

# THE GOOD GOVERNMENT: COOPERATIVE ENVIRONMENTAL REGULATION IN A COMPARATIVE PERSPECTIVE



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On both the national and European levels, cooperation between state and society has developed considerably with regard to decision-making and regulatory enforcement, often with the explicit intention of raising the effectiveness and legitimacy of the regulatory practices. A number of instruments (e.g. voluntary agreements, joint implementation, environmental dispute resolution, legislative consultation and concertation procedures) have been developed and introduced, which seem to generalize and expand cooperation as a principle of environmental regulation altogether. The present paper aims to take up these developments by drawing a picture of 'cooperative' environmental regulation in Great Britain, France, Germany and the USA, the purpose being to delineate and compare national styles or patterns of cooperation. It is argued that each country has a proper way of organizing and moulding cooperation within public administration and between state and society. Moreover, each style of cooperation is linked to distinct working

relationships, problem-solving approaches and strategies of validation and legitimization. In spite of these different traditions and styles, however, it will be argued that all countries are bringing about a less autonomous and more cooperative state. This general development, which is repeated on the European level as well, raises the need for a more strongly structured and transparent organization of cooperative relations between the state and society. Copyright © 2000 John Wiley & Sons, Ltd and ERP Environment.

## INTRODUCTION

The institutionalization of environmental policies in most European countries has taken a somewhat paradoxical development. On the one hand, the struggle against environmental degradation and pollution was established as a regulatory task of the state, thus underlining its responsibility for safeguarding the general welfare of present and future generations. On the other hand, though, the state's regulatory action was increasingly criticized and scrutinized, not least with regard to environmental policies, which were seen as one further field where the state expands and deepens its powers and controls. The state is being perceived less as a problem-solver and more as part of the problem itself,

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in that its regulations increase costs and expand bureaucratic interventions, which are slow and badly targeted, and therefore often inefficient and ineffective. The institutionalization of environmental policies was thus quickly followed, in some countries even paralleled, by a general debate about the 'reinvention of government' (Osborne and Gaebler, 1993) and the necessary re-orientation of regulatory action. This led to a number of reforms with regard to deregulation and re-engineering, decentralization and devolution, new public management and alternative dispute resolution tools amongst many others. It was hoped that the effectiveness and efficiency of environmental regulation could thus be increased. While these reforms did not lead to a withdrawal of the state from regulatory tasks, and while, in many regards, there is as much reregulation as deregulation (Tate and Vallinder, 1995), we are still moving to a 'hybrid state ... in which administrators must simultaneously manage within government, without government and across governments' (Cooper, 1995, p 185). State regulation, even when referring to its 'tougher' command and control instruments, has thus been grounded on a wide cooperation between state agencies and social groups on the international, national and local levels, and this cooperative orientation is becoming a '*leitmotiv*' of environmental regulation as such.

European environmental policies are quite symptomatic of this double-faced institutionalization process. In fact, early attempts to establish and expand European environmental regulation by means of a case-by-case harmonization of national standards and laws failed repeatedly with regard to the diversity of national priorities and regulations. A new impetus resulted from institutional changes in the wake of the Single European Act of 1986, by which the European institutions delegated the questions of harmonization to European standard associations, restricting themselves to defining the basic requirements and principles (Eichener and Voelzkow, 1994) of what is becoming an 'à la carte' approach towards common European environmental policy. Interestingly enough the European institutions introduced a number of guidelines and rules

dealing with cooperative instruments (e.g., environmental agreements between state and industry, eco-audit), which aim to institutionalize cooperative relationships between the regulators and the regulated, demanding, at the same time, basic requirements to safeguard a substantial quality of the outputs and outcomes achieved. In this regard the European environmental policy is itself in the lead of the aforementioned transformation towards a 'cooperative' regulation.

