The second point is that I am not sure that those using the actors based approach are definitely a minority, even if this is what one can derive from a quick scan of the international political science journals. The point is that the vast majority of analyses are not only done in domestic policy fields in national languages, but are done by individuals that are not academic researchers (the ones that write and read scientific journals). Sometimes these analyses are not even written down but are discussed in more or less open meetings in which the interested parties gather in order to find solutions to real problems. I suspect that their approach is more similar to our than sometimes we think, and that, as a matter of fact, the whole process is very different indeed from what the followers of the "comparative politics approach to policy analysis" assume is actually happening. Actually this is more than a suspicion, as I have participated myself in such meetings and I have found that our conceptual tools, if they are not used in a scholastic way, can actually be useful in order to help the understanding and the development of this process and can easily be grasped by the real policy makers. In other words the real problem is not if the actor based approach is dominant in the scientific community, but if it is dominant in the policy making community...

This brings me to the third point, i.e. the fact that the job description of a political scientist, and any other scientist, for that matter, includes teaching. And the product of this teaching cannot be solely the production of other researchers. This of course is one part of the outcome but only a part and possibly not the biggest. We actually teach, and in Peter Knoepfel's case this has been a choice made many years ago, to people that are likely to become, and sometimes already are, policy actors. This is what makes teaching interesting; as some of these people have already a knowledge of how the game is played that can be compared with what we have elaborated in our books and articles. And even if they are young students, the purpose of teaching policy is actually to improve their chances to be able to influence, when they will enter the real world, the policy processes in which they will find themselves involved. When I was hired by the Politecnico di Milano in the Planning Department, someone explained to me that the dominant philosophy of the university was that the teachers should actually try to involve themselves in real projects - building houses and bridges, designing machinery, etc. - basically because no one trusts an engineering or architectural professor that has never been active in realising some real projects. From time to time I wonder what, apart from the use of sophisticated conceptual tools, some of our more mainstream colleagues are actually able to teach to their students.

Summing up, and going back to the main argument of this short paper, in my opinion the attention devoted to resources, and to the use of law, in Peter Knoepfel's scientific programme, is a consequence and a reflection of his reformist approach. The idea that providing conceptual frameworks, analytic tools, evidence and insights able to ease the solution of real world problems is not only the "right" thing to do by a socially responsible scholar, but it is also much more fun than the alternative.

CHAPTER 2

Why Do We Obey Soft Law?

ALEXANDRE FŁOCKIGER

Introduction

Compliance with law

"What explains the singular habit of respecting laws, which only a few 'abnormal' people obey only when compelled to do so?" Can this habit be explained by coercive sanctions? The fear they instil, or the threats they represent? The guilt and shame they evoke? In short, do we respect laws because of the emotions they stir within us?

This is certainly part of the answer, though not the entire answer. The authority of law stems not from coercion alone. Explanations vary depending on the point of view: neuroscientists cite the activation of cerebral zones specific to compliance with norms, psychologists the emotions, sociologists social norms, ethicists the sense of values, theologians morality, economists efficiency, psychiatrists the superego, and so on.

Compliance with soft law

If compliance with hard law is not easy to explain, compliance with soft law is even more complex. It is astonishing—to a legal mind at least—that certain non-binding instruments, such as recommendations, declarations, information and persuasion activities, gentlemen's agreements, charters and other incentive instruments, compel respect. The rules of soft law may, in practice, be respected regardless of whether or not they are of a legal nature. The rate of compliance does vary, as it does widely with binding instruments: "In some instances, compliance with non-binding norms and instruments is extremely good and probably would not have been better if the norms were contained in

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1 This text is the short version of an article published in the Revue européenne des sciences sociales, 2009, 144, p. 735ss entitled "Pourquoi respectons-nous la soft law? Le rôle des émotions et des techniques de manipulation."


a binding text." The Joint Declaration of the European Ministers of Education convened in Bologna on June 19, 1999 (Bologna Declaration), a non-binding instrument, is an example of the potentially powerful effects of soft law. This text was followed and implemented much more effectively and quickly in universities than the rule imposing a fine on pedestrians who use a bicycle path when a sidewalk is available. This is a remarkable phenomenon for a jurist: rules of law, though compulsory, are sometimes less respected than rules of soft law, although clearly rules of hard law are often more effective than rules of soft law taken in isolation, and soft law is by far not always as effective. The most marked effect certainly results from a combination of rules of law, their enforcement and soft law instruments. Neither a compulsory nature nor a penalty alone is a determining factor in the analysis of compliance with rules.

