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Reorganizing Society

And as everything fell apart,
Nobody paid much attention.

Talking heads

In contemporary Danish society we seem to be experiencing a crisis in those forces which traditionally hold a society together. – Citizens express increasing scepticism towards their elected representatives and the Danish parliament, lately in conjunction with two referenda concerning the Maastricht Treaty. Until recently a minority government remained in office for more than 10 years, even though it was outvoted several times on crucial political issues. Thus, both Government circles and citizens seem to lose respect for and faith in the actual Danish Parliament as a sovereign force giving expression to the common will. This means that confidence in the way representative democracy works diminishes. – Criticism of the state's overmanagement of the population and of the burden of taxation recur, and initiatives to privatize and user-orientate the public sector have been taken. This has been interpreted as demonstrating that we have great difficulty in finding and formulating *la raison d'être* of the state, in describing its role and legitimizing it. – Disrespect for the law seems to occur with ever increasing frequency – especially for laws concerning taxes and the regulation of fishery – and a recent scandal concerning illegal restriction of Tamil immigration has revealed that the Minister and the Ministry of Justice may have broken the law. This has been taken as a proof that the status of the law is both changed and weakened.

Analysts tend to regard all these occurrences as a crisis of the Danish community as such, as signs of an increasing disintegration of society. It may be, however, that we should not interpret the crisis of the traditional integrative forces as a result of decadence, but rather as signs of an ongoing process of reorganization of the Danish society. The "crisis" of the traditional integrative forces is not a sign that society is disintegrating, but tells us that society begins to cohere in a new and yet unseen way, and that traditional institutions and organizations have difficulty in coping with this and in readjusting themselves to this change.

First, we will draw an outline of the conventional account of legitimate decision-making in representative democracy, which has served as a guiding principle in Danish society and which still guides the attempts to conceptualize and analyse society. – Then, we will show how, on the basis of a democratic constitution, democratic developments have produced new ways of organizing social coherence. The community which is developing may be characterized as a society of continuous and never-ending negotiation. – Finally, we shall suggest how this society of negotiation – as it reintegrates the constitutional basis on which it was developed – forces us to rethink the

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Decision-making in Democracy

Modern representative democracy rests on certain idealized conceptions of decision-making, a conception of routes or procedures that decision-making has to follow in order to be legitimate.¹ These conceptions are not just wild ideals, since they have shaped the formal institutions of traditional representative democracy. In representative democracy an institutionalized formal process of legitimate decision-making has been established.

These formalized procedures are linked, forming the chain of parliamentary democracy. In representative democracy the people or the citizens are considered to be the ultimate holders of every authority, but the people elect a parliament and delegate part of their authority to this legislative body. The Parliament appoints an executive power, a government endowed with the authority to carry out the legislation of the parliament and, at the same time, limited by the Parliament's legislative power. The government, for its part, directs and is responsible for the administration. Ideally, the administration carries out the decisions and the legislation of Parliament under the direction of the government and within the limits prescribed by existing legislation, and, in doing this, the administration deals with and directs the people (cf. *Olsen* 1983, p. 32). The parliamentary delegation of authority or of dominion takes the form of a chain consisting of several links which are interconnected in such a manner that they constitute an unbroken circle.

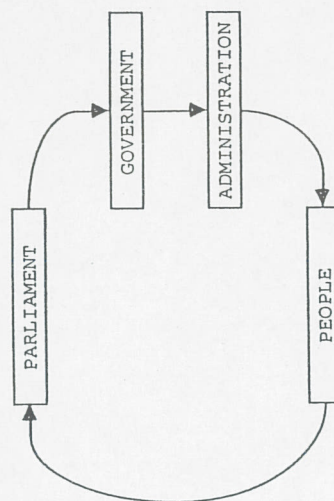


Figure 1

1 Cf. Alf Ross' procedural notion of validity in § 3 of *Om Ret og Retferdighed*.

The institutionalized formal process of decision-making contains an implicit definition of politics: Politics is what goes on inside this closed formalized system, whereas everything outside is classified as matters of privacy, e.g. the market. – The closed distribution of authority also allows the stipulation of the reference of the notion "state": The state is an organ provided with the task or the function of making sure that legislation and decisions which are legitimate according to this process of decision-making are carried out and followed. The distribution of authority demarcates a figure which in itself does not rest on values, which is neutral and autonomous, but which, as a uniting force, takes care that the chosen values are accepted and followed. Decision-making in modern representative democracy determines the role of the state and establishes it as one of relative or provisional autonomy. – It should be noted, too, that the separation of the public from the private sphere is formulated and institutionalized in terms of law; a limit is fixed or expressed in terms of a general written binary distinction between allowances, or rights, and prohibitions of the public system. Intrusion in the private sphere of the individual is only permitted on certain general terms. The modern representative democracies are constitutional states or states ruled by law; their procedures for authorized or legitimate decision-making are legalistic procedures; and the boundaries of politics are defined in legal terms.

