

EVALUATION AND THE APPROPRIATE POLICY LEVEL UNDER THE DEMANDS OF SUSTAINABILITY

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1 Introduction

The discussion of sustainability reaches in all dimensions of daily life and governmental practice. Reviewing the literature it seems obvious that, in principle, it is clear where to the society should develop. However, important measures are not put into place although the necessity is rather obvious. This finding highlights deficiencies in the field of research about the implementation of sustainability in particular on the question how can we best make use of our existing institutions in order to achieve a sustainable development. Therefore, The main points I would like to address under this topic are the following ones:

- Which criteria allow best investigating the appropriate policy level in order to contribute to the achievement of sustainability, and how should these criteria applied?

- Do federal systems offer better opportunities to deal with sustainability? The purpose of the paper is to clarify in which way sustainability can offer a guiding principles for federal states. For this purpose it needs to be recorded what federal states means (section 2.1) and which specific starting points with regard to sustainability are available. The two aspects responsibility assignment (section 2.2) and co-ordination (section 2.3) between both the levels and the states are in the centre of consideration. The third chapter offers the operationalisation of sustainability with regard to the question of a guiding principle². After the delineation of the different dimensions of sustainability (section 3.1), the thematic dimension of economy (section 3.2), environment (section 3.3) and social (section 3.4) is explained. In section 3.5 the dimension of monitoring by the society is discussed. Finally (section 4) the conclusions for the guiding principle of sustainability for federal structures will be drawn.

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² Many authors tried to operationalise the keyword *Sustainability* and the result was more or less felicitous. The following article is based on the considerations of the Enquete Kommission of the German Parliament and its survey (cited below). If sustainability should be researched as a guiding principle for federalism, relatively clear outlines are needed. So far the Enquete Kommission provides an anchor, which rest upon a relatively wide acceptability.

2 Federal Governments

2.1 Sketching federal systems

In the following, federal government and federal system are used as synonyms and treated in contrast to unitary governments³. It seems to be advisable to check first the definition of federal governments. Federation means an alliance of states for a temporarily political and economical purpose⁴ whereas federalism signifies a principle of a state that allow every single member wide autonomy⁵. These definitions are used as an initial point, because federalism inheres much more that is of pertinence for sustainability: A scope from federalism as a wide social concept to a narrow political instrument, federalism and cross-national relationships as special political phenomena⁶.

Regarding constitutional law the federal state (federation) must be distinguished from the federation (confederation) by the relation between the governmental levels. Members of a federation keep their status as states and the federation represents also a state in itself⁷. Pivotal is the constitutional anchor of the federalism: accordingly levels of the country (Länder) and the federation can be identified for Germany or Austria.

The inclusion of the municipalities is not applicable in this definition. In a broader sense of federalism they should be included in the same way as the constitutional levels. The EU-level should be included as well as already a certain constitutional status is established, even if it is often denied⁸.

The legality of all constitutional states is built on the division of power between the legislative, executive and juridical authorities on the horizontal level stands. However, big differences between the states exist in view of its definition. In contrast to a centralized form of government, where all centralized levels disposes the power of decision in one country, the federalism allows a diversion of powers in also a vertical regard, which means that national functions are separated into two national levels, a central or federal and a regional level.

³ Brockhaus online

⁴ Brockhaus online keyword „federation“

⁵ Brockhaus online keyword „federalism“

⁶ See Elazar 1968, S. 354f.

⁷ See Münch 1993.

⁸ It becomes obvious, if one keep a view on the significance of the European tribunal, which dispose the increasing competences across the national constitutional courts.

Motivations to employ federal systems touch a range of issues, which are back-to-back synthesised. The perception outlined above articulates clearly, that a pure national definition for such a discussion is too narrow⁹:

- The most important motivation lies, indeed, in the *vertical division of power*. This creates a high transparency and control in the regard of functional, spatial and factual aspects¹⁰.
- Furthermore a *better of more efficient fulfilling of public task* can be identified by the application of further criteria. At that point it becomes clear that the focus only on state levels in the narrow sense would not be allow to address the potential of federal systems¹¹.
- A more extensive demand lies in the *subsidiarity* within the execution of tasks in federal systems. Apart from the division of powers and a better responsibility assignment – the principle of subsidiarity defines: upper levels only become active, if lower levels are not able to discern their tasks¹².

