

Becoming Denmark: Understanding Good Governance Historical Achievers

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Abstract

In a widely read and influential book, “Confronting Corruption”, issued as a Transparency International Sourcebook in 2000, Jeremy Pope developed the theory of ‘integrity pillars’, key institutions which should all stand together for good governance to be achieved and whose failure endanger it. They are an elected legislature, a honest and strong executive, an independent and accountable judicial system, an independent auditor general (subordinated to the Parliament), an Ombudsman, a specialized and independent anticorruption agency, a honest and non-politicized civil service, a honest and efficient local government, an independent and free media, a civil society able to promote public integrity, responsible and honest corporations and an international framework for integrity. This comprehensive list generated equally broad anticorruption strategies missing a prioritization based on the understanding of what puts what in motion. The clear specification on institutional designs also gives the illusion that adoption of certain institutions and designs has to lead somehow to good governance. While the performance of these institutions in contemporary times can be tested separately, it is of great interest to understand how they came about and what role they played historically. This paper argues that we have two different sets of explanatory factors of good governance when we account for present times versus historical ones. Institutions which are today responsible with enforcing ethical universalism are only to a limited extent those which helped this norm become enshrined. The explanation for the performance of historical achievers is not to be found in their present organization (legislation, political institutions) which should not be viewed as a cause, since it acts for the *maintenance*, rather than the *creation*, of good governance.

How have societies which first arrived at the norm of ethical universalism as basis of their governance manage this process? Can this path be distinguished from the more general evolution to freedom and equality? Can we speak of a similar drive, of comparable paths and sequences, of similar challenges and empowering circumstances? And are such evolutions significant for societies struggling today to evolve from particularism? As this book could not ambition a full history of good governance, we shall rather divide the issue into three questions: what institutions of good governance were successfully experienced in pre-modern times and what is their potential to be used today, what is a sequence of good governance in a top early achiever (Denmark) and what role did the institutions we rely upon in present times perform across the early achiever cases?

The current lessons learned for good governance all draw on the modern experience of a handful of countries. The accent is on 'modernization' – of taxation systems, judiciaries, politics – although if the European modernity taught us something it was precisely that modernization, particularly the political one, is fraught with risks and is anything but simple technological progress. Modernization in itself does not bring good governance, though it provides a basis for it, and we need to look in more detail at the history of each case to understand what explains the success of early achievers and what specific sequence they followed.

Two distinct streams of good governance development seem therefore to have existed in Europe. One is a continuation of Roman republican tradition based on city self-

government, which was reinvented in European cities, most notably in Italy but also in other continental European cities, from Low Countries to Southern France. The other is a more innovative result of individual country development, achieved at a later stage and which evolved due to the confrontation between embattled monarchs in need of funds for their wars and their aristocracies (military and landowner classes). Sometimes the monarchs had the upper hand in this confrontation, as in Denmark, Germany and France, but occasionally it was their challenger who won, as in England. Either way, a rationalization of government ensued from this confrontation, leading to a state increasingly autonomous from private interest and an egalitarian legal system (rule of law). The two different histories were also originally anchored in two different legal traditions, Roman on the one hand, and Germanic (with variants such as Viking, Saxon) on the other. But this separation was host lived: due to Church law, which was Roman, the two systems actually coexisted and communicated even in countries where German legal tradition was strong. Furthermore, in 1495 the German Emperor Maximilian officially endorsed Roman law, initiating a marginalization of customary law.

The evolution of the two good governance traditions diverged with time: while either triumph or defeat of the absolute monarchy in Britain, Denmark and Germany led to the consolidation of a modern state by 1848 - although quite different where democracy was concerned - the Italian city state Republican tradition succumbed to foreign invasion and rule, political ambitions of the Papacy and finally, nationalism. Modernity has not managed to build on Italy's pre-modern traditions.

There are several fascinating histories to be told about these European evolutions, but for the purpose of this book, we are only interested in the potential lessons that we could or could not draw for the developing countries of today. *The main remark is that good governance is not a monopoly of modern states, as we can observe forms of good governance in the*

pre-modern world as well. The communal movement in Italy had a common ideological background and similar social and economic conditions, so despite many differences it can be treated as a whole. The situation is different when we come to later evolutions. It is rather difficult to speak, despite the existence of some commonalities, of a Scandinavian path, a continental path and an Anglo-Saxon path. Every country, sometimes even every region seems to have evolved on a path of its own and geography is not enough to provide clear and distinct paths. We can organize cases around the concept of elite of North and all (2007) into oligarchic paths (Italian city states) elitist paths (Britain), democratic paths (France, US) and absolutist paths (Denmark), according to the numbers and status of promoters of ethical universalism. Or we could describe following Edmund Burke an organic path (Britain, Scandinavian countries, Netherlands, Austria) versus a revolutionary, contested path (France, Germany). The truly democratic path is to be found only in United States, New Zealand and Australia, where sustainable democratization (unlike in France) either preceded or was simultaneous with enshrinement of the norm of ethical universalism in government. This does not mean that it did not take decades of demand, reform and resistance for the best governed countries to arrive where they are today – and that the work remains to some degree unfinished everywhere.

Intellectual origins of ethical universalism as governance norm

The first preliminary dilemma is if and why such evolution should have been sought and pursued at all. It is hardly evident why ethical universalism has gradually evolved to become the dominant view on state-society relations, when competitive visions, far more realistic and less demanding on rulers were on the offer both from pagan and Christian

sources. The question is seldom frontally addressed in the many histories of Western political thought and it would deserve a whole book itself. To begin with, the issue was only marginally treated by many Western thinkers due to, on one hand, the reliance on religion as main provider of all ideology for many centuries, including for the political life, and on the other on the high political instability generated by many external threats, which rather encouraged reflections on violence and its containment or on freedom and sovereignty than on ethics of government. The classical tradition of discussing justice and fairness was present at all times, but it was seldom applied to the relation between government and citizens – except by a distinct tradition. The intellectual heritage of ethical universalism seems to run therefore from the Stoics (doctrine of natural law) to Cicero (106 BC – 43 BC), Saint Isidore of Seville (c. 560 – 636) Aquinas (1225 – 1274), Brunetto Latini (1220–1294), John of Salisbury (c. 1120 – 1180), Marsilio of Padua (1275 – c. 1342), and from then it spread in several directions with the Renaissance to become inbuilt in modern state building doctrine in the works of Montesquieu or the Federalists. The legal philosophy of Cicero seems to have been the most influential early source (Carlyle 1903; Neumann 1986; Skinner 1989). The explanation for ethical universalism becoming the current dogma (though still on paper for many countries in the world) lies in its association with highly successful economies and the strong link between ‘good’ institutions and development put forward in the decade of ‘good governance’ paradigm. Virtuous poor countries would not have managed to put ethical universalism on the global agenda and in a treaty such as United Nations Convention against Corruption. Unfortunately and significantly, no such countries really exist in our times.