The formal, legal procedures of decision-making establish a centre of competence; they function so as to secure a centre of legitimate authority in society. The people are determined as the centre of ultimate legitimate authority, but delegate this power to their elected representatives in parliament. This means that parliament is established as, or conceived as, the efficient locus of sovereignty in representative democracy. Parliament is the place where the common wealth and common values are discussed, and a common will is established and expressed in general and unrestricted legislation. As a sovereign agent parliament is conceived as a superior will which refers and answers to nothing but itself and the people, a legitimate highest competence which only limits itself as it exerts its own power within the limits prescribed by the Constitution.

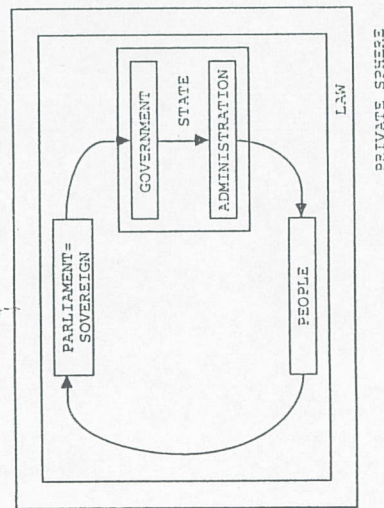


Figure 2

Ideally, the centre fulfills the function of creating unity in disparity. When a centre which is to be regarded as an expression of the common will is established in an area and exerts its authority, social coherence is imposed internally. Simultaneously, the territory where the sovereign exercises its jurisdiction is demarcated and opposed to other "foreign" areas, and external borders are established. Ideally then, in representative democracy a constitution expressed in legal terms is considered to be the basis for the establishment of a centre in society, of a legitimate superior power or a sovereign which establishes social coherence and unity in society. The legal constitution is considered to be constitutive of society as such.

These implicit conceptions inspired the Danish Constitution of 1848, the introduction of Cabinet responsibility and parliamentary absolutism in 1901, and later revisions of the Constitution.

Transitional Experiences

Starting from this conception of legal decision-making however, society has developed its decision-making procedures in a way which questions the original conception. Decisions respecting parliamentary legal procedures have been taken which imply that society has deviated from its initial constitution on the basis of the conditions which this constitution stipulates. Within representative democracy a democratic development which questions its own stage and setting has taken place. Gradually, a democratic development has made our conceptions of democracy increasingly obsolete. The development affects both internal and external affairs.

Internally, the parliament and the government have delegated authority to different subsystems as they have been created. The creation of an institutionalized system for the regulation of the labour market and for wage negotiation is but one important example of this. Trade Unions were formed in the 1870s in Denmark, but it was not until the 1880s that the government recognized the right to organize collectively. In 1899 the trade unions and the employers' organization agreed to recognize each other as free legal subjects who had the right to negotiate general conditions of work and wages on behalf of their members. Since then, this system of collective wage negotiation has been increasingly institutionalized – among other things through the establishment of boards of conciliation and arbitration – and it has been legalized and centralized. As the government accepted and sanctioned this development, a difference between the system of politics and the system of collective bargaining was created, and parliament, government and state delegated part of their competence to regulate, judge and sanction relations between individuals. This is just one example by which semi-private organizations have grown from below and have been recognized and given competence by the centre of legitimate authority (for further examples and illumination cf. Pedersen 1993). – At the same time, from above, an auto-segmentation of the public sector has taken place. A multitude of rather independent boards have been established, each competent in a specialized field. Some of these boards have an advisory function, others are to be described as tribunals and may settle disputes and pronounce judgments. Such boards are: The National Trust, The Monopolies Appeal Tribunal, The Environment Protection Board. The independence of the local authorities, or municipal

autonomy, has been enforced significantly as their field of responsibility has increased. The Danish local authorities are very powerful, maybe some of the strongest in the world, and at times their organisation, the National Association of Local Authorities in Denmark, has proved to be more powerful than the government.

If one considers the internal and national affairs of the "state of Denmark", one notes that the public sector seem increasingly segmented and subdivided into a number of often conflicting competent agents, and that the distinction between the public and the private sphere is blurred through the appearance of semi-private, semi-public organisations endowed with public competence.

