

Failures in Implementation

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Abstract

The purpose of this essay is to propose a comprehensive legal theory of implementation allowing for a deeper understanding of the failures of contemporary Public Administration. Such a theory requires its proper methodology, which is, in fact, the missing link between administrative law and the so-called new sciences.

The thesis takes the view that the systemic approach satisfies the above requirements, for it makes possible the broader conception of law, viewed within its social context. It also makes salient the decision-making element inherent in the implementation process. In this way, it enables the researcher to identify and interrelate important but latent factors of implementation failure, neglected or even overlooked by purely legal or purely empirical implementation studies. This deeper understanding of implementation, drawn from the relevant theoretic systemic models, is a necessary prerequisite for a sound policy making, avoiding the pitfalls of implementation failure.

On the other hand, the usefulness of the proposed comprehensive legal study of implementation is shown in the Second Part of the thesis. For this purpose, a characteristic case of administrative failure has been selected and analyzed on the basis of the relevant theoretical model proposed in Part One. The case refers to the failure of urban policy in Greece as expressed in the phenomenon of unauthorized development. It is a case worth studying, since the failure is due to a multiplicity of factors other than the relevant legislation (statute of 17.7.1923), which is of a remarkable quality. The models and findings of the study can be applied to any case of implementation failure, thereby facilitating not only diagnosis but prevention of failures as well.

Failures in Implementation:

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Failures in Implementation

Part One

Chapter 1. Delimitation of the problem

Abstract

The accumulating failures of the modern welfare state's policies and the limitations of contemporary implementation theories point to the need for an adequate legal theory of implementation. The formulation of such a theory, combining concern for the rule of law with effectiveness, shall be the object of the present study.

This theory should attempt to overcome the limitations of the existing empirical studies on the subject, which leave many fundamental questions unanswered and open. By their own nature these questions can only be dealt with in a synthetic study, i.e. a study following a holistic approach, which permits: a) an integrated, both legal and empirical, approach to the subject and b) a synthesis of all relevant factors in a meaningful way.

The present chapter contains a brief review and critical analysis of the major empirical approaches to implementation, which may serve as a stimulus for further research.

1.1. Introduction

"Failures in implementation" is proposed in this essay as a convenient term to draw attention to an important problem, namely the incapacity of the state to carry out its policies to the desired extent. State policy failures ranging from minor errors to major catastrophes, abound in history and have always been a favorite theme for political, historical or even philosophical debate¹. However, the suggested term implies a different approach to this perennial problem, namely an attempt to apply a strict method to its study.

State policy failures usually become manifest in the implementation phase in which the designed policy is actualized and produces its effects. For a long time, policy failures were considered political failures of the state, giving rise to claims for government change, ideological shifts or even revolutions. However, the development of policy sciences shed light to the technical aspect of implementation by establishing the distinction between politics and policy². Following this distinction politics is the power process within the state, whereby issues and leaders are filtered, whereas policy is a decision making process aiming at the solution of public problems. While there is an obvious interaction between the two, prevalent in the policy making process are the rational and technical elements required for the solution of those problems which fall within the range of state responsibility.

In this sense we talk of economic policy, energy policy, health policy, education policy e.t.c.³

Thus defined the policy making process is susceptible to scientific analysis, usually under the name of public policy analysis⁴. There is a variety of models of public policy analysis and implementation has a special place in everyone of them along with the other components of policy making, i.e. problem structuring, alternative thinking, goal setting and evaluation. Thus, implementation has acquired rather technical connotations, thereby facilitating policy analysis in exactly the same way as the distinction between rule-making and rule-application has facilitated legal analysis in classical administrative law. However, while elements of moral, economic and technical rationality are emphasized in policy analysis, legal constraints are rather poorly analyzed. The purpose of this essay is to restore the balance by shedding light on the legal dimensions of implementation.

Today there is a shift of academic interest towards implementation and there are several reasons for that: the alleged failure of a number of social policy programs in the modern welfare state during the recent decades⁶; an increasingly managerial attitude in the running of public administration emphasizing the importance of such methods as cost-benefit or cost-effectiveness analysis in the evaluation of welfare and other programs⁷; the growing capacity of the private sectors to compete with the state in the provision of social services, which has upgraded the criteria of performance⁸. A general feeling has been established that the state has somehow exceeded the limits of its capacity thereby undermining its own authority⁹. Scientists and laymen point to the multiplication of paper statutes and express doubts about the capability of the state to carry out the tasks it has undertaken. Lawyers give warnings of the approaching limits of law¹⁰. The main problem now is not to call in question the intentions of the state, as in the past, but rather to wonder why so good intentions produce such poor results¹¹. In trying to answer this fundamental question scientists are obliged to descend from generalities to specific problems.

Confronted with the growing problem of implementation failure, scientific studies try to deal with it in different ways. Non legal theories shed light to significant matters of substance related either to structural or functional aspects of implementation. As a rule these studies are analytical and focus on specific factors without attempting a synthesis of the whole problem. On the other hand, traditional academic literature, administrative law, more or less ignores the subject and insists upon the legal conceptualization of failure, manifested in the illegal administrative actions or the damages caused by them.¹² The inadequacy of such a purely legal approach is evident in the increasing number of cases where perfectly lawful administrative decisions end up producing colossal failures of the overall policy. In other words, the problem is how to produce decisions that are not only lawful but also effective. This is precisely the weak point of contemporary legislation, which is often reduced to paper law.

Therefore, there is an obvious vacuum in legal theory. By themselves empirical studies are not sufficient since the frame of law. In order to make public policies effective it is not enough to correct the specific failures detected by empirical theories. Something more is required and that is the need to modernize legal theory itself. Such a task is by

nature synthetic and presupposes a new conception of law, focusing not only on rules, as is the case with traditional positivist theory, but also on the decisions and actual operations.

The present study departs from a novel theory of Law (presented) below in chapter 3) which integrates policy analysis with the findings of the so called new social sciences. In that context implementation is considered as a distinct phase of a far greater decision making and law making process. This permits the identification and interconnection of all factors, legal and operational, which contribute to its failure ¹³. Such a synthetic approach may be characterized as holistic and, more specifically, systemic, as we shall explain below in chapter 3.

The practical value of an integrated implementation theory may best be shown through its application upon a real failure case. The Second Part of the present thesis is dedicated to such a task.

1.2 The Concept of Implementation

Any discussion of implementation failures presupposes a clear-cut and complete definition of implementation. In the last two decades a number of studies appeared, dealing directly with implementation and seeking to define and analyze it from various perspectives. Their common characteristic is the adoption of a non legal approach to the implementation process, despite the fact that the latter is an intrinsically legal process. The definitions proposed in those studies may lack in precision from the legal point of view, but are worth examining for a twofold reason : to assess the contribution as well as the limitations of non legal approaches to implementation and to ascertain the need for a legal theory of implementation.

The seminal work on implementation is considered to be Pressman and Wildavsky's book "Implementation " ¹⁴. According to their definition, implementation may be viewed as a process of interaction between the setting of goals and actions geared to achieve them. In this definition implementation is depicted as a process of interaction between two variables, namely a policy choice embodied in a statute and the actions aiming at its realization. Thus, the definition focuses not on implementation itself, but on its interaction with the previous stage of the policy making process, which is the goal setting stage. However, interaction with the goal setting element is not characteristic of implementation alone, since all the other elements of the policy making process (policy formulation, alternative thinking, evaluation) interact iteratively with that element as well. If what is meant is that implementation consists of actions aiming at achieving policy goals, the definition is deficient, because implementation consists not only of actions but also of decisions, namely legal decisions of individual character, which are omitted in the proposed definition.

Van Meter and Van Horn ¹⁵ adopt a similar standpoint regarding implementation, which they define as encompassing those actions by public and private individuals (or groups) that are directed at the

achievement of objectives set forth in prior policy decisions. They correctly distinguish the stage of policy formulation, in which policy goals are adopted, from the stage of policy implementation, in which policy goals are realized. Their definition, though valid, is not complete for the same reasons already mentioned above, namely because it fails to consider the legal aspect of implementation.

A somewhat different definition is proposed by G. Edwards¹⁶. Policy implementation is defined as the stage of policy-making between the establishment of a policy-such as the passage of a legislative act, the issuance of an executive order, the handing down of a judicial decision or the promulgation of a regulatory rule-and the consequences of the policy for the people whom it affects. Edwards defines implementation indirectly. He correctly acknowledges that it constitutes a separate stage in the policy making process. However, instead of pointing out its particular characteristics, he simply locates the implementation phase within the entire policy-making process. One may assume that implementation is what happens to a policy after it is authoritatively decided and until it produces its effects. This definition of the implementation process is apparently insufficient, since it fails to describe what actually happens to the policy during the implementation stage.

Sabatier and Mazmanian¹⁷ define implementation as the carrying out of a basic policy decision usually made in a statute (although possibly important executive orders or court decisions as well). Their contained definition is vague, because it does not specify of what exactly consists the process of carrying out a policy decision. However, regarding a special category of statutes, namely statutes regulating private economic activities, Sabatier and Mazmanian describe the implementation process as running through a number of stages, beginning with the passage of the basic statute, followed by the policy outputs (decisions) of the implementing agencies, the compliance of target groups with these decisions, the actual impacts, both intended and unintended of these outputs, the perceived impacts of agency decisions and, finally, important revisions of the basic statute. Thus elaborated, the proposed definition is overextended at both ends, since it begins by appropriating to implementation a part of the rule making process (passage and revision of statutes) and ends by including activities outside the law making process. More specifically, from the activities described in the definition only the policy decisions of the implementing agencies and the compliance of target groups are part of the implementation process. The intended actual impacts are actually tantamount to the compliance of target groups. As for the unintended actual impacts, in other words the spill-over effects of the policy, they are random elements which, together with the perceived impacts, may be useful data for evaluation but are not part of the law-making process strictly speaking.

According to another definition, proposed by Masood Hyder ¹⁸, implementation is about putting policies into practice. This definition is too wide for analytical purposes. Even if it is complemented by the evolutionary model suggested by the author, in which the innovative and corrective character of implementation is emphasized, the definition remains too vague, because it does not specify in what way the innovation or correction of the policy takes place in the implementation stage. Also by omitting the legal aspect of implementation, the definition fails to consider if and under

which legal conditions such activities can be part of the implementation process at all.

A completely different approach to implementation is suggested by Bardach¹⁹. He defines the implementation process as (1) a process of assembling the elements required to produce a particular programmatic outcome and (2) as the playing out of a number of loosely interrelated games whereby these elements are withheld from or delivered to the program assembly process on particular terms.

At first sight, the above definition seems rather vague since it does not specify the various elements whose combination is expected to produce the intended programmatic outcome. However, it must be assumed that these are the elements at stake in the various games described in the book, namely resources, policy goals, administrative controls and personal or political energies.

Still, Bardach by overlooking the legal aspect of implementation, has produced a definition which is too wide, since it fails to delimit the implementation process within the policy making process. More specifically, some of the alleged games he describes are actually related to the stages preceding the implementation process and are, therefore, not implementation games but rather policy formulation games (e.g. budget game, funding game, piling on game e.t.c.). Perhaps the definition adopted by Bardach is instrumental to the purpose of his book, which is apparently a presentation of an assortment of pathologies of the law making process, some of which are related to implementation. One has the impression that implementation takes place in a vacuum, where different actors, interrelated in incoherent ways participate in a major game of maximizing individual profits. Even if this may sometimes be the case from the individual actor's perspective, it does not shed much light either on the implementation process or on its failures. In the first place, it is not made clear in what way those elements, when finally assembled, will produce the intended programmatic outcome, in other words it is not specified what implementation actually is. The behavior exhibited in the course of the various games may be pathological, illegal or even immoral. But, by failing to produce the legal and institutional context in which this behavior is manifested, Bardach cannot grasp its precise impact on the implementation process. One is left with the vague impression that this behavior somehow influences the assembly of some elements required for the implementation of a specific program.

Another approach is proposed by Barret and Fudge²⁰, who define implementation as a policy action continuum in which an interactive and negotiative process is taking place over time, between those seeking to put policy into effect and those upon whom action depends. Implementation is thus described as a process of interaction between policy formulators and policy implementors, in which policy is continuously modified and reshaped in response to the actions of the implementing agencies.

The above definition assumes that implementation has a decisive and continuous impact on policy formulation. However, by failing to consider the intrinsically legal nature of both policy formulation and implementation, the definition cannot specify what exactly implementation is

and by what formal structural and procedural mechanisms the alleged mutual influence is exercised.

Despite the great variety of novel approaches and definitions, implementation is actually a new name for an old concept, that of rule application. (Execution , Verwaltung) . The term rule application was used to convey the idea that policy is first prescribed by a rule-making body and then entrusted to someone else (usually an administrator) for the purpose of its application to immediate and variable situations by means of individual decisions and actions²¹. As it is obvious from the very term (rule application), emphasis in this approach is given to the compliance of the administrator to the constraints imposed by the rule maker. Thus, the main concern is of negative character, namely that the individual administrative decision should always be conform to the will of the legislator and never exceed the legal limits set by him even in case of unworkable statutes.

The new term implementation suggests a shift in emphasis from legality to effectiveness. Interest now focuses on the capacity of a policy to produce its intended outcome and solve the problems which triggered its formulation. Until now this effort has been undertaken by non legal methods, which have proven to be insufficient in view of the complexity of the problem. Thus, it is important for lawyers not only to share this new interest in implementation, but also to express the concept in legal terms so that it will acquire the accuracy and clarity of a legal definition.

A legal definition of implementation presupposes a thorough knowledge of the structure of the decision-making process in the state, which is actually the law making process. This structure has been postulated in the preceding centuries by the principle of the separation of powers ²². It should, however, be made clear to non lawyers that this postulate does not reflect a legalistic or arbitrary assumption, but, on the contrary, corresponds to a major organizational policy which is the cornerstone of the constitutional system. The above structural model requires that each of the two basic components of the policy making process (namely policy formulation and implementation in functional terms, or legislation and administration in legal terms) should be entrusted to a separate decision making body, endowed with the necessary properties for its optimal performance. Thus, the legislative body, which is entrusted with policy formulation, should have representative character and responsiveness to societal needs, while the administrative body, which is entrusted with implementation should be characterized by continuity, professionalism and specialization. It follows therefrom that implementation is strictly confined within legal (constitutional) limits, which should be respected before any considerations for effectiveness may be taken into account. Good implementation is first of all lawful and then successful.

Implementation may be defined as the process of application of general rules, embodied in statutes or other regulatory acts, to concrete situations, through individual legal decisions and the concomitant material operations, for the purpose of realizing the public goals pursue by the above general rules.²³

Seen from this perspective, deliberate state intervention in the social process, i.e. law, is a complex system of decisions consisting of: a) a general decision called statute, which sets in an authoritative manner the goals pursued and the basic structures and procedures for their attainment, b) other regulatory instruments elaborating the provisions of the statute, c) individual legal decisions applying the general provisions to individual cases, d) material operations, i.e. actions, by which the intended goals of the results. In that context implementation consists only of the decisions and operations referred to by c) and d). ²⁴

1.3 The Concept of Failure in Implementation

The concept of implementation failure is directly derived from the above definition of implementation. Successful implementation consists in the full materialization of goals pursued by the statute. Implementation failure consists in the discrepancy between the goals pursued by the statute and the actual outcome of the corresponding individual legal decisions and operations. According to the general theory of failure²⁶, failure is conceptualized as a shortfall between expectations and reality, characterized by dissatisfaction, unattained goals and/or undesirable outputs.

Given the concern of contemporary legal science with both the lawfulness and effectiveness of administrative action, the above definition reflects the modern conception of failure from both perspectives, the legal and the political. However, interest is not always equally allocated among these different aspects of failure.

Classical administrative theory has approached the problem from a rather narrow perspective determined by practical considerations. Only such failures are taken into account, which could eventually lead to the annulment of an administrative decision in court ²⁵. Otherwise, once established, usually through a trial, that a specific decision has not exceeded its prescribed legal limits, it ceases to be of any theoretical or practical interest to the lawyer. The distinction between legality and expediency of the administrative decision reflects the resolution of traditional legal theory not to concern itself with question of effectiveness. Thus, judicial control is strictly limited to disputes over legality, while expediency is considered to be an intraadministrative matter, which concerns the lawyer only in such extreme cases where ineffectiveness constitutes a direct violation of the law.

Despite the obvious importance of the problem for lawyers, most implementation failure studies come from the field of political science and, therefore, adopt the same pragmatic approach that characterizes evaluation studies of governmental programs.

Thus non legal approaches to implementation take the concept of failure for granted and focus rather on the identification and analysis of factors accounting for poor implementation. This preoccupation with the preconditions for successful implementation may succeed in suggesting

empirical ways of avoiding failures, but does not answer the crucial question what an implementation failure is.

More specifically, Edwards admits that measuring the success of a particular policy is often difficult and considers preferable to focus on logical prerequisites for effective implementation. A similar attitude is shared by Sabatier and Mazmanian, who also propose a detailed list of preconditions for good implementation, without specifying what poor implementation is. It is to be assumed that implementation failures must be blamed on the absence of the stated preconditions. Pressman and Wildavsky attribute implementation failures to the complexity of joint action, consisting of changing actors, diverse perspectives and multiple clearances; they back their assumptions with data provided by a detailed case study. For his part, Bardach chooses the game metaphor as a convenient way of explaining how and why implementation fails. Barret and Fudge refrain from defining implementation failure, which they consider as a relative issue, depending from the evaluator's perspective and his particular definition of the situation.

When speaking of failure, one should specify in what level of activity one is interested. There are failures of cabinets, failures of policies and failures of specific actions. For the present thesis we chose policy failures as an appropriate level of analysis from both the legal and the pragmatic perspective, i.e. failures of a certain identifiable policy, usually incorporated in a statute, to deal with a problem or a cluster of problems. In this way we will not be preoccupied with the failure of entire administrations because the evaluation required in such a case expands over a long period of time and is extremely complex due to the manifold character of administration. On the other hand, focusing on the level of the isolated decision presents a fragmented view of administration and does not permit the drawing of valid conclusions about the effectiveness of implementation. Thus, the policy (program) is selected as a middle level of analysis because it presents a unity of character, even if it unfolds over a certain period of time, and deals with particular problems whose course and eventual solution can be traced by empirical investigation.

It is at this level that state intervention is usually designed through the adoption of different policies (urban, housing, monetary etc) prescribed in statutes.

It is also at this level that evaluation studies are usually conducted and parliamentary control is performed. Therefore a study at this level may provide helpful insights for those interested either in policy design or in policy evaluation.

What is the appropriate method for conducting an analysis at this level? A policy, no matter how limited its scope, is a highly complex system of measures affected by a great number of factors and having multiple implications and consequences. It is, in other words, a complex object of study. According to the great theoritician of complexity, Ross Ashby, complexity is only tamed by complexity. The only methodology capable of treating complex problems is, in our view, the systemic approach, whose fundamental principles will be discussed below (Chapter III). In the present thesis, the systemic approach is based upon a general systemic

model of policy failure depicting all factors responsible for it. The present study aims precisely at developing a comprehensive theoretical model of implementation, which shall integrate legal and empirical factors of implementation failure. Then we intend to show how such a model may be used to shed light on the multiple aspects of a specific policy and reveal the factors of its failure. In order to do this in a meaningful way, we shall first provide the reader with a brief presentation of the fundamental principles of the systemic approach (see Chapter III).

Moreover, before we proceed to the presentation of our own model we shall briefly review the basic current approaches to implementation in order to identify some fundamental issues that remain open and to which the present thesis will attempt to provide an answer.

1.4 Awareness of the Problem : Current Theories

A critical review of the current non legal theories of implementation should begin from a basic classification: generally speaking there are two perspectives in which implementation is examined, one "*from the top to the bottom*" and another "*from the bottom to the top*". The term "top" refers to policy formulation, usually assigned with those having a rule making power (legislators or administrators endowed with regulatory power)²⁸, while the term "bottom" refers to rule application or policy implementation, usually assigned to low level administrators or private persons²⁹.

According to the top-bottom approach policy is decided at the top, where the policy formulator sets a clear objective, designs an implementation process, i.e. a sequence of increasingly more specific steps for achieving that objective, and states an outcome against which success or failure can be measured³⁰.

This approach is compatible with the comprehensive models of systems analysis and policy analysis (similar to the one used in this essay), which analyze policy making in a sequence of phases (namely policy formulation, alternative thinking, choice, implementation and evaluation). These models are also compatible with the established structural model of the decision-making process in the state, according to which implementation (administration) is subordinate to rule-making (legislation). In legal theory this is expressed with the doctrine of the principle of legality ("rule of law"). The basic assumption of both legal theory and policy analysis is that policy formulation is qualitatively different from policy execution. Policy formulation deals with decisions about major issues concerning value allocation, value conflict and value integration. Also it requires a holistic view of the problem under consideration, capacity for creative synthesis and authority for setting and imposing a value system for its solution. These qualities emerge only at the level of the rule maker (usually a legislative body) and do not exist at the lower levels, which are entrusted with the performance of specialized tasks and have, therefore, a limited experience acquired in the field³¹. Historically this was the reason why the rule making function was taken away from the king and assigned to the legislature³², as

a body possessing the necessary properties allowing for the authoritative value analysis of the problem. In this perspective the principle that a clear line of demarcation should be drawn between policy formulation and implementation is valid. This separation, however, should not be misinterpreted, in the sense that the administrator performs only tasks of mechanical execution. On the contrary, integral parts of the classical administrative law are: a) the delegation of legislative power for making secondary regulations³³ and b) the discretionary power, which ensures two levels of policy making for purposes of flexibility and adaptation³⁴.

Moreover, in modern systems analysis and policy analysis, implementation is considered one of the variables that should be studied at the stage of policy formulation in an iterative way, together with the other components of the policy making process (this is specifically defined as feasibility study)³⁵. Current approaches in systems analysis seek to involve the implementors in the policy making process, in the sense that, when asked to, they should provide information about the prospective difficulties or other problems of the prescribed implementation. It is also a part of the classical theory of administrative law that the higher level administrators play an important role as advisors to the law makers by gathering data, providing information about resources or even preparing drafts of laws³⁶. However, the meaning of this involvement is not that implementors are expected to prescribe policy but rather to offer advice and discuss particular problems of implementation in view of their experience in the field. In these activities the possibilities for the participation of implementors in policy formulation are exhausted.

In view of the above, the rationalized top-down approach seems to combine legal validity with the requirements of effective implementation as prescribed by modern systems analysis and policy analysis.

The bottom-top approach rests on the assumption that there is no conceivable separation between policy formulation and implementation. Thus, policy formulators do not and should not exercise the only, or even the determinant, influence on the implementation process. On the contrary, policy is constantly reshaped by the knowledge and problem-solving ability of lower-level administrators through informal devices of delegation of power and dispersion of authority³⁷.

If the outcome of this interaction between policy makers and implementors is the adaptation of the policy to the requirements of the specific situation, then there is no room for objection, except for the fact that the approach, if interpreted in this way, contributes nothing new: the traditional practice of granting discretionary power has been especially designed for that purpose. It should be made clear, however, that we are talking about adaptations of minor importance confined within prescribed limits. If, on the contrary, experience in the field prescribes a major revision of the existing policy, then the problem is one of adopting a new policy and has nothing to do with adaptation. It is a new problem to be solved at the level of policy formulation. In the cybernetic sense this is a feedback process used by the policy formulator to improve his policy³⁸. In reality this phenomenon occurs quite often in the form of law amendment or repeal.

However, the model suggested by the bottom-top approach is something different. The outcome at the policy action interaction might be a major alteration of the policy, regardless or even in spite of the intentions of the policy formulators. Such a view of the implementation process deviates from basic principles of administrative law. It actually means that an illegal implementation, i.e. an implementation in violation of the rules which prescribe it, can be valid and even recommendable. This attitude may be attributed to lack of legal knowledge, because, in reality, adequate judicial and extrajudicial controls are available for the reversal of such practices ³⁹. Those adversely affected by such policy-reshaping can challenge it and succeed in reversing it. Whenever they occur, incidents of major policy alterations effected by implementors should be interpreted as isolated cases, which have escaped control for various reasons, and cannot be considered as models of the implementation process in general.

Further arguments in favor of the bottom top approach suggest that the process of implementation is highly politicized, in the sense that there is constant political confrontation between policy formulators and implementors. This view, so far as it refers to the implementation process within the state apparatus strictly speaking, rests on a wrong assumption of the state mechanisms and processes. More specifically, the relationship of the implementors to the policy formulators can be of one of the three following types:

a) the implementors are public agencies, i.e. they are part of the administration. In that case their relations to the policy formulators are strictly hierarchical and there is no room for politics. This means that if the implementors attempt to enter into political confrontation of any kind there are adequate inter administrative or judicial controls (disciplinary sanctions, annulations etc) to guarantee their compliance and ensure the legality of their actions ⁴⁰.

b) The relations between implementors and policy formulators are not strictly hierarchical but also political, as for example in the case of the relationship between federal and state government or between central and local government. It should be made clear that even in such cases the political interactions are not random but take place in the context of a specific formal legal pattern. On the one hand, there are permanent control structures, whose function irrespective of any particular policy is to incorporate the peripheral structures to the central state mechanism and to ensure the necessary integration of local to central policy while allowing for sufficient autonomous action. On the other hand, the policy formulator, when designing a specific policy, should take particular care of the individual properties of the implementing agencies entrusted with the policy application and provide adequate control mechanisms after conducting the appropriate feasibility study. If he fails to do so, his policy is predisposed to failure. If adequate controls have been made available, the controller may or may not be willing to exercise them at his own legal and political risk. If, however, failures occur as a consequence of this decision, they should not be attributed to any inherent intractability of political relations to control but rather to the attitude adopted under the particular circumstances.

c) The implementors belong to the private sector and stand outside the state mechanism. In that case, the problem of implementation is more

complicated and requires systematic analysis. If the private parties are related to or control vital issues of the policy, then their predispositions constitute part of the problem formulation itself and should be seriously taken into consideration at that stage of policy making. Modern sophisticated methods of problem definition include the identification, classification and prioritization of the private persons affected by the policy; these persons are invited to present their views, which are analyzed and screened (assumptional analysis)⁴¹. In the design of major policies a communication between the private stakeholders and the policy makers is a basic precondition for problem formulation and often brings about an attenuation of the original position of both through some sort of bargaining or compromise. It is, however, important to remember that this interaction takes place at the hierarchical level of policy formulation and not at the lower level of implementation.

From the above case we should distinguish the case in which the cooperation of the private stakeholders is required for the successful implementation of particular issues of minor importance (e.g. installation of a new industry in a particular residential area, adoption of antipollution measures from a specific industrial unit, compliance with building regulations in a specific construction etc). In such cases, the implementors should be granted adequate discretionary power to exercise it by way of bargaining and negotiating with the private stakeholders in order to achieve the best possible results under the particular circumstances. This discretionary activity is also policy making, though of limited scope, as it will be explained below (chapter 4). It differs from the policy making activity of the policy formulator in the sense that it is restricted and should be exercised within the limits and according to the criteria set by the law. Thus bargaining and negotiations taking place at this stage can neither exceed those limits nor lead to the alteration of the original general policy.

Regarding the problem of compliance of the private stakeholders to the policy makers it should be pointed out that this is rather a matter of appropriate incentives and controls. Private stakeholders are dependent on the administration in various ways and, consequently, the administration has a great deal of leverage over them. For example, the granting and revoking of licenses has proved to be an effective way of keeping within desired limits activities as heterogeneous as the operation of private schools or hospitals, the installation of industries or the exercise of various professions. Also the granting of loans, tax exemptions or other similar incentives is successfully used to promote such activities as e.g. industrial decentralization or company mergers, especially if combined with sanctions like retrospective revocation of the benefits granted. In sum, administrative law offers a great variety of sanctions and controls which can be used effectively for the realization of a policy, should negotiations or bargaining fail.

Taking into account that the policy making process, including implementation, takes place in an organizational context, usually that of public administration, it is only natural for implementation theories to be influenced by the different approaches to the study of organizations ⁴². Thus top-bottom and bottom-top approaches are coupled by the respective organization theories adopted by the researchers. The top-bottom approach

is shared by a) classical organizational theory, b) neoclassical theory, c) systems theory and d) organizational behavioralism, while the bottom-top approach is adopted by a) human relations theories, b) public choice or market theories and c) various interpretative, emergence and bargaining theories. This variety in the approach of implementation requires a brief analysis of the above organizational theories in relation to implementation.

More specifically, the classical bureaucratic model (Weber, Taylor, Wilson)⁴³ focuses on the organization as unit of analysis and emphasizes hierarchy, authority and control as its fundamental characteristics leading to maximization of efficiency, economy and effectiveness. The same values, including rationality and productivity, are espoused by the neoclassical or neobureaucratic model⁴⁴ (Simon, March, Gore), which focuses particularly on rational decision-making. Both these approaches are compatible with the theory of organized complexity, rationality and hierarchy, which form an integral part of systems methodology. The systemic approach to organizations will not be discussed here, because it will be analysed in detail below. Finally, the organizational behaviorist⁴⁵ approach (Crozier, Lindbloom et al), focuses mainly on the bureaucrat, who is described as competitive, resistant to change, concerned primarily with his professional survival and making decisions in incremental ways. The study of implementation in this approach draws particular attention to the behavior of the lower-level implementor and, more specifically, to his negative attitude towards new policies endangering his established routine. If such behavior is considered susceptible to change according to rational standards, then the present approach is compatible with those previously discussed and in a sense may be regarded as complementary to them, since it urges the policy formulator to take bureaucratic behavior seriously into account, either as a constraint to policy making or as a target for modification, if possible. On the contrary, if the described behavioral regularities are considered rigid and susceptible only to marginal modification, then the approach is compatible only with incremental theories, which regard policy making as seriously constrained by the existing routines and practices of administration.

All the above theories view implementation as a distinct phase of the policy making process, assigned to specialized organizational units usually located at lower hierarchical levels. Thus, the functional study of implementation is combined with its organizational aspect, while the focus is on the search for the necessary prerequisites for successful implementation. Common to all these approaches is the empirical conceptualization (normative or descriptive) of the problem, as well as the absence of interest for its legal or institutional dimensions.

The bottom-top approaches to implementation, on the other hand, adopt organizational models whose common feature is a shift in emphasis from the organization and the efficient attainment of its goals to the individual and the promotion of his self-actualization or self-interest.

The human relations or organizational development model⁴⁶ (Argyris, McGregor, Likert, Bennis) focuses on the basic psychological and social needs of individuals for autonomy, participation, dignity and self-actualization. These ultimate values can be maximized by means of participation to bureaucratic structures organized on the basis of

consensus on goals, open communication, participation in decision making, mutual trust, commitment to common purposes and minimal hierarchical control. This theory, developed by psychologists and business managers rather than public administrators and political scientists, soon faced an unresolvable dilemma: how was the value of participation, postulated by the newly adopted principle of democracy within the administration, to be reconciled with the values of efficiency and accountability, postulated by the principle of traditional political democracy? The crucial question, what to do when the imperatives of public organization conflict with the psychological needs of the individuals, has received no satisfactory answer yet. Among the advocates of human relations theory there is still ambivalence whether their commitment to individual development is regarded as a means towards more effective organizations or as an end in itself.

The attitude of human relations theories towards successful implementation is radically different from all the theories mentioned above. For these theories policies do not exist in a concrete sense until they are adopted and shaped by the implementors; the policy making process actually begins at the bottom and ends at the top. Thus, the central problem of implementation is not one of conformity to prescribed policy, but rather one of participation to policy formulation, individual motivation and commitment to its goals achieved by consensus. Failures in implementation are due to insufficient participation of implementors in decision making and/or lack of cooperation and good personal relations between them and the policy formulators.

The human relations theory presents a model of public administration which seems to overlook the fact that public organizations are man-made, designed for the purpose of performing a specific task considered to be of public interest. If such a task ceases to be important or can be adequately accomplished by individuals, then there will be no reason of the existence of the organization. Therefore there is no room for fundamental tensions between the goals of the organization and the goals of the individual role holders in it, for the simple reason that they belong to different hierarchical levels. In this sense, the organization is neither a means for the self-actualization of its members nor a monster devouring them for the sake of its self perpetuation. Its goals are prevalent because their fulfillment usually exceeds the capacity of the individual and has to be undertaken by a more complex entity. Thus, the organization is endowed with a life of its own outliving the temporary role-holders, and there are adequate controls in its outer environment to ensure that it fulfills its purposes. It is one thing to emphasize the impact of good human relations on the achievement of the goals of organizations, and it is to the merit of the human relations theory to have brought attention to this aspect of policy making. But it is quite another thing to throw doubt on the value of their existence. Organizations should be listed among the most important human achievements: without them the performance of any complex and enduring task would have been impossible.

The public choice or market theories⁴⁷ adopt an antibureaucratic view of public administration and prescribe the application of economic methods to public problems. Non coerced individual choice and maximum aggregate utilities are the values to be pursued by means of decentralization, free competition and bargaining. Conflict is considered inherent in social life

and the application of economic logic is proposed as the best method of resolving it in a satisfying rather than maximizing way.

According to these theories, implementation consists of a series of fragmented decisions reached by actors pursuing different purposes and disposing of different value resources. The public choice model is not a bottom-top approach to implementation strictly speaking, because power is considered to be fragmented and the formal position of the actors in the state mechanism is only one of the many sources of power which compete in the bargaining arena. Since there is no commonality of purpose, implementation success or failure is relative, depending on the preferences and position of each participant.

The market model has been challenged for both its general validity and its applicability to the public sector. Regarding the latter, the descriptive merit of the public choice approach is seriously contradicted by facts: public organizations with rigid hierarchical structures and well defined goals are quite common, while in most fields of public activity value conflicts are authoritatively settled at an hierarchical level higher than implementation (that of constitution or legislation) so that there is no room for bargaining at all. Resort to bargaining or similar negotiative procedures does not depend on the will of the participants but may take place only if permitted by the policy which prescribes the specific implementation process.

As for the prescriptive value of the public choice model, it is equally controversial. If the production and allocation of public goods is entrusted to market mechanisms and performed strictly according to economic logic, a number of difficult problems are bound to arise: what about goods and services which may be non profitable, yet are necessary for the public, (public works, social security, transportation, education, health)? What about goods and services which are scarce, yet must be provided to all and not only to those occupying strong power positions in the bargaining arena? And what about those goods whose production is inherently incompatible with market mechanisms (e.g. justice, defense, public order)?

This brief review of organization theories has provided us with a broader context in which we may study the various approaches to implementation mentioned above. Thus Pressman and Wildavsky, VanMeter and VanHorn, Sabatier and Mazmanian, Edwards, Gunn and Lewis, among others, seem to adopt the top-bottom approach, while Barrett and Fudge, Hill and Elmore are rather in favor of the bottom-top model. As each approach sheds light on a different aspect of the implementation process, it is useful to proceed to a more detailed discussion of the most characteristic ones among them.

Edwards attempts to increase understanding of the implementation process by describing and explaining the relationships among the critical factors involved therein. He identifies four basic categories of factors constituting possible sources of implementation failure, namely communication, resources, dispositions and bureaucratic structures, and studies each one separately as well as in interaction with the others. Moreover, he examines the types of policies most likely to face implementation problems, i.e. policies that are new, complex, controversial,

highly decentralized, crisis-related and/or established by the judiciary. In conclusion, he suggests the use of feedback mechanisms such as monitoring or follow-up and discusses the prospects for improving implementation.

A similar approach to the implementation problem is adopted by Sabatier and Mazmanian⁴⁸. The authors identify a number of factors affecting the achievement of policy objectives, which they classify in four categories pertaining to the tractability of the problem, the implementation structure, non statutory variables affecting implementation and properties of the implementing agencies. They also provide a detailed model of the implementation process, which is already presented above. Finally, they propose a list of prerequisites for successful implementation, including clarity of policy objectives, hierarchical structuring of the implementation process, commitment of implementing agencies to the policy and support by constituency groups, courts and legislators.

Gunn⁴⁹ also provides a catalogue with ten preconditions for successful implementation. The issues he considers as crucial refer to the nature of the policy, environmental constraints, communication and noise, and, finally, control over implementing agencies.

Lewis⁵⁰ adopts the distinction between policy and implementation and emphasizes the difficulties of policy interpretation or "translation" and the impact of political language on the problematic nature of implementation. He then proceeds to the problem of what actually constitutes a successful policy implementation and defines it as the cost-effective use of appropriate mechanisms and procedures in such a way as to fulfill the expectations aroused by the policy and retain general public assent. He concludes by suggesting ways of increasing the success rate in implementation, which he classifies as pertaining to the form of the policy, the mechanism for implementation and the translation process.

The above mentioned approaches share a common view of implementation: implementation is a process whereby human activities and resources are combined for the purpose of materializing a specific policy goal; the factors affecting the success of this process may be numerous and heterogeneous in nature but they are also subject to manipulation and control; better understanding of these factors allows for a better design of the implementation process at the appropriate level, thus minimizing the probability of failure. All these theories agree that implementation problems should basically be attributed either to the implementation structure or to the policy under execution or to the social, political and economic environment.

As we have already stated above, common weakness of these approaches is the total absence of an overall legal framework, which would encompass all factors affecting implementation and would indicate the precise location and significance of each one of them. Implementation does not take place in a vacuum; it is a process located within the organizational framework of public administration, which is itself a part of the wider organizational framework of the state. What the state is (structural decision-making process) and what the state does (functional decision-making process) is prescribed by legal rules shaping human behavior and integrating it at various hierarchical levels. Notwithstanding their

individuality, people acting in the organizational context of the state perform roles and, thus, the various situational interactions cannot preclude the recognizable regularities shaped by legal rules. One needs a picture of the whole to comprehend the behavior of the parts and one cannot have a total picture of implementation without adequate legal theory. The lack of legal theory leads to a fragmented view of the implementation process, allowing for exaggerations, one-side conclusions or emphasis on trivialities. Moreover, while all the above approaches recognize the importance of control in implementation theory, they are unable to contribute anything beyond mere wishes for adequate and effective controls. This is hardly surprising, since the design of an appropriate system of controls presupposes thorough knowledge of administrative law.

On the microlevel, in most of the above mentioned theories, implementation is defined vaguely without explaining what it really consists of. The notion of the legal administrative decision of individual character is completely ignored, despite its central importance in implementation theory. Yet, the elaborate legal theory that exists on the subject should not be underestimated by empirical approaches. A more careful study would have to credit it with considerable empirical achievements. More specifically, the conceptualization of the individual legal act in the implementation process has had significant practical consequences, namely: a) it compels the implementor to produce in advance detailed information about his intentions and his course of action, b) this information has to acquire formal character (usually in a written document) to ensure clarity and security in communication. In that way, the individual decision can easily be assessed against the existing legal constraints and subjected to adequate internal and external controls, c) regarding the context of the information, it is required that the selected course of action should be supported by adequate reasoning ⁵¹.

Although the above mechanisms are designed for the purpose of incorporating the decision of the implementor in the hierarchy of state decisions, the end result is neither too rigid nor too formal. On the contrary, the requirements for adaptability and responsiveness of the administrative action are well satisfied by means of the legal theory of discretionary power ⁵². Most of the above-mentioned implementation theories are familiar with the notion of discretion, yet they seem to overlook the fact that the granting of discretionary power is primarily a legal device whose function in empirical terms is twofold: on the one hand it adapts general programs to the particularities of individual cases and, on the other hand, it integrates the individual case within the context of a general policy. This can only be accomplished by legal means, i.e. by setting at the appropriate hierarchical level of the policy making process criteria and standards for the exercise of discretion.

In our discussion of the different approaches to implementation a special place has been reserved for Bardach who tackles the problem from a singular perspective. According to his definition, Bardach seems to consider implementation as a system of games played among relatively independent actors, who have at their disposal the elements required for the implementation of a specific policy. The games are played in a defensive attitude and, therefore, involve decision-making under uncertainty and conflict. Though the theory is presented as a descriptive one, based on the

analysis of specific case studies, it necessarily implies that there is no room for effective control in implementation, but only for learning from the respective games regarding the use of appropriate strategies and techniques.

With regard to this approach, the following comments can be made: In the first place, although the author's conclusions are presented as general propositions about implementation, they are actually supported by a rather narrow factual basis, mainly reflecting the particularities of federal policies or central-local government relations. More specifically, most of the case studies mentioned concern policies designed either at the federal level and requiring state cooperation for their implementation, or at the level of the state and requiring the cooperation of local authorities or private parties.

However, federal systems are by definition loose systems composed by autonomous units to whom the responsibility of certain policies is entrusted. If the federal state becomes involved in these policies, implementation of the federal policy follows the regular path of federal state relationships: a great amount of autonomy and decisive power is reserved to the state, which should not be interpreted as implying implementation failure in case of non compliance. On the other hand, whenever the federal state attributes exceptional importance to a certain policy, experience shows that it is determined to use effectively all available means of coercion to ensure a successful implementation (e.g. see *Brown V. Board of Education*, busing etc.)⁵³.

The same comments apply to the cases where implementation requires the intervention and collaboration of private stakeholders. It is true that the private implementors are autonomous units with respect to the state mechanism. Still, the implementation process nearly always involves other implementors, belonging to the state apparatus and exercising adequate controls, ranging from incentives to sanctions, depending on the importance of the private contribution. The eagerness to impose such controls has little to do with game playing and depends rather on the nature of the specific policy. If the latter is considered vital to the general public interest, effective means of control will certainly be imposed and resistance will be curbed.

It should be noted that the importance of legal controls is underestimated in Bardach's approach. By emphasizing the autonomy of all actors, he overlooks the constraints resulting from the coherent nature of the administrative mechanism. In sum, it can be said that Bardach draws general conclusions from a restricted category of problems, pertaining mainly to federal or intergovernmental experience. Regarding the game metaphor, which is the unifying theme of his book, it should be noted that many of the implementation problems he points out, even in discussing his major case study of mental health reform in California, should be attributed not to game-playing but to other equally important factors (such as failure to consult a priori all actors involved in the policy etc).

Richard Elmore⁵⁴ adopts a bottom-top approach to implementation analysis, which he defines as backward mapping. He suggests that analysis should begin at the lowest level of the

implementation process by describing the specific behavior that generates the need for a policy, and then it should proceed to the statement of an objective, first as a set of organized operations and then as a set of outcomes resulting from these operations. Only after a precise target has been established at the lower level of the system, should analysis back up through each of the higher levels of the implementation process, in order to describe the effect of that level on the target behavior and the resources required for that effect.

Like all the bottom-top approaches, Elmore's stresses the point that the policy is not the major influence on the behavior of the factors engaged in the implementation process. Thus, emphasis moves away from authority, hierarchy and control towards informal structures, dispersion of authority, negotiations and bargaining. Especially recommended is the reliance on street-level discretion as a device for improving the reliability and effectiveness of policies. The central theme of the approach is that policy problems are better solved by those with immediate proximity to them, namely the street-level implementors.

It is true that the street-level implementor is closer than anyone else to the individual case he is handling. However, detailed knowledge of each specific case is only one of the factors related to successful policy making. In fact, operations required for the effective implementation of a program are the last element in the designing of a policy. Of major importance are other fundamental issues, such as the structuring of the general problem, the pooling of the criteria involved therein, the selection of the critical values affecting its solution or the setting of operative objectives. All these matters have to be solved at a higher level of decision-making in view of the whole problem situation and the resources available for its solution. Also, in the designing of the program, other factors are relevant, such as the respect of the legal principles of equality and distributive justice, which require the assessment of comparative data and, therefore, cannot be properly taken into account at the street-level, which lacks an overview of the entire situation.

Barret and Fudge adopt a similar approach to implementation. Following their definition of implementation already discussed above, policy is not "fix" but is subject to modification by means of bargaining and negotiations among all actors involved, which seek to maximize their own interests. The policy-implementation dichotomy is not viewed as the setting of constraints from the actors at the top to those "lower-down", but the other way round, as the capacity of lower level actors to take decisions limiting hierarchical influence or altering policies.

This approach is subject to the same criticisms addressed to the other bottom-top approaches discussed so far. More specifically, the argument that bottom-top approaches are more realistic, since policy is often only a response to pressures and problems experienced on the ground, is not valid: street-level experience helps the awareness of a problem situation and can be a valuable source of information. Yet, as already stated, it is not sufficient, because problem formulation or alternative thinking require more information than that available to street-level implementors. A further argument presented by the authors is that the implementation problems of control and compliance cannot be treated as

purely administrative but rather as political issues, since political processes do not stop when the initial policy decision is made, but continue throughout the implementation process. This argument can only be attributed to a misconception of the law making process, due to lack of legal knowledge: the basic political value choices are always made at the higher level of policy formulation and cannot be disputed or negotiated by implementors or target groups.

From the above critical review of the principal implementation studies, theories and frameworks it has become obvious that the analytical approach adopted so far⁵⁵ has some considerable limitations, of which the scholars themselves have eventually become aware.⁵⁶ Recent assessments of the field⁵⁷ have resulted in the identification of several major shortcomings obstructing further development of implementation research, namely : a) lack of precise delimitation of the concept of implementation itself or formulation of a fully developed implementation model,⁵⁸ b) failure to consider implementation as an integral part of the policy making process and to relate it to its broader cultural and political environment,⁵⁹ c) failure to cross-fertilize implementation theories with the findings of other related fields of social science,⁶⁰ d) failure to identify the really "crucial variables" in a parsimonial way,⁶¹ e) restricted nature of policy implementation research and especially failure to combine the respective merits of the "top-down" and "bottom-up" approaches into a single operative model⁶² e) scarcity of large scale diachronic studies of implementation, due to methodological difficulties regarding data collection and measurement of socioeconomic and political variables.⁶³

Nevertheless, despite growing awareness of these problems, hardly any specific answers have been proposed yet, besides mere recommendations and directions for future research.⁶⁴ In our view, these shortcomings are the consequence of the narrow analytical approach⁶⁵ used so far in implementation research, which has allowed for only a partial glimpse of a very complex and dynamic process. The issues raised by analytical researchers are closely interconnected and, therefore, cannot be dealt with separately⁶⁶. In other words, the phenomenon under study has a complexity exceeding the methodology selected for its examination and this serious epistemological handicap cannot be remedied otherwise than by the adoption a methodology of adequate complexity. This simple truth was well known to systems engineers, who had always considered feasibility study as an essential part of the design and construction of systems.

Today, as we shall see in detail below, the task of implementation scholars is to adapt and transfer these basic systemic principles to the field of public policy analysis, of which implementation is an integral part.

For that purpose we have selected systems methodology as having the capacity to attack complex problems and help us find the right answers through the construction of the appropriate models. Moreover, by insisting on the interconnections among factors, this methodology can provide new insights in the problem under consideration

NOTES on Chapter 1

1. See the interesting book by *Barbara Tuchman*, *The March of Folly* (1983), in which important political decisions in history are critically analyzed and the point is convincingly made that serious errors were committed.

2. As early as 1951 *Harold Lasswell* adopted the view that science should be problem oriented and political science in particular should focus on fundamental social problems (see *D.Lerner, H. Lasswell*, *The Policy Sciences*, Stanford Univ. Press 1951). In collaboration with *Myres Mac Dougal* Lasswell succeeded in putting his ideas into practice. Together they held for a long time their famous seminar "Law-Science-Policy" at the Yale Law School, in which they developed a fully fledged "policy oriented jurisprudence". This approach, in its systemic character, is considered the most important contribution in postwar legal theory (see *M.Decleris*, *The Empirical Theory of Harold Lasswell in Law and Politics*, 1980). Many remarkable essays concerning major global issues in law were the product of this approach (see *M.Mac Dougal, H. Lasswell, Long Chu Chen*, *Human Rights and World Order*, Yale University Press, 1980, *M. Mac Dougal, H. Lasswell, I. Vlasic*, *Law and Public Order in Space*, 1963, *M. Mac Dougal, W. Burke*, *The Public Order of the Oceans*, 1962 et al).

Lasswell's "policy science" and Lasswell - Mac Dougal's policy oriented (contextual) jurisprudence were the early examples of modern policy analysis (see *W. Dunn*, *An Introduction to Public Policy Analysis*, Prentice Hall 1981).

3. In his book "Systems Design in Public Policy" (National Center of Public Administration, Athens, 1988) Justice *M. Decleris* makes clear the distinction between "power" problems and "public" problems. The former are the object of politics in the established meaning of the term, provided by the contemporary empirical political theory (Lasswell, Dahl, Deutsch et al), while the latter are the object of policy science (Lasswell, Dror, Hogwood and Gunn et al). Thus, power problems are usually solved through games and fights between opponents striving for supremacy in the political arena (see e.g. *A. Rapoport*, *Fights, Games and Debates*, Univ. of Michigan Press, 1960). The concept of public problem, on the other hand, is based on the concept of social problem. Generally speaking, a problem is a discrepancy between the actual and the desired state of a system which creates disfunction. If such a problem arises in a social system (economic, cultural etc) and can be solved through self-regulation, it is simply considered a social problem. If, however, the complexity of the problem exceeds the capacity of a particular social system, then it becomes a public problem and its solution requires external control and organized decision-making, which are tantamount to public policy (see also *M. Decleris*, *Certain System Concepts in Law and Politics*, North Holland, 1985).

4. On Public Policy see e.g. . *Dror Y.*, Policy Making Reexamined (1983) N. J. Transaction Books, *B.W. Hogwood, L. A. Gunn*, Policy Analysis for the Real Word, Oxford Univ. Press (1984), *C.O. Jones*, An Introduction to the Study of Public Policy, Monterey C.A. Brooks/Cole (1984). *E.S. Quade*, Analysis for Public Decisions, North Holland (1982), *Brewer and deLeon*, The Foundations of Policy Analysis, The Dorsey Press (1983), *Jenkins N. I.*, Policy Analysis, Oxford: Martin Robertson (1978) et al.

5. The need for combining legal and organizational or social theory in the study of implementation is emphasized in *J. Jowell*, Implementation and Enforcement of Law. Law and the Social Sciences 1986, Russel Sage p.287-317.

6. e.g. *King A.*, The Problem of Overload, in *A. King* (ed.), Why is Britain Becoming Harder to Govern? London BBC Publications 1979. The author, summing up the British experience, points out that failures are rapidly accumulating in various fields of governmental policies, such as health, education, local government, economy, crime etc. A number of interrelated factors are to be blamed for this apparent ineffectiveness: mounting expectations and increasing demands on government are coupled with a reduction of the state's capacity to carry out the tasks it has undertaken, due to the intractability of the relevant problems, the lack of appropriate information and technology, the increasing number of dependency relationships and the growing non-compliance. As possible solutions the author suggests a partial unloading of governmental burdens and change in the attitude of politicians.

See also for the United States *Ch. Jones*, An Introduction to the Study of Public Policy, Brooks/Cole 1984 p.2-4 .

7. The very replacement of the term administration by the term public management is characteristic of the new tendency: The methods of cost-benefit or cost-effectiveness analysis originated in economics, but soon claimed relevance as ultimate criteria for public decision-making. See *M. Carley*, Rational Techniques in Policy Making, Gower 1980.

8. The performance of the expanded public sector in the pursuance of various welfare or economic policies is measured against the success of private organizations and is often found deficient. The pendulum seems to swing towards the opposite direction and a new wave of reprivatization is gaining support in various countries.

E.g. for France see *G. Sorman*, L'Etat minimum, Albin Michel 1985, *Alain Madelin*, Pour Libérer l'Ecole: L'enseignement a la carte. Laffont 1984, *Paul Mentre*, Gulliver enchainé, ou comment dereglementer l'economie, La Table Ronde 1982.

9. See e.g. *J. P. Mackintosh*, The declining respect for the law, in *A. King* (ed) op. cit.

10. See *A. Allot, The Limits of Law*, London Butterworths, 1980.

In his attempt to answer the fundamental question whether Law can and should be used to reconstruct society, the author searches for the limits of Law. He finds them arising from the nature of law, the nature of society, from the system of communication, from the social and geographical environment or from other normative systems such as religion, morality and mores. In conclusion, the author is skeptical about the capacity of the legislator to impose compulsory change despite people's resistance.

11. On the difficulties of evaluation see *J. Jowell, Implementation and Enforcement of Law, Law and the Social Sciences*, Russell Sage 1986 p. 289.

12. In any comprehensive treatise of administrative law a special section is usually dedicated to the study of the organizational structure of public administration [e.g. centralized or decentralized agencies, deconcentration, local government, public corporations etc]. For Germany see *F. Mayer, Allgemeines Verwaltungsrecht*, Boorberg, 4th edition, 1977 pp. 83 ff., *E. Rosch, Probleme der Burokratie des off. Hand*, Vern. Arch. 1967 ,211 ff. For France see *J. Rivero, Droit administrative*, 8th edition, 1977p. 300 ff., *Eisenmann, Centralization et Decentralization*, 1948.

Moreover, modern administrative law has developed comprehensive theory of general principles which should be respected by the public administration of the contemporary democratic and social state. Thus the familiar principle of the rule of law must go hand in hand with the principle of the social state [Sozialstaatsprinzip], which requires that all state activities must be oriented towards the realization of social justice and the harmonious integration of various social groups. The principle of law conformity [Gesetzmässigkeit], stemming directly from the principle of separation of powers, obliges the administrator not only to restrain his activities within the limits set by law but also to revoke any illegal acts, see *Mayer op. cit. p.30 ff.*

Modern administrative law also includes a theory of fundamental principles of the administrative process: such are the principle of ex officio action (Offizialprinzip); the principle of non-formality (Nichtformlichkeit) meaning that the administrative process should be appropriately simple and free of formalities as long as equality and goal directness are not violated; the principle of coordination of the various agencies involved in a specific process; the principle of publicity and transparency (Publizitat); the principle of directness (Unmittelbarkeit) meaning that administrative agencies should establish direct contact with the people affected by a policy; this principle is closely connected with the principle of oral communication (Mundlichkeit); the right to previous hearing (rechtliches Gehor), which provides the citizen with the opportunity to present his views before an individual administrative decision harmful to his rights or liberties is adopted, and several other principles concerning evidence, the burden of proof etc. See *Mayer op.cit.p. 114 ff.*

Regarding the application of substantive principles in judicial review of administrative action in Britain see *J. Jowell, A. Lester, Beyond Wednesbury: Substantive Principles of Administrative Law, Public Law, Autumn 1987*. The authors suggest that, beyond the traditional concept of unreasonableness, two more categories of principles of substantive review of administration are often tacitly applied by the courts and should presently gain full recognition in English law. The first category comprises principles of good administrative practice, drawn from continental, international or Community sources, such as the principle of proportionality, of law certainty and of law consistency; the second category refers to fundamental human rights, such as equality, free expression, right to privacy, etc.

13. See e.g. *John Warfield, Societal Systems, Wiley 1976*.

14. *Pressman J. Wildavsky A., Implementation. Berkley : University of California Press (1973)*.

15. *Van Meter, D. Van Horn, C. The Policy Implementation Process: A conceptual Framework. Administration and Society 6 (Feb. 1975) p.445-448*.

16. *Edwards C. G. Implementing Public Policy. Congressional Quarterly Press (1980)*.

17. *Sabatier P.A., Mazmanian D.A., The Implementation of Public Policy, A Framework of Analysis, in Sabatier P. Mazmanian D.(eds) Effective Policy Implementation. Lexington Books D.C. Heath and Co., Lexington Mass (1980)*.

18. *Masood Hyder, Implementation, The Evolutionary Model, in Lewis D., Wallace H. (eds) Policies into Practice, National and International Case Studies in Implementation, Heinemann Educational Books, 1984*.

19. *Bardach E. The Implementation Game: What happens after a bill becomes Law. Cambridge Mass. The MIT Press (1977)*.

20. *Barret S., Fudge C., Examining the Policy-Action Relationship, in Barret S. Fudge C. (eds) Policy and Action: Essays on Implementation of Public Policy. Methuen London (1981)*.

21. According to *L. White* in his classical book "Introduction to the Study of Public Administration" N. York Macmillan 1939, "Public administration consists of all those operations having for their purpose the fulfillment or enforcement of public policy as declared by the competent

authorities. See also Charlesworth's study of the procedural objectives of modern public administration in J. Charles-Worth, *Governmental Administration*, Harper 1951 p.23 ff.

The same distinction was adopted in Political science by *C. Friedrich*, *Man and his Government*, Mc Graw Hill (1963) p. 443 ff., *Almond and Powell*, *Comparative Politics: a Developmental Approach*, Little Brown (1966), *K. Loewenstein*, *Political Power and the Governmental Process*, Univ. of Chicago Press. 2nd ed. (1965).

22. The principle of the separation of powers was first postulated by *Aristotle* in his book in *Politics* (for a full account see *M. Decleris*, *Greek and American Origins of Modern Constitutionalism*, Dialogue 1988). It was further propagated as an organizational device against monarchy and tyranny by *Montesquieu* (*Esprit des Lois*, in *Montesquieu, Oeuvres Completes* Seuil, p. 586 ff.). Thus, in spite of a certain skepticism regarding its applicability (see e.g. *Griffith and Street*, *Principles of administrative Law*, Pitman Press 1963 p.13-17) the doctrine of the separation of powers has acquired the validity of an undisputed principle of modern Constitutionalism (see *M. J. C. Vile*, *Constitutionalism and the Separation of Powers*, *S. A. de Smith*, *Constitutional and Administrative Law*, Penguin 1971, p. 39-43). Aristotle's original conception of the principle has been confirmed by modern policy analysis. In fact Aristotle provides a functional model of the separation of powers and discusses the desirable organizational properties for each component of the decision-making process (rule-making, rule application, adjudication) (see *M. Dekleris* op. cit.)

23. Public services are usually rendered by administrative agencies strictly speaking or bodies ad hoc appointed to deal with particular problems (e.g. public corporations). However, it is a traditional practice of administration to engage private parties in the implementation of public policies (especially in the fields of economy, industry, banking, education, transportation) by various modalities, such as concessions, contracts etc. (see for France *J. Rivero*, *Droit Administratif*, p.446 ff., *A. de Laubadere*, *Traite des Contrats Administratifs*, 1956, for Germany *F. Mayer* p. 75-76, *F. Ossenbuhl*, *H. U. Gallway*, *Die Erfuellung Von Verwaltungsaufgaben durch Private* VVDST RL 29 (1971) p. 137 ff.

On the enterprises of mixed economy and the professional associations of doctors, lawyers etc see *Rivero* op. cit. p. 486-490).

24. In continental theory the application of law by the administration is highly elaborate and strictly formalized. Roughly speaking, the administrative activity of implementation usually comprises four stages, namely a) the stage of internal preparatory acts, such as instructions, propositions, consultations etc. b) the stage of issuance of the individual legal decision strictly speaking (*acte executoire*, *Verwaltungsakt*) which creates legal consequences and is the only one subject to invalidation by the courts. c) the stage of legal acts of execution adopted in conformity with the above individual decision (e.g. issuance of a police order for the closing down of an enterprise which was declared unfit by the

competent authorities; also reports, notifications etc). d) the stage of material acts required for the actualization of the individual legal decision (e.g. demolition of an unfit building).

The whole process is rigorously determined and quasi-judicialized. Recently, there is a tendency towards the adoption of comprehensive codes of administrative procedure, which build upon a rich tradition in legal theory and jurisprudence.

Thus in Germany a codification of the law of administrative procedure (Verwaltungsverfahrensgesetz) is valid since 1976 (see *C.H. Ule*, Das Verwaltungsverfahrensgesetz, D V BL 1976). In USA the A.P.A. (Administrative Procedure Act) establishes detailed rules of administrative procedure (see *E. Gellhorn, B. Bayer*, Administrative Law and Process, West, 1981). Also in Italy codification of various branches of administrative law, called "testi unici", are common practice. On the efforts for codification in France see *M. Letourneur*, Quelques Reflections sur la Codification du Droit Administratif, Melanges J.de la Morandiere (1964)p.276.

25. Thus, in France the various forms of illegality which can lead to the annulation of an administrative act in court are traditionally classified in four categories: a) Lack of competence (incompetence) b) formal or procedural defects (vice de forme), c) abuse of power (détournement de pouvoir) in case the administration uses its powers to pursue a different goal than the one assigned to it by the law, or a goal which is contrary to the general public interest, d) violation of the law (violation de la loi) which includes violations of primary and subordinate legislation, international treaties duly ratified and promulgated and general principles of law. This category comprises various forms of substantive illegality such as false interpretation of the law, deficient or illegal motives, false qualification of the facts and illegal use of discretion (see *J. Rivero* op.cit. p. 244 ff. *J.M Auby - R. Drago*, Traite de Contentieux Administratif, L.G.D.J. 1962 p. 528 ff.). Approximately the same classification is adopted in Germany (see *F. Mayer* op. cit.p.160 ff.). and in Greece (see *E. Spiliotopoulos*, Administrative Law, Sakoulas, 1986 p. 460 ff).

Roughly speaking the same logic seems to guide the review of administrative acts in Britain. Administrative decisions are quashed because of lack of jurisdiction, jurisdictional facts, procedural defects, error of law on the face and abuse of discretion (See *Griffith and Street* op. cit. p. 222 ff., *S.A. de Smith*, The Judicial Review of Administrative Action, 1959, *W.R. Wade*, Administrative Law. 1977,p. 237 ff.).

26. See *Bignell V. and Fortune J.*: Understanding System Failures, Manchester University Press 1984. The authors describe failure as the shortfall of performance below a standard, the generation of undesirable side effects or the neglect of an opportunity. The assessment of failure is considered as dependent upon the values of the person making the judgment. Failures, ranging from catastrophic to minor, overwhelming to partial and sudden to slow, can occur in any kind of system, such as technological (e.g. the accident at Three Mile Island nuclear power station, see *Bignell-Fortune* ibid. p. 9-39 or the capsizing of the Alexander L. Kielland

rig. *ibid*, p. 79-115), sociotechnical (such as the crisis at Normansfields Hospital, *ibid* p.64-78, the collapse of Rolls Royce *ibid* p. 145-151) etc.

Of particular importance are catastrophic failures, which occur when a system of any kind, physical, technological or social, can follow more than one stable pathways of change. This sudden jump from one pathway to the other is called catastrophe and is the subject of a topological mathematical theory formulated by the mathematician R. Thom and applicable to many fields, ranging from natural sciences to politics. Catastrophe theory offers valuable insights for the understanding of major administrative failures of extensive scope (e.g. revolutions). See *Thom, R. Structural Stability and Morphogenesis: An Outline of a General Theory of Models* Reading: Benjamin 1975, *Zeeman E.C. Catastrophe Theory, Selected Papers 1927-1977*. Reading Benjamin 1977, *Bignell V.F., Peter G, Pym C. Catastrophic Failures*, Open University Press 1977, *Woodcock A., Davis M. Catastrophe Theory*, Penguin 1980.

27. On evaluation see *C. Weiss*, *Evaluation Research* (Prentice Hall, 1972), *M. Guttenberg, E. Struening* (eds) *Handbook of Evaluation Research* (Sage Publ.1975), *P.Rossi, H. Freeman, S. Wright*, *Evaluation: A Systematic Approach* (Sage pub. 1979) *E. Struening, M. Brewer* (eds). The University Edition of the *Handbook of Evaluation Research* (Sage Publ. 1983) et al. *E. Johansend*, *Evaluation as Social Policy*, *Policy Studies Review* 1986, Vol. 6, No.1 .

28. Rule making is usually assigned with the legislative bodies, which are the primary rule makers. However, comparative observation confirms that in practice administration is often authorized by the legislator (see e.g. *loi-cadres* in France and in Greece) to issue primary rules. It is also possible by constitutional arrangement that administrators are granted by a special law and for a limited amount of time primary rule-making power (on the French " *ordannances*", issued according to the article 38 of the constitution see *J. Rivero* op. cit. p. 65). Finally, it is a common feature of crisis management that the executive takes over the entire rule making power (see *M. Decleris* *The Process of Reaction to Crisis Situations*, J. S. D dissertation 1970, *Evolution and Coercion in the Modern State*, National Center for Social Research 1973).

29. For a perceptive discussion and criticism of the different perspectives on implementation see *St.H. Linder and B. Guy Peters*, *A Design Perspective on Policy Implementation: The Fallacies of Misplaced Prescription*, *Policy Studies Review*, February 1987, Vol. 6. No.3 p. 459-475.

30. See *Dunsire A. Implementation in a Bureaucracy*, NY St. Martins (1978).

31. On the potential differences in policy perspectives of formulators and implementors see *Lane J.E.* (1983). *The Concept of Implementation*. *Statsvetenskaplig Tidskrift*, 86, 17-40.

32. For the strenuous process of constitutional change in England see *J.R. Tanner*, *English Constitutional Conflicts of the Seventeenth Century 1603-1689*, Cambridge University Press 1961 For France see *M. Jallut*, *Histoire Constitutionnelle de la France*, Scorpion 1956, Vol 1 p. 97 ff. For Germany, *E. Forsthoff*, *Deutsche Verfassungsgeschichte der Neuzeit*, 1967, p. 78 ff.

33. For the historical development of subordinate legislation in Britain see Report of the Committee on Ministers' Powers (Cmd. 4060). See also *Sir C. Allen*, *Law and Orders*, 2nd ed. Ch. 2. *Sir C. Allen*, *Law in the Making* and *Griffith and Street* op. cit. p. 32 ff.

In Germany subordinate legislation takes the form of "Rechtsverordnungen", i.e. rules of general and abstract character destined for the prompt and effective handling of current administrative affairs, and "Satzungen", issued by autonomous bodies incorporated in the state. (see, *Forsthoff*, *Lehrbuch des Verwaltungsrechts*, 1958 p. 115 ff., *F. Mayer* op. cit. p. 22 ff.)

In France the administration legislates on a regular basis by means of regulations (reglements administratifs). This regulatory power of the administration is definitely subordinate to the legislator: it is obliged to respect the letter and the spirit of the enabling legislation, cannot have a retroactive effect, cannot affect fundamental rights unless explicitly authorized by the legislator and, finally, cannot extend on certain matters explicitly reserved or the domain of statute (taxation, penal sanctions etc.). See *M. Waline*, *Droit Administratif*, Sirey 6th edition.

The above principles of subordinate legislation are also valid in Greek administrative law (see *G. Papahatzis*, *System of Administrative Law*, Athens 1976 p. 103 ff.).

34. Administrative discretionary power, as opposed to duty, should be distinguished from a) the regulatory power and b) the judiciary discretion. For a detailed analysis see below, chapter 4.

On the merits and defects of legal control of administrative discretion see *J. Jowell*, *Law and Bureaucracy*, Dunllen, 1975, p. 11 ff. and 169 ff.

35. *H. Miser, E. Quade*, *Handbook of Systems Analysis*, Wiley, 1985 p. 239.
W. Dunn, *Public Policy Analysis*, Prentice Hall 1981 p. 206 ff.

36. See *Griffith and Street* op. cit. p. 28-31, *F. Mayer* op. cit. p. 10, *J. Rivero* op. cit. p. 12-13.

37. For a devastating criticism of the "bottom up" perspective see *St. Linder, Guy Peters* op. cit. p. 463 ff. According to the authors this approach may have the greatest potential detrimental effect on policy studies, since it accepts the "descriptive generalizations about implementation being determined largely by lower echelons in organizations also as a prescriptive statement", thus undermining democratic policy control. Moreover by adopting political feasibility and ease in implementation as the only, or the most important, criteria of policy design, it neglects the other political, economic and ethical criteria which should be equally considered when designing public policies.

See also *Hogwood B.W., Peters B.G.* (1984) *Policy Analysis for the Real World*. Oxford Univ. Press p. 208.

38. See *M. Decleris* (ed) *Systems Theory*, Athens Sakoulas 1985; also *W. Ross Ashby*, *An Introduction to Cybernetics*, Methuen 1956.

39. Thus in Britain administrative acts may be quashed on review for abuse of discretion manifested in the form of improper purpose, extraneous considerations or unreasonableness (see *Griffith and Street* op. cit. p. 230 ff., also *Denning*, *Freedom Under the Law*, p.122, *J. Jowell*, *A. Lester* 1987 *ibid*).

In France, Germany, Greece and Italy administrative acts can be challenged and subjected to both administrative and judicial controls for illegality due to procedural defects or errors of law. (See *F. Mayer* op. cit. p. 165 ff., *M. Waline* op. cit. p. 43 ff.). For the extrajudicial control of the administration by the Ombudsman see *K. Halmgren*, *La protection des administres en droit suedoise et la charge de l'Ombudsman*, in *Droit social*, February 1969 p. 69 ff.

On the French Mediateur and the British parliamentary commissioner see *Barber*, *De l'Ombudsman au Mediateur*, *Melanges Ancel*. 1975; also *3me colloque franco-britannique de la Societe de Legislation comparee* "Le mediateur et le commissaire parlementaire" *R.I.D.C.* p. 398.

40. Civil servants are usually controlled by special disciplinary law. In comparative law see for Germany *H.R. Clausen, W. Janzen*, *Bundesdisziplinverordnung* (Koln 1975 3rd ed), for France, *Andre de Laubadere*, *Traite de Droit Administratif* 6th ed., for Italy *A. Guerra*, *il Potere Disciplinare nella Pubblica Amministrazione* 1956, for Britain see *B. Chapman*, *The Profession of Government*, Unwin, 1970 4th ed p. 158 ff. See also *Adr. Clemens*, *Der Europaische Beamte and sein Disziplinarrecht*, 1962, pertaining specifically to the employees of international organizations.

41. See *A. Christakis, D. Kever, J. Warfield*, *Development of Generalized Design Theory and Methodology*, Center for Interactive Management, George Mason University, 1986.

42. See also *Elmore K.* Organizational Models of Social Program Implementation, *Public Policy* 26 (2) 1978.

43. See *Max Weber*, The Theory of Social and Economic Organization, Trans *A. Henderson and T. Parsons* (1947).

Max Weber, Economy and Society, Guenther Both and Claus Wittich. eds. Berkley Calif: Univ. of California Press 1968.

Taylor, Frederick Winslow, Scientific Management, New York, Harper and Bros (1947).

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44. *Simon, Herbert, A.*, Administrative Behavior: A Study of Decision Making Processes in Administrative Organizations, 3rd rev. ed., New York : Free Press, 1976.

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45. *Lindblom Charles E.* The Science of Muddling Through, *Public Administration Review* 19:1 (1959): 79: 88 .

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See also *Etzioni Amitai* Mixed Scanning. A "Third" Approach to Decision Making. *Public Administration Review* 27, no 5 (December 1967).

46. See *Mc Gregor, Eugene B.*, Social Equity and the Public Service, *Public Administration Review*, 34 (January-February 1974) 23-24.

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47. See *Dennis L. Mueller*, Public Choice: A Survey, Journal of Economic Literature, 14:2 (1976) : 395.

Buchanan James. M. and Tullock Gordon, The Calculus of Consent. Ann Arbor, Mich: University of Michigan Press, 1962.

Ostrom Vincent. The Intellectual Crisis in American Public Administration, rev. ed. University. Ala : University of Alabama Press, 1974.

On Emergence Theories see *Karl E. Weick*, The Social Psychology of Organizing 2nd ed. (Reading, Mass: Addison Wesley, 1979).

48. In a later work "Implementation and Public Policy" Glencoe IL, Scott, Foresman (1983) , *Sabatier and Mazmanian* adopted the so called "bottom-down" approach which gives emphasis to the impact of the environment on the failure of programs to attain their stated objectives.

49. See *Gunn L.* Why is Implementation so Difficult? Management Services in Government (1978).

50. *Lewis David*, Improving Implementation in Lewis H. Wallace H. (eds) Policies into Practice: National and International Case Studies in Implementation, Heinemann Educational Books, London Exeter 1984.

51. In its legal formulation the individual administrative act constitutes a transformation of the administrative order, which was the typical form of administrative action in the past. The concept of administrative order emphasized the element of command and power, whereas the legal element is preeminent in the modern administrative act. This significant transformation of the administrative act was made in analogy to the concept of legal transaction in private law (the generic term used in Germany theory, *Rechtsgeschäft*, is abstract enough to cover both the contract and the unilateral act) in order to facilitate judicial review. Once the administrative act became a legal act a body of theory was developed about the requirements of its validity. Seminal in this respect is the book of Kormann, *System des rechtsgeschäftlichen Staatsakts*, 1910. There is now a rich bibliography on the theory of the administrative act, which is recognized as a standard part of administrative law. (See *Virally*, *Act Administratif* in *Repertoire Dalloz*, 1957. *H. Schroeder*, *Die Verwaltungsrechtliche Entscheidung*, 1962, *M. Stasinopoulos*, *Traite des Actes Administratifs*, Sirey 1954 et al). Generally speaking the development of the legal theory of administrative act has contributed to the technical character of the administrative intervention to the detriment of the power element inherent in the administrative act.

52. The theory of discretionary decision is an integral part of the previously mentioned theory of the administrative act. It can be said that the most delicate legal problems actually arise in the area of administrative direction, as will be explained below. Important in this respect are the so called indeterminate legal concepts (*unbestimmte Rechtsbegriffe*) through which administrative discretion is usually exercised.

53. In an indicative way we can mention the cases of school segregation in USA as a characteristic example of enforcing federal policy. In this case the federal policy consisted in the interpretation provided by the Supreme Court on the nature of school segregation, whereby it was ruled that separate educational facilities were unequal (see *Brown v. Board of Education* 347 U.S. 483, 745, 686, 98L. Ed 873 (1954) in *Lawrence Tribe* *American Constitutional Law*, Foundation Press, 1978, p.1019). State and local resistance to this ruling was effectively curbed since the whole process of implementation was taken over by the courts (see *Brown v. Board of Education* 349, U.S. 294, 75 S. ct. 753, 79, 1083, (1955) in *Noel T. Dawling*, *Gerald Gunther*, *Constitutional Law*, Foundation Press, 1965 p.1169).

54. *Elmore Richard*. Backward Mapping: Implementation Research and Policy Decisions. *Political Science Quarterly*, 1980.

55. Lester et al. have classified implementation research of the period 1970-1987 in four distinct stages:

a) Generation of case studies (1970-1975) focusing mainly on the description of specific failures to carry out a given policy. (See e.g. *Derthick M.* Defeat at Ft Lincoln, *The Public Interest*, 20, 1970 2-39,

Derthick M., New-Towns in Town, Washington, D.C.: The Urban Institute, 1972, *Pressman, J. L. & Wildavsky, A.* Implementation (3rd edition) Berkeley: University of California Press, 1973 *Murphy, J.* The Education Bureaucracies Implement Novel Policy: The Politics of Title I of ESEA in *A. Sindler* (ed) Policy and Politics in America. Boston MA: Little, Brown; *Bardach, E.* The Implementation Game: What happens after a bill becomes a law. Cambridge, MA : MIT press, 1977; *Liphart A.* Comparative Politics and the Comparative Method. American Political Science Review, 65, 1971; *Przeworski, A. & Teune, H.* The Logic of Comparative Social Inquiry. New York: Wiley - Interscience 1970.

b) Development of policy implementation frameworks (1975-1980), focusing on the identification of various factors obstructing effective policy implementation with the help of either the "top - down" approach (e.g. *Van Meter, D.S. and VanHorn, C.E.* The Policy Implementation Process: A Conceptual Framework. Administration and Society, 6, 1975 pp. 445-448; *Sabatier, P.A. and Mazmanian, D.* The Conditions of Effective Implementation: A Guide to Accomplishing Policy Objectives , Policy Analysis, 5 (1979) pp. 481-504; *Edwards, G.C. III.* Implementing Public Policy, Washington D.C.: Congressional Quarterly Press 1980), or the "bottom-up approach (e.g. *Lipsky, M.* , Street Level Bureaucracy and the Analysis of Urban Reform, Urban Affairs Quarterly, 6, 1971, pp. 391-409; *Berman P.* The Study of Macro and Micro Implementation, Public Policy, 26, 1978, pp. 157-184; *Ingram, Helen, M., and Dean E. Mann,* Policy Failure: An Issue Deserving Analysis. In *Ingram and Mann* (eds) Why Policies Succeed or Fail, Beverly Hills, Calif: Sage, 1980, pp. 11-32; *Ingram Hellen,* Policy Implementation through Bargaining: Federal Grants in Aid, Public Policy 25, Fall 1977; *Hanf, K. and Scharf, F.* (eds) Interorganizational Policy Making: Limits to Coordination and Central Control, London, Sage, 1978; *Williams, W. and Elmore, R.F.* (eds) Social Program Implementation, New York: John Wiley, 1976; *Elmore, R.F.* Lessons From Follow Through, Policy Analysis 1,3 (Summer) 1977, pp. 549-584; *Elmore, R.F.*, Organizational Models of Social Program Implementation, Public Policy 26,2 (Spring) 1978, pp. 185-228; *Elmore, R.F.* Backward Mapping: Implementation Research and Policy Decisions. Political Science Quarterly 94,4 (Winter) 1979-80, pp. 601-616.

c) Application of the frameworks (1980-1988). See e.g. an assessment by *Van Horn, C.E.* Applied Implementation Research, Paper prepared for delivery at the annual meeting of the Midwest Political Science Association, Chicago, IL.1987.

d) Syntheses and Revisions (1980-1987) attempting to combine the advantages of both top-down and bottom-up approaches into an integrated model of implementation. See e.g. Elmore's combination of backward and forward mapping in *Elmore R.F.*, Forward and Backward Mapping: Reversible Logic in the Analysis of Public policy. In *Kenneth Hanf and Theo A.J. Toonen* (eds) Policy Implementation in Federal and Unitary Systems: Questions of Analysis and Design, Dordrecht: Martinus Nijhoff, 1985, pp. 33-70; Also Sabatier's theoretical framework aiming at synthesizing the best of both approaches in a more general model of the policy process, which combines the top-downers' concern for socio-economic conditions and legal instructions and the bottom-uppers' unit of analysis, namely a variety of public and private actors involved in a policy problem, in *Sabatier, P.A.*, Top-down and Bottom-up. Approaches to Implementation

Research: A Critical Analysis and Suggested Synthesis. *Journal of Public Policy*, 6, 1986 pp. 21-48; *Sabatier, P.A.* Knowledge, Policy-oriented Learning and Policy Change: An Advocacy Coalition Framework Knowledge: Creation, Diffusion, Utilization, 1987 Finally, see *Goggin, M.L., Bowman, A.O'M., Lester, J.P. and O'Toole, L.* Theory Construction and Testing in Implementation Research: A Comparative State Diachronic Analysis. A proposal submitted to the National Science Foundation, Washington DC. 1987.

For a detailed analysis of the above see *Lester, J.P., Bowman, A.O'M., Goggin, M.L. and O'Toole L.J.Jr*, Public Policy Implementation: Evaluation of the Field and Agenda for Future Research, in *Palumbo, D.J. and Calista, D.J.* (eds) Symposium: Implementation: What we have Learned and Still Need to know, *Policy Studies Review*, Autumn 1987, Vol 7,1 pp.200-216

56. See *Alexander, E.K.* From Idea to Action, Notes for a Contingency Theory of the Policy Implementation Process. *Administration and Society*, 16 (4) 1985 pp. 403-426; *Linder, S.H. & Peters, B.G.* , A Design Perspective on Policy Implementation: The Fallacies of Misplaced Prescription. *Policy Studies Review*, 6 (3) 1987, February, pp. 459 -476; *Kelman S.* Using Implementation Research to Solve Implementation Problems. The Case of Energy Emergence Assistance. *Journal of Policy Analysis and Management*, 4 (1) 1984, pp. 75-91.

57. In a comprehensive assessment of implementation literature O'Toole has reviewed more than 100 implementation studies and identified a multiplicity of variables considered as crucial for effective implementation by the respective authors, most important of which are: policy characteristics (clarity, specificity of goals, flexibility, validity of causal theory etc), resources, implementation structures, implementor disposition, implementor-client relationship and timing. See *O'Toole, L. J. Jr.* Policy Recommendations for Multi-Actor Implementation: An Assessment of the Field, *Journal of Public Policy*, 6, 1987, p. 181-210.

58. See *Lester, J.P et al* op. cit. (1987) p. 200.

59. See *Palumbo, D.J.* Introduction to Symposium: Implementation: What have we learned and still need to know, *Policy Studies Review*, Autumn 1987, 7, 1, p. 97; Also *Lester J.P. et al*, op. cit. (1987) p. 210.

60. See *O'Toole, L.J.Jr*, op. cit. p. 204.

61. See *Gogging, M.L.* The "too few cases / too many variables" Problem in Implementation Research, *Western Political Quartely*, 38, 1986, pp. 328-347; *Ingram, H.* Implementation: A Review and Suggested Framework. In *A Wildavsky & N.B. Lynn* (eds). *Public Administration: The State of the Field*. Chatham, NJ: Chatham House Publishers Inc. 1987; *Lester et al* op. cit. 1987 p. 210; *Goggin, M.L., Bowman, A. O'M.,Lester, J.P. & O'Tool, L.* op. cit. 1987.

62. See *O'Toole, L.* op.1987 p. 204; *Lester et al* op. cit. 1987 p. 211; *Wittrock, B.* Beyond Organizational Design: Contextuality and the Political Theory of Public Policy. In *K. Hanf & T.A.J. Toonen* (eds). Policy Implementation in Federal and Unitary Systems. Dordrecht: Martinus Nijhoff, 1985.

63. See *Lester et al*, op. cit., 1987 p. 212.

64. As Elmore validly pointed out "Implementation research is long on description and short on prescription". See *Elmore, R. F.* Backward Mapping: Implementation Research and Policy Decisions, *Political Science Quarterly*, 54, 1979, pp. 606-616; O' Toole also notes that recommendations are largely unsupported by empirical research, contradictory and often tend to assume a proverbial rather than heuristic character. See *O'Toole, L.J.* Op.cit 1987 p.201; See also *Palumbo D.J.* op. cit. (1987) and *Lester et al*, op. cit.1987.

65. There has even been some controversy over the issue whether it is appropriate to talk of implementation failure at all or whether implementation success, in the narrow definition proposed by rationally oriented researchers, is actually utopian. eg *Dror, Y.*, Policy Making under Adversity, New Brunswick, N. J: Transactions Books, 1984; *Rossi, P., & Wright, J.D.*, Social Science Research and the Politics of Gun Control, In *R.L. Shotland & M.M. Marck* (eds), Social Science and Social Policy, Beverly Hills, C.A: Sage 1985; *Schwarz, J.*, America's Hidden Success: A Reassessment of Twenty Years of Public Policy, New York: Norton, 1983;

66. Another line of criticism points to the non cumulative character of implementation research, see *Wittrock, B.J. & de Leon*, Policy as a Moving Target: A Call for Conceptual Realism, *Policy Studies Review*, 6, 1986, pp. 44-60. There is a remarkable tendency of implementation scholars to develop their own individual theories and disregard the findings of others, which results in a "multiplicity of approaches without any integrating framework" (see *Alexander, E.*, From Idea to Action: Notes for a Contingency Theory of the Policy Implementation Process. *Administration and Society*, 16, 1988, p. 409-426; also *Alexander, E.*, Implementation: Does a Literature Add up to a Theory? *Journal of the Planning Association* 48, 1982, p. 132-135. Nevertheless, there is a growing trend towards viewing implementation from the broader perspective of the entire policy making process. See *Bowman, A., O' M., Goggin, M., Lester, J.P., & O' Toole, L.*, Third Generation Implementation Studies: Conceptual and Methodological Issues. Paper prepared for delivery at the annual meeting of the Midwest Political Science Association.

Chapter 2. The Necessity of a Legal Theory of Implementation

Abstract

A legal theory of implementation is an integral part of administrative law. Administrative law has always been concerned with good implementation and has approached the problem from different angles, depending on the various historical periods of its formation and existence.

Good knowledge of administrative law's long process of evolution and of the historical circumstances which determined its course of development is necessary for better understanding contemporary implementation problems. In that way, the researcher will realise that concern for maximum effectiveness of administrative action is not something new, but dates back from the period of the absolute monarchy. On the other hand, consideration for guaranteeing autonomous spheres of private social and economic life has been the natural reaction of the liberal state to the practices of the former period. Today administrative law has entered the third phase of its development and is confronted with problems more complex than ever before.

In order to deal with them it should integrate the legacies of its past with the methods and findings of modern social sciences. The new implementation which will result from such an integration, will combine concern for efficiency, effectiveness and rational decision making with legality and respect for human rights.

2.1 Descriptive and normative theories of implementation

Notwithstanding their specific context, theories about implementation can be classified in two basic categories depending on the adopted scientific method, descriptive or normative.¹ We may generally define as descriptive theory the kind of compressed information which consists in an algorithm (law), determining empirically observed regularities in objective reality. In other words, descriptive theories consist of propositions describing and explaining social phenomena. In terms of traditional social science such theories are considered value free or value neutral.² On the other hand, normative is a theory organised by deontic logic, i.e. a theory which prescribes desired patterns of behaviour.³

This dualism is inherited from traditional epistemology. Modern science, however, rejects this distinction:⁴ cybernetics and systems theory are among the modern scientific paradigms which integrate both types of theories.⁵ Moreover, modern social science is concerned with inductive problems, which are not susceptible to explanations based on law seeking theories but have to be approached and dealt with, thereby requiring not only theories but action as well. Finally social problems have a complexity

defying simplistic explanations in terms of cause and effect (which actually, after the closure of the feedback loop, do not exist anyway). A multiplicity of factors interact in what we usually describe as a problem situation and the only possible way of cognitive and active intervention is the construction of a model whose variables are determined by the task requirements. In such a model description is always coupled with optimization.⁶ The present study is characterised by such an approach.

Returning to the traditional classification, we note that descriptive theories, while often successful in pinpointing the regularities determining the phenomena under study, have nevertheless important shortcomings.⁷ More often than not their empirical findings claim the status of social laws, which leave little (incremental) room for change. By picturing reality as more or less inevitable and predetermined they confine the scientist to the role of an observer. Perhaps the underlying idea is that science should provide an accurate description of reality in order to promote adaptive intervention only.

On the other hand, the value of normative theories in dealing with social problems has been proven by the undisputed success of law and legal theory.⁸ More specifically, with respect to implementation the normative theory par excellence is administrative law. Administrative law is a system of rules which regulates the activities of public administration and organises the structure and functions of the various administrative authorities; it provides special procedures and methods which govern the exercise of public functions by public or private bodies and permit the exercise of legal and substantive controls⁹. Thus the process of implementation of public policy embodied in a statute is thoroughly prescribed by administrative law. Recently, however, following the scientific breakthrough due to the development of modern methodologies (information and communication theory, cybernetics, systems theory) there has been a proliferation of normative theories about implementation in such scientific fields as organisation theory, management, public policy etc. As long as administrative law remains confined within its traditional limits, there will be a dualism in the normative theory of implementation: on the one hand a strictly legal theory of implementation appertaining to classical administrative law, and on the other hand strictly non legal theories of implementation represented by the various organisational or managerial theories mentioned above (Chapt. 1).

There are, however, signs that point to the merger of the two approaches to implementation. For example, recent jurisprudence of the French Council of State indicates an application of the cost-benefit analysis in judicial review of administrative decisions;¹⁰ evaluation is often imposed by legislation in the USA etc.¹¹ A full account of this development will be given below, but for the present it is sufficient to point out that the emergent phase of administrative law should be characterised by the integration of the principles of contemporary social sciences. Such a theory should provide a new model of implementation combining the traditional elements, which have been successfully tried in practice, with the data of modern methodologies.

However, this proposed reorientation of administrative law suggests in fact nothing new. The same phenomenon has repeatedly occurred in the past: administrative law is the product of a long evolution and has undergone substantial changes in the course of history, determined by the specific requirements of the times. As it will be shown in detail below, the

development of administrative law has always followed closely the evolution of the modern social and political system. It is thus a natural practice for administrative law to incorporate the prevalent philosophical and political doctrines of each historical period and to transform them in a prescriptive theory of implementation. It is by this process that the theory of reason of state (*raison d'état*), which was conceived for the first time in the middle of the sixteenth century, dominated the implementation theory of the absolute monarchy, while the philosophical doctrine of natural law and individual rights, proposed by the physiocrats of the Enlightenment, determined not only the modalities of implementation but also the scope of administrative activity throughout the nineteenth and part of the twentieth century. Today administrative law is faced with a new challenge: A number of new disciplines (organisation theory, policy science, public administration, management) are putting at its disposal standards, methods and procedures for enhancing rationalisation and effectiveness in implementation.

2.2. Is There Room for a Legal Theory of Implementation ?

2.2.1 Implementation in the Early Administrative Law: Power and Effectiveness.

In most textbooks of administrative law its origins are traced back to the French Revolution.¹² In these approaches administrative law is considered to be the offspring of the constitutional and liberal state. This is an erroneous assumption. The origins of administrative law go beyond this convenient milestone back to the emergence of the modern state.¹³ In fact administrative law is the conscious effort to rationalise state activities in order to achieve certain public goals. Thus the evolution of ideas about these goals and activities is reflected in the development, or the negation,¹⁴ of administrative law. In this chapter we shall review the legal frame of implementation as it was developed by the theory of administrative law.

The history of administrative law maybe divided in three basic phases. The first phase is triggered by the transition from the complex network of medieval feudal connections to the large scale system of the modern state, identified by geographical boundaries and characterised by a permanent and rational organization¹⁵. The crucial issue of the time is the building of the state as a separate system differentiated from its social environment and armed with effective means of action other than the private law institutions which regulated the interactions of feudal society.¹⁶ Thus, even prior to the development of national consciousness, the notion of the Crown (*Couronne*) is used to identify the emerging system and to distinguish it from both the society and the household of the monarch.¹⁷ Notwithstanding certain minor differences between the various continental and the Anglo-Saxon models, which will be discussed below, the new system makes its decisions unilaterally and implements them with the help of public power (*puissance publique*). Thus the problem of implementation dominates the administrative law of the newly founded state, which relies a lot on the effective use of public power.

The development of the concept of public power, which is fundamental in administrative law, is made possible due to the formation of a standing army and a professional bureaucracy¹⁸ and is legitimised by the notion of the reason of state (*raison d'etat*)¹⁹. However, the concern for the survival of the state, considered as the ultimate value, should not be misinterpreted for arbitrariness or attributed to the whim of the monarch.²⁰ On the contrary, the novel idea of unilateral state intervention in society found its justification in the administrative doctrine of the public interest.²¹ And while the use of coercion for securing compliance is by no means extraordinary at the time, the new order admittedly enjoys a high degree of consensus among middle class and peasants, with the exception of the often recalcitrant feudal lords.²²

The building of the modern state owes much to the development of administrative law. Supported by power and guided by the reason of state, the implementation of the law of the sovereign is permeated by considerations of effectiveness²³ and has gone a long way from the contractual implementation of the feudal pacts, which united king, barons and vassals with bonds of mutual obligations and rights. The first task of administrative law is to organise the permanent structure of the new system according to the rational principle of the bureaucratic organization²⁴. It is worth noting that the structural differentiation of the elements of the decision making system of the state established at the time (king, council, officials, courts), still continues to exist along roughly the same lines. The administrative law of that period includes detailed regulations about the organisation of the various agencies, the qualifications, duties and status of officials²⁵, the jurisdiction of the courts and the discipline of the military.²⁶ Moreover, administrative law has already conceived the distinction among the different stages of the decision making process. Thus it is familiar with the notion of fundamental law, which is tantamount to the constitutional law of the time, concerning mainly matters of succession to the throne, the notion of program or law, consisting mainly of the king's orders, usually prepared by a body of experts in his council, the notion of individual decisions in their various forms and, finally, the notion of control, which can be external or internal depending usually on the nature of the applied legislation (public or private law).

From the point of view of the state's functions in society, administrative law has already developed the idea of state intervention for the sake of the public interest. This is the first conception of the notion of public service, which dominates administrative law up to the present.²⁷ The whole state mechanism and the king himself are motivated and their actions justified by the appeal to the common interest, which rises above personal or sectional interests. The king ceases to be a private person, his private and public self fuse into one and he devotes himself entirely to the public interest.²⁸

The newly founded state expands its activities in various fields, most of which have remained within the scope of the public sector ever since. Security, which is tantamount to the very existence of the system in a highly aggressive domestic and international environment, is achieved through the organisation of a professional army supported by and loyal to the king.²⁹ Seigniorial justice is slowly replaced by a complex system of national courts³⁰ which interpret and apply the king's law and are especially sensitive to

matters of public order ³¹. A permanent professional bureaucracy integrates in the system middle class and nobility. In order to meet the rising expenses of the system, various methods of intervention in the economy are devised, ranging from the creation of monopolies and royal manufactures ³² or enterprises to the venality of public offices³³ and titles.

While the doctrine of mercantilism ³⁴ is used to regulate domestic and international trade, the first steps of intervention are made in the domain of social services, such as health, education and welfare.

It is evident from the above that in this first phase the main features of implementation can be summed up as follows: a) the unilateral administrative act is established as the legal framework of implementation, b) implementation takes place for the sake of the public interest, c) implementation is unrestricted in the name of the reason of state and is effectively backed by public power and d) implementation is permeated by a concern for rationality and effectiveness. This last characteristic deserves particular attention for the purposes of this study. The prevalent goal being the consolidation of the state, the focus is on the optimal delimitation of the state's versus private activities; the former are regulated by the king's law and entrusted to experts, while the latter continue to belong to the domain of common law or custom. Substantive rationality of state decisions is the major concern of law makers and implementors, while control, when permitted, uses exactly the same criteria.

It is interesting to note that the above mentioned features of administrative law during its first phase of development are common in the European nation states, though variations in modalities may exist depending on national peculiarities. Such a conclusion can be corroborated by a brief overview of three characteristic patterns of administrative law.

If we take the sixteenth century in France as the founding period of the modern state (beginning with the accession on the throne of Francois I^{er}), we can already distinguish in the law of that period certain characteristic tendencies: the first is a trend towards the unification of public law throughout the entire kingdom, with the exception of some provinces or bodies (e.g. clergy) which continue to exercise certain privileges on the basis of contractual agreements, with the king.³⁵ The second is a decay of oral sources of law in favour of written legislation, characteristic example being the registration of existing customs by the king ³⁶. Moreover there is a trend towards the codification of legislation as well as a flourishing of legal doctrine and literature.

The common force behind all these is the gradual establishment of the rulemaking authority of the king, who becomes the principal policy maker. In order to understand the particular characteristics of implementation in that period we should examine more closely the sources and content of public law in the emerging nation state of France. In the first place it should be noted that policy making is not arbitrary, because it is subjected to moral constraints ³⁷. Thus the legislative freedom of the king finds its limits in his obligation to respect the fundamental laws of the kingdom and the principles of natural justice. It is the king's duty to be just and fair, to oppress nobody, to protect the virtuous and punish the evil, to

maintain peace and to enhance the common good. Though no specific sanctions are provided against violations of these principles³⁸, the kings themselves (including Louis XIV) acknowledge their duty to obey the law. The implementation of the king's law is accordingly exercised: the officials derive their authority through nomination by the rightful king and are obliged to perform their functions in the name of the public interest.

Regarding the law-making process itself, it comprises in the first place legislative acts of general and permanent character (ordonnances) issued by the king and formally promulgated, which deal mainly with the regulation and reform of the administration³⁹. A great volume of legislation of general character, also pertaining to matters of administration, is issued by the council of the king.⁴⁰ The king also issues a great number of decisions of individual character, analogous to the implementing decisions of contemporary administrative agencies. These acts (lettres patentes) concern specific individuals or categories of persons, usually of official status, and their content presents a great variety: nominations to public offices, awarding of privileges, paying orders, administrative circulars etc. A special category of these decisions consists of the famous "lettres de cachet" which serve all kinds of secretive royal purposes from security and hygiene to the prevention of scandals or vengeance. Less frequently they expedite arbitrary orders of exile, arrest or detention.⁴¹

It is evident from the above that there is yet no formal distinction between policy formulation and implementation in the sense that the latter must follow the former. Policy may be formulated either directly by individual acts or indirectly by rules of general applicability and of a certain duration. Other basic principles guiding administrative activities are the unity of policy making, implementation and control, the secrecy in administration and the limitless and immediate effect of the administrative action (absolute effectiveness), meaning that no legal constraints whatsoever deriving from individual rights can be invoked against the implementation of official decisions.

With respect to the substance of administrative law, that is the criteria of policy making, they are genuinely political, i.e. criteria of power, and can be summarised in the notion of the reason of state. It is this notion which determines the way of deciding on questions concerning the common good, though usually the king explains the motives of his decisions in the preamble of his letters. When, however, secrecy is demanded by the circumstances, he simply invokes the reason of state, being himself responsible to God only. Nevertheless, in practice implementation is usually characterised by moderation and the limits of absolute power are often moral or factual, inspired by a sense of realism.

It is, however, true that the violation of what is known today as individual liberties does not concern the implementation of the absolute monarchy. Personal freedom may be restricted by a letter de cachet, the liberty of conscience and religion may be suppressed for the sake of the union of the church, the liberty of expression is subjected to censorship in the name of the public order and property is often the victim of heavy taxation imposed according to the discretion of the king.

In the German states administrative law develops along the same lines as in France and implementation is guided by similar principles. The main difference is that the period of feudalism is prolonged until the beginning of the 18th century (reign of Friedrich Wilhelm the 1st of Prussia), while absolute monarchy is relatively short-lived (until the middle of the 19th century). However, even during the feudal period the notion of directly effective action (Selbsthilferecht) characterises the rights of the monarch (Hoheitsrechte), in spite of the fact that these rights are acquired through transactions of the private law (contracts, various forms of inheritance etc.).

As to the scope and content of these rights, the monarch can exercise them at his free will (plenum arbitrium) in view of his unrestricted political power (jus politiae) and to the benefit of his subjects. This power is, however, limited to the degree that his subjects can invoke acquired rights of their own (e.g. the right of property or certain granted privileges). Conflicts arising from such confrontations are subjected to control by the courts. Nevertheless, acquired rights can be curbed, upon compensation, in case of public necessity invoked by the monarch, in a manner similar to the process of expropriation of contemporary administrative law.

With the establishment of the absolute monarchy, especially in Prussia, the power of the monarch becomes unrestricted and uncontrollable by the courts. A permanent model army and a bureaucracy of experts are entrusted with the implementation of the will of the monarch (Polizeirecht), who assumes not only legislative and administrative but judicial functions as well (Kabinettsjustiz).

The emphasis on expertise and effectiveness of implementation is such that Friedrich Wilhelm I of Prussia himself urged the jurists who until then had only learnt legal tricks and useless rubbish, to study Politics, Economics and Public Finance. It is characteristic that public finance (Kameralistik) was taught for the first time in the University of Frankfurt in 1727.

In order to improve the financial situation of the state and the standard of living of its subjects administrators apply the mercantilistic economic theory to regulate commercial activities. The monarch makes use of his prerogative (jus politiae) to update the medieval social and economic order by enforcing modern rational regulations. Implementing activity (Polizei) aims not only at the maintenance of public order, but primarily at the attainment of public goals in various sectors, such as political economy, manufacture, traffic, urban development, education, health and cultural affairs.

In England the transition from medieval to modern government is marked by the accession of the Tudor dynasty. The rule of the Tudors and the Stuarts, usually termed as the New Monarchy, is characterised by the concentration of power and authority in the hands of the king, while the independence of feudal aristocracy and clergy is radically diminished. As the political sovereignty of the king is established and fortified by the absolutist principles of Roman law, royal control is widely extended over the social and economic affairs of the nation at large, which are brought under increasingly minute regulation.

The main organs of government (Crown, Council and Parliament, central and local government and the courts) are actually inherited from the Middle Ages, but during the Tudor reign they are revived and allowed to develop their full potentialities. The new posts of the powerful executive mechanism are filled with experts, lawyers and administrators, who are recruited not from the aristocracy but from the rising and competent middle class. However, while the Crown bureaucracy is loyal, efficient and dedicated to the public interest, it never becomes professional in the continental sense of the term, i.e. salaried by and completely dependent upon the king. Moreover the Crown, traditionally constrained by the maxim that the king should live of his own, lacks the means of constructing and supporting a professional standing army. In order to meet his mounting expenses, both military and administrative, the king has to rely on the voluntary co-operation of the propertied classes; though recourse to Parliament is unavoidable in case of extraordinary expenses, its infrequent summoning is considered both politically popular and constitutionally almost impeccable.

While Parliament is the supreme authority, it is an occasional rather than regular instrument of royal action, summoned and dismissed at the king's pleasure. The regular business of government is conducted by the king's council (Privy Council). Manned by professional administrators from the middle classes it engages in every kind of governmental activity, legislative, judicial or administrative, supervises authorities and jurisdictions, manages and influences Parliament, imposes taxes and prepares the issuing of royal proclamations and ordonnances. These proclamations deal with such a variety of topics as: Foreign relations and commerce, aliens, customs, army and navy, military and naval supplies, trade and industry, wages and prices, coinage, wades and measures, patents, monopolies, charters and enclosures of land: enjoined adherence to prescribe religious ceremonies, penalised recunnency and heresy, controlled printing and publications: issued directions related to public order, press, food and even games.

In order to achieve its multiple purposes the Council not only makes and applies statutory legislation but also confers substantive discretionary power to local authorities, especially in matters of trade and economic affairs. On the local level, administration is largely entrusted to the Justices of Peace, whose judicial and police functions are also increased in the Tudor period. For the effective implementation of its policies the Council does not rely invariably on the machinery of Common Law, but uses an independent coercive authority, the Star Chamber.

It is thus obvious that, compared to the continental pattern of implementation, the English version is not substantially different. There is extensive intervention in the social and economic sectors, emphasis on efficiency and effectiveness, reliance on expertise and, in final analysis, implementation is supported by public power. Central bureaucracy is not comparable in size to the continental one and is especially characterised by the lack of a standing army; however, the English variation develops and uses effectively a decentralised model of administrative activity, performed by the Justices of Peace, and supervised by the Star Chamber.

2.2.2 Classical Administrative Law: Limited Scope.

The second phase in the evolution of administrative law begins as the dynastic state is succeeded by the constitutional state, fusing within it liberalism, nationalism and capitalism. With the prevalence of the bourgeoisie in the political and economic scene, the role of the state has to be redefined and the modalities of its actions redesigned accordingly. The old distrust of the state, dating from Seneca and St Augustine to John Locke and the philosophers of the Enlightenment, has finally made its way and the functions of the state are reduced to the necessary minimum, namely maintenance of peace and order, diplomacy, defence, justice and finance.

The shrinking of the constitutional state is achieved through the acceptance among its foundations of an amplified bill of individual rights. This device combined with the doctrines of the separation of powers and rule of law, creates all over Europe a wave of administrative reform with decisive impact on implementation. State activities are thoroughly regulated by a pyramid of legal rules in which implementation occupies the bottom echelon only. The formal distinction between law, emanating from the legislative bodies, and administrative decisions is considered the cornerstone of the new legal system and the principle of legality is the ultimate guarantee against power abuses. Implementors are thus deprived of their policy making functions and confined to the application of decisions made at a higher hierarchical level. The accountability of the implementors is secured by various forms of external controls such as the adoption of the British device of ministerial responsibility and particularly the legal scrutiny of administrative decisions performed by a system of independent courts. It is the system of judicial review of administrative action which constitutes the paramount safeguard of the constitutional order and the rule of law. For the first time public subjective rights are recognised and protected by the courts.

Judicial control of the administration is, however, only marginal, restricted to matters of legality and especially protective of individual rights against the encroachments of the state. Questions of effectiveness or substantive rationality of administrative decisions are not examined, on the assumption that they pertain exclusively to the political sphere, which is entrusted to the will of the majority in Parliament. It is this distinction between the legal and the political, also adopted later by the positivists, which has deprived the theory of implementation from its direct contact with reality ever since. According to the classical distinction of Jeze in his book "Principles of administrative law", the problem of administrative law must be studied from two points of view: 1) the political viewpoint, 2) the view point of legal technique. Thus 1) One must always look for the social, political and economic need for an institution, the economic, social and political conditions in which a certain public service is rendered; the practical usefulness from the social political and economic viewpoint of the service. All these pertain to the political viewpoint. 2) One must also examine the rules and juridical procedures by means of which this goal is pursued and attained. This is the viewpoint of legal technique.

The rationale behind this new organisation of implementation is of negative character: each citizen should pursue his happiness in the economic,



cultural and moral field free from infringement by the state or by his fellow citizens . The state stands aside like a night watchman in order to guarantee order and security as the necessary framework for the free development and expression of private initiative.

Administrative law, now entering its classical phase, organises the system of implementation accordingly. In the first place, the various sources of administrative law (constitution, legislation, administrative acts, jurisprudence) are hierarchically classified in order to remind the implementator of his position in the hierarchy of legal rules and of the respective constraints on his initiative. It is obvious, that unless specifically provided for by law implementation cannot exist.

A great part of administrative law is dedicated to structuring and organising the administrative mechanism. By adopting, and occasionally reforming, a specific organisational model, administrative law reveals at this early stage its close connection with organisational theory. This is a classical example of the way law incorporates, often unconsciously, the findings of other sciences. To a certain extent the same holds true for that part of administrative law which deals with the staffing of the civil service; procedures and standards concerning the recruitment, qualification, training, status and discipline of the civil servants are shaped according to the recommendations of the relevant sciences of the times.

With respect to the functions of the administration, they are performed to the last detail according to the rule of law, which expresses, as we have already mentioned, the absolute supremacy of legislative versus administrative decisions. Policy is made at the level of the statute only. Since a certain amount of policy-making power is indispensable for the implementation of law to particular circumstances, discretionary power may be granted if sufficiently circumscribed by adequate legal constraints. The classification of administrative acts in powers and duties expresses and analyses the regularities between these two basic types of administrative decision making.

According to the spirit of the times, the greatest part of administrative law is dedicated to the control of administrative activity. While various internal controls of both legality and expediency guarantee the closure of the feedback loop inside the administration, the conformity of administrative decisions to the will of the lawmaker is entrusted to the judicial review.

We may sum up the main features of implementation in this period as follows: a) the unilateral action is maintained but it is subjected to severe constraints deriving from the principle of legality, b) while implementation during the first stage is concerned with effectiveness, now the emphasis is on accountability. The liberal state is not supposed to be an effective state, c) administrative action continues to be supported by public power but the theoretical emphasis is not on power but on public service. According to the French theory, which is typical of this phase, the administration does not exercise power , it is simply rendering public services, which may require ways and means different from these of the private law (e.g. clause exorbitante in administrative contracts), d) the main concern is on the legal techniques of implementation, that is correct

rule application and respect of procedural formalities. Matters of substance are excluded from administrative law and relegated to politics.

However, soon enough the social consequences of industrialisation compelled liberalism to follow a more moderate path. In view of the mounting social problems created by the industrial revolution, the state is once again regarded as an engine of social justice and betterment. Since large sections of the population continue to live in ignorance, deacease and exploitation, social morality begins to demand the intervention of the state.

In order to respond to its new responsibilities the state, which has in the meantime accumulated sufficient wealth and power, has to restructure its administrative mechanism. In countries with a long uninterrupted tradition in powerful centralised bureaucracies, like France, the task is relatively easy. For England, on the other hand, with its long commitment to a system of decentralised government, the challenge of enforcing new laws without expanding its administrative machinery is more difficult. A compromise is found in the appointment of officials -commissioners, inspectors etc.- to supervise the authorities of local organisations. These officials are granted considerable discretionary powers for framing regulations and putting them into effect, in such areas as public health (Public Health Act of 1866), welfare (Poor Law Act of 1834) or working conditions (Factory Act of 1844). The appointment of these officials, usually experts in their respective fields, is another characteristic step of administrative law towards entrusting implementation to professional expertise. On the other hand, the creation of such ad hoc bodies and the appointment of officials for the implementation of social legislation is considered by many as responsible for the unsystematic development of English administrative law.

2.2.3 Trends towards a Revised Legal Theory of Implementation.

The idea that deficiencies of the economic system and social evils have to be met by state intervention is gradually established, particularly since the New Deal experiment in the USA and the dominance of Keynesian theories in England. However, as the amount of state responsibilities constantly increases, ranging from the provision of a wide scope of social services to the control of production and consumption through nationalisation, public supervisions and regulatory measures, the results often fall short of expectations. Thus it has been pointed out that the enormous growth in the nature and ambit of state power, the massive increase in the number of administrators and the menacing complexity of regulations are not justified by analogous achievements. On the contrary, some suggest that the accumulated failures prove that the state has exceeded its legitimate limits and should reassume its traditional role of a policeman before it is too late. In the meantime, given the interventionist nature of the modern state, it is the task of administrative law to act as counterweight and to provide adequate controls of the executive in order to reconcile social needs and ancient liberties.

In reply to the above, others claim that the role of administration in providing services for the benefit of the community is not only legitimate, but has also proven to be quite successful so far. If there is something to be done, it is not in the direction of legal controls but rather in the direction of efficiency and effectiveness in policy implementation.

