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**Private law governmentalities -  
the polyvalence of private law**

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**Abstract**

The paper will take a governmentality approach to private law. I will discuss the governmentalities, i.e. mentalities of government that underlie private law rules.

Governmentality is a notion introduced to social sciences by the French philosopher Michel Foucault in his late 1970s' and early 1980s' lectures (Foucault, 1993; Gordon, 1993, Lemke, 2001). The notion refers to an entire framework of analysis of government and power. Governmentalities are multiple complexes of technologies of power that determine the possibility of government. A governmentality is built on a set of conceptualizations of the world that is governed, the subjects, i.e. the objects of government, and the laws of motion of the society and the strategies available to govern it (Rose, 1999, Dean, 1999). Usually multiple historical governmentalities are discerned. Nikolas Rose, a British sociologist, has drawn a demarcation line between the classical liberal governmentality of 19<sup>th</sup> century bourgeoisie societies, the welfarist governmentality of mid-20<sup>th</sup> century Western Europe states and the emergent advanced liberal (or neoliberal) governmentality.

Why a governmentality approach to law? Modern positive is often portrayed to have a monolithic face. We are told that law is or at least should be understood as consistent and coherent system of rules. In its core it is said to be a singular enterprise that has one single ontology. A core of law, a set of fundamental legal principles and conceptualizations and rationalities exists and constitutes what law is (Tuori, 2000; Tuori, 2007). The law of law defines law. I find this approach far too simplistic and complacent. There is no law, instead

there is a multiplicity of laws of which we have to pick our own poison. A governmentality approach could shed light on law's polyvalence.

I take three examples of private law rules: the traditional core rules of the law of obligations, consumer law rules, and the principle of contractual loyalty. The idea is to sketch out the social imaginaries that underlies the examples– i.e. what kind of environment the subjects as they are understood in each setting inhabit –, and the different strategies and technologies of government that are mobilized when the rules are performed.

Hopefully, cracks begin to appear in law's features. Private law is not a coherent or consistent system of rules. Instead, it will prove a battle ground for governmentalities, in which different worlds, people and strategies of government are envisioned, put together and performed.

**Keywords:** governmentality, private, ontology, conceptualization

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