As for Denmark's external relations, they are marked by closer and more institutionalized co-operation. The nature of these international relations manifests itself with particular clarity in the relations to and through the EU, which so far works mainly as an international organisation or a stateless federation, not as a federation or a confederation in the ordinary sense of these terms. This organisation enables the participating nations to control fields outside the range of each individual nation, and in this sense the EU has increased or enhanced the competence of the Danish nation, whereas it may be questioned as to whether the EU has consolidated and enforced the power of the Danish Parliament, which is still generally conceived of as the legitimate centre of authority in society. The competence, as it happens, has mainly been entrusted to different councils and commissions. At parliamentary level a Common Market Council has been created, and at the administrative level 33 different boards have been erected, each dealing with EU-matters in its particular field, while, simultaneously, a multitude of standardisation committees have been established. A parliament-within-parliament has arisen, a government-within-government, an administration-within-the-administration has been created. In everyday politics the activities of these specialized EU-boards are directed primarily horizontally and externally towards the corresponding boards in the other EU-countries, as they are trying to negotiate common standards of integration. Subsequently, confirmation is sought vertically.

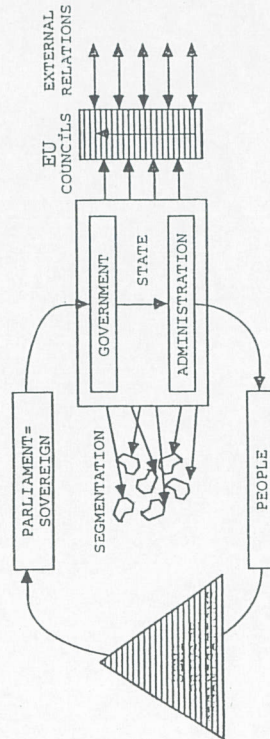


Figure 3

The external borders then, have become increasingly blurred too. The EU forms an actively integrated part of internal Danish politics and administration and affects and limits the liberty of the alleged sovereign forces. As external competence increases, external and internal sovereignty is diminished.

It seems difficult then, to maintain the picture that legitimate decisions are taken by the Parliament and then implemented by the government and the administration. Decisions respecting the constitution have created a multitude of relatively autonomous interacting units, and it has been stipulated that legitimate decisions may be taken through negotiations between them. A democratic development has made our original conceptions of democracy increasingly obsolete.

First, the dimensions of the changes speak against maintaining the received picture. Taken separately each individual case might still be described within the existing picture, and we should then say that the legitimate centre of authority had provisionally devolved power and authority which it would be able to take back if necessary. But considered in its entirety the development shows that authority and power has been devolved to such an extent and that the devolution has been institutionalized to such a degree that it seems unreasonable to maintain the ideal of a centre when one tries to describe decision-making processes in Denmark. Taken separately, each instance may be interpreted as a provisional devolution of power and authority; regarded in their context the individual cases show that the decision-making processes have begun to follow other *structures*.

Second, the way in which the changes have taken place affects the original idealized conceptions of legitimate decision making. The development was not simply one conditioned by contingent circumstances which took place in spite of the will of the involved parties. On the contrary, they have contributed actively to it, even though they have not always done so explicitly and in full awareness. The sovereign forces in democracy have taken an active part in the creation of relatively autonomous, interacting units, and through their conduct they seem to have implicitly recognized that they might contribute to a democratic development by foregoing power. Likewise, other participants have striven to influence and change the rules of representative democracy in order to have a say in other ways. Since the participants in public life have actively contributed to the development described and have accepted it, they have implicitly recognized that there was a rationale for changing the decision-making process; through their conduct they have implicitly acknowledged that the development was rational. As other structures evolved, other perceptions of legitimate decision-making processes have developed, and these perceptions, which make themselves effective in the way people act and in the limits as to what people will and will not accept, give the developed structures stamina. New conceptions as to how legitimate decisions are constituted have been established, which render void the idea that society may accept the revocation of the newly constructed structures and the reestablishment of a sovereign centre of decision-making.

The findings that Danish society has developed ways in which it makes legitimate decisions suggest a transition from one kind of social coherence to another. Representative democracy tried to answer the question of social coherence: What may bind individuals and groups together to such a degree that they may consider themselves as part of the same unity? What may structure and shape human intercourse to such a

degree that, instead of describing it as mere cohabitation, one might speak of a society? If a form of life is characterized by a certain regularity in its judgements and actions, which attest an accordance or a reciprocal attunement, then one might also say that representative democracy sought to establish a form of life at the macro level, our society or our form of life. It tried to answer the question as to how we should erect and maintain an encompassing form of life, able to coordinate and subordinate other forms of life. Representative democracy tried to establish a coherent form of life, a society based upon law. The newly developed structures in the Danish public life which we have outlined suggest that a parallel answer to the question of social coherence may be possible. It suggests that society may cohere through ongoing negotiations which connect the participants in public life to each other and make sure that they belong to the same society.

