiating formal and informal processes within the group of actors. The participation of private actors is supposed to guarantee a certain amount of credibility of policymaking for disadvantaged urban areas. This approach takes into account that private actors or non-state actors i. e. NGOs have sufficient expertise on specific circumstances in the deprived area. They are also usually more flexible and speedy in adjusting to new challenges. It also lowers the transaction costs. Regarding urban development it is clearly shown that without the expertise of citizens and other non-state actors complicated social and economic problems in deprived areas could not adequately be dealt with by governmental state actors only.

4.5   The legal perspective towards governance

New forms of governance affect the usual way law works in many spheres. While few scholars doubt that network governance has an impact on law, others debate about the desirability and nature of changes linked with governance. It is discussed that network governance is able to expand law's capacities and enhance its legitimacy, particularly regarding democratic legitimacy. This could undermine law and values associated with law.

The growing importance of governance networks has two important consequences: On the one hand, decision-making has spilled beyond different core representatives. Public-private networks of diverse kinds have multiplied at every level from the smallest to the largest scale, such as from the International to the municipial level. On the other hand, formal authority has been dispersed and decentralized from central states both up to supranational institutions, like the European Union, and down to subnational governments on the regional or local level (regional or urban tier).

Because of that, governance networks are a methodical challenge for public law, especially for administrative law and constitutional law. Among others, two questions are of utmost importance for a legal reception of new forms of governance. What is it, that the governance approach can accomplish for public law? And which requirements have to be fulfilled for a jurisprudential reception of new forms of governance?

4.5.1 Narrowing governance

Regarding this thesis, the focus is on a "narrow" term of governance, which means that governance is not understood in terms of gubernare[113], but as structures of regulation and structures of coordination which are lacking a central actor. The state remains an important actor, but is not the central actor anymore.[114] This development is illustrated by the development of sustainable development on the European scale where the Leipzig Charter and the TAEU launched European Territorial Governance, which constructs networks between European, national, regional, and local actors. This network for sustainable planning does not have a central actor, but it aims at approaches for the implementation of sustainable development. Therefore the core of governance is the monitoring of mechanisms and effects of the coordination of actions of more or less independent actors within an institutional framework. A wider term of governance would point to all forms of collective regulation of societal issues and consists of polity and policies.[115] Concerning a legal perspective of governance, this term lacks a specific conciseness that is needed to introduce it into the legal perspective. But even though, legal scholars are still cautious towards the reception of governance, law plays a key role in adopting new governance modes. The main contribution of jurisprudence to the conceptualization of governance is its ability of a systematic elaboration of regulatory structures which create legal frameworks for governance networks. Jurisprudence provides metarules for their functioning.

4.5.2 Connection between governance and law

One of the reservations towards governance is the term's vagueness.[116] Pierre and Peters even call it "notoriously slippery".[117] This, however, does not necessarily mean a disadvantage. By contrast, the term's alleged vagueness also includes possibilities for the enhancement of new forms of governance. Administrative law and public law can benefit from a reception of new governance in the way that it can both improve and re-measurise the relations between public, private and hybrid actors within network structures.[118] Because of that there that should be no servious objection towards the implementation of network governance structures.

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[113] The Latin noun *gubernare*, which means 'to steer a ship', is the etymological basis for the verb *to govern*.

[114] G. Schuppert, 'Was ist und wozu Governance?' (2007) 40 Die Verwaltung 463.

[115] M. Kötter, Rechtsordnung und Regelungsstrukturen: der Beitrag einer entscheidungs- und wirkungsorientierten Rechtswissenschaft zur Governanceforschung' in S. de la Rosa/U. Höppner/M. Kötter (eds), *Transdisziplinäre Governanceforschung. Gemeinsam hinter den Staat blicken* (1st edition, Nomos 2008) 211.

[116] A. Benz, 'Governance – A Political Science Perspective' in D. Jansen (ed), *New Forms of Governance in Research Organizations* 4.

[117] J. Pierre/B. Peters, *Governance, Politics, and the State* (1st edition, MacMillan 2000) 7.

[118] W. Hoffmann-Riem, 'Governance im Gewährleistungsstaat' in G. Schuppert (ed), *Governance-Forschung* (2nd edition, Nomos 2006) 195.

Jurisprudence is a dynamic discipline. The dynamic is caused by the ambivalence between a tendency of conservation and a tendency of change. In general, jurisprudence is a conservative and defensive discipline since it tries to avoid overhasty changes. It works as a kind of warning authority and wants to stay away from innovations which could be a threat to its traditional guarantees, such as the protection of the individual interests and rights of every citizen.[119] But law is also a creative and innovative discipline which wants to support the enhancements of administrative law and to go along with social developments. Jurisprudence however is also anxious to retain the connectivity to its dogmatic approach. This ambivalence sets the area of conflict for the reception of new forms of governance. This reception needs to take into account that the governance approach cannot replace jurisprudential dogmatism, but it can be a necessary complement to dogmatism. In this kind of sense, governance works as a framework for visible changes of the shifting dynamics within states. Governance also imparts interdisciplinary connectivity. The shift towards a more institutional thinking in network constructions requires the law to develop new, complexer instruments. So far, most legal instruments are based on the assumption of bipolar top down relations.[120]

4.5.3 Requirements for the reception of governance

The reception of governance modes in the law needs to fulfill certain requirements.

4.5.3.1 Law as an actor-focussed science

New forms of governance can only be absorbed into the law if they anticipate its specific way of thinking in dogmatic structures. This also means, that governance still needs to focus on the actor because law is an actor-focussed science.[121] This is necessary to analyse the constitutional binding of actors, the solution of conflicts of interests within networks, and the democratic legitimacy of networks.

Therefore administrative science and administrative law are both focussed on research of actors and their actions when they try to solve conflicts of interests. But governance does not necessarily dismiss the central position of the actor. The shift from steering towards governance means a shift of attention from the steering of actors towards the interaction of actors within institutional structures of regulating

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[119] For this basic approach see for example Article 19 (4) German Constitution that provides that everyone whose rights are infringed by a public authority has the right of access to justice.
[120] A typical example is the administrative act (Verwaltungsakt) in German administrative law.
[121] J. Kersten, 'Governance in der Staats- und Verwaltungsrechtswissenschaft' in E. Grande/S. May (eds), *Perspektiven der Governance-Forschung* (1st edition, Nomos 2009) 45.

and structures of coordinating. This indicates a changed downplaying view of the role of elected officials. Thus the actor is still in the centre of the concept, but is complemented by an analysis of the institutional framework in which he acts. Usually no single individual actor has the power to control the network's operations.[122] The key question of governance is: Who performs how?

4.5.3.2 Public actors in networks

Elected officials as public actors remain a significant role in governance networks. Even though their role is downplayed when they enter into tripartite networks, they still play a key role when it comes to initiating and weaving networks, providing them to work, which may include the provision of certain formal rules, enabling networks to participate in decision-making processes, and pooling both public and private ressources.[123] The leading role of public actors is also shown in their function of setting goals and priorities for the network. This underlines the importance of a shadow of hierarchy as a remaining hint of steering in the governance concept again.[124] Though networks are actually supposed to be self-governing and independent, they often discover difficulties in contributing to the efficient governing of society and societal problems. These difficulties can result from a lack of ressources or mandates. As mentioned above, a shadow of hierarchy by means of public actors and a legal framework in which governance actions happen, helps to ensure the efficient work of governance networks. It is a response to the fear of coordination and collaboration failure in networks. The engagement of public actors can be understood as "governance of governance".[125] They are guiding the "self-organisation of governance" with organisation of the conditions for governance, for example the development of a legal framework, and aim at the achievement of best possible outcomes for those engaged in governance networks.

To give an example, sustainable development as a target of urban development is implemented into urban governance networks by public actors. This is characteristic of the concept of European Territorial Governance: The target of sustainable

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[122] See H. Tolkki and others, 'Governance in regional development – between regulation and self-regulation' (2010) Public Organization Review 3; R. Rhodes, 'Governance and public administration' in J. Pierre (ed.), *Debating governance. Authority, steering and democracy* (1st edition, Oxford University Press 2000) 61.

[123] B. Peters/J. Pierre, 'Governance without Government? Rethinking public administration' (1998) 8 Journal of Public Administration - Research and Theory 227; H. Tolkki and others, 'Governance in regional development – between regulation and self-regulation' (2010) Public Organization Review 3.

[124] B. Peters/J. Pierre, 'Governance without Government? Rethinking public administration' (1998) 8 Journal of Public Administration - Research and Theory 231.