In the first Book of *De re publica* (I. XXXII) Cicero argued for equal treatment of citizens, “since the law is the bond of civil society, and the justice of the law equal, by

what rule can the association of citizens be held together, if the condition of the citizens be not equal? For if the fortunes of men cannot be reduced to this equality—if genius cannot be equally the property of all—rights, at least, should be equal among those who are citizens of the same republic. For what is a republic but an association of rights?"¹. And in *De Legibus* he further argued that both justice and law derive their origin from God, while "wicked and unjust statutes" are "anything but 'laws,'" because "in the very definition of the term 'law' there inheres the idea and principle of choosing what is just and true."²

The ideas of Cicero had an impressive following in the Middle Ages, from Isidore of Seville who passed them to Aquinas, to Brunetto Latini who reformulated and transmitted the republican ethic to other thinkers like Remigio and Dante, and also used it as the basis for his formal treatise on city state government (Jones 461-462). Aquinas developed further the Ciceronian idea that in the event of a conflict between positive law (the law of the given community) and natural law, which derives from God and therefore upholds common good, passive resistance is not only a right, but even a duty, for the *lex naturalis* is indispensable, even God cannot dispense with it (Neumann 1986:53). He explained the distinction between *lex naturalis* and *lex tyrannical* (Summa, I.II. 92. 1-4), arguing that norms need to fulfil three conditions to be considered laws: to serve the common good, to respect the principle of proportional equality when distributing burdens to subjects and to be issued by legislator only within the limits of his authority. Private interest, even that of the ruler, should not at any time be

¹ <http://www.gutenberg.org/dirs/1/4/9/8/14988/14988-h/14988-h.htm#FN-309>

<http://www.gutenberg.org/dirs/1/4/9/8/14988/14988-h/14988-h.htm#FN-309>

² Cicero, *De Legibus* (Keyes translation), bk. 2, sec. 11.

promoted over common one. On the basis of Cicero and Isidore, Aquinas argued in the first article [I-II, Q. 96, Art. 1] of Summa ‘Whether Human Law Should Be Framed for the Community Rather Than for the Individual?’ that “the end of law is the common good; because, as Isidore says (Etym. v, 21) that "law should be framed, not for any private benefit, but for the common good of all the citizens." Hence “human laws should be proportionate to the common good” and further “laws are enacted for no private profit, but for the common benefit of the citizens. (Summa, P(2a)- Q(90)- A(1, 2))”. Marsilio of Padua in *Defensor Pacis* stipulated further that although draft statutes are to be framed by prudent persons (*prudentes*) who, by virtue of their leisure and superior experience, are best qualified to propose just and useful laws, the wisdom of a minority does not entitle them to enact legislation on behalf of the majority. Rather, the whole body of citizens or nearly all (*legislator humanus*) should consent to draft statutes in order to make them mandatory laws for the community. We recognize in such authoritative views (Aquinas) and influential (Marsilio) the germs of ideas of government accountability, ‘thick’ rule of law and public participation, the three key concepts at the basis of what we call today good governance. While such ideas were extremely widespread particularly in Italy’s communes, where they informed the special tracts of city government which erupted in the early thirteenth century and infused them with republican ideology, such arguments were also made on behalf of monarchs. John of Salisbury argued in the *Policraticus*, Book Four, chapter 1, that “Between a tyrant and a prince there is this single or chief difference, that the latter obeys the law and rules the people by its dictates, accounting himself as but their servant. It is by virtue of the law that he makes good his claim to the foremost and chief place in the management of the affairs of the commonwealth and in the bearing of its burdens; and his elevation over others consists in this, that whereas private men are

held responsible only for their private affairs, on the prince fall the burdens of the whole community.[...] The prince accordingly is the minister of the common interest and the bond-servant of equity, and he bears the public person in the sense that he punishes the wrongs and injuries of all, and all crimes, with even-handed equity’.

As feudalism and the influence of the Catholic Church over social and private ethics have started to decline, a more realist vision on politics gradually prevailed. Establishing ethical universalism as main norm of treatment of citizens or subjects is all very well, but what if they were undeserving? In Chapter XVII of his *Discussion on Livy*, Machiavelli soberly reflects that a corrupt people coming onto their liberty can maintain itself free only with the greatest difficulty. The foundation of good governance is in the mentality of the people: ‘where the people is not corrupted, tumults and other troubles do no harm; but where corruption exists, well ordered laws are of no benefit’. He links freedom with virtuous behavior and answers in the negative to the questions ‘ whether a free State can be maintained in a City that is corrupted, or, if there had not been one, to be able to establish one’. Finally, Machiavelli is the first author to be aware of the possible inconsistency between legal mores and real mores, or, as we should say today, between formal and informal institutions, when stating that ‘For as good customs have need of laws for maintaining themselves, so the laws, to be observed, have need of good customs’. We are by now into realism.

Cicero’s influence, particularly through Aquinas endured the Middle Ages, although an Italy invaded by foreign powers could no longer provide a favourable environment for city state good governance. From Renaissance to Enlightenment and up to the eighteenth century his work remained mandatory reading of elites and spread far beyond the circle of legal scholars. While authors such as Pocock (1975) argued that

American founding fathers obtained many of their ideas through the influence of Machiavelli, we can in fact trace the direct influence of Cicero on Montesquieu and through him to federalists, especially James Madison, as well as direct strong impact on both John Adams and Thomas Jefferson (Botein 1978, 150; Reinhold 1984, 315). Montesquieu, allegedly cited more by the American founders than any source except for the Bible, praised Cicero for having made Greek ideas “available to all men, like reason itself” and wrote an introduction to *Cicero’s* thought *Discours sur Cicéron* (1709) (Lutz 1984; Fott 2002).

If A.J. Carlyle (1903, 8-9) was right in his interpretation that the period between Aristotle and Cicero was the dividing line between ancient and modern political theory then we could count two millennia of Western tradition upholding ethical universalism as basic governance principle, tied into the mainstream doctrines of highly successful constitutions and states until it has become universal doctrine. The foundations of the Western vision of good governance are Latin and pagan, but they were reinforced by mainstream Catholic doctrine in the twelfth century, long before Reform, and rediscovered by Renaissance and Enlightenment. Ethical universalism thus became strong in the European legal philosophy from early stages and was as such exported to British colonies; later, political and religious emancipation opened the road to broader interpretations of fair and virtuous governance. Why it was that Protestant countries evolved the first to good governance is an interesting question for historians, but the causality is clearly more complex than doctrine alone.

The communal path of good governance

The Italy's experience with good governance can be documented from early medieval times and is considered to a great extent a Roman civic and urban heritage, due to and drawing on Italy's configuration as a 'land of cities' (Jones 1997, 73). By the times of Machiavelli, this picture had been considerably changed by foreign rulers and local despots who first manipulated the old political system, like the first Medici in Florence, and then simply privatized it in their favor. Venice was the last to lose – to foreign rulers – an aristocratic regime with ancient traditions. Eighteenth century Florence, whose corruption is described in detail by Jean Claude Waquet (1984), had a foreign dynasty supported by foreign troops and ruling over a larger state in scope (to use Francis Fukuyama's concept) than in previous centuries, making it more vulnerable to corruption than medieval Florence was.

Surviving or recovering ancient cities made Italy the most urbanized part of Europe. City states also dominated the territories surrounding them and the most successful were really colonial states, exploiting other cities in Italy or more distant places. Between eleventh and thirteenth centuries these cities turned into self-governing 'communes' and managed to build elaborate constitutions, strong administrations and effective bureaucracies, all in the midst of considerable adversity of man and nature (Jones 1997). Their experience is of interest due particularly to their not yet modern but also non-feudal character. Italian cities fought deliberately against feudal institutions, viewed knights and more generally arms bearers with great suspicion and tried to bind them legally, relied on paid troops for their protection and fund-raised for their defense. They were republics, although not democratic ones. The political community had various degrees of inclusiveness, but the proportion of direct participation to decision making and government was very high compared to any other regime of the time: in thirteenth century, due to population growth, the 'great council' of many cities, the main legislative

body grew impressively. In Padua 1000 adults were members at one time from a total population of about 11 000; in Bologna the 50 000 people were represented by a council which grew from 2000 to 4000 (Jones 1997, 407). Frequent reselection made participation ever greater. Of course, it varied with time and place: some city states had a more pronounced aristocratic character than others, some only included only traders' guilds, others also some manufacturers, etc. The body of citizens did not include anyone, but most people were represented directly or indirectly (for dependents and clients). The second feature of republicanism was the concept that public office was not a privilege, but a civic duty. People were drafted to serve and everyone's turn would come due to some equitable drafting arrangement. It worked mostly on the basis of cooptation rather than election (those existed for some top positions only), and for limited periods of time, but this republican principle of short-term, non-professional office holding seemed to work well. It was not due to financial reasons (most office holders were not paid) but part of a conception of government. Brunetto Latini compared Italian governments favorably with France, arguing that election of magistrates and governors on the basis of merit by the citizen body was infinitely better than offering offices to the higher bidder as the custom of the French king was (Jones 1997, 458). A third feature of these republican regimes was equality before the law. Without being democratic, they were nonetheless strongly bound by law, government and economic activity being based on written contracts. Surviving legal privileges were under attack and the concern that law is applied fairly existed at all times. Finally, a certain moral realism informed the governance of these communes, as they took it as self-evident that government was used by default as a tool for self-enrichment and self-aggrandizing, and that good institutions had to provide against such corruption. By and large, such a design of governance, based on civic duty, participation, cooptation and election on a merit base, all in the framework

of law equally applied to everyone is obviously promoting ethical universalism. It remains to be seen how these institutions performed and why in order to understand the degree of applicability in contemporary settings.