There are serious arguments in support of this position. In the first place, the size and complexity of the critical contemporary problems do not allow for circumstantial or fragmented handling, but require a systematic approach by a carefully designed project. Such a project requires: a) authoritative hierarchization and combination of often conflicting values, b) great resources, expertise and technical skills, c) permanent mechanisms for implementation, monitoring and control, d) enforcement by authoritative power if necessary. It results from the above that only the state can combine all these requirements to the desired extent. Thus the intervention of the state is inevitable, either it is considered a necessary evil or a blessing.

The problem of implementation is therefore included in the state's priorities and the question arises what is good implementation and how it can get better.

The legacy of the past is important and should not be underestimated. From the first phase the lesson is that policy is made in order to be realised and implementation is good only when it is effective; power is suggested as the means to ensure the desired degree of effectiveness.

The second phase has contributed something of equally lasting significance, namely that the value and dignity of the individual human being is the limit of rational decision making and is not to be sacrificed for any considerations of effectiveness: excessive concern for accountability and legal technicalities are the means recommended in that stage for the protection of the citizen. From the same, period legal theory has inherited the idea that certain social systems are self regulated and are not susceptible to state intervention.

The third phase is confronted with a much more complex reality: the goals of the political system are much more controversial than in the seventeenth century and power, even expressing the will of the majority, does not always guarantee the best choices. On the other hand, the individual may be still considered inviolable, but its rights are often juxtaposed and counterbalanced by group interests and social rights. This new reality requires original insights and new methods of approach, such as the ones proposed by the contemporary theoretical and empirical literature. Accordingly several criteria of good implementation have been suggested. One relates to the level of citizen satisfaction with the administrative mechanism; another is provided by the economic efficiency in achieving the goals set for it by legislation. Such criteria shed new light on neglected aspects of implementation and are helpful indicators for evaluating effectiveness. However, the fact that these methods and criteria have been successfully applied to the management of the private sector does not

necessarily render them equally appropriate for managing administration, which still continues to operate in a strictly legal framework.

Administrative law, on the other hand remains preoccupied exclusively with matters of legality and its concern with good implementation is only marginal. Nevertheless, lawful implementation is not necessarily good implementation and administrative law so far has little to propose in the direction of improvement. While judicial review tends to adopt a more pedagogic stance towards administration by applying such principles of substantive review as the concept of irrationality in England or the principle of proportionality and the manifest error of appreciation in France, these are in fact only timid steps towards preventing the most flagrant of mistakes. However, since administration consumes today the greatest share of society's scarce resources, it is expected to accomplish something better than mere avoidance of the irrational; society can hardly afford such luxuries anymore. If until now a more permissive attitude towards administrative ineffectiveness was allowed to prevail, it was because no administrative science existed to provide guidance and criteria for evaluation. People were accustomed to consider policy making as a prevalently political power game, whose outcome did not depend on rationality alone. Usually they were bound to be satisfied with an alleged balance of interests.

Better equipped today, administrative law is expected to perform more rationally. Such an attitude is not novel to legal theory; trends towards this direction can be traced back to the eighteenth century and are currently reactivated in many legal schools. The formulation of a rational system of legal acts, adapted to the geographical, economic and social environment and capable of providing sound solutions to social problems, was already a major concern for legal theorists of the late eighteenth and early nineteenth century. Bentham and Montesquieu, Holbach and Beccaria, to mention only a few, regarded the formulation of good law as the product of a conscious effort from the part of the law maker and, for that purpose, they proposed criteria and principles such as rationality, morality and public utility.

In recent times the first important effort to formulate a comprehensive legal theory, fusing policy science and decision making theory, is H. Lasswell's and M. Mc Dougall's contextual jurisprudence. It is an empirical theory not of law but about law, whose aim is to render jurists capable of handling social problems scientifically and effectively. For that purpose the theory makes use of all available tools and methods and is by nature configurative, i.e. it takes into consideration all the relevant elements of the social process. More specifically, the formulation of a contextual theory about law presupposes a) the identification of the observational standpoint of the scientist and b) the delimitation of his field of analysis.

In order to be comprehensive the analysis should take into consideration both the perspectives and the operations of the decision maker in a balanced way. So far, legal schools have given emphasis either on the former or on the latter. Thus the school of natural law focuses exclusively on authority, emanating from religious or metaphysical sources (God, Universe, Reason). On the other hand, the positivist school is preoccupied with legal rules, which are considered either as the sovereign's perspectives (Austin) or as impersonal autonomous commands (Kelsen), the underlying

assumption being that such authoritative commands are effective per se. Other schools, like American and Scandinavian realism, focus on human action and control and underestimate the impact of rules on human behaviour.

The school of contextual jurisprudence believes that neither rules nor actions alone constitute the phenomenon of law but are both different stages of the law-making process. This process includes at least seven stages, namely intelligence, promoting, prescribing, invoking, applying, termination and appraising. Moreover, in order to connect the law making process with the social process and to reveal their relationship, Lasswell and Mac Dougal introduce the method of value analysis. They point out that the law making process is activated by demands of members of society, provoked by respective changes in the distribution of social values, such as wealth, power, respect etc. According to them, law is a purposeful activity requiring a series of intellectual tasks, which include goal clarification, description of trends, factor analysis, projection of future developments and formulation of alternatives.

Most important, Lasswell and Mac Dougal believe that, as there are no value neutral rules of law, no theories about law are neutral either. The theorist cannot overlook the consequences of his theories and it is his duty not only to reveal the policy expressed in legal rules, but also to recommend which is the best policy. The clarification of the goals of authoritative public policy is the responsibility of the scientist; the fundamental values recommended by the school of contextual jurisprudence are derived from the cultural legacy of mankind and can be summed up in the notion of human dignity.

The same attitude towards law-making is adopted by another contemporary school of legal thought, the German school of Erlangen. This school has undertaken the task of proving that the formulation of good law is a purposeful activity which intrinsically belongs to the domain of legal science. The school of Erlangen not only provides philosophical and epistemological arguments in support of this position, but also proposes specific methods and procedures for arriving at a substantially right law.

2.3 The Content of a Legal Theory of Implementation

The above mentioned reorientation of legal theory should have significant implications for the theory of administrative law, since the latter has always been the product of conscious rational problem solving. A new approach in administrative law should preserve the legacy of the past, which founded the legal theory of implementation, and supplement it with the findings and methods of modern social sciences. The new theory should be a legal theory formulated by jurists, because only jurists have in mind a contextual picture of the state and the law-making process and are thus acquainted with the constraints of the legal order, which constitutes the framework of implementation. The new material provided by other social sciences is heterogeneous and pertains to different subjects, from organisation and human relations to decision making and methods of enforcement. Therefore, only a lawyer has the knowledge and the skill of translating this information in the form of authoritative commands (laws,

regulations, etc.) and of incorporating it in the existing legal order, so that it will be uniformly and predictably applied.

In this new approach law will be moulded beforehand in order to suit the requirements of the specific administrative task; in that way administrators will stop regarding the law as an obstacle hampering them from the effective implementation of their policies and, instead of trying to ignore it, they will resort to law for help and guidance. The gap between lawyers and administrators is bound to be bridged if both are pursuing the same values and applying the same criteria.

Many areas of administration can profit from such a reorientation of administrative law. Administrative organisation should be restructured along the lines of modern organisational theory. Already in French theory administrative reform, which is a form of continuous organisational change, is institutionalised in order to answer the problem of administrative adaptation to rapidly changing environmental conditions.

Human relations in public administration is another area which should attract the attention of modern administrative law. The traditional assumptions behind the law of civil servants should be replaced by the new findings of behavioural sciences concerning human relations, which have already been incorporated by the theory of personnel administration in management. This material is already taught in the Schools of Public Administration in many countries.

Administrative procedure is another area of administrative law where the application of new material could be very useful. Each administrative task should be performed according to the appropriate procedure, which should adapt the general principles of good administration (natural justice, fairness, proportionality) to the particularities of the task (secrecy, urgency) in order to generate among the affected citizens a feeling both of justice and effectiveness.

The decision making process within the administration is another area susceptible to considerable improvement .

Since administrators are endowed with a good deal of decision-making power in the exercise of their discretion, the new sciences of policy making and decision making can provide criteria and methods for rational and feasible solutions of practical problems. Scientific methods such as problem structuring, alternative thinking, cost-benefit analysis etc. should become a part of the living administrative law.

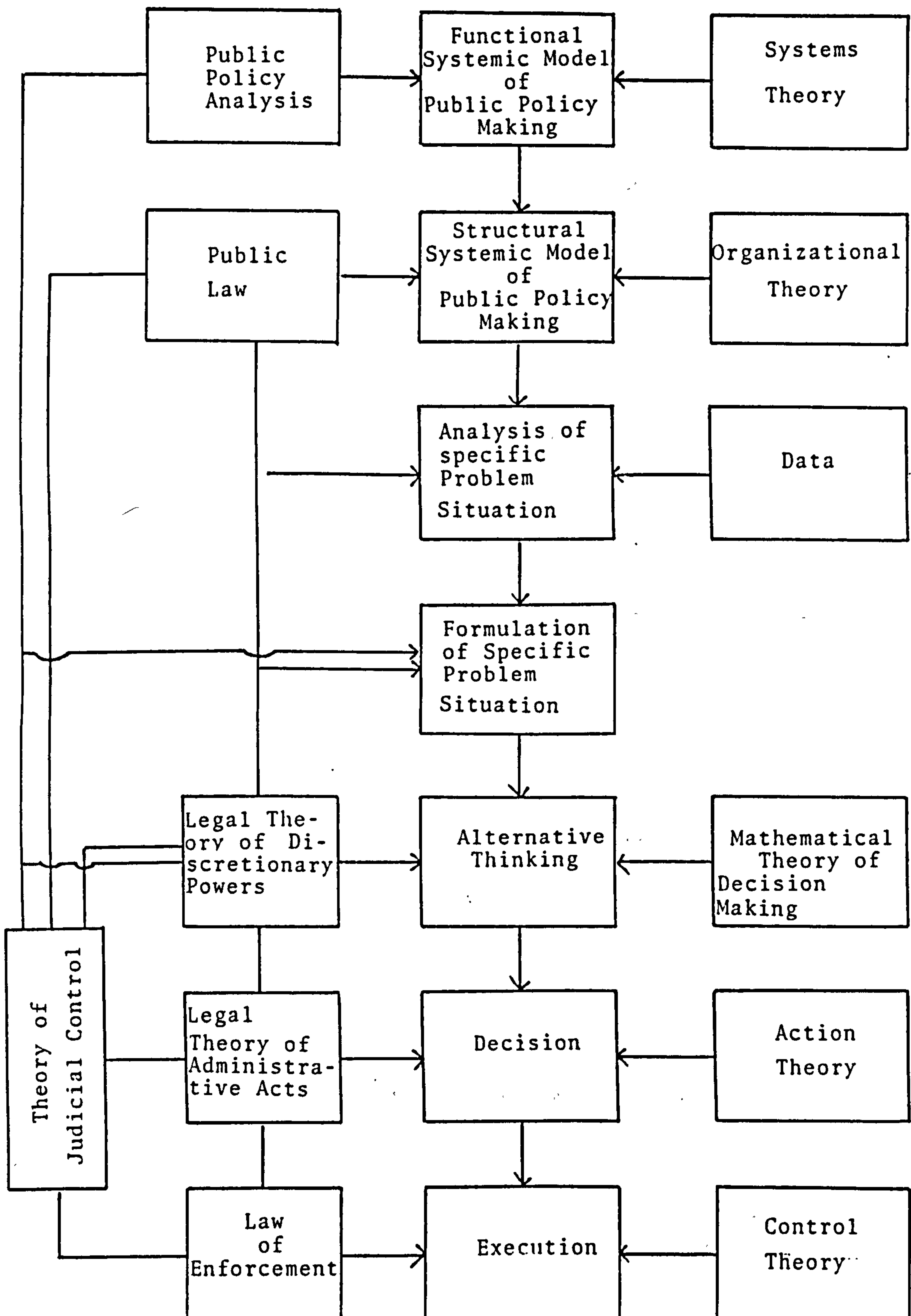
Ethics in government and particularly public administration is a rapidly growing field of modern ethics. The germ of such a development can already be found in classical administrative law, where such principles as fairness and equity are being empirically applied for a long time.

Moreover, the principles of the theory of information and communication and the potentialities offered by the use of artificial intelligence will find a wide area of application in administrative law.

It is within this broad context that a legal theory of implementation is envisaged in that essay.

The following diagram shows in a detailed manner the multidisciplinary character of a comprehensive study of implementation, which, nevertheless, can be still considered as predominantly legal.

A Design For Implementation Study (Public Policy)



NOTES on Chapter 2

1. On the descriptive or normative view of science see *Nagel*, *The Structure of Science*, Harcourt 1961, p.p 26-28, 117-129. Also *A. L. Stinchcombe*, *Constructing Social Theories*, Harcourt 1968; *A Kaplan*, *The Conduct of Inquiry: Methodology for Behavioural Sciences*, Chandler 1964.

2. The modern scientific attitude favouring value neutrality systems from the concept of *Wertfreiheit* which characterised the thinking of M. Weber. See M. Weber, *Die Objektivität sozialwissenschaftlicher und Sozialpolitischer Erkenntnis*, in *Gesammelte Aufsätze zur Wissenschaftstheorie*, hsg. bv. J. Winckelmann, 2. A. Tübingen 1968, p.p. 146. Also *M. Weber*, *Der Sinn der Wertfreiheit der soziologischen und ökonomischen Wissenschaften*, op.cit. p.p. 489. See also *A. Brecht*, *Political Theory*, Princeton University Press, 1960.

3. See *J. G. Truxal*, *On Optimisation and Network Theory*, in R.E. Kalman, N. DeClaris (eds), *Aspects of Network and System Theory*, Holt, Rinehart, Winston, 1971, p.p. 409. According to Truxal, optimisation is the process of determining the best possible solution for a given problem.

4. See *R. L. Ackoff*, *Redesigning the Future*, Wiley 1974.

5. See *W. Buckley*, *A Systems Approach to Epistemology*, in G. Klir (ed), *Trends in General Systems Theory*, p.p. 188. Also *N. Rescher*, *Cognitive Systematisation: A SystemsTheoretic Approach to a Coherentist Theory of Knowledge*. Rowan and Littlefield, 1979, and *Morin E*, *La Methode*, t.1-3, Paris, Ed. du Seuil, 1977, 1980, 1986.

6. See *M. Decleris*, *Systems Theory*, Sakkoulas 1986.

7. On a criticism of descriptive theories see *St. Linder and B. Guy Peters*, *A Design Perspective on Policy Implementation: The Fallacies of Misplaced Prescription*, *Policy Studies Review*, February 1987, Vol. 6, No. 3 p.p. 459-475.

8. See *P. Gemptos*, *Methodology for Social Sciences*, Papazisis, 1984 p.p. 236. Also *J. Esser*, *Grundsatz und Normen der richterlichen Fortbildung des Privatsrechts*, Tübingen 1964, 2nd ed.

On juridical epistemology see *Cristian Atias*, *epistemologie juridique* PUF, 1985.

9. The necessity of administrative law as a separate body of legal rules, guided by a special methodology departing from private law and

applied to the exercise of public functions, has been put into question in England. However, it is acknowledged today that a system of specific methods and procedures should be applied to the rendering of public services by public or private bodies. (See *P. Cane*, *An Introduction to Administrative Law*, Clarendon Law Series, 1986, p.p. 4 ff).

10. The French Conseil d'Etat formally recognised and applied the principle of proportionality for the first time in 1971, in the famous case *Ville Nouvelle Est*. For a more detailed discussion of these recent developments in judicial review of administrative discretion see below, note No 76.

11. See *Marylin Brewer*, *Evaluation: Past and Present*, in the University Edition of *Handbook of Evaluation Research*, Sage Publ. 1983.

12. See e.g. *M. Waline*, *Droit administratif*, Sirey, 6th ed. p.22 ff, *J. Rivero*, *Droit administratif*, 8th ed, 1977.

13. See *G. Lepointe*, *Histoire des Institutions et des Faits Sociaux*, Montchrestien, 1963 p.p. 487 ff.

Also *W. Tieme*, *Verwaltungslehre*, Carl Heymanns Verlag, 1977, p.p. 31 ff.

More specifically, for a detailed history of French administrative law see *Mestre J.L.* *Les fondements historiques du droit administratif français* EDCE, 1982-83 no 34, p. 63-80. Also *Mestre J.L.* *Un droit administratif a la fin de l'Ancien Regime: Le contentieux des communes e Provence*, Paris L G D S, 1976.

14. According to Dicey "In England.... the system of administrative law and the very principles on which it rests are in truth unknown". See *Dicey Av*, *Law of the Constitution*, (1885), 10th ed by E C S Wade 1959 p. 328.

15. See *Perry Anderson*, *Lineage of the Absolutist State*, V L B 1974. Also *Lubasz Heinz* (ed), *The Development of the Modern State*, New York, Macmillan 1964, *G. Poggi*, *The development of the Modern State: A Sociological Introduction*, Stanford Univ. Press 1978.

16. In feudal society "the law, being eternal law, was higher than the ruler's will, higher than any necessity of state.... . The state itself as a superpersonal organism, whose vitality and demands were by far the greatest of all, had not yet been discovered.... . There existed only the graduated rights of the ruler and his vassals". See *Gerhard Ritter*, *Origins of the Modern State*, in *H. Lubasz*, op. cit. p. 17. Also *M. Decleris*, *Evolution and Coercion in the Modern State*, National Institute of Social Research. Athens 1973.

17. The king is distinguished from the Crown and cannot diminish its prerogatives by engagements or alienation. The continuity of the Crown despite the succession of kings is characteristically manifested in the permanence of laws, treaties, privileges, royal debts etc. See *Olivier Martin*, Manuel d' Histoire de Droit (Montchrestien 1950) *Maitland*, The Constitutional History of England, Cambridge Univ. Press, 1963. *Keir D.L.*, The Constitutional History of Modern Britain 1485-1951, Adam and Charles Black, 1961 6th ed. p. 2 ff.

18. The formation of a corps of officials and the substitution of the feudal and chivalric conception of the relationship between king and liegemen by the bureaucratic conception of the state, with emphasis on professional mentality, technical skills and rational conduct of business, is the most distinctive feature of the modern state. See *Federico Chabod*, Was here a Renaissance state ? in Actes du Colloque sur la Renaissance organise par la Societe d' histoire moderne, Paris : J. Vrin, 1958 p.p. 57-74.

As *Alexis de Toqueville* has observed, administrative centralisation is not at all achievement of the Revolution but it is the product of the ancient regime and the only part of the ancient regime to have survived the Revolution.

19. According to *G. Ritter* (op. cit. p. 23) "where general interest becomes the loadstar of policy, there lies the beginning of modern reason of state (raison d' etat, staats rason). Rational action, i.e., action appropriate to one's objectives becomes the first commandment ".

The principle of the reason of state, first spoken by Monsignore *Giovanni della Cosa* in 1547 and a little later by *Machiavelli*, is defined towards the end of the sixteenth century as that which teaches the proper means for founding, maintaining and enlarging the state (Botero). See also *Richelieu*, Testament politique.

20. It has been pointed out that " the absolute monarch is in no way an oriental despot, an Athenian tyrant or a Roman dictator. His very absolutism presupposes that law is upheld and respected rather than suspended or disdained. Although it is always possible for him to modify what he himself ordained in the first place, his power is not temporary, exceptional or extraordinary; it is neither exempt from the duty of respecting the fundamental laws of the land nor actually unlimited..... . Absolutism took pains to justify itself first through the theory of divine right and later through the concept of enlightened despotism.." . See *E. Lousse*, Absolutism, Droit divin, Despotisme eclaire, in Schweizer Beitrag jur Allgemeinen Geschichte 16 (1958) p.p.91-106 trans. H. Lubasz.

21. The king represents the public interest, which is superior to the particular interests of individuals or intermediate bodies and consists of the sum of present and future interests in the kingdom, with special emphasis on the two essential preconditions of social life, justice and peace. See *G. Lepointe*, op. cit. p. 551.

22. On the religious wars and the war of La Fronde in France see *G. Livet*, *Les guerres de Religion*, Paris 1966, *E. Kossmann*, *La Fronde*, Leiden 1954, *P. Anderson* op.cit. p.95 ff.

On the war of Roses in England see *F.W. Maitland*, op.cit. p. 266 ff.

23. According to *Keir* (op.cit. p.95), The government of England after 1529 was developed under the impulses of emergency and effectiveness.

24. Thus in England, while the motive force behind administrative departments is the king's command, since the reign of Henry VII " some of the offices of the state (Chancery, Privy Seal Office, Exchequer, Naval and Military organisation) had, owing to the more distinctly governmental nature of their functions, become detached from the king's household, within which others remained. See *Keir*, op.cit. p.15-16.

On the principal elements of bureaucratic organisation and its technical superiority over other forms of organisation see *M. Weber*, *Economy and Society*, Guenther Roth, Claus Wittich (eds) University of California Press 1968 p.956-994.

25. In France e.g. the status of officials, their powers, duties, prerogatives and obligations, are determined by the texts which establish each particular office. It is characteristic that the life tenure of officials was officially declared by Louis XI in 1467.

26. In England the first texts of Martial Law consisted of rules and orders composed by the king, prior to an actual war, for the due order and discipline of officers and soldiers together with certain penalties on the offenders. See the *History of the Common Law of England*, 6 th ed *Ch. Runnigton*, p. 42.

27. To speak of public services in France during the last centuries of the Ancien Regime is not considered an exaggeration today; such services comprised Justice, Finance, Army and Navy, Public Works and Assistance to the needy-sick or poor. See *G. Lepointe* op. cit. p.p. 615 ff.

On the social and economic policy of the Tudors and the Stuarts see *Keir*, op. cit. p.p. 114 ad 166.

28. See *Olivier Martin* op. cit. p. 323.

29. The availability of fluid wealth made it possible to the king to replace the feudal nobility in the two functions that in the Middle Ages had

made it indispensable to him (officials, army) with hired professionals. *See H. Lubasz, op. cit. p.4.*

30. In France the jurisdiction of the seigniorial courts was deflated, first by the measure of appeal, which subordinated them effectively to the king, and even more directly by the measure of prevention which permitted to the royal judge to take seizure of a particular case. Municipal and ecclesiastical courts were also struck and their competence severely restricted by means of various procedures, such as the "cas privileges" or "l'appel comme d'abus". *See G. Lepointe, op. cit. p. 617 ff.*

On the complexity of the judicial system in England, the supremacy of the Common Law courts during the Tudor reign and their potential conflict with the Council see *Keir p. 27 ff.*

31. On the development of treason legislation in England, derived originally from the feudal crime of breach of loyalty to an overlord see *Keir, p. 104 ff.*

32 Royal manufactures in France are created by the granting of a privilege by the king to a private person or an association of persons for the fabrication of a special product (usually luxurious such as glass, porcelain, fine drapes). The manufacturers supply the capital, bear the risks and enjoy a monopoly, but are subjected to strict regulations on working conditions, security, hygiene salaries etc. and are controlled by royal inspectors. *See G. Lepointe op. cit. p. 703.*

33. Venality and heredity of public offices constituted one of the bases of the social system in France in the 17th and 18th century, as well as an important source of income for the monarchy. On the success of the famous system, "la Paulette see" *G. Lepointe op. cit. p. 589.*

34. The doctrine of mercantilism, associated with the name of Colbert, minister of Louis XIV, gives priority to commerce and industry over agriculture. Its methods can be summarised in four words: encouragement, reglementation, protection, advantages to companies. *See Herbert Heaton, Histoire economique de l'Europe, t 1. p. 250-51.*

35. With respect to public law, no authority independent from the king possesses legislative power. However, the uniform application of royal texts may be jeopardised in case of refusal of the sovereign courts (Parlements) to register them officially in their area of jurisdiction. *See Lepointe op. cit. p. 489.*

36. In France the official registration of customary law prevented to a great extent the penetration of Roman Law, in contrast to what happened in Germany. *See Lepointe op. cit. p. 491.*

37. While the king was recognised as the sole representant of the living law, his power is limited by his obligation to respect the principles of natural justice and the positive fundamental laws. The former apply to all governments in general, should guide both legislative and administrative activities and actually constitute the principles of governmental morality (justice, fairness, furtherance of peace and common good).

On the other hand the positive fundamental laws are special to the specific government, are mainly founded on custom and constitute the way of being of the monarchy. Modern authors agree that they actually formed the constitution of the Ancien Regime. As Louis XIV declared "The perfect felicity of a Kingdom is achieved when the king is obeyed by his subjects and himself obeys the law". See *Lepointe*, op. cit. p. 507 ff.

38. However, certain authors in the XIV century (publicistes) did not hesitate to suggest that extra-judicial sanctions such as revolutions or regicide should be applied in case of violations (In France Henri III in 1589 and Henri IV in 1610 were the victims of this doctrine).

39. In France while the initiative theoretically belongs to the king, it is in fact exercised by the competent members of his council, such as the chancellor or the controller of finance. Enquiries are frequently ordained to allow the affected parties (bodies, communities, Estates) to provide all relevant documents so that the maximum amount of information might be obtained. See *Lepointe* op.cit. p. 511.

40. According to *Brissard*, in the last two centuries of the Ancien Regime this form of administration was so common that the numbers of the Council's decisions amounted to approximately eight hundred thousand.

41. On the rarity of such abuses see the Report on the letters de cachet, Sept. 1775, in Isambert t. XXIII, p.263.

42. On the feudal period in Germany see *W. Jellineck*, 3rd ed. 1931 p. 80, *L.Kahler*, *Grundlehren*, 1936 p. 38. Also on the historical evolution of German administrative law see *O. Mayer*, *Deuts. VerwR.* 3rded. t.1, 1924, p.25 ff.

43. See *W. Thieme*, *Verwaltungslehre*, Carl Heymanns, 1977, . 31 ff; *E. Dittrich*, *Die deutschen und osterreichischen Kameralisten*, 1974 ; *H. Maier*, *Die aeltere deutsche Staats und Verwaltungslehre*, 1966 *O. Hintze*, *Behoerdenorganization und allgemeine Verwaltung in reussen um 1740*, In : *Acta Borussica*, 6 Bd, 1 Haelfte, 1901 et al.

44. See *Keir*, op. cit. p. 1-5.

45. See *Keir*, op. cit. p. 3.

46. According to *Keir* (op. cit. p. 18), Henry VII'S chief advisers and members of his council were ecclesiastics, Knights and lawyers, i.e. men of middle class origin, professional government servants of a type which was to become increasingly familiar in the sixteenth century .

47. In Tudor England jurisdiction and administration were inseparably interconnected and performed by the local governmental authorities. The main instruments of royal control over the social and economic life of the nation were the Justices of Peace, who used the judicial machinery for administrative purposes as well. *Keir* states that like local jurisdiction, local administration was entrusted to amateur and unpaid officials, whose main obligation was to fulfill the law rather than the orders of the central government and whose affinities were strongest with the Common Law courts and with Parliament ; *Keir* op. it. p. 35-36, 127. See also *S.T. Bindoff*, Tudor England, Pelican 1950.

48. Military service was organised on a mainly local basis. Military forces were composed of and commanded amateurs who served by virtue of the Common Law obligation of every subject to bear arms in defence of the realm. (On the commissions of array see *Pickthorn, Henry VII*, 75). the same applied, though to a lesser extent, to naval forces (*Keir*, op. cit., 37).

49. *Keir*, op. cit., 14.

50. *Keir*, op. cit., 115.

51. *Keir*, op. cit., 129.

52. It has been pointed out that the liberals, recalling the old tyrannies of royal despotism and the later tyrannies of the mob spirit, were greatly concerned to make the machinery of state incapable of quick and effective action. See *David Harris*, European Liberalism in the Nineteenth Century, in *American Historical Review* 60 (1954-5) p.p. 501 - 26.

53. The list of individual rights is an essential part of any constitutional system. In fact these rights were meant to form a barrier against the absolute effectiveness of the administrative activity of the absolute monarchy. Reaction against the ruthless pursuance of the fiscal and military policy resulted in the declaration of fundamental rights as the foundation of the constitutional state. Their function, however, is not exhausted in the protection of the individual against state encroachments but also, as objective norms, they constitute the prevalent value system of society (see *Schmidt-Bleibtreu, Klein. Die*

Grundrechte, Lutherhand 1970). While fundamental rights are an integral part of all continental constitutions, the question remains open for Britain, where many claim that the time has come for an enforceable Bill of Rights. See *A.W. Bradley*, *The Sovereignty of Parliament in Perpetuity?* in *J. Jowell, D. Oliver* (eds), *The Changing Constitution*, Clarendon Press, 1985, p. 23 ff.

54. On the evolution of administrative law from 1880 to the second world war and the great theoretical constructions of what is considered its golden era see *Th. Fortsakis*, *Conceptualisme et Empirisme en Droit Administratif Francais*, Paris LGDJ, 1987 p. 103 ff. The classical work which inaugurates this new era is *Ed. Laferriere's*, *Traite de la jurisdiction administrative et des recours contentieux*, Paris, 2 vol. 1887. See also *M. Hauriou*, *Precis de droit administratif*, 1892, *Jeze G.* *Principes generaux du droit administratif*, Paris, Berger Levrault, 1ere ed. 1904. In his period administrative law becomes a harmonious and coherent system and achieves its autonomy. See *P. Legendre* *Histoire de l'Administration de 1750 a nos jours*, Paris PUF 1968,p.7

55. On the evolution of the convention of ministerial responsibility to Parliament see *C. Turpin*, *Ministerial Responsibility : Myth or Reality*, in *J.Jowell, D. Oliver* (eds) op. cit., p.p. 48 ff. On the traditional conception of the doctrine see *A.V. Dicey*, *The Law of Constitution* (1885) p.p. 329, 364, 374-5, 382-3.

56. In the continent (France, Germany) the substitution of internal control of the administration (justice retenue) by external judicial control (justice deleguee) was the outcome of a slow evolutionary process which resulted in the creation of a separate system of administrative courts. See *M. Waline* op. cit. p.p. 44 ff., *Th. Fortsakis* op. cit. p.p. 195 ff.

On judicial review of administration in Britain see *S.A. de Smith*, *Judicial Review of Administrative Action* (1980) 4th ed (Evans), *Robson W.A.* *Justice and Administrative Law*, 1951, 3rd ed., *Peter Cane*, *An Introduction to Administrative Law*, 1986.

57. On the Rule of Law as fundamental principle of the British Constitution see *A.V. Dicey*, op. cit. On the Rule of Law as a principle of institutional morality see *J. Jowell*, *The Rule of Law Today* in *J. Jowell, D. Oliver* (eds) op. cit. p.p. 3 ff.

58. See *G. Jeze*, *Les principes generaux du droit administratif*, 3rd ed. Paris M. Giard, 1923, t. 1 p.p. 3 ff.

59. See *A.D. Lindsay*, *The Modern Democratic State*, Oxford Univ. Press 1962.

60. The exercise of discretion has always been a major problem of administrative law even at the early stages of the classical period. See e.g. *L. Michoud*, Etude sur le pouvoir discretionnaire de l' administration, in *Revue generale de l' administration*, 1914 t. 3., *R. Laun*, Das freie Ermessen und seine Grenzen, 1910, *W. Jellinek*, Gesetz, Gesetzanwendung und Zweckmaessigkeitserwaegung 1913.

61. See *D. Harris* op. cit. Also *Richard L. Nettleship*, ed Works of Thomas Hill Green (London 1894-1900); *David G. Ritchie*, The Principles of State Interference (2d ed London 1896); *Charles Gide and Charles Rist*, History of Economic Doctrines (New York, n.d.) p.p. 587-607.

62. *Hill M.* (1976) The State, Administration and the individual. Also *O. Mc Donagh*, The Nineteenth Century Revolution in Government: A Reappraisal, *I Historical Journal* (1958) 52. *H. Parris*, Constitutional Bureaucracy (1969).

63. See *C. Harlow and R. Rawlings*, Law and Administration, Weidenfeld and Nicolson, 1984 p. 9.

64. On the impact of the New Deal on the conception of law as an active instrument of social and political justice see *P. Nonet* (1969), *Administrative Justice*, p.p. 83 ff.

65. See *A. Shonfield*, Modern Capitalism, Oxford University Press, 1965 p.p. 63 ff.

66. See *Friedman W.* Law in a Changing Society, 2nd ed 1964 p.273-4.

67. This idea is supported by a number of contemporary writers such as *F.A. Hayek*, The Road to Serfdom (1947) Law, Legislation and Liberty (1969); *Nozick*, Anarchy, State and Utopia (1974). Also *Barry*, The New Liberalism 13 *Brit. J. Pol.* 5.93. (1983), *Ryan* The New Libertarians: a Gauntlet to both Left and Right, 56, *New Society*, 1981, 427.

68. As early as 1929, Lord Chief Justice Hewart warned that the goal of the modern executive is once again to regain supremacy as in the times of the Stuarts by destroying the balanced constitution. See *Hewart Lord* (1929) *The New Despotism*.

69. In *Wade H.W.R.* Administrative Law, 1st ed. 1961 p.3.

70. *Dimock M.E.* Law and dynamic Administration (1980), *Jennings W.I.* (1936) Courts and Administrative Law, 49 *Harv. LR.* 429.

71. On the concern for efficiency and effectiveness in government see *M. Elliot*, *The Control of Public Expenditure*, in J. Jowell, D. Oliver op. cit. (1985) p.p. 149 ff. See also *Hill M. Understanding Social Policy*, Blackwelder and Robertson, 2nd ed, 1983 p.p. 239 ff.

72. In matters of fundamental rights, emphasis today often shifts from the protection of the individual towards the realisation of social justice and the furtherance of public goals. See *F. Mayer*, *Allgemeines Verwaltungsrecht*, Boorberg, 4th ed, 1977 p.p. 30 ff.

73. See *P. Cane*, op. cit. p.p. 309 ff.

74. On administrative advice and appraisal and the problems of economic appraisal in particular see *Peter Self*, *Administrative Theories and Politics*, Allen and Unwin, 2nd ed (1977) p.p. 192 ff.

75. See *J. Jowell, A. Lester*, *Beyond Wednesbury: Substantive Principles of Administrative Law*, Public Law, Autumn 1987.

76. In France a major step towards a more substantive review of administrative discretion was taken with the decision "Denijet " of Conseil d'Etat (C.E. 13 Nov. 1953 R.489) which applied the notion of manifest error of appreciation in order to control the equivalence of two administrative posts. This notion did not remain restricted to the area of public service law, but was gradually expanded in purely technical matters, which were until then beyond the reach of the administrative judge. (The main fields of application beyond public service - promotions, disciplinary sanctions etc. - were quasi administrative bodies such as professional organisations, land redistribution and economic or social intervention of the administration) See *Letourneur*, *L'erreur manifeste de l'appréciation dans la jurisprudence du Conseil d'Etat français*, *Miscellanea Ganshof Van de Meersch*, Paris Bruxelles L G D J , 1972 t. p.p. 563 ff; *R. Odent*, *Contentieux administratif*, G. Fasc. Paris, Les cours de droit, 1977 - 80, Fasc. 6 p. 1966; *G. Vedel*, *Droit administratif*, Paris P U F. 9th ed. 1984, p. 766. The manifest error of appreciation is actually an empirical principle. It extends judicial review of discretion in cases of error which is unusual, serious, extraordinary, irregular, gross or irrational so that even a nonexpert can identify it. See *Odent* op. cit. p. 1995-6. The relationship of this notion with the English principle of unreasonableness has been pointed out. See *G. Braibant*, concl. *Sieur Lampert*, C E Nov. 1970, A J D A, 1971 p. 53 and C H R p. 33.

Moreover, recently the Conseil d'Etat has formally recognised and applied the principle of proportionality, which is actually one of the oldest sources of inspiration of the French administrative jurisprudence. See *G. Braibant*, *Le principe de la proportionnalité*, *Mélanges Waline*, Paris 1974, t 2, p. 306. The first application of the principle was in a case of compulsory purchase (expropriation) for reasons of urban development (CE 28 mai 1971, Ville

Nouvelle Est, R. 409 concl. Braibant). The judge proceeded to a cost-benefit analysis by balancing the public utility resulting from the expropriation against the financial costs, the violation of private property and other relevant social consequences in the specific circumstances. In the same spirit in 1972 the Conseil d'Etat for the first time quashed a decision referring to the construction of a highway, which would eventually obstruct the functioning of a psychiatric establishment (C E 20 oct 1972, Ste Sainte Marie de l' Assomption). In another, highly criticised, decision the Conseil d'Etat delivered a judgement on the utility of the construction of an airport by a small community (CE 26 oct 1973, Grassin R. 598).

77. This attitude still characterises the behaviour approach to policy. See *Dahl*, *Modern Political Analysis*, Prentice Hall, 1976. It is also shared by the so called incremental school of public policy, see *Lindblom Ch.*, *The Policy Making Process*, Prentice Hall, 1980.

78. See *P. Self*. op. cit. p.p. 261 ff.

79. *Bentham J.*, *An Introduction to the Principles of Morals and Legislation*, published 1780, London 1970, J. H. Burns, H L A Hart.

80. *Montesquieu*, *L' esprit des lois*.

81. *d' Holbach*, *Ethocratic ou le government fonde sur la morale*, Amsterdam, 1776.

82. *Cesare Beccaria*, *Dei delitti e delle penne*, 1764. See also *Gaetano Filangieri*, *La scienza della legislazione*, 1780-1788, strongly influenced by Montesquieu.

83. On configurative jurisprudence see *M.S. McDougal*, *H.D. Lasswell*, *W.M. Reisman*, *Theories about International Law: Prologue to a configurative Jurisprudence*, 8 *Virginia Journal of International Law* 188 ff (1968), *M. D. Lasswell*, *M. S. McDougal*, *Jurisprudence in Policy-Oriented Perspective*, XIX *Univ. of Florida Law Review*, 486 ff (1967), *M. S. McDougal*, *Jurisprudence for a free Society*, 1 *Georgia Law Review* 1 ff (1966), *H. D. Lasswell*, *M. S. McDougal*, *Criteria for a Theory about Law*, 44 *Southern California Law Review*, 362 ff (1971), *John Norton Morve*, *Prolegomenon to the Jurisprudence of M. S. McDougal and H. D. Lasswell* 54 *Virginia Law Review*, 662 ff (1968), *M. Decleris*, *The Empirical theory of H.Lasswell on Law and Politics*, Syntagma 1, 1980.

84. The School of Natural Law is centuries old and is characterised by periodic revivals. For our century see particularly *R. Stammler*, *Wirtschaft und Recht nach der materialistischen Geschichtsauffassung* (1856), *G. Del Vecchio*,

Lecons de philosophie de droit (1936), Lon Fuller, Anatomy of the Law (1968), A.P. D'Entreves, Natural Law (1951).

85. On the positivist or analytical School of Law see *John Austin*, The Province of Jurisprudence Determined and the Uses of the Study of Jurisprudence (1954- Intod. by H.L.A. Hart), *H. Hart*, The Concept of Law (1951), *H. Kelsen*, General Theory of Law and State (1945).

86. On American Realism see *Helmut Coing*, Tendencies in Modern American Legal Philosophy: A Survey, in 40 George-town Law Journal 523 (1951); *Karl Llewellyn*, The Bramble Bush (1951), *Jerome Frank*, Law and the Modern Mind (1930) 'Courts on Trial (1949), *Thurman Arnold*, The Folklore of Capitalism (1937). The symbols of Government (1937), *F.S. Cohen*, Ethical Systems and Legal Ideals (1933).

87. On Scandinavian Realism see *J. Orfield*, Survey of Scandinavian Legal Philosophy, Wisconsin Law Review, 466 f, 85 ff(1956), *K. Olivecrona*, Law as Fact (1939), *A.Lundstedt*, Legal Thinking Revised (1956), *A. Ross*, On Law and Justice (1958).

88. See *H. Lasswell*, The Decision Process: Seven Categories of Functional Analysis (1956).

89. See *H. Lasswell M. McDougal*, Trends in Theories about Law: Comprehensiveness in Conceptions of Constitutive Process, in 41 George Washington Law Review, 1 ff (1972).

90. On the School of Erlangen see *Schwemmer*, Philosophie der Praxis, Versuch zur Grundlegung einer Lehre vom moralischen Argumentieren, Frankfurt a. M. 1971, - Grundlagen einer normativen Ethik, in Kambartel, P (ed): Praktische Philosophie und Konstruktive Wissenschafts theorie 1974, p. 73-95.

The general program of the School of Erlangen is exposed in *Lorenzen / Schwemmer*, Konstruktive Logistic, p.-28 and also in *Lorenzen Paul*, Theorie der technischen und politischen Vernunft, Stuttgart 1978, - Normative Logic und Ethics, Mannheim, Zurich, 1969.

91. See *C. Harlow, R. Rawlings*, op. cit. p. 45.

92. See *Lanza A*. Projet de reforme administrative en France, PUF , 1968, *Debbasch Ch*. Science administrative, 1976, *Caiden G*., Administrative Reform, Aldine, 1969.

93. See *Peter French*, *Ethics* in Government, Prentice Hall,

Chapter 3. Issues of Methodology.

Abstract

In Chapter 1 we pointed out that modern empirical theories are not adequate for dealing with a predominantly legal phenomenon, such as implementation. Therefore we suggested that a new theory is required, combining the legal aspect with the behavioral. Such a theory should draw from the experience acquired during administrative law's long period of evolution and should combine the legacies of the past with the findings of modern social sciences. The identification and analysis at these legacies has been the object of chapter II.

The present chapter elaborates upon a point made earlier in chapter I, namely that conventional legal science cannot effectively deal with the problems of modern administration any more. Administrative law should, therefore, be fundamentally transformed in order to incorporate, as it has often done in the past, the findings of other scientific fields, related to various aspects of implementation. As a result of such a change, new administrative structures and functions shall emerge, expressing new administrative values and principles pertinent to rational action in contemporary conditions.

The first section of chapter III is dedicated to the presentation of those modern scientific disciplines, whose findings may contribute to the formulation of a comprehensive theory of implementation. Special emphasis is given to the new fields of communication and control theory. There is a close connection between implementation and control since the desired outcome of implementation cannot be measured without appropriate control mechanisms. Modern cybernetics took the issue of control over from philosophy, turned into a scientific question and provided concrete answers. Today the theory of control is integrated with communication theory and applies to all types of organizations, including Public Administration. Actually, modern administrative law of Public Administration and Public Decision Making are structured along the principles of control theory; emphasis is placed thus upon goal-setting and design of the appropriate communication and control mechanisms for their attainment.

The theory of failure, based upon the simple methodology of learning from one's mistakes, may also provide valuable insights for better understanding implementation failures and their factors. Failure theory has already been incorporated in legal theory in the form of summative evaluation.

Finally, the present thesis draws heavily from normative public policy analysis, which integrates the principles of systems design with value analysis in order to provide rational solutions to public problems.

As we have already stated, the aim of the present thesis is to propose a comprehensive theoretical model for the evaluation of implementation failures. This task is undertaken in the following chapter 4. The verification of the above model by its application upon a particular actual case of policy failure takes place in the second part of the thesis. However, before proceeding to the presentation of our model it is necessary to clarify some issues related to the methodology followed in this study. The study of policy implementation failure is by definition an evaluation study, since it refers to a past policy, already terminated at the moment of the study, and seeks to establish the reasons of the failure. Such a full scale evaluation, involving the identification and analysis of a great number of interrelated variables, requires a methodology of adequate complexity. Systems methodology has been selected among the various methods used for the analysis of public problems in view of its unique capacity to treat problems of great complexity. It is a research and design strategy which permits the gathering and treating of the greatest possible volume of information and is, therefore, particularly appropriate for the study of implementation. The great number of factors involved in the implementation process can only be depicted and studied by systemic models displaying their multiple interconnections, which is something fundamentally different from establishing mere causal connections among them. For that reason, the greatest part of chapter III is dedicated to the presentation of the fundamental principles of systems methodology.

For a critical assessment of systems methodology from a comparative perspective, chapter III also contains a brief review of three other major approaches in modern legal theory, namely Dworkin's theory of rights, Unger's critical theory and Luhmans autopoietic theory of law.

3.1 The complexity of the failure problem: criteria for an adequate methodology.

It has already been pointed out that legal theory is the oldest method of treating the implementation problem: in fact, its lasting achievements were the effective intervention through the binding unilateral administrative action (*acte exécutoire*) and the notion of constraints upon such action derived from statutory programs and logical or moral principles. Today, however, as the amount of public problems constantly increases, the limits of legal theory of implementation have become apparent, since most of the time it falls short of meeting the requirements of complex problems. For example, a good part of legal theory of implementation deals with the discretionary powers of administration; yet, most of it is devoted to marginal controls related to such vague standards as reasonableness, sound administration or proper purpose, while the administrators, participating substantially in the policy-making process, are in need of a more coherent and detailed theory of rational decision making.

Assuming that the legal theory of implementation needs updating in order to keep pace with the related scientific disciplines, the question arises, what criteria should the recommended methodology meet.¹ In our view an appropriate methodology should have the following characteristics:

a) it should be problem oriented, i.e. capable not only of analyzing and explaining but also of providing practical solutions to the problems of implementation;

b) it should be realistic, i.e. related to the actual administrative and social process, and its recommendations should be verifiable by empirical data;

c) it should be non-trivial, i.e. the proposed models should not be self-evident but should allow for useful insights and generate further ideas about the problems under examination;

d) it should combine comprehensiveness, i.e. exhaustive consideration of all significant factors, with parsimony, i.e. choice of relevant factors only;

e) it should be scientific, in the sense that it should relate legal theory to the findings of other scientific disciplines;

f) it should be formulated at the appropriate level of abstraction in order to provide general propositions, irrespective of the features of specific administrations. At the same time it should be flexible enough to be applied to particular situations, when required.

The above criteria cannot be met by legal theories which are either oriented towards the interpretation of the law in force² or propose legislative changes empirically conceived. As we have already noted, the complexity of a comprehensive theory of implementation exceeds the capacity of these methodologies. For the same reason the requirements of the task cannot be met by legal theories inspired by natural³ law or otherwise philosophically oriented.⁴

In view of the above, systems methodology, specifically designed to deal with complexity, seems to be appropriate for providing a comprehensive normative model of implementation.⁵ As it will be shown below, systems methodology, by assimilating the findings of a number of relevant new sciences, can shed light to important and often neglected aspects of implementation.

In the following section we shall briefly review some of the most important new sciences directly related to the object of our study, namely cybernetics, communication theory, general theory of failures, catastrophe theory and policy analysis.

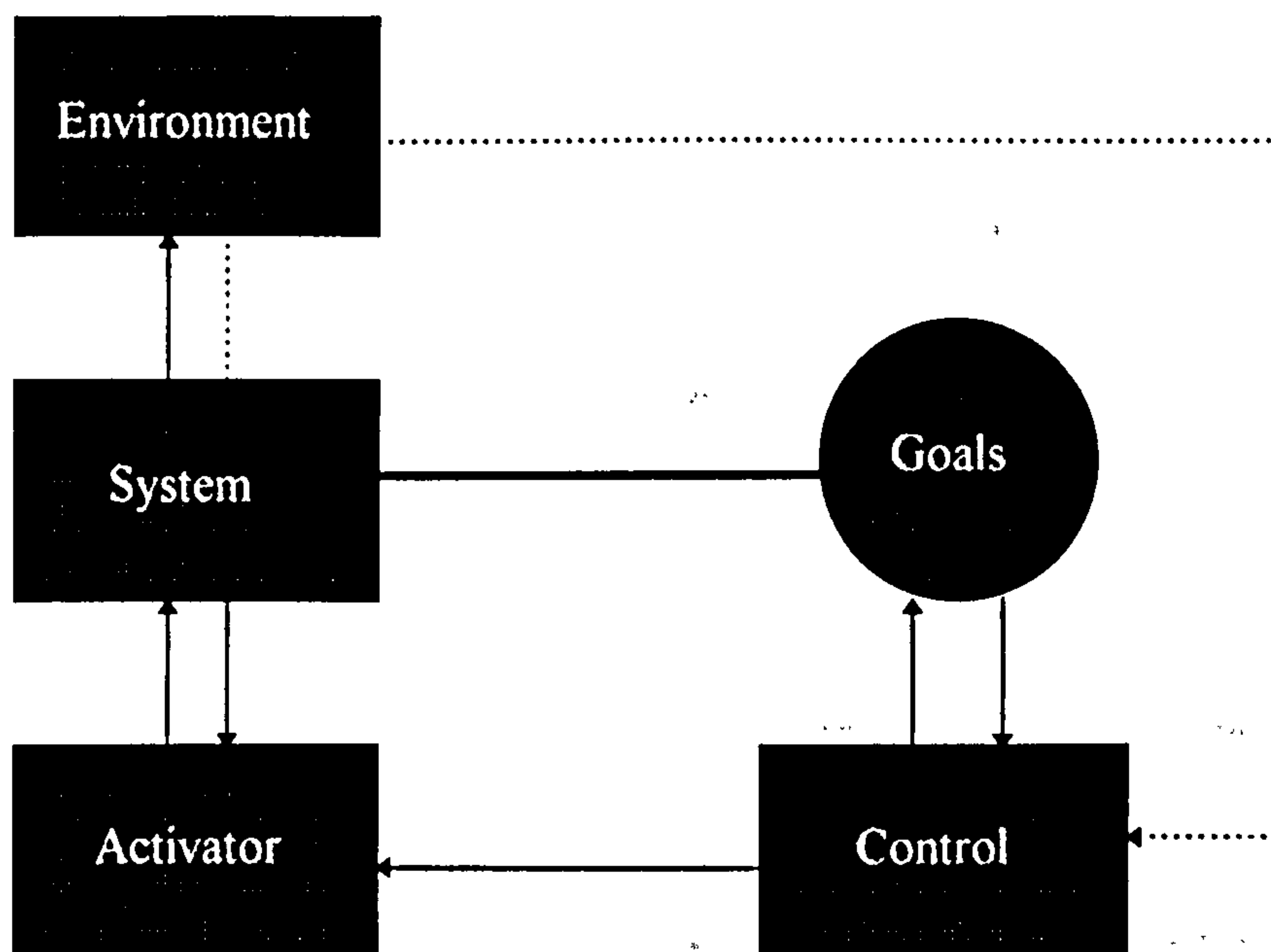
3.2 Related Methods.

3.2.1 Control theory (Cybernetics).

The notion of control is central for implementation. The essence of implementation is the actualization of public goals by turning decisions into action and, therefore, it presupposes control. Thus a modern theory of implementation could and should take advantage of the findings of the

scientific theory of control, namely cybernetics. Cybernetics has been authoritatively defined as “the science of control and communication in the animal and the machine“, the assumption being that the theory of control in engineering, whether human or animal or mechanical, is a chapter in the theory of message.⁶ Put simply, control is information which a system applies to its own activities in order to reach or to maintain a desirable state (goal).⁷ Control is necessary because of the influence of the environment on the activities of the system and is usually performed by a specialized subsystem of the controlled system. The purpose of the control subsystem is to minimize as much as possible the deviations of the output of the system from the desired goal. This is achieved through a process which feeds back to the system information about its actual performance, thus permitting the comparison between actual and desired output and the modification of the input or the conversion process accordingly. It is evident that there is a close connection between control and communication and that any control process depends on the available flow of information.

A simple model of a feedback control system is illustrated in the following diagram.



In order to establish effective control a number of preconditions must be satisfied irrespective of the nature of the system.

More specifically:

- a) the system being controlled must be understood in terms of input, output and conversion process,
- b) the inputs and outputs of the process must be measured in a repeatable and operative way and at appropriate time intervals,
- c) a channel of communication must exist between decision maker and controller. This channel must satisfy the requirements of communication theory with respect to the process being controlled (see below on communication theory).

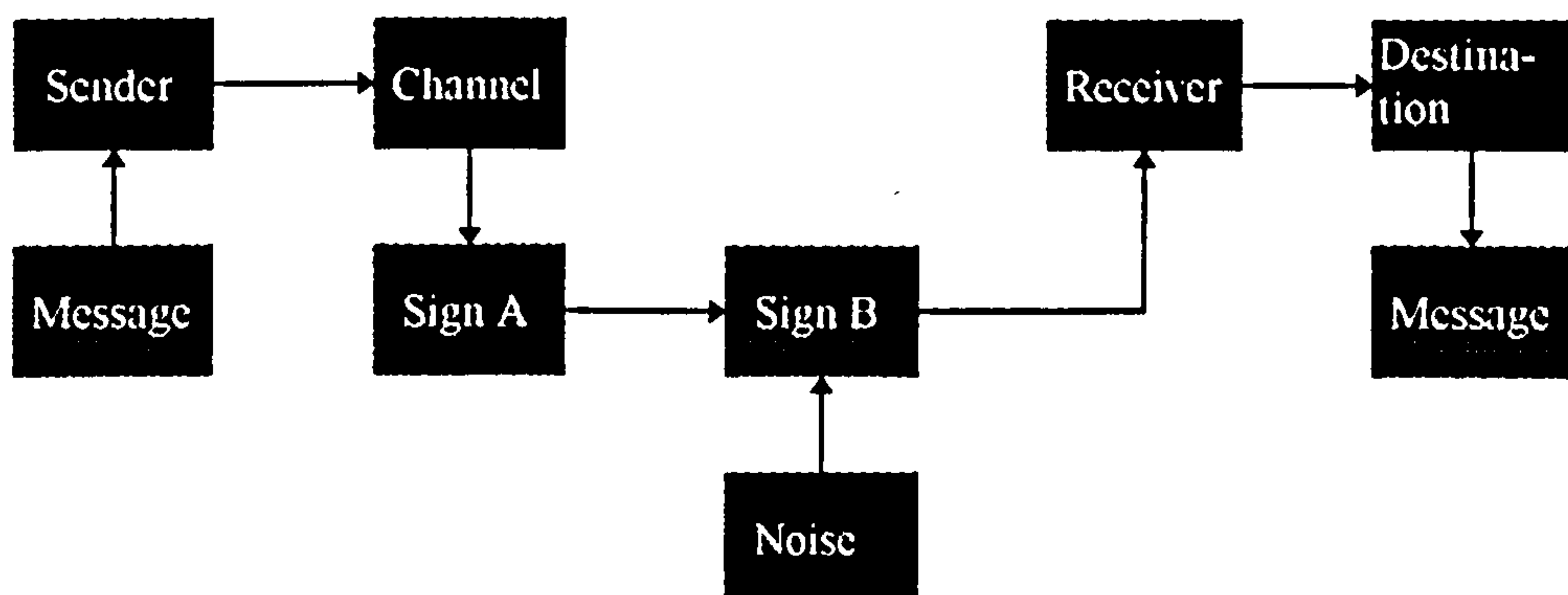
In short, a control system must be capable of performing the activities of measuring, communicating, comparing, deciding and correcting.

Particularly useful in understanding the nature of controlled systems is the concept of positive feedback, which occurs when the information about the output, which is fed back to the controller, leads to an action that increases the deviation from the desired level. Problem situations, such as shortages of goods or inflation, have been attributed to positive feedback loops.

In view of the above it seems that successful implementation depends a great deal upon effective control. The above mentioned elementary principles of control should be considered axiomatic in implementation theory and should be observed under any circumstances. Control mechanisms should be provided at all hierarchical levels to ensure conformity with prescribed standards, stability and responsiveness. As it will be shown below, failures of implementation may often be attributed to the inadequacy or breakdown of the control mechanism.

3.2.2. Communication theory.

A cybernetic system, such as the administration, is directed towards its goals under conditions of uncertainty, which can only be reduced by appropriate information processing. The gathering and transmission of information is the subject of the theory of communication.⁸ A simple representation of a communication system is shown in the following basic diagram of Shannon.



Since uncertainty is a distinctive feature of public problems, communication theory is particularly important for implementation. The observance of its basic principles is a prerequisite of rational decision making and may help to prevent many common failures. These principles emphasize the necessity of an adequate communication channel between policy maker, implementor and controller. They also recommend the correct assessment of

the channel's capacity in order to avoid informational overload, which is so common in administration, and prescribe the use of a common code of communication to prevent distortion of the message or noise. In order to reduce uncertainty communication theory also postulates full exploitation of all available information and use of the theory of probabilities. Moreover, in view of the complexity of the information processed by the administration, an hierarchical system of information processing is required to ensure the system's stability, while the rate of the information flow should be constantly controlled to allow for timely response.

3.2.3 General theory of failures.

Deficient communication and control may cause the system to fail. Recently there is an effort towards the formulation of a general theory of failures, which studies a wide range of failures from different fields of activities and aims at improving their understanding, forecasting and prevention.⁹

The concept of failure is usually expressed as a shortfall between expectation and reality, performance and standards. It is often characterized by dissatisfaction, goals unattained and/or undesirable outputs. Failures can occur in a variety of forms, catastrophic or minor, overwhelming or partial, sudden or slow. An investigation of their causal background shows that they are bound to be multicausal, arising from interdependent and interactive factors.¹⁰

In order to enhance clear understanding of failures, a process of comparison is proposed between paradigms (models) of the actual failure situation and paradigms (more or less in the form of archetypes) of desirable or undesirable aspects of the same situation. If the selected formal paradigm represents "success", it is the discrepancy between it and the actual situation that reveals the causes of failure; if, on the contrary, it is designed to represent "failure", it is the similarities between it and the real situation that point to the causes of failure.

A holistic approach of the system which has failed and its environment is of particular significance, because it permits the assessment of the failure situation from a variety of viewpoints (e.g. that of a lawyer, an engineer, a manager etc).

General theory of failures has adopted from safety and reliability engineering¹¹ a number of safety paradigms (models). These paradigms can also be applied in human systems in order to trace individual component failures which have occurred in the past and have eventually caused the breakdown of the whole system.

The first of these paradigms is the technique of Failure Mode and Effects Analysis (FMEA). It is essentially a "bottom-up approach" which considers the possible failure of individual components and their impact on the system as a whole. FMEA usually comprises the following steps (phases):

- 1) Definition of the system,
- 2) Description of system operation,
- 3) Description of environmental conditions,
- 4) Listing of failure mechanisms,
- 5) Analysis of failure effects,
- 6) Failure detection,
- 7) Compensation for failure.

When the effects of a component failure depend upon the particular set of conditions which affects other components at the same time, then the most convenient approach is to represent the various possible sets of conditions into a logic diagram. Such a diagram is called the fault tree and it is used to depict by special symbols the events leading to an overall failure of the system.

The common mode failure paradigm describes a failure situation caused by the simultaneous breakdown of vital components of the system due to some initial deficiency that they all commonly possessed.

The cascade failure, popularly known as the "domino effect", is a situation where one failure leads to another and a chain of failures occurs.

Finally, an interesting failure paradigm is provided by catastrophe theory, which depicts sudden changes in a system, that actually constitute jumps from one situation to another without a steady transition. Catastrophe theory deserves special attention and therefore will be discussed in detail below.

A number of case studies from the field of public policy indicates the potentialities of failure theory in handling complex failure problems which extend over a long period of time.

The construction of the Humber Bridge¹² is a characteristic example of a project which, though a major civil engineering success, was nevertheless a failure in fulfilling the intended objectives. In this particular case the failure should be traced back to the initial policy decision of constructing such a major and costly public work without conducting a proper-cost benefit analysis, but relying on political considerations instead. Thus, on the one hand none of the expected conditions (population growth, industrial development of the area etc), which would have rendered the construction of the bridge necessary, materialized; on the other hand, cost escalation was greater than expected due to inefficiency, inflation, poor initial estimation, random events (accidents) and erroneous estimate of the expected toll income.

The crisis at the Normansfield Hospital¹³ for mental patients, which resulted in the catastrophic failure of a strike unprecedented in the history of NHS, may be considered a characteristic example of component failures, which accumulated over a long period of time and finally brought about the breakdown of the overall system. While the hospital suffered chronically from mismanagement, the relevant information, although available, was not correctly evaluated at the appropriate hierarchical levels of control of the greater systems (Area Health Authorities, Regional Health

Authorities, National Health Service, Department of Health) and no remedial control action was promptly taken to prevent collapse.

3.2.4 Catastrophe theory

As we have already mentioned, in some cases an implementation failure may present the particular characteristics of a catastrophe. This does not necessarily mean that it produces a devastating effect, but rather that it constitutes a sudden qualitative change, a jump from a given situation to a novel one. This interesting process is the subject of catastrophe theory. Catastrophe theory is a topological mathematical theory which stresses qualitative rather than quantitative regularities. According to its founder, the mathematician R. Thom,¹⁴ nearly all natural processes exhibit some kind of regularity which allows us to distinguish in it certain recurrent identifiable elements. These elements which acquire specific forms (like that of a butterfly or a snowflake) or develop along specific patterns, have what Thom defines as structural stability. Catastrophe theory is a mathematical language based on the assumption of such structural stability; thus, in a way similar to the analogies of ordinary language, it points out qualitative regularities in wide variety of processes. People have often wondered at the similarity of the branching pattern in a tree, a river system, a nervous cell or an organization. Catastrophe theory rigorously classifies and analyses these similarities by the use of mathematics. A catastrophe, in the broad sense that Thom gives to the word, is any discontinuous transition that occurs when a system can have more than one stable states or can follow more than one stable pathways of change. The catastrophe is the jump from one state to the other. Thom proposes seven elementary catastrophes, presented in graphs, as the seven simplest ways for such a transition to occur.

Numerous applications of catastrophe theory have been presented in various fields such as physics, chemistry, biology, animal behavior, sociology, economics and politics in the form of models based on the elementary catastrophes. Most of the proposed models are descriptive rather than explanatory, but they also allow for qualitative prediction. In particular with respect to social and political sciences it has been suggested that catastrophe theory can provide useful insights regarding the distinction between continuous and discontinuous change: it offers a picture which combines political evolution, i.e. the more or less continuous processes called trends, with political revolution (literal or figurative) i.e. the more or less discontinuous events which separate one period of political development from another.

By selecting the appropriate control variables and depicting them in a catastrophe graph one can come up with intriguing insights regarding the course of many social processes. Also one can predict change in a qualitative way and, depending on his goals, prevent or encourage it by the manipulation of the relevant variables towards the appropriate direction indicated in the graphs.

Interesting applications of catastrophe theory related to public policy are attempted in the field of economics, sociology and politics. Thus

in economics¹⁵ one of the proposed models deals with the effects of competition and elasticity of demand on prices, while another depicts gradual and dramatic changes in inflation as a function not only of unemployment but also of the expected inflation rate. In the field of public policy¹⁶ particularly interesting is an application of catastrophe theory which depicts the conflict between two organized pressure groups with opposing aims, namely the environmental lobby versus the nuclear power lobby, and the resulting impact on the rate of nuclear power station construction. In the same case, an alternative model is proposed that shows how a compromise might emerge.

3.2.5 Policy Analysis.

(Note: The present chapter draws heavily from M. Decleris, *Systems Design of Public Policy*, forthcoming publication of the National Center of Public Administration, Athens).

Public policy in technical terms is a system of decisions and actions which aims at the solution of public problems. Public Policy Analysis is the science which applies the principles of rational decision making in the formulation, implementation and evaluation of public policy.

The effort to rationalize public decisions is an old one and was initially the object of political philosophy. Ancient Greek theories on the ideal state aimed in fact at the optimization of the existing state and the contribution of the legislators - philosophers was significant in that respect. Ancient Greek legal science was policy oriented¹⁷ in contrast to Roman legal theory which was based on analogous thinking.¹⁸ Law is the permanent achievement of the effort to rationalize both the structure and the function of the state.

Until recently, legal science had restricted itself in prescribing a logical and ethical framework for the state's activities. Within these limits the so called "political" decision was recognized as autonomous; its content was considered either as the outcome of a power game or as the art of the feasible and its correctness was entrusted to ideology or intuition. However, while political and legal philosophy remained preoccupied with such matters, in many areas of public policy problems emerged (education, health, pollution etc), which revealed the need for technical expertise rather than political compromise. On the continent, the development of Special Administrative Law¹⁹ permitted the gradual substitution of political decisions by policy designed by administrative experts.

In the last three or four decades the development of science and technology provided new arguments for the reorientation of public policy: as the systematic application of scientific methods had already permitted the development of the economic system, it was considered appropriate to apply the same methods to politics.

Roughly speaking, the efforts towards the rationalization of public policy emanated from two different directions,²⁰ which are now gradually converging. The first one is operations research, which was introduced during the Second World War as a systemic method of designing military operations and was extended thereafter to such areas as armaments, military strategies or even purely economic problems, such as the optimal distribution of resources in competitive projects. This method, further developed by the Rand Corporation, became known as systems analysis²¹ and was successfully applied first in major sociotechnical systems (development of water resources, distribution of resources in health systems etc) and then in decision-making and politics, where it focused on the study of the cost of alternative solutions and introduced the criterion of efficiency. Nearly at the same time, a new methodology with broader content, called systems engineering²², undertook the task of designing and implementing the appropriate system depending on the requirements of the specific problem.

In sum, both systems analysis and systems engineering have introduced the so called 'hard' ²³ methodology in the definition and solution of sociotechnical problems, thus providing politics with a scientific background.

As a recognition of the merits of these efforts in 1972 seventeen countries (including the USA and the USSR) founded in Austria the International Institute for Applied Systems Research for the purpose of studying the great problems of our time (population, resources, pollution etc).²⁴

The second contribution to the rationalization of public policy comes from the School of Policy Oriented Jurisprudence, which is closely connected with the names of H.Lasswell and M. Mc Dougall²⁵. Their effort to assimilate the findings of various scientific disciplines in a methodology for the rational solution of complex problems has already been discussed in detail above. It remains to be noted that, while systems analysis originated from technological or small scale social problems, which permitted the use of mathematical models, contextual jurisprudence began with complex social problems which could only be studied with the help of value analysis .

From the 1960's the above two directions were gradually drawn together to form the so-called Public Policy Analysis, which is the contemporary scientific methodology of public policy.²⁶ Public Policy Analysis concentrates:

- a) on the definition of ill-structured problem (i.e. where there are multiple versions of the problem),
- b) on the integration of conflicting goals (where a logical value processing is attempted),
- c) on the implementation of decisions (with emphasis on feasibility and consensus) and
- d) on program evaluation.

Contemporary public policy analysis is assisted by a large variety of technical methods, including extensive use of computers. It is recognized as the most important part of the science of Administration.

There is a great variety of models in Public Policy Analysis, all of which have a common minimal content that includes:

- a) methods for problem formulation,
- b) methods for deciding under uncertainty in forecasting alternatives,
- c) methods facilitating rational choice (cost-benefit analysis, cost-effectiveness analysis etc),
- d) methods for feasibility studies in implementation and, finally,
- e) methods for evaluating public policy.

3.3 The Necessity of a Comprehensive Theory: Systems Methodology.

The study of public policy has been recently marked by a shift of interest towards policy design. It has become evident that efforts to analyze implementation or to evaluate public programs effectively require a more fundamental and comprehensive understanding of public policy processes. As it has been pointed out, analyses which focus on the end of the process (evaluation) or at a mid-point in the cycle (implementation) cannot account for characteristics created and shaped by the earlier activities of problem definition and policy design.²⁷

Current systems methodology has merged systems analysis and systems engineering in the more comprehensive approach of systems design.²⁸ From the systemic perspective public policy consists in the design of the appropriate systems for the solution of public problems. The notion of problem has already been defined as a discrepancy between the actual and the desired state of a system, which creates disjunction. A problem becomes public if its complexity exceeds the capacity of a particular social system (e.g. economic, cultural) and its solution cannot be reached by self-regulation but requires external control and organized decision-making, which are tantamount to public policy.²⁹

In human systems the discrepancy between actual and desired state may be attributed either to an objective change in the system's environment or to a change in the conception and evaluation of the relevant information. In both cases the problem situation arises because the system has to seek a new state which is not precisely known before-hand. Since human systems are characterized by a certain degree of autonomy, the new state is the result of a choice among many alternative solutions of the problem. The task of systemic public policy is to design a system that would provide the best solution of a given public problem. Before examining how systemic methodology can be applied to public problems, it would be useful to review briefly its basic principles.

Systems methodology is a new strategy of research in gathering and processing information concerning public problems. The objects of research is always studied as a whole (system). Thus the method is holistic in the sense that it has to encompass the whole, which is called system, i.e. an organized assembly of components interrelated with multiple

interconnections. The system as such is an entity different from its components, since it possesses emergent properties not present in its parts. While the traditional approach to science, formulated by Descartes, is based on analysis, i.e. disintegration of the object of research into its minimal fundamental units and study of their properties, which are believed to explain the behavior of the whole, systems methodology is based on a new logic dictated by the complexity of the object under study.

Since it is a basic tenet of systems methodology that the whole is more than the sum of its parts, systems are represented in topological models depicting their structure and functions. These models, designed by the researcher with the appropriate degree of abstraction, are an indispensable part of systems methodology, since they permit a grasp of the characteristic properties of the system.

Another fundamental difference between traditional (Newtonian) methodology and systems theory lies in the fact that the former is exhausted in the search for causal connections, which are assumed to explain the phenomenon under study. For systems methodology, on the other hand, causal connections may be appropriate for explaining the behavior of small and relatively simple systems (usually physical or mechanical), but insufficient for large scale systems with multiple interconnections and constant feedback from the environment. The behavior of such systems does not allow for simplistic cause-effect explanations but requires a teleological approach focusing on their goals, functions and choices and performed with the help of formal methods (cybernetics etc).

Systems methodology is problem oriented and as such its main interest is not ontological- what the system is - but functional - what the system does and how it can do it better. The system's properties, structure and functions are studied for the purpose of its optimization. In this respect the role of the systemic researcher is not limited to that of passive observer but is seen from an optimization perspective which unites theory with practice.

In view of the complexity of such a task systems theory is interdisciplinary; it aims at bridging the communication gap among specialized sciences by providing them with a metalanguage that integrates their specific findings into systemic models.

Roughly speaking, a systemic model of public policy must satisfy the following questions:

a) where is the system? The right answer to this question leads to system recognition, i.e. awareness and location of a more or less autonomous whole of interactions among humans and objects, which becomes the target of public policy. More specifically, the policy maker should know in advance where he is going to intervene, what is the system which is going to be influenced by his intervention. The quasi-autonomous nature of systems facilitates intervention, provided that they are correctly identified. System identification is easier when the system is observable, such as a formal organization e.g. a Ministry; it becomes increasingly difficult as one moves to non observable systems such as e.g. external trade or the black market.

System identification must be precise: a broader or narrower definition of the system might cause the failure of the intervention.

b) What does the system do? The right answer to this question provides the external model of the system, i.e. its relations with the megasystem of which it is part from the particular aspect of interest. The relative autonomy (identity) of the system coexists with its dependence from an hierarchically superior system.

The principle of systems hierarchy is fundamental in systems theory. The importance of the external model is obvious when a public problem arises which requires intervention at the connections of a system with its megasystem, as e.g. in the case of granting incentives for enhancing productivity in industry or agriculture in order to develop the national economy. Since public problems nearly always have ramifications in more than one hierarchical levels of systems, the policy maker should always consider even the remotest impacts of his intervention. What influences the system and what is the influence of the system are questions which can only be answered by an appropriate external model of the system.

c) How is the system? The answer to this question is provided by the design of the internal model of the system. This model depicts the structure of the system under consideration: What are its elements, their interconnections, their degree of organization, the state of the system etc. System description may be susceptible to mathematical formulation but in any case requires the use of diagrams. In large scale systems with numerous components and multiple connections the description of the system may require simulation with the help of a computer. System simulation permits not only good observation but also safe and cost free experimentation regarding the intended intervention.

d) Where does the system go? Systems theory emphasizes the dynamic character of systems in general and human systems in particular. The description of a system assumes that the interconnections of its elements are dynamic and that it is subject to state transformation. The time factor is crucial: e.g. the formulation of a public problem should take into consideration the evolutionary trends of its parameters, while the assessment of alternatives should include prediction of even remote impacts.

Since public policy tends to control future situations, the designed system must have a capacity for learning, adaptation and, if necessary, transformation. The monitoring of the course of the system is a separate phase of public policy performed by the appropriate techniques. The parallel evolution of system and environment is a necessary prerequisite for the success of public policy.

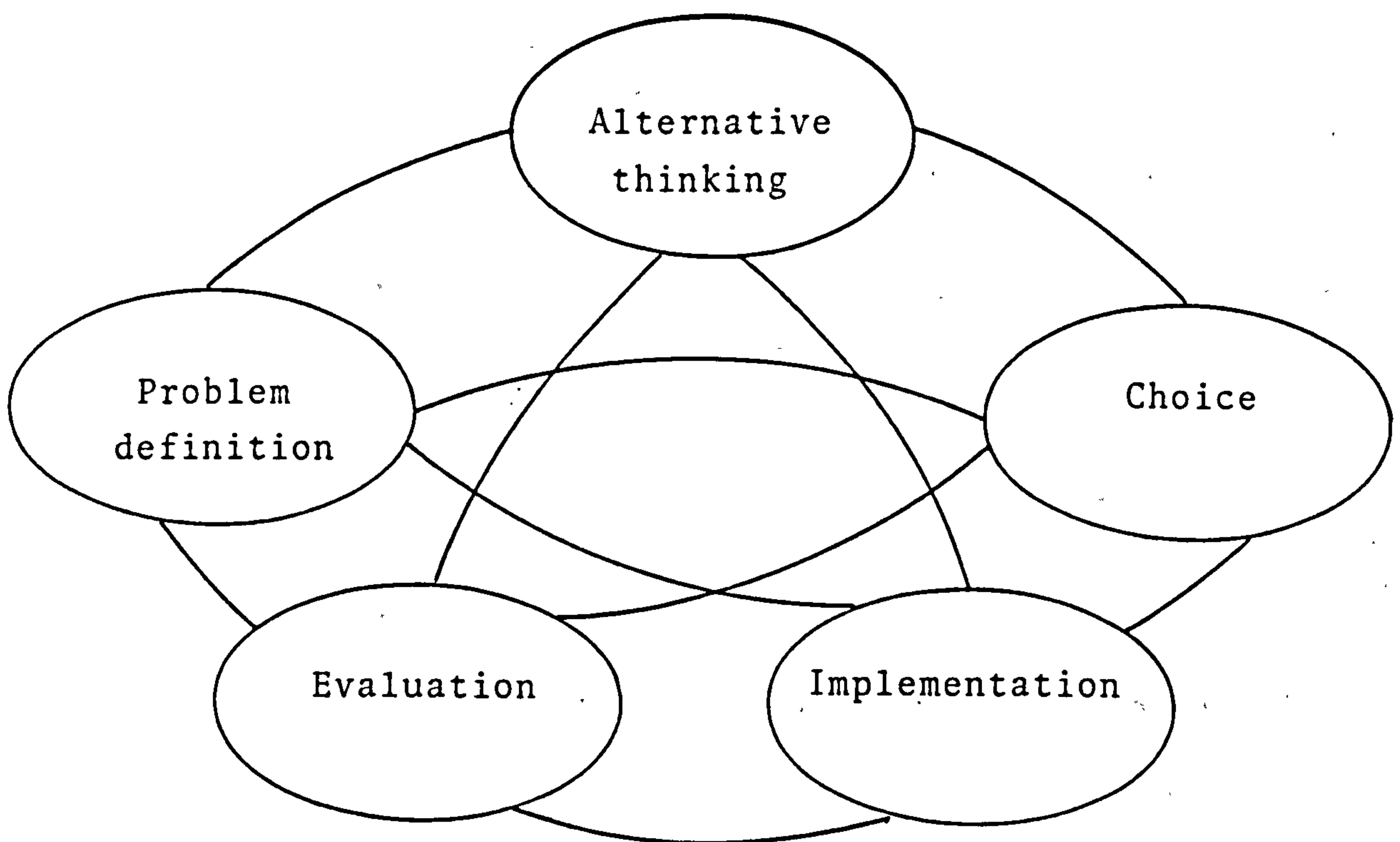
As complex human systems, such as the Administration, are primarily information processing systems of a stochastic nature, systems methodology seems particularly appropriate for dealing with their problems. By concentrating on the design of the "right" behavior of the system. (i.e. a behavior which takes into consideration the existing constraints - e.g. those of the natural environment - but for the rest is based on rational decision making), systems methodology offers the following advantages:

a) objectivity is introduced in the decision making process,

- b) the existing uncertainty becomes obvious and, if possible, is calculated,
- c) decision and action are integrated in the existing hierarchy of systems,
- d) decision and action are evaluated in view of their results in order to avoid unexpected side effects,
- e) the exhaustive study of the potentialities of human intervention enhances creativity,
- f) logical value processing is introduced and permits conflict solution by the articulation of value systems.

A systems approach to public policy begins by designing the policy making process as a system whose interrelated elements are the various phases of the process. The proposed model is functional, not structural, and its basic elements are the following five:

- a) problem definition,
- b) assessment of alternative solutions,
- c) choice,
- d) implementation,
- e) evaluation (see diagram).



In the above model all elements are interconnected. This structure incorporates a multiplicity of closed feedback loops which minimizes the probability of error. The transition from one phase of the decision making process to the other is not linear but iterative, so that the decision maker

can always return to a previous phase and e.g. redefine the problem or rule out a number of alternative solutions in view of the information acquired at a subsequent phase.

The systemic model of public policy aims at the optimization of the choice, i.e. at a rational decision, which for the rest depends on the quality of the acquired information. The design of the optimal solution of a public problem distinguishes systems methodology from other models of mixed character (descriptive and normative, such as e.g. the model of satisfying decision (Simon) or the model of incremental decision (Lindblom).

3.3.1 Systems Theory and Law.

European legal theory has come under the influence of systems theory in the late 60's and early 70's. There are two basic trends, the Greek and the German. Both have their origins in American systems theory with which the European pioneers became acquainted during their postgraduate studies in the USA. Yet there is an important difference in the outlook of each school: The German school (Luhmann, Teubner) initially inspired by American functionalism (Parsons), has finally come under the influence of the epistemological principles held by the German von Foerster and a group of Latin-American systems biologists (Maturana and Varela), to which was added the influence of European constructivism. It is a purely theoretical school and we do not yet have any specimen of application of its theories on real problems. Particularly in public law, the school takes a negative attitude towards state activity and intervention. We shall critically review its basic tenets in more detail below, together with other main trends in contemporary legal theory.

The Greek school (Decleris) was influenced by the Yale Law School's contextual jurisprudence and particularly value analysis, as well as hard systems theory of the MIT systemicians, which emphasizes the unity of the systemic approach in all its applications, the objective character of information and communication theory and the attachment to the principles of cybernetics and support of the intelligent machines. Underlying is the trust to the effectiveness of rational intervention in human systems, inspired by the undeniable success of the systems engineering and systems design in large scale systems.

Justice Dekleris has developed a macrotheory on Law and Politics as well as a microtheory for solving public problems which both have been tested in practice, since they constitute the official training course for the newly recruited civil servants and the in-service training of experienced administrators in the National Center of Public Administration in Greece. The present study uses concepts and models designed by this methodology at the Systems Research Unit of the above Center.

The Greek Systems School identifies Public Law with Public Policy and distinguishes both from Politics. Public Policy is considered as the contemporary administrative law adapted to the finding of new sciences.

Public Law is conceived as a process of rational decision making on the basis of systems design. Politics, on the other hand, are considered to be power games, appropriately studied by mathematical games theory. There is, however, close interaction between politics and public policy, mainly affecting the formation of the political agenda and the political feasibility of public decisions, a factor with considerable impact upon implementation.

Experience in the National Center of Public Administration has shown that systems methodology has many advantages and greater appeal among civil servants than the traditional one, as it has proved capable of taming complex public problems by producing precise and robust models for their formulation and solution.

The use of topological graphs is an indispensable part of this methodology because it permits the precision of the proposed models. Graphs are the only way of depicting the great amount of information contained in complex problems, since language models are incapable of representing the multiple interconnections of the problem-system. The following case study of the failures of town planning in Greece makes full use of such graphs and, though this is not the case with traditional legal studies, the use of graphs in this study should be considered necessary in view of the multiplicity of factors and interconnections examined. In these graphs, numbered circles represent the elements of the problem system, while arrows, directed or not, depict the interconnections among elements, negative (-) or positive (+). In that way attention is duly distributed among all elements of the system and their main interconnections - a basic prerequisite for the design of corrective intervention.

The theory of the Greek Systems School has been corroborated by the latest trends in the legislation of many countries (USA etc) which have already adopted several methods of systemic structure (cost-benefit analysis, cost-effectiveness analysis, cross impact analysis, project evaluation, formal evaluation etc). In that sense systems methodology in law is a significant development over traditional hermeneutic models (logical, teleological etc) and aims at succeeding where the latter have failed, namely in taming the problems of the modern state. It might thus be the answer to the increasing phenomenon of paper laws and the present legitimacy crisis of the State.

3.3.2 Modeling of the Law making Process

As we have already mentioned, implementation is one of the (five) stages of the policy making process and should always be examined in connection with the other four. From the legal point of view the policy making process is articulated in a series of decisions, which in their totality constitute the Law Making Process. Therefore, the effort to locate the failures of implementation should screen the entire process and thus requires a proper model of the whole law making process. For this reason a systemic approach to law is recommended, since it permits an analysis which goes beyond a descriptive equilibrium model towards policy making.³²

The proposed model is adopted from Justice Decleris' "Certain System Concepts in Law and Politics" (published in the proceedings of the Sixth European Meeting on Cybernetics and Systems Research, University of Vienna, Austria, 1982). In this model Law is viewed as the output of the political system (P.S.).³³ The political system is a large and complex living system, whose major function is to process value demands from its environment (social complex) and to transform them into authoritative and controlling decisions (Law) regulating the value process in the social complex.³⁴ Values in this model are treated empirically as conceptual classes of things (material or non material) produced and distributed within the social complex, which motivate human action by their cognitive and emotive meaning.³⁵ It is a purely empirical question, which values, to what extent and under what circumstances (e.g. value scarcity in comparison with the volume of demands) are subject to the conversion function of the political system. According to the model illustrated in the following diagram I, value demands (VD) and base values (B.V., i.e. available values extracted from the social complex) are the inputs of the P.S. and authoritative decisions (Law) its output.

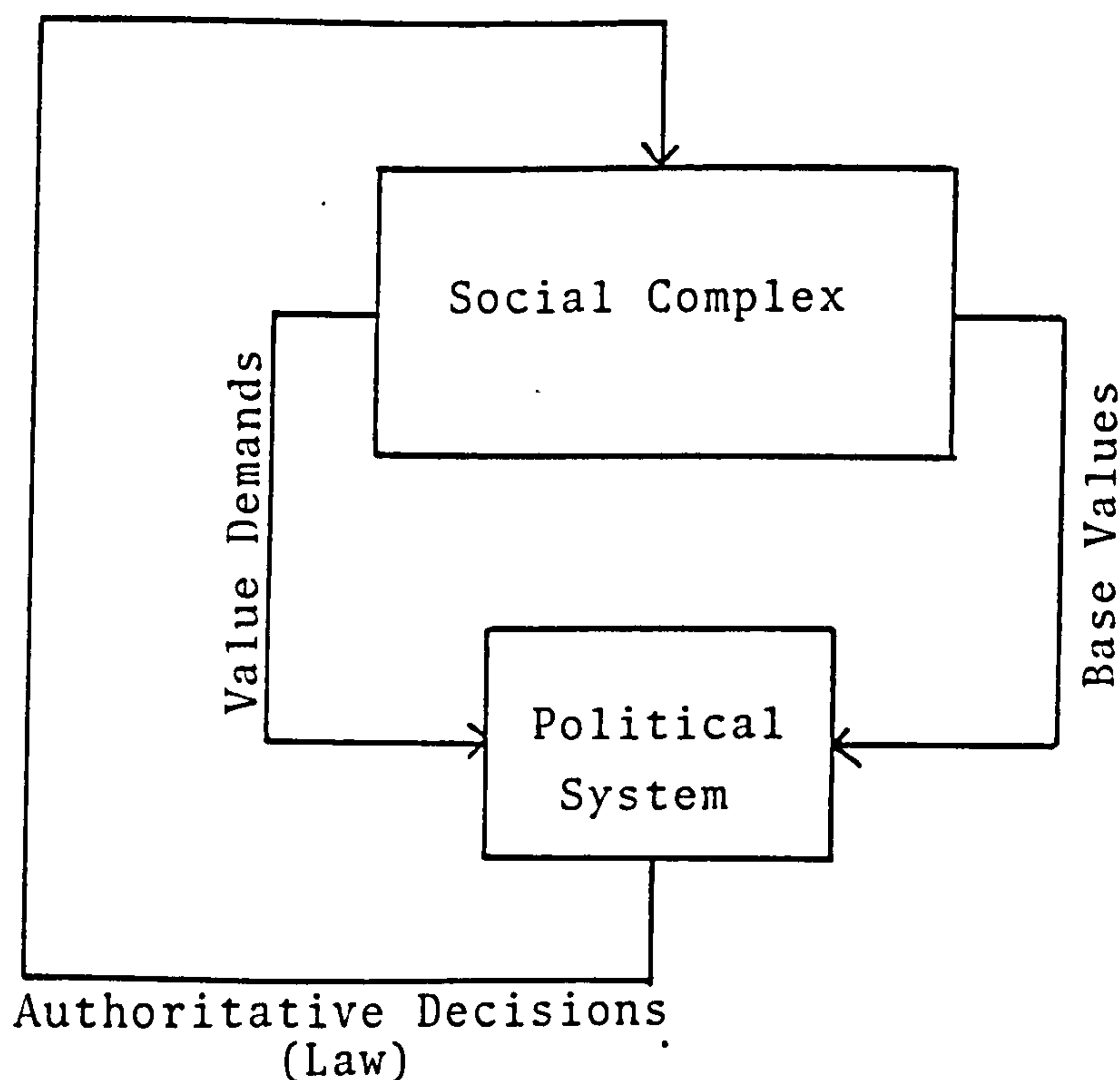
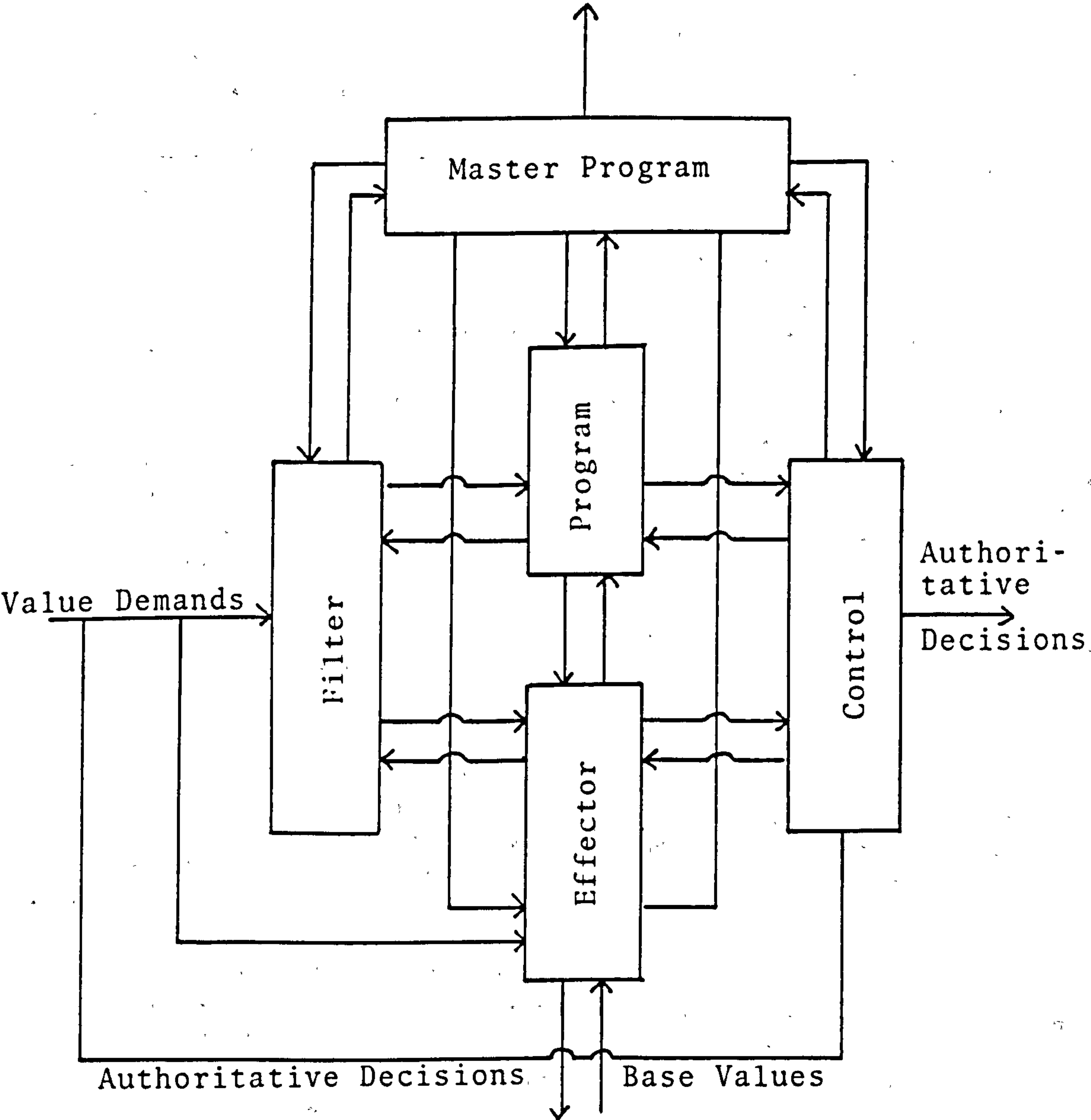


Diagram I

The model shown in diagram II focuses on the main function of the P.S., which, as we said, consists in the conversion of an unlimited number of conflicting value demands into a manageable quantity of authoritative decisions allocating the available values.



The output of the P.S. are the authoritative and controlling decisions which, conceived in their interaction, constitute the system of Law. We may identify five kinds of such decisions, each of them being the output

of a specialized component of the P.S. Their common feature which distinguishes them from other human decisions is that they are vested with authority and power. Authority and power are allocated among the elements of the system on the basis of its hierarchical structure. Authority, defined as the property of eliciting voluntary compliance, ultimately stems from the Master Program (see below), as the model of the system (each component being authorized to make a certain kind of decision) , supported by the cultural subsystem of the social complex (Founding Myth). Power, defined as the ability to elicit compliance through severe deprivation of values, is constantly input into the P.S. in the form of base values extracted from the social complex.

Thus Law is an ongoing conversion (decision making) process and not a closed system of rules as traditionally defined by lawyers. Further analysis focuses on each of the main stages of the process.

A) Master Program : The Master Program , usually known as the Constitution, is the governor element of the system: it is the regulator of the P.S. Regulation covers: 1) the state of the system (self regulation), 2) the inputs-outputs of the system (flow regulation). The Master Program provides the model of the system being regulated and is thus an application of Ashby's proposition that "every good regulator of the system must be a model of that system". It also regulates the inputs-outputs of the system by communicating to both the social complex and the elements of the system the abstract classes of value demands that are to be accepted for processing by the system. In every Constitution the well known list of human rights makes explicit the authorized values of the system. Thus, by its nature the Master Program is the most comprehensive decision of the P.S., in fact a decision about decision making. Deliberately abstract to a certain extent, the Master Program is concretized and updated through its constant interaction with the other components of the system: By this interaction a continuous constitutive decision making process is maintained.

B) Filter : The Filter subsystem processes the incoming value demands in such a way as to eliminate noise (undesirable demands, irregular voicing) and to identify particular classes of demands. This grouping activity is the main function of filter decisions. Parties, pressure groups, associations and other similar organizations perform this function in the modern political system.

C) Program (legislation) . Program decisions classify clusters of relevant value demands and subject them to uniform regulation on the basis of selected value standards. However, owing to the complexity of the value issues involved in the program making, instructions refer to problem solving activities. In other words, only seldom programs are routinized responses, while, more often, program decisions do not specify activities but only operative value goals, thereby allowing wide discretion for their implementation (:discretionary decision making). Programs are strategic decisions providing the appropriate relationship between the inputs of the system (V.D. + B.V.: ends-means). Such decisions are not only the statutes, regulations, by-laws and other similar governmental programs, but many other private programs as well (corporation charters, foundation statutes). The multiplicity of stored programs poses the problem of their

interrelationship, which is only partially solved through special codification programs and generally handled by the control subsystem.

D) Processor : The processor subsystem is entrusted with the task of actualizing classified value demands. Acting on the basis of stored programs, it deals with specific claims upon specific value objects. Processing, being in fact program execution, is a subordinate activity, attenuated as such by its discretionary character. The Processor, guided by the value goals of the stored program, is actually authorized to choose among several alternative courses of action. Given the enormous volume and variety of value demands constantly input into the system, centralization cannot practically be a property of the Processor. However, for those value demands which have consequences not only upon the claimants but on the value interests of the Social Complex in general, processing is centralized and supported by authority and power. The Public Administration is a gigantic and highly complex public processor, whose scope of function is constantly expanding. But, parallel to it, the millions of the community members act daily as processors engaged into decision making on the basis of stored programs, which confer to them a far greater range of free choice than to the public processor.

Because the processor's function is to satisfy value demands, most of the base values that are input into the P.S., extracted on the basis of stored programs, are in fact converted and distributed by that subsystem. Wealth, skill, information etc are input into the Processor in enormous quantities, thus making it the most powerful subsystem. Continuity is the essential feature of the Processor function by reason of which it is the most indispensable subsystem of the P.S. Elemental political systems are in fact single element systems, consisting only of the Processor served by its own short term memory.

E) Control : The control subsystem is entrusted with the task of correcting errors in the system's decision making process in order to maintain the output congenial to the achievement of the system's goals. It is a man-control having the following features :

- a) it is an open-loop control in the sense that the control standards are not precisely defined, but allow for adjustments,
- b) outputs of the system and inputs prescribed for correction are often non quantifiable,
- c) there may be opposition to control.

Distinction should be made between system's performance control (effected by parliament, press etc which does not constitute law decisions) and operational control. The operational control, ensuring the daily regulation of the system, is a complex subsystem including courts, arbitrators, mediators, ombudsmen. It has the specific task of correcting deviations from established goals, standards and procedures in the decisions and programs of the system. It has a hierarchical structure aiming at minimizing control errors, since operational control decisions have the final word in the conversion process.

3.4. Alternative Approaches in Modern Legal Theory : A Critical Review

The application of systems methodology to the study of implementation failures in this essay does not reflect a subjective methodological predilection; it is also accompanied by an extensive discussion and critical examination of other important approaches in modern legal theory and specifically Dworkin's theory of rights, Unger's critical theory and Luhman's autopoietic theory of law. Such a critical assessment will facilitate the comprehension of systems methodology by the non specialist, who is thus provided with a comparative perspective.

Like systems theory those contemporary trends in legal philosophy are a reaction against the well known shortcomings of positivism, which nevertheless continues to be the prevalent theory not only in the academic community but among judges and lawyers as well.

a)Dworkin's Theory of Rights.

Our discussion will begin with Dworkin's theory of rights, which has gained worldwide support as the best known reaction against the identification of Law with Politics.³⁶ A distinction between politics and public policy is not apparent in Dworkin's theory, since both are fused in his concept of policies to which he juxtaposes his concept of principles and individual rights. Nevertheless his theory is not incompatible with the one adopted in the present essay. Their main difference is methodological: by fusing politics with policy Dworkin is obliged to resort to the notion of rights in order to introduce the element of morality in Law.

Such a task is not necessary for our theory, which goes one step beyond Dworkin in this respect. By drawing a clear demarcation line between power politics and public policy, which totally excludes the former from the law making process, it "moralizes" so to say (by a pertinent value analysis) the entire public policy making process. Thus rights and values are taken seriously not only in hard cases but in the regular law making process as well.

Dworkin terms his theory interpretive, as opposed to semantic. According to him, semantic theories, which include such classical schools of legal thought as positivism and natural law, commit a common fallacy: that in case of theoretical disagreement about law, lawyers accept roughly the same criteria, factual or moral, for deciding whether a claim about the law is true or not. An interpretive theory of law, on the contrary, does not seek to expose common criteria or general rules for deciding what the law is, because such rules do not really exist; they try, instead, to show legal practice, as they find it, in its best justification.

In fact the concept of justification is central in Dworkin's theory, since for him law's function is precisely to justify the use of coercive force by the government by requiring that it be exercised according to individual rights and responsibilities flowing from past political decisions. This definition of law raises some crucial questions regarding a) the necessity of

constraining the use of coercion by legal rights and responsibilities, b) the reason for accepting law's constraints, be it predictability, fairness or integrity, and c) the right method for determining which these rights and responsibilities are, i.e. whether they should be explicitly mentioned in past political decisions or derived from the general principles of morality inherent in our legal and political systems.

Dworkin proposes three abstract interpretations of legal practice, conventionalism, pragmatism and integrity, and discusses each analytically with respect to the above questions. While Dworkin himself opts for integrity, a brief review of the way he perceives and criticizes the other two may provide a better understanding of his theory.

Conventionalism accepts the idea of law and legal rights and considers law as the product of distinct legal conventions such as legislation or precedent. Legal practice should respect and enforce as law nothing but the explicit upshot of these conventions. Those who enforce the law, judges or implementors, should always treat as law what convention stipulates as law and nothing else. It follows therefrom that on some issues there is no law at all: in such cases judges (or implementors) must use their discretion to make what conventionalism declares as new law. People have legal rights, but these are only those that "legal conventions extract from past political decisions".

Conventionalism is an attractive justification of coercion because it fosters predictability and promotes the ideal of protected expectations.

Dworkin, however, considers conventionalism as a failure in both dimensions of interpretation because it neither fits nor justifies the existing legal practices. On the contrary, its obsessive concern for consistency actually produces the opposite results, because it obliges the interpreter to treat most cases as hard, i.e. as standing outside law and precedent. Nor does conventionalism justify our practices: the claim that conventionalism hits the right balance between reliance and flexibility is easily overturned by pragmatism, which provides the judge (and the implementor) with almost unlimited freedom to change the rules for the sake of efficiency and adaptability.

Legal pragmatism on the other hand denies that law, i.e. past political decisions, can provide a justification for the state's use of coercive power. Justification rests with justice, efficiency and other virtues which do not necessarily include consistency with the past. Judges (or implementors) should decide which rule seems best for the occasion and act on their own views irrespective of any past legislative or judicial decisions. Thus, pragmatism denies that people have legal rights, i.e. rights emanating from past political decisions, as trumps over what would otherwise be the best future for the community in the judge's (or implementor's) view.

Nevertheless, pragmatism is not in practice as radical as it seems: for the sake of society judges usually choose to act as if people had legal rights, while reserving their own freedom to exclude statutes and overrule past decisions that they consider as especially inappropriate. They are free to use the criteria of their choice, moral or political, about what benefits a community most, be it justice, wealth, happiness, power or anything else.

Dworkin opposes the pragmatic rejection of legal rights by postulating the political virtue of integrity. Integrity is distinct from justice and fairness and usually superior to both, when it comes to a compromise. Integrity in legislation means that legislators should take care to keep law coherent in principle, while integrity in adjudication requires that the judge enforce law as coherent in the same way. A community which accepts integrity as a political virtue recognizes that its members are bound together by special personal obligations and show equal concern for one another. A community of principle is one that is governed by common principles which provide the best justification for the legislative use of coercive force. In such a community governments are free to make policy decisions, i.e. to commit themselves to the pursuance of various goals for the community's benefit, but their freedom is constrained in that they are required to respect distinct individual rights," case by case, decision by decision".

Thus, according to law as integrity, propositions of law are true or false if they follow from the principles of justice, fairness and procedural due process that provide the best constructive interpretation of the community's legal practice. Past political decisions of all kinds are important not only with respect to their narrow explicit content, but mainly because they provide the broad scheme of principles necessary to justify coercion.

Since the interpretation of law is a delicate task requiring a balance among political convictions of different sorts, it is ideally entrusted to a judge of Herculean capacities. In order to decide a case brought before him this judge, appropriately called Hercules, first proceeds by constructing a list of alternative interpretive solutions. He begins by ruling out all interpretations which do not fit the existing legal system, be it common law, statute or constitution, i.e. contradict the political history of the community in question. If two or more alternative interpretations pass the initial threshold test, then the judge is confronted with a hard case. His next task is to choose among eligible interpretations the one that shows the community's structure of institutions and decisions in the best light from the standpoint of political morality. At this stage his own moral and political convictions are directly engaged and the decision he considers right as a matter of political principle may be controversial. However, this makes his decision neither arbitrary nor political or fraudulent; there is no other way that a judge (or an implementor for that matter) can report his conclusions about a case except to say what the law, as he understands it, is.

If the task of Hercules is to interpret a statute, he must read it in whatever way follows from the best interpretation of the legislative process as a whole. This does not mean that he is free to give it whatever substantive meaning he thinks best, as if he were legislating himself, but that he should find the best justification of the statute seen as a past legislative event. This involves not only his personal convictions about the values regulated by the specific statute, but also his convictions about the ideals of political integrity, fairness and due process as these apply to legislation in a democracy.

In order to find the interpretation that best fits and justifies the statute and is at the same time consistent with other legislation in force, he is in the first place constrained by the text of the statute, its policy

purposes. Moreover, his commitment to fairness excludes his personal preferences, even if they are consistent with the language of the statute, if they conflict with general public opinion as expressed e.g. in the statements of legislators.

When Hercules is faced with the particularly delicate task of interpreting the Constitution, his method remains the same. He is neither conservative nor liberal, neither active nor passive. Moreover, his commitment to constitutional rights and principles is irreconcilable with historicism as well as with natural law. To suit the nature of the Constitution his interpretation must be foundational as well: it must fit and justify the most basic arrangements of political power in the community and therefore it must be drawn from the "most philosophical reaches of political theory". His judgment must be sensitive to the great complexity of political virtues bearing on the issue in question, must embrace popular conviction and national tradition and must also draw on his own convictions on justice and fairness and the right relation between them.

The above summary of Dworkin's theory reveals its nature, which is in fact normative hidden behind his personal view of interpretation. In other words his theory, while respecting the traditional position of jurists that law stems from rules, at the same time reserves for the judge (or implementor) the task of defining, under certain constraints, what is stemming from the rules.

This judgment requires further argumentation: From the policy perspective every legal interpretation has a normative character, in the sense that, no matter what school the interpreter belongs to, historical, positive (analytical) or school of free interpretation, each time he claims to have discovered the true meaning of the rule, he is in fact ascribing his own policy to the rule.

Leaving aside the trivial cases of a readily interpretable rule, it is commonly accepted that the true interpretative work begins where the letter of the law ends. In terms of modern information theory, this means that it is not only information contained in the rule but also information derived from the data of the specific case which, by their interaction, each time enrich the rule's original meaning. Experienced judges know well that what matters in judicial interpretation is not the interpreted norm, which constitutes the major proposition of the judicial decision, but the information concerning the data of the specific case (minor proposition), because the former is in fact constructed in consistency with the requirements of the latter. It is the outcome of the interaction of these two propositions, which constitutes the creative element of any judicial decision and this is essentially a policy judgement.

However, very few interpreters are ready to acknowledge what they are doing and most prefer to ascribe authority to their own policy decision by invoking a non-existent objective meaning of the rule. In that sense, all interpreters propose krypto-normative theories.

However, there exists another class of interpreters who are genuinely and avowedly normative: they are those who are aware that they do not simply propose theories and methods of interpretation but principles

of content as well, thereby committing themselves to such principles. This is for instance the case of Lasswell and McDougal's school of contextual jurisprudence or of the various schools of natural law. In our view, it is in this class of interpreters that Prof. Dworkin belongs. Because he does not simply seek the best possible interpretation, but he also postulates a certain content of this best solution. The hard core of Dworkin's theory is the distinction between principles and policies. Had he not specified at all the content of these principles, he could well have been classified along with the other krypto-normative theories. But Dworkin makes himself clear: these principles, which are the beacon light of any meaningful interpretation, are propositions that prescribe rights. Thus described such principles are moral principles and more specifically moral principles of that ethical school which recognizes individual rights as an authoritative standard for moral behavior. In a narrower (political) sense, Dworkin should be placed in the stream of the great classical liberal tradition, which emphasized individual rights in western culture.

Dworkin admits that he is a moralist and states clearly that the best interpretation is a moral one. Yet this is not the whole description of his stance, since he is not only a moralist; he is a propagator of a specific ethical school, that of individual rights and their prevalence over common policies. (Taking Rights Seriously, p. 84). It is in this sense that he proposes a normative theory. However, in a sense he does not admit it, for he believes that these principles can be inferred from the existing legal order. It is not clear to what order Prof. Dworkin refers, since any one familiar with continental constitutional law will answer him that there are also social rights and group rights well embedded in the institutional order; are such rights principles or communal policies ?

Dworkin may not declare openly and directly that he is in favor of an interpretation that gives preeminence to individual rights (as do e.g. Lasswell and Mc Dougal, who clearly state that they are in favor of an interpretation which stresses human dignity). Nevertheless his message is in fact hidden in the following series of syllogisms: a) the best interpretation is a moral one ; b) moral interpretation should rely on the preponderance of principles over community policies; c) principles are propositions about individual rights.

1. Such an attitude has both advantages and disadvantages. Dworkin is aware of the limits of positivism, particularly with respect to the so-called hard cases. He realizes that in such cases it is pointless to disagree about true hidden meaning of past decisions and this leads him to acknowledge the inevitability of normative handling of each case, which he calls creative interpretation. While we do not disagree in principle with this view, we point out that hard cases are many more than he seems to think and actually include all cases of private and public law which cannot be regulated by routinized decisions.

2. Though he does not state it expressly, Dworkin seems to realize that law application is a problem solving activity, which he conceives as the assessment of alternative solutions and the choice of the right one among them. This view brings him close to the modern theory of decision making: since law is not merely rules but rules as interpreted by those who apply

them, it is obvious that, when it comes to its application, law is something new "case by case, decision by decision".

3. If interpretation is a heuristic way of admitting that law is never fixed but always on the making, Dworkin is frank enough to admit that interpretation is a matter of principles, in other words is closely connected with morality. Law is a decision combining rules and morality. Dworkin uses the term principles to imply the moral standards embedded in the legal system as a whole. This view is in conformity with our model of law which gives preeminence to the moral principles of a society embedded in its fundamental law (constitution, conventions etc) in the form of founding myth and individual rights.

4. Dworkin's theory is attuned to the modern philosophical theory of rights as well as the ideology of rights expressly adopted not only in contemporary constitutions but also in international conventions and charts. There is an international tendency towards the recognition of rights and thus Dworkin's theory has the qualifications for becoming highly popular. However, as we shall see below, it is a different matter if rights can exist outside and irrespective of policies, as he seems to believe.

5. While we may disagree with his method of argumentation, his stance, that in making law decisions the ultimate criterion is moral, is correct, in the sense that he avoids the common error of parochialism committed by those who believe in the "waterproof" autonomy of legal method.

6. However, from certain points of view, Dworkin's theory seems vulnerable. In the first place, we note that his theory about law is built around the concept of power. It is assumed that it is the state's function to use power and the law's duty to guide and constrain it. Thus his first question about law concerns the connection between law and coercion and the point in requiring that public force be used according to the law, i.e. according to rights and responsibilities flowing from past political decisions. Such a position about law is rather outdated. If only we substitute the term past decisions with the term rules, it is not very different from what the Greek Archytas stated 2.500 years ago, namely that rules are meant to tame and regulate power. (The term decisions is probably preferred to rules in order to include judicial precedent). This view, which insists in regarding power as the dominant element of states and legal systems has a static character and does not reflect the features of modern states. If we define law as a network of authoritative decisions supported by power (see p. above) it is obvious that the interrelation of these three elements (authority, power and decision) has not remained stable in the course of law's evolution. On the contrary, the balance among them has changed, so that today in modern democratic states the decisional element prevails, while power and authority remain simply supportive. It is characteristic that today we speak of public policy and not of power politics. Law is necessary not to tame power but to solve problems. If it fails to do so it can never be accepted as legitimate. The right question to ask about law is whether it is capable of for solving current problems. Dworkin's theory, however, often refers to past decisions but only seldom to present problems. Nevertheless, as we shall see below, the issue is the appropriate correlation between the law in force and the problem it is addressed to, in other words the law is relevant to the

problem, whether it does set the right goals and objectives, whether it does provide the right instructions etc.

7. With respect to the second question he raises, namely what is the point of law, what is the point of imposing legal constraints to governmental powers, Dworkin's answer is that "law benefits society not just by providing predictability and procedural fairness, or in some other instrumental way, but by securing a kind of equality among citizens which makes their community more genuine and improves its moral justification for exercising the political power it does. The legal rights and responsibilities which constrain political power need not be explicitly mentioned in past decisions but may also be inferred from the principles of personal and political morality these decisions presuppose by way of justification".

It is true that one of the primary effects of programs, i.e. what we call in legal terms "rules" or "past decisions", is to impose order in an area of relations; this order is associated with the concept of predictability (if X then Y), or the concept of expectations (Luhman). However, these values usually appear intertwined with many others, such as safety, security, fairness, proportionality etc, and are in themselves too vague to answer the crucial question, what is the content or even the features of legal order.