[125] B. Jessop, 'Governance and Metagovernance: On Reflexivity, Requisite Variety, and Requisite Irony' (2003), Working Paper published by the Department of Sociology, Lancaster University 5 <http://www.lancs.ac.uk/fass/sociology/papers/jessop-governance-and-metagovernance.pdf> accessed 21 May 2011.

development is defined on a "higher" level, for example the International, European or national level. It is then transferred to regional and urban levels where is is concretised in tripartite networks of public, private, and community actors.[126] Public actors are also needed to diminish likely conflicts of interests among the private participants whose participation in networks is usually characterised by a certain tension due to their heterogeneity. Therefore neither self-regulation nor regulation solely dominates the work of governance networks.[127]

4.5.3.3 Conflicts of interests within networks

Networks are not necessarily a very harmonic construction. Their challenges, such as finding solutions for certain societal problems and finding ways to implement these solutions, need common definitions of problems, goals and possible actions. These steps bear a high potential of conflict in horizontal networking structures, which are characterised by their heterogeneity. Such structures are not free of power asymmetries, clashes of interests or hierarchies.[128] Networks consist of more dominant actors and weaker actors. They can be understood as a web of interorganisational and intergovernmental relationships. That can lead to inequalities of power. This is particularly dangerous for networks for urban development in which private parties usually have fewer ressources and less power to enforce their interests than public actors. Tenants for example are usually less organised and powerful than city councils and housing associations. This might affect the network's ability to deliver mutual agreements and can result in exclusionary networks. Furthermore the attending actors can form coalitions with each other or against each other. Mayntz describes this phenomenon as "antagonistic cooperations".[129] She also indicates that the potential for conflicts rises the more directly aggrieved parties take part in negotiations. Regarding urban development, this is particularly conspicuous since these negotiations affect the life situation of citizens, who are involved in the network for the neighbourhood. This is particularly problematic when decisions about selective demolitions of dwellings are inevitably.

All those dangers can potentially lead to suboptimal compromises only. These occur as a result of the attempt to solve conflicts by sharing the advantages and disadvantages evenly between all parties (negotiating dilemmas): While all parties

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[126] See H. Tolkki and others, 'Governance in regional development – between regulation and self-regulation' (2010) Public Organization Review 1.
[127] Ibid. 2.
[128] A. Benz, 'Governance – A Political Science Perspective', in D. Jansen (ed), *New Forms of Governance in Research Organizations* 13.
[129] R. Mayntz, 'Governance im modernen Staat' in A. Benz (ed), *Governance – Regieren in komplexen Regelsystemen* (1st edition, VS Verlag 2004) 65.

are trying to develop the overall benefit to the maximum, they also try to get the best result for themselves. Under certain circumstances this can result in a shift of costs to third parties, who do not attend the negotiations (externalisation).[130]

These problems should however not be perceived as a weakness of governance structures. They only stress once again the importance of the actor in governance structures and why the focus still needs to be on the actor: It is necessary to research his interests and incentives to develop transparent rules which lay down how interests can be accomplished within networks and outside of networks. These rules also need to ensure accountability. The ambiguity of governance underlines the importance of the shadow of hierarchy again.[131]

4.5.3.4 Democratic legitimacy of network structures

The integration of non-state actors in governance networks raises the question, whether democratic legitimacy is given for the integration process. Democratic structures are traditionally focussed on the nation as the central actor. As mentioned already, governance designates a comprehensive change in terms of who is in charge of political decision making. Governance networks are horizontal forms of coordination which lack a central actor, which raises the question, if new forms of governance provide a sufficient amount of democratic anchorage. Moreover, governance patterns imply the use of a wider repertoire of formal and non-formal tools. This may also cause problems regarding the democratic legitimacy of governance.

The democratic legitimacy of all public actions is the core of the administrative legal system. To answer this question, the relation between the governance concept and the concept of democratic legitimacy will be examined. Therefore another key question of governance research is: Do new forms of governance fail to meet democratic standards?

4.5.3.4.1 Democratic legitimacy – a traditional approach

The traditional approach of democracy is a concept which focuses on the nation (*demos*) as subject of legitimacy and as the central actor. This approach demands that every action of an authority, which has a decisive character, has to be tracked back to the nation. In government systems, state, society and market are clearly separated from each other and characterised by a hierarchical relationship among them. The power to formulate policies and to put them into practice is more or less exclusively

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[130] Ibid. 73.
[131] See above (4.2.3.).

rested with state authorities. The concept of democratic legitimacy requires that responsible decisions for the community can only be made by the elected government that draws its legitimacy from elections.[132] Legitimacy is generally procured by means of elections and voting. Parliaments or other elected councils on the federal, regional or local scale mediate legitimacy and convey it on the executive (representative democracy).[133] All decisions and all administrative actions require an uninterrupted "chain of legitimacy".[134] Democracy is government by officials who are accountable to the majority of the people in a jurisdiction, albeit with provisions for protections for individuals and ministers. The increasing importance of governance structures however blurs the clear separation between society and political leadership. According to this traditional view of constitutional law, citizen participation is only legitimised in giving advice to the deciding public actors and in preparing decisions, for example in hearings before a plat is launched. This means that every delegation of power has to be complemented by such a chain regarding personal and material democratic legitimacy.

Governance networks however consist of experts from both the public and the private sector which means that not all actors in these networks are usually democratically elected nor accountable in any other way to the public. Furthermore, governance networks can have a lack of transparency since their work seems to remain beyond the control of a broader public because it is increasingly difficult for the public to follow the processes within networks. This leads to the conclusion, that governance networks can be seen to be at odds with the central constitutive fundamental principle of representative parliamentary democracy since the sharing of state sovereignty between actors from different levels is not completely compatible with this system. As said in conjunction with the phenomenon 'shadow of hierarchy', governance does not entirely negate government. Instead formal institutions are necessarily one component of governance networks. But the interplay between public and private actors, and the fact that the public sector is only one of the participants within these networks, are crucial points for the traditional democratic approach.

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[132] But note that there are local referendums as an exemption and as an example for direct democracy.
[133] See for example Article 28 (2) of the German Constitution. On certain topics it is also possible that a binding referendum is allowed to decide, for example in a public decision (direct democracy).
[134] R. O. Keohane/J. S. Nye Jr., 'Between Centralization and Fragmentation: The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy' (2001), John F. Kennedy School of Governance Harvard University KSK Working Paper No. 01-004, 12 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=262175 accessed 21 May 2011.

4.5.3.4.2 Democracy – a different view

Governance networks challenge the traditional approach of democracy, which does not apply to new forms of governance where citizens are not only addressees of governmental decisions or stakeholders anymore, but partners of the state actors. Therefore the traditional approach needs to be opened towards a more pluralistic understanding of democracy. There is a tension between the need for structured cooperations and the political strain that arises whenever policy-making authority is lodged in institutions. It is mainly the shift of the locus of policymaking from elected officials to networks which causes problems.

Therefore the concept of the legitimacy level seems to be more appropriate in terms of new forms of governance. It indicates an opening up of the traditional democracy model. It also stresses the idea of the free self-determination of every citizen as a pillar of democracy and as the core of the peoples' sovereignty. Democracy is a concept which is generally open to new development. An opening of the concept can also lead to a more equal power distribution between all participants, either state or non-state actors. Therefore the concept of the legitimacy level can provide a solution to the question whether governance networks have the necessary democratic accountability and legitimacy.