Taxation was addressed in various ways, but the most original design was drawing on the voluntary work by the community, whose members were obligated to participate in collecting taxes (in the Genoese colonies, the community of full rights citizens was organized as a shareholders community). Territories were divided into taxation units and tax collectors raised funds from the area for a limited period of time; they would repeat their turn every few years. In the colonies, most funds collected in this way remained in the community after a share was sent to Genoa to be spent on defense; on the mainland the funds were mainly spent on defense and communal works. In mainland Italy, an abundance of refined taxation forms existed, starting with indirect taxes and arriving by thirteenth century in some places at personal taxes (either proportional or flat). Taxation was based on self-declaration, but very active committees existed which verified and estimated the declarations and decided on their accuracy. Many services relied on direct fees from consumers, so the funds did not actually circulate within treasury, and sustained themselves by means of fines.

Public order and law enforcement relied heavily on conscription and mercenary work. Paying for security was the main destination of tax. City states were suspicious of mercenaries and always on the alert for treason, so reliance on patriots for policing and other law enforcement duties was not only cheaper, but also reduced risks they would offer the city keys to the higher bidder. Although in time some specialization occurred and people below a certain income could not access such positions anymore, Venice's

long struggle with superior forces of the Ottoman Empire shows that the mixture of conscripted citizens and paid mercenaries was fairly effective.

Short term mandates in public office were designed to prevent the exercise of a duty turn into the exploitation of a rent. All the positions were based on very short mandates and were not immediately renewable. Governors of Genoese colonies were expected to leave by the same boat that brought their appointed successor. City managers (podesta) also had one year mandates and could not return to the same city for quite a while after one mandate. A market therefore existed for the employment of these top bureaucrats.

Participation was the key resource for public service. Most bureaucratic offices were distributed following a quota logic by guild and clan (family), with the exception of the top executive position with its various systems. This meant that everyone participated. Clerks only were paid. Combined with the military obligations of each clan, the system was very participatory and inclusive, especially given the fact that these were small communities (below one hundred thousand at a maximum, descending to the lower thousands). Each family was thus socialized into public affairs and the business of government. Service was mandatory and unremunerated.

For the top executive position, many Italian city states opted for what we would call today a city manager – a podestà, a professional manager hired from the market. It was mandatory that the podestà came from a different city so that he could not favor anyone locally, and he brought his own staff with him (a few law enforcers, some clerks and magistrates). He paid a security deposit at the beginning of term and after his final accountability report was accepted, he received his money back and his fee. He was usually appointed for one year and served as an executive with a legislative based on the local community (a council, elected or corporatist). Podestà, as well as governors in Eastern Mediterranean colonies, were bound by strict conflict of interest regulations.

Neither they, nor their staff, were allowed to perform any other activity than service, so that a collision of interests was avoided.

Permanent control and auditing was a steadfast feature of government. While one family might have to provide a tax collector, another was asked to provide an auditor. Committee duty for auditing and control was frequently implemented in Florence. There were strict regulations guarding against conflicts of interest. Short mandates, rotation of positions by family and appointments of outsiders showed that Italians understood that a conflict of interest is ubiquitous and hurts government and business alike. These measures were aimed at permanently building an objective government and controlling particular interests from capturing government. Of course, tremendous variations existed, with Venice at all times more aristocratic than the rest (power entrusted to a more limited number of families which held offices for life). But even this design allowed Venice for most of the time on its own to hold back the advance of the Ottomans and defend Eastern Mediterranean and the Adriatic for nearly three hundred years, a remarkable performance seeing that its size on land was extremely small.

Such European tradition is of interest to the modern corruption scholar and practitioner because the economic systems these city states operated under are not so different from the environments faced by practitioners today. Merchant city-states like Genoa or Florence which dealt with Mediterranean and Ottoman Europe lived in a dual economic system similar to the one found in many developing countries today, where genuine global capitalism cohabitated with domestic semi-controlled markets and economies of privilege. The skill of such city states in creating good governance and laying the basis for evidence based policymaking in pre-modern societies has recently captured the attention of historians (such as Carlo D. Cipolla in Italy) and political scientists (such as Avner Greif). Although an in-depth analysis is beyond the scope of the

present chapter, the table below documents some pre-modern good governance institutions which could be of more interest for many development work locations of today, since they work in the absence of modernity and of autonomous and effective state agencies. As states modernized and centralized, many of these institutions were lost in favor of national institutions, such as account courts, financial guards and a more specialized bureaucracy. A great investment was made at times to develop such modern agencies or to decentralize to poorly staffed and paid local ones. We should learn, however, from these pre-modern communities, which managed to defend themselves in very hostile environments by collecting funds for defense. Good governance and a performing economy were necessary; thus, community-based mechanisms were developed to ensure it.

Pre-modern tools of good governance

Institution	Description	Original operation
Podestà	The institution of entrusting government to a foreigner selected for his lack of connections with local clans/elite.	Northern and central Italy 12 th century and after
Rotating community (elite) based tax collection system	Tax collection as a community due activity	Genoese Oriental/Black Sea colonies

Community based audit	Community organized audits at end of term	Genoa, Venice
Absolute conflict of interest regulation	Governors appointed by Genoa for one non-renewable limited term were not allowed to engage in any local business, nor any members of their family and to leave at the end of term by the same ship on which their successor arrived	Governors in Italian colonies in Eastern Mediterranean and Black Sea
Safety deposit at the beginning of office	The <i>podestà</i> as professional manager paid a security deposit as a guarantee against mismanagement and was reimbursed only at the term ended	Florence, Genoa 13th-15th centuries
Control committees	Permanent bodies based on short terms (participant automatically drafted from guilds) to check the quality of public services	Medieval Florence
Non-professional rotating	Conscription based system of	Most cities

public office or task	filling offices, either bureaucratic or military with citizens who would serve in turn; enforced by fines	
Elections of top magistrates or leaders	Indirect complicated electoral systems designed to avoid factionalism and populism	Venice, Florence, others

This government design was quite successful, although short lived. It is important to understand therefore what brought it about and what lead to its demise. First, it seems that these institutions were extremely favorable to the early development of capitalism in Italy, which made these city states richer than European kingdoms of the time and the Italian finance industry become Europe’s main (Jones 1997, 197). Although colonial expansion is to a large extent responsible for the economic success of Italian city states, the government and the institutions which developed during this time (contract, arbitrage courts, and stock exchange) were also crucial to ensure an environment where trade flourished (Greif 1997). In fact such organization seems to have had two sources: Roman republican ideology adapted by Aquinas and the need of merchants for a government able to ensure freedom of trade and rule of law. Between 1250 and 1350 there seemed to be more capital in Italy than in the rest of Europe, and Italian money funded princes’ military conquests and colonial expansion. Even the misdirected Fourth Crusade was funded by Italian money. Public budgets also increased constantly from eleventh century on, bringing about an important development of city government, from ninety-

one officials in Pisa in 1162 to 1800 at Bologna in the late thirteenth century (Jones 1997; 410). This Italian literal explosion of capitalism should be enough to refute the hypothesis of a Protestant origin of capitalistic mentality or of the link between Protestantism and good governance. Italian city states were economically very successful and lived in an age of their own: not yet having arrived at Renaissance, they however developed public and private management systems anticipating modernity. Their demise was brought about not by some internal failure of their own, but by the imperial ambitions of monarchs in Spain, France and Italy, which turned the peninsula into a battlefield for the next centuries.