As for equality, it is true that it constitutes a dominant principle of our legal order, prevalent in the Master Programs of all constitutional states since the French Revolution. It is in fact an ancient principle, because it was the ancient Greeks who first declared that we cannot speak of a state unless we accept its members as equals. Today no one denies that the rule of law presupposes equality among the citizens. Nevertheless, equality cannot in itself be considered as the object of law; from the postulate that equals should be treated equally, it inevitably follows that unequals should be treated unequally. (This is anyway the line steadily adopted by modern jurisprudence). This, however, does not solve the problem of who and under what conditions are to be considered equals. Therefore, the postulate that the object of law is to guarantee equality is of little practical value as criterion. Generally speaking, while the stratification system of society today is retreating, the complexity and variety of contemporary problems is such that equality cannot help much as a criterion for their solution.

8. It is now time to return to the distinction between principles and policies that is crucial in Dworkin's theory about the interpretation of law. According to him principles are meant to constrain policies as trumps over government decisions regarding the pursuance of various community goals. The recognition and guarantee of distinct individual rights, such as political rights drawn from personal morality, is the predominant feature of integrity.

We believe, however, that the distinction between principles and policies is hard to establish. From a purely logical viewpoint the distinction is an arbitrary one: in law both principles and policies constitute norms, i.e. deontic propositions. Prof. Dworkin is of course free to call principles the norms that prescribe individual rights. But he should also be aware that there are other norms which prescribe absolutely equivalent social rights. In fact in any constitutional order there is always a complementarity between equivalent norms prescribing either individual or social rights or even requirements of the public order or pertaining to the public interest, i.e.

communal policies of the highest order. This is precisely the well known complementarity of constitutional or basic norms in every legal order; for every basic norm the opposite one is also available in the realm of the vague notion of "legal order".

In other words, in any society both principles and policies serve value goals. (It is possible that in Dworkin's theory principles imply individual value goals while policies imply community value goals). To put it simply the recognition of rights serves goals directed to self regulated systems. For example, the freedom of expression serves the purpose of fostering the free flow of information and enhancing creativity and variety in information. Information, however, is by its nature a social value because it is unthinkable outside a communication system. To take another example, property rights nowadays cannot be reasonably claimed in any other way than within the boundaries of the economic system and in accordance with the requirements of the environmental system and the land-development subsystem.

Even behind the fundamental freedom of movement (personal freedom) one can discern a wise social policy of guaranteeing to the components of the social system their inherent mobility for the sake of their peaceful coexistence and for the promotion of social goals, since coerced individuals become hostile to their environment and counterproductive.

To put it more generally, the recognition of individual rights as opposed to social policies reminds us of the old distinction between individual and society, which is rejected by modern social theory. Individual and society are not distinct entities. A society is formed by the interacting individuals and every individual is a semiautonomous entity, or, to use Koestler's metaphor, a double faced Janus, one face looking inwards and claiming autonomy, the other face looking outwards and respecting dependence.

In sum, what Dworkin calls policy goals are ordinary state interventions in such self-regulated systems as the economic system, the cultural system, the moral system etc. It is obvious therefore, that principles are not immutable or sacrosancta, but are subject to regulation in socially desirable ways. Since, however, the observance of principles cannot be considered as the criterion for policies, the problem of the meta-criterion for regulating both principles and policies remains open.

9. The distinction between principles and rules (policies) could have objective meaning only if it were proposed with reference to the different level of generality of each: thus principles are more general norms and rules more concrete ones. Such a taxonomy of norms is, however, devoid of any meaning with respect to their real nature. Because every norm is always the prescriptive outcome of a certain policy, individual or communal. Any norm derives its authority from the goal of this policy. In that sense there can be no norms of any level, principles or rules, without a corresponding policy. Norms without policies can only be justified in the name of metaphysical principles. But, of course, such principles have no place in a theory which professes to be scientific. Such principles without policy may be conceivable in e.g. theological or otherwise dogmatic philosophical theories about law, but cannot be accepted in the modern scientific approach to the study of law.

Now, if both principles and rules are of necessity the prescriptive outcome of policies, the only reason for their distinction in Dworkin's theory is that according to him principles should be the guiding instructions in case of a vacuum in law. Well, if principles are taken in their above logical meaning, which does not exclude social policies, then there is nothing new in Dworkin's recommendation: it is a postulate of legal interpretation that no vacuum exists in law. Vacuums may exist only at a certain level and should be filled by principles drawn by the superior level. The so called judicial discretion in case of vacuums of law reveals the uncertainty inherent in the generality and complementarity of the norms of the highest order (constitutional). Incidentally we should mention that there can be no talk of "extra-legal" principles: while a good number of legal norms are of ethical origin, no ethical proposition can become a part of law without an adequate legal connection, i.e. proper indications from positive law.

In any case if the distinction between principles and policies is not based on their difference of hierarchical level but on their difference of content (individuated versus non individuated claims) it cannot serve Dworkin's purpose for giving them the leading role in hard cases. Dworkin's theory seems to be inspired exclusively from the American Constitution. However, a cursory look at other modern constitutions, such as the German or Greek, will prove that constitutional principles are complementary, as Mc Dougal has already pointed out. In hard cases there is complementarity in matters of principle, so that there is no definite answer for the judge (or the implementator) which one of them should prevail, what is the right compromise among them and on the basis of what metacriterion.

Any continental lawyer could readily name an abundance of principles prescribing not individual rights but communal policies, such as e.g. the principle of public order, general interest etc, in the name of which all individual rights, including these expressly listed in the constitution, are abridged or mitigated by ordinary legislation. Therefore, the preference of "principles" over "policies" in Dworkin's terms or vice versa is only a matter of personal moral choice.

10. On the same issue hard positivists would argue that rights are to be interpreted in strictly rule terms since they are not antecedent to positive law. There are only such rights as recognized by rule. Constitutional provisions establishing individual rights are themselves legal rules as well. If a legal theory is built around the concept of interpretation as Dworkin's is, rules cannot help occupying a dominant position. In fact, in continental constitutional theory and practice, after the initial recognition of a right by a constitutional provision, legislation is usually authorized to regulate it by statute. Thus there are no absolute rights but only relatively protected rights: what is actually protected is only the core of the right which is in fact quite malleable.

We, on the other hand, insist that in hard cases there are no definite rules at all, just relevant instructions derived from other programs. There is nothing out there waiting to be interpreted. The program is constructed ad hoc by the problem solver, be it judge or implementor, who is expected to design it using those instructions as constraints.

In view of the above it is clear that integrity, though appealing, cannot serve as a metacriterion for practical purposes. Thus the question remains on the basis of which metacriterion is the policy to be designed. In our view the problem is one of system's design. A system of the values involved in the specific problem has to be designed from the start by the problem solver. The appropriate value combination will be performed in conformity with the principle of systems hierarchy, i.e. the values of the immediately superior system will be taken as constraints at the lower level.

11. At this point it might be useful to expand a little on the myth of interpretation which occupies a central part of Dworkin's theory. Despite the sophistication and creativity of his methods as well as his contempt for the "semantic sting", Hercules feels compelled to attribute his judgement to a rule which is being interpreted. However, according to modern information theory, institutions and programs have simply heuristic character and in fact authorize the implementator or the judge to make another rule for the hard case in view of the information provided by it. In reality what we have is problem solving of the specific case for the sake of which the judge (or the implementor) creates a new rule guided by higher level instructions, which he handles as simple constraints. This view of law application is not only confirmed by actual practice but also dictated by the postulates of information theory.

In order to make the above point more clear we could use an example from jurisprudence. Suppose that under a constitutional clause for the conservation of physical and cultural environment a statute provides for the preservation of neoclassical buildings. Another constitutional provision guarantees the execution of wills founding charitable institutions, against legislative intervention.

Suppose now that a charitable institution (e.g. an orphanage) is founded by will. According to the terms of the will the institution is supported exclusively by the income provided by the exploitation of a neoclassical building donated to it. The foundation functions successfully for several years, until it becomes obvious that under the present economic circumstances it cannot meet its expenses any longer unless it develops its sole property (the building) by demolishing it and building a modern complex. At the same time, the competent governmental agency proposes to the Minister of the Environment the preservation of the building as a characteristic example of neoclassical architecture. The foundation appeals to the Minister and invokes its own constitutional right to exploit its property for the fulfillment of its purposes.

At first sight, under the influence of Dworkin's theory, one might be tempted to say that the foundation has a constitutionally guaranteed right to manage and exploit its property for the sake of its purposes. Since the goal of preservation of the cultural tradition is, in Dworkin's terms, simply a community policy, it has to recede in view of the foundation's individual right. A closer look however will show the problem under a different light. The right of the foundation is not an individual right, but actually corresponds to a particular community policy, namely to encourage and guarantee charitable activities. At the other end, we have a different policy, which aims at the preservation of the nation's cultural memory and to which correspond the respective rights and interests of citizens,

organizations for the conservation of the environment etc. Thus put, the problem consists in the conflict of two public policies.

The problem of the implementor, administrator or judge, now appears harder than it appeared at first sight. He cannot look at the rules for an answer because he has to deal with rules which contradict one another at the same hierarchical level (constitution) Dworkin's theory offers no help either since, as we saw, both rules refer to matters of policy. No rule, no matter how constructively interpreted can give an answer to this problem. The implementor has only one way out: to construct a new policy appropriate for the specific problem and for all identical ones which might arise in the future. The question is how to handle the existing constraints from the two contradictory statutes mentioned above. Should he attempt a compromise or should he prefer one policy to the other and on the basis of what metacriterion? What is more important, the preservation of the environment or the encouragement of charity? If the answer is, as in this case, that both are equally important, since both are constitutionally guaranteed, his constraint is that he should design a policy, a new rule, which should somehow include both criteria. Such a solution would be, for example, to offer funds for an alternative way of exploiting the building instead of demolishing it, or to preserve the building as it is and provide the foundation with another source of income. The construction of a set of alternative solutions and the choice of the optimal one among them will be performed according to the method described in chapter IV.

The final decision, whatever it may be, will thus not be the result of interpretation; in terms of information theory the decision will be completely new, since it will have interrelated the two competing programs and created a new junction for the specific occasion and all identical ones.

b) Unger and the Critical Legal Studies movement

Quite different is another modern theory of Law, proposed by R.M. Unger.³⁷ In his basic book, *Law in Modern Society*, Unger adopts the traditional classification of law into tribal, bureaucratic and legal order.

However, in contrast to the evolutionary model proposed above (Chapter II), Unger's typology is not evolutionary. In other words, though he recognizes that different types of law correspond to different forms of social organization and social consciousness, he does not seem to accept any evolutionary trend in the sequence of these stages, and renounces the "idea of a metastructure of history or society that can serve as a source of law-like generalizations".

In his typology he distinguishes three forms of law, tribal law, i.e. the law of primitive societies, bureaucratic law and the legal order. Tribal or customary law is neither public nor positive, in the sense that it is a law common to the entire society, tacit and universally accepted as expressing the values of the entire community.

While the above form of law corresponds to a homogeneous, simple community, bureaucratic law presupposes a society organized on the basis of increasing specialization and hierarchy. In such a society the main

features are a multiplicity of social groups acting in power relations towards one another and a disintegration of community due to the breakdown of the society's shared value system.

In such a society law becomes "a tool at the power interests of the groups that control the state". Therefore law becomes: a) "public", emanating from a state which is distinct from society and whose rulers impose their will and dominate the others, and b) "positive", explicitly manipulating the social relations to the interests of the rulers. To overcome the inescapable opposition that it generates, this law is accompanied by secular sanctions, while at the same time it is in perpetual search for a legitimacy beyond instrumentalism or terror. This legitimacy rests solely with a separate, parallel body of religious precepts which expresses the right order of things and is placed beyond the ruler's reach; consequently, the inherent conflict within bureaucratic law lies with the antagonism between the legitimacy-oriented and the instrumentalist approach to social order, respectively expressed by the sacred law and the discretionary-positive law.

The third type of law is the legal order, which is claimed to be a phenomenon corresponding strictly to the modern Western liberal state. It owes its emergence to the unique and accidental coexistence of its two social prerequisites, namely group pluralism and natural law. The plurality of groups, none of which is powerful enough to command allegiance by the others, and the increasing disintegration of moral values make necessary a legal system that tries to accommodate antagonistic interests by committing itself to generality and autonomy. The same characteristics are reinforced by a widespread belief in natural law, i.e. a higher law which is not the product of human deliberation, but general and universal, and provides the standards for the evaluation of social arrangements, namely equality and human value. However, according to Unger, the integration of the above characteristics, that constitute the essence of "public natural law", fell victim to its own inherent tensions between the transcendental requirements for universalism and immutability and the secular concern for particularism and flexibility.

Contemporary law corresponds to modern societies, which are classified into three subtypes, postliberal, traditionalistic and revolutionary. The term postliberal is attributed to the Western capitalist social democracies, whose basic social arrangements and beliefs tend to undermine the rule of law and to discourage reliance on public and positive rules as bases of the social order. Postliberal society is organized in a welfare and corporate state and these two features have a destructive impact upon the rule of law and the public and positive character of legal rules. On the one hand, a welfare state needs a policy-oriented and purposive law which makes broad use of open-ended standards and general clauses and aims at substantive rather than formal justice; however, such concerns cannot be reconciled with the ideal of generality nor with the relative autonomy of the legal order. On the other hand, a corporate state by effacing the boundaries between state and society tends to destroy the public and positive character of legal rules and to replace them by a law which is neither public nor private but appropriate for the novel structures of public-private organizations. At the same time a renewed struggle for community substitutes shared purposes to the liberal principle of interest association and the positive character of law is undermined by a reapproximation of the ideal to actuality.

In this notion of modernity Unger includes two non liberal types of society, the traditionalistic and the revolutionary. The first is marked by a "cultural schizophrenia" due to the attempt to reconcile native traditionalism with imported modernization. The law of such a society is equally twofold: on the one side there is a central legal system imposed by the elite and formulated in imitation of foreign models and on the other side there is an informal system of customary law that embodies the dominant consciousness of traditionalistic society.

Revolutionary society is equally torn in two by the attempt to reconcile industrialism, bureaucracy and national power with an ideal fraternal and egalitarian community. Therefore this society suffers from a paradox as well: ruthless and radical manipulation of the society is exercised for the sake of demolishing hierarchy sometime in the future; collective interests have gained the primacy over individual ones in order to allow the flourishing of individual autonomy in the future. The law of such a society is also twofold: a law of bureaucratic commands exists parallel with a law of autonomous self-regulation thus expressing the fundamental dialectic of revolutionary society.

The above mentioned types of modern society both resemble and differ from each other. Since all of them express dependency relationships robbed of legitimacy, their common political problem is the reconciliation of political freedom with community cohesiveness. More specifically, for the traditionalistic society the problem arises from the gradual erosion of traditional organization in the realm of social life, for the revolutionary society from its failure to realize the communitarian ideal and for the postliberal society from the failure of the rule of law to solve the problem of power. For each one of them the communitarian ideal is differently conceived: it is hierarchic for the traditionalist, egalitarian for the revolutionary and either one for the post-liberal society.

From the forces at work in modern society Unger foresees two main evolutionary paths for law. The first may be represented by the metaphor of the closed circle and will end up destroying first the generality and autonomy of legal norms and then their public and positive character, thus causing the decline of the rule of law, the suppression of individual freedom and the relapse into the logic of a revived tribalism. The alternative evolution may be represented by the spiral metaphor which will guarantee the rescue of individual freedom and its reconciliation with communitarian consensus. This requires not only the free passage of the individual from one social group to another and his participation in their decision-making processes, but primarily a new moral agreement based on universal consensus about the immanent order of social life and the intrinsic demands of shared human nature. Such novel normative order will be based on the revival of a new kind of customary law, lacking in public and positive character but accepting the crucial distinction between the actual and the ideal.

According to Unger the above typology results from an evolutionary process on a local scale only and cannot be established as a general evolutionary law. While he acknowledges that in Western society we have a transition from bureaucratic law to legal order and then to

postliberal order, he does not discern any necessity in the sequence of these stages either in the West or in any other part of the world. His position becomes even clearer in his speculation about the evolution of modern law, that we just discussed. Thus, he is unable to foresee any predetermined course in the future development of modern law but claims instead that many opposite paths are equally possible.

His rejection of the evolutionary model is not supported by any substantive arguments other than a romantic attachment to an ideal society free from divisions of hierarchy, and to a state which will not be hostage of factions but open to constant self-revision and providing occasions to disrupt any fixed structures of power or coordination in society. His theory about law is of neomarxist inspiration since it retains the basic tenet of Marxism, according to which any historically known type of law (apart from the legendary primitive law) is the expression of the will of the dominant group, the so-called autonomous rule of law being simply fictitious. Unger's view about social groups being engaged in perpetual conflict is a further development and a milder version of the Marxist law of class struggle.

However, while he adopts from marxism the idea of the dominant social group, he rejects historical materialism in the sense that class is the locomotive of social evolution through predetermined stages, i.e. from tribalism to feudalism to capitalism to communism and finally to a classless society. While he recognizes certain types of society, (tribal, aristocratic and liberal), as well as the corresponding types of law (customary, bureaucratic, legal order), he does not interconnect them with an evolutionary trend in the sense that each stage is invariably followed by the next one.

Particularly with respect to the second stage, roughly corresponding to the great agrarian-bureaucratic empires, he seems to accept that they are prone to perpetual reversion cycles, since, under the influence of domestic or external causes, they tend to disintegrate into small self-sufficient feudal units. So far the only societies which, due to extraordinary circumstances, managed to break this cycle and proceed to another kind of order, the rule of law, were late Medieval Europe and Tokugawa Japan. Therefore, the rule of law, far from being a universal phenomenon, is just an accidental mutation. In sum, to the Marxist idea of predetermined evolution Unger substitutes his theory about reversion cycles, while at the same time he declares that he rejects the "idea of a metastructure of history or society that can serve as the source of law-like generalizations".

At first sight his rejection of the marxist causative model may seem justified; it leads, however, to the opposite extreme, since he does not seem to realize the existence of any constraints for the transition from one type of society and law to another. On the contrary, he seems to accept that even the most complex form of law is at any time open to any kind or degree of transformation and it is only a matter of inspiration to create counterimages of social life and bring them to a reality.

This view is rejected by the modern theory of evolution and contrary to the elementary laws of information theory. Of course today, apart from the marxists, nobody speaks of laws of social development: the reality is a perpetual process of irreversible change, which is governed by

chaotic dynamics; chaotic dynamics, however, do not imply that anything is possible. On the contrary this dynamical process is a process which is deterministic but unpredictable. This means that all systems follow a course that is subject to certain constraints expressed by a limited number of attractors towards which the system may be directed. Unger's assumption that systems have no constraints resulting from their existing structure is a chaotic view which is not supported by any scientific data. To his statement that there are no historical laws that might justify a theory of compulsive stages or a limited variety of social arrangements, modern systems theory replies that for every dynamic system there is a plurality of futures, but these futures, unless catastrophic, are always definite and dependent on the structure of the existing system. Therefore the sequence of the stages is determined by the degree of complexity of the system. It is impossible for a system to interchange freely between complexity and simplicity and vice-versa. Forecasting methods in policy science rest on the assumption that there is a plurality of scenarios for the future with varying probabilistic value. The direction of change correlates with the degree of the system's complexity and therefore, while there is no causality, one can estimate the probability of one type of stage following another.

These elementary principles of systems theory, if transferred into legal theory mean that the complexity of any legal system is a function of the complexity of the society to which it corresponds. Moreover, on the basis of Ashby's law of requisite variety, which coincides with the basic axioms of Shannon's information theory, the controller of a complex system should be of equal complexity. Thus, while a simple society has a simple law, a complex one can only have an equally complex law, i.e. an hierarchically structured legal system. In view of the above, the thought that a complex society, like the contemporary society, can dispose of its hierarchical legal system and return to one or another form of primitive law is simply naive. It is highly unlikely that modern society can ever evolve backwards to the harmonious system of perfect moral community that Unger anticipates.

As we have already mentioned, Unger shows a preference to some form of customary law, which he uses as a yardstick for assessing all other systems, his favorite features being the absence of hierarchy, implied by its non positive and non public character, and the moral community of the entire society. His abhorrence towards any kind of hierarchy in social or legal relations reveals the romantic aspect of his theory, since he does not seem to realize that hierarchy is not an evil invention for the oppression of one group by another but an inevitable property of all complex systems. According to the dynamics of information processing, beyond a certain limit the linear growth of a system renders it unstable, so that hierarchy is an ingenious way of organization that ensures system stability and adaptivity. Hierarchy is not a characteristic of human systems only but an isomorphism common to all complex systems and studied as such by general systems theory. Thus Unger's vision for a return to a non hierarchical society is unfortunately contradicted by the postulates of modern science.

Equally unfounded is his concern about the loss of the community of consensus over moral, religious and other values. His worry can only be attributed to inadequate understanding of the complexity of structures and the complementarity of values.. Values register social needs and thus every society nurtures the values that are necessary for its survival and evolution.

Societal values are the product of the autonomous cultural subsystem of the society, whose complexity corresponds to the complexity of the structure of the society. While the cultural system of a simple society is simple as well, the cultural system of a complex society is respectively complex and reflects the complexity of the other subsystems (e.g. stratification, economic etc). Therefore the loss of common values, corresponding to the simple societies of hunters which have disappeared forever, is not to be lamented. Common values still exist in modern social systems but they are proper to the hierarchical level to which they belong. Nor are these values identical with the values of the group occupying the highest stratum of the system, as Unger seems to believe. The complementarity of values in modern society is reflected in the bill of rights of any typical constitution, which, being the code of sanctioned social values, includes e.g. individual versus social rights. When making a decision, the public agent has to integrate these values depending on the level he is acting on.

On the above issue Unger seems to adopt the marxist fallacy according to which the values of a certain group determine the values of the entire complex system. This model is simplistic: by picturing society as an hierarchic system with the ones on top imposing their values on the others, it ignores the autonomous function of the political system. The autonomy of the political system is not fictitious as he describes it. On the contrary it is the result of the new undisputed prevalence of the rule of law in all civilized societies of the world. The autonomy of the rule of law is not contradicted by the existence of such autonomous subsystems as family, market etc, as he claims since autonomy of law goes hand in hand with the principle of the subsidiarity of the state of the so-called pluralism. In other words, the autonomous political system is only one of the multiple systems in which the modern social complex can be analyzed. Moreover, while it is true that any legal system is in constant interaction with the cultural system, the cultural system itself is not causally determined by the stratification system, as Unger and other marxists believe. Such a conception is an old reductionist view based on the causality model between infrastructure and superstructure. This model is simplistic: by picturing society as a hierarchic system with the ones on top imposing their values on the others, it ignores the autonomous function of the political system. Modern social theory rejects such simplistic views. The cultural system is not determined by the stratification system, but is continuously evolving in constant interaction with a multiplicity of other social systems such as the communication system, affective system (family) economic system, technology etc.

Apart from the above comments concerning the validity of the foundations of Unger's model, of particular importance are his claims about the social role of law. In the systems model we proposed above, modern law is conceived as the outcome of a three stage evolutionary process, in each one of which law solved particular social problems. We believe that it is important to be conscious of the origins of contemporary law, because it is precisely the survival of certain features up to the present which proves that it served wider societal interests than Unger assumes. Like all marxists he is incapacitated by his reductionist model of law as a tool of the ruling and is unable to perceive the true nature of the evolutionary trends in modern administrative law. Apart from the fact that his work does not prove any familiarity with public law, his legal theory is a narrow social view of law which misinterprets it as means of satisfying the interests of the

ruling class and not as a means for solving specific social problems. Thus in his view bureaucratic law is clearly an instrument of domination, while the legal order makes some claims over autonomy, which prove to be fictitious.

However, bureaucratic law, far from being a means of oppression in the hands of the powerful, was created for the express purpose of solving problems of a wider scope than the private interest of a dominant group. As we have already pointed out, the great achievement of law was to rationalize power and to use it effectively for the consolidation of the national state. The king was able to realize the emergence of a national community from the disintegrating feudal order and he became its leader by identifying his dynastic interest with the greater interests of his community. It is not the king who made the national community, he simply facilitated its emergence and at the same time he laid down the foundations of an autonomous political system distinct from the royal household. Therefore at its first stage of development administrative law should not be considered as a means of royal or aristocratic domination, but as a means for rationalizing the structure of the state against particularism.

Nor can we agree with Unger's distinction between two legal systems existing in parallel in the normative order of the bureaucratic state: on the one hand the public and positive law of the ruler, expressed in the form of unilateral decisions and having a discretionary (or even arbitrary) character devoted to the imperatives of instrumentalism, and on the other hand a body of common law, which he calls sacred law, prior to the state and limiting its power, expressing the prerogatives of the estates and providing a framework of legitimacy for social arrangements. If he assumes that common law was an autopoietic system which came into being by a spontaneous social process in contrast with the public and positive bureaucratic, he is mistaken. The common law was the law of the king's servants, i.e. the judges, who were at that time "lions under the throne" and traveled throughout the kingdom to impose the admirable uniformity of this law after having wiped out the customary feudal law, which was autopoietic. Judges of higher rank together with superior administrators served in the king's councils, i.e. were bureaucrats in Unger's sense.

On the other hand, concerning the legitimacy of the king's law, it had been established long ago, when the medieval conflict between church and state was resolved in favor of the state and the monarch was acknowledged by both clergy and laymen as the direct representative of God on earth.

With respect to the legal order, a term that he uses instead of the more appropriate constitutionalism, Unger claims that it is a legal type which emerged in Western Europe as a result of extraordinary and accidental circumstances. The location of its origin, however, does not make the rule of law a uniquely Western phenomenon, as he assumes. First of all his assumption is contradicted by the plain fact that the legal order has been adopted in one or another form of constitutionalism in the whole world. Ever since even the societies he calls revolutionary show signs of moving towards some kind of constitutionalism. The spread of constitutionalism is some form of cultural diffusion. Any cultural innovation starts in some place of the world and is subsequently adopted elsewhere when the conditions are

suitable. In the same way constitutionalism was diffused when societies around the world reached the appropriate level of complexity.

From that point of view the emergence of constitutionalism in Western Europe does not make it a phenomenon appropriate to the Western culture; it only shows that Western society was the first to reach the level of complexity which required that kind of legal order. Incidentally, similarly complex ancient societies, like the Greek one, were the first to be modern enough as to require a limited government and thus were the first to invent the legal order.

Moreover Unger has a misconception of the legal order and the society to which it corresponds. He perceives this society as torn by a contradiction between personal autonomy and collective needs, which is reflected in the dilemmas faced by the legal order, namely the inability to achieve order without legitimacy and structure without hierarchy. According to him the rule of law rests on two assumptions; The first is that all significant sorts of power can be concentrated in the hands of an independent government, which will guarantee the basic freedoms of the individual from the tyranny of established hierarchies. The second is that power can be effectively constrained by rules of general character and uniform application, so that the individual will not experience personal dependence from the whims of the administrator or the judge.

Unger considers both the above assumptions fictitious: the first, because the most important hierarchies that affect the individual, namely family, work and, market, remain outside the government's reach and cannot be subverted by formal equality before the law or by political democracy. The second, namely the assumption that rules make power impersonal and impartial, is also shaky since any law-making system embodies certain values and incorporates a view of how power should be distributed and conflicts resolved. Moreover there is no way of guaranteeing that judges and administrators will interpret rules irrespective of their personal preferences.

To his arguments we may answer that they rest on a complete misinterpretation of the rule of law. Constitutionalism never meant to concentrate all conceivable forms of power in the state. On the contrary it guarantees a dynamic interplay between several autopoietic systems (economic, cultural, moral etc), in which the individual acts freely, and the political system (state), which is neutral and instrumental not to particular interests but to arrangements serving the general interest. Thus the role of political system in a modern social complex is subsidiary in the sense that it claims supremacy only in certain limited aspects and for the rest it intervenes only in case of problems that the other subsystems (economic, cultural etc) fail to solve by self regulation.

Regarding Unger's claim that even a legal order which guarantees the separation of powers cannot prevent administrators and judges from interpreting the rules according to their own personal preferences, we must point out that it rests on the erroneous assumption that decision-making systems are closed systems without negative feedback. In fact, however, decision makers are not insulated from their environment and their objective judgment is ensured through a multiplicity of controls. In modern societies in particular, the authority of judges and administrators is intrinsic, i.e. it is

derived primarily from the quality of their decisions. For that reason, judges and administrators are persons trained to identify with interests wider and above their own, or else they risk losing all their authority, since, as we said intrinsic authority is the limit of extrinsic authority. Common law in Britain, administrative law in France and constitutional law in the United States, being the work of judges and enjoying a high degree of consensus in the respective societies, are a living proof of the fact that, contrary to Unger's accusations, judges and administrators in the legal order have been successful in winning and preserving their authority.

According to Unger most liberal societies nowadays have entered the postliberal era by acquiring welfare and corporate characteristics which threaten the rule of law and particularly its generality and autonomy as well as its public and positive character. While his observations about the main features of postliberal legal order, such as the introduction of managerial considerations, the ad hoc balancing of interests and the broader use of discretion, are quite correct, their impact on the rule of law is again assessed in a biased way. The rule of law is not a body of fixed and immutable rules. On the contrary various schools of legal interpretation, often contradictory, grew under its cover. The rule of law proved to be an equally appropriate frame of reference for the school of literal or grammatical interpretation, the school of free interpretation and the teleological school, which was the forerunner of the public policy approach.

Moreover, the considerations for substantive justice and policy-oriented legal reasoning do not make modern law less general but more complex and better adapted to the requirements of the modern highly differentiated society. Substantive justice is not opposed to but founded on the concept of general interest. The unequal treatment of unequal cases, is legally valid only if it is justified by reference to the general interest.

Unger is also prejudiced when he states that in modern society no moral standards exist beyond the arbitrary preferences of individuals or groups and that any apparent consensus simply masks the control of some by others. He seems to overlook the fact that prevalent moral ideas and ruling groups are two things which belong to two different social subsystems, namely the cultural system and the stratification system respectively, and that there is no causal interconnection between the two. In other words, the prevalent morality which, as we said above, is an output of the complex cultural system, does not express the beliefs of the dominant group but is the outcome of a long tradition and consists in a merger of the beliefs of all social strata and groups. (E.g. the prevalent morality of Western Europe has incorporated many elements of the Christian religion, which cannot be seriously considered as expressing a dominant group ideology).

Moreover, prevalent values have no arbitrary meaning but are legal concepts, included as such in many modern constitutions (see e.g. article 2 of the German and article 5 of the Greek Constitution). In that way both the judge and the administrator are obliged to use as criteria of their decisions the prevalent morality which is officially sanctioned and enjoys the authority of the Constitution; there can be no question of substituting to it their own preferences or personal moral convictions since their decision will become legally invalid. Finally we come to the problem of the legitimacy of the modern state, that Unger raises, probably under the influence of

Habermas, who wrote about the legitimacy crisis in the 1970's. At present the issue seems a little outdated since it has been bypassed by the rapid development of the 1980's. Today both scientists and laymen are conscious of the fact that the capacity of the state is constantly challenged by serious and concrete problems. The nature of these problems clearly indicates, however that their solution lies not with the restoration of a mythical community of shared values, but with the introduction in the decision-making process of the state of a new science and methodology of adequate sophistication and complexity. Therefore the only legitimacy of the state today is scientific and will result from the successful resolution of these problems. This is the reason why the modernization of the law is not only necessary but perhaps even a little overdue and it is towards this direction that the present essay is oriented.

c) Luhman's autopoietic theory of Law

1. The German systems methodologies (Luhman, Teubner) are distinguished by the complexity of their language, which the authors attribute to their radical departure from traditional epistemological premises and the incapacity of traditional language to express the newly perceived social realities. They reject the old dichotomy of "realism versus idealism" and "individualism versus collectivism" and seek to replace it by the new methodology of the so-called epistemological constructivism, using new concepts such as discourse, social self reflection and autopoietic systems.

According to epistemological constructivism it is naive to suppose that human actors through their intended actions make up the basic elements of society. This fundamental principle, applied in the field of law, implies that law does not correspond to a social reality out there but, on the contrary, law is an autonomous epistemic subject which constitutes a social reality of its own. Nor is law a cultural artifact of human individuals but, on the contrary, human actors are produced by legal communications as semantic artifacts. Given the fragmentation of modern society into different discourses (epistemes), the legal discourse is caught in an "epistemic trap" oscillating between autonomy and heteronomy. Constructivism challenges the quasi natural reality of the individual human actor, assumed by modern social and economic theory, and proposes itself as the attractive alternative to realism and individualism, which could not be offered by idealism and collectivism.

More specifically, the intellectual origins of the German systems school are M.Foucault's ³⁸ poststructuralism, the critical theory of Habermas ³⁹ and the theory of autopoiesis of Maturana ⁴⁰, Varela ⁴¹ and Zeleni, which have in common the ambition to replace the autonomous individual not by supra-individual entities but by communicative processes: For Habermas objective truth is replaced by consensus and the epistemic subject is replaced by intersubjectivity ; Foucault is more radical: for him the human individual is a mere ephemeral construction of a contingent power/discourse constellation, while for Luhman the new epistemic subjects are autopoietic systems.

For Habermas the criterion of truth is not its correspondence to some external reality (in the traditional Aristotelian sense), but the potential consensus of all participants, reached through an ideal speech situation defined by certain formal and procedural characteristics. Consequently, epistemic authority is transferred from the autonomous subject (Kant) to the intersubjectivity of the communicative community.

Foucault's thesis is a radicalization of the position of Habermas. For him reality is constructed by cognition itself. However, it is neither the individual consciousness of the subject nor intersubjectivity that constitute reality, but discourse: i.e. a stream of anonymous and impersonal intention-free linguistic events. Science is the product of discourse, locally and temporally i.e. discourse dictates the science of an epoch, while the human subject itself is not the author of discourse but rather the opposite: the human subject is produced by the discourse as a semantic artifact. In his later works Foucault identifies power as the foundation of discourse.

2. Luhman's⁴² systems theory underwent a significant evolution. As we already mentioned, he was initiated in systems theory during his sojourn in the USA and the influence of Parsons is obvious in his early works: in this period, Luhman too was speaking of law as expectations. At that time he wrote an important book of epistemological character regarding systems rationality, where he convincingly proved the objective side of human goal directed action.

Later, however, under the influence of the cognitive theories of the biologists Maturana and Varela, Luhmann proceeded to a rather subjective systems theory. This theory, obviously based on the processing of information by biological systems, denies the objective character of information and, consequently, rejects the higher status of science as well. The idea of system is conceived exclusively according to the biological model and, therefore, the only world view available is one from the inside of a system, which cannot objectively communicate with other systems: the system constructs its own model of reality. In Luhman's approach the theory of the above biologists blends with the philosophical trend of constructivism, which blooms in Germany, and whose fundamental assumption challenges classical cognitive realism and boils down to the thesis that there is no objective reality but reality is constructed by the system.

Luhman acknowledges the existence of various differentiated social systems (legal, economic etc) each consisting of a specialized type of communications. These systems are inherently incapable of communicating with one another and thus are not organized into a suprasystem of society. In fact, society as a system does not exist for Luhman, who characteristically depicts it in his celebrated metaphor as blind rats running in a maze.

As a result, Luhman ascertains the fragmentation of science into a plurality of autonomous discourses which do not communicate either among them or with the psychic self of man: such a position already marks his resignation from the fundamental aspiration of General System's Theory for the unification of science.

What are the consequences of this epistemological position for Luhman's theory about law and which is this theory ? From what may be inferred from his writings, which are not always characterized by clarity, the legal system, as he names it, consists of communications, i.e. communicative events. Given the distinction between communication and action, the law exists only as communications. But what is meant by communication ? As Luhman himself explains, communication with respect to law means a synthesis of information communication and comprehension and not merely the act of communication as such. Law as communication is an autopoietic system and, following Maturana's definition also adopted by Luhmann, an autopoietic system constitutes the elements of which it consists through the elements of which it consists. In simpler words autopoietic systems are self reproduced and that principle holds true for law as well; there is self reproduction of the legal system and following the principle of fragmentation the legal system has its own construction of reality. Despite his further elaboration at this point, Luhmann does not make clear what exactly is a legal communication and in what respect does it differ from e.g. a sociological or a political communication. One may validly presume that he refers to legal communications in the classical positivist sense of the term, i.e. a sort of idiom or vocabulary composed of a system of precisely defined legal concepts. This, as it is well known is a circular definition. Nevertheless, this circularity which Luhmann calls self referentiality, is not considered a problem; on the contrary, it is considered as the natural fragmentation of law. At this point it should be added that fragmentation is supported by another principle of the biological theory of systems, namely the principle which stresses the closure and not the openness of systems. This principle applied in the field of law leads, according to Luhman, to the position that the legal system is a normatively closed but cognitively open system.

3. Any criticism of Luhman's systemic model should not overlook the fact that he is one of the first who attempted to frame a systemic theory of law and has been constantly trying to improve it. Nevertheless, for those accepting the fundamental principles of General Systems Theory, which constitute the basis of systems thinking, Luhman's theory in its final version, finds itself in conflict with a number of such principles.

In the first place, Luhman's theory has weak epistemological foundations, since it rather constitutes a metaphor of the biological theory of autopoiesis (itself controversial) at the level of social systems. Thus the inherent limitations in the information processing capacity of biological organisms are arbitrarily assumed to exist at the level of human systems as well, despite the fact that the human brain has emergent properties, which have permitted abstract thinking and symbolic communication and thus made possible the emergence of culture.

From this basic misconception Luhman is driven to the conclusion that there can be no objective transfer of information among information processors, living or artificial, an assumption rejected by modern communication theory and its numerous applications (artificial intelligence with neural networks which imitated the parallel thinking of the human brain, fifth generation computers etc).

But, even judged in its own terms, Luhman's theory presents basic contradictions. If, as he accepts, communication has been possible for the initial formation of differentiated social systems, there is no reason to deny the possibility of communication among social systems as well with the development of the appropriate metalanguage. In sum, Luhman's theory seems to be founded upon some kind of modern solipsism, which is rejected by cognitive science. In the hierarchy of human systems there is such a thing as a science system which occupies a higher level than the individual thinker. Science is validated knowledge produced by many generations of humans and an ongoing process based on methods and techniques of objective transpersonal validity.

If there is in fact fragmentation of science, this only renders communication difficult but not impossible. In any case, modern science (Cybernetics, Decision Making etc) constitute a synthesis of more than one sciences, a thing which defies fragmentation. This means that, as foreseen by Bertalanffy, we are on the right path towards the unification of science and it is the specific task of systems theory not to come to terms with the existing fragmentation but to overcome it. "Systemic" models which do not succeed in the above task have simply failed as such.

4. This brings us to the second fundamental tenet of systems theory that Luhman seems to ignore, the principle of hierarchy. Hierarchy is a modality of systems structures which ensures the system's stability beyond a certain level of growth. Hierarchical organization of systems implies that the higher level system contains the communication code of the lower level ones and is therefore an information processor of greater capacity.

Luhman, though accepting the existence of social systems, refuses their capacity for intercommunication and hence their hierarchical organization. Besides the fact that no genuine systemic theory may ignore the principle of hierarchy, Luhman's theory presents many contradictions in this respect as well. If one accepts the existence of systems, as he does, one cannot deny the principle of hierarchy altogether, since by definition the system occupies a higher hierarchical position than its elements, be it human beings, roles or communications. To accept the principle of hierarchy up to the level of the individual system only and deny it beyond that level is an arbitrary assumption contradicted by another systemic principle according to which the chain of interlocking systems is uninterrupted.

5. Moreover, Luhman, by insisting upon the impossibility of communication among systems seems to ignore the integration mechanisms which exist in all large scale systems. Where there is a process of differentiation there is a parallel process of integration as well. Otherwise, human beings, obliged to fulfill the requirements of their multiple roles-each corresponding to a different social system at Luhmans's own admission - would have become schizophrenic. The fact that they are not indicates the existence of integration mechanisms in every society, such as Morality and Law, whose regulatory functions preserve social cohesion.

By rejecting the regulatory and coordinating role of Law in society, Luhman reduces it to the same level with all other social systems and hence has difficulties in specifying what exactly is the function of legal communications. If legal communications produce legal communications upon which more legal communication are built, in other words if Law is not connected to actual human behavior, then we are drawn to the inevitable conclusion that Law exists solely for the sake of lawyers, judges and legislators, who produce and interpret such communications.

The view that law is just legal communications not having any relationship with the real social process seems to revive the old positivist (dogmatic) theory of law, refurbished by systems vocabulary. For it is limited to communications, separated from actions, exactly as in the past rules were separated from actual behavior. Nevertheless if Science and Art may exist by themselves, irrespective of any application (which is doubtful), this does not hold true for normative systems like Law. In that case, if the intended result is not achieved, i.e. if the normative rule is not transformed into the desired action, the system will lose its authority and it will be unable to survive. Even those who complain about "paper" laws, know very well that effective and living laws also exist. It is a major deficiency of this theory that it separates legal action from legal communication. Anyone with elementary experience of law knows that, despite the possible redundancy of legal communication, there is always a final act which is created, amended or terminated as a result of this communication and it is to this act that people really purport. No closure of the system can erase this fact. Thus, the theory of legal communications constitutes a regression to the conceptualistic theory of law, i.e. to the "paradise of legal concepts" of Jhering.

How then can such a theory be explained ? This theory is no attempt to solve the complex problems of our time but constitutes a kind of *modus vivendi* with them. However, it is in particular the failure of traditional lawyers to solve contemporary problems which, instead of leading to an improvement of human intervention, ended up legitimizing the incapacity of man to solve these problems. If it is true that some of these problems are indeed very persistent, the premature legitimization of the incapacity to control them inevitably raises the question how did human societies manage to survive and develop so far. The question arises whether deficient design is better than admitting the impossibility of any design at all. For the genuine systemic thinker the answer to such questions is self evident: systems theory of human systems is by definition intervention, i.e. it is unity of theory and action. If it is true that self regulated and autopoietic systems do exist, it is equally true that the coordination of such systems cannot always be effected through self regulation but requires intervention, i.e. conscious design (see Decleris, *Prolegomena to a Modern Theory of Public Policy*, in *Melanges Tsoutsos Sakola* 1990).

If some regulatory attempts of the State have indeed failed, the blame does not lie in its inherent incapacity for communication and control, as Luhman claims, but in the choice of reductionist methods inappropriate for dealing with problems of great complexity. Luhman's theory, in denying the capacity of the State and Law for intervention in the various social systems, is in fact an attempt to revive the 17th century liberalism of Adam Smith and Ricardo dressed in systemic verbiage.

Notes on chapter 3

1. For the criteria of systems methodology see *Walliser Bernard*, *Systemes et Modeles*, Seuil 1977, p. 116 ff. Also on issues of methodology of social sciences see *P. Gemtos*, *Methodology of Social Sciences*, Papazisis 1984 (in Greek).

2. On legal positivism see *Austin John*, *The Providence of Jurisprudence Determined* (H. Hart ed. 1954), *Hart H.L.A.*, *The Concept of Law*, Clarendon (1979). On the continent legal positivism in public law is represented in Germany by the monumental works of *Georg Jellinek* (*Allgemeine Staatslehre*, Verlag Dr. Max Gehlen, 3rd ed. 1966), *Laband* (*Das Staatsrecht des Deutschen Reiches*) and *G. Mayer* (*Lehrbuch des Deutschen Staatsrechts*). According to the renowned Greek positivist *Saripolos* (*Constitutional Law*, vol. 1, 1911), these books contain no political judgements but are restricted to the scientific treatment of principles of positive public law following a rigorous legal method. In France positivism is represented by *Carre de Malberg* and his famous book *Contribution a la Theorie Generale de l'Etat* (Sirey, vol. 1, 1920, vol. 2, 1922).

More widely known is the celebrated Viennese School, headed by *H. Kelsen* (*General theory of Law and State* (1945). See also *Adolf Merkl*, *Allgemeine Verwaltungslehre*, 1927. The positivist school of legal thinking is still considered dominant in Europe (see *Villey Michel*, *Philosophie du Droit*, Dalloz 1982, 3rd ed.).

3. See e.g. *Dworkin R.M.* *Taking Rights Seriously*, Revised ed. 1978.

4. See e.g., *Fuller Lon*, *The Morality of Law* (1959) and *The Anatomy of Law*, Mentor Books 1968.

5. On the epistemological foundations of Systems Methodology see e.g. *W. Buckley*, *A Systems Approach to Epistemology*, in G. Klir (ed.) *Trends in G. ST*, Wiley, 1972, p. 188 ff., *N. Rescher*, *Cognitive Systematization: A System-Theoretic Approach to a Coherentist Theory of Knowledge*, Rowan and Littlefield (1979).

6. See *Wiener, Norbert*, *The Human Use of Human Beings*, Avon Books (1967), p.25, also *Wiener N.*, *Cybernetics*, Technology Press and John Wiley (1948). The word "Cybernetics" was first used by Ampere as the title of a sociological study. It is derived from the Greek word for steersman. *Stafford Beer* defines cybernetics as the science of proper control within any assembly that is treated as an organic whole. (see *Beer St.*, *Cybernetics and Management*, English University Press 1960) *Ross Ashby* gives emphasis to abstracting a controllable system from the flux of the real world and considers as the object of cybernetics every form of reproducible behavior (see *R. Ashby*, *Introduction*

to Cybernetics, Chapman and Hall 1956, Design for a Brain, 1952, Mechanisms of Intelligence, Intersystems, 1981. Today cybernetics is particularly developed in the fields of mathematical systems, brain theory and artificial intelligence (see *M.Arbib*, Cybernetics after 25 years, I EEE Transactions on Systems, 1975, p. 359 ff.).

See also *Pask Gordon*, An Approach to Cybernetics, Hutchinson and Co, 1965, *Kuhn A.* Organizational Cybernetics and Business Policy : System Design for Performance Control, Pennsylvania State Univ. Press 1986, *Floyd Michael*, Policy Making and Planning in Local Government, a Cybernetic Perspective, Aldershot : Gower, 1984. *Aulin, Arvid*, The Cybernetic Laws of Social Progress: towards a Critical Social Philosophy and a Criticism of Marxism, Oxford Pergamon 1982, *Dobuzinski, Laurent*, The Self-organizing Polity : an Epistemological Analysis of Political Life, Boulder, Westview Press, 1987, *Geyer Felix, Johannes Van Der Zouwen* (eds) Social-cybernetic Paradoxes: Observation, Control and Evolution of Selfsteering Systems, London Sage 1986. *S.H. George*, Philosophical Foundations of Cybernetics, Abacus Press, 1986.

7. See T 301 Block II, A Systems Approach to Failures, Systems Paradigms Studying Systems Failures, Open University Press 1984.

8. The idea of a mathematical theory for the transmission of information was conceived almost simultaneously by three scientists, the statistician *Fisher*, the mathematician *Norbert Wiener*, who was preoccupied with the problem of control, and a communications engineer of Bell Telephone Laboratories, *Claude Shannon*. However it is the latter who is credited with the classical formulation of the mathematical theory of communication (see his paper of 1945, reprinted in *C. Shannon, W. Weaver*, The Mathematical theory of Communication, Univ. of Illinois Press, 1979). Shannon remained preoccupied with the purely technical problem of signal transmission and was not interested in the semantic problem of the content of information.

See also *Cherry Colin*, On Human Communication, Third ed. 1978, The Massachusetts Institute of Technology, *J. Pierce*, An Introduction to Information Theory, Dover 1980.

9. See *Bignell, V. and Fortune, J.* (1984) Understanding Systems Failures, Manchester University Press, Also *Turner, B. A.* Man-made Disasters , Wykeham, London , 1978 , *Bignell V. F. , Peters G., Pym C.* Catastrophic Failures, Open University Press, 1977.

10. See Bignell V., Fortune J. op. cit. p. 3-8.

11. See T 301 Block II, A Systems Approach to Failures p. 40 ff.

12. See Bignell V., Fortune J. op.cit. pp. 40-63.

13. See Bignell V., Fortune J. op. cit. pp. 64-78. Also *National Health Service* Report of the Committee of Inquiry into Normansfield Hospital, *M. D. Sherrard* (QC) Department of Health and Social Security, Cmd 7357, HMSO, London 1978.

14. See *Thom R.* Structural Stability and Morphogenesis: An Outline of a General Theory of Models, Benjamin 1975. Also *Zeeman E.C.* Catastrophe Theory, Selected Papers, 1972-1977, Reading: Benjamin 1977, *A. Woodcock, M. Davis*, Catastrophe Theory, Penguin, 1980.

15. See *A. Woodcock, M. Davis*, op. cit. p. 126-134.

16. See *A. Woodcock, M. Davis*, op. cit. p. 141-146.

17. See *Unger R.M.* Law in Modern Society, Free Press, 1976, p. 3 ff.

18. See *Berman*, Law and Revolution, Harvard University Press 1986.

19. In the field of Special Administrative Law see e.g. *H.J. Wolff*. Verwaltungsrecht, 6th ed., 8 vol. (1961-1963) *A. Bochall*, Besonderes VerWR., 2nd ed., 1963, *H.V. Rosen. V. Hoevel*, Allg. VerWR, 1959 (2 vol. general and special part). Also *Berthelemy H.* Traite Elementaire de Droit Administratif (13th ed. Paris 1933), *A. de Laubadere*, Traite de droit administratif, Paris 9th ed., 1984.

20. Operational research for the solution of military problems is related with the names of *A.P. Rowe* (Bawdsey Research Station) and *P.M.S. Blackett* (Blackett's Circus, University of Manchester) who designed defense systems with Radar control (1940). The success of those systems led to the extensive use of operations research in the design of all kinds of military operations (see *Mc Closkey - J.F. Trefethen* (eds) Operations Research for Management, John Hopkins Press, 1954).

According to the authoritative definition of the Operations Research Association, Operations Research (OR) is the application of scientific methods in complex problems arising out of the management of great systems of humans, machines, money and resources in industry enterprises, administration and defense. This approach is characterized by the design of a scientific model of the system which incorporates the calculation of random elements and risk and which predicts and compares the consequences of alternative decisions, strategies and controls. See *P. Checkland*, Systems Thinking, Systems Practice, Wiley, 1981, p. 73. The various problems that are the object of OR are classified in categories such as Allocation Problems, Inventory Problems etc. See *C.W. Churchman, R.L. Ackoff, E.L. Arnoff*, Introduction to Operations Research, Wiley, 1957.

21. Systems analysis compares the following basic phases: a) Definition of desired goal, b) Alternative systems for its achievement, c) Calculation of the cost of each alternative system, d) Mathematical model showing the interdependence of goal - systems - environment - cost, e) Criteria of choice of the optimal alternative solution. See S.L. Ortner, *Systems Analysis* Penguin, 1973, A.M. Lee, *Systems Analysis Frameworks*, Macmillan, 1970.

22. Systems engineering with the extensive use of mathematical models contributed to the further advancement of systems methodology and led to its application in many scientific fields (Biology, Ecology, Psychology etc). On Systems engineering see the classical book of *A.D. Hall*, *A Methodology for Systems Engineering*, Van Nostrand 1962. Also *H. Chestnut*, *System Engineering Methods*, Wiley, 1967, *A. Wymore*, *Systems Engineering Methodology for Interdisciplinary Teams*, Wiley 1976.

23. As "hard" systems are defined the "natural" and "technological" systems, whose models have great accuracy and are susceptible to exact measurement and control. Human systems or human activity systems are considered "soft", since the processing of information in the form of "symbols" or "values" presents obvious difficulties in designing reliable models. See *M. Decleris*, *System Theory*, p. 78, *P. Checkland*, *Systems Thinking, Systems Practice*, Wiley, 1981 p.141 ff., *Sir Geoffry Vickers*, *Human Systems are Different*, Harper, 1983. *R. Ackoff*, *F. Emery*, *On Purposeful Systems*, Intersystems 1972, *C. Churchman*, *The Systems Approach*, Delacote Press 1968. For the application of systems theory in sociology see particularly the books of *W. Buckley*, *Modern Systems Research for the Behavioral Scientist* (Aldine, 1969) and *Sociology and Modern Systems Theory* (Prentice Hall 1968). For economics see the works of *K. Boulding* and particularly his recent *Evolutionary Economics*, Sage, 1981.

24. Members of the Institute are scientific organizations (Academies, Institutes, Research Centers etc) of the countries-members, such as the National Academy of Sciences (USA), the Academy of Sciences (USSR), the Royal Society of London (UK), the Max Planck Society (W.Germany) etc. According to the Preamble of the Charter of the Institute, the present methods of research and analysis should be substantially improved in order to be able to predict, manage and benefit from the social and other consequences of scientific and technological development. See *Charter of the International Institute for Applied Systems Analysis*, Luxembourg, 1978.

25. On the works of *H. Lasswell* and *M. Mc Dougal* see Notes on ch. 1, 2. p. 29 and Notes on Ch. 2, 83, p. 88. Also chapter 2 p. 66-68.

26. For a bibliography on Public Policy see Notes on chap. 1, 4, p. 30.

27. See *Patricia W. Ingraham*, Toward More Systematic Consideration of Policy Design, *Policy Studies Journal*, Vol. 15, No. 4 June 1987, p. 613.

28. On the development of Systems Theory see *L. Von Bertalanffy*, the History and Status of General Systems Theory, in *G.Klir*, Trends in General Systems Theory, 1972, p. 21 ff., *R.Ashby*, Systems and their Informational Measures, *ibid.* p. 78-79. *R. Ackoff* makes a distinction between the "machine age" and the "systems age", see Science in the Systems Age, in *Operation Research*, 21, 1973 p. 661 ff. *Bertalanffy*, using as criterion the technology of communication distinguishes five stages in the development of human systems. The scientific method (Newtonian Science) belongs to the third stage and the "systemic model" to the fifth. See *Systems Inquiring and the Science of Complexity: Conceptional Bases*, International Systems Institute, 1984. See also *R. Curtis*, Evolution or Extinction: The Choice before us, Pergamon Press, 1982. Systems theory is also adopted as a new way thinking by scientists of communist countries, See e.g. *V. Sadovsky*, General Systems Methodology: Present and Future, in S.G.S.R., A General Survey of Systems Methodology: Proceedings of the 26 Annual Meeting, 1982. Also *I. Blauberg*, *V. Sadovsky*, *E. Judin*, Systems Theory, Progress Publishers, Moscow, 1977.

29. On the notion of public problems see *M. Decleris*, Systems Design in Public Policy .

30. The design of rigorous theoretical models, including the use of mathematics, distinguishes Systems Theory from the so-called holistic theories of traditional philosophy, such as e.g. the theories of Spencer, Comte, Marx etc.

31. *The Traditional Method* which has dominated science since Newton and Descartes is based on analysis, i.e. the object of study is decomposed in its constituent parts, which are separately studied and whose properties are supposed to explain the whole. Scientific method searches for the "causal relation" which can provide the explanation of the phenomenon under study. The analytical method is supported by modern analytical philosophy, whose principal representative is Bertrand Russell. According to him scientific progress was accomplished by analysis and artificial isolation. (See *B.Russell*, Human Knowledge, its scope and limits, Allen and Unwin, 1948).

Systems methodology, on the contrary, approaches its object as a whole; it expresses a new scientific logic which does not constitute a breach in the continuity of scientific development, but is determined by the complexity of the phenomena under study. In practice the systemic approach of a problem consists in the design of a systemic model at the appropriate level of abstraction, which depicts the basic elements of the system and their interaction which determines its behavior. Since the systemic scientist is not a mere observer and interpreter of reality but an actor who intervenes in view of a specific problem, the criteria of the model's success are determined by its approximation to reality. In other words, a model is scientifically correct if it achieves its practical purpose (model realism).

In this respect systems methodology is related with the epistemological theory of pragmatism (*William James*, Pragmatism (1907), The Meaning of Truth (1909), *John Dewey*, The Quest for Certainty (1929), Human Nature and Conduct (1922). It has nevertheless developed its own philosophical foundations. See *E. Lazlo*, Introduction to Systems Philosophy, Gordon N.Y. 1972, The Systems View of the World, Bresiller, N.Y. 1972, *J.S. Stamps*, Holonomy: A Human Systems Theory, Intersystems, 1981, *E. Jantsch*, The Self - Organizing Universe, Pergamon, 1980, *E. Jantsch C. Waddington*, Evolution and Consciousness, Addison-Wesley, 1976, *E. Bunge*, Treatise on Basic Philosophy, v. 3,4, Reidel Publishing, 1977.

Systems methodology is interdisciplinary i.e. appropriate for all fields of science and technology. It constitutes a common language which has permitted the communication of scientists from different scientific fields thus providing a way out from increasing specialization. The general foundations of systems methodology are common for all sciences and are the object of General Systems Theory. On General Systems Theory see *G. Klir*, An Approach to General Systems Theory, Van Nostrand Reinhold, N.Y. 1969, *G. Klir* (ed.), Trends in General Systems Theory, Wiley, 1972, *M.D. Mesarovic*, System Research and Design : View on General Systems Theory, Wiley, 1964; General Systems Theory and its Mathematical Foundations, I E E E , Transactions on Systems Science and Cybernetics, S S C - 4, 1968, *T.D. Bowler*, General Systems Thinking, North Holland, 1981, *G.M. Weinberg*, An Introduction to General Systems Thinking, Wiley, 1975, *J.L. le Moigne*, La Theorie du Systeme General, PUF 1984; Les Nouvelles Sciences sont bien des Sciences, Reperes Historiques et Epistemologiques, in Revue internationale de systemique, AFCET, vol. 1, No. 3, 1987 p. 295-319.

Also for a full bibliography see *G. Klir - G. Rogers - R.G. Gesyps* (research team): Basic and Applied General Systems Research (Binghamton, N.Y. 1977) and *R. Trappl - W. Horn - G. Klir*. Basic and Applied Systems Research: A Bibliography 1977-1984 (Hemisphere Publishing Co USA).

32. One of the first who attempted to construct a systemic model of the state was *David Easton* (see The Political System, Knopf, 1953, A Systems Analysis of Political Life, Wiley, 1965. A Framework for Political Analysis, The Univ. of Chicago Press 1965 (1975). However, Easton's model presents serious limitations such as : a) it remained in the "black box" method and did not open it to show the conversion process of the state, b) it ignores the functional system (network) of Law, c) it is particularly concerned with the system's equilibrium, d) it does not clarify sufficiently the process of goal-setting and implementation in the state, e) it is not concerned with the dynamic process of "morphogenesis" which is indispensable for understanding changes in the system. (See M. Decleris op. cit. p. 51.)

In sum, Easton's model as well as the models proposed by *C. Deutsch* (The Nerves of Government, Free Press, 1962) and *T. Parsons* (The Social System, 1951, Economy and Society, 1959, A Paradigm for the Analysis of Social Systems and Change in *T. Parsons, E. Shils*, Theories of Society, Free Press, 1961) are too general to be used for practical purposes. On the contrary the proposed model of M. Decleris can serve as a base for the solution of specific problems and provide answers to questions concerning e.g. the way

programs should be made, the relationship of law-making and implementation, implementation and control etc.

33. The present state of the Political System is the product of a long evolution over thousands of years. On the development of the political system see M. Decleris, A systemic theory of public administration , in M. Decleris, Systems Theory, op. cit. p. 249 ff.

34. On the political system and its position in the social complex see M. Decleris, Systems Theory of Law and State, in M. Decleris, Systems theory op. cit. p. 46 ff. For an extensive analysis, see M. Decleris, Systems Approach to Law and Politics, forthcoming publications, Intersystems.

35. The model of M. Decleris adopts Lasswell's indicative list of eight values: respect, power, wealth, affection, enlightenment, skill, rectitude and well being. On other classifications see *Clyde Kluckhohn*, Values and Value Orientation in the Theory of Action: An Exploration in Definition and Classification, in *T. Parsons, E. Shils*, Towards a General Theory of Action, op. cit. p. 388 ff. *R. Williams*, Change and Stability in Values and Value Systems in *B. Barber, A. Inkeless*, Stability and Social Change, Little, Braun, 1971, p. 123 ff.

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Chapter 4 . Turning Decisions into Actions: A Comprehensive View of Implementation.

Abstract

In this chapter the proposed systems theory of implementation is analyzed and a balanced perspective of decisions and actions is established. The possible logical relations between decisions and actions are critically examined and preference is given to the principle of rationality, which is further applied to a model of small scale policy making that constitutes the essence of systems methodology.

More specifically, the first section of chapter 5 focuses on the legal aspects of implementation. Implementation is delimited with precision within the law making process as the making of official decisions of individual character. By definition, an individual legal decision contains all the crucial information for the proper application of a general rule to a particular situation. Thus it is clearly distinguished from both legislative and judicial decision making, as well as from the preparatory and executory decisions which precede or follow its issuance . The second part of this chapter attempts to restore a balance perspective of the decisions and operations which constitute the implementation process. In fact, the operational factor in law-making is usually overlooked by legal theories and overemphasized by non legal theories of implementation. In the same section alternative logical relations between decisions and operations, proposed by different philosophical schools, are critically examined and preference is given to the principle of rationality.

The main part of chapter 4 is dedicated to the presentation and analysis of a systemic model of implementation. In fact, implementation is represented in two kinds of models, the external and the internal. The external systems model presents a comprehensive view of the system under study, showing its relationship with the wider environment in which it is embedded. This model examines the behavior of the entire system as a whole, i.e. how the system is influenced by its environment and what is its own impact upon the environment. Such a model is appropriately called "black box" model, since at this stage of research the focus is on the external factors which constitute the environment of implementation. The black box model is particularly useful in our case because it depicts: a) the main factors which usually affect the implementation process (inputs) and b) the expected outputs of the same process. Both inputs and outputs are not chosen arbitrarily but are basically derived from the greater system to which implementation belongs, this greater system is the State seen as Information Processing System (see chapter 3). In fact, the black box model presented here constitutes a close-up version of the Processor element of the state presented in chapter 3, showing a more detailed and analytical picture of the connections already depicted there.

The factors identified as inputs to the black box are legal, factual or mixed, since, in our view, implementation is a mixed process, where attention should be equally allocated between the legal and the behavioral aspect. The output of the black model consists of legal decisions, material operations and, when necessary, acts of enforcement .

The external (block box) systemic model may at first sight appear similar to the multifactor models proposed by the various empirical implementation theories discussed in chapter I, since they are all based upon data provided by failure analysis (empirical observation and registration). There is, however, a fundamental difference between the two approaches. Empirical theories stop at the point of data collection and immediately proceed to the formulation of hypotheses, supported by statistical evidence and leading to one-sided conclusions as to the causes of implementation failure or success.

Systems methodology, on the other hand, takes over when the usefulness of empirical theories has been exhausted. In other words, it presupposes an increased degree of complexity of the problem, which becomes evident when the multiple interactions among the factors of implementation have to be considered.

While the external model is particularly useful at the level of macroanalysis of the implementation process, the internal (functional) model, presented in this chapter is valuable at the level of microanalysis, i.e. at the level of specific administrative agencies involved in individual decision making. The purpose of this model is precisely to improve the decision making process at the individual level, i.e. the level of rule application to specific individual cases. In fact, the internal model, otherwise called "the white box" model, consists in the opening of the black box and reveals the mechanism of implementation. More specifically, the micromodel of implementation depicts it as a small scale policy making process and thereby guides the exercise of discretionary power for the conversion of the broadly defined policy goals into specific decisions and material operations.

4.1 From Projects to Individual Decisions : the Notion of the Individual Legal Decision.

The concept of implementation presupposes some policy, a program, that must be put into effect. A program is a complex decision, i.e. a decision aiming at regulating an indefinite number of particular cases, present or future. Thus it is designed at the appropriate level of abstraction in order to be applicable to an unspecified number of similar cases. Implementation is the process by which a program is applied to variable circumstances in order to bring about the intended environmental change, i.e. the desired action.

Since action is always controlled by the respective decision, implementation consists of both actions and controlling decisions, appropriate or adapting the generalities of the program to the particularities of the specific situation. This type of decisions are the individual legal decisions. It should be noted that we cannot speak of implementation unless action is

controlled by a whole series of decisions, ranging from complex (constitution, statutes, delegated legislation) to simple (individual legal decisions). On the contrary, there is no question of implementation when action occurs directly as the result not of conscious decision-making but of repeated practice (custom). Implementation thus presupposes that there is a time distance between the rational conception of an action plan and the action itself.

Since in modern societies the controlling (normative) system par excellence is law, implementation is predominantly a legal process and the decisions controlling the desired actions are legal decisions. The notion of the individual legal decision was first developed in the sphere of private law and was the product of mature legal thinking and long legal experience dating from Roman times. In private law the term legal transaction (*Rechtsgeschäft*) is used to describe the voluntary act, in other words the decision, either unilateral, bilateral or multilateral, which produces legal consequences. The active element is prevalent in this definition, which rests on the assumption that, within the framework of programs characterized by a high degree of abstraction (e.g. civil or commercial law), man creates his own law by shaping his decisions. Such abstract programs are addressed to actors assumed to have almost equal value positions and aim at controlling exchanges of values possessed by the actors themselves and not directly affecting other actors or society in general.

In the sphere of public law the notion of the individual legal decision was formulated much later and was greatly influenced by the already developed private law theories. A precise distinction among laws, regulations and individual decisions was of no practical value, until the doctrines of separation of powers and rule of law marked the beginning of the classical period of administrative law (see above, chap.2). Under the influence of the new ideas about the legality of administrative activity, i.e. that this activity should be planned and effected according to the law, the primordial administrative orders, often characterized by a degree of arbitrariness, gradually gave way to legal decisions. Consequently, policy programs were invested the form of statutes or delegated legislation and administrative actions took the form of their implementation.¹

In view of the above, the individual legal decision can be defined as a decision emanating from an administrative agency (formal criterion) and aiming at the application (adaptation) of the general program to the variable individual situation. The individual legal decision is usually unilateral, since it connects and controls actors of unequal value position. More specifically, one of the actors (state), aiming at inclusive values, has the apparent control of the connection and regulates by unilateral decisions the behavior of the other actors (private persons) aiming at their own private values.

In continental legal theory, the distinction between administrative decisions of individual character on the one hand and administrative decisions of regulatory character on the other is an important issue of both theoretical and practical value. The distinction may be easy in clear cut cases; e.g. the granting of a building license is an individual legal decision, while traffic regulations have an obvious regulatory character. Many cases, however, are marginal and present difficulties in classification. What is, for example, the nature of the administrative decisions which

regulate the operation of a specific complex system of irrigation? In terms of classical legal thinking the practical significance of the distinction appears in such matters as the necessity for publication or notification, the relative ease of revocation, the retroactive effect etc. However, for the purpose of the present essay the issue is related to another important aspect of the implementation process, namely the complexity of the transition from programs to individual decisions. This complexity is often ignored or misinterpreted by non legal theories of implementation, which usually attribute it to the whims or incapacity of bureaucrats. However, rare are the cases where the entire program is contained in a single all-comprehensive statute, which is directly implementable by means of individual legal decisions. More often, to the extent that state activity increases in complexity, the parliamentary legislator lacks both the time and the expertise for making anything but general provisions, which are further clarified and complemented by delegated legislation. Thus a typical program usually consists of : a) general declarations of goals, guidelines and procedures, incorporated in statutes, b) acts of delegated legislation, issued on the basis of authorization clauses inserted in the statute ; such acts provide all the details of the program, c) numerous acts of subdelegated legislation which regulate minor issues (e.g. composition of collective organs of implementation etc). Only after this rather lengthy procedure is completed, comes the time for issuing individual legal decisions for the actual implementation of the program. This complexity which characterizes administrative intervention aims at combining the authoritative value allocation, performed by the elected legislative bodies, with the necessary technical expertise provided by the administration. Sometimes, however, many programs never proceed beyond the first stage of goal declaration. Such is, for instance, the case of statute 947/1978 on urban systems in Greece. This law never came into effect because the numerous acts of delegated legislation required for its implementation were never issued. Those abortive efforts are wrongly included among the so-called implementation failures, because the truth is that they never came close to implementation, since the program was not even completed.

It is the point of this essay that the implementation stage begins with the legal decisions immediately preceding and controlling action. Nevertheless, things are no less complicated even at this stage, since the individual legal decision is usually preceded and followed by a host of preparatory or executory acts. Preparatory acts include circulars and instructions providing guidance for the interpretation of the program and the exercise of discretion, consultations, advisory opinions, expert reports, notifications to third parties etc. Administrative acts issued after the individual legal decision aim at facilitating its execution and include internal communications, notifications of impending enforcement or reports confirming the execution. Thus the "dossier" of an administrative case, that is the file containing all relevant documents, is usually quite voluminous, which is sometimes misinterpreted by laymen as "red tape". However, the importance of this multiplicity of legal acts in the formulation and actualization of the individual legal decision should not be underestimated. In order to make the best possible decision, a lot of factors should be taken into consideration, particularly if the decision is discretionary. Such considerations may, at first sight, impede efficiency or effectiveness and appear time consuming and expensive , but their significance and usefulness cannot be assessed by methods of the type of cost-benefit analysis alone.

Let's take as an example the issuing of a town plan, which, in Greek law, is an individual legal decision made by the Prefect. The basic statute of 19.7.1923 lays the rule that a town should grow along the lines provided by a comprehensive town plan, which should satisfy the criteria of health, security, aesthetics, transportation etc. The process starts with the proposal of the interested town, formulated in a tentative plan drafted by its council. This proposal is made public, so that all interested parties have the chance to present their comments and objections, which are scrutinized and judged upon. However, this is not enough. The plan is further inspected by a central expert committee at the Ministry of Town Planning and Environment, which ensures that parochial criteria and considerations do not contradict the general policy and public interest (environmental protection etc.). At the final stage the plan is approved by the Prefect, whose decision is further subjected to internal and external control (appeal to the Minister and to the courts). Similar procedures can be found in such matters as redistribution of land, expropriation for public utility purposes etc. The complexity of such procedures only reflects the complexity of the problems faced by the decision maker, since each step is carefully designed to represent a significant aspect of the problem situation. Where some see games, competition or power struggles, a lawyer sees only the effort to integrate often conflicting interests in one binding decision. Put in other words, the transition from projects to individual legal decisions passes through, affects and is affected by a multitude of systems, which, constitute the environment of the decision.

4.2. Decisions and Actions.

Since decisions and actions are the elements of implementation, a further analysis of these concepts is advisable at this point. In their numerous attempts to formulate a general theory of action, especially under the influence of Parsons, philosophers and sociologists seem to overlook the distinction between the two and to restrict themselves to the study of action, in which some elements of decision are also incorporated. However, a theory of implementation, especially a legal theory, requires a precise delimitation of both concepts and of their interrelationship.

A decision is a mental activity, i.e. processing of information by actors responding to various situations with the help of moral (value preferences) and cultural (logic) systems. As such it may well be made or even recorded without being at all acted upon. ² Action is something different. It is an observable change in the environment (action situation) which follows a decision; it is externalized behavior. ³

While any action presupposes at least an elementary decision, the capacity of pure decision making, distinctly conceived by its implementors for the purpose of controlling future situations, signifies an advanced stage of interaction between man and his environment. The transition from trial and error responses to planned control of the environment by means of rational decision-making owes much to legal thinking. Such decision making involves extrapolation of the future situation,

gathering of relevant information and detailed planning of actions prior to their execution and in view of their anticipated effects. This conscious planning of the future is indispensable, particularly when the costs and /or consequences of the intended action do not allow for trial and error experimentation.

The distinction between decision and action is crucial for the purposes of this essay: since decision controls action, a balanced theory of implementation should be proportionally focused on both. In contrast to other social sciences, the distinction is inherent in legal thought and a great part of administrative law is dedicated to the improvement of decision making. Thus the theory of the individual legal decision (*acte exécutoire*) aims at isolating among the multitude of preparatory and executory decisions the one that contains all the necessary information for controlling the intended action. The various formal and procedural requirements, such as the obligation to acquire expert advice, provide reasons or consult interested parties, aims in fact at improving the quality of this decision. Finally, the external (judicial) control of legality has the last word in ascertaining that the decision was properly made according to the instructions of the program and the general principles of good decision making.

Action, on the other hand, requires equal attention. The feasibility of the action is a serious constraint of the decision, in the sense that the decision should be transformable into action. Moreover under the theoretical concept of the rule of law, administrative actions are not permitted unless especially provided for in formal legal decisions; action non conform with such decisions creates serious legal implications (rights to indemnity, penal sanctions etc).

The degree to which decision can control action is in fact a philosophical matter which has been the object of much controversy among the various philosophical schools. The modern science of decision making approaches the question of the decision/action relation in three basic ways, respectively represented by the rationalist, incrementalist and bounded rationality models of decision making. A cursory view upon these models seems to be useful for the purposes of this study.

The rationalist model of decision making is based on the assumption that for every problem there is an optimal solution and one best way of achieving it. The term optimal should not be misinterpreted for utopian. Such a solution can be reached after all alternatives have been exhaustively scrutinized, an ideal value system has been designed and a feasibility study of implementation has been conducted. What is sought is the best solution and not merely an acceptable or "satisfying" one. It is the fundamental assumption of the rationalist model, that decision can thoroughly control action and that good implementation is attainable with the help of feasibility study, iterative thinking and appropriate control mechanisms. This hard approach, combined with the appropriate value analysis can, in our view, provide the most rigorous treatment of the problems of implementation.

At the opposite end is the incremental model of decision making, proposed by Charles Lindblom. It is founded on the assumption that any change of the status quo can only be partial and limited. The complexity

of public problems, the limited amount of available information and resources, the cost of analysis, the multiplicity of the often conflicting values and goals and the uncertainty of alternative solutions are some of the factors which do not allow for rational decision making. Thus in practice decisions do not emanate from a decision center, which assesses all relevant information and imposes its authoritative viewpoint, but rather from disjointed decisional parts which interact in the process of collective decision making. The necessary coordination is achieved by "partisan mutual adjustment", either adaptive or manipulative, since, for the sake of reaching some compromise, all participants are expected to bear an equal amount of sacrifice. Consequently, the examined alternatives differ among themselves and from the status quo only incrementally. Thus decision making does not aim at a final or optimal solution of a given problem, but rather at a serial analysis of the problem from a multiplicity of decisional points.

The proposed model has an undeniable descriptive value, since in practice many decisions are made in an incremental way. However, Lindblom has attempted to attribute to it normative power as well. Thus he claims that the free competition of all interested participants, each promoting his own values and goals, is the best way of achieving economical and realistic results. This is actually the economist's view of the decision making process, a model inspired by market theories, where values are treated in a way analogous to commodities. Its numerous shortcomings have been extensively commented upon and will not be discussed here. With respect to implementation it should be noted that incrementalism is compatible with approaches which give priority to action and doubt or deny the feasibility of comprehensive planning. It is the underlying assumption of bottom-top approaches to implementation, which emphasize the importance of the street-level decision maker and consider power struggle and compromise as the predominant features of the implementation process.

The model of bounded rationality, which occupies an intermediate position, has developed considerably since it was first formulated by H. Simon in 1945.⁴

Rationality was initially defined as the conduciveness of means to ends, while the choice of goals was not considered a strictly rational process but was viewed under the light of cultural relativism. As such, the theory was descriptive, merely restating what often happens in practice, namely that actions are usually guided by "rules of thumb". It is the basic assumption of the model that people are contented with "satisfying" solutions rather than seek the optimal, since the exhaustive examination of the alternatives is usually impossible and requires a great amount of time and resources. Even in this initial descriptive form the above model contributed significantly to the theory of implementation, because it shifted the focus of attention from the static organization to the dynamic process of decision making.

Later, however, as Simon concentrated on the theory of problem solving, he became more demanding and gradually abandoned the rules of thumb for the sake of utility theory and statistical decision making, which he enthusiastically recommended. Under the influence of such highly refined forms of rationalism as systems analysis and computer modeling Simon included decision making in the sciences of the artificial and

drastically mitigated his views on goal relativism. Thus the model of bounded rationality, while it remains less demanding in terms of processing and evaluating information, has come significantly close to the rationalist approach.

With respect to implementation, the above model has introduced significant insights: by insisting on the effective use of means for the achievement of a specific goal, it emphasized the element of rationality in implementation; by promoting satisfying solutions it introduced a pragmatic managerial attitude in administrative decision making. If the rational model expresses the hard scientific approach to decision making, the model of bounded rationality codifies the popular managerial wisdom.

This brief overview of the decision/action relation confirms the point that both require an equal amount of attention. While the ultimate test of implementation success is what actually happens, action can be shaped and manipulated by a chain of appropriate decisions almost to the last detail. This means that the causes of implementation failures should be sought at either level, that of decision or that of action.

4.3. A Behavioral (black box) Model of Implementation.

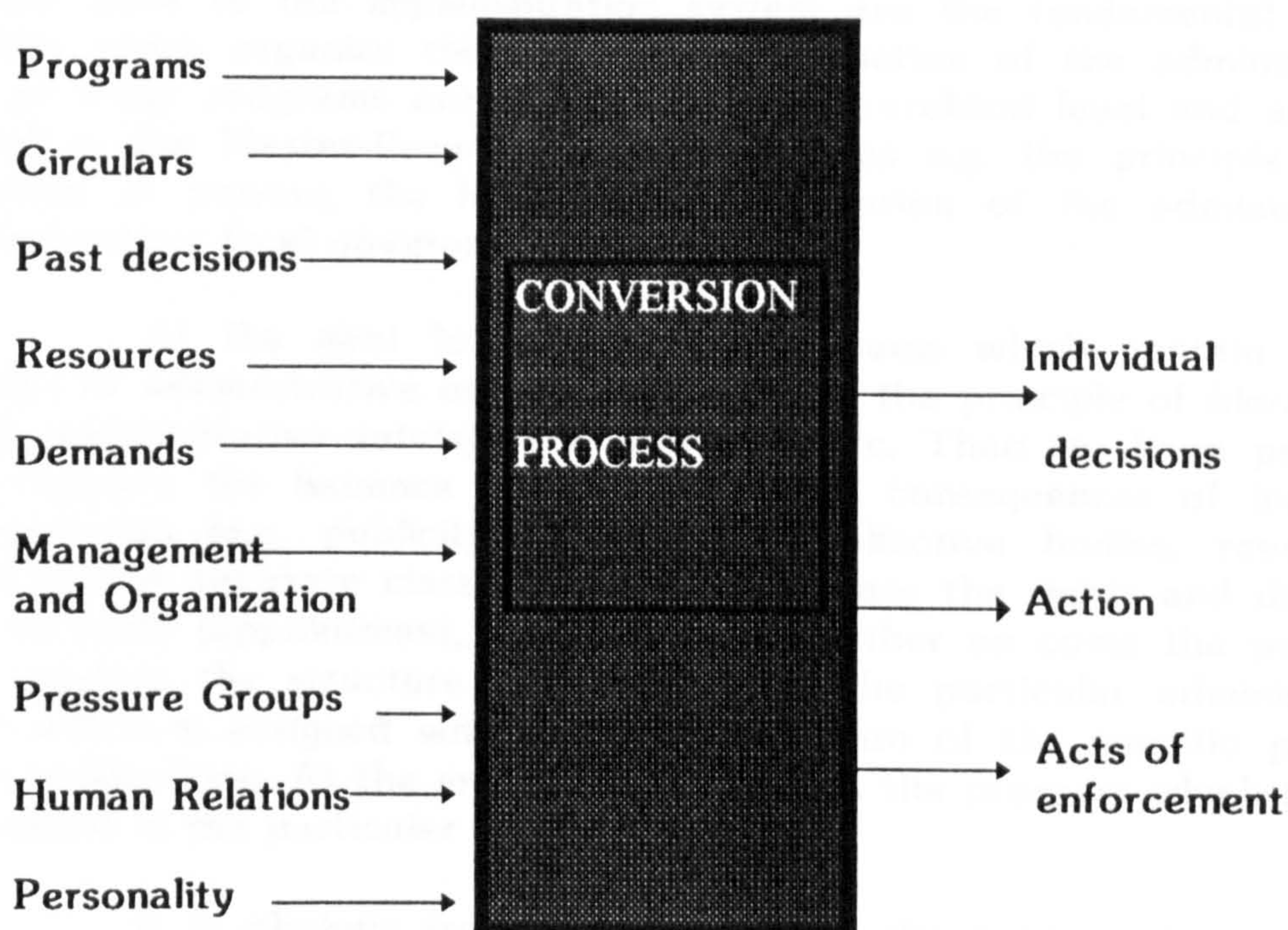
The distinction between decision and action aims at emphasizing an important point, which is rarely made sufficiently clear in non legal theories of implementation, namely that the decision making process is not terminated at the stage of policy formulation but continues well into the implementation stage. Most theories, however, either assume that implementation is merely mechanical or tightly controlled action, where minimal decision-making is involved (most top-bottom theories) or, on the contrary, claim that it is action which determines the decision - making process at all levels, from policy formulation down to implementation (bottom-top theories). Either way with respect to implementation the focus is on action, while the decisional aspect is neglected and a fragmented view of implementation is presented. Moreover, while a multiplicity of variables are proposed and purport to explain implementation, it is commonly admitted that neither the crucial variables have been identified nor is the implementation process precisely conceptualized and delimited yet.

The failure to formulate a comprehensive theory of implementation in spite of the rich material available may, in our view, be attributed to insufficient understanding of legal theory and particularly administrative law. The complexity of the implementation process is reflected in the complexity of administrative law. To those familiar with the latter it is clear not only that implementation consists of both decisions and actions but, particularly, that it is the quality of the decision which determines the quality of the action. These decisions cannot be logically or mechanically inferred from the program, but involve a good deal of policy making at the individual level which, though of a limited scope, requires great skill and capacity.

Since the decisions of implementation are legal decisions and the respective actions are legally controlled actions, a theory of implementation cannot overlook the legal element. On the other hand an exclusively legal theory cannot account for the difficulties of transforming decisions into action; with the assistance of the sciences of decision -making, policy -making, action theory and cybernetics, the problem of action becomes less incomprehensible to the lawyer and easier to manipulate. However, it should be kept in mind that better action depends primarily on the improvement of the administrative decision-making process. Thus what is required is a comprehensive theory of implementation with balanced emphasis on both decisions and actions.

Such a view of implementation should start with an external (black box) model depicting the behavior of the implementation system in relation to its environment. This model represents implementation as a subsystem of a greater system (law-making process) and describes its connections with its environment in terms of inputs and outputs. Systems methodology, as opposed to analytical thinking, recommends as a first step the design of such a model because it provides a holistic conception of the problem under study. Thus the implementation system should first be depicted as a black box which receives inputs and produces outputs without any reference to the conversion process, i.e. the way the former are transformed into the latter. Such a behavioral (black box) model of the implementation system is presented in the following Diagram (1).

Since it is already established that the outputs of the implementation system are legal decisions and actions, its inputs should be legal decisions and actions as well; the legal element can only be present in the output if it is maintained throughout the conversion process. However, since the output decisions are of individual character, the input ones must be of a different kind, namely legal decisions of the program type.



4.3.1. Inputs: Classificational Analysis.

- a) Programs.
- b) Circulars.
- c) Past decisions.
- d) Resources.
- e) Demands.
- f) Management and Organization
- g) Pressure groups.
- h) Human relations.
- j) Personality.

We now proceed to a brief analysis of the inputs, (decisions or actions) to the implementation system, conceived as a black box model.

a) Programs are the principal inputs to the implementation system. In fact they are its basic connections with the hierarchical suprasystems within the law-making process. As we have already mentioned, programs are legal decisions of general and abstract character, usually embodied in statutes or regulatory administrative acts, regulating an indefinite number of present or future situations. Most theories readily identify programs as a crucial variable of the implementation process. However they usually focus exclusively on the specific program under implementation, while the complex network of interrelated programs which constitute the backbone of the implementation process are hardly taken into consideration at all. Therefore, we will attempt here a more systematic classification of the numerous programs which enter the implementation system.

Since implementation does not take place in a vacuum but in the context of the gigantic system of the state (law making process), a standard input to the implementation system are the fundamental general programs which organize the structure and function of the administration. Some of these programs are of the highest hierarchical level and are even included in the Master-Program (Constitution) as e.g. the principle of the separation of powers, the hierarchical organization of the administration, decentralization, local government etc.

At the next level we have programs which contain general principles of administrative organization, such as the principle of hierarchical control, administrative tutelage, responsibility etc. Then we have programs which regulate the issuance, validity, and legal consequences of individual legal decisions (e.g. publicity, synthesis of collective bodies, revocation, reasons etc) A separate class of programs regulate the rights and duties of public servants (appointment, discipline etc.). Further on come the programs which regulate the structure and function of the particular administrative agency which is assigned with the implementation of the specific program under consideration. At the end of the line comes the program which is to be implemented in the particular case.

It is obvious from the above that the implementor entrusted with the implementation of a specific program does not face an easy task. His implementing activities are subjected to a number of serious constraints

which emanate from the above mentioned programs and his primary duty is to identify those constraints and integrate them with his own particular program.

At the level of the particular program things are equally complicated. Seldom are programs so self contained as to be directly implementable without reference to other programs. Public problems are usually the object of numerous consecutive regulatory attempts; thus most new programs come to modify, complement or abolish existing programs which have already treated some aspect of the same problem. When faced with a specific case, the implementor must, in the first place, identify the appropriate program to be implemented. In contrast to e.g. civil law, administrative programs are subject to frequent amendments, so that uncertainty as to the law in force is a perennial complaint of the administrators worldwide. Since the quality of implementation depends to a great extent on the quality of the program, the input of the right program is of primary importance. Nevertheless, a brief survey of court files would reveal that the incorrect choice of program is a common ground for judicial review. Even in clear cut cases when a specific program is rightly selected and applied, it usually draws along a number of related programs which may have an impact upon its interpretation. Procedural requirements such as hearings, consultations, appeals etc, often blamed as costly and inefficient, provide nevertheless the implementator with the opportunity of hearing conflicting views about the law in force before a final decision is reached.

In conclusion, the difficulty of choosing the right program as an input to the implementation system is quite comprehensible, given the fact that each new program always upsets the existing network of programs and literally has to fight its own way among them with the help of creative interpretation. Thus, the capacity to interrelate relevant programs, which are separately stored in the memory of the system, seems to be an essential prerequisite for good implementation.

b) Circulars

Programs have a certain duration and are usually implemented by different authorities in different places and at different times. It is thus of primary importance that their application is performed according to the principles of good administration. Such principles, often so fundamental as to be constitutionally guaranteed, are, among others, the principle of equality, consistency, proportionality, predictability, stability and uniformity. The observance of those principles is attained by means of the administrative circulars, which complement or interpret the law and provide guidance for the exercise of both duties and discretionary powers.

Circulars are an important input to the implementation system with a heavy impact upon the decisional output. In practice most implementors happen to know the law only indirectly through the use of circulars. Therefore the preparation of circulars requires profound knowledge of the subject matter regulated by a certain program, as well as great skill and expertise in foreseeing and handling the various theoretical and practical problems which are bound to arise in the course of its implementation. It should be mentioned that, in spite of their influence in administrative decision

making, circulars are not legal decisions strictly speaking and thus are not directly subject to judicial control, even when they dictate express orders to the competent authorities.

In sum, the ability to draft precise and lucid circulars is another important prerequisite for good implementation.

c) Past decisions

Since usually programs are repeatedly implemented over long periods of time and in variable situations, past decisions concerning the same program contribute to its development. Such decisions may emanate either from administrative or from judicial authorities and may refer either to the particular program being implemented or to the standard programs which provide the general framework of implementation.

During the course of a program's implementation most of its major procedural or substantive issues are bound to become the object of conflict among interested parties; in that way ample guidance for future implementation is gradually accumulated in the form of past decisions. The extent to which these decisions are binding, i.e. control the content of future output decisions, depends on their nature (administrative or judicial) and on their degree of relevance to the case in consideration (i.e. whether they concern the same or a different case). Thus in most legal systems issues settled by judicial review constitute precedents for future implementation. If this is the law in certain countries (Anglo-Saxon), it is no less the reality in most continental countries as well.

The same principle applies, though to a lesser degree, to issues resolved by administrative decisions. Repeated administrative decisions on a specific issue tend to develop into administrative practices which, once adopted, are seldom abandoned. Such practices are favored by administrators as time and energy saving, but are also very useful for promoting stability, certainty and uniformity in implementation. Administrative practices are subordinate to programs and can easily be modified by them. However abrupt discontinuity in the application of a standard practice may violate legitimate expectations and be considered illegal unless satisfactory reasons are provided.

In conclusion, the input of past decisions should be considered as equally if not more important than the program itself, since they represent its actual interpretation by the competent authorities. In fact sometimes such interpretations may even be at variance with the original conception of the program.

d) Resources

The term resources is used here to describe all values which are instrumental for the implementation of a specific program. These values may be material, such as money, buildings, equipment, or non material, such as skill support, expertise etc. While nearly all of these resources can be evaluated in monetary units, thereby providing the total sum of funds

required for the implementation of a program (which is important for budgetary considerations), each one possesses distinct features which may be crucial for good implementation. Thus the availability of funds cannot always make up for e.g. the shortage of skilled engineers or trained social workers. Programs which are not supported by the appropriate amount of instrumental values can never reach the stage of implementation and are confined to the state of wishful thinking.

The distribution of resources among different classes of public problems (welfare, defense, education etc) and among specific programs within each class is usually the task of central authorities, distinct from those which actually formulate each program. Thus competition and conflicts among subordinate authorities for ensuring the necessary resources are not uncommon. As a result many well conceived programs may later become the victims of poor allocation of resources.

e) Demands

Demands are the information which enters the political system from the environment and activates the law-making process. After the policy is formulated, demands are classified in the program and their satisfaction is provided under the conditions set by the program. Therefore any such demands submitted thereafter trigger the implementation process. In other words demands are the stimulus for the retrieval of the program by the implementor. This empirical phenomenon, described in the terms of information theory and cybernetics, is presented in legal theory as a kind of formal syllogism determined by legal reasoning.

The submittal of demands is usually formal and is subjected to certain procedural requirements such as fixed terms, deadlines etc., so that the implementation system will not be overburdened beyond its capacity. However, since most programs remain stored and inactive until a relevant demand is made, the required formalities should be in accordance to the particularities of the specific program, so as not to render its implementation unnecessarily difficult.

f) Management and Organization.

The implementation of programs is usually undertaken by the administrative mechanism of the state; public administration is the principal implementor of programs. The various domains of state intervention, each corresponding to the respective public problem area (health, education, welfare e.t.c.) are assigned to specialized public services, central, local or public corporations.

The implementing capacity of the existing administrative agencies with respect to new programs should be assessed in advance at the stage of policy formulation in view of the particularities of each program and the anticipated difficulties of implementation. One and the same agency may be appropriate for the implementation of one kind of program and inappropriate for another. If the available organization is considered deficient, the formulator of the program should introduce the necessary structural or functional changes.

The implementation of certain programs may require the cooperation of more than one public services or even the participation of private citizens in the process. In such cases the program formulator must take in advance the necessary measures for the coordination of activities. Of particular importance is the neutralization of indifference, procrastination or interagency competition by means of the appropriate control mechanisms.

As a rule, the implementation process should be designed so as to include the minimal number of decision modes (linkages or clearance points). Undue increase of their number will inevitably increase the probability of error or malfunction. When the implementation of a specific program requires the involvement of private persons as implementors, their number should be in the right proportion, otherwise the success of implementation may be undermined.

g) Pressure groups.

Pressure groups are private organizations of various interests, which seek to affect the law making process to their benefit. Since programs affect all kinds of interests, pressure groups are usually mobilized into action at the stage of policy formulation, but often continue to pursue their goals throughout the implementation process. While pressure groups are active since the Middle Ages (guilds etc), it is only the modern state which has legalized the action of such important pressure groups as trade unions, syndicates etc. The usual practices of pressure groups are persuasion and inducement. Some pressure groups are so organized as to keep permanent lobbies (e.g. American Medical Association) and to engage in environmental scanning in order to be constantly vigilant for the protection of their interests.

h) Human relations.

Good human relations are the indispensable supplement of good organization. The term human relations is used here to define not only the interpersonal relations among implementors but primarily their attitude towards the program and its addressees. Even a well organized agency may obstruct the implementation of a program if it adopts a negative stance towards it. Thus ensuring the support of the implementors should be a major concern of the policy designer; he should not only prevent the open, concealed or disguised boycotting of the program but, if possible, promote their willful cooperation.

Good public relations are an equally important prerequisite of good implementation. Their importance has only lately been appreciated and there is a recent effort to apply the principles of marketing for analyzing and improving communication with the public

i) Personality.

Decision making in implementation follows a rational model which assigns only a lesser role to the personality of the individual decision maker. Even so, personality traits of the specific implementor do have an impact on the outcome of the implementation process; while the optimal

decision-making model constitutes the software of the decision-making system, it is the personality of the decision maker which constitutes its hardware, thus providing the potential and the constraints which determine the degree of approximation of the optimal model in each particular case. Historically it was the famous Greek legislator Solon who first observed that neither law nor religion alone can benefit a society because the really important factor is the actual decision maker.

Modern theory of management has little to add to this point; instead it analyses the personality traits which appertain to the good manager: initiative, leadership, forecasting capacity, capacity to estimate risks and uncertainty, ability for creative synthesis, talent in handling interpersonal relations, emotional stability etc. Lack of these qualities may have a negative effect on decision making in exactly the same way as a defective computer may provide false data. A realistic model of implementation should therefore take personality into serious consideration: a good manager may even make up for some program deficiencies, while even the best designed program cannot prevent the failure due to an incompetent manager.

4.3.2. Outputs: Classificational Analysis

- A. Individual Legal Decisions.
- B. Actions.
- C. Acts of Enforcement.

As shown in Diagram (1) the outputs of the implementation system, irrespective of the nature of the program, can be classified in three categories:

- A) Individual legal decisions,
- B) Actions and
- C) Acts of enforcement.

A) The first output of the implementation system are the individual legal decisions. The notion of the individual legal decision has already been discussed above but a more precise legal definition is necessary at this point. Thus an administrative legal decision is a decision which applies the program to an individual case, thereby establishing, altering or abolishing a legal situation. Such a decision emanates from an administrative authority and is related to the function of a public service.

From the above definition it follows that:

I) Implementation is performed by administrative authorities only; legislative bodies and courts do not participate in the implementation process. The term administrative authority is used in a broad sense including not only public (governmental) persons and bodies strictly speaking, but also private or semi-private persons or bodies (e.g. professional bodies, nationalized industries, quangos etc,) which exercise public administrative functions, i.e. are entrusted with the implementation of public programs.

II) Individual legal decisions apply the program to variable individual situations and are clearly distinguished from program (rule) - formulating

decisions, which may also emanate from administrative authorities (delegated legislation). Thus an individual legal decision concerns a person or a number of persons which are individually identified or identifiable at the time of the issuance of the decision. They may also concern a number of persons having common characteristics, on the basis of which they can be personally identified at the time of the issuance of the decision ; these are the so-called individual legal decisions of general character (*Allgemeinverfügungen*), which are quite common in administrative practice (e.g. the decision which approves a town plan). On the contrary, administrative decisions of regulatory character concern an indefinite number of persons, whose identity cannot be determined at the time of the issuance of the decision (*Verwaltungsmaßnahmen*). In other words the criterion of distinction lies in the generality of the application: the content of the individual decision is exhausted by its application on a definite number of cases, while the regulatory decision can be applied indefinitely.

III) The individual legal decision implements a public policy program. A public policy program organizes an intervention in society for the purpose of attaining a public goal or rendering a public service and therefore its implementation is accordingly guaranteed by special prerogatives. In order to explain the particular characteristics of public program implementation French legal theory emphasizes the criterion of public service (*service publique*), German theory the criterion of power (*Hochheitliche Massnahme*) and Greek theory the criterion of public goal, each focusing on a particular aspect of implementation, namely the means (German), the purpose (Greek) or both (French).

Thus, with respect to implementation, relevant are only the administrative decisions which meet all the above criteria. The various activities of administration which concern the management of its various private resources (*actes de gestion privée, fiscus*), i.e. those activities performed according to private law, are of no interest to implementation.

Individual legal decisions are characterized by what in legal terms is called bilateral legal effect, meaning that they contain information directly controlling the future actions of both administrative authorities and private citizens. More specifically, following the issuance of such a decision the administrative authority is bound to proceed to the planned intervention as scheduled in the decision, while the affected citizen has to comply to the prescriptions of the decision.

Irrespective of their content, which is multivarious, in most developed legal systems the issuance of individual legal decisions is subjected to special substantial and procedural rules. Thus, for instance, the issuing authority must be competent "*ratione loco, temporae et materiae*", that is it must act within the limits of its jurisdiction. Moreover, individual legal decisions are subjected to certain formalities, such as the written form, publication and notification to their addressee. Discretionary power is also exercised according to certain general rules, which will be discussed below. There is a general obligation of administrative authorities to give reasons for their decisions; reasons may be either incorporated in the decision or inferred from other preparatory acts such as opinions, advice etc. For reasons of legal stability and protection of acquired rights, legal decisions are

usually irrevocable; illegal ones may be revoked within reasonable time or indefinitely in case of fraud and/or for the protection of the public interest.

The above rules are the product of long administrative and legal experience, their rationale serving a number of public goals such as stability and transparency in administrative activities. They actually constitute fundamental constraints of implementing authorities, which should be observed irrespective of the particularities of the program or the specific situation.

B) Action is the final outcome of the entire law-making process, designed and minutely prescribed by the individual legal decision. The great variety of actions can be classified in three broadly defined categories.

The first category includes acts performed in compliance with police regulations. Police is a generic term, coined by French theory and covering a wide spectrum of regulatory activities of the administration concerning the so called "trptych" of public order, "securite, salubrite, tranquillite". Thus, regulations issued by the administration refer to public programs related to public health, environmental protection, transportation, control of professions, press control etc. The implementation of such regulations may proceed either directly, when the addressees of the rules comply with their content by abstaining from or performing the prescribed action, or indirectly, when such actions or omissions should be preceded by an individual legal decision, usually of the type of a license granted with or without conditions. In conclusion, it is the administrative authority which prescribes what is the desired kind of action or omission in each particular case, but it is the private citizen who, in the course of pursuing his own activities, is expected to modify his behavior in compliance with the decision. As we shall see later, his compliance is ensured by a variety of sanctions.

The second category includes the cases whereby the administration not only designs the action, but performs it as well by its own agents. Examples can be found in the provision of certain public services such as defense, security, education, transportation, medical and welfare services etc. It is self understood that in those cases the performance of the desired action is highly probable, because it is guaranteed by the various intraadministrative control mechanisms (internal controls, appeals, disciplinary sanctions etc).

The third category is actually a subcategory of the second and includes the cases whereby the state assigns the implementation of public programs to private citizens. The assignment may take various legal forms such as concessions, administrative contracts etc. This category differs from the first in that the private citizens are not simply subjected to certain constraints while pursuing their own activities, but literally act in the capacity of implementors, that is they perform a public service. It also differs from the second category in that the private citizens, due to the temporary or extraordinary character of their involvement in the implementation process are subjected to different forms of control (annulation of contracts, fines etc).

The difference between the three modes of action is clearly manifested in cases where the same kind of public service (e.g. education, medical care, transportation) may be performed either by the state itself (public schools, public transportation) or by private persons (private schools or private hospitals operating under license) or by citizens acting on the basis of official concession (transportation, public works etc).

From the point of view of controllability, the conformity of action to decision is most securely guaranteed when both are assigned to administrative authorities. When the implementors of public programs are private persons, their compliance depends on the selection of the appropriate levers and control mechanisms. Control is quite problematic in the case of private persons pursuing private programs under the constraints of police regulations. The relative ineffectiveness of the existing control mechanisms, partly due to the unwillingness of the state to enforce them, is manifested in the well known examples of arbitrary urban development, environmental pollution etc.

C) Acts of enforcement. Modern administration is characterized by the rendering of public services rather than the exercise of power or coercion. This was first pointed out by the great French jurist Leon Duguit in his famous book. "The transformation of public law" and the same holds true today. Both the power and authority base of modern administration are greatly restricted; coercion is replaced by persuasion. Still, the administration maintains a powerful control mechanism which is put in motion as the last resort to ensure the conformity of the action to the decision. While as a rule action voluntarily follows the decision, the administration has at its disposal various means of restoring the desired connection between the two in case of non compliance.

A great part of administrative law is dedicated to the law of enforcement, which is rich and subject to constant updating. A brief comparative review of enforcement methods in continental legal systems provides a basically common pattern.

In the first place, if the addressee of the administrative decision refuses to behave as prescribed, the execution of the desired action is undertaken by a third party instead, usually administrative officials, at the expense of the addressee (Ersatzvornahme). Such is e.g. the compulsory transportation of an illegally parked car by the police or by third persons hired by it. If the nature of the action does not permit the application of this method, the addressee may be obliged to pay an additional sum of money, the amount of which varies depending on the particularities of the situation (Zwangsgeld). Ultima ratio of the enforcement procedure is the forced execution (unmittelbare Zwang) against the person or the property of the addressee (e.g. sealing of a dangerous or unfit building, forced expulsion of undesirable foreigners etc).

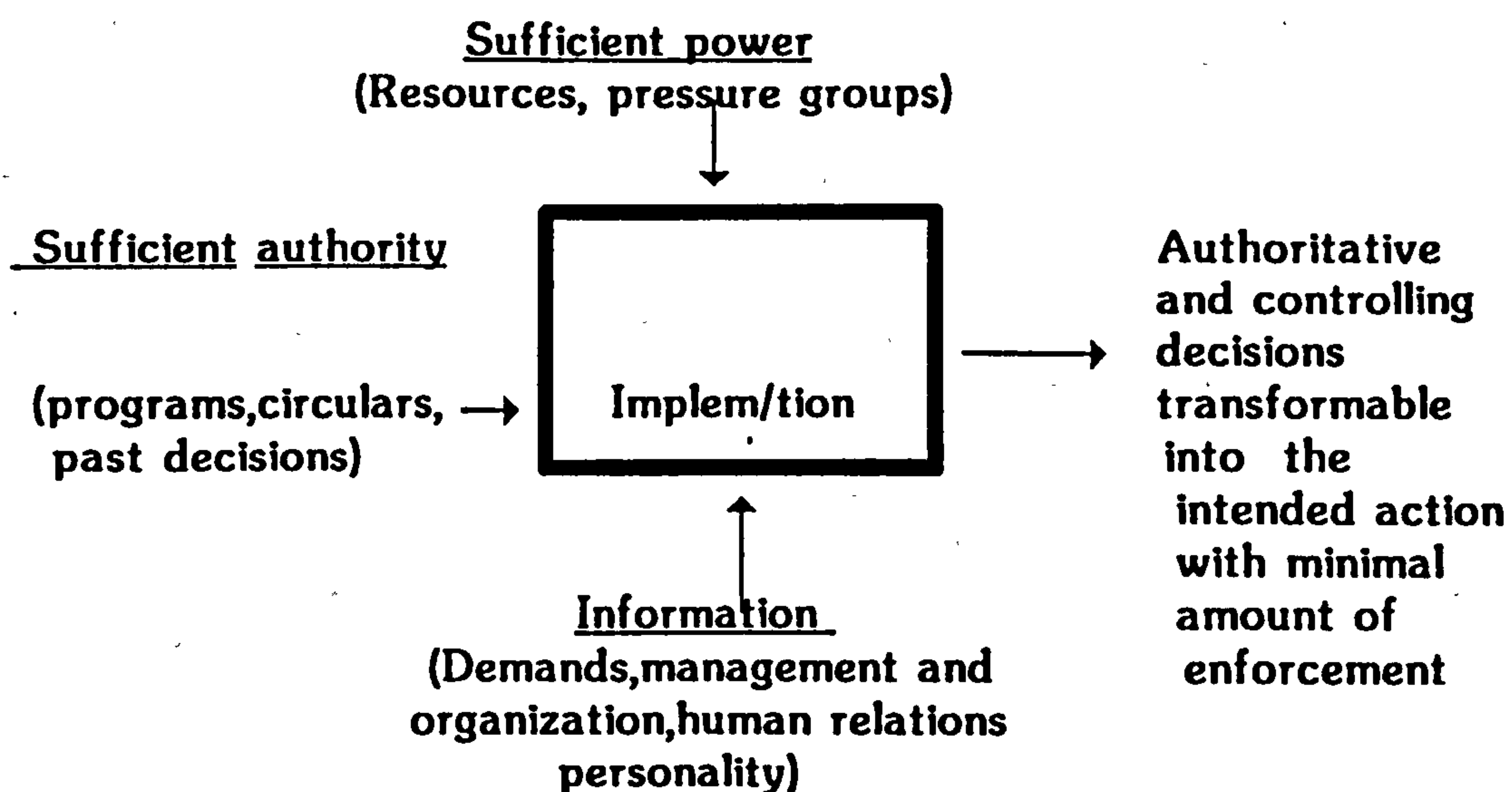
The most effective means of control at the disposal of the administration are administrative sanctions. These sanctions have a great variety and are widely used, being more flexible than penal sanctions, although they are sometimes criticized as an usurpation of the penal authority of the courts. Such sanctions are provided for by statutes,

regulations or administrative contracts they may be pecuniary (often amounting to substantial sums of money) or disciplinary (e.g. sanctions imposed to students by university authorities); they may be applied to consumers of public services (e.g. discontinuity of use of public utilities) or to the beneficiaries of administrative authorizations and licenses (e.g. revocation of licenses in case of non conformity with its conditions). In sum, administrative sanctions are an indispensable supplement of the implementation process and the most effective guarantee for ensuring the desired outcome.⁵

The above legal analysis of the outputs of the implementation system gives us an idea of the complexity of the process by which a program is gradually materialized. The three outputs which constitute the final product of implementation appear in different combinations every time. Thus in some cases the prescribed action is immediately and accurately performed so that no enforcement is necessary, while in other cases compliance is problematic and the principal weight is on enforcement.

The precise identification of the outputs delimits implementation against the other stages of the law-making process, especially program formulation, and is thus an indispensable precondition for the location of implementation failures, which will be the object of the next chapter.

Having located the crucial inputs and outputs of the implementation system, we can now study the black box model from a different perspective and ask the question: what is the optimal behavior of the implementation system viewed as a black box or, in other words, what are its desirable outputs and how can they be attained ? In view of the preceeding analysis it is obvious that the desirable outputs of the implementation system are authoritative and controlling decisions transformable into the intended action with the minimal amount of enforcement. In order to have such an output the appropriate inputs are power, authority and information. Thus the problem can be formulated as follows: What is the contribution of each input to the desired properties of the output. This is shown in the following Diagram:



In the above model, by authority we mean an abstraction from a cluster of inputs consisting of programs, circulars and past decisions. Common in all these inputs is the legal element which transmits the authority of the program to the decisions and actions of implementation, thereby eliciting voluntary compliance from the part of the addressees. By power we mean an abstraction from a cluster of inputs consisting of resources and pressure groups. Common element of these inputs is the supply of matter/energy to the implementation system in the form of various combinations of base values, which constitute the raw material to be converted into actions. By information we mean an abstraction from a cluster of inputs consisting of demands, management and organization, human relations and personality. It is from the conversion of information that decisions are made. More specifically, demands provide the data for the decision, management and organization determines the capacity of the decisional channels, while human relations and personality have an impact upon the way decisions are made from the above raw material.

4.3.3. Turning Inputs into Outputs: Impact Analysis

In view of the above the next step is to proceed to impact analysis.⁶ The term impact analysis is used here to describe the study of the relationship among inputs as well as the influence of inputs on the desired outputs of the system. Since an exhaustive analysis of all possible combinations among inputs exceeds the purposes of this study, we shall selectively examine some characteristic cases of mutual influence among inputs and of their impact on the processing capacity and the outputs of the implementation system.

a) Demands are the first to be examined since they are the input which usually activates the implementation system. Demands will first be discussed with respect to certain characteristics, which mostly affect the conversion process and the outputs of the implementation system, namely their volume, urgency, degree of conflict and attitude.

The impact of the volume of demands on the processing capacity of the implementation system is evident. Assuming that the processing capacity is limited, the volume of demands should be well calculated so as never to exceed those limits. It is common experience that any increase of the volume of demands above the acceptable level will create strain in the system and will adversely affect the desired output.

The urgency of demands also has a direct impact on the implementation system. Pressing demands, especially if unpredicted, may put the implementation system in a state of crisis or even, in extreme cases, collapse. Such demands, usually generated by major disasters or states of emergency (wars, floods, earthquakes etc) belong to a particular category of implementation problems and require special handling by the appropriate methods of crisis management.

The input of conflicting demands constitutes an additional burden to the implementation system. They often cause delays or disorder in the conversion process and contradictory decisions at the output.

Demands are formulated and submitted by specific persons, whose attitude towards the administration may vary depending on their background, education, previous experience etc. Since the interaction between applicant and implementor is not terminated with the formal submittal of the demand but usually continues throughout the implementation process (hearings, appeals etc), the attitude of the former towards the latter may facilitate or impede a favorable final outcome. It is only natural that implementors react better to cooperative and bona fide applicants than to those who withhold information, try to mislead, bribe or use undue pressure. Generally speaking the attitude of the public towards the administration depends on the system's political culture, whose study is the object of the so-called ecology of administration.