The Rule of Law

Since Solon the basis on which society cohered was sought expressed in legal terms, but the society constituted most purely in terms of law was the modern centralized European territorial states which emerged when the Holy Roman Empire dissolved (Wyduckel 1984, pp. 81–85). The law served as the medium of unification and centralization in a process which reached its provisional conclusion when absolute monarchy was introduced. The importance of the law is underlined by the fact that less than six months after the proclamation of absolute monarchy in 1660, the Danish king, Christian V, initiated the formulation of the first legal code valid for the state of Denmark in order to replace the different provincial laws (Tamm 1983, pp. 1–17). Likewise, the Court chaplain of Louis IV, Jacques Bossuet, stressed the important role played by the notion of law when he voiced the principles of absolute monarchy in the terse formula: "One king, one faith, one law."² Modern centralized representative democracy is the inheritor of absolute monarchy in so far as law is considered to be the "backbone" of society in both.

Detached from the teleological context in which it had been embedded the law stood forth in what appeared to be its purified form. When we behave as legislators we take a certain normative attitude towards the world. If events do not fulfill our expectations we may adopt a learning or a "cognitive" attitude and try to modify them; but at other times we may adopt a different attitude in order to maintain our original expectations, despite the evidence that confutes them. We may say: "This simply cannot be true!" or "We won't allow this to happen!" In these cases we maintain a normative attitude, not a cognitive one.³

2 Later the device will be: "One king, one law, one Parliament" (*Ladurie* 1991, pp. 362–364).

3 In the extreme case we may insist on upholding a normative claim, in spite of events and circumstances running counter to it, i.e. despite the circumstance that it is never followed up or followed through in experience – and despite the fact that it is neither tenable nor wise to maintain constantly confounded and confuted expectations. That this is possible does not entail that normative claims are less "factual" than cognitive expectations; both kinds of expectations shape and are part of our social reality. The difference between the normative and the cognitive is simply a difference in attitude or assimilation, a difference concerning the way in which we respond to the problem of

When we behaved as legislators we took a resolute normative stand at the outset; we sought to avoid disappointment by demonstrating that our expectations were to be fulfilled. The law was a symbolic expression of a normative attitude which gave voice to a resolute will to uphold the anticipations it expressed. When central normative expressions were voiced as law, they were expressed as general standing mandatory orders, as imperative statements which were to be obeyed until further notice by anyone concerned, simply because they were emitted by someone in the position to do so, rightly (Hart 1961, pp. 18–25).

The commands or imperatives established an exhaustive clear-cut binary division of the world, since every kind of activity was either classified as a transgression of the orders of the law or as lawful action which took place within the limits prescribed.⁴ Law was regarded as a coherent set of orders, binding as general rules, which were to be accepted and applied as they stood without delay, because they were issued by those justified to do so. Law in this new and fundamental sense was sought integrated into a coherent code of laws, into a unified "Rechtsdogmatik".

Not only in political practice was law, understood in this sense, regarded as the cement of society, the substance which glued society together and prevented it from falling apart; political thinkers and philosophers like Bodin, Hobbes, Locke,⁵ Rousseau,⁶ Bentham,⁷ and Austin all considered adherence to common laws, understood as general commands, as the basis of society. In Hobbes, for example, society was not to be presupposed; it was established in an act which should be described as an initiating command creating it ex nihilo. As he put it: "the Pacis [...] by which the parts of this Body Politique were at first made [...] resemble that Fiat pronounced by God in the Creation" (*Leviathan*, 1968, p. 82). This "Common Wealth", for its part, however, seemed fragile and constantly threatened by dissolution⁸ and could only be upheld

confuted expectations. To distinguish two ways of responding does not amount to maintaining that facts may be constituted without the influence of norms, or that facts are not "normative"; neither does it amount to assume that pure values exist. To separate two different "realms" in this way, to distinguish eine Faktizität des Seins und des Sollens, is precisely to misconceive an originally relative difference between ways of responding to and coping with the world. To this point cf. Luhmann (1981), and compare the remark by Winch (1987): "Now while I do think that there is an important distinction, or range of distinctions, to be made under the headings of 'fact' and 'value' [...] when the distinction is made in association with a correspondence theory of truth, I believe that nothing but confusion results."

4 In his lecture at the Collège de France, January 11 1978, Foucault sees the distinctive mark of the "legal code" in the "partage binaire entre le permis et le défendu". This analysis is only pertinent in so far as one describes the denotation of the notion of law, the universe it establishes.

5 "The great end of Mens entering into Society, being the enjoyment of their Properties in Peace and Safety, and the great instrument and means of that being the Laws establish'd in that Society; the first and fundamental positive Law of all Commonwealths, is the establishing of the Legislative Power" (Locke, p. 401).

6 "J'appelle donc République tout Etat régi par des loix, sous quelque forme d'administration que ce puisse être: car alors seulement l'intérêt public gouverne, et la chose publique est quelque chose. [...] Les loix ne sont proprement que les conditions de l'association civile. Le Peuple soumis aux loix en doit être l'auteur" (Rousseau pp. 379–80).

7 "The State of Nature is the State men are in when there are no Laws [...] Nations, States are made such by means of the Laws [...] that there are in each" (Bentham, p. 37).