These positive motivations of federalism are confronted with special risks, that are mainly related to co-operation between the different levels¹³. The multiplicity of the information-, coordination- and co-operation forms throw a glance at the possible risks. A risk of blockades are given in case of:

- various common competences of decision making of the different levels;
- the delineation and limitation of competences between the levels is not clear;
- there are too big differences between the states with regard to their economic strength, size and their political power.

The kind of modalities how and how far consensus must be achieved play a key role in this respect – is it real consensus or imposed, competitive or consensus model of federalism? ¹⁴The disadvantages mirror the advantages of the unitary state, but the advantages persist in principle if the disadvantages are accordingly dealt with.

⁹ As a fundamental principle of federalism, the following aspects are pointed out: not-centralisation, democracy, “check and balances“ open bargaining processes, constitutionalism and save units of the sub division of state. see Elazar 1995, 475ff.

¹⁰ See Laufer 1991

¹¹ See for example Beer 1977 and Oates 1972.

¹² See Eser 1996 for different interpretations (catholic social doctrine (Soziallehre), economic perspective). Quite often one forget that to be „in the position of being able“ also includes co-operation on lower levels, where possibly only stimuli from above are given, without adopting the tasks within one step.

¹³ See Kilper/Lhotta 1996

¹⁴ Solving problems, bargaining (amicable) Paternalism, imposed, Scharpf 1995, 30.

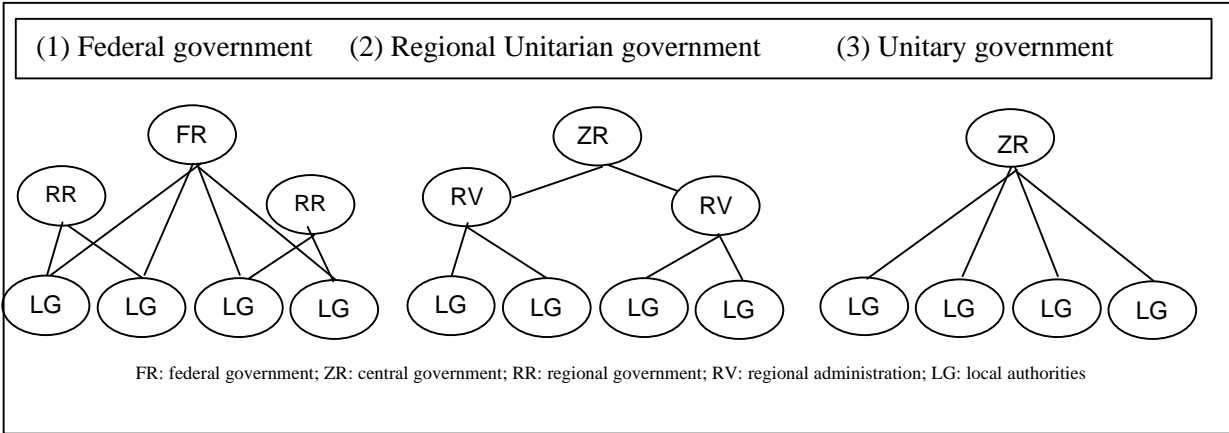
Now how does the European landscape look in that respect? It seems to be quite difficult to classify the European States, because every state shows an inimitable and a grown structure¹⁵. Nevertheless it appears advisable, to make a classification into three categories: a federal system well established on the base constitutional regulation (1) unitary system with regional administration and some kind of regional representation, but which is not of constitutional status (2) and a purely central regime (3). Among all these already mentioned forms, the level of the regional authority is allocated¹⁶.

There is a common understanding after the decentralisation efforts in some EU countries the following assignment is most appropriate¹⁷.

- (1) Austria, Belgium, Germany
- (2) Italy and Spain with longer tradition, but now after more recent decentralisation (in the UK called “devolution”) efforts also France and the United Kingdom
- (3) Denmark, Finland, Greece, Ireland, Luxembourg, the Netherlands, Portugal, Sweden.

It should be mentioned that all groups of countries include strong municipalities and in some cases in particular in unitary countries municipalities dispose of reasonable power.

Figure 1: Federalism and unitary states in practice



For simplification purposes of the theoretical discussion, the two forms (federal and unitary regimes) will be used as two poles of a continuum, whereas the rationalised unitary regime supposed to be in the middle. Federalism allows in contrast to unitarism and centralism that two levels among themselves are in direct competition (vertical competition)¹⁸, in case the particular constitution does not provide a clear responsibility assignment between the levels.