The need to legitimize the State's non-normative action

Since a non-compulsory rule may be enough to change individuals' behaviour, the State has made a habit of using such rules in addition to, or instead of, conventional legal instruments. This circuitous the burdensome legal processes that apply to rules of law and contributes to strengthen the State's hold. The phenomenon is not a new one. There are traces of it, for example, in Michel Foucault's concept of governmentality. However, its originality resides in jurists' awareness of the power of these "weak" instruments, with the legal system conveniently branding their non-legal nature as an excuse to avoid addressing the legality or constitutionality of such instruments. The challenge, then, is to convince the State to develop appropriate legitimation mechanisms. Constitutional law did so in the past by democratizing law and subjecting it to requirements of precision and the control of constitutionality, while administrative law did so by requiring procedural guarantees for the adoption of administrative decisions or certain plans.

With this end in mind, we will explore how soft law exerts its influence. We will detail these mechanisms from a psychological perspective. The role of emotions in persuasion techniques as well as manipulation techniques that affect individuals' behaviour without their knowledge will then be examined.

The role of emotions in persuasion techniques

The concept of emotion is not easily defined. Still today, many references are made to the six basic emotions identified by Paul Ekman: anger, fear, disgust, joy, sadness and surprise. Research in the field has only made the concept more complex by distinguishing emotions from other affects such as feelings, passions or moods by categorizing and broadening them to such an extent that it is impossible to find a unanimously recognized definition today.

Emotion and reason: Two readings of the same reality

Emotion is not opposed to rationality, but interwoven closely with it. Far from interfering, emotion helps us make rational decisions in situations of uncertainty, for example. Emotion can also be described as rational. It follows, therefore, that it is more appropriate to imagine different ways of reading the same reality: while it is reasonable to drive on the right side of continental roads, an emotional reading of the issue might focus on the fear of an accident (not to mention a fine). The rational choice theory might lead someone to prefer a solution that involves deliberately breaking the law, if this is less costly in terms of both money and image, as studies in law and economics have theorized. On the other hand, an emotional reading would show that desire for wealth, greed or fear of impoverishment would weigh more than pride and honour in compliance with law or the embarrassment that guilt stemming from a violation might evoke. The opposition between reason and emotion is in fact used for persuasive purposes in all decision-making processes, whether legal, political, economic or other: an individual who calls another to reason is actually trying to show him that his decision may be based on other emotions that could prevail or that certain emotions can be appeased.

As such, the intention is not to oppose reason and emotion, but to probe the emotional variable in the mechanisms at work with observation of rules. Although this perspective is restrictive, it opportunely completes more conventional political, sociological and economic analyses.

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Emotion at the service of compliance with hard and soft law

To improve compliance with soft law, the State can use various persuasion techniques by appealing more or less strongly to emotions. This approach is not original, to the extent that the role of emotions can be shown easily in the application of conventional law: criminal law, in its primitive punitive aspect (confinement, exclusion, impoverishment, humiliation, suffering and death), is designed to inspire fear,28 anxiety and terror in the public, as well as evoke shame, embarrassment or guilt among those found guilty, and assuage the anger, rage and desire for vengeance felt by victims in order to impose compliance with the rule of law. The justiciable obey law because of an emotional tie, which for some involves fear of punishment or the resulting shame,18 and for others, positive emotions such as respect for or commitment to the public good.16 Fear of punishment, however, is far from the only explanatory factor.