8 In Hobbes the threat that social coherence may come to an end, that society may dissolve is

because the initiating pact authorized the establishment of a sovereign who was endowed with the right and might to issue general orders and who, through this legislation, was capable to recreate society continually. For "as men have made an Artificial Man, which we call Common Wealth; so also have they made Artificial Chains, called Civill Lawes, which they themselves [...] have fastened at one end to the lips of that Man or Assembly to whom they have given the Sovereigne Power; and at the other end to their own Ears" (*Leviathan*, p. 263).

In the theory and practice of absolute monarchy and representative democracy, law is considered the backbone of society, and how to establish and maintain society by issuing legislative acts becomes the central problem. The idea that society is tantamount to adherence to law, to shared principles guiding our behaviour in the way commands do, is the unquestioned starting-point. It is the unquestioned basic assumption in social and political theory, and it is the unquestioned basis on which the territorial state is erected. It constitutes the shared form of life. Even today people believe that contemporary democracy is united primarily by legal procedures; and people still picture forms of life and society as common patterns of behaviour guided by rules which direct our actions in the way laws or general orders seem to do, as existing rule-guided patterns of behaviour. However, the transitional experiences dealt with in the previous chapter suggest that these "truisms" begin to appear less obvious. The way in which participants in public life act shows that they begin to realize that the cement of society is not necessarily general and unconditional legislation, but rather that society may cohere through ongoing negotiation.

Negotiation and Norms of Negotiation

Negotiation is an allocation of resources in order to reach an agreement through discussion between relatively independent decision-making centres, which have different and/or conflicting interests. Different negotiations concerning the distribution of different resources bind these centres to one another in a complex network. The discussion does not merely mediate between participants, given their pre-established goals; during the discussions the involved parties shape each other, affecting and

experienced as a possibility present in all social intercourse. The propensity is there in every encounter when closely scrutinized, and this is experienced as a lethal threat because, in the last resort, the fact that the other neither wills nor wants the same as I, and the fact that I may not be able to rely on him, may threaten my very existence. "It may seem strange to some man, that has not well weighed these things; that Nature should thus dissociate, and render men apt to invade and destroy one another: and he may therefore [...] desire perhaps to have the same confirmed by Experience. Let him therefore consider with himself, when taking a journey, he arms himself, and seeks to go well accompanied; when going to sleep, he locks his doors; when even in his house he locks his chests; and this when he knows there be Lawes, and publique Officers, armed, to revenge all injuries shall be done him; what opinion he has of his fellow subjects, when he rides armed; of his fellow Citizens, when he locks his doors; and of his children and servants, when he locks his chests. Does he not there as much accuse mankind by his actions, as I do by my words?" (*Leviathan*, pp. 186–87). In *Leviathan* legislation is meant to ensure a proper basis for society and in this way avert the lethal and ever-present possibility that society may cease to cohere. Concerning this possibility of *Cavell* 1988, pp. 171–73).

accommodating themselves to each other's preferences, and they try to shape even the procedures and the institutions which regulate the game (*Nielsén / Pedersen* 1993).

Hitherto we believed that society was only possible because somewhere we agreed on something substantial which transcended our everyday conflicts and permitted us to settle them and create peace and harmony. We thought that social coherence rested on peaceful agreement somewhere in society, and we figured that peace was the fundamental and proper way to relate socially.⁹ It has been an important strand in philosophy from Plato, Hobbes, Kant, and Hegel to Heidegger and Wittgenstein to create peace and reconstitute social coherence by reminding other citizens of a fundamental unanimity in or behind the everyday conflicts in which they take part. In absolute monarchy and representative democracy attempts were made to establish institutions which were able to impose and codify unanimity in society because they were endowed with the right to legislate in a general and unrestricted form.

Practices of negotiation, on the contrary, show that strong and enduring relations may be formed through disagreement and conflict. Exactly because the parties disagree each of them always tries to reach a better position, to turn the relation to his advantage, and this causes a constant reworking of the relations which demands the full attention of the involved parties and binds them to one another. Relations established in this way may be strong and almost unbreakable – or "stable" if the word is taken to characterize a durable and steady relationship – even though they do change constantly, even though the balance between the involved parties shifts and the substance of the relations alter. Practices of negotiation show how forms of life may be glued together by an ongoing conflict and how society may cohere through disagreement, not through unanimity.

Because we supposed that social coherence was only possible if it rested on fundamental agreement, society appeared as something in need of a constitution. Since the Greeks we have thought it indispensable to society that it should rest upon firm foundations, foundations which made a stable human intercourse possible because the citizens could rely on them. The idea is voiced in the myths of the great founding legislators – of Solon, Kleisthenes, Dracon, and of Moses – and in the modern dream of revolutions, which imagines a radically new and better basis for society, and which, when realized, immediately seeks to express itself in new legal constitutions.¹⁰ Most modern societies claim to rest on a constitution expressed in legal terms which lays down the foundations for all further social intercourse.¹¹

Social coherence established through practices of negotiation is not essentially based on a previous articulation of citizens' rights and duties, however. Social coherence is something which the participants in public life create as they engage in

9 Originally the term "status" meant a state of peace, cf. *Luhmann* (1989), *Gesellschaftsstruktur und Semantik*, Frankfurt a.M., p. 83.

