Abstract

An acceleration of the perception of change can be stated to have initiated with important technological innovations throughout the 20th century. These innovations have not only changed our way of living but equally our perception of change itself. The resulting changes have also brought about serious challenges to the existing order governing – what is now called – the “global information society”. In order to respond to these changes by way of formulating new modes of governance, this article discusses the question of whether it is necessary to ‘mind the changes’ and to eventually also ‘change the mind’, and tries to formulate some principal as well as concrete recommendations for future directions of the debate on, what is termed here, “glocal governance”.

Keywords: Global Governance, Glocalisation, E-Governance and Cognitive Science
Governing Glocalization: ‘Mind the Change’ or ‘Change the Mind’?

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I. Introduction

To anticipate the prospects for global governance in the decades ahead is to discern powerful tensions, profound contradictions, and perplexing paradoxes.

James N. Rosenau

The late 20th Century is often associated with the advent of the era of globalization. This tends to ignore the fact that the world had previously been strongly integrated and that often there were less barriers to the free movement of goods, services, persons and capital in place than there are today. Hence, at the dawn of the 21st century it appears that a more accurate defining characteristic of the modern age of globalization is thus the so-called “information revolution”, namely far-reaching technological innovations in particular in the communications and transport sector which were initiated at the end of the 19th Century.

These more recent innovations in the field of information, communication and transport (ICT) technology, first of all, confirm that changes are a recurrent pattern of the history of humanity. Second, however, these innovations also brought important and unprecedented changes to our means of perception. Paradoxically, the main aspect of these changes in perception is found an intensified sensation of change, in which change itself appears to have become the only constant. Similar to the old adage “panta rei (everything is in flux)” formulated by the Greek philosopher Heraclitus of Ephesus (c.535–475 BCE), Isaac Asimov aptly described the same phenomenon as follows:

The only constant is change, continuing change, inevitable change, that is the dominant factor in society today. No sensible decision can be made any longer without taking into account not only the world as it is, but the world as it will be.

Hence, we have been and we are not only constantly subject to change but we appear to also experience a drastic “acceleration of change”. This acceleration was applied to our temporal understanding by Paul Nora in his notion of an “acceleration of history”, which he describes as an “increasingly rapid slippage of the present into a historical past that is gone for good, a general perception that anything and everything might disappear”. At this stage, it remains perhaps more doubtful whether the acceleration of change will also faster introduce the so-called “end of history”, as was earlier argued by Francis Fukuyama. It is perhaps more appropriate to speak of a possible “end of geography” albeit in terrestrial terms only, since we appear not to

have reached the outer end of our universe yet. It is safe, however, to content that the world is shrinking, especially in terms of the means of information, communication and transport.

From a general point of view, these important changes that hold the world in their grasp today are reflected in the transition from still photography to motion pictures by the end of the 19th century. This important visual change has only intensified and spread to other areas since then. These new possibilities of simultaneously and globally processing information through text, image, and sound have further advanced with digital technology and the Internet. Digitization and the Internet have thus become two important defining characteristics of the present time and of our present societies, which are also referred to as “global information society”. The challenges of building and governing such global information society were also addressed by the international community and representatives of the peoples of the world when they formulated principles for the governance of the global information society. In particular, the representatives declared to pursue the following objectives:

- Our common desire and commitment to build a people-centred, inclusive and development-oriented Information Society, where everyone can create, access, utilize and share information and knowledge, enabling individuals, communities and peoples to achieve their full potential in promoting their sustainable development and improving their quality of life, premised on the purposes and principles of the Charter of the United Nations and respecting fully and upholding the Universal Declaration of Human Rights.

The impact of the new possibilities derived from these technologies is well reflected and was perhaps even anticipated in Albert Einstein’s insight that time and space are intertwined and that the “world we live in is a four-dimensional space-time continuum.” In such world, the perception of change is more dynamic where the observer is moving slower and vice-versa; an effect that is well known from the cinematograph transforming single pictures in a moving story and the “Doppler-effect” describing the change of frequency of a wave for a listener moving relative to the source of the wave.

The new technologies and the growing amount of information to be processed by our mind, which must ultimately be seen as the principal cause for our felt acceleration of our perception of change, has certainly important repercussions for the individual and other areas. Three aspects were identified by Paul Nora in the following sentence:

- The total psychologization of contemporary memory entails a completely new economy of the identity of the self, the mechanics of memory and the relevance of the past.

The ongoing process of what Paul Nora aptly calls “psychologization of memory” is widely carried forward by the ongoing “computerization of our society”. It leaves little room for doubt

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6 The concept is reported to go back to the writings of the economist Fritz Machlup; see F. Machlup, The Production and Distribution of Knowledge in the United States (Princeton: Princeton University Press, 1962).
8 Recital 1; ibid.
that these trends constitute an important challenge of our time with broad repercussions for both each single individual and the sum of the collective societies forming the global community as a whole.