The present paper aims to ponder on these observations by analysing the cooperative governance structures of four countries, namely Germany, France, Great Britain and the USA. Evidences from clean air policies (Murley, 1995; Héritier *et al.*, 1996) will be used in order to clarify whether this movement towards a 'hybrid' or 'cooperative' state is generally given, thus paving the way for common European governance styles and structures. The countries under analysis were selected because they represent very different cases and come closest to the theoretically deduced policy styles or models often portrayed in the literature (Richardson *et al.*, 1991; van Waarden, 1993; Vogel, 1996). The USA will provide us with an interesting case that illustrates the advantages and disadvantages of a particular policy style. Our comparison will not be geared towards depicting specific cooperative instruments: instead the paper aims to portray the general lines of the cooperative governance structures into which the various instruments are embedded. In this regard it is to be assessed whether these styles, as described in the literature more than a decade ago (see, e.g., Richardson and Watts, 1985; Vogel, 1986), are still in place, whether differences are increasingly being blurred and which factors or developments can be blamed for possible changes. The findings presented emanate from a comparative project on environmental regulation in the realm of clean air policies, which reviewed numerous documents and over 140 interviews with representatives of state administrations, interest groups, professions and scientific advisers. While the main research focus was on the comparison of general policy styles (Münch, 2000), many insights into cooperative forms

and styles of governance were produced, which are to be exposed in the following text.

### THE COOPERATION 'PRINCIPLE'

Cooperation pervaded the practices and routines of national environmental regulations right from the beginning. However, it should be noted that cooperation has entered into a complementary, sometimes conflicting, relationship with the established principles and points of reference of environmental regulation. Indeed, the successful institutionalization of environmental regulation as a proper field of political action in the 1970s and 1980s was driven initially by the polluter-pays principle that was set up to make the polluters accountable and responsible for reparation and or prevention of future pollution. This principle involved a high degree of activity with regard to the formulation, implementation and control of regulations, which pushes public policies towards 'cascades of regulatory rules and standards' (Wolf, 1988; translation C.L.) and an enforcement strategy of command and control.

The precautionary principle, which was introduced into the environmental laws of the USA, Germany and France from 1980 on, underlined this general approach by extending its reach. Indeed, the precautionary principle was to direct regulatory action from cure to prevention. In this sense, it not only demands preventive measures to be taken when specific environmental problems are known and understood thoroughly, but establishes a need for action under conditions of uncertainty, particularly with regard to incomplete knowledge about risks, causes and adequate precautionary measures (Haigh, 1994). This principle led to ample margins of safety in the realm of emission limits, technical norms and air quality standards, moreover, it shifted the burden of proof onto the proponents of new activities or products as a way of guaranteeing a precautionary attitude towards public health and environmental concerns (Bodansky, 1994).

These proactive and enforcement-oriented regulatory principles were complemented by a number of guidelines and rules, which were to refrain the state from too ambitious initiatives and thus aimed at guaranteeing the environmental measures' practicality, cost-effectiveness or 'Verhältnismäßigkeit'. Amongst them were risk and impact assessment or cost-benefit analysis in the US, different 'best-practice' procedures in Britain or concepts of 'Stand der Technik' in Germany, which specifies technical norms with regard to both technical achievability and economical feasibility. These issues of practicality, cost-effectiveness and 'Verhältnismäßigkeit' have implied intense cooperation relations between regulators and the regulated. This is the case because industry has a privileged access to questions of costs, technical requirements and operational practicality. Additionally, the more public administration is submitted to efficiency and effectiveness requirements, the more it will be interested in bringing industry and the general public together in order to prevent conflicts or litigation. That is to say, cooperation pervades even the most state centred aspects of environmental regulation (i.e., command and control instruments, e.g., the permitting requirements and procedures), expanding from there to the entire repertoire of environmental protection measures. However, with the exception of Germany, which introduced cooperation as a general principle of governmental action in 1976 (Hartkopf and Bohne, 1983, pp 114–125), cooperation has not advanced to a proper regulatory principle on the international scene. Merely individual instruments or procedures have been codified or formalized (e.g. regulatory negotiations or environmental dispute resolution, voluntary agreements, cooperation and consultation procedures) under this and other comparable headings (e.g. cooperation, but also participation, consultation and concertation).