In the context of soft law, research on compliance with social norms9 and persuasion techniques16 are of great interest. Observance of non-binding rules cannot be explained solely by the rational choice theory, but is attributable essentially to emotional mechanisms, particularly anticipation of shame, guilt or embarrassment in the event of violation as well as pride in compliance,17 with shame being evoked by others' disgust or scorn.18

The emotional reading is but one possible reading of rule compliance mechanisms. Although it has a high potential to explain changes in attitude, consideration must be given to other levers that a purely emotional approach only partially explains. That is why, in the second part, we will examine manipulation techniques that prompt individuals to unwittingly change their behaviour. Some research also gives less importance to the effect of emotion (in this case, fear of punishment) in compliance with law. According to this

24 Elster 1998 [note 17], p. 149.
public buildings for energy efficiency), giving individuals a model to follow and
accustoming them in the hope of sweeping them along. Citizens perceive the
State’s publicity of its new behaviour as a real recommendation to adopt the
same attitude.88

Research in social psychology on obedience shows the importance of the
weight individuals give to a figure of authority,89 regardless of whether there is
a mandatory legal relationship.90 Credible sources are more convincing. For
example, experts have proven to be influential within the framework of anti-
smoking campaigns.91

Some non-binding instruments are adopted, drafted and formulated like
binding instruments, resulting in a bluff effect on the intended audience.92
Here, obedience is the product of a transfer, as it were, where secret hopes are
invested in the normative power of the written word93 or where the solemnity
of the adoption procedure is impressive, as with some non-binding
international declarations94 like the Rio Declaration (environment) or the
Bologna Declaration (education).

In other cases, respect for authority is strategic. It may arise from the need
to foster a climate of trust by maintaining harmonious relations with the
administration, a determining factor in non-binding arrangements (or
gentlemen's agreements).95 The fear of a deterioration in relations leads to
compliance with non-binding instruments. This motive is particularly strong
in public international law, where the necessity of maintaining good relations
among States means that violating a purely political commitment may result in
a range of retaliatory measures.96

89 Girandola, Fabien, "La source," in Girandola, Psychologie de la persuasion et de
l’engagement, Besançon 2008, p. 175s.
90 Milgram’s experiment where subjects were pushed to obey inhuman orders
must be understood from the perspective of hard law, to the extent that the
experimentator gave them direct orders (Milgram, Stanley, "Behavioral Study of
91 Falomir Pichastor, Juan Manuel/ Mugny, Gabriel, Société contre fumeur: une
92 Flückiger 2006 [note 6], p. 247.
93 Tschannen, Pierre, Der Richtplan und die Abstimmung raumwirksamer Aufgabe,
Berne, let. c, p. 325.
94 Nguyen Quoc Din/ Daillier, Patrick/ Pellet, Alain, Public International Law,
95 Kautz, Steffen, „Absprachen im Verwaltungsrecht: Zulässigkeit, Grenzen und
Folgen, Berlin 2004, p. 80s; Müller-Graf, Thomas, „Entrechtlichung durch
Informalisation? ein Beitrag zur Handlungsformen- und zur Rechtsverhältnislehre im
Verwaltungsrecht, Bielefeld, etc, 2001, p. 179ss.
96 Virally, Michel, “La distinction entre textes internationaux de portée juridique et
textes internationaux dépourvus de portée juridique (à la exception des textes émanant des
organisations internationales): rapport provisoire,” Annaire de l'Institut de droit
fear of disease in prevention campaigns against obesity; fear of the enemy revealing its ferocity in military propaganda, etc.

In fact, these primal fears are not the only emotions that prompt individuals to follow the behaviours advocated by such campaigns. Reality is not as clear-cut. Effectiveness must be understood in combination with other tools, including legal instruments. The effect of anti-smoking or anti-drinking campaigns is thus reinforced with special taxes on cigarette packets and strong alcohol. Parallel motivations sometimes meet, as with the rate of protected sexual intercourse, a part of which can be attributed directly to AIDS prevention campaigns while another part may stem from competing motives such as a desire to assuage the fear of unwanted pregnancy, other sexually transmitted diseases, or a criminal penalty.