Applied to the political and legal realm of contemporary societies, this means that change is experienced more intensely and more friction is likely to occur where the political and legal institutions are inapt to deal with the rapidly altering conditions and circumstances, contrasting with the context in which they were originally placed. In the legal realm, this dilemma has been aptly summarized as follows:

The omnipresence of change throughout all human experience thus creates a fundamental problem for law; namely, how can law preserve its integrity over time, while managing to address the newly emerging circumstances that continually arise throughout our history.\(^\text{12}\)

An important consequence of this growing pace of change is the blurring of formerly well-established lines of distinctions in the legal world. In the realm of the mind, this is apparent in a significant challenge to our dual way of thinking.\(^\text{13}\) In law, this becomes, for instance, manifest in the relation between public or private (international) law, domestic and international law, trade and non-trade issues or the interests of the individual vis-à-vis those of the collective society or societies it belongs to. These multiple developments are perhaps best summarized in the emergence of new types of concepts which bear apparently contradictory or paradoxical features and frequently appear in the form of paradoxes or oxymora. Three such oxymora, which are highly relevant for the governance debate are glocalization\(^\text{14}\), fragmegration\(^\text{15}\), and simplexity.\(^\text{16}\) These three oxymoronic concepts are symbolic for the acceleration of perception and felt pace of change that also explains the replacement of the former and more static concept of government by the novel and more dynamic concept of governance. Literally, “governance” means “to steer” which implies that something is in motion as otherwise it means to stand idle, stagnate or eventually decline. In this process of governance, the three concepts stand for several closely related problems which are best captured by the following brief characterization: Glocalisation, first and foremost, describes the oscillation of regulatory forces between the global and the local level. This oscillation is also encapsulated in the concept of multilevel governance. Secondly, fragmegration is generally understood to describe two movements pressing in opposite direction.\(^\text{17}\) More specifically, it can also be used for the description of conflict between the proliferation and fragmentation of policies and regulatory attempts countering them with a view of streamlining them into a coherent set of strategies of public management. The difficulty of increasing the coherence of the constantly expanding scope of


\(^{13}\) See e.g. Peter Carruthers, Stephen Laurence & Stephen Stich, The Innate Mind: Foundations and the Future (Oxford: Oxford University Press, 2008) at 101, writing that “it may be that we cannot shake off our dualistic way of thinking because it is innate and modular, and innate modular beliefs are extremely hard to shift”.


\(^{17}\) See Hettne, supra note 15 at 22, using the concept of “fragmegration” to describe two movements pressing in opposite direction, namely, toward fragmentation, on the one hand, and toward integration, on the other hand.
policy areas is directly linked to *simplicity*, as the third related concept. *Simplicity* can be briefly defined as denoting a trend towards a growing complexity and the remaining desire for greater simplicity.

These three words and the difficulties they set out to describe are in principal relevant for and applicable to all political entities that exercise some form of public authority. Expressed in other words, the challenges to governance are similar, whether we think about the public management of the affairs of international or regional organizations, nation states or federal states, regions or provinces, territories or municipalities.18

These prospects raise numerous questions which put in a nutshell can be reduced to the following two options available to policy and law makers and citizens alike, namely to “mind the change” and to begin to “change the mind”. In the context of governing *glocalization*, this “minding the change” entails, first of all, rethinking the present ways and forms of government and regulation; then, “changing the mind” means in particular to look for novel ways and to create new structures of governance of the global and local affairs on this planet. Taken together, the references to the mind also mean to suggest to look for the answers not in the external action (only) but to (also) consider the mind as the central source from which not only our perception but equally our normative claims derive. In sum, the questions posed mean to invite to find answers to the related problems of how to deal with change in view of these drastic recent changes and how to prepare for future ones still to come. It is a debate on these answers and perhaps some ideas of their concrete implementation, which this article aims at introducing.

II. Governing *Glocalisation*: Mind the Change?

1. The Global Governance Debate

Global governance is becoming a commonly used term, yet its precise meaning and exact scope remains elusive.19 Carrying contradictions and paradoxes, the term global governance also poses serious challenges to our established modes of thinking,20 and thus it has been aptly described as a “mystery”.21 In greatly simplified terms, it can be understood as trying to find answers to the questions of “how we are governed” and of “how we want to be governed”.22 In legal discourse this question largely corresponds to the distinction between the law as it is (*de lege lata*) and the law as it should be (*de lege ferenda*). In other words it focuses at the same time on a twofold set of issues: first, it aims to understand the present legal and institutional framework and the identification of urgent problems of a global character and, second, it marks an attempt to gather enough critical ideas for the development and reform of the present legal framework with a view to establishing a new global legal order. Both sets of questions, however, are inextricably linked.