With respect to the relationship between demands and the other inputs to the implementation system, we can briefly note the following:

aa) Demands - Pressure groups. While demands are usually submitted by individuals, they often refer to issues of general interest which attract the attention, support or opposition of pressure groups (mass media, professional associations etc). Pressure groups may either get involved in the policy making process from the initial stages of filtering and program formulation or appear later at the implementation stage in order to back up or oppose individual demands with the various means at their disposal (broadcasts, publications, demonstrations, strikes, lobbying etc). Generally speaking, the above mentioned effects of the volume, urgency etc of demands on the processing capacity and the outputs of the implementation system are multiplied if combined with the activity of pressure groups. Good policy design should predict the potential involvement of pressure groups in the implementation process and arrange for their participation at the early stage of program formulation. The interference of pressure groups at the implementation stage is bound to complicate the conversion process and render rational decision making problematic.

ab) Demands - Organization. If the volume and / or urgency of demands increases beyond the expected limits, it may exceed the processing capacity of the existing organization. In such cases implementation will be severely handicapped unless new organizational arrangements are made in order to handle the additional flow of demands. Nevertheless, the strain of organizational readjustment, if added on the usual problems of implementors, might adversely affect the quality of the output decisions.

ac) Demands - Human relations. The volume and urgency of demands evidently has a negative impact on the state of human relations between implementors and public. Poor human relations resulting from mismanagement may obstruct the access of the public to the agency and discourage the submittal of demands by those entitled to the benefits of the program. On the other hand, poor management, characterized by corruption, negligence etc, may encourage the submittal of demands by non beneficiaries of the program, thus unduly overburdening the implementation system.

ad) Demands- Resources. The relationship between demands and resources is equally self evident. If the volume of demands is greater than expected, there is bound to be a shortage of the resources required for their

satisfaction. It is one of the central problems of administration that demands nearly always exceed the available resources. In practice such cases are usually treated by the transfer of resources from one program to another, thus creating problems for implementation. This method has the additional disadvantage of requiring a premature evaluation of the relative importance of programs before their implementation is completed. The expected volume of demands should therefore be calculated, if possible, in advance, before the final distribution of resources among programs, i.e. at the stage of program formulation. However, the need for cuts, especially with respect to long term programs, often arises in the course of implementation and constitutes a source of frustration for both applicants and implementors; for the former because of the unfulfilment of their legitimate expectations, for the latter because of the necessity to abandon adopted practices and to reformulate their criteria of discretion in view of the new situation.

ae) Demands - Past decisions. The volume of demands is directly affected by past decisions, because usually the favorable or unfavorable settlement of an issue by judicial or administrative decisions respectively encourages or discourages the submittal of similar demands. Analogous is the effect of past decisions on conflicting demands.

Sometimes, however, conflicting demands generate contradictory decisions which, in their turn, trigger more conflicting demands (snowball effect). The resulting confusion and uncertainty as to the output requires the necessary control, usually performed by higher level administrative or judicial authorities.

f) Demands - Program. The relationship between demands and program is another central issue of administrative law. Programs deal with classified demands only and, therefore, the principal task of the implementator is to ascertain whether or not the submitted demands fall in the classification of the program. Since the scrutinization of the validity of demands is a time consuming and costly process, programs should provide filtering procedures, which will permit the screening of obviously invalid demands at the earliest stage possible. A distinction should be made, however, between invalid demands and demands which can be satisfied by means of a creative interpretation of the program. In fact such demands promote the adaptability of the program to unforeseen situations and protect it against frequent amendments.

A well designed program should provide for procedures which facilitate the submittal of all classified demands. For that purpose programs should be properly communicated to the public. In most legal systems, special statutes provide for the methods of program publicity (publication in the official gazette, local press etc). Publicity is so important that usually courts refuse to apply programs not properly communicated to the public, while administrative decisions issued on the basis of such programs are subject to quashing.

Moreover, implementing agencies should take additional measures for informing the public as to their rights and duties with respect to a specific program. Such measures are particularly recommended if the addressees of the program have limited access to formal means of publication (disadvantaged minorities, people with low education etc).

b) Pressure Groups. As we have already mentioned the involvement of pressure groups in the implementation process is usually detrimental; in order to avoid this interference, pressure groups should be provided with the opportunity to participate effectively in the stage of policy formulation.

ba) With respect to the relationship between pressure groups and organization it should be noted that the reaction of pressure groups may obstruct the implementation of a program by neutralizing the enforcement mechanism of the state. Since modern administration is usually reluctant to use effective controls, the opposition of pressure groups may frustrate even the best designed organization. A characteristic example is the Greek law N.815/1978 concerning the restructuring of higher education. This law, though voted by a strong parliamentary majority, was effectively blocked by the militant reaction of student unions and was never implemented.

bb) Pressure groups - Human relations - Personality. Pressure groups opposing the program may offset the favorable impact of other informal inputs to implementation process such as human relations and/or personality. They may also shape, favorably or unfavorably, the image of implementors occupying strategic positions in the implementation process, thereby indirectly affecting the decision making process.

bc) Pressure groups - Budget. Pressure groups using the appropriate practices (lobbying etc) may affect the financing of a program at the stage of implementation by influencing the allocation of budgetary funds.

bd) Pressure groups - Past decisions. Pressure groups, especially massmedia, sometimes present to the public biased pictures of the implementation process in order to expose and intimidate the decision makers and thus achieve the reversal of unfavorable administrative practices.

be) Pressure groups - Program. As we have already mentioned, the formulation of programs without prior consultation of interested pressure groups is bound to create problems at the stage of implementation. This principle applies to both parliamentary and delegated legislation; particularly with respect to the latter the obligation to publicize the proposed rules and hear comments and objections is often guaranteed by statute and subjected to judicial control (e.g. Administrative Procedure Act of the United States).

ca) Human relations - Organization. We have already discussed the complementary relationship between human relations and organization. Human relations, even if not taken as the quintessence of organization as some theories consider them, are nevertheless an important element of organizations. Organization is only a structure, an interrelationship of rules with objects, which should be set in motion by human relations. We could say that good human relations is the lubrication of every well designed implementation machine.

cb) Human relations and personality, though belonging to the informal parts of an organization should not underestimated. An organization can never be accurately described unless its informal connections are precisely identified. Sometimes the impact of personality upon the formal structure of an organization may be so powerful as to transform it temporarily and informally. Thus a formally autocratic organization can be run democratically by a democratic minded manager. The appointment of managers whose personality fits the special requirements of their task is a sophisticated way of enhancing the processing capacity of implementation systems.

It is a popular thesis of some implementation theories that organizations should be designed so as to promote, above all, the self actualization of their agents. As we have already discussed above (chapter 1) these theories overlook the fact that the role requirements are designed to promote the purposes of the organization and not the personal needs of the implementors. Such views can only be interpreted as a reaction against theories of the opposite extreme, which completely disregard human needs. Well designed organization should make on personality only such demands as dictated by the nature of the task (e.g. military organizations evidently make heavier demands than welfare services).

da) Organization - Budget. It is self evident that poor organization leads to the squandering and waste of resources. On the other hand, insufficient resources may prevent the provision of organizational facilities necessary for good implementation (e.g. special training of staff, costly investigations, sophisticated analysis of alternatives, expert opinions etc).

db) Organization - Past decisions. Judicial decisions which refer to the structure and function of the implementation process (e.g. synthesis of collective bodies, procedural issues etc) should always be respected in future cases. Their violation may expose substantively good decisions to the risk of quashing, thus causing unnecessary delays and complications in the implementation process.

4.4 A Flow Model of Implementation.

4.4.1. The Nature of Administrative Decision

Making: Routinized and Standardized Decisions.

The preceding analysis has identified the main inputs to the implementation system, which are transformed into the decisions and actions of implementation. It has also established the correlation between the necessary properties of the inputs, i.e. authority, power and information, and the desired outputs, i.e. authoritative decisions effectively controlling the intended actions. Moreover, impact analysis has indicated some of the basic interactions among inputs and outputs.

It is now time to open the black box and examine more closely the process by which inputs are converted into outputs. For that purpose we

suggest the design of a flow model depicting the conversion process as shown in the following Diagram II.

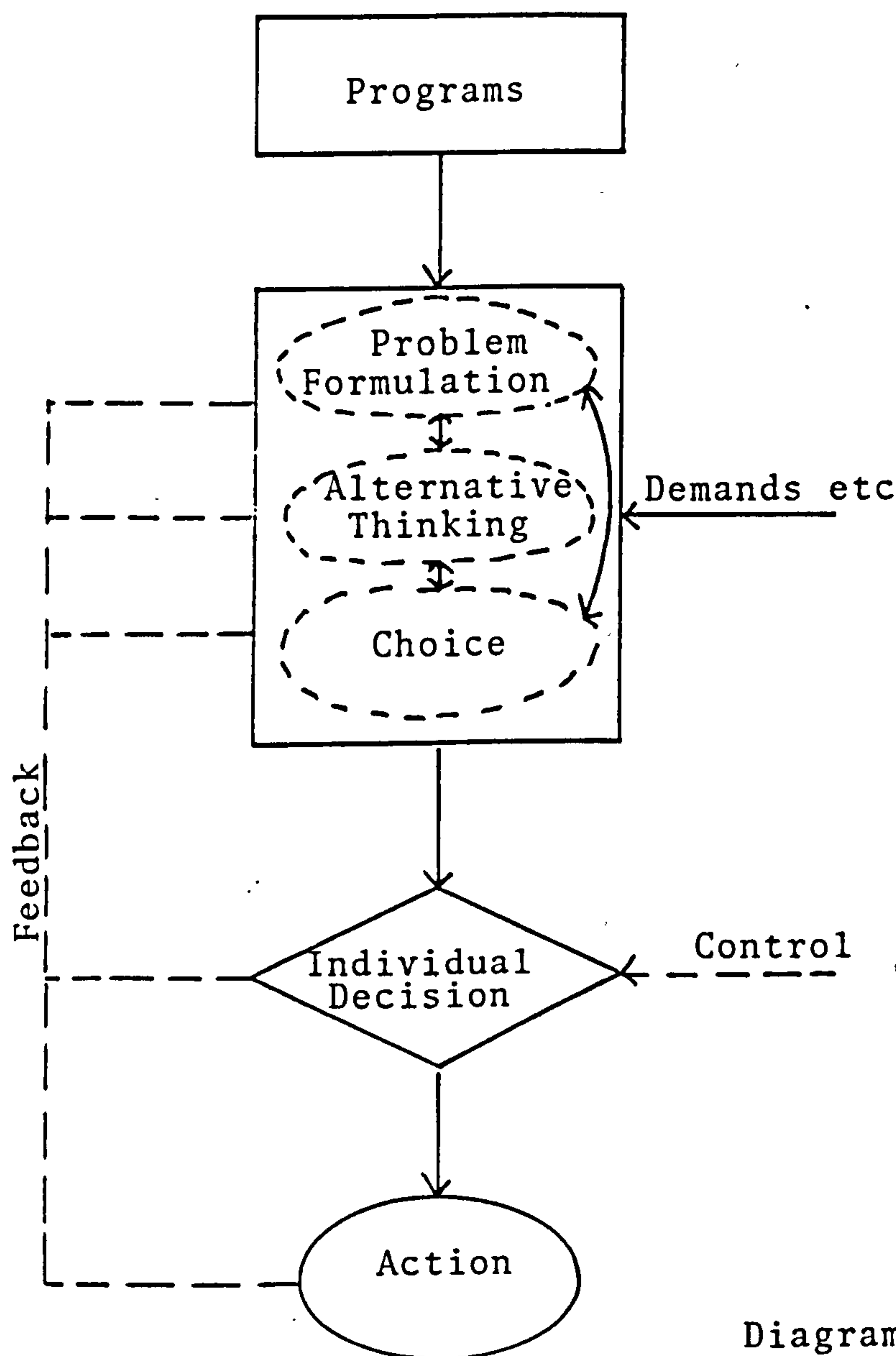


Diagram II

Generally speaking the conversion process is conceived as a rational process, in the sense that it is neither random nor simply empirical. It is a decision making process of a particular kind, namely the process of producing individual legal decisions. Seen from a legal perspective, the conversion process constitutes an essential part of administrative law under the name of general theory of administrative acts. This theory enlists and systematically examines the general principles which guide the process of making, amending and terminating administrative acts. Nevertheless, a modern theory of implementation, especially a normative one, should examine

the conversion process from a broader viewpoint, assisted by theories of decision-making and policy analysis.

Decision-making theory in particular has to offer some useful findings. Despite the great variety of programs the decisions of implementation can only be issued in either of two ways depending on the nature of the program, namely in a routinized (fully programmed) or in a standardized (problem solving) way. If the program prescribes its implementation to the last detail by providing a ready response for every classified stimulus (demand), then the implementor's only task is to call forth the appropriate output decision by means of deductive reasoning. Such decisions are the so called routinized or fully programmed decisions, commonly known in legal terms as duties. If, on the contrary, the stimulus (demand) elicits from the part of implementor a larger or smaller amount of problem solving activity concerned with the setting of the appropriate standards and the selection of the preferred alternative, then the output decision is discretionary.

The tendency towards the fully programmed and uniform treatment of similar cases, traditionally favored by lawmakers and administrators, corresponds to a rather early stage in the development of legal thinking. On the contrary, the allocation of rights and duties on the basis of subtle differentiation among apparently similar cases comes closer to the ideal of distributive justice and marks a more advanced stage in legal thought, which acknowledges and preserves complexity. Since, however, such subtle differences can only be ascertained at the lowest level of analysis, this kind of decision-making is characterized by a high degree of uncertainty.

It is the high degree of uncertainty which distinguishes discretionary decisions from stereotyped or mechanical ones. A decision can be routinized only if there is certainty as to both the definition of the situation and the outcome that will result from the application of the program to the situation. If there is a high degree of uncertainty as to any or all the elements of the decision-making process, then the decision can only be discretionary. The freedom of choice, which is inherent in discretionary powers the necessary prerequisite for handling the uncertainty involved in the decision-making process. In genuine discretionary decisions uncertainty spreads over the totality of the components of the process. Thus there may be uncertainty as to the formulation of the problem; uncertainty may exist with respect to the different ways of handling the problem within the constraints of the program or with respect to the outcome of the alternative solutions. Finally, the choice among different courses of action may also involve a high degree of uncertainty: despite the fact that programs usually provide instructions as to the intended goals, considerable distance may exist between goals and operative objectives, since one and the same goal can be translated into a number of operative objectives.

Thus, viewed from the perspective of policy analysis the freedom of the implementator is the freedom to handle the uncertainty in the best possible way and to select the optimal among many possible solutions. There is however a substantial difference between classical administrative law and decision-making theory in this point. Classical legal theory is only concerned with preventing the implementor from committing gross mistakes, while modern decision theory is more demanding and

prescribes the optimal transformation of goals into operative objectives and effective action. Legal analysis of discretion may focus on reasons, procedure or constraints, but is always centered around a single unifying theme: where to draw the line between the issues that may or may not be subjected to judicial review. It is of no concern to the lawyer, whether the discretionary decision is optimal, satisfying or barely acceptable, as long as it does not exceed the limits set by law, reasonableness and morality. This marginal control of discretion is the offspring of the distinction between legal and political judgment, which dominates legal thinking since the 19th century. At the bottom of the distinction lies the assumption that administrative decisions, being the outcome of political compromise, cannot be judged as to their merits in any other way but that of political accountability. It is to the merit of legal theory that it gradually mitigated this extreme position by introducing the judicial control of discretion. By transferring the control of small scale policy from the political to the legal sphere, legal theory imposed to the formerly arbitrary administrative decision-maker the respect of rationality, morality and fairness to a significant extent. Thus the contribution of classical legal theory to the rationalization of the administrative decision-making process is indeed considerable.

There is, however, a substantive difference between the traditional and the modern view point: The addressee of the former is the judge, whose task is to guarantee that the administrator in exercising his discretion does not exceed the limits of law and morality; the addressee of the latter is the implementor, whose task is quite different: his decision should not only be legally valid but also optimally suited to the particular situation. Therefore, the appropriate opening of the black box should be the design of a normative model of small scale policy making. This means that we are not so much interested in the circumstantial way decisions are actually made, but rather in the way they should be made. In other words, the task of implementation theory is to guide the implementor in making his policy in an optimal way. From this perspective, the exercise of discretion is the most crucial part of implementation and deserves special attention.

The first step of the implementor is to ascertain whether the program empowers him with discretion or not. If his decisions are fully programmed, then his role is trivial and will not occupy us here. Most programs however, cannot be applied to the variable situation unless specially adapted by the implementor by means of inductive logic. Thus policy-making is not terminated at the level of the program, but continues, though in a smaller scale, throughout the conversion process. The freedom of the implementor to design his own policy within the limits set by the program and in view of the particularities of the situation is what is called in legal terms discretionary power. It is only a nominal freedom since it is subject to a twofold constraint: On the one hand, the implementor should exercise it according to the general and particular instructions of the input programs; on the other hand he should design the best possible policy within this context.

Traditional legal theory focuses only on the former constraint. In dogmatic terminology discretion exists when the law deliberately uses indeterminate concepts whose meaning must be concretized by the implementor in view of the particular circumstances. In that way the implementor constructs the major proposition of the legal syllogism, applies

it to the case under consideration and then arrives at the conclusion by deductive logic. For the purpose of concretizing the meaning of the law the implementor is free to choose among a number of solutions and his final choice is subject to marginal control only.

On the other hand, a modern theory of implementation, especially a theory concerned with failures, has to be more demanding. Marginal control may suffice to prevent gross mistakes, such as unreasonable or arbitrary decisions; it is however the accumulation of smaller mistakes, the systematic choice of second best solutions, which can drive the implementation process astray.

Before taking a closer look into administrative discretion, that is discretion in implementation, we should distinguish it from other similar decisional capacities, such as the rule-making power of the legislator or the conflict resolution power of the judge. With respect to the distinction of administrative discretion from legislative power the task is rather difficult, because at first glance there is an apparent similarity between the two. Both activities involve policy - making and are articulated in instructions for further decisions and/or actions. In that sense they are both distinguished from routinized or fully programmed decision-making, which constitutes in fact the precise carrying out of the instructions. Despite this qualitative similarity there is an important difference between program-making and administrative discretionary power regarding their respective degree of freedom. The scope of the program-maker's discretion is wide, depending on the complexity of the problem under consideration; legislators are usually concerned with large scale problems which affect a multiplicity of participants and a variety of values. Consequently, their freedom in designing policy is very broad and subject only to the constraints of the constitution. Implementors on the other hand can make policy only to the scale necessary for the adaptation of the program to the specific situation; their freedom is therefore much more restricted, because it is subjected to the additional and much tighter constraints of the program. In view of the above, in a highly complex political system, such as the constitutional democracy, the exercise of administrative discretion presupposes the logically preceding phase of the program-making. In that sense value goals and operative objectives formulated by the program should be transformed into concrete targets for administrative action by the implementor. Also the value system guiding policy-making is freely designed by the implementor, subject only to the constraints of the Constitution, whereas implementors are entrusted with minor value judgment. Generally speaking, legislators act in view of the whole problem; implementors act in view of the specific situation.

While the distinction between rule-making and administrative discretion is a matter of degree, the difference of the latter from the dispute settling power of the judge is substantive.⁷ Because administrative discretion basically constitutes policy-making, while judicial decisions constitute control. It is only the poor knowledge of control theory among lawyers, which accounts for the frequent confusion between the two. In terms of the control model we presented in chapter 2 the judge acts as a comparator, since by referring to the program under implementation he compares the challenged administrative decisions with the requirements of the program, as interpreted by him. In fact, what the judge mostly does is to interpret the program or the master program (depending on the case) and to provide an authoritative

version of it. Besides, he may also interpret other programs related to the implementation of the main program, such as e.g. general principles concerning the rationality and morality of administrative acts etc. However, he never enters into the proper domain of administrative decisions, i.e. the so called expediency of the administrative acts, meaning the actual way in which administrative discretion is used in the specific case. Thus judicial control of administrative action is limited and the judge himself never engages into small scale policy-making. The extent of judicial control is greater only when the challenged decision is not a discretionary one but a duty. In such cases the judge is empowered to pronounce the correct decision. By doing so the judge does not exercise discretion, as it is often erroneously assumed, but reveals the unique administrative decision ordered by the program.

After the concept of discretion has been sufficiently clarified, the question arises where to locate it within the conversion process. Classical legal theory approaches the problem from a dogmatic perspective without any reference to policy making. Thus much theoretical controversy has arisen in the past as to essence and the exact location of discretion. Some theories adopt the view that discretion exists when the freedom of the administrator is not counter-balanced by subjective rights (Buhler), or when it may not be subjected to legal control, or when the implementator has a freedom of choice among conflicting alternatives (Laski); some go as far as to deny the qualitative distinction between duty and discretion and to claim that both exist in any kind of legal decision (School of Vienna, Kelsen, Merkl). Other theories, particularly British ones, take a broader view of discretion so as to include delegated legislation, finding of facts and application of standards as well as judicial decisions.

The predominant classical legal theory on the subject is German and defines discretion as the freedom of the implementor to concretize the meaning of indeterminate concepts, which the legislator deliberately avoided to clarify.⁸ Such concepts have a value content which leaves to the implementor ample room for subjective judgment. Since classical theory is not concerned with optimal but only with legally valid solutions, indeterminate concepts are susceptible to a variety of interpretations. According to this theory there is no discretion:

a) In the interpretation of the law (grammatical, syntactic or teleological).

b) In the definition of the meaning of *stricto sensu* legal concepts; such are the concepts whose meaning is provided directly by the law.

c) In the definition of the meaning of *lato sensu* legal concepts; such are the concepts whose meaning can be determined by use of common sense or technical knowledge.

d) In the finding of facts.

e) In the application of the law to the specific circumstances of each particular case, since the conclusion is the necessary outcome of logical reasoning and not of free choice.

In sum, following the classical legal theory, discretion is only the freedom of the implementor to define a concept which the law deliberately left undefined. In such cases the major proposition of the legal syllogism is concretized each time in view of the particular situation.

From the empirical viewpoint adopted in this essay, discretion exists when the implementor is empowered by the law to make further policy. As we shall see below, the formulation of the problem, the selection of relevant data, the choice among alternative solutions etc are all aspects of administrative discretion in the sense that they can be freely decided by the implementor. Either seen in the systemic perspective of by sheer managerial standards, which have permeated modern public administration, administrative discretion is not granted by the program to be exercised at free will. The predominant logic of efficiency and effectiveness in administration requires that discretion should always be exercised in an optimal way. Freedom can only be justified if it helps for the appropriate adaptation of the program to each particular situation whose details cannot be known in advance.

As our view of discretion is founded on continental theory, it might be interesting at this point to consider an other theory, also of legal character but of Anglo-Saxon origin, which focuses exclusively on discretion and tries to delimit it and to connect it with the broader network of legal and political values. Galligan's theory about discretion formulated in his book "Discretionary Powers" is very relevant to our subject and deserves special attention.⁹

In contrast to continental systems, Anglo-Saxon legal systems were until recently dominated by a subjective view of discretion which guaranteed to the power holder nearly unlimited autonomy to decide in whatever way he thought fit, provided that he remained within his jurisdiction. Galligan's work constitutes an important contribution in the direction of influencing and constraining discretion, not necessarily by rules but primarily through legal values and practices. Since Galligan's book is the most systematic effort to treat discretion from the legal viewpoint, it is useful to compare his views with our own stance towards discretion.

In the first place we note that he rightly adopts a modern, positive attitude towards discretion and acknowledges its importance in contemporary legal systems, due to the complexity and variability of social problems and the need to ensure participation of all affected interests in the decision making process of the state.

Moreover, in identifying two aspects of discretion, he correctly perceives that discretion involves both policy-making, i.e setting of standards, and considerations of the merits and circumstances of particular cases. In other words the rationale behind the granting of discretionary power is to ensure the achievement of broadly defined policy goals in individual cases. For this purpose Galligan believes that it is the duty of the official not only to choose one amongst different courses of action but to choose one for good reasons. Since good reasons are actually a function of setting the right standards for decision-making, this view is very close to our point, that namely discretion is small-scale policy and that its proper exercise requires the making of the optimal policy choice. Thus the proper exercise of discretion is the best means for ensuring the substantive rationality of official decisions.

Galligan's primary consideration is to examine the requirements for the exercise of discretion in compliance with the standards of rationality, purposiveness and morality, which all ensure the accountability of officials towards the community in general. He realizes that the constraints of discretion are multivarious and classifies them in those of a more practical kind, such as efficiency, effectiveness, organizational and economic factors, nature of the task etc, and those of a more value-based kind, such as moral attitudes of officials, requirements of fairness and guidance etc.

In addition to these procedural constraints, Gallighan examines the question whether some more precise guidance can be given as to the allocation and exercise of discretion. He seeks the answer in the right balance between rules and discretion, between comprehensive planning on the one hand and incrementalism on the other. This involves issues regarding the optimal degree of precision of the standards guiding discretion and the impact of precise standards on the protection of public and private interests. He perceives a certain tension between individual rights and discretion, in the sense that the exercise of discretion tends to advance social goals and seems more appropriate for the exercise of the regulatory function of the state, while rules remain the principal safeguards of individual rights and liberties.

The juxtaposition of rights, be it claims or just protected interests, against discretion, which he seems to adopt, is, as we have already said, only superficial. Galligan seems to take for granted that the system of discretionary goal-directed authority is superimposed over the system of private rights and duties. The claim of the affected individual can only consist in requiring that certain procedures be followed, which guarantee full consideration of all interests involved. This view reflects Dworkin's distinction between principles and policies and has, therefore, a questionable starting point. It is reminiscent of the philosophical theory insisting upon the preexistence of individual rights over the activities of the state. Apart from the fact that such theories are in fact postulated and not backed by empirical evidence, they are not very helpful either. The reason is that once an area of social relations becomes the target of state intervention for the sake of the public interest, the preexisting rights and interests of those adversely affected by the intervention must from now on be confronted with the newly created rights and interests of those benefited by the intervention. In this way it is not a matter of rights versus power but only of rights sacrificed for goals of public policy which are tantamount to the creation of rights for other individuals. In final analysis it is a matter of allocation of rights and interests.

It is important to note that Galligan raises the current problem of the relationship between rule of law and governmental effectiveness or, put in another way, the controversy between judicial and governmental values. Although he comes up with the right answer, stating that legal principles and institutions should both enhance effectiveness and maintain other values, he somehow falls short of specifying how exactly this could be achieved. With respect to implementation it is important to keep in mind that concern for efficiency and effectiveness-concepts adopted from the economic sciences - no matter how important in modern administration, does not mean that the administrator dispenses with his duty to respect legal rules. As we have already pointed out, this is an aspect of implementation ignored by modern implementation theories. However, this statement is not

enough either. The question is to find out by what kind of constraints we can achieve efficiency and effectiveness through the application of legal rules.

In our view, a theory of discretion should move one step further, beyond the vague principles that Galligan accepts (namely rational achievement of purposes, legal stability, fair procedures and moral or political values) towards establishing scientific criteria for helping administrators to exercise their discretion in the right way, so as to act both legally and efficiently and/or effectively. Such criteria will not be confined to the mere shaping of the discretionary process, as Gallighan's are, but will also directly determine the outcome of the discretionary decision. In other words, while legal considerations have always been present in the minds of administrators, if not for anything else for the simple fear of judicial review, "governmental" considerations should also assume their proper status in the legal theory of implementation and not be taken as extra- legal factors any more. The optimal legal solution of this problem would, of course, be the incorporation of these principles into a Code of rational procedure of administrative acts. Nonetheless, even where such a thing has not been achieved yet, we think that the criteria of efficiency and effectiveness should be granted the force of general principles derived from other more general principles of law; e.g. efficiency may be derived from the principle of accountability or the due respect for the taxpayer's money.

It is important to note that this is the simplest phase of the whole story: establishing legal principles through deductive reasoning within a coherent system of law is a relatively easy task. The difficulty lies elsewhere, namely in suggesting methodologies for finding the exact effective or efficient solution for each particular problem, and this is the major concern of modern administration. It is not enough to invoke principles unless one specifies at the same time what are the exact properties of the correct solution. As long as this task is confined to the stage of control and assigned only to the judge, it can be carried out relatively easily, since the only thing that a judge has to do is to compare an already existing decision with the standards imposed by the program of reference; the administrator, on the other hand, has to specify himself, how exactly the programmed standards should be applied to the specific situation. Thus it is he who needs the appropriate guidance and help and we think that he should be the addressee of the legal theory of implementation.

4.4.2 Analyzing Discretionary Implementation: Small Scale Policy Making.

4.4.2.1 Formulation of the problem.

4.4.2.2 Alternative thinking.

4.4.2.3 Setting the criteria of selection - Choice.

4.4.2.4. Implementation

4.4.2.5. Evaluation

The function of the conversion process in implementation is to translate the broadly defined policy goals into precise operative objectives

immediately transformable into action. In other words, policy goals, as formulated in the program, should be made so specific as to be able to guide action. This is the essence of discretionary power. The specification of policy goals is often effected in many stages; delegated and subdelegated legislation are used for the gradual concretization of objectives. Nevertheless, delegated legislation, however detailed, cannot exhaust the particularities of the specific situation. The distance between the two is bridged by the individual legal decision of the implementor, i.e. the discretionary act.

An example may be useful for clarifying this point. Let's take for instance a program which regulates maritime transportation of goods and passengers in a certain country. According to the law a limited number of licenses are granted by the local authorities to the applicant shipping enterprises after taking into consideration the criteria of safety of navigation, satisfactory level of services (including speed of travel, comfort, frequency of communication etc) and economic viability of the enterprises. Further requirements concerning the type of vessels etc are provided by acts of delegated legislation. It is obvious that the above criteria, explicit as they may be, cannot offer full guidance to local authorities in view of the variable situations they are bound to face in the course of the program's implementation. In order to grant a single license to one among many competing applicants, they should design their own policy and set additional standards appertaining to the particular situation. Let's suppose e.g. that three shipping companies are competing for a license concerning transportation service of a remote island with few permanent inhabitants, great seasonal touristic activity and no other means of communication with the mainland. The first applicant is a big shipping company, situated in the capital of the country, which is ready to use modern and comfortable vessels but maintains the option of regulating the frequency of transportation depending on the number of passengers. The other two applicants are small companies, which offer old fashioned vessels, unsuitable for accommodating large numbers of passengers, but are willing to guarantee frequent service even during the dead winter season. Moreover, one of them is situated in the capital while the other one is local, i.e. situated in the island and owned by local people. It is obvious that the implementor cannot choose among the three on the basis of general criteria and conditions applicable to the entire country but insufficient in view of the particularities of the present situation. If the program's goals are to materialize successfully, further policy is required from the part of the implementator. It is for that purpose that the implementor, who has the final word in granting the license, is empowered with discretion. This discretion allows him to translate the general directives of the program (safety, good service, economic viability) into operative objectives adapted to the particularities of the situation he is confronted with. What then constitutes good and safe transportation under the particular circumstances? Is it the provision of modern and comfortable vessels able to accommodate great numbers of passengers during the peak season or is it the guaranteed continuity of frequent service throughout the year? Such details cannot be regulated at the level of the program. Programs set minimal standards but cannot guide the implementor to choose the best among many possible solutions within these standards. In order to solve this delicate problem the implementor cannot rely on legal theory alone but needs the assistance of a more comprehensive theory of implementation. Only a merger of the two can provide adequate tools for specifying goals and directly transforming them into legal and effective action.

As we have already mentioned, very few legal systems identify discretion with purely subjective judgment; discretion is usually restricted by means of more or less severe, though marginal, legal constraints. It is the point of this essay that, in addition to these constraints, discretion should be examined on the basis of a policy-making model focusing on the optimal use of the implementor's freedom. In other words, the entire conversion process, where discretion is located, should be treated as a policy making process of a smaller scale and should be organized accordingly.¹⁰

4.4.2.1 The first stage of the conversion process is the formulation of the problem. Goal specification without prior problem formulation is bound to be deficient. According to the model proposed in chapter 3 goal setting cannot exist independently from problem formulation alternative thinking, implementation and evaluation; they all constitute elements of an iterative process, constantly interacting among themselves and with the constraints of the program in order to produce the necessary information for constructing the problem.

The formulation of the problem is a material construction which should be distinguished from the great volume of data used for its structuring. Problems should not be taken for granted and should not be confused either with the difficulties in choosing among alternatives or with the difficulties in implementing a given choice. Public problems in particular are usually so complex, that at first sight they can only be detected as a malfunction of a certain system. This malfunction is the "problem situation" which causes discomfort and usually raises demands for intervention. The transition from the problem situation to the formulation of the problem requires a great amount of relevant information, as well as the capacity to construct a reliable model of the problem. Thus problem formulation presupposes the capacity of the implementor for both abstract thinking, i.e. choice of crucial variables only, and creative synthesis, i.e. precise delimitation of the interrelations among these variables. It is a very important stage of the conversion process because it is binding for the following stages to a significant extent. In the example we proposed above, the problem of the implementor (local authorities) can be formulated as follows: What is the optimal transportation service for a remote small island with seasonal tourism and no other means of communication?

Systems methodology points out that the first task of the implementor is to place the problem under consideration at the appropriate hierarchical level, where it belongs, and to trace its vertical and horizontal connections with other problems. Relevant difficulties refer to the identification of problems appertaining to different programs, to the precise delimitation of the problem under study and to the identification of all constraints to be taken into consideration. The identification of the hierarchical level of the problem is particularly important from the legal point of view, because the constraints stemming from higher levels (constitution, statutes e.t.c.) may rule out a priori some of the proposed formulations of the problem.

Another category of difficulties has to do with the subjective perception of the problem by its participants, i.e. those immediately affected by it. Each participant has his own perception of the problem, which is usually partial, i.e. determined by his relative position with respect to the problem, and often distorted by ideological bias. Due to these difficulties many claim that the objective formulation of the problem is rather impossible. Such a view is erroneous: there is a holistic and objective view of the problem by the legitimate manager of the system under consideration, who is observing the system from the appropriate hierarchical level (which is higher than those of the various participants). In other words, objective knowledge of the problem is possible only when the implementor is able to see it as a dynamic system, which means that he is able to come up with a holistic model of the problem.

A third category of difficulties arises from the dynamic character of the problem, which requires full and accurate knowledge of its history, present state and future trends. If the problem is to be modeled as a dynamic system, its trajectory has to be taken into consideration. It is self understood that due to the dynamic character of the problem any formulation remains valid only for a limited period of time.

In order to overcome those difficulties systems methodology proposes the following stages in problem formulation:

- a) Identification and prioritization of the participants; these may be living systems (people, groups, animals, environmental systems), physical or technological systems (resources, artifacts) or behavioral systems (activities etc).

- b) Analysis of the decision-making system of each participant and particularly of their identity, their involvement in the problem, their demands, their beliefs (what they think about the problem and how they support their views) and finally the underlying values and the means used for their attainment.

- c) Determination of interconnections among participants.

- d) Value analysis.

- e) Identification of the effects and side effects of the problem.

- f) Inventory of previous efforts to solve the problem.

- g) Creative synthesis of the model of the problem.

Social problems and particularly public problems are far more complex than technological ones, because the demands and values of the participants are usually conflicting. Thus the implementor cannot proceed to an objective formulation of the problem unless he performs value analysis. Value analysis makes explicit the values of the participants, which are usually latent, and examines their interrelationship. If after such a preliminary value analysis a genuine value conflict continues to persist, then the implementor is faced with a so-called "wild" problem, which requires the following handling.

- a) Identification of values involved in the resolution of the problem.

- b) Determination of their relationship, i.e. whether they are parallel, complementary or conflicting. This value articulation does not take place in abstract but always in connection with the problem under consideration. If for instance the problem of the implementor is the design of a new highway, value analysis of the conflicting demands of the participants

(e.g. local proprietors, associations of local businessmen, organizations for the protection of the environment etc) is expected to reveal different values involved in the problem, such as speed of circulation (value of communication) safety of traveling (value of health), low cost of expropriation (value of wealth), protection of the nearby forest (value of preservation of the environment) etc. Some of these values may be guaranteed at higher hierarchical levels than that of the problem (for instance the value of environmental protection may be constitutionally guaranteed and the value of safety may be given priority in the relevant statute), thus constituting constraints for the full actualization of the rest of them.

c) In case of persistent value conflict among equivalent values, the implementor must formulate the problem in a way which either bypasses or resolves the conflict. In the last case the implementor performs a creative synthesis of the problem, usually by means of merging of values, trade-offs etc. His capacity to do so derives directly from the higher hierarchical level from which he is acting as the regulator of the system under design.

Modern decision-making theory offers various techniques which aim at facilitating the objective formulation of the problem, such as brainstorming, decision seminars, demosophia etc.

4.4.2.2. The definition and value analysis of the problem provide the implementor with necessary information so that he can proceed to the formulation of alternative solutions. At this stage the implementor is expected to activate not only his judgment but also his imagination, intuition and forecasting capacity in order to come up with as many alternatives as possible.

As alternative solutions we mean hypothetical alternative systems designed so as to correct the malfunction of the existing system. Some of them may coincide with the proposals of the participants, while others may deviate considerably from them. The implementor should not consider himself bound by these proposals but should openly examine every alternative that crosses his mind before proceeding to their assessment. The advantages and shortcomings of each alternative should be carefully scrutinized and for that purpose the implementor may need to recur to the stage of problem formulation or preexamine issues related to choice and feasibility of implementation.

The major difficulties for the implementor at the stage of alternative thinking arise from the constraints imposed upon him and from the uncertainty regarding the outcome of alternative solutions. These constraints are multivarious and may be physical, moral, economic or legal. In order to deal with legal constraints the implementor should be constantly aware of the hierarchical level of his problem. Since the level of implementation is by definition the lowest in the hierarchy of legal decisions, constraints stemming from higher levels (constitution statute, delegated legislation) can only be dealt with at the respective levels by means of amendment and it is futile for the implementor to try to bypass them in any other way.

In order to assess the merits of alternative solutions, the implementor needs information regarding their expected effects and side-effects, the response of affected parties and the evolution of all relevant parameters. Modern decision-making theory has developed various methods for future forecasting which can be classified in three broad categories:

- a) forecasting methods based on the study of the past, e.g. trend extrapolation, least square trend extrapolation, time series analysis etc,
- b) forecasting methods based on the design of mathematical models, e.g. linear or dynamic programming, simulation models, game models etc,
- c) forecasting methods based on judgment or even intuition, e.g. scenario writing, Delphi technique etc.

4.4.2.3. The most crucial phase in the exercise of discretion is the choice of the optimal solution by the implementor: in fact the two previous stages are preparatory to this one and aim at ensuring that the right choice is actually made. While some decision-makers still rely on charisma or intuition for guidance, it has lately become evident that in complex public problems the right choice can only be the product of scrupulous analysis. Such an analysis presupposes full and reliable information as well as rational analysis of the underlying value problem.¹¹ Generally speaking public choice, i.e. choice concerning a public problem, consists of three different stages:

- a) definition of the value goal which should prevail in the solution of the problem.
- b) determination of operative objectives, i.e. specific, quantifiable results which will actualize the selected value goal.
- c) actions i.e. activity which leads to the materialization of the operative objectives.

In the example stated above, the first participant (big shipping company) offers the values of speed of transportation, higher quality of service and greater capacity in adverse weather conditions. The second participant (smaller company situated in the capital) offers continuity of service, while the third participant, being a small local company, not only offers continuity of service but is also bound to be more sensitive to local demands and benefactor to the local economy. It is taken for granted that all participants offer traveling conditions which satisfy the value of safety.

After this value analysis, the problem of the implementor (local authority) seems to be relatively easy, since the values involved appear to be ranked in a hierarchical relationship. It is obvious that when it comes to the only means of communication of a remote island with the mainland continuity of service is the dominant value, while speed and comfort are secondary. Having thus set his priority the implementor rules out the first participant and proceeds to the transformation of the selected value into operative objectives. Between the remaining two alternatives it is obvious that continuity of service is better guaranteed by the local company, which is bound to be more sensitive to local needs and has the additional advantage of supporting local economy.

It is evident from the above that value analysis is very important for making the optimal choice, because it reveals the values which constitute the relevant criteria for the problem's solution. If these values are interrelated in such a way (e.g. hierarchical) as to permit their articulation in a system, then the task of the implementor is relatively simple. E.g. the statute regulating town-planning in Greece sets as dominant criteria safety, health, aesthetics and communication and as secondary criteria the existing state of property. Disputes usually arise out of the conflict of the secondary with the primary criteria and are nearly always resolved in favor of the latter. If, however, the values are conflicting, then the implementor needs a metacriterion in order to select the predominant value. At the level of implementation the metacriterion is derived from the value system inherent in the program as it materializes in view of the specific problem situation. In the above mentioned example of maritime transportation, the criteria set as equivalent by the program (frequency of communication, confort, speed) can be ranked hierarchically in view of the requirements of the particular situation (remote island). Generally speaking value problems at the level of implementation can be solved with the appropriate value analysis of both the program and the specific problem situation. Obviously the problem is much more difficult at the level of program formulation, but this lies beyond the scope of this essay.

Furthermore, after the optimal choice is made, good exercise of discretion presupposes monitoring of the execution of the selected solution and assessment of the results through experimental or formative evaluation at the individual level. Since, however, the issue of evaluation is very important for implementation theory we shall expand upon it immediately below.

4.4.2.4. Implementation.

Before making his choice of the optimal solution to the problem he faces, the implementor should also consider the particular circumstances of its implementation. This is "implementation within implementation", in the sense that successful materialization of an individual discretionary decision presupposes careful study of its feasibility in exactly the same way as the materialization of an entire program.¹²

The preconditions for the successful implementation of an individual decision are roughly the same with those of a program, adapted to the smaller scale dimensions of the process. In other words the implementor has to make sure that:

a) he has correctly interpreted the instructions of the program regarding the degree of freedom assigned to him and the nature of the relevant constraints. In other words, he must clarify the extent of his discretionary power,

b) he disposes of the appropriate resources (funds, technology etc) required for the materialization of his decision. This is often a vexing problem, since usually resources are granted by specialized agencies or

departments, other than the implementing one, a thing which might cause serious delays or intra-agency friction.

c) he has correctly assessed the organizational capacities and limitations of his agency and particularly the informational overload of his staff and the level of management in his agency,

d) he has checked out the communication networks at his disposal and he has ensured smooth flow of communication with superior and inferior levels, the public, as well as any other agencies involved in the process. He should also make sure that he receives feedback through reliable monitoring, so that he can perform timely control,

e) he has correctly assessed the impact of environmental factors (mass media, pressure groups) upon the smooth implementation of his decision so that, if possible, he may offset their negative reactions. Since public policy implementation inevitably affects a more or less broad number of interests, good public relations are gaining in importance in modern administrations. The implementor has to inform the public and explain his intentions in order to overcome opposition on time. While administrative procedure, at least in the continental system, is closely regulated, administrative practice is equally important and negotiations may prove valuable, provided that they are lawfully conducted so that they do not exceed the limits of reasonableness and good faith.

Since paper decisions are one of the greatest problems of contemporary administration, the implementation forestudy should include briefing of interested parties and assessment of their expected response. Modern public managers should know that it is preferable not to make a decision than fail to implement it. They should, therefore, before committing themselves to a decision, check out whether they dispose of the appropriate coercive mechanism and, most important, whether they are determined to go all the way in using it.

4.4.2.5. Evaluation.

We have already mentioned (chapter 2) that a feedback mechanism is a crucial element of any decision-making system, since it provides it with learning capacity permitting it to adapt its behavior to the requirements of its environment.

This basic principle holds true for public policy making systems as well: such systems must receive information about the impact of their behavior upon the social environment and assess if this impact is tantamount to the solution of the problem. This judgment is called evaluation and basically consists in the comparison of the actual outcome of a given public policy to the goals and objectives it was designed to attain.¹³

More specifically, evaluation aims at identifying:

- a) the degree of materialization of the designed goals and objectives,
- b) the factors determining success or failure,

c) the degree of solution of the problem. In that sense evaluation differs from monitoring, in that the latter provides factual information about what actually happened, how and why, while the former contains a value judgment as well.

Evaluation was first applied in special fields, such as education, medicine, psychology and economics; in the last twenty years, however, it has been broadly used for the assessment of the results of the great social programs of the 1960's ; today it is common practice for the modern Administrations worldwide and, in some cases, mandatory by law.

Evaluation methods and technologies are becoming increasingly sophisticated and permit evaluation: a) before final implementation of a given policy (pilot projects, social experimentation), b) simultaneously with implementation (developmental or formative evaluation, which is in fact a sort of a constant feedback process), c) after implementation, which takes into consideration and assesses all impacts of a given policy.

A distinction should be made between formative and substantive evaluation. The former consists in examining the degree of goal actualization, in other words measuring the effectiveness of the decision, irrespective of the correctness of goal setting. The latter goes deeper and attempts to answer the crucial question : was the problem actually solved ? If not, why ?

Particularly with respect to individual decisions evaluation may be performed in three basic ways :

a) preliminary evaluation, which is a kind of testing especially recommended in case the decision is very costly or has irreversible consequences. It is a wise step for the implementor to take before being committed to a final decision. Various legal modalities, such as time terms, conditions etc , may be used to provide learning about the way things work in practice.

b) formative evaluation, when the outcome of the individual decision is constantly monitored and appropriate modifications are made in the course of its implementation.

c) summative evaluation, which may also be performed through various legal modalities, such as ex tunc revocation, termination for the future etc.

From the systemic perspective preliminary evaluation is particularly recommended in terms of efficiency and effectiveness, though it presents considerable methodological difficulties (e.g. selection of target groups etc).

NOTES on Chapter 4

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3. Besides the classical work of **Parson, T., Shils, E., Towards a General Theory of Action, Harvard Univ. Press, 1951, see also Munch, R., Theory of Action: Towards a New Synthesis going Beyond Parsons, London, Routledge & Kegan, 1987;**

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4. See **Simon, H., Administrative Behavior, Free Press, 1945/1976; The New Science of Management Decision, Prentice Hall 1977, The Sciences of the Artificial, MIT Press, 1981; Reason in Human Affairs, Oxford, Blackwell 1983;**

5. On some current enforcement problems see **Shover, N., Clelland, D., Lynxwiler, J., Enforcement or Negotiation: Constructing a Regulatory Bureaucracy, Albany N.Y: State University of New York, 1986; Also Hawkins, K., Thomas, J.M. (eds), Enforcing Regulation, Boston, Kluwer Nijhoff, Hingham Mass 1984.**

6. The method adopted in this essay is a variation of classical cross impact analysis. The basic idea of cross impact analysis is to identify events that will facilitate or inhibit the occurrence of other related events. The method originated in Rand Corporation and the term is attributed to Olaf Helmer. see **Gordon, T. J., Hayward, O. H., Initial Experiments with the Cross Impact Matrix Method of Forecasting Futures, 1 no.2, 1968.**

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12. On the methods and techniques used for preassessing the impact of social policies, see e.g. *Harrison, D.*, *Social Forecasting Methodology*, Russel Sage, 1976; *Mitchell, A.*, *Handbook of Forecasting Techniques*, Fort Belvoir va. 1979; *Michan, E.*, *Cost-Benefit Analysis*, Praeger 1976; *Goldman, T.*, *Cost-Effectiveness Analysis*, Praeger, 1967; *Land, K., Spilerman, S.*, *Social Indicator Models*, Sage, 1974; *Sonderstrom, E., J.*, *Social Impact Assessment and Experimental Methods and Approaches* N.Y.: Praeger, 1981; *Leistritz, L., Eskrom, B.*, *Social Impact Assessment and Management: An Annotated Bibliography*, N. York, Garland Publ 1986; *Finsterbusch, K., Lewellyn, L. C., Wolf, C.P.* (eds), *Social Impact Assessment Methods*, Beverly Hills, Sage Publications, 1983.

13. The origins of evaluation research are traced back to the period of Benevolent Despotism; evaluation further develops in the period of Enlightenment, in the form of statistics and comparative program ratings, and attempts at being established as a professional field after World War I (see *Suchman, E.A.* *Evaluative Research*, Russel Sage Foundation, New York, 1967). However, as A.C. Hyde points out , "it is in the 1960's that the impetus provided by the Great Society programs, the development of the art and science of administration and the impact of systems approaches and technologies made evaluation a critical component of public service activity". (See *A.C. Hyde*, *A Survey of the Program Evaluation and Evaluation Research Literature in its Formative Stage*, in *G.R. Gilbert* (ed), *Making and Managing Policy: Formulation, Analysis, Evaluation*, Marcel Dekker, New York 1984, p. 219-238.

The modern landmark in the field of evaluation and evaluation research is considered to be Suchman's book (op. cit.), which establishes evaluation as a professional field of study with conceptual, methodological, administrative, social and political dimensions. Suchman identified as main problem areas of evaluation those dealing: a) subject matter and objectives, b) methods and procedures, and c) administration and evaluation expertise. A number of significant works followed in the early 1970's, focusing on one or more of the above problem areas, namely: *Wholey, J. S., Scanlon, J.N. Duffy, H.G., Fukormoto, J. S. and Vogt, L.M.* *Federal Evaluation Policy*, The Urban Institute, Washington, D.C., 1970, focusing on the administration of evaluation and offering recommendations for improving evaluation in the public sector; *Rivlin, A. M.*, *Systematic Thinking for Social Action*, The Brookings Institute, Washington D.C., 1971 , focusing on political issues which arose during the implementation of the large scale programs of the 1960's; *Rossi, P.H., and Williams, W.* (eds). *Evaluating Social Programs*. Seminar Press, new York, 1972, an anthology of essays on both methodological and administrative issues; *Weiss, C.* *Evaluation Research*, Prentice Hall, Englewood Cliffs, NJ, 1972.

In the mid seventies there is a shift of emphasis towards the political environment of evaluation and it is acknowledged that its political, methodological and administrative aspects are closely interrelated. Among the most remarkable works of this period are *Hatry, H., P., Winnie, R., E., and Fisk, D., M.*, *Practical Program Evaluation or State and Local Government*

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In the 1980's evaluation literature is characterized by a literal explosion: books, monographs, articles, readers and evaluation studies of numerous public and private agencies reflect the new tendency towards specialization and differentiation, supported by sophisticated evaluation technology. See *Struening, E. Brewer, M.* The University Edition of the Handbook of Evaluation Research, Sage. 1983. Also, *Worthern, B.L., White, K., R.,* Evaluating Educational and Social Programs: Guidelines for Proposal Review, Onsite Evaluation, Evaluation Contracts and Technical Assistance, Kluwer, Nijhoff, 1987; *House, E.,* Evaluating with Validity, Beverly Hills, Calif. Sage Publ., 1980; *Kaufmann, F.X. Majone, G. Ostrom, V.,*(eds) Guidance, Control and Evaluation in the Public Sector. Berlin : de Gruyter, 1985.

Part Two

(Application: Systemic Case Study)

Chapter 5. Case study: The failure of urban policy in Greece.

5.1. Introduction.

In Part One we presented and analyzed a systemic legal theory of implementation. It is a legal theory because it defines the precise conditions required for the lawful implementation of a given statute, i.e. how an administrative agency should exercise its discretionary power in order to convert the general goals of a valid general law into the intended specific individual decisions and material operations. It is also a systemic theory, because it is not limited to the analysis of conditions related to legal validity, but tries to encompass all other factors affecting the efficiency and effectiveness of the lawful administrative act. In other words the proposed systemic legal theory aims at ensuring that administrative action is not only lawful, as did classical administrative law, but efficient and effective as well.

The interest in the rational choice involved in administrative decision making developed under the influence of the principles of modern public management. Today it is an integral part of the new administrative culture, which places equal emphasis upon the values of efficiency and effectiveness along with the traditional values of equity and legality.

A systemic legal theory of implementation differs from a classic theory in that it is by definition practically oriented. It is a fundamental axiom of systems methodology that theory should be united with practice; therefore, a systemic legal theory seeks not only to explain past action but also to guide future action upon a given public problem. As we already pointed out (chapter 3), the ultimate verification of a systems model is its testing upon reality. For this reason, the validity of the comprehensive implementation theory proposed in Part I is tested by means of its application to a specific implementation problem, namely the complete diagnosis and evaluation of a real implementation failure. In that way, with the help of systems theory and systems methodology, all elements of the problem become visible and their multiple interconnections are revealed.

The application of the proposed legal theory to a specific policy problem constitutes what is known as a *systemic case study*. The systemic case study is different from the usual case study, which has a well established content in the context of empirical analytical disciplines. The systemic case study, on the other hand has a different content, which consists in putting a specific policy problem in the right systemic context by showing all its connections with the multiple environments in which it is embedded. By focusing not only on the numerous factors of a problem, but on their interactions as well, the systemic case study is able to show the multiplying

effect of these interactions, which is missed when the same factors are treated separately. It is clearly a method which facilitates both understanding of a problem and taking action upon it. By using the systems model the prospective actor becomes aware of the problem situation as a whole and of the multiple levels at which his attention should be allocated. In this perspective, a systems model is specifically expected to provide answers to such questions as the following: a) precise identification of the failure factors and of their interconnections, b) relative weight of the failure factors upon the overall failure effect, c) social background of each failure factor, d) hierarchical ordering of the failure factors, e) potential scope of corrective interventions and anticipated results etc.

The subject of the systemic case study presented in Part Two is the failure of urban policy in Greece, as demonstrated in the phenomenon of unauthorized development. This particular case has been selected for the following reasons: First of all, the failure itself is indisputable: according to official estimates, the number of unauthorized constructions built over the years exceeds one million and, even today, the phenomenon still occurs at an exponential rate. Secondly, as we intend to show, this colossal failure is purely an implementation failure, which occurred despite the exceptionally good quality of the initial legislation, the statute of 17.7.1923. Finally, though this particular failure case derives from a specific national experience, it has a general significance: on the one hand, problems of urban policy are very complex and difficult to handle, because they have ramifications in all aspects of social life (economical, cultural, environmental etc). On the other hand, they are directly connected with broader policy issues, related to regional and national planning and even matters of international and global planning.

5.2. Planning the Urban System.

a. The Notion of Urban System.

Before embarking upon the study of these particular failures, we consider it necessary to introduce and clarify the fundamental concepts that we shall use as well as our basic assumptions on the subject of urban planning.

Central in our study is the concept of *urban system*. Generally speaking an urban system is a man-made human system consisting of a) complex heterogeneous activities organized on a kinetic field with recognizable boundaries and b) artifacts in various forms of land development (houses, streets, parks etc). The activities of an urban system are primarily economic activities pertaining to secondary and tertiary production (manufacture, various services etc.) and cultural activities such as education, arts and science, leisure and recreation, health services, communication and particularly transportation, administrative activities and residence. The term "Kinetic field" represents the distance a person can move within a certain period of time by walking or by riding on animals or in vehicles (see Doxiadis C.A. *Ecistics, The science of human settlements*, Science, 1970).

Following the guidelines of the American Institute of Planners, the elements of the optimal model of an urban system are activities such as

environmental protection, economic development, energy conservation, aesthetics and historical preservation, public safety, welfare and health, good communication and transportation, leisure and cultural opportunities. ¹ These activities should be depicted as interconnected and should approximate as much as possible the optimal model of the system. The optimal combination of all the above factors in each specific case is attained by the appropriate *growth management*. In the classical theory of urban planning the term growth management defines the fundamental decision about the size of the urban settlement, the population that it may accommodate, the character of the city or town and the standards of its development, the appropriate land use and the respective zoning in residential, commercial and industrial areas. Separately taken the basic elements of an urban system may be briefly described as follows.

We shall use the term environmental protection in the sense adopted by the Preparatory Committee of the United Nations in the Stockholm Convention of Human Environment (1972), and confirmed by the Rio Conference of 1992, i.e. as pertaining to three different areas:

- Protection, restoration and improvement of the physical environment.
- Protection, restoration and improvement of the human environment.
- Protection of physical and mental health from pollution.

Economic development in an urban system includes activities related to industry and manufacture, wholesaling and retailing, services, tourism, transportation etc. The urban plan should be founded on a sound economical basis, i.e. on a precise estimate of the financial capacity of the population to contribute to its development in the form of rents, taxes etc, depending on their employment opportunities, property income, production resources etc. Moreover, urban planning should establish the optimal balance between economic development and the other basic elements of the urban system, even at the cost of reorientation or diversion from accepted economic trends.

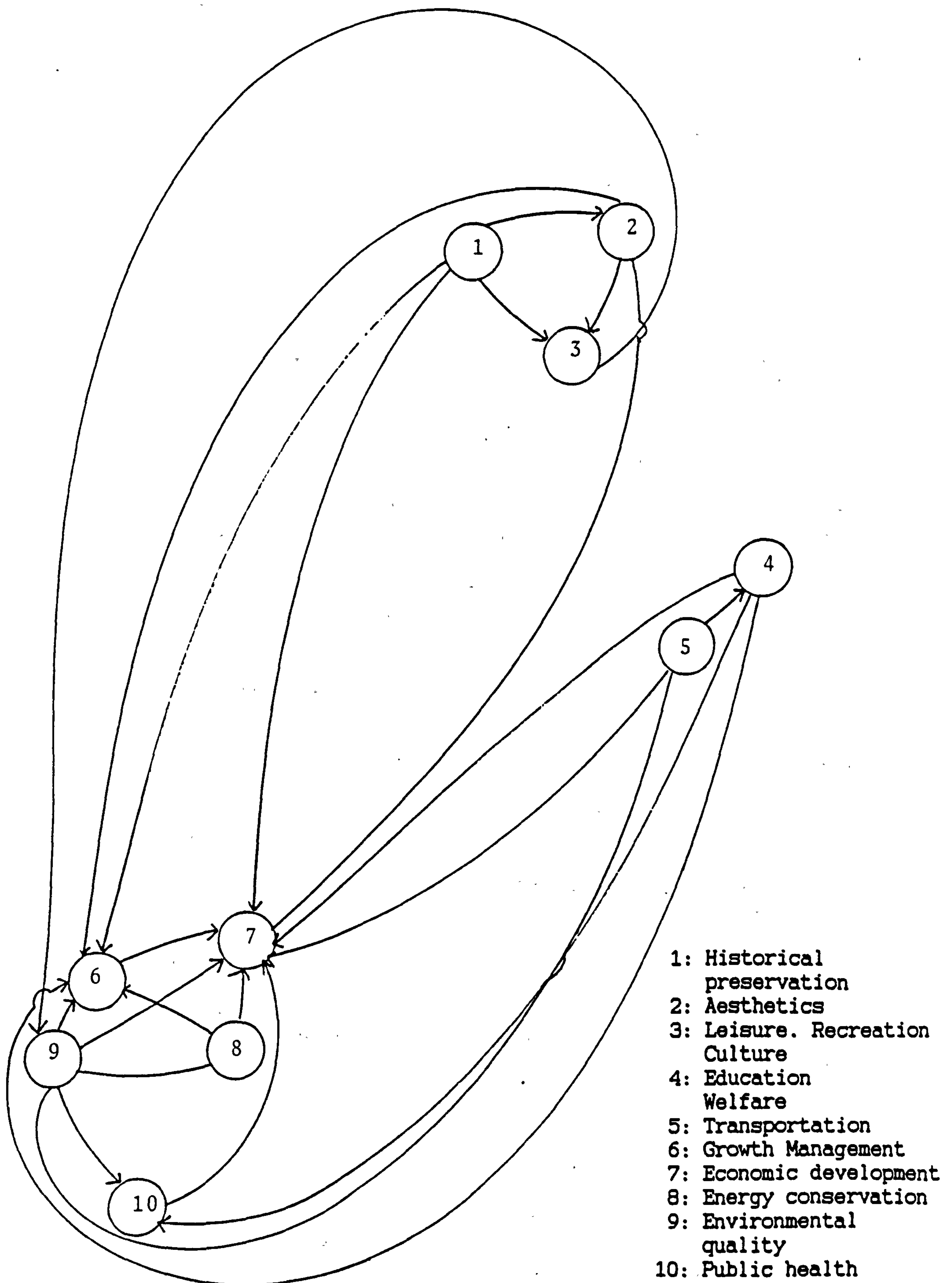
The protection of public health has been the primordial concern of city planners and the object of police regulations since the times of ancient Babylon and Greece. It implies safety of the citizens from both natural (e.g. floods, earthquakes) and man-made (e.g. fire, panic etc) disasters. It is a primary consideration for selecting the location of the city, imposing regulations and prohibiting obnoxious uses. Concern for public health was the motive behind the first acts of zoning in modern times, such as the decrees of King Philip of Spain or Napoleon as well as the Prussian codes of 1845 and the British Public Health Act of 1848. Public health is promoted by various measures such as building regulations requiring adequate light and air, avoidance of undue congestion and concentration of population and provision of appropriate city "infrastructure" including water supply, sewage disposal, gas and electric distribution, fire prevention facilities, good condition of streets etc. An optimal urban system should have these services installed in advance in sufficient quantity and quality to meet future requirements as planned by growth management.

While in the beginning of the century aesthetic considerations were considered "a matter of luxury and indulgence rather than of necessity" and were thus totally out of the scope of police power (see *Passaic v. Paterson Bill Posting Co.* 62A, 267 (1905), New Jersey Supreme Court), it has gradually been affirmed that a community has a right not to tolerate ugliness and to take legal steps to correct it (*Berman v. Parker*, 348 U.S. 26, 75 Sup. ct. 98, 99 L. Ed 27 (1954). Thus the appearance of an urban system becomes less a matter of personal taste and more a concern for the public interest. Aesthetic considerations apply to both public and private domain. The former, consisting of streets, squares, walks, parks and civic reserves, offers great opportunities for creative intervention in the form of space arrangement, landscaping, street furniture, signs and structures. The latter particularly requires police regulation. Due to the multiple and conflicting needs created in human settlements and the tendency to subordinate aesthetic to economic priorities regulations are necessary to ensure integrated land use, tasteful building designs and elimination of aesthetically offensive structures (e.g. advertising billboards destroying natural scenic quality).

A particularly sensitive element of the urban system is the preservation of its historical tradition and cultural inheritance. The new trends towards this direction have a dynamic character and recommend not only preservation and restoration of historical sites, monuments, traditional parts of town or buildings, but also their revival and integration in the modern economic, social and cultural environment (e.g. appropriate economic or touristic development of traditional settlements etc).

Transportation establishes the connection between the sources of employment in commerce and industry and the residential neighborhoods of the urban system. An adequate transportation system should provide: a) space for people to walk in safety and beauty, b) room for all vehicles to circulate with ease and safety, preferably on the surface rather than underground, as well as separation of different types of vehicles, c) parking space, d) good communication of the urban systems with its environment, i.e. countryside, neighboring urban systems etc.

Figure I shows the model of an urban system



b. Brief history of Urban Planning.

The allocation of specific areas to specific uses (initially for agriculture and worship) is a phenomenon whose origins are lost in prehistoric times. However, as civilization developed and human settlements grew in size and complexity, conflicting demands for land use created an increasing need for regulation. Thus the official designation of certain areas for specific uses, often enforced by serious penalties, is an age long practice. The code of Hammurabi in Babylon in approximately 1800 BC is stated as the first recorded appearance of building regulations. Traditional Chinese architecture postulates harmony between people and the space they occupy. While a geometrical pattern is present in early towns of Egypt, Mesopotamia and the Indus Valley, a Greek architect from Miletus, Hippodamus is credited with developing articulate theories about the art and science of city planning. He perfected and applied the gridiron street system pattern to achieve a rational and functional arrangement of buildings, open space and circulation of people and vehicles. Space arrangements were consciously designed in Greek cities to meet the requirements of business and political life, while building regulations, including proper orientation, are recorded in various chronicles.²

With the Romans came the problems of accommodating overwhelming masses of people in cities.³ Some technical problems, such as water distribution, drainage and heating systems were ingeniously solved but could not prevent parts of the cities from deteriorating into slums with the height of buildings reaching up to eight stories.

The early medieval towns, specifically designed as relatively closed systems confirmed within encircling walls, were functional in both form and location.⁴

In Britain evidence of medieval town planning is found in the town of Baldock, a creation of the Knights Templar, or in small towns in North Wales like Flint, Conway and Caernarvon, built in the late thirteenth century on the French model of Bestide towns. In continental Europe the consolidation of absolute monarchy and papal power in the Baroque era produced such masterpieces of formal town planning as the reconstruction of Rome in the late sixteenth and early seventeenth century, the Tuileries Gardens and Champs Elysees in Paris, the Versailles palace and its neighboring planned town or the cities Nancy in eastern France and Karlsruhe and Mannheim in Germany. At the same period Britain, dominated by the aristocracy and the new merchant class, developed its own distinct form of town planning with fine rows of formal dwellings and parks, a few remaining samples of which may still be seen in London's West End quarter, Edinburgh New Town or Bath. However, as the mercantile economy flourished and population grew, cities became congested and soon conditions were worse than ever before. Behind the beautiful facade of plazas and grand open space European cities lacked sanitation, sewage, water distribution and drainage.

The Industrial Revolution further downgraded the urban environment both in Europe and the U.S.A. With its factory system more and more people were brought to the urban centers and caused an unprecedented mushrooming growth of old and new cities with deplorable living conditions.

While health legislation and building by-laws for residential areas increased in number and scope during that period, commercial and industrial construction continued to develop along the lines of *laissez-faire*. With the improvement of transportation a new evil came to be added to the above, the phenomenon of urban sprawl, rapidly devouring rural land and causing traffic congestion and ribbon development. The model towns built by nineteenth century industrialists to improve the living conditions of their workers (e.g. Robert Owen's experiment in Scotland c. 1800-1810, Bourneville outside Birmingham in 1879-1895, Port Sunlight near Birkenhead in 1888, Margaretehohe (1906) and other model villages built by the Krupp family in Germany, Valenciennes and Noisel sur Seine in France, Agenta Park in Holland in 1883 and Pullman Town outside Chicago in 1880) were too isolated an effort to contribute to the solution of the overall problem⁵.

It is not surprising that protest against such intolerable urban conditions was first voiced in the countries which had the lead in the industrialization process, namely Britain and the U.S.A. The need for positive and effective planning to limit urban growth, control development and improve living conditions was acknowledged by enlightened people belonging to such diverse professions as planners (in Britain the Town Planning Institute was incorporated in 1914), rural conservationists (the Council for the preservation of rural England was organized in 1925), architects, civil servants or even biologists like Geddes⁶. Their theories, though fully developed before the First World War, were not applied at a large scale until after the end of the Second War⁷.

In view of the different pattern of growth of British and American versus continental cities-the former sprawling out in high density single family houses, the latter growing upwards in high density apartment buildings-planning theories in the respective countries developed in different environments and started from different premises. The Anglo-American tradition is to a great extent influenced by the works of Ebenezer Howard⁸. He elaborated, generalized and propagated the conception of decentralized, self sufficient new towns, combining working opportunities with healthy living conditions and further grouped into polycentric urban agglomerations, called the Social City. His followers, Raymond Unwin⁹ and Barry Parker, modified his original model stressing the need for more open space, lower densities and green belts surrounding the cities. In the United States Clarence Perry¹⁰ developed Howard's original concept of "wards" into the idea of dividing the city into clearly articulated neigborhoud units. The concept was applied by his assistant Clarence Stein¹¹ to the town of Radburn near New Jersey and enthusiastically taken up by British planners¹² after the Second World War, in combination with A. Tripps novel suggestions on traffic and precincts.

Meanwhile the time was ripe for a change of scale in dealing with planning problems. Under the influence of the works of Scots biologist Patrick Geddes¹³ and his American follower Lewis Mumford, the natural region, embracing a number of towns and their surrounding sphere of influence. - an idea originally anticipated by Howard - was established as the basic unit of planning, while Geddes' method of survey - analysis - plan gave planning a logical structure. The above ideas were integrated, developed and applied by Patrick Abercrombie in the Greater London Plan of 1944 ¹⁴.

In continental Europe, on the other hand, the origins of planning tradition go back to the Ancient Greeks. At this point, however, we shall only mention some characteristic tendencies of the modern European tradition proposing alternative versions for the transformation of traditional town planning into city-regional planning. The linear city of the Spanish engineer Arturo Soria y Mata, Tony Garnier's French version of the garden city, the satellite towns of Ernst May in Germany and the Radiant City of the Swiss architect Le Corbusier are the most prominent examples of this tradition.

It is a common trait of early planning theory down to the mid 60's - appropriately called by P. Hall the Master Plan or Blueprint Era - that the planner sets out to produce a fixed plan embodying the desired end state in terms of land use patterns on the ground. Moreover, emphasis is given on spatial or physical solutions, whose capacity in solving social or economic problems is usually over estimated.¹⁶ This approach is adopted by both the Statute of 17.7.1923 in Greece and the British 1947 Town and Country Planning Act.

Under the influence of new sciences (cybernetics, systems theory), the limitations of the above approach became evident¹⁷ and a new systemic approach to planning was adopted, which stressed the interaction between planner and planned system and emphasized the complexity of the latter, consisting of social, economic, cultural, psychological etc variables. Planning is viewed not as a desirable end state but as a continuous process, whereby alternative solutions are tested, subject to constant monitoring, evaluation and control¹⁸.

After its successful application to the field of geography, systems methodology is now expanding towards urban systems and should be considered as the most authoritative trend in contemporary planning theory. Particularly after the development of environmental systems partial or one-sided approaches to planning seem to be outdated.¹⁹ While systems theory of planning is still evolving, there are valid reasons to believe that it will eventually be able to tame the major modern planning problems, such as the control of the megapolis.²⁰ Since systemic models permit control of numerous variables, they are the appropriate tools for the study of complex urban systems.

Finally another modern trend in planning theory attempts to transfer the responsibility of decision making from expert planners to interested parties by means of negotiating and bargaining procedures. It should be noted that while the participation of interested parties in the decision making process of town planning is of equal concern to systems methodology, the latter reserves the responsibility of complex design to the expert systems scientist, while participation has advisory value only.

c. Urban planning in Greece

aa). The Background

After this brief overview of the fundamental concepts related to any study of urban policy we shall now move on to the study of Greek urban policy. It is a legal study, of course, limited to the aspects which are relevant

to the above mentioned subject of this essay. However, the methodology adopted, while focusing on legal data, i.e. programs, administrative decisions and case law related to the subject, includes analysis and synthesis dictated by the systemic conception of the problem. This holistic perspective rests on the assumption that legal interpretation alone cannot exhaust the phenomenon under study. On the contrary, in our view, legal theory should be conceived as an open system and therefore it should always be examined in connection with the other systems (economic, cultural etc), with which it interacts, in order to obtain its full meaning. In this sense, a legal study of failures would be deficient if isolated from its social economic and cultural context. Law, administrative decisions and jurisprudence are answers given not to legal riddles but to real problems generated in various social systems. It is therefore impossible to evaluate these answers as successes or failures unless we have formulated a clear description of the problem. This general principle applied to our case study points out the necessity for a brief overview of the problem of urban development in Greece.

The idea of an ordered city with a plan designed to serve the public interest emerged naturally from the philosophical climate of classical Greece.²¹ The Miletian architect Hippodamus (second half of the fifth century B.C.) formulated a positive theory of urban planning and is credited with adopting the gridiron pattern for the rational arrangement of buildings and circulation. Athenian writers of the period make ample reference to building regulations, while the sophisticated town planning criteria of the time - emphasizing a harmonious relation between buildings and sites - were applied again only 2.400 years later in postwar European reconstruction.

The idea that cities should be consciously planned and rationally designed for the sake of the public interest was further elaborated and found its full expression in the proliferous colonization of the Mediterranean shores by the Greek metropolitan city states. The planning of cities prior to their settlement refined planning theory and established the belief that town planning is indisputably the object of public policy.

There is, however, a discontinuity in Greek history separating modernity from its glorious urban past due to the dark ages of Turkish occupation. Four centuries of such occupation prolonged the Greek Middle Ages well into the nineteenth century and hampered urban development due to successive disasters and incessant population movements. The great cities of the antiquity and the Byzantine empire declined and were replaced by rural settlements, often situated in inappropriate sites for reasons of safety, i.e. to be inaccessible from the armies of the conqueror. Since safety considerations prevented traveling or trading by sea, a number of greater urban settlements abandoned their natural seaside sites and retreated in the mainland. The conditions of occupation prohibited the formation of urban centers (churches, schools, public buildings) and, as a result, most settlements were developed incrementally according to a linear pattern. Moreover, due to the age long economic and cultural stagnation those rudimentary urban settlements remained cachectic and did not develop trends for growth, expansion and smooth transition to modernity.

From the point of view of urban development it should be noted that the traces of the successive conquerors were imprinted upon the form of most urban settlements, expressed in a mixture of Turkish, oriental or Italian

characteristics. Archaic streets, inadequate transportation system, congestion, incompatible land uses, lack of open space and public buildings were the outcome of this piecemeal development. In sum, neither urban nor rural settlements were the product of conscious planning, but had evolved in response to the terms imposed by the conquerors.

Nevertheless, under the rule of Greek local government these settlements managed to secure a semi-autonomy, which permitted the survival of the cultural, religious and legal Greek inheritance. The traditional Roman law, Hellenized in Byzantine times by the Macedonian dynasty (codification of Vassilika) and popularized by the codification of Armenopoulos, remained the civil law of the conquered. As there was naturally no question of authoritative town planning, all property conflicts were subject to the arbitration of Greek ecclesiastical courts on the basis of traditional civil law principles and the concomitant restrictions (nuisance, rights of way etc).

After liberation following the Greek revolution of 1821, the emergent state was restructured by the Bavarian dynasty which reigned in Greece from 1833 until 1862 (absolute monarchy of King Otto). The Bavarian modernizers introduced to Greece elements of German as well as French legal culture, to which they themselves had been previously exposed. In order to assess the German influence upon the town planning philosophy of the time, it should be noted that in Germany the medieval prerogative of the sovereign to plan the settlement of his subjects was considerably strengthened in the time of the absolute monarchy: as a matter of fact many German cities still bear the mark of ordered growth. Even under the influence of liberalism, when the freedom of construction (*Baufreiheit*) almost acquired the status of an individual liberty (see e.g. the Prussian *Allgemeinen Landrecht* of 1794), the practice of imposing property restrictions for the sake of the public interest (safety, circulation) on the basis of police regulations was never challenged. Especially after the economic and demographic expansion of the nineteenth century, a need was felt for more effective regulations to control the construction boom and prevent excessive land fragmentation.²³

The transfer of this philosophy to Greece resulted in the issuing of analogous regulations, such as e.g. the decree of 3.4.1835 "on salubrious dwellings", the decree of 3.4.1834 "on cemeteries", the decree of 3.6.1842 requiring that the exterior of buildings should be inflammable, the decree of 26.4.1882 "on sidewalks and sewage" etc. The idea of authoritative planning from above (i.e. central government) was not foreign to Greek legal culture, since, as we saw, it rested upon an age long classical tradition. Consequently many successful efforts to rationalize existing settlements (as e.g. the statute on the implementation of the town plan of Athens²⁴ (1836) which contained provisions on street width, layout of constructions building permissions etc) or to create new ones (statute on urban planning of the cities and towns of the realm (1867), town plans of the cities of Syros or Sparta etc) took place at the time. It is characteristic of the prevailing spirit that disproportionately large sums from the country's meagre budget (3.000 gold pounds in 1834) were dedicated for the clearing of the Acropolis area and the restoration of the monuments.

Nevertheless, the above mentioned sporadic regulations had little impact upon urban environment as a whole. In reality town planning and housing were usually left out of the scope of public policy in the uncontrolled

hands of private initiative.²⁵ However, though the origins of anarchic development may be traced back to that period, the traditional architecture of the time produced remarkable rural and urban settlements and managed to preserve the human dimensions of the buildings and their proper integration with the physical environment.

After the expulsion of the Bavarian dynasty there is a revival of the traditional private law model for the exploitation of private property, attenuated by measures of police and health legislation, narrowly interpreted by the courts.

Such was the situation in the first part of the nineteenth century, when Greece was suddenly faced with one of the worst crises in its modern history, the Asia Minor disaster of 1922, following which more than 1.200.000 refugees, inhabitants of Asia Minor ²⁶, amounting to about 30 % of the indigenous population, fled to Greece.²⁷ The impact of the influx of refugees on urban development was decisive and marks the beginning of a new era for demographic growth and rapid urbanization. A brief overview of the situation will shed light on the circumstances which triggered the formulation of the policy under study, namely the statute of 17.7.1923.

The flowing in of the refugees had both a positive and a negative impact on Greek society. Among the positive effects we should mention demographic growth, strong national homogeneity and cultural upgrading, especially in the bigger cities (Athens, Thessaloniki) which received the population from Konstantinople and Smirni,²⁸ Equally beneficial was the impact on the domain of industry, where the number of industries and industrial workers more than doubled between 1920-1925. Negative side effects appeared in the domains of employment and, particularly, housing and urban development; while more than 600.000 refugees settled in rural areas and contributed to the modernization of agriculture, the remaining 600.000 flowed in the cities and towns and influenced their course of development for the rest of the century.²⁹ A nucleus of bankers, traders and shipowners from the greater centers of Asia Minor transferred in Greece their capital, expertise and experience and set the basis for industrial and commercial development. Around them there gathered a multitude of cheap industrial hands, small tradesmen and parasitic professions. It is characteristic that the 33 bigger cities with a population of more than 10.000 received 447.184 refugees, i.e. a percentage of 33.67 % of their previous population. ³⁰ In the two greater urban areas, Athens and Thessaloniki, the percentage of refugees to indigenous population was 1 to 3. It was the beginning of a process of urbanization that ended up in a hydrocephalic capital, which, after nearly a century of continuous growth, is still expanding. ³¹

The urgent need to provide shelter to thousands of homeless, the difficulty of selecting the appropriate areas and the cost of acquiring them though expropriation, resulted in hasty solutions, whose long-term price we are paying today. ³² Since housing standards before 1922 were already deplorably low, they became dramatic immediately afterwards.³³ It is noteworthy that 7 years after the disaster, in 1930, the housing needs were estimated at 150.000 dwellings (60.000 for the Athens area and 90.000 for the rest of the country), but only 24.616 were satisfied while the rest of the population remained congested in shacks.

The fact that Greece, while still involved in a struggle for national independence and unification, showed an awareness of the need to control urban development through a permanent and comprehensive policy, can only be attributed to the exceptional situation that it faced. Due to those circumstances Greece became a pioneer in the field of framing an official mandatory town planning policy at the national level, since by any standards the statute of 17.7.1923 is an achievement for its time. It is characteristic that in Germany, though the need for a comprehensive and rational regulation of land use and development according to human needs was acknowledged already in the twenties, it was not until 1960 that the Bundesbaugesetz of June 23 brought unity to town planning and land use legislation at the federal level. In France on the other hand, comprehensive planning in the sense of organizing the national space according to the needs of the population was formally introduced with the decentralization policy of 1955 and the regional planning policy of 1957 (loi-cadre of August 7, 1957), while the necessary administrative structures for the implementation of these policies, expressed in schemes and land use plans, date from 1963. As for Britain, though the origins of town planning legislation may be traced back to the Public Health legislation of the nineteenth century (e.g. Chadwick's Public Health Act of 1848, Torren's Act of 1868, Cross's Act of 1875, the Public Health Act of 1875, London's Building Act of 1884 etc), it was only after the war that it adopted an analogous policy with the enactment of the Town and Country Planning Act of 1947. The preceding Housing, Town Planning etc Act of 1909 and the successive Town and Country Planning Acts of 1919 and 1932, though inspired by the planning ideas of Howard and others, had adopted a substantially different stance towards the problem, since planning remained optional. More specifically the first Town Planning Act of 1909, being the natural extension of public health principles into the domain of town planning, permitted local authorities to prepare town planning schemes for the purpose of "securing proper sanitary conditions, amenity and convenience" in the development of new housing areas, but, in view of its vague nature and cumbersome procedures, its implementation remained very limited. Its first revision, the Housing and Town Planning Act of 1919, while paying lipservice to the idea of town planning, gave more emphasis to housing by granting state subsidies and introducing new standards for working class housing. The following Town and Country Planning Act of 1932 extended planning powers to both developed and undeveloped land, resembling in that respect the Greek Statute of 1923, but still it remained optional and thus could not prevent piecemeal and incremental development.³⁴

The seminal statute of 17.7.1923, being the work product of qualified planning experts, reflects the established scientific principles of the town planning theory of the time. The French influence is particularly evident, since most of the adopted town planning criteria, namely safety, salubrity and aesthetics, had been the object of special legislation in France since the times of the absolute monarchy. As a matter of fact, the criteria incorporated in the Greek statute were the outcome of a long evolution starting in 17th century France.³⁵ It is interesting to note that the creation of straight street lines is traced back to Henri IV (Edit of December 1607), leveling was introduced in 1725, while Louis XVI imposed the relation between street width and building height (ordonnance of April 10, 1783). With the exception of measures regarding dangerous or insalubrious lodgings, it was in the end of the 19th century and after Pasteur's discoveries that public health legislation was made mandatory and was codified in 15.12.1902, introducing the lodging

permission. Aesthetic considerations, on the other hand, had been the object of special legislation since Henri IV, Louis XIV and Napoleon (e.g. architectural zones imposed by Mazarin), but it was only in 1911 that legislation allowed for a refusal of building permission in Paris for the protection of monuments and sites.³⁶ Analogous measures were introduced at the national level in 1911 and 1924. Traditional security measures for the prevention of fire became imperative quite recently, with the law of 11.7.1935. It was in 1943, that the French law of June 15 attempted a synthesis of the above sporadic measures by requiring a building permission from all persons and for any kind of construction.³⁷ It is noteworthy that the above criteria had already been incorporated in Greek legislation twenty years earlier.

bb) Planning Philosophy.

Before we proceed to the detailed description of the provisions of the statute of 17.7.1923 it might be useful to say a few words about the underlying planning philosophy and its evolution throughout the present century. Since this philosophy more or less espouses the continental model, it might be interesting to attempt a brief comparison with a different planning philosophy, that of Britain, and to locate a few basic differences and similarities.

It has been pointed out that British planning law, far from being value neutral, reflects the influence of three distinct and competing ideologies, namely the traditional common law approach, the orthodox public administration and planning approach and, finally, the public participation approach to planning.³⁸ We shall attempt to identify analogous trends in the development of Greek planning philosophy and explain the differences by reason of cultural and circumstantial factors.

In Britain the traditional *common law planning ideology* developed in the late nineteenth and early twentieth century as a reaction towards early public health legislation, dictated by the need to deal with the disastrous impact of the industrial revolution upon urban environment. Though mostly permissive in character, these measures were seen as a governmental intrusion upsetting the natural evolution of the common law of land use and tenure. In response to the pleas of landowners, courts developed a number of principles aiming at ensuring that governmental planning powers and controls would remain within the appropriate limits.

In Greece, though the notion of a mandatory town plan had already been introduced by the Bavarians in some major towns, the attitude of the courts towards planning at the time was not very different from that the British courts.

The twentieth century, however, is marked by a progressive consolidation of the *public interest planning ideology* in both countries. In Britain the two basic strands of early planning philosophy, namely the public health movement and the garden city movement, through their long evolution had prepared the ground for an interventionist rather than mere regulatory policy; their respective ideas were finally drawn together in the three major Reports which preceded the enactment of the postwar planning legislation and greatly determined its content, the Report of the Barlow Commission on

the Distribution of the Industrial Population (1940), the Reports of the Reith Committee on New Towns (1946) and the Report of the Scott Committee on Land Utilization in Rural Areas (1942). The underlying ideology is expressed in planning laws which confer to the administrator wide powers and broad discretion to identify and advance what he conceives to be the public interest.³⁹

In Greece the statute of 17.7.1923 is also an expression of the public interest ideology, but from a continental perspective which is substantially different from the British.

More specifically, the Greek system had ever since the beginning opted for the precise enumeration of specific town planning goals allowing for objective definition and interpretation by the courts, namely salubrity, safety, aesthetics, economy and transportation. As we shall explain in detail below, the major shortcoming of the Greek system is that it has failed to convert (by means of circulars or acts of delegated legislation) those general goals into precise operative objectives in order to provide effective guidance for the drawing of local plans. In spite of that, the persistence on the objective character of the criteria may be easily inferred from the rulings of the Council of State, which insisted that any approval or amendment of town planning schemes should be justifiable strictly in terms of the above criteria. It is noteworthy that in dubious cases the Court always required full reasoning and refused to validate town planning arrangements which did not fall within the scope of the above town planning criteria. Thus in Greece the issue of the town planning objectives has always remained a legal problem.

On the contrary, in Britain the town planning system is acknowledged to be a political system in the sense that, as Grant has observed, "the objectives sought for planning and the values applied in decision making have ultimately no greater rationality than the degree of public support which they command".⁴⁰ In fact, the 1947 Act avoids giving a definition of town planning or its aims and objectives and, though it emphasizes its long term character, it leaves ample room for planning authorities (central and local), interest groups and citizens to reach a balance among their competing powers and conflicting interests. Thus, despite the assumed flexibility, adaptability and democratic accountability of the system, it has been pointed out that, once the political consensus of the 40's withered away, the vagueness of the Act caused many crucial town planning issues to become the object of political and ideological conflict both at the national (e.g. compensation) and at the local level (e.g. new town policies). Today, the great complexity and broadening scope of planning problems (including energy conservation, pollution etc.), the conflicting views as to the notion of public interest and the strengthening of local authorities' powers even beyond the intentions of the 1947 and 1968 legislator, have made the exercise of discretion less predictable and more controversial than ever before.

Closely related to the above is another basic difference regarding the compulsory or permissive nature of town planning in each country and the amount of discretion granted to planning authorities. Under the prewar British system town planning was optional on local authorities and, apart from the remote risk of being compelled to undo their development, no effective means of control existed to prevent developers from proceeding without applying for a planning permission or ever ignoring a refusal of

permission. Under the postwar system all development, with certain exceptions, has been subjected to the prior approval of the local authorities, while enforcement provisions were strengthened to a significant degree, including enforcement notices, stop notices, fines etc. Nevertheless the British planning system is basically a discretionary system. Notwithstanding certain statutory duties mainly of a procedural nature (e.g. procedure for handling planning applications) planning authorities enjoy an unusual for continental standards amount of discretion as to whether to grant planning permissions, on what terms, whether to take enforcement measures etc. It is also acknowledged that despite the existing procedural, legal and political controls of its misuse, the scope of discretion has steadily broadened over the years.

Such powers of the town planning authorities have always been unthinkable in Greece. Following the approval of a town planning scheme from the centre, its application is obligatory for the local authorities; thus the granting of building permissions according to the scheme's provisions or the taking of enforcement measures against offenders is imposed upon them as a duty and not left at their discretion.

It should be noted, however, that in practice the public interest ideology in Greece is considerably mitigated by a judicial principle recommending the least onerous planning measures with respect to property rights (C.O.S 2523/1965). Nevertheless, the rule remains that property considerations are auxiliary and must bend before the public interest. Another characteristic expression of the survival of traditional byzantinoroman civil law principles is the fact that the granting of building permissions is a duty and not an act of discretion.

It has been remarked that a third planning ideology is gathering momentum in the last two decades in Britain, the *ideology of participation*. Its basic tenet is that planning law is a vehicle for the advancement of public participation and its basic difference from the previous two is that it reduces both property owners and planning authorities to the status of mere participants in the planning process. A similar trend may be traced in Greece, especially after the reform of planning legislation in 1979 and particularly in 1983. While in Britain the philosophical ancestry of the ideology of participation is traced back to J.S.Mill, the origins of the Greek version may be found in the traditions of local self government under the Turkish occupation. Nevertheless, participation in Greece remains rather procedural than substantive, in the sense that it does not challenge the established planning criteria but only the decision making process for the identification of the public interest. In other words it aims at providing many other groups, besides property owners and planning authorities, with a chance to express their opinion on what constitutes the public interest (e.g. local authorities, neighborhood committees etc).

Notwithstanding the above, the official planning ideology in Greece, as it may be inferred from legislative texts, administrative acts and court decisions, is constantly distorted under the erosive influence of an extralegal factor, namely the overt defiance of building regulations by affected parties, who by means of massive violations eventually managed to create a social problem. In view of the insufficiency of state controls against such massive insubordination a new ideology of accommodation is in the process of developing .

Based on the assumption that unauthorized development is the product of social needs, this new philosophy aims at the ex post facto legitimization of accomplished facts. Having met with the resistance of the courts to sanction blunt illegalities (see below), it has recently adopted a milder approach mostly consisting in the selective incorporation of unauthorized settlements in town plans after marginal infrastructure improvements.

Nevertheless, despite the novel planning jargon of this new ideology, we are in fact witnessing a regression towards the traditional supremacy of private property.

Chapter 6. Town Planning Legislation in Greece.

6.1. Seminal Statute of 17.7.1923: The Law that failed.

a. Introduction

From the theoretical point of view the statute of 17.7.1923 is an example of the so-called *classical town planning*, whereby state intervention is limited to the regulation and control of private building activity at the individual level on the basis of an approved town plan. At the opposite end we have the *active (dynamic, coordinated) town planning*, characterized by organized construction and comprehensive planning, often undertaken by the state itself. Active town planning in Greece was institutionalized much later in the 1970's and was not implemented until the 1980's.

The statute of 17.7.1923 is a program containing the basic instructions for the future development of every urban settlement in Greece. It is characteristic that town planning is conceived as a dynamic process, since the statute requires that the town planning scheme should be designed in view of the maximum expected expansion of the settlement (Art 2 # 2). According to its provisions every city, town or settlement must develop and expand on the basis of a specific town planning scheme approved by the Administration. Such a scheme should satisfy the settlement's needs according to standards set by considerations of salubrity, security, aesthetics, economy and transportation. The specific prescription of these standards is entrusted to subordinate legislation, which also decides about the necessary infrastructure works (sewage, transportation, recreation facilities) as well as the concomitant financial obligations of local land owners and municipal authorities.

The statute of 17.7.1923 sharply distinguishes between areas which fall within the range of a town plan and areas outside it. Building activity in the latter is subjected to severe restrictions (see below). Settlements formed before 1923 constitute a third category which is also subjected to special provisions (see below).

In broad lines, the statute of 17.7.1923 regulates the process for the design, approval and implementation of town planning schemes, sets the general conditions of urban development, imposes restrictions on property for reasons of salubrity, safety, aesthetics and orderly urban development, regulates building activity, provides for the expropriation of land to secure appropriate implementation of the town planning scheme and normal expansion of the settlement, prescribes a procedure for lot restructuring and allocation of compensation payable to adversely affected parties, establishes the building permission as the basic instrument of planning control and regulates the procedure for its issuance and, finally, threatens severe sanctions for the violation of its provisions.

The statute of 17.7.1923 has been the institutional frame of urban planning and design for over sixty years. Taking into consideration that the first legislative measures on comprehensive planning, such as statute 360/1976 on "Comprehensive Planning and Environment" and Statute

947/1976 on "Areas of Organized Human Settlements" ("ecistic" areas) remained virtually on paper, it was not until 1983 that most, though not all, of its provisions were replaced by statute 1337/1983. Even today amendments of the town-planning schemes of existing cities and towns are subjected to its provisions. As we intend to show, the framing of the law was of impressive quality and, had it only been properly implemented, the present case study would have been unnecessary.

The town plan delimits, among other things: a) the public domain (streets, squares, alleys, parks, and other areas for public use), b) the lots specifically designated for the construction of public, religious or municipal buildings and c) the lots designated for constructions of any other kind (residential, commercial etc).

b. Description

aa) The *process for the preparation and enactment* of a town planning scheme may be set into motion either *ex officio* by the Minister (or the Prefect in case of smaller towns) or following a proposal of the municipal authorities or even of private persons who own land in the area. In any case the decision for the initiation of the town planning process is left to the discretion of the Minister (C.O.S) 1267/58 Pl.) As a first step towards the preparation of the plan the Minister is bound to ask the local authorities to submit an opinion containing information on local needs and circumstances as well as their views on the intended land arrangement. The opinion of the local authorities must be submitted to the Minister within a short term, whose precise duration is set by delegated legislation (Decree of 8/12/9/1923 issued by virtue of art 3 # 3 of statute of 17.7.1923: on the subject see also below). If the Minister fails to comply with his obligation to seek the opinion of the local authorities, his unilateral decision approving the town plan may be quashed by the Council of State. On the other hand, if the local authorities fail to submit their opinion within the fixed time term, the Minister may proceed without it.

A preliminary draft of the proposed town planning scheme is publicized at the municipal office and duly announced, so that all interested parties are notified and may submit their appeals against it. If the intended arrangement consists in the "localized" amendment (amendment restricted to a very small area, minimum size of one block) of an existing town planning scheme, all affected owners have to be notified in person as well.

The satisfaction of these requirements (minutesly prescribed in the General Code of Building Regulations of 1929, see below) is the duty of the municipal authorities. However, non observance of the above formalities may lead to the quashing of the ministerial decision of approval only when the planning initiative was taken by the municipal authorities themselves. On the contrary, if the planning process is initiated *ex officio* by the central government and the local authorities fail to observe their obligation within a fixed time term, the Minister may proceed without considering their opinion and without appropriate publication and notification of the intended arrangement (C.O.S. 1932/82, 2958/72 etc.) The rationale of such a procedure is to avoid procrastination of local authorities.

At the next stage the preliminary draft together with the local authorities' opinion and appeals of the interested parties are submitted to the Ministry for consideration. The entire file is put before the Central Committee of Public Works, a permanent body of planning experts at the Ministry. The Committee is expected to issue a detailed advisory opinion on the intended arrangement, which constitutes in fact the most serious constraint of the Minister's discretion. More specifically, while the Minister is not bound to comply with the local authorities' opinion, he cannot disregard, modify or proceed without it unless he has the consenting opinion of the above Committee. In other words, the Minister has to adopt either the opinion of the local authorities or that of the Committee, but he cannot modify or disregard both of them and proceed to his own arrangement. On this subject it has been ruled that the discretion of the Minister to reject the proposal of local authorities for the amendment of a town plan does not violate the constitutionally guaranteed autonomy of local government, because town planning cannot be considered as a strictly local affair, since it is regulated on the basis of criteria of general interest (C.O.S. 1134/65). However the rejection of the local authorities' opinion must be supported by adequate reasoning (C.O.S. 3433/72, 1240/74, 1150/82).

bb) The Ministerial decision approving the town planning scheme is published in the Official Gazette together with the respective map of the area. It is noteworthy that the simultaneous publication of the map is considered by the Council of State an essential formality, the omission of which may cause the annulment of the town planning scheme. This was ruled for the first time in 1958 and, as the omission of such a publication was until then a common practice, it caused great concern in the Administration, which hurriedly legalized all past town planning schemes by a special statute (statute 3879/1958).

The promulgation of the decision approving the town planning scheme has direct effect upon property rights in the area: the decision of approval constitutes the act of expropriation of all private property designated for common use by the plan. As we shall see below, the expropriation is not completed unless full compensation is paid to the owner (C.O.S. 372/62 pl). On the other hand, the property designated by the plan for the construction of public buildings (e.g. schools, municipal buildings etc) is immediately subjected to various constraints imposed by the law, but is not expropriated unless a special expropriation act is issued.

The ministerial decision of approval of the town planning scheme terminates the first stage of town planning and may be challenged before the Council of State. The second stage consists in the implementation of the town planning scheme, i.e. the materialization of the approved arrangement. Following the expropriations of the previous stage many land lots, expropriated in part, lose their regular shape and size, while other lots, for various reasons, do not have the dimensions required by the building regulations in force. At this stage, such lots may be reshaped through the method of lot restructuring and lot concession. Lot restructuring and concession is an administrative procedure by which the shape and size of land lots is modified, so that they will acquire the appropriate form and dimensions required by the town plan. For that purpose, either pieces of land are mutually exchanged among neighboring properties until they all acquire the desired form and dimensions (lot restructuring), or an entire property is ceded

to a neighboring one (lot concession). Lot concession may take place only when restructuring is impossible. Both practices are very common and accompany virtually every approval, amendment or expansion of a town planning scheme.

The law regulates in detail the conditions required for lot restructuring and concession. For the purposes of this essay it is sufficient to say that it is a very complicated technical process, for which the administration is granted broad discretionary powers; the criteria of its decisions (e.g. whether lot restructuring is feasible or not) are considered technical and subject to marginal judicial control only.

Lot restructuring and concession are always accompanied by the allocation of compensation among proprietors benefiting from and proprietors adversely affected by the arrangement. The administrative act of allocation specifies the properties which were expropriated and the properties which gained an advantage from this expropriation and fixes the percentage of compensation payable by the latter to the former. At this point, we speak of beneficiary and liable properties and not proprietors, because final adjudication as to the person of the proprietor and the exact amount of payable compensation is assigned to the civil courts .

Throughout the entire procedure there is extensive participation of citizens affected by the town plan. The acts of lot restructuring, concession and allocation of compensation are prepared by the competent planning agencies and exposed to public scrutiny for a period amounting from 2 to 10 days. All interested parties may submit their appeals to the Minister (after the decree of 5/8-10.1948 ministerial jurisdiction and responsibility on the matter was transferred to the Prefect). The Prefect exercises a control of both legality and expediency of the act and either approves it as it is or sends it back to the technical agency for reconsideration. The Prefect's decision of approval is subject to control of legality by the Minister. Both decisions may be challenged before the Council of State.

All land required for the implementation of a town planning scheme(i.e. land designated for public use or for the construction of public buildings, land which is restructured or conceded following the process of lot restructuring) may only be obtained by the modality of expropriation. The fundamental principles for the expropriation of private property are set by the Constitution According to the Greek constitutional system for the protection of private property, expropriation is allowed under the following conditions: a) it must be undertaken for reasons of public interest, b) cases of public interest must be defined by law and not by administrative decisions, c) the owner of the property must receive full compensation, whose precise amount must be fixed by the civil courts. According to the Court's rulings, the requirements of town planning on private property constitute legal grounds of public interest justifying expropriation.

The administrative decision approving the town planning scheme constitutes the act of expropriation of lots designated for public use, while the administrative decision on lot restructuring and allocation of compensation constitutes the act of expropriation of the exchanged or conceded pieces of land. However, the expropriation process is not completed unless full compensation fixed by the courts is paid to the proprietor; until then he

remains in full ownership of his property and may dispose of it at will or seek and obtain a building permission for it .

cc) *The individualized level of town planning consists in the regulation and control of construction.* Any construction is subject to conditions and restrictions, depending on the location and size of the land lot, the nature of the buildings etc. Different restrictions apply depending on whether properties are located within or outside the town planning scheme. In the first case, construction is subjected to conditions and restrictions imposed by acts of subordinate legislation issued by virtue of art. 9 of the Statute of 17.7.1923. On the basis of the above enabling legislation the Administration issues Building Regulations, General or Particular. General Building Regulations constitute in fact a comprehensive Code and impose restrictions regarding density and layout of buildings, construction design and safety standards, minimal lot size, minimum and maximum height of buildings, number of floors, maximum lot coverage and rate of exploitation, sewage, drainage and sanitary facilities, air and light provision, etc.

The General Code of Building Regulations is applicable throughout the country, but its provisions bend in front of Particular Building Regulations, i.e. decreed regulations especially enacted for specific settlements or even parts of settlements. The relationship between General and Particular Building Regulations is expressed in the principle that, in vacuum legis, i.e. in case the Particular Regulations do not provide the solution to a specific problem, the answer must be sought in the General Regulations. It should be noted that, as a rule, it is Particular Building Regulations which form the local regime in towns or even parts of town (zone, areas), at least with respect to lot dimensions, building heights, number of floors etc.

Construction in areas outside the scope of a town planning scheme is subject to severe restrictions concerning the minimal lot size required for construction, the maximum allowed size and bulk of building etc .

Special provisions regulate construction in urban settlements preexisting the enactment of the statute of 17.7.1923: such settlements are also expected to acquire, within reasonable time, their own town planning scheme and in the meantime, construction obeys special arrangements (C.O.S.1787/1957).

dd) Following the approval and implementation of a town planning scheme any owner of a land lot, which meets the legal prerequisites and may be built upon, is entitled to seek and obtain a *building permission*. The building permission is the means for controlling building activity from the point of view of safety, salubrity, aesthetics and general observance of planning legislation. It is required irrespective of the building's location, within or outside a town plan, and is necessary for any kind of construction, including demolition, modification, structural alterations and major amendments of existing buildings. No person, physical or legal, including the State, is exempt from the obligation to seek and obtain a building permission.

The granting of a building permission is not an act of discretionary power, but constitutes a duty of the authorities, as long as all

conditions required by the law are satisfied. Competent for the granting of building permissions are the local decentralized planning agencies (in some cases the competence has been recently transferred to the municipal authorities). The permission is granted after close examination and approval of a technical study of the intended construction, submitted by the owner to the planning agency.

Building permissions may be challenged before the Council of State and so is the refusal of the planning authorities to grant a permission legally ought.

ee) To ensure compliance of citizens with its provisions the statute provides for a spectrum of *sanctions*. Theoretically, the basic rule is that any building erected without a building permission and in violation of town planning legislation is subject to demolition by the Authorities. However, the owner may avoid demolition by performing himself the necessary modifications indicated by the Authorities. The demolition costs are charged on the owner. Enforcement of the sanctions and obstruction of any ongoing unauthorized building activity is entrusted to the police.

It is characteristic of the rather optimistic assessment of the statute's framers, that by a special provision (Art. 80) a ten year deadline was set for all towns to acquire plans designed or amended according to the statute's provisions.

6.2. Relevant Legislation

a. The above mentioned model of town planning established by the statute of 17.7.1923 is, as we said, a good example of the classical type: the precise definition of the planning criteria, vaguely stated in the statute, was in fact entrusted to the Administration, which would elaborate the particular town planning schemes, and no further instructions to that end were given by the text of the law itself. Yet, once started, the process of town planning gathered momentum and within only six years resulted in a regulatory text, *the General Code of Building Regulations of 1929* (decree of 3.4.1929) containing provisions which, even judged by contemporary criteria, appear to be of impressive quality. In fact these provisions seem to move one step beyond the classical model towards arrangements reminiscent of the modern comprehensive town planning system.

Besides the usual standard provisions of Building Regulations, the above first General Code of Building Regulation contains special provisions aiming at facilitating, rationalizing and operationalizing the town planning process. Thus it is required that any design of a town planning scheme should be accompanied by a technical Report, which would provide full reasoning for the intended land arrangement and minutely describe, among other things, the local living and working conditions, the existing communication network, the financial capacity of local authorities to meet the town planning expenses, as well as methods expected to increase their

resources, the ratio between open and building space as well as the percentage of open space per inhabitant before and after the intended arrangement, the existing water supply and sewage system and their expected improvement, the commercial center and, if insufficient, its expected expansion and finally, the existing structure of real property in the area.

The detailed description of the required content of the Report shows the care of the legislator for a thoughtful, well informed and documented approach to town planning by the Administration.

On the basis of the above technical Report the town planning design should provide, among others things, for: the internal communication network and its junction with external networks, the precise site of public and municipal buildings, such as churches, schools, theaters, museums, libraries, hospitals, stadium, cemeteries etc, the site of alleys, squares and other areas designated for common use, the commercial center and its expected expansion, the building system (continuous, discontinuous etc,) of each part of town, the minimum and maximum building height and minimum lot size and dimensions. The town planning design should also delimit an industrial zone, incase industry already exists or is expected to develop in the area, and take particular care for the protection of archaeological and historical sites or monuments.

Moreover, with a set of instructions the framer of the above General Building Code seeks: a) to turn the abstract criteria of the law into operative objectives and b) to provide the administrative structure with feed forward controls, i.e. with anticipatory management of the resources in its hands in order to facilitate future development of the town. Thus, for instance, planning authorities are instructed to take special care so that the layout of buildings and streets will allow for adequate air and light, the communication network shall link the center directly with the railway stations or highways, the slope of streets will not exceed 7% and, if possible, the new street network shall be designed on the traces of the old one, the land lots shall be as big as possible, the bulk of the buildings situated along the main roads shall be as small as possible, extensive areas designated for common use and enough open space shall be provided, the communication system (on the surface or underground) shall be designed with economy and in view of the settlement's expected development, and, finally, that the design of new settlements or new parts of town shall take place in conformity with the latest scientific developments of the science of town planning.

b. Already by 1955 the legislator was aware that urban development was rapidly getting out of control. Taking into consideration that during the military regime (1967-1974) town planning had been subordinate or even instrumental to the paramount goal of economic development, it is no wonder that in the 70's people were becoming fully conscious of the failures of urban policy.

The need for a more drastic state intervention in the domain of town planning was first perceived in the 60's and was firmly accepted in the 70's. By that time, phenomena such as ribbon development of towns alongside mainroads, uncontrolled expansion of commercial against residential areas and rapid deterioration of the latter due to conflicting land uses, pollution and

traffic problems, had clearly proved the inadequacy of incremental measures to ensure a viable urban environment.⁴²

The first proposition for reform amounts to the introduction of zoning processes for land subdivision in combination with a policy of incentives to facilitate implementation (e.g. incentives for the transfer of industries in special areas). As a first step towards this direction the state (Ministries of Coordination, Public Works, Interior etc) or public agencies (local authorities, National Tourist Organization etc) assigned to private agencies the task of designing urban systems plans for specific urban or touristic areas. It is estimated that approximately 40 such plans were drawn between 1963-1974, which based their comprehensive design of land use on functional criteria.⁴³

These first isolated attempts were soon followed by legislation and particularly *Law 1003/1971 "on active town planning"* and *L. 1262/1972* (amended by L. 198/1973) "on comprehensive plans of ecistic areas".

The former statute provides for the establishment of zoning regulations for the comprehensive development or upgrading of residential, touristic, commercial or industrial areas within or outside the existing townplans. Property included within such zones is transferred to the state by means of purchase or expropriation, while the task of redevelopment is either undertaken directly by the state itself or conceded to public, private or semiprivate companies.

The L. 1262/1972 which followed immediately afterwards, is an attempt to exercise control on the development of urban areas through the approval, implementation and amendment of comprehensive plans (analogous to the Development plans of Britain, Master plans of U.S.A. and Schemas Directeurs of France). Such plans should be drawn by the competent planning authorities on the basis of general criteria and instructions provided by comprehensive plans of a higher level (national or peripheral) and should, in their turn, serve as the frame for the design of individual plans for settlements or parts of town. These comprehensive plans consist of a) texts setting the goals and principles of development and providing the basic directions for its implementation and b) maps depicting area boundaries, zones and land uses, population densities, communication networks, major public works and basic development priorities.

Although a number of such plans were drawn, they were destined to remain on paper and never to proceed beyond the stage of design. For one thing, the proposed land-use policies were designed at a very high level of abstraction (1:20.000) and thus required concretization, which was never undertaken for various political and technical reasons. It is characteristic that the process of drawing the comprehensive plan of Athens, which began in the 60's by initiative of the Ministry of Public Works, was never completed, and the first comprehensive plan of Athens was approved by Law only in 1985 (L.1515/1985, L.1561/1985).⁴⁴

Thus despite the considerable qualities of the above programs, the transition from visions to reality proved to be more difficult than expected: implementation of the system of comprehensive planning would have to overcome deeply rooted attitudes favoring circumstantial or disjoint

decision making: Resistance of the public, clinging to traditional concepts of property rights and unwilling to submit to the discipline of comprehensive planning, opposition of land speculators and constructors, poor organization, inadequate staffing and inertia of the administrative services were factors requiring considerable time and effort to be put under control. It was to the great relief of planning agencies that the energy crisis of 1973, whose first victim was building activity, diverted attention from town planning matters to other more urgent issues and provided an excuse for dropping the whole subject.

Two years later the governmental change and the drawing of the *Constitution of 1975* provided a unique opportunity for the updating of the town planning legislation. Article 24 of the new Constitution "on urban planning and environmental protection" is considered among the most progressive on a worldwide scale (its equivalent may be found only in the Italian Constitution) and its adoption placed Greece among the pioneers in the field. By virtue of this article the state assumes a direct responsibility to protect the natural and cultural environment and to provide a regulatory frame for integrated and harmonious urban development. Comprehensive planning is constitutionally sanctioned and assigned to the care and control of the state; the so far inviolable right of property is subjected to severe limitations imposed in the form of property contributions, compulsory purchase of land by the state etc, for the purpose of providing the public land necessary for the materialization of comprehensive town planning. It is characteristic of the prevailing state of mind in the Constitutional Assembly of 1975 that the above Article met with the unanimous approval of all parties.

The constitutional policy expressly formulated in Art. 24 provided for an integrated mega-system of comprehensive systems: at the top level a national Master Plan was provided which would in broad lines distribute settlements in an harmonious and orderly way within the national territory. Within the context of the Master Plan regional plans would decide similar issues on the basis of peripheral criteria and, finally, within such regional plans various comprehensive urban systems would be organized.