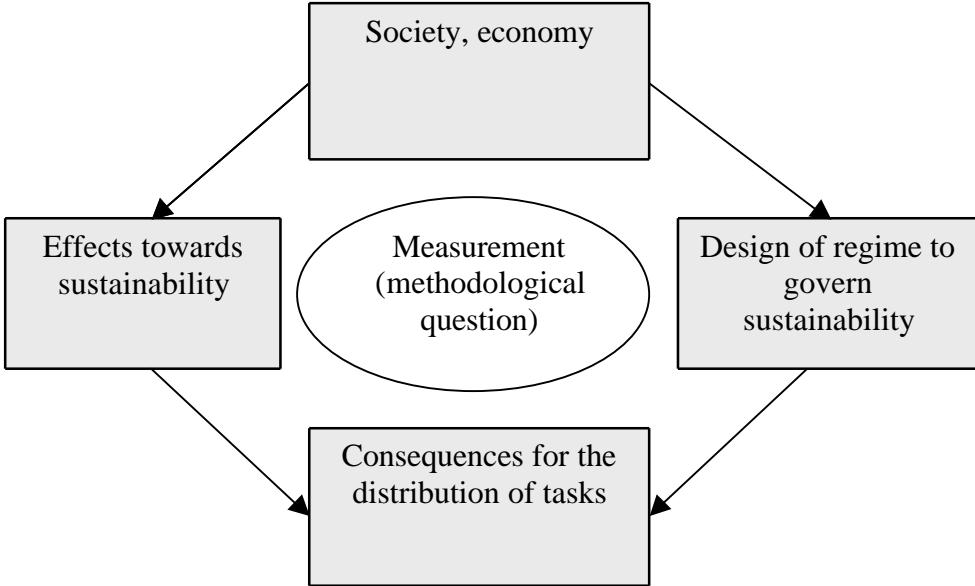
¹⁵ See European Commission Luxembourg 1997, S. 39.
¹⁶ Own version according to Sauerland 1997.
¹⁷ See Wiehler, F./Stumm, 1995
¹⁸ In terms of competition about competences, whereas a displacement of competences (upturned) is immanent, as long as no counterbalance, such as demanding of the principle of subsidiarity, will be universally accepted.

On the other hand there is normally competition on the regional level between the regional authorities (horizontal competition)¹⁹. Competition means in that case that the particular level is allowed to a certain decision-making and responsibility, whereas within the unitarism no regional competences are available. Competition takes place within the scopes taxation, national services, regulations and promotion of economic developments. Competition depends from the number of competing units, as well as from the level of autonomy and competition that is fixed by the higher levels²⁰.

2.2 The allocation of tasks

The allocation of tasks between the national levels within the federalism follows the question, which functions with regard to which tasks according to which norm should be allocated at which governmental level? As shown in figure 2, two dimensions must be considered in order to answer the question.

Figure 2: general framework for the allocation of tasks in a federal system



Within the first dimension it will be observed, to what extent the society defines the public tasks on the basis of pertinent demand as well as how far there are thematic interdependencies of impacts that have consequences of the responsibility assignment between the levels. The second dimension considers the current political and social institutions, which administrate the presentation of these tasks. There the appropriate allocation of tasks should take place. Against a constitutional law and political scientific background, there is a requirement of divi-

¹⁹ According to Tiebout, 1956.

sion of powers and democracy. In principle that means to federal systems, that only those should decide about a public task who are both spatial and factual affected. But often the congruence between those who are affected and those who decide it is not given. Ideally only those decide on tasks who are directly affected. This can only be achieved by a regime, which is capable to allow interventions on different governmental levels. In practice, often decision-, administration- and financial functions are subdivided into different federal levels with regard to a public task. The classification of these functions allows in the case of interactions between the regional authorities on different levels co-decision and frame setting. But in practise it is often necessary to “create” appropriate delineation and level for governance by the cooperation and coordination of the governmental units in order to achieve the congruence required.

2.3 Co-ordination

Now institutional arrangements come to the fore, which allow coordinating intersections and conflict of the allocation of tasks between units of one level in federal systems. This kind of coordination usually goes beyond the mandatory processed prescribed by the constitution of a federal (or unitary) country. The institutional forms are multifarious: they range from legal and partial constitutional, such as common tasks, delegation systems²¹; duty tasks to compulsory and voluntarily built associations for specific purposes and (standing) conferences; the latter are in a legal sense barely connected with any obligations²². Especially within the regional policy many forms of these co-operation and team-work are applied. Mostly the level between the countries and the municipal level and regional authorities are involved.