The images used in such campaigns indisputably enhance their emotional impact, as illustrated with anti-smoking and road accident prevention campaigns. Nevertheless, the influence of images in a propaganda context is controversial today.48

Finally, more generally, an individual may feel pressure to change from the social group to which he belongs, if he fears conflict with the group. Social psychologists call this attitude conformity.49

Regret is also at play in obedience mechanisms, especially the anticipated fear of regret or remorse that may arise from behaviour contrary to a recommendation. Economists have even proposed a theory of regret, according to which the fear of regret (e.g., for an investor to miss a future opportunity) is more intense than the gain to be expected from a correct decision.45 However, the anticipated regret is not the only emotion that can prompt individuals to change their behaviour. For example, a desire to avoid the fear of disease in prevention campaigns against obesity; fear of the enemy revealing its ferocity in military propaganda, etc.

Yet the psychological mechanisms the law evokes can be similar to those of binding instruments. There is a fine line between legal sanctions and the "pressures" that encourage non-mandatory behaviours.

This is the case of the financial pressure behind incentive taxes. These involve non-mandatory recommendations, as well as payment of a sum of money. They consist of dual components, imperative and non-imperative. The advocated behaviour is not compulsory but simply recommended. However, the intended audience may perceive this instrument as a financial penalty very similar to regular legal penalties: individuals who fail to sort their waste must pay a tax.46 The difference is that in the recommendation-based variant, the payment of a tax does not have the same symbolic scope as in the legal variant where a fine is imposed. Fear of impoverishment or a desire to avoid waste money, generated in both hypotheses, are doubled in the second variant. The difference tends to fade each time small sums are at stake, to the extent that the legal process is then simplified. The penalty is then perceived as "just a tax."49

The pressure may also be regulatory, decisional or jurisdictional in nature. The targeted audience will obey from fear that the authorities will carry out the threat to adopt regulations, render a decision or institute proceedings. The greater the credibility of executing the threat, the greater the effect.

At one end of the spectrum, this pressure may be very diffuse, political in nature, like non-binding, informal arrangements intended to avoid a regulatory act. Examples include the gentlemen's agreements used by the Banque nationale as of the 1930s or the industry-wide agreements used in environmental law since the 1970s. At the opposite end of the spectrum, the pressure may be "juridicized", while remaining a fact, when there is a Damocles' law. This type of law institutionalizes the part of the agreement binding the State to individuals by legally guaranteeing that the public body will not adopt state regulations in a given area in return for the "voluntary" adoption of autonomous private regulations.48 Although individuals are not legally obligated to adopt a self-regulated solution, in reality, their behaviour is dictated by fear that the State will exact less favourable regulations. There are
indignation, anger, rage or disgust, play on these same motives. The effect of such processes for individuals can be far more painful than recourse to binding legal instruments, as the example of warnings against hazardous products shows: the necessary advertising is clearly more detrimental to the manufacturer than a simple notice of prohibited distribution, since the manufacturer’s image is tarnished. Their effectiveness is questioned, especially as regards government stakeholders, as illustrated by the implementation of the open method of coordination in European law (non-compulsory method of coordinating public policy). Information campaigns that play on the fear of deadly disease or accidents often provoke shame or guilt in their targeted audience, as do organ donation promotions that make non-donors feel guilty for not wanting to save the lives of others.

Joy

Joy and other resulting positive emotions like pride, self-esteem, desire and pleasure are emotions that can change the behaviour of individuals without forcing them to do so.

This is the intent of all redistributive economic instruments that play on the pleasure of winning money and the desire for profit. Thus, when a recommendation is supported by state funding, the economic incentive strengthens the recommendation’s appreciative nature commensurate with the sum at stake.