The German Federal Constitutional Court has pointed out in a few decisions that the participation of concerned citizens in certain decisions can strengthen the level of democratic legitimacy of decisions.[135] The court stresses that the opening towards a more intensive participation of citizens can increase the effciency of decisions because the participation also leads to the harness of specific knowledge.[136] With exemption to the sectors of direct state administration and municipal self-administration, the principle of democracy is generally open for other forms of organisation and execution of state power. These forms can also deviate from the necessity of personal democratic legitimacy of all actors who are authorised to make decisions.[137] Knowledge from outside the administration, participation of concerned citizens, and efficiency towards the achievement of legally set goals, are therefore becoming the basis for an addition to the traditional understanding of democracy. While the traditional democratic approach is characterised by its focus on the input, that is an understanding which concentrates on legally normative requirements, the opening of the democratic approach means a shift towards output legitimacy. Output legitimacy refers to the functional principle of utility and looks at the question how

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[135] BVerfGE 107, 59 (91).
[136] See A. Benz, 'Governance – A Political Science Perspective' in D. Jansen (ed), *New Forms of Governance in Research Organizations* 19.
[137] BVerfGE 107, 59 (91).

certain objectives can be achieved.[138] In this context, the way in which decisions are made and the achievements of decisions are the scale for the evaluation of democratic legitimacy.[139] The focus on output legitimacy orients relations between decisions and structures of decisions to the achievement or, at least, to the support of the goals of the legislative. Hence, structures and decisions in a so-understood democratic principle can be justified by the efficiency of their output. This opinion towards an opening of the traditional democratic approach was once again underlined in the recent ruling of the German Constitutional Court regarding the Lisbon Treaty and its compatibility with democratic legitimacy, especially in its argumentation about new possibilities for the participation of citizens through the new Article 11 (1) and Article 11 (4) TEU.[140] But the Court also stresses that forms of deliberative democracy can only be used as additional legitimacy, whereas a basic level of democratic legitimacy still needs to be provided through elections because this is the only way to represent the will of all citizens.[141]

4.5.3.4.3 Implications for governance networks

As seen above, traditional elements of democratic legitimacy, such as elections, keep their central constitutional position. But they are amended by the concept of output legitimacy. This means that the participation of concerned citizens is gaining importance. Citizens have especially gained influence on the way decisions are made. In traditional bureaucratic thinking citzens only appear as owners of fundamental rights agaist the State. They are addressees or applicants for top down administrative acts, for example permissions or allowances. The paradigm shift towards governance has lead to a new understanding of citizens: They are now not only regarded as customers, but also as attending parties in network structures. Due to the change of the role of the state, citizens play an important role in community development and urban development. As mentioned already, urban development is an area where challenges can only be accomplished with a cooperation between the state and private actors. The involvement of citizens strengthens the output of decisions of network structures for neighbourhoods. It increases not only the legitimacy of urban development policies, but also its credibility, its accountability, and its acceptance.

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[138] R. O. Keohane/J. S. Nye Jr., 'Between Centralization and Fragmentation: The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy' (2001) 18.

[139] F. W. Scharpf, 'Legitimationskonzepte jenseits des Nationalstaats' in G. Schuppert/I. Pernice/U. Haltern (eds), *Europawissenschaft* (1st edition, Nomos 2005) 705.

[140] M. Beyer-Katzenberger, 'Judgment of the Bundesverfassungsgericht, Second Senate of 30 June 2009 in joint cases 2 BvE 2/08, 2 BvE 5/08, 2 BvR 1010/08, 2 BvR 1022/08, 2 BvR 1259/08 and 2 BvR 182/09 (Lisbon Treaty)' (2009) 10 ERA Forum 625.

[141] F. Schorkopf, 'Die Europäische Union im Lot' (2009) 20 Europäische Zeitschrift für Wirtschaftsrecht 718.

These conclusions have impact on the question, how governance networks are democratically legitimized. For the approval of the democratic legitimacy of networks the synopsis of input- and output-legitimacy needs to show an appropriate and sufficient level of legitimacy. The structures of regulation for urban governance networks are usually provided by the government and with legal norms. This means that the framework, within which the actors make decisions, is structured by the Parliament. The government's democratic legitimacy, which is drawn from elections, is brought into legal norms for urban development by its origin. Public actors in those governance networks add their personal democratic legitimacy into urban frameworks for sustainable development.[142] The democratic level is also strengthened by the participation of citizens who have specific knowledge about the problems in deprived areas. It has to be made clear that participation of non-state actors *per se* does not make urban governance democratic. But it is beneficial for the democratic level if this participation is not selective and does not lack transparency.

This view supports the changed role of cities as well. No. 5 TAEU shows that territorial cohesion can only achieved through cooperations of different concerned actors on a local or regional level. This means that only integrated approaches in urban networks are able to provide efficient solutions for problems of deprived areas. This is also underlined by a redress towards Agenda 21 which also wanted to support the implementation of sustainable development on the local level. Cooperative and consensual urban governance concepts are able to provide solutions for the causes of social fragmentations or disparities, not only for their symptoms. In this context, governance structures contribute to the level of democratic legitimacy, because the goal of the legislative body to find solutions for the problems of social disparities and social exclusion within cities is supported.

Urban governance networks often deal with highly specific societal, social, economic, and environmental problems which need to be tackled by experts or concerned participants who are usually most knowledgeable about these topics. But it is of great importance to bear in mind that the implementation of new forms of governance does not mean a complete undermining of traditional government structures. From the actual point of research, governance modes are only applicable for certain areas, for example urban development and urban planning, which means that the parliament and other elected organs remain their outstanding positions. Tripartite networks are meant to be on top-services, extending the standard of public services.[143] Rather than replacing traditional structures, governance comes as a

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[142] A. Benz, 'Governance – A Political Science Perspective' in D. Jansen (ed), *New Forms of Governance in Research Organizations* 18.

[143] B. Peters/J. Pierre, 'Governance without Government? Rethinking public administration' (1998) 8 Journal of Public Administration - Research and Theory 232.

complementarity which can help to enable wider democratic anchorage through an increased participation of non-state actors who are thus able to influence decisions that have impact on their own life situations. The specific pooling of the political power from the public sector with the specific knowledge, expertise, and ressources of private and community actors can contribute to more efficient solutions for urban problems. But the non-state actors do not replace state competences. Therefore all sides, the public, private, and the community sector, can benefit from governance networks. They can provide more efficient solutions and they may work faster. This supports democratic legitimacy which depends on decisionmakers being seen as acting on behalf of a community, too. Compared to merely private networks (for example associations for city improvement), governance networks may gain more public approval and also public fundings for their projects. The attending of public actors also contributes political power derived from elections or legal mandates and therefore raised the democratic accountability in the network. The implementation of governance networks can therefore increase the legitimacy of governance in terms of democratic participation and accountability.

4.6   Surplus of governance

Governance provides a changed view of the relation between public, private, and the community sector, blends the differences between them, and promotes a combination of formal and non-formal instruments. The question is whether and, if yes, why and how, governance can be seen as a surplus for administrative law and jurisprudence in general. Vice versa it is also necessary to know how law can support the governance approach and where the surplus of the law for governance is. How is governance through law to be conceived?

4.6.1 Law in the governance perspective

The blurring of the differences between public, private, and community actors in governance networks is a challenge for organisational forms in administrative law. Cooperations between more or less autonomous actors are overcoming tradional and long-grown organisational limits. This accrues the necessity to launch new legal instruments to coordinate and organise cooperations between actors from different levels. This new institutional structure has to bear in mind that it cannot determine the actors' actions and decisions. It can only provide a legal framework that enables actors to make their decisions. They should therefore focus on defining corridors for actions rather than trying to steer individual decisions. The challenge for law is to provide appropriate strucures, tools, scales, and means which capture the diversity of the factors influencing the actors. Actors in networks need to have a reliable, yet

flexible framework for their cooperations and their decision-making process. This framework can be set with specific legislation. As it will be shown in Chapter 5, the German urban development law has several opportunities for governance networks. For example, § 171e Federal Building Code (Baugesetzbuch) sets the premises for the Social City and gives concrete directions on necessary requirements, possible actions, and its objectives. The provision of a legal framework is a challenge, especially for administrative organisational law and administrative procedural law. In particular this should promote a cooperative infrastructure and set legal norms that focus on the development which can be qualified as "law as infrastructure".[144]

As mentioned above, law contributes to the governance approach by enabling public and private actors to interact within a legal infrastructural framework of mostly organisational and procedural norms. Legal norms are part of the governance regime[145], in which governance actions happen. The regime can be understood as the (legal) framework. This also insinuates that a legal approach to governance is solely focussed on the legal forms of coordination and interaction between the participants, and does not take any non-legal forms of coordination, such as the market or competition, into account.

4.6.2 Structures of regulation

The term "structures of regulation" was first introduced in the context of privatisation and deregulation. This can be understood as the jurisprudential approach to the concept of governance or as the interdisciplinary bridge between law and social sciences.[146] Thus structures of regulation establish the analytical framework in which changes of the state as well as correlations between impacts of actions and substitution or amendment effects between actors, instruments, and standards of action can be examined.[147] Hence, this builds a bridge between the actions of public, private, and community actors. This also stresses that the term is not restricted to an examination of legal structures of regulation. Furthermore, an analysis also needs to take non-legal institutions into account since those also influence the coordination of actions between the different actors. This leads to the conclusion that structures of regulation concentrate on the coordination of the

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[144] G. Bachmann, *Private Ordnung* (1st edition, Mohr Siebeck 2006) 24.