The functioning of the good governance institutions described here was not without problems and permanent constitutional invention was needed to protect the state's autonomy towards private interest. Due to the republican character of these polities, the effort was on prevention: control and selection especially rather than post-factum repression which did not fit these elected governments. A carefully weighted regime of incompatibilities existed between certain professions and certain public offices, for instance, barring aristocrats, lawyers or usurers from certain offices. Not only the occasional infringement, but also the inability to ever come near to the ideal of ethical universalism described by Aquinas or Latini made contemporaries to complain heavily of corruption. The notions of both corruption and *malgoverno* meant in fact particularism, undue power of privilege, which surfaced in defiance of official leveling in law and constitution (Jones 1997; 533). Plain corruption immediately appeared whenever the institutions described here gave way to tax farming or sale of offices, widespread European practices. Overall, the histories of these governments are histories of a permanent struggle for good governance rather than of triumph. But they remain

powerful examples of good governance driven by collective action and social organization on the basis of an egalitarian doctrine.

Such good governance designs were based on conditions which we could encounter in the present world and might be simpler to reproduce than building full-fledged modern states, a difficult task for outsiders. Communities of businesses could serve as auditors and self-organize to both collect taxes and supervise how tax money is spent. The same can go for a community of villages or other types of collectivistic organization: the only limit is size. Donors frequently miss their state building objectives because they try to organize modern states from the top down. Decentralization in weak or post-conflict states, as Afghanistan or Sierra Leone is understood as central government brought closer to the citizens, frequently as a way to ensure that donor money gets outside the capital. Such structures are not grounded in local communities and have poor sustainability, when not perceived as competitive altogether by traditional power structures and sidelined (as in Sierra Leone). Government should rather be designed from bottom up, starting with communities which collect themselves funds to solve their pressing needs (or draft people), as it is highly unlikely that central governments would be able to address them. A community which gets together to fund a local nurse will be far better in terms of collective action capacity and public health than one which waits for donor funds to leak down through a system of pipelines which has either never existed or it's blocked. A village which organizes itself to receive a small grant will progress by the simple fact that they need to match their voluntary effort to receive cash, to supervise one another, and the rest. Most state building efforts miss this social capital development perspective because they focus on national or nation-wide structures. They try building nations as well as states – and this is too ambitious.

Such pre-modern institutions may not be a substitute for modernity but they can ensure two important things: They ensure that communities can receive aid and administer it themselves when the state lacks the basic capacity or impartiality, and that 'organization' - in other words collective action - is stimulated and communities learn how to solve their own issues. Communities which acquire such capabilities can later be trusted to build their own states themselves. Assisting developing countries to build institutions similar to those of contemporary developed states works poorly. Good governance is easier to build on an inclusive community level rather than on the entire level of political society. We want to create good governance and fair allocation, not necessarily modern states similar to current Europe.

The absolutist path to good governance

The other path to good governance in Europe, as stated earlier, is not connected with the Roman republican tradition but to the rise of absolute monarchy and its aftermath. We shall present only one case study, Denmark, although references will be made to England and Germany. We chose Denmark because it appears to be everyone's ideal of governance. As Pritchett and Woolcock (2002) stated in a paper, 'getting to Denmark' signifies reaching the benchmark of good governance. It is highly relevant, then, to understand how Denmark became Denmark.

In 1658, the Danish-Norwegian kingdom was forced to cede all the Scandinavian provinces east of the Oresund to Sweden, as a result of defeat in one of several wars during the 16th and 17th centuries. These included three large provinces in the southern part of present-day Sweden, and the loss of these territories reduced the total area of the

Danish-Norwegian kingdom by almost one-third. This defeat led to a political crisis in 1660, which forced the nobles to transfer some of their power and privileges to the king, and changed the form of government to an absolute monarchy. According to the new King's Law of 1665, the monarch's authority was unrestricted; the hereditary sovereign thus replaced the former elective monarchy, which had been dominated by the aristocracy.

What might be regarded as a first set of good governance policies was born with the creation of the absolute monarchy in the years following 1660. The king consolidated his position as the sovereign, absolute monarch by centralizing power in Copenhagen and gradually replacing the traditional aristocracy in the crown administration with new groups of bureaucrats who were more likely to be loyal to him. The extent of corrupt practices such as nepotism, fraud, the sale of public offices and bribery in state bureaucracy in 17th century Denmark has not yet been thoroughly investigated. Several cases of such corruption appear on historical record, and it is probably correct to assume that corruption was an ingrained part of public administration in Denmark at the time of the constitutional revolution. It may also be safe to assume that it was at a level corresponding to that of the more advanced European states, for example England under the Stuarts.

The reorganization of the civil service in 1660 created a larger bureaucracy bound by the joint code of laws, the Danish Law of 1683. The standards for official duties were described in detail in this and subsequent legislation: Forgery by civil servants was included in the law and a clear ban was imposed. And while the Danish Law did not include a chapter on the abuse of office, fraudulent conversion was to be judged as theft from the crown. In 1690 the king issued a law specifying and regulating the penalty for fraud in office. A ban on bribery and the acceptance of gifts by civil servants was

introduced in 1676 and renewed with greater penalty attached in 1700. The 1700 bribery law applied to all military, clerical and civil servants. Throughout the 18th century, the ban on bribery was renewed over and over and separate groups of officials, such as custom officers, were specifically addressed. By the beginning of the 19th century, it appears that bribery was no longer a common form of corruption and did not form a deep-rooted part of administrative culture (Gøbel 2000: 214; Knudsen 2006: 66–68; Frisk Jensen 2008). In short, the various laws which were adopted between 1676 and 1700 to regulate and define the civil servants' duties criminalized bribes, forgery and fraud. These laws constitute the first set of policies intended to control corruption in the state's administration.

The absolutist government reorganized itself and its administration in a highly hierarchical manner centered on the king. Gradually, the aristocracy lost its prominence in the civil service of central and local administration, and was replaced by a new group of bourgeois bureaucrats. These civil servants were sworn in directly by the king - to whom they pledged loyalty and fidelity - throughout the era of absolutism, which lasted until the adoption of a liberal constitution in 1849. As a general rule, non-noble civil servants did not have private fortunes and were reliant on the income from their public office, which led to a form of interdependence between the king and his civil servants. By the beginning of the 19th century, only ten percent of civil servants were nobles and held offices primarily in the foreign service and diplomatic corps (Knudsen 2006: 66-71; Gøbel 2000: 103-107).

In 1736, the University of Copenhagen established a final examination in law and throughout the 18th century, its graduates slowly took over the bureaucratic offices, starting in the central administration in Copenhagen and gradually spreading to most regional and local higher public offices. In 1821, a law was passed which made it

mandatory for civil servants to have a law degree from a university, thus formalizing a development in public administration which was already, to a large extent, reality.

Around the beginning of the 19th century, recruitment to the royal nominations in the administration was fundamentally meritocratic (Feldbæk 2000: 318 – 326).

After a long period of peace and prosperity in the 18th century, Denmark became involved in the Napoleonic Wars. Denmark was an ally of France, so when France was defeated in 1814, Denmark was forced to cede Norway to Sweden. The cost of the war was immense; in 1813, the Danish state went bankrupt and the country was hit by a severe economic crisis in the years following. In the midst of a revolt in the duchies of Schleswig and Holstein and shortly after the February revolution in France in 1848, a public demonstration in Copenhagen demanded a liberal constitution. The Danish king responded by renouncing absolute rule, and by June 1849, Denmark had become a constitutional monarchy with a representative elected government, separation of the powers, and freedom of press, religion and association. The constitution also separated the private wealth of the monarch from the finances of the state.