Cooperation in all its varieties is understood as any structured working relationship between the state and society, be it informal or formal, which aims to prepare, produce and implement commonly supported measures of environmental pollution abatement or prevention (Hartkopf and Bohne, 1983,

pp 222–225; Lascoumes and Valluy, 1996). On the one hand, cooperation requires some form of organization and a certain binding character of the measures decided, both aspects being intimately interconnected, in that the structured working relationship is to generate for itself the desired obligingness. On the other hand, these cooperative structures can be informal or heavily formalized. In a sense, it can be argued that many of the established cooperative instruments have formalized what consisted of informal cooperative practices or routines before. Their task is to institutionalize and civilize the proliferating cooperative elements of state–society relations, which undermine the legitimacy and effectiveness of regulatory practice, particularly due to the selective and fragmented, non-binding or *ad hoc* orientation of the informal working relationships.

Cooperation fulfils different functions within the regulatory process, which allows us to categorize the different instruments and procedures accordingly (Lascoumes and Valluy, 1996). First, cooperation is widely used with regard to the definition of goals to be pursued in environmental regulation. In fact, within the legislative process different interest groups are consulted intensively both in formalized, public hearings or through informal consultations and lobbying attempts. Although the individual interests are not legitimized to impose their particularist views, the cooperation and consultation process is widely accepted, particularly because it allows mobilization of diverse concerns and expertise and thus formulation of enforceable and practicable laws. Second, state and industry cooperate by ‘dividing’ duties and responsibilities. Most of the market-based instruments fulfil this function of relieving the state from regulatory action and/or preventing it from taking undesired measures. While these instruments lay emphasis on the protagonism of the market, the state is not absent. It may threaten to be engaged in a legislative process in order to move industry into voluntary agreements on environmental pollution abatement, or it may negotiate goals and terms in the form of a binding contract, as proposed by the general guideline of the Eu-

ropean Commission for the application of environmental agreements in 1996. Moreover, the state can also define the general goals to be reached, leaving it up to the market (and industry) to effectively reach those targets. This is the case, for instance, with marketable permit systems and joint implementation procedures, whereafter ‘clean’ industries or plants are allowed to trade with remaining emission permits and/or to balance the emissions of diverse sites. These instruments give industry the mandate to decide by which measures and in which sites the objectives can be attained efficiently and effectively. Finally, the state can be involved in formulating, monitoring and sanctioning market-based instruments as, for instance, with regard to eco-audit or eco-labelling, where the respective assessment procedures and the public records are authorized or sanctioned by the state or semi-public agencies.

Third, the drafting of implementing regulations, guidelines and guidance notes is supported and shaped by an intense cooperation between regulators and the regulated. Particularly with regard to technical standards, release levels, air quality norms etc, a sound knowledge of the bio-chemical processes behind the environmental issues and the technical feasibility of pollution abatement procedures and techniques for each of the many sources is required. Practitioners on the one hand, scientists and technicians on the other (many of them working in the sites being regulated) become crucial participants in this drafting and standard setting process. In this context, the state does not simply cooperate with science and experts through means of regulatory science and scientific review. Given the fact that different departments, agencies, interest groups and/or think tanks forward their experts or evidence, environmental regulation also becomes a matter of a cooperation and concertation amongst experts and a related expert-based policy deliberation (Jasanoff, 1990).

Finally, the implementation process, particularly with regard to the permitting procedures, also involves heavy consultative practices. On the one hand, operators are formally consulted and heard. However, also

informal contacts are very common, often to the point that most critical issues have been clarified before a formal application is submitted. On the other hand, public hearings are held in major permitting procedures in order to allow concerns to be voiced, thus contributing to more sensitive administrative decisions. However, the two elements of the permitting process clash when conflicting interests arise between operators and the public. Moreover, the attempt to ease and speed up permitting procedures as part and parcel of the general deregulation attempts has endangered the potentials of solving possible conflicts through and within the permitting process itself. In this context instruments and models of alternative dispute resolution were developed and 'tested' in all four countries (Weidner, 1996). While many of these instruments (amongst them, above all, mediation tools) were designed to solve conflicts arising from contentious installations or building projects, it has to be noted that environmental dispute resolution tools were also conceived as participatory forms of public planning and management. This is particularly the case for the European countries: While in the USA forms of regulatory negotiations most frequently fulfil the function of preventing the conflicting parties from going to court, this propensity to litigate is far weaker in the European countries. Here, instead, the aim is to make administrative procedures more transparent, inclusive and responsive, at the same time

empowering and capacitating the public in its dealings with the state.

