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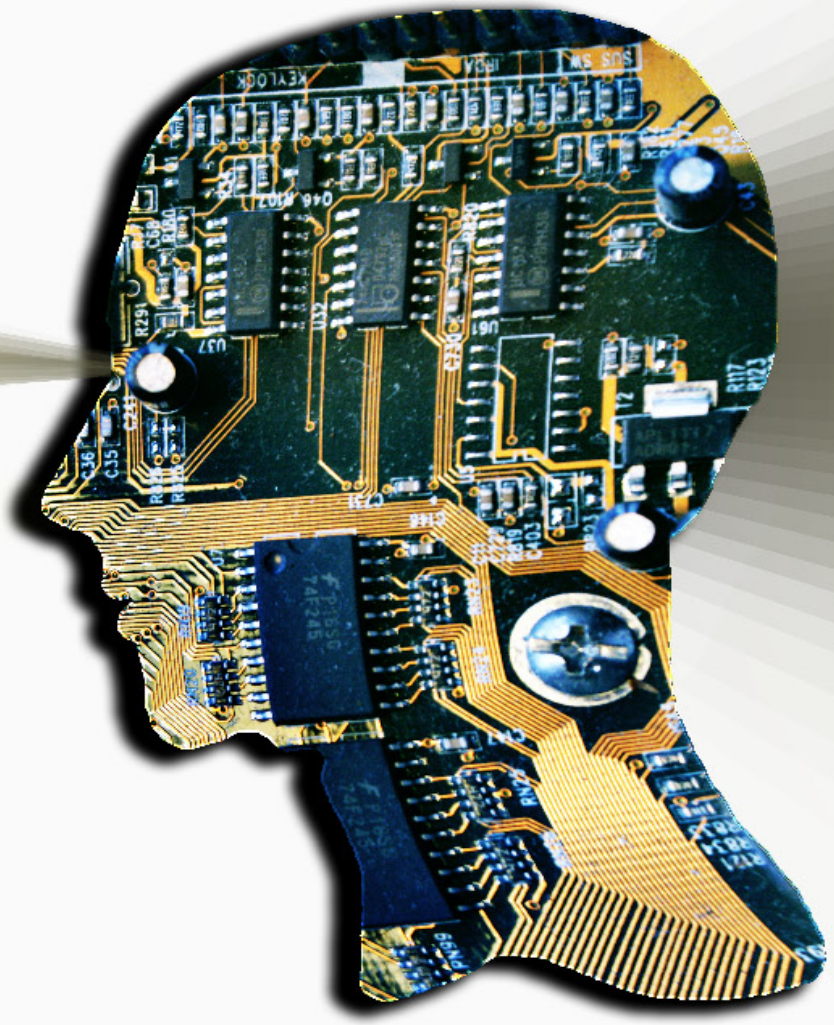

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EDITORIAL

Die Zeitschrift für Nachwuchswissenschaftler geht ins vierte Jahr

W Honekamp

Über drei Jahre ist es her, dass ich die Leser der ersten Ausgabe der Zeitschrift für Nachwuchswissenschaftler begrüßen durfte. Jetzt gehen wir ins vierte Jahr. Das Team ist deutlich größer geworden, und es ist eine Freude zu sehen, mit welcher Begeisterung sich junge Menschen den ehrenamtlichen Aufgaben widmen. Qualifizierte Redakteure betreuen mittlerweile die Fachgebiete Agrarwissenschaften, Architekturwissenschaft, Automatisierung, Bauökologie, Betriebswirtschaftslehre, Biologie, E-Health, Elektrotechnik, Ethik, Ethnologie, Facility Management, Germanistik, Geschichte, Gesundheitsökonomie, Gesundheitspolitik, Gesundheitswissenschaft, Informatik, Literaturwissenschaft, Ökologie, Pharmazie, Philosophie, Politikwissenschaft, Qualitätsmanagement im Gesundheitswesen, Rechtswissenschaften, Religionswissenschaft, Soziologie, Systemgestaltung (Forschungsmethoden), Technische Gebäudeausrüstung, Theologie und Wirtschaftsinformatik. Für das deutschsprachige Lektorat stehen uns drei engagierte Lektoren zur Verfügung. Auch Layout und Textsatz werden jetzt von einem Fachmann realisiert. Alles in allem ein starkes Team, mit dem wir optimistisch in die nächsten Jahre schauen! In 2012 erwartet uns vor allem die 13. Nachwuchswissenschaftlerkonferenz in Görlitz. Informationen dazu sind unter nwk13.de zu finden.

Die dritte Ausgabe der Zeitschrift für Nachwuchswissenschaftler in 2011 befasst sich mit drei unterschiedlichen Themen. Gräske, Kuhlmey, Fischer und Wolf-Ostermann beschreiben in ihrem Studienprotokoll eine Studie zur Identifikation eines geeigneten Instrumentes zur Messung demenzspezifischer Lebensqualität im Setting ambulant betreuter Wohngemeinschaften in Berlin. Janoska geht in seinem englischsprachigen Beitrag *Privatisation of Public Health Services at European Health Markets from a Law and Economics Perspective* auf die Privatisierung öffentlicher Gesundheitsdienstleistungen ein. Witjes beschreibt in ihrem ebenfalls englischsprachigen Arbeitsbericht *Whose' Knowledge for Development? Knowledge Management in Development Cooperation: Lessons from the Development Gateway* schließlich das Wissensmanagement in der Entwicklungszusammenarbeit am Fallbeispiel des Development Gateway.

Auch wenn wir bereits viele Fachgebiete abdecken können, so suchen wir immer noch Fachredakteure und englischsprachige Lektoren. Auch die Position des Chefredakteurs würde ich mittelfristig gerne in jüngere Hände legen. Bewerbungen sind an editor@nachwuchswissenschaftler.org zu richten.

Wilfried Honekamp
Herausgeber der Zeitschrift für Nachwuchswissenschaftler

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PFLEGEWISSENSCHAFT

STUDIE ZUR IDENTIFIKATION EINES GEEIGNETEN INSTRUMENTES ZUR MESSUNG DEMENZ-SPEZIFISCHER LEBENSQUALITÄT IM SETTING AMBULANT BETREUTER WOHNGEMEINSCHAFTEN IN BERLIN

Study to identify an appropriate dementia-specific quality of life instruments for shared-housing arrangements in Berlin

Johannes Gräske*[1,2], Adelheid Kuhlmey[1] Thomas Fischer[2] Karin Wolf-Ostermann[2]

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Eingegangen am 24.01.2011; Überarbeitet eingereicht am 06.02.2011; Online veröffentlicht: 11.04.2011

Reviewer: Bernd Kwiatkowski, Stefan Schrank; Korrektorat: Nicoletta Wojtera.

Zusammenfassung

Lebensqualität ist ein multidimensionales Konzept, welches in der Versorgung von Demenzerkrankten eine zunehmend wichtige Rolle einnimmt und als Mittel zur Überprüfung der Pflegequalität empfohlen wird. Die Bestimmung der Lebensqualität wird durch einen fehlenden Goldstandard erschwert. Dies führt dazu, dass verschiedene Methoden der Lebensqualitätsmessung entwickelt worden sind. Für das neue Setting der ambulant betreuten Wohngemeinschaften fehlt bisher jegliche Erfahrung in der Messung demenzspezifischer Lebensqualität. Somit ist auch nicht bekannt, welches Instrument tatsächlich valide Daten in diesem Setting liefert.

Das Ziel in dieser Arbeit ist es, ein Instrument zu identifizieren, das für die Beurteilung der demenzspezifischen Lebensqualität von Menschen im Setting ambulant betreuter Wohngemeinschaften geeignet ist. Zur Bearbeitung des Forschungsinteresses wird zunächst mittels systematischer Literatursuche in einschlägigen Datenbanken ein Überblick über verfügbare demenzspezifische Lebensqualitätsinstrumente erstellt und darauf aufbauend werden geeignete Instrumente für die vorliegende Fragestellung ausgewählt. Im empirischen Teil der Arbeit werden Lebensqualitätsinstrumente der Selbst- und Fremdeinschätzung eingesetzt, welche in deutscher Sprache verfügbar sind.

Es wird davon ausgegangen, dass ein für Wohngemeinschaften geeignetes Lebensqualitätsinstrument identifiziert wird. Die Ergebnisse dienen dazu, dass in künftigen outcomeorientierten Studien in diesem Sektor validierte Instrumente eingesetzt werden können.

Schlüsselwörter: *Ambulant betreute Wohngemeinschaft* | *Demenz* | *Lebensqualität*

Abstract

Background: Quality of life is a multi-dimensional concept, which is considered a major outcome parameter in dementia care and it is recommended as a way to evaluate the quality of care. Because of a missing gold standard, the assessment of quality of life is not clarified yet. Because of this, various assessments were developed. For the new German setting of shared-housing arrangements, experiences in quality of life assessments are not available. This means, it is unknown which instrument provides valid data.

Objectives: The core aim of this project is to identify an appropriate scale to evaluate dementia-specific quality of life of residents in shared-housing arrangements. Method: First of all, a systematic literature research will be conducted to provide available dementia-specific quality of life instruments. Based on the review, instruments will be selected, regarding the main topic of shared-housing arrangements. In the empirical part, various self- and proxy ratings will be applied.

Expected results: It is expected to identify an appropriate scale to measure dementia-specific quality of life. The results allow studies in the future, to apply an instrument, which provides valid data.

keywords: *Shared-housing arrangements* | *Dementia* | *Quality of life*

Mit der steigenden Zahl älterer, pflegebedürftiger Menschen, insbesondere mit der Diagnose einer Demenzerkrankung, steigt auch die Zahl der Leistungsanbieter in der pflegerischen Langzeitversorgung. Insbesondere Pflegeheimbetreiberinnen[1] bedienen den gewachsenen Bedarf. Zwischen 1999 und 2007 ist die Anzahl von Pflegeheimen um 23,6% (eigene Berechnung; Statistisches-Bundesamt 2002, 2009) gestiegen. Als Alternative zur stationären Versorgung wurden

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[1] In vorliegendem Artikel wird die weibliche Sprachform verwendet, die männlichen Studienteilnehmer sind ausdrücklich mit gemeint. Dieses Vorgehen dient der besseren Lesbarkeit. Die Verwendung der weiblichen Form ist begründet mit der überwiegenden Zahl weiblicher Bewohnerinnen und weiblicher Pflegekräfte.

in der Mitte der 1990er Jahre ambulant betreute Wohngemeinschaften für ältere, pflegebedürftige Menschen mit Demenzerkrankung gegründet (Pawletko 1996). Inzwischen sind diese aus ihrem Nischendasein heraus getreten und haben sich am Markt etabliert (Fischer et al. 2011). Mit der Verbreitung der Wohngemeinschaften entstehen seitens der Aufsichtsbehörden Erwartungen an Qualitätsmindestmaße, wie Personalschlüssel oder -qualifikationen (Villbrand 2010). Neben der Einhaltung von Mindeststandards dienen bewohnerbezogene Outcomeparameter, vor allem Lebensqualität, als Mittel zur Überprüfung der pflegerischen Versorgung (Görres et al. 2008). Bisher ist unklar, wie die Evaluation der Lebensqualität valide durchgeführt werden kann. Ziel des vorgestellten Projektes ist die Identifikation eines geeigneten demenzspezifischen Instrumentes zu Messung der Lebensqualität im Setting von ambulant betreuten Wohngemeinschaften.

HINTERGRUND

Für die wissenschaftliche Einordnung des Projektes ist es notwendig, das Krankheitsbild „Demenz" sowie epidemiologische Merkmale näher zu betrachten. Ein besonderes Augenmerk wird auf Schätzungen für die zukünftige Entwicklung gelegt. Anschließend wird ein Überblick über das Setting ambulant betreuter Wohngemeinschaften und deren Charakteristika gegeben. Im letzten Absatz wird der Begriff Lebensqualität näher erläutert. Hierbei werden insbesondere Möglichkeiten und Grenzen in der Bestimmung der demenzspezifischen Lebensqualität dargestellt. Zunächst wird das Krankheitsbild „Demenz" näher betrachtet.

Demenz

Laut den diagnostischen Leitlinien der International Classification of Disease 10 (ICD 10) charakterisiert im Wesentlichen folgende Voraussetzungen eine demenzielle Erkrankung:

- chronische oder fortschreitende Krankheit des Gehirns mit Störung vieler höherer kortikaler Funktionen, einschließlich Gedächtnis, Denken, Orientierung, Auffassung, Rechnen, Lernfähigkeit, Sprache und Urteilsvermögen.
- Begleiterscheinungen sind Veränderung der emotionalen Kontrolle, des Sozialverhaltens und der Motivation (DIMDI 2011).

Auf Grund der eher globalen Symptome und der daraus resultierenden erheblichen Beeinträchtigungen des täglichen Lebens ist eine Demenzerkrankung im Frühstadium nur schwer zu identifizieren (Weyerer et al. 2006)). Die mit Abstand häufigste Demenzform ist die des Alzheimer Typs, gefolgt von der vaskulären Demenz (Stoppe 2006). Die Prävalenz von Demenzerkrankungen liegt in der Bundesrepublik Deutschland bei rund 7% (Weyerer & Bickel 2007). Allerdings gibt es deutliche Unterschiede zwischen den Altersgruppen. Mit zunehmendem Alter steigt die Prävalenz der erkrankten Personen.

Ziegler & Doblhammer (2009) werten in ihrer Studie Krankenkassendaten aus dem Jahr 2002 aus. Sowohl Prävalenz als auch Inzidenz werden nach der auf Basis ICD 10 (DIMDI 2011) diagnostizierten Demenz berechnet. Dieses Vorgehen setzt voraus, dass auch tatsächlich alle demenzerkrankten Menschen ärztlich diagnostiziert wurden. Schäufele et al. (2008) stellen in ihrer Studie fest, dass in Privathaushalten lediglich bei 49%, der von ihnen selbst als demenzerkrankt diagnostizierten Personen, jemals eine ärztliche Abklärung der kognitiven Einschränkungen stattgefunden hat. Aus den ärztlichen Untersuchungen resultiert bei insgesamt nur 31,3% der Studienteilnehmerinnen mit einer Demenz auch tatsächlich eine diagnostizierte Demenz. Auf diesen Erkenntnissen beruhend, dürfte die Zahl der tatsächlich an einer Demenz leidenden Personen deutlich höher sein, als die in den beiden zuvor dargestellten Studien identifizierten Prävalenzen.

Aktuellen Schätzungen zufolge wird die Zahl der hochaltrigen Menschen in Deutschland bis zum Jahr 2060 deutlich zunehmen (Statistisches-Bundesamt 2009). Betrug der Anteil der über 80-Jährigen im Jahr 2008 5%, wird dieser, nach aktuellen Berechnungen, bis zum Jahr 2060 auf 14% (9-10 Mio. Menschen) steigen (Statistisches-Bundesamt 2009). Wie bereits erläutert, geht ein höheres Alter mit einer höheren Wahrscheinlichkeit einher, an einer Demenz zu erkranken. Dies bedeutet, dass für die künftigen Jahre durch den demografischen Wandel und ohne derzeit vorhandene kurative Therapie (Herholz & Zanzonico 2009; Qaseem et al. 2009) mit einer deutlichen Zunahme der absoluten Anzahl an Demenzerkrankten gerechnet werden muss. Ausgehend von derzeit rund 1,1 Millionen Menschen (Ziegler & Doblhammer 2009; Weyerer & Bickel 2007) schätzt Bickel (2009), dass die Zahl der betroffenen Personen im Jahr 2050 auf rund 2,6 Millionen Menschen steigen wird. Das deutsche Gesundheitswesen steht somit vor der großen Herausforderung, die steigende Zahl der demenzerkrankten Personen zu versorgen.

Ambulant betreute Wohngemeinschaften

Die Versorgung pflegebedürftiger Menschen erfolgt in Deutschland vorwiegend in der eigenen Häuslichkeit bzw. in der Häuslichkeit von Familienangehörigen oder innerhalb von Pflegeheimen. Während die Mehrzahl der Leistungsempfänger nach dem Pflegeversicherungsgesetz (SGB XI) ambulant und zumeist auch von Angehörigen versorgt wird (Statistisches-Bundesamt 2008), stellen demenzielle Erkrankungen einen wichtigen Grund für den Übergang in die vollstationäre Heimversorgung dar (Schäufele et al. 2008; Fischer & Wolf-Ostermann 2008; Bickel 2000).