By awarding prizes and distinctions to reward exemplary attitude (see, for example, the order on the Prix du cinéma suisse), authorities are indirectly recommending the adoption of a specific behaviour. This kind of

For example, a study of the United Nations Commission on Human Rights: When and How Does it Matter? (published on www.allacademic.com/meta/p179882_index.html). The same process is used to implement the open method of coordination (OMC) in European law (Collignon, Stefan et al., "La Stratégie de Lisbonne et la méthode ouverte de coordination: 12 recommandations pour une stratégie à plusieurs niveaux plus efficace," Policy paper no 12, 2006, p. 10 [www.notre-europe.eu — rubrique travaux]).


Implementation of the open method of coordination in European law is based on a peer pressure system that "has not functioned correctly, partly due to the fact that members do not wish to ‘name and shame’ their peers. Stakeholders are not very motivated to engage in this type of process: the various members fear they will make enemies and reap the negative consequences in other political areas where they show little progress." (Collignon 2006 [note 62], p. 10).

RS 443.116.
recommendation plays on the recipient's joy, pride, pleasure, and even the desire, envy or jealousy that such an award may arouse in others.

Information campaigns may also aim to excite feelings of joy and happiness: the pleasure of eating healthily to counter obesity; the joy of watching a young athlete with a heart transplant promote organ donation; the magic of a stroll in the shaded woods to prevent the death of forests.

Finally, we can revisit the phenomenon of social conformity discussed in the section on fear. Conformity motivated by complacency—in which an individual who fears conflict with the group prefers the pleasure of peace—must be distinguished from conformity motivated by identification. The latter is based not on fear but on joy, pride or desire for recognition when the individual conforms in order to establish his or her place in the group and maintain positive relations with it in the hope of eventually obtaining prestige and visibility.68

Finally, it should be noted that pleasure is an ambiguous emotion in this context, since it is often a factor opposed to the implementation of soft law rules. The individual is constantly required to balance the fears raised by an anti-smoking or AIDS prevention campaign with the pleasure of smoking or lovemaking without a condom.

Surprise

Soft law presents an interesting characteristic in this regard in comparison with hard law, in that the former often has an experimental function to test a potential future rule of law.67 This allows the State to study the reaction of the intended audience and either withdraw the tested measures or make them permanent, depending on the observed impact. Soft law thus accustoms citizens, or gradually acclimatizes them, to a new regime by avoiding any surprise on the day it evolves into hard law (smoking is first discouraged, then prohibited in public places; helmets and seatbelts are first encouraged, then imposed; etc.). We find a variant of this process when non-imperative planning progressively creates accomplished facts that become increasingly difficult to counter over time.68 Certain manipulation techniques, like the door-in-the-face technique or deceit, knowingly make use of the surprise effect.

66 Regarding such effects in planning, see Flückiger, Alexandre, Le régime juridique des plans: l'exemple du plan de gestion des déchets, Berne, 1996, p. 117ss (ref. cit.).
Such practices do not make direct use of individual emotions, but condition emotions at the unconscious level, particularly through deceit, deception and surprise. Contrary to hard law but like soft law, the subject is placed in a situation that gives him a feeling of free choice. This perception of freedom is a determining factor in the success of manipulation techniques. The individual must believe he is making a free, informed decision without being influenced, despite behaving differently than he would have without the unseen manipulation. Commitment theories are the basis for such processes. The principle is that the subject's conduct is determined by one or more earlier behaviours that are elicited without his knowledge. Subjects become caught up in the process, one that is increasingly difficult to halt as time advances.

Several methods can be used:

- **The foot-in-the-door technique**, which consists of making an initial trivial request before the main request. The trivial request involves little cost and is not necessarily related to the main request (for example, asking the time); the subject is then asked to perform the desired action, which he likely would have refused had it not been preceded by the initial request.

- **The door-in-the-face technique**, which on the contrary consists of making an initial excessive, though not abusive, request before the main request in order to obtain less; in fact, the "less" is exactly what the requestor wants. The effect of calming surprise gives the subject an illusion of gain that makes him statistically more likely to consent.