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18 See infra “The Governance Conundrum: Glocalisation, Fragmentation and Simplexity”; Section II.2.
19 See e.g. Lawrence S. Finkelstein, “What is Global Governance?”, (1995) 1 Global Governance 367, writing that “The term governance has been applied to international matters in a variety of ways that have been at best disorderly and perhaps confusing”.
20 See e.g. Rosenau, *supra* note 1.
Apart from the traditional issues of international peace and security, global governance is used in a wide array of areas, from health and food security via culture to environmental protection, as well as from international trade and global competition law via human rights to sustainable development. This enumeration is far from complete. The term also responds to the challenges imposed by new technological advances. In accordance with challenges deriving from a changing political environment, it blurs the lines between previously well established distinctions, such as those of public and private, municipal and international law, or politics and economics. It interconnects various themes and transcends national, regional and international boundaries to attain a global dimension. Here in particular the role of private individuals under international law gains special significance. Similarly, the emerging role of global civil society is being taken into account. This gradual change in perspective is also responsible for the use of the adjective “global” instead of “international” in connection with “governance”, especially in a legal context. Global governance also brings different scientific branches and disciplines

together by slowly corresponding to new developments which cut diagonally through previously well-established disciplinary boundaries. In the legal realm, it meets with the concepts of constitutionalization or constitutionalism and strongly relies on the methods used by comparative law. Equally, being a child of globalization and trying to cope with challenges to legitimacy and democratic principles of global rule, global governance experiments with well-established concepts, such as the nation state and sovereignty, and proposes new forms of government in an era of globalization. New forms of government also mean an acknowledgement of changing conditions in the political and economic arena which pose new global challenges. New global challenges require not only new forms of government or regulation but also a new institutional architecture which is being discussed under the aegis of governance. It even proposes to proceed without the concepts of “state” or “government”. These two words relate well to the underlying problem in our perception which has resulted in the emergence of the concept of governance. As was briefly mentioned in the introduction, this is found in the etymological meaning of “governance”, which derives from the ancient Greek verb κυβερνάω (kubernao) “to steer”. The process of a new form of governing was largely initiated by the information, communication and transport revolution following the invention of the cinematograph. Generally, it could then be said that governance comprises of the efforts of humanity to find the adequate means for the organization of their affairs. More particularly for the present time, it means the formulation of ideas allowing for the adaptation of states and their governments to a more dynamic and long-term vision.


33 See e.g. Aseem Prakash & Jeffrey A. Hart, eds., Globalization and Governance (New York: Routledge, 1999).


In this respect it is closely linked to the concept of sustainable development, which received wider recognition following the 1992 Rio Declaration on Environment and Development.\textsuperscript{39} Sustainable development is frequently defined as a development that meets “the needs of the present without compromising the ability of future generations to meet their own needs.”\textsuperscript{40} In this regard, the Plan of Implementation of the World Summit on Sustainable Development can also be said to call for greater coherence in global law and policy making, integrating different policy goals, such as those of economic, social cultural and political development as well as of environmental protection.\textsuperscript{41} It also requires an enhanced inter-institutional coordination between international organizations based, for instance, on principles of comity\textsuperscript{42} or vertical and horizontal subsidiarity.\textsuperscript{43} The same plan also cites as an important aspect of the global governance debate the inclusion of the local level into the global debate, as it is reflected in the title using the concept of glocalization. In the same sense, the Plan reaffirms that “good governance within each country and at the international level is essential for sustainable development”.\textsuperscript{44} Governance, therefore, not only introduces a dynamic element following the accelerated perception but, based on this, also provides good reasons why we should actually mind the changes going on around and perhaps even in us. We should notably also critically analyze which of the changes are caused by us.

In sum, the need to mind the numerous changes, in turn, provides an equally strong argument for the need of changing the mind. Such change of mind may consist, first and foremost, in a re-evaluation of our predominant modes of thinking with a view of initiating a more critical and dialectical dialogue between different, apparently antagonistic concepts, such as the local and the global, fragmentation and integration, as well as simplicity and complexity. Such dialogue, however, is not limited to these three concepts but equally extends to other pairs, such as


notably the public and private or individual and collective distinction to mention but two. First signs of such critical and dialectical dialogue are already perceptible in the rise of paradoxes and oxymora as outlined above using the three examples of globalisation, fragmegration and simplexity. These examples can be seen as representative for the major conundrum of the governance debate to which we shall now turn.

2. The Governance Conundrum: Glocalisation, Fragmegration and Simplexity

The underlying issue of the global governance was said to be found in the phenomenon of a perception of accelerated change. The wide array of academic writing suggests that the governance debate addresses numerous policy areas of global concern but widely stays fragmented despite of the growing interdependence between them. This horizontal interdependence, which is caused by the dynamic developments holding the world in a tight grip, also extends to the vertical level. In additional to the need for the horizontal coordination between different policy areas there exists also the need for a multilevel governance model that includes the global, regional, national and local level. Several examples of constructive approaches towards forms of multilevel governance exist. We may first think of the European Union and its sophisticated governance system balancing the different interests of individuals, locals, nationals, regions, Member States, and the European Union with the help of instruments such as the principle of subsidiarity. The People’s Republic of China too, follows an interesting model of governance, otherwise known as “one country, two systems” (although I would increase the number of systems considerably), with which it not only governs the provinces of the Mainland but equally its two special administrative regions, Macau and Hong Kong. It is submitted that the existence of different levels and instruments to balance interests between different strata of society can be applied to practically all states, large or small, and old or new. Even the global level represented solely by various international organizations and conceived in isolation from its various constituent subjects of public international law, such as notable the United Nations Organizations, the World Trade Organization, and other

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institutional settings, such as the G20, are under pressure to cope with change and to reform internally as well as externally in relation to other institutions.