[145] A. Benz, 'Governance – A Political Science Perspective' in D. Jansen (ed), *New Forms of Governance in Research Organizations* 5.

[146] G. Schuppert, 'Was ist und wozu Governance?' (2007) 40 Die Verwaltung 463.

[147] H.-H. Trute/W. Denkhaus/D. Kühlers, 'Governance in der Verwaltungsrechtswissenschaft' (2004) 37 Die Verwaltung 451.

cooperation between different actors.[148] The terminological bridge of structures of regulation provides the connectivity between the governance concept and the administrative law. This is, for example, underlined by the growing importance of organisational law as a form of framework law. It sets the premises for administrative actions without determining the decision itself.

Above all, structures of regulation have two tasks in the context of governance.[149] On the one hand they establish a basis for institutionalised processes, within which governance efforts are performed. On the other hand, structures of regulation themseves are products of governance efforts that are performed by the actors to establish structures. According to Schuppert this can be described as "governance in and through structures of regulation".[150] The framework of structures of regulation are structures of policy-making. They can be described as arenas which consist of "different sets of actors, different rule systems and different modes of functioning".[151]

4.6.2.1 Effectiveness of structures of regulation

In connection with the definition of structures of regulation, which was given above, structures are premises for decisions that do not directly influence the decisions, but design scopes of possibilities and open or coin corridors for actions. This is particularly important in terms of personal, organisation or procedure.[152] These structures enable, structure, and limit cooperations within governance networks. This task includes the use of forms and instruments of administrative organisational law and administrative organisation.

It is particularly the requirement of interactions between different actors that stresses the parallels between the governance approach and the concept of structures of regulation. Both are tailored to these interactions in changed forms of public tasks which go beyond traditional bipolar relations.[153] Whenever actors cooperate within networks, the interest is focussed on structures (especially on organisational law),

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[148] H.-H. Trute/D. Kühlers/A. Pilniok, 'Governance als verwaltungsrechtswissenschaftliches Analysekonzept' in G. Schuppert/M. Zürn (eds), *Governance in einer sich wandelnden Welt - PVS 41/2008*, (1st edition, VS 2008) 173.

[149] M. Kötter, 'Rechtsordnung und Regelungsstrukturen: der Beitrag einer entscheidungs- und wirkungsorientierten Rechtswissenschaft zur Governanceforschung' in S. de la Rosa/U. Höppner/M. Kötter (eds), *Transdisziplinäre Governanceforschung. Gemeinsam hinter den Staat blicken* 215.

[150] G. Schuppert, 'Governance im Spiegel der Wissenschaftsdisziplinen' in G. Schuppert (ed), *Governance-Forschung* (2nd edition, Nomos 2006) 371.

[151] A. Benz, 'Governance – A Political Science Perspective' in D. Jansen (ed), *New Forms of Governance in Research Organizations* 5.

[152] H.-H. Trute/W. Denkhaus/D. Kühlers, 'Governance in der Verwaltungsrechtswissenschaft' (2004) 37 Die Verwaltung 468.

[153] Ibid. 468.

and on other ways of coordination between the participants. On the other hand, the single actor, his decisions, and his requirements are not in the center of attention within this normative analysis anymore. This once again underlines that the governance analysis is extended to forms of collective decision-making processes, which focus on the solution for societal problems. Regarding the law, the perspective of governance in conjunction with the changed perception of the state's role makes it possible to analyse the possibilities, requirements, and basic conditions for the actions of different actors in multilevel systems such as governance networks.

The concept of structures of regulation includes the institutions which are important for the regulation of a certain question. These institutions have influence on the coordination of the actors within governance structures when the actors are providing services, but they also influence the authorities, criterias, forms, and instruments within governance structures. In this context, institutions should be understood as norms or complexes of norms which frame and steer the actions of individuals permanently. This leads to the development of regular examples of interactions and hence to the constitution of a social regime.[154] In this context, it does not matter initially of origin these institutions are. They can origin from law, morality, and also from the economics. It is decisive that these institutions are able to organise "arenas for the social coordination of actions".[155] The institutions distribute competences and ressources, open up the political corridors for decisions, and have influence on the orientations of the actors' actions. This means that they focus on the actors' intrinsic logics and connect the structural side of governance with its procedural side.

4.6.2.2 Law in and as structure of regulation

Bearing in mind that structures of regulation focus on cooperations between public, private, and community actors, the question can be raised, which requirements of these new forms of cooperative provision of actions have to be fulfilled by the law. What can the law contribute to the enabling, structurising, and limitation of cooperative relations?

The task of law within structures of regulation is to develop new institutes and principles. Looking at the example of urban planning, the important role of law within governance structures is stressed once again. Governance networks and cooperations do not arise on their own in urban planning. As mentioned above, the

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[154] G. Schuppert, 'Governance im Spiegel der Wissenschaftsdisziplinen' in G. Schuppert (ed), *Governance-Forschung* (2nd edition, Nomos 2006) 434.
[155] H.-H. Trute/D. Kühlers/A. Pilniok, 'Governance als verwaltungsrechtswissenschaftliches Analysekonzept' in G. Schuppert/M. Zürn (eds), *Governance in einer sich wandelnden Welt - PVS 41/2008*, (1st edition, VS 2008) 177.

relevant actors in urban development are characterised by their heterogeneity. Instead, urban governance networks require an organisational framework which provides incentives for cooperations. This framework also needs to be able to structure the framework and to ensure that all relevant interests, especially the common welfare, are dealt with appropriately. This leads to the design of structures of regulation and also modifies the view of administrative law which is not only executing but above all providing, structurising and enabling.

4.6.2.2.1 Structuring function of law

Law is different to other social norms, for example moral principles, because it can be tracked back to a public actor with a certain level of democratic legitimacy and because it can be enforced with public means.[156] The legal system provides forms of organisation, action, and procedures for the enforcement and the implementation of legal norms. These forms open and design the scope of actions for the participants. With these provisions, the law conduces a structure for social reality. Therefore law has a structuring function.[157] From the governance view, this is a key aspect.

The concept of the structuring function of law is able to capture the specifities of steering through law, especially of steering through administrative (organisational) law. In this respect, law must provide the frame for cooperations, capture the diversities of the factors which influence these cooperations, design the positions within the cooperations, and ensure the common welfare of processes and decisions. This shows that organisational law is framework law. Within the scope of this structure control, the law "thinks" in structures of regulation, not in terms of orders or prohibitions. It is focussed on the design of interactions, structures, and their interdependencies. It becomes the base for forms of social coordinations of actions. Governance "steering" aims to shape the interactional context between the actors and the main legal instrument for this aim is, particularly in conjunction with urban development, administrative organisational law. The law aims at the accomplishment of social or societal problems, and tries to avoid normatively undesirable effects. As it will be shown in Chapter 5, this structuring function of law is also evident in context with legal instruments in urban planning. They have their basis in certain legal statutes which can be seen as the framework for the interactions of different actors in tripartite governance networks for deprived urban areas. This already shows

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[156] M. Kötter, 'Rechtsordnung und Regelungsstrukturen: der Beitrag einer entscheidungs- und wirkungsorientierten Rechtswissenschaft zur Governanceforschung' in S. de la Rosa/U. Höppner/M. Kötter (eds), *Transdisziplinäre Governanceforschung. Gemeinsam hinter den Staat blicken* 216.

[157] G. Schuppert, 'Grenzen und Alternativen von Steuerung durch Recht' in D. Grimm (ed), *Wachsende Staatsaufgaben – sinkende Steuerungsfähigkeit des Rechts?* (1st edition, Nomos 1990) 233.

that legal structure steering and the providing function of law are paired concepts. Therefore this chapter will now focus on the providing function of law.

4.6.2.2.2 Providing function of law

From the governance perspective, the legal system generally has a double meaning. Besides the structure control, the legal system itself is a point of reference for different effects of governance: First, it is so by setting formal legal norms through the responsible public actors, and their possibilities to coordinate and to steer. This means a institutionalisation of structures. Second, it is so through the implementation of the law respectively its modifications as well as through every behaviour that sticks to these norms. This stresses that the law has a providing function[158] which is shown in the opening of corridors for the actors' actions.

The legal system is of utmost importance for governance structures and the governance concept. The law is still the central instrument for steering. Hence, it represents a system of values, framework for actions and for decisions. These providing and enabling functions ensure that legal norms can be used to "steer" actions in the desired way. The state does not interfere in the process of societal problem solutions directly and immediately in a way that it produces the desired results by itself. Instead the state tries to build up a legal framework in which state and non-state actors can manage their problems and affairs by themselves and on their own responsibilities. This is called the providing function of law, which means a provision of legal infrastructures. It is assumed that appropriate solutions to different societal problems can be found with the help of structures provided by the law. In this case, with the provision of the legal framework and the objectives for the behaviour of parties and their actions, the legal system enables the achievement of certain goals.