Traditionelle Versorgungsformen stehen immer wieder in der Kritik (Schaeffer & Wingenfeld 2008; Schneekloth & Wahl 2006). Auch als Reaktion auf diese Kritik haben sich als neue Versorgungsform für ältere pflegebedürftige Menschen mit Demenz ambulant betreute Wohngemeinschaften (Pawletko 1996) etabliert. Mit ihrem Angebot stellen sie einen Zwischenschritt zwischen der ambulanten Versorgung in der eigenen Häuslichkeit und der vollstationären Versorgung in Heimen dar. Sie sind dadurch gekennzeichnet, dass eine Gruppe von in der Regel sechs bis acht pflegebedürftigen Menschen (Wolf-Ostermann 2007; Wolf-Ostermann & Fischer 2010) mit unterschiedlichem Pflege- und Versorgungsbedarf in einer WG zusammenlebt.

Die überwiegende Zahl der Pflegebedürftigen in Wohngemeinschaften sind von einer Demenz betroffen (Wolf-Ostermann & Fischer 2010; Wolf-Ostermann et al. 2009). Diese Versorgungsform unterscheidet sich durch das selbstbestimmte Zusammenleben der Gruppe grundlegend von traditionellen Versorgungsformen; es gilt das Ziel der Erhaltung von Normalität und die Schaffung einer familiären Umgebung unter Einbezug der Angehörigen (Fischer et al. 2011). Da es sich bei der ambulant betreuten WG um ein noch recht junges Setting handelt, das gerade erst den „Schritt in die Regelversorgung" vollzogen hat, gibt es nur wenige wissenschaftliche Erkenntnisse darüber. Die wenigen vorliegenden Daten beziehen sich überwiegend auf Berlin (bspw. Wolf-Ostermann 2007; Wolf-Ostermann & Fischer 2010). Noch völlig unklar ist, ob die in den Konzepten und Praxisleitfäden zu Wohngemeinschaften behauptete höhere Lebensqualität gegenüber traditionellen Versorgungsforme[2] tatsächlich vorherrscht und wie sie valide gemessen werden kann.

Lebensqualität

Ähnlich wie Autonomie (dazu Wulff et al. 2010) ist Lebensqualität eines der Konstrukte, die häufig in der Versorgung von pflegebedürftigen Menschen mit und ohne Demenz als ein primärer Outcomeparameter angesehen werden (Volicer 2007; Ettema et al. 2005). Görres et al. (2008) regen darüber hinaus an, Lebensqualität anstelle von Pflegequalität zu messen, um somit die subjektive Sicht der Nutzer zu stärken. Allerdings ist die theoretische Diskussion, was unter dem Begriff „Lebensqualität" zu verstehen ist, noch nicht beendet. Es existieren keine verbindlichen Vorstellungen eines annehmbaren Lebenszustandes, der sowohl objektive als auch subjektive Komponenten enthält. Neben dem Fehlen einer einheitlichen Definition des Terminus „Lebensqualität" ist die Abgrenzung gegenüber dem Begriff „Wohlbefinden" gleichfalls unklar. Während die Bezeichnung „Lebensqualität" aus dem Bereich der Sozialwissenschaften und Medizin stammt, wird der Begriff „Wohlbefinden" in der Psychologie verwendet (Schumacher et al. 2003).

Eine Abgrenzung beider Begriffe ist kaum möglich, da sie in der Literatur häufig wechselseitig verwendet werden (Marek 1989). Weit verbreitet ist allerdings die Ansicht, dass in dem Konzept „Lebensqualität" das Konzept „Wohlbefinden" integriert sei (Pieper & Vaarama 2008; Gerritsen et al. 2007; Lawton 1991). Schon länger herrscht unter vielen Forschern Einigkeit, dass Lebensqualität als eine Kombination aus subjektiven und objektiven Faktoren verstanden wird (Bullinger 2000; Frytak 2000). Als Ausgangspunkt objektiver Einflüsse gilt das „Ressourcenkonzept" von Erikson & Feichtner (1974). Darin beschreibt Erikson, dass jeder Mensch über Ressourcen verfügt, die gezielt zur Verbesserung der Lebensbedingungen eingesetzt werden können. Darüber hinaus beeinflussen Determinanten, wie das Wohnumfeld oder Umwelteinflüsse, gleichfalls die Lebensqualität von Personen. Nach diesem Prinzip lässt sich Lebensqualität über personengebundene Ressourcen und mittels Einflüssen durch die Umwelt und Infrastruktur objektiv ermitteln (Erikson & Feichtner 1974).

Die ausschließliche Bestimmung der Lebensqualität auf Grund objektiv beobachtbarer Ressourcen steht wiederholt in der Kritik (Kunz 2006). Vielmehr wird eine kombinierte Evaluation empfohlen, die sowohl objektive Merkmale als auch subjektives Wohlbefinden beinhaltet (Innes & Surr 2001; Lawton 1997; Bulman 1996). Das Erleben von subjektivem Wohlbefinden wird mit einem Abgleich von einer individuellen Erwartung und des tatsächlich eingetretenen Ereignisses gleichgesetzt (Diener & Suh 1997). Die inhaltliche Fokussierung auf die Betroffenenperspektive setzt sich in der Bewertung der Lebensqualität fort. Diese beiden unterschiedlichen Ansätze und die uneinheitliche Gewichtung in der Kombination daraus führen dazu, dass es eine Vielzahl an Lebensqualitätinstrumenten gibt. In der aktuellen Debatte der Lebensqualitätsmessung herrschen verschiedene limitierende Faktoren bezüglich der validen Bestimmung demenzspezifischer Lebensqualität vor. Die Versorgung von pflegebedürftigen Menschen mit einer Demenzerkrankung erfolgt in Wohngemeinschaften nach speziell auf die Bedürfnisse von demenzerkrankten Menschen abgestimmten Betreuungskonzepten. Aus früheren Studien (bzw. Eppstein et al. 1992; Hammond & Aoki 1992) ist bekannt, dass krankheitsspezifische Interventionen auch durch krankheitsspezifische Instrumente evaluiert werden sollten. Selei (2001) begründet dies damit, dass durch die Reduktion auf relevante Dimensionen, neben der stringenteren Evaluation, die Belastung für die Betroffenen reduziert wird. Dies ist insbesondere bei einer vulnerablen Population, wie es demenzerkrankte Menschen sind, von ethischer Bedeutung. Allerdings schränkt sie jedoch ein, dass durch krankheitsspezifische Instrumente ein Vergleich zwischen verschiedenen Erkrankungen nicht mehr möglich ist.

Die Entwicklung von demenzspezifischen Lebensqualitätsinstrumenten hängt von dem jeweiligen Verständnis des Konzeptes „Lebensqualität" und dem Kontext ab, in welchem es genutzt werden soll (McSweeny & Creer 1995). Das mündet darin, dass in den letzten Jahren eine Vielzahl von demenzspezifischen Lebensqualitätsinstrumenten für jeweils eine bestimmte Population und eine bestimmte Versorgungsform entwickelt wurden (Gertz & Berwig 2008; Schölzel-Dorenbos et al. 2007; Ettema et al. 2005). Die Bestimmung der demenzspezifischen Lebensqualität ist durch Fremd- und Selbsteinschätzung und durch Beobachtung von geschulten Raterinnen möglich (ebd.). Bei Fremdeinschätzungen werden Personen befragt, die den Betroffenen nahe stehen, wie bspw. Familienmitglieder oder die betreuende Pflegekraft (Brod et al. 1999). Durch Fremdeinschätzungsinstrumente wird zwar die Anzahl der Non-Responder, insbesondere auch im fortgeschrittenen Stadium einer Demenz (Nnatu 2004) reduziert, aber die Bewertung an sich bringt Schwierigkeiten mit sich. So kann die Beziehung zwischen der Proxy-Raterin und der betroffenen Person eine objektive Beobachtung erheblich erschweren. Insgesamt werden Selbsteinschätzungen trotz der Limitationen durch die fortschreitenden kognitiven Einschränkungen von

[2] Bspw. **Fachstelle ambulant betreuter Wohnge-meinschaften in Bayern (o.J.):** *Praxisleitfaden für die Qualitätssicherung in ambulant betreuten Wohngemeinschaften. Bayerisches Staatsministerium für Arbeit und Sozialordnung, Familie und Frauen.* Online unter: http://www.verwaltung.bayern.de/Anlage3486146/PraxisleitfadenfuerdieQualitaetssicherunginambulantbetreutenWohngemeinschaften.pdf, http://www.webcitation.org/5vtwS2iCk (21.01.2011)

Demenzerkrankten als beste Art der Lebensqualitätsmessung erachtet (Trigg et al. 2007) und gelten als anerkannte Methode (Nnatu 2004; Bullinger 2000). Auf Grund des Nachlassens von Erinnerungsvermögen, der zeitlichen Orientierung, der Selbsteinschätzung und der Kommunikationsfähigkeit der demenziell Erkrankten, ist die Messung der demenzspezifischen Lebensqualität eine Herausforderung. Eine valide Messung ist nicht ohne weiteres möglich (Banerjee et al. 2009; Selei 2001). Die Auswahl von Lebensqualitätsinstrumenten in empirischen Studien erfolgt neben der Perspektive der Lebensqualitätsbestimmung auch auf Grund guter psychometrischer Daten in einem bestimmten Setting (Gaugler 2006; Spector & Orrell 2006). Für ambulant betreute Wohngemeinschaften in Deutschland fehlt bislang eine Grundlagenstudie zur Einschätzung der Aussagekraft verfügbarer demenzspezifischer Lebensqualitätsinstrumente. Erschwert wird die Auswahl eines geeigneten Instrumentes durch die Tatsache, dass Wohngemeinschaften eine ambulante Wohnform darstellen. Durch das Zusammenleben mehrerer Personen hat sie allerdings gleichzeitig institutionellen Charakter. Üblicherweise werden Lebensqualitätsinstrumente für den ambulanten oder stationären Einsatz entwickelt (Gertz & Berwig 2008; Schölzel-Dorenbos et al. 2007; Ettema et al. 2005).

Die Auswahl eines geeigneten Instrumentes ist demnach nicht geklärt und gleichzeitig aber notwendig, denn nur mit validen Lebensqualitätsinstrumtenen können Rückschlüsse auf die Versorgungsqualität in dem neuen Setting gezogen werden.

MATERIAL UND METHODEN

Ziele

Das Vorhaben ist ein eigenständiges Teilprojekt des Projektes WGQual (Gräske et al. 2010). Im Projekt WGQual wird eine wissensbasierte und dezentrale Qualitätsentwicklung in Berliner Wohngemeinschaften durchgeführt und evaluiert. In dem hier vorgestellten Dissertationsprojekt wird die Erarbeitung wissenschaftlicher Grunderkenntnisse fokussiert, welche Voraussetzung für eine valide Evaluation pflegerischer Handlung in der Demenzversorgung ist. Eine Möglichkeit, die zunehmend empfohlen wird, ist dabei die Messung der demenzspezifischen Lebensqualität. Die Forschungsziele in der Arbeit sind:

- Erfassung aller Lebensqualitätsinstrumente, welche konzeptuell für ambulant betreute Wohngemeinschaften geeignet sind
- Empirische Überprüfung der Gütekriterien im Setting ambulant betreuter Wohngemeinschaften
- Vergleich der Fremd- und Selbsteinschätzungsinstrumente in ambulant betreuten Wohngemeinschaften und
- Erfassung von Einflussfaktoren zur Steigerung der demenzspezifischen Lebensqualität von Bewohnerinnen in ambulant betreuten Wohngemeinschaften.

So soll festgestellt werden, welches Instrument für den validen Einsatz in dem noch neuen Setting der ambulant betreuten WG geeignet ist. Die zu untersuchende H0-Hypothese zum Hauptziel des Vorhabens ist:

> *Die (gemessene) Lebensqualität von Bewohnerinnen ambulant betreuter Wohngemeinschaften ist unabhängig vom eingesetzten demenzspezifischen Lebensqualitätsmessinstrument.*

Vorgehen

Um eine fundierte Aussage hinsichtlich des Hauptforschungszieles machen zu können, ist es erforderlich, alle Bewohnerinnen der an der Studie WGQual teilnehmenden ambulant betreuten Wohngemeinschaften in das Dissertationsvorhaben einzuschließen. Das Dissertationsvorhaben gliedert sich in folgende Schritte:

(i) Systematische Literatursuche
(ii) Datenerhebung und
(iii) Datenauswertung

Systematische Literatursuche

Um in dem Promotionsvorhaben die Vollständigkeit bei der Auswahl der demenzspezifischen Lebensqualitätsinstrumente sicherzustellen, ist eine systematische Literaturstudie in den für den pflegerischen Kontext wichtigsten Datenbanken unumgänglich. Als internationale pflegerelevante Datenbanken gelten Cinahl, Embase, Gerolit, PsycInfo & PubMed (Kleibel & Mayer 2005). Vor dem Hintergrund der fehlenden einheitlichen Vorstellung von dem Terminus Lebensqualität wird eine breite Suchstrategie verwendet: „Alzheimer“ OR „Dementia“ OR „Demenz“ AND „Quality of Life“ OR „Lebensqualität“. Es werden ausschließlich sprachliche Limits gesetzt. In die Studie werden deutsch- und englischsprachige Publikationen ohne zeitliche Begrenzung eingeschlossen. Die erzielten Treffer werden nach Studien durchsucht, in denen demenz-spezifische Lebensqualität mittels standardisierter Instrumente gemessen wird.

Die identifizierten Instrumente werden hinsichtlich der vom Lohr (2002) vorgeschlagenen Attribute zum wissenschaftlichen Instrumentenreview (Konzept und Messung, Reliabilität, Validität, Änderungssensibilität, Interpretationsmöglichkeit, Aufwand für die Auskunftgebenden und Administration, Alternative Formulare und Übersetzungen und kulturelle Anpassungen) überprüft. Abschließend wird nochmals explizit nach einer deutschen Fassung der Instrumente gesucht. Als Quellen kommen u.a. die Patient-Reported Outcome and Quality of Life Instruments Database (www.proqolid.org) oder die jeweiligen Autorinnen direkt in Frage. Es wird überprüft, ob für die deutschen Versionen Gütekriterien für das Setting ambulant betreuter Wohngemeinschaften verfügbar sind.