10 This is evident in the French revolution, for example. In 1789 the National Assembly immediately was declared a legislative assembly, which meant that its decisions were to be regarded as laws, and worked out the *Déclarations des droits de l'homme*; legal constitutions were ratified in 1795, 1796, 1799, and 1802. When in 1804 the *Code Civil* was created, a unified corps of laws revoked all legislation hitherto.

11 This is the case whether the foundation seems articulated once and for all (as is the case in French and the Danish Constitution) or constructed during a long span of years (as is the case in the English Rule of Law).

processes of negotiation and establish mutual bonds. In these practices social coherence no longer appears as the firm foundation upon which participants in a form of life or in society must presuppose; it appears rather to be something that we move towards as we try to make other participants recognize our concerns. Social coherence does not any more have to be pre-established and take the form of a constitution stated in legal terms; it seems to be a project in which the participants engage themselves constantly.

Negotiation makes it plain that forms of life need not rest on adherence to specific common norms which may be codified. In the end, this conception tends to reduce the normative to the normal, conceives norms and the normal as always already extant beings, upheld by their own inertia, and leaves open the question as to how norms and the normal are established and applied. Negotiation shows that a form of life may contain its own normativity – may guide and condition the activities of the people who participate in it – without prescribing particular and specific norms. The regularity which characterizes a society cohering in negotiative practices is not directed by imperatives. Negotiation is based on the fact that the participants constantly try to change the existing relations, on the fact that they are creative. But at the same time the participants try to assert their claims and themselves, which means that negotiation also involves a will to recognition. Not every concern or claim is recognized, however, and this implies that the participants in the negotiation game constantly experience that there are limits of acceptability. This complex is what contributes to conditioning the regularity of a society cohering through negotiation to an increasing extent and is what makes cohabitation society: First, creativity and attempts to transgress; second, will to recognition; third, a repeated experience that transgression is confined.

Participants in negotiation games do not simply presuppose accordance and agreement as is done in practices of habit and custom; neither do they try to prescribe fundamental accordance by command as is done when we legislate; instead, accordance rests on an ongoing mutual attunement. Negotiation may establish a coherent form of life which contains its own implicit normativity, since the participants taking part in the game are guided and the activities which take place within the game are marked by a certain regularity. This regularity is not, however, based on adherence to specific norms which may be stated explicitly in strict and universal terms. Negotiation creates a non-codified community. Practices of negotiation leave their mark imprinted on the participants because they try to influence each other and in this way are bound and attuned to each other. The normativity of a society cohering through negotiation results from mutual acts of normation.¹² Through mutual attunement society constantly redefines and states its own limits. In order to be able to characterize a society cohering through negotiation and marked by its peculiar regularity and normativity as a form of life, one ought to change the received description of what constitutes a form of life. One should no longer define a form of life as a single recurrent pattern of behaviour which must be explained in terms of adherence to certain specific rules. Instead one should say that a form of life is characterized by variable limits of acceptability, by what it accepts and recognizes as capable of entering or taking place within itself.¹³

12 Par normatif, on entend en philosophie tout jugement qui apprécie ou qualifie un fait relativement à une norme, mais ce mode de jugement est au fond subordonné à celui qui institue des normes. Au sens plein du mot, normatif est ce qui institue des normes (*Canguilhem* 1991, p. 77).

13 The proposal is in line with the way in which Finch interprets Wittgenstein (1977, pp. 90–91): "A

That a society cohering through negotiation cannot be described as a chaotic Hobbesian state of war – even though conflict is an essential part of everyday life – is evident in recent Danish public life. As the negotiation network has been created, practices of moderation and consideration for other participants have arisen which are necessary in order to make the negotiation game work. Moderation has been evident in wage negotiations in Denmark since the 1980s. Employees' and employers' organizations talk a lot less of employers' or workers' rights and a lot more of mutual consideration, of self-restraint for the common benefit.

This means that a third conception of Danish coherence begins to loom. These conceptions are ordering schemes through which we perceive the world, and which determine us to speak and act as if Denmark was a well-defined unity demarcated from other parts of the world. The legal conception, which determines Denmark as a sovereign state within certain territorial limits, was completed with the Danish Constitution of 1848. The second conception of Danish unity is the cultural definition: When do people begin to consider themselves as part of a common Danish culture in opposition to other cultures. One may say that Denmark was not completed as a nation in this sense until the German occupation during World War II. The third notion of Danish unity is the idea of a common destiny, not in the sense of an inevitable common fate or of a substantial unity, but in the sense of a mutual economic dependence you cannot escape, of an inextricability. It is the notion of a precarious economic balance that must be respected out of self-interest, because your life depends upon it and you cannot leave it. The notion of society as a precarious economic balance has been able to motivate the Danish integration into the EEC so far, despite a widespread reluctance on the constitutional and cultural level.