### REGULATORY STYLES IN GERMANY, FRANCE, GREAT BRITAIN AND THE USA

As we have seen, cooperation and concertation practices pervade the entire regulatory process. Moreover, each country has developed cooperative practices and rules according to its particular priorities, problems and needs, and for this reason we argue that each country has brought about a specific pattern or style of cooperation, which the different practices and tools are part of. In order to better compare the four countries under analysis it seems advisable to refer to the environmental policy styles described and classified by scholarly writing more than a decade ago (e.g., Richardson and Watts, 1985; Vogel, 1986; also van Waarden, 1993; Münch, 2000). For our purpose, we suggest synthesizing these attempts by distinguishing policy styles according to the underlying paths of problem-solving and the dominant governance structures (see Figure 1). These dimensions help to differentiate between four policy styles, where each of them is particularly dominant in one of the countries under review: a deliberative consensus model in Germany, a rationalist style of etatism in France, a pragmatist compromise model in Great

		governance structure	
		decentralized	centralized
approach to problem-solving	rationalist discourses	Germany	France
	incrementalist - pragmatist bargains	USA	Britain

Figure 1. National policy styles.

Britain and a pluralist and adversarial competition style in the USA.

These policy styles engender a particular form of organizing and moulding cooperative working relations between state and society. In the following, we wish to elaborate on these cooperation styles by exemplifying (i) how cooperation is institutionalized as a general form of state-society relation, (ii) which 'operative' features are of particular relevance within these working relations and (iii) what consequences these arrangements have with regard to the exclusion or inclusion of social groups and to the problem-solving strategy applied.

France and Germany, to begin our comparative journey, are very similar in their stress on the higher rationality of an 'enlightened' policy community that is strongly professionalized. This orientation has instituted an antagonism of expert and lay discourses, of dominant and counter-discourse, where the former claims to represent an entirely rational attitude in contrast to the emotionalism and sensationalism of public interests and articulations. Both countries are distinct in the inherent relation between state and experts/professionals. While in France the state remains the centre of regulatory action, the point of reference of the policy communities and the turntable of cooperation and concertation, in Germany the professions have been able to establish themselves as an important and autonomous medium and arena of governance, particularly with regard to administrative and technical aspects of regulation. This is to be attributed also to the structure of the state: while France actively sought to bind professions into an enlightened, highly centralized and hierarchical administration, in Germany 'cooperative federalism' has relied much more on professions as liaisons and arenas of policy deliberation, regulatory coordination and implementation.

These institutional structures engender important differences in the meaning and outlook of cooperation. In Germany, consensus-oriented policy deliberation seems to permeate the entire policy-making process (Richardson and Watts, 1985) and is manifest on all levels of clean air regulation: the gen-