The first legislation enacted in execution of the above constitutional directives was *L. 360/1976 "on Planning and Environment"*, subsequently amended by *L. 1038/1980*. This legislation introduces large scale and long term planning at the national and regional level. For this purpose it contains provisions for the design and implementation of comprehensive programs and plans and for the coordination of public and private sector activities on planning matters.

The plans may refer to the entire country (national), to a periphery (regional) or to a special activity (specific). They usually provide for population and land densities in domains of production, national and regional transportation networks, social, economic and administrative infrastructure networks, green belts, national parks as well as special measures for landscape conservation and environmental protection. The plans are usually accompanied by programs containing measures required for the plan's funding and implementation.

The above legislation had the same fate as its predecessor L. 1262/1972 for approximately the same reasons and it was never implemented.

Three years later a new town planning legislation drastically modified the statute of 17.7.1923, namely L. 947/1979, amended by L. 1337/1983. The rationale behind the new town planning system is that urban development should not occur randomly, but should be the outcome of a long term policy, formulated on the basis of town planning criteria and integrating aesthetic, demographic and economic considerations with the particular features of each developing area. For that purpose a host of new institutions and measures are introduced within the framework of the above constitutional directives. Thus, in order to bypass the traditional expropriation procedures and to ensure the land required for public utility or housing purposes at a minimal cost, the new legislation provides for the contribution of proprietors in land and money, for the state's option in land purchases in certain areas and for the setting up of land banks. Other measures purport to the limitation of excessive land exploitation, such as e.g. the fixing of the coefficient of exploitation at the maximum limit of 0.8. Moreover, town planning procedures are decentralized and more active participation of citizens and local authorities is required to ensure maximum consensus.

In broad lines, the new law introduces a system of active state intervention in the domain of town planning (similar to French model of "Urbanisme d'intervention" expressed by "urbanisme operationnel" and "remembrement urbain" or the German "Flachennutzungsplane" and the British development or structure plans) aiming at controlling the form, modalities and timing of urban development. The new system is constructed around the concept of "ecistic" area, i.e. an area whose location and particular characteristics render it appropriate for residence and productive activities.

An area is designated as "ecistic" by decree, following a complex multiphase administrative procedure. The process begins with the drawing up of a General Urban Study depicting all relevant factors (soil condition, existing land uses, ratio of population growth etc). At the following stage a model suitable for the development of the ecistic area is selected among the alternatives offered by the law, namely urban redistribution, active urbanization or building regulations: the former two introduce a novel form of extensive state intervention, while the latter leaves ample room to private initiative. The entire process provides for extensive participation of competent authorities (central, peripheral or municipal) and affected citizens or other interested parties.

The necessary details required for the activation of s. 947/1979 (e.g. procedure for design and approval of the General Urban Study) are not directly regulated by the law itself but are assigned to delegated legislation. However, since most of the relevant decrees have not yet been issued, the entire system of s. 947/79 has been condemned to virtual ineffectiveness (so it was ruled by the Council of State, decision No 2149/1979).

On top of that, the implementation of s. 947/79, whenever attempted, was confronted with considerable reaction from the public, professional organizations, pressure groups and mass media. Its provisions, especially those establishing land and money contribution, self indemnification etc, were considered unfair for petty proprietors and were sharply criticized

as leveling and indifferent to the particular features of each area. Most important, the law was criticized as incapable of providing a viable solution to the problem of reshaping and upgrading the existing unauthorized settlements, which urgently required to be incorporated in townplans and provided with infrastructure facilities.

In view of the numerous deficiencies of s. 947/79 a new law (L. 1337/1983) of transitory character was enacted as an interim regime, until a more comprehensive planning legislation of permanent duration would be adopted. Law 1337/1983, initially destined to last for two years but still in force today, introduces a rather complicated system of town planning design in two levels (General Urban Plan, 1:5.000-1:20.000 and Urban Study 1:1000-1:5000, the equivalent of the former townplan), while a third higher level is provided for the two major cities, Athens and Thessaloniki (1:50.000-1:100.000). It is the ambition of the new system to combine ecistic with development and social policies. For this reason, citizen participation becomes more extensive and institutionalized (Neighborhood Committees, District Boards etc), proprietor contribution to urban development is estimated according to social criteria and a number of zones are provided (e.g. Zones of Special Incentives for the redevelopment of problematic areas, Zones of Ecistic Control for preventing land fragmentation and unauthorized development in the periphery of cities, Zones of Special Support for economic development etc). Of particular importance for this essay are the measures taken to check the persisting problem of unauthorized development. These measures will be discussed below at the appropriate place.

While it is still early for a systematic assessment of the significance and impact of L. 1337/83 some general evaluative comments may be appropriate here.

In the first place the new law is applied only to areas located outside a townplan (with certain exceptions still reserved for the statute of 17.7.1923). For the rest, the old system of L. 17.7.1923 is basically maintained for the amendment of existing townplans, so that most cities and towns of Greece continue to develop incrementally.

Immediately after the enactment of L. 1337/83 the Ministry of Town planning and Environment undertook the widely publicized task of providing every town and village of the country with a town planning scheme. The actual scope of the law's application are the new "ecistic areas" (meaning in fact new urban settlements), for which a structure plan is provided, coupled with a detailed townplan. According to the program, General Urban Plans were supposed to be designed for 462 towns in the entire country (213 such plans were approved by 31.12.1987), followed by Urban Studies for the extension of town planning schemes in an area exceeding 50.000 ha (such urban studies covering an area of 15.000 ha have been approved by 31.12.1987; nevertheless by June 1988 only 15 such studies covering only 400 ha have received final approval). Despite, however, the great effort undertaken, no significant signs of implementation are visible yet. ⁴⁵

Chapter 7. The Consequences of the Failure: Unauthorized Development in Greece. Diagnosis and Analysis.

7.1. Description of the Problem Situation

The sprawl of unauthorized development in Greece is all the more remarkable for the fact that it occurred in a country which did have a model town planning legislation as early as the beginning of the century and was in that respect a pioneer in the field. Since the statute of 17.7.1923 is, even by contemporary standards, an outstanding piece of legislation, an analysis of its failure should begin with some background information concerning the circumstances of its enactment and the subsequent landmarks which influenced its future course.

To begin with, one might wonder at the fact that a small agrarian country, such as Greece, with only a few cities and minimal experience of urban problems, came up with a mandatory town planning policy at the national level, while at that time more developed industrial countries, facing serious urbanization problems, such as Britain, had failed to do so. As we have already mentioned, all evidence in this respect points to the exceptional circumstances related to the catastrophic failure of the Asia Minor military campaign (1922), following which Greece was shouldered with the problem of 1.200.000 homeless refugees (see above). As the refugee settlements were dispersed throughout the country, the need arose for a mandatory legislation to prevent their uncontrolled growth. It was under these circumstances that the de facto government, which had temporarily taken over after the military disaster, proceeded to the enactment of a statute that was destined to live for more than 70 years.

The statute of 17.7.1923, though essentially an original piece of legislation, had nevertheless, assimilated continental and particularly French experience in town planning. It is characteristic that only a few years earlier a French specialist in planning, Ernest Hebrart, had worked with Greek planners in the Administration and had presented his ideas to the Greek National Academy in 1920.

In the short run and with respect to its immediate object, namely to contain the refugee settlements, it may be estimated that the statute of 17.7.1923 has been more or less successful.⁴⁶ Nevertheless in the long run the statute has not had the expected impact upon the orderly future development of the country. In order to understand this major failure we shall have to take into account several relevant problems which were not properly taken care of and eventually had an adverse impact upon urban development. A detailed and systematic account of these factors will be given below. However, it is useful to mention a few of them now in order to place the problem under study within its appropriate context. Such basic factors worth considering at this point are the *deficient financing of the town planning system, the absence of a parallel coordinated housing policy* and, finally, the

impact of unforeseen catastrophes. But it is better to take the story from the beginning.

In the first place, as we have already mentioned, Greece entered the twentieth century as a predominantly rural country with only a few cities and towns, many of which already had their particular town plan and building regulations. Following the social and economic crisis of the First World War, while most European countries, such as Britain, preferred to give priority to housing considerations, Greece, perhaps overestimating its capacities, opted for a more ambitious comprehensive town planning policy. Nevertheless in the formulation of this progressive policy Greece, in contrast to Britain, seems to have overlooked an important factor: namely that town planning problems cannot be properly dealt with without a prior, or at least parallel, solution of the housing problem. Consequently, while the British, making significant concessions to town planning, embarked upon a social policy with particular emphasis on housing, the Greeks insisted upon a major nationwide town planning policy combined with ad hoc measures for the housing of the refugees, without providing for an equally large scale housing policy, which would have served as a bumper for the protection of town planning. This is one of the main factors which rendered the Greek town planning policy so vulnerable in the following years.

The second area of problems is related to the town planning financing system. Greek experience in this respect is similar to that of many European countries and particularly to that of prewar Britain: the implementation of the town planning system has been severely handicapped by the compensation problem. In Greece, as in Britain, the compensation burden has been placed on the weak shoulders of local authorities. Hence, as in both countries the systems for determining land values rendered compensation costs disproportionate to the limited resources of local authorities, both town planning systems faced analogous problems in the course of implementation: Schemes drawn by the local authorities practically ratified the existing trend of development in order to minimize compensation costs. In Britain developers, taking advantage of the time lapse between preparation and actual operation of the schemes, proceeded to premature development, counting on the reluctance of local authorities to pull down existing buildings. It is the same rationale which urged Greek developers to ignore the restrictions and sanctions of town planning legislation and to undertake the risk of directly violating the law by proceeding to unauthorized construction.

Up to this point we have referred to problems which could have been anticipated and taken proper care of in due time. But the fate of the town planning legislation has been determined by a number of other factors as well, which were beyond the legislator's control, since they were related to major national and international catastrophes. Most important among them is the extensive devastation caused by the Second World War, in which respect Greece suffered to an extent analogous to that of Britain. At this point some comparative comments are useful for drawing attention to the different reaction of each country towards the problem of postwar reconstruction.

More specifically, Greece emerged from World War II and the large-scale Civil War, which followed immediately afterwards, with a housing problem reaching the dimensions of a crisis. Within the general destruction of

the country (roads, railways, bridges, factories, material and equipment) the destruction of entire settlements or individual structures was so dramatic as to place Greece first among the allies in that respect. Out of a total of over 10.000 villages, some 1.500 were totally wiped out, while the rest suffered extensive or lighter damages. In sum, the totality of buildings in Greece (amounting to 1.740.000 according to the 1940 census) suffered total or lighter destruction. Expressed differently, 409.000 average housing units or about 25 % of the total, were destroyed and 226.500 families remained virtually homeless.⁴⁷ As the urban centers suffered comparatively less than the villages, (the degree of destruction increasing with the remoteness of the villages) the population of the latter, especially in northern and mountainous areas, fled massively into the cities to seek more or less permanent refuge. In spite of governmental efforts to reestablish those refugees to their original villages after the War, many proved unwilling or unable to return and remained in the already congested urban areas.

Nevertheless, the magnitude of the disaster provided both countries with a rare opportunity for drastic improvement of urban conditions on the national scale through the rational relocation, redistribution and reconstruction of the destroyed settlements. Yet, only the British managed to take advantage of these exceptional circumstances, which marked the beginning of a new era for British town planning. Unfortunately, in Greece just the opposite happened: World War II is a landmark for an increasing deterioration of urban and environmental conditions. The enormity of the reconstruction task proved to be too much for the financial and organizational capacities of the country. Immediately after liberation (1945) a tremendous effort for nation-wide reconstruction was undertaken. The Under-Secretariat for Reconstruction, headed by C.A. Doxiadis, introduced a novel comprehensive approach to the large-scale problem of integrated planning and reconstruction⁴⁸. In view of the dimensions of the problem, the scarcity of the resources and the complexity of the task, the program of rural reconstruction has been on the whole evaluated as successful.⁴⁹ In the field of urban housing, however, results were not as satisfactory. Why ? Probably because Greece got involved in a major and protracted civil war (1942-1949) which not only shifted attention to more urgent and vital matters but also changed the variables and magnified the dimensions of the housing problem by creating a large number of internal immigrants.⁵⁰

Moreover, to the destruction of the War came to be added the damages (often amounting to 100 %) created by major earthquakes which hit great part of the country's territory in the 1950's and 1960's.⁵¹ This breathless succession of emergencies combined with the rising urbanization, did not allow for the appropriate handling of the housing problem neither qualitatively nor quantitatively.

Notwithstanding the similarities of the catastrophic war impact on the respective countries, a significant difference in the attitude and mentality of both decision makers and the public should be taken into consideration. In postwar Britain, a favorable combination of a number of factors made comprehensive planning appear as the appropriate instrument for a drastic solution of long-standing social, economic and environmental problems. The unique, even if transitory, postwar political consensus with respect to the objectives of town planning was combined with the invaluable war experience in controlling industrial location and produced an

unprecedented optimism and confidence in the country's capacity to solve its perennial social and economic problems.

In Greece, unfortunately, none of the above factors was present. On the one hand, no organizational experience whatsoever was acquired during the war, since every activity remained dead under the four year German occupation. On the other hand, town planning controls, no matter how systematically pursued by the state since the 19th century, had never gained true consensus and support by the proprietors, in view of the unsatisfactory function of the financing system. Thus most of the achievements of traditional architecture, both in the capital and in provincial towns and villages, were quickly crushed under the weight of the acute postwar housing demands.⁵² Following the end of the civil war in the early 50's the situation was ripe for planned reconstruction. Nevertheless, the scarcity of capitals in combination with the acuteness of the housing problem created by the internal immigrants produced a peculiar self-financing system of reconstruction, whereby engineers and builders, forming greedy alliances with small proprietors, became developers at the expense of town planning regulations and the public interest. When that frantic building boom exhausted itself, the opportunity for a well planned reconstruction was definitely lost.

In order to comprehend the Greek attitude towards the reconstruction problem one should take into account the particularities of the Greek housing policy which from the very beginning was left to the private initiative. More specifically, the significance of a public housing policy was acknowledged only too late and, even then, the task was not undertaken at a large scale by the state ⁵³, but was basically assumed by individual small proprietors, to whom small loans or subsidies were provided ⁵⁴, a practice which ended up encouraging unauthorized development. It should be noted, that while in Britain, as well as in most European countries, land development is usually an affair reserved to public authorities or big enterprises, in Greece the construction of a privately owned home is a feasible dream even for low income people, provided they skillfully perform the necessary (legal or illegal) operations. This fact, combined with the widespread method of land fragmentation, especially in areas located outside town planning schemes, favored land speculation and encouraged the massive violation of the law by the anonymous multitude.

To be more specific, in Greece the level of public investment in the housing sector, together with financing by credit institutions (banks etc), has always been relatively low, covering only 5 to 10 % of the total housing investment.⁵⁵ On the contrary, private investment in housing has always been very popular in Greece, both as a means for acquiring a private home and as a preferred method of capital investment. Thus, in spite of the limited state subsidies, since 1960's Greece presents a very high rate of construction, which places it at the top of the OECD countries list; in fact, in 1977 it surpassed all other OECD countries in that respect ⁵⁶. It is characteristic that e.g. in 1977 45 % of the total capital investment in Greece was devoted to construction. ⁵⁷

In the private sector, housing in Greece is financed by two principal methods, both highly popular: self financing and property exchange. The former is very common; it is estimated that in the decade 1970-1980 40 % of the houses built in Athens and 60 % of the houses built in the rest of

the country were financed by their owners. The second method is more complicated: the lot owner transfers his property to a builder in exchange for a number of ready apartments. The construction is financed by the builder himself, usually by selling the rest of the apartments while still under construction. It has been estimated that around 47 % of new dwellings were constructed by that method (estimate of 1965, Minutes of 5th Panhellenic Convention of Architects p. 49). Both methods present the short term advantage of providing housing without relying on the support of the state and without burdening the tax payer.

From the point of view of improving housing conditions the above system proved to be quite satisfactory (Table I).

Table I : Change in housing conditions in Greece: 1961-1971		
Percentage		
	<u>1961</u>	<u>1971</u>
Houses with bathroom or shower	10	36
W.C.	15	45
Water supply	29	65
Electricity.	53	88

Source: National Statistic Service, in T. Papayiannis, Greece, Urban development in the 1980's, Athens January 1981 p. 69.

Moreover, in the following decade 1970-1980 the average house size increased from 2,8 to 3,0 rooms,while the number of inhabitants per room decreased from 1,14 to 0,9. Private home ownership also increased and is estimated at ca 70 %, which is a high percentage compared with the other OECD countries.

However, in the long run the impact of this piecemeal and incremental housing policy upon the urban environment has been disastrous. It is estimated that more than 35 % of all houses, usually situated at the fringe of great cities outside the town plans, are built illegally, i.e. either without a building permit or in violation of its terms. They are often situated in non residential areas or occupy land belonging to the state or church. While the minimal legal size of lots is already very small (on occasion only 400 m² or even 200 m²), houses are constantly built on still smaller understandardized lots, thus increasing congestion and traffic problems. High population density, inadequate transportation system, mixed and incompatible land uses, lack of infrastructure (water, sewage and drainage facilities, garbage disposal) and deficient architectural design have created an aesthetically poor and highly polluted environment in most Greek cities, where open space and trees are indeed a rare sight. While London and Rome provide 9 m² of park per inhabitant, Paris 8,4 m² and Vienna 15 m² , Athens has only 2,7 m² and the surrounding suburbs even less (Moshato 1,7 m² , Tavros 1,3 m² and Kallithea with a population of 200.000 only 0,2 m²). *This defacto expansion of Greek urban settlements in direct violation of the provisions of the legislation in force (statute of 17.7.1923) and in defiance of sanctions and controls constitutes a problem situation of unprecedented dimensions, persistence and complexity.*

Those who may find the Greek experience of unauthorized development as rather strange, should perhaps remember that the urbanization process in continental Europe and Britain during the industrial revolution has not been very dissimilar. In terms of control, both processes got out of hand with the resulting bleak urban conditions of today. It is true that in Greece the rapid urbanization process proved to be stronger than the preexisting town planning legislation. And though the industrialization stage is passed, it seems that deeper trends, which determine the problem, cannot be controlled by institutional arrangements alone, be it duties, minimal discretion or strict measures of enforcement. But again, in Britain for instance, corrective measures with doubtful results, such as the slum clearance programs of the 30's and the 50's, the substantial house improvement and redevelopment policies of the 60's and the comprehensive urban programs of the 80's point to the difficulties of reversing trends established during the industrial revolution.

One might say that in the final analysis both countries have failed to control urban growth within the desirable limits, the difference being that in Britain the belated urban planning legislation was faced with an already accomplished fact, while in Greece the preexisting legislation gave to the phenomenon the form of massive law violation. Perhaps the lesson from both cases is that the uncontrolled growth of cities was the inevitable byproduct of the market mechanisms and, as such, it was not susceptible to control in countries whose economy relies on a self regulated market.

7.2. Formulation of the Problem.

The previous section contains data related to the background of the case under study. It is, in other words, the story of the failure narrated in empirical terms. However, a systems analysis of the failure case requires something more than that, namely a theoretical analysis encompassing all the essential variables of the case, which are different from the empirical data, since they are defined in an abstract way. The story provides the necessary material; the selection of the analytical factors (variables), on the other hand, is a kind of problem formulation, since it presupposes a model of the whole situation, which, though abstractly conceived, should be comprehensive enough to include all the variables suggested by the empirical data of the study.

In our case, such a model is a theoretical description of the problem of unauthorized development in Greece and may be used for several purposes. It is, for instance, very useful for purposes of policy design, if one decides to attack and solve the problem. This, however, is not the case here. The purpose of the present thesis is not to propose a policy for dealing with the problem of unauthorized development but, on the contrary, to explain why a state policy designed to solve this particular problem has failed. Nevertheless, the system analysis of the problem is required as a necessary introduction to the evaluation of the failure, since the problem itself is the direct product of the failure.

The analysis includes: a) identification of the major participants to the problem, i.e. of all those affected by the problem, either negatively or positively, b) identification and analysis of their influence relations, positive or

negative, c) design of a systems model of the problem and d) analysis of the values implicitly or explicitly held by the participants. From these values the potential criteria for the solutions of the problem may be safely and objectively inferred.

The participants of a problem, i.e. all those positively or negatively affected by it, may be living systems (persons, groups, organizations; such are, for instance, in our case the owners of buildings, the land developers, the constructors etc), physical or technological systems (resources, artifacts such as the unauthorized buildings in our case) or behavioral systems (activities, events, such as investment policy, social support or corruption in our case). The identification of the participants should be combined with analysis and control of a) their identity, i.e. the particular characteristics or properties by way of which they are involved in the problem and which indicate their connections with other, usually superior, systems, b) their demands (what they want), c) their beliefs, i.e. what they think about the problem and what are their arguments in support of their demands, and d) the values implied by their demands and the means used for their satisfaction.

In view of the above we shall begin with the *identification of the principal participants of the problem of unauthorized development* and we shall proceed to a brief analysis of the demands, beliefs and values of those participants which constitute decision making systems.

We consider as the major participants of the problem of unauthorized urban development in Greece the following :

1. Unauthorized buildings.
2. Owners of unauthorized buildings.
 - a. Settlers (owners of first homes).
 - b. Owners of second homes.
 - c. Entrepreneurs (manufacturers, hotel owners, shop owners etc)
 - d. Others.
3. Land developers and speculators.
4. Investment policy.
5. Builders.
6. State tolerance.
7. Corruption.
8. Social support.
9. Urban environment.
10. Urban planning.
11. Land value.

1. Unauthorized buildings. We shall adopt the definition of an unauthorized building provided by article 118 par.2 of the General Building Regulations (Statute 8/1973). An unauthorized building is a building constructed a) without a building permit, b) in violation of the permit's terms, c) in violation of the legislation in force or d) on the basis of a building permit which turns out to be illegal. Such buildings are used primarily as dwellings (first or second homes) as well as for the installation of various business enterprises (manufactures, hotels, restaurants, shops etc).⁵⁸ Illegal building activity may appear in many forms, the most common of which are the following :

- 1) Excess of maximum lot coverage.
- 2) Excess of maximum building height
- 3) Excess of the maximum number of floors.
- 4) Non observance of minimal standards of light, air or yard space.
- 5) Non observance of minimal dimensions of space dedicated to common use.
- 6) Excess of the maximum dimensions of balconies.
- 7) Non observance of the established building lines.
- 8) Construction on understandardized lots (i.e. lots not satisfying the minimal lot area dimensions).

The above eight categories may be summarized in the following three:

- 1) Excess of the maximum coefficient of exploitation.
- 2) Non observance of the established horizontal or vertical building lines, without a simultaneous excess of the exploitation coefficient.
- 3) Construction on lots not allowed to be built upon.

Unauthorized buildings may be located:

- a) In areas having a town plan.
- b) In areas at the fringe or outside a town plan.
- c) By the sea (beach, seashore).
- d) In zones restricted to special uses.
- e) In open land districts, including sites of particular scenic or historic importance.

In view of the above, unauthorized buildings may be classified as follows:

- I. Unauthorized buildings for which a building permission, if sought, would have been granted
- II. Unauthorized buildings for which a building permission, even if sought, would not have been granted. And such are buildings:
 1. Constructed on lots allowed to be built upon
 - a) where any type of building is permitted
 - b) Where only mobile homes are permitted
 - c) Where only constructions of specific use are permitted.
 2. Constructed on lots not allowed to be built upon.
 - a) Inside a town plan (this category is rare).
 - b) Outside a town plan.

The following Table (adopted from the Findings of the Research Team on Unauthorized Development, Athens 1974) depicts the connection between different kinds of unauthorized buildings and the motives or conditions which triggered their construction.

A. Motives	1. Speculation	2. Ignorance or Misinterpretation	3. Actual housing need	4. None observance of procedure	5. Need for a summer residence.
B. Classes of Unauthorized Buildings					
1. Not violating the law		X		X	
2. Built on lots allowed to be built upon	X	X			
3. Built on lots destined for mobile homes only					X
4. Built on lots where construction is restricted to specific uses	X		X		
5. Built on lots not allowed to be built upon outside a town plan			X		
6. Built on areas of particular importance for the public interest	X		X		X

The following conclusions may be drawn from the above tables:

a. Category B1 does not create any real problem for the urban environment, because the illegality of the building may be easily amended by the issuance of a building permit and the payment of the appropriate fees and penalties.

b. Categories B2 and B4 may be attributed primarily to the lucrative motives of the owners and to a lesser degree to ignorance or misinterpretation of the legislation. Both categories are very common.

c. Categories B3 and B6 may be attributed to the increasing desire to acquire a summer residence. To a lesser degree category B6 is the result of speculation, as in the case of installation of manufactures or hotels.

d. Finally, category B4 stems from the actual housing need of low income groups which fled to the cities from rural or semi-rural areas.

2. Owners of the unauthorized buildings. This major category may be subdivided into three minor ones, namely, the owners of a first home, the owners of a summer residence and the various entrepreneurs who use the unauthorized building as a business installation.

a) The owners of a first home (settlers). This category includes Greek refugees from various areas, victims of natural disasters, particularly earthquakes, victims of the extensive nation-wide destruction of World War II and the Civil War, and finally rural populations which fled to the cities in search of better working and living conditions. They are usually low income groups with big families and often without permanent occupation.⁵⁹

The continuous and uncontrollable urbanization raised the question of shelter for all the above groups. As the government could hardly deal with the succession of emergencies and was unprepared for a publicly financed housing policy, the burden fell on private initiative, which immediately resorted to unauthorized development, primarily in areas outside a town plan. This phenomenon appeared during and after World War II, was augmented between 1945-1955 and rapidly mounted in the 1960's. After 1967 it seemed to recede for a while, only to expand again ever since. As the cost of land in areas inside the town plan kept rising and rents were also too high for poor people's means, the best alternative was unauthorized development. It should be noted that, irrespective of the existing general housing problems, private home ownership is deeply cherished by Greeks of all income groups and is at the same time considered as a very sound form of capital investment. Hence, with the passing of time unauthorized construction has been motivated primarily by profit considerations.⁶⁰

The process of unauthorized construction begins as a rule with the purchase of a small lot (usually 150-200 m²) from a land speculator at the fringe of the city, in an area without a town plan. The construction is undertaken either by the owners themselves or by a builder and is usually completed room by room. The urgency of their need and the intensity of their desire makes the settlers easy prey to the often exorbitant demands of land speculators and builders, who offer very little in return (undeveloped areas with no infrastructure, poor quality of construction etc). On top of that, they live with the perpetual fear of demolition, which is alleviated only by bribing the authorities.

All of the above (refugees, victims of wars and disasters or urban newcomers) demand that their primary human need for shelter should somehow be provided for. Those deprived of their homes for reasons beyond their control (wars, disasters) consider themselves victims of vis major and invoke their right to safety and special social aid. Those drawn to the cities in search of employment claim that society, which is all too eager to use their working potential, should also take care for their basic needs, such as shelter. To support their claim they invoke the fundamental freedom of personality, expressed in the right of the individual to choose his place of work and residence. They also invoke the entire complex of fundamental social rights which guarantee protection of the family as well as state support of the underprivileged.

These claims are often enhanced by social support provided by various groups sensitive to the above arguments. Thus, the owners of

unauthorized buildings and their supporters, though not formally organized, constitute a pressure group of considerable importance exercising substantive influence on the different bodies of decision makers (legislature or implementors).

b) The owners of second (summer) homes. This category includes those who, having satisfied their primary housing need, seek a summer residence, preferably by the beach. As Athens (like most major Greek cities) is virtually surrounded by an extended coast of exceptional natural beauty, ownership of a summer house, which permits fleeing the city and commuting to work every day, is highly popular in Greece.⁶¹

Demand for such a residence is equally high in low, moderate and high income groups, the difference being in the location and size of the lot and the luxury of the construction. Over the years the unplanned scattering of summer homes in the suburbs only resulted in transferring the problems of the city center there as well: congestion, pollution, insufficient public services and inadequate transportation continue to haunt the vacationers. As the areas around town filled up, the wave expanded towards more distant areas like small islands and villages, gradually destroying their traditional character.

To legitimize their activity, the owners of unauthorized summer residences claim that they have a right to protect their own and their children's health by fleeing from the city in the hot summer months. Since the state is responsible for the neglect of the cities and the deterioration of living conditions, it should have provided for planned and orderly expansion in the country side. Its failure to do so should not prevent the underprivileged from their right to leisure. Given the fact that living conditions in the city, especially in the summer, are depressing and often unhealthy, escape to the countryside should not be reserved exclusively to those who can afford a summer house in the few well planned, but expensive, residential suburbs. In view of the above, they claim that unauthorized construction is not a voluntary choice; it is the inevitable response of the poor to the absence of housing policy and to a defacto situation which discriminates against them, leaving them no other alternative than to break the law.

If the above arguments apply, more or less, to all categories of city dwellers who seek a summer resort, the case is far less defensible with the high income groups who tend to exhibit their status by building huge villas in the most beautiful non-residential areas (forests, beaches etc).

c) Unauthorized buildings used as business installations is not an uncommon practice among entrepreneurs of various kinds, such as shop owners, small manufacturers, hotels or inn owners etc. The former tend to justify their practice by the services they render to the already established unauthorized settlements, while the latter invoke their contribution to the national economy as well.

3) Land developers and speculators They are entrepreneurs who buy large estates from the original owners, usually farmers, for the purpose of breaking them up and reselling them at a high profit. The tremendous post

War increase of land value in Greece (it is estimated that between 1960-1975 the average value of lots increased 390 % in the entire country and 530 % in the area of Athens, while the value of estates increased 800 % and 1095 % respectively and is still rising ever since) and the absence of state regulation of the often questionable practices of land speculators permitted them to make huge and uncontrolled profits (amounting to 300-1000 %) at the expense of the prospective land buyers and the urban community as a whole.

The activity of land speculators is a purely lucrative one, aiming at making as much profit as possible in the shortest possible time, irrespective of the consequences on urban environment. The great demand of the public for cheap, even substandardized, lots and the absence of standards or requirements for land development (such as licensing, dedication of streets, installation of infrastructure etc) encouraged the unscrupulous land exploitation. However, in defense of their practices, land speculators claim that they are pursuing a necessary economic activity, since they manage to offer to the disadvantaged an opportunity denied to them by the state, namely to acquire the cherished land lot. They claim, moreover, that there is nothing illegal in their activity per se. If their clients proceed to unauthorized construction on the lots they purchased, it is not their responsibility, but it only proves the failure of the state's housing policy.

Various attempts were made at times by the state to reduce excessive fragmentation of land and restrain the activity of speculators by subjecting it to the requirements of proper city planning (see below on the various legislative measures taken). To these efforts they reacted by invoking, often successfully, their constitutionally guaranteed right of property as well as their economic freedom.

The above claims, weak as they may seem, find nevertheless strong support from the groups of prospective buyers, as well as from all groups involved in the profitable business of unauthorized urban development.

A distinct category of land developers are the so-called *building cooperatives*, i.e. associations whose purpose is to acquire land and subdivide it between their members for the purposing of building private homes.

The setting up of such cooperatives is common practice in Greece among people of both low and high income, the difference being that the latter have usually access to better areas of land. Since in fact many sites of considerable natural beauty (forests, coasts) were illegally appropriated by such cooperatives, legislative measures were taken to restrict their activities within already developed areas.

The goals of building cooperatives are highly popular ones: to provide land lots to their members as cheaply as possible. Since most Greeks have at one time or another benefited from the activities of such a cooperative, they enjoy a high degree of social support.

This category too invokes the social character of their activities by stressing their initiative in an area neglected by the state: by uniting the forces of the weak they manage to bypass exploitation by speculators and to

acquire land for their members under the best possible terms. Against state efforts to control them (see below) they seek refuge to the constitutionally protected economic freedom and freedom of property which allows them to invest their funds and manage their property in the desired way. Moreover, they invoke the freedom of association which guarantees the pursuance of their goals undisturbed by state intervention.

4) Builders. The unauthorized construction of a building is usually undertaken by builders, specialized in that kind of illegal activity. These builders may lack in professional qualifications but have developed the necessary skills required by the particularities of their task. Fear of state repression makes them work under pressure and at great speed in order to create an accomplished fact , since in reality, once completed, the unauthorized building is hard to demolish. Since their activities are forbidden by law and themselves subject to considerable penalties, they often seek to ensure the tolerance of the authorities by means of bribery and corruption. In return for these "extra" services they charge the lot owner with fees disproportionate to the low quality of the construction.

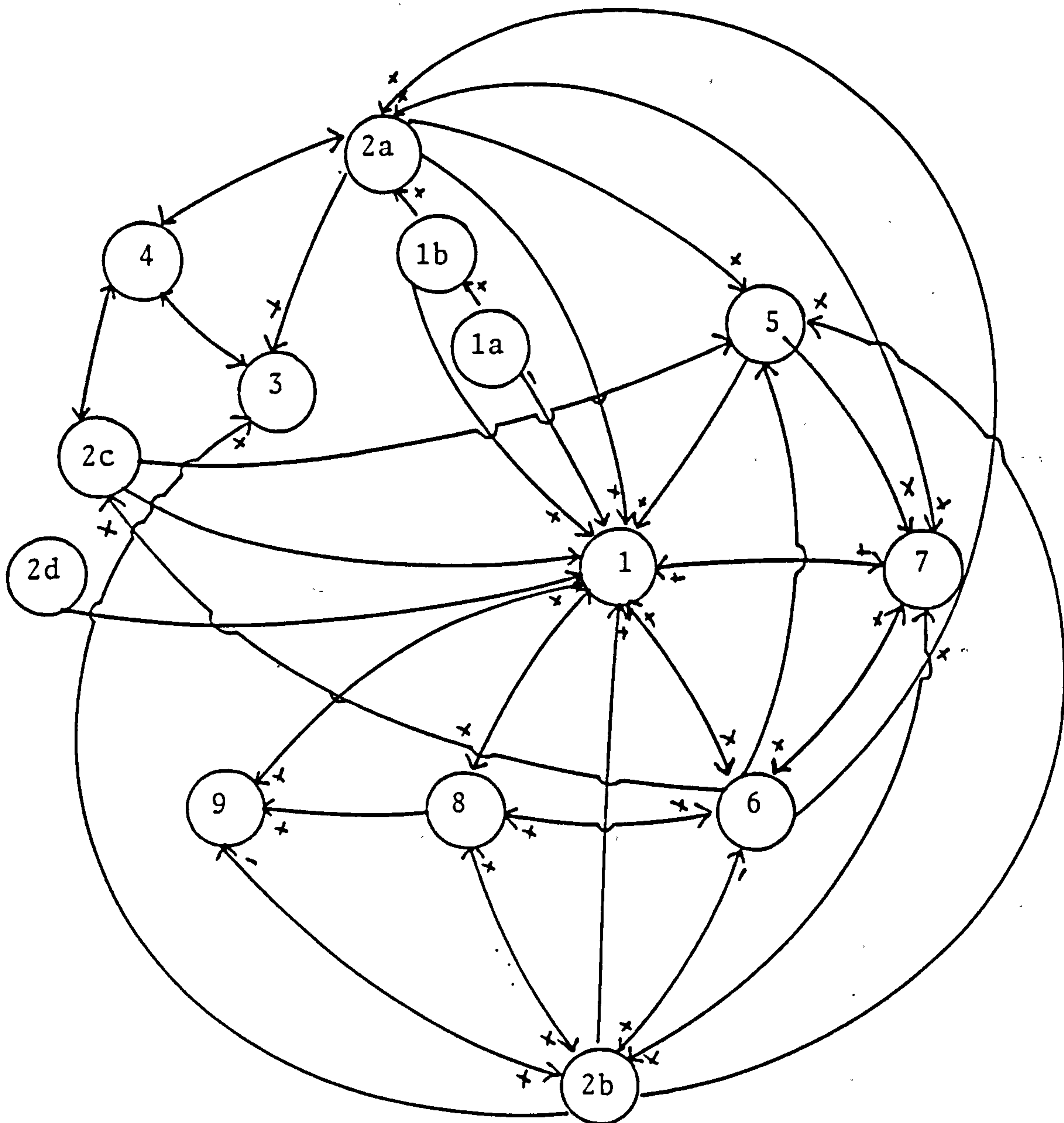
Their goal is purely lucrative and usually the quality of their work is not determined by any consideration (aesthetic, environmental etc) other than profit.

Builders tend to legitimize their activity by stressing their effectiveness in providing the cherished construction at an affordable price.

The above analysis of the identity, demands, beliefs and base-values of the basic participants of the problem of unauthorized urban development is summarized in the following Table.

Participants	Identity	Demand	Belief	Base value
1. Unauthorized buildings	First or second (summer) homes, business installation, located in or out of a town plan	--	--	
2. Settles (owners of first home)	Homeless people: Refugees, victims of natural disasters, urbanized rural population	Acquisition of first a home	Housing policy is the state's responsibility, especially towards disadvantaged groups. Therefore if the state fails to fulfill its obligation, they provide themselves with shelter in order to protect their human dignity and their right to safety and work.	The apparent validity of the claims generates social tolerance and even support, especially in view of the constitutional rights for the protection of the family, provision of shelter etc.
3. Owners of a second home.	Urban dwellers	Acquisition of a second (summer) residence.	They blame the state for the deterioration of urban environment and for the lack of a housing policy in summer resorts and they invoke their right for leisure and quality of life in a healthy environment,	Leisure, Health
Entrepreneurs	Owners of manufactures, industries, hotels and inns., restaurants, shops.	Acquisition of a business installation at a convenient place and at a low cost.	Economic and touristic development prevails over environmental issues. Private initiative should be protected and supported. They provide necessary goods and services to already developed unauthorized settlements.	Contribution to the national economy. Support from settlers. Support from workers. Since they provide working places.
Land speculators	Persons or companies which buy, subdivide and resell pieces of land	Profitable land development	They provide a social service by providing low income groups with a chance to acquire private property. Economic activity cannot be stopped by the fact that the state is unable to control its impact on urban development.	Property right and economic freedom. Support by settlers.

The following systemic model depicts all major participants and their interconnections. Interconnections constitute relations of mutual influence, positive or negative, represented by the appropriate symbols (+, -).



- | | |
|-------------------------------------|----------------------|
| 1. Unauthorized constructions | 4. Investment policy |
| 1a. Urban planning system | 5. Builders |
| 1b. Land value | 6. State tolerance |
| 2. Owners of unauthorized buildings | 7. Corruption |
| 2a. Owners of first homes | 8. Social support |
| 2b. Owners of second homes | 9. Urban environment |
| 2c. Entrepreneurs | |
| 2d. Others | |
| 3. Land developers and speculators | |

The following Table depicts the major influence relations, beneficial or detrimental, among the participants. Beneficial relations are represented by + and detrimental ones by - .

+

1) Unauthorized buildings ==> Settlers

-

- + Shelter (realization of a dream, feeling of security).
- + chance to shape their own ecistic environment, which is not the case with organized housing.
- poor quality of construction
- lack of facilities and infrastructure.
- transportation problems.
- congestion.
- risk of demolition by the authorities.

+

2) Unauthorized buildings ==> Owners of second homes.

-

- + shelter for vacation
- poor quality of construction etc (same as above).

+

3) Unauthorized buildings ==> Entrepreneurs

-

- + Cheap business installation
- + Convenient location
- transportation problems (including goods and personnel).
- lack of facilities
- risk of penalties.

+

4) Unauthorized buildings ==> Builders

-

- + Increased profits due to low quality of construction
- risk of penalties.

+

5) Unauthorized buildings ==> State tolerance

-
- + In the short run, easy and cheap solution to housing problem, no burden for taxpayers.
 - In the long run, increased cost for the reshaping of the area, for provision of services and facilities.
 - loss of fees due to the bypassing of the building permit procedure.

+

6) Unauthorized buildings <==> Corruption + Mutual support

-

7) Unauthorized buildings <==> Deterioration of urban environment.

- poor aesthetic quality of buildings
- lack of open space and green
- congestion
- deterioration of sites of scenic or historical importance
- pollution (air, water, noise)

+

8) Settlers etc. ==> Unauthorized buildings
+ increase in number

+

9) Settlers etc. ==> Land developers
+ Profit

+

10) Land developers ==> Settlers etc

-

- + Chance to acquire property cheaply
- Exploitation.

+

11) Settlers etc ==> Builders
+ Profit

- 12) Builders
- +
==> Settlers etc
 -
 - + Speedy construction
 - exploitation (poor quality of construction, disproportionate fees).
- 13) Settlers etc
- +
==> Investment policy
 - + Preference due to constant rise of land value.
- 14) Investment policy
- +
==> Settlers etc
 - + Increase of the number of settlers for reasons of investment.
- 15) Settlers etc
- +
==> High land value
 - Demand increases land value even in undeveloped areas.
- 16) High land value
- ==> Settlers
 - Inability to acquire land inside a town plan forces them to unauthorized home building outside the town plan.
- 17) Settlers
- +
==> State tolerance
 - + Settlers constitute a significant pressure group which stimulates state tolerance.
- 18) State tolerance
- +
==> Settlers
 - + State tolerance and random enforcement of sanctions encourages settlers and increases their number.
- 19) Settlers
- +
==> Public support
 -
 - + The (alleged) validity of settlers' claims (homeless etc)
 - Beyond a certain point public support may be withdrawn.

- 20) Public support +
 ===> Settlers
 + Public support encourages
 settlers and legitimizes
 their activity.
- 21) Settlers +
 ===> Corruption
 +
 + Mutual support.
- 22) Settlers -
 ===> Deterioration of urban
 environment
 - Housing needs are satisfied
 at the cost of the
 environment.
- 23) Owners of second -
 homes ===> Deterioration of environment
 - Particularly detrimental
 impact due to the location
 of summer house in areas of
 particular beauty.
- 24) Settlers -
 ===> Urban planning system
 - Constant violation of the
 urban planning system.
- 25) Land speculators -
 ===> Investment policy
 due to their activity land
 value keeps rising and
 consequently the
 preferability for investments
 in land increases.
- 26) Land speculators +
 ===> Corruption
 +
 + Mutual support
- 27) Land speculators -
 ===> Deterioration of urban
 environment
 - Detrimental impact due to
 fragmentation of land.
- 28) High land value +
 ===> Speculators
 + High land value obliges the

public to turn to land
speculators for land
purchase.

29) High land value

+
==> Investment policy
+
+ Continuous investment in land
increases land value.
+ increased land value
increases preferability
towards this kind of
investment.

30) Builders

+
<==> Corruption
+
+ Mutual support

31) State tolerance

+
==> Corruption
-
+ Tolerance amplifies corruption
- Authority and effectiveness
of state controls is
undermined by corruption.

32) State tolerance

+
<==> Unauthorized buildings
+
+ State tolerance increases
the number of unauthorized
buildings.
+ Excessive increase of the
number of unauthorized buildings
has persuaded the state to
massive legalization (see
below statute 720/1977).

33) State tolerance

+
==> Land speculators
+ Increases their number and
encourages unscrupulous land
speculation.

34) State tolerance

+
==> Builders
+ Multiplies the number of
builders and encourages
hasty and deficient
construction due to lack of
controls.

35) State tolerance

-
- ==> Town plan
 - Retroactive legalization encourages violation of the town plan.

36) State tolerance

- +
- ==> Investment policy
 - + High land value
 - + State tolerance encourages investment in any kind of land (even if not allowed to be built upon) as well as on illegal construction.

37) State tolerance

-
- ==> Urban environment
 - Detrimental impact.

38) Public support

- +
- ==> State tolerance + Mutual support

39) Public support

- +
- ==> Corruption
 - + Public support legitimizes corruption.

40) Deterioration of urban environment

- +
- ==> High land value
 - + Deterioration increases land value in well planned areas and encourages demand in non developed areas.

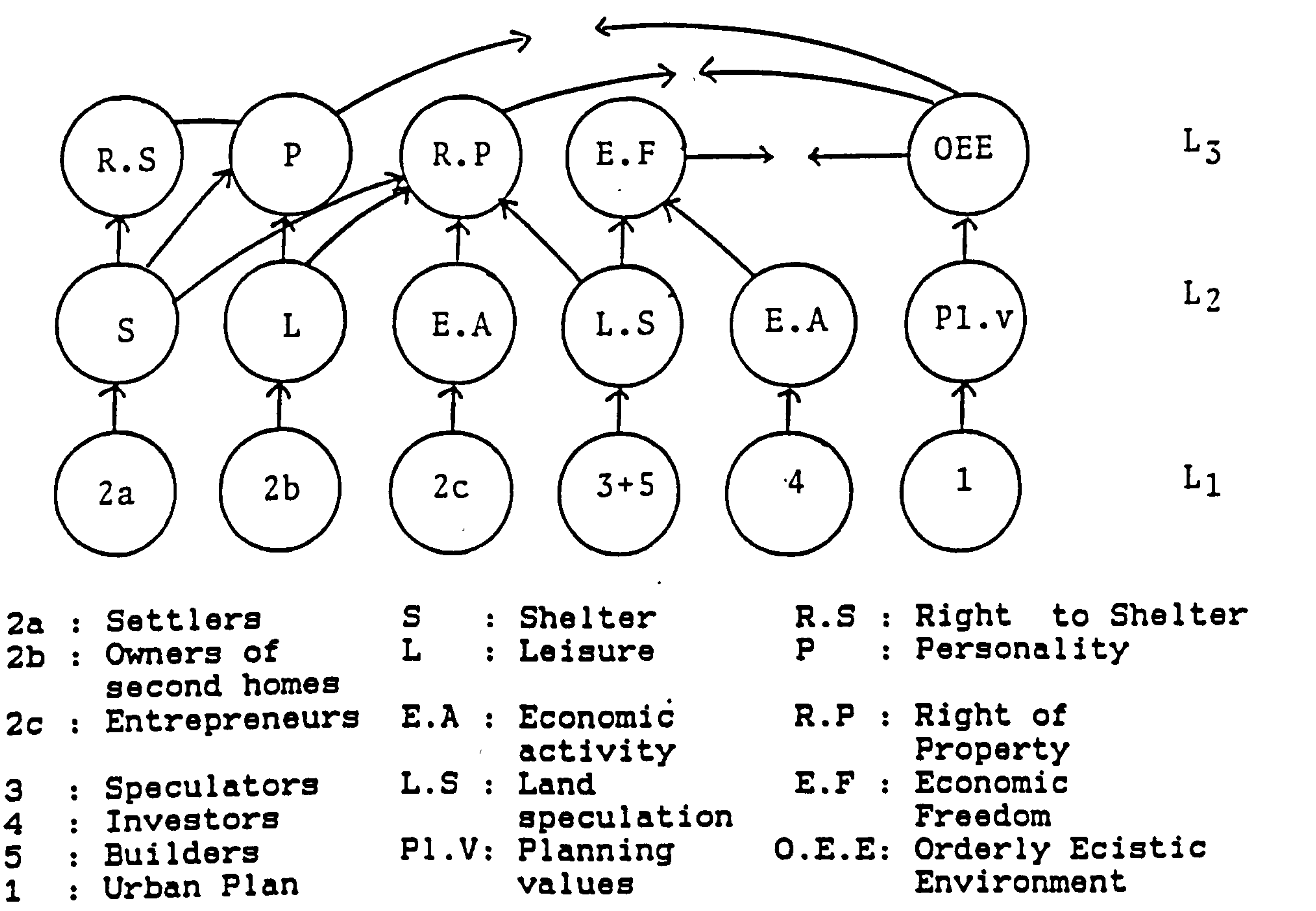
41) Deterioration of urban environment

-
- ==> Urban planning system
 - De facto deterioration makes difficult the extension of urban planning in non developed areas.

7.3. Value Analysis.

The next step in the systems analysis of the above model will refer to value analysis of the problem. Such an analysis will bring to the surface the values implicitly or explicitly held by the participants, which may be proposed as potential criteria for the solution of the problem. Knowledge of these values by the decision maker is indispensable because it provides the linkages of the above model system with its superior hierarchical levels, thereby revealing the legal, and particularly the constitutional dimensions of the problem.

At this point it should be noted that the description of the values is made following the terminology of Greek constitutional law. The Greek Constitution, like most continental ones, contains a list of fundamental rights, which constitute in fact the authoritative code of values of the society. The exercise of these rights is guaranteed by the constitution, subject to the limits and restraints imposed by ordinary legislation. According to constitutional theory and jurisprudence such limitations are valid only as long as they do not infringe upon the "core", i.e. the essence, of the fundamental right. Thus a law may be declared unconstitutional if its provisions restrain a fundamental right to the point of rendering it ineffective (see in detail below).



The following value analysis will take place at two levels, L1 and L2. L1 refers to the immediate claims of the participants over their preferred values. L2 refers to the fundamental rights, i.e. the constitutionally protected values under which these claims may be classified.

The method does not imply that all claims mentioned are legally (constitutionally) valid. It is however necessary because it reveals the value argumentation behind the problem under consideration and is therefore indispensable for a thorough understanding of the value conflict involved.

The above diagram represents at level L the major participants of the problem, at L1 their immediate value goals and at L2 the fundamental values explicitly or implicitly invoked by direct value claims. The diagram also depicts the value conflict at the highest hierarchical level, as it will be explained right below.

a) *Settlers (owners of a first home)*. Claims put forward by the owners of unauthorized first homes may be classified as invoking at L1 the right to shelter, i.e. the right of every human being to satisfy his primary need for a decent shelter. At L2 this right may be considered as an expression of human dignity (protected by Article 2 of the Constitution) and the freedom of personality (Article 5 par. 1 of the Constitution) which implies the right of the individual to choose his place of work and residence, and, consequently, the exact location of his shelter. The right for shelter may also be connected with the constitutionally protected property right (Art 17) and particularly the freedom to develop one's property according to one's needs.

Moreover, since the state has declared its commitment to a housing policy which will provide shelter to the homeless or inadequately sheltered (Art 21 par.4 of the Constitution), those deprived of their homes, though not having a direct claim against the state, have nevertheless, a justified expectation in that direction. In view of that, they may claim that if the state fails to fulfil its promise, it has no right to deny them the opportunity to provide themselves with homes in any way they can.

b) *Owners of second (summer) homes* may not have such strong claims to the right to shelter as the previous category. However, in their turn they invoke the right to leisure and recreation away from the city, a right highly popular in our times, which constitutes the object of social welfare policy in many modern states. This claim may be related, at L2, with the constitutional right to develop one's personality (Art. 5 par.1 of Constitution). It may also be connected with the free development of one's property (Art. 17 of the Constitution) as well as equality, in the sense that underprivileged groups should have equal access and equal opportunities to enjoy summer resorts.

c) *Owners of unauthorized business installations* invoke their right to pursue their economic activity freely and to set up their enterprises in the area of their choice, and under the most favorable conditions. This right stems directly from the constitutionally protected right of economic freedom at L2 (Art.5 par.2) and it may also be related with the freedom of property (Art. 17).

d) *Land speculators* claim that they have the right to engage in the economic activity of their choice, namely land development (L1), as an expression of their economic freedom (L2). Moreover, their right to administer their property in the most profitable way cannot be restrained by the state, since it constitutes a direct assertion of their right of property (L2).

e) More or less similar are the claims of *builders*, who also invoke their freedom to exercise their profession and earn their living (L1) as a direct expression of economic freedom and freedom of personality (L2).

f) At the opposite end we have the *social values* involved in the criteria of health, safety and aesthetics, which are the acknowledged goals of town planning and urban legislation (L1). These are directly connected at L2 with the commitment of the state to the protection of natural and cultural environment and the guarantee of decent housing and orderly ecistic environment. (Art 24 of the Constitution). It is obvious from the above that the complexity of the problem under consideration does not lie only in the variety of the participants' claims but primarily in their conflicting nature. For the decision maker this is the most difficult kind of conflict because it takes place at the highest hierarchical level, i.e. the level of the Constitution.

The major value conflicts which constitute the heart of the problem are the following.

1. Right to Shelter versus Orderly Ecistic Environment

This conflict, bound to arise whenever housing policy is insufficient, is acute and difficult to resolve. It is self understood that cities should grow according to a plan and people should abide by the existing zoning and building regulations. However, in times of rapid urbanization, if the state proves unable to accommodate the existing needs by an appropriate housing policy, the urban problems bound to arise cannot be treated as a mere question of effective implementation of the existing town planning legislation. It is debatable whether the state has the right to organize space without being at the same time able to provide suitable housing for everyone.

2. The problem becomes deeper when the right of Human Dignity is juxtaposed to the Protection of Natural and Cultural Environment. Should concern over the environment prevail over the primary need of every human being to have a decent shelter? On the other hand, even if, for the sake of the homeless, society is prepared to tolerate congestion, pollution and ugliness in urban development, does it have the right to compromise the environment of future generations?

3. The Right of Property is already subjected to serious constitutional and legal constraints for the sake of Environmental Protection and Orderly Ecistic Growth. However, as we shall see below it has been common practice for the courts to invalidate provisions of urban legislation as excessively restricting the right of property.

4. The conflict between Economic Freedom and Protection of Natural and Ecistic environment is also acute. In the absence of a comprehensive policy

on general land use and zoning dedicating specific areas to industrial, commercial or mixed uses, it is hard to convince entrepreneurs to comply with randomly selected and often highly taxing building standards.

The above analysis provides a rough sketch of the values at stake in the problem under consideration. A detailed analysis, which is beyond the scope of the present essay, would probably reveal many more. What seems obvious from the constitutional viewpoint is that the incapacity of the Greek state to control rapid urbanization and the resulting deterioration of urban environment, constitutes at the same time a failure of the state to honor its constitutional pledge for a satisfactory housing policy. Aware of this failure the government hesitated to enforce the existing legislation and oscillated between grand policy design on paper and inertia in practice.

Chapter 8. : Understanding the Failure: A Systems Analysis of the Implementation Failure.

8.1 Systems Diagnosis and Evaluation of the Failure Case.

The formulation of the problem of unauthorized development has shown in clear and precise terms the practical implications of the failure of urban policy in Greece. More specifically, it has shown that in policy failure cases it is not only the initial problem, against which the policy was directed, that remains unsolved, but also additional problems, more complex and aggravated than the former, are further created through the unsuccessful pursuance of the policy. In our case, urban policy failure has not only failed to solve the initial problem of an orderly urban development, but has also created a far more complex and difficult problem, namely how to deal with extensive unauthorized land development. It is, therefore, necessary to have clear and full understanding of the failure.

Ordinary empirical studies focus on such or such causes of the failure, depending on the hypothesis formulated by the researcher. Irrespective of their specific context, such hypotheses are usually limited, in the sense that they seek to identify specific causes of the failure. This approach is fundamentally different from the logic of systems models, which departs from the assumption that in complex problems, such as social problems, it is futile to look for specific causes; instead, the researcher should try to locate multiple factors standing in interaction. The identification of only two variables, standing as cause and effect, so familiar in analytical logic, is not valid in terms of systems logic. Because, in fact, these two interacting factors, have more than one relationship due to their mutual feedback. Once the feedback relationship is established, the sequence of cause and effect ceases to exist: in the feedback relationship the effect may in its turn stand as the cause and viceversa, so that it is more accurate to speak of a circular relationship.

Systems models are specifically designed to depict such relationships formed by a number of elements in interaction. The synthetic character of the systemic model allows the researcher to allocate his attention in a balanced way among all critical factors involved. However, since the systemic researcher has to deal with a vast material of data, his position is very difficult from that of his empirical counterpart, who seeks to establish a limited hypothesis with the help of experiments or empirical documentation. The design of a systems model is in fact a complex process which includes many stages. The wide scope of such a model determines the selection of the means for its corroboration. In order to get a full picture of the problem under study, it is necessary to construct a comprehensive model, i.e. a model at a very high level of abstraction. At this stage empirical corroboration of the model is both unnecessary and impossible. The elements of this model are themselves lower level subsystems and are, therefore, too abstract to be directly corroborated by empirical evidence. This task will be

performed at a later stage, when these subsystems will in their turn be opened (analyzed) in order to lead the researcher to the lowest level of concrete, specific systems empirically observable. It is thus obvious that systems methodology does not reject empirical research, but combines it with synthesis, and therefore uses it at the appropriate level of analysis.

In the case under study the theoretical task of constructing a systems model of failure factors consists in selecting the right elements of the system under study. Such a selection is not arbitrary. As stated in chapter 3, the design of the systemic model of the particular failure under study depends on the higher level systems, which set clear and precise constraints for the subsystems that depend on it. In our case this superior system is the system of the Implementation Process presented in chapter 4, which is derived from the higher-level system of Public Administration. In that model, the main elements of the Implementation System were precisely identified and depicted. The same elements, taken in their dysfunctional aspect are called "failure factor categories" and are used as the elements of the Implementation Failure System, which is a dysfunctioning system, directly derived from the model of the Implementation Process. In that way, we have a logical sequence of hierarchically ordered systemic models, following the logic of the chinese box: systems model of Public Administration (superior level 1), systems model of the Implementation Process (level 2), systems model of Implementation Failure, which is a dysfunctioning facet on the former (level 2a), systems model of each Failure Factor Category (level 3), systems model of each Element of the failure factor category (level 4). Empirical research can only be conducted at this last level 4. It should be noted, however, that the elements of levels 1, 2 and 3 are not arbitrarily selected. On the contrary, their selection implies a respective theory constructed on the basis of data obtained by the author from direct participation in and observation of the problem during : a) a long period (over ten years) of judicial review of administrative cases related to unauthorized development, b) teaching in seminars held in the context of inservice training programs for senior civil servants, by the Hellenic School of Public Administration and c) research conducted in the evaluation process of the Greek Public Administration for an ongoing Program of Administrative Reform. In this sense, information provided in this study comes from a first hand knowledge of the problem.

The basic failure factor categories identified as responsible for the failure of the urban policy in Greece and particularly the phenomenon of unauthorized development, are the following: *legislation* and especially legislation adopted for the purpose of correcting faults and omissions of the initial basic townplanning legislation (remedial legislation), *communication* and *control* , with special emphasis on judicial control (case law), *management* and *organization*, *administrative practice*, *pressure groups* and *human relations*. Before we proceed to the depiction of the selected failure factor categories in systemic models, and in order to make these models more comprehensive, we shall provide some basic data and information about each one of the above categories.

A. Legislation.

At first sight it might seem paradoxical that a law of such high quality as the statute of 17.7.1923 ended up producing the colossal failure under consideration. By European standards the statute of 1923 was one of the best of its era. At a closer look, however, the germs of failure were perhaps already present. Its main defects were: a) excessive respect for private property, which increased expropriation costs, b) lack of operative criteria facilitating objective implementation and preventing disputes, c) delegation of too many important issues to the weak and politically sensitive subordinate legislation. Nevertheless, as the systemic analysis of the failure will clearly show, these defects alone wouldn't have brought about the failure of the entire townplanning system, if they were not reinforced by the aggravating impact of other interacting factors, presented here below.

It should be noted that the state did not remain indifferent in front of the accumulating failures in the implementation of the statute of 17.7.1923 ; various remedial measures were adopted at times to deal with the situation before it got irrevocably out of hand. However, in the absence of an appropriate theoretical model for the study of a problem of such complexity, all efforts were condemned to failure as well. The analytical, cause and effect, approaches that were adopted led to oversimplifications which aggravated the problem instead of solving it. Incremental attempts to patch up the symptoms rather than deal with the roots of the problem (such as the repeated retroactive legalization of the unauthorized buildings, see below) had a positive feedback effect which only made things worse.⁶⁶

For the purposes of this essay we can classify the stream of legislative measures which followed the enactment of the basic statute of 17.7.1923 and purported, directly or indirectly, to the better implementation of its provisions into two broad categories : a) General town planning legislation, which amended and supplemented the original legislation (S. 17.7.1923). b) legislation dealing specifically with unauthorized urban development. We shall briefly discuss the most important of the above measures, which give us an idea of the various problems generated in the course of the statute's implementation and of the way they were handled by the state.

aa. General Town Planning Legislation

1. One of the chronic problem in the implementation of town planning legislation is related to the incapacity of planning authorities to pay compensation for expropriations. It was only natural that early arose the question of the proprietor's rights pending the expropriation.

The town planning legislation preceding the enactment of Statute of 17.7.1923 did not contain any special provisions on the subject, but, according to the prevalent judicial opinion, no building activity whatsoever was permitted on the expropriated lot, even if compensation were not yet paid. After 1909 the unfairness of this practice was generally acknowledged and a series of often contradictory legislative measures were adopted in order to relieve the proprietors (e.g. it was proposed that a yearly compensation amounting to 7 % of the damage caused by the expropriation should be paid

to the proprietor), until final settlement of the indemnification. However most of these measures were hardly implemented.

Finally the government, prompted by the adverse rulings of the Council of State, acknowledged the unconstitutional character of such measures and decided to handle the problem in a different way. Special legislation, Statute 5269/1931, was enacted to deal with the problem.

According to its provisions, the owner of a land lot expropriated for town planning purposes but not yet indemnified, is entitled to seek a building permission for the development of his property; the Administration has a duty to grant the building permission unless full compensation is paid within a fixed time limit (four months are allowed for the issuance of the act of allocation and six more months for the actual payment of the compensation).

This phrasing of the law gave way for controversial interpretations and an inconclusive debate about its true meaning was going on for years. For that reason the statute 5269/1931 was authoritatively interpreted by Statute 1740/1951, which clearly stated that the granting of the building permission did not in any way imply that the expropriation was rendered ipso jure ineffective or that the administration had a duty to revoke it.

However, the Council of State refused to accept the above arrangement as a valid excuse permitting to the Administration to perpetuate expropriations without payment of adequate compensation. By a series of rulings the Court repeatedly stated that expropriations, for which compensation is not paid within reasonable time, are depriving the owner from the free exploitation of his property at real value and therefore constitute a legal and economical burden violating the constitutionally protected right of property. Consequently, the Administration is bound to revoke such expropriations at the owners request (C.O.S 1670, 2716/1964 Pl) (for a more detailed discussion of the above ruling see below).

The right of the proprietor to build upon his lot as long as the Administration does not duly indemnify him was abolished by art. 35 par. 4 of the Statute 1337/1983. The conformity of this provision with the constitutional provision protecting the right of property was contested before the Council of State. This time the Court took a different stance on the same controversial issue. Possibly under the influence of hard realities, manifested in the continuous shrinking of public space for financial reasons, the Court decided that the prohibition of building upon the lot pending the expropriation constitutes a legitimate limitation of the right of property, which does not affect its core, since it is only temporary and its removal is within the proprietor's power, who can either set into motion the process of indemnification or, when this is proved ineffective, to ask for the termination of the expropriation by the repeal of the relevant decision (C.O.S. 219/1987 Pl.)

Liability for compensation payable to the owners of expropriated land is shared between local authorities and beneficiary proprietors. The precise allocation of the expropriation costs between the two has been the object of conflicting legislation characterized by instability, uncertainty and

frequent amendments. Thus e.g. the liability of owners whose property borders the newly created public space was initially limited to a 20 meter wide zone of land, while the remaining costs were charged on the municipal authorities (art 3 of Statute 5269/1931). This liability was reduced to a 10 meter zone by art 2 of statute 625/1968 and was further modified (increased to 15 meter zone) by statute 653/1977.

2. The first major amendment of the basic statute of 17.7.1923 was the Statute 690/1948, which tried to settle miscellaneous issues created by the implementation of the original legislation.

2a. Permanent concern of the state over its incapacity to meet compensation costs for land designated for common use by the town planning scheme was manifest in the various modalities by which the state sought to avoid or limit its liability. Article 1 of Statute 690/1948 is such an instance, whereby the state took care to secure the necessary space for common use for areas which were inserted in a town planning scheme at the request and initiative of private landowners or development companies. By a special provision of the above statute, all such landowners are considered to forego their property rights for all land designated for public use by the town planning scheme, if the latter was approved or amended at their request, unless they had expressly declared in writing their disapproval of such an amendment. It is clear from the official Report on the statute, that the legislator explicitly makes a fictitious but incontestable assumption that the above landowners, having taken the town planning initiative, are willing to forego their property rights on space designated for common use, since otherwise the approval of the town planning scheme would never have been granted. The legislator moreover estimates that the profit gained by those landowners from the approval of the scheme fully compensates them for their loss of property rights.

However, the Council of State struck down this provision as contrary to the Constitution. More specifically the Court ruled that the omission of the proprietor, who had initiated the town planning process, to oppose a subsequent amendment of the plan, which adversely affected his property, cannot be interpreted as a valid proof of his intention to forego his property rights, because such an obligation was for the first time imposed by S. 690 /1948 and therefore, prior to that, he could in no way be aware of the consequences of his omission (C.O.S. 747/1954).

Once more, strict adherence of the Court to the rules and principles protecting property rights prevailed over a fair solution of the perennial compensation problem. By denying the validity of the above legislative provision, judicial rulings deprived many areas (especially Athens suburbs) from adequate public space, since proprietors and developers, encouraged by the above rulings and in view of the perennial insolvency of the state, converted a great portion of land designated for common use into ordinary land lots to their great benefit.

2b. As the wave of postwar unauthorized development constantly increased, an effort was made to check the process at the earliest possible stage, namely the acquisition of the land lot. Thus, article 2 of the statute 690/1948 prohibited any transaction of land which would result in the

creation of substandardized lots, i.e. lots not meeting the minimal building standards (size, dimensions, shape etc). Any such transactions were considered null and void by the courts. As explicitly stated in the Report on the statute, the above measure was rendered necessary by the fact that many landowners, taking advantage of the existing demand for cheap housing, divided their land into substandardized parts and sold it to low-income persons, to the great detriment of both buyers and town planning in general. Quite often the same proprietors, after constructing a house on their land lot, sold the surrounding open space, thus creating two substandardized properties.⁶⁷

The implementation of the above provision constitutes a typical example of failure, since it was constantly contradicted by building regulations. It is characteristic that building regulations subsequently issued for the specification of local minimal lot standards in various areas, nearly always contained exceptional provisions for the legitimization of preexisting substandardized lots. In view of its failure in practice, this provision was abolished by art. 3 of statute 652/1968. It was again brought in force by art 6 of statute 651/1977 in order to prevent, as explicitly stated in the accompanying report, excessive fragmentation of land and the subsequent unfair demands of proprietors for the restructuring of their substandardized lot at the expense of their neighbors. However, the practice was so deeply rooted and the above attempt to abolish it raised such strong reaction that the government was forced to turn about within the same year: by virtue of article 6 of statute 720/1977 all previous transfers of substandardized lots were legitimized.

It is noteworthy that even the courts adopted a rather permissive attitude towards the above provision of st. 690/1948. Thus, the Supreme Civil Court (Arios Pagos) seriously restricted its scope of application by ruling that the nullity of the transaction concerns only pieces of land and not lots which have already been built upon (A.P. 206/1959, 55/1961); of the same opinion was the Council of the Solicitors of the state, (Section B, op. 495/18.5.1961). On the contrary, the Council of State ruled that the nullity of the transaction applies to all lots, irrespective of whether they are built upon or not. (C.O.S. 2307/1952). Paradoxically, the same Council of State also ruled that the law does not prohibit the transfer of parts separated from already substandardized lots, on the ground that the statute seeks to prevent regular lots from being fragmented into substandardized ones, which is not the case when such a lot is already substandardized and further fragmented.

2c. The statute also made a serious effort to refine, simplify and concretize the complex network of provisions regarding lot restructuring and concession, which in practice had met with serious difficulties.

2d. Finally the statute (art. 4) made an attempt to check the activities of building cooperatives by prohibiting them to acquire land in areas which were not yet included in a town planning scheme. As expressly stated in the official Report on the statute, this restriction was dictated by the fact that building cooperatives deliberately purchased great forestal or agricultural estates at low prices and then exercised various pressures in order to insert them in the town planning scheme. This practice was not only detrimental to the environment, but also imposed a heavy burden upon the local authorities,

which were required to expand the installation of infrastructure facilities without appropriate programming.

The above provision is another striking example of inefficient legislation : it is common knowledge that building cooperatives continued to direct their activity precisely in areas without a town plan, where land was cheaper and greater opportunities were offered for wild exploitation. The above provision was formally abolished retroactively by art. 3 par. 2 of statute 625/1968.

3. In spite of all the above legislative measures, as early as 1955 the danger of urban anarchy was officially recognized, especially for the Athens area where the wave of internal immigrants continued to flow.

In an overoptimistic effort to control urban growth and specifically to check the postwar rapid expansion of the city of Athens, *statute 3275/1955* was enacted "on the prohibition of the expansion of town planning schemes in the Athens area". The Report on the statute gives us indeed a most bleak description of the situation, where unauthorized settlements grew with the tolerance of the police authorities and reckless expansion of town planning schemes took place under the pressure of accomplished facts and party politics.⁶⁸ The official assessment, as expressly stated in the report, was that further expansion of the town planning scheme of Athens was not justified on sound grounds and especially taking into consideration its current population (then just over 1,000,000 ; according to the census of 5.4.1981 amounting to 3,027,331 for the greater Athens area; now estimated at over 5,000,000).⁶⁹ Nevertheless the legislator also admits that the present situation cannot be ignored; some expansion is necessary for legitimizing existing unauthorized settlements and for the sake of building cooperatives which had invested in land, anticipating the expansion of the town planning scheme.

For all the above reasons the law prohibits the expansion of the city of Athens beyond a peripheral line which would be drawn within three months from the statute's enactment by a unique and non amendable act of delegated legislation. An exception to this rule was made for settlements that were to be constructed in the future by the Minister of Welfare for the accommodation of refugees. Unfortunately the above Decree was never issued.

The aim of the above provision, as explained in the official Report, was not only to prevent further expansion but also to make known to all interested parties, and especially building cooperatives, that the state would yield no more to pressures for urbanization. However, the rest of the statute contains provisions which are a clear proof of the state's failure to check the defacto expansion of unauthorized building activity and may even be interpreted as an indirect encouragement towards such activity.

More specifically, on the one hand the law states that in order to prevent disorderly urban growth and to enhance good communication between capital and periphery the expansion of town planning schemes beyond the above boundaries is prohibited and construction in this area is subjected to serious restrictions: buildings may be erected only on lots

exceeding 4.000 m² and may cover only 10 % of the surface of the lot. On the other hand however, the same provisions contain the seed of their self defeat. Thus land lots which could have been legally built upon before the statute's enactment, continue to do so even if they do not meet the new minimal standards (4000 m² etc) required by the law. Moreover, all land lots which had already been built upon, even without authorization, are fictitiously considered as meeting the required standards. It is noteworthy that no explanation for such conflicting provisions is provided in the official Report on the statute.

Finally, art.9 of the statute requires that the maximum number of floors and height of buildings in the various districts of Athens must be fixed by an unique act of delegated legislation (decree) issued within three months from the statute's enactment and not subject to modification. Indeed the decree of 30.8/9.9.1955 "on building regulations for Athens" was issued by virtue of the above enabling legislation. However, thirteen years later the military regime, acting under the pressure of economic recession, proceeded to a wholesale exit from town planning standards. Among the various measures taken in support of building activity was the law 625/1968 (see below), which set aside the above provision by permitting the amendment of the above decree of 30.8./9.9.1955 for a period of two years. It is characteristic that numerous decrees were issued, which modified building regulations, while the above time term was extended for one more year by st. 758/1970. The same practice continued well after the fall of the military regime; statute 551/1977 granted another six-month extension of the term, while statute 720/1977 (see below) authorized for a period of six months the issuance of decrees modifying building regulations and expressly permitted the increase of the existing coefficient of construction.⁷⁰

4. The next major amendment of statute of 17.7.1923 was *Law 625/1968* which gave effect to multiple modifications resulting in the great deterioration of the urban environment. The most important among them are the following.

As we saw, by virtue of art. 9 of statute of 17.7.1923 authorization is granted for the issuance of building regulations only for these areas that have already been included in a town planning scheme. (As a matter of fact, in practice the act of approval of the scheme and the decree determining the building regulations of the area are simultaneously issued). On the contrary, construction in areas not included in a town planning scheme is subject to severe restrictions, directly regulated by law (see above) This minimal guarantee was modified by art. 1 of Law 625/1968. The law gave authorization for the issuance of building regulations and thus encouraged building activity in areas outside the range of the town planning schemes, provided they had a minimal size of 6.000 m². This practically meant that owners of such land lots could virtually acquire their own building regulations (regarding minimal lot size, number of floors, maximum height, coefficient of construction) even though the surrounding area continued to be subjected to the normal rules and standards (e.g. 4.000 m² minimal size required for a building lot etc). It is not difficult to see that this provision untied the hands of land speculators, since immediately afterwards it was followed by a host of decrees, which diversified the building regime in the countryside. It should be pointed out that the law's enactment was dictated by standards not related to town planning and, more specifically, by the wish of the military regime to reactivate the failing economy. Construction was chosen as a catalyst for the

reactivation of the economy by its chain effect impact on the productive activities and for that purpose many incentives, among which the above legislation, were provided in support of intensive building activity " As long as construction goes on, the economy will be thriving " was the slogan of the day. It is true that the policy in the short term was successful, in the sense that the economy recovered from recession and took off spectacularly in the following years, justifying the expectations of its formulators. However, the price in terms of environmental destruction was too heavy and the damage proved to be irreversible: it was the inevitable effect of a town planning legislation not motivated by its proper standards but subordinate to other, economic or social, considerations.

It should be reminded that the same law contained amendments which limited the share of beneficiary owners in the compensation costs of expropriations (see above); abolished the prohibition of transactions concerning substandardized lots and set a two year term for modification of the building regulations in the Athens area.

5. Equally harmful for the environment was the notorious *Law 395/1968*, enacted within the same year, which drastically increased the existing "coefficient of land exploitation" throughout the country (ratio of the total sum of covered surfaces to the area size of the lot).⁷¹ The increase ranged from 40 % for areas with two-storey buildings to 20 % for areas with five-storey buildings. For the Athens area, and other areas where maximum height was 11 m, the increase was also 40 % .

Since the average size of land lots was rather small, coefficients were allowed to be used in height. The resulting density of construction in big cities caused a rapid deterioration of the urban environment and exposed them, especially Athens, to air pollution.

The legislator, probably fearing an eventual detrimental effect of the statute upon the environment authorized the administration to exempt from its provisions archaeological and historical areas, landscapes or suburbs, by acts of delegated legislation. It is noteworthy that only a few such decrees (about ten) were issued.

6. All the above legislation concerns areas included in town planning schemes. For areas not included in such schemes the general rule is to prevent construction for housing purposes in order to facilitate the orderly expansion of existing settlements in the future. As early as 1928 the *Decree of 23.10.1928* set considerable restrictions for building activity in areas outside the town plan or in the surrounding belts of cities and towns. Construction in the surrounding belts is allowed only for buildings of special use, such as industries, hospitals, hotels, schools, asylums and similar institutions, stables and warehouses, and the minimal size of lots is fixed to 2.000-8.000 m². Strict building regulations are imposed and additional licenses are required from the competent authorities depending on the use of the construction (Ministry of Health, Bureau of Tourism, Ministry of Agriculture etc).

Construction in areas not included in town planning schemes is only permitted on lots with a minimal size of 4.000 m² provided that the construction covers only 10 % of the lot. For land lots facing highways, national, regional or municipal roads as well as railways only 2.000 m² are required. In 1962 an important exception from this rule was made and the minimal standards were reduced to 1.200 m² and in some cases 750 m². Maximum lot coverage was fixed to 20 % and maximum height to 8,5 m, while only two floors were allowed.

7. Despite the numerous exceptions and alterations of the above, initially strict, legislation, building activity in areas outside the town planning schemes continued to be rather difficult and, in any case, it was a rather isolated phenomenon which did not permit the creation of settlements. Still, pressure to set up such settlements in the beautiful landscapes of Greece, so that they could be used as summer resorts, was growing strong, particularly in view of the rapidly deteriorating urban conditions. Relative prosperity of the Greeks created the need of a second summer home and, as usual, accomplished facts preceded the action of the State. In view of the rising demand, the familiar process of land speculation took off and soon fragments of land on beaches and mountains were offered at accessible prices. A good number of city dwellers found themselves in possession of small lots which, according to the legislation in force, could not be built upon.

Once again Greek ingenuity found a legal solution to an apparently insoluble problem and the *Decree of 7.8.1967* was issued "on vacation installations". By this Decree a new concept was invented for describing a kind of construction which would not be exactly a house in the terms of town planning legislation (for such a house could not be built in small lots outside the town planning schemes), but something much like it, in the sense of a temporary and "dismantable" shelter of a bungalow type, which would thus escape legal prohibitions. The above decree permitted the installation of such dismantable homes on privately owned land lots situated in areas outside the town planning schemes throughout the country. These homes were peculiar constructions of a maximum surface of 50 m², plus 20 m² of covered verandas, placed on a stone or concrete base erected up to 1 m from the surface of the earth and of a total height of 4,5 m. According to the law, they were supposed to be of "extremely high aesthetic quality" and were allowed to be placed at a distance ranging from 30 to 80 m from the beach. For their installation a formal permission from the local planning authorities was required. For the installation of such homes the standard requirements for construction outside the town plan (minimal lot size of 4.000 m² etc) did not apply.

The installation of "dismantable homes" was such a gross strategem that it met with the immediate reaction of the Council of State. The Court, commenting on the legality of the above Decree, declared that the enabling legislation of art. 17 of the statute of 17.7.1923, permitting the issuance of strict building regulations for areas not included in town planning schemes, aims at preserving the agricultural etc. character of these areas and at protecting the aesthetic quality of their environment and, for that reason, prohibits land fragmentation and the creation of settlements. In view of the above, the Decree in question, permitting the installation of vacation houses exempt from the standard provisions set for construction outside the scope

of town planning schemes, leads to the defacto creation of settlements and is thus illegal as contrary to the above enabling legislation (Council State, advisory opinion No 374/1967).

Nevertheless, considerations about the popularity of the measure prevailed over any hesitations regarding its legality and the opinion of the Court was bypassed. Soon, entire settlements emerged, composed not only of "dismantable" homes but also of real houses of impressive size: the ingenuity of the legislator was outmatched by the even greater ingenuity of the citizens, who obtained permission for dismantable homes and in their place erected luxurious villas

The case of dismantled homes proves to what ludicrous arrangements a program can degenerate, once its standards are determined by its mere popularity. Such programs, when adopted parallel to the standard legislation provide the legal outlets for the latter's violation.

8. In the unrelenting battle between a conceding legislator, who is constantly loosing ground, and an aggressive builder determined to have his way at any cost, the latest stratagem has been the "house on wheels". An ingenuous legal argument was invented, according to which the owner of a lot can park in it his "house on wheels" the way he parks his car, i.e. without any administrative license. The fact that the wheels are usually removed or that the house may consist of two floors and numerous rooms is of no importance according to the inventors of the argument. The Council of State struck down this practice (C.O.S. 3746/77, 648/78, 28/82) but this did not seem to discourage its proliferation.

bb. Legislation on Unauthorized Construction

1. A special branch of legislation was issued specifically for the purpose of preventing unauthorized development and enforcing the relevant legal sanctions.

Immediately following the statute of 17.7.1923, the *Decree of 18.3.1926* was issued prescribing the procedure for identifying and demolishing unauthorized buildings as well as for imposing sanctions to the offenders.

According to the above Decree a building permission is required for any kind of building operations, including structural alterations, additions or major maintenance and improvement works. Operations carried out without a legally issued building permission are immediately interrupted by a stop notice issued by the competent authorities.

Constructions erected without a building permission (or in violation of its terms) and in breach of the town planning legislation are characterized as unauthorized and are subject to demolition. Buildings erected by virtue of illegal building permissions are not characterized as unauthorized, unless the permission is revoked by the Administration or quashed by the courts. In case of minor constructions (kiosks, terraces, staircases etc) or non-residential buildings the demolition takes place immediately without any

further notice. For the rest of the cases (e.g. residential buildings), upon identification of the unauthorized construction the competent planning authorities proceed to the issuance of a protocol describing the offense and indicating the parts which are subject to demolition. The issuance of the protocol is a duty for the Administration and not an act of discretionary power. The relevant provisions of the law are considered as pertaining to the public order and, consequently, the duty to demolish continues to persist irrespective of the time interval between construction and demolition (C.O.S. 540/1962, 619/1965). Thus it has been ruled that the duty persists even after 30 years (C.O.S 430/1962).

It has also been ruled that the protocol of demolition must contain detailed reasoning, including precise description of the unauthorized construction, specifying the violated provision of the law and defining the part of construction subject to demolition. Protocols not fulfilling the above requirements are quashed by the Council of State.

The protocol is notified to the proprietor who has the right to appeal. If the appeal is rejected, the protocol becomes final, which means that it cannot be revoked by the Administration on a different assessment of the facts of the case (C.O.S. 573/64, 1663/73).

However repeal of a final protocol is permitted in view of subsequent legislation legitimizing the unauthorized construction (C.O.S. 2086/1965). Once the protocol becomes final, the owner is obliged to proceed to the demolition of the unauthorized construction; if he refuses to comply, the building is evacuated and demolished by the Authorities at his expense.

Assessing its quality as a program, we can say that the above Decree is the logical supplement of the statute of 17.7.1923. It is a classical specimen of a control system relying exclusively on policing and prompt administrative enforcement. However its properties have not been able to prevent the spread of unauthorized construction in the following decades. This has nothing to do with its quality as a program; its failure is rather due to the same reasons which rendered ineffective the statute of 17.7.1923:

2. The above *Statute 3275/1955*, which had attempted to set a limit to the expansion of Athens, contained special provisions aiming at checking unauthorized construction beyond these limits. In an effort to render enforcement more effective, the above law simplifies procedures and takes particular care to crack down on corruption by threatening penal sanctions for breach of the law against builders, supervising engineers or planning and police authorities.

Despite the fact that these measures were never implemented (since the peripheral line of Athens was never drawn, (see above) they are worth mentioning here, because they express the intensified desire of the state to control failure.

3. In defiance of the sanctions threatened by the above Decree of 18.3.1926, unauthorized individual buildings or entire settlements spread like mushrooms all over the country. The responsibility for such an extensive failure should be

attributed to the inconsistent attitude of the legislator, who, on the one hand enunciated severe sanctions (demolition, penal sanctions, nullity of transactions etc) and on the other hand encouraged violations by permitting the installation of dismantable homes and by constantly authorizing exceptions from the minimal lot standards in order to legitimize de facto situations.

However, it was in 1968 that the growing incapacity of the State to enforce the planning legislation was openly avowed for the first time by an act of capitulation before the massive violations. By *Statute 410/1968* the State acknowledges its failure and seeks to come to terms with reality: A new institution comes into being, the exemption from demolition, which, and in spite of its repeated repudiations, proved to be one of the most persistent practices of Greek urban legislation, precisely because it expressed its failure.

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According to Art.1 of the above Statute, unauthorized buildings constructed within the limits of a town plan may be exempt from demolition by a ministerial decision accompanied by the opinion of the Committee of Public Works. The exception may be granted provided that the preservation of such an unauthorized construction does not compromise the safety of the building or cause excessive harm to the town. According to the rulings of the Council of State, the term "town" refers not only to the settlement as a whole, but also to a limited area or even a small part of town (e.g. a neighboring apartment house, C.O.S. 1129/1970).

The owner of the legitimized construction is obliged to pay a special fee amounting up to 10 % of the value of the construction. For unauthorized buildings erected after the statute's enactment penal sanctions are imposed to owners, builders and supervising engineers.

The enactment of the above statute clearly proves the predisposition to accept accomplished facts and to legitimize at least a substantial part of unauthorized constructions. The ensuing procedure of exemption initiated a sort of unofficial bargaining process between Administration and the public, as to which violations of the planning legislation may be forgiven and which not.

The Council of State, anticipating the potential abuse of the measure, tried to restrict the scope of its application. Therefore it ruled that the power of the Minister of Public Works to grant exemptions from demolition can only be exercised by individual decisions referring to specific individual cases after investigation of the particular circumstances of each. On the contrary, the Minister cannot exercise his power by general decisions referring to whole classes of unauthorized buildings without investigation of each particular case (C.O.S 2297/1969). Moreover, demolition being the rule and exemption being the exception, the ministerial decision rejecting the owner's petition for exemption does not require particular reasoning; it is sufficient to describe the unauthorized construction and to state that it does not fulfill the legal requirements for exemption (C.O.S. 3322/1973). On the contrary, it was repeatedly ruled that the ministerial decision granting the exemption should contain specific reasoning referring to the particular features of the construction and its impact on the environment; mere repetition of the letter of the law "that the unauthorized construction does not compromise the safety of the building or cause great harm to the town"

cannot be taken as sufficient reasoning for the ministerial decision (C.O.S. 522/1973).

Moreover the Court made it clear that the provisions of Statute 410/1968 do not in any way abolish the standard legislation on unauthorized buildings (C.O.S. 2775/1969) and thus they are only applicable to buildings constructed before its enactment (C.O.S. 2836/70). However they are applicable even to cases for which a final protocol of demolition has been issued, since they constitute a valid legal reason for the repeal of such a protocol (C.O.S. 371/1970).

4. Exemption from demolition was initially conceived as an exceptional measure destined to last for a transit period of time in order to accommodate accomplished facts. It is, however, a most convincing proof of the town planning system's failure that a few year later, in 1973, the institution of legitimization of unauthorized construction became a permanent provision of town planning legislation and was incorporated in the General Code of Building Regulations of 1973 (*Statute 8/1973*). Thus, the foundations of town planning legislation were eroded and its authority was weakened: from then on it was commonly interpreted as encouraging violations by generating the expectation that at least some breaches of the law would be tolerated.

The General Code of Building Regulations of 1973, which replaced the former Code of 1955, defines as unauthorized a construction executed: a) without a building permission, b) in violation of the permission's terms, c) in breach of the legislation in force or d) by virtue of a building permission which has been subsequently judged as illegal.

However, not all such unauthorized constructions are subject to demolition but only those which violate the existing town planning legislation with respect to minimal lot size, lot coverage and maximum height regulations, maximum coefficient of exploitation, layout of buildings and obligatory open space. In addition to the demolition offenders are also subject to fines.

A construction is characterized as unauthorized by decision of the competent planning authorities, issued after investigation on the spot, which may also impose a fine and set a time term for demolition. The above decision is subject to appeal before the Regional Committee of Public Works, whose final decision may be reviewed by the Council of State.

Unauthorized constructions may be exempt from demolition by ministerial decision, provided that the offenses are minor and that demolition would be extremely costly or harmful to the construction's, stability or aesthetic appearance and on condition that the preservation would not compromise the safety of the building or be extremely harmful to the town.

5. Typical of the ambivalence of the legislator on the subject of control of unauthorized buildings is the Statute 349/1974 which instituted a speedy process of law enforcement dispensing with most of the formalities. A distinction is made between unauthorized buildings constructed in areas inside the town plan, where building permissions, if sought, may be granted, and buildings constructed outside the town plan, where construction is as a rule prohibited. The latter are demolished on the spot without further procedure

but no penal sanctions are imposed on the offenders. The former continue to be subject to the standard provisions of the General Code of Building Regulations (see above) but offenders are subject to imprisonment non convertible into fine.

6. Three years later the above statute fell victim to its own severity without having proven its effectiveness: it was abolished by statute 651/1977. In the official Report on the latter, S. 349/1974 was accused for being unfair, contrary to justice and the rule of law and extremely strict. It was blamed for unnecessarily disturbing the system of penal sanctions, until then uniformly applied to all classes of offenders (inside or outside the town plan), and it was criticized for abolishing penal prosecution where it was mostly needed, namely in cases of substandardized lots outside the town plan, where land speculation is thriving and environmental destruction is imminent. It was also accused of violating the principle of the rule of law by prescribing immediate demolition without prior issuance of an administrative decision. Moreover it was pointed out that the threat of imprisonment non convertible into fine was so severe a sanction that it was doomed to be ineffective, since the Courts would be reluctant to apply it.

For all the above reasons the St. 349/1974 was expressly abolished and the standard provisions of the General Code of Building Regulations were reactivated by St. 651/1977. The latter also introduces a cluster of novel measures aiming at drastically curtailing the multivarious activities related to unauthorized buildings.

Thus penal sanctions of imprisonment and fine are imposed not only to the owners but also to the simple possessors of unauthorized buildings, as well as to builders, who are considered as a major factor of anarchic development, since they are only motivated by profit. A new measure aiming at discouraging speculative activities is the confiscation of technical equipment used for unauthorized construction. Moreover the same statute reactivated the prohibition of transactions regarding substandardized or irregular lots (which was first introduced by St. 690/1948 and abolished by St. 625/1968, see above). For every land transaction a map is attached signed by the contracting parties and an engineer, who certifies that the lot has the appropriate dimensions so that it can be built upon. In case of false certification, penal sanctions are imposed. Penal sanctions are also imposed to those acting as brokers in such transactions or advertising them on the mass media. If the offenders are companies, the sanctions are imposed to their managers or directors. According to the official Report, penal sanctions were deemed necessary because the mere nullity of the transaction was never invoked by the parts before the civil courts.

Moreover, lot restructuring is not permitted for lots which lack the minimal legal dimensions or are irregularly shaped as a result of illegal fragmentation.

To put an end to the claims of owners of unauthorized buildings to be supplied with water, electricity, sewage facilities etc, the law prohibits the respective public utility companies from providing their services, unless a copy of the building permission is submitted to them by the applicants. Employees violating this obligation are subject to disciplinary sanctions.

In sum, we can say that the above law contains provisions aiming at dealing with unauthorized development in a more comprehensive way than ever before. Thus enforcement is directed against the entire system of persons who, under various capacities (owners, possessors, builders, engineers, advertisers, public servants etc) are involved in unauthorized development. The law also introduces a number of other provisions aiming either at checking unauthorized activity at an early stage (e.g. counterincentives such, as nullity of transactions, prohibition of restructuring or of supply of public services) or to enhance law enforcement.

However, the same statute which threatens the above strict sanctions undermines its own credibility by pardoning all offenses previously committed; owners of unauthorized buildings constructed between 1955 and 1973 are given the chance to legitimize their buildings following the procedure of St. 410/1968. This measure is justified in the official Report on the statute by the mysterious formula that "relevant" to the checking of arbitrariness is the recognition or legitimization of old unauthorized constructions for which a building permission could have been granted or which are not extremely harmful to the town.

7. After a ten year period of repeated legitimization the State was now only one step behind the full confession of its incapacity to control unauthorized development. Within the same year (1977) it attempted a desperate solution for coming to terms with accomplished facts: the enactment of the notorious statute 720/1977.

It is noteworthy that the above statute was voted on the eve of the 1977 elections and, as it results from the discussion in Parliament, all parties, while paying lip service to the necessity of control in town planning, were rivaling each other as to the lavish concessions offered to the offenders of the town planning legislation.⁷³

The Statute 720/1977 goes a step beyond the individual legitimization introduced by S. 410/1968 : it proceeds to the massive exemption (i.e. legitimization) from demolition of all unauthorized buildings constructed up to the day of the enactment of S. 651/1977. In the official Report on the statute the framers of the law boasted that the new solution was much "braver" than the previous one of S. 410/1968 because it applied to all buildings, inside or outside the town plan, and legitimization was effected automatically: neither investigation of the particular circumstances of each case nor the issuance of a respective administrative act of exemption were required. It is obvious that such a measure, equivalent to the total abdication from control, was an open admission of the failure of the law enforcement process. However the reasons given in the official Report tried to convey a different meaning, namely that after the severe sanctions instituted by St. 651/77, it was expected that unauthorized construction would be seriously impaired; therefore, the time was considered ripe for the legitimization of all preexisting constructions. In view of this rather unusual statement of the framers of the law, it is interesting to take a better look at its provisions.

According to Art. 1 all unauthorized buildings constructed before St. 651/1977 are exempt from demolition, irrespective of their location (inside

or outside a town plan) and no matter whether they are violating the planning legislation or building regulations in force. Fortunately the exemption does not apply to buildings constructed on space designated for public use (streets etc, beaches, forests or archaeological sites). The exemption is effected automatically upon submission of two declarations by the owner to the local planning authorities: the first must be accompanied by photos of the building and submitted within three months from the Statute's enactment. According to the official Report, the short term is meant to prevent abuse of the generous provisions of the law by those who would hasten to take advantage of the opportunity for legitimization and proceed to unauthorized building. The second declaration is more detailed and must be submitted much later, within a year from the promulgation of delegated legislation specifying its content. Moreover, the owner of such a building is obliged to pay a small legitimization fee, whose amount varies with the size, location and particular features of the building. The Minister of Public Works may reject the above declaration, if the construction does not meet the required aesthetic criteria or causes great harm to the town.⁷⁴

The above statute is a scandalous enactment with respect to unauthorized construction in particular and town planning in general. The sad thing is that such a statute was issued by a fully democratic regime which, in this respect, somehow managed to surpass the dictatorship.

During parliamentary debate speakers of both the majority and minority, after lamenting the existing urban anarchy caused by deficient housing policy, chaotic legislation and deplorable living standards in unauthorized settlements, enthusiastically acclaim the proposed legitimization. The speaker of the majority "thanks" the government for the brave measure which relieves half of the country's population from the stigma of illegality. The only objection of the speaker refers to the reduction of the legitimization fee, which is considered exorbitant. Both speakers, and especially the speaker of the minority, expressed some reserve over the fact that the measure covers different classes of unauthorized construction (e.g. residences of low-income people or huge villas) and might thus result in inequalities. It was also pointed out that the measure would be unfair towards law-abiding neighbors, who bear the consequences of unauthorized construction. However these objections remained only nominal in view of the immense popularity of the measure; it is characteristic that the retroactive abolishing of S. 651/1977 was enthusiastically hailed by the speaker of the minority, who characterized it (S. 651/77) as an "antipopular and antisocial legal monstrosity".

Thus two of the three powers of the State, government and legislator, not only came to admit their failure to enforce the law, but gave their blessings to the illegal acts of the citizens. However the third and "least dangerous" power was of a different opinion: The measure of massive exemption of demolition introduced by S. 720/1977 was challenged before the Council of State and was declared unconstitutional.

The case was brought before the competent section of the Court on appeal of an owner whose declaration, submitted according to the provisions of s.720/1977, for the legitimization of his unauthorized construction (gym and residence built on the open space of an apartment building) was rejected by the planning authorities. According to the opinion of the reporting Judge, the automatic massive exemption from demolition

undermines the authority of the State and the Law and violates a number of fundamental constitutional principles, namely the Rule of Law, the principle of equality and the right to orderly ecistic environment guaranteed by Art. 24. More specifically, under the Rule of Law the state has an obligation to protect only the rights legally bestowed upon the citizens and to corroborate their trust in the legal order by guaranteeing the effective application and enforcement of law. The s.720/77 also violates the principle of equality by obliging law abiding citizens, who have themselves refrained from unauthorized construction, to bear the consequences of the illegal activities of their neighbors.

By a decision of its Plenary Section (No. 1876/1980) the Council of State ruled that the massive legalization of unauthorized constructions, performed automatically upon request of the owner, irrespective of townplanning criteria or the particular features of each construction (e.g. its location in or outside a townplan, its size, the severity of the offense, its impact on the environment etc) cannot be tolerated under the provisions of Article 24 of the Constitution, which guarantees a rational urban development, well integrated with the national and cultural environment.

8. After the failure of L. 720/1977 no further modifications of the former regime of 1973 were attempted until 1983, when L. 1337/1983 was passed (on this Law see above). L. 1337/1983, subsequently modified by L. 1512/1985, acknowledges the acuteness of the problem of unauthorized construction and its disastrous consequences and aims at a twofold goal:

- a) integration of the existing unauthorized buildings in the urban environment
- b) prevention of future offenses.

In search of the ideal solution, which would wishfully combine fairness with effectiveness, equity with prevention and social policy with townplanning considerations, the above law establishes a highly complex system of classifications and subclassifications, rules and exceptions of questionable quality. Unauthorized constructions are classified in two major categories: those erected before 3.1.1983 (defined as "old" unauthorized buildings) and those erected thereafter (defined as "new" unauthorized buildings). For buildings belonging to the former category, demolition is temporarily suspended; for these among them located outside a townplan the suspension is valid until land use of the area is finally determined and the fate of each construction is individually decided, while for those situated inside a townplan the suspension is valid until the fate of each construction is determined by a special committee on the basis of specific townplanning criteria (impact on the environment e.t.c.). The suspension does not apply to buildings erected in certain special areas (public open space, beaches, forests etc.). Moreover, the Minister of the Environment is empowered to exempt from the benefit of suspension specific buildings which are extremely harmful to the urban environment. These last two categories are subject to immediate demolition following a short procedure of appeals.

On the contrary, all buildings erected after 11.12.1984, irrespective of their size, location, gravity of offense or impact on the environment, are immediate demolished. For those buildings erected in the interim period between 10.12.1981 and 31.12.1984 demolition is suspended if

they serve as the major dwelling of their owner. In addition to this, two kinds of fines are imposed on the offenders: a fine for the erection of the unauthorized construction and another fine for its preservation. Nevertheless, the Prefect may exempt from demolition unauthorized constructions of minor importance on condition that they are not dangerous or extremely harmful to the environment and their demolition would damage the rest of the building or be extremely costly.

The above mentioned highly complicated provisions are only the skeleton of the new regime introduced by L. 1337/83, which is in fact much more complex and contains a host of minor exceptions and subexceptions. The Council of State interpreting the new system of sanctions, has repeatedly declared on different occasions that the basic rule of demolition of unauthorized buildings has not been repealed by L. 1337/83 but, on the contrary, it has been preserved despite the numerous exceptions introduced by this law. Consequently, the basic principle requiring that full reasons should be provided for every exemption from demolition, applies equally to all provisions of L. 1337/83 as well (C.O.S 4487/1987).

It should be noted that the Council of State has taken a strict stance on the disputes arising out of the application of the above Law. For instance, L.1337/83 contains special provisions regarding the fate of the unauthorized constructions that were massively legalized by L. 720/1977: each particular case must be individually reexamined and may be exempt from demolition only under the same conditions that L. 1337 sets for the rest of unauthorized constructions. When the above provision was challenged before the Council of State, the Court rejected the claim that the law was in fact imposing retroactive burdens, on the theory that the beneficial provisions of L.720/1977, being unconstitutional, were invalid *ex tunc* (C.O.S 2725/87,779/88). The severity of the Court is also apparent in its basic policy that the lapse of time, no matter how long, cannot impede demolition. Thus it has been ruled that a demolition order issued 32 years after the offense does not violate the constitutionally protected right of property, because the Constitution does not protect unauthorized construction (C.O.S. 2405/1987).

The procedure for the identification and characterization of unauthorized constructions is regulated by delegated legislation. The relevant decree (of 5/12 July 1983) provides that an unauthorized building is characterized as such by the competent townplanning agent, who draws a report describing the offense. The report may be challenged before a special committee situated at the townplanning agency, whose decisions are subject to review by the Council of State. The Council of State has ruled that, since the procedure for characterizing a construction as unauthorized and subject to demolition is different from the procedure for considering a petition for exemption from demolition, mere rejection of the latter does not empower the agency to proceed automatically to demolition (C.O.S. 4562/1987).

While it is still early to evaluate the impact of L. 1337/1983, evidence so far points to the disappointing observation that the law has been no more successful than its predecessors in preventing the spread of unauthorized construction. Since none of the crucial factors mentioned elsewhere has been eliminated, unauthorized construction still goes on at the same, if not faster, pace, interrupted by sporadic instances of law enforcement.

B) Communication and Control

ba) Communication

We have already mentioned (see above) that the observance of the basic principles of communication theory is a necessary prerequisite for successful implementation. At this point we shall briefly review the communication aspects of the case under study and their impact on the implementation failures.

We shall begin with a schematic description of the communication system in town planning, which for the greater part corresponds to the decision making system established by the town planning legislation. The communication system for making and applying the town planning scheme is highly complicated because it consists in fact of three distinct decision - making systems, one for the design of the scheme, one for its implementation (lot restructuring, allocation of compensation) and one for its materialization in each particular case (granting of building permissions). Diagram 1 depicts the typical procedure for the issuance of a town planing scheme, from the moment of its initial conception until its final approval by the Minister, followed by its publication in the Official Gazette. Diagram 2 depicts the typical procedure for the town planning scheme's implementation and Diagram 3 depicts the process of issuing building permissions.

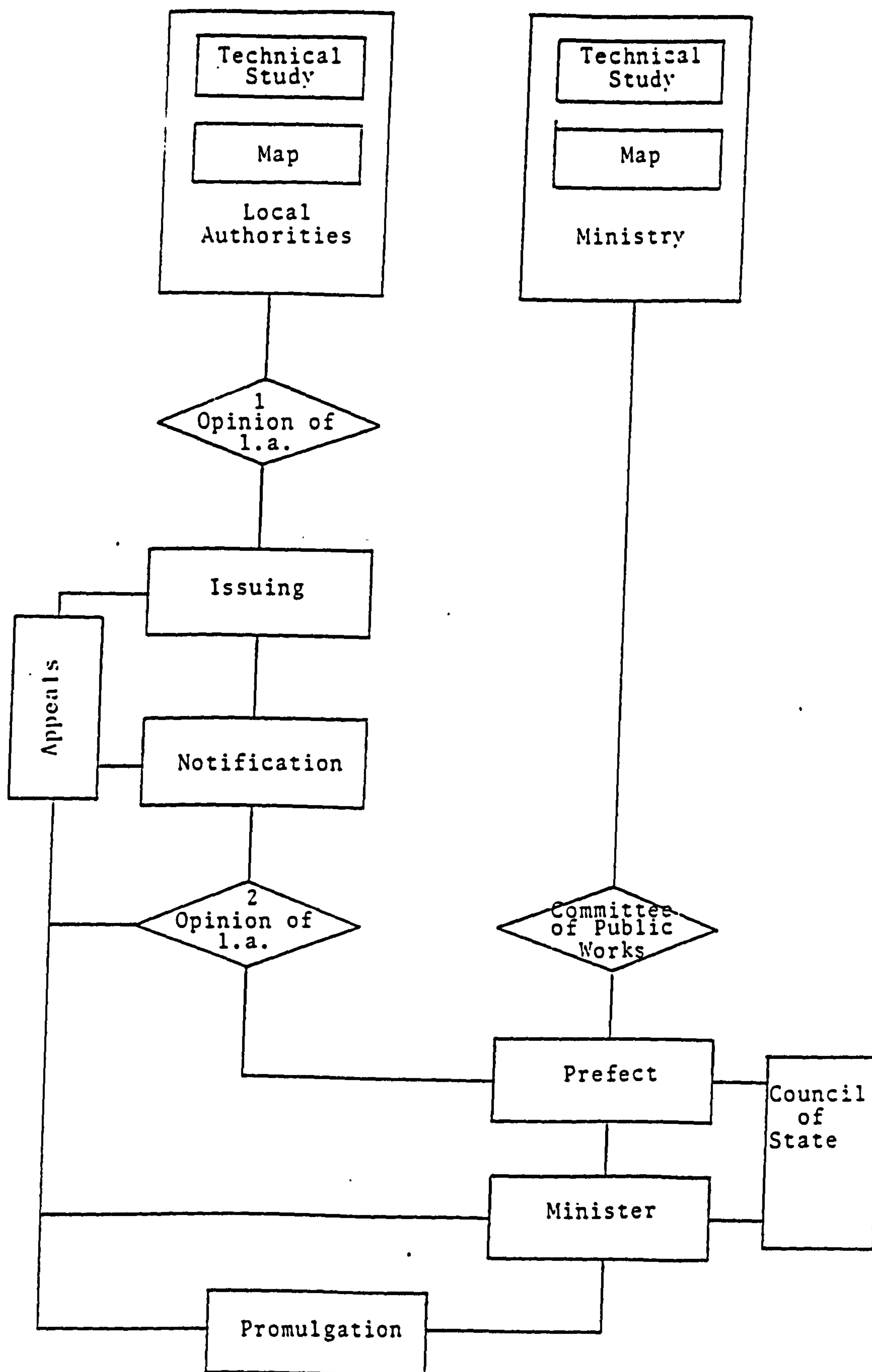


Diagram 1

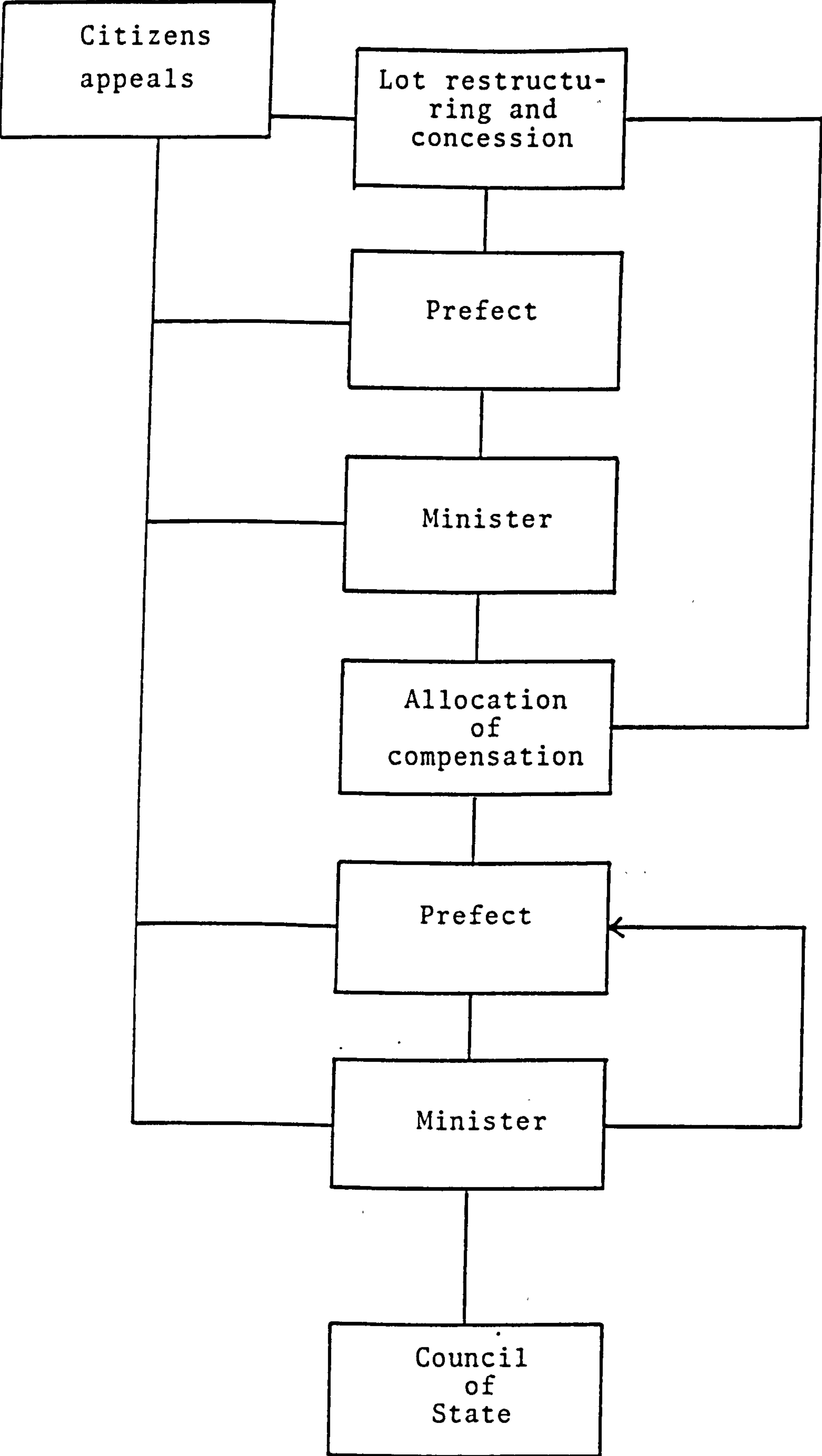


Diagram 2

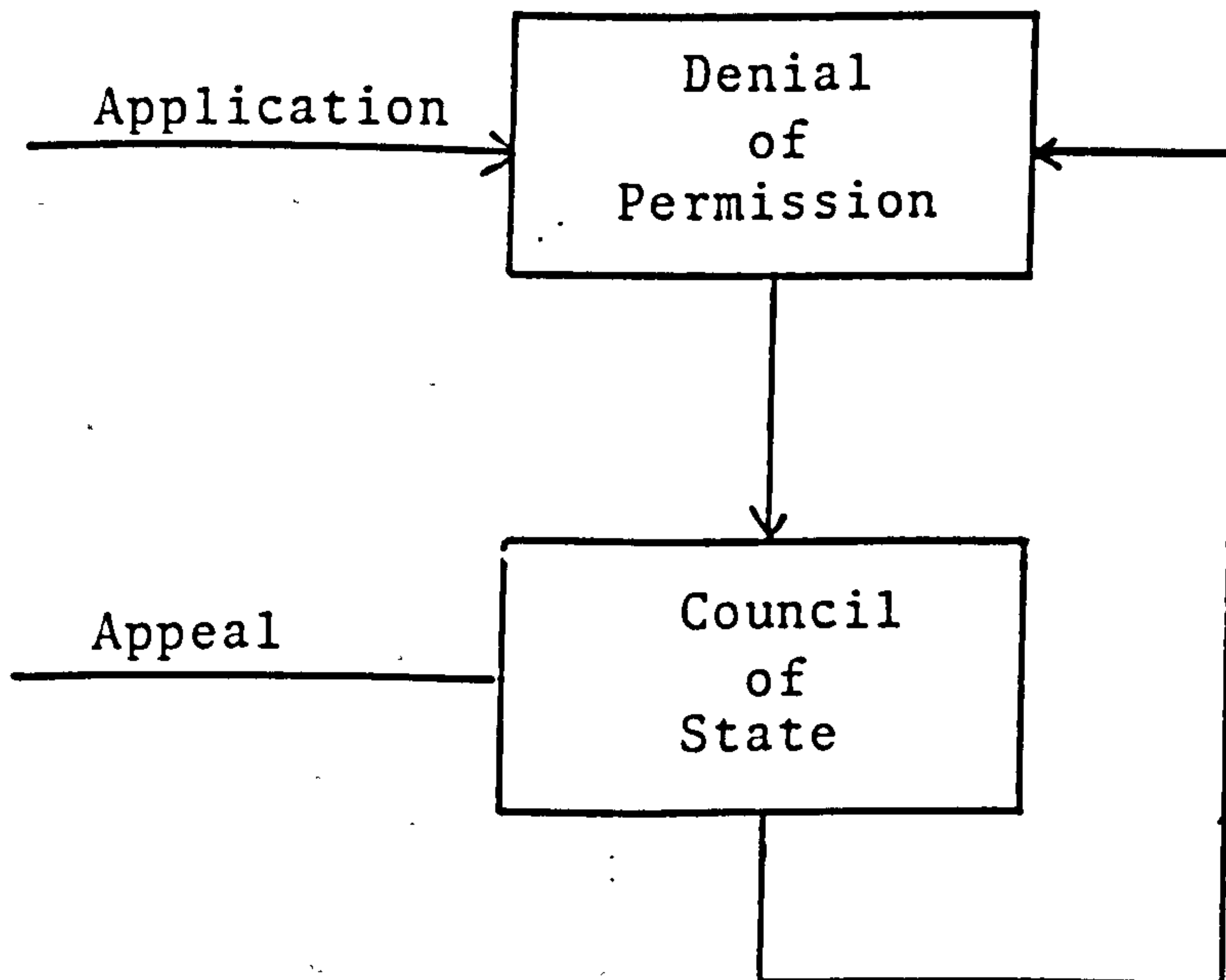
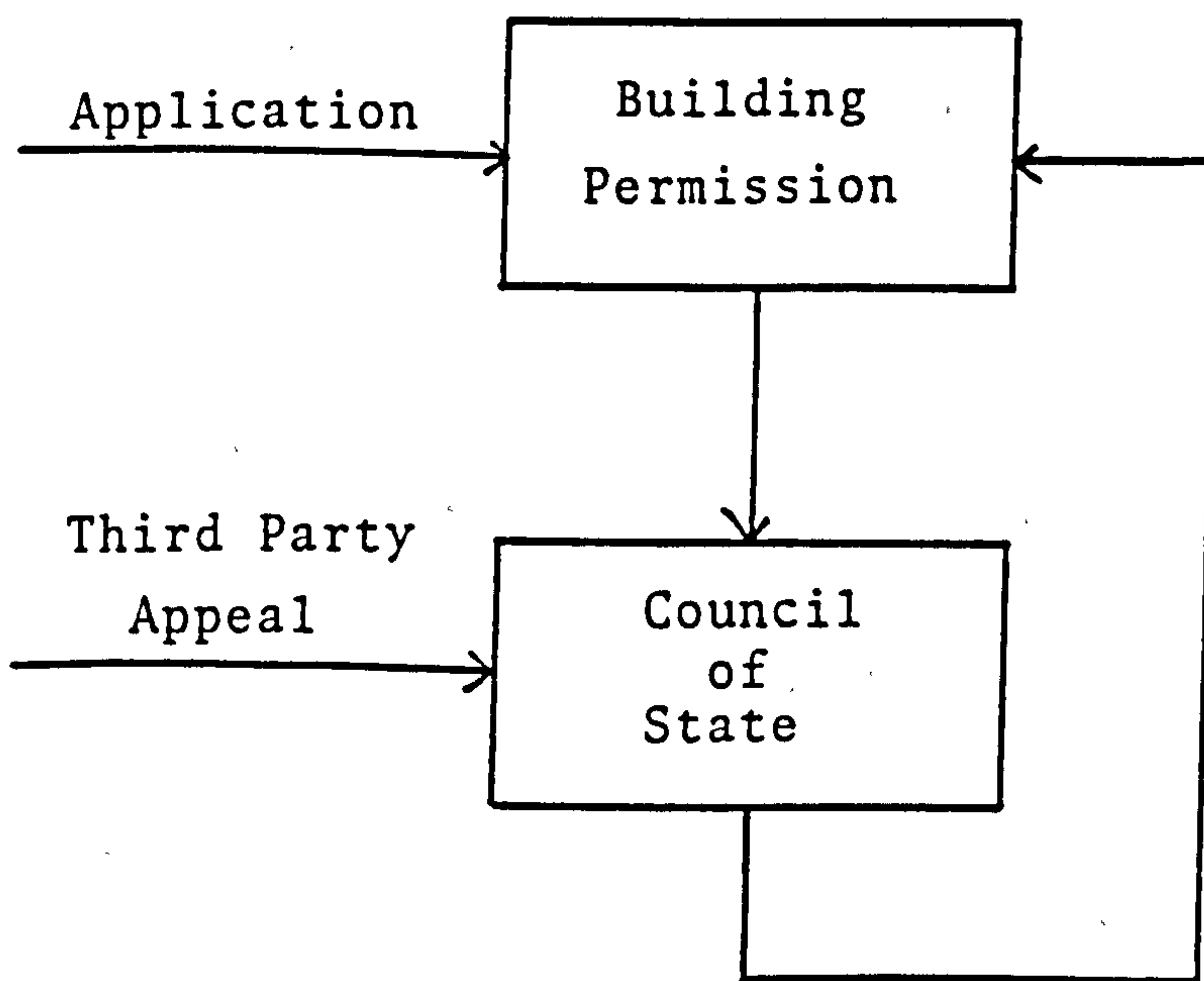


Diagram 3

From the above Diagrams we can draw the following conclusions.