The third conception of Danish unity is not a constitution since it does not provide precise and codified prescriptions on which we may base our actions. Permitting ourselves to borrow – and perhaps to misuse – a Kantian term we are tempted to characterise this conception as a regulative principle. The participants in public life act in view of an idea of a totality that resists closure, of a conception of a larger whole.¹⁴

The Propagation of Politics

So far the awareness of inextricability has mainly consisted in respect for mutual economic dependence, but it is rather inaccurate when people say that market forces rule, at least in Denmark. The market does not prevail in Adam Smith's sense of the word, as an exchange of material goods directed by simple supply and demand. At the moment many participants in the Danish society try to capture considerations for balance in other respects within the existing economic scheme. They try to account for ethics, for culture, for society's relations to nature, but this threatens to explode the

form of life is a pattern of behavior [...] what people do makes sense not only because it is recognizable as a current pattern of behavior, but because it is recognizable as something which makes sense form the standpoint of those who do it."

14 According to Kant's *Critique of Pure Reason* (p. 472) a regulative principle of reason is "kein konstitutives Prinzip der Vernunft [...], sondern ein Grundsatz der [...] Fortsetzung und Erweiterung der Erfahrung".

existing picture. So, instead of oiko-nomos it is tempting to speak of oiko-logos; instead of a picture of economic dependence it may be that we are establishing an ecological sensibility. This is an awareness that one's self-interest depends on a number of precarious balances that one has to respect, that one is part of a household that has grown so large that no participant can survey it any more, that one depends on a precarious, non-surveyable environment which now appears to be man-made and provisional.

At any rate, the negotiation game cannot be reduced to an economic exchange. In the negotiation process the participants try to shape each other – incorporating each other's preferences – and they try to shape even the procedures and the institutions which regulate the game. So, instead of asserting the hegemony of the Market, it seems more adequate to characterize the development as an emanation of a rationality that respects nothing, but which once was confined to a particular locus in society. One may speak of the propagation of Parliamentarism, of a relentless political rationality.

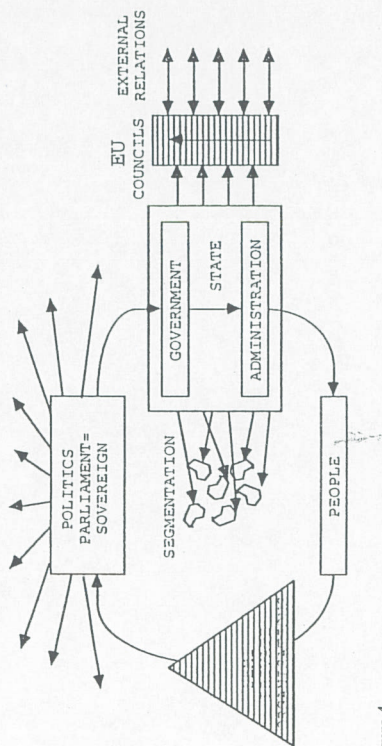


Figure 4

At an earlier stage this rationality, which does not respect other and/or higher standards or criteria, but which rather reflects upon and seeks to process and assimilate that which it encounters, was confined to a certain locus in society, i.e. the Parliament; but in the course of the development which we have tried to describe, political rationality – which in itself recognizes no limits – seems to have transgressed its outer institutional limitations. Contrary to what was generally assumed in representative democracy, everything now appears to be of political relevance.

Reframing the Frames of Politics

As political rationality propagates, it seeks to reinscribe and reinterpret the institutions which have limited it thus far; it tries to reincorporate and refunctionalize them within its own pragmatic rationality.

The way in which the Danish Parliament legislates at present shows that the status of the law is changing. It is wrong to say that the status of the law is weakened if this is

taken to imply that legislation will cease. On the contrary, the number of laws increase, but it is important to note that laws proliferate because their nature has changed. It seems still more problematic to interpret the legislative activity of the Danish Parliament as an attempt to voice universal or generally valid principles; legislation rather seems to be a way of responding to specific and already existing problems in society. At times the Parliament seeks to formulate a specific solution to the problems it faces and the laws issued resemble government circulars or statutory instruments; at times the Parliament leaves it to the involved parties to sort out their problems within certain limits and provides rough legal guidelines. In both cases, the belief that law gives expression to and prescribes the right order seems affected. Law is not any more conceived as constitutive; to an increasing extent it is regarded as a measure of pragmatic relief, a fix or remedy, an expedient through which to govern and direct an environment, activated in the moment social intercourse threatens to reach an impasse or to dissolve. Laws proliferate because the changes in the cement of society make this seem a constant propensity. Wherever the ever-present social conflicts threaten to escalate and turn into an open fight law is activated; it is unfurled as a safety net permitting the participants in public life to disentangle in an orderly way, so they may establish new relations and recreate society. This development re-opens the question of the legitimacy of the law, however. To legitimize a legislative activity functioning as a remedy by referring to a just order is futile, but what if the legitimacy of the law is reduced to a functional one? Must citizens, then, only respect the law for pragmatic and functional reasons, and are they, then, only obliged to obey the law to the extent that these considerations motivate them? Or shall we, perhaps, be able to develop broader notions of equity?