- **Priming**, which consists of getting an individual to agree to an action, the true cost of which is initially concealed and revealed fully only at a later time.

- **Deception**, a variant of priming, in which the requestor asks the subject to perform an attractive behaviour the requestor knows to be impossible, then informs him of that fact and proposes an alternative that is more costly and that the requestor initially had in mind.

In order to achieve the desired effect, the individual must believe himself to be free. Empirical research in social psychology has shown that explicitly telling someone they are free to choose significantly increases the rate of a manipulation technique in itself. Soft law is based on exactly this type of reaction because it is defined as not legally mandatory. Equally relevant is the concept of psychological reactance, in which individuals, who believe their

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77 Joule/Beauvois 2002 [note 76], p. 1178ss.
78 Joule/Beauvois 2002 [note 76], p. 658ss.
79 Joule/Beauvois 2002 [note 76], p. 6588.
80 Joule/Beauvois 2002 [note 76], p. 160.

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behavioural freedom is being diminished, manage to resist attempts at persuasion.

These techniques tend to be used to support information and persuasion campaigns. They have been tested successfully in the area of energy efficiency in encouraging people to turn lights off when no longer needed and to turn down heating instead of opening windows when they are hot, as well as in the area of occupational health and safety to encourage workers to wear hearing protectors in noisy environments, in the area of AIDS prevention to encourage use of condoms and undergo testing, and to promote organ donation.

The ethics of authorities using such techniques is highly debatable, particularly those techniques based on deceit and deception, since they may be contrary to the constitutional principles of good faith and proportionality.

**Strategic use of cognitive dissonance (effect of the duty to state reasons)**

According to the cognitive dissonance theory, an individual feels uncomfortable when faced with contradictory "cognitions," where cognition refers to a person's knowledge of self, behaviour and environment. This state of unpleasant tension motivates the individual to reduce dissonance in order to achieve cognitive balance (or consonance).

Some methods of reducing cognitive dissonance have been used strategically to modify individuals' behaviour. This is the case when a person is asked to explain a solution he does not support, in which case he tempers his final position in an effort to harmonize his behaviour with his ideas.

**Context effects (contrast and compromise effects)**

Context effects (contrast and compromise effects) introduce biases into the decision-making process. These effects have been used in marketing since its inception and have been tested recently in the legal decision process.

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51 Baggio [note 66], p. 868ss.
52 Joule/Beauvois 2000 [note 73], p. 548ss.
53 Joule/Beauvois 2000 [note 73], p. 1108ss.
54 Joule/Beauvois 2000 [note 73], p. 1278ss.
55 Joule/Beauvois 2006 [note 73], p. 1428ss.
58 Baggio [note 66], p. 868ss.
With the contrast effect, the same option is assessed more positively in the presence of similar, less favourable alternatives than in the absence of such choices. This effect exists optically with the Ebbinghaus Illusion: a circle of the same diameter is perceived as being smaller when surrounded by larger circles.

The compromise effect results from the observation that the same option is assessed more favourably when seen as the middle solution in a group of alternatives than when presented as an extreme.

A first American experiment showed that, based on the same established facts, the probability of being found guilty of murder rose from 38% to 55% when capital murder is among the choice of offenses. This compromise effect means that the accused risks receiving a higher sentence when the law provides for capital murder, even if he is not found guilty of that offense.

The experiment was repeated with similar results with 230 civil and criminal judges in the cantons of Bâle, Berne and Graubünden. Their rulings based on the same established facts were compared depending on whether life imprisonment was among the available criminal penalties. Introducing an extreme option among the range of potential solutions increases the proportion in favor of the median solution.

These conclusions can be transposed to the area of soft law. This type of reaction is counted on with Switzerland's new organ donor card, which offers three options: authorization for removal of all organs, non-authorization, and, as the intermediate alternative, selective donation with boxes to check for various organs (heart, lungs, liver, kidneys, small intestine, pancreas, cornea, skin and other tissues and cells). Although not confirmed by a study, one can reasonably hypothesize that the presence of an intermediate option will be considered more favourably.