eral framework law (the *Bundesimmissionsschutzgesetz*) is formulated so as to mirror the broadest possible societal consensus on the goals and principles to be followed; voluntary agreements and consensus talks have been widely applied in the realm of energy, climate change and individual pollutants; finally, both the drafting of regulations and ordinances and the implementation procedures of permit granting evolve in close cooperation with the regulated (the *betroffenen Kreise*). This intense cooperation has been described as specific forms of 'eco-corporatism' (Jänicke and Weidner, 1997) or of 'permitting cartels' between state administration and industry (Stark, 2000). What characterizes the German style of cooperation, however, is the fact that this consensual policy deliberation is strongly controlled by professions, particularly in the realm of clean air policies, which is dominated by a legalistic and technicistic approach. Indeed, administrative ordinances and prescriptions on the one hand, and technical standards and norms on the other, guide clean air abatement throughout, and here we recognize an orderly division of professional labour. On the one hand, the *Länderausschuss für Immissionsschutz* of legally trained state functionaries plays an important role in the drafting and coordination of administrative regulations between the *Länder* and the federal state. On the other hand, most technical norms and standards are developed by the private association of engineers (the *Verein Deutscher Ingenieure*) and its commission on clean air. In both cases the professions act as an important turntable of 'cooperative federalism' and an arena of cooperation between state and society. In this crucial area of regulatory action, consensual policy deliberation tends to follow the belief that a consensus is possible when the policy community is obliged to an 'objective' or 'disinterested' discourse abstracted from the social interests and emotionalist intentions involved. Only this '*Sachlichkeit*' can assure the effectiveness, durability and legitimacy of political regulation, and in this sense professional discourses and expert panels tend to establish themselves as fiduciaries of a broader public policy

deliberation. Since the 1970s, however, the neutrality and disinterest of established expert politics is increasingly being questioned through changing public perceptions and attitudes, making clean air issues much more contested and adversarial. However, the validity of expertise and deliberative cooperation has not been refuted radically, and very often the established environmental and citizens' groups aim to capacitate themselves by generating better evidences and arguments, thus leading to a professionalization of these groups both on the national and local levels (Christmann, 1992).

In France, policy-making can be described as being strongly etatist in that the state is the body representing the citizenship, thus having the responsibility, authority and legitimacy to regulate public matters above and beyond the individual citizen or interest. Hence, cooperation between state and interest groups is generally gauged with suspicion, and neither transparent and fair negotiation procedures nor independent expert discourses seem able to validate and/or legitimate cooperation properly. Instead, the state is regarded as the principal locus and medium of effective and legitimate policy deliberation and concertation. This means that consultations are conducted preferably in house, for instance, when the Department of the Environment drafted the *Loi sur l'air* of 1996 and the many subsequent directives and ordinances, or when the prefects and their technical services engage in permit-granting procedures (Borgards, 2000). This sectoral structure of consultations is faced, in part, by the great number of interministerial commissions (e.g. on air pollution abatement) as well as the consultations amongst prefectural services on the regional level. All of them aim at bringing about integrated regulations (so-called *arrêtés intégrés*) and shared regulatory responsibilities (e.g. in the case of stationary sources between the departments of the environment and industry). However, the sectoral segmentation tends to dominate cooperative practices, because we are speaking of different administrative cadres and professional networks. In fact, there are different prestigious *Grandes Écoles* and *Corps* (e.g., *École Nationale d'Administra-*

*tion, École des Mines* or *École des Ponts et Chaussées*), which offer their graduates promising career opportunities in specific fields. For instance, the departments of industry and environment and their respective services on the regional level are strongly dominated by 'state engineers' from the *École* and *Corps des Mines* and by lower qualified engineers and technicians. This explains the rather tight relationships between the two ministries and the technicist and technocratic approach towards environmental regulation, which is particularly evident in the case of stationary sources and the respective pollution abatement measures (Borgards, 2000). Moreover, these cadres (and, to a lesser extent, the professional groups on the operative level) build on professional networks that embrace both public administration and private corporations, between which the individual *corpards* tend to alternate as a means of career promotion (the so-called *pantouflage*). Consequently, cooperation tends to be structured along these professional networks, their social capital, solidarity and loyalty bonds. While there is a common understanding between these different cadres, and while all of them tend to legitimate their exclusiveness by an 'enlightened', rationalist and technocratic discourse (Lascoumes, 1998), the day-to-day cooperation is primarily restricted to sectoral arenas of policy concertation.

Undoubtedly, etatism has been challenged by the administrative decentralization under way since the 1980s, and by the stronger focus on broader concertation processes, which were put in practice in the case of the *Loi sur l'air* and with regard to the many regional air quality plans (Borgards, 2000). However, while these trends have discredited the caricaturist pictures of French public administration, still 'major changes to the basic institutional rules' were discouraged (Guyomarch, 1999, p 191), thus reproducing core features of the French etatist cooperation style.