Datenerhebung

Grundsätzlich werden alle Bewohnerinnen der teilnehmenden Wohngemeinschaften in Berlin in die Untersuchung eingeschlossen. Voraussetzung ist die informed consent, ggf. von gesetzlichen Vertreterinnen. In der empirischen Datenerhebung werden vier in deutscher Sprache verfügbare Lebensqualitätsinstrumente der Fremdeinschätzung und zwei Instrumente der Selbsteinschätzung eingesetzt, die inhaltlich

die Hauptmerkmale von Wohngemeinschaften (Fischer et al. 2011) wiedergeben. Die Begrenzung auf vier Instrumente zur Beantwortung der Hauptforschungsfrage ist einerseits aus Praktikabilitätsgründen erforderlich. Andererseits könnte der Einsatz weiterer Instrumente die Akzeptanz der Studienteilnehmerinnen verringern. Der Einsatz von Beobachtungsinstrumenten wird auf Grund des deutlich höheren Zeitaufwandes und der zuvor zu absolvierenden Schulungen ausgeschlossen. Eine vorab durchgeführte a priori Fallzahlplanung mittels G-Power V 3.1.2 (Faul et al. 2009) ergibt eine notwendige Studienpopulation von 127 Teilnehmerinnen. Es wird von einem für derartige Studien üblichen globalen α-Fehler von 5% (Bock 1998) ausgegangen. Aufgrund der Problematik multipler Tests (Mehrfachvergleiche zwischen den gewählten Instrumenten) wird eine Bonferoni Korrektur durchgeführt (Norman & Streiner 2000). Somit ergibt sich ein korrigierter α-Fehler von 0,008%. Bei einer avisierten Power von 80% wird eine mittlere Effektstärke von Cohens q = 0,3 gewählt. Beides ist für derartige Fragestellungen üblich und lässt zudem Rückschlüsse auf praxisrelevante Effekte zu (Cohen 1992). Der Zugang zu den Bewohnerinnen von ambulant betreuten Wohngemeinschaften in Berlin ist über die Einbettung in das Projekt WGQual sichergestellt. Die standardisierte Datenerhebung erfolgt nach einer mehrmaligen Schulung der Datenerheberinnen zu den Besonderheiten der einzelnen Instrumente als auch zur Erfassung des Ongoing-Consent (Buterworth 2005) der Teilnehmerinnen. Bei der Überprüfung des Ongoing-Consent werden die Raterinnen auf (non-)verbale und/oder vegetative Zeichen achten, die auf eine Ablehnung der Befragung schließen lassen und werden dann gegebenenfalls das Interview beenden. In quantitativen face-to-face Interviews werden geschulte Raterinnen des Projektes WGQual die Befragungen der Bewohnerinnen und von deren Pflegekräften durchführen. Neben der Einschätzung zur Lebensqualität werden auch Daten zum Vorliegen einer Demenz erhoben. Dazu zählt das Vorliegen einer ärztlich diagnostizierten Demenz. Die kognitive Leistungsfähigkeit wird mittels Mini Mental State Examination Folstein et al. (1975) festgestellt und der Schweregrad der Demenz mittels Global Detoriation Scale bzw. Functional Assessment Staging (Reisberg et al. 1982; Reisberg 1988). Der Umgang mit den Studienteilnehmerinnen sowie den erhobenen Daten wurde von der Ethikkommission der Deutschen Gesellschaft für Pflegewissenschaften begutachtet. Ein positives Votum liegt vor.

Datenanalyse

Zur Validierung der ausgewählten Instrumente im speziellen Setting der ambulant betreuten WG erfolgt eine Überprüfung der klassischen Gütekriterien Objektivität, Reliabilität und Validität. Für die Überprüfung des Kriteriums der Validität bei Fremdeinschätzungen im Setting der ambulant betreuten WG als primärem Forschungsziel dieses Dissertationsvorhabens erfolgt eine Überprüfung der Inhalts- und Konstruktvalidität. Für eine Überprüfung der Kriteriumsvalidität fehlt ein eindeutiges und validiertes Außenkriterium, so dass diese Überprüfung nicht vorgenommen werden kann. Die am einfachsten durchzuführende Form der Validitätsprüfung ist die Überprüfung der Face Validität bzw. Inhaltvalidität (Bortz & Döring 2009; LoBiondo-Wood & Haber 2005).

Der Konstruktvalidität kommt bei der Überprüfung von Testgütekriterien ein besonderes Gewicht zu (Bortz & Döring 2009). Die Überprüfung hierzu erfolgt nach dem Monotrait-Multimethod-Prinzip. Hierbei erfolgt eine Überprüfung der konvergenten Validiät der verschiedenen Lebensqualitätsmessinstrumente. Eine konvergente Validität liegt vor, wenn die konvergenten Validitätskoeffizienten (Korrelationskoeffizienten) signifikant größer als Null sind (Bortz & Döring 2009). Nach Weise (1975) sind Validitäten zwischen 0,4 und 0,6 als mittelmäßige und über 0,6 als hohe Korrelationen zu bewerten. Die statistische Gegenüberstellung der Selbst- und Fremdeinschätzungsinstrumente erfolgt ebenfalls mittels Korrelationskoeffizienten. Dadurch lassen sich Rückschlüsse hinsichtlich unterschiedlicher Bewertungen der Lebensqualität der kognitiv eingeschränkten Bewohnerinnen ziehen. Die Lebensqualität sowie mögliche beeinflussende Faktoren werden hinsichtlich ihrer stochastischen Unabhängigkeit mittels χ^2-Test bzw. exakter Test nach Fisher untersucht (Ostermann & Wolf-Ostermann 2005).

ERWARTETE ERGEBNISSE

Die systematische Literaturrecherche wird dazu führen, dass verschiedene Instrumente zur Messung der Lebensqualität identifiziert werden. Der Einsatz der ausgewählten Instrumente wird erwartungsgemäß nicht zu einem einheitlichen Ergebnis führen. Dennoch wird davon ausgegangen, dass das primäre Forschungsziel – die Identifikation eines geeigneten Instrumentes – erreicht wird. Neben der wissenschaftlichen Relevanz für weitere outcomeorientierte Forschungsvorhaben in ambulant betreuten Wohngemeinschaften ist das übergreifende Ziel der Arbeit, für eine vulnerable und wachsende Bevölkerungsgruppe eine Verbesserung der Versorgungsqualität zu ermöglichen und somit einen Beitrag zum Erhalt und zur Stärkung der Lebensqualität zu leisten.

Durch eine valide Überprüfung der Lebensqualität können durch Erbringer von Pflegeleistungen auf die Bewohnerinnen bezogene Handlungsempfehlungen abgeleitet werden, die die Pflegequalität und somit das Bewohnerinnenoutcome verbessern.

Neben der Erhöhung der individuellen Lebensqualität können Pflegedienste dadurch ihren Stellenwert am Pflegemarkt steigern. Durch das Fehlen einer flächendeckenden Evaluation der Lebensqualität der Bewohnerinnen, führt das Vorliegen solcher Daten zu einem marketingstrategischen Vorteil, mit dem bewusst um Klienten geworben werden kann. Es ist weiterhin zu vermuten, dass ähnlich wie im stationären Bereich bereits geschehen, eine kontinuierliche Überprüfung des Wohlbefindens der demenzerkrankten Bewohner durch den Medizinischen Dienst der Krankenkassen gefordert wird.[3] Betroffene Personen bzw. deren Angehörige/Betreuerinnen

[3] **MDS (Medizinischer Dienst des Spitzen-verbandes Bund der Krankenkassen e.V.) (Hrsg.) (2009):** *Qualitätsprüfungs-Richtlinien –MDK-Anleitung – Transparenzvereinbarung. Grundlagen der MDK-Qualitätsprüfungen in der stationären Pflege*. Online unter: ttp://www.mds-ev.de/media/pdf/2010-02-16-MDK-Anleitung_stationaer.pdf, http://www.webcitation.org/5vtxZpiM9 (21.01.2011)

werden durch das Berliner Wohnteilhabegesetz (Abgeordnetenhaus 2010) in ihrer Selbstbestimmung gestärkt. Dadurch entsteht ein neuer Wettbewerb, in welchem eine regelhafte Überprüfung der Lebensqualität ein ausschlaggebender Punkt für oder gegen den Einzug in eine WG sein kann.

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GESUNDHEITSÖKONOMIE

PRIVATISATION OF PUBLIC HEALTH SERVICES AT EUROPEAN HEALTH MARKETS FROM A LAW AND ECONOMICS PERSPECTIVE

Privatisierung öffentlicher Gesundheitsdienstleistungen auf europäischen Gesundheitsmärkten aus Sicht der ökonomischen Theorie des Rechts

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Abstract

European health markets are undergoing transformation in the aftermath of the deregulation, liberalisation and privatisation of institutions of general public interest. A health care system is characterised by complex structures and a functioning interaction between the actors and institutions, which are reflected in the health care structures. Privatisation of public hospitals is altering the role of government in healthcare. This article underlines the importance, analysing such decision with the principles of law and economics. In this case, the application of economic theory of law on the European integration means to seek for justifications for a common European «health market» and to analyse the role of the European Union on national health systems. This proposal is not about whether, according to the German Federal Constitutional Court's ruling on the Treaty of Lisbon, German principles of government are affected inadmissible, particularly in the social state principle. It is about whether the use of social state principle of German coinage is suitable to identify limitations and liberties in the European integration process. This paper attempts to analyse the explanation of social and legal norms based on economic patterns of interpretation in order to investigate changes to the healthcare mandate in the European healthcare sector and their consequences for national government activity.

keywords: *Privatisation of public hospitals | healthcare systems | social state principle | economic theory of law | emergence of a European Union's healthcare mandate*

Zusammenfassung

Europäische Gesundheitsmärkte sind im Umbruch als Folge von Deregulierung, Liberalisierung und Privatisierung von Einrichtungen des allgemeinen öffentlichen Interesses. Ein Gesundheitswesen ist durch komplexe Strukturen und ein funktionierendes Zusammenwirken der beteiligten Akteure und Institutionen charakterisiert, welche sich in den Versorgungsstrukturen niederschlagen. Privatisierungen öffentlicher Krankenhäuser verändern dabei die Rolle des Staates im Gesundheitswesen. Dieser Aufsatz unterstreicht die Bedeutung der Überprüfung solcher Entscheidungen anhand der Rechtsökonomik. Die Anwendung der ökonomischen Theorie des Rechts auf den europäischen Integrationsprozess bedeutet hier, nach Rechtfertigungen für einen gemeinsamen europäischen „Gesundheitsmarkt" zu suchen und die Rolle der Europäischen Union im Hinblick auf die nationalen Gesundheitssysteme zu konkretisieren. Mit der Rechtsökonomik wird nicht untersucht, ob nach dem Urteil des Bundesverfassungsgerichts der Vertrag von Lissabon in deutsche Staatsprinzipien, insbesondere das Sozialstaatsprinzips unzulässig eingreift. Es geht darum, ob die Anwendung des Sozialstaatsprinzips deutscher Prägung geeignet ist, Grenzen und Freiheiten im europäischen Integrationsprozess aufzuzeigen. Gegenstand des Aufsatzes ist die Anwendung ökonomischer Instrumentarien zur Analyse sozialer und rechtlicher Normen, um Veränderungen im Gesundheitswesen mit Blick auf einen im Entstehen begriffenen Versorgungsauftrag der europäischen Union im Gesundheitswesen mit seinen Auswirkungen auf die nationalen Systeme zu untersuchen.

Schlüsselwörter: *Privatisierung öffentlicher Krankenhäuser | Gesundheitssysteme | Sozialstaatlichkeit | Ökonomische Theorie des Rechts | Versorgungsauftrag der Europäischen Union im Gesundheitswesen*

In the aftermath of the deregulation, liberalisation and privatisation of institutions of general public interest the healthcare markets of member states of the European Union (EU) are undergoing transformation (Janoska 2009, On the implications for the hospital management, see Braun von Reinersdorff (2007)). The change from a state that provides services to a state that ensures the provision of services from others, represents a paradigm shift that is tantamount to «slimming the state» (Janoska 2009). In his special report on the future of the state

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«The Economist» (2011) recently pointed out: «How to slim the state will become the great political issue of our times». [1] The question is whether and to what extent the state is losing its influence on the health structures. In this specific market segment, the state provision of services can only be transferred to other institutions if it is guaranteed that these institutions are providing health services as good or better. The failure of the market will bring the state to take the power back on and ensure supply of health care goods and services. The transformation to a guarantor state inevitably leads to the question whether this transformation process creates a mandatory of the European Union to build a framework in which member states comply with the service mandate towards their own citizens in the area of health under changed conditions. If (partial) transfers of public service to private actors in the hospital sector are allowed, it is not far to the problem that this transference leads also to a transition into EU competence(Janoska 2009). Indeed, looking at services of general interest according to the Protocol No. 26 of the Treaty on European Union and the Treaty on the Functioning of the European Union as key element in the European social policy, [2] there is already a responsibility of the EU (Eichenhofer 2010) and, actually becomes stronger the more it includes an increased privatisation of social security organisations (Chwaszcza 2008). In other words, a separate order of the EU gains strength to an extent where the national organisation of social security systems will lose some of their legitimacy (Chwaszcza 2008), especially in case of the withdrawal of member states from public service structures.

The issue of safeguarding social benefits is closely linked to the question of which duties the state in health care and whether that definition was codified in the constitutions of the member states (Janoska 2009). In Germany the social state principle is understood as a creative mandate for lawmakers authorising and obliging them to shape and influence society in the interest of social justice (Kingreen 2003; Hantrais 2007; Heinig 2008). The mandate is derived from the social state principle and is subject to two reservations: the reservation of «what is feasible» and the reservation of «what is desired». The reservation of «what is feasible» may be described in greater detail with «what is financially feasible». It stands for the specific question of whether the privatisation process can be measured by economic efficiency. Instead, the reservation of «the desired» will be effective when it comes to the examination of the legislative creative scope in the exercise of the mandate («will to act»; Kingreen 2003; Heinig 2008; Janoska & Thöni 2009). Contrarily, it is hardly compatible with the closed structure of a social «preservation of the status quo» in the healthcare system (Janoska 2009). The openness and the dynamics of such a principle can be used as a stimulus for creating a common European healthcare market (Janoska 2009). The comparison with how other member states address the problem of ensuring health care, allows the member state in turn, an orientation on the general European development with a view to exhausting the potential of the national healthcare system on a long-term basis (Janoska 2009).

The social state principle also provides the opportunity to deal with the constitutional principles in social, health and other policies of the EU (Janoska 2009). Important changes in various policies of the member states are caused by emergence of a sovereign supranational entity. An increase of freedom determines the ongoing process of political and legal transformation more than previous historical events. Concepts such as subsidiarity, decentralisation and regionalisation are not only used to justify the existence and autonomy of local units in a larger alliance. Rather, with regard to the convergence of different political systems and different geographic entities also the instruments of legal harmonisation and unification have been established (Carbonara & Parisi 2008). This paper attempts to analyse the explanation of social and legal norms based on economic patterns of interpretation in order to investigate changes to the healthcare mandate in the European welfare and healthcare sector and their consequences for national government activity.

BACKGROUND

Through creation of new, uniform law, Europe has a system-building effect in many fields of law. At the same time, the European Single Market leads to increased social interactions of Europeans among each other. These interactions are influenced by legal norms and the respective cultural norms systems. The fact that such legal and social norms must comply with norms and standards in other European member states gives rise almost automatically to questions about their compatibility, stability and evaluation, which have to be answered within the context of European integration. The underlying argument is that member states in an expanded community continue to differ in their policy responses to common social problems in healthcare systems while being increasingly constrained by EU law and EU regulation (Dienel & Overkämping 2010). These constraints refer on economic regulation, social regulation, competition law and the legal system. Regulation exists to influence industry, organisations, and individuals to modify their behaviour, to gain compliance with the law, and ultimately, to achieve desired outcomes (Veljanovski 2010b). Yet it operates in a world where the law is imperfect, enforcement and compliance costly, resources limited, and the regulator has discretion. Regulation has two other features – it generates winners and losers; and its creation and enforcement are the outcome of political and legal processes (Morlok 1998; Bizer 2002; Veljanovski 2010b). The underlying choice is rarely between a free market and public regulation: «It is between two methods of public control – the common law system of privately enforced rights and the administrative system of direct public control - and should depend on a weighing of their strengths and weakness in particular contexts» (Posner 2007, p. 389).

Economic regulation assumes that there are no overtly economic issues affecting firm performance, industry structure, pricing, investment, outputs and so on. Indeed is economic regulation concerned with the principles and techniques for regulating a utility which does not face effective competition

[1] *The future of the state, Taming Leviathan*. In: The Economist, vol. 398 no. 8725, London: The Economist Newspaper Limited

[2] *Treaty on the European Union and Treaty on the Functioning of the European Union* (Protocol No. 26), Official Journal of the EU, C83, Volume 52, 2010, (p 308)

(Veljanovski 2010a). Social regulation embraces health and safety, environmental, anti-discrimination and other laws. This category of regulation does not have overt economic objectives but does have economic effects, costs, and benefits. These permit to evaluate the economic impact and the desirability of specific approaches to social regulation (Veljanovski 2010a). The legal system with its rules, procedures, and enforcements provides an important backdrop to regulatory laws, and can often determine their effectiveness and legitimacy. Economists typically deal with this area in the field called economic analysis of law which looks, for instance, at the economics of contract and property laws, and especially at the basic legal institutions of a society (Veljanovski 2010a).