Both the structuring and the providing function of the law are underlined in the legal instruments for urban development and urban planning. The state tries to give an infrastructural framework which is supposed to lead to sustainable urban development. It provides cities with several possibilities for actions, which means that the State opens corridors for actions. Legal instruments for deprived areas are focussed on the implementation of sustainable development into these areas with urban governance structures. Local network structures should implement the requirements of sustainable development, which were particularly concretised in European law (for example in several negotiated agreements of the EU member

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[158] G. Schuppert, 'Governance durch Wissen' in G. Schuppert/A. Voßkuhle (eds), *Governance von und durch Wissen* (1st edition, Nomos 2008) 259.

states) and integrated in the approach of European Territorial Governance. This means a reflection of the European requirements on the local and regional level. During this process, public, private, and community actors cooperate within the provided framework and its options to tackle new social challenges. The challenge for the legal system in this context is the provision of legal infrastructures for interactions between the public actors and societal participants. The launch of urban planning instruments thus shows that these are linked to an infrastructural decision of the legislative body.

4.6.2.2.3 Concept of regulatory choice

Governance means the challenge to coordinate actors from different levels using certain organisational and procedural forms, for example structures of regulation. The provision of a legal framework, which forms and limits the possibilities of the participants, has to be qualified as a form of regulation. The design of this regulating framework is a genuine task for the government. Looking at a state's responsibilities regarding enabling, providing, and structurising, the question raises, which instruments should be used. After all, the framework defines the issues that are at stake. It was Gunnar Folke Schuppert who introduced the term regulatory choice to describe the state's framework-designing challenge.[159] In this context, regulatory choice is used to characterise the process of choice between different possible legal regulative instruments. The key question in regulatory choice is which instrument should be used to achieve the objectives. The answer to this question requires knowledge about the functions of each instrument. Possible instruments include the law (for example town planning statutes), informal ways of steering (recommendations and warnings), economic policies of steering (taxes and special assessments), or organisational ways of steering (duties of declaration). These instruments form a collection of instruments, which provides all the possible choices that can be used by the law and the government. Each instrument is assigned to a specific choice, which includes a decision for a given legal way of regulation, which is qualified as a regulatory choice. According to Benz, the combination of several governance mechanisms is called governance regime.[160] This means that a governance analysis requires deep-going reflection, conclusion, and reasons, what each policy or instrument is able to provide. This analysis is required to solve societal problems.

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[159] G. Schuppert, 'Governance im Spiegel der Wissenschaftsdisziplinen' in G. Schuppert (ed), *Governance-Forschung – Vergewisserungen über Stand und Entwicklungslinien* (2nd edition, Nomos 2006) 371.
[160] A. Benz, 'Governance – A Political Science Perspective' in D. Jansen (ed), *New Forms of Governance in Research Organizations* 5.

The concept of regulatory choice has two main requirements[161]: First of all, it requires more than one actor which leads to a plurality of sources of law. Secondly, it needs a plurality of norms. The second requirement points at the tendency of a blurring separation between state and society. Due to this, the definition of corridors for actions and the development of legal norms is not only a task for the State anymore, but a task that is shared between state and society. This is underlined by the growing importance of soft law-instruments, such as voluntary negotiated agreements, for example the TAEU.

The concept of regulatory choice is becoming relevant whenever bipolar, dichotomic relations are expanded to hybrid partnerships between actors in government and private actors. Whereas bipolar relations are usually characterised by hierarchical steering and the use of legal instruments i. e. the law, hybrid partnerships come with an enlargement of the possible ways of directing. Therefore governance network structures are *the* typical example for the relevance of the concept of regulatory choice.

4.7 Conclusion

The concept of governance is making an interdisciplinary career. It has become an often-used term, in political science as well as in economics and law. Governance is a useful addition to to traditional polity concepts especially when it comes to urban and regional planning. Many concepts in planning which feature a governance polity, understood as tripartite networks between the public, private and community sectors, now exist alongside with traditional top down-polity approaches, as we will review more concrete in the following chapter where we are going to look at urban planning instruments which emphasize urban governance to implement sustainable development.

The implementation of governance networks can increase both effectiveness by means of problem-solving capacity and the legitimacy of governance in terms of democratic participation and accountability.

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[161] G. Schuppert, 'Governance im Spiegel der Wissenschaftsdisziplinen' 398.

Chapter 5   Activities for deprived areas in the UK and in Germany

Fundamental socioeconomic changes have aggravated social inequalities in and between European cities. More and more neighbourhoods are becoming the focus of negative trends, for example high crime rates, high unemployment rates, and poor accomodation standards. Evidence has been mounting that traditional urban development policy and support seem to be unable to solve the complex problems in deprived urban areas.

As it was shown in Chapter 3, sustainable development is a concept of harmonisation and reconciliation among environmental, economic, and social fields which is best implemented with urban governance structures. This relation is particularly fruitful when it comes to the objective of sustainable cities where one specific challenge is to meet the needs and wishes of the citizens. To achieve sustainable cities it is of utmost importance that their citizens are participated in the development of strategies for sustainable development.

This section introduces models for sustainable cities in the UK and in Germany. The focus is on models which promote urban governance structures. The section starts with an introduction into the necessity of integrative approaches in sustainable urban development. Approaches in Germany and in the UK have in common that their emphasis is on developing self-sufficient community life in inner-city neighbourhoods, creating an atmosphere of mutual acceptance and respect within residents from all over the city, and strengthening the ties between inhabitants of deprived areas.

5.1   Integrative approaches

Urban governance strategies for urban planning and urban development need to take into account that they should not consist of single projects for deprived areas only.[162] Instead the projects need to be part of a coherent strategy for the improvement of deprived areas. This includes a coherent development strategy for the whole city in which deprived areas are embedded. This can anticipate a further isolation of these areas despite all efforts. Urban restructuring projects are therefore usually characterised by integrative approaches.[163] An integrative approach can refer to a combination of measures and provisions from different sectors. Talking about urban development for deprived areas an approach like this could include common projects from city councils and schools to improve the educational level in the area in a long-term perspective. Another example is a cooperation between the area and private

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[162] P. Healey, 'Transforming Governance: Challenges of institutional adaptation and a new politics of space' (2006) 14 European Planning Studies 299.
[163] R. van Kempen/F. Wassenberg/A. van Meer, 'Upgrading the physical environment in deprived urban areas: lessons from integrated policies' (2007) Informationen zur Raumentwicklung 487.

enterprises to improve the employment situation in the area. These projects try to work on the three pillars of sustainable development, mostly trying to improve the social and economic situation in the neighbourhood. But integrative approaches are not limited to a combination of measures from different segments. They can also refer to collaborations between different actors which is the most significant feature of urban governance: Citizens, governments, private enterprises and organisations found a network for the area. As it is shown in this chapter, UK and German approaches to upgrading deprived urban areas focus on both characters of integrative approaches to ensure a comprehensive improvement for the area.

Due to renewed concerns with social exclusion, nearly all European countries have introduced specific programmes for socially deprived areas over the last years. The participation in negotiated agreements of the EU member states and in several EU territorial initiatives and programmes (such as ESDP) has contributed to the shaping of new urban governance modes. The UK was among the countries that already started to implement programmes and projects in the 1970s. Programmes take into account that local partnerships are necessary to bring all the relevant actors for the local area to the table. They are characterised by an integrative approach. Local public and private actors, such as citizens, local governments and private enterprises, have a certain stake in improving the physical, economic and social environment of the concerned area. The participation of different actors contributes to efficient provisions for deprived areas because it leads to specific local knowledge being introduced into the project: Local actors know about the certain problems, priorities and needs in the area better than external actors. This shows that urban governance networks are of utmost importance for sustainable urban development. But the organisation of these networks is the most crucial part in the process of urban development, as shown above in chapter 4.

5.2   The UK approach

Sustainable urban development in the UK is amongst others promoted with the Single Regeneration Budget programme and the New Deal for Communities.