Figure 3 reveals institutional options which exist and which allow putting that kind of consensus building processes into operation, which supports the concerned congruence between the effected individuals (in the end the beneficiaries) and those who decide (the ones who usually have to pay). Consequently an appropriate level of co-operation plays a key role in that respect. It should be mentioned that these mechanisms of coordination often create the problem of legitimacy and liability, as the influence of the democratic key institutions such as parliaments and politicians are partly put out of the process²³ and representatives of administrations overtake their places: This was already interpreted as “co-operation in the shadow of the hierarchy”²⁴.

²⁰ See overview in Keynon 1997, 26.

²¹ See Postlep 1993

²² See Eser 1997.

²³ Quite clear displaced in Kregel 1998.

²⁴ See Benz u.a. 1998, 21.

Figure. 3: communication in federal systems beyond mandatory processes

| | Forum | Conference | Association (in a legal form) |
|------------------|-----------------------------------|----------------------------------|--------------------------------------|
| Tasks | Exchange of ideas | Concepts, priorities, management | Implementation, execution |
| Structure | All interested | Networks organisations | Mandatory bodies |
| Actors | Administrators, interested public | Administrators, representatives | Mandatory representatives |
| Processes | Contact, exchange | Coordination, bargaining | Clearly defined tasks implemented |

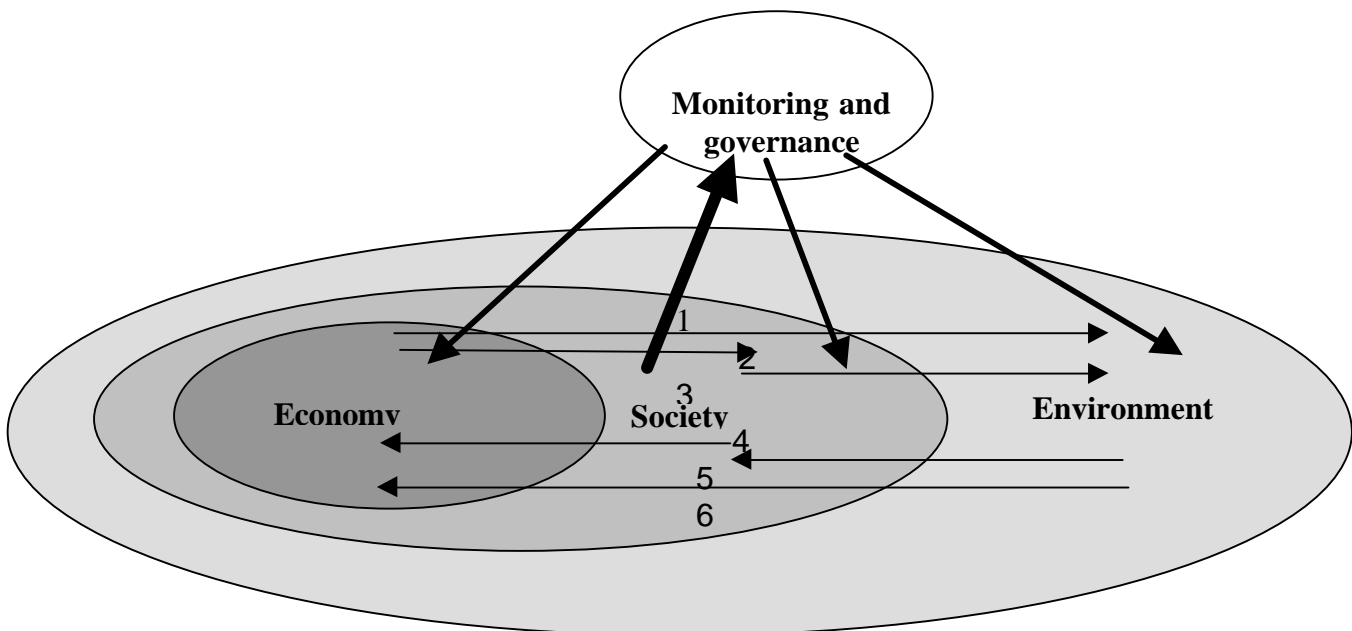
This brief overview only allows indicating the access points for federalism and therefore only pinpoints the frame for the implementation of sustainability. But first it is necessary to better define the demands of sustainability for governmental regimes and structures.