Despite the growing awareness and different reform efforts undertaken in this respect, there remain many more things to do in order to transform governing bodies and institutions and to generally improve the forms of public management. After having in principal advocated that global governance also requires multilevel modes of governance connecting the local and the global, there exist more difficulties of public management in dealing with the accelerated perception of change. Some of these difficulties were identified as follows:

Introducing change into the public sector is highly controversial and complex as it affects, directly or indirectly, the interests and way of living of members of society. Public and private organisations cannot avoid changing if they are to survive in a more globalised, highly interdependent and fast changing world.

These difficulties lead on to the next broad oxymoronic concept that is used to address the issue of change in the governance of glocalization. This concept is the one of fragmegration. As mentioned before, fragmegration generally describes two movements pressing in opposite direction but they reach out to areas that are beyond the opposite trends of fragmentation and integration from which the word derives. Before discussing those, however, it is necessary to recall that when addressing governance and introducing change into the modes of public management, it is indispensable to address not only the laws and regulations by which the institutions were legitimated but also those which they implement and enforce. With regard to these laws and regulations, some major difficulties that may be encountered in this process are listed in the following quote from a working paper of the Organization for Economic Co-operation and Development (OECD):

In terms of regulation, the most common problems that affect the relationship between the public and the private are duplication of rules, overlapping and low quality regulations, and uneven enforcement. This issue is critical as it impedes adequate public service delivery at local level, citizen’s perception of local and national authorities. It also places unnecessary burdens on business services and activities as well as to investment and trade. High quality regulation at one level of government can be undermined by poor regulatory policies and practices at other levels, impacting negatively on the performance of economies and on business and citizens’ activities.

The first important additional opposite trend encompassed by fragmegration is the public private distinction in the widest sense possible. It includes not only the distinction between the (private) individual and the (public) state, but also the relation between private and public

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A further example is the concept of “public management” as used before. It can be said to be oxymoronic too, as it marks a transplant of a concept of the sphere of private business practices into the one of public governmental tasks. Without referring to more examples, the public – private distinction certainly forms a fundamental aspect of the governance debate.

As a further element of two different trends that are combined in the governance debate and follow two apparently opposite directions, is found in the different forms of regulation. This includes different pairs of antagonisms used to describe the large number of legal systems prevalent in this world. Two such pairs from the field of regulation would be the distinction between uniform laws and legal pluralism, or else between legal harmonization and legal polycentricity. It is also closely related to the different methods of regulation, such as centralization vs. decentralization, regulation vs. deregulation, or self-regulation and co-regulation, negative and positive integration, widening and deepening, or hard law vs. soft law. In accordance with the trend described above, also the lines of distinction between different methods of regulation have become blurred, such as methods and instruments like the open method of coordination (OMC) or the concept of soft law show. It could also be applied to different means of conflict-solution such as negotiation and litigation or else mediation and arbitration.

In the context of governance and of public management, the various listed opposite concepts in the regulatory field are of great relevance for the third and last representative oxymoronic concept expressing the tensions derived from the accelerated perception of change. This concept is the one of simplicity, which shows the alternating cycles with which things become complex and become simplified again before they become complex again and so on and so forth. By and large, the entire history of humanity could be said to follow this pattern, especially when it is observed over a sufficiently long time period. Such pattern notwithstanding, the length, height and intensity of the respective cycles remain uncertain. Such cycles have been recorded for civilizations, empires, markets, cultures, and many more areas whether old or new. A

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58 The term “legal polycentricity” was coined by Professor Henrik Zahle at the Conference on Legal Polycentricity, convened by the Institute of Legal Science of the University of Copenhagen and is defined as “consisting in a critique of the single-value approach to law, a denial of radical relativism, and in an acceptance of moral pluralism”; see Surya Prakash Sinha, Legal Polycentricity and International Law (Durham: Carolina Academic Press, 1996) at 1.


similar pattern can be found to govern our perception of history in general. In fact, the historian Reinhard Koselleck describes this phenomenon by referring to history as proceeding both in linear terms (evolution) and in circular or cyclical terms (revolutions). He proposes to overcome this opposition in his theory of time layers by reference to the etymological origin of “history” in Greek language which means “to experience and to learn through the narration of what has been learned”. If our perception of history follows indeed this pattern, it is also no surprise to find a similar dynamic in the history of our understanding of science. Thomas Kuhn has encapsulated this pattern in the concept of paradigm shift in his landmark book on the Structure of Scientific Revolutions in which he inquires into the patterns of scientific discoveries and scientific progress. Kuhn also relates the concept of paradigm to perception, when he writes that “a paradigm is prerequisite to perception itself” and that what “a man sees depends both upon what he looks at and also upon what his previous visual-conceptual experience has taught him to see”.