5.2.1 Single Regeneration Budget

The Single Regeneration Budget (SRB) was introduced in 1994. This programme was designed to support an economic, social and physical regeneration and revitalization in deprived city areas. SRB can be seen as "*a flexible funding*

supplement to main programmes".[164] It aims to attract other (financial) sources from the private, welfare or public sectors to strengthen improvements in the area. SRB's objective is a smooth transition into mainstream funding which means that state funding is reduced step by step and private funding is increased until provisions are funded by private fundings only. The SRB wanted to introduce tripartite networks and partnerships between the public, private, and community sectors in which all actors should try a joint approach to the specific local priorities and needs.[165] The way of making a long-lasting impact on urban development by encouraging local partnerships to work for their neighbourhood underpins the urban governance approach of the SRB programme: Citizens and local organisations become part of local partnerships that develop solutions and approaches for sustainable development.

5.2.2 New deal for communities – The UK approach

In the UK the planning process has been a predominantly local activity.[166] The New Deal for Communities (NDC) programme, which started in 1998, is a key part of the UK government's strategy to tackle the challenges of deprived areas in English cities.[167] It is a regeneration programme lead by the UK Government and overseen by the Neighbourhood Renewal Unit within the Department for Communities and Local Government. The NDC programme is one of the most intensive area-based initiatives (ABIs) that have ever been launched in the UK and is part of the Government's National Strategy for Neighbourhood Renewal.[168] One of the differences between the NDC programme and other ABIs is the long-term commitment of the first one: It is to operate for 10 years.

There are currently 39 NDC partnerships in the UK[169], for example in Manchester (covering the Beswick and Openshaw areas), Brighton (covering the East Brighton area) and Nottingham (covering Radford and Hyson Green). These are all deprived

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[164] J. Rhodes/P. Tyler/A. Brennan, *The Single Regeneration Budget: Final Evaluation* (Cambridge 2007) I <http://www.landecon.cam.ac.uk/research/reuag/uars/pdf/part1_final_eval_feb_07.pdf> accessed 21 May 2011.
[165] P. Foley/S. Martin, 'A new deal for communities? Public participation in regeneration and local service delivery' (2000) 28 Policy & Politics 481.
[166] Ibid. 479; M. Tewdwr-Jones/K. Bishop/D. Wilkinson, ''Europscepticism', political agendas and spatial planning: British national and regional planning policy in uncertain times' (2000) 8 European Planning Studies 653.
[167] For a review of linked programmes before 1998 see P. Foley/S. Martin, 'A new deal for communities? Public participation in regeneration and local service delivery' (2000) 28 Policy & Politics 480; E. Batty and others, *The New Deal for Communities Experience: A final assessment - The New Deal for Communities evaluation: Final report – Volume 7* (2010) 10 <http://www.communities.gov.uk/documents/communities/pdf/1488479.pdf> accessed 21 May 2011.
[168] E. Batty and others, *The New Deal for Communities Experience: A final assessment - The New Deal for Communities evaluation: Final report – Volume 7* (2010) 10.
[169] Seventeen partnerships were announced in 1998, a further 22 partnerships in 1999.

socially and economically neighbourhoods, each accomodating around 9,900 citizens.[170] They were chosen upon above average crime and unemployment rates, underaverage educational rates, and a high proportion of social rented accommodation and social housing.[171]

5.2.2.1 Key objectives

The NDC programme is focussed on a couple of key objectives[172]: (1) transforming these 39 areas over ten years by improving the outcomes education, worklessness, and health and by achieving holistic changes in crime, community, and housing; (2) close the gaps between these areas and the development of the rest of the country; (3) achieve a value for money transformation of these neighbourhoods; (4) secure improvements by working and co-operating with other institutions such as schools, nurseries and the police; (5) put the community in the focus of the initiative and (6) sustain a local impact after NDC programme funding ceased. The activities within these deprived areas are each funded with on average 50m GBP of programme spend.[173]

Key characteristics of the NDC programme are long-term commitments which are needed to deliver real changes and transformations to deprived areas. The change has to be initiated by the communities themselves, in partnership with so-called key agencies. Communites are involved in this process and are requested to help defining their specific needs and solutions. Then tripartite partnerships between the public, private and community sector are established. They are supposed to review which actions and solutions work for the specific deprived areas and which ones do not.

The catalogue of the NDC's objectives illustrates the approach towards sustainable development. All activities are clearly focussed on the reasons for deprivation and try to improve the situation by changing social and economic factors. They are set up to empower deprived areas and try to initiate self-help schemes according to the principle of "help to self-help". Therefore the focus is not solely on the fight against problems, but also on their reasons. This promises long-term solutions and can improve trust in local authorities and positive thinking within communities.[174]

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[170] E. Batty and others, *The New Deal for Communities Experience: A final assessment - The New Deal for Communities evaluation: Final report – Volume 7* (2010) 11.
[171] For detailed information see ibid. 11.
[172] Ibid. 13.
[173] Ibid. 12.
[174] G. Gardner, *Recognising the limits to community-based regeneration* (2007 Aberystwyth) 1 <http://extra.shu.ac.uk/ndc/downloads/presentations/Community%20engagement%20seminar%20-%20Dr%20Graham%20Gardner%20presentation.pdf> accessed 21 May 2011.

5.2.2.2 Activities

The activities focus on enhancing the living and housing standards in the neighbourhoods and on addressing issues such as crime, health, education and employment. The catalogue of activities needs to bear in mind that each NDC area has unique difficulties. Therefore each NDC needs to develop its own specific catalogue of actions.

An important field of action is crime reduction and community safety.[175] Possible actions include street or neighbourhood wardens that can help to diminish the fear of crimes.[176] Neighbourhood wardens are a good example for urban governance in sustainable urban development: To improve the living environment by reducing fear of crime, the community and the public sector, in this case the police, work together and start new actions against the problem, here fear of crime and feeling insecure by night. NDCs also try to tackle crimes against property and vehicles. Evaluation shows that the biggest amout of the programme fund was spent on the sectors housing and the physical environment (32 per cent), community (18 per cent) and education (17 per cent).[177]

The sector community includes, amongst others, improvement of community representation, for example in partnership boards and in appraisal panels, and special trainings for community representatives.[178] Other actions include the improvement or construction of community facilities, for example city halls, which is important to create a central meeting point in the community where activities like flea markets or concerts can take place, so that a feeling of being a community is supported. In general, the community element aims to improve citizens' capacities to work cohesively and to forge social networks within these areas. In an effort to stem the growing segregation of community members from social structures such as families, friendships, clubs, and local activities, the NDC programme works to promote self-help, neighbourhood interaction and networks as well as personal responsibility.

Actions in housing and the physical environment may include improvement and modernisation of social housing.[179] This targets both the social and economic dimension of sustainable development. Regarding the pillar of social sustainability, the modernisation can lead to an improvement of citizens' feelings for their districts and may lead to an improved identification with it which again is necessary for

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[175] E. Batty and others, *The New Deal for Communities Experience: A final assessment - The New Deal for Communities evaluation: Final report – Volume 7* (2010) 15.

[176] Neighbourhood wardens were one of the actions in Newcaste, see ibid. 15.

[177] Ibid. 14.

[178] Ibid. 16 with an example from the NDC area Bradford.

[179] Ibid. 16.

citizens' engagement, and empowerment for the deprived area. Improvements of the quality and the standards of housing in the NDC areas can help to attract better-off new tenants from outside the neighbourhoods or at least to encourage wealthier households to stay in the area . This is one of the first steps to narrow the gaps within cities and to solve social exclusion. Looking at the economic dimension of sustainable development, an improved situation in deprived areas can also improve the perception of their citizens' within the rest of the city because their bad reputation and other reservations against them might be weakened once the feeling of a real and sustainable improvement in deprived areas is evoked. In turn, they might be offered new employment opportunities. Other actions in the sector housing and the physical environment include improving poor living conditions in the private sector, for example through facelifts to property exteriors or energy efficiency improvements.[180] This is beneficial for the environmental pillar of sustainable development, and also for the social pillar because these actions can also improve the feelings of citizens in deprived areas who may not feel like living in no go-areas anymore. In addition, demolition of dwellings and renaturisation can improve the look and viability of deprived areas and allow the creation of more public space, the development of public facilities, or, if needed, the construction of new housing.[181]

Another field of action includes unemployment in deprived areas which endangers not only economic development but also social development. Actions may include training opportunities for unemployed residents and neighbourhood-based job brokerage.[182] This is particularly important for young unemployed people.[183]

5.2.2.3 Urban governance

Regeneration strategies and patterns of local service have usually been imposed from the top down perspective, which means that they were basically hierarchically organised and imposed without or with only little participation of citizens.[184] Under the top down principle, communities had hardly any chance to influence plans to revitalise their (socially or multiply deprived) areas. This also meant that specific problems or needs could not be considered sufficiently.