During the economic crisis at the beginning of the 19th century, corruption among Danish civil servants escalated dramatically. By the 1820s, one of the king's highest officials referred to the situation as "an epidemic of peculation" (Frisk Jensen 2008: 192). The civil servants – primarily in regional and local administration – were affected by runaway inflation; their real wages often lost more than half of their purchasing power within a few years. Their salaries simply became insufficient to allow them to make a living, and a significant number of civil servants compensated by spending the money they were hired to administer. In the years from 1810 to 1830, bureaucrats in regional and local administration in particular, as well as in central administration, were prosecuted for embezzlement to a much larger extent than previously. This increase was followed by a

decrease in civil servant misconduct over the following thirty years. Around 1860, corruption reached a very low level and has remained fairly constant since. In short, corruption was to a large extent eliminated in Denmark by 1860.

The sudden increase in the administrative and economic misconduct of civil servants most likely created an extraordinary focus on the problem. Even though the press was not free during the period of absolutism and the king could not be openly criticized, the corruption of the king's civil servants was to some extent discussed in public. Corruption in the beginning of the 19th century primarily took the form of embezzlement; the civil servant stole from the public funds he was hired to administer. This had direct consequences in several cases for the citizens in the official's area of responsibility, such as in the administration of a deceased person's estate. If the civil servant did not pay the amount due to the citizens, they could complain directly to the king – and they did.

Naturally, these crimes of peculation were hard to hide from the general public, who was the victim of these crimes, which led to public awareness and publicity. In fact, the problem of corruption amongst civil servants was debated in the consultative provincial assemblies which were established after 1834 (Jensen 1931: 122; Olsen 2000: 418-425).

In conclusion, a significant number of the basic principles of good governance and the rule of law were adopted in Denmark during the era of absolutism (1660–1849). The Danish Code of 1683 modernized, standardized and collected the former provincial laws, and – to a large extent – introduced the principle of equality before the law. The absolutist monarchy deprived the nobility of its political power, and later, inspired by the ideas of the Enlightenment, managed to build a fairly well organized (by the standards of the time) bureaucratic state characterized by egalitarian norms by the beginning of the 19th century.

The original drivers of governance improvement in Danish history are the Danish king and his top officials, who were motivated by the need to improve performance after a lost war. Only later, in the early nineteenth century, did bottom-up demand for good governance increase. Despite still being a peasant society, Denmark was one of the first European countries to achieve full literacy in the early nineteenth century (driven by the Lutheran church) and important efforts were made to modernize Danish farms also at this time. The administration of civil servants was the direct responsibility of the king, and the sovereign monarch and his top officials were very aware of the kind of popular discontent that corruption could create with the king and his absolutist rule. With the French revolution in the background, Danish intellectuals were increasingly aware of liberalism and democracy, and the majority of the population was experiencing economic hard times. The king thus feared a potential revolution. It is likely that the king perceived the corruption of his civil servants as a liability of the absolute monarchy, and this motivated him and his advisors to take action. When found to be corrupt, each civil servant was suspended and the case was thoroughly investigated before he was put on trial. Maladministration was not accepted, even though it coincided with economic hard times. Civil servants indicted for fraud and embezzlement were sentenced to life imprisonment. Under absolutism, the king had the right to pardon his subjects, but he did not do so in these cases, and the consistent condemnation of civil servant misconduct at all levels was very characteristic for the period. This was most likely received as a strong message from the government announcing the beginning of an anti-corruption approach.

Something similar to a modern anti-corruption campaign took place after 1819. When the king and his top officials realized the full extent of civil servants' escalating corruption, they stepped up the control of the administration. Between 1819 and 1830,

several top officials from the central administration and judges from the Supreme Court were sent to all the regions of the country to audit the administration, especially the account books and vouchers of the civil servants in regional and local administration (Jørgensen 1969).³ This stepped-up surveillance by the Crown meant that the likelihood of corruption being discovered increased considerably. Combined with the will to hold civil servants responsible by prosecuting them and giving them harsh sentences, this audit campaign was probably a key element in changing the situation. In a fairly small country like Denmark, news of the Crown's strengthened sanctions against corrupt civil servants would have spread quickly – both among civil servants and the general population. In the long term, the crisis at the beginning of the 19th century contributed to the introduction of a number of reforms which began to transform the Danish administration into a more Weberian type of universalist bureaucracy. One of the main conclusions in the reports made by the king's delegates who travelled through the regions to monitor the administration was that the standard administrative procedures for check, audits and accounting in general were out of date, badly organized and inefficient. In 1824, these conclusions led the king to appoint a committee of top officials to work out a new set of standards for the state's accountancy. The task was difficult and complicated, and the commission did not conclude its work until 1835, eleven years later. The commission's recommendations led to the adoption of a new law for the administration of public accounts in 1841. The law introduced a more detailed keeping of accounts, separate account books for separate offices and a considerable intensification and formalization of audits (Olsen 2000: 417–424; Frisk Jensen 2008). Very importantly from an anti-corruption perspective, the law also abolished civil servants' former right to borrow the public funds

³ Regular inspection trips also took place from 1803 to 1807 but were forced to end because of the war. In 1819, they were re-implemented because of a large number of complaints about the civil servants administration by the population to the king.

they were hired to administer. The law demanded a clear separation of civil servants' private and public funds, which had never existed before. The right to borrow from public funds had become very hard for civil servants to exercise responsibly in economic hard times. Before the new law was adopted in January 1841, a civil servant could have credit in public funds as long as he was able to pay his debt when his accounts were checked. With the unsystematic and inefficient audits, the debts of a good proportion of civil servants had simply escalated to a point where the chance of repayment had ceased to exist.

In 1840, a new general penal code was introduced which included a new law on misconduct in office. The crimes of embezzlement, fraud and forgery were described in far greater detail, and the penal code introduced new standards for meting out penalties. In the former penal code, the penalty for embezzlement had been fixed, which gave the civil servant no incentive to stop committing corrupt actions: The penalty would be the same no matter what the amount he had stolen from the public funds. The 1840 penal code was amended in 1866. The 1866 code included a separate chapter specifying the forms of public servant misconduct in even greater detail, and it also introduced the general principle of no punishment without law.

During several of the trials of civil servants convicted of corruption between 1810 and 1830, the salary system and insufficient wages were mentioned as part of their defense. By the beginning of the 19th century, a fixed salary was in place for the royal appointments in the central administration, in the Supreme Court and the higher regional courts. However, officials in regional and local administration were primarily paid in a combination of a small fixed amount and a certain percentage of service and legal fees (*sportler*) (Feldbæk 2000: 326-331). The service and legal fees provided civil servants with money on a daily basis, and the element of direct cash payments between the civil servant

and the population continued to exist until 1861. The size of the fees had been regulated several times by law beginning at the end of the 18th century, but they continued to represent a potential source of income for the corrupt civil servant. By the 1850s, salaries had improved and civil servants in general became part of the well-to-do middle class. In 1861, a new law pertaining to the state's civil service salary system was passed which abolished the fee system and granted fixed salaries to all officials. During the 18th century, many of the civil servants' official duties had been added, and posts were accumulated in an attempt to provide civil servants with a living wage. By the middle of the 19th century, the majority of civil servants were full-time employees, even though the principle of full-time employment for civil servants was not fully established in Danish administration until approximately 100 years later (Knudsen 2001: 542-544; Knudsen P. U. 2001: 381-386). The constitution of 1849 specified the right of civil servants to receive a retirement pension at the age of 70 or in the case of illness. The detailed rules of the retirement reform were specified in an act in 1851, which also specified that the right to a pension could be forfeited in the case of misconduct in office (Frisk Jensen 2008; Gøbel 2000: 235-239).

The increase in control of regional and local administrative practices which began in 1819, combined with the complex of legal and administrative reforms passed between 1840 and 1866, can be interpreted as a set of good governance policies which had a decisive influence on the history of corruption in Denmark. While they were not the first, they supplemented the administration developed during the era of absolutism, which was already fairly well established and well organized according to the standards of the time. Universal franchise was not introduced, however, until 1915.

