ON LAWS AND RULES

AND ATTITUDES TO LAWS AND RULES

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It has always been a theoretical problem to me, to put it in
very simplistic terms, how a nation as law-abiding and rule-oriented
as the Germans could become a nazi nation with 110 000 people in SS,
SA and SD exterminating 11 million people, out of them six million
Jews with as many as 7 million people being members of the nazi party.
May be my problem could be stated as follows. On the one hand there are
the Nazi crimes and horrors. Some highly concrete people had to do it -
and not only the 110 000; also the many who worked in the infra-structure
making it possible, more or less knowing what they did . On the other
hand is the German inclination not only towards words, but towards strong and
very explicit words, and towards the use of words to make explicit, univer-
sal norms of conduct. I am thinking of Luther, I am thinking of Kant,
and not only of the moral injunction "Handle immer so, daß
die Maxime deines Willens als eine allgemeine Gesetz-
gebung gelten könnte". All this universalism was always put in explicit
form, it had to be clothed with words. But those words were also some-
how to be acceptable when they were put in normative form. The nazi
horrors were not acceptable to most Germans, or at least so I assume,
or even more: at least so I hope. To put Nazi crimes down as general
norms would look "unschön", to put it mildly.

So my problem was and is: if there were all these norms, fine values,
explicit, elegantly formulated, floating on oceans of legitimizing words,
and Germans being very well socialized not only into reciting these words
but also internalizing them, would that not stand in the way of nazism?
Centuries of Christians in general, and Luther in particular, with words -
orally and in writing, millions, billions of them poured over generations
of Germans - would that not have some kind of effect? I certainly have myself
a dim view of many aspects of Christianity since exterminism is also
expressed in the Old and New Testaments as something a revengeful God can engage
in, and rightly so according to his representative on earth, Jesus Christ.

But like many, I felt that this would be reserved for God and not for some-
what lesser creatures,I nevertheless felt Christianity was in the way of nazism.

I think I now see it in a different light. The whole thing has
to do with how one handles contradictions between   verbally formulated
rules and norms and behaviour. This in turn has to do with the relative
strength of the two. If the norms are very strong, in the sense of being
internalized and/or institutionalized,then they will win out and
behaviour dissonant with the norms will be met with negative sanctions,
bad conscience and/or punishment. But then the behaviour may be so
strong, so insistent, engaged in by so many that even if it is dissonant
with the norms,and even when the norms are backed up,there is a conflict
that cannot be met adequately with negative sanctions. What does one
do in that case? Change the behavior, change the norms, both or neither"?

What seems to me to be the <u>Anglo-saxon,and also Nordic,</u>approach to this
would be to regard <u>any system of norms as a system of hypotheses, in casu</u>
normative hypotheses. They are to be tested much in the same sense as a model,
as descriptive hypotheses: if there is by and large consonance (<u>Über-</u>
<u>einstimmung)</u> between norms and facts then they stand the test. But if the
cases of dissonance are too strong or too many or both,then one may
have to do with the norms the same as one does with hypotheses in
empirical sciences: they have to be revised, but only if there are
good reasons for doing so. Those who insist that it is the norms
rather than the behaviour that has to change will have to produce
examples of counternorms, in other words legitimize their deviant
behaviour. Again this is,of course,similar to scientific procedure.
There is a rather important difference though: it is not the de-person-
alized objects that natural sciences have tried to construct out of
nature that stand up,rebelling against scientific hypotheses,but
people themselves who may stand up against norms as a way of not only
prescribing but also predicting their behaviour. One obvious example would
be   the continuous,ongoing transformation of sexual mores . It then
becomes a question of strategic behaviour on the part of the rule-
makers: are these norms we can change without harming the very basis

of the normative stratum, or are they so much anchored in the core
of the normative construction that it can not be done without harm
to the entire framework? One will recognize in this formulation that
the basic attitude becomes very parallel to that of the strategy of
theory construction: a scientist may easily revise a peripheral pre-
diction, but when the hypotheses are very central to the whole con-
struction he will hold out, tenaciously, and tend to regard dissonance
as aberrations, perhaps due to observation errors, etc.

It now becomes a question of to what extent a comunitas exists between
norm senders, receivers and norm objects. I would say that in the Nordic
countries we are close to having this type of comunitas: people can
simply report that this norm doesn't fit. It is "wrong" in a sense
wavering between the normative and the descriptive; it will have to
be revised. There are channels of communication, there is a dialogue.
Norm senders   will   tend to have more power, and they may tend to
insist on the sacredness of their norms much beyond any reasonable
life expectancy for the normative construction. But the good citizen
is not only the person who conforms with the norms, but also the person
who does not conform but is willing to participate in the construction
of a new normative framework. The bad citizen is not only the person
who does not conform, but the one who does not want to participate in
reconstruction, giving a damn in the whole process, conformist or not.