The NDC programme however tries to involve citizens in a wide range of policy decisions with influence on their neighbourhood's development. These decisions

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[180] Ibid. 16.
[181] Ibid. 16 with an example from the NDC area in Hartlepool where an area remodelling project was initiated.
[182] Ibid. 17.
[183] See example of 'The West Bowling Youth Initiative (WBYI)' in NDC area Bradford in ibid. 18.
[184] P. Foley/S. Martin, 'A new deal for communities? Public participation in regeneration and local service delivery' (2000) 28 Policy & Politics 480.

may be related to local government services, employment, schools, reduction of crime rates, health service, environment, and revitalisation. This commitment is an expression of bottom up and is an instrument to increase local accountability, as it was shown in chapter 4.

NDCs are urban governance instruments. All the 39 neighbourhoods have established partnership boards that largely consist of community and public representatives, for example the mayor and other members of city councils. Evaluation shows that in 2008, community citizens made up at least 50 per cent of the members of these boards.[185] This stresses that activities for the neighbourhood can only be successful when they are planned and implemented by the neighbourhood itself. This is an expression of urban governance using bottom up-structures. These acitivities are defined in deprived areas and are not opposed from outside. This contributes to a change of cultural and societal attitude towards urban policies and also to the implementation of the vision of sustainable development and its objectives. Citizens want to be able to influence the decisions that have impact on their lives. Projects like the NDC can help to create networks for the development of deprived areas. Therefore it is of utmost importance to invite not only institutions from within and from outside the area, but also local citizens or groups. The diversity of people thinking about activities for the area can form an effective urban governance network that is also able to proceed without state fundings. It also leads to a trustful relationship that contributes to the effectiveness of NDCs. This can also instill pride in local neighbourhoods which is very important for long-term success in deprived areas. Urban governance underlines that neighbourhoods are an important setting to shape both life chances and social identities.

5.2.2.4 Evaluation of the NDC programme

A national evaluation of the NDC programme found out that the programe has produced improvements in quality of life in deprived areas as well as so-called "soft outcomes", for example an improved trust in local authorities.[186] There is evidence of improvements in employability and also the percentage of households with incomes of less than 100 GBP has also fallen.[187]

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[185] E. Batty and others, *The New Deal for Communities Experience: A final assessment - The New Deal for Communities evaluation: Final report – Volume 7* (2010) 15.

[186] Ibid. 21; G. Gardner, *Recognising the limits to community-based regeneration* (2007 Aberystwyth) 1.

[187] G. Gardner, *Recognising the limits to community-based regeneration* 2.

The biggest improvement was revealed regarding the indicators of citizens' feelings about their neighbourhoods.[188] According to the survey it can be attested that in general NDC areas have become more livable areas. The evaluation also concludes that all NDC partnerships have made great efforts to engage citizens which shows that the implementation of bottom up structures has been successfully enforced. Moreover "observers point to the benefits which resident board members bring to partnership boards".[189] This is because private estate owners definitely have to be included in partnerships for an improvement in housing and for more livable sustainable areas. Their engagement is important for capital investments in these areas and necessary building measures. Therefore the group of private estate owners has to be considered in discussions about changes for sustainable cities and in meetings where decisions about concrete projects are made. All in all, the request to participate actors not only from the public sector, but also from the private and community sectors, seems to be successfully fulfilled by the NDC programmes. In total, relations within tripartite partnerships between public, private and community actors have been introduced, improved, and intensified.

But the evaluation also revealed that NDC areas are still below the average development of areas in the UK which means that the results of the NDC programme have to be understood as rather modest.[190] Reviewing the community social capital indicators, the evaluation showed that there was not a very apparent impact on these indicators.[191] At first, this might sound like a disappointing result of the NDC programme. But, as it was found out already in chapter 4, urban governance projects and instruments are no short-term, but long-term commitments. Real transformations in deprived areas cannot be initiated ad hoc. Instead, they demand consistency, commitment, and reliability. Because of that, it is of utmost importance to develop strategies in order to sustain activities started under the NDC programme even though funding ceases for so-called Round 1 and 2 partnerships in 2010 or 2011.[192] Regarding the community sector, the most important targets are still engagement, empowerment, involvement and consultation of citizens to help them helping themselves and their district. In this context, one of the challenges for the public sector is to manage expectations: Some community actors might have inflated expectations regarding the speed with which NDC projects can be delivered, and

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[188] E. Batty and others, *The New Deal for Communities Experience: A final assessment - The New Deal for Communities evaluation: Final report – Volume 7* (2010) 15.
[189] Ibid. 7.
[190] G. Gardner, *Recognising the limits to community-based regeneration* (2007) 2.
[191] E. Batty and others, *The New Deal for Communities Experience: A final assessment - The New Deal for Communities evaluation: Final report – Volume 7* (2010) 7.
[192] Ibid. 7.

regarding the immediate perceptible outcomes of the actions.[193] If these expectations are not managed, reduced engagement and involvement of citizens could be the consequences which would be contradictory to the programme's target.

5.3   "The Social City" - The German approach

In Germany, regeneration and sustainable development of (multiply) deprived areas is primarily supported with the programme "The Social City".[194] With the "Social City" programme, the German Federal Government is trying to help cities to improve living conditions in neighbourhoods that are physically run-down, economically disadvantaged, and socially deprived. In these areas, physical regeneration is accompanied by measures from various policy areas, such as housing policy, labour policy, economic policy, integration policy, education policy, and social policy: They are consolidated to form an integrated urban development policy at local authority level. The programme promotes urban governance structures and therefore forsters participation as well as cooperation and represents a completely new, innovative integrative approach to sustainable urban development. It understands that the realisation of actions, measures, and projects in substantive activity areas of the Socially Integrative City programme demands the establishment of effective coordination and efficient management of multilateral participation in the different fields of action. This should reflect the transformation from traditional top down-orientated urban renewal programmes, for example improvement of accomodation, to integrated urban district development.

In order to prevent and counteract social and spatial polarisation and segregation in cities, in 1999 the Federal Government and the Federal States jointly launched a national programme called "Neighbourhoods with development priority - the Social City". Its target was to counteract the widening socio-spatial gaps in the cities and within the cities and the growth of socio-spatial polarisation in German cities.[195] It also aims to upgrade and stabilize deprived neighbourhood areas. The key element of the Social City programme is that it combines investments in the redevelopment and renovation of deprived areas with the improvement of the living situation of residents in deprived districts.[196] This means that urban development is not only delivered with

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[193] Ibid. 9.
[194] Other actions include private initiatives for urban development, for example Business Improvement Districts, urban renewal and redevelopment (Stadtumbau, §§ 171a Town and Country Planning Code (Baugesetzbuch), and the law of restructuring of cities (§§ 136 Town and Country Planning Code (Baugesetzbuch)).
[195] Federal Ministry of Transport, Building and Urban Affairs (BMVBS), *Status Report The programme "Social City" (Soziale Stadt) – Summary* (2008 Berlin) 5.
[196] Ibid. 5.

financial help, but above all with non-financial help, for example certain employment training facilities or specially qualified teachers at school.

Initially, the programme was accompanied by the "Urban Restructuring in the Old Federal States" and "Urban Restructuring in the New Federal States" programmes. The programmes provided assistance to cities which where especially hit hard by structural changes. One of the specific targets was taking precautions to prevent high vacancy rates, as well as the regeneration of inner-city areas. These targets consider that attractive city and district centres with traditional, owner-run retail businesses, with community centres and cultural facilities, are important for establishing ties between citizens and the places in which they live, and they foster a sense of identity and responsibility for the area. The programme was further institutionalised in 2004, when it was incorporated into the Federal Building Code in § 171e.

Some 500 neighbourhoods in around 320 German cities have taken part in the Social City programme so far.[197] They have been granted more than 2 billion Euro in the period between 1999 and 2007.[198] Two third of this sum is given by the Federal government, the Federal States and local municipalities finance the remaining third.[199] Every year about 50 new neighbourhoods are designation Social City programme areas.[200]

5.3.1 Activities

The Social city concept agrees that urban development is not just building policy. Instead, sustainable urban policy must also be responsive to citizens' concerns regarding social security, their jobs, their childrens' education, housing and the physical environment, and environmental protection. Therefore concepts for social cities must not trade-off one aspect of sustainability over the others, for example concentrate solely on housing and the physical environment without caring for environmental protection.