The Danish path to good governance is therefore the path of enlightened absolutism, prompted first by military defeat, and second by fear of Revolution. Equality

before the law, a bureaucracy based on merit and an accountable state apparatus preceded democratization. Party politics, even after full democratization, could not infringe on the autonomy of the state, and did not develop the extensive forms of political clientelism that we see in France or the United States. The chief assets of the Danish path to good governance are the early adoption of merit as only principle of selection in a bureaucracy (with a law degree from a university mandatory by 1821), control, auditing and harsh sentences against corruption with immediate suspension from the administration of officials allegedly corrupt until their clearance. Like many developing countries, Denmark struggled with an underfinanced administration; the situation was resolved by allowing civil servants to perceive fees officially as a supplement to their salary. Fees which are fixed and clearly linked to certain services are infinitely preferable to bribes, and can be gradually removed when economic development allows the raising of salaries. Private public-separation was instituted only by 1848.

Gradualists and revolutionaries

The European countries pathways to good governance have quite a few points in common, although many disparities as well. Although the tendency of the city to self government was stronger and more natural in Italy, due to Roman tradition and the particular conditions of a conflict between the Papacy and the Holy Empire after the breakup of the Charlemagne empire, we can find this tendency in the form of a communal movement also in other parts of Europe, especially in northern and southern France and the Low countries. Researching the roots of the French Revolution Augustin Thierry was commissioned by Francois Guizot, Education minister under Louis-Philippe in 1836 to write a history of the French Third Estate (*Essai sur l'histoire de la*

formation et des progrès du Tiers Etat, Paris, 1853), tracing it back to this communal development. Similarly, in 1859, E. Levasseur wrote a history of the urban working class, *‘Histoire des classes ouvrières en France depuis la conquête de Jules César jusqu’à la Révolution, I-II, Paris 1859’* where the communal movement was credited with the development of demand for good governance. Even the name given in 1870 to the provisional government of the insurgent city of Paris *‘Commune of Paris’* has the same roots, indicating over six hundred years of communal doctrine. The political emancipation of traders and craftsmen’ guilds against the feudal lords is not the only element of good governance: communes organized themselves around a charter which required an oath, carried privileges but also numerous duties and they organized their own taxation and law enforcement (rights they have obtained from the feudal lords after great efforts) in similar ways to the Italian city states. A preserved charter in the largest town of Normandy (*Etablissements de Rouen*) spells out conditions of selection and control for magistrates. The One Hundred council members (elected from the patricians of the city) were checked for corruption at every fifteen days, jurors were checked at eight days. The mayor was chosen by the king from a short list of three the city prepared and his mandate was of one year only⁴. The emancipation of the cities was due to trade, and their commercial character was bound to bring them in some form of conflict with the feudal order: many histories of such struggles exist, with varying results. In France, the kings favored the cities against the feudal lords. In Spain, Charles V managed to defeat them and end their strong tradition of self-government. The success of cities and the communal doctrine, even if limited periodically by adversities

⁴ Ch. Petit-Dutaillis, *Les Communes françaises : Caractères et évolution des origines au XVIIIe siècle*, Paris, 1947 ; Giry, A (1883), *‘Les Établissements de Rouen’*, Paris: F. Vieweg

and setbacks, still shows today, for instance in the difference of governance quality between the urbanized Italian North and the rural South (Putnam; Rothstein 1998) or the good governance of Netherlands. The European communal tradition thus still accounts for one strong source of European good governance.

Thus being said, European good governance has to be understood as a process of state building. One can hardly speak of a 'state' under feudalism, which was a trans-territorial and hierarchical connection between individuals. The result of such a network was not a 'public' state the way we understand it today. Power offices were completely patrimonial. In the same way that vassals equipped their own troops and came to fight for their overlord when summoned, judges and tax farmers were entrusted a task to fulfill as a duty, with their own material and human resources. They were allowed to reimburse themselves from plunder of the enemy, fees from claimants and other means. This in itself was not dishonest. The 'corruption' encountered in the Middle Ages, or the Roman Curia, or the Stuarts Court is improperly called so, as no public interest objectively defined existed and few 'constitutions' rested upon ethical universalism. It was mostly embezzlement and fraud from the masters. This was different from Italian Republics, where public property and interest were clearly defined. At some point, when control by the central power was lost over regulating tax farming and office sales we can indeed speak of bad governance and corruption. But to start with, the sale of offices was a progressive act, praised by Montesquieu, Burke and Bentham, a way to open offices held until then by privilege to new classes. It was in fact a way to democratize access to power. As long as demand surpassed the offer, conditions could be put for bidders to fulfill certain criteria of competence, and the funds they collected afterwards could be regulated. When demand fell, however, criteria were relaxed, incompetents started to fill in these

positions and to govern poorly and arbitrarily, resorting to extortion to cover their investment (Swart 1949, 92-94). West European sovereigns who used sale of offices to finance their wars – nearly all of them- took a while to realize that this was a way to lose wars, too. In the eighteenth century, incompetent French and British officers who had bought their way into the army lost many battles in the colonies before the practice of selling commissions was amended by some form of examination of competence. By and large, the sale of offices and the financing of government by fees rather than taxes were simply stages in the development of the state and it is questionable that these steps in the ladder could have been skipped. The process of private-public separation was lengthy as the ‘public’ needed being created from scratch. It was first and quite created in the law, even in feudal monarchies; and far later in the realm of finance, army and others. The medieval kings of France financed war from their own coffers or loans from Italian financiers. The first act to render the budget transparent attempted by Louis XVI Minister Necker was rewarded by public outrage, as the Court’s expenses, part of public expenditure, were both extravagant and exaggerated. The separation between public and private was only introduced by the French Revolution. It took bankruptcies to promote public finance sheltered from personal extravagance of a monarch, as it took heavy military defeat or threat of defeat to promote merit based competitions in the army. Denmark is no exception in this respect. Military threat or serious defeats prompted military reform and merit based systems for officers in the monarchies of Sweden, Britain, Hapsburg Empire and Prussia. Of course, behind promoters of reform there was always some ideology: Empress Marie-Therese and her son Joseph II had enlightened ideas, Burke advocated merit based systems for the British abroad, the Federalists had read Montesquieu and Cicero, and so on. But it seems fair to say that triumph of reformist ideas and the building of ethical universalism as a norm was brought about by necessity

rather than virtue. Plainer even, the party of virtue would have remained marginal or in opposition had not striking necessity shown that the old system was leading to disasters of existential proportions.

When European countries like Denmark and Britain started to implement political modernization decisively in the second half of the nineteenth century some fundamental elements of good governance had already been put in place, despite still wide particularism. Enfranchising new groups and removing the privileges of the old (titles, sinecures, and immunities) was a gradual process which strengthened impartiality and objectivity of government and did not question it. This was the gradualist path, resulting from a power equilibrium between the new and the old which did not grant any group sufficient power to become a predatory elite. It evolved through a succession of equilibria which took at least a century. In Britain, the reform of sinecures and 'old corruption' started in 1780, and the building of a more impartial civil service was seen as roughly over by 1840, only to be followed periodically by new waves of reform (Cohen 1965). This was followed shortly by a reform of the electoral regulations culminating between 1868 and 1883. The main goal of these reforms is to prevent the vote from being used as commodity and traded, as the case had been in the early British democracy. The secrecy of an extended ballot, on one hand, and very transparent and carefully audited elections expenses (with ceilings for spending) worked in the end. Unlike Denmark, where the monarch was the main principal of reforms, in Britain it was the Parliament itself which debated, investigated and in the end adopted reforms to foster the integrity of the voting process. Full records exist of claims of electoral corruption at every round of elections and how they were investigated and solved: an examination of such records in conjunction with reform proposals in the Parliament from 1868 to 1911 by Cornelius O'Leary (1962) allows seeing how from generalized corruption the system cleans itself to arrive at

exceptional corruption. Magistrates accepted only late and with great reluctance to be involved into solving such claims, as they considered the issue far too political and burdening Courts which had other primary duties. The investigations into electoral fraud were thus carried out by bipartisan Parliament committees, and reforms were passed in agreement with the opposition or at least a part of it. The autonomy of the state was thus reinforced during political modernization instead of being challenged.