Conclusion

States have long been aware that conventional legal instruments are occasionally ineffective in piloting public policy. Soft power is rediscovered, thematised and used with sometimes startling effectiveness, particularly in synergy with conventional legal means. Soft law has an even greater impact because its persuasive strategies involve skilful use of emotions, and even manipulation techniques.

The question is this: To what degree can authorities use emotions to increase the rate of compliance with soft law instruments, knowing that, in a constitutional state, they are less democratically legitimate than legislative and regulatory means? As such, the State cannot employ just any manipulation method to develop transplant medicine. However, as we see in road safety communication campaigns, it can certainly bank on the heuristics of fear by showing an hypothetical catastrophe leading to an accident, in order to make it more probable in the eyes of the targeted audience.

Soft law's effects, as measured by the emotions they evoke, show that non-legally binding instruments can compel obedience. An absence of legal effects in the conventional sense would therefore not exempt them from the adoption of an adapted legitimization and control system, like that which has applied to the rules of hard law in constitutional states for a long time. Consequently, soft law instruments should be subject—relatively speaking and based on their effects, including emotional effects—to the material principles of the constitutional state, such as legality, action in the public interest, good faith and proportionality, the requirement of fair and non-discriminatory treatment, the prohibition of arbitrary action, as well as formal rules like the definition of specially adapted procedural guarantees like recourse to mediation or, in certain cases, legal processes. Public consultation and participation mechanisms should also be developed when adopting soft law rules, like citizen forums and consensus conferences, so as to establish a true "administrative
Greater legitimacy for such instruments would make them more effective, as research in social psychology has shown. This conclusion in no way detracts from the legitimacy of soft law’s use of emotions, or even certain non-problematic, well targeted manipulation techniques. It simply requests a legal framework suited to the specificities of non-binding state instruments in order to avoid circumventing the principles of a constitutional state. Otherwise, soft law’s very effectiveness would simply be challenged, given the importance and scope of its emotional effects.

See the work of Tyler 2006 [note 19] regarding compliance with law, but whose conclusions may be transposed to soft law in our opinion.

CHAPTER 3
The Impact of Direct Democracy on Public Policies: a Historical Perspective

WOLF LINDER

Introduction

Political scientists analysing direct democracy have been preoccupied with the citizens’ political behaviour, their motivation for participation, their values and interests, the shaping of the voters preferences in the campaigns by political parties and other factors that determine the outcomes of the direct participation process. Thus, the mainstream of direct democracy research has been theoretically and methodologically, much in line with the research on electoral behaviour. Less attention, however, has been paid to the impacts of citizen direct participation on public policies. This question is relevant for two reasons. First, in the course of the development of the Swiss polity from 1848 to our days, the institutions of direct democracy have been gradually opened to new categories of parliamentary decisions, and thresholds of launching referenda became lower. Thus, one might expect that more and more decisions of parliament have to be ratified by the people before they can be enacted. Indeed, in the end of the 19th century, we find hardly more than one popular vote per year, while today, the people have almost ten opportunities to say their “Yes” or “No” to constitutional amendments or laws. Second, we observe a tremendous secular change of federal policies. In the 19th century, the competencies of the Federation were limited to an almost “minimal state”, and the fathers of the Swiss constitution intended that federal policies should be implemented by the cantons. Until World War II, federal competencies were extended only slowly. This changed completely in the second half of the 20th century, when federal responsibilities were extended or developed in all fields-economic, social, infrastructural, and environmental regulations and policies as well. From “minimal state”, the Swiss Federation has become a modernized intervention State like others. Yet, despite this development, direct democracy is used ever and still is functioning.

These secular trends—the continuous opening of parliamentary decisions to direct participation of the people, and the growing importance of federal policies—give raise to several questions which are addressed in this article:
- How did the relationship between direct democracy and federal policies evolve over time? Did the opening of direct participation lead to a higher...