A. a. The above decision-making systems are *quite complex*. Let's take as a typical example from the decision making system 1 the design of the town

planning scheme of a small town, where final approval of the plan is assigned with the Prefect, i.e. the regional organ of the State. For that final decision to be made, there is first a technical report prepared by the regional (decentralized) town planning agencies, then there is the advisory opinion of the local authorities supported by the advice of their own technical agencies, this opinion is exposed to appeals by the citizens, appeals are decided upon by the authorities and a final opinion is formed by the Regional Committee of Public Works. The decision of the Prefect approving the plan is subject to appeal before the Minister and both decisions may be challenged before the Council of State.

b. The communication is further complicated by the fact that the decisional nodes are not only numerous but also belong to *different organizations*. In fact the above process involves local authorities (technical planning agencies of the municipality which work out the required studies, drafts, maps etc., local councils which issue advisory opinions) central or decentralized authorities (Committee of Public Works, Prefect - in case the scheme concerns a city with a population under 5.000 - and Minister who approves the final version of townplanning schemes of bigger towns and decides on appeals of subordinate authorities) and finally the Courts (Council of State). Considering the fact that the self-government of local authorities is constitutionally guaranteed (Art. 102) so that there is no hierarchical relationship between them and the center, prompt and coordinated communication is harder to establish.

In order to diminish the time span between decisions, the law (Art. 3 par. 3 of Statute of 17.7.1923) requires that the authorities' opinion must be issued and notified to the Minister within a short term, whose precise duration is determined by delegated legislation (from 20-45 days depending on the area). Upon expiry of this delay the Minister is free to proceed to the approval and promulgation of the plan without consulting the local authorities. This is a typical case where the law itself has provided a mechanism for the elimination of a decisional node which might slow down the flow of information.

c. The communication system provides for *extensive participation* of affected citizens through the mechanism of appeals. Thus the initial decisional nodes depicted in the above Diagrams may be, and usually are, multiplied as a result of repeated appeals to superior authorities or to the Courts, which often result in the repetition of the entire process over and over again. Communication of the files back and forth from the center to the region, notifications, publications and various other formalities, counter-appeals and interventions of third parties further complicate and delay the communication process.

d. The entire communication process is highly *legalized and judicialized*. Complicated procedures set by the law for publicity and notification, short terms for the submission of appeals or opinions and other such formalities are often not observed and, thus, offer ground for protracted litigation both before the administration and the courts. Not rarely the entire process is reversed and has to be repeated either from the start or from the stage where the breach of the law occurred. The whole circle may take years to be completed because of considerable delays at each decisional node (e.g. a case at the Council of State may take 2 to 3 years to be decided).

e. The communication system is *over - centralized*. The final word for the approval of the plan of even the remotest village is reserved to the central authorities, but all the crucial information regarding the expediency of the intended arrangement must be provided by the periphery (local authorities, interested appellant parties etc.).

In the early 1970's in the context of a broader devolution of power from the center to the provinces, authority for the approval, expansion or amendment of town-planning schemes and the issuance of building regulations was transferred from the Minister to the Prefect. According to Art. 1 of Law 314/1968, replaced by the Law 1018/1971, the Prefect decides after hearing the opinion of the municipal council and the regional Committee of Public Works. His jurisdiction includes the approval of schemes for towns with a population up to 5.000 or the amendment of schemes for towns with a population up to 20.000 (C.O.S. 3229/1983).

Of analogous complexity is the second stage of decision making, which follows the approval of the town planning scheme and consists in its implementation through lot restructuring and allocation of compensation. Lot restructuring and allocation of compensation are actually two distinct processes, where interested parties are extensively involved through a complex mechanism of bargaining and appeals, administrative or judicial (appeal to the Prefect at first instance, to the Minister at second instance and finally the Council of State). Consequently the flow of information is often embottled at this stage, because it affects property issues which are bitterly embattled, usually in Court, thereby partaking in the usual delays of protracted litigation. If an administrative (e.g. ministerial) decision on lot restructuring or allocation of compensation is annulled by the Council of State, the whole process has to be repeated all over again in conformity with the requirements of the judicial decision. The new ministerial decision may be challenged again by the same or another party on different grounds and this may lead to an endless repetition of the procedure. At this point it should be reminded that the allocation of compensation which is an administrative procedure (see above), does not settle the whole problem of indemnification because, by its nature, it is limited only to the question of which property is liable for indemnifying whom. The equally or more important problem of the identity of the proprietors and the land value is reserved to the civil courts where litigation can be protracted through at least three stages (Court of first Instance, Court of Appeals, Supreme Court - Arios Pagos).

B. Another shortcoming of the town-planning communication system, directly related to the above, is that it does not ensure *reliability and untrammelled flow of information*. The communication network being more complex than necessary, mistakes are unavoidable. The number of decisional nodes makes the system prone to information distortion and to great delays in the free flow of information. Thus e.g. in practice the time lapse between the advisory opinion of the municipal authorities and the final approval of the plan by the Minister is often so long that in the meantime actual changes in the environment made the former virtually irrelevant.

Therefore, in order to promote accurate and timely flow of information the Council of State set the principle that advisory opinions, maps depicting the existing situation and other similar documents, aiming at

informing the competent planning authority on current local needs and actual circumstances of the area, should not be too distant from the final approval of the town-planning scheme (C.O.S. 2544/1977). Thus it was ruled that an advisory opinion issued three years before the approval was far too distant, a fact which caused the annulment of the entire town-planning scheme (C.O.S. 1217/60 pl.); an approval granted in 1970 on the basis of a map drawn in 1966 and an advisory opinion submitted on 1968 was also invalidated on the same grounds (C.O.S. 1926/1974).

Since the decision-making stage 1, which ends with the approval of the town planning scheme, and the decision-making stage 2, which ends with lot restructuring and payment of compensation, are in practice too loosely connected and almost disjointed, many town planning efforts, for a variety of reasons, stop at the first stage and do not proceed to the stage of implementation. The above mentioned rulings (see above) of the Council of State regarding the ipso jure reversal of expropriations after reasonable time meant precisely to reduce the uncertainty caused by the burden of expropriations which were not duly brought to end.

C. It is a common complaint of both citizens and authorities involved in town-planning, that the communication system is constantly overloaded and information is blocked at various decisional nodes. This overload is a side effect of *the poor organization* of the communication networks. Due to inadequate allocation of personnel among the various competent agencies some of them are overstaffed while others are permanently understaffed. Usually there is jamming at the center, where information constantly flows from the regions in order to be processed at the final stage of approval. Jamming also occurs at all nodes where appeals are decided as well as at the stage of litigation at the Council of State.

The situation is further aggravated due to the lack of proper support by adequate information technology. In spite of the progress made in that field, information systems, which would greatly enhance the processing capacity of the system, are hardly used in town planning.

D. The whole system is not supported by adequate *memory* and this is a factor seriously limiting its processing capacity.

In the first place, town planning legislation shares the ill features of any other legislation on administrative matters: fragmentation, disjointed incrementalism, complexity, frequent amendments and dispersion of its provisions in numerous and often irrelevant statutes. The effort to locate the appropriate legislative text among conflicting provisions often consumes considerable time of both planning authorities and courts.

On the other hand, at the factual level there is no central memory, where past experience from the multiple town-planning activities all over the country may be stored and retrieved to provide guidance for the future. Perhaps the only information properly stored are the rulings of the Council of State on town planning matters, which are regularly issued and properly classified, thus providing the main guidance of town-planning agencies. For the rest, provincial town planning agencies have no ready support from standard

administrative practice and are, therefore, obliged either to seek advice from the center, a fact which prolongs the already lengthy procedure, or to rely on improvisation, taking the risk of annulment by the Court.

E. It follows from all the above that the communication system of town planning is inevitably exposed to *noise*. Noise in communication theory results not only from technical disfunctions of the system but especially from undesired informational interference. In our case, such noise is elicited from various sources. Due to the lack of comprehensive planning at the national or regional level, the town-planning process in each particular case is often triggered by the initiative of private persons (usually building cooperatives), who design town planning schemes at their convenience and submit them to the Administration for approval. Approval is usually granted without much scrutiny and often without even taking into consideration the opinion of the local authorities, which is easily bypassed upon expiry of the short terms set by the law. If we add to the picture the absence of clear and consistently held planning criteria, it is obvious why property considerations become the hot issues in town planning: the layout of streets, the enlargement of a square, the design of a commercial center or the location of a public building are hardly determined by functional criteria pertaining to an urban system, but become issues of litigation among opponent proprietors instead. Those who take the planning initiative and those who bitterly oppose them are usually both motivated by selfish considerations. Their conflicts degenerate into lengthy litigations, while the solutions reached by the courts are often dictated by legalisms quite irrelevant to the criteria of an urban system. The echo of such judicial battles often attracts the attention of organized interests, whose interference further aggravates noise.

With respect to noise, it is clientele politics which strikes the final and most critical blow. It is characteristic that in the eve of elections a stream of Decrees is always issued, amending town planning schemes, modifying building regulations (usually by increasing heights, coefficients of development etc.), granting exceptions to minimal lot standards or even legitimizing unauthorized buildings (see above on Statute 720/1977). In view of the above, to determine town planning issues on the basis of strictly relevant information is a very difficult task indeed.

bb) Control

Wiener was the first to stress the close relationship between communication and control. Control is in fact unthinkable without communication and it is interesting to see how this principle applies to the case under consideration.

Inherent in the concept of any control is the establishment of a closed feedback loop, whereby information concerning the actual properties of the system is fed back into it and appropriate corrective action is taken, depending on the degree of deviation from the established standards.

In any control system feedback loops ensure connectedness of at least four elements, each performing a specific function. Thus the system's output should be input to the appropriate *sensor* and the sensor's output

should be duly communicated to a *comparator*, whose output would be input to the *activator*, which applies the corrective action to the system (see above). Central in this control system is the concept of the criteria (standards) of performance, which constitute the reference program applied by the comparator: it is against these *criteria* that the output of the system is to be compared.

1. In our case the *reference program* consists of the criteria established by art. 1 of the statute of 17.7.1923, namely salubrity, safety, economy, transportation and aesthetics. It is obvious that such criteria can take a meaning only when properly related to the particular features of a specific urban settlement, whose development is the object of a town planning scheme. Consequently, equally important to the enunciation of the criteria in the text of the law is the way they are actually applied for the design of each particular town planning scheme, because only then do they become operative.

At this point exactly is the Achilles heel of all town planning schemes. As we have already mentioned, the law (art. 19 of the General Building Regulations of 1929, see above) converted the general criteria of the Statute of 1923 into operative objectives, by requiring that every town planning design should be accompanied by a supportive report, providing full reasoning for the intended arrangement on the basis of such data as the local living and working conditions, the financial condition of the local authorities, the existing infrastructure and its intended improvement, the ratio of open space per inhabitant before and after the arrangement, the basic communication network and the state of private properties. Had the above requirements been satisfied by the planning authorities, there can be no doubt that urban policy in Greece would have been a complete success.

However, in practice more often than not planning authorities used to neglect their obligation to work out such a report. At first the Council of State, insisting upon the fulfillment of this requirement used to invalidate all town planning schemes not accompanied by such a report (e.g. C.O.S. 650/1931, 1913/1955, 2334/1962). Nevertheless, soon the Court was forced by reality to adopt a more permissive attitude on the issue. In the first place it limited the obligation to draw a report only in cases where the townplanning process was initiated by private persons and not by the authorities (central or municipal) themselves (e.g. C.O.S. 927/1962, 2134/1965). In the latter case it ruled that the submission by the interested parties of a mere map depicting the existing situation could replace the report, if adopted by the Minister and the Committee of Public Works (e.g. C.O.S. 834/1972). The report could also be substituted by a study of the local authorities submitted to the Central Committee of Public Works, which was the specialized agency advising the Minister (e.g. C.O.S. 1426/1964, 1276/1965, 1343/1970, 1108/1969). It has even been ruled that the report is not necessary if it can be proved by the files that the Administration had full knowledge of the existing situation (C.O.S. 834, 3492/1972).

In that way, the explicit Technical Report, required by the law in order to explain and support the intended arrangement and to serve as a basis for the reasoned opinion of the specialized agency (Committee of Public Works), remained on paper; in practice it was replaced by a laconic proposal of the initiating parties (planning agencies, local authorities or even private

persons) and a stereotype formula of approval or rejection by the Central Committee of Public Works.

Since the standards of the law soon decayed out of atrophy, they were never embedded in the conscience either of planning authorities or of the public. Consequently, they were easily set aside and substituted by other irrelevant criteria: legitimization of de facto situations, profitable land investment, protection of acquired property rights soon became the prevalent considerations in town planning. Despite the fact that the Council of State insisted that property issues and other similar considerations cannot serve as a basis for town planning, the lack of a well founded and reasoned report on the intended land arrangement accounted for a persistent tendency to circumscribe the requirements of the law. The Court made an effort to check this tendency by invalidating town planning arrangements dictated by irrelevant criteria. Thus for instance it has been ruled that the following circumstances do not constitute legal grounds for town planning amendments: the incapacity of local authorities to bear compensation costs (C.O.S. 1075/65, 3632/1986), the expansion of an industry in a non industrial sector (C.O.S. 620/1965), the setting up of a touristic unit or a provincial industrial unit for economic reasons without prior consideration of their impact on the existing town planning scheme (C.O.S. 155/1971, 1628/1963), the construction of a municipal theater on land designated as open space (C.O.S. 1396/1966) etc. On the other hand, the Court also ruled that, while the existing state of property or the excessive compensation costs are not by themselves sufficient to justify a town planning amendment (C.O.S. 1774/1970), they can serve as an auxiliary basis in support of a town planning decision, if they do not contradict the general criteria of town planning legislation (C.O.S. 997, 2523/1965, 735/1962, 2122/1975, 2173, 3166/1986).

It is obvious that the absence of clear and consistent criteria and standards of performance constitutes a basic source of control failures in town planning.⁷⁵ Instead of developing town planning consciousness, people were soon convinced that by appropriate maneuvering town planning could be a very profitable business indeed. As a result, narrow streets, lack of open space and public buildings and deficient infrastructure are common features not only of provincial towns but also of elegant suburbs, where land values are excessively high. It is not accidental that most of the latter owe their development to private initiative: thus e.g. Psihico and Philothei, two of the most affluent Athens suburbs were respectively created by a private company and by the building cooperative of the employees of the National Bank of Greece, while a third such suburb, Politeia, was developed by the building cooperative of the Members of Parliament.

Failure of control due to the lack of appropriate standards has been considered one of the major causes of incremental urban expansion and unauthorized development and, as such it constituted one of the objects of the last constitutional revision of 1975. Orderly urban development was invested with constitutional authority: Protection of the natural and cultural environment and state control of ecistic development at the national level have acquired the statute of fundamental constitutional principles. The implementation of such principles naturally requires the design of comprehensive plans at the national and regional levels, which will thus provide consistent standards for the development of individual urban settlements along the constitutional guidelines.

Today, twenty years later, we must admit that very little has been accomplished in that direction: neither national nor regional plans have been completed yet. Consequently the Council of State was soon faced with the question whether in view of the new constitutional provision, in the absence of comprehensive planning, town planning could still go on at the local level. In order to prevent de facto urban expansion, the Council of State once more adopted a "realistic" solution and ruled in the affirmative (C.O.S. 695/1986 Pl.sec.). The reasons given in the Court decision were that comprehensive planning at the national and regional level was suggested by the constitutional legislator as a long term policy and not as an immediately effective rule, which means that, in the meantime, the Constitution does not forbid specific urban arrangements necessitated by local circumstances and aiming at protecting the natural environment or to control building activity.

After the failure of the first ambitious attempts to control urban development at the national level, efforts are now concentrated on improving the situation at the more modest level of town planning. A number of provincial cities (about 350 according to official estimations) are in the process of being remodeled on the basis of town planning studies worked out according to the above mentioned constitutional criteria.

To sum up we can say that the most important deficiency of the control system in town planning has always been the absence of consistent and operative criteria of performance.

2. With respect to the *sensor* element it would not be an exaggeration to state that, there too, the system seems to rely almost entirely on private initiative. As a rule, it is the interested parties (neighbors etc.) who spot out and lodge complaints against violations of town planning schemes, building regulations etc. Thus, there exists no preventive control nor supervision by specialized authorities to check the fast expansion of unauthorized settlements. Taking into consideration that the number of private complaints is in itself considerable and their processing is cumbersome and highly legalized, the control system cannot effectively rely on such a kind of sensor apparatus.

3. The *comparator* element of the system is not less problematic. As we have seen, ever since 1926 a stream of successive legislative measures was adopted in order to check the wave of unauthorized building activity. The instability of the criteria of performance, due to the repeated amendments of the legislation, has always been a permanent source of confusion for the comparator. This uncertainty, further aggravated by the fluctuating rulings of the Court and the cumbersome and highly legalized procedures set for the identification and demolition of unauthorized buildings, impeded the prompt and effective judgment of the comparator and accounted for some degree of randomness in the exercise of control.

4. Any control system requires an *activator* whose task is to materialize the comparator's judgment and apply the appropriate corrective action. At this point , a brief overview of the town planning enforcement

process in Greece might be useful, in view of its significant differences from the British enforcement system.

With respect to enforcement in general, Greece has adopted the French model, according to which administrative decisions are the outcome of the so called "unilateral action" which is *eo ipso* enforceable. This means that the Administration is entitled to proceed to the actualization of its decisions by its own means without having to resort to the judiciary. Administrative decisions are thus enforceable upon issuance, even if they are illegal, for they have in their favor the presumption of legality until revoked by the administration or invalidated by the courts. Consequently, citizens have an immediate legal obligation to comply and, failing to do so, they are subjected to the appropriate modalities of enforcement. In view of its drastic effect the enforcement procedure is duly formalized.

In the domain of town planning in particular, any kind of development requires a building permission, which is a routinized administrative decision, and not an act of discretion, in the sense that the administration has a duty to grant the permission sought, as long as the application meets the requirements of the law. The building permission specifies in detail the allowed development and, as a result, any development, however minimal, performed without a building permission or in violation of its terms, is illegal. Upon identification of such an illegal development the planning authorities are obliged to proceed to its demolition following a formal procedure, including issuance of a protocol, appeal before a special committee and, finally, review by the Council of State.

It follows from the above that enforcement against offenders of the town planning legislation, namely demolition of the unauthorized construction, is a duty for the Administration and, in contrast to the British system, does not depend upon considerations of expedience, public complaints or the severity of the offense.⁷⁶

Moreover, in the Greek enforcement process there is no question of negotiations or bargaining between the administration and the offender.⁷⁷ While after 1968 various legislative measures (see above) were introduced for the exemption from demolition of individual buildings upon fulfillment of certain conditions, this does not imply that a negotiatory process over these conditions has been introduced. On the contrary, the decision of the planning authorities on the exemption remains unilateral and is further subject to judicial control with respect to the legality of its reasoning.

The above rigorous and consistent enforcement system does not reflect the realities in any way, at least since the massive failure of town planning legislation, which began in the late 60's - early 70's and is still going on. There is no question of the readiness and promptness of the enforcement mechanism: however, social opposition - at instances of an extensive character - or lurking corruption account for strange inconsistencies, such as immediate intervention against minor offenses and passive acceptance of major ones.

5. As we have seen, from the cybernetic point of view control of urban development has always been deficient and this accounts to a great

extent for the unruly situation that was created. Such a statement may come as a surprise to those who focus their attention exclusively on *legal controls*: in fact legal controls provided by town planning legislation appear at first sight not only adequate but perhaps even redundant.

These legal controls are situated in the comparator, i.e. they control the judgment of the officials who apply the criteria of the law on specific cases at the different stages of implementation. Thus the judgment of the technical planning agencies on e.g. lot restructuring is subject to the approval (control of both legality and on the merits) of the Prefect, the Prefect's decision is subject to control of legality by the Minister, and the Minister's decision may be reviewed by the Council of State. Or, the decision of the town planning agency by which a building is characterized as unauthorized and subject to demolition is subject to appeal before the Committee of Public Works, while the latter's decision may also be reviewed by the Council of State. The importance of the above administrative judgments of the second instance (Minister, Committee) is shown by the judicial principle that whenever an appeal before such an instance is provided by law, it is only the decision on the appeal that may be challenged for annulment before the Council of State and not the decision of the first instance⁷⁸. However, in practice all intermediate acts and decisions are also indirectly controlled since they are considered to be incorporated in the final one (e.g. the decision of the Prefect is incorporated in the Ministerial decision on the appeal the opinion of the Committee of Public Works on a town planning scheme is incorporated in the Ministerial decision of approval etc., (C.O.S. 1340/1962, 245/1965).

The remedy against administrative decisions of the last instance is the petition for annulment before the Council of State (recours pour excès de pouvoir). It is a very effective remedy, which can be made on four grounds: lack of jurisdiction, breach of procedural rules, breach of substantive legislation and abuse of power. Most breaches of the law seem to occur on the third ground, because control of legality also includes control of discretionary powers. As we shall presently see, the latter is highly developed in Greece.

At this point we should make clear the distinction between discretionary power of an administrative authority and technical judgment of administrative experts.⁷⁹ While the former is subject to judicial control (see below), the latter cannot be disputed in court, the reason being that the juxtaposition of expert opinions would probably lead to endless debates. Thus, e.g. an injured party cannot contest the validity of a technical judgment of an administrative expert by presenting a contradictory opinion of a private expert. However, this does not mean that the technical judgment remains totally outside the scope of judicial review. In fact, the Council of State applies an indirect, but very effective, method for controlling such judgments: the control of the reasons. The Court requires that every administrative decision should be fully reasoned, meaning that it should have adequately dealt with any controversial issues that might have arisen. Thus, alternative technical solutions which were not considered or claims on technical matters which were put forward and not answered may provide sound basis for quashing, although they refer to purely technical matters.

In the ruling of the Court the demarcation line between a technical and a purely discretionary judgment is unclear. In some instances matters that were in the past considered to be technical were subsequently characterized as matters of discretionary judgment, e.g. the displacement of the axe of a road (C.O.S. 3229/1983), the need for street enlargement for traffic reasons (C.O.S. 1403/1564) the infeasibility of lot restructuring (C.O.S. 1814/1961) etc.

Leaving aside technical judgments, which in the area of town planning tend to fuse with discretion (C.O.S. 1599/1983), it is interesting to see how exactly the control of discretion is exercised.

According to the judicial rulings of Greek courts, which have integrated many French and German elements, discretion consists in the granting of freedom of decision by the legislator to the implementor. Whether discretion is granted in each specific case is a matter of interpretation of the enabling legislation. In matters of town planning the discretionary powers granted are very broad indeed. Thus, the approval, expansion or amendment of a town planning scheme is not a duty but a matter of discretionary judgment and so is the decision about the content of the arrangement, whether it serves the public interest, satisfies the criteria of aesthetics, salubrity, safety and transportation, whether public space should be increased or diminished, whether a street should be opened, which is the appropriate form of lot restructuring or the best location of a public building, or whether an unauthorized building should be exempt from demolition etc.

According to continental jurisprudence, an implementor empowered with discretion is free to choose among various alternative solutions; from the policy perspective in doing so he makes small-scale policy. However, this freedom does not mean that there is room for subjective judgment. Discretion must be exercised on the basis of general and objective criteria and is subject to limitations dictated by fundamental constitutional principles, such as equality, proportionality, the widely accepted principle protecting the trust to government (C.O.S. 4633/1986) and the principle of a fair and honest administration, the latter originating from the principles of substantive justice and equity. Serious constraints are the logical limits of discretion, a principle equivalent to the Anglo-Saxon reasonableness.

The merits of a discretionary decision are not in themselves subject to judicial review, i.e. the judge cannot decide whether choice "b" would have been more expedient than the choice "a" actually made by the administrator. However, control of discretion is exercised indirectly but effectively through the control of the reasons supporting the selected solution. By reasons we mean the sum of propositions and facts which provide the logical basis of the chosen solution. Reasons need not be included in the body of the decision, but may be inferred from the various documents of the file (C.O.S. 3782/1981, 1990/1983). For instance, the particular reasons for the opening of a street (amendment of a town planning scheme) may not be well stated in the opinion of the local authorities but the choice may be well founded on the opinion of the Committee of Public Works, adopted by the Prefect. The latter, though containing in itself no reasons at all, may be well founded by reference to the documents of the file.⁸⁰

Cases where no reasons whatsoever are given are actually very rare. The Court, however, does not stop in front of elementary or formal

reasons, but proceeds to their full scrutiny and quashes decisions for logical gaps or contradictions in the reasoning, unfounded rejection of proposed alternatives or even omissions in the search of alternatives. Thus e.g. in the case of a land lot which was granted by the State to its present owner in 1979 and expropriated in 1984 for the creation of green, the Court, judging on the validity of the expropriation, demanded from the administration to explain whether in the meantime the needs of the area in green had increased to such an extent as to necessitate this expropriation, given the fact that the area was located near a forest and that another land lot, more appropriate to that purpose, was voluntarily offered by its owner to become green (C.O.S. 3162/1986).

It is noteworthy that even in cases where no reasoning is required in the administrative decision (e.g. rejection of a petition for the amendment of a town planning scheme), if, nevertheless, reasoning is in fact given, it may be reviewed by the Court (C.O.S. 2928/1985). Reasonable explanations provided by the Administration for a specific town planning arrangement must be accepted by the Court; however, claims challenging the factual basis of the selected solution or proposing alternatives should be explicitly answered: provided that they are reasonable, such answers cannot be reviewed by the Court for their substantial validity.

In sum we can say that the Council of State exercises an extensive control of administrative discretion in town planning matters. Moreover, the factual basis of the discretionary decision is also controlled for errors in judgment. Errors in judgment occur when the administrative authority assumes the existence of certain facts, which in reality do not exist.⁸¹

The rulings of the Council of State have greatly influenced the Administration in the exercise of discretion in town planning matters. It is true that the Court has tolerated the lack of the explanatory Report on town planning arrangements (see above), but, on the other hand, it defended the objective criteria of the law and made considerable effort to render them operative. While this effort was seriously undermined by the inclusion of the criterion of property among the rest, it should be pointed out that the Council of State insisted on its subsidiary character and steadily invalidated decisions dictated by property considerations alone (C.O.S. 1990/1983, 3190/1983).

Thus, the Court strongly promoted the rationality of administrative action and often forced the Administration, directly or indirectly, to apply correctly the criteria of the law.⁸³ Moreover, by the subtle and systematic control of the reasoning of decisions it contributed to the refinement of policy in hard cases and related them to major constitutional issues, such as the protection of the natural environment (e.g. decision 695/1986 which upheld extremely severe restrictions to building activity in the island of Zakynthos - minimal lot size 20,000 m² - for the sake of the protection of the sea turtle CARETTA-CARETTA) or the quality of life in the cities. Often the Court did not hesitate to put aside as unconstitutional important statutes (such as e.g. provisions of the General Code of Building Regulations of 1985 see above) on the ground that they were causing deterioration of the existing urban environment (principle of protection of acquired urban rights). In that way the Court reserved for itself the last word in matters of town planning control.

Nevertheless, in spite of its substantive contribution to the rationalization of urban policy, the Council of State has not been able to avert its overall failure: by its nature judicial control is circumstantial, since it is only set in motion by the appeals of injured parties. Moreover, under the Greek judicial system it should be noted that the solutions given by the Court do not automatically apply to any other cases beyond the one that was tried. Even if the issue decided is of general importance, the application of the judicial precedent to future cases by the Administration depends solely on its good will, which is not always ensured. Unfortunately non observance of court decisions is not a rare phenomenon and various measures have at times been taken to ensure compliance of the Administration with the rulings of the Court.

With respect to the prevailing principles in the rulings of the Council of State, we should note that there is lately an emphasis on the protection of the environment (natural, cultural or urban) which reiterates and reinforces adherence to the original criteria of the law (security, salubrity, aesthetics etc.). On the other hand, the Council of State has always been very sensitive to issues of property, which it tried to protect against governmental abuses. Thus the rulings of the Court are characterized by a conscious effort to achieve a delicate balance between protection of environment versus property.

Generally speaking, the attitude of the Council of State had considerable impact upon the behavior of the planning authorities. To take an example from the area of unauthorized urban development, in 1977 the Council of State opposed the in globo legitimization of unauthorized buildings introduced by Statute 720/1977 (see above). It may be true that the unauthorized buildings were not demolished and, in some cases, their number has even increased ever since. Nevertheless, the Administration learned its lesson and from then on it has never attempted to repeat the measure of in globo legitimization; instead it has tried to incorporate unauthorized buildings in new specially designed town- planning schemes.

C. Resources

One of the major obstacles in implementing townplanning legislation has always been the insufficiency of resources dedicated to that purpose. In the context of a legal (constitutional) and a cultural system both highly protective of individual property rights, the sole modality for acquiring the land necessary for the implementation of townplanning schemes has always been expropriation. Nevertheless, despite the constantly rising land values and compensation costs, no sound and realistic financial scheme was ever worked out, which would promptly and efficiently meet the requirements of townplanning legislation. It is characteristic that the provisions of the law of 1/15.11.1923 for the institution of a Special Fund for townplanning purposes were never implemented.¹

The lack of systematic official reports or data on public investment in townplanning at the national, peripheral or local level make difficult the estimation of the overall development costs and their allocation among local authorities and beneficiary proprietors. It is, however, common knowledge that administrative decisions approving or amending townplanning schemes are made incrementally without prior estimation of time limits and implementation costs (for compensation of expropriations and/or costs of infrastructure works). Urban development is, as a rule, planned not according to but irrespective of available funds.

According to the basic statute of 17.7.1923, liability to compensation paid to aggrieved owners following the expropriation of their property for townplanning purposes is shared by local authorities and beneficiary neighboring properties. However, given the perennial insolvency of local authorities and the crippling compensation costs, most townplanning decisions remain pendant for a long time after their approval (see below), a fact which causes protracted judicial litigation and provides property owners with the opportunity to resort to unauthorized construction in the meantime.

To give a bare summary of the complex relevant provisions of Statute of 17.7.1923, as soon as the ministerial decision approving or amending a townplanning scheme is published in the Official Gazette, all private properties appertaining to the space designated by the scheme as public land (squares, streets etc.) are ipso facto expropriated. For land designated by the scheme for the construction of public and municipal buildings special individual acts of expropriation are required (C.O.S 372/1966). Expropriation, however, is not completed until full and fair compensation, the amount of which is fixed by the civil courts, is paid to the property owner. The compensation procedure is lengthy and cumbersome and, in the meantime, the proprietor remains in full ownership of his property and entitled to dispose of it at will. Liability to compensation is shared by local authorities and neighboring properties benefiting from the new arrangements of the town plan. Liability of these proprietors is, however, limited to the amount of money required for the compensation of a zone up to 20 m. (10 m for each property bordering the newly created public land). The 20 m zone was subsequently reduced to 10 m and then to 15 m . If the space designated for public use is further enlarged by subsequent amendments, the benefiting neighboring proprietors bear no additional obligations exceeding the above

zone (C.O.S. 614/1965). Compensation for the remaining space as well as for any expropriated buildings, trees or other constructions must be paid by the local authorities.

The compensation process is divided in two phases, one appertaining to the administration and the other to the judiciary. The administrative phase consists in allocating the land, which must be compensated for, among liable proprietors. The Council of State has ruled that this process, indispensable for the fulfillment of the goals of townplanning legislation, does not violate the principle of equality or the constitutionally guaranteed right to property (C.O.S. 2249/1960, 284/1962). Final adjudication as to debtors and holders of compensation rights and/or the precise amount of compensation is assigned with the civil courts (C.O.S. 281/1961).

In order to be in conformity with constitutional requirements, compensation should cover not only the value of the expropriated land but also any other damages caused by the expropriation (as e.g. obsolescence of buildings located in the remaining piece of property (C.O.S 167/1967).

It is evident from the above that it is the local authorities who bear the major part of expropriation costs for townplanning purposes. Fulfillment of such an onerous obligation presupposes their good financial condition and particularly the availability of funds. It is exactly this point which constitutes the weakest point of the entire townplanning system, since Greek local authorities are notorious for their insolvency.

As a result, local authorities are usually rather reluctant to engage into townplanning which would radically change the existing urban arrangement, since this would imply their involvement in financial troubles that they would not be able to afford. Practice shows that whenever local authorities got engaged in real townplanning, i.e. urban redevelopment entailing extensive expropriations, their inability to meet compensation costs was manifested in their deliberately protracting the relevant procedure. Such inertia of the Administration, lasting in extreme cases over a century, triggered the strong reaction of the Council of State. Thus the Court invariably ruled that expropriations imposed by virtue of the townplanning legislation, for which compensation is not paid within reasonable time, are in fact depriving the owner from the right to exploit his property at will and at its real value and, therefore, constitute a financial and legal burden which violates the constitutionally protected right of property. Consequently the Administration is obliged to revoke such expropriations immediately at the owner's request.

As a result of this standard judicial practice a great number of townplanning schemes remained on paper. The Council of State has considered as unreasonably long delays ranging from 107 years (C.O.S. 2110/72) or 100 years (C.O.S. 2951/1975) down to 95 (C.O.S. 1533/1973), 73 (C.O.S. 3192/1972), 45 (C.O.S. 528/1975) 32 (C.O.S. 3072/74) 20 (C.O.S. 1289/1974), 13 (C.O.S. 2551/1974), 10 (C.O.S. 311/1971) or even 8 years, provided that the Administration does not prove that actual measures have already been taken, which indicate its serious intention for the immediate completion of the expropriation process. The Court reserves its right to have

the final say as to the kind of measures from which such an intention may be inferred.

Eventually, the above judicial rulings were adopted by the legislator and became the explicit provisions of a special statute on expropriations (s. 797/1971), which set the rule that expropriations initiated by virtue of townplanning legislation and not completed within a time span of 8 years are invalidated *ipso jure* and should be formally revoked. However, as these provisions (amended and interpreted by S. 653/1977), as well as the analogous provisions of subsequent Law 1337/1983, do not apply to expropriations dating before 1971, the latter are still subject to the above mentioned judicial principles.

To bypass the strict rulings of the Court, the Administration has at times invoked various arguments aiming at preserving the expropriation or, at least, delay its repeal. Nevertheless, all such measures were invariably rejected by the Council of State: It has thus been ruled that, despite the fact that the repeal of an expropriation act constitutes an amendment of the respective townplanning scheme, the complex procedure normally required for such amendments (specific reasoning, opinion of local authorities etc.) is not necessary when the repeal is obligatory due to non payment of compensation (C.O.S 142, 2503/1973). Moreover, the duty to revoke such expropriations is not suspended even when, pending the comprehensive planning of a specific area, any partial amendments of the existing townplanning schemes of this area are temporarily forbidden by law (C.O.S. 2154/1975).

The Supreme Civil Court of Greece (Arios Pagos) has been more permissive in the matter of repeal and has ruled that expropriations imposed for townplanning purposes are not subject to time limits and consequently, they are not affected by the passage of reasonable time. The Court drew its basic argument from Statute 1731/1935, which declared *ipso jure* null and void all expropriations not fully compensated for within 5 years, with the exception of expropriations initiated by virtue of townplanning legislation. However, the Council of State has invariably counterargued that the above exception does not imply that such expropriations are allowed to be of indeterminate duration (i.e. extend beyond reasonable time).

To recapitulate, with respect to the principles worked out by the Council of State for the protection of property in the context of town planning we may make the following remarks: though the Court has always acknowledged town planning as a valid reason of public interest justifying interference with property rights, it has steadily insisted upon the fair compensation of aggrieved owners. Whenever this condition was not promptly met, the Court has not hesitated to demand the repeal of the expropriation, regardless of its consequences on the implementation of the town-planning scheme. This rather strict attitude of the Court is comprehensible if one bears in mind that land development in Greece has never been the object of large scale enterprising. Aggrieved parties are usually small scale property owners, whose only means of defense against unreasonable procrastination of the authorities is to engage in litigation. Thus, delayed compensation of small proprietors, being the inevitable side effect of the poor financing of the town-planning system, has made the protection of private property one of the hottest issues in judicial debate as well as a major obstacle in the way of smooth implementation.

To alleviate the heavy financial burden of local authorities the legislator has provided them with certain special resources, exclusively dedicated to meet townplanning costs. These resources consist in various taxes and levies imposed by the local authorities to proprietors benefiting from a town planning scheme. The most important of these taxes and/or levies are the following: Levy for the extension of the existing townplanning scheme (imposed by L. 3033/1954, Royal Decree of 29.9/20.10.1958 and L. 127/1975). When an existing townplanning scheme is expanded in order to include for the first time neighboring properties, the latter are subject to the above levy, which consists in a small percentage of the property's total value (estimated at the moment of the promulgation of the relevant decree) without including the value increase due to the operation of the planning scheme. With the exception of expropriated lots, the levy is imposed on every property included in the extended townplanning scheme, irrespective of its actual value increase in each particular case. Property values, which serve as the basis for the estimation of the levy, are determined by a special committee, whose decisions are subject to various administrative and judicial appeals.

The Council of State has steadily rejected appeals which challenged the constitutionality of the above levy with respect to the principle of equality and the protection of property rights (C.O.S. 329, 664/1961). Nevertheless, given the fact that a) land values were usually estimated at rather low levels, without including the value increase as a result of the scheme, b) the procedures for the assessment and collection of the levy were slow and cumbersome and c) many cases ended up in protracted judicial litigation, the financial importance of the levy has been negligible.

The same legislation allows local authorities to claim a betterment levy from properties whose value has increased as a result of an amendment of the existing townplanning scheme, consisting e.g. in the opening of new streets, decrease of the minimal plot size or increase of the allowed coefficient of exploitation. The Council of State has limited the scope of application of the above legislation by ruling that mere widening or improvement of streets does not justify the levying of neighboring properties. The actual value increase of each property due to the amendment of the scheme should be proved and precisely determined in each individual case, a thing which caused great delays in the collection of the levy and often provoked judicial conflicts between proprietors and local authorities.

A similar levy was imposed on properties benefiting from major public works carried out under a scheme. The Council of State has ruled that levying is allowed only if the executed public works are among those exhaustively enumerated in the law, namely construction or substantial improvement of streets squares and alleys, installation of sewage, drainage or water facilities etc. (C.O.S. 1406/1974, 2506/1975). The importance of the works is a necessary prerequisite for imposing the levy and, as such, it may be challenged by liable proprietors before the Court.

The same legislation (Royal Decree of 24.9/20.10.1958) also provides for a voluntary levying of proprietors benefiting from the execution of public works. In view of its voluntary character the overall contribution of this levy to townplanning resources has been negligible.

The rationale of all above levies is that owners benefiting from the operation of a townplanning scheme should bear at least a small part of its implementation costs. Nevertheless, the long term experience of local authorities in the assessment and collection of these levies has been rather discouraging. Lack of skilled personnel and legalistic procedures intensified the inherent difficulties in determining land values and value increase directly attributable to development and not to extraneous factors. In addition to this, most cases were challenged and brought before the courts, a thing which caused further uncertainty and delays. As a result, the proceeds from the levies remained rather low and were never sufficient to cover development costs.

Quite recently another levy was imposed on properties inserted for the first time in a townplanning scheme (art.21 of s. 947/1979, art 10 of s. 1221/1981, s. 1337/1983, Decree No 5/17.12.85/17.1.86) aiming at ensuring the contribution of proprietors to the construction costs of major infrastructure works. Up to now, its proceeds are estimated to be rather low due to great land fragmentation, especially in areas where unauthorized development has taken place.

In addition to the above levies, a number of special taxes are imposed in favor of local authorities to cover the costs of compensation and/or public works construction. Such are a) a complementary analogical income tax (art 49 of Royal Decree of 24.9.1958) which constituted a considerable source of income for local authorities until 1980. After L. 1080/80 its proceeds are rendered to the central government while local authorities receive VAT instead (1982) b) a special tax on undeveloped (unbuilt) land (art 32 of L. 3033/54, art. 38 of R.D. of 24.9.1958) aiming at encouraging house-building and discourage land speculation. The assessment and collection of this tax has been rather problematic for the same reasons mentioned above. The proceeds from both taxes are dedicated to compensation and/or public works costs as well.

To the same purpose are devoted the proceeds from a special fee imposed for the issuance of building permissions (s.3033/54, art of R.D. of 24.9.1958, art 2 of s. 226/1975).

To understand the relative importance of the above mentioned levies and taxes we should make a few brief comments on the financing system of local government. The overall regular yearly income of local authorities may be distinguished in generalized, i.e. income, that may be used for any purpose at their discretion, and specialized, i.e. income specifically devoted to a particular purpose. The above mentioned levies and taxes belong to the second category, since they are exclusively destined to meet town planning costs (compensation for expropriations and execution of public works). The income from these sources amounts, however, to a mere 5-10% of the overall yearly income of local authorities (for e.g. the years 1967-1969 and 1975-1984 and it is presently declining) and is, therefore, insufficient for covering the high townplanning expenses. In order to secure the necessary funds, local authorities are obliged to resort to other sources of income, such as state subsidies (about 35 % of the local authorities yearly income) and/or loans (about 10 % of the yearly income). Since most of the subsidies are, however, also specially dedicated to specific purposes (e.g. about 81 % of the

total for 1984), it is only the remaining amount of about 20 % which must be divided among various competing purposes, one of which is town planning. Finally, local authorities also receive from various Ministries or governmental agencies a number of specialized subsidies, the amount of which fluctuates every year and is often unequally distributed among local authorities due to political considerations.

In sum, we may conclude that given the insufficiency of specialized resources for townplanning purposes (levies and taxes), local authorities are dependent on state subsidies and loans, whose unstable and incremental character does not guarantee for the prompt and efficient financing of town planning implementation.

Notes on Resources

1. A special Fund for the Implementation of Comprehensive and Urban Plans was created in 1972 in view of the provisions of article 19 of L. 1262/1972.

2. With respect to the construction of infrastructure networks, liability and competence are shared among local authorities and various specialized public agencies or organizations. Generally speaking, local authorities are responsible for the construction and maintenance of street networks, municipal buildings, public space (squares, parks) and the water and sewage networks (with the exception of the Athens and Thessaloniki area, where the task is assigned to specialized organizations). For the rest, competent are various specialized public organizations such as the Public Electricity Enterprise, the Greek Organization of Telecommunications, the Organization of School Buildings etc.

3. The new townplanning legislation which followed the constitutional revision of 1975, namely L.947/1979 and L. 1337/1983, provided for a number of novel measures aiming at relieving local authorities from at least part of the crippling compensation costs for the acquisition of public land. Such measures are:

a) contribution in land of beneficiary proprietors for the creation of public land and compensation of expropriated properties. The percentage of this contribution was initially determined to 30-40 % (by L.947/79); it was, therefore, considered too high and antipopular, met with unanimous reaction from proprietors, pressure groups and mass media and the measure was never implemented. The subsequent L.1337/83 provided for a proportional contribution depending on the size of the property (e.g. only 10 % for lots up to 250 m²), but the measure still faces active public opposition. Moreover, its effectiveness in the long run is questionable due to the existing great land fragmentation and density of construction

b) proportional contribution in money to cover infrastructure construction costs. It had initially been estimated that this contribution would amount to about 40 % of the total costs, but so far this proved to be an unrealistic expectation in view of the excessive land fragmentation and the estimation of land values at relatively low levels

c) option of the state in land purchases for the purpose of creating a "land bank" for public utility goals in order to avoid costly expropriations. This measure, though enacted by law since 1971 (L. 1003/71, L.947/79) has

remained on paper, since the necessary acts of delegated legislation, required for its implementation were never issued for fear they would upset the real estate market and for lack of specialized agencies at both the national and the local level

d) transfer of the coefficient of exploitation provided by L. 880/79 and Decree 510/79. This measure allows owners of listed buildings or properties potentially appropriate for public utility purposes to transfer their development rights to other pieces of property situated in special zones, e) various negotiating procedures for the acquisition of land by the state, local authorities etc. directly from the owner without cumbersome expropriation procedures. The use of this measure has been limited so far.

4. On the distinction between generalized and specialized resources of local authorities see Tatsos N. (1988), State subsidies to local government, Athens ETEAA Tatsos N. (1987), Tax decentralization, Athens ETEAA.

5. A considerable source of specialized income of local authorities (about 20 % of the total) which, nevertheless, may not be used for townplanning purposes, are the so called reciprocal fees which cover exclusively the operation costs of various public utility municipal services (water supply, sewage, cleaning etc.). Such are e.g. the cleaning and lighting of public space fees imposed by L. 3033/54, R.D. of 24.9.1958, L. 429/76, L. 25/75 L. 1080/80) as well as a special proportional fee (3%) on the income tax. (L. 2916/54, R.D. of 24.9.1958, L. 4129/61, L. 323/76, L. 1069/80).

6. It is noteworthy that until recently (1977) construction of infrastructure and rendering of public utility services by local authorities or specialized public organizations in areas of unauthorized development was not prohibited by law; on the contrary, the supply of e.g. electricity at the owner's request was obligatory for the competent Public Electricity Enterprise on the basis of cost-benefit criteria alone. As a result, owners of unauthorized constructions invariably resorted to heavy pressures for the construction of roads or the extension of public utility services in their area. The absence of planning thus led to incremental and circumstantial decisions with high installation costs and unfair allocation of burdens among beneficiaries.

In 1977 Law 651/77 (see above), aiming at checking unauthorized development and discouraging incremental extension of infrastructure networks, expressly prohibited the connection of unauthorized constructions with sewage, water and electricity networks. The measure met with the reaction of Public Utility Organizations and it is not certain whether it was ever enforced. Subsequent efforts to coordinate the activities of all Public Utility Organizations, initially in the Athens area (1977) and then throughout the country, (art 3 and 5 of L. 1337/83) have not been implemented yet.

D. Management and Organization

Despite the fact that implementation of town planning legislation is a predominantly legal procedure, the importance of good management should not be underestimated. Executing a town planning policy is such a complex and demanding task that great managerial skill is required; conscious of this fact, the legislator has deliberately untied the implementator's hands by granting him broad discretion in town planning matters and ample time to design and execute his own small scale policy.

Nevertheless, in view of the systemic nature of modern town planning, the skills and capacities required for its successful implementation are very different today from those of the traditional civil engineer, in whose hands the entire town planning process was entrusted in the past; therefore, specialized town planners are gradually replacing civil engineers and architects in planning agencies.

However, theoretical training in the science of townplanning, though indispensable, is not enough; a competent implementor should also possess all the personality traits of the good manager. In order to combine conflicting values he should have ability for creative synthesis; the perennial scarcity of resources requires his efficiency, while the necessity to handle the numerous extralegal factors involved (interested parties, pressure groups etc.) requires initiative, leadership and talent in handling interpersonal relations. The need to integrate social with technical issues requires a manager with comprehensive education for making the right choices, while the operation in an indifferent and often corrupted environment requires an emotionally stable personality, resistant to frustration and possessing high ethical and professional standards.

Nevertheless, such managers have always been and still are scarce in Greek Administration and, even when they exist, they are stifled by their environment. We shall briefly try to explain why.

The effectiveness of town planning implementors, or of any implementors for that matter, largely depends upon the specific features of the administrative organization of which they are part. Therefore, in order to understand the behavior and deficiencies of Greek administrators we have to take a closer look at the Greek administrative system.⁸⁴ This might explain why the system has so obstinately resisted the numerous attempts for its reform and modernization.

Greek Public Administration can be classified among those of developing countries and, more specifically, countries with polyarchal competitive political systems. Thus it operates in a more or less unstable political environment, often interrupted by transitory shifts in power relationships (e.g. military interventions), which may temporarily unbalance but do not totally disrupt the political system. Political power is rather dispersed and great social mobility exists, which enhances competition. Since regularly held elections are thought to be the legitimate procedure for sorting out political leadership, politicians are out to achieve the widest possible political consensus, a thing which renders them very vulnerable to public opinion and

interest groups pressure. As a result, political debate is centered on issues with immediate appeal to popular feeling and the government concentrates on the pursuance of short term goals in such fields as health, welfare, education etc. On the contrary, long term objectives, even when publicly proclaimed, seldom proceed beyond the stage of promulgation.

It naturally follows from the above that due to its dependence upon private interests, the government is rather reluctant to exercise effective control on such unpopular matters as e.g. taxcollecting or law enforcement. Nor can the civil service count on the government's political support when it comes to hot controversial issues, as e.g. enforcement of sanctions in town planning.

Caught in the midst of such a turbulent political environment, Greek Administration tries in vain to hold on to the French model, of which it was supposed to be a copy. It has, nevertheless, preserved the same highly centralized character, as when it was first introduced by the Bavarian royal dynasty. This excessive centralization was traditionally considered most appropriate in view of the country's geographical and social fragmentation and was thus preserved for over a century. In fact, the first attempt to transfer competence from the center to the periphery (Prefect) took place on a limited scale only in 1955. As to local government, its role has never been significant, since it was traditionally limited to such rudimentary tasks as garbage collection, lighting and cleaning of public open space etc.

After 1955 and especially since 1972 (ironically enough under a dictatorial regime) an effort has begun for the devolution of power to the provinces, which is still going on today. The initial conception of the idea of devolution was that the Ministries would become headquarters, while most of the decision making would take place at the peripheral level. This has not been achieved yet, despite the fact that the Prefect is already granted with significant powers.

In the last couple of decades the role of local government has also been upgraded, as it has acquired constitutionally guaranteed political autonomy and substantive competence in local affairs. Nevertheless, in view of the above, one should not wonder at the so far limited involvement of local authorities in the town planning process, since local government has been traditionally deprived of substantive powers in many other equally important local affairs as well.

For the rest, we should point out that Greek civil service is divided among a considerable number of Ministries (usually around 20) with often overlapping jurisdictions, but operating, nevertheless, in comparative isolation and even competition. If we add to them the great number of adhoc bodies, specialized semi-autonomous agencies and organizations, quangos etc., the inevitable result is fragmentation, work duplication and uncoordinated or contradictory decisions.

Concerning its function, public service in Greece, like in most developing counties, is used less for the achievement of program objectives and more as a substitute for social security programs or as a means to relieve unemployment. This attitude naturally results in the overstaffing of public service, especially at the lower ranks, a practice which is further

enhanced by the fact that bureaucracy itself is one of the major arenas of competition among political parties.

In view of the above, bureaucratic recruitment, though officially observing the formal appearances of a merit system, is in fact performed according to different criteria. Political patronage and other inside or outside service affiliations (personal or political friendships, local connections) are commonly used to ensure entrance in the service, promotions, assignments etc. As a result, despite the proliferation of unnecessary posts, especially on the eve of elections, the service has remained deficient in personnel trained in specialized skills and technical capacities.

Town planning agencies are no exception to this rule. Though usually overstaffed with holders of university degrees, such as architects and civil engineers, they keep failing in their tasks due to inadequate management and lack of trained town planners. In the past, the traditionally centralized Greek administrative system neutralized the potential of competent peripheral managers; today with increasing decentralization and concession of town planning powers to peripheral and local authorities, the shortage of good managers is felt more acutely than ever.

A serious handicap on managerial talent and initiative, which deserves special mention, is the legalistic spirit which prevails throughout the Administration and which accounts for much of its inertia or slow pace. Statutes and regulations are usually framed in such a way as to provide for every imaginable contingency and, as a result, much of the administrator's energy must be consumed in dogmatic interpretative exercises. This attachment to the letter of the law or reference to a higher authority offers a convenient defense or excuse for inertia and incompetence and protects junior officials from the criticism of their superiors, but, at the same time, it is a source of frustration for talented managers. It is only natural that the latter either attempt to bypass legal obstacles in unorthodox ways (exposing themselves to the risks of sanctions and annulations) or resort to skepticism, bitterness and, finally, resignation. It is obvious that either way implementation is adversely effected .

One would expect that such a legalistic style of management would, at least, compensate for lack of effectiveness with rule of law and accountability. Yet it is the paradox of Greek Administration that it can combine dogmatism and legalistic thinking with gross illegalities. Actually, this is only an aspect of a phenomenon common to all developing administrative systems, which Riggs has labeled "formalism" to indicate the wide discrepancy between form and reality, expectations and actualities. To put it in simple words, things appear on paper much better than they really are. Thus by feigning devotion to the letter of the law, an expert administrator, mastering the art of observing formalities, may in fact manipulate legality at his convenience or, even worse, to his benefit, if corrupt. As a matter of fact, the search for loopholes in the law is a systematic practice for both private citizens and officials.

This brings us to the last but not least of the deficiencies of Greek Public Administration, corruption. Corruption, ranging from small payments or favors to bribing of an often legendary scale , though officially sanctioned, is not rare. In the field of town planning, bribing for speeding up a cumbersome

procedure, approving a favorable scheme amendment, exempting from regular building standards or conniving on an unauthorized construction is a steady illegal practice.

E. Administrative practice

Generally speaking, Greek administration is characterized by passivity and lack of foresight. Past experience shows that it rarely anticipates events and has no sensitivity or responsiveness to the initial perturbations caused by the existence of a problem. Perhaps one could say that Greek administration is actually engaged in crisis management, in the sense that problems are not seriously taken into consideration and dealt with unless they reach the stage of crisis.

Due to its extensive dependence upon clientele politics and the disjoint character of its action, Greek administration is rather incapable of framing and implementing large scale and long range policies in any field; instead it prefers to rely on incrementalist methods of decision making and to postpone major decisions as long as possible. If confronted with a crisis, it responds to it by improvisation and this is perhaps the only field in which Greek administration really excels. It is perhaps an integral part of Greek administrative culture, that the best way to handle problems is to allow things to happen by themselves.

F. Pressure groups

The loose controls of the townplanning legislation, combined with the permissive attitude and broad discretion of planning authorities, leave ample room for extensive involvement of pressure groups in the implementation process. Such groups, having a direct interest in the outcome of the process are primarily the *property owners* of a specific area, the members or associates of *housing cooperatives* and, finally, *professional groups*, such as engineers and builders.

To comprehend the motive and attitudes of the above pressure groups, it should be made clear that large scale development and construction, undertaken either by the state or by private corporations, has never existed in Greece, as opposed to most European countries.⁸⁵ On the contrary, construction has, as a rule, remained a private enterprise, individually undertaken by the proprietor himself, usually acting in collaboration with a civil engineer.

In this process of small scale development *engineers and builders* soon undertook a central entrepreneurial role, which offered them opportunities for quick and easy profit at the expense of their professional standards and ethics.⁸⁶ Through the popular method of "antiparochi", i.e. a peculiar form of partnership between plot proprietor and developer (engineer or builder), whereby ownership of the plot is exchanged for a certain number of finished apartments, whose construction is undertaken and financed by the engineer, a great number of the latter soon became prosperous businessmen.

This direct involvement of engineers in the lucrative business of land development prevented them from sticking strictly to the appropriate code of professional ethics and often urged them to overlook aesthetic considerations in favor of the most profitable land exploitation. This attitude of self employed engineers could not fail to influence the outlook of their colleagues in the civil service, who gave in to their constant pressures for more and more permissive building regulations. It is characteristic that in the decades 1960's - 1980's, when the destruction of natural environment by both authorized and unauthorized construction took the dimensions of a national disaster, no organized voice of protest rose from the professional lobbies of architects and engineers. On the contrary, their professional associations were among the most virulent opponents of the rulings of the Council of State on environmental issues.

By far the most active among pressure groups have always been the *Housing or Building Cooperatives*, whose activities have greatly upset the orderly implementation of town planning legislation.⁸⁷ In order to understand why, we should say a few words about the particular features of Greek housing cooperatives, which distinguish them from the usual type found in most European countries (Building Societies, cooperatives d'habitation, Bau- und Wohnungsgenossenschaften) In fact, Greek housing cooperatives hardly deserve their name, because their activity is usually limited to the acquisition of a great estate (often under favorable conditions, such as e.g. expropriation), its fragmentation into small land plots and distribution of the latter among the associates. Further development of the distributed plots is individually undertaken by the associates themselves. In a sense, housing cooperatives have occupied an intermediate position between large scale organized land development, which has never occurred in Greece, and small scale individual land purchase and construction.

In order to comprehend the huge dimensions of the housing cooperatives movement in Greece, it should be pointed out that ever since the beginning of the century, and especially following the Asia Minor disaster, the government saw them as the answer to the acute housing problem by means of an ideal combination of private initiative, state support and help from local authorities. Therefore, the state greatly encouraged their activity⁸⁸ by taking a host of favorable measures aiming at facilitating their proliferation and growth, such as grants of public land, expropriations of municipal or even private property in their favor, state warrants for their loans, various immunities etc. As a result the number of housing cooperatives increased from 24 in 1923 to 243 in 1924, 625 in 1932 (of which 442 in Athens and 72 in Thessaloniki), 919 in 1936 and 1770 in 1967. The great majority among them were formed by groups occupying influential positions in Greek administration and society (e.g. civil servants, officers, MP's, bank employees etc.). to which most of the state favors were generously lavished (granting of privileged areas, insertion in town plans etc.). To them there was soon added a great number of cooperatives formed by petty, middle or lower income proprietors, who saw them as a profitable opportunity for investment. Nevertheless, the rapid increase in the number of housing cooperatives is rather misleading, since most of them were condemned to inertia due to lack of funds, deficient management or incapacity to secure state support. Thus e.g. from the 1700 cooperatives which officially existed in 1967 only 500-600 were actually operating.

If we attempted an assessment of the overall contribution of housing cooperatives in Greece, the balance would rather be on the negative. While some credit them for developing remote and abandoned areas and providing housing opportunities to lower and middle incomes, the price in terms of environmental destruction and anarchic urban growth has been too high.

Among the factors blamed for the failure of housing cooperatives as a land development system are the deficient state control of their activities, lack of capital, inadequate funding, incapacity to proceed to organized construction and, finally, the reservation of favors to certain privileged groups, while the less fortunate often fell prey to ruthless exploitation. Moreover, proliferation of their number and excessive demand for land caused a great increase in land values especially in urban areas. Consequently, the quest for cheaper opportunities was soon directed towards remoter, undeveloped areas, in defiance of existing legal restrictions (see e.g. on restrictions of L. 690/1948, above). This inevitably led to hasty purchases of land totally unsuitable for development, lacking infrastructure facilities or, even worse, to the usurpation of public property or occupation of space where development was altogether prohibited (forests, coasts etc.).

As a result , having found themselves in possession of virtually worthless property, cooperatives resorted to the exercise of pressure to the authorities. The most common demand was the inclusion of their estate in a townplanning scheme, usually predesigned by the cooperatives themselves at their convenience (e.g. providing for minimal public open space, highest possible density etc.). Since such demands often came from highly influential interested parties, submission of the authorities was not difficult to secure. This resulted in the rapid proliferation of anarchic, non viable settlements, whose townplans were in fact nothing but ex post facto legalizations of accomplished facts. Equally heavy pressure was often exercised for the legitimization of unauthorized dwellings constructed by the most impatient of the associates.

With respect to pressure groups consisting of *individual proprietors*, owners of unauthorized constructions, mobile homes etc., the motives for their involvement in the implementation process are so self evident that they require no particular comments (also see above) ⁸⁹ . It should only be noted that due to their significant number, proprietors of unauthorized buildings have always exercised heavy political pressure through their local M.P.'S. ⁹⁰ From their side, political parties, far from discouraging such unorthodox demands, are rivaling each other in lavish concessions, particularly on the eve of elections.⁹¹

While support of maximum, even anarchic, building activity has been the point of convergence of all the above pressure groups, virtually no counterarguments had been proposed until lately. The emergence of *environmentalists* is worldwide quite a recent phenomenon, and in Greece, even today, one can hardly speak of organized protest against the spread of unauthorized constructions.

Thus the sporadic and circumstantial reactions to unauthorized development were easily overshadowed by the much louder noise created by construction activists. During the long years of environmental and urban

distraction public opinion has passively witnessed the intense lobbying of land owners, engineers, builders, cooperatives etc., which grew all the more effective every time elections approached.

It should be pointed out that pressure group interference at the stage of implementation and enforcement of town planning legislation, expressed in demands for e.g. legalization of unauthorized buildings, higher density of space exploitation, more permissive building regulations and various exceptions from the standard land development regime, has taken the dimensions of a real epidemic. Unfortunately, due to their extreme suggestibility to private pressures, both legislature and administration hardly ever failed to succumb to such demands.

G. Human relations

Human relations, both inside the civil service and with the public, have always been among the weakest points of the Greek administrative system. The low level of information of the members of the political system and their insufficient knowledge of public problems has maintained their negative attitude towards public officials. It has been accurately pointed out that "in a society where familial obligations have a moral priority, it is scarcely surprising that the relations between the public and the civil service are distant and unsatisfactory". Both sides share deeply rooted (and not altogether unjustified) prejudices against one another and each views the opposite through the distorting lenses of stereotypes.

For the average citizen, civil servants are indifferent, lazy, incompetent, hostile, politically subservient and corrupt. To protect themselves from the "monster of bureaucracy" citizens either adopt a defensive attitude, consisting e.g. in tax evasion, withholding or distortion of information and recalcitrance, or constantly solicit state aid.

On the other hand, for the average civil servant, citizens are ignorant, irrational, unduly persistent, self seeking, prone to deceit and eager to resort to various kinds of blackmail. To quote from J. Campbell's and Ph. Sherrard's accurate and penetrating observation of Modern Greece, "neither in terms of his own status, nor the dignity of his service, does a civil servant believe he is bound to serve or assist his fellow citizens. It is, naturally, another matter if they are personal friends or clients of political figures and other personalities with influence, who may affect a man's professional or social position..."

Specifically in the field of town planning, planning agencies tend (not always unjustly) to regard interested parties as a source of nuisance, who interfere only to upset carefully designed projects for selfseeking reasons. An autocratic attitude is often adopted in order to discourage the public from too much involvement in the process. For their part, citizens, having little respect for authority in general, let alone public authority, are determined to have their own way at any cost, including bribing, exercise of heavy political pressure, use of friendships or local connections for undue influence, use of the mass media etc.

Human relations inside the administrative agency leave much to be desired as well. Downgraded working conditions, under - or overstaffing, political pressures, autocratic management, frustration of initiative, deficient compensation system, lack of incentives and recognition, sap the morale of civil servants at all levels and create an atmosphere permanently oscillating between tension and passive complacency.

8.2. A Systemic Mapping of Failure Factors in the Implementation of Town Planning Legislation.

We have so far reviewed the basic factors which, in our view, have caused the failure of the overall town planning system. Up to now, our analysis has been systemic only in the sense that it has tried to include all major relevant factors and not to focus exclusively on only one or two of them, as is usually the case with analytical methods. But the systemic method is not exhausted in the mere listing of multiple failure factors. Its basic strength lies in the study of their interconnections, which alone may explain what seems incomprehensible at first sight: namely, the accumulation of failures and their persistence over time in defiance of any attempts to eliminate them.

The systemic method seems to be the only way to avoid the traditional simplistic explanations ⁹², which have unfortunately dictated all corrective measures undertaken so far and have made policy makers the prisoners of a vicious circle: policy making --> failure --> simplistic explanations--> simplistic corrective action --> accumulative failure. If, on the other hand, we use the systemic method instead and try to identify multiple factors and interconnections, we will realize that behind the obvious phenomenon lies such great complexity, that our attention must be equally divided among many factors simultaneously.

And so much for diagnostic purposes. An accurate diagnosis, however, is valuable, since it may easily lead to the right cure as well. Such a thing falls, of course, beyond the scope of this study, as we are not going to expand to policy recommendations. Nevertheless, by revealing the complexity of the failure problem, we hope to orient policy makers towards the right direction and help them realize that their attack should be systemic and multifacet. Circumstantial or disjointed measures are pointless, as they are bound to be devoured by the megasystem, which will appear on the diagram below. The study of remedial town planning legislation proves this point only too well.

In the following section we will first draw a general *Megasystem*, composed of major *Failure Factor Categories*: since we speak of categories, it is obvious that each component of this megasystem will not be a simple element but a subsystem in itself, composed of its own interconnected elements, the so called *Failure Factors*. Our next step will be to decompose this inclusive megasystem into its individual subsystems and to examine the failure factors of each and their basic interconnections.

A. To depict the above we have chosen a simple graph technique, whereby each circle indicates a different system component (: failure category for the megasystem, failure factors for each subsystem), while the connecting arrows indicate the direction of aggravating impacts. Each diagram will thus be a graphic representation of a multifactor failure system.

Failure Factor Categories

- FF1. Program (Legislation).
- FF2. Case Law.
- FF3. Resources.
- FF4. Administrative Practice.
- FF5. Management and Organization.
- FF6. Communication.
- FF7. Control
- FF8. Pressure Groups
- FF9. Human Relations.

(FF = Failure Factor)

See Diagram I

From Diagram 1 it is clear that all failure categories do not have the same weight, since some of them have more and others receive more adverse influence. All failure categories are depicted in relevant groups occupying different levels (levels A, B, and C). A dividing line separates the elements of the first group (level A) from the rest. The reason is that these elements actually belong to the higher hierarchical system of Policy Formulation. We have, nevertheless, included them in the megasystem of Implementation in order to study their "top-down" impacts, since it is our basic hypothesis that implementation is subordinate to policy formulation (: the familiar principle of the rule of law in dogmatic legal thinking).

We shall call the elements of the first level structural components, i.e. components referring to the structure of the town planning system. More specifically, the Program (1) is tantamount to the basic design of the town planning system and contains instructions for its implementation; Case Law (2) consists in the clarification of the program on the occasion of conflict resolution on controversial issues. Owing to legal requirements, the Resources (3) necessary for the program's actualization should also be programmed.

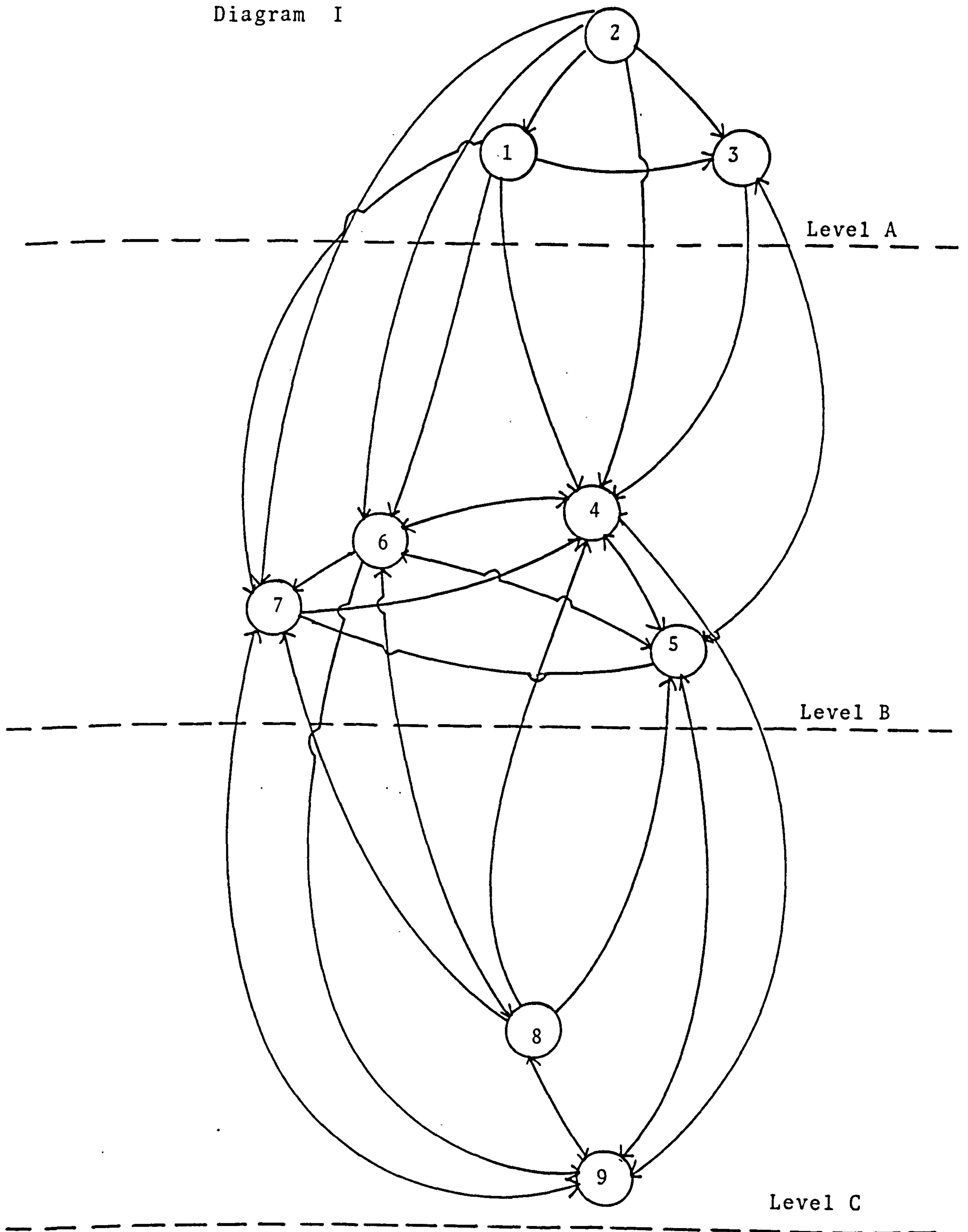
From the above elements, the first two (program and case law) have a negative impact on most of the lower level elements, but they themselves receive adverse impact only from elements exogenous to the system of implementation, i.e. failure factors pertaining to the system of Policy Formulation. In other words, while failures of the program and failures of case law are among the basic causes of failures in implementation, they are themselves the product of failures occurring at their own superior-level system. Resources seem to be the only element at this level engaged in mutual interconnections with lower level components. The reason is obvious: efficient management increases the value of funds available by the program for town planning purposes. (5 → 3).

The medium level B consists of mixed components, i.e. failure categories combining structural and behavioral traits. At this level we have placed : a) Administrative Practice (4), a failure category combining procedural and behavioral elements, b) Management and Organization (5), a category of structural and procedural elements combined with skills, and finally c) Communication (6) and d) Control (7), two distinct failure

categories, each containing structural, procedural and behavioral elements as well as skills. If we take, for instance, communication as a characteristic example, we will see that it consists of : aa) structural elements, i.e. formal communication channels set up by the relevant programs, bb) procedural elements, regulating the flow of information, cc) behavioral elements, in the sense of informal communication channels, style of information etc., and finally dd) the necessary skills required for eliciting, interpreting and processing information.

At the third level we have placed those failure factor categories which, from our point of view, are mainly behavioral, namely Human Relations (9) and Pressure Groups (8). Thus, if we examine human relations in the town planning implementation system, we will see that their degree of programming is minimal: Aspects of human relations may be regulated by normative codes of civil servants' professional behavior, but on the whole they are basically informal, because they refer to interpersonal relations, subject to the rules of organizational or social psychology. The same applies to pressure groups, which concern us here exclusively from the behavioral aspect of their dynamic interconnection with town planning implementation agencies.

Diagram I



B. We shall now proceed to the analytical study of Diagram I by decomposing each of its components (failure factor categories) and examining their internal structure in terms of mutual interconnections. Dominant is called the component which elicits the most aggravating influence, while subdominant is called the component which receives the most aggravating influence. This characterization serves the practical purpose of setting the priorities for corrective action. Dominant and subdominant elements should attract preferential attention, the first in order to be mitigated, the latter in order to be alleviated.

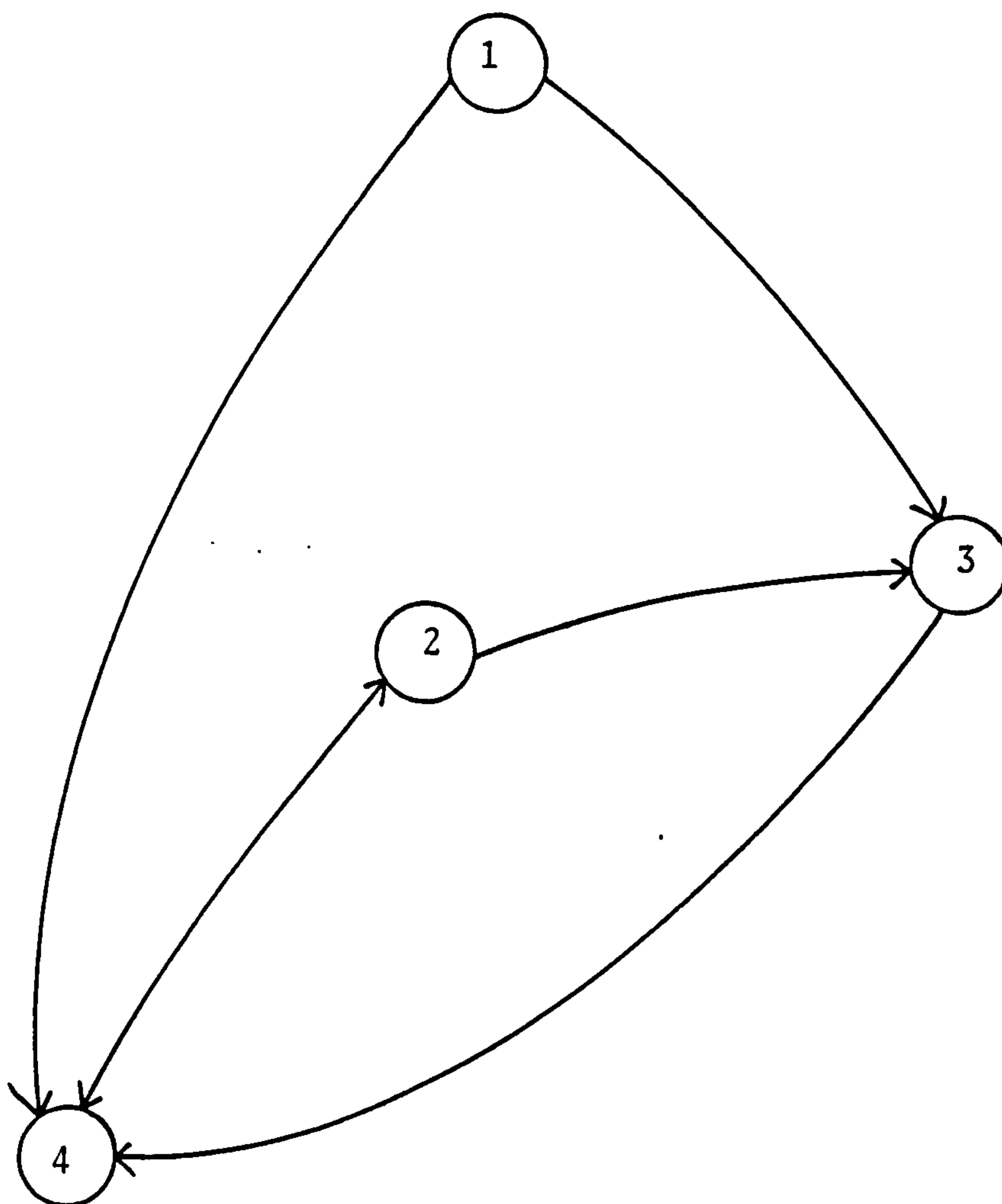
FF1. Program.

A. Program stricto sensu (L. 17.7.1923)

Failure Factors

- 1.1. Lack of precise (quantified) town-planning criteria.
- 1.2. Poor financing system.
- 1.3. Lack of finite planning (time constraints).
- 1.4. Deficient regulation of property rights.

See Diagram 1 A



The above diagram corroborates what could also be empirically established, namely that deficient regulation of property rights is the basic error of town planning legislation, since it is the element most exposed to the adverse impact of the other factors (subdominant element 4). The diagram also shows that the absence of precise and indisputable planning criteria robs the selected town planning solutions of their authority towards adversely affected property owners and leaves the latter with the feeling of being victims of injustice and partiality. (1 --> 4). Infinite delays in the payment of compensation due to the poor financing system enhance the negative attitude of property owners (2 --> 4), while the lack of definite time constraints for each phase of the town planning process, a factor itself aggravated by the impact of elements 1 and 2, increases uncertainty and dismay of property owners and stimulates their reaction (3 --> 4). The above diagram explains much of the hostility and resistance of property owners to town planning and also accounts for the overprotective attitude of the Courts in property issues, obviously dictated by their concern to make up for the program's deficiencies, which render the proprietors powerless pending the expropriation of their property. It follows therefrom that, had the program been more carefully designed in this respect (stricter time constraints, prompt compensation etc.), much of its unpopularity would have been eliminated and it would have also received greater support by the Courts.

B. Delegated Legislation

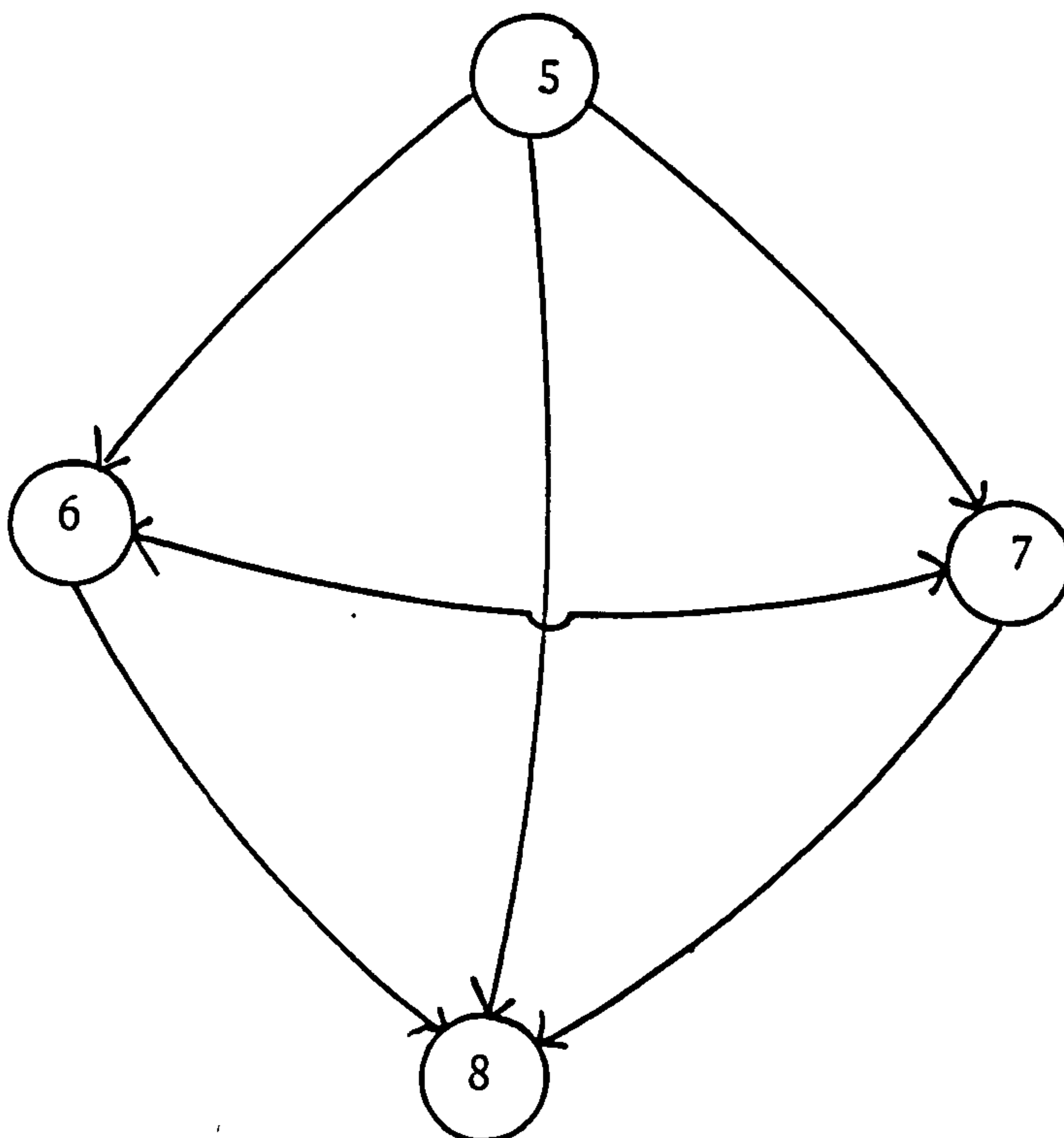
The shortcomings of the statute of 1923 were further amplified by the excessive use of delegated legislation. The original spirit of the law was distorted by an abundance of regulatory decrees, which followed its enactment.

In fact, almost every urban settlement had its own particular regime, shaped by local interests. Lack of common standards among such multiple townplanning schemes inevitably led to parochialism in both implementation and judicial review.

Failure Factors

- 1.5. Excessive delegation.
- 1.6. Excessive suggestibility.
- 1.7. Excessive variability.
- 1.8. Low controllability.

See Diagram 1 B



As depicted in the above diagram, the subsystem of delegated legislation consists of one subdominant element (8), expressing the system's behavior, and one dominant element (5) which acts upon the former both directly and indirectly, i.e. by aggravating the adverse impact of the other two elements (6 and 7).

The term excessive delegation (5) implies that too many town planning matters were assigned to delegated legislation, without reserving a minimal core of important issues to uniform legislative standards. Consequently, town planning schemes and building regulations are individually and disjointedly designed for each settlement, or even part of it, on the basis of peculiar and often questionable criteria. This directly accounts for both the extreme variability of different town planning schemes and regulations (5 --> 7) and the equally high suggestibility of town planning officials to local pressures (5 --> 6).

As a result, the entire subsystem appears to be of low controllability (subdominant element 8), in the sense that it is very difficult to locate the rules in force at a specific time and place and to establish the standards against which they should be measured (7 --> 8), as well as to keep the exercise of delegated legislative powers within the limits dictated by appropriate town planning considerations(6 --> 8). The diagram also points out that further deficiencies of the entire implementation system, proper to the control subsystem (see below Diagram 7), are inevitably of secondary importance, since the system is inherently of low controllability.

C. Relevant Programs

Owing to developmental policies pursued in Greece after World War II, townplanning never acquired the appropriate high position in the scale of policy priorities. Compared in particular to industrial or touristic policy, it was considered of lesser importance and was often sacrificed to the requirements of the former.

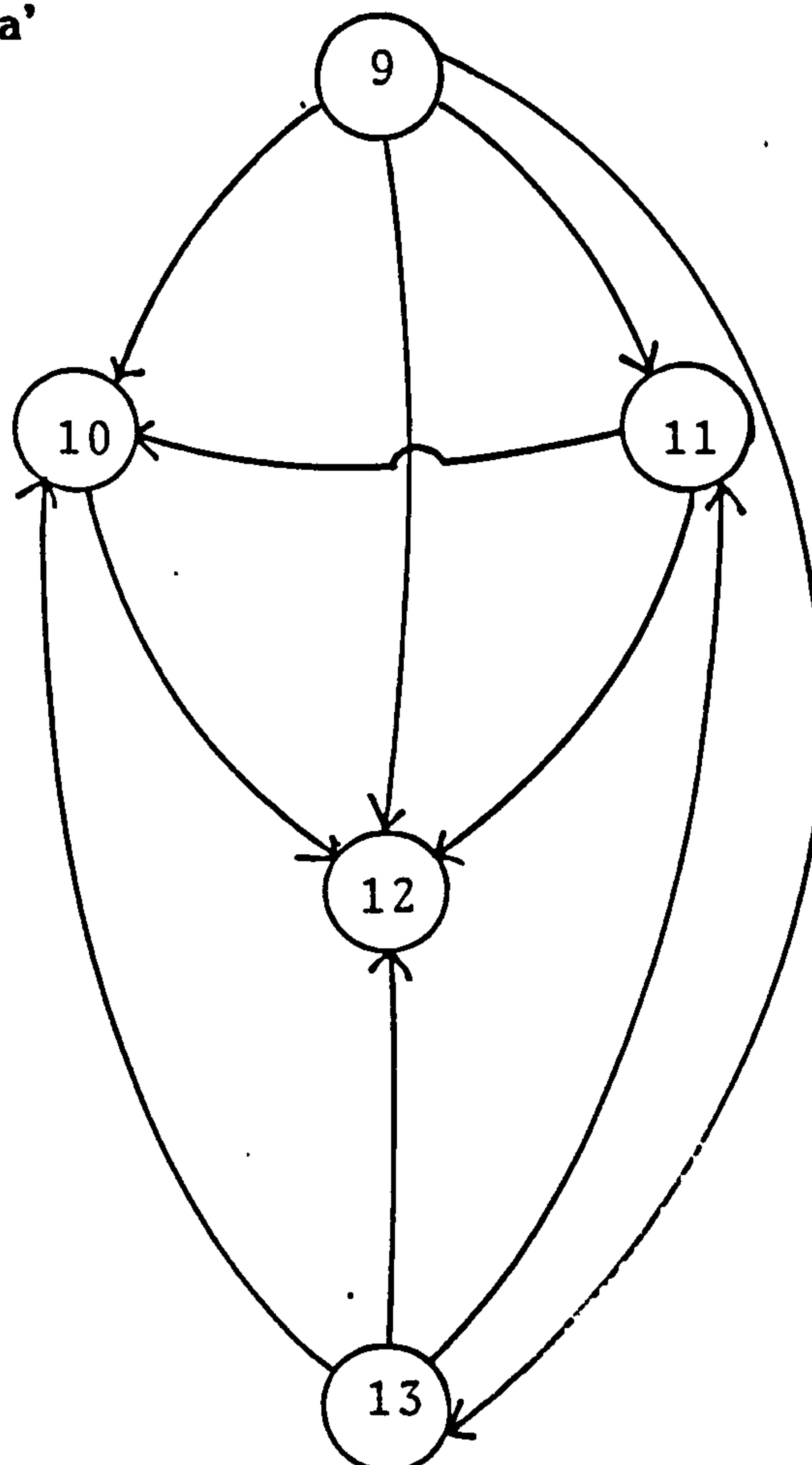
a. In general

Remedial legislation

Failure factors

- 1.9. Lack of comprehensive national or regional planning standards.
- 1.10. Non existent or uncoordinated relevant policies (economic, industrial, housing policies etc.).
- 1.11. Conflicting policies (inconsiderate economic or touristic development, cheap housing etc.).
- 1.12. Instrumental use of town planning legislation for other purposes.
- 1.13. Text fragmentation.

See Diagram 1 C a'



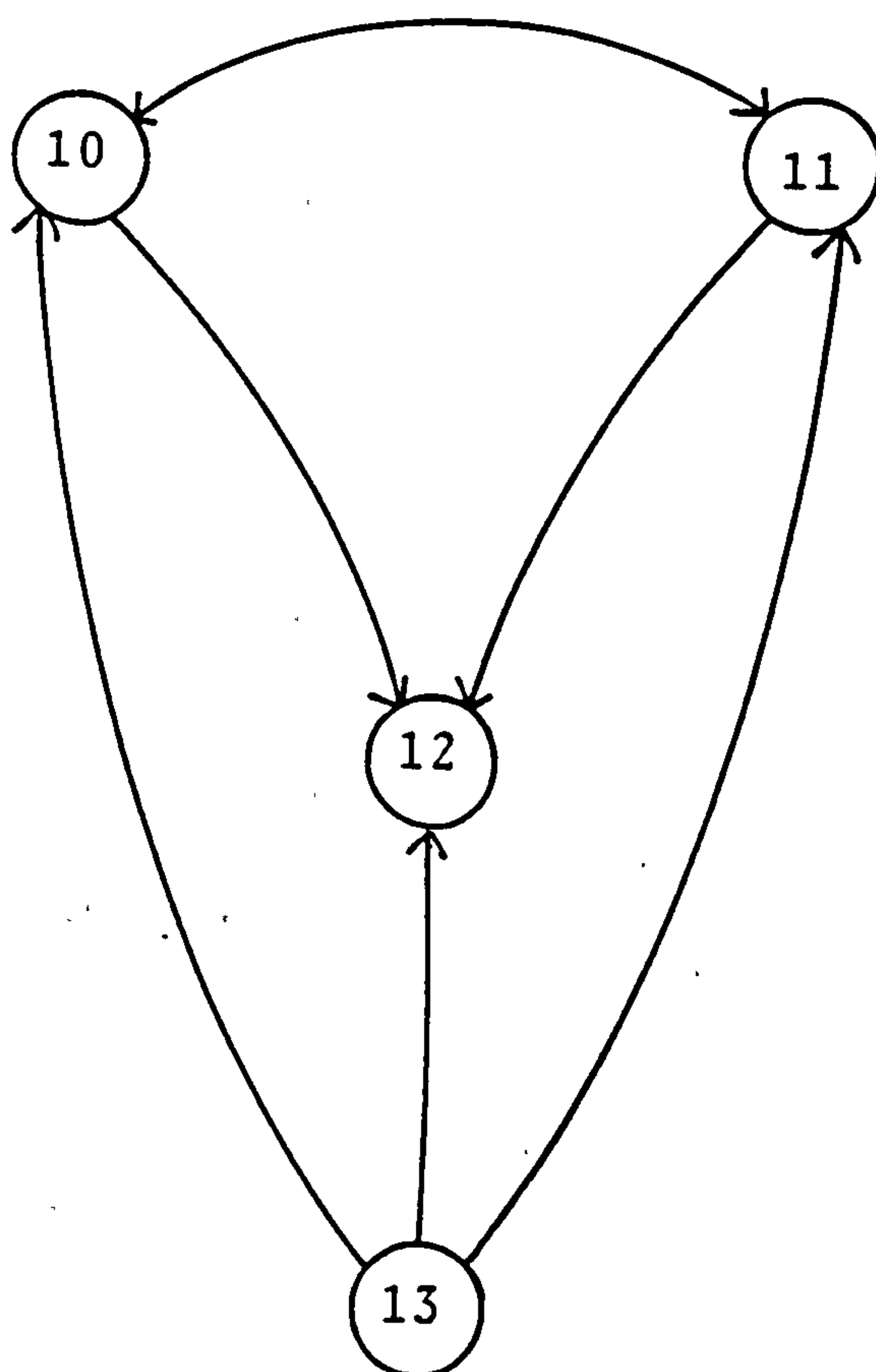
The subdominant element of this subsystem shows that relevant programs, enacted in execution, amendment or supplement of the basic statute of 17.7.1923, have not been dictated by strictly town planning standards but aimed at serving other purposes as well. This instrumental use

of town planning legislation was made possible by the system's dominant element (9), namely the absence of binding comprehensive planning at the national or regional level, in the form of e.g. structure or corporate plans, zoning regulations etc., which would guide and delimit the legislator's choices within the appointed strategic framework and would integrate town planning with major social and economic considerations (9 --> 13).

The lack of high level comprehensive planning permitted the disjointed formulation of policies in relative fields such as housing, economic and industrial development, tourism etc., which were designed independently from town planning considerations (9 --> 11), and whose goals often contradicted those of harmonious and rational urban growth (9 --> 12). The result was that town planning legislation not only failed to achieve some coordination of public sector policies but it was often used to facilitate, reinforce or even substitute for the lack of broader social or economic policies (as e.g. touristic development, economic growth and public sector housing respectively). The use of irrelevant or instrumental criteria was facilitated by the text fragmentation of town planning legislation (13 --> 12).

The diagram clearly shows that subdominant element 13 is fed by the failures of all other elements, among which dominant element 9 occupies a decisive preeminent position. It is thus obvious that a high level intervention which would eliminate factor 9, would automatically ease the pressure on all other factors and would substantially relieve the subdominant element 13 both directly and indirectly, as shown below.

See Diagram 1 c'



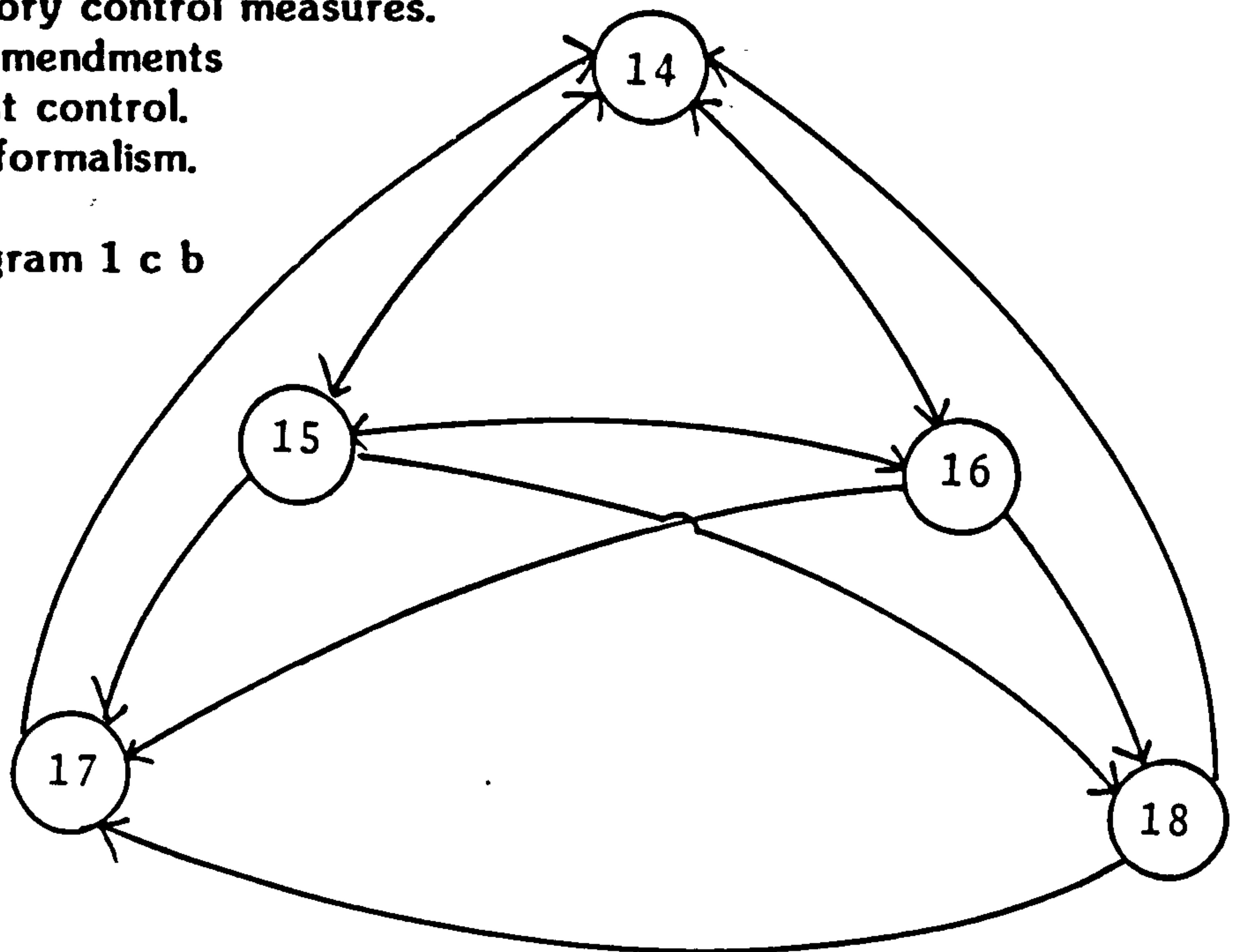
b. Legislation on unauthorized construction.

It is true that the various townplanning statutes that followed the seminal law of 17.7.1923 included severe sanctions to discourage unauthorized development. They never worked in that direction because: a) law enforcement has never been consistent, b) intermittent legalizations of unauthorized constructions weakened the authority of the law and even created a tolerance culture in state and society.

Failure factors

- 14. Self defeating policies.**
- 15. Contradictory control measures.**
- 16. Frequent amendments**
- 17. Intermittent control.**
- 18. Excessive formalism.**

See Diagram 1 c b



The number of interconnections among elements and their direction, as depicted on the diagram, show that all elements are virtually equivalent, while the system's subdominant element, which receives adverse impact from all the others, are the self-defeating measures against unauthorized development (14).

It is clear from the diagram that due to the multiple interconnections, any intervention for the improvement of the system should deal with all its components simultaneously. Moreover, despite the fact that demolition of unauthorized buildings is a duty for the administration, the diagram points out that failure factors such as the contradictory character of control measures, the frequent amendments of the relevant legislation and the procedural formalities required for their identification, make the exercise of control circumstantial, thereby generating uncertainty with respect to law enforcement (15 --> 18, 17 --> 18, 19 --> 18).

Finally, contradictory control measures fail to be effective and thus give ground for frequent amendments, whereby the same mistakes are invariably repeated (16 --> 17, 17 --> 16). The resulting confusion causes frequent breaches of formalities by the controller (16 --> 19, 17 --> 19), offers opportunities for circumscribing the law, if so desired, and thus makes the exercise of control even more random and arbitrary (19 --> 18).

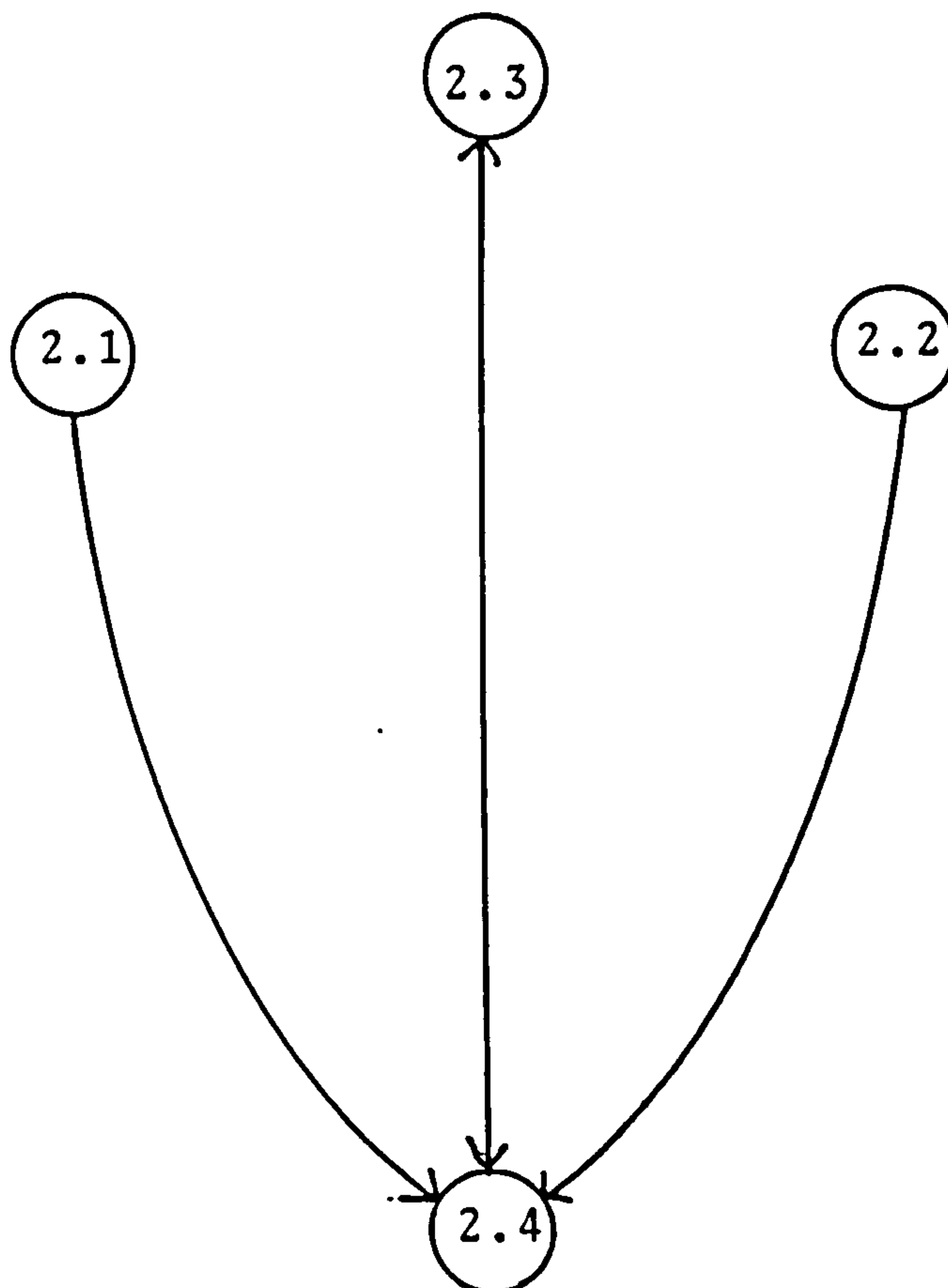
FF2. Case Law

The various shortcomings located at the legislative and executive level have not always been properly corrected by the judiciary. Despite the indisputable quality of their decisions, the courts and particularly the Council of State have initially been very sensitive to matters of private property protection. Although this attitude has gradually changed over the years, the overall impact of court decisions is partially neutralized by administrative recalcitrance and their limited effect upon the tried case only.

Failure Factors

- 2.1. Overprotection of property.
- 2.2. Pragmatic approach.
- 2.3. Limited effect of court decisions
- 2.4. Administrative recalcitrance.

See Diagram 2



The diagram shows that the system's dominant element (2.4), namely administrative recalcitrance and non conformity to court decisions is greatly aggravated by the defective structure and function of the judicial system (2.3 --> 2.4) and by the Court's ambiguous attitude in certain crucial town planning issues (2.2 --> 2.4). The tolerance of the Court regarding certain issues (such as e.g. the drawing of Technical Reports with every town planing scheme (see above), inspired, no doubt, by a compromising attitude view of hard realities (2.4 --> 2.3) has often been misinterpreted as weakness and has, thus, reinforced administrative defiance of the rulings of the courts. On the other hand, the sensitivity of the courts on property issues, justifiable in view of the great delays involved, often blocked the town planning process and urged the administration to ignore judicial decisions in order to get on with its work.

Nevertheless, all of the above can be explained if one takes into consideration a serious limitation of the Greek judicial system: on the one hand, judicial decisions even of the Highest Courts (e.g. Council of State) do not constitute binding precedents for any case other than the one that was ruled upon, even if they solve constitutional questions of general importance. This fact permits to the administration to close its eyes and conveniently repeat the same illegalities over and over. On the other hand, the system of enforcement of court decisions is also highly deficient so that many of them remain empty words on paper, to the benefit of offenders (2.3 --> 2.4).