"Social City" aims at urban renewal programme and has an integrative and thus a cooperative approach: In order to enhance the effectiveness of financial assistance provided[201], urban development assistance has to be combined with other departmental programmes and ressources.[202] It is not only about renewing buildings

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[197] Ibid. 5.
[198] Ibid. 5.
[199] Ibid. 5.
[200] Ibid. 5.
[201] During the programme period from 1999 to 2008, the Federal Government, the Federal States, and the local authorities provided 865 million euros of funds for the "Social City" programme.
[202] Ibid. 5.

in the neighbourhoods funded by the "Social City" programme, but also about more public green spaces, for example playgrounds and parks, in the residential environment, an improved infrastructure, leisure centres for children and young people. In addition to structural investment the programme also focuses on socially inclusive actions in the fields of education and employment promotion to achieve an overall improvement of the housing and living conditions of the people in these neighbourhoods.

The ARGEBAU "Guideline for Implementation of the Joint Socially Integrative City Initiative" plays a key role in programme application. It formulates certain goals in the fields of resident participation, local economy and employment, social, cultural, educational and recreational infrastructure, housing and the physical environment, and ecological environment. It also provides methodological and procedural guidelines for programme implementation, for example an interdisciplinary approach, legal instruments, use of funds, exchange of experiences and monitoring. The administrative agreement on federal allocation of financial assistance to the Federal States, which is renewed annually, codifies these guidelines during programme implementation.

An important field of actions in the Social City programme is education. As it was already shown in chapter 2, schools are not the only ones responsible for educating adolescents. Succesful education and social integration also rely on education processes in family. But many parents in deprived neighbourhoods struggle to bring up their children properly due to their own impoverished situation. A lot of children in these districts are inadequately prepared to meet expectations at school. In the light of school segregation, schools see themselves today increasingly as places where social and communication skills can be acquired and have to be taught, rather than simply as an instituion where knowledge is transferred. Strategies to improve the level of education in deprived areas under the Social City programme include the opening up of schools, an approach which entails new forms of teaching and closer contact with the local neighbourhood. This might include cooperations with local businesses which is beneficial for employment chances for adolescents, for example finding a apprenticeship training position. Some schools even develop tailored programmes for their pupils' social backgrounds and their specific needs and expectations. These programmes can include school social work or extracurricular activities, for example an extended sport programme in the afternoon.

Since 2006 pilot projects in the sectors education, integration, and local economy have also been eligible for financial fundings from the Social City programme.[203]

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[203] Ibid. 5.

Supplementary labour markets programmes, like the ESF Federal Programme "Social City – Neighbourhood Training, Economy and Work (BIWAQ)"[204], that is managed and coordinated by the Federal Ministry of Transport, Building and Urban Affairs, and the "Local Social Capital (LOS)" programme, which is a projekt managed by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth[205], are implemented in deprived areas. Both programmes keep in mind that education is necessary to promote both social and economic sustainability.[206]

5.3.2 Social City and urban governance

As an expression of the urban governance approach, the "Social City" programme demands to work together with the inhabitants of deprived urban areas in order to find new, tailored solutions to counteract the downward trend in their neighbourhoods. Participation, empowerment, and engagement are main elements of the programme. Citizens' participation in deprived neighbourhoods is important to develop efficient local structures which can promote and support sustainable development in the cities. Therefore tripartite partnerships between the public, private and community sectors have to be established to work as efficient networks for deprived areas. The ARGEBAU guidelines stresses that the activation of self-initiative, empowerment, and self-help potential are crucial elements of the Social City programme. In addition a common awareness needs to be developed. Neighbourhood networks should be established.

The Social City programme works, like the NDC programme, on the premise of area-based initiatives with an emphasis on active resident participation.[207] To support tripartite networks for deprived areas a neighbourhood management, consisting of at least one professional worker who could also be an employee in the city council, should be established. The managements' key function is to guarantee horizontally and vertically networked cooperation and management structures at municipal government and district levels, between these levels, and also with all other actors in the network. One could visualise this challenge with the image of a cobweb.

A strengthened participation of the community sector and the cooperation of public, private, and community actors in partnerships is not only a challenge for citizens, but

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[204] See O. Güles/T. Wagener/R. Wagner, 'Bildung, Arbeit und Sozialraum – Zum besonderen Handlungsbedarf in benachteiligten Quartieren' (2010) Informationen zur Raumentwicklung 111.

[205] Federal Ministry of Transport, Building and Urban Affairs (BMVBS), *Status Report The programme "Social City" (Soziale Stadt) – Summary* (2008 Berlin) 5.

[206] O. Güles/T. Wagener/R. Wagner, 'Bildung, Arbeit und Sozialraum – Zum besonderen Handlungsbedarf in benachteiligten Quartieren' (2010) Informationen zur Raumentwicklung 111.

[207] Federal Ministry of Transport, Building and Urban Affairs (BMVBS), *Status Report The programme "Social City" (Soziale Stadt) – Summary* (2008 Berlin) 5.

also for the local authorities. They have to rethink their role and have to transform from top down-hierarchical structures to bottom up network structures which is still a learning process.[208] All levels, Federal States, municipals and neighbourhoods have to learn and rethink their roles for community development. This learning process is also an expression of Urban Governance. The process can also be supported by neighbourhood managements.

5.4 Conclusion

New approaches of urban governance, understood as a networked polity between the public, private and community sectors, partly supplant traditional top down-polity models when it comes to the implementation of sustainable development in deprived areas. Due to renewed concerns with social exclusion, nearly all European countries have introduced specific programmes for socially deprived areas over the last years. This chapter focussed mainly on the NDC programme in the UK and the German Social City programme. Both programmes are area based initiatives which bear in mind that strategies for deprived areas have to be developed in the concerned areas. These areas' citizens have specific knowledge for the areas' needs and can contribute to strategies for sustainable development.

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[208] Ibid. 5.

Chapter 6   Conclusions

Economic and social upheaval leaves social inequality in its wake, particularly in the areas of economic development, especially work, high unemployment rates, interpersonal relationships, isolation, segregation, and welfare rights, for example restricted or denied access to facilities (for example due to financial restrictions), institutions and an acceptable, average standard of living. These social inequalities also vary from neighbourhood to neighbourhood. They manifest themselves in deep-seated sociospatial structural changes, which result in increasing fragmentation and polarisation with upwardly and downwardly mobile urban districts (sociospatial segregation). Due to this development cities are increasingly dichotomizing into low-income, socially disadvantaged neighbourhoods on the one hand side and privileged areas on the other hand. If deprived areas were left to their own devices and without public intervention, the downward spiral in these urban districts would continue because the processes in these neighbourhoods are self-perpetuating unless they are interrupted by concerted efforts from (local) politicians, residents, businesspeople, and other locally active players. But there has to be a consensus about the direction and conduction of actions before the downward spiral can be stopped.

Since 1992 the concept of sustainable development is the worldwide consensus on urban development. The concept of sustainable development focusses on the three pillars of an equal relation between the protection of the environment and a just society by means of a social economic development and good governance. There should be no trade-off between the pillars. The most often quoted definition of sustainable development emanates from the Brundtland report from 1987. In order to ease the implementation of sustainable development, informal ministerial meetings of European ministers for urban policy take place regularly. The biggest challenge for sustainable development in the next years will be its operationalisation. An effective implementation of the approach requires a translation of its objectives into specific actions for specific places. Therefore integrated decisionmaking processes, which are of utmost importance for strategies for sustainable urban development, need to be combined with profound processual changes: from top-down steering to bottom up structures and a focus on the local levels with high citizen partizipation. Urban governance as a useful approach to sustainable development

The concept of governance is making an interdisciplinary career. It has become an often-used term, in political science as well as in economics and law. Governance is a useful addition to to traditional polity concepts especially when it comes to urban and regional planning. Many concepts in planning which feature a governance polity, understood as tripartite networks between the public, private and community sectors,

now exist alongside with traditional top down-polity approaches, as we will review more concrete in the following chapter where we are going to look at urban planning instruments which emphasize urban governance to implement sustainable development.

The implementation of governance networks can increase both effectiveness by means of problem-solving capacity and the legitimacy of governance in terms of democratic participation and accountability.

New approaches of urban governance, understood as a networked polity between the public, private and community sectors, partly supplant traditional top down-polity models when it comes to the implementation of sustainable development in deprived areas. Due to renewed concerns with social exclusion, nearly all European countries have introduced specific programmes for socially deprived areas over the last years. The thesis focussed mainly on the NDC programme in the UK and the German Social City programme. Both programmes are area based initiatives which bear in mind that strategies for deprived areas have to be developed in the concerned areas.

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