At the same time the changes in legislation highlight the fact that the Danish Parliament is acting as if it is beginning to reconsider its own role and status, even if the politicians in Parliament do not always speak in this way. An agent which regards its legislative measures as pragmatic measures, and ceases to hope that its orders may establish a just order, no longer conceives of itself as an omnipotent and sovereign being. To an increasing extent the Danish Parliament acts as an agent provided with limited power and capabilities which tries to find its feet in an environment which surpasses its own power. In traditional representative democracy Parliament is considered to be the locus determining the common will, but another conception begins to take shape according to which the "common will" is established within the context of a much larger interaction, in which Parliament is only one limited participant. But its privileged position as a superior agent which gave expression to a common will hitherto gave Parliament its identity and legitimacy; it motivated the citizens' exceptional loyalty to and interest in parliamentary decisions and the parliamentary system, and one may wonder what will happen if this privileged status diminishes. An agent and a system which at once openly claim to be the privileged representatives of the common will and in the same breath implicitly recognize to be only limited participants within the context of a much larger interplay which establishes the "common will" may have trouble finding their identity and voicing their legitimacy. In the last resort, a limited system of this sort may tend to act as a peculiar subsystem which primarily takes care of its own interests, and it may be commonly regarded, treated, and opposed as such. In so far as Parliament gives up its traditional role one may wonder by what means the

citizens can be persuaded to be loyal to their former "rulers", and whether limits may be set to the extent that different groups in society – professional politicians in particular – may legitimately try to make the subsystem serve their own interests.

In representative democracy the political system terms itself a "state"¹⁵ when it wants to stress the fact that it is an autonomous unit which attends to the common interests of the citizens within a certain territory and which monopolizes coercive power in order to ensure that these interests are respected. But if the belief that a single locus is capable of determining the common interests and establishing a common will dwindles, one begins to wonder what the state represents and what constitutes the unity of the state. Modern societies began to refunction the state when they introduced the welfare state. The state was no longer an instrument which ensured surveyability and central command; it became an overstrained part of an unsurveyable system for the satisfaction of the citizens' and society's demands. At the moment, the development makes it increasingly difficult to draw a dividing line between society and the state, and one may begin to ask oneself whether the term "state" denotes a specific object.

Not only does the fact that political rationality tends to reinscribe the institutions which limited it thus far question their future role; new political problems arise, problems as to how the participants may find their feet within and define an unconfined political rationality. The people who tried to formulate the constitution of bourgeois "Öffentlichkeit" seemed to know that politics need limits. Politics need confinement in order to be able to produce enduring decisions. In an endless political space every decision is temporary because it may constantly be renegotiated, and the lack of orientation and the constant demand of reorientation which results from this fact causes a lot of stress and fatigue in contemporary Danish society. The existence of sovereign forces in society was not merely a remnant of a bygone archaic state; it was a reminder that somewhere in society we must be able to maintain something that transcends pure practice, something non-negotiable. The trouble is that the negotiation game tends to transform everything into something negotiable, and this is why it seems difficult to imagine how moral considerations in a traditional sense may guide law, state, politics, and society in any remarkable way. A society ruled by economic and ecological considerations is still a society where self-interest has a large role to play.

A related set of problems is how to maintain democracy in the non-constitutional sense in which the Greeks understood the word. This is democracy taken as people's striving to avoid giving up the control of their lives in any excessive degree, their attempting to stay in charge. The propagation of politics enhances the possibilities of participation in the political process to the extent that, theoretically and ideally, any "body" may have a say in any decision. But the very creation of an enlarged political network increases the unsurveyability and opaqueness of politics and society, and the probability is that participants cannot find their way and get lost within the complexities of politics. Representative democracy is a constitution which meant to guarantee that people could avoid giving up the control of their lives to an excessive degree. How to shape a much larger and unsurveyable field of politics so that the participants may shape and direct their own "lives" is still an open question.

Figures by Søren Aalykke

15 "Der Staat, das ist die Formel für die Selbstbeschreibung des politischen Systems der Gesellschaft" (Luhmann (1987), Soziologische Aufklärung 4, Opladen p. 78).

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