Countries which embarked on the revolutionary path also sought to solve the problem of state impartiality. The French Revolution was to a large extent an anti-particularism revolution, directed more against privilege than against property, like later 20th century Marxist revolutions. The 1791 French Constitution stated clearly that sovereignty 'belongs to the nation. No segment of the people and no individual can appropriate it'. The purpose of the revolutionaries when thus stating the principle of the state impartiality was to prevent the threat of a new capture by absolute monarchy. The succession of regimes induced by the Revolution however brought anything but impartiality. In the nineteenth century, administrative 'cleansing' (*épuration*), initiated by the Revolution became the rule of the game in the relation between legislative power and administration. Each change of regime was followed by a total sweep of the previous administration, in 1815, 1830, 1838, 1852, let alone the great political turmoil of 1777-79 or 1883 (Rosanvallon 1992, 77-79). Only few technicians escaped unscathed at these administrative overhauls. Appointment of partisans to administration assured that administrators would be loyal to the policies of leaders, elected or not. Civil servants did not swear an oath to public interest, but to the party in power, a habit which persisted long into the twentieth century. In parallel, the 19th century saw the development of a strong trend in the public opinion against favoritism and particularism more generally. But the revolutionary path being based on power and administrative overhauls it proved

less conducive to the development of ethical universalism: patronage and political clientelism became resilient features. Rosanvallon cautiously salutes the arrival of first impartial institutions only in the last quarter of the twentieth century. Furthermore, politicization became a motor for an expansion of public sector which was not driven by policy needs. France grew from 150 000 civil servants in 1815 to 3 millions today. In the era of small government in the United States, party machines had provided services for the poor, the unemployed and new immigrants and patronage allowed the construction of mass-based parties; once social services passed from parties to local governments political participation has steadily declined (Arnold 2003). The passage of US Pendleton Act of 1883 which introduced the merit based system gradually was triggered by the assassination of President Garfield by a campaign worker who had expected to be appointed ambassador as a reward. The Act, influenced by the earlier Northcote-Trevelyan reforms in Britain (themselves originated in scandals related to the lack of preparedness of the army), specified for the first time that “no person in the public service is . . . under any obligation to contribute to any political fund,” and “no person in said service has any right to use his official authority or influence to coerce the political action of any person . . .” The act also gave to presidents the authority to expand the number of positions covered by merit system. Over the next two decades presidents routinely expanded coverage, although in the times of Lincoln nearly all positions had been filled by political appointments. Had the law asked from the beginning that the state becomes ‘modern’ and all civil servants are tenured, it would only have provided grounds for infringements by the next parties in government, as we see today in many countries which adopt instant ‘depoliticization’. Nevertheless, it took decades to the Americans to arrive at a merit based non-politicized civil service, which they managed before the French did.

We find thus quite some variety among historical achievers. In Europe, the Scandinavian countries, Austria (and Germany) had managed to develop an impartial state prior to democratization. Britain combined some limited democracy with good governance, and advanced steadily through gradual reforms. France took the revolutionary path; the French and the American way to ethical universalism, though fairly specific, is similarly tied into the history of their respective republics, with intense politicization, spoiling and favoritism. Good governance was nowhere driven by mass demand, unless we consider the Paris revolutionary mobs as such, but by public opinion of elites which prompted monarchs or prime ministers to reform.

The historical paths to equilibrium teach us some brief lessons. Denmark, the world's ideal of good governance, had in fact reached the essentials before democratizing. Unlike in Germany, the modernization of the state by an enlightened despot was followed by the gradual passage to a more inclusive political society. Political parties could not become significant spoilers, not even after the generalization of franchise because the state was already sufficiently developed and autonomous towards politics by the time universal franchise opened political access. The United States is the only country where the development of democracy precedes the development of good governance; the challenges were very similar to those of middle-income developing countries of the present. Such specific sequences where rule of law and autonomous bureaucracy are achieved previous to the enfranchisement of new groups are quite difficult to reproduce in present countries, when so many countries already experienced free elections before rule of law and state autonomy. The group of non-democratic contemporary achievers has some claim to a part of this historical path. The governments of Qatar and the United Arab Emirates, for example, traveled to good governance on a synthetic path made of traditional and post-modern elements of governance: the modernity in between was

partly skipped. If such countries were to introduce complete free and fair elections, their sequence would be complete.

Development of institutions of good governance

In a widely read and influential book, "Confronting Corruption", issued as a Transparency International Sourcebook in 2000, Jeremy Pope developed the theory of 'integrity pillars', key institutions which should all stand together for good governance to be achieved and whose failure endanger it. They are an elected legislature, a honest and strong executive, an independent and accountable judicial system, an independent auditor general (subordinated to the Parliament), an Ombudsman, a specialized and independent anticorruption agency, a honest and non-politicized civil service, a honest and efficient local government, an independent and free media, a civil society able to promote public integrity, responsible and honest corporations and an international framework for integrity. This comprehensive list generated equally broad anticorruption strategies missing a prioritization based on the understanding of what puts what in motion. The clear specification on institutional designs also gives the illusion that adoption of certain institutions and designs has to lead somehow to good governance. While the performance of these institutions in contemporary times can be tested separately, it is of great interest to understand how they came about and what role they played historically, since we actually find two different sets of explanatory factors of good governance when we account for present times versus historical ones. Institutions which are today responsible with enforcing ethical universalism are only to a limited extent those which helped this norm become enshrined. The explanation for the performance of historical achievers is not to be found in their present organization

(legislation, political institutions) which should not be viewed as a cause, since it acts for the *maintenance*, rather than the *creation*, of good governance.

We have already discussed civil service or bureaucracy. In the communal design, its role was small because government was based on conscripted citizens who filled offices as a civic duty. In the monarchical path, bureaucracy played a strong role being developed by monarchs to check on their aristocracies; perhaps in current traditional monarchies this can still work, but it is obviously a circumstance hard to reproduce elsewhere. In democratic circumstances, such as France or US, bureaucracy was not the factor of good governance, public jobs being severely politicized and a resource for corruption: impartiality occurred extremely late. Even the British, who were the first were still struggling with civil service reform as late as after Second World War. The Chinese, who had been world leaders in promoting government by mandarins were unable to sustain it and in early 20th century they were thoroughly corrupt and adopting a civil service act copied from the British. Secondly, the development of an independent judiciary was a late occurrence in Western Europe. Britain was the leader, despite the fact that it has retained until today a system of appointment which could be seen as anachronistic. So the appointment system does not matter much, since the country most advanced historically had a gradually developed and from a moment on anachronistic system. Two elements seem to have been necessary to bring about progress: The development of legal elites with sufficient integrity, professionalism and respect from society to be able to stand political pressure; and the arrival at an equilibrium point where rulers had to surrender power over the judiciary (Neild 2002). While the principle of equality before the law also became an early part of constitutional tradition in Denmark, Britain, the US and France, and a *Rechtstaat* was a constant demand of liberals in nineteenth century Germany, it was only by the 20th century that judges managed to

become truly independent; issues of low accountability and political partisanship have persisted up to present times in many countries. The advocacy of Montesquieu in favor of a separation of powers found adherents from American Virginia aristocrats to German liberals, but it was a challenge to implement. In France and Italy, a late battle was fought between the two state powers, executive and legislative, after the Second World War which has still not come to an end. Germany needed a foreign military occupation to reinstate the *Rechtstaat*. Since on the one hand, an elite is needed (as produced by such universities as of Oxford, Copenhagen, Paris or Bologna starting in medieval times) and on the other a situation of strong constraint upon rulers, the independence of the judiciary is one of the most difficult to reach among good governance factors. *It did not lead to the historical development of good governance but seems rather to have been a result of it.* In any event, its development is determined mostly by politics. As Stephen Holmes put it, “Law is a tool of power” (Holmes 2002). Binding power to allow independence of the law is necessarily a political act. Many rule of law programs, if not all, fail because they lack – for obvious reasons- this political part and instead treat rule of law development as a problem of missing capacity.