In all these examples the underlying basic structure is the dynamic of change and our perception and the possible explanations thereof. In certain periods of times then paradigm shifts constitute a form of simplification when things have become too complex. In this regard, Ervin Laszlo explains that such paradigm shifts are usually preceded by an increased occurrence of anomalies which then necessitates a new (and more) unified theory of everything because of the following reasons:

An integral theory of everything would bring us closer to understanding the real nature of all the things that exist and evolve in space and time, whether they are atoms or galaxies or mice and men. It gives us an encompassing and yet scientific view of ourselves and of the world; a view that we very much need in these times of accelerating change and mounting disorientation.
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Hence it is not only our perception of time and history but also the realm of science that is affected by these changes. It is therefore no surprise that this pattern can also be stated to exist in the realm of law and policy making or, in particular, of public management. A particular challenge to the realm of law was outlined before. A similar finding was made by Reinhard Koselleck when he writes as follows:

For law to be considered law, it must be based on its repeated applicability. [...] Theoretically, we need to note that the history of law, as of all its single norms, is both compelled by and dependent on its repeated applicability. It therefore thematizes longer deadlines or a relative duration, or else structures and not events.

There is no area of public policy making that is not affected by it, regardless of we think of the maintenance of global peace and security, or the local introduction of environmental policies. Most of all, this change and the arising complexity poses serious challenges to both sides, the public authority managing public affairs and the private individual being both subject to and user of them. Paradoxically though, scientific and technological progress is meant to simplify things and alleviate many burdens related to work in order to improve our overall well-being but often the scientific progress also tends to complicate things and causes certain anomalies to arise. Some of the resulting anomalies in the realm of public policy making will be outlined in the following section.

3. The International Legal Order’s Present Anomalies and the New Paradigm Shift

Paradigm shifts are said to occur and are most needed when anomalies are on the rise. This has also been found to dominate the beginning of the 21st century where the scientific community has been reported to face “another paradigm shift, just as fundamental as the revolution that shifted science from the mechanistic world view of Newton to the relativistic universe of Einstein”. In the realm of public policy and regulation there exists a long list of challenges that could be termed to fall within this category. Globally, international conflicts and threats to security and peace have never stopped to occur since the creation of the predominant legal framework as established by the United Nations Charter in 1945. As a matter of fact, the United Nations Millennium Declaration reads just like a summary of these anomalies, considering the never-ending threats to global peace and security, the wide spread of poverty and environmental degradation in this world, or the continuous violations of international human rights standards.

Old conflicts between the organization of politics and economics, which are inter alia rooted in the institutional fragmentation between various UN specialized agencies on the one hand and the WTO on the other, continue to challenge the efficiency and legitimacy of the international
legal order. Otherwise known as the so-called “trade linkage debate”, various political, social, environmental and cultural objectives are said to clash with the organization of trade and commerce.74

More problems derive from the separation between public international law and private international law.75 They mainly derive from an insufficient coordination of the legal relations between private parties and notably states and international organizations as the central subjects of public international law. The public-private relation and particularly the legal status of private parties in international law continue to require greater attention both in law and governance.76 More concretely, this is for instance the case with the rights of the national consumer in a global market, who hardly finds the adequate international legal remedies in the growing amount of international legal obligations.

The insufficient coordination is both caused and is still causing the ongoing fragmentation of international law.77 Equally, the growing fragmentation is both caused and continues to cause not only a proliferation of legal norms but of international organizations too.78 To cut a long story short, the overarching problem of global governance and the sum of anomalies that arise in the legal field today can be summarized by the characterization of a principal lack of coherence. Coherence in the international law context can generally be defined as the absence of conflicts and especially the “avoidance of unnecessary duplication of activities” of international organizations with a view of securing their effective cooperation.79 Coherence is also a key word in the global governance debate but reform efforts regarding the global legal system are still not yet carried out in a manner adequate to the challenges the world faces.80 Why this is so shall be

briefly illustrated by a reference to the “natural laws” of physics. Generally, coherence in physics is used in reference “to light as being composed of waves that have a constant difference in phase” and means that a “phase relations remain constant and processes and rhythms are harmonized.”\(^{81}\) This could be compared to the consistency and absence of conflicts in the legal sphere.\(^{82}\) More recently, however, coherence in physics was expanded to encompass the following significance:

It [Coherence] indicates a quasi-instant correlation among the parts or elements of a system, whether that system is an atom, an organism, or a galaxy. All parts of a system of such coherence are so correlated that what happens to one part also happens to the other parts.\(^{83}\)

Such quasi-instant correlation is not only relevant to atoms, organisms, or galaxies but also something that the global information society is more and more exposed to and is experiencing in greater intensity with every day. In the Newseum, a museum on the media in Washington DC, it reads to this end as follows:

Speed has always been a primary concern in the gathering and telling of news. The substance of news has changed little over time. What has changed has been the speed of which news travels. Early telephones required an operator’s assistance; rotary dial and touch-tone telephones allowed direct and ever faster connections. Modern cell phones gave reporters greater mobility. News travels as rapidly as technology allows.\(^{84}\)

New technologies and particularly the Internet have further increased the speed to a quasi-instant reporting of news. The now available technologies have fulfilled and even exceeded George Orwell’s predictions of more than 60 years ago when in 1948 he gave the following assessment of new media and their impact:

The invention of print, however, made it easier to manipulate public opinion, and the film and the radio carried the process further. With the development of television, and the technical advance which made it possible to receive and transmit simultaneously on the same instrument, private life came to an end.\(^{85}\)

These statements strongly reflect the drastic changes that new technologies have brought to human life and the world. It is therefore high time to notice the changes and the resulting anomalies and to change our mind and by applying a new understanding, implement new structures and processes to successfully govern our affairs until the occurrence of the next paradigm shift.