The two other countries, the USA and Great Britain, appear different in various aspects. The locus and medium of environmental regulation are not the state cadres and the professions, because 'jurisdictional claims',

mandates and functions are not that neatly stipulated and ordered into an hierarchical and/or functional setting. Instead, pluralist and competitive structures seem to accompany environmental regulation from the very beginning, making it more incremental and disjointed. Under these conditions, policy-making and environmental regulation become less a process of consensual policy deliberation and more a process of bargaining and negotiation. Moreover, regulatory cooperation and negotiation cannot rely primarily on elite networks or professions. In the case of the USA, it is rather formal procedures that enable, mould and control politics with regard to effectiveness, efficiency and legitimacy. In Great Britain, the different policy branches of the administration, in particular their accommodative structures of advisory councils and discussion panels, play the same role.

In both countries, however, environmental regulation follows different points of reference and orientations. In Great Britain, a strategy of compromise – and a complex consultative process – can be regarded as the structuring principle of the political process (Kurth, 2000). This system of consultations is particularly relevant in Great Britain because no constitutionally codified and formalized system of policy-making and implementation exists. In this context, the executive has gained particular importance as a turntable and arena of political claims-making and compromise building. The vast networks of advisory committees bring about stable policy communities that maintain adversarial relations amongst another (Dudley and Richardson, 1996). This is true also for individual departments, most prominently for the Department of the Environment, Transport and the Regions, which comprises different policy communities connected to its various divisions and subdivisions (e.g. the Environmental Protection Division and its Air and Environmental Quality Division on the one hand, the divisions for local government, construction and energy efficiency, and transport on the other; Lowe and Ward, 1998). Within each policy community consultations build strongly on reliance, trust and pragmatism (Kurth, 2000), and these ‘cosy relationships’

are particularly true for the HM Inspectorate of Pollution, which is responsible not only for the factual implementation, but for the drafting of regulatory guidance notes and rules. These guidance notes leave inspectors room for discretion and negotiation, and thus have instituted a cooperative ‘compliance strategy’ that allowed coordination and harmonization of conflicting interests (Vogel, 1996, p 77). This cooperative approach is strongly associated with a pragmatist notion of effective regulatory action. In fact, a generalized legal codification such as prescriptions, definite levels of admissible emissions and prescribed technical standards, which is so typical of Germany, seems to be impractical and pointless for British regulators, since they do not account for situational conditions and concrete constellations of interests in which problems appear and solutions are pending. Issues of practicality thus dominate environmental regulation throughout. In principle, this strategy of problem definition and solving is more open and inclusive; however, this consultation and compromise oriented policy style exerts strong accommodative pressures and leads to a certain ‘mainstreaming’ of interest groups and their claims, and a subsequent reactive and dragging problem-solving approach (Richardson and Watts, 1985). Undoubtedly, European regulations and the *Environmental Protection Act* of 1990 brought a more formal and explicit approach (Lowe and Ward, 1998), not least by establishing a more formal and detached ‘arms-length approach’ in the dealings of the inspectorate with industry. These changes are also to be attributed to a more active and uncompromised state administration under Margaret Thatcher and, to a certain extent, Tony Blair as well. However, the emphasis laid on integrated pollution control, on concepts of ‘best environmental option’ and ‘practicable means’ are reinvigorating a new pragmatism beyond left and right, which reinforces the weight of practicable regulatory measures and a respective system of consultation and compromise-building that has been so typical of British politics ever since.