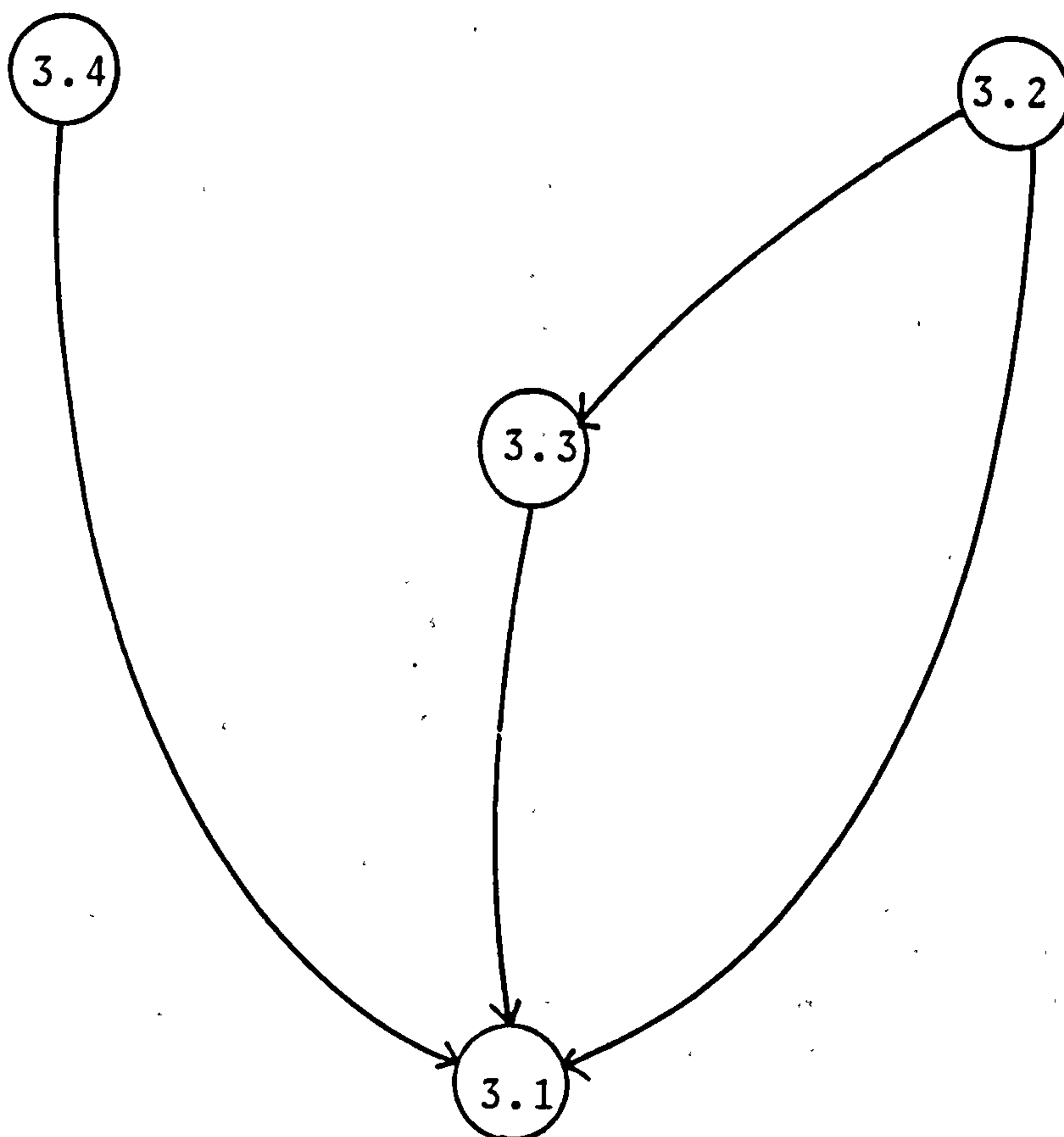
FF3. Resources.

Effective townplanning requires a sound financing system, which was always lacking in Greece: resources are poor, resource management is even poorer and the expropriation costs burdening the local authorities are so high that many townplanning schemes have remained on paper.

Failure Factors

- 3.1. Poor resources.
- 3.2. Poor, overformalized financial management.
- 3.3. Increased expropriation costs.
- 3.4. Unduly low private contribution.

See Diagram 3.



This diagram shows that the problem of scarce resources is more complicated than it seems at first sight. Not only are the funds devoted to town planning purposes poor to begin with, but their economic value is minimized by the combined impact of the other factors and especially the poor financial management of whatever resources the administration manages to collect (3.2 → 3.1).

Moreover, as the entire town planning process relies almost exclusively on expropriation, the costs of the latter reach considerable heights, (3.3 → 3.1), while the contribution of beneficiary property owners is kept at nominal or insignificant levels (3.4 → 3.1).

FF4. Administrative Practice.

The implementation of town planning policy is by its nature a long term operation and, therefore, its success greatly depends upon an effective, stable and consistent administrative practice. Such traits, however, do not characterize Greek administrative practice. Under the overwhelming influence of clientele politics, Greek Public Administration does not follow rational and predictable paths. Inimical to planning, it prefers the easier and more familiar path of passivity and incrementalism. On the other hand, in view of the high qualifications of many civil servants, it shows a remarkable capacity for improvisation, which helps it to overcome occasional crisis situations.

Failure Factors

- 4.1. Clientele politics.
- 4.2. Passive attitude.
- 4.3. Absence of foresight.
- 4.4. Procrastination.
- 4.5. Incrementalism.
- 4.6. Improvisation.
- 4.7. Inadequate circular instructions.

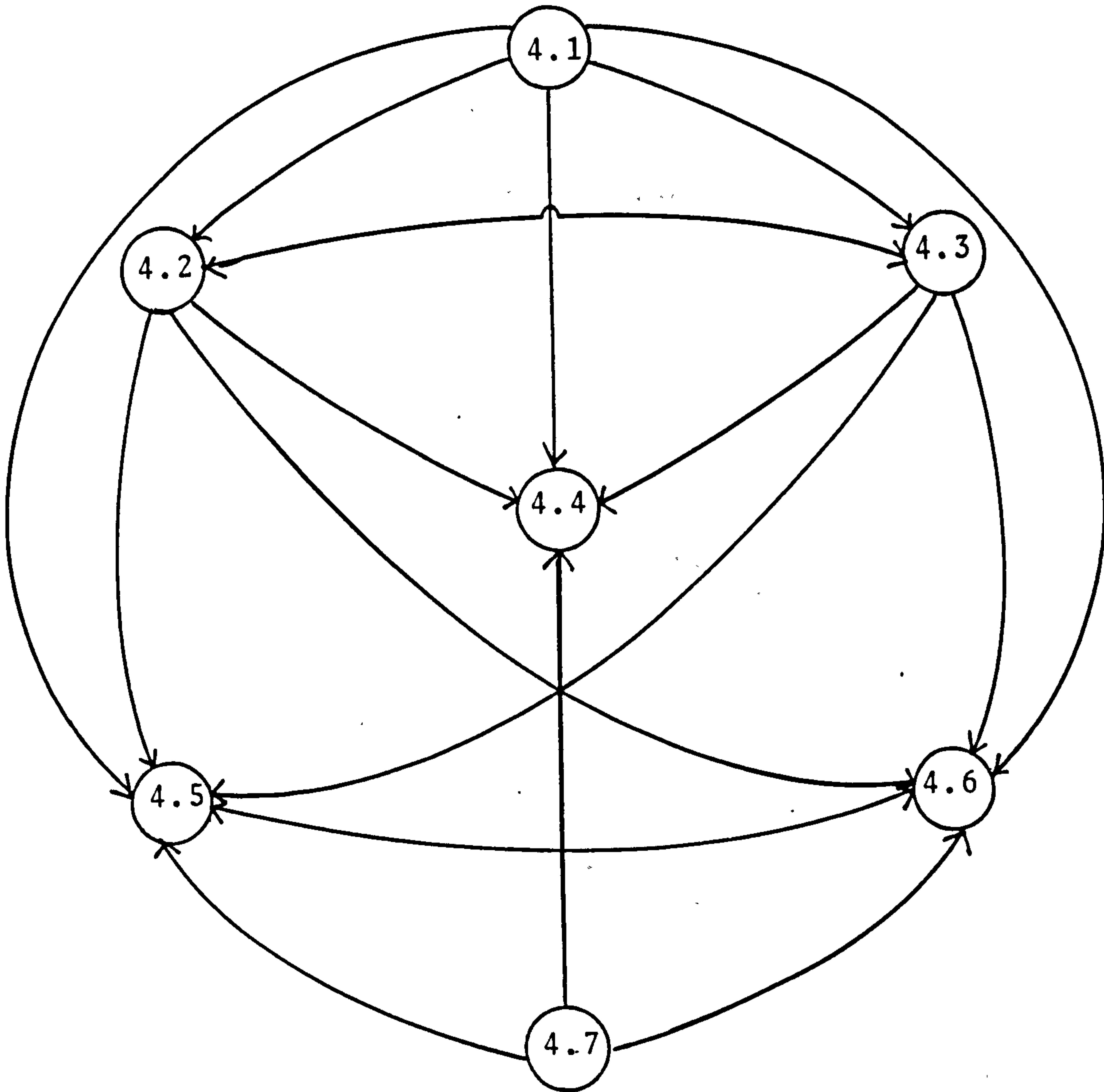
See Diagram 4.

Diagram 4 confirms what is already known in practice, namely that the implementation of town planning legislation takes place in a slow and incremental way and relies on improvisation rather than systemic decision-making methods.

The diagram draws particular attention to the fact that it is clientele politics- the system's dominant element-which has prevented town planners from engaging into active, rational, long-term planning. The deeply rooted belief that the administration responds to extraneous pressures rather than objective needs reinforces the passivity and shortsighted attitude of officials and discourages the most active among them (4.1 --> 4.2, 4.1 --> 4.3).

Since filtering is by definition incompatible with clientele politics the administration is permanently lost in a sea of demands, which, given the absence of adequate circular instructions, are processed at a very slow pace (4.1 --> 4.4, 4.7 --> 4.4). Incrementalism, being the theory which justifies and recommends open competitiveness, absence of planning, response to pressures and compromise, has found among Greek administrators some of its most fervent advocates (4.1 --> 4.5, 4.3 --> 4.5, 4.2 --> 4.5, 4.6 --> 4.5). Insufficient circular instructions leave ample room for improvisation (4.7 --> 4.6) and increase delays, as each case is individually decided on the basis not of general standards but of circumstantial considerations (4.7 --> 4.4, 4.7 --> 4.5, 4.7 --> 4.6). It is thus clear from the diagram that as long as clientele politics prevail, there is little hope for the elimination of factors 4.5 and 4.6 and for the rationalization of administrative practice.

Diagram 4



FF5. Management and Organization.

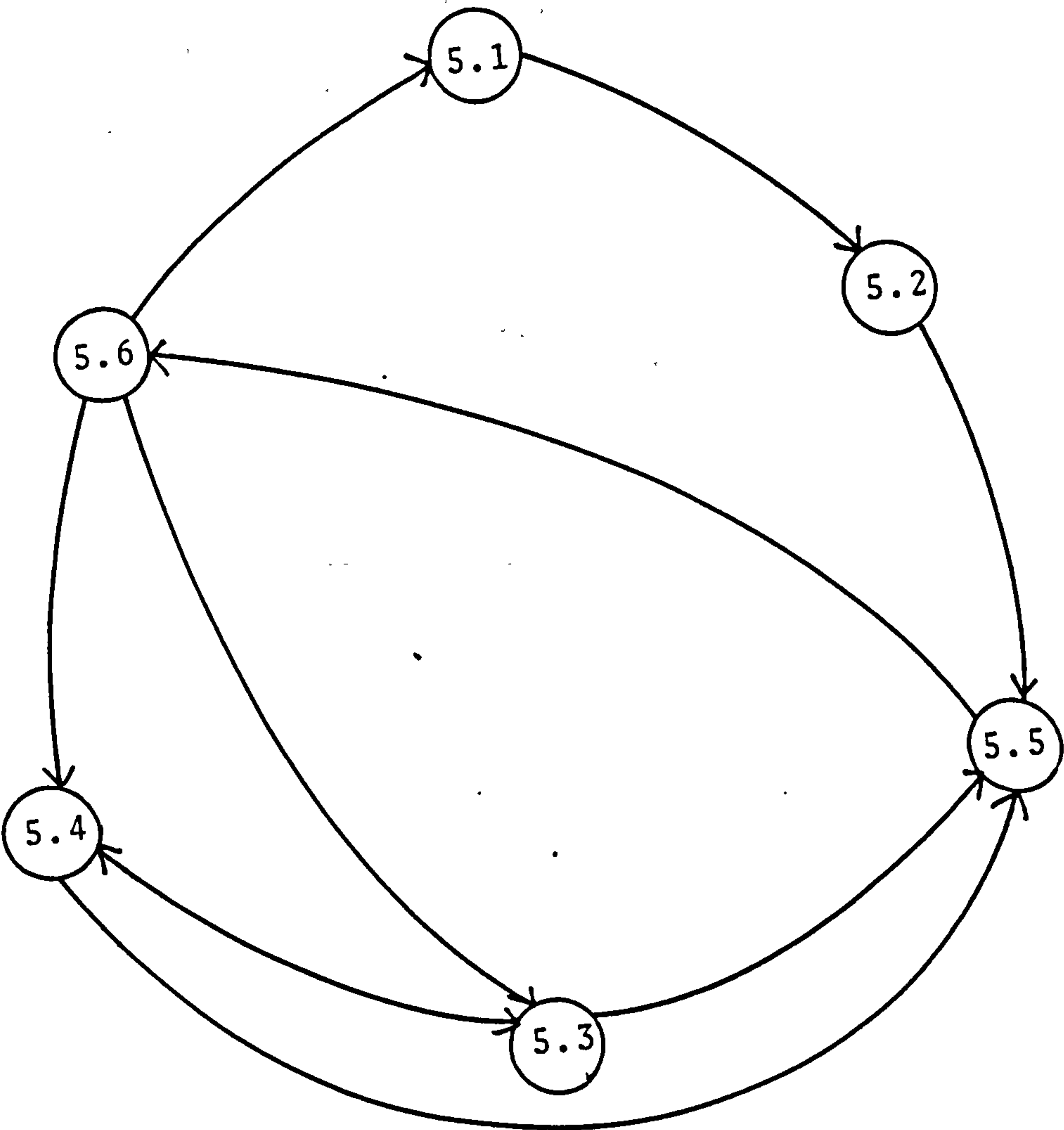
FF5. A. Organization

The excessive politicization of the system cancels the impact of measures taken for the improvement of administrative organization. Moreover, the lack of political support undermines administrative authority and leaves the civil servant exposed to the pressure of political clients.

Failure Factors

- 5.1. Overcentralization.**
- 5.2. Complex structures.**
- 5.3. Deficient personnel management system.**
- 5.4. Lack of political support.**
- 5.5. Formalism.**
- 5.6. Excessive politicization.**

See Diagram 5 A.



This diagram reveals the formalistic character of the town planning system's organization (subdominant element 5.5), namely the existing gap between the way this organization appears on paper and the way it actually operates in practice. While the organization in question seems to be quite rationally designed, providing for hierarchical levels in decision making, enlightenment of town planning officials by experts and interested parties, as well as for a system of internal controls, the impact of the above mentioned failure factors prevent it from functioning accordingly.

The diagram shows that the main responsibility lies with dominant element 5.6, which indicates the excessive openness and vulnerability of the system to political pressures. It is indeed the undue politicization of the system which a) enhances centralization so that the Minister may preserve his tight political control over town planning decisions (5.6 --> 5.1), b) indirectly increases the complexity of the system's structure so that all decisions may ultimately be directed to the center (5.6 --> 5.2) c) aggravates the deficiencies of the personnel management system by introducing political considerations in the behavior and choices of officials (5.6 --> 5.3).

The second in line dominant element of the system is the absence of political support (5.4). This factor indicates the common practice of politicians to withdraw their support from town planning decisions which tend to become politically costly or embarrassing (a classical example being law enforcement in cases of unauthorized development). Thus it is not uncommon for town planning measures, which had been unanimously approved at the stage of enactment, to be stripped of political support at the stage of implementation and enforcement.

The mutually negative impact between factors 5.6 and 5.5 is not hard to establish: excessive politicization of the system (5.6) gives preeminence to political over technical considerations. Issues are thus downgraded from the level of scientific debate over the appropriate town planning criteria to the level of political bargaining and compromise. This robs the final choices from the necessary undisputed authority and makes their fate dependent from the precarious approval or disapproval of politicians, a thing which enhances the system's politicization (5.6 --> 5.5). In view of the above, it must be expected that in such a highly politicized environment officials will respond favorably to the pressures of politicians in order to ensure their support (5.3 --> 5.4) and this attitude will drive the system further away from its settled objectives.

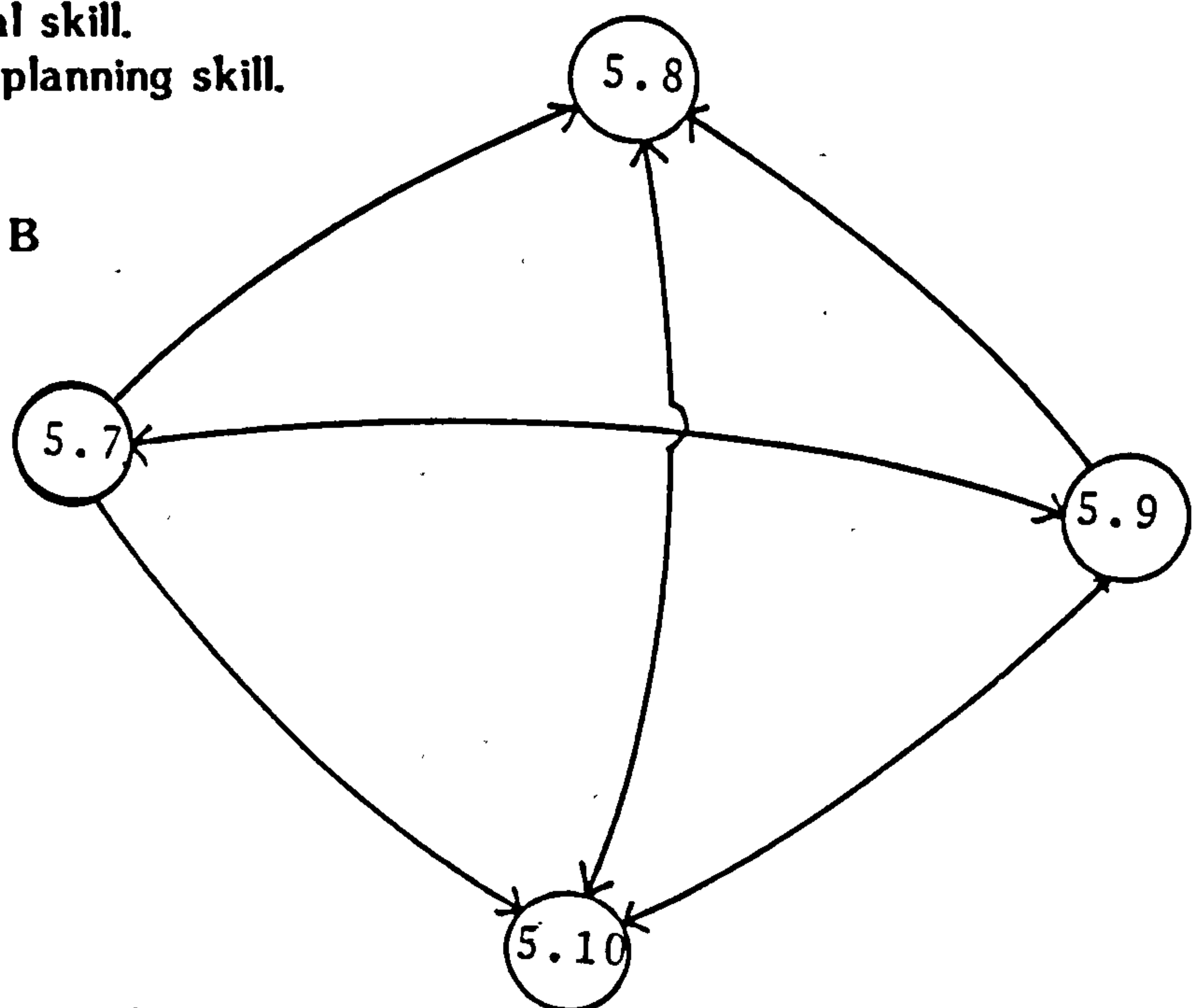
FF5. B. Management

The absence of sound and stable administrative practice is further aggravated by poor management. In an excessively politicized environment, combining legalism and formalism with favoritism and corruption, managerial talent is often stifled. Moreover, political clientelism and a deficient personnel management system have created a civil service which, though overstuffed, lacks the necessary specialized personnel for managing the highly complex townplanning issues.

Failure Factors

- 5.7. Legalistic attitude.
- 5.8. Poor managerial skill.
- 5.9. Lack of urban planning skill.
- 5.10. Corruption.

See Diagram 5 B



The diagram indicates that the system's behavior is shaped by the absence of managerial skill (5.8) combined with corruption (5.10). More specifically, the diagram shows that deficient management: a) is produced by the prevailing legalistic attitude which stifles managerial talent, if and when it exists, (5.7 → 5.8) and b) is further perpetuated due to the lack of town planners, who would preoccupy themselves with substantial rather than legalistic considerations (5.9 → 5.8, 5.9 → 5.7). Moreover, a mutual connection links poor managerial skill to corruption: it is only natural that in a mismanaged system ample opportunities for corruption are offered (5.8 → 5.10), enhanced by the fact that the absence of trained urban planners prevents the development of a strict code of professional standards and ethics among town planning officials (5.9 → 5.10). Nor is the absence of trained personnel so difficult to understand: urban planners and their professional ways are not particularly welcome among corrupt engineers (5.10 → 5.9). On the other hand, professional urban planners are not eager to be buried in the formalistic environment of public administration (5.7 → 5.9).

Finally, corruption is further aggravated by the prevailing legalistic attitude which fusses over minor issues and blocks control. It is common knowledge that the more legalistic a system, the more opportunities it offers for the exploitation of loopholes in the law (5.7 → 5.10).

FF6. Communication

By its own nature, towplanning is a complex decision making process, in which multiplate actors are involved. Therefore, good communication and control are essential for both the efficiency and effectiveness of the system.

The decision making system, established by the statute of 1923, has, however, serious shortcomings. It is a highly complex system, in which multiple implementation agencies are involved and extensive citizen participation is provided for. The situation is further complicated by the fact that the competent agencies belong to different organizations (central, regional, local), whose activities are not properly coordinated, Moreover, the communication process is highly legalized and judicilized, thereby lacking in flexibility and responsiveness. Its overcentralized character causes delays and procastration. As a result, the entire communication system is usually overloaded and, therefore, cannot ensure the untrammelled flow of reliable information. Inadequate memory and poor technological support limits the processing capacity and undermines continuity and coordination. Finally, the whole communication system is exposed to noise, caused by a heavily politicized environment.

In the field of control, effective mechanisms for monitoring and correction are lacking. We note: a) the lack or fuzziness of operative standards, i.e. the criteria against which the performance of the entire system can be measured, b) the poor organization of the sensor element, which functions in a fragmented and selective manner, c) the uncertainty and confusion of the comparator element, due to the abundance of conflicting statutes and regulations, and further aggravated by political noise, and d) the inertia of the activator element, immobilized by cumbersome and legalistic procedures, as well as heavy political and social pressure.

Failure Factors.

- 6.1. Multiplicity of implementation agencies.
- 6.2. Highly formalized and centralized decision-making.
- 6.3. Slow and cumbersome procedures.
- 6.4. Excessive judicialization.
- 6.5. Extensive citizen participation.
- 6.6. Poor technological support.
- 6.7. Poor memory.
- 6.8. Excessive noise.
- 6.9. Informational overload.
- 6.10. Low reliability.

See Diagram 6.

The above diagram indicates that the communication system suffers from major deficiencies at the structural level (elements 6.1, 6.2 and especially dominant elements 6.5, 6.6 and 6.7) which unduly complicate or delay its functions (6.4, 6.8 and particularly 6.3) end up producing an undesirable outcome, i.e. slowly flowing information of low reliability (6.10).

A closer look at the multiple interconnections of this highly complex system reveals the following basic impacts:

The multiplicity of implementation agencies (local, peripheral and central, ad hoc bodies etc.) enhances the formalization of the decision making system for reasons of coordination and control (6.1 --> 6.2). The complexity and formality of the decision making system, causes delays and jamming in the regular flow of information (6.1 --> 6.3) and 6.2 --> 6.3), while the number of decisional nodes increases the probability of distortion and error (6.1 --> 6.10 and 6.2 --> 6.10). The formalized character of the decision-making process increases judicialization, because it encourages litigation over nonobservance of formalities (6.2 --> 6.4).

Institutionalized extensive citizen participation exposes the system to a great volume of irrelevant information (6.5 --> 6.8 and 6.5 --> 6.9), thus aggravating the deficiencies in its performance (6.5 --> 6.3, 6.5 --> 6.10).

Poor technological support impedes the development of a reliable long-term memory (6.6 --> 6.7); both these factors increase judicialization, since ignorance of court precedents causes unnecessary litigation over the same issues (6.4-->6.4, 6.7 --> 6.4). Poor technological support also enhances distortion (6.6 --> 6.10) and causes jamming and delays in the normal flow of information (e.g. constant reference from the periphery to the center (6.6. --> 6.3 and 6.3 --> 6.9).

The system's poor memory prevents it from learning from previous experience in order to avoid the same mistakes and to filter out irrelevant information. As a result, information processing is unnecessarily delayed (6.7 --> 6.3) and useless data are accumulated, which in their turn further confuse the originally deficient memory (6.7 --> 6.9 and 6.9 --> 6.7). Moreover, the lack of adequate memory undermines the uniformity and predictability of decisions in both time and space and thus enhances the system's unreliability (6.7 --> 6.10).

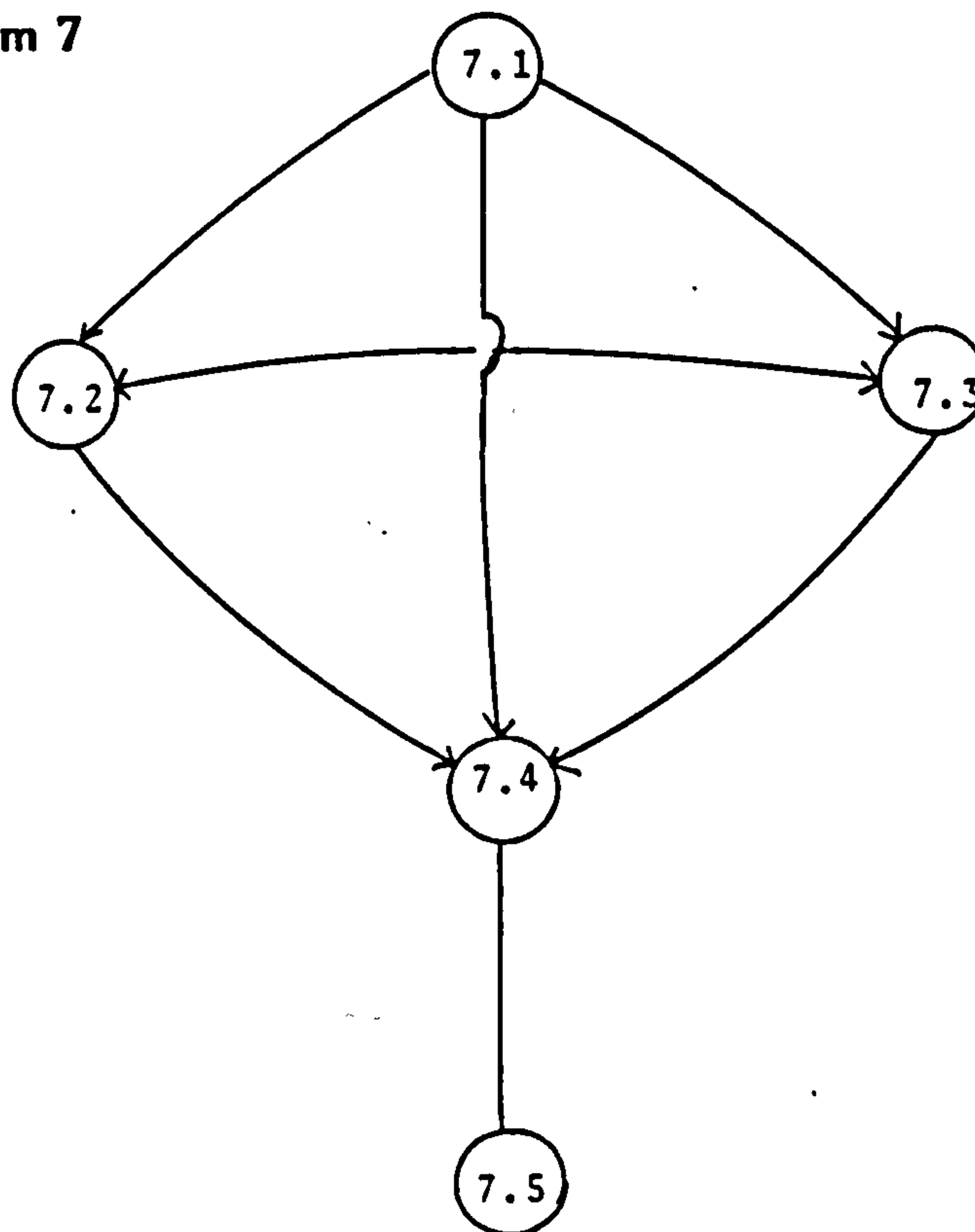
Finally, excessive judicialization, as it is often accompanied by publicity, pressure group or massmedia involvement etc., increases noise (6.4 --> 6.8) and delays procedures (6.4 --> 6.3). The aggravating effect of noise on informational overload (6.8 --> 6.9) and low reliability (6.8--> 6.10) is too self evident to require further comments.

FF7. Control

Failure Factors.

- 7.1. Lack of operative standards.
- 7.2. Use of irrelevant standards.
- 7.3. Misinterpretation of standards.
- 7.4. Poor monitoring.
- 7.5. Poor activation.

See Diagram 7



It is clear from the above diagram that the control subsystem suffers from two major deficiencies. The first is located at the level of operative standards, which is the dominant element of the system: it has already been explained how the lack of precise and quantifiable criteria at the highest level leaves room for misinterpretation in the course of lower level decision-making and even allows for the use of irrelevant standards (7.1 --> 7.2 and 7.1 --> 7.3).

The second deficiency is the outcome of the first and is located at the system's subdominant element, monitoring, i.e. the process of sensing the town planning system's deviations, comparing them with the established standards and determining the appropriate form of corrective action. The diagram shows that, contrary to what usually occurs in practice, any effort to improve the system's performance should begin with the concretization and operationalization of standards (7.1). Efforts dedicated exclusively to the amelioration of factors 7.4. (monitoring) and/or 7.5 (activation) by e.g. increasing the number of control agents, providing them with technical equipment, tightening control procedures and imposing severe sanctions, are bound to fail unless combined with drastic interference at the level of operative standards.

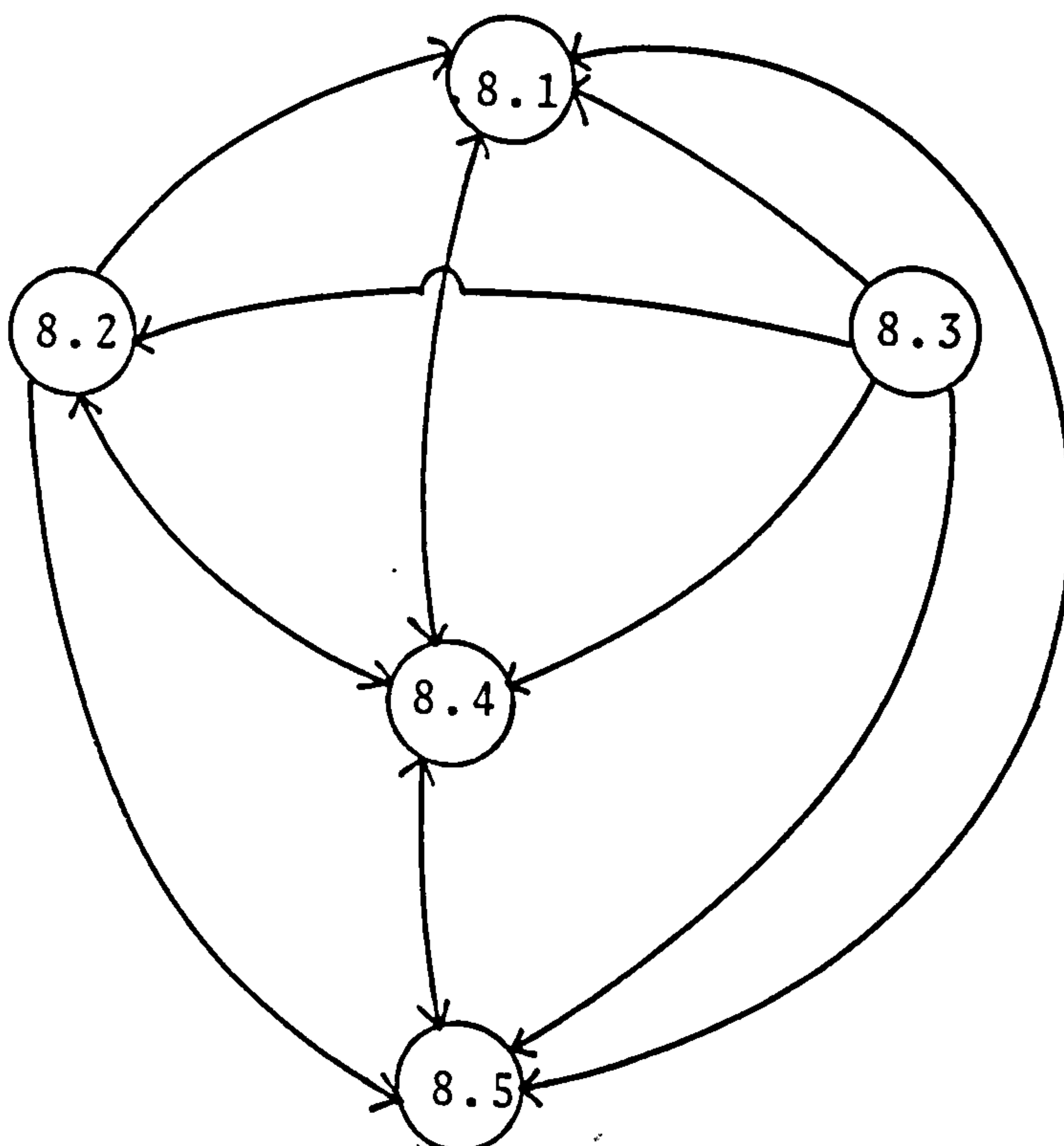
FF8. Pressure groups.

Greek Public Administration, weakened by the adverse impact of the above mentioned factors, has an additional problem to face: the powerful and persistent lobby of the affected interests. Pressure groups invariably get involved in all stages of the townplanning process, from legislation drafting down to the enforcement of corrective measures. Given the suggestibility of some officials and the weak presence of environmentalist lobbies, pressure groups have so far been very effective in obstructing the implementation of townplanning legislation, distorting townplanning standards and neutralizing enforcement.

Failure Factors.

- 8.1. Excessive involvement.**
- 8.2. Convergent negative action.**
- 8.3. Absence of environmentalist groups.**
- 8.4. Suggestibility of officials.**
- 8.5. Effectiveness of action.**

See Diagram 8



This diagram draws attention to the mutually aggravating effect of the system's subdominant elements (8.1, 8.4 and 8.5): not only do pressure groups actively and effectively impose their views and preferences upon suggestible town planning officials, but also these three factors are reciprocally reinforced through their interaction.

The diagram also indicates that the effectiveness of pressure group action is greatly enhanced by the fact that all such groups pursue

common or convergent goals (e.g. maximum density of exploitation, minimal restrictions and controls etc.). This multiplies their influence on officials (8.2 -> 8.4) and their success reinforces their active involvement in the implementation process (8.2 --> 8.1).

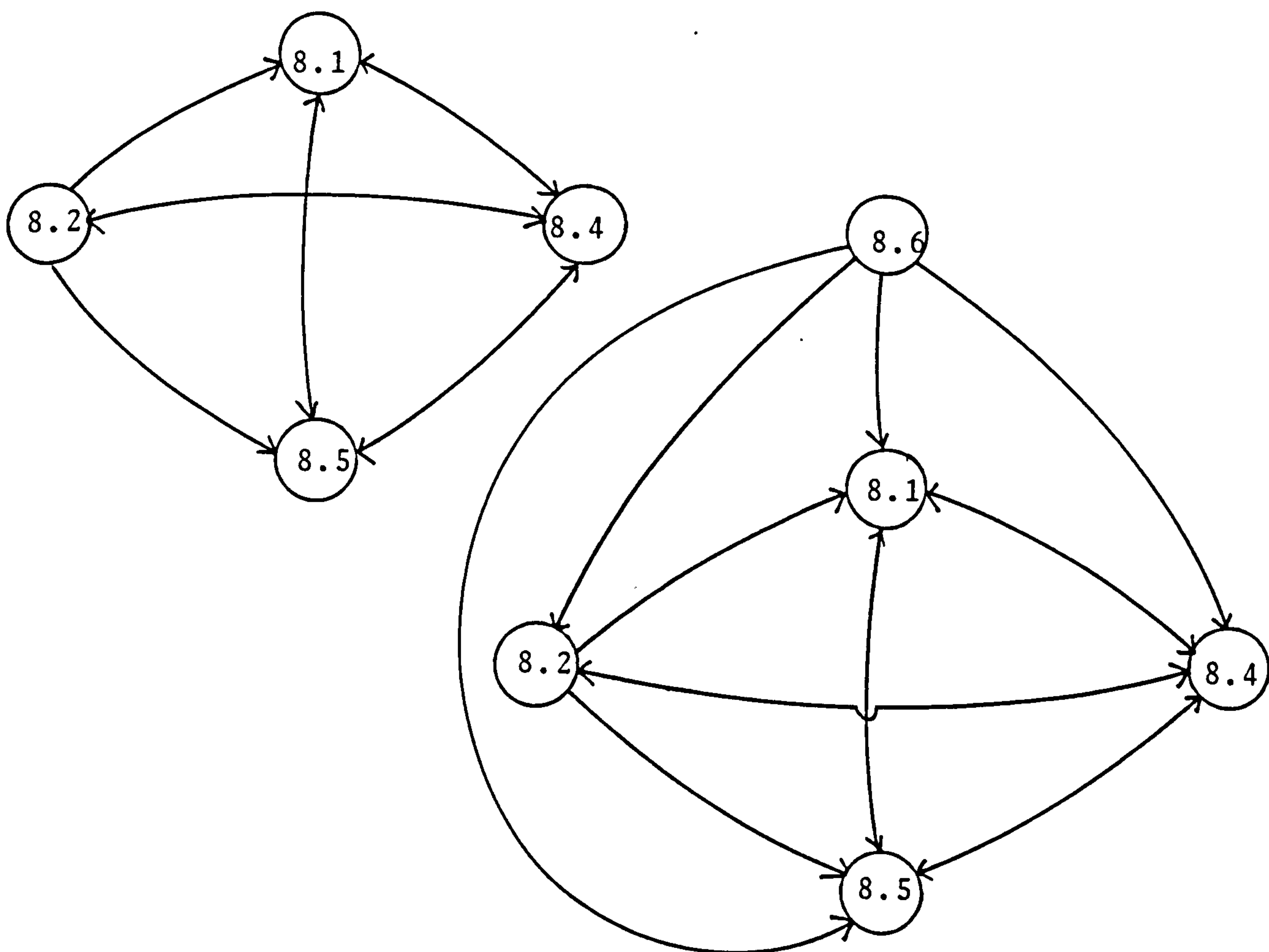
The diagram also reveals the decisive impact of a hitherto underestimated factor, which, nevertheless, turns out to be the system's dominant element: the lack of environmentalist groups (8.3). Their absence or passivity has emboldened pressure groups of opposite convictions and has permitted them to monopolize impressions on public opinion and to intimidate town planning officials. (8.3 --> 8.2 and 8.3 --> 8.4).

Finally, the number and direction of the diagram's connecting arrows points out the close interdependence of the system's elements and suggests that the battle for the elimination of pressure groups' negative impact should primarily be conducted in their own territory, namely by exposing them to the polemic of pressure groups of opposite preferences. Diagrams 8B and 8C show how the elimination of dominant element 8.3 and its substitution with element 8.6 (= active environmentalist groups) would not only deprive the remaining elements from a negatively reinforcing impact (D. 8B), but would also minimize their relative weight and would thus diminish the entire subsystem's overall capacity (D. 8C).

See Diagram 8 B

and

Diagram 8 C



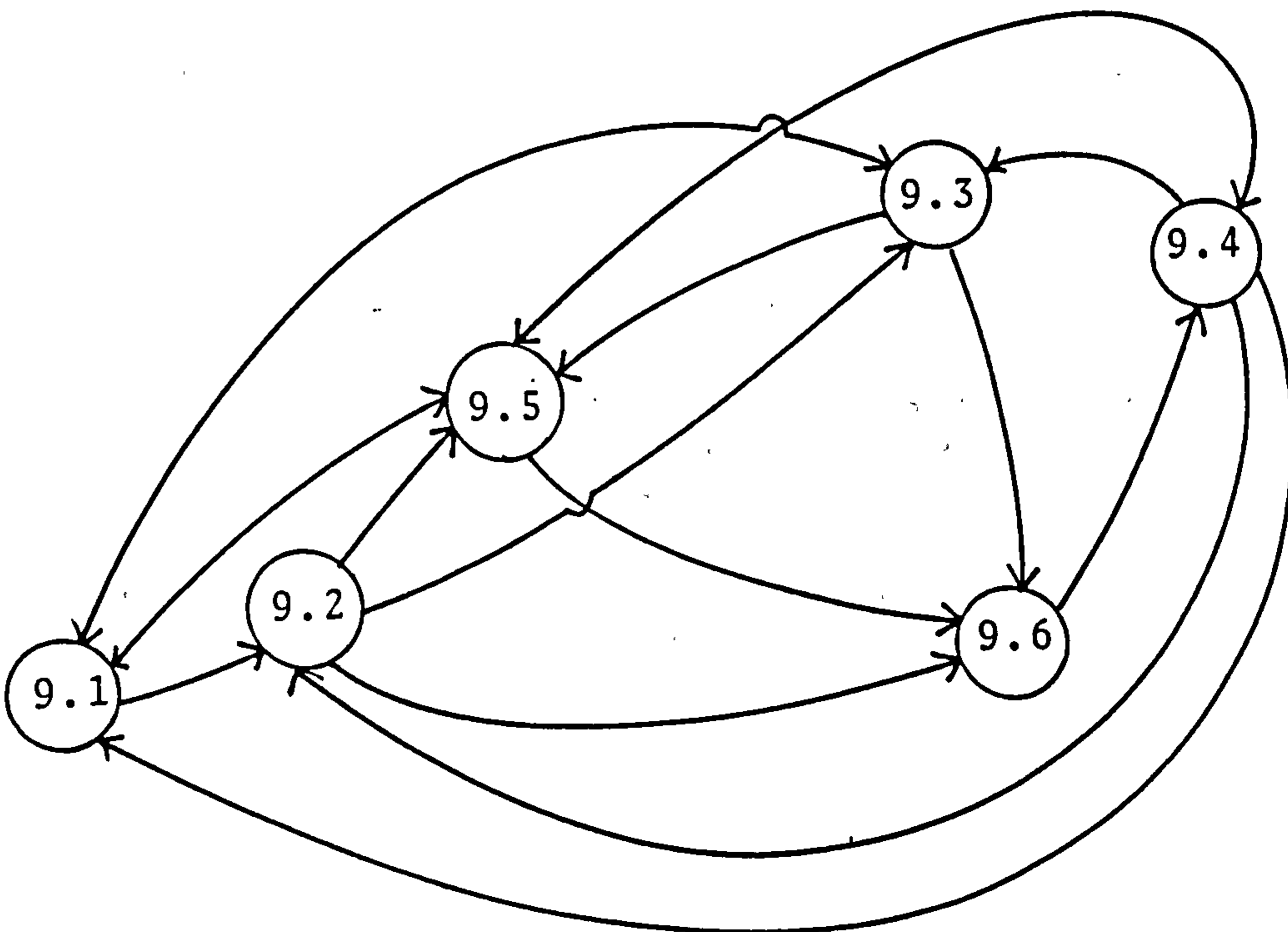
FF9. Human relations.

Given the multiplicity of actors involved in the townplanning process, the factor of human relations is crucial. However, in Greece communication of authorities with the public has always been poor. The civil servant-citizen relationship usually oscillates between mutual distrust and undue favoritism. Resort to political pressure is a common means for overcoming strict adherence of public servants to the law. The resulting favoritism erodes administrative authority and encourages public defiance. The exposure of officials to political pressure, coupled with poor working conditions and low pay, blocks their motivation and saps their morale.

Failure Factors.

- 9.1. Mutual distrust.**
- 9.2. Defiance of authority.**
- 9.3. Autocratic leadership.**
- 9.4. Favoritism.**
- 9.5. Interference.**
- 9.6. Low motivation and morale.**

See Diagram 9.



The subsystem of human relations appears highly complex, with numerous mutually reinforcing components. From the diagram it is obvious at first sight that the system's behavior, i.e. the town planning officials relations with the public and among themselves, is primarily shaped by extraneous interference from various sources (political or local connections, personal friendships etc.), which disturb their regular activities.

A more detailed analysis of the multiple interconnections reveals the following:

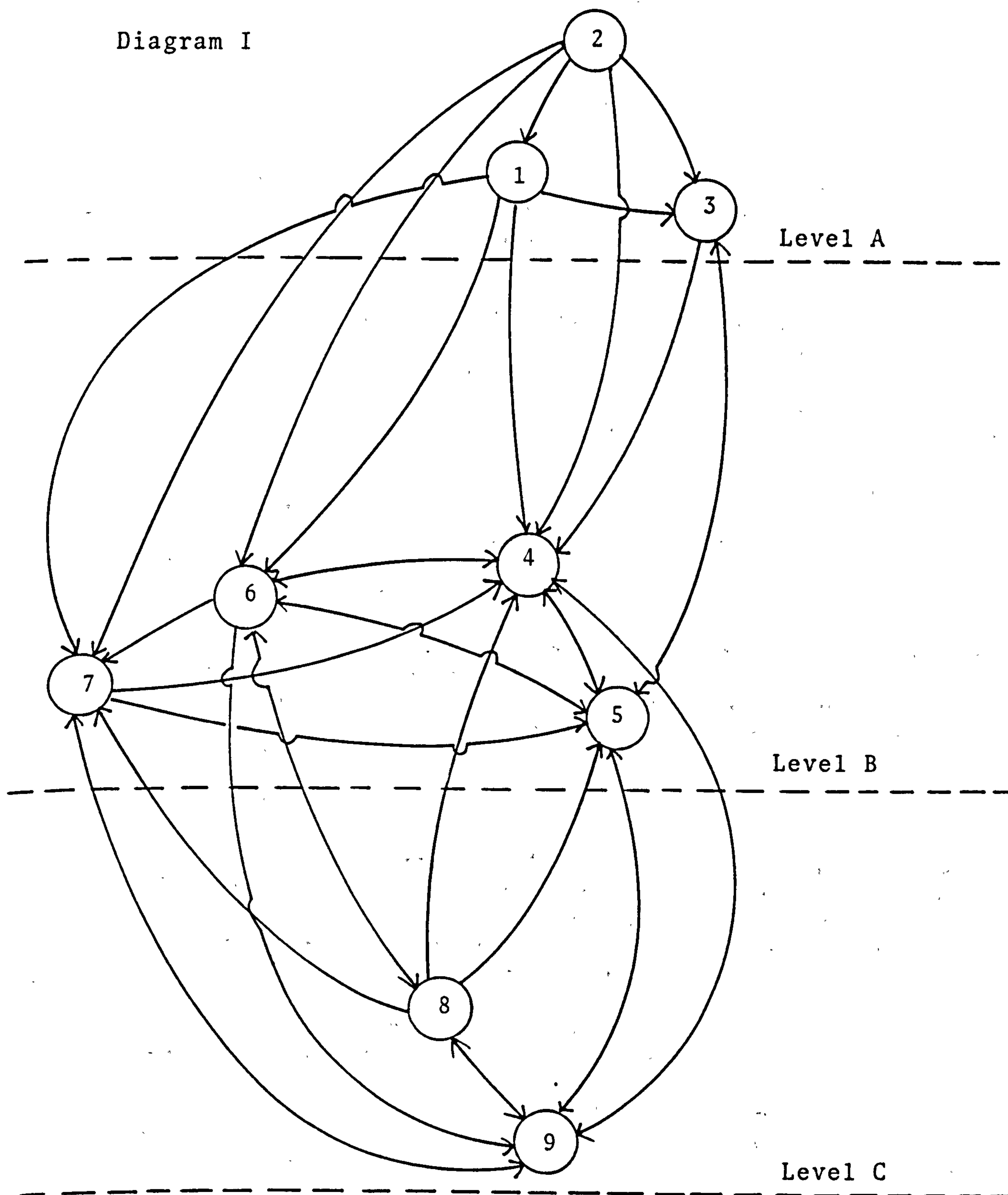
The traditional distrust between town planning officials and citizens has convinced the latter that their demands, valid or not, are not likely to be duly and/or promptly processed unless supported by adequate pressure (9.1 → 9.5). This seems to be a mutually reinforcing connection, since it increases the officials mistrust in the citizens' good faith and, at the same time, convinces the latter that, if properly supported, any demand can get by. The exercise of extraneous pressure is further encouraged by the public's lack of confidence in the administration's enforcing capacity (9.2 → 9.5) and by the prevailing belief in civil servants corruptibility (mutually reinforcing impact 9.4 → 9.5 and 9.5 → 9.4). Given no other reasons, citizens resort to pressures anyway, in order to overcome what they perceive as administrative inertia or indifference (9.3 → 9.5).

The diagram also shows that the public's skepticism about the officials' efficiency or integrity saps the latter's authority and encourages public disobedience and non conformity to administrative decisions (9.1 → 9.2). Mistrust is reinforced by administrative behavior which is, or appears to be, distant, inconsiderate, (9.3 → 9.1) or even partial and biased, a fact that naturally aggravates the existing prejudices (9.1 → 9.3). In reaction to the defying attitude of the public, civil servants tend to increase the abruptness or even hostility of their manner (9.2 → 9.3), behind which some of them conveniently hide their partiality. (9.4 → 9.3). The lack of impartiality enhances both the mistrust of the underprivileged (9.4 → 9.1) and the contempt of the beneficiaries, who become convinced that they can manipulate the administration at will (9.4 → 9.2).

The entire complex network of the above interactions ends up sapping the morale of civil servants and diminishing their motivation. Crushed under the extraneous pressures and/or autocratic attitude of their superiors, challenged and frustrated by the contempt and disobedience of citizens, they tend to identify with the distorted image the public has formed about them (9.2 → 9.6, 9.5 → 9.6, 9.3 → 9.6, 9.6 → 9.4).

C. We shall now proceed to the examination of the basic negative interactions among the various failure factor categories, which constitute the components of the implementation megasystem.

Diagram I



With respect to the three elements of level A, it has already been pointed out that the examination of their failures falls beyond the scope of this study, since they do not constitute failures in implementation but failures in policy formulation. However, their adverse impact on implementation is necessarily considered, because it indicates the degree to which implementation failures must be attributed to exogenous failure factors.

First we should note that there is a mutually negative interaction among all three elements: Legal provisions on the town planning system's design or its financing scheme may be virtually rendered ineffective through judicial interpretation (2 --> 1, 2 --> 3). Since funding is also the object of special legislation, the scarcity of resources may also be attributed to program deficiencies (1 --> 3). On the other hand, managerial incompetence and legalistic procedures are responsible for unnecessary squandering of resources (5 --> 3).

The second level contains four components, among which Administrative Practice (4) is the megasystem's subdominant element, since it receives negative influence from all the others. Administrative practice is insufficiently regulated by programs or judicial decisions, which provide town planning officials with only elementary guidance, no longterm perspective and minimal time constraints, thus favoring incrementalism and improvisation (1 --> 4, 2 --> 4). The perennial scarcity of resources also favors improvisation and causes great delays, especially in the payment of compensation (3 --> 4). Excessive politicization and deficient personnel management increase the passivity of officials and make them easy prey to clientelism, a factor further aggravated by corruption (5 --> 4).

Slow and unreliable communication increases delays and favors improvisation and lack of uniformity in decision-making (6 --> 4). Inadequate control and especially the absence of operative uniform standards results in fluctuations of the administrative practice depending on the circumstances (7 --> 4). Favoritism and extraneous interference support clientele politics, while low motivation and morale are greatly responsible for the passivity and inertia of officials (9 --> 4).

The effectiveness of pressure groups reinforces clientele politics, while their excessive involvement in the implementation process impedes the development of standard practices and makes officials resort to disjointed decision making and improvisation in order to meet their multivarious and mostly self-seeking demands (8 --> 4).

With respect to the second in line subdominant element of the megasystem. Management and Organization, we note the following:

An administrative milieu, where clientelism and incrementalism are thriving, is particularly prone to corruption. Moreover, the passivity and shortsightedness of officials make them indifferent to modern management methods (4 --> 5). On the other hand, the permanent shortage of funds frustrates managerial talent while, at the same time, it increases legalistic management of resources (3 --> 5).

Good management is not possible without support by reliable and timely information (6 --> 5). The absence of uniform standards encourages corruption and induces managers to stick to formal rather than substantial issues (9 --> 5).

Modern theories on public management and efficiency or effectiveness considerations are rather incompatible with the traditionally autocratic administrative ethos, not to mention favoritism and extraneous pressures (7 --> 5). Finally, pressure group involvement favors corruption and puts managerial considerations aside (8 --> 5).

The basic interactions of failure category 6 (Communication) with the others are the following:

The structural and procedural aspects of communication receive a strong negative impact from program deficiencies: The absence of time constraints leads to an endless perpetuation of procedures; contradictory and/or conflicting policies and deficient regulation of property rights cause excessive judicialization; instrumental use of town planning legislation increases noise; text fragmentation and frequent amendments delay the flow of information and confuse the system's memory; extensive citizen participation enhances the officials' suggestibility, while intermittent control measures diminish the system's reliability (1 --> 6). Limited effect of court decisions and administrative recalcitrance cause excessive judicialization and further decrease the system's reliability (2 --> 6). Finally, scarcity of resources does not allow for technological support and innovation. (3 --> 16).

Clientele politics encourages citizen participation, multiplies noise and creates informational overload. Inertia of officials causes unnecessary delays in the processing of information while incrementalism overloads the system's memory with casuistry (4 --> 6).

The legalistic style of management aggravates the formalization and judicialization of the decision-making process, while corruption undermines its reliability (5 --> 6). The absence of good memory and the lack of technological infrastructure favor the use of irrelevant standards; multiplicity of implementation agencies and formalization of procedures impede prompt monitoring and control. Extensive citizen participation and the concomitant noise lead to misinterpretation of standards, (7 --> 6) while the exercise of interest groups pressure incites further participation and ends up creating more noise and informational overload (8 --> 6).

Regarding failure category 7 (Control) we note that the program's failure to establish precise and quantifiable planning criteria is responsible for major control deficiencies, namely lack of operative standards and use of irrelevant criteria. Excessive delegation and/or variability of delegated legislation further aggravate this important control failure. Conflicting policies and instrumental use of town planning legislation, increase confusion over the appropriate criteria. The self defeating character of legislation on unauthorized construction obstructs monitoring and neutralizes enforcement, while frequent amendments increase the comparator's confusion (1 --> 7). Emphasis on the protection of property rights and/or a pragmatic approach to planning sometimes outshadow town planning considerations and distort interpretation of standards. Moreover, the

limited effect of court decisions, combined with administrative recalcitrance, obstructs activation and enforcement (2 --> 7).

The complexity of the decision-making process, the lack of good memory and the absence of technological support create difficulties for comparator and activator, while noise decreases the sensitivity of the entire control mechanism (6 --> 7).

Favoritism and extraneous interference distort the meaning of standards and block enforcement. (4 --> 7).

The citizens' defying attitude and non compliance to administrative decision neutralizes enforcement; Low motivation and morale of officials generate indifference and amount to loosening of controls. (9 --> 7).

Given the suggestibility of officials, the active involvement of Pressure Groups in the implementation process is greatly responsible for the misinterpretation of standards and the use of irrelevant considerations, while the effectiveness of their action often neutralizes enforcement (8 --> 7). With respect to the last two elements of the megasystem, namely Pressure Groups (8) and Human Relations (9) we point out the following:

Clientele politics and suggestibility of officials to interest group pressures increase the citizens' mistrust in their impartiality (8 --> 9, 4 --> 9); on the other hand favoritism increases the effectiveness of pressure group action and encourages their involvement (9 --> 8).

Problems of communication intensify mistrust, create tension and impede good human relations (6 --> 9). Deficient control, on the other hand, emboldens citizens and encourages their defying attitude and non compliance to administrative decisions (7 --> 9). Finally, passivity and procrastination in the processing of demands urge the public towards more active undue interference in the implementation process (4 --> 9).

8.3. A Systems Evaluation of the Program Quality in the Statute of 17-7-1923

Having completed the first systemic mapping of Failure Factors in the implementation of town planning legislation and before we proceed to the next, more complex, stage of systemic analysis of these factors, we shall pause to have a better look at the Statute of 17-7-1923 in view of the new information produced by the preceding analysis. As we have already pointed out when discussing the failure factors of town planning implementation, the program is taken for granted, without further investigation of the causes of its proper failure factors, since, by definition, they belong to the distinct system of problem formulation. Nevertheless, a meaningful discussion of implementation failure presupposes the identification and assessment of the qualities and/or deficiencies of the program that is being implemented.

For that purpose we shall attempt to measure the basic provisions of the Statute of 17-7-1923 with respect to their qualities and/or deficiencies (see above) against the standards regarding the properties of ideal program-type decisions about public problems, proposed by Justice M. Decleris in his *Prolegomena to a Modern Theory of Public Policy*. According to the author a good program should:

- a) *clarify its value goals and objectives.*

In this respect, the goals of the Statute of 17-7-1923 towards orderly, well planned and integrated urban development may be easily inferred from its provisions (art.1 and 2). Moreover, the scope of the law is very broad, both in time and space, covering every kind of urban settlement, preexisting or future, irrespective of its size and location. It is for that reason that the law specifically requires the remodeling of all existing settlements within a period of ten years so that they will develop in conformity with its provisions.

- b) *Prescribe by the appropriate instructions an optimal (abstract) system for the realization of these value goals.*

The statute of 17-7-1923 fully meets this requirement, since it introduces a detailed town planning system, consisting of three distinct consecutive phases (see above), namely

- a) design and approval of the town planning scheme,
- b) issuance of building regulations and
- c) issuance of building permissions on the basis of the building regulations for specific constructions located within the boundaries of the scheme. Moreover, distinct systems are provided for the regulation of construction in areas remaining outside the limits of approved town planning schemes.

Nevertheless, we have identified as major deficiencies of the abstract town planning system the poor design of its financing system (see above failure factor 1.2) and the lack of time constraints for the prompt conclusion of each townplanning phase (failure factor 1.3). It also appears

that the system has entrusted to delegated legislation more issues than those strictly necessary, thereby jeopardizing its own foundations.

c) Articulate a value system taken for the implementation of such a system.

Regarding this requirement, the Statute of 17-7-1923 expressly states the basic values which should serve as the criteria for town-planning decisions and which are: health, security, economy, aesthetics and transportation. Though not expressly included among the above, the value of private property may also be inferred from the provisions of the law. The position of this value in relation to the other is, however, rather subordinate, subject to severe limitations ranging from constraints in exploitation and development imposed by building regulations, to zoning, land use restrictions, obligatory lot restructuring and concession and, finally, expropriation.

Most of the program failures we have identified above are related to deficiencies in the design and articulation of the value system providing the criteria of implementation. Inadequate conversion of generalized criteria into operative standards (failure factor 1.1) accounts for the great variability of town planning schemes and/or building regulations (failure factor 1.7) and the low controllability of the entire system (failure factor 1.8), while value conflicts about the primacy of property rights over town planning considerations is partly due to the ambivalence of the legislator in the articulation of the value system. Moreover, generality and ambiguity in the statement of the criteria has encouraged the instrumental use of town planning legislation for irrelevant purposes (failure factor 1.12) and has permitted the formulation of conflicting policies in relevant domains (failure factor 1.11).

d) Be formulated in rules that have the appropriate degree of generality which would make possible its implementation through repetitive and creative application.

In this respect, the Statute of 17-7-1923 limits itself to providing generalized instructions for the design and approval of town planning schemes and building regulations on the basis of the above mentioned criteria. For the rest, the law relies on delegated legislation in order to adapt its generalities to the particularities of each developing urban settlement. The fact that the various town planning schemes and building regulations issued on the basis of the above standards and instructions show excessive variability (failure factor 1.7) implies the overgeneralized character of the latter.

e) Have such duration that will allow for variability in space/time.

In the case of Statute of 17-7-1923 this precondition is fulfilled through the assignment of many major town planning decisions (e.g. issuance of building regulations) to delegated legislation. The Statute's uncommon durability has been proven by the mere fact that even today, more than seventy years after its enactment, some of its basic provisions continue to be in force.

f) Authorize individual decisions and/or actions for the implementation of the optimal system.

The Statute of 17-7-1923 has fulfilled this requirement by subjecting all kinds of construction activity to prior permission. The excessive variety and low controllability of these individual decisions (building permissions) is due to deficiencies appertaining to the preceding stage of decision making, that of delegated legislation.

g) Provide for the appropriate control loops.

Regarding this condition, we note that in order to control deviations occurring at the third stage of town planning (usually in the form of unauthorized constructions) the law has provided for a system of sanctions aiming at a) discouraging offenders and b) eliminating the offense by demolition of the construction. As we have already noted, the system at this stage is deficiently designed with respect to monitoring (basically entrusted to private citizens, such as neighbors etc.) and enforcement (entrusted to police authorities). Controls located at the preceding stages of decision-making (approval of town planning schemes, building regulations etc.) in the form of appeals to administrative authorities of a higher order (e.g. Minister) or courts are even less adequate; being limited mostly to marginal issues of legality, such controls cannot guarantee the substantive conformity of town planning decisions to the criteria set by the law, a thing which enhances the system's low controllability (failure factor 1.8).

h) Be well integrated with relevant programs.

We have already pointed out that the absence of coordination of the Statute of 17-7-1923 with other relevant housing, economic, industrial or touristic policies was one of its major sources of failure. Nevertheless, this is not a deficiency of the statute of 17-7-1923 properly speaking, but a major shortcoming of subsequent relevant legislation, which failed to take into consideration the requirements of orderly town planning.

With respect to legislative measures aiming specifically at controlling unauthorized development, we have already pointed out that a complete system of sanctions (demolition, fines etc.) is provided by the Statute of 17-7-1923 itself and the Decree of 18-3-1926 enacted by legislative authorization.

Consequently, all subsequent laws on the same issue (see above) were in fact redundant and unnecessary. Their contradictory and self defeating measures (failure factors 1.14, 1.15) and especially the ex post facto legalization of unauthorized constructions were mere palliatives which increased the confusion of controllers, encouraged offenders and ended up aggravating the situation instead of improving it.

8.4. A Detailed Systems Analysis of Failure Factors in the Implementation of the Statute of 17-7-1923

A. A deep analysis of any public problem is an impossible task without the proper mapping of the social process, since each one of the various variables involved in the problem is related to a distinct (differentiated) part of this process. Some variables belong to the communication process, others to the economic process, others to the cultural process etc. Therefore, the search for any systemic relationships between these particular variables presupposes a mapping of the relationships of these parts of the social complex to which they are connected.

Past theories of society are too general to be of help in this task. This can be done only by systems theory. Early systemic models, such as Parson's and Luhmans's, are too abstract to be used for that purpose. In contrast, the Decleris model of the seven subsystems of the social complex is more adequate and precise, since it has been formulated after many years of applied research in social and public problems, undertaken by the Greek Systems Society.

According to Justice M.Decleris, Society, or the *Social Complex* as he calls it, is a very loose system composed of seven highly differentiated and semi-autonomous subsystems, which perform the necessary tasks for the survival of any large human aggregate and are diversified both functionally and structurally, each having its own different properties. Those seven social system are:

1. *Evaluation System*. (Value System. V/S) which authoritatively establishes the human value system and serves as a goal bank determining the orientation of the Social Complex into the greater environment through the motivation of human actors. It is the top social system because it postulates answers to the ultimate questions put by man: Religion, metaphysics, philosophy, morals, art are among its visible components.

2. *Communication System*. (Information Processing System I/S) is the cognitive system of the Social Complex: i.e. the system whereby information is gathered, processed, transmitted, exchanged and stored by humans. It is the system responsible for the validity (objectivity) of human knowledge and communication and the rationality of action. Language, logic, science and technology are among its visible components.

3. *Hierarchy System*. (H/S) is the system supporting communication within the Social Complex through the distribution of a symbolic status to the various roles of social actors. Following this distribution social roles are stratified with those located at the higher levels claiming preferential access to the attention/reception/influence of those located at the lower levels. Casts and classes are among the well known components of this system.

4. Governance System, (or Political System, G/S) is the rational decision making system of the Social Complex. It provides effective local control of the trajectory of the Social Complex, i.e. control for some period of time and/or for some directions within the broader orientation provided by the Evaluation System. Its function is a mixture of power gaming (politics) with rational decision making (law). Politics, States and Law are among its visible components.

5. Environment Control System, (E/S.) is the system supplying matter/energy to the Social Complex and all goods and services which are needed by its various systems. It is a mixed, i.e. both information and matter/energy processing system, since humans gain access to goods and services through a market (:economy) embedded in a physical environment (eco-system). It is a decision-making system under great uncertainty and among its visible components are the biosphere, human population, habitat/ecistics and economy.

6. Affective System, (A/S) is basically the reproductive system of the Social Complex and rests on a core of biologically programmed connections (sexuality/procreation), on whose model other extended networks of emotive support have been formed. Families, relations, clans, friends circles, ethnic groups and even nations are its best known components.

7. Person System, (P/S) The person system is conceived as the singular organization of the concrete individual as the compound psychic and biological system, which accounts: a) for converting in its own way the inputs from all the other systems of the Social Complex and b) for introducing infinite variety into the social complex through even the slightest deviation from the programs of the various social systems, and c) thereby causing some sort of uncertainty and even phenomenal chaos in the Social Complex through statistical degradation. In any case the Person System is a technical term for the inherent autonomy of the human individual. Despite the numerous constraints from all the higher level hierarchical systems, the Person System is far from being a fully programmed implementor of their binding laws and programs. On the contrary, on the one hand it receives their guidance and instructions and on the other it acts upon them and actively enriches them. In this sense the top level of the Social Complex (V/S) is connected with the bottom level (P/S) in a circular manner which is typical of any system.

The above subsystems are depicted in the following graph of mixed structure, i.e. both hierarchical and cyclic.

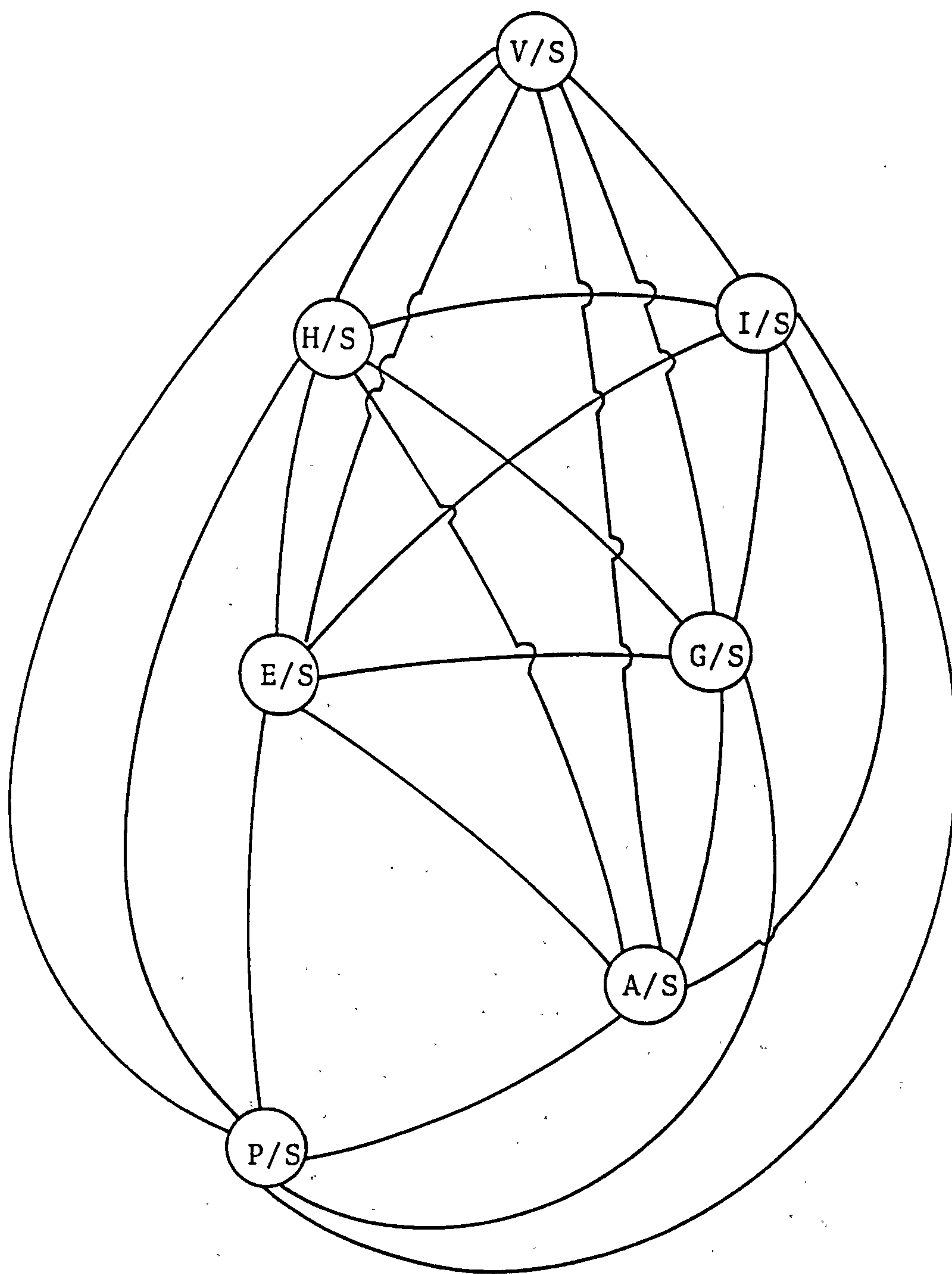


Diagram of the Social Complex

B. The diagrams of failure factor categories depicted above (7.2) constitute the first stage of information processing from the data of the problem situation; as such they have provided us with the first clear picture of an expressly formulated problem, consisting of the basic relevant factors and their interrelationships.

The following stage proceeds to a further analysis of all identified factors and to a further exploration of their interactions. This is attained through the classification of all failure factors according to their position in the various subsystems of the Social Complex mentioned above. On the graphs of this stage the failure factors are depicted in groups occupying different hierarchical levels, which correspond to the relevant social subsystems. One and the same factor may occupy several positions on the same graph, depending on the relevance of its aspects to more than one social subsystems.

More specifically, each graph represents a particular failure factor category (e.g. organization, administrative practice). While the graphs of the previous section depicted the interrelationship among failure factors belonging to the same category, the graphs of this section have a different function. Here the failure factors are represented as related to the various societal systems (moral, economic etc). For example, corruption, a failure factor belonging to the failure factor category of Management, is depicted in all its social aspects, which are multiple: in that sense, corruption is accepted by the societal value system (V/S); it is also a common social and political practice (level of Hierarchy System H/S and Governance System G/S); it is a standard economic practice (level of Environmental System E/S) and, finally, it is internalized by the individual actors (level of Person System P/S). Hence, it is obvious that if a policy against corruption is adopted, it should be properly designed so as to cope with all the above aspects.

The practical significance of these graphs consists in the fact that information depicted on them is now sufficiently processed to be converted into alternative solutions. As we have already mentioned, alternative solutions are hypothetical optimal systems designed in such a way as to eliminate or at least ameliorate the failures of the actual system. The great value of the above type of graphs is that they provide the decision maker with a clear picture of the way his attempted interventions are related to the different subsystems of the Social Complex. This means that in his quest for alternative solutions the decision maker using the appropriate techniques (e.g. nominal groups, brain storming etc.) will have to search for specific measures, whose effectiveness will be checked through the constant monitoring of their interrelationships. Thus every proposed measure will have to be positively related to the other measures with which it will be directly connected.

Depending on the level where each failure factor is situated, the proposed measures will be designed accordingly. It is self evident that the higher the level of the required intervention, the slower and perhaps more uncertain its impact. In other words, interventions aiming at improving or eliminating failure factors connected with higher level subsystems, as e.g. the evaluation system or the communication system, require a much longer time

perspective for their impact to be assessed than interventions aiming at affecting failure factors related to lower level social systems, as e.g. the economic system.

Moreover, multidimensional failure factors, i.e. factors whose aspects are related to more than one social systems, are usually more difficult to deal with, since their improvement or elimination requires simultaneous intervention to more than one social systems. Careful study and analysis of the diagrams may offer useful insights regarding the social aspects of the failure factors.

For example, the failure factor category of poor resources has an internal complexity due to the fact that it is the product of the parallel activity of many multidimensional factors. The acknowledged failure of the state to provide adequate funds for the realization of townplanning schemes is due to the fact that the problem of poor resources has always been treated as a merely fiscal one, while all its other, equally important, social aspects have been ignored.

In the diagrams the failure factors occupy a certain hierarchical position which suggests the right order for dealing with each one of them.

The following graphs depict the same Failure Factors Categories as above (7.2). The elements (failure factors) are grouped together on hierarchical levels corresponding to the relevant social systems. Multiattribute elements related to more than one social systems appear at all corresponding levels. For that reason the following graphs, through depicting in fact the same failure factor categories as the ones above, appear to be much more complex both in the number of their components and in their interconnections.

FF3. Resources *

The location of many failure factors of this category at the level of the Evaluation System (V/S) suggests that the problem of resources should not be treated as a merely fiscal one. Long term measures should be adopted, aiming at affecting the relevant set of social values. The basic idea should be to instill the conviction to the public that, in the long term townplanning is not a burden but a benefit for private property.

Failure Factors

- 3.1 Poor resources**
- 3.2 Poor and overformalized financial management**
- 3.3. Increased expropriation costs**
- 3.4. Unduly low private contribution.**

See Diagram of Resources.

At the highest level of the social complex, occupied by the Evaluation System (V/S), we have located two failure factors of the system of Resources, increased expropriation costs (3.3) and unduly low private contribution (3.4). These two factors indicate that the traditional strong attachment of Greeks to the value of private property accounts for their resistance to any kind of sacrifices dictated by the necessities of town planning and thus constitutes a serious obstacle against governmental measures aiming at increasing private contribution to town planning costs.

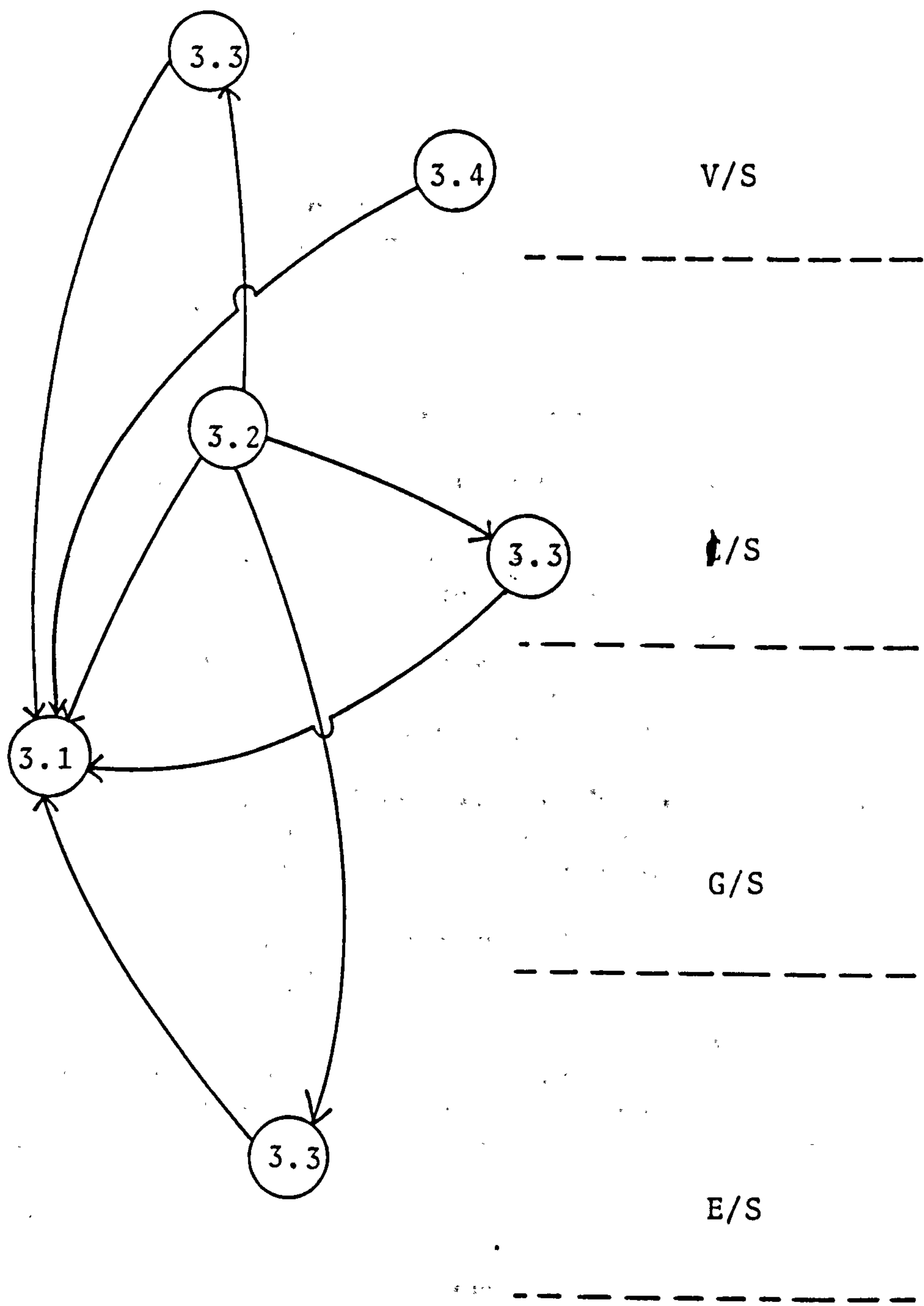
At the next level, that of the Communication System (I/S), we locate the same factor (3.3) from a different perspective, namely the deficiencies of the administrative machinery in terms of efficiency, effectiveness and appropriate time management, which end up increasing the overall expropriation costs. Poor financial management (3.2) is another factor which belongs to this level as a result of the lack of properly trained financial managers in the civil service.

At the level of the Governance System (G/S) we locate poor resources (3.1) as the outcome of a poorly designed town planning financing system.

The same factor (3.1) appears again at the level of the Environment Control System (E/S), this time from its purely financial aspect. At the same level we find again failure factor (3.3), this time caused by the selfseeking attitude of land owners, who try to obtain the highest possible compensation for their expropriated property (e.g. by deliberately increasing its value through development, construction etc. pending the expropriation).

* Note : Failure Factors 1 (Program) and 2 (Case Law) are not included at this stage of analysis since, as we said, they belong to the phase of policy formulation.

Diagram of Resources



FF4. Administrative Practice.

Administrative Practice appears to be a failure factor category of great complexity due to the dominant position of clientele politics in Greek political life. In fact, this particular factor (clientele politics) imposed an objective and almost insurmountable constraint against any chance for improvement. The dominant position of this factor provides as adequate explanation for the failure of any Administrative Reforms so far attempted in Greece. It also accounts for the prevalence of another failure factor, equally characteristic of the behavior of the system, improvisation. It is a factor which keeps the entire administrative system moving, if not always to the right direction.

Failure Factors

- 4.1 Clientele politics**
- 4.2 Passive attitude**
- 4.3 Absence of foresight**
- 4.4 Procrastination**
- 4.5 Incrementalism**
- 4.6 Improvisation**
- 4.7 Inadequate circular instructions.**

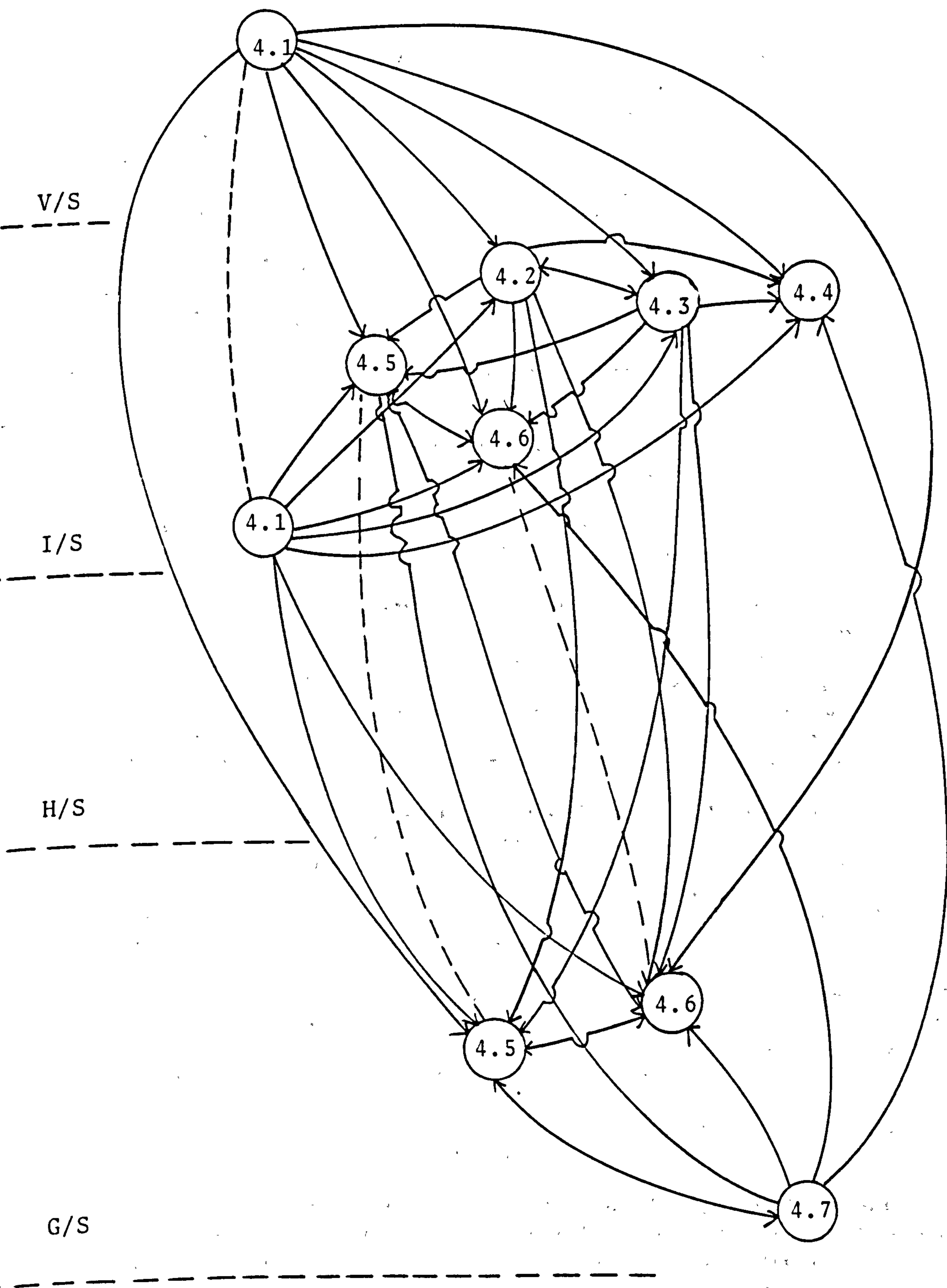
We have placed failure factor 4.1 (clientele politics) at the level of the Evaluation System (V/S), since it is an integral part of the Greek political culture. Clientele politics, being in fact the extrapolation of the feudal contract in modern societies, express the deeply rooted popular belief that citizens have no direct access to any state benefits, unless they are proteges of a particular political lord, with whom they are bound by mutual trust and interests. Clientelism exists both in the relation between politicians and civil servants and between civil servants and the public.

The same factor 4.1 reappears at the level of the Hierarchy System (H/S), where the supremacy of politicians is universally acknowledged, so that they dominate both scientists and professional civil servants.

A host of failure factors is located at the level of the Communication System (I/S). In the traditional, highly individualistic Greek culture initiative and activism are only associated with private activities; in contrast, when involved in organizations, Greeks tend to become passive, because deep inside they do not believe in organizational effectiveness. Factors 4.2 (passive attitude) and 4.4 (procrastination) are the expression of this attitude, while absence of foresight (4.3) and incrementalism (4.5) are also typical of the Greek organizational behavior. High capacity for improvisation (4.6) is an integral part of Greek culture, which often manages to offset the shortcomings of poor organization and conceal the disadvantages of poor planning, at least in the short run. As it has repeatedly offered to the administration a convenient way out of the numerous crises of its history, capacity for improvisation is a highly popular cultural trait.

Incrementalism and improvisation are also salient features of the Greek Governance System (G/S) and might be attributed to its poor organization. At the same level we place failure factor 4.7 (insufficient circular instructions) which indicates poor monitoring .

Diagram of Administrative Practice



FF5. Organization and Management

FF5.A. Organization.

Greeks have always shown low capacity for organizing themselves. The present diagram analyses and explains the multiple aspects of the factors responsible for this phenomenon. It is clear that most failure factors originate from the traditional Greek value code, which does not favor the formation of large scale systems and, thereby, feeds clientele politics. There are, however, other aspects of the some factors, located at lower levels, which allow for limited intervention and improvement.

Failure Factors

- 5.1 Overcentralization**
- 5.2 Complex structures**
- 5.3 Deficient personnel management system**
- 5.4. Excessive politicization**

It is characteristic that most failure factors of the organization subsystem can be found at more than one levels. Thus factor 5.1 (overcentralization) is a salient feature of both the Evaluation and the Communication System, closely related to clientele politics and as such it has dictated the basic structure of the Governance System.

Deficient personnel management system (failure factor 5.3) has its roots at the level of the Evaluation System, as yet another expression of clientele politics; moreover, being the outcome of the absence of scientific knowledge on public management it is related to the Communication System (I/S). The same factor, seen from the perspective of the low social status and the insufficient compensation of civil servants, respectively belongs to the Hierarchy System (H/S) and Environment Control System (E/S) as well.

The basic causes for the lack of political support to the administration (5.4) should be traced up to the level of the Evaluation System (V/S), where the opportunism of politicians is a prevalent feature, and further down to the level of the Hierarchy System (H/S) where we note that administrative decisions have no autonomous authority per se but are greatly dependent upon political approval.

Formalism (5.5) is a characteristic expression of the system's incapacity to function as prescribed due to deficiencies at the level of the Communication System (I/S) (e.g. insufficient application of scientific methods and/or technology to the administrative process etc.).

The same factor is also closely linked to the Governance System (G/S), since it reflects its fractal (prismatic) quality.

Excessive politicization (5.6) is closely linked to both the Evaluation and Hierarchy systems, since it expresses the prevalent popular belief that politicians should have the lead in solving social problems and consequently should be rewarded with a very high social status.

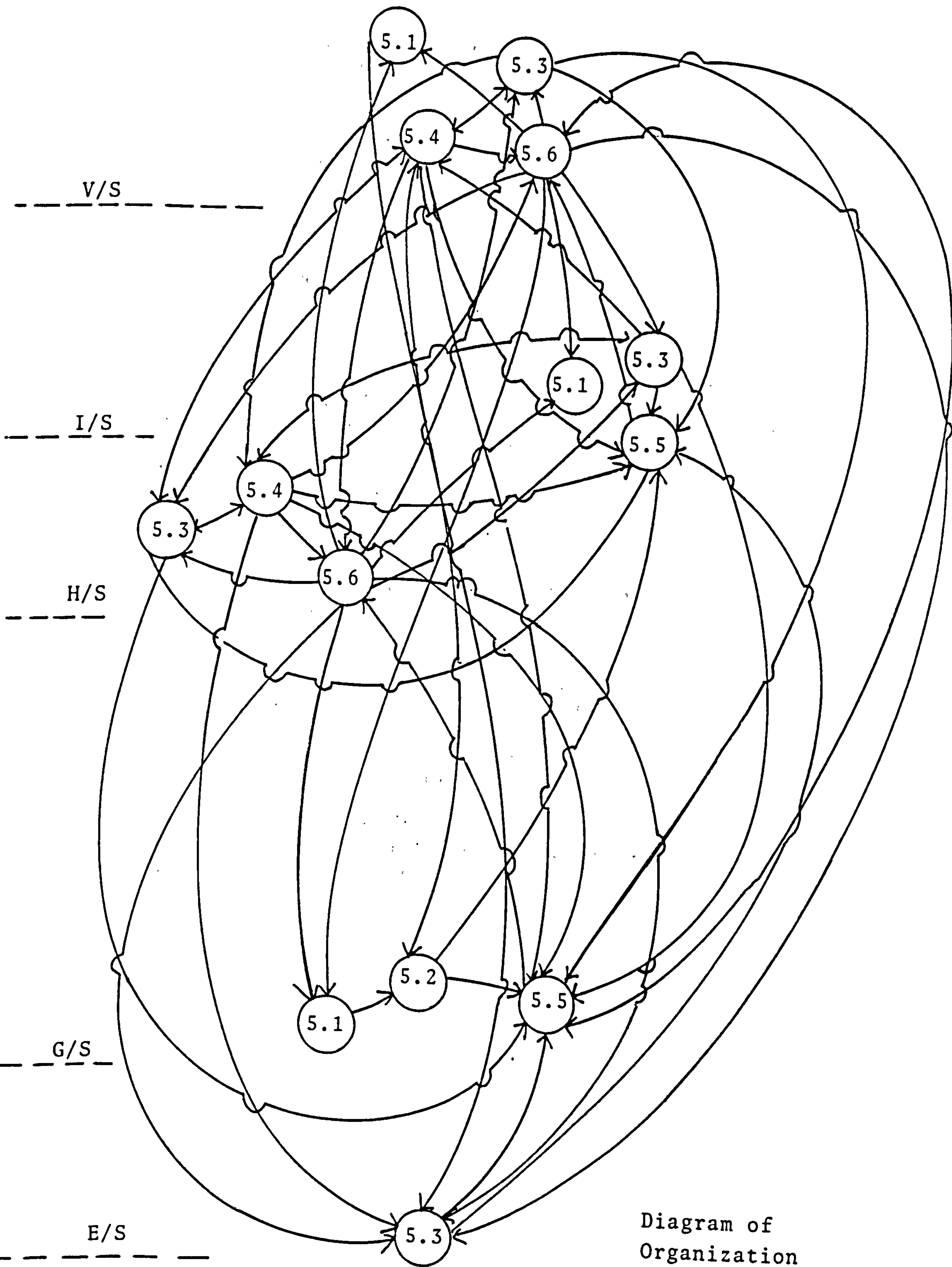


Diagram of
Organization

FF5.B. Management

Management bears the negative impact of corruption from more than one social levels. In order to improve the management system, one has to deal not only with one but with many forms of corruption, such as political corruption, economic corruption, administrative corruption etc. Most important there is corruption deeply imbedded in the social value code (V.S.) which inevitably also appears as a common trait of individual behavior (P.S.)

Failure Factors

- 5.7. Legalistic attitude**
- 5.8. Poor managerial skill**
- 5.9. Lack of urban planning skill**
- 5.10. Corruption**

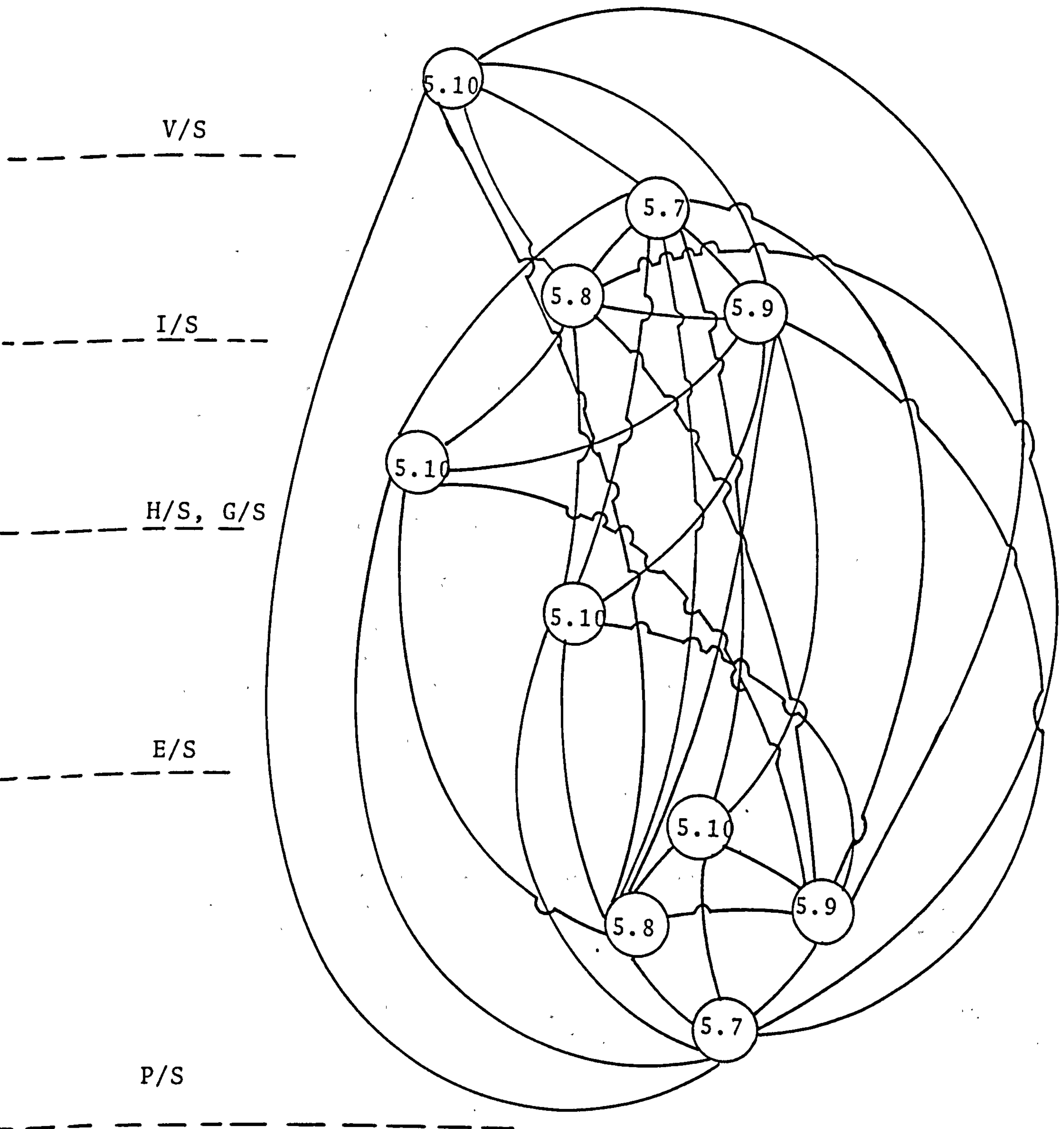
The prevalent failure factor of the system, corruption (5.10), is located at numerous levels under different forms. Besides its obvious connection with the Evaluation System (V/S), corruption is also related to the Hierarchy System (H/S), whose structure permits great social mobility on the basis of economic criteria and thus encourages corruption. Seen from a purely financial perspective, the same factor also belongs to the Environment Control System (E/S), since it seriously increases the implementation costs of town planning in multiple ways.

Finally, corruptibility is a distinct personality trait and as such it is directly related to the level of the Person System (P/S).

Failure factor 5.7 (legalistic attitude) indicates a characteristic way of approaching and solving problems and is, therefore, connected with both the Communication System (I/S) and the Person System (P/S).

To the degree that poor managerial skill (5.7) and lack of urban planning skill (5.8) are caused by inadequate education and training , they belong to the level of the Communication System (I/S). For the rest, managerial competence and capacity for conceiving and materializing successful town planning solutions are special talents related to the implementor's Personal System (P/S).

Diagram of Management



FF6. Communication.

The study of the diagram shows that communication is a failure factor category offered to corrective intervention. There are many opportunities for improving the legal modalities of communication (rationalization of communication structures and procedures at the level of the state (G-S), while advanced communication and information technology offers great chances for improving factors located at level 2 (I.S.)

Failure Factors

- 6.1. Multiplicity of implementation agencies.**
- 6.2. Highly formalized and centralized decision-making.**
- 6.3. Slow and cumbersome procedures**
- 6.4. Excessive judicialization**
- 6.5. Extensive citizen participation**
- 6.6. Poor technological support**
- 6.7. Poor memory**
- 6.8. Excessive noise**
- 6.9. Information overload**
- 6.10. Low reliability**

At the level of the Evaluation System (V/S) we place failure factor 6.4 (excessive judicialization), since it is an inherent trait of Greek culture to resort to litigation rather than try to reach a compromise. Failure factor 6.10 (low reliability) is also located at this level to indicate the tendency of Greeks for expressive communication rather than exchange of information.

Naturally most the failure factors of this system are located at the level of the Communication System, since they refer to the structure of the communication network and its properties.

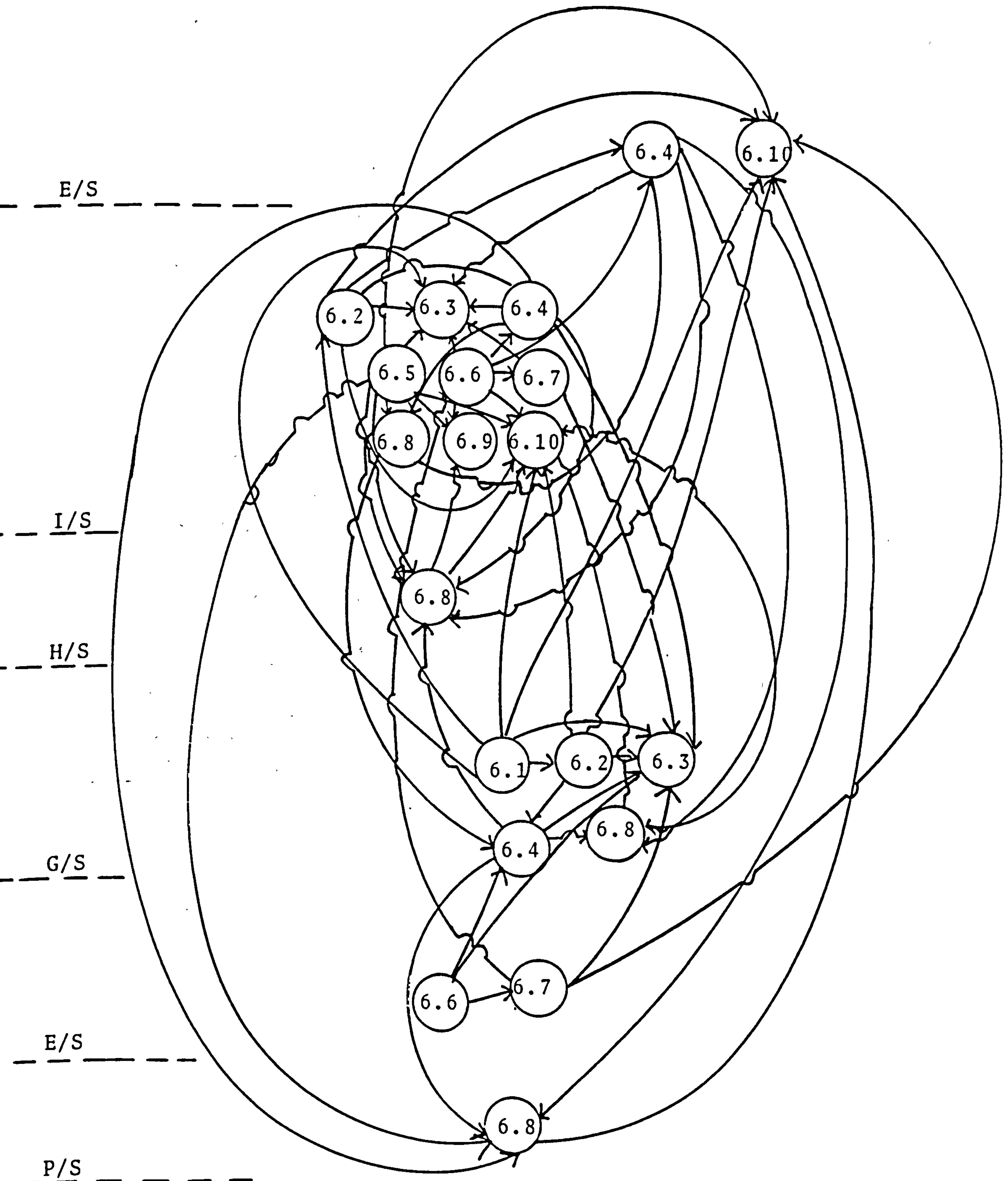
At the level of the Hierarchy System we have placed failure factors 6.5 (extensive citizen participation) and 6.8 (excessive noise) to point out the often unstructured character of participation.

A great number of failure factors (6.1, 6.2, 6.3, 6.4, 6.5) are located at the level of the Governance System, since they refer to the basic characteristics of the formal decision making system entrusted with urban policy.

Failure factors 6.6 (poor technological support) and 6.7 (poor memory) are placed at the level of the Environment Control System to point out that the formal decision making system is poorly supported by information technology due to the scarcity of resources.

Finally, failure factor 6.8 (excessive noise) is located at the level of the Person System (P/S) to indicate that the tendency for selfappointed involvement is a characteristic trait of Greek personality.

Diagram of Communication



FF7. Control

Contrary to communication, the failure factor category of control presents serious inherent problems. The very idea of exercising control according to objective standards is unpopular and conflictual to Greek individuality. Limited improvement, however, is feasible by redesigning the control at the legislative level (G.S.) and providing inservice training to control agents (I.S)

Failure Factors

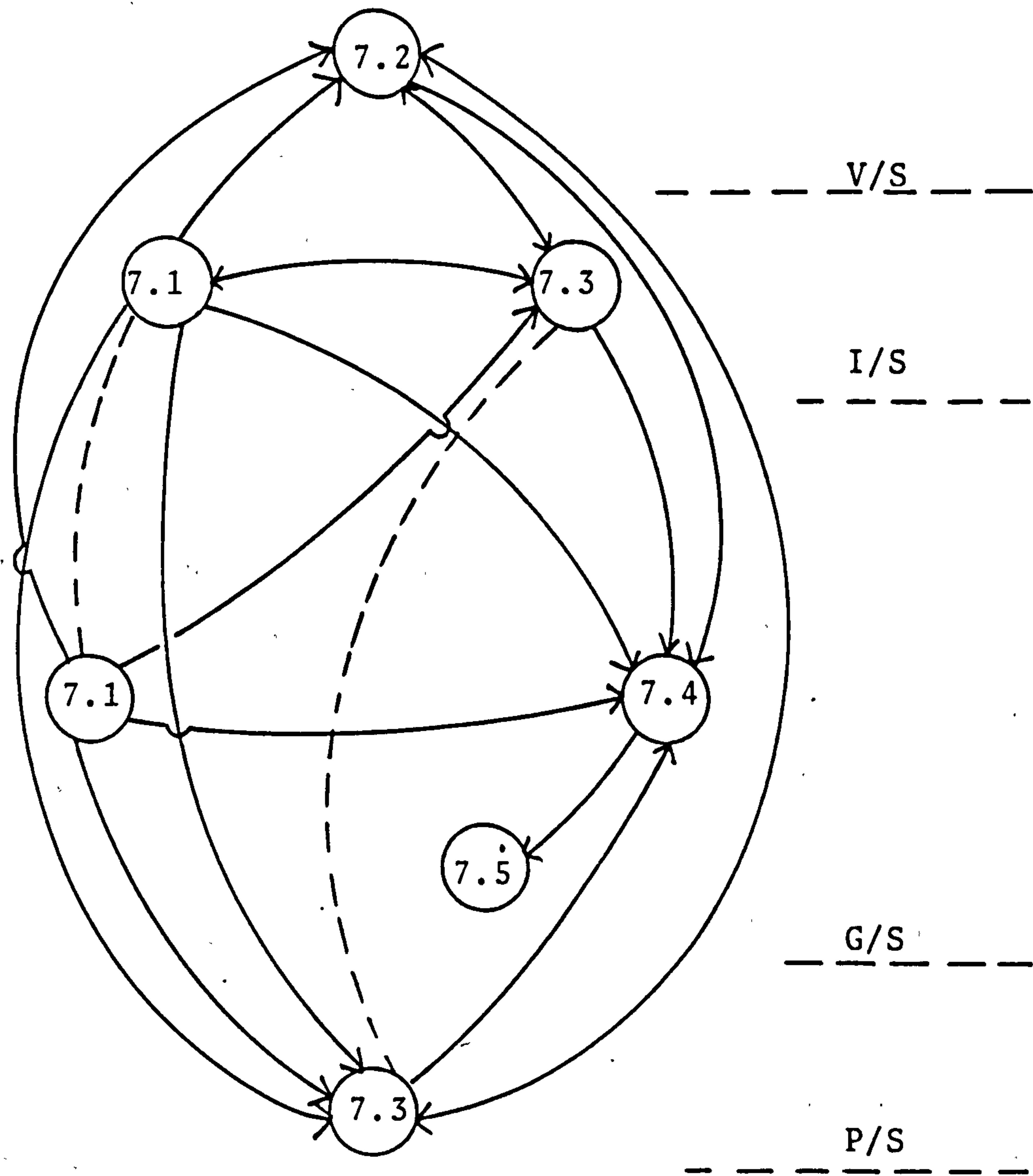
- 7.1. Lack of operative standards**
- 7.2. Use of irrelevant standards**
- 7.3. Misinterpretation of standards**
- 7.4. Poor monitoring**
- 7.5. Poor activation**

The location of failure factor (7.2)(use of irrelevant standards) at the level of the Evaluation System (V/S) indicates that orderly and rational town planning is not included among the highly cherished values of the system; on the contrary, town planning considerations are easily set aside in view of other, more popular, values such as wealth, private property etc.

Deficiencies of the Communication System (I/S), such as the absence of rule-making expertise and/or inadequate legal training of civil servants account for failure factors 7.1 (lack of operative standards) and 7.3 (misinterpretation of standards). The latter (7.3) may equally be attributed to deficiencies related to the person system (P/S).

Owing to the lack of experts in rule-making at the level of the Communication System (I/S), the general instructions of the program are not properly translated into operative objectives in order to facilitate implementation (7.1). Inadequate monitoring (7.4) and poor activation (7.5) may also be attributed to organizational deficiencies of the Governance System (G/S).

Diagram of Control



FF8. Pressure Groups

Abuse of lobbying is a standard practice which appears at all levels and in all social systems. The presence of nearly all elements of this failure factor category at the level of the value system, (V.S.) indicates that any improvement will be difficult and slow. Nevertheless, limited improvement might be expected by offsetting the influence of competitive interest groups. In the case under study a necessary step towards this direction is the immediate encouragement of weak environmentalism organizations.