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\(^{81}\) See Laszlo, \textit{supra} note 68 at 25.

\(^{82}\) \textit{Cf.} Emmanuel Roucounas, “Engagements parallèles et contradictoires” (1987) 206 Rec. des Cours 9 at 246, writing that “les juristes s’interrogent souvent sur la cohésion du système et par-la sur l’opportunité d’aller plus loin dans la recherche d’une homogénéité et d’une hiérarchie normative dans l’organisation du commerce mondial”.

\(^{83}\) See Laszlo, \textit{supra} note 68 at 25.


III. Responding to the Challenges Posed by Glocalisation: Change the Mind!

1. Change and Coherence in Light of Technological Innovations

The preceding paragraphs have tried to assess the impact of a perceived acceleration of change on the global governance debate and to find an answer to the question of whether we should actually “mind the changes” that occur at all levels around us. Representative for a wide array of changes several oxymora were analyzed with regard to the tensions that they set free. They can also be said as first conceptual steps to confront the numerous anomalies in the sphere of global law and policy making. In this context, the fragmentation poses a serious problem and coherence was mentioned as a possible way out of the dilemma. It is hence time to consider some novel modes of governance that provide adequate responses to the challenges that lie before us and ahead.

As an old saying goes, problems should be attacked at the roots, hence where they arise. For the legal approach, I already put forward the idea of Law as Mnemonics and the Mind as the Prime Source of Normativity.66 This idea entails at least two connected arguments: First, it implies that the mind appears as the highest known source of inspiration from which a normative discourse may start to emerge; and, second, laws can be described as mnemonic traces when they refer to the various legal norms adopted and formed based on the collective experiences of the past and as mnemonic devices when laws serve as guidelines in the policy debate on legislative actions to be taken in the future. The mind, however, is also the centre of perception. Given that the acceleration of change is noted with our mind, it is also recommended to address the problem at the same level as where it arises. Finally, a last point to consider is the fact that the information society is strongly characterized by an im-materialization of reality, or a shift from reality to virtual reality as in particular aided by the processes of computerization and digitization. This also points to an interesting connection that can be found between human evolution and technological progress. In this connection too, the mind appears to be the prime switchboard between the two areas. It seems that human curiosity that stands at the origin of technological innovations is somehow linked to hidden or covert human capabilities. In other words, as the human being was born without tools, like wings of birds to fly or fins for fish to swim, the only human tool is the mind with which he projects his hidden capabilities through technology into reality in order to acquire the desired abilities. This can be illustrated, for example, with the invention of wireless communication, which can be compared to the human ability to telepathic communication, which is gradually receiving also growing scientific recognition.87

Put briefly, there are sufficient examples to suggest the necessity to change the mind and to redirect the governance debate to take into account more closely the conceptual level on which the mind operates. In this context, it is also necessary to carefully revisit and redefine the relation between law and technology.

2. Law and Technology: Formulating an Adaptive Response

Above it was found that the ongoing fragmentation of international law and policy making leads to an unnecessary duplication of activities or even obstructs the successful realization of some of

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the most fundamental human rights. This process is aided globally by the growing proliferation of international organizations. Nationally and locally, the same process is even stronger given the world’s legal segmentation in more than 200 sovereign or quasi-sovereign jurisdictions. This segmentation, which has grown in close alliance with the emergence of the nation state, poses in today’s world of growing globalization and interconnectedness as well as interdependence more and more serious problems. Anyone, who has planned to visit more than one countries for each of which the traveler needs a valid visa but happens to not leave in the capital of her/his own country where usually the consular affairs are handled by the respective embassies, knows of the enormous difficulties that such endeavor entails. The same applies to international business, in terms of the laws and regulations governing the free movement of goods, the international transfer of payments, international standards and safety regulations and so on and so forth. In all these cases, the amount of administrative hurdles and the required red tape is breathtaking and angering at once. Things at the local or national level are no different and may be equally require or involve excessive bureaucratic activity. The sole difference between the global and the local except is that usually the legal remedies in the event of maladministration are stronger and more adequate. However, in times of global business practices, growing transnational transactions and a growing usage of e-commerce services, these differences are becoming blurred. They, in fact, call for concerted action and new modes of governance and novel ways of legal thinking.

Therefore, a first conceptual change in the mind may actually be found in the theory of Gestalt (Gestalttheorie). This theory is based in principal on the claim that the perception of all the individual constituents of any entity together constitutes something else and adds something new, a so-called “Gestalt” (shape), to the sum of the single individual constituents. Gestalt theory, thus, contends as a basic principle that the whole is greater than the sum of its parts. In accordance with this approach, Christian von Ehrenfels, for example, wrote that a sequence of twelve tones is no longer only a sequence of twelve single tones, but also constitutes the foundation of a melody. Applying this principle to different qualities of such Gestalten (shapes), it also implies that “higher Gestalten are those in which the product of the unity of the whole and the multiplicity of the parts is greater”. In short, it means a mode of perception that takes into account at the same time the individual components and the Gestalt (shape) created by them as a whole. When transplanted into the area of governance, ideally, this means that public policy making should find a good balance between the interests of one citizens vis-à-vis the interests of society, i.e. the sum of all citizens of a given political entity.