In the USA, finally, politics is structured according to a strategy of pluralist

competition (Jauß, 2000), i.e., it aims to submit the different interests, professions and institutions involved to a generalized competition that is geared toward a fair settlement of different positions. In the realm of clean air policies this adversarial and competitive structure can be illustrated by reference to the Environmental Protection Agency (EPA) in its responsibilities for regulatory rule-making on the one hand, and the different 'checks' and control measures actively used by the President, Congress and the courts on the other. Moreover, devolution and *new federalism* have reinvigorated the role of the individual states in the definition and implementation of clean air strategies and measures (Lester, 1995). This institutional context provides various opportunities for influence-taking, moving cooperation closer to bargaining than to concertation, closer to *ad hoc* alliances than to stable policy communities, and closer to issue specific compromises than to a broad consensus formation. In view of this adversarial relations, legislators have opted repeatedly for a formalization and 'judicialization' of clean air regulation (Bryner, 1987), most prominently by defining precisely the procedural requirements of regulatory rule-making. EPA's *Natural Ambient Air Quality Standards* on different pollutants, for instance, need to be developed in an orderly process of scientific review, public hearings, internal decision-making and public scrutiny, satisfying the many procedural instructions defined by Congress and judicial review. Due to the adverse relations between the state, industry and the public, however, this strategy of formalizing cooperation has led to generalized litigation and low compliance (McSpadden, 1995; Vogel, 1996). These developments have been severely criticized by Republicans, and the Reagan and Bush administrations have pushed towards reducing regulatory burdens, increasing discretionary powers and widening informal negotiations, e.g., via the President's Office of Management and Budget (Bryner, 1987, pp 83–85; Kraft, 1996). However, the Clinton administration and individual federal states have been developing towards 'cooperative environmentalism' as well (Kraft, 1996, p 188; Switzer and Bryner, 1998, pp 303–305), and

this new orientation is manifest also in EPA's compliance-oriented programs (e.g., via the 1994 Five-Year-Strategic Plan, its stress on the principle of partnership and the subsequent voluntary agreements in the realm of energy efficiency, climate gases and toxic substances). However, while concertation has been developed as an efficient instrument of policy-making, still adversarial relations and competitive bargains remain of focal importance. This is due to the widespread pluralist understanding of politics, which calls for a democratic competition of interests, legally guaranteed equal opportunities and an impartial and fair decision-making process. In this competitive situation the pragmatism of 'trial and error' and 'just do it' is the optimal strategy for action by which alternatives are tried out, gauged by and evaluated in practice, generalized to broad recommendations and integrated into a comprehensive, yet patchworked framework. Hence, competitive politics is responsible for a high potential of innovation with equally high resulting costs (Kraft, 1996, p 112). Moreover, a schism between formal or 'symbolic' pluralist guarantees and informal networks of influence and power, as well as the related schism between legitimization and efficiency or effectiveness, becomes more evident in the USA than in the other countries.

When we return to the policy styles delineated at the beginning of this section, we recognize two further dimensions of relevance to our analysis of cooperation styles (see Figure 2). On the one hand, it should be noted that the range of consultations and the comprehensiveness of the 'consultative networks' differ between the four cases under analysis. Here, we can distinguish between those countries that favour a broad concertation and/or negotiation, and those nations where a number of sectoral networks dominate the landscape of state–society cooperation. These 'consultative networks', however, are not *per se* more or less inclusive and open, they rather discriminate differently. In Germany, for instance, consultations are comprehensive and inclusive; however, the distinction between lay and expert discourses exerts a stronger discriminatory effect than in the other

**Cooperative panels and arenas**

		integrated	segmented
What is at stake?	'totality'	Germany	France
	'partial steps'	USA	Britain

Figure 2. Cooperation styles.

countries under review. In the USA, to name another example, participation is formally guaranteed; however, the competitive structure and confrontative dynamics of the polity makes successful participation a matter of effective resource mobilization and lobbying.

On the other hand, the countries compared differ with regard to the quality of the regulated matters. We can identify those cases that incrementally regulate diverse areas of environmental action in order to integrate them into a general *Clean Air Strategy* (UK) or into a complex *Clean Air Act* (USA). In Germany and France, a similar tendency is apparent, simply because the gradual institutionalization of environmental policy was paralleled and supported by consecutive legislative initiatives. However, these countries aim to counter or reverse this tendency by concerting and formulating a general framework law rationally ordering and integrating these different areas of action, from which future environmental regulations are to be specified in an orderly manner.