I have a feeling, based on some experience in those regions
that in Latin countries of Southern Europe and Southern America there
is considerable less willingness to change the normative construction.-
One may perhaps add norms, but not subtract or change. This has to do
with the relative power between norm sender and norm object. But it
also has to do with a different attitude to the written word; I think
it is taken much less seriously than in the Anglo-saxon/Nordic cultures.
It is considered as beautiful and valuable in itself, in a stratum
which is exactly that, of words. Much emphasis would be placed on
making it euphonic, nice to listen to. But it is understood that the word

is detached from reality, a poor guide both for norm objects and norm
receivers to a reality which is much less perfect. It is incorrect,
as many outsiders assert,that Latins will tend to think that a problem
is solved once it is solved on paper: once it is solved on paper it is
exactly that, it is solved on paper. The difference between Latins and
others is not that they think that is a solution to the real problem,
only that they think that the paper solution is important in itself
because of all the cultural connotations it carries, because of the
pleasure derived from good construction, the prestige derived from
being a master in that field, in the stratum of words.

How, then, can one handle deviant behaviour? Perhaps essentially by
accepting it, by seeing it as "normal". One may <u>confess</u> that deviant
behaviour has been engaged in; as soon as there is that <u>verbal</u> admission
there is already something. If somebody does something "wrong", but confesses
sanctions may not be administered. In order to do something "right"-
that does not come forth with the given set of norms-a little extra
incentive, by Anglo-saxons and Nordics often interpreted as "corruption",
may be forthcoming. At any rate there was never the idea that the
beautiful words should be taken that seriously as a model of reality.

The little I know of Japanese normative culture would tend to
make me believe that this represents   a third possible approach.
The Japanese language being as vague as it is, so difficult to pin
down to what Indo-Europeans would recognize as precise statements,
renders itself easily to interpretations. The norm object that does not
behave in a way consonant with the norms can be saved from the stigma
of dissonance by interpreting the norms, by stretching them conceptually.
Perhaps this should not be seen as some kind of a trick, nor as some
ambiguity built into normative language on purpose in order to guard
against difficulties in the future, but as simply a basic characteristic
of Japanese culture. The question, of course, is <u>who</u> interprets, who
is permitted to interpret,and that would definitely be the norm senders
rather than the norm objects. However, they may constitute an inter-
pretation <u>comunitas</u>, albeit a very vertical one,and struggle together

to arrive at an interpretation consensus. Any statement is seen as
valid to the extent that it can harbour more meanings than one, possibly
because the world is seen to be like that, fluid, ambiguous, not reductable
to something single-valued that can be captured in an unambiguous statement.
It is through vagueness rather than precision that the model becomes adequate.

Thus, the general thesis here is that the Anglo-saxons and Nordics
would save the normative culture by changing it, being essentially
flexible, case oriented, experimental in their attitude. The Latins
would tend to save normative culture by retaining it and embellishing
it, giving it the status of a piece of culture rather than a normative,
not to mention descriptive, guide to behaviour. The Japanese would
save normative culture by stretching it so that it covers a vast
variety of behaviour, finding a "solution" not so much by invoking
other norms (Anglo-saxon), no norm at all only common sense and personal
relations (Latin case), as by reinterpreting the norms, claiming that it
was already there. The question, then, is: what do the Germans do?

On the one hand there is the enormously impressive verbal con-
struction, the normative and legal   systems/pyramids constructed like
teutonic thought pyramids in general. On the other hand there is the
real world of the real people, fighting in struggle and cooperation; in
hatred and love. Of course they clash, there ia a problem of regulation. But
the three solutions mentioned above are all closed, for different
reasons. The Anglo-saxon/Nordic solution presupposes a more detached
attitude to the normative constructions, viewing them as transitory,
not as permanent. Of course the Germans also know that their constructions
are not permanent, but they relate to them as if they were. Hence
there is much less tendency to be willing to change the rules; after
all quite a lot of work went into making them, probably more than in
most other cultures, and with more deductive talent. The Latin solution
coincides with the German one in regarding the norms as rather sacred,
as being made if not for eternity at least for a very long period, and
for some of the same reasons. But the Germans would not be willing to see norms
like Latins tend to, as detached from reality. They would rather tend to see
norms as real   reality; seeing reality as an imperfect reflection of

the norms, rather than the normative system as an imperfect guide to
reality. This means that norms cannot be changed; that they remain valid
come what may.   That   should open for the Japanese solution. But this
is not available in the Germanic culture either, the language being far too
precise and much too much   work being put into exactly that unambiguity.

Consequently, the Germans are in a relatively tough situation:
They cannot easily change the rules, they cannot detach them from
empirical reality, they cannot reinterpret them. And here then, it
seems to me, one starts touching a rather essential element of Germanic
culture. So, what does one do in that case, when behaviour totally contra-
ry to the rules (a) is engaged in and cannot be stopped and/or (b) has
to be engaged in, as something one wants people to do even if proscribed?

