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, universal 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 Gesetzgebung gelten könnte". All this universalism was always put in explicit form, it had to be clothed with words. But those words were also somehow 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 naziism? 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 exterminationism 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 Anglo-saxon, and also Nordic, approach to this would be to regard any system of norms as a system of hypotheses, in casu 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 (Übereinstimmung) 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 countrernorms, 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-personalized 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 prediction, but when the hypotheses are very central to the whole construction 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 confess that deviant behaviour has been engaged in; as soon as there is that verbal 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 who interprets, who is permitted to interpret, and that would definitely be the norm senders rather than the norm objects. However, they may constitute an interpretation comunitas, 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 reducible 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 construction, 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 is 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 contrary 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 anniversary, 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 understood the nature of the crimes perpetrated upon them. I am almost certain, however, that to the extent they were able to admit to themselves 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 depriving 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.