Already in connection with the Single market plans the EU tried hard to develop an independent socio-political agenda and to set priorities within this frame. This agenda has become more concrete in the direction of central social-juridical proposed reforms of numerous member states. Started in 2000 the Lisbon process should develop the EU within decade to the advanced area of a knowledge-based economy. In particular with this process the EU seemed to be the actress of a global social-economic policy which took care of the integration of its economy, to social-political and occupation-political elements. In this context the social politics experienced a strong revaluation (Hantrais 2007). Thus, the efforts to deepen the social security are understood as a part of an economy and of a labour-political and socio-political coordination process of the social-economic governance. Only because of that the EU commission can formulate that the common social values are an authoritative component of the European identity, because the European unification process has rested from the outset on these values (Eichenhofer 2010).

Besides, a key position came up for the Open Method of Coordination (OMC). As a new non-legislative approach to European governance it is characterised «by flexibility, decentralized decision-making, nonbinding coordination, benchmarking, and policy-learning, and by procedural rather than harmonization» (Majone 2008, p. 59). The European Council supported the instrument of the OMC in order to handle some convergence of sensitive national policies, such as social policy (Majone 2008). The aim is to modernize social protection systems (Dienel & Overkämping 2010). This aim contains an instruction for the EU to provide a contemporary social law with a guaranteed future, and how Eichenhofer (2010) stressed, nothing less. The OMC stands for the attempt of consensual and concerted coordination of the social policy of member states. It reveals the necessary action areas and identifies imperfections (Dienel & Overkämping 2010). The program helps to develop a common understanding of social challenges among the member states. It has promoted the spirit of cooperation and willingness to learn from the experiences of other member states. It has created a new dynamic in the continuation and implementation of reforms and supports them with knowledge of practical decision making that is characterized by openness, transparency and participation (Eichenhofer 2010).

For example, in Germany, the provision of hospital services is set primarily by the Social Security Code (SGB), based on

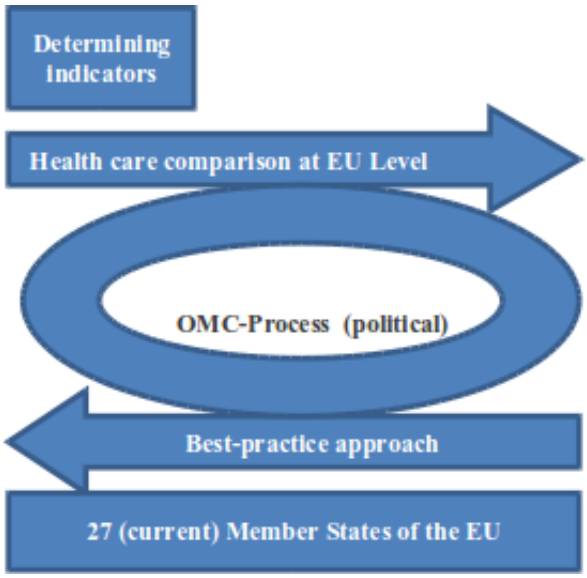

Fig. 1: Correlation between the IMC and a comparison of health systems. Adapted from Jaeckel & Spangenberg (2009, p. 41)

Article 20, paragraph 1 of the German Basic Law (GG). Social security is redistributive; it has to fulfil a basic function that is directly dependent on the economic structural principles of market economy: social security has to enable people to participate in the market exchange of goods and services, if they - from socially laudable reasons - can not generate income (Eichenhofer 2002). In addition, article 74 GG determines that the state regulates measures against dangerous or communicable diseases, admission to medical and other healthcare professionals and medical industry, and the right of the pharmacy system and of the drugs, medical products, alternative means of narcotics and poisons (article 74, paragraph 1, paragraph 19 GG) and, as well, the economic hedging of the hospitals and the regulation of hospitalisation rates (article 74, paragraph 1 paragraph 19a GG). The Bundesverfassungsgericht (German Federal Constitutional Court) arrived at the decision on the Lisbon Treaty that it is only possible to interfere in the German legislation, if the principle of state (given the so-called «eternal guarantee» of article 79, paragraph 3 GG) are not affected (Bundesverfassungsgericht 2009). This raises the question therefore whether the OMC in this area is contrary to the principles laid down in the Bundesverfassungsgericht's ruling. The answer follows from the respective state principle itself (Eriksen & Fossum 2010, especially here: the social state principle). German law values people as humans more than commodities; rather, the German society is organized in a way that the state is allowed to mediate between the groups (Dau-Schmidt 2005). The Germans' commitment to human rights causes them to disdain express discussions of the value of human life and the efficient level of medical care or regulation (Dau-Schmidt 2005). In this case, the principle of social state may be affected by European integration. Instead, the paper examines the question whether the reservations of the «desired» and the «feasible» in the social state principle have found a counterpart in the economic theory of law. In particular, the question should be whether the German social

state principal in conjunction with the principles of economic theory of law is suitable to state the OMC more precisely in the light of the Treaty of Lisbon. Then, the social state principle may fail as an object of an intervention on the part of European integration efforts, because it is already the basis of understanding in the process of the OMC.

METHODS

The methods of law and economics refer to the methods of economics. On the theoretical basis of the neo-classical theory, the basic idea of law and economics is that law should facilitate an increase in social wealth creation through the operation of efficient market relations, and that welfare is maximised efficiently the more state interventions and regulation can be minimised (Head & Mann 2009). The economic approach operates at two different levels. More precisely, one has to differentiate between normative and positive theories (Posner 2007, p. 24).

Normative theories try to derive a model of ideal regulation of the market from economic perspective to form thereby the basic conditions of the market. These theories are based on the basic draughts of economic efficiency and the market failure. They deliver the economic basis for the «theory of the public interest» (Veljanovski 2010a). The positive analysis is an «attempt to explain legal rules and outcomes as they are rather than to change them to make them better» (Posner 2007). The positive results of the economic analysis of law, particularly the forecasts, open discussion about what and how law should be, especially how it is to be understood, because people react differently to different rules (Bizer & Führ 2002). Using statistical and cost-benefit analyses explains the positive theory of the nature and evolution of the law, the regulation and its influence on resource allocation through markets (Veljanovski 2010a). On the other hand the normative economic analysis provides policy proposals and is able to assess social politics. To make recommendations on the desirability of different results, it is first necessary to define the framework. In the economic analysis of law the frame is given by «the efficiency» which is here understood synonymous with the maximisation of social welfare (Schäfer & Ott 2005).

Rational Choice Theory

Human choice is analysed from the position of economics. For it, rational choice theory builds the core. Rational choice theory's basic idea insists that human behaviour can be analysed, as if people strive to maximise their expected use (Pacces & Visscher 2011). Rational behaviour characterises most economic models as a key assumption. As the personification of the rational choice approach the so called *homo oeconomicus* (Gröschner 1998, Eidenmuller2005, Schäfer & Ott 2005) behaves rationally when his decisions are aimed to maximise his welfare (or utility or well-being Salzberger 2008). *Homo oeconomicus* is regarded as a universal model of behaviour, on the basis of which human behaviour in all areas of life can be described and analysed. It stands for the assumption that enterprises and households act rationally and aim at maximizing their profit or benefit respectively. Actors are clear about the objectives pursued and they can formulate the objectives in operational form. They use the available scarce resources in a way to obtain the highest possible level of achievement, i.e. that human behaviour is directed to maximise self-wealth (Salzberger 2008). *Homo oeconomicus'* empirical relevance is controversial. It is pointed out that human behaviour is strongly guided by standards and reflexes rather than rational consideration (Eidenmüller 2005). However, the criticism that the *homo oeconomicus* is «unpsychological» was not without opposition (Pacces & Visscher 2011, p. 101: «Behavioural law and economics points out a number of individual biases in decision-making.»). Special attention deserves the fact that social norms are integrated as restrictions to act in the model of *homo oeconomicus*. In addition, a social norm can be seen as a preference-building date that is taken as a given non-economic item. Rather, it is to explain «average» human behaviour and make prognoses. Economic theory is always interested in the behaviour of groups of individuals. As a counterpart to the model of rational choice models of «bounded» rationality have been developed. In contrast to the mainstream of the models of rational choice, here, individuals are seen as less informed and with less capacity to process problems (Posner 2007).

Nevertheless, a significant advantage of the model of rational behaviour is in its well-defined concept. This can not be said of the construct of irrationality. The mere absence of rationality is not an applicable model of human behaviour. While the world is changing very vibrant, diverse and therefore difficult to predict, the concept of bounded rationality is often said to have a certain vagueness and lack of operability. Moreover, the boundaries between full and «bounded» rationality are flowing, if one considers, that the fact that a decision maker is not fully informed does not contradict the rationality assumption.

This argument can be based not only on the problem of incomplete information but also to a lack of capacity or lack of problem processing capabilities. However, if a participant in the market (*homo economicus*) is not satisfied with his capacities, he will try to solve this problem (for instance, in improving his education) through investment, of course, due to technological restrictions. As usual for investment, this is a risky endeavour. The extent of the limited nature of the problem of processing capacity would appear in this perspective as a result of a decision (under uncertainty) about the extent of investment in human capital. In this respect the boundedness, as defined above, seems to be only conditionally suitable as a criticism of the character of rational behaviour. Salzberger (2008, p. 33) points out, that «. . . the major reason for pre-assuming individual self-wealth maximizing behavior is the simplicity of modeling and applying advanced techniques of analysis, combined with the ideological belief in wealth maximization as the desirable prime collective goal». Nevertheless, for recommendations that are derived from the model of rational choice, one should always keep in mind that they imply the assumption of rational behaviour of the decision makers. It should always be asked whether there is evidence that this assumption is to a particular degree inappropriate. Accordingly, the economic analysis of law is based on this approach. Law and economics can be defined as an application of the rationality principle to the law. Based on the model of an individual which

is rational, comprehensively informed and guided by stable preferences of its own, economic analysis of law determines the consequences triggered by legal norms in legal reality (Eidenmüller 2005; Schäfer & Ott 2005). In short, people respond rationally and with self-interest («utility») to legal rules and legal standards. This model of behaviour is a positive model, not a normative (Eidenmüller 2005; Posner 2007). In this regard, a rational decision contains three elements. First, the actor chooses the option that fits the best to all of his preferences (in his view and under given expectations). Secondly, his expectations must rest on the available information. And thirdly, he collects an optimal amount of information (neither too much nor too little). In short, it is believed, that actors want to increase their expected utility. These benefits will depend on opportunities arising from the relevant income. The maximisation of the expected utility is one limitation of many, such as income, time, and especially the cognitive ability of actors (Pacces & Visscher 2011). According to the rational principle, it is further assumed that actors have transitive preferences and that the preferences of an actor are stable and constant for the period of analysis (Pacces & Visscher 2011).

The rational choice approach introduces the principles of the *methodological individualism*, subordinating that the fundamental unit of the analysis can be only the individual action. Therefore, collective phenomena and social interactions can be understood conceptual also as decisions of individuals (Schäfer & Ott 2005). Furthermore, the rational choice theory assumes the existence of markets which press towards a (general) equilibrium. Prices and other market instruments allocate the scarce resources. Referred to law and economics, one can say that legal rules often make implicitly prices of different behaviour patterns (Cooter & Ulen 2008). Economists assume that the increase of a price of a good or a service leads (*ceteris paribus*) to a decrease of the demand for this good or service. One can apply this idea to the implicit legal prices, while supposing that illegal behaviour decreases if the legal prices (sanctions) rise (Cooter & Ulen 2008).

The rational choice theory is outcome-oriented. To achieve an aim, the actor will take the necessary measures. On the contrary, the social norm theory is act-oriented. That means people act in a certain manner because they agree with the social norms. Rational choice theory assumes that aims and measures are independent of each other. It does not claim to be able to predict all reactions of all people in all situations. The economic analysis of law concerns predictions about the effects of legal rules, because individuals follow their own benefit unaffected by moral categories of duty (Schäfer & Ott 2005). This *methodological individualism* is purely intended as a scientific tool and assumes that the preferences of individuals are relevant, which are given and should not be corrected (Hansjürgens 2002; Schäfer & Ott 2005). It sees the rational and egoistic person acting as the basis for the understanding of rules and institutions. It assumes that organisations are only capable of fulfilling their tasks if they are designed so that the persons acting in them can reach their personal advantage, while pursuing the tasks of the organisation (Schäfer & Ott 2005). Rather, from the view of the *methodological individualism* the object of consideration is not behaviour of systems or institutions, but only the behaviour in institutions (Schäfer & Ott 2005). It follows immediately, that the positive economic analysis of rational behaviour in institutions leads to the possibility of an economically rational design for institutions.

Efficiency as a normative program

The economic analysis of law is a teleological theory. As a teleological theory, the final outcome is in the focus of attention (Eidenmüller 2005). In other words, the point is that a certain goal is reached. The question how this happens is secondary. Law should be designed, as if it always leads to an economically desirable, i.e. «efficient» outcome.

The economic analysis of law demonstrates, firstly, that economic efficiency is a desirable goal and tries to justify the economic goal of efficiency directly. Secondly, the economic analysis of law criticises competing goals of legal policy, in order to justify the aim of economic efficiency indirectly. Here, the economic theory of law deals especially with demands for distributive justice (Bizer 2002).

Efficiency means that the members of a society allocate their initial resources so that they achieve the highest possible level of utility (Schäfer & Ott 2005). In the centre of the normative approach stand the drafts of the efficiency and the market. Resources, goods and services using the best production technology in line with the individual willingness to pay are to be allocated through the market. Then, there is an efficient outcome in the market today (Veljanovski 2010a). Apparently, in terms of allocative efficiency, the system of market exchanges and the self-regulatory forces of the market work well (Stilwell 2006). Regularly two efficiency criteria are used to the measurement of the allocation effect in the market. It concerns the *Pareto criterion* and the complementary *Kaldor/Hicks criterion*.

According to Pareto an efficient outcome exists if the benefits for a person can not be improved without having to involve a utility loss to another person. Then the allocation of resources through a market transaction is *Pareto superior*, if the outcome is better than before the transaction, and therefore called the *Pareto-superior* choice (Posner 2007). A *Pareto superior* transaction is one that makes at least one person better off and no one worse off (Posner 2007; Stilwell 2006). The idea behind it is that it is ineffective and wasteful not to carry out a change which makes somebody better off but nobody worse off. Such a change is called *Pareto improvement*. If a transaction makes anyone better off, «the criterion of Pareto superior is unanimity of all affected persons» (Posner 2007). Hence, a situation is *Pareto efficient* if all market participants benefit from the transaction and no one suffers a disadvantage by a re-allocation of resources, goods, assets or the change of the legal basic conditions. Comparisons of utility are avoided with the requirement that no one is disadvantaged. An evaluation is seen as a comparison of utility, when it deals with whether the losses of one person are compensated by the losses of another person (Veljanovski 2010a). *Pareto optimal*, however, is a state with an efficient outcome in which there are no further *Pareto improvements*. Which in turn is based on the assumption that free and rational people will not participate in a market exchange, if they can not both benefit from such a transaction. That is, if the market transaction will not lead to an improvement in the *Pareto sense* (Head & Mann 2009).

Main application of the *Pareto criterion* is the market mechanism. This works «ideal» if it leads to an equilibrium in which the status of any market participant can only be improved simultaneously when the position of another participant is deteriorated. Which specific equilibrium is reached depends on economic resources which the participants had to begin with. Besides, any balance can be achieved, depending on how the initial position, the status quo, is modified (Eidenmüller 2005; Posner 2007; Cooter & Ulen 2008; Schäfer & Ott 2005).

The *Pareto criterion* is based on two complementary value judgments. On the one hand, the individual can best decide about his welfare needs. On the other hand, the welfare of a society depends on the well-being of its single members and encloses this (Veljanovski 2010a). In terms of a policy change a difficulty of the *Pareto criterion* can be seen already in the restriction that nobody should be disadvantaged. Even the most trivial change in policy creates winners and losers as a logical way out of this dilemma appears a compensation option, i.e. to impose the winners to compensate the losers. In a strict application of the *Pareto criterion*, therefore, a political change could be performed only in the rarest cases (Erlei et al. 2007). To avoid these difficulties, the *Kaldor/Hicks criterion* complements the *Pareto criterion* - also known as wealth maximisation or allocative efficiency. Compared with the *Pareto criterion*, the *Kaldor / Hicks criterio*n is extended, since ordinal utility measurement is used instead of cardinal utility measurement (Erlei et al. 2007). Straight from the Kaldor-Hicks compensation criterion derive other decision rules as P*osner's auction rule*, the *wealth maximisation principle* and the *cost-benefit analysis*. A policy is efficient in this sense, if those who benefit from it compensate those who suffer a disadvantage, in principle (Schäfer & Ott 2005). In other words, a cost-benefit analysis is employed to determine whether the so-called gains exceed the losses of a policy with whom they may arise.