## CONCLUSIONS

France, Germany, Great Britain and the USA have developed quite distinct national styles and patterns of cooperation. However, our comparison has also revealed some developments that qualify the distinctiveness of each style. In fact, there is a latent rapprochement under way, which can be attributed to a number of factors. First, it is evident that environmental concerns have by now become an

unquestionable item on public agendas, both in response to the environmental movements of the 1970s and 1980s and the sustained interest of the mass media. Second, in all countries the disadvantages and the dwindling success of the dominant regulatory strategies came increasingly to the fore, encouraging a cross-national learning process and a consecutive rapprochement with regard to mixed regulatory styles (e.g. a more formal approach in the UK, and a less formal and adversarial approach in the US). Third, interest groups and the general public have become more distrustful of state policies, leading not only to an increasing participation within national policy-making, but also to conflicting negotiations on individual industrial and environmental projects. Finally, regulatory action can rely less on an expert discourse of 'objective' evidences, not least because the increasing number of differing evidences and the subsequent 'battle of expertise' is undermining the credibility, scientific evidence and professional expertise altogether; particularly the more social actors opt for validating their own position in this way (Janoff, 1990).

These developments have created, on the one hand, a greater need for a broader policy deliberation and a complementary public consensus on regulatory priorities and measures. On the other hand, they have also shifted the role and function of the state authorities towards conflict resolution and management duties in the realm of environmental planning, rule-making and implementation. These developments are thus calling for something

that can be named the cooperative or collaborative state. In part, this development signals the power of interest groups, particularly the economy, to 'force' the state into cooperation, especially by imposing a new definition of what a 'good government' is. This definition power has given the market a high priority on the government's agendas, both in the sense that the market needs more autonomy for self-regulation and is, at the same time, a model for evaluating and organizing the government. However, this neo-liberal attitude represents but one aspect and force within a new culture of governance that re-invents the 'good government' as a state that is more reflective on the unintended consequences of state action and more prone to management and mediation, concertation and cooperation. This collaborative attitude has a coercive strand to it in that the state forces societal actors into taking responsibilities. Governance is thus contracting and expanding at the same time: contracting as the role and function of politics are restricted ever more to the ultimate question of arriving at collectively binding decisions, and expanding, because the number and range of inputs into the process, of public debates and 'voluntary' or tripartite agreements is increasing.

This latent rapprochement is not leading to the elimination of national cultures and styles of cooperation at large. The countries under analysis are moving closer to each another, yet, from very different starting points and along different paths. These paths are determined, on the one hand, by the prevailing legal and institutional structures, which exert some resistance to change (Weale *et al.*, 1996), yet allow for a 'cooperative turn' of state action within certain limits. On the other hand, each country still maintains a general belief and value system with a proper understanding of effective problem-solving and democratic legitimacy. For these reasons, comparative analysis remains an important instrument of policy learning and deliberation. On the one hand, it allows us to depict common developments, for instance, the general trend towards concerted governance just outlined. On the other hand, each country has developed proper and very specific answers

to the problems of environmental regulation in general, and of cooperation in particular. These twofold experiences are of great value, given the fact that the development towards a cooperative state is challenging environmental regulation on two dimensions alike. First, each country has had the experience that cooperative practices and instruments are (mis-) used for blocking and/or watering down regulatory action. This 'negative cooperation' is the more enshrined structurally into environmental policies, the more the state refrains from unilateral action and opens up for consultation, concertation and consensus formation. Second, the legitimacy of political regulation is the more challenged, the more it transcends the democratic procedures and institutions of decision-making in order to integrate various forms of 'cooperative' or concerted policy deliberations. Regardless of whether cooperation is assessed positively or negatively, it thus becomes crucial to reflect on further, more consistent measures and strategies for safeguarding the effectiveness and efficiency, as well as the transparency and legitimacy of cooperative regulation. The analysis of national styles of cooperation might teach us some important lessons in this regard.

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