A way to achieve such balance through public management is to ensure that the impact of newly developed technologies is matched by the use of corresponding mechanisms of checks and balances. In other words, the new possibilities opened by these technologies should also be used in the realm of governance. However, it also requires that their use is accompanied by control measures commensurate with the dangers that threaten it.

In national administrations this is undertaken, for instance, by the use of e-governmental services or electronic governance (e-governance). Already it is frequently the case that citizens

90 Ibid. at 123.
can download application forms and submit applications online and make payments via credit or bank cards. The times of revenue stamps, however, is not long gone and certainly in some places not even entirely over. Still in national administrations, there exist open incompatibilities, and even absurdities which may prevent the provision of an efficient, cost-effective and citizen-friendly administration.

The situation in global administration is more complex and quite different. First of all, there is not even a truly global administration as the principal subjects of international law are states and international organizations. Second, where transnational administrative services are required, such as immigration or visa applications, tax declarations or the issue of certificates and alike, they are performed by the respective national administrations. In case of two or more such national administrations are involved, the communication between them is more than often totally underdeveloped and inefficient and not for language reasons only. The insufficient coordination between national laws and regulations can be illustrated by the example of the author of this article who ended up with four driving licenses and expenses amounting to more than 1000 Euros after having worked in three different countries.

Applied to the challenges that the governance of glocalization brings about, this requires an adaptive response which is adequate to the challenges that come with it. This means therefore that procedures and institutions must be created that efficiently coordinate the local and the global level simultaneously. More concretely and in accordance with the need for greater coherence, this requires the setting up of an integrated system of policy making that administers and enforces the laws and regulations and also provides adequate information of citizens and civil servants alike. That information is crucial can also be derived from the world of physics where it has been described as follows:

Most of us think of information as data or what a person knows. But the reach of information is deeper than this. Physical and life scientists are discovering that information extends far beyond the mind of an individual person, or even all persons taken together. It is an inherent aspect of both physical and biological nature. The great physicist David Bohm called it “in-formation,” meaning a process that actually “forms” the recipient.\(^91\)

The above description can easily be applied to the legal realm where “in-formation” in terms of access to public administration also “forms” the respective citizen or other subjects of public life, whether we think of certificates, licenses, permits or alike. In other words, our global information society must find ways to govern its affairs through instruments that are commensurate to its inherent potential and the challenges or threats deriving from it.

### 3. E-Governance and the Theory of the Gestalt: An Adaptive Response

E-Governance is understood as a means to achieve better government. It has been defined as “the use of ICTs, and particularly the Internet, as a tool to achieve better government”.\(^92\) A simple but useful example for the handling of citizens’ affairs is the computer administered system of handing out numbers for the as practiced in the Macau S.A.R. When picking a waiting number at the entrance, the computer already calculates a certain time by when the applicant will be called to the desk. This helps to avoid long waiting queues and unnecessary waiting

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\(^91\) See Laszlo, *supra* note 68 at 13.

looms. Another example governing the process of public administration is the federal electronic file management system used by the Federal Government of Austria (ELAK im Bund). Based on this system, the federal ministries in Austria have been creating, managing and editing their files fully electronically since 2004 as part of a comprehensive e-Government strategy. The system not only helps to avoid unnecessary waste of paper – to the difference of the old paper file system – but has the advantage of allowing users to simultaneously access the content of the file. In this procedure, the first administering officer designs a path of the competent officers that may – depending on the issue – also include different ministries and governmental agencies. This does not only help to speed up the process but also helps to prevent misuse or corruption (as each step can be traced back electronically to the respective officer making changes to the file). Most of all, it helps to increase the policy coherence as competent officers and ministries can ensure that their opinion is taken into account by the principal handling ministry. This allows, for instance, the ministries of the environment or culture to integrate their concerns into administrative processes that are governed by the Ministry of Commerce. It also allows to raise legal concerns and to integrate political with economic and other social concerns. However, it is clear that with such new modes of governance also new threats emerge. For instance, there need to be sufficient safeguards for misuse (for instance by the computer administrators) in the case of malfunctions of the system. Hence, there have to be sufficient levels of checks that guarantee the efficiency and accountability of the system.

IV. GEOLAW – A “GLOCAL ELECTRONICALLY OPERATED LAW ADMINISTRATION WEB”

Before drawing an end to the present discussion, it is perhaps useful to sketch outline of governance mechanisms that efficiently link the global and the local level in an integrated and coherent mode of glocal governance. To this end, the present article advocates the creation of GEOLAW that is a “GLOCAL ELECTRONICALLY OPERATED LAW ADMINISTRATION WEB”. Inspired by the work of Internet search engines and similar related services, international organizations and member states forming the international community should envisage the creation of a global network that fulfils in particular the following functions:

- To provide access to both citizens and civil servants to the existing legislation in force, both at the international level (e.g. conventions, treaties etc.) as well as at the regional and national level (e.g. supranational regulations and domestic laws).