In this manner the *Kaldor/Hicks criterion* separates efficiency from difficult uncertain distribution problems, e.g., of social services (Veljanovski 2010a). Furthermore, for the *Kaldor/Hicks criterion* is sufficient the mere option of compensation. It does not depend on actual compensation (Schäfer & Ott 2005). If only a possible compensation is enough to recommend reforms, the mere possibility of compensation will not receive the consent of those who have been harmed. Up to this point, if an institutional arrangement should be made, one returns to the *Pareto criterion* (Erlei et al. 2007). To sum up so far, it can be said that the criterion of efficiency – no matter what definition – is a crucial measure to evaluate social decision-making and to design them legally.

Economic Analysis of Constitutional Law

Based on the *Pareto criterion*, with the Buchanan consent criterion it can be distinguished between actions and results that take place within certain rules or systems of rules (Brennan & Buchanan 1993). Only those social outcomes are feasible, leading in a specific institutional arrangement to equilibrium. For this reason, it does not matter to examine the entirety of all possible final states of society, and then select the ideal state to satisfy some external normative criterion. Rather, it is seen that institutional arrangements to assess the totality of feasible final states no less than the basic physical constraints impose limits the amount of attainable goods (Brennan & Buchanan 1993).

The fact that political decisions are actually made in the context of economic interests, does not mean simultaneously, that the analysis of the impact of exogenous economic policy would be uninteresting. Such analysis is necessary, as a basis for any discussion on economic policy. It serves in a political-economic analysis to identify the interests of the actors. At length, normative analysis provides the guidelines, which can be used in the design of a constitution. In formal terms actually fall together, the analysis of the optimal constitution and the analysis of the optimal economic policies by a benevolent state as long as both take care of the impact of rules (Grüner 2008). Therefore, individual policy measures are recommended if they are supported by rules (i.e. institutions) to which individuals agree in principle (implicitly or explicitly). For rules and changes of rules a general consent can be assumed, if they are not contrary to superior law, or, rather, if the rules and amendments are consistent with the constitution (Erlei et al. 2007).

To evaluate certain rules and the measures based on them it will be always important to focus on the adoption of the constitutional consensus and the compliance with constitutional law. A central role for the justification of rules is the voluntary consent of all members of society, which finds its expression in the social contract or constitution (Morlok 1998). Van Aaken (2008, p. 658) points out: «*Laws, and other state measures, are evaluated and validated by their constitutionality*» and « *[. . .] economic analysis still makes sense when constitutional principles are accepted as the goals to be pursued or principle to be adhered to instead of taking economic efficiency as the only goal.*» The common element is the consent of the individuals on the constitution and not the individual action or the final state caused by them. The presumed consent also depends on the facts, which likely arise from the change in the rules for the involved people. In order to avoid strategic behaviour, multiple results and its consequences are grasped, but no single final state.

From here on, the evaluation of the rules of a political order must be based on the compatibility with the constitution as a crucial benchmark. Consequently, an individual will agree to the change, when it is likely that at least in the medium or long term, compared with the status quo, an improvement and no deterioration is expected. Therefore, the application of the *Buchanan consent criterion* ultimately means the application of the *Pareto criterion* to institutions (Erlei et al. 2007).

Approaches of the New Institutional Economics

The new institutional economics does not deal only with the economic institutions, but also with economic behaviour and economic design of institutions. Economists generally refer to the functional area of the society, which deals with the production and the market related exchange of goods and services. Exchange relationships between sellers and buyers in the market and exchange relations within enterprises, especially private companies, are at the forefront of the institutional economic analysis. Institutions to regulate economic cooperation would not be necessary if the individuals were entirely self-sufficient. It has throughout history proved to be extremely

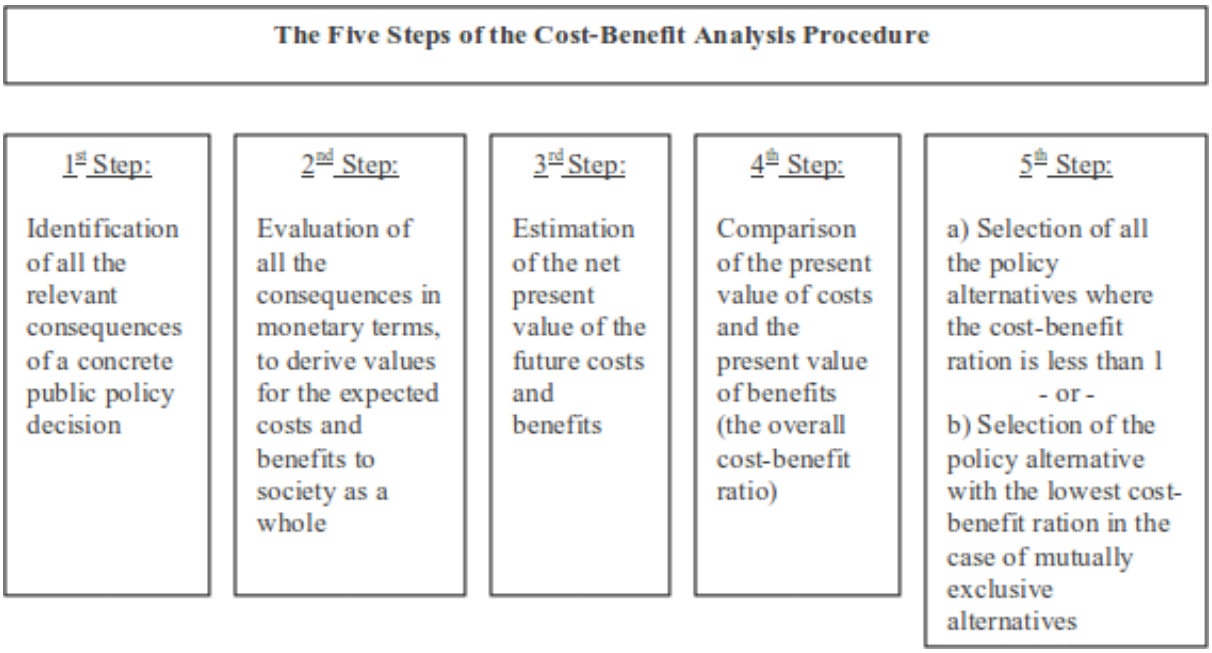

Fig. 2: The five stepts of the Cost-Benefit Anaylsis procedure. Adapted from Stilwell (2006, p. 202)

enhancing welfare to share both property and working with others and to swap single or bundled rights (goods). According to the Coase theorem, goods are to be understood as a bundle of property rights. Through this concept of differentiated goods can be emphasized that not only goods are exchanged, but also individual rights. The advantage of sharing and exchange of property rights is primarily the possibility of increased resource utilisation (Coase 1993). Other economic actors can not only receive relative property rights, such as the granting of usage, but the complete bundle of property rights to full ownership as an absolute right of disposal. It is exchanged for the claim of the purchase price. This can be welfare-enhancing, possibly because the new owner knows how to use resources more efficiently than the old. Only then the change is worthwhile for both parties and it will come to a contract.

The new institutional economics is mainly split into three parts: The economic theory of property-rights, principal-agent-relations (agency costs, these are: «the costs to the principal of obtaining faithful and effective performance by his agent» Posner 2007, p. 420) and transaction cost theory (*«as costs of organising and successfully achieving a negotiated agreement»* Head & Mann 2009, p. 290). The *property-rights approach* examines the effects of various legal positions available on the behaviour of individuals. This involves the distribution of property rights. The central question is here: How does it affect the behaviour of rational and self-interested individuals, if they have certain property rights, or not? In other words, individual behaviour is channelled through the nature of the distribution of property rights because it is defined by a structure of incentives. For the problem of motivation, of course, this approach offers the solution in a change of property rights (e.g. the transfer of public ownership to private ownership). The *property-rights approach* is concerned only partially with the coordination problem. It is about how a change of certain property rights leads to a change of incentives for the provision of services (Göbel 2002). The *principal-agent approach* applies also to the motivation issue by asking how the rational and self-interested individuals accomplish a fair exchange of property rights, if they do not have the same goals, the knowledge or power. The main interest is thus the optimal contract under the assumption of asymmetric information between principal and agent (Voigt 2009). The solution of the problems is then primarily in the rational design of contracts. The contracts tend to be complete. That means that they take all potential motivation problems of the relationship in advance and into account through appropriate contractual arrangements for the payout structure. After the *transaction costs approach* the market is not without problems and for free, as envisaged by the neoclassical theory in its assumptions. The use of the market caused costs (cost of searching, planning costs, security costs, etc). The *transaction cost approach* can cover all the problems of market exchange, the coordination problem (supply and search problem) and the problem of motivation (measurement and specificity problem Medema & Zerbe 1999). However, the focus is more on the deployment problem than on the specificity problem. The main idea is to assign specific types of transactions to appropriate control and monitoring structures (market, hierarchy or hybrid forms). The structure alternatives are rather qualitatively compared with the aim to eliminate waste.

Theory of Market Failure: The interplay between regulation, law, and economics

A mechanism specifies the rules under which a collective decision can be made in an economy. Therefore, one can interpret the whole economic system as a complicated mechanism. The market mechanism allocates the individuals property rights

of the existing resources in the economy, leaving the further allocation of goods to the contract negotiations between private individuals. The state's role is limited to the provision of courts which monitor the compliance of private contracts.

According to the neoclassical equilibrium theory, providers and buyers of goods and services meet on the market. Transactions take place without transaction costs between many fully informed buyers and sellers who can enter and exit the market freely. The parties which value the most will receive the entitlements. Actors are the accumulation of all costs and benefits that are caused by their behaviour, both for them and for others. Activities will be undertaken only if social benefits are higher than the social costs. The price of the products is equal to total production costs. Because consumers would buy the product from a competitor, competition is forcing manufacturers to produce efficiently. Under these conditions, social welfare is maximised. Welfare is the sum of consumer surplus and producer surplus.

From a kind of an *argumentum e contrario* to all of assumption of full competition, the theory of market failure has been derived. Full competition is only a theoretical construct. There are a number of reasons that markets fail the aim of Pareto optimality. State interventions in the field of resource allocation are usually guided by the idea of market failure. The concept of market failure leads, so to speak, to a normative theory of regulation. State or collective interventions are economically necessary (but not sufficient) justified by market failure (Veljanovski 2010a). The state should ensure the supply if the self-regulation of market forces no longer leads to the desired allocation of resources (Erlei et al. 2007).

In the economic theory of law, law is analysed as an instrument to cope the negative consequences of such market failures (Pacces & Visscher 2011), already as it is for the research of the regulatory impacts, to assess the effects of policy design options. In reality there are four sources of market failure: monopoly in its various forms (market power, competition law), the presence of negative externalities (regulation law), the existence of public goods and imperfect information (asymmetric information; Cooter & Ulen 2008; Veljanovski 2010a; Pacces & Visscher 2011). The failure of one or more of the competitive preconditions on markets has as its consequence a reduction in welfare below that what is obtainable from existing resources and technology, in the sense of a failure to reach an optimal state in the sense of Pareto (Arrow 1963). When the market fails to achieve an optimal state, the view is proposed, society will, to some extent at least, recognize the gap, and non-market social institutions will arise attempting to bridge it (Arrow 1963).

State failure (non-market failure)

The approach of market failure implies that regulatory interventions in the market are for free and pursue the economic efficiency as the sole objective (Veljanovski 2010a). In a society in which property rights are listed clearly and transaction options are freely transferable, and, where best sources of information, optimal competition and coordination is such that transaction costs are zero, the resource allocation is always *Pareto efficient*, irrespective of how the original legal structure, i.e. the original distribution of the rights of action looks like (Medema & Zerbe 1999). The *Coase theorem* says that the relevant comparison cannot be made between the ideal market and the ideal regulation, but between feasible, incomplete and expensive markets and regulation (Veljanovski 2010a). The essential point of the *Coase theorem* is that whenever the transaction costs, i.e. the cost of information, coordination and enforcement are greater than zero; the original allocation of property rights has a significant influence on society welfare (efficiency). The higher the costs are the greater is the importance of the original legal order for the allocative efficiency. Based on these considerations, one can analyze the effects of different legal rules and proposals to justify and evaluate (necessary) changes in legislation (Schäfer & Ott 2005). This is exactly the objective of the economic theory of law.

This approach extended the framework to the so-called state failure. In practice, regulation is expensive and generates its own distortions and inefficiencies (Veljanovski 2010a). That markets and regulation are costly, leads to further implications (Medema & Zerbe 1999). First, economists (and others) have given the occurrence and extent of market failure, excessive attention. Markets often seem to fail just because the model of the economist (or the standard statements of non-economists) ignores the costs and efforts caused by participation in the market or by government intervention (Veljanovski 2010a). While looking at the market failure, it is easy to see that transaction costs initiate the self-regulating market forces. Consequence of the theory of market failure was eventually a false sense of dualism between market-oriented and non-market-related activities. At the same time, some apparently non-market activities developed in response to the cost of participation in the market. This means, the treatment of positive transaction costs would help to explain otherwise inexplicable features of the economy (Medema & Zerbe 1999). Until then, it was assumed that law and institutions develop when the organisation of economic activities are less costly. Indeed, this explains the existence of the firm. The company is seen as a nexus of contracts and market-based non-hierarchical and administrative methods, which are aimed to replace direct exchange transactions between market participants (Veljanovski 2010a). Veljanovski (2010a, p. 23) finds in this connection, that the «firm thereby replaces market transactions costs with the principal/agency costs of internal administrative controls«. This distinction has been transferred to the problem of regulation. Accordingly, regulation is also subject of the economic analysis of contract costs and transaction costs. Therefore, all attempts by the state to correct the alleged or actual market failures are problematic.

The recommendation is rather to consider carefully whether the intended state intervention really leads to a correction of the market or simply replaces a source of inefficiency through another. Government intervention in the events on the market cost money and may dissolve from inefficiencies that exceed by far to be corrected. Therefore, even in cases of market failure, a policy of «do nothing» can be better than a policy of state intervention (Eidenmüller 2005). After all, law should not only do everything necessary that the market for legal rights (institutions) is functioning without frictions. If many individuals are involved in a legal relationship, the transaction costs will be so high that a negotiated settlement is impossible.

The law aims to establish the result in which the parties had agreed, if a proper market exchange would not be failed because of high costs. Law is intended to simulate the market mechanism («mimic the market«; Eidenmüller 2005). This means, for the case of prohibitively high transaction costs, the economic analysis of law initially assigns those legal positions, which would arise if the transaction costs were zero and the market for rights would run smoothly (Schäfer & Ott 2005).

In summary, although state intervention is generally intended to remove market failures and imperfections, intervening can, in itself, cause more problems. «State failure» occurs when intervention creates more inefficiency in the market and can occur for the following reasons: First, politicians may intervene for political reasons rather than to remedy market failure; secondly, regulatory capture occurs when a government organisation set up to monitor an industry or an business begins to work in its interest, rather than those of society as a whole; thirdly, imperfect information, i.e. just as managers and households lack perfect information, so does the government, and this may mean that intervention is mistimed or inappropriate because the government has misunderstood the nature of the problem (Gillespie 2010).

Efficiency and equity

Markets and regulation each generate winners and losers. On this basis, people, in their role of market participants and in their role of citizens depend more on how the rules affect their prosperity, than on how the rules affect others or society in general. Moreover, there will be often different views on fairness and acceptance of results of market and regulation. It would be surprising if an economic theory of regulation, particularly in their value as a normative theory would be able to ignore these non-economic factors.