3. Sustainability

3.1 Dimensions

Stating from the definition of sustainability in the Brundtland-report²⁵, there exists a broad consensus that a distinction of the three dimensions economy, environment and society is useful with regard to the discussion of sustainability²⁶. However, there is not any consensus in particular when it comes to down to the last dimension as the quintessence can be circumscribed as social, participation and politics as well²⁷. This wide coverage reveals a certain dilemma, as it gathers about everything that cannot be summed up under economy or environment. With regards to a narrow focus of this dimension there is an area of conflict between the thematic aspects (social) and monitoring aspect (policy)²⁸. Figure 4²⁹ sums up the context.

Figure 4.: the relation between dimensions of sustainability



²⁵ „Sustainable Development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs“ World Commission on Environment and Development 1987, 46. Out of it over 70 definitions could be deduced see Kreibich 1996, 40.

²⁶ In connection with that trisection, it is quite often spoken of aims. In practice it proves that even in those cases where a distinction is made between objectives or aims and dimensions as e.g. at the Enquete Kommission „Schutz der Menschen und der Umwelt“ on the „concept sustainability“ it was not possible to hold a clear distinction through because the aims are dealt with under the topic „Dimensions“ and translated in „requirements for action (Handlungserfordernisse)“ (Enquete Kommission, 1997, S.44). These requirements flow into further elaborated aims or, as in the case of the environment in the Management concepts.

²⁷ See for example Blower 1993, 6ff.

²⁸ Wehling 1997, 36 characterizes the phenomena quite aptly: „The idea of a sustainable development consists of a normative postulate, which says that social developments hat to be created in that way, that the natural base is supported to sustain future generations. On the other hand it updated, that the analytic perception social and analytical developments are not possible to be kept apart but that the transformation must be included. On that background sustainability has to be seen as a political concept with theoretical implications. The theoretical implications are still open.“

²⁹ According to Bush-Lüthy.

The scheme shows that the three dimensions economy, environment and society lie on one level as thematic dimensions. Therefore a differentiation seems to be appropriate which considers three thematic dimensions devoted to environmental-, economical- and social concerns, which need be in balance. The balance between all three dimensions is achieved via the societal monitoring only, which therefore can be understood as a independent institutional dimension on its own.

As a result, the sustainable development has to be interpreted as a regulative idea, that settles on future-orientated social learning-, searching- and formation process, which features openness and lacking knowledge about the future³⁰. With it, the question of monitoring becomes a central subject for the understanding and implementation of sustainability. Now at first the thematic and than the institutional dimension are addressed with reference to sustainability.

3.2 Economy

If the society has selected the market-economy as the economic system of their choice, the question of the allocation of public tasks in order to avoid market failure and in order keep the market economy running. The aim and the function of the market economy is the provision of goods and services for the people³¹. It is also assumed that a separation of allocation and other social aspects is possible³². Now the relevant question for federalism is, where, or more precise, on which level should be which task allocated in order to achieve best results in the functioning of the market economy.

The market-economy represents the strongest decentralised economic system, because the economic subjects schedule individually their plans – both on the supply and the demand side. If market failure occurs³³, public intervention is recommended. But firstly it has to be proved, whether it is possible prevent the failure of the market by the self-organisation and cooperation of the economic subjects. The failure of the market because of the lack of information (lemon markets) and with regard to the quality assurance can be reached for example by chambers and industrial unions. The systematical underestimation of risks can be reached

³⁰ See Minsch u.a. 1998, 18.

³¹ Under the umbrella of the market-economy different kinds of interpretations do exist. See Enquete Kommission 1997, Minsch 1998, 22.

³² In practice, it is not possible to divide, which is shown within the Coase Theorem, if allocations- and disposition aspects are taken into account.

³³ In the following, only the most important aspects will be activated: external effects, lacking possibility to divide goods, lack of information and a lack of conformation. See Fritsch u.a. 1991.

through the obligatory insurance for example in health sector and with pension funds. An account of market failures is given in figure 5.