- To create an electronic file system of public administration which allows states and international organizations to simultaneously express information and/or comment on various legislative proposals or similar actions of legal relevance (e.g. such exchange of information could precede the negotiations for various international legislative efforts, whether we think about the conclusion of the Doha Round, the Copenhagen Summit on Climate Change or the reform efforts with regard to the financial institutions undertaken by the G20). This has the advantage that all members of the international community are constantly and simultaneously informed about developments and that they can act only when they are affected. This may reduce the need for the great number of preparatory meetings in different formations in accordance with the respective issues. This because it has been seen that different issues require different formations. Or else that some issues

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require only a local, national or regional involvement while others require the broadest multilateral formation possible.

- To provide respective services to individuals’ requests. The extension of the system of private parties, however, can only be realized following drastic changes in and to the legal structure underlying the present international legal order, by which in particular the role of private parties is being enhanced as to receive the status of legal subjects under international law. Concrete areas of application can range from simple visa applications, (alleged) human rights violations to deep sea oil exploration licenses and alike. On a more general note, it is necessary to restore the balance between individual rights at the global level with the growing amount of obligations deriving from international law which have a direct or indirect effect on individuals.

As indicated in the third element, the creation of such a global file system requires the creation of an adequate global legal order and global institutional framework. It could for instance be complemented by the creation of an office of a global Ombudsman, which would have to be established in the framework and assists a democratically elected global forum for deliberations modeled on the basis of the General Assembly. The system must equally provide the respective formal means for separation of powers, checks and balances, and the appropriate legal remedies against misuse and maladministration supported by a strong and impartial global judiciary.

V. Conclusion

To briefly conclude, the 20th century has brought drastic changes to all members of the international community. These changes were induced primarily by technological innovations in the transport and communications sector. These innovations have not only become possible due to the formulation and realization of creative conceptual ideas but, in turn, they have also shaped and influenced the formulation of new ones based on the perception of them. This dynamic and paradoxical process underlying the governance of the global information society is often expressed by reference to paradoxes. In this article, the three oxymora of globalization, fragmegration and simplexity were chosen to identify the basic features of the challenges to the governance of global affairs in the world of today and tomorrow. Trying to confront these challenges, this article has used the mind as the prime source of normativity. The mind’s central role is also reflected in the title’s question of whether we should “mind the change” and, if answered to the affirmative, also “change our mind”?

The location of the debate at the level of the mind was derived from in particular an old saying that problems should be addressed where they arise; that the mind is the centre of perception from which the felt acceleration of change originates; and the trend of an immaterialization of reality towards the creation of a new “virtual” reality, understood here as a reality in the making. Ultimately, the adequacy of using the mind as the starting point of a global governance discourse is also confirmed by the latest insights gained in the world of physics, cosmology, biology, and consciousness research. It is expected that future insights will reveal not only fascinating aspects of human existence but also further push the need for a general paradigm

95 See Laszlo, supra note 68 at 59-60.
shift. The need for a paradigm shift is already visible in the growing number of anomalies that threaten our survival and the equilibrium of our ecosystem at large. This paradigm shift will inevitably also need to achieve a return to a greater unity of the sciences. Thinking of the theory of the Gestalt discussed, there already exist astonishing parallels between the still widely separated and ill-termed “natural” (or hard) and “social (or soft) sciences”.

Hence the answer to the question posed in the beginning of this article can be answered in the affirmative, namely that we have to “mind the change” and eventually and inevitable also “change our mind” to account for the many changes and the accelerated perception thereof. In the context of governance, one way of confronting the challenges derived from these changes is found in the formulation of adaptive and adequate responses such as the enhanced use of electronic means for the governance of global affairs (e-governance). In addition, the contours of such responses were outlined in a brief proposal for the creation of what was called “GEOLAW”, i.e. a GLOCAL ELECTRONICALLY OPERATED LAW ADMINISTRATION WEB. Based on existing e-governance strategies, such project certainly needs to be developed further and worked out in greater detail. Already, as a point of departure in the governance debate, it could help to provide the necessary impetus for the implementation of a more holistic conception of new modes of glocal governance. Solving the conundrums of glocal governance as manifest in several anomalies and paradoxes requires first a new way of thinking, which may consist in an adaptation to the accelerated perception of change. This may consist in a shift from result-oriented towards more process-oriented thinking or even their critical combination. In such thinking various regulatory method, such as de-regulation and regulation, harmonization and unification are not statically opposed to each other but combined in various adaptive responses meeting the challenges that the respective society faces. The old Latin adage “contraria sunt complementa” (opposites complement each other) may be of great use in this context and in particular in bringing about greater coherence in law and policy making. This is because contradictions are a creation of the mind and their coherence can only be achieved at the same level. Such coherence and the perception of contradictions as complementarities should hence start at the level of the mind in order to secure the global information society’s continuous, prosperous and sustainable development in the future.
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