Also, for technical reasons, distribution problems are observed. This is due to the fact that efficient market outcomes are predestined ex ante by the distribution of income and different assets in society. In other words, there is an (insoluble) interdependence between wealth distribution and economic efficiency and market performance as well as taking account to regulation (Veljanovski 2010a). Consequently, the normative theory includes distribution factors into the discussion. In fact, many disciplines deal with this issue in view of the constitution, the welfare state, social issues and an equitable distribution of public finance and tax. From the perspective of an economic theory of regulation, this seems decidedly schizophrenic (Veljanovski 2010a). On the one hand, regulation in terms of efficiency is assessed alone by the implicit assumption that redistribution can be achieved through direct market transactions at its best. After the positive theories, politicians, lobbyists and interest groups significantly affect regulation. These parties urge primarily on redistribution through assignment. The reason for the aversion of regulation is usually the fact that state regulation is regarded merely as a blunt and ineffective instrument to re-distribute income. State regulation affects prices and runs incentives of market participants in its opposite. It therefore results in significant power losses and unintentional (i.e. including uncontrolled or unregulated) effects on the market that often just harm those whom they should benefit.

Efficiency is better than inefficiency, but that's not all. In a competitive equilibrium, some individuals are very rich, while others live in bitter poverty. A person may have skills that are valued very highly, others do not. Competition may lead to an efficient economy with a very unequal distribution of resources. In a competitive economy the law of supply determines how disposable income is split. It determines the wages of workers and the return on the shareholders and thus the income distribution. Knowing how the income distribution is determined is important when it comes to the question, for whom the goods are produced. While competitive markets ensure economic efficiency – no one can be made better-off without someone else is worse off – but they can also generate an income distribution that at least some people appear morally repugnant. Left to themselves, markets can provide an answer to the question, for whom the goods are produced that does not appear acceptable.

That does not mean that the mechanism of competitive economy should be abandoned. At least not, under the condition that applies to the basic assumptions, namely, fully informed, rational market participants, who meet on perfectly competitive markets. Even if society as a whole wants a redistribution of income, competition mechanism cannot be waived. Instead, it is only necessary to redistribute the assets of the people and leave the rest to the forces of competitive markets. Using an appropriate distribution of wealth, the economy can achieve any desired distribution of income. State interventions in the market place are often justified because they increase equality. This is based on the widely held but incorrect view that these measures, except on redistribution, have no further consequences. Redistribution measures, such as changing the relative prices interfere with the efficiency of an economy, however. Intervention in the economy to increase equality must therefore be treated with caution. Under the assumptions of the model of perfect competition, the only means of the state to achieve an efficient allocation of resources at the desired income distribution is to re-distribute the initial assets. Thus, one cannot rely only on the market mechanism, but any intervention in the market may actually lead to the fact that the economy is not *Pareto efficient*.

EXPECTED RESULTS

Some Features of Healthcare Systems in Europe: The reasons for opacity are the healthcare sectors themselves. Liberalisation and privatisation is often promoted and always accompanied by major changes in the regulatory systems (Hermann et al. 2007). The focus of regulation has shifted from governing the whole process to regulating particular aspects of the of service provision (Hermann et al. 2007). In comparison to Poland, Austria, the United Kingdom (UK), Belgium and Sweden the strong tendency towards the full material privatisation of public hospitals contrasts in Germany clearly(Brandt & Schulten 2008). Even so, liberalisation in European healthcare systems has taken the form of a general commercialisation. A main result of rising financial difficulties of present public owners is an increasing involvement of private (for-profit or non-for-profit) actors in the provision of hospital services (Hermann et al. 2007). In concrete terms, while there are in

Germany an increasing number of sales of entire public hospitals to private for-profit investors, in Sweden sales are still an exception (Flecker et al. 2008). As in Belgium privatisation is unfamiliar, in Austria the legal status of many hospitals have changed, which is why hospitals now run under private law. In the UK private involvement is focused on several public hospitals mergers with private not-for-profit hospitals to become private for-profit conglomerates (Flecker et al. 2008).

All healthcare systems in Europe are stamped by regional and local specifics and quirks. This is why the structural comparison and the confrontation of the efficiency in different system develop difficultly (Hantrais 2007). Yet, the common characteristics of the values and structures for a compatibility with a uniform EU health policy are given and can lead to an «aggregation», i.e. to an autonomous healthcare mandate for the EU.

The National Health Service in Great Britain with its efficiency can be seen as an important innovation mediator and model for cooperation in the European care sector. Even if its basic idea of a high-quality, free and efficient healthcare under state directive and management can be seen as an «attempt of squaring the circle», it is recognizable that the emerging competition leads to competitive and performance-based remuneration systems (Weatherly 2009). Likewise Spain supports the healthcare on a tax-financed system. As a result of declining birth rates and increasing life expectancy future efforts will be directed to an efficient, needs-based organisation and development of certain health areas. In the region of Valencia the whole acute-medical care is already produced by a private operator. Nevertheless, in Spain the highly innovative projects are not accompanied by administrative reform. The Spanish health service is also in the change and the trend seems given from public to private achievement production (Reuter & Zippan 2009).

In the Netherlands and Germany the financing of the healthcare systems occurs predominantly from social security contributions. With the privatisation of the legal health insurance the healthcare system of the Netherlands is valid as especially innovative. The new insurance system is a system of private health insurance in a public setting with only private health insurers (Dekker 2009). From a European perspective the social systems of the Netherlands and Germany look related. Both countries have the same framework for their healthcare systems, in principle (Van Rooij 2009). With a comparison of the changes in the hospital market of both countries by privatisation becomes clear that in the Netherlands the «demand» and in Germany the «supply» can be restructured. With such a coalescence of both systems «under lab terms» the market mechanism from demand and supply in a public frame can develop. However, both member states have to be contented with the role of the governors instead of the role of the creators. Conditions for such a notional transnational healthcare market would be a cooperation as well as competition between actors on the part of the supply and on the part of the demand. Further more, it implies the strengthening of patients' position and competence as well as getting through the problem of social utility, i.e. of the fragmentation of costs and quality. Therefore, the health care provider have to devise an interest in quality (achievement incentives by financial advantages) and the patients need to develop an interest in efficiency (personal responsibility, also proactivity in financial interest; Caris 2009). Such a scenario would have effects across the borders of two member states. In this case, the international market relations fall in the competence area of the EU. Since the «four freedoms» are subject to the market, this simple model appears as an application case of the European law and requires the coordination by the EU, with its own healthcare mandate.

Thus far, the «healthcare market» itself is characterised by two particularities. It has dual character in transformation; i.e. changes affect both the financing side and the service side, i.e. provision of healthcare services. And, it lacks the cyclical character of other industries, i.e. the demand for healthcare services is independent of the economic situation and the economic forecast (Papouschek & Böhlke 2008). In turn, the relationship and the interdependency between these two sides must meet the requirements of the social welfare state principle.

One can begin the conclusions with the concept «healthcare mandate» looking at the legitimisation of the state and the way how he perceives this constitutional order to provide appropriate institutions. A mandate in healthcare policy for the EU indicates that applying a perspective of law and economics can bring us very close to the limits at which the approach is applicable.

The starting point was the withdrawal of European member states from services of public interest. When it comes to fulfilment of the healthcare mandate, the state is to be not so much a benefit-granting state but rather an activating, co-ordinating and organizing allocative state which does not replace social processes but rather promotes them through production and enforcement of binding decisions. This can mean that the allocative responsibility in the production of a public good is to be identified not only with reference to the task itself, but exclusively through an analytic consideration of the function assumed by the state (Kingreen 2003).

For this purpose, the classification of public tasks in the European healthcare sector is linked to the question of how to protect social benefits and services. To embed the idea of a European social welfare state principle, the changing role perception of the state is to be confronted with the limitation and consideration reservations of desirability and feasibility, and to attain the joint objective of generating compatibility advantages the double benefit is pointed out that economic analysis of law has. Positive economic theory is able to determine the behaviour and the expectations of involved actors and thus the social acceptance on the basis of the rationality model. Normative economic analysis of law makes efficiency and improvements in efficiency visible on different allocation levels in the interest of supply security.

If one examines healthcare systems with direction for a uniform European healthcare market and according to the social state principle, it is to be considered whether an efficient supply situation (*Pareto optimum*) can adapt itself at healthcare markets or whether state interventions become necessary on the basis of market failure. Whereas the analysis whether an efficient situation is desirable in general and socially or whether state interventions become necessary to allow non-efficient citizens the market access can follow. Further, an answer has

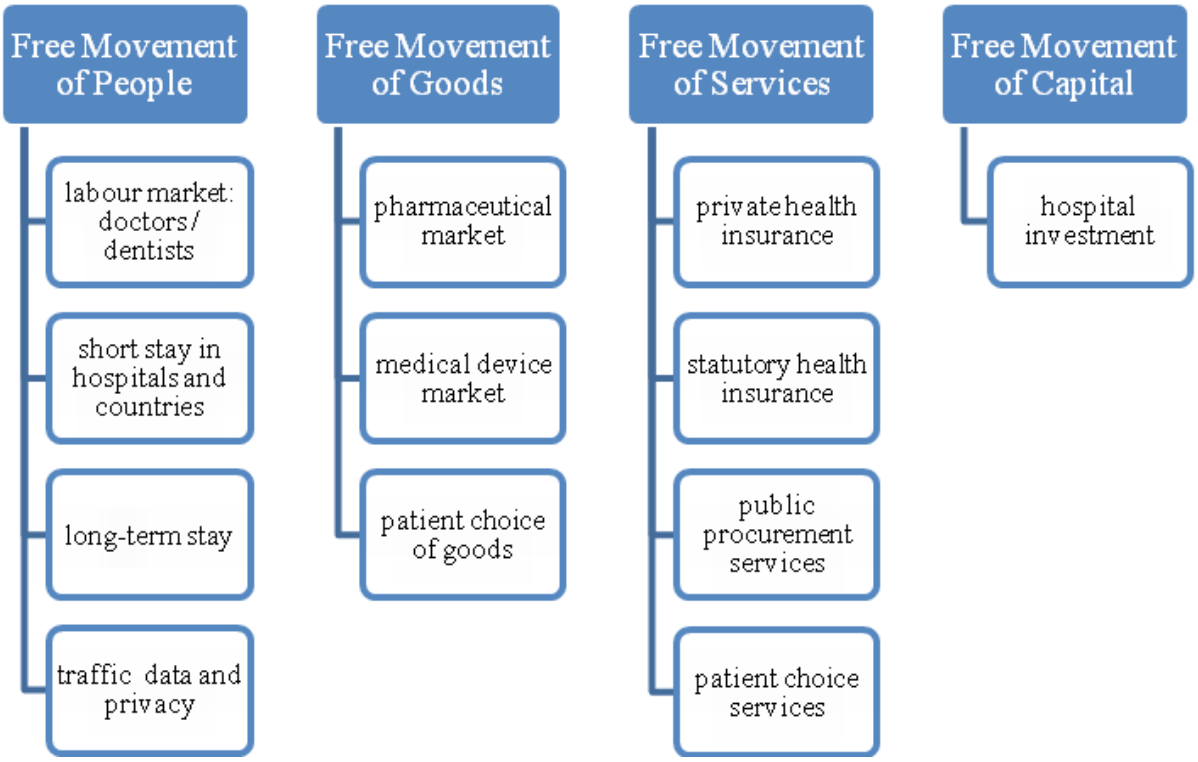

Fig. 3: Impact of European freedoms on healthcare. Adapted from Schölkopf & Philippi (2010, p. 206)

to be found whether the guarantee-state only borders dates for marketing events or whether direct interventions in market activities are wanted. Therefore, it is to be considered, that the bipolar alignment between market and state in the healthcare systems helps to decide if it is essential that the healthcare sector orientates itself more towards the consumer or more towards productivity. The qualification to be found in this tense situation of doctors, hospitals and health insurances as agents of the citizens, does not change anything because these institutions cannot have a mandate with a constitutional rank.

If there is an interest in cooperation between the state and the private sector, so «secondary markets» can evolve, attention should be paid to constitutional guidelines and a clear allocation of rights and duties in full transparency. Here, a hybrid is gaining importance. In a Public Private Partnership (PPP) public and private partners share functions, risks and responsibilities for the best possible fulfillment of tasks. It offers the possibility of private capital and know-how involved in the performance of public duties, and thus to relieve the public administration (Haarländer et al. 2007). It must be noted that PPP can only be an alternative to implementing long-term investment programs, but by no means a panacea for solving problems of public finance (Haarländer et al. 2007).

Institutional Similarities between Legal and Healthcare Markets: There is a special place for healthcare in economic analysis, and there are, in fact, strong institutional similarities between the legal and healthcare markets (cf. Arrow 1963). As indicated previously, interpretation of basic principles means an optimisation problem. While rules are applicable or not, constitutional principles must however be understood in relation to real and legal restrictions. They also apply, as they are, even if they are not «fully» satisfied. They are standards that can be understood more or less, and therefore need to be complemented, as the principle of democracy and the welfare state principle. They are also concepts that need to be concretized in the discourse about the legal application so that the (common) basic ideas can be found (Van Aaken 2008). The implementation of this imperative is done with the principle of proportionality (Fuhr & Gabriel 2002). It includes three principles: the principle of appropriateness, the principle of necessity and the principle of proportionality in the narrower sense. In terms of the social state principle, this means:

The Social Welfare Principle and the Economic Analysis of Law: Through creation of new, uniform law, Europe has a system-building effect in many field of law. At the same time, the European market leads to increased social interactions of Europeans among each other. These interactions are influenced by legal norms and the respective cultural norms systems. The fact that such legal and social norms must comply with norms and standards in other European member states gives rise almost automatically to questions about their compatibility, stability and evaluation, which have to be answered within the context of European integration. The underlying argument is that member states in an expanded community

Types of welfare state					
European post-communism (former state-socialist welfare)	(other) Latecomers	Social-democratic	Centrism, corporatism, social-democratic	Centrism, corporatism	Liberal
Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia	Cyprus, Greece, Malta, Portugal, Spain	Denmark, (Norway), Sweden	Finland, Netherlands	Austria, Belgium, France, Germany, Italy, (Japan), Luxembourg, (Switzerland)	(Australia), Ireland, United Kingdom, (United States of America)

Fig. 4: Types of welfare state. Adapted from Schölkopf & Philippi (2010, p. 15ff).

continue to differ in their policy responses to common social problems in healthcare systems while being increasingly constrained by EU law.

«The Reservation of What is Desired» and the Theory of Rational Choice: This does not facilitate the analysis of actor's behaviour on the European market scene for public service benefits based on the national model, such that a clue is provided for the «desired» and the weighing of the targets. Based on the economic model of behaviour, economic analysis of law determines the consequences triggered by legal regulations in legal reality. In this context, it is assumed that people react to legal regulation and jurisdictional standards rational and self-interested. The model is a positive and not a normative model of behaviour, because it shows how individual actors behave in certain circumstances (Eidenmüller 2005). Economic theory always describes institutions with recourse to individual behaviour. In particular, the methodical clarity of the economic model assumptions is capable of complementing the normative perspective in European law, because collective actors (e.g. national governments and parliaments) play a major role rather than individual actors (Morlok 1998).

In terms of law and economics, that «what is desired» can be used for the specification of national policy objectives and public tasks, because the social welfare state principle's legitimacy effect results from the recourse to the objectives and preferences of members of society. Normative decisions can be attributed to rational decisions of individual actors in order to determine the society's objectives more closely. In judicial terms, the preference analysis addresses the objective of distributive justice, which competes with the efficiency objective. Though privatisation is considered as efficiency-oriented it complies with «the reservation of what is desired«, if the bottom line of advantages and disadvantages is maximised without occurrence of a change for the worse. For this reason, it is a preference of affluent societies to realise the objective of distributive justice. It must be figured out who benefits from advantages and who suffers disadvantages. If one speaks of liberty, solidarity and social justice in conjunction with the access problem to health services, the protection need of the people resonates with the concept of solidarity.

