PRIVATE PROPERTY, REGULATION AND GOVERNMENTAL DIRECTION
Development and Perspectives

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I. *Development*

Below I shall try to throw a sidelight on the concept of private property, its historic development and relation with the social conditions and the political organization.[1]

Private property does not exist in the outer world as particular objects or qualities of the objects. Private property is a socalled institutional fact, i.e. a plurality of elements which are organized by means of rules governed by an aim, which has its foundation in human needs and values. Therefore, we have to distinguish between the real facts, i.e. the needs and activities of human beings in relation to their surroundings, and the conceptions we form of those things.[2]

When we fully realize this distinction, we can also understand, why it is fundamentally wrong to speak of private property in a long historic perspective, and why it is at the same the meaningful. Presumably, man's fundamental need for using things in his surrounding world in order to attain the object of his desires has been relatively unchanged through all times. Like animals man has appropriated food and other things, just as individually or in groups he has limited and maintained a territory, which has yielded the material basis of his existence or

1 A more extensive sketch of the historical evolution is made in my article: "Der Begriff des Eigentums in geschichtlicher und gegenwärtiger Betrachtung im Bereich der öffentlichen Planung", in Schelsky, Helmut, *Festschrift für*, 1978, p. 249. About theories of legal concepts in general, see Ross, Alf, *Virkelighed og Gyldighed i Retslaeren*, 1934, Kap. VIII-XII, p. 168 ff.; Olivecrona, Karl, *Law as Fact*, 1971 (2a. ed.), Ch. 6, p. 135 ff.; Dubischar, R., *Grundbegriffe des Rechts*, 1968, Kap. 4, p. 30 ff.; about concepts in general, see Stig Jorgensen, *Typologie und "Realismus" in der neueren Rechtswissenschaft*, 1971; see also *Law and Society*, 1971, p. 8 ff.; and, *Vertrag und Recht*, 1968, p. 49 ff.

2 See Jorgensen, Stig, *Idealism and Realism in Jurisprudence*, Scandinavian Studies in Law, 1977, vol. 21, p. 95.

the existence of the group. However, in addition to this man has been able to keep and adapt objects for tools and permanent use. For that reason human beings have had a need for creating and preserving lasting relations between themselves and outer objects and territories. Besides human beings have been able to form ideas of these relations and translate them into languaje, the so-called concepts.

Our ideas and consequently our concepts are formed and developed on the basis of our experiences individually as well as collectively. Therefore, they naturally have to be closely connected with the physical conditions of our life, including the prevailing socio-economic conditions at the time in question and the social organization. The ideas and concepts arise and are developed through the history of mankind. Therefore, this is naturally also true of the concept of law and the concept of right. It is a well-known fact that some legal theorists therefore for instance deny the existence of "*objective law*", i.e. the totality of rules of law in given society, before this society has a formal social organization with legislature, central government and courts, whose purpose respectively are to create and administer legal rules and to settle legal disputes. Only within such organized societies exist –according to this conception– also "*subjective rights*", i.e. "individual positions of power" secured by the rules of law. According to this conception neither law nor right in primitive societies or in international relations. If, on the other hand, a more functional view is adopted and interest is taken in human beings' different forms of organization and the way in which they secure the satisfaction of their needs within organized limits, it has sense to speak of law in less developed societies as well. Obviously, the former conception permits a more precise and applicable analysis of law and its structure in our time, whereas the latter makes it easier to understand the development and social function of the rules and the legal concepts. If a study of law is to be complete one therefore has to supplement these two aspects and combine a structural with a functional apptoach.[3]

Many