The office of an independent auditor, subordinated to the legislature (which was not a party based, but a corporatist based legislature) had strong roots in the communal traditions, but was absent in modern monarchies. The auditor was the arm of the sovereign and checked on his subjects, not the arm of an elected legislature checking on government. The beginnings of the office of Ombudsman can be traced back to such an office created by Charles XII of Sweden in 1713, though obviously with intentions far removed from the nature of the institution in its later form. This office, denoted as the King’s Chancellors of Justice, had the task of supervising officials in the exercise of their office while the king was in Turkish exile. Nevertheless, the Chancellor had institutional

loyalties, first and foremost towards the king, and therefore the idea began to circulate that there was a need for an administrative post to supervise the government from a position of true independence. (Bexelius 1967: 171) The office of an independent Ombudsman was then anchored in the Constitution of 1809. It obviously relies upon a reputation for impartiality and integrity, but formally has remarkably few powers. Thus the Ombudsman can make recommendations, but cannot reverse decisions. He is to be granted unfettered access to all relevant documents, even if they have been classified as secret. He can initiate legal proceedings against officials who have erred in fulfilling the duties attached to their office. He can petition the parliament to amend legislation. In fact, the efficiency of this institution is dependent upon the existence of transparency and their beginnings originate in the same country and period (Roberts 1986: 134; Samuelsson 1968: 120f.). Starting with 1756, Nordencrantz, a leading figure in the opposition Caps party, launched a vituperative campaign against corruption with a series of pamphlets. Previous to this, dissemination of knowledge about abuses had been suppressed by censorship, but the censors somewhat liberalized their policies (Roberts 1986: 151-155), permitting in particular the publication of Nordencrantz's writings. This all fed into the popular upsurge of revulsion which displaced the Hats from power in the 1764 election. As Roberts writes: "The general election of 1764 differed in character from any that had preceded it. It revealed a popular reaction against notorious abuses; and that reaction had been made possible by increasing laxness of the censorship. The disastrous state of the economy, the sordid struggles of the Diet of 1760-2, the unscrupulous greed of the ruling plutocracy had been exposed to all the world; the arguments of Nordencrantz and Rudbeck [leading figure of the Caps party, Marshall of the Diet from 1765 onwards] were now available to any; in a

simplified (and perhaps distorted) form they were in every man's mouth." (Roberts 1986: 155)

Upon convening in 1765 the Estates, now dominated by the Caps, set up investigatory committees to examine allegations of malpractice at the Estate's Bank and pushed through an austerity program, designed to purge the system of the old abuses. In 1766 the Estates passed a law which can be considered the world's first **Freedom of Information Act**: "According to the principle established there, all documents (with certain exceptions) on which officials base their decisions are public." (Bexelius 1967: 170) This law was one of the reforms brought about by the Caps after they had wrung power from the Hats and was in part the product of enlightenment ideas favouring broader participation in the governance of the country (Anderson 1973: 421f.) Indeed, its ideological origins lie in the Caps' concept of the Estate as a body accountable and responsible to the nation (Roberts 1986: 146). The vitality of civic government was regarded as being dependent upon unfettered public scrutiny of government action. The Caps economic policies however lost them the support, and they were displaced from power by the elections in 1769.

The Provisions guaranteeing public access to official documents fell into abeyance during the temporary resurgence of absolutism which followed the coup d'état carried out by Gustav III but reasserted itself when it was enshrined in the constitution of 1809. (Anderson 1973: 422) Despite subsequent revisions and amendments which in part were designed to more precisely define the exceptional cases where secrecy is indispensable, this constitution effectively instated a continuous observance of this principle.

The ombudsman and the principle of transparency worked in Sweden due to the existence of strong political challengers demanding it and a public opinion which was

sensitive to issues of corruption and abuse. In other words, there was a high demand for government accountability reflecting the existence of a powerful opposition challenging the existing equilibrium. Similar to judicial independence, these institutions were a result of specific historical Western transitions to good governance rather than the cause. Introduction of an institutional check on government because domestic opposition demands it is bound to play a role, since a force exists to use this check: its adoption because a donor or a treaty asks for it risks remaining irrelevant if domestic demand is not there. Wars and financial crises were the best triggers of governance evolution, as well as revolution (or fear of). A permanently competitive military environment led to the introduction of merit systems in the army and bureaucracy, and the rationalization of taxation (Neild 2002). Enlightened despots came a long way in building states which were autonomous to all private interests but their own. The introduction of reforms sometimes toppled them, as in the case of Louis XVI, the first monarch in Europe to publish his expenditures in 1781. Mindful of these lessons, monarchs in Denmark and England continued to reform. The demand for good governance developed prior to populist politics, during times of limited participation and evolved through successive power equilibriums.

If this is the case with state institutions, let us examine the society ones that Pope suggests are indispensable for good governance: business, civil society and the media. Here we find evidence of a more substantial historical role. In Sweden, Britain and the US, veritable public opinion anticorruption campaigns existed from fairly early on, taking advantage of the freedom of the press. It was not easy for contemporaries to perceive them as such, since media of the times was savage as well as free and considerable amounts of defamation was also published. But by end 19th century, due to civil lawsuits more than censorship the media started to become more professional. We

have a remarkable account of the role of the media played in one of the best documented corruption stories ever, that of New York 19th century local government, the 'Tammany Hall'. Although the 'ring' of corrupted local administrators (who were also running the Democratic Party locally, and fully controlled the judiciary) was eventually brought down with the help of media; but it was also media which helped them endure so long. Most of New York newspapers seem to have been on the Ring's payroll. 'On some sheets... there were six or eight staffers who drew stipends from the city ranging from \$ 2000 to \$ 2500 a year. Their jobs were to write blurbs in the guise of news stories. Some specialized in writing letters to out-of-town papers extolling the accomplishments of Major Hall administration'⁵. The minority market oriented media, personified by the *Times* (publisher George Jones) and the *Harper's Weekly* (which employed a gifted cartoonist, Thomas Nast), fought for years against the local corrupt government; until they managed to publish on front-page the leaked accounts of the city proving wrongdoing, they did not succeed in curbing the power of the gang. The role of businesses was also paradoxical. In Britain, it was manifestly the traders who pushed constantly for government impartiality towards private actors, starting from the times of Scottish Enlightenment. But this does not mean that notorious companies, such as East India, for instance, were actually not doing exactly the contrary, extracting rents from the government and buying Parliament members (many were shareholders, and voted to buyout the company from its difficulties with public funds). The situation was no different in US: while some corporations pushed for the government to step aside and let business develop without hindrance, many others developed due to privileged public-private partnerships. By and large, businesses promoted good governance mostly by their demand of fair, impersonal and limited regulation rather than playing

⁵ See Nathan Miller, *Stealing from America*, NY: Marlowe and company, 1996.

some direct role in anticorruption. We do not find many businessmen among historical heroes of the fight for ethical universalism, which features mostly journalists, intellectuals serving as columnists as well as MPs, a handful of aristocrats and quite many barristers, who fighting to redress particular injustices actually promoted the greater cause of government fairness and impartiality.

The important lesson of this very brief historical overview is that the adoption of what we consider today the most quintessential institutions of Western good governance followed a change in power equilibrium or a massive threat to the existing one, which generated strong demand for better governance. It was brought about and consolidated by human agency. The international environment which Pope highlights as the additional factor has always mattered: empires of Napoleon or the British infused many countries in the world with legal codes and other modern institutions. But only some of those managed to sustain the institutions they received by transplant: the explanation for this lies in domestic agency.

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