«The Reservation of What is Feasible» in Outlines of an Efficiency Perspective: Hence, the opportunity of talking about efficiency is presented in the implementation of the healthcare mandate that was vividly made manifest in the aftermath thereof. Efficient action will always have to be demanded in the interest of public safety and upon the acceptance of the healthcare mandate. For the purpose of developing models of a rational, generally acceptable and at this stage efficient organisation of the state, the economy and the society must be capable of serving a normative role model for the factual organisation of these institutions. Determination of the legal and real consequences must be followed by their evaluation. The evaluation standards are borrowed from welfare economics by asking whether the consequences of legal provisions meet an efficiency criterion which has been defined in a certain way (Eidenmüller 2005). Two Pareto efficient social states cannot be put in a social ranking by means of the *Pareto criterion*, as *Pareto efficiency* does not mean that a society is organised on the basis of fairness. Therefore, «desirability» may content a compensation rule like the *Kaldor/Hicks criterion* to amend «feasibility» improved by the Pareto criterion (Schäfer & Ott 2005).

The Primacy of Efficiency in Analysing the Hospital Sector: Rational action and efficiency are complicated in healthcare systems. One could assume that the provision of health services is exclusively carried out by private providers and that

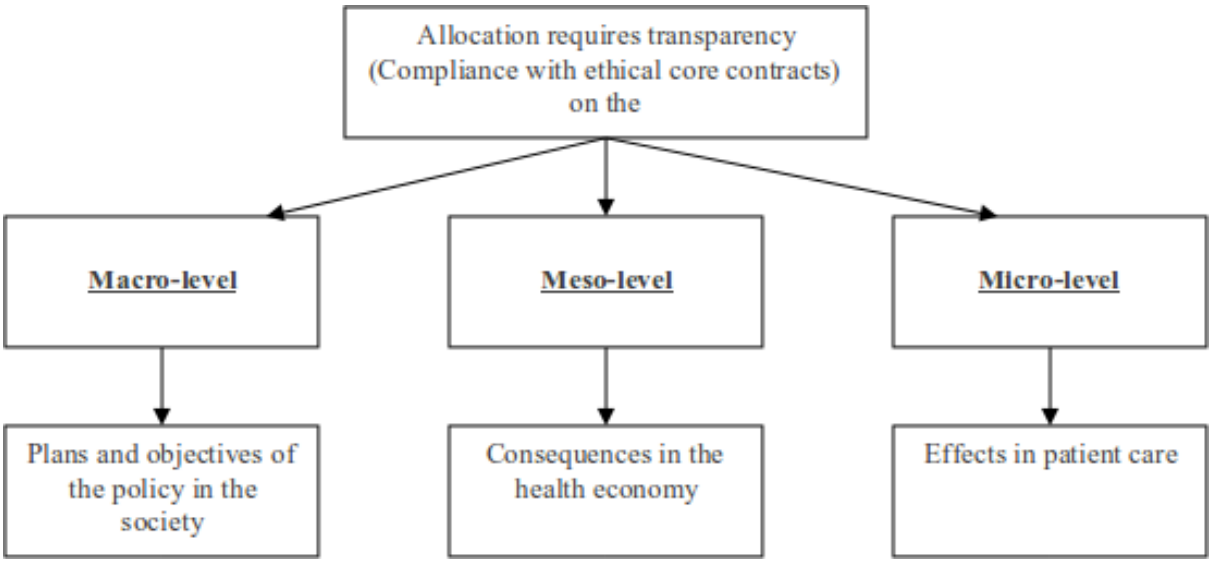

Fig. 5: Adapted from Haubrock et al. (2009, p. 9).

the state's influence within the framework of redistribution by means of tax and social security law is sufficient to bring about distributive justice in the field of medical care. In the next instance it would be possible to ask whether the state's withdrawal from the sector of service provision can be measured in terms of the efficiency objectively. In this context, «feasibility» has a double function, taking effect at different allocation levels. On the one hand, an absolute limit is in place for the overall frame of public revenue and expenditure. For only what is available can also be distributed. On the other hand, benefit entitlements are restricted «*[. . .] within the meaning of what the individual can reasonably claim from society*» (Bundesverfassungsgericht 1972, p. 333).

«Feasibility» therefore does not constitute an absolute limit, but rather addresses allocation and weighing of opposing legitimate interests with regard to the use of available resources. The balancing of interests takes place on three allocation levels. In the first place, it is important how the distribution of available means to the state's individual fields of responsibility is carried out (macro-allocation). Subsequently, a financial volume can be fixed that is available for issues within a certain field of responsibility (meso-allocation). Finally – in case of scarcity - the claim of the individual is transformed into an equal claim for participation in the overall volume determined in each particular case by the other allocation levels (micro-allocation; more specifically to the allocation levels, see Heinig 2008).

The claim is not equal participation in the status quo of public benefits, but rather the demand for moderate allocation of the provision of such capacities (Heinig 2008). If it turns out at the end of the consideration process that the EU ensures the quantitative and qualitative provision of healthcare services in a more efficient way through private providers than this could be done by public institutions in the member states, legal standardisation will become the substance of the EU citizens claim and, at the same time and vice versa, a EU healthcare mandate by nature (given the continuation of the EU; Flecker et al. 2008).

Analysis of Consequences and the Right to Provide and Obtain Health Services: But even if it seems as if the state loses its influence in the hospital sector as a result of the privatisation process, the healthcare mandate of the state remains intact in Germany as a part of an unchangeable fundamental constitutional principle, derived from the social welfare state principle as a social welfare guarantee mandate (articles 1, 20 paragraph 3, 23 paragraph 1, 79 paragraph 3 GG). The healthcare mandate can be understood as a call to act, to ensure the supply of hospital services through administrative activity only where suitable private providers are not available (principle of subsidiarity). Private provision can be the required if it makes allocation in healthcare sectors more efficient. Viewed from the perspective of the social welfare principle as a guideline, thus results a constructive mandate of the legislation, authorizing it and placing it under an obligation to provide for social justice in the social security system. Consequently, the social welfare state principle reacts to the dual character of transformations in the healthcare market. However, the German constitution does not make a statement what is to be understood by the term of social justice. Instead, the healthcare mandate is placed under the double reservation of desirability und feasibility of structuring the healthcare system (Heinig 2008). As far as the vision of an efficient healthcare system can be regarded as a common objective on EU level, analysis of legal and real consequences then provides finally an option of acquiring and preparing information to anticipate the expected impacts on the implementation of a concept of harmonisation and its proposals for joint actions of EU actors in the field of their healthcare systems. But, supply of the people is the common denominator and relates to an area of life in Europe that, despite of such very different

Tab. 1: Transformations of the state in health systems of the OECD countries. Adapted from Rothgang et al. (2006, p. 348)

Type of Health System (representative)	**Financing** (all countries)	**Services by** (all countries)	**Regulation** (USA, Germany and Great Britain as Representatives for the Types of Health Systems)
Private Health Insurance	Increasing share of public in total health	Constant importance of private providers in the system	Introduction and development of hierarchical regulatory elements through «managed care» in the private insurance sector, greater state control potential by inclusion of other parts of the population in public benefit systems
Social Security, Social Insurance System	Constant share of public in total health	System differences tend to persist at increasing importance of private providers	Remaining dominance of corporate negotiating structures, but increasingly in the «shadow of hierarchy» and enriched by elements of competition
National Health Service	Declining share of public health at the entire expenses	System differences tend to remain in declining importance of state providers	Remaining strong state control, but which is enriched by elements of competition (internal markets) and corporatist arrangements
All countries and systems	Slightly declining share of public in total health spending since 1980; convergence trends between the systems	System will remain differences	Convergence trends: from pure to mixed regulatory arrangements [Social State Principle as a guiding principle in the process of convergence]

welfare systems, essentially always requires a strategy for the efficient allocation.

European Healthcare Systems in Alignment with Common National Characteristics: All healthcare systems in Europe stand under considerable cost pressure and change pressure: Challenges lie in the backup of long-term and lasting financing, so that a durable and stable system can be guaranteed. Although the challenges are similar in the member states, the approaches to the problem are different. This is valid for the macro-level (financing) as well as for the micro-level (control instruments and forms of institutions). In the core is it about the optimum relation of solidarity and competition. Just in the emphasis of the solidarity the high esteem expresses itself for health as a «public good» in modern societies. It corresponds to a great extent divided value understanding that every sick person is supplied medically in case of need and that regardless of his solvency. Disagreement exists with the care extent and the magnitude of distributive elements with the care (Böckmann 2009). Meanwhile, with a one-sided look at distribution justice, one comes up to the changes in healthcare systems only restrictedly. A health policy which is subject to the purpose of distribution justice asks who has advantages and who disadvantages. Despite the very normative features of the principle of solidarity in healthcare, free-enterprise control instruments have increased. Because of the complexity and opacity of healthcare systems it is necessary to analyse the direction change of state achievement production to the regulation across healthcare markets.

Overall, the analysis indicates a change of clearly definable health system types into mixed types and multi-dimensional convergence trends by the alignment of health expenditure ratios, the approximation of the public funding share of health expenditure, the establishment of common regulatory instruments and in particular the inclusion of non-system regulatory elements in the basis types of health care systems, resulting in mixed regulatory arrangements (Rothgang et al. 2006). Based on the basic types in relation to funding and service provision the following figure summarises the evolution of the three dimensions of statehood under consideration of the social state principle as a guiding principal.

By all means, efficiency, quality and freedom of choice on the one hand and a financing system with solidarity and the respect for people's protection need on the other hand are not contradictions in terms. The state can either fulfil the task itself (fulfilment state) or guarantee that private providers ensure the supply (guarantee state). But, considering a social welfare principle on the European scale activating, co-ordinating and organizing allocative states should concentrate on market-making, market-breaking and market-correcting. To use the welfare state principle as a decision-making aid on basis of the economic analysis of law, the starting-point should therefore be the relationship between the two terms «state» and «society», which are contained in the term «social state principle» and lead multilaterally to cultural enhancements between member states.

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ARBEITSBERICHT

WHOSE' KNOWLEDGE FOR DEVELOPMENT? KNOWLEDGE MANAGEMENT IN DEVELOPMENT COOPERATION: LESSONS FROM THE DEVELOPMENT GATEWAY

Entwicklung – durch wessen Wissen? Wissensmanagement in der Entwicklungszusammenarbeit am Fallbeispiel des Development Gateway

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Abstract

Since 1990 the international development community, particularly the development agencies led by the World Bank, has postulated a new development paradigm: knowledge was now seen as the means for poverty reduction. Poverty, in this understanding, is rooted in a lack of knowledge. Knowledge, in turn, could and should be transferred from -rich» to -poor» societies. The World Bank´s approach to knowledge as a transferable commodity is expressed in its biggest knowledge management initiative, the Development Gateway. It will be shown, that the aim of organizing and disseminating development- relevant knowledge as focused by the Gateway is not achieved. Reasons for this are the Banks approach to knowledge itself, which ignores means of power and sees knowledge as neutral. Instead of fostering an equal and democratic exchange of knowledge between the North and the South the web-based initiative helps to strengthen the Bank's neoliberal paradigm. To use ICT-based Knowledge Management for social change, the recognition of different forms and expressions of knowledge as well as participation and inclusion of marginalized groups are necessary preconditions.

keywords: *Knowledge Management* | *Development Cooperation* | *World Bank* | *Development Gateway* | *Knowledge for Development* | *ICTs* | *Participation*

Zusammenfassung

Zahlreiche Organisationen der Entwicklungszusammenarbeit haben ab den 1990er Jahren Wissen zur zentralen Ressource für Entwicklung erhoben. Die Weltbank hat hier früh eine Führungsrolle eingenommen und sich selbst zur „Wissensbank" ernannt. Die Ursache von Armut liegt im Verständnis der Bank auch in einem Mangel an Wissen und Information. Mittels Techniken des Wissensmanagements könne entwicklungsrelevantes Wissen ausgetauscht und transferiert werden und so zur Armutsreduzierung beitragen. Wissen erhält eine eindeutig ökonomische Funktion und wird zu einem global handelbaren Gut. Dieser Ansatz zeigt sich auch in der größten Initiative der Weltbank, dem Development Gateway. Anhand dieses Fallbeispiels soll gezeigt werden, dass ein demokratischer und gleichberechtigter Wissensaustausch zwischen Nord und Süd bisher nicht erreicht wurde. Der Grund dafür ist u.a. die Konzeption von Wissen durch die Bank selbst: Wissen wird als neutrales Gut dargestellt, während gleichzeitig durch den Ausschluss kritischer Stimmen aus den entwicklungspolitischen Diskursen die neoliberalen Paradigmenhoheit der Bank gefestigt wird. Damit ICT-basiertes Wissensmanagement sozialen Wandel unterstützen kann, müssen folgende Grundvoraussetzungen für Initiativen des Wissensaustausches erfüllt sein: Verschiedene Artikulationsformen des Wissens müssen anerkannt werden; die Initiativen müssen sich am spezifischen Bedarf und dem sozio-kulturellen Kontext vor Ort orientieren und von Beginn an auf allen Ebenen partizipatorisch gestaltet werden. Um nachhaltige Erfolge zu zeigen, sollte die Inklusion marginalisierte Gruppen gewährleistet werden.

Schlüsselwörter: *Wissensmanagement* | *Entwicklungszusammenarbeit* | *Weltbank* | *Partizipation* | *Informations- und Kommunikationstechnologien*

Knowledge was an integral part of international development cooperation since its official beginning in the 1950ties. It was knowledge about Others", knowledge about what (and who) has to be developed and how as well as knowledge about the desired effect of development cooperation. Often it was western knowledge and epistemology that was spread across the globe and claimed to be the valid, or true, knowledge (King and McGrath provide an interesting overview about knowledge-based aid. See King & McGrath 2004). Development Agencies saw themselves as holders of development-relevant knowledge for a long time, often not distinguishing between knowledge and information. During the 1990ties and strongly influenced by aid effectiveness debates, knowledge for development was kind of rediscovered as central for achieving poverty reduction. Because of the technical progress, mostly the development of ICT, it was now feasible to digitalize all the project- and programme material

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formerly stored in development agencies. Without doubt, the intern knowledge management as well as knowledge sharing between agencies had positive effects in the sense of organizational effectiveness, transparency and harmonization among donors. But, as King and McGrath point out regarding the discovery of knowledge-based aid: «*[. . .] it is somewhat ironic that knowledge is being emphasized when there is little evidence for answers to many perennial questions*» (King & McGrath 2004, p. 49). Analyzing knowledge-based aid, there are actually more answers given than questions posed by the agencies, above all the World Bank. At the beginning I will briefly introduce the Bank´s rediscovery of knowledge for development and it´s approach to knowledge which stands in a sharp contrast to a poststructuralist understanding of knowledge as socially constructed, diverse and tied to a specific cultural, political and economic context. To illustrate the Bank´s conception of knowledge its main knowledge exchange initiative, the Development Gateway, will be introduced and analyzed. Criticisms on the editorial policy of the Gateway, irrelevance of northern-generated knowledge information and unequal possibilities to participation in the open-part of the Gateway for people in developing countries will be presented. I will concentrate on the choice of topic as well as the system of Topic Guides who determine which material is presented on the platform.

Finally, I will make some proposals how ICT-based knowledge-sharing initiatives can be made more inclusive, opening up possibilities for real participation of those who should be at the center of all efforts of knowledge-based development.

THE KNOWLEDGE BANK – LENDING LITTLE PIECES OF KNOWLEDGE?

Since 1990 the international development community, particularly the development agencies led by the World Bank, has considered knowledge as the central resource for development. Access to development-relevant knowledge and information was stated to be even more important than land, labor or capital. With the World Development Report 1998/99 on „Knowledge for Development« [1] the World Bank drove the agenda and established itself as the „Knowledge Bank.«

The first sentence in the World Development Report expresses in a poetic manner the expectations of knowledge: „*Knowledge is like light. It can easily travel the world, enlightening the lives of people everywhere. Yet billions of people still live in the darkness of poverty – unnecessarily* (World-Bank 1999, p. 1). Knowledge, the WDR states, can save lives and creates development. It is available (mainly in the global North) und can be transferred (mainly to the global South). The difference between North and South is clearly defined in the second section: „*Poor countries – and poor people – differ from rich ones not only because they have less capital but because they have less knowledge.*» (World-Bank 1999, p. 1).