Failure Factors

- 8.1. Excessive involvement**
- 8.2. Convergent negative action**
- 8.3. Absence of environmentalist groups**
- 8.4. Suggestibility of officials**
- 8.5. Effectiveness of action**

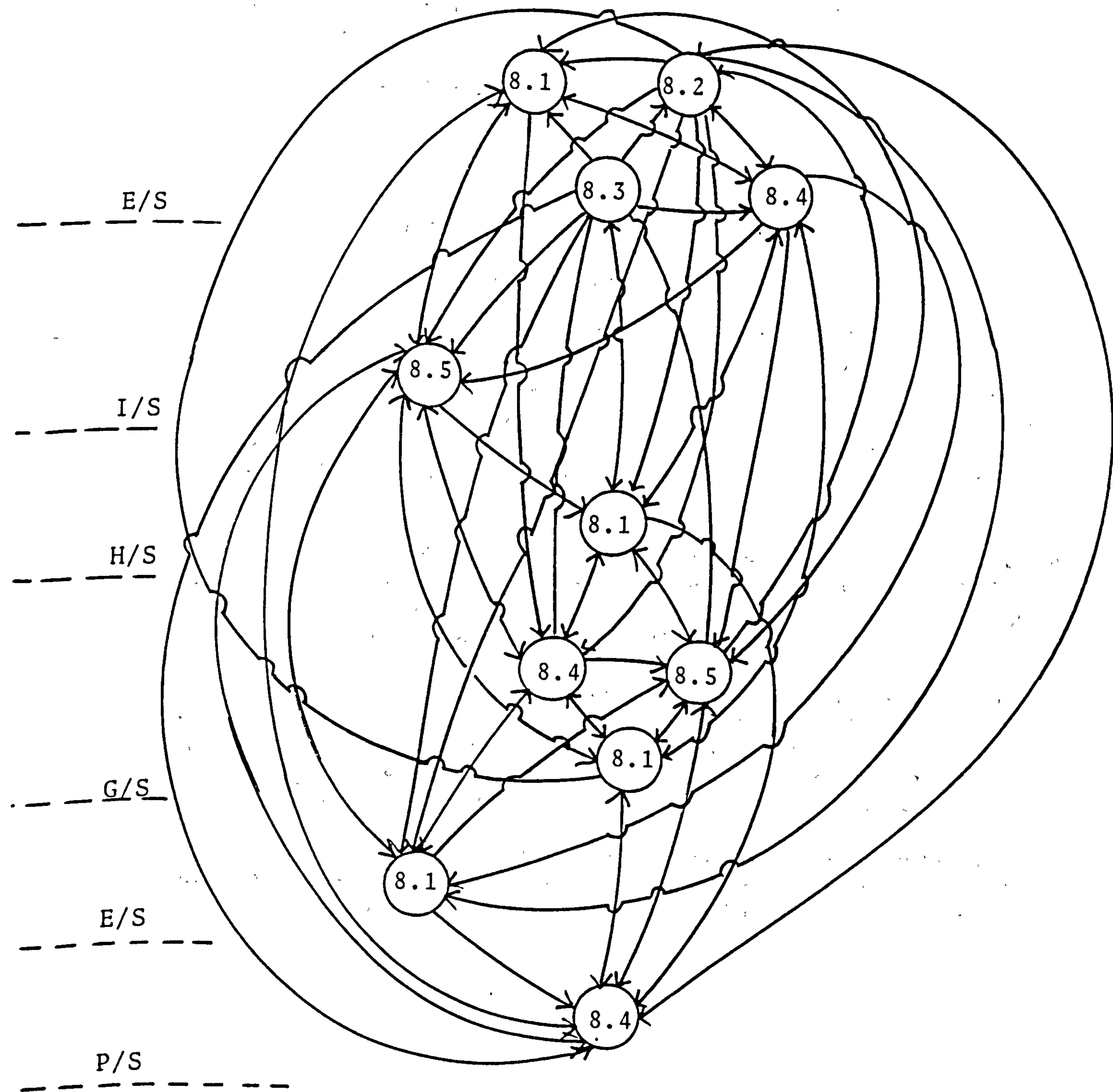
The excessive involvement of pressure groups in the implementation process (8.1) originates from the traditional deeply rooted attitude of Greeks for participation in the political process and in this respect it is closely linked to the Evaluation System (V/S). Moreover, the proliferation of pressure groups, as a form of public solidarity in the absence of social housing policy, points out the close relationship of this factor (8.1) with the Hierarchy System (H/S). The same factor is related to the Governance System (G/S), as it is reinforced by the characteristic weakness of Greek governments to insist upon implementation of their policies when confronted with public reaction. Since pressure groups, motivated by self-seeking purposes, have often contributed to the financing of town planning activities, the same factor (8.1) appears again at the level of the Environment Control System (E/S).

Failure factors (8.2) (convergent negative action) and (8.3) (absence of environmentalists) are characteristic of the prevailing Evaluation System (V/S) which allows for town planning values to be effectively suppressed by lucrative considerations.

Factor (8.4)(suggestibility of officials) also belongs to the Evaluation System (V/S), as an expression of the prevailing loose and permissive moral standards regarding the integrity of public servants. The same factor may also be linked a) to the Governance System (G/S), which puts up with and tolerates such an attitude on behalf of its officials and b) to the person system (P/S), since in the final analysis, notwithstanding environmental pressures, the convictions regarding the appropriate professional behavior of a civil servant depend on one's character and personality.

The failure of the Communication System (I/S) to develop strict and authoritative, logical and scientific criteria for the formulation and evaluation of public decisions accounts for the effective interference of pressure groups in the process (8.5). The same factor is further enhanced by the incapacity or reluctance of the Governance System (G/S) to neutralize undesirable interest group pressure.

Diagram of Pressure Groups



FF9. Human relations

The location of the basic failure factors of this category, namely defiance of authority and mutual distrust, at the level of the Evaluation System (V/S) implies that they should be considered as targets of a long range policy; the same factors existing as personality traits (P/S) of civil servants may be improved by means of short or middle range policies enhancing their status of the latter in the state and in society.

Failure Factors

- 9.1. Mutual distrust**
- 9.2. Defiance of authority**
- 9.3. Autocratic leadership**
- 9.4. Favoritism**
- 9.5. Interference**
- 9.6. Low motivation and morale**

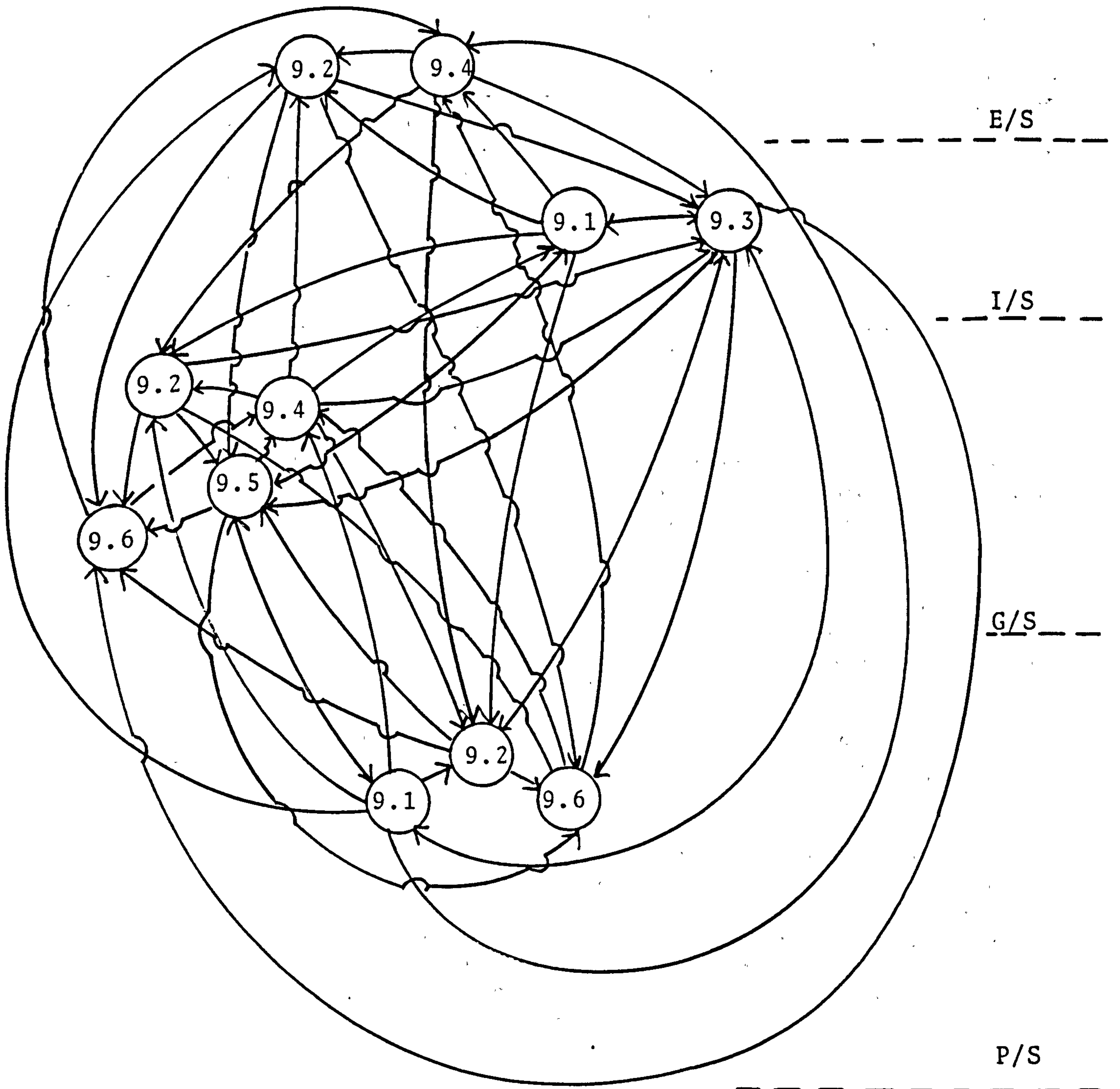
Defiance of authority (9.2) belongs to the Evaluation System (V/S) as a characteristic feature of the Greek culture in general and political culture in particular. Favoritism (9.4) also belongs to this level since it constitutes a particular expression of clientele politics. Both factors (9.2 and 9.4) are found again at the level of the Governance System (G/S) where, together with interference (9.5) they constitute salient features of the Greek political process.

Mutual distrust (9.1) is a serious impediment to communication and as such it is closely related to the Communication System (I/S). At the same level we locate factor 9.3 (autocratic leadership style) as the typical modality of information processing in the Greek administration.

Low motivation and morale (9.6) are closely connected to the Governance System, since they are chiefly caused by the deficient system of recruitment, compensation and professional advancement of civil servants. The same factor is naturally linked to the Person System (P/S) as well, since it is obviously related to individual frustration tolerance capacity.

At the same level (Person System) we locate again factors (9.1) (mutual distrust) and (9.2) (defiance of authority) which, being salient features of the Evaluation System, are also common behavioral traits of the typical Greek personality.

Diagram of Human Relations



Appendix

Greek Legal Culture

For a better comprehension of the analysis of the selected implementation failure it might be useful to have some knowledge of the legal and administrative culture in the context of which such a failure took place. Though the subject is broad enough to require a separate, empirically documented study, we shall here confine ourselves to a rough sketch of some elements of the Greek administrative and legal culture, based on data provided by the few available relevant studies as well as on the author's professional experience in the judicial review of governmental and administrative activity in Greece.

A. Greek Constitution

The overview of Greek legal culture should start with a brief description of the Greek constitutional order, which provides the frame of that culture. The Greek constitutional order belongs to the big family of continental constitutional systems, which started as constitutional monarchies and developed further into constitutional democracies. Leaving aside the first revolutionary constitutions of the emergent modern Greek state (Constitution of Epidaurus of 1822, Constitution of Astros of 1823 and Constitution of Trizina of 1827), which were directly inspired from the French Revolutionary Constitution, the archetype of the Greek Constitution of 1864 has been the Belgian Constitution of 1831. Since the Belgian Constitution was modeled after the French Constitution of 1791, there is an indirect affinity between the latter and the Greek. However, in the course of its revisions the Greek Constitution has received the influence of other Constitutions as well as, e.g. the German and the American.

Despite its successive revisions (1911, 1925, 1927, 1952 and 1975 as well as the two constitutions of 1968 and 1973 issued by the dictatorial regime) the hard core of the Greek Constitution has remained recognizable. Like its prototype, the Greek Constitution has the structure of the classical continental system which basically includes : a) a list of fundamental rights, b) the principles of popular sovereignty (democratic principle) and rule of law (Rechtsstaat), c) the principle of the separation of powers, d) independence of the judiciary, e) representative system and f) parliamentary control. Under the influence of the Weimar Constitution of 1919 the list of fundamental rights expanded to include social rights, which were first recognized by court decisions and were finally incorporated in the Constitution of 1975.

For the purposes of this study the above description should be coupled with a brief sketch of the constitutional process (i.e. the dynamic element of the Constitution) and particularly the interaction among the legislature, the executive and the courts in the shaping and protection of fundamental rights and freedoms. The system of the constitutional protection of fundamental rights basically functions in the following way.

The classical fundamental rights and freedoms are expressly listed and guaranteed in the Second Part of the Constitution under the title "Individual and Social Rights". Such rights are, among others, equality (Art 4 # 1), including equality of the sexes (Art 4 # 2), free development of one's personality (Art 5 # 1), a right inspired from the German Constitution and broadly expressed in order to cover any conceivable form of participation in the economic, social and political life of the country, freedom of movement (Art 5 # 3), habeas corpus (Art 6), right to privacy, including inviolability of the domicile (Art 9) and privacy of communication (Art 19), right to petition (Art. 10), right to assemble (Art. 11), and to associate , i.e. to form non-profit unions and associations (Art. 12), religious freedom (Art. 13), freedom of expression (Art. 14) including academic freedom and the specific right to engage in artistic, scientific and cultural activities (Art. 16), right of property (Art. 17) and, finally, right to judicial protection (Art. 8 and 20).

The above mentioned classical individual rights were supplemented by a list of social rights, originally recognized by the decisions of the courts and subsequently included in the constitutional revision of 1975. This list includes the right to protection of family, marriage, motherhood and childhood (Art. 21 # 1), protection of disabled veterans, war victims and people suffering from incurable ailments (Art. 21 # 2), protection of health, youth and old age (Art. 21 # 3), right to work (Art. 22 # 1) and to strike (Art. 23 # 2) and finally right to acquisition of a home by the homeless or those inadequately sheltered (Art. 21 #4).

Of particular importance for this essay are a group of rights which were first incorporated in the Constitution of 1975 and intend to *protect natural and cultural environment and to guarantee an orderly development of the ecistic environment*. Thus Art. 24 states the following.:

"1. The protection of the natural and cultural environment constitutes a duty of the State. The State is bound to adopt special preventive or repressive measures for the preservation of the environment. Matters pertaining to the protection of forest expanses in general shall be regulated by law. Alteration of the use of State forests and State forest expanses is prohibited, except where agricultural development or other uses imposed for the public interest prevail for the national economy.

2. The master plan of the country, and the formation, development, town planning and expansion of towns and residential areas in general shall be under the regulatory authority and the control of the State, in the aim of serving the functionality and the development of settlements and of securing the best possible living conditions.

3. For the purpose of designating an area as residential and of activating its town plans, property included therein must participate, without compensation from the respective agencies, in the disposal of land necessary for the construction of roads, squares and public utility areas in general, and contribute to the expenses for the execution of basic public town planning works, as specified by law.

4. The law may provide for the participation of property owners of an area designated residential in the development and general accommodation of that area on the basis of an approved town plan, in exchange for real estate or horizontal storeys of equal value in the parts of such areas that shall finally be designated as suitable for construction or in buildings.

5. The provisions of the preceding paragraphs shall also be applicable in the rehabilitation of existing residential areas. Spaces remaining free after rehabilitation shall be disposed for the creation of common utility areas or shall be sold to cover expenses incurred for the rehabilitation, as specified by law.

6. Monuments and historic areas and elements shall be under the protection of the State. A law shall provide for measures restrictive of private ownership deemed necessary for protection thereof, as well as for the manner and the kind of compensation payable to owners." (Official translation).

Though recent, the above constitutional provision has already been the object of systematic processing by the courts and is enriched by case law which will be discussed below.

It is important to point out that the protection of fundamental rights is not absolute but relative. Technically, the right is formally declared in the text of the Constitution, while its further regulation is entrusted to the ordinary legislator. In other words the right is guaranteed in principle but its concretization in practice is reserved to the legislator. This formula permits considerable limitations of the rights imposed by common statute: such restrictions are tolerated on condition that they are imposed on the basis of objective criteria justified in the name of the public interest. For instance, while the right to set up an industry is constitutionally guaranteed as an expression of economic freedom, its exercise is restricted by laws requiring that various conditions related to security, public health, environmental protection etc are satisfied. Moreover, while the freedom of movement is constitutionally guaranteed, the prohibition to leave the country, imposed to debtors of the state, is deemed constitutional (C.O.S 2858/1985 Pl.). Further more, prohibition of the circulation of private vehicles in certain parts of town of settlements lacking the appropriate street network, dictated by reasons of traffic decongestion and aiming at serving the general interest do not violate the rights of personal freedom and freedom of movement (and more specifically the right to use private and not public transportation for one's movements, C.O.S 1749/1985). It was also ruled that the freedom to exercise the profession of attorney is not incompatible with an age limit for the entrance in the profession (C.O.S. 727/1985 Pl.). Other rights, e.g. the freedom of expression, are subject to limitations imposed by the constitutional provisions themselves. Thus the seizure of newspapers and other publications is allowed in exceptional circumstances enumerated in par. 3 of Art. 14. On the other hand, it was ruled that since the price of newspapers directly affects their circulation, state regulation of this price is unconstitutional (C.O.S 902/1981). It is also against the constitution to take legislative measures directly or indirectly affecting the price of newspapers to a degree that substantially influences their circulation: thus a levy of 7 % imposed in favor of the Press Workers Fund was struck down as unconstitutional (C.O.S 832/1985 Pl.).

In sum, we can describe this method of regulation of constitutional rights by a characteristic formula usually employed by the courts: what is actually inviolable is not the entire right but only its nucleus, its core (i.e. its most fundamental expressions), while legislative interventions in its periphery are allowed as long as they are imposed on the basis of objective criteria and dictated by serious economic or social considerations.

Thus e.g. the right of property which can only be taken away under payment of full compensation (Art. 17) is subject to severe limitations imposed in the name of the public interest without indemnification. Such restrictions may be imposed e.g. by zoning regulations (C.O.S. 1968/1974) or by town planning legislation, such as arcades and alleys (C.O.S 2602/1965, 3599/1972) Nevertheless, when the legislative intervention is prejudicial to the property right to such an extent as to render it in fact ineffective, then it is invalidated as unconstitutional .

The problem of the limits of legislative intervention is very delicate and the balance between acceptable and non acceptable restrictions of fundamental rights is a constant problem for the courts. At this point we should make clear that the system of fundamental rights is not merely declared on paper, but is accompanied by adequate guarantees and particularly by the right to judicial protection. By virtue of a special constitutional provision (Art. 20 par.1) every person is entitled to seek and obtain legal protection by the courts and may plead before them his views concerning his rights and interests as specified by the law. This right has been recognized by the courts ever since the liberation of modern Greece and probably echoes an ancient Greek tradition.

Unconstitutional statutes cannot be directly challenged and invalidated by the courts; in this sense there is no Constitutional Court controlling the law in Greece. Nevertheless, protection is rendered indirectly but effectively: according to Art 87 par. 2 in no case whatsoever are judges obliged to comply with provisions enacted in violation of the Constitution. In that way unconstitutional laws are not directly invalidated but are declared ineffective, i.e. they are not applicable on the case under consideration. This can be achieved either by a direct appeal before the Council of State against an administrative decision, individual or normative, issued on the basis of an unconstitutional law, or on the occasion of a civil process about rights before the civil courts. Sometimes this may result in the issuance of conflicting judgments on the subject of a law's constitutionality by the council of State (Supreme Administrative Court) and the Arios Pagos (Supreme Civil Court); in that case the conflict is resolved by a Special Highest Court (Art. 100 of the Constitution).

The case of a law which is issued in breach of the Constitution is relatively simple in comparison with the case where two conflicting constitutional principles seem to be relevant for settling an issue brought before the court, e.g. economic freedom versus environmental protection or freedom to exercise a profession versus public health etc. In such cases the courts resort to subtle argumentation in order to justify the prevalence of one right over the other not in an abstract way but always in connection with the specific case. In that sense the meaning of constitutional provisions cannot be derived by an in abstract interpretation of the constitutional document but only through the rich rulings of the courts. Generally speaking we can say that Greek courts usually adopt a strict attitude towards the legislator and consequently a considerable number of statutes is declared unconstitutional.

B. Legal and Administrative Culture.

Our overview of the Greek legal and administrative culture shall begin by defining the basic concepts that will be employed below. From the many meanings of the term "culture" we have adopted as more appropriate to our purpose the one developed in contemporary social theory of Parsons, Shils, Almond and Verba.⁶² From this perspective culture is the psychological orientation towards social objects, while political culture in particular is the overall distribution of citizens' orientation towards political objects. The terms legal and administrative culture respectively refer to the legal and administrative systems as internalized in the cognition, feelings and evaluations of the population. Thus the term "legal culture" is used here to imply the cognitive, affective (emotional) and evaluative orientation of the members of the Greek social complex towards Law and the State, while "administrative culture" implies their orientation towards Public Administration and its activities.⁶³ To paraphrase Almond and Verba, the term cognitive orientation is used to define knowledge and beliefs about the legal and administrative systems, their inputs and outputs, their roles and the incumbents of these roles; affective orientation refers to feelings about these systems and roles, personnel and performance, while evaluational orientation refers to the judgments and opinions about them, which involve the combination of value standards and criteria with information and feelings.

While this study focuses mainly on the prevailing cognitive and psychological orientation of the Greek society, it also takes specific note of certain principle subcultures (that of the members of the legal profession and that of the administration) to enhance comprehension of the respective systems.

a. In the first place we should point out that Greek political culture in general as well as administrative and political culture in particular defy easy classification in the usual typology of parochial, subject or participant cultures and even surpass in complexity the prismatic model of Riggs.⁶⁴ Though sufficient knowledge about the political, legal and administrative systems is available to and usually sought by the average citizen in his transactions with the administration, his attitude towards the latter is ambivalent depending on the circumstances. In this respect the Greek personality is in fact marked by a deep fracture. It seems that the traditional individualism and subjectivity of the Greek soul has encountered many difficulties in properly adjusting to the requirements of a modern state, whose dimensions surpass those of the traditional city state. As Hegel shrewdly observed, the Greeks, being the fathers of the ideas of human dignity and freedom, have not throughout their history been fully capable of overcoming their subjectivity in order to obey to the objective discipline of a larger system. This has remained the major political and legal problem of Greece until today.

As we have already mentioned, the cognitive element in the Greek legal and administrative culture is rather strong. Following on a long tradition, the legal profession is highly developed and flourishing: there are prestigious legal schools offering adequate training; the judiciary consists of professional judges with a long tradition of independence and reputation of impartiality, enjoying tenure and other constitutional guarantees of their

freedom of opinion; in a country of around 9.000.000 the number of lawyers amounts to 36.000 of whom 20.500 in Athens area only. In view of the above, the Greek citizen, irrespective of education, social or economic status, has at his disposal a highly sophisticated and easily accessible system, which, should need arise, is able to provide him with full knowledge of the structure and function of his administrative and legal system as well as his rights and duties towards the bureaucracy and in court.

Nevertheless, in his interaction with his fellow citizens and the Administration, the Greek tends to overlook the requirements of his relative position in a larger system and rather sees himself as a solitary figure situated at the center of it. Such an attitude is not incomprehensible if one bears in mind that the Greek administration has always espoused the fundamental governmental principle of the continent, according to which, whatever is not expressly permitted, is prohibited (in contrast to the Anglo-Saxon countries where exactly the opposite stands true). As the citizen is bound to stumble upon the Administration at his every step, he becomes fully aware of the impact of administrative decisions on his daily life and tries to manipulate them to his advantage. Apart from the fact that most professional activities are subject to some sort of administrative license, it is characteristic that the most sought after goods, from loans and grants to appointments and business contracts, are mostly available not through the market but through the state.

As a result competition for gaining access to the benefits of the public sector is high and all means are used for that purpose. While condemning the use of unorthodox and opaque means by his fellow citizens, the Greek feels free to use them himself, if only to overcome the anticipated reaction of his rivals.

Though generally feeling respect towards the Judiciary, the Greek citizen is rather skeptic in his evaluation of his Public Administration, which, when compared to this of the other European countries, he finds deficient. As a rule he is perennially dissatisfied with administrative performance, complains of red tape and questions the objectivity and integrity of civil servants. In his everyday dealings with the bureaucracy he is prepared to experience indifference or even negative reaction and is inclined to resort to defensive behavior. It is noteworthy that, owing to sporadic periods of defacto government in this century, a certain mistrust towards the police has never ceased to exist, with fear often giving way to an overreaction of aggressiveness.

In his attempts to influence the administration in his favor, the Greek usually acts as an individual via personal or political connections. In view of the individualistic nature of his demands, he seldom resorts to the formation of formal or informal groups for their promotion.

The use of political means for private ends in his transactions with the administration seems to be inevitable in view of the fact that public life has always been deeply penetrated by political factionalism. In fact cleavage between left and right has been deep and severe in the present century. Owing to political misfortunes mutual distrust was exacerbated and the gap broadened to the extent that we could almost identify two distinct subcultures, one prowestern and one pro third world (this cleavage is now

weakening in view of the integration in the European community).As a result the image of opposite party supporters is often distorted and the citizen's attitude is naturally projected in the relationship between civil servants and the public. Despite the fact that civil servants are, according to the law, politically neutral and, until recently, not permitted to express political opinions when in office, the public has never been convinced of their impartiality. The overwhelming and persistent permeation of politicians in the administration can only enhance the mistrust of those belonging to the opposition or altogether deprived of political support.

b. Since the orientations of the members of the legal profession have a decisive impact upon the formulation of the overall legal and political culture, both at the cognitive and the evaluational level, the particular subculture of judges and lawyers deserves specific attention at this point.

In the first place it should be pointed out that there is a substantial difference in the mentality of lawyers and that of judges. The latter are career judges who enter the judiciary usually in their late twenties and are from then on molded in a structured, disciplined and relatively closed environment. The former have always been more sensitive to the requirements of the free market and in their daily contact with their clients tend a sympathetic ear to their often exorbitant demands. Thus they do little to discourage the inherent tendency of the average Greek towards excessive litigation and not seldom they are inclined to blame the courts for their failures.

Judges on the other hand belong to a hierarchically structured and strictly disciplined body and are aware of their relative position in it. There are two distinct orders of courts in Greece, the civil and penal jurisdiction headed by the Supreme Civil and Penal Court (Arios Pagos) and the administrative jurisdiction headed by the Council of State Judges enter the judiciary after examinations held by their superiors and their whole career depends upon the judgment of the latter.

Thus the judiciary constitutes a self perpetuating body which, though exposed to a turbulent political environment, is less penetrable by political influence. In fact judges enjoy life tenure, meaning that they cannot be dismissed from office even if their position is abolished by law, and have a constitutional obligation not to enforce laws or administrative decisions issued in violation of the Constitution.

Nevertheless, in a legal system of the continental type, the judges' capacity to shape the law is rather limited, since law is made exclusively by statute and judicial precedent is only valid for the specific case on which it applies. However, incidental control of the constitutionality of laws has always been extensive in Greece and has provided judges with the opportunity to exercise significant and often corrective influence in many fields of the law.

Greek jurisprudence and case law have merged many continental elements, especially of French and German origin, into a distinctly Greek

variety which, though rigid and dogmatic in comparison to the Anglo-Saxon is, nevertheless highly sophisticated, realistic and equitable.

Administrative courts in particular, in whose jurisdiction town planning belongs, have succeeded in formulating a whole system of principles guiding administrative action and by persistent annulations have imposed effective controls upon the administration. Despite delays caused by workload and cumbersome procedures, administrative courts have managed to provide the citizen with a sense of security and have thus gained his confidence and esteem. Their undisputed authority is proven by the fact that their function was never interrupted in periods of de facto governments and their decisions invalidating administrative acts were even then invariably enforced.

Nevertheless, as cases with political underpinning tend to become hot, unfavorable court decisions often meet with administrative recalcitrance. This brings us to the crucial issue of administrative compliance to the decisions of administrative courts. The problem is by no means parochial in Greece, but exists in various degrees in all countries with similar judicial systems, such as France, Italy and Spain. Decisions of administrative courts often reverse governmental policies and are thus a considerable source of frustration for the administration, which resorts to all kinds of devices in order to gain time and avoid proper compliance.

c. To conclude our analysis a few words should be added regarding the Greek civil service and its particular subculture.

Civil service in Greece is a separate body of disproportionate size: today in an active population of circa 3.000.000 more than 600.000 are employed in the public sector, 300.000 of whom are civil servants strictly speaking.⁶⁵ Their professional status was established in the beginning of the century, when in 1914 they were granted constitutionally guaranteed tenure, in the sense that they stay in office as long as their position is provided by an organic statute. Civil servants enter the service following examinations and any changes in their professional career (transfers, promotions etc) are decided by Special Boards consisting of senior civil servants to a majority of 2/3 and often preceded by judges. The decisions of these Boards are subject to special appeals before the Administrative Courts, whose review is in some cases extended on the merits as well as on issues on legality.

Despite judicial supervision there is a latent politicization of the Administration consisting in the skillful manipulation of structures and procedures by Ministers and Secretary Generals, who are the political heads of Departments. As a result, though the spoils system was abolished in the present century, political parties have retained a strong grip upon the Administration not only directly but also indirectly through the civil service unions.

Aspects of administrative culture relevant to the present case study will be discussed in greater detail below. Nevertheless at this point we should take note of certain general features of the Greek Administration, which might be useful for the better comprehension of its problems. The

basic structure of the Greek Administration is the outcome of an abrupt and rapid growth of the public sector, which took place in the present century after national unification. Due to the ever-present politicization the Administration has always been overstuffed by political proteges, often unqualified and to whom hardly any in service training was provided. These factors prevented the formulation of a distinct administrative ethos and culture and made the civil service more vulnerable to political penetration. This by no means implies that decision makers in the civil service are incompetent or ignorant; on the contrary, as positions in the civil service have always been sought after by young professionals, its ranks are constantly filled with educated personnel, those with legal training traditionally having the lead but gradually giving place to economists and engineers.

Roughly speaking, Greek Public Administration, despite its somehow antiquated culture (legalistic attitude, centralized organization, cumbersome procedures) has managed to successfully accomplish many considerably complex and long term tasks. Nevertheless, owing to low pay, lack of incentives and political domination, Greek civil servants often feel frustrated and to those of low moral standards corruption is endemic.

Finally, a few words should be added regarding the relationship of central and local authorities in view of the role of the latter in town planning. Under the system of statute of 17.7.1923 the role of local authorities is more or less relegated to that of a simple opinion. Administrators at the center tend to look down upon local government since, until recently, the latter, organized according to the French model, had very limited functions and insufficient technical support.

NOTES ON PART TWO

1. These variables were identified as planning goals - areas of major interest by the American Institute of Planners in a series of guidelines published in October 1977 and intended to serve as a guide to both practitioners and authorities (legislators and courts). See *American Institute of Planners*, Washington D.C., Planning Policies, 1977.

2. For a classical account of the evolution of planning see *Arthur B. Gallion*, *Simon Eisner*, *The Urban Pattern*, City Planning and Design, Van Nostrand, Reinhold, 1986, fifth edition.

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3. The Romans adopted many Greek regulations (e.g. the minimal distance between rural constructions, *Lex duodecim tabularum* D 10,1,13 Gaius) and were greatly preoccupied with the aesthetic appearance of their buildings.

It is noteworthy that many provisions of Roman law regarding construction, nuisance etc, having survived through the Byzantine times, are repeated, with slight modifications, in the Greek Civil Code of 1946 or other contemporary acts of legislation.

4. In the times of the Byzantine empire townplanning legislation was introduced and developed by Emperor Zenon (474-491), who imposed, among other things, the minimal street width of 3 m, the minimal height of balconies 4,50 from the street level and the obligatory discharge of sewage networks in the sea.

5. On early townplanning experiments and model towns see *Colin and Rose Bell*, *City Fathers*, Penguin, 1972.

6. Also **Mumford Lewis**, *The story of Utopias*, Magnolia: Peter Smith Publishers, Inc, 1922; **Owen Robert**, *New View of Society*, 2nd ed, Fairfield: Augustus M Kelley 1977 (reprint of 1816 edition) **Wright Henry**, *Rehousing Urban America*, New York, Columbia University Press, 1935.

7. For a general account of the theories and work of the most prominent planning thinkers see **John Tetlow** and **Athony Goss**, *Homes, Towns and Traffic*, Faber, second edition, 1968. Also **Thomas A. Reiner**, *The Place of the Ideal Community in Urban Planning*, Philadelphia: University of Pennsylvania Press, 1963; **W. Ashworth**, *The Genesis of Modern British Town Planning*, Routledge, 1954; **Leonardo Benevolo**, *The Origins of Modern Town Planning*, Routledge, 1967; **Gordon Cherry**, *Urban Change and Planning*, Foulis, 1972. For a general review of the period 1780-1914, see **Sutcliffe Anthony**, *Towards the Planned City*, Oxford: Blackwell, 1981.

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8. *Ebenezer Howard, Garden Cities of Tomorrow.* (with preface by Frederick J. Osborn and introduction by Lewis Mumford, Faber 1946); Also *Walter Creese, The Search for Environment: The Garden City Before and After* (New Haven and London: Yale University Press, 1966) on Howard, Unwin and Parker.

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10. *Perry Clarence, The Neighborhood Unit, vol. 7, Neighborhood and Community Planning, New York: Regional Survey of New York and its Environs, 1929.*

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13. *Patrick Geddes, Cities in Evolution, Been 1968.*

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14. *Abercrombie Patrick, Greater London Plan 1944, London, His Majesty's Stationary Office.*

15. *Le Corbusier*. The City of Tomorrow, London, The Architectural Press, 1929

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- Concerning Town Planning, Transl. by Clive Entwistle, New Haven: Yale University Press, 1948.
- New World of Space, New York: Reynal and Hitchcock, 1945.

16. An excellent perspective on the evolution of modern planning is provided by *Peter Hall*, Urban and Regional Planning. London: Unwin Hyman, 1989.

17. For the more recent developments in the 1970's see *Peter Hall*, Planning: A Geographer's View, in *Brian Goodall and Andrew Kirby*, Resources and Planning, Pergamon, 1979.

18. For an introduction to the systems view of planning see *Mc Loughlin, Brian J.*, Urban and Regional Planning: A Systems Approach, Faber 1969 and *Chadwick George*, A Systems View of Planning, Pergamon, 1971, for a more theoretical approach.

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19. On the systemic and other modern approaches to planning see *F. Stuart Chapin*, Urban Land Use Planning, Urbana: University of Illinois Press, second edition, 1965; *Andreas Feludi*, Planning Theory, Pergamon, 1973. Especially with respect to the use of forecasts, models etc in planning see *Walter Isard*, Methods of Regional Analysis: An Introduction to Regional Science, Cambridge, Mass: MIT Press 1960; and *Alan Wilson*, Papers in Urban and Regional Analysis, London: Pion, 1972.

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20. On the unprecedented rate of urban growth in developing nations and the major problems related to the efficiency and equity of urban development see *Johannes F. Linn*, *Cities in the Developing World*, A World Bank Research Publication, Oxford University Press, 1983.

21. Many major Greek philosophers such as *Plato* (Laws 778 E and 779 Δ, Republic X2) and *Aristotle* (Politics, 8, 10) devoted their attention to planning problems, while Hippocrates was greatly preoccupied with the appropriate city sites as well as the salubrity of urban settlements.

22. See *Tekton, K.*, Historical Evolution of Townplanning Legislation, Review of Public and Administrative Law, vol 5, 1961, pp 287-294, Athens 1961 (in Greek).

23. see *Friauf Karl Heinrich*, Baurecht, in Besonderes Verwaltungsrecht/hrsg von Ingo Von Munch, bearb. Von Peter Badura, 7 Aufl. Berlin, New York: de Gruyter, 1985 p.p. 439-534.

Also *K. Balz / F.W. Fischer*, Preussisches Baupolizeirecht, 6 Aufl. Neudruck, 1954, *W. Ernst / W. Happe*. Das öffentliche Bau-und Bodenrecht, Raumplanungsrecht, 2 Aufl, 1987.

K. Gelzer, Bauplanungsrecht, Bundesbaugesetz-Baunutzung verordnung - Stadtebauforderungsgesetz, 4 Aufl. 1984.

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24. The Royal Decree of 9.4.1836 on the townplan of the city of Athens was a remarkable piece of legislation containing provisions on street levelling, minimal lot size, property restructuring under the penalty of demolition so that all buildings would acquire rectangular shape etc.

The Athens plan regulations were extended to the rest of the Greek cities by the Royal Decree of 5.6.1842

25. An excellent account of housing policy in Greece, with emphasis on public housing, is provided by *J. Papaioannou* in Housing in Greece, Government activity, Technical Chamber of Greece, Athens, November 1975 (in Greek with English translation). While it is true that very little had been done in the domain of public housing until the end of World War I, a brief overview of the Greek housing culture before that date might provide interesting insights related to the object of this study.

The period from 1830, when the country regained its independence, until 1920 is marked by the gradual liberation of the Greek territory, which more than trebled while its population more than quintupled. In view of the acute economic, social, political and administrative problems of the time, public house hardly appeared on the political agenda. Nevertheless, despite housing problems, especially in rural areas (overcrowding, lack of amenities and public utilities), given the favorable climatic conditions, the average skilled peasant managed to provide for his family's housing needs in quite a satisfactory way and expected very little from the state in that respect. In fact, public housing was considered an issue of lower priority and did not take place in any significant scale before World War I.

It should be noted that Greece possessed at that time a remarkable, centuries-old housing culture, with a great variety of unique features integrating each construction in the settlement as a whole as well as in the surrounding environment in most original and aesthetically inspiring ways. The types of houses matched in diversity the Greek landscape and, while some traditional types are traced back to the Byzantine private house, others, mostly on the islands, go as far back as neolithic prototypes.

A characteristic aspect of the Greek housing culture, with significant implications for our study, is the unusual care of the average family for its dwelling, both in terms of aesthetic appearance and cleanliness. These values of the traditional Greek housing culture managed to survive, to a greater or lesser degree, even in the poorest areas, including unauthorized settlements, thereby preventing them from deteriorating into slums (e.g. the Ilissos community in Athens which had preserved, amidst the surrounding blocks of flats, not only the overall appearance but also the social organization of the traditional island settlement; see *J. Maltby, C. Martin, B. Roe and D. Philippides, Ilissos, 1966*).

In the following period (1920-1960) the Greek government abandons its previous inactivity and develops a number of ambitious and original large - scale housing programmes aiming at coping with an unprecedented series of emergencies (influx of refugees, large scale earthquakes extensive destruction from World War II and the ensuing Civil War and many natural disasters of a lesser scale, such as floods, storms, landslides etc). Those who wonder at the absence of a normal, regular, publicly financed housing policy in Greece, should keep in mind that, in view of this breathtaking succession of emergencies, such programmes were at the time virtually out of question.

26. At the beginning of the century the Greek population of Asia Minor is estimated at 1,5-2.000.000 and is characterized by stable, rapid demographic growth. (See *Moutal, M., L'avenir economique de la Turquie nouvelle, Paris 1924*).

In Smyrni, e.g. the population rose from a few thousands in the beginning of the 18th century to 30.000 in 1803 and surpassed 150.000 in 1920. Besides their agricultural activities, Greeks occupied key positions in the economic life of the Ottoman Empire, especially in the domains of commerce (import- export) and credit. Greeks dominated industry as well: for example,

out of 3.315 factories in Smyrni 73% belonged to Greeks, 26 % to Turks and 1% to Armenians and Israelis; out of 1.230 employees 88,5 were Greeks, 8,5% Turks and 3 % various nationalities; out of 20.684 workers 82 % were Greeks, 16% Turks and 2 % various nationalities. (Source: *Union micrasiatique de Smyrne*, Etude sur l'avenir économique de l'Asie Mineure, Paris, 1919.

On the capacity of Asia Minor Greeks to preserve their cultural and economic autonomy See *Reclus E.*, Nouvelle géographie universelle, Paris, 1894.

On the same subject see also: *Hatzimichalis, A.* Aspects of the economic organization of Hellenism in the Ottoman Empire, Athens, 1935 (in Greek) *Sartiaux, F.*, L'Asie Mineure grecque, Paris 1919. *Karapanagiotis, G.*, The autonomy of the Greek nation under the Turkish protectorate, Athens, 1912 (in Greek).

27. The influx of Greek refugees had begun at a smaller scale in the 1910's and was intensified after the Russian revolution of 1917 (Greek communities from S. Russia around the Caucasus) and the population exchange with Bulgaria following the treaty of Neuilly (1919). It was, however, the abrupt arrival of the Asia Minor refugees in 1922 and the population exchange after the treaty of Lausanne in 1923 which created multiple economic and social problems for the following decades: a number of about 1.400.000 destitute people had to be absorbed by a country of 4.000.000 (whose population was still 2.600.000 only in 1907).

28. In the domain of industry the impact from the influx of refugees was also very significant: Industrial population rose from 360.000 in 1920 to 480.000 in 1928, while the number of industrialists increased from 33.811 to 76.591. The number of enterprises occupying more than 25 workers doubled and their personnel increased from 42.149 to 109.468 people

See *Polyzos John N.* op. cit.

29. The enormous task of integrating the refugees socially and economically in a country already overburdened with problems was made more difficult by the occasional enmity of the local population as well as the refugees' negative reaction to governmental policies demanding that they be settled in rural rather than urban areas.

Refugee settlements were set up in both rural and urban areas. The settlers' preference for the latter was a permanent source of friction between them and the government and resulted in a great number of unauthorized settlements, which sprang up at the fringe of major cities, often in the most inappropriate locations (slopes of river beds, steep hillsides) and out of the most inappropriate and flimsy materials (timber, tin, sackcloth). It is, however, remarkable that these settlements were soon ingeniously embellished and humanized by their inhabitants in the traditional style of anonymous folk Greek architecture. The

above slums were gradually replaced by multistoreyed elevator blocks of flats on the basis of a large scale slum clearance program undertaken by the government, which lasted over 50 years.

In rural areas over 2.000 refugee settlements were established, most of which (about 80%) in Northern Greece (Macedonia and Thrace). About 75% of these settlements, whose size did not usually exceed 1000 to 5000 inhabitants, were adjacent to existing villages, the rest forming independent settlements. In urban areas, on the other hand, independent satellite communities were built, usually outside the fringe of the cities so as not to interfere with the 'normal' life of the latter. In the capital (Athens and its port, Piraeus, until then a separate city) over half a million refugees was added to the preexisting half million of inhabitants in 12 major and 34 smaller settlements. The same phenomenon is encountered in all major cities: the 33 towns with a population above 10.000 in 1920 - a total population of 1.185.442 - received 447.184 refugees, i.e. an increase of 37,6 % . According to the 1920 and 1928 censuses in some cities of Northern Greece (Kavalla, Drama, Serres) the increase surpassed 50 % , while in the greater urban centres (Athens and Thessaloniki) the analogy of refugees to indigenous population reached 1:3. As the refugee population was initially characterized by great mobility, the average city of 1928 with a population above 20.000 consisted of three equivalent categories:

indigenous population	35 %
mobile refugees	33.3 %
refugees	31.7 %

TOTAL	100 %

30. The following Table depicts the population growth of a number of Greek cities in the years 1920, 1928 and 1971 in relation to the number of refugees they received.

Cities	1920	1928	Refugees	1971
Athens	317.209	459.211	129.380	2.092.680
Piraeus	135.833	251.211	101.185	437.527
Thessaloniki	174.390	244.680	117.041	550.563
Patras	53.255	64.636	6.967	119.956
Kavala	22.939	50.852	28.927	46.675
Volos	30.046	47.892	13.773	88.065
Iraklio	29.491	39.231	14.069	84.304
Corfu	30.569	34.193	2.064	26.658
Chania	28.373	32.239	6.925	53.376
Agrinio	11.892	16.735	2.863	41.518
Alexandroupolis	6.963	14.019	8.262	25.154
Veria	14.275	16.303	7.026	29.447
Drama	16.755	32.186	22.601	29.655

See Polyzos, John N. Asia Minor Hellenism, Townplanning Effects from the Settlement of Refugees, Economikos Tachydromos 992/26.4.1973. Greek Polytechnic School, Editions of Townplanning Research Laboratory, Athens, 1979. (in Greek).

31. At first the refugees showed great mobility; a great number of them, originally settled in rural areas according to sound governmental policies, proved reluctant to engage in agricultural activities and finally settled at the fringe of the cities, thus further aggravating the urbanization problem. The following data from the 1920, 1928 and 1940 censuses refer to the population growth in certain municipalities and communities of Athens and Piraeus.

	1920	1928	1940
Aghia Varvara	33	138	1744
Aghia Paraskevi	45	512	3557
Aghios Anargyros	--	1057	4642
Aghios Dimitrios	987	3740	14608
Athens	292991	452919	481225
Egaleo	147	2149	15942
Amaroussio	3450	7567	8253
Byron	--	7723	25560
Daphni	237	1924	11328
Drapetsona	--	17652	18784
Kesariani	11	15357	20151
Kallithea	4940	29446	36572
Keratsini	--	10827	36358
Koridallios	78	2429	9690
Moshato	1704	6031	10348
Nea Ionia	79	16388	27775
Nea Smyrni	--	210	15114
Nea Philadelpia	110	6337	8871
Nikaia	--	33201	59552
Paleo Phaliro	2303	7110	9087
Piraeus	133482	251328	205404
Peristeri	123	7268	21537
Tavros	--	6207	12157

Source: *Statistical Yearbooks of Greece.*

32. On the refugee problem see also *Pentzopoulos, D* The Balkan Exchange of Minorities and its Impact upon Greece, Paris 1962.
- On the characteristic features and peculiarities of the urbanization process in Greece see *Polyzos J.* Processus d'Urbanization en Grece 1920-1940, These pour le Doctorat de Specialite, Universite de Toulouse le Mirail, Toulouse 1978.
33. On the living and working conditions in early refugee settlements, see *Societe des Nations, L'etablissement des refugies en Grece* Athenes 1926. Also *M. Paf Ergane.* Au pans des dieux parmi les hommes, Paris 1935.
34. See *Cullingworth L.B.,* Town and Country Planning in Britain,
Grant M., Urban Planning Law, Sweet and Maxwell 1983
Jowell J. Development Control, Political Quarterly, vol 46, no 3, 1975 pp 340-4.
35. *Liet-veaux Georges,* le Droit de la Construction, Librairies Techniques 1970, p.p. 66-89.
36. see *Conseil d'Etat* arret Gomel. 4 avril, 1914. Sirey 1917,3,25 and note Hauriou.
37. see *Jurisclasseur administratif* fascicule 445. Also "Jacquignon", Le droit de l'urbanisme, 3 me edition 1965.
see *Jurisclasseur administratif* fascicules 25 et suivantes.
38. *Mc Auslan Patrick.* The Ideologies of Planning Law, Pergamon Press.
39. *Ashworth W.* The Genesis of Modern British Townplanning, Routledge and Kegan Paul, London, 1954.
40. see *Grant M.* op.cit. p. 6 .
41. *Jowell J.* The Limits of Law in Urban Planning, Current legal problems, 1977, vol 30, pp 63-83. *Jowell J.* Bargaining in development control, Journal of Planning and Environment Law, 1977, pp 413-33.

"Grant M"., Planning by agreement, Journal of Planning and Environment Law, 1975 pp 501-8.

42. The following Table depicts the urbanization process in Greece between 1951-1981.

Urban development in Greece: 1951-1981 in thousands

	1951 ----	1961 ----	1971 ----	1981 ----
Rural population	4515 (59%)	4565 (54%)	3901 (45%)	3026 (42%)
Urban population	3118 (41%)	3824 (46%)	4868 (55%)	6714 (58%)
Total population	7633 (100%)	8389 (100%)	8769 (100%)	9740 (100%)

OECD, Environmental Policies in Greece, 1983, Greek translation, p.33.

43. In the period 1963-1979 a considerable number of studies for Master and Comprehensive Plans of various cities, among which Athens, were assigned to public or private agencies by the Ministries of Coordination (36 studies), Interior (21 studies), Public Works (12 studies) and the Technical Chamber of Greece (1 study).

See *IX Conference of Architects of Balkan Countries U.I.A.* Development Planning of our Cities, Report of the Greek Sector of the International Association of Architects, Technical Chamber of Greece, Athens 1979. The report points out that the implementation of these Master Plans met with serious difficulties caused by the reaction of land owners, (who refused to transfer the land necessary for the creation of public space) and the inability of local authorities to meet the high costs for expropriations and public infrastructure works.

44. In view of the rapidly accumulating problems of the Athens metropolitan area, a number of Master and Comprehensive Plans were drawn since the 1960's. Among them we mention the following:

Master plan of Athens 1965, Ministry of Public Works, Department of Housing; *Master Plan of Athens 1969*, Ministry of Public Works, Department of Housing; *Master Plan of Athens 1978*, Ministry of Public Works 1978; *Master Plan of Athens, Capital 2000*, Ministry of Public Works Department of Housing

1979; *Master Plan 1983*, Athens, Proposals for the Reconstruction of the Capital, Ministry of Environment, Town Planning and Public Works.

See also *Operation Urban Reconstruction*, 1982-1984 Athens, Ministry of Environment, Townplanning and Public Works, 1983;

Operation Urban Reconstruction 1982-1984, Athens Ministry of Environment, Town Planning and Public Works.

See also *Doxiadis Associates*, Comprehensive Planning for the Capital, Study for the Ministry of Planning and Coordination, Report N.16, Final Report vol.I.II, Athens, May 1976. It is noteworthy that the above lengthy process for drawing-up a Master Plan of the Athens area was never completed, while the first Master Plan for Athens was approved in Parliament only in 1985 (Law 1515/1985).

45. see *Getimis P.* Urban policy in Greece . Odysseas 1989 p.

46. The refugee housing program was initially funded by the 'Fund for Refugee Care' set up by the Greek government immediately after the first arrivals. Soon after (1924) a special loan of 12.300.000 £ was granted to the Greek government by the League of Nations at a 7% interest, followed by a subsequent second loan of 3.000.000 £ at 6 % interest. An independent committee, the ' Refugee Rehabilitation Committee', was entrusted with the administration of funds from the above loans or any other sources. The committee had an elaborate structure involving 4 directorates and was governed by a four-member board, two Greeks and two foreigners, appointed by the League of Nations.

In the 30's urban housing was continued mainly under the responsibility of the Ministry of Social Welfare. While the greater bulk of the 'regular' refugee housing program was completed in about one decade after their arrival, it managed to house only about half the urban refugees, the other half still residing in slums, which it took another 40 years to clear, mainly through blocks of flats.

Nevertheless, given the unprecedented dimensions and complexity of the rehabilitation problem and the inherent organizational, financial and technological limitations of the country, the overall effort to integrate the refugees in the social and economic life of the country, which included not only their housing but also land distribution, agricultural rehabilitation, training, provision of public buildings, amenities and utilities etc, can only be considered a success.

See *Housing in Greece*, Government activity, Part I by *J. Papaioannou*, Technical Chamber of Greece, Athens 1975 (in Greek with English translation).

On the work of the Refugee Rehabilitation Committee see the relevant book by Eddy, Chairman of the Committee from 1926-1930: *Eddy C.B*, Greece and the Greek Refugees, London, 1931.

47. The following Tables depict the destruction of buildings in Greece during World War II.

Table I

<u>Magnitude of destruction</u>	Rural	Urban	Total
Totally destroyed	118.000	37.500	155.500
Partially destroyed	16.000	25.500	41.500
Lightly destroyed	787.000	737.000	1.524.000
Total	921.000	800.000	1.721.000

Table II

Destruction in average housing units

<u>Magnitude of destruction</u>	Rural	Urban	Total
Totally destroyed	118.000	75.000	193.500
Partially destroyed	8.000	25.500	33.500
Lightly destroyed	94.000	88.500	182.500
Total	220.000	189.000	409.000

The above Tables are taken from *C.A. Doxiadis*, *Ekistic Policy*, Editions of the Ministry of Reconstruction, Athens 1947, pp 23-24.

For the extent of the War damages see also *SADAS (Association of Greek Architects)*. Variables of the problem of public housing in Greece, Athens, 1962 (in Greek) and *SADAS*, Minutes of Second Panellinic Convention of Architects, Thessaloniki, 1962, Technical Chamber of Greece, special edition 248,1964.

48. A very interesting account of the reconstruction effort is given by the architect S. Papaioannou (op.cit) who took an active part in the process. Already during World War II an underground group was formed around C.A. Doxiadis, who eventually became the central figure in the reconstruction task. The group's activities were primarily dedicated to the development of a totally new comprehensive approach to the large-scale problems of human settlements (including as partial aspects, housing, building, town planning, urban sociology, urban economics etc). By gathering data on destructions, organizing lectures and issuing publications (e.g. the periodical *Chorotaxia* and a series entitled 'Reconstruction Publications') they provided both the appropriate theoretical framework for designing the reconstruction policy and the techniques for its implementation.

The new theoretical approach was officially adopted when in 1940 on "Office for Town Planning and National Planning Studies and Research" was set up by C.A. Doxiadis within the Ministry of Public Works. Initially very small (5 architects) the office soon grew to a staff of several hundred and after liberation (1945) it was promoted to an "Undersecretariate for Reconstruction" (always under Doxiadis), whereas later the same unit, changing names, was included in Various Ministries (e.g. Social Welfare, Public Works etc).

The reconstruction task was approached from a long term perspective and in an interdisciplinary manner (economic, financial, social, technological, administrative, legal, cultural etc). At the level of policy formulation it involved such sophisticated methods as problem conceptualization, examination of alternative solutions, development of ekistic theory (synthesis and analysis) and financing systems, prioritization of beneficiaries and extensive research in a variety of relevant fields. At the level of implementation the effort concentrated upon the creation of a complex administrative machinery, both central and regional, the recruitment and training of specialized staff and the application of a special follow-up system permitting the constant readaptation of the program to changing conditions. Moreover, public participation was introduced at a scale unusual for the times, including the organization of large scale Reconstruction Congresses, in which local population was given the opportunity to express their opinion and participate actively in the solution of their housing problems.

As Greece was at the time one of the poorest European countries (the per capita income having fallen to 40% of its prewar value) and faced extensive destruction in every field, the new approach necessarily included relocation and redistribution of displaced settlements, experimentation with new systems of financing for housing large scale (state-sponsored) production, importation and distribution of building materials and, finally, devising new methods of construction. Great emphasis was put to the avoidance of slum formation through temporary settlements and, for that reason, the policy initially adopted was to build entirely state-planned, state-financed and state-built "house nuclei", extensible by the owner in the future. As soon as economic conditions improved, a new policy was adopted (1949 to 1953), 'self help housing', which proved to be highly successful. Under this policy each owner was provided with a selection of

building materials, some money and technical assistance to build his own house and eventually improve it out of his own means.

This system promoted cooperation among local artisans, (who grouped themselves in teams according to their special skills and contributed to all the houses of the village), provided training for younger people, resulted in more interesting architectural shapes and, most important, induced love and devotion of the owner to his new house.

Thanks to the above integrated approach the program of rural housing can be evaluated as highly successful: It managed to provide the necessary number of houses (ca. 200.000) to keep the rural population to their villages or induce them to return to them, to prevent the creation of slums by providing wholly permanent houses, well adapted to the peasants' needs, to maximine the owner's contribution and induce him to love and improve his house, and, finally, to keep cost at a minimum due to the ingenious novel approaches to financing and acquisition of building materials.

In refugee settlements a great variety of housing and settlement models was eventually used (more than 100 different types). A typical refugee dwelling had a floor area of ca 40 sq. m. and consisted of a small hall, two rooms and a W.C., but numerous variations above or below this average were also frequently used. Most of the above types can be grouped into the following major categories: twin houses, row houses, free standing one or two family two storeyed houses, small free standing one-storeyed one family houses, blocks of flats, early prefabs, and, finally land and utility schemes were adopted for the housing of wealthier refugees.

Compared to the program of rural reconstruction, "urban housing" to face the consequences of World War II has been limited at a much smaller scale and focused mainly at replacing houses destroyed by direct war action in the cities. In most cases urban communities were specially designed within the cities involving blocks of flats, usually 2 or 3 storeyed. Larger urban housing schemes included community facilities, while smaller schemes relied on nearby existing facilities.

See *Papaioannou J*, 1975, op.cit.pp. 7.40

49. On the reconstruction effort see also *High Reconstruction Council*, Temporary long term program for the economic restitution of Greece, submitted to OEOS, Athens, 1948.

Memo to OEOS on the Program 1950-51, 1951-52, Athens,1950.

United Nations, Economic Commission for Europe, UNECE, Housing, Building and Planning Problems and Policies in the less developed countries of Southern Europe: Greece, National Monograph 1973.

UN,E.E., Committee on Housing, Building and Planning, Policies and Programmes for the improvement of housing conditions in Southern Europe: Report on Greece, Athens 1973.

Organization for Rehabilitation, Program for the Rehabilitation of the Country, Technical Chronicles, XXIV, 277,278, 947, Athens, 1945.

Ministry of Social Welfare , Housing of Urban Refugees: The work of the six-years period 1952-1957, Athens 1958.

Doxiades C.A, Housing policy for the reconstruction of the country's settlements, Undersecretariate of Reconstruction, Athens, 1946.

Doxiadis C.A. Ekistic policy: A twenty year plan for the reconstruction of the country, Ministry of Reconstruction, 1947.

50. Immediately after World War II a refugee problem of a smaller scale but of similar acuteness was created by the massive influx into the cities of populations fleeing the guerilla-stricken rural areas. After the War (1949) it has required a very sustained effort by the government to reestablish those refugees, amounting to 700-800.000, to their original villages and to clear up their ad hoc temporary settlements.

See J. Papaioannou op.cit

51. Throughout its history Greece has been the victim of frequent and often very strong earthquakes, destroying its settlements in their entirety. In the period under consideration (1920-1960), earthquakes destroyed, among other things, the town of Corinth (1928), the town of Volos together with a large area in Thessaly (1958) and several villages of unique architectural beauty on the island of Santorini (1958). But by far the most destructive earthquakes in modern Greece, which created an acute housing problem, took place on the Ionian islands in 1953 and virtually wiped out every structure and most of the infrastructure on the islands of Zakynthos, Cephalonia and Ithaka. As a result, an overall population of 100.000 became homeless and destitute overnight and many refined constructions of unusual architectural interest in the local Greek-baroque style, including many art treasures, were destroyed at 100%. The tremendous reconstruction task (30.000 houses to be built) was made even more difficult by the unusual concentration of the destruction in one area and the comparatively higher educational and cultural level of the population. The effort, including the temporary installation of a military administration on the islands, lasted four years (1953-1957) and managed to replace all buildings by earthquake resistant constructions and to prevent the, initially terrified, population from bandonning the islands.

More earthquakes struck the country in the mid 1960's (Peloponnese, Epirus, Thessaly, North Sporades Islands, Euritania) and destroyed about 90.000 dwellings, while a considerable number of mountain settlements (about 500), endangered from landslides, had to be rebuilt in more stable locations. It should be noted that earthquake destruction has hardly ever stopped, since extensive damages were created by earthquakes in Thessaloniki (1981) and Kalamata (1986). For more details on the above see "J. Papaioannou" (op. cit).

52. The pressing housing needs created by the above mentioned succession of emergencies in the period 1920-1960 (refugee problem, War damages, natural disasters) absorbed the greatest part of the country's financial and administrative potentialities and prevented it from carrying out a rational, full-scale, 'normal' housing policy, analogous to that of other European countries. That such a policy was, nevertheless, much needed at the time, is evident from the following data from the 1961 Census, which constitutes the first thorough study of the problems of the housing sector.

As indicated in the following Tables 1 and 2, the index of persons per room (1,47) was one of the highest in Europe; moreover, there were 2.144.000 households living in 1.991.300 dwellings; 3,6 of those households resided in unsuitable dwellings. Unsuitable dwellings may be described as follows:

-	Unsuitable dwellings (warehouses, shops)	73.100.
-	Unsuitable dwellings due to bad quality and age	176.000
-	Dwellings without infrastructure	14.000
-	Dwellings on unsuitable ground conditions (landslides etc)	20.000

		283.100

On the other hand, as a number of ca 200.000 households had to acquire their own separate dwellings, the existing housing deficit at the time was as follows:

-	Number of households at the time of census	2.144.000
-	Number of households to be separated and acquire their own dwelling	200.000

		2.344.000
-	Existing stock of dwelling	1.991.300
-	Unsuitable for housing	- 283.100

-	Suitable dwellings	1.708.000
		2.344.000
		- 1.708.200

	Housing Deficit	635.800
	to secure market flexibility	14.200

	Total deficit	650.000

T A B L E 1

HOUSING CONDITIONS, 1961

	Country's Total	Athens	Towns of more than 10.000 inh.	Small towns (2.000- 10.000 inh.)	Villages of less than 2.000 inh.
Number of dwellings suitable & unsuitable	1.991.300	480.000	451.000	251.000	833.000
Number of rooms	5.517.100	1.236.000	1.251.000	751.900	2.277.700
Number of persons	8.150.500	1.776.100	1.670.200	1.074.000	3.612.200
Number of households	2.144.000	523.300	457.200	269.300	894.200
Index of rooms per dwelling	2.77	2.57	2.94	2.99	2.73
Index of persons per dwelling	4.07	3.70	3.92	4.17	4.33
Index of persons per room	1.47	1.44	1.34	1.39	1.59
Index of persons per household	3.80	3.39	3.65	3.89	4.04

T A B L E 2

DISTRIBUTION OF DWELLINGS BY NUMBER OF PERSONS PER ROOM

	Country's Total	Urban dwellings (Capital, towns, small towns)	Rual Dwelling
Less than one persons per room	18.4 %	19.9 %	16.2 %
1 - 1,5 persons/room	27.8 %	29.5 %	25.4 %
1,5 - 2 persons/room	14.2 %	13.6 %	15.1 %
2 - 3 persons/room	21.1 %	20.0 %	22.3 %
3 and more persons/room	18.5 %	17.0 %	21.0 %

In the decade 1960-1970 there was considerable improvement in housing conditions, as Greece was heading the list of european countries in dwelling construction rate (See "U.N". Monthly Bulletin of Statistics, October, 1970). The improvement is evident from the following data from the population and dwelling census of 1971.

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Census

	<u>1961</u>	<u>1971</u>
Person / dwelling	4.10	3.38
Person / room	1.47	1.19

The improvement in terms of conditions of household facilities is shown in the following Table.

T A B L E 3

CONDITIONS OF HOUSEHOLD FACILITIES

Households not having	Urban Areas 1961	Urban Areas 1971	Semi-Urban 1961	Semi-Urban 1971	Rural Areas 1961	Rural Areas 1971
1. Bath or Shower	78.5	47.7	96.8	79.3	99.3	94.2
2. Indoor toilet (within the dwelling or building)	70.4	29.6	95.2	70.3	98.9	90.5
3. Running water within the dwelling or building	29.0	5.3	72.9	17.6	91.9	40.6
4. Electricity	10.5	2.4	47.8	10.9	86.5	26.7

Nevertheless, there still remained 12.000 households housed in unsuitable dwellings (though this is quite a decrease from the respective 1961 number, which amounted to 73.000). Moreover, there were 42.000 squatters built in that decade, 25.000 of which were described as unsuitable dwellings. In addition to that there were 63.000 families, victims of earthquakes and landslides, for whom new dwellings were not yet provided. There still remained 113.000 households that had to acquire their own separate dwellings (respective number of 1961 200.000) and there were 286.000 families living in high density (more than two persons per room). In sum the housing demand amounted to 600.000 main dwellings; among them 400.000 referred to urban areas, out of which 235.000 in the Athens Metropolitan area, 60.000 in Thessaloniki and 105.000 in their urban areas. This disturbing concentration of population at the periphery of the capital and greater urban centres has ever since reached the stage of a crisis, especially in the Athens area. For a more detailed account of the above see *E. Vassilikiotis*, Housing in Greece, Government activity, Technical Chamber of Greece, Athens, November 1975, pp 41-65, (in Greek with English translation).

53. In the period under consideration, i.e. until the early 1970's, the housing policy of the state was mainly exercised through the following authorities:

- a) *The Ministry of Public Works*, Department of Housing,
- b) *The Ministry of Social Services*, through two basic housing programs:
 - 1) The program of 'Popular' Housing, providing housing aid to
 - a) families living in substandard dwellings and not capable of acquiring a 'suitable dwelling through their own means and
 - b) families settling in existing or new settlements on the basis of a state development plan.

2) **Rehabilitation Program for New and Old Refugees, i.e. Greek or stateless refugees, refugees from East European countries etc, wishing to settle in Greece.**

c) ***The Organization of Workers Housing***, supervised by the Ministry of Employment and aiming at providing suitable dwellings to blue and white-collar workers.

d) ***The Autonomous Building Organization for Officers***, aiming at securing a residence to the officers of Army, Navy and Air Forces.

The beneficiaries of the above programs should not, as a rule, possess suitable dwellings or be in a position to acquire one through their own financial means.

More specifically with respect to the programs of 'popular' and refugee housing, they comprised a number of particular programs set up for rural and urban areas. Those programs were financed by the state Budget and the Public Investment Program. It should be noted that quite often the loans granted on the basis of these programs (as well as those of the Organization for Workers Housing) were not refunded by the beneficiaries and, consequently, the total amount of loans was inevitably kept at a relatively low level.

For more details on the above see *E. Vassilikiotis, Housing in Greece, Technical Chamber of Greece, Athens 1975, pp 41-65.*

In those of the above programs set up for rural areas the beneficiaries were mainly victims of natural disasters and the programs were generally applied either through the methods of 'self-housing' or by constructing new housing complexes through a contractor. In programs set up for urban areas the beneficiaries were mostly people (about 10.000 families) living under miserable conditions in wooden shacks constructed at the fringe of great cities right after the Asia Minor defeat in the early 1920's for the temporary housing of refugees. Those slums were gradually incorporated in the central areas of Athens and Thessaloniki and their rehabilitation had for a long time been unfeasible, since, as soon as the families occupying them moved to more suitable lodgings, they were instantly refilled, usually arbitrarily, by other homeless families (rural population, victims of disasters etc). In 1959 a special program was jointly prepared by the Ministries of Social Services and Public Works for 'the rehabilitation of families living in shacks in Athens, Piraeus and Thessaloniki within the framework of the Refugees and Popular Housing Programs'. The program provided for the construction of dwellings either by the contracting system or, to a lesser extent, by the self housing system. As a result most slum areas in the above areas were cleared up and replaced by new dwellings, while many small units (200-500 dwellings each) were constructed in a number of smaller provincial towns as well. (See *E. Vassilikiotis, op.cit*)

54. At that time the major credit institutions financing the housing sector in direct collaboration with the government and according to the decisions of the Currency Committee were:

- a. The National Mortgage Bank, major financing agency of the private sector.
- b. The Loan and Consignations Fund and
- c. The Postal Savings Bank, which grants housing loans to civil servants.
- d. The Agricultural Bank, which grants loans to farmers.

55. To give some examples, public investment in housing has been considerable in the period 1948-1950 (about 1/3 of the total investment in housing). From 1951-1958 it oscillated between 8-15 % and thereafter it fell to a marginal 3-5 %

See *National Statistic Service of Greece* (N.S.S.G), National Accounts of Greece 1948-1970, Athens 1972 (in Greek). Also N.S.S.G. Statistic Yearbooks 1954-1977. According to other sources, the general credit policy of the state through various credit institutions covered an average of 25 % of housing investments, at least until 1972. See *E. Vassilikiotis*, Housing in Greece, Government activity, p. 163

56. Completed dwellings per 1.000 inhabitants: 1975-1980 Selected OECD Countries.

	1975	1976	1977	1978	1979	1980
Greece	10.4	14.0	17.1	20.0	--	14.2
Japan	13.9	15.2	13.2	15.3	14.7	--
Finland	14.7	12.1	12.0	11.6	--	10.4
Australia	10.5	--	11.3	11.3	8.1	--
Canada	9.5	10.3	10.9	10.6	--	7.5
Norway	10.8	10.5	9.5	9.4	9.1	--
Spain	10.5	8.8	8.8	8.7	--	7.0
France	12.2	10.0	8.5	8.3	--	7.0
Ireland	8.1	7.5	7.7	7.9	--	8.2
Holland	8.8	7.8	8.1	7.7	6.4	--
U.S.A	4.4	6.1	7.8	7.7	--	6.6

See *OECD*, Environmental Policies in Greece, 1983 p. 36, Source: OECD .

57. See *OECD, Environmental Policies in Greece*, 1983 Greek translation, p.37.

58. The phenomenon of unauthorized development is common in developing or Third World countries and, to a lesser degree, in Europe and the USA, especially in the form of squatters. Nevertheless, unauthorized development in Greece has specific features which clearly distinguish it from the above. More specifically, though the phenomenon of invasion of public or private land by squatters is quite common in Asian, African or Latin American countries, it is virtually unknown or extremely rare in Greece, where unauthorized construction takes place on the owner's property. Consequently, in Greece there is no question of conflict or violence between landlords and settlers, as is often the case in Asian or Latin American countries. Moreover, unauthorized construction in Greece is individually undertaken by the owner and not the outcome of organized group activity. Finally, unauthorized settlements in Greece are of a more or less permanent character and despite the lack of infrastructure facilities, the overall living conditions and public health standards are much superior to those in their Asian, African or Latin American counterparts.

See *Findings of the Research Team on Unauthorized Development*, Athens 11.11.1974. Also *Johannes F.Linn, Cities in the Developing World, Policies for their equitable and efficient growth*, A World Bank Research Publication, Oxford University Press 1983.

59. When Athens, then a town of 10-12.000 people, was named capital of the new Greek state (1834) a team of architects, among which the Greek Kleanthis and the German Schaubert, were assigned with the task of drawing up its town plan. The initial design provided for wide boulevards and prohibited construction in the area of classical Athens to allow for future archaeological excavations, but it soon was modified in both these respects.

As soon as Athens acquired its first town plan and building regulations, the first unauthorized constructions made their appearance as well: The first recorded case were two small houses situated at the northern slopes of the Akropolis. Their respective owners, Marcos Sigalas and Georges Damigos were coming from Anafi, a remote Aegean island. Carpenter and builder by profession, they decided to ignore the prohibition of construction in the area and to join forces in order to provide their families with a home. When the authorities were summoned, they were met with an already accomplished fact, which, given its small dimensions, they decided to overlook.

The example of the first two settlers was soon followed by others and from time to time a new house sprang up, until an entire settlement was formed. It was named Anafiotica, in remembrance of the origins of its founders, and it is still maintained today as a traditional settlement near Plaka. See *A. Karkavitsa, Anafiotica*, Magazine Estia, 1888, p. 382.

On the first townplanning experiments in the city of Athens see *Lork*, Karl F. Schinkel, pp 106 ff; *Russack*, Deutsche Bauer in Athen, pp 37 ff.

60. It has been estimated that from 1950-1974 the value and volume of unauthorized construction amounted to ca 10% of the total building activity.

See *United Nations Economic Commission for Europe* 1973, Housing, Building and Planning Problems and Policies in the Less Development Countries of Southern Europe, Greece p. 105.

According to other sources, between 1945-1956, 282 257 unauthorized constructions were built at the fringe of urban centers and particularly the capital.

See *Voivoda A et al*, Regulation of Space in Greece; A brief historic review, Architectural issues 11, 1977 p. 128-213.

Moreover, according to official data of the Ministry of Public Works from 1955-1977 unauthorized building activity amounted to 17-27% of the total building activity in the private sector.

At a seminar on unauthorized construction held at the National Centre of Public Administration in 1990 a senior civil servant of the Ministry of the Environment, Town Planning and Public Works admitted that town planning agencies do not exercise control ex officio but rely on private complaints about town planning offenses. Moreover, enforcement is rarely activated and is usually blocked by the opposition of offenders and the reluctance of the government to bear its political cost. Fines are seldom imposed and the courts are in practice reluctant to impose penal sanctions. Finally, due to the lack of statistical data both at the periphery and the centre, the exact number of both unauthorized constructions and of demolitions following enforcement are partially unknown. A rough official estimate of unauthorized constructions gives a figure over 1.000.000.

61. The Centre of Planning and Economic Research had already in 1972 drawn attention to the impact of low quality urban environment upon the growing demand for a second country residence and the resulting premature and excessive development of forests and beaches at the fringe of urban centres. See *Centre of Planning and Economic Research* (C.P.E.R.) Long term Perspective Plan for the Development of Greece, vol2, Housing, pp 201 ff, Athens, 1972 (in Greek). The danger of excessive land fragmentation, deterioration of the natural environment, deficient infrastructure, low quality of housing and disfiguration of traditional settlements has materialized ever since to a degree much greater than anticipated.

On the frequent usurpation of beaches etc, see incidents reported in Newspapers *Vima* 10.8.1977, *Akropolis* 24.6.1979, *Kathimerini* 17.10.1953, 29.8.1957, 27.6.1957, *Estia* 2.2.1957, 30.8.1957 etc.

62. This is the so-called 'culture-personality' or 'psychocultural approach' to the study of political phenomena, which has developed a substantial theoretical and monographic literature in the 50's and 60's. See in particular *Gabriel Almond and Sidney Verba*, *The Civic Culture*, Princeton University Press, 1963.

See also in the same perspective *Lucian W. Pye*, *Politics, Personality and Nation Building*, New Haven, 1962; *Alex Inkeles*, *National character and Modern Political Systems*, in Francis L.K. Hsu (ed), *Psychological Anthropology* Homewood, Ill, 1961; *Margaret Mead*, *The Study of National Character*, in Daniel Lerner and Harold Lasswell, *The Policy Sciences*, Stanford 1951; *Harold D. Lasswell*, *Psychopathology and Politics*, in *Political Writings*, *Alex Inkeles* and *Daniel Levinson*, *National Character: The Study of Model Personality and Socio-Cultural Systems*, in Gardener Lindzey (ed), *Handbook of Social Psychology*, Cambridge Mass, 1954, Vol II, *Dennis Kavanagh*, *Political culture*, Macmillan Press, 1972 etc

For a definition and classification of types of political orientation see: *Talcott Parsons* and *Edward A. Shils*, *Toward a General Theory of Action*, Cambridge Mass, 1951 pp 53 ff. Also *Gabriel A. Almond*, *Comparative Political Systems*, *Journal of Politics*, Vol XV III, 1956.

Relevant studies for the United States include: *Geoffrey Gorer*, *The American People*, New York, 1948, *David Riesman*, *The Lonely Crowd*, New Haven, 1950.

For England See: *Geoffrey Gorer*, *Exploring English Character*, New York, 1958

For France, *Nathan Leites*, *On the Game of Politics in France*, Stanford 1955, *Rhoda Metraux* and *Margaret Mead*, *Themes in French Culture*, Stanford 1954.

For several interesting country studies by specialist authors, see *Lucian Pye* and *Sidney Verba* (eds), *Political Culture and Political Development*, Princeton, 1968.

63. For an extensive account of scientific principles and ethical ideas underlying the British and American philosophies of Administration see *Thomas Rosamund*, *The British Philosophy of Administration*, Longman, London, 1978.

64. see *Riggs F.* *Administration in Developing Countries : The Theory* Prismatic Society, Houghton Mifflin Co. Boston 1964.

65. According to recent official data the number of civil servants in 1990 amounts to 659.885

66. In sum, we may say that in the fifties public housing had a predominantly urban character and was primarily undertaken by the Ministry of Social Services (former Welfare) as well as the Organization for Workers Housing. Beneficiaries were mainly old refugees, victims of war and slum dwellers.

The sixties were marked by a more systematic concern for the housing problem, which was now considered an integral part of comprehensive programs for economic and social development. The 5-years plans 1960-1964 and 1966-1970 as well as the 15 year plan 1973-1987 were concerned with the deficit in dwellings and proposed measures for an active housing policy.

In the seventies there was a shift from direct construction of houses to the granting of loans, especially through the banking system. Most of the original housing programs described above were replaced by loans granted primarily through the Argarian Bank, with the exception of special programs for the rehabilitation of victims of natural disasters etc. Thus public housing policy was exercised through a complex system of loans, subsidies and other forms of direct or indirect benefits to different socioeconomic groups for the purpose of improving their housing conditions. In the following years there was an effort to coordinate the activities of the administration, the credit system and the numerous housing agencies of different legal forms and to introduce a new institutional framework for planned urban development and organized construction at a large scale. The creation of the Public Enterprise for Townplanning and Housing by the Law 446/1976 was an effort to check unauthorized development by providing low income groups with housing opportunities under favorable financial terms and to restructure existing unauthorized settlements by incorporating them into town plans. Related to the above was the trend towards forming enterprises of mixed economy (with state participation and intervention) capable of undertaking large scale projects of restructuring and development with the use of technological methods.

For a critical evaluation of the above state housing production programs see *National Center of Social Research* (NCSR), *Housing in Greece*, Summary Report, Athens, 1977 (in Greek). Also *Center of Planning and Economic Research* (SPER), *Development Plan 1976-1980, Housing*, Athens 1976 (in Greek) and *CPER*, *Development Plan 1966-1970, Housing*, Athens 1967 (in Greek).

67. To cite an example, it has been estimated that, despite legal prohibitions, in the period 1957-1977 more than 1,5 million of rural plots of a total value of 25 billion drachmas were sold, most of which were understandardized (200-300 m²). In the same period (1960-1975) the value of urban plots increased 390%, while the value of rural plots increased 800%. Sources: Centre of Planning and Economic Research, cited in *A.K. Alexandropoulos*, newspaper *Vima* 18.9.1979.

On some initial circumstantial attempts to control transactions involving illegal land fragmentation, see newspaper *Estia*, 18.7.1956 and 26.3.1957 and *Kathimerini* 11.5.1957.

68. The development of Athens is considered average compared to cities in underdeveloped countries, equal to other mediterranean capitals (Rome, Madrid), but excessive in the national demographic context (while the annual rate of demographic growth in Greece between 1956-1976 was 0.7%, it amounted to 3% for the Athens area only).

See *Guy Burgel*, Athens: Development of a mediterranean Metropolis, Greek translation by P. Rulman, Exandras 1976. Also *Guy Burgel*, Aspects de la structure de l'agglomeration Athenienne, in Sociological Thought, vol 1, 2 November 1966 (Greek, French). And *Guy Burgel*, La Condition Industrielle a Athenes, vol 1: Les Hommes et leur Vie, CNRS, Athenes et CNRS, Paris, 1970.

La condition industrielle a Athenes, vol 2, Mobilite Geographique et Mobilite Sociale, CNRS Athenes et CNRS Paris, 1972.

To get a rough idea of the population booms in the municipalities and communities of the Athens Metropolitan Area we cite the following data regarding the decade 1951-1961:

In 45 % of the municipalities and communities of the Athens area, which occupy 35 % of the total area, there is a population increase from 50-199% .

In 14 such municipalities and communities the increase is above 20%

In 5 municipalities/communities situated at the fringe of the approved town plan the population increase is 300-846%.

See *National Centre of Social Research (NCSR)*. Demographic and Sociological Study of the Master Plan of Athens, Final Report for the Ministry of Public Works, 3 Vols, Athens 1973 (entries in Greek and in English).

69. To give a rough idea of the situation in the Athens area in the seventies we quote the following information from the *Master Plan of Athens 1978* (Book 3.2 p. I).

"Athens today (1978) has a population of 3.450.000, amounting to 37% of the total population of the country. It attracts 120.000 people yearly or 350 daily, 50 % of yearly private investment, 95% of international commerce, 43% of industrial population, 50 % of tertiary sector. An area of 30.000 ha is inserted in town plans. According to the coefficient of exploitation in force, it has the capacity to develop a residence floor area three times greater than necessary. (It is noteworthy that today -1991- the population of Athens amount to nearly half the population of the entire country). It has an acute traffic problem and pollution exceeds the acceptable limits. Infrastructure in terms of sewage and street networks is deficient. Uncontrolled urban development has sprawled in totally inappropriate areas, destroying rural land, ecological environment, mountains and beaches, causing a tremendous increase of land values. "

For more information see: The problems of the Athens Metropolitan area, *Minutes of the 5th Panellenic Convention of Architects*, Athens, January 1966, edition Technical Chamber of Greece.

According to *OECD*, the economic significance of the Athens area in relation with the rest of country in 1981 was as follows

Population	31
Family income	57.2
Private cars	57.6
Home use of power	56.6
High school graduates	57.9
Univercity graduates	53.9
Hospital beds	48.6

See *OECD*. Environmental Policies in Greece, 1983, Greek translation p.36.

For an excellent account of the development of Athens see *Biris Constantine*, Athens from the 19th to 20th century, Town Planning and History of Athens Foundation Athens 1966.

70. According to *K. Biris*, an authority on the history and town planning of Athens, most amendments of the Athens townplan after 1978 aimed at satisfying private interests and were supported by the unscrupulous politicians.

In his denouncement addressed to the Technical Chamber of Greece, *A. Stathakis*, Director of the Housing Department of the Ministry, states that more than 1700 amendments of the Athens town plan took place in the period 1968-1975. According to a similar demouncement of *H. Angelopoulos*, in the period 1836-1920 565 amendments of the Athens town plan were attributed to pressures aiming at satisfying private interests. See *D. Philippides*, Modern Architecture, Athens 1984 (in Greek).

71. On the destructive impact of L. 395/1968 upon traditional settlements, cities and suburbs see *Housing in Greece*, Seminar 18-23 June 1979 Eugenidion Foundation. Vol.2.

72. The military regime of 21.4.1967 with a circular issued by the Ministry of the Interior (see Bulletin of Technical Chamber of Greece 421/29.4.1967 p. 7) announced its intention to check unauthorized development; for that purpose it ordered the immediate issuance of building permissions in combination with the immediate demolition of unauthorized constructions: 'Buildings constructed without authorization overnight will be demolished in the morning'. Nevertheless, only five months later the first official distinction was made in favor of unauthorized buildings used as business installations, whose demolition was 'suspended'.

Immediately afterwards the L. 410/1968 initiated the notorious process of successive legitimizations.

73. The statute 720/1977 was strongly criticized by the Technical Chamber of Greece (see press conference of 23.9.1977, published in the special issue 964 of the Bulletin of the Technical Chamber, 24.9.1979). Special emphasis was given to the vote-seeking character of the law, which benefits law offenders at the expense of law abiding citizens. On the other hand, at the same press conference of 23.9.1977, the Association of Architects and the Greek Association of Civil Engineers, though in principle equally critical of the above legislation, recognized that the measure was dictated by a social necessity and, thus, they did not oppose it, provided that a proper distinction would be made between low-income people on the one hand and profit-seeking speculators on the other.

74. More than 70.000 declarations for the legitimization of unauthorized buildings were submitted on the basis of st. 720/1977 and more than 150.000 on the basis of st. 1337/1983. The exact number of unauthorized constructions after 1983 has not been estimated yet. According to official sources of the Ministry of Environment, Town Planning and Public Works only in the first semester of 1986 more than 5000 such constructions have been identified in the various regions of the country, but this number is considered to be far too modest. See *Getimis, P.*, Housing Policy in Greece, Odysseas, Athens, 1989.

75. The lack of officially recognized and legislated townplanning standards (optima and minima) has been criticized as a crucial deficiency of town plans. Although a number of relevant studies have been conducted by private and public agencies, there has been no official sanctioning of such standards besides the usual building regulations (height, number of floors, coefficient of exploitation etc).

See *Centre of Planning and Economic Research*, Development Plan 1976-80 *Housing*, Athens, 1976 (in Greek).

Also *Conference of Architects from Balkan Countries U.I.A.* developmental planning of our cities, Report of the Greek section, Athens, November 1979.

76. For a critical account of the enforcement system in British planning law, together with proposed reforms and improvements see *Jowell Jeffrey* and *Millichap Denzil*, Enforcement: the Weakest Link in the Planning Chain, in *Planning Control: Philosophies, prospects and Practice*, Croom Helm series in geography and environment, 1979, pp 175-194.

Also, for an empirical study of town planning enforcement in London see *Jowell Jeffrey* and *Millichap Denzil* The Enforcement of Planning Controls in London, *Journal of Planning and Environment Law*, 1983 pp 644-654.

77. On the discretionary character of the British enforcement system and the various criteria taken into consideration by the enforcement authorities see "K. Hawkins", *Environment and Enforcement*, Clarendon Press, Oxford, 1984.

Also see *G. Richardson, A. Ogus and P. Burrows*, *Policing Pollution*, Clarendon Press, Oxford, 1982, and *A. Barker, M. Couper*, *The Art of Quasi-Judicial Administration: The Planning Appeal and Inquiry Systems in England*, *Urban Law and Policy*, 6,5 (December 1984) p.p.

Also *Conference of Architects from Balkan Countries* 363-376.

78. We should note that the administrative decisions of lot restructuring and allocation of compensation are considered to be of individual character and, consequently, their validity may not be challenged in case of appeal against building permissions issued on the basis of their provisions.

79. The opinion of the Committee of Public Works is a technical judgement and as such it is not subject to judicial control, unless based on errors of fact (C.O.S. 156/1973).

80. In case of amendment of a town planning scheme the Court requires full reasoning if private rights are adversely affected (C.O.S. 251/1964, 284/1969).

In case of extensive amendments no specific reasons are required for the particular arrangements, if the necessity of the amendment is in globo justified (C.O.S. 2123/1975).

It is characteristic that the majority of amendments challenged before the court were aiming at satisfying private rather than public needs, such as e.g. reduction of street width, irregular building lines, etc, and as such they were often quashed. On the other hand, it has been ruled that the following cases constitute valid grounds for the amendment of townplannings schemes: construction of infrastructure in view of the areas touristic development (C.O.S. 1628/1963), construction of school buildings (C.O.S. 2538/1967), industrial development in industrial zones (C.O.S.1525/1965), providing a blind property with a face on the street (C.O.S. 810/1966), protection and/or construction of monuments, churches, archaeological sites etc (C.O.S. 1054/1966, 2233/1969, 245/1969), traffic considerations C.O.S. 2093/1965), widening of streets for traffic reasons etc.

81. Illegalities regarding the competence of townplanning agencies or breaches in procedure have caused the quashing of many town planning decisions, since the Council of State has always been quite particular with respect to observance of procedural formalities.

82. A great deal of cases arose out of the delicate issue of drawing a demarcation line between reasonable property restrictions, imposed for town planning purposes, and taking away of property, for which formal expropriation is required. To take an example, according to town planning regulations, neighbouring properties on main city streets are bound not to build their front ground floor alongside the pavement in order to leave an arcade for public use. When this measure, which met with great reaction from property owners, was challenged, the Court ruled that if imposed on the basis of objective criteria for the sake of the public interest, the above obligation does not violate the right of property (C.O.S. 3029/1968, 1048/1964 et al). On the contrary, it has been ruled that the obligation of property owners to leave arcades for public use within the building block constitutes expropriation, for which appropriate compensation should be granted (C.O.S. 1199/1963, 568/1967).

On the other hand, it has been ruled that provisions regarding minimum lot dimensions or obligation to leave open space in front of the building do not constitute expropriation but a reasonable restriction of property, for which no compensation may be granted (C.O.S. 101/1964, 1967/67). The prohibition of construction on a privately owned landplot is unconstitutional, unless the property is expropriated (C.O.S. 277/1967). However, it is not unconstitutional to prohibit the construction of dwellings in a certain area and to allow construction of a specific type of buildings instead (e.g. touristic installations) C.O.S. 3784/1984.

Nevertheless, all such property restrictions should, in doubt, be interpreted in a spirit favorable to the right of property (C.O.S.).

83. The Court has often attempted to impose some degree of uniformity in the issuing of building regulations and to restrict the common administrative practice of permitting exceptions from the established building standards. Thus it has been ruled that building regulations are legal rules and as such they should treat all similar cases in a general and uniform manner (C.O.S. 1286/1961). Therefore, the same building regulations should apply to all land plots of a given area or part of town, or at least to the land plots of a given block, which in this respect constitutes the minimal town planning unit (C.O.S. 2581/1975). Nevertheless, some differentiation of building regulations regarding parts of building blocks may be allowed for reasons of public interest (C.O.S. 459, 1973). In such a case specific reasons are required (C.O.S. 439/1972) to ensure that the constitutional principle of equality is not violated (C.O.S. 2355/1972).

84. See *Heady Ferrel*, Public Administration; a Comparative Perspective, Prentice Hall 1966, pp 69-87. Also *John Campbell, Philip Sherrard*, Modern Greece, London: Benn 1968.

85. Four Greek representatives were present at the Inauguration of the International Union of Town Planners in Amsterdam in 23.1.1965 (See Bulletin of Technical Chamber of Greece, 317/1965 pp 15-16). Nevertheless it took 17 more years for the setting up of the Greek Association of Town Planners in 1982.

86. When accused by the newspaper *Akropolis* in 1971 of inertia with respect to the problems of the Athens Metropolitan area, the Technical Chamber of Greece defended itself by making public its activities including: a) the drawing up of a town plan for the city as early as 1934, b) the forming of a special Technical Committee during the Second World War, c) the organization of a series of public discussions and expositions for the preservation of the city's traditional character etc (see Bulletin of the Technical Chamber of Greece 631/1971).

Nevertheless, opinions as to the independence of professional bodies, such as the Technical Chamber, from politics are quite controversial (See Bulletin of the Technical Chamber 769/22.12.1973 p.7, 801/1974 p.4). Moreover, while the Technical Chamber has often demanded a more substantive participation in the decision making process on planning matters, the outcome is controversial (See Bulletin of the Technical Chamber 808/28.9.1974 p.5).

87. For a detailed account of the history and activities of housing cooperatives in Greece see *Panos, D.T., Klemes AN*, Housing and Building Cooperatives, Athens, 1970 (in Greek).

See also on the same subject *Georgakis Th.* Building Cooperatives in Greece, Patras 1932; *Economopoulos A and Klemes A.* Legislation and case law on cooperatives, Athens, 1962 (in Greek).

Bank of Greece : Report of the Governor for the years 1964-1968.

88. Statute 602/1915 is the seminal statute which regulates the activities of cooperatives in general and particularly provides for the setting up of housing cooperatives. It was followed by the basic law 4202/1929 as well as a stream of other legislative measures (laws and acts of delegated legislation) aiming at promoting the activity of housing cooperatives by granting them various privileges. In view of the abuses disclosed, another set of legislative measures was issued, among which st. 4546/1966, Royal Decree 1059/66 St. 201/1967. aiming at the reforming of the institution, with dubious results.

To give a rough idea of the volume of legislation issued in favor of housing cooperatives we note that only in the period 1923-1970 over 260 legislative acts were issued, either granting specific privileges to particular cooperatives (of officers, civil servants, MP's etc) or extending those privileges to other categories of cooperatives.

89. Owners affected by townplanning policies have formed associations at the regional level, while the Union of these peripheral associations is sited in Athens.

90. On the pressure exercised by politicians to town planning authorities for the extension of the town plan of Athens and the incorporation of unauthorized

settlements see *Biris, K.*, Athens from the 19th to the 20th century, Athens 1966, p. 274. See also report of K. Biris at the newspaper *Nea*, 9.10.1956.

91. At a press conference held on 16.11.1989, the secretary of the Ministry of Environment, Townplanning and Public Works admitted that unauthorized construction has been intensified in view of the forthcoming (November 1989) elections: in the last three months 48 unauthorized buildings were demolished, 2475 protocols were issued and 636 fines were imposed on offenders.

See Newspaper *Nea*, 17.11.1985

92. A totally different explanation for unauthorized (illegal) housing in Greece is provided by *D. Emmanuel* in his Phd thesis at the London School of Economics and Political Science, *The Growth of Speculative Building in Greece, Modes of Housing Production and Socioeconomic Change, 1950-1974*, London 1981. Emmanuel criticizes as inadequate and ideologically biased both the view that illegal housing, being the outcome of the inability of public housing and/or speculative market to accommodate the growing low-income population, was tolerated by the state in view of its incapacity to provide an alternative solution, and the view that illegal housing was intentionally promoted by the bourgeois state as a policy of easy access to urban land, aiming at reducing the cost of living of the working class. The second view is so far-fetched and unsupported by data that it requires no specific counterarguments. With respect to the first view, Emmanuel assumes that neither the capitalist state nor the speculative market are by nature inclined to seek a solution to the housing problem, unless forced to do so by special historical conditions and social struggles, which were not present in post-war Greece. To prove his point that inability to solve the housing problem, benign neglect and laissez faire attitudes do not inevitably lead to unauthorized housing, he invokes the example of 19th century England, where despite the presence of the above conditions, no similar phenomenon was observed.

According to Emmanuel the phenomenon of illegal housing can only be properly accounted for if seen as a particular form of the broader phenomenon of precapitalist petty building and not as a third alternative to public and market housing, which are in fact exceptional and recent phenomena in postwar Greece: it is only in the wider context of popular precapitalist theory that Greek illegal housing can be understood.

Emmanuel proceeds to an analysis of the conditions which, in his view, permitted a relatively substantial scale of precapitalist housing production in postwar Greece. He identifies such factors as access to urban land and autonomy from middle class/capitalist controls and pressures (and more specifically, lack of bourgeois landed estates and diffusion of land ownership, limited spatial expansion of speculative buildings, political process of 'colonization' of urban land by popular strata) and underdevelopment of modern-capitalist relations in the supply of factors of production other than land (such as personal vs institutional finance, requirements for capital in housing production, limited modernization of land and building controls and particular structure of the labor market).

It follows from the above that Emmanuel approaches the complex problem of unauthorized development from the traditional reductionist perspective and, consequently, he ends up considering it a byproduct, insignificant per se, of a purely economic process, that of popular precapitalist housing. It is obvious that he overlooks the legal and administrative concept of a town plan, which is nevertheless an autonomous and crucial variable of the problem.

As it is well known to those familiar with townplanning theory, town plans have been designed and applied since the antiquity in a variety of political systems irrespective of the mode of production of these systems, because towns plans are dictated by different considerations related to the public interest, such as safety, public health, transportation etc. The above requirements of town plans, which incidentally present a remarkable consistency through the ages, have survived a great many changes in the modes of production from agrarian to precapitalist, capitalist, socialist etc.

It is obvious from the above that the distinction between authorized and unauthorized construction, i.e. construction in accordance or in defiance of the town planning restrictions in force, is crucial since it is related to important cultural factors, such as capacity of perceiving town planning values, environmental conscience, law abiding attitudes etc, and cannot be simply dismissed as a circumstantial subcategory of a specific mode of housing production. Thus, the concept of unauthorized construction presupposes the capacity to formulate the concept of the town plan, which is only attained after a certain level of cultural and not of economic development. Moreover from this perspective, the concept of unauthorized development has nothing to do with the quality of the construction or the method of its financing: it is common knowledge that unauthorized constructions in Greece range from shacks to luxurious villas, the latter outnumbering by far the former.

Finally, Emmanuel's argument that unauthorized development is not related to the incapacity of state and/or market to solve the housing problem, since in 19th century England no such phenomenon had occurred, is in our view not valid. As we have already pointed out (see p), the reason that no unauthorized settlements existed in 19th century England was that the concept itself was at the time unknown.

Conclusions

The present thesis has undertaken an analysis of implementation failures from the perspective of an integrated legal theory. The analysis has shown that implementation is a complex process, in which a variety of factors, both social and legal, of different weight and significance, are involved. Consequently, implementation failures may well be attributed to factors of great diversity, ranging from controversial social values down to personality traits of individual implementors. The theoretical task is, therefore, to identify and classify these multiple factors within the context of a general model of implementation.

Such a task exceeds the potentialities of classical legal theory, which limits itself to the study of legal rules and illegal individual decisions. Empirical theories, on the other hand, have, in our view, also come short of the task, because they focus on the description of actual failure situations and/or the indicative enumeration of certain failure factors taken separately and disjointedly, without specific connection to a broader legal context.

The present thesis rests upon the identification of a number of failure factors, not randomly taken but derived from a general legal model of implementation. In order to do so, the thesis applies systems methodology and makes use of systems models. These models are, in fact, research strategies permitting the gathering and processing of the greatest possible volume of information concerning the object of study. The design of systemic models for the implementation process as well as for each factor responsible for implementation failure (appropriately called "failure factor category", since it consists itself of a system of failure factors), is the basic contribution of the thesis to the formulation of an integrated legal theory of implementation.

Our basic assumption about implementation failure is that it is produced by illegal and/or inefficient and ineffective individual decisions, which fail to realize the value goals intended by the law. The major sources of implementation failure (failure factor categories) are identified as follows: Legislation, Communication and Control (including Case Law), Resources, Management and Organization, Administrative Practice, Pressure Groups and Human Relations.

The validity and usefulness of the proposed implementation theory were tested through its application upon a real case of implementation failure. Our case has been selected from a critical public policy domain, i.e. urban planning, in which notorious failures occur all over the world. More specifically, the failure case refers to the misfortunes of an excellent planning law, the Greek statute of 17.7.1923, which, against any expectations, ended up producing a colossal failure. The most characteristic aspect of this failure is the phenomenon of unauthorized development, which, despite repeated efforts to control it, is still out of hand. Ever since its first appearance in prewar Greece, the phenomenon has acquired international dimensions: most of the rapidly expanding megacities in developing countries are the product of unauthorized development.

The application of the proposed systems model upon the failure case has clearly shown that the failure of the statute of 1923 cannot be attributed solely, or even mainly, to the inadequacy of its provisions, but rather to the above mentioned failure factors. These factors lie outside the sphere of traditional public law and their impact has only recently started to be understood and evaluated.

The present thesis has studied each failure factor category as a separate system. In order to do so, it has depicted the main components (failure factors) of each category in systemic models of two different kinds. The first kind focuses upon the multiple interactions among the components, which mutually aggravate their negative impact upon the overall failure. The second kind of models relates the failure factors to the respective social systems, with which they are connected. In this way, the thesis has come up with models which may be used in any case of implementation failure, provided that concrete data concerning the specific problem are fed into the respective variables of the model.

Since Law is by nature an applied science offering solutions to practical problems, the proposed legal theory of implementation aims not only at explaining but at guiding action as well. One of the main conclusions of this thesis is that, according to systemic logic, all failure factors should be treated simultaneously by a corresponding system of corrective measures. One sided or partial attempts to deal with a problem situation not only fail to improve it, but end up complicating and aggravating it as well.

In view of the above the present thesis has finally established the following points and has come up with the following suggestions for the improvement of implementation:

1. Implementation is a distinct and essential stage of the law and policy making process which should not be overlooked or underestimated. On the contrary, it deserves equal attention to policy design; otherwise the entire policy making process is exposed to failure.
2. The implementation process is neither purely legal nor purely factual. Consequently, neither legal science nor empirical social sciences alone are sufficient for its study. In fact, it is a complex process with ramifications in all social fields and, therefore, requires a modern legal methodology integrating the findings of the so-called new sciences.
3. Such a modern legal theory of implementation is based upon the following principles:
 - a) The traditional principle of legality, upon which classical administrative law has been founded, cannot prevent implementation failures of contemporary Administration any more. Perfectly legal policies have met with blatant failure due to other aspects of the policy process, related to their feasibility.
 - b) Feasibility in implementation is not an empirical or practical matter, but a legal and scientific problem. It was studied as such for the first time by the so called new sciences and particularly cybernetics, organization theory,

management and policy sciences. It is therefore necessary that the methods and findings of these sciences are taken into consideration by the legal theory of implementation.

c) Until now the only legal rules concerning implementation were codes of administrative procedure and enforcement. According to the new criteria and standards of administrative performance this is not enough. The existing codes should be revised and enriched with new rules concerning omitted aspects of administrative behavior, namely the decision making process, its organizational context as well as communication and control inside and outside the administration.

d) In view of such a comprehensive approach the classical continental law of administrative acts seems outdated. Emphasis upon formal processes and marginal concern for the content of the administrative decision inevitably led to a superficial conceptualization of the implementation problem. In other words, classical administrative law has been bypassed by events and cannot serve as an effective guarantee against administrative abuse or incompetence any more. It should be revised in the above stated sense in order to ensure the efficiency and effectiveness of administrative action.

4. Specific conclusions referring to the above mentioned failure factors are the following:

Legislation When focusing upon implementation, inherent is the risk to overlook legislation as directly related to implementation. And yet many implementation problems have their roots in the statutes and regulations, which are being implemented. In fact, the quality of legislative texts in terms of information requirements and problem structuring, i.e. their logical cohesion, completeness, clarity and precision, are obviously fundamental prerequisites for successful implementation. Moreover, analysis of the relations of the basic statute of 17.7.23 to other relevant public policies (economic, touristic, industrial, environmental etc.) has established that there is an imperative need to harmonize any new legislation with the existing system of laws in force. This is a common omission of legislators and the ensuing conflicts of law are one of the major sources of implementation failure.

Case law The case study has shown the considerable impact of case law upon the effectiveness of legislation. If a legislative text can successfully convey its meaning to the judge, the resulting judicial decisions will be constructive and complementary to the law and will thus enhance its durability and promote uniformity in its application. If, on the contrary, the law is imperfect and unclear, misinterpretations at the level of adjudication will make things worse by distorting the poorly expressed intentions of the legislator.

Resources. The identification of inadequate resources as a major implementation failure factor is quite commonplace; nevertheless, resources deserve some special attention in view of the need to see them from a different perspective. Classical administrative law is solely concerned with providing adequate controls against dishonest management of public

resources. Today there is a growing concern towards the efficient use of public money and adequate financing schemes are an essential part of public policy making. For this reason new institutions, such as performance budget and evaluation, should be included in public law.

Communication and Control. Although the question of effective control is crucial in implementation, classical legal theory has so far treated it from a narrow perspective, limited to the exercise of marginal legal controls. Today it has been established that full use of the potentialities of information technology can improve communication and control immensely. Nevertheless, this presupposes that adequate information systems are designed, a thing which in turn depends upon the extensive rationalization of the existing bulky, fragmented and often conflicting legislation.

Regarding control, the present case study has convincingly shown that law enforcement should only be used as the last resort for effective implementation and cannot serve as a substitute for missing prerequisites of good implementation. Otherwise, i.e. if implementation relies solely on enforcement, both are bound to collapse.

Organization With respect to the question of information flow in decision making, systems methodology has solved the top-bottom/bottom-top dilemma of empirical implementation research by recommending the design of an appropriate decision making system for each specific kind of policy. While preserving the distinction between policy design and policy implementation, systems methodology delegates to implementors the amount of discretion necessary for the realization of the intended policy goals. The same principle of selective design applies to other crucial organizational matters, such as the amount of decisional nodes in decision-making, the degree of citizen participation, the coordination of competent authorities etc.

Management The case study has shown that strict adherence to the principles of classical administrative science does not by itself warrant good and effective implementation. New Public Management, on the other hand, is a relative recent development in the field, which should be adopted by the new theory of implementation in so far as it does not contradict the fundamental values of administrative science. In order to incorporate New Public Management in an integrated legal theory of implementation some organizational and functional rules should be modified, so that public managers are granted the necessary legal powers for acting efficiently and effectively.

Human Relations. Traditional administrations, such as the Greek one, have always relied upon general disciplinary codes of civil servants' behavior to ensure internal cohesion and performance. This is not considered sufficient any more. The science of New Public Management includes a body of rules and practices, greatly influenced by the private sector, aiming at improving communication within the administration as well as in its relations with the public. The analysis of our failure case has shown the importance of human relations for implementation and the integrated legal theory recommends the adoption of the new approach. A new body of rules concerning the citizens' rights towards administration is becoming part of administrative law. Moreover, special modalities of communication, when required, should be included in any specific policy project to facilitate its implementation.

Pressure Groups. The integrated legal theory of implementation does not underestimate the fact that we live in an interest society, in which pressure groups, representing various articulated interests, play an important role. However, any sound legal theory should not tolerate the undue interference of these groups in the implementation process. Interest groups should promote their legitimate demands (lobbying) at the stage of policy design (law making and issuing of regulatory instruments). Experience shows that the delayed involvement of pressure groups in the policy process and particularly at the stage of implementation can lead to policy distortion. In that sense, the claim of bottom-top theory cannot be accommodated as such in a legal theory of implementation, because it particularly implies the power of implementors to alter or even practically cancel the authoritative decisions made by the legislator. On the other hand, participation of pressure groups in the implementation process can be useful at the stage of problem structuring, which proceeds the issuance of the individual decision and in this respect it is recommended by the integrated legal theory of implementation.

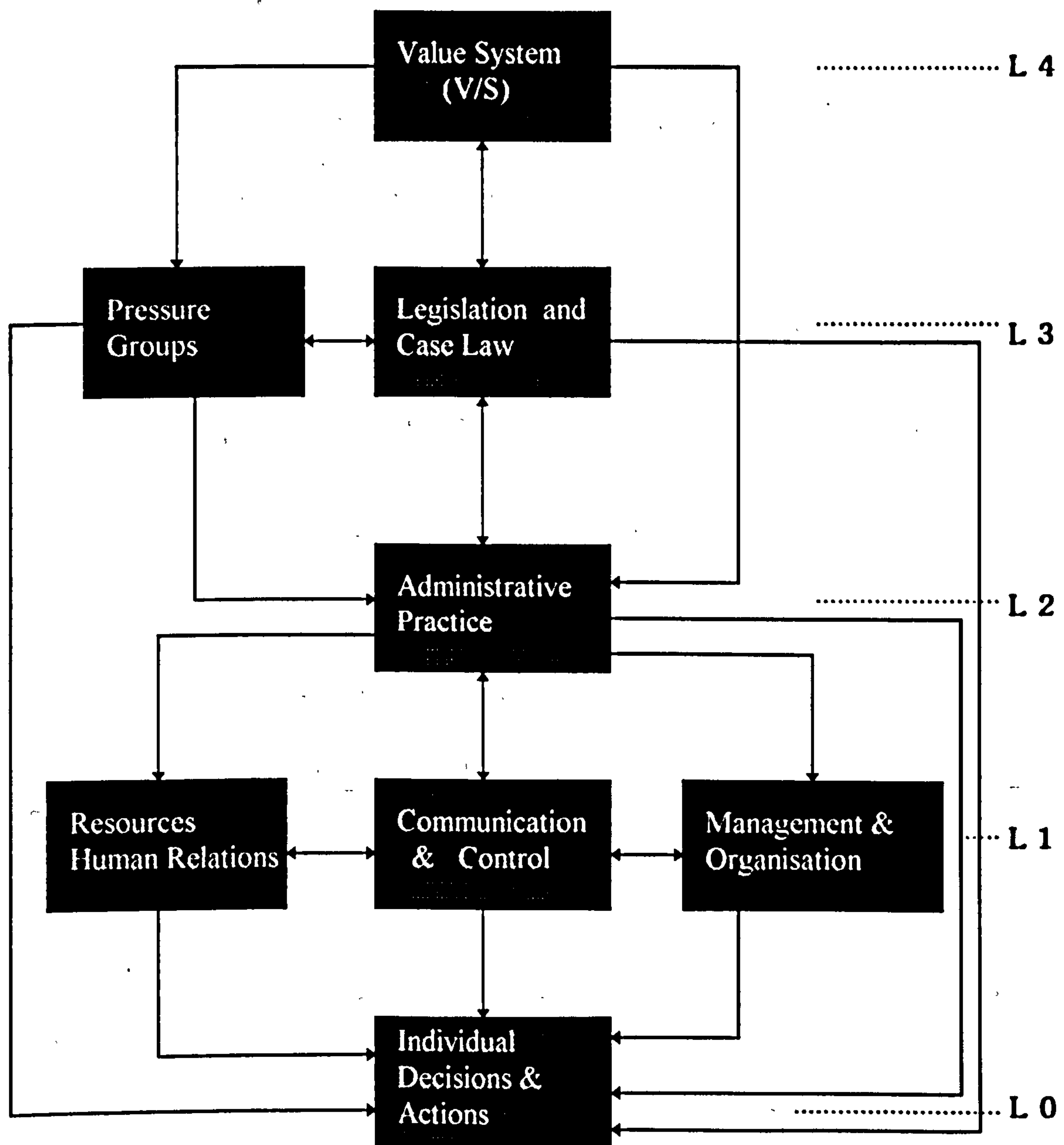
5. In the following Diagram we present a model depicting the hierarchical relationship of the main failure factor categories involved in implementation. This hierarchical relationship is built on the basis of criteria related to the weight of the factors included in the model, determined by their proximity to the top hierarchical level occupied by the societal *Value System (V/S)*. The value system is considered the top factor in view of its superior position in society and its slow rate of change (in technical terms it is a system with a long term of relaxation; on the other hand, the value system is usually entrenched in the constitution of a country).

Next to the V/S we have a level where values, drawn from the value system and related to implementation, are further processed in the form of value demands by *Pressure Groups (P.G.)* in order to be finally converged into the various value goals of the *Legislation* in force. At the same level *Case Law* developed by the courts is included due to the constant need for elaborating and updating the laws in force.

The following level is occupied by *Administrative Practice*, which shapes the broader context of implementation within Public Administration. No matter how different the requirements of each specific implementation case, there is a uniform implementation environment composed of such rules, practices or even rules of thumb, which reflect the usual practice of the respective Administration. This practice actually sets the insurmountable limits and constraints, within which the implementation of a given legislation is bound to take place, even at the expense of the letter of the law.

At the lower level we find *Communication and Control, Management and Organization, Resources and Human Relations*. The presence of these elements at this level implies that the implementation is located within a complex bureaucratic organization, financed by public resources and run according to the various methods and techniques concerning human relations. Therefore, the individual decisions made at the next level are directly conditioned by the state of these elements.

At the lowest level a processing of *Individual Demands* takes place, which corresponds to the respective individual *Decisions and Actions*. The structure of this implementation model clearly shows that the intended individual decisions and actions are exposed to the impact of a whole hierarchy of factors, in the sense that, starting from the top level, the performance of each level is qualified by the performance of its immediately superior level. In this way, the often poor quality of the lowest level (individual decisions and actions) is sufficiently explained.



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