The individual phenomena can probably relatively easily be dealt
with: handling them as individual cases, fragmenting them from each other,
finding individual "solutions". If it takes the form of people having
claims not clearly covered by the rules but yet somehow legitimate
it becomes more important to save the rules, than to save the resources
that are claimed, for instance money. The gaps between claims and rules
can then be filled with money that again from an Anglo-saxon/Nordic
point of view looks not like corruption, but like bribing - only that
this time it is the norm object who gets money to save the rules,
not the norm sender. He is paid for not pressing any verbal change.

Considerably more difficult, however, are collective phenomena.
How could the nazi crimes initiated already in February 1933 be tolerated
given the whole weight of German moralism and legalism, of German
Christianity and state construction combined? I have come to think of
this somewhat inspired by the frequent reference this year upon
the 50th aniversary,   to the "brown hordes". Nazis are often referred
to as animals, as "brutes", in short as something not quite human. With
that one might certainly agree, but not with the conclusion that I think
many Germans to draw. I think the conclusion drawn by many Germans was that

the normative framework, however much it is an embodiment, a purified
version of reality, simply did not apply to the nazi phenomena because
these people were no longer humans. I am   not thinking of the victims -
of the communists in Kreuzberg and the social democrats in Schöneberg
(and Köpenick) - they certainly saw themselves like I see them, as humans.
And they certainly saw the nazis as brutal, fascist human beings to whom
laws should apply and should have applied.   I am thinking more of the
German Bürgerschaft, more of the Charlottenburg/Dahlem/Grunewald people to
put it in Berlin terms. My guess would be that to them the normative
construction was saved because it did not apply. This was a phenomenon
sui generis, like some fighting among   animals; the blonde Bestie at work.
To this one may object that however much they even at that time could
see the SA as brown hordes,how could they also see people on the left
in the same vein? And the answer is probably very simple: they were
seen as extremist, very much in the same light as when Helmut Kohl in
his election speech in Berlin February 20 1983 referred to extremists left
and right as a "medizinisches Problem". I do not think they saw Jewish
friends and colleagues in that vein, but I am not sure if they really under-
stood the nature of the crimes   perpetrated upon them. I am almost
certain, however, that to the extent they were able to admit to them-
selves images of concentration camps and gasovens they had for their
inner eye visions of sub-humans, hungry, dirty, emaciated skeletons.They
became the easy preys of exactly what the nazi intended: treat a person
as if he is sub-human, in a concentration camp, and he turns out not
only to look   sub-human, but also to behave as one, relative to food,
relative to each other. The normative model was saved.

In short, the hypothesis is simply that the phenomenon was set
apart so that normative systems no longer apply. If not legitimized nazism
was at least not forbidden.Important in this connection, and this is
where the nazis might not agree, would be the idea that the nazis also were
included in this phenomenon set   apart. And that makes it even more
dangerous because it also means   dehumanizing the nazis, thereby de-
priving them of the right to be responsible for their acts. I would be
much surprised if the many nazis or members of the party (or the SA) who now appear

in Germany even as presidents of the republic are not pardoned in the
minds of many people on the assumption that "everybody is a little wild
in his youth". So the conclusion becomes that it was precisely because the
normative construction was so strong that it did not stand in the way
of nazism. It became inapplicable; at the same time it could not be changed.
Nazism produced its own rules on the side - Führerbefehle, for instance.
The training of the German population, through Lutheranism in general
and the teaching of zwei Regimenten in particular, must have been
important in accepting a division of social reality into two parts
with relatively non-overlapping normative systems.

Finally, it should be noted that according to this perspective
there is a basic similarity between normative systems and theoretical
systems in the four cultures. To wit

- the German normative culture would be compatible with teutonic
  intellectual style: high emphasis on deductive rigor, less on
  correspondence with the world of facts. Facts that do not fit
  lead to the construction of a new pyramid that takes on a life
  of its own, not to rejection of the old. New norms are added.

- the Anglo-saxon/Nordic normative culture would be compatible with
  the saxonic intellectual style: low emphasis on deductive rigor,
  much on correspondence with the world of facts. Norms that do not
  fit may be discarded. New norms are substituted.

- the Latin normative culture would be compatible with the Gallic
  intellectual style. High emphasis not so much on deductive rigor as
  on verbal elegance, less on correspondence with the world of facts.
  Facts that do not fit are treated with generosity, the normative system is
  for admiration more than adherence.

- the Japanese normative culture would be compatible with the nipponic
  normative culture: low emphasis on deductive rigor, much on
  correspondence with the world of facts - but this can be obtained
  through skilful reinterpretation rather than the other means mentioned.