In the World Bank´s conception, knowledge seems to be little more than information, transferrable and objective while obscuring that knowledge is power and that processes of knowledge dissemination are never neutral. During the Bank´s strategic reorientation knowledge management became the major instrument in achieving knowledge-based development cooperation (For more information about the strategic reorientation see for example Fuhr & Gabriel 2002).

Bank staff gained experience with intern knowledge management projects and then turned outward to manage the disordered » development knowledge. One of the central assumptions of the Knowledge Management fascination as well as the knowledge for development paradigm is that global knowledge is manageable. In order to organize, share and disseminate knowledge via ICT, what knowledge is has to be clearly defined.

No universal definition of knowledge exists since it has been the object of philosophical disputes for hundred of years. However, this process, instead of defining knowledge opens up space for negotiation which is important to gain acceptance that there are different forms of knowledge instead of the kind» of knowledge, mostly possessed by those who hold the power.

There are several critical points in the construction of the World Bank as the knowledge bank and its approach to knowledge. First, it ignores multiple forms of knowledge as well as the controversial debates and understandings which surround it. It also disregards opportunities to articulate and present knowledge in different ways. A second question arises: If knowledge, whatever it is like, is useful for development – and this is not a World Bank discovery – why is it not primarily the knowledge generated in developing countries which is debated, disseminated and supported by development agencies? Why it is mainly the knowledge generated in northern universities and think-tanks which is defined as relevant to development? And there is another important point: why is it the World Bank, a financial institution, which wants to be the central knowledge broker? Beginning with the last question, the political-economic background of the Banks strategic reorientation is crucial: At the end of the 1980ies and during the 1990ies the Bank experienced a significant loss of importance.

As King and McGrath state: «*[The] conjunction of the need to become a learner organization, criticism of the effectiveness of the Bank´s operations, and a growing need to think beyond structural adjustment opened up a space for the notion of the knowledge bank to emerge.*» (King & McGrath 2004). By repositioning itself as a knowledge broker the Bank extended its original objectives and assumes a pioneering role in the global market place for development knowledge and is actually central actor in the knowledge economy in which «*[. . .] knowledge is the only source of long-run sustainable competitive advantage*» (Thurow 1996).

GLOBALIZATION and technological progress allowed a steady flow of capital and information. As a result, information and communication technologies helped to put knowledge back on the development agenda and created significant promise and many expectations. Proponents of ICT are sure that it is only a question of time before the digital divide can be closed.

Technologies which are able to send information around the world in seconds seem to be making the idea of a totally networked world come true. As Samoff and Stomquist argue,

[1] World Bank (1999): World Development Report 1998 / 99: Knowledge for Development. Oxford University Press New York

the expectation is that the material poor no longer need be deprived of information (Samoff & Stromquist 2001).

By using technologies and access to crucial information they acquire the means of improving their livelihood as well the economic situation of their country. Inequalities resulting from gender, religion, nationality or status can be reduced.

Poor countries will be enabled to catch up and to accelerate the introduction of the knowledge-based society and thus the participation in the global market for knowledge (Samoff & Stromquist 2000). Knowledge in the World Bank´s understanding is seen as a commodity which can be traded and easily transferred on behalf of ICT. But there is, as in other development agencies' knowledge initiatives, often no clear distinction between knowledge and information. This ignores that information has to be converted in knowledge through human action and, according to Mittelstraß is a central promise of the knowledge economy: to get access to and command of knowledge without the bothersome processes of learning (Mittelstraß 2001). This understanding of knowledge, available in little pieces, is reflected in the Bank´s greatest web-based initiative for knowledge exchange, the Development Gateway.

THE DEVELOPMENT GATEWAY: ONE-WAY-STREET FOR DEVELOPMENT KNOWLEDGE

The *Development Gateway* (DG) is an online portal which comprises five different web-based platforms with the aim of disseminating knowledge relevant for development. It was developed in the context of the aid effectiveness debates and focuses on three areas of ICT-related development cooperation: effective government, knowledge sharing and fostering a global network between organizations in developing countries. [2]

Initiated by the World Bank, it has been independent of the Bank since 2001 when it was transferred to the DG-Foundation. [3] The services available inform about programmes, projects and calls of the international development community.

In special Country Gateways content is provided by multi-stakeholder organizations in developing countries, but selected and given technical and financial support by the DG-Foundation. For the purpose of this paper, the Knowledge Exchange Service » is of special interest. Thematic priorities are Governance, Economy, Sectors, Environment, Education, Health, Society, Culture as well as Science and Technology which all include specific subtopics and are moderated by Topic Guides.

There are several criticisms of the Gateway, mostly articulated by NGOS in the field of knowledge and as well from researchers both in the North and the South. [4] Criticisms mostly concentrate on the editorial policy of the Gateway, its connection to the World Bank as well as the irrelevance of northern-generated information for and unequal possibilities to participation in the open-part of the Gateway (e.g. discussions, ranking the material). I will go now through this one by one.

WHO DECIDES WHAT´S BEING DISCUSSED?

The choice of topics is thus orientated to the official donor categories while you will not find topics such as political economy, inequality or discrimination, instead concepts like governance and human development. Wilks criticizes this taxonomy because it «*[. . .] appears to reflect an aim to organize development-related information in a way that is convenient for people who see the world through official development lenses, or perhaps a failure to understand that issues are constructed and perceived differently by different groups.*" (Wilks 2001). The Choice of Topic setting is a highly political field, determining the mainstream development discourse. In spite of the commitment the World Bank has made to the new Aid Architecture as signatory of the Paris Declaration as well as the Accra Agenda, it can not be said that the principles, [5] especially the concept of Ownership, are reflected in the Development Gateway. On the contrary, it seems that the communication and information structure of the DG still represents a top-down approach to participation as transaction instead of fostering fair representation. Ownership of the choice of topic as well as content generation and the structuring of communication is not realized in the actual design of the DG.

As Thompson (2004) puts it, the Gateway organizes information in a way that "*[. . .] objectifies, measures and exposes 'the developing' in categories not of their own choosing; it 'mediates' by screening and presenting a view of development which accords with dominant developmental power relations[. . .]*» instead of putting the » and diverse in the center of attention.

The choice of language is only one example for this. Given, that you can » only something you understand, there is no reason why DG-content is published mainly in English or another of the six UN languages. Swahili for example is one of the most important and widespread languages in East and Central Africa. It counts more than 60 million speakers and plays a crucial role in every day life of millions of people.

[2] Development Gateway / About: 2011-07-26. http://www.developmentgateway.org/about. Accessed: 2011-07-26. (Archived by WebCite® at http://www.webcitation.org/60Sam6XxD)

[3] The Development Gateway is financed by several governments, International Corporations, mainly from the Technology Sector as well as from the World Bank itself. This is a critical point because the World Bank declares the DG as independent, only governed by the Development Gateway Foundation. In an analysis with the Tool Issue Crawler, Noortje Marres from the University of Amsterdam founds out that there are indeed strong ties with the Bank. For detailed information about tracing trajectories of issues see: Marres (2004).

[4] Most critique came from the CSOs Bretton Woods Project, OneWorld, Bellanet and Voice of the Turtle. For further reading see for example: Voice of the Turtle (2001), The Development Gateway: A Declaration of concerned knowledge workers. Available at : http://www.voiceoftheturtle.org/gateway/. Accessed: 2011-07-26. (Archived by WebCite® at http://www.webcitation.org/60Sb2xzJR)

[5] The Paris Declaration (2005) and the Accra Agenda for Action (2008) are founded on the five core principles Ownership, Alignment, Harmonization, Results and Mutual Accountability. For more information see: http://www.oecd.org/dataoecd/11/41/34428351.pdf. Accessed: 2011-07-26 (Archived by WebCite at http://www.webcitation.org/60SbCvwyK)

The process of knowledge production is directly restricted to language skills, and to exclude for example Swahili from the Development Gateway would mean excluding millions of people from participation. On this basis to use only English in the context of East Africa allows access to only a limited (exclusive) group - quasi a linguistic elite and excludes the marginalised in from what is claimed to be knowledge relevant to development.

This is true for the Country Gateways, too, which were a response to voices in civil society critical of the centralized Gateway structure and of the lack of ownership for developing countries. This seems democratic and participatory, but it ignores that it will be only a certain elite who has the opportunity to disseminate its knowledge through the Gateway, also because «*[. . .] issues of inclusion and representation are more directly connected with conflict and survival*» (Van Der Velden 2002a, p. 8).

Another critical point is that mechanisms of selection transform the southern-generated knowledge till it is integrated in northern knowledge databases. As Samoff and Stromquist state with respect to the aspects of power in knowledge sharing processes: «*[. . .] the official knowledge collectors will have important authority over what is regarded as knowledge and over the constructs used to organize it, for example 'indigenous', 'traditional', and 'authentic'.*» (Samoff & Stromquist 2001, p. 639).

TOPIC GUIDES: A CRITICAL ONE-MAN SHOW

It is the task of the Topic Guides to select the material which will be available on the Gateway. According to King, they fulfill the central function of knowledge management. But it seems doubtful that their collection represents the interest of all in the development communities, especially because «*[. . .] the Topic Guide would need to be a very unusual combination of knowledge manager, networker, reviewer, disseminator, synthesizer, policy analyst, and last but not least – scholar.*» (King & McGrath 2004). There are a lot of criticisms articulated by civil society organizations from the North and the South about this selection procedure, especially with respect to the missing transparency about the Gateways quality standards which determine if material is published. This is crucial because Topic Guides have to find a balance between material send by established organizations as the WHO, UN or even the World Bank and their mandate to encourage capacity-building in the South. Methods of knowledge validation do not exist in a power-free space and are not only oriented to quality.

The selection of which knowledge is worthy to be published made by the Topic Guides, thus as well as the presentation of information determines who has access – and who has not.

THERE IS NO CONSENSUS

The super-site for development knowledge creates the impression that a consensus exists about relevant knowledge in the international development community. But knowledge is power and therefore it is contested. This is not reflected in the Gateways structure nor is there room for discussion about knowledge in general or what is meant by, for example, the term development which cannot be supposed to have the same meaning for everybody using the Gateway.

With reference to the work of Maja Van der Velden, development as understood by the DG means the diffusion of knowledge from more to less developed societies in a linear process and has nothing to do with emancipation through the deconstruction of power.

Instead, I endorse the comprehension of knowledge as imperfect, socially constructed and diverse, which is situated and cannot be detached from its cultural, political and economic context (This comprehension is adopted from Lyla Mehta in her critical examination of the World Development Report on Knowledge for Development. See Mehta 1999). Otherwise, communication between knowledge networks and within the DG becomes merely an information transport medium. The role of the knowledge network will be to «*[. . .] provide cheap, fast, long-distance communication that will strengthen the relations between centers and margins while weakening everything between; it supports centralized decision-making and authority while decentralizing ‹location›, i.e. work; it will go further and faster while saying less about more.*» (Menzies 1996).

There cannot exist a real consensus when a lot of people are excluded from the development discourse as arranged by the Development Gateway. According to Foucault, mechanisms of exclusion regulate the access to discourses as well as which discourse is possible and which is not (Foucault´s general theories concerning power and the relation between power and knowledge were significant for the development of the poststructuralist theory of knowledge. Among his the most important works are Foucault 1972, 1973).This means that certain regions of the discourse are reserved for qualified persons; others, who do not meet the given requirements, will be marginalized or even totally excluded (Pscheida 2010, p.36, my translation).

It can be stated that because of the mechanisms of exclusion – through top-down topic setting and content selecting by DG Staff, opaque quality criteria, and the lack of recognition of other forms of knowledge which perhaps cannot be expressed in the context of the present structure of the DG as well as by arbitrary language choice – that the DB empowers a certain kind of discourse.

Initiatives such as this one enable select groups of expert to determine what is regarded as valid and relevant knowledge. But this group is not likely to fulfill the needs of people in developing countries, especially when local and indigenous knowledge is excluded.

As Ishengoma points out: «*[It] implies that the Bank has already set a standard for development knowledge. That means the huge amount of local / indigenous knowledge outside its scientific and technocratic community will be excluded from the Bank´s standard knowledge website. This exclusion will consequently make the World Bank irrelevant to Africa and many other Least Developed Countries.*» (Ishengoma 2001, n.P.).

This raises concerns about the World Bank´s role as knowledge broker, or, as we have seen, concerns about its domination of the development discourse by discouraging dissonant discourses in many different ways. As Robert Bissio points out: has argued in favor of the World Bank [. . .] starting to publish a newspaper, even in countries which badly lack them. There

would be a public outrage if someone proposed it, as the press is supposed to be free.» (Roberto Bissio, Executive Director of The Third World Institute, Montevideo commented on the Development Gateway. See therefore Wilks 2001).

But even if nobody from developing countries has asked for the Development Gateway, the expected advantages seem to be clear: with an ostensibly open platform it became possible to appease some of the voices critical of the Banks disconnection to -world» problems in developing countries while at the same time privileging those contributions, which will not affect the neoliberal paradigm. (Regarding the bank intern research unit DEC Robin Broad, a formerly World Bank economist states that there exist a lot of mechanisms to discourage dissonant voices from within the Bank which reduce the trust in the Banks claim to provide the -available» knowledge in the Gateway. For a detailed and critical analysis of World Bank research see Broad 2006).

Through the setting of quality standards many people (and therefore many different views) get excluded from discourse while at the same the DG-Team maintains that the platform has many possibilities to interact and participate.

The option to comment on and rank the material on the website seems democratic only at the first sight. But it implies that everyone has access to a computer or the time to spend in front it as well as a functioning internet-connection or even the necessary electricity. Perhaps this is one of the reasons why in 2001 only 30 per cent of the Bank´s site users were from outside the U.S. (Wilks 2001).

CONCLUSION

The stated aim of World Banks´ Knowledge Management initiatives was the sharing of Knowledge between the North and the South. The implicit assumption that by means of knowledge management knowledge can be detached from its specific context is critical. This illustrates the Bank's approach to knowledge as something which can be transferred in a linear way and can be possessed in the North while being applied in the South. The analysis of the Development Gateway confirms that in the case of the World Bank there seems to be no equal and participative kind of knowledge exchange between North» and South» as a constructive sharing of expertise.

Instead, it is argued, the Bank's leading position as a global knowledge broker has been strengthened by its focus on knowledge management, mainly through ICT, while the equal participation of other actors has not been achieved. The nature of technical-based knowledge management as used by the World Bank makes it an instrument to preserve dominance in global knowledge governance. Hence, knowledge management itself is not the problem but the way the Bank originally implemented it. But, Knowledge Management and ICTs for Development have a great potential as instruments for the global knowledge exchange, recognizing diverse kinds of knowledge as well as multiple ways of knowledge creation and validation. To reach a democratic and empowering knowledge exchange, three aspects for knowledge sharing initiatives are of importance:

First, it was shown that methods do not exist in a power-free space. Acquaintance with the scientific METHODS means also to gain power. The selection of information through the Topic Guides, processes of knowledge validation as well as the presentation of information determines who has access – and who has not.

Second, to be relevant in the context of self-determined development, platforms have to be designed in a participatory manner. This means, that a variety of stakeholders on all levels of society has to be involved in planning processes from the beginning, not only intellectual, political and economic elites. Methodical, it would be most promising to use participatory action research to assess the knowledge needs of people in developing countries. Therefore, it is important that the social context in which knowledge sharing initiative are developed has to form the basis of their design. This includes e.g. linguistic and socio-cultural translations to make the knowledge accessible for all, independently of their educational background (Van Der Velden 2002b, p. 12). This is the only way information and knowledge can be relevant for those concerned and to improve their living conditions through knowledge exchange. Therefore, participation has to be conceptualized as a citizen right with the aim of a radicalised democratization of knowledge exchange which includes as many people as possible.

Third, the design of ICTs for development has to be inclusive if their aim is to reach the most marginalized groups. These are largely excluded till now as well as from content generation as from access to the highly technology-based knowledge databases. E.g. papers and analysis could be offered as audio files for visually impaired or illiterate persons. As already mentioned the choice of language is of high importance for access. There is no reason for the dominance of former colonial languages. Knowledge Management should be used as an instrument which allows as many as possible different voices to be articulated and heard. This also means creating opportunities for people in developing countries to participate in the international development discourse as equal participants and not only as receiver of knowledge generated and tested elsewhere

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