Figure 5: **Policy level relevant aspects of economic sustainability**

A) „Classic“ arguments

- Market economy as a decentralised system
 - Market failure demands for more centralised action:
 - o Regional monopolistic markets
 - o Negative external effects: environmental effects
 - o Positive external effects: location management
 - o Public goods – free rider positions
 - Macro-economic interventions, stability, distribution
- B) „New“ arguments**
- Material flow orientated economic development
 - Valued added chains, import substitution
- More differentiated approach towards regulation possible in cases of regionally limited market failure, often connected with administrative boundaries

In terms of federalism and sustainability it is important to allocate the task at an appropriate level. That means for example to delegate dealing with external effects only to those governmental units which are directly involved on the causes and effects side³⁴. The same applies in the case of income distribution; relevant is the on the effect side how far in spatial terms is migration invoked by redistribute measures³⁵. Now in order to reach a sustainable economy all these cases of market failure need to evaluate with reference best level of intervention. Overlapping to the other dimensions is already visible so the decision on where to deal with which issues must be considered taking into account also the other dimensions.

3.3 Environment

The dimension of environment ties up to the concept of external effects. In principle the aim is to keep the environment within its potential, whereas in particular the capacity of regeneration of the environment and the minimization of irreversible damages as well as withdrawal of the environment are in the foreground. The German Enquete Kommission formulated management rules for material flows³⁶. With regard to federal systems it needs to be tested, to what extent it is possible to identify the (spatially) bound systems of the environment and to

³⁴ Furthermore the World Trade Organisation is involved and represents the global level.

³⁵ That means, that people benefit from the measure of redistribution in local authorities with high degree of redistribution. Those, who lose because of the measure of redistribution, orientate themselves to the local authorities with low levels of redistribution. The resulting segregation leads to the fact, that relatively levels of redistribution cannot barely implemented on a decentral level. See Olson 1999, Oates 1972.

³⁶ See Enquete Kommission 1997 S. 44ff, it is not undisputable, whether the management rules do suffice with respect to sustainability, but this is hot the point. It is about, which consequences result out of the reflection of the environment. Minsch 1998, 21f.

find the appropriate level and units for the intervention in order protect the environment in the necessary way.

In practice, that means to identify the most important eco-systems as well as their spatial extension³⁷. On that basis it seems to be useful to define the greatest common denominator. Figure 6 provides in the first two columns some examples for the delineation of areas on the basis of eco-systems.

Figure 6: political level relevant aspects of environmental sustainability

| Ecosystem | Spatial extension | Cooperation with regard to the eco-system |
|----------------------------------------|--------------------------|----------------------------------------------------------|
| Water | Rivers, lakes, seas | Rhine cooperation, Lake Konstanz cooperation, Baltic Sea |
| Air | World, regional | World climate conference, „Blue sky over the Ruhr“ |
| Natural and cultural landscapes | Forests, mountain areas | Alpine convention |
| Antropogene landscape i.n.s. | Cities, rural areas | Municipalities and cooperations |

The ideal case is described by so-called “Container regions”³⁸, that are closed in some respect. It needs to be added, that the material flows of many eco-systems are not found yet, and that overlapping occurs in any case. Section 2.3. already pointed at out the fact, that we cannot approach reach the an ideal boundaries in any case, but we can try to approximate by making use of the flexibility of the federal system and the current administrative system.

3.4 Social affairs

The starting point for the social questions with regard to the sustainability is, which provisions the society has to make, in order to save the long-term survival of people on the world and within their jurisdiction. The most important basic conditions are peace and stability, as well

³⁷ See for example Park 2001, 576ff.

³⁸ Quoted in Läßle.

as the protection of the individual freedom- latter at least according to democratic societies. Further aims arise, which influence the social stability. In democratic societies regarding the social dimension a fundamental consensus but different interpretations persists about values, such as human dignity, free development of personality and solidarity³⁹. Finally it is a social decision, which aspects represent a contribution for the social stability of each society⁴⁰. It has to be taken into account, that the social aspects should be judged with regard to their impact and possibility to influence them. Here again the interdependencies between the dimensions become obvious.

The reach of social peace and social stability in spatial terms depends factors such as economic integration, social-cultural point of contacts or historical developments. The intensity of the impact is depended on the gravity of problems, as well as of the spatial proximity. It affects both sides: the postulation of solidarity and the responsibility for solidarity. With regard to the federalism, it needs to be proved, how far spatially these tasks range in order to reach the above mentioned congruence. The arguments reach from the protection of human rights to the prevention of undesirable regional disparities such as high migration rates. The reference for the allocation of social tasks to regional authorities and levels is how functional context groups are organized.

3.5. Monitoring and governance

Up to now we were assuming that there is a kind of invisible hand, which guides all public institutions to follow a sustainable road. In fact the processes in order to find objectives and to implement a policy which allows an appropriate monitoring of such a kind of sustainable development is not such a clear task. Figure 7 can only give glance of the complex processes in that respect⁴¹.

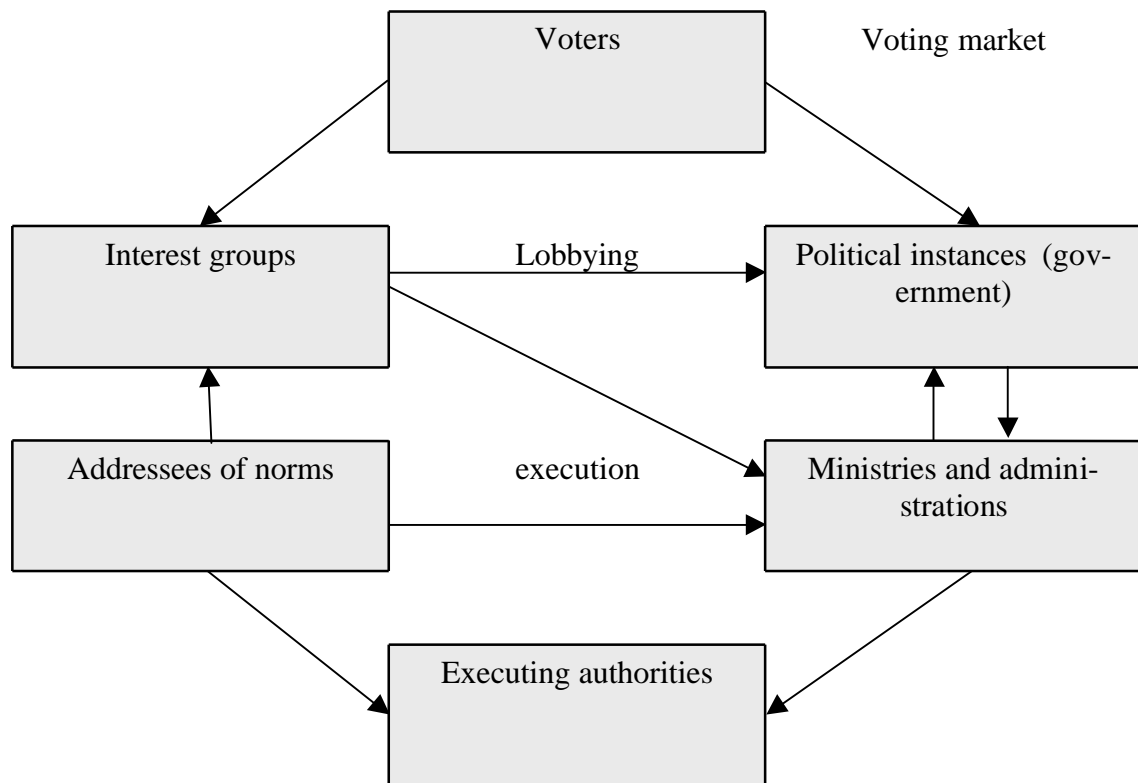
In order to provide guidance for the design of appropriate decision and implementation processes some basic functions have been identified which are supportive for the achievement of sustainable development in particular in order to find the right balance between the thematic dimensions described above and to realised the regulative idea of sustainability defined above as the fourth dimension.

³⁹ See Enquete Kommission 1997, S.51; Minsch u.a. 1998, 20. Bizer 2000 tries to introduce the social dimension of sustainability via the consideration of social capital into the societal production function as side of human capital, real capital and natural capital.

⁴⁰ This can be shown by the selection of indicators. Example of the ISÖ: securing the existence of all members of the society, maintenance and development of the social resources, equity in accessing resources and – here another connection to the monitoring is obvious, participation in societal decision processes. Siehe <http://www.isoe.de/literat/kurzdp13.htm>.

⁴¹ See Minsch u.a. 1998, 65 with reference to Gawel 1995, 33 und Endres/Finus 1996,43:

Figure 7: policy level relevant aspects of monitoring and governance of sustainability: actors and interactions



With regard to the interaction between the relevant actors shown in figure 7 the Enquete Kommission has proposed some institutional basic strategies in order to achieve the mentioned design-, searching- and learning process. The strategies manifest themselves in the foundation of respective institutions and have been summarized to an extensive institutional atlas:

- *Reflexivity* serves to increase knowledge of side-effects resulting from the action of actors in politics, economics and society⁴², which is important in that it reduces the orientation to and thereby the dependence of one-dimensional knowledge (experts) and short term orientation. These includes systems of information and counselling by satellite institutions, the improvement and structuring of information and decision making processes as well as a well focused research-, educational- and scientific policy.

⁴² See Minsch u.a. 1998, 143 Usually insufficient demand for information by voters is usually assumed regarding the risk assessment of environmental hazard. The reason for that grounds in the information paradox: the cost of additional information is much easier to assess than the utility.

- “*Participation* and self-organisation contribute to the strengthening of the organisational potentials of the concerned groups of interests”⁴³, which is important as it might, due to the high differentiation of society, enable the differentiation of comprehensive institutions and thereby create new coalition and strategies of solution. These include alternatives of self-organisation of all subsystems of society and beyond its borders, rights of participation from the public to the direct democracy, as well as discursive participation models.
- “*Compensation- and conflict regulation*”⁴⁴ become more important as here borders can be crossed, which result from a lacking degree of organisation, insufficient participational rights and rights of decision making and other dependencies of the political-administrative system as well as other actors. These include advocacy institution in for sustainability within the existing institutions, resources – and power compensation, the opening of the processes of norm finding as well as integration strategies on an administrative level.
- “apart from the technical-economic *innovations*, a sustainable society especially relies on social and institutional innovations...”⁴⁵ which to that effect is important, as in this way new ways of solutions to cross blockades for a sustainable development can be found. These include new instruments of internalisation, strategies of co-operation, and strategies of information and national intermediary and private institution, informational strategies and supported strategies of the public households.

Now we can search for access points where federal system can support these kinds of functions and indeed there are several issues. Without going deeper into the subject at this stage, e.g. participation is support by the possibility to involve the affected and to exclude the not-affected groups by issues addressed under the thematic dimension, conflict management can be achieved by the monitoring of the higher level in case of disagreement on lower levels, or employment of the competitive process between the lower governmental units in order to simulate innovation processes.

4. Conclusions

⁴³ See Minsch u.a. 1998, 201 (accentuation by the author)

⁴⁴ See Minsch u.a. 1998, 264 (accentuation by the author)

⁴⁵ See Minsch u.a. 1998, 323 (accentuation by the author)

Federal systems consolidate the advantages of both unitary and purely independent states in several ways. On the one hand a task adequate allocation is possible, on the other hand the division of powers in a vertical respect can be warranted. In addition a common frame for the co-ordination and execution of societal tasks is available. Disadvantages become obvious, if there is no clear delineation of tasks between units and levels are defined consequently everyone adjudicates on everything.

The fundamental advantages provide starting points for the implementation of sustainability that is, in principle, not news. But it takes supplementary aspects into consideration, which up to now have played an inferior role. In the thematic respect three dimensions and aims, such as environment, economy and social have to be taken into account. With respect to the sustainability they need to be brought in line, especially in cases where conflicts of aims do exist. This takes place within the fourth dimension, the monitoring.

The vision of sustainability insists on an approach, which approximates the spatial circle of impacts monitoring in the above-mentioned thematic dimensions. Concerning the impact circle, examples for every single dimension are mentioned. With regard to the monitoring circle it has to be taken into account that sustainability as a regulative idea imposes new demands on the dimensions of monitoring by the society, which steps out the understanding of division of labour of public and private spheres. Sustainability challenges the design of the welfare state and invokes the potentials for self-organisation of the civil society⁴⁶. Important contributions for the enforcement of sustainability can be obtained, if basic strategies as well as institutional implementation are taken into consideration by making use of the potentials of federal states. It needs to be emphasized that some of these essential institutions are up to now available to some extent, which means that a federal system has already shown its advantages concerning innovations in some parts. The social learning-, searching- and design process within the context of federal states has to prove in practice, whether the potential can be put in value.

⁴⁶ In the end it is always a matter of the assessment of the society how the circle of impacts is delineated. See Postlep/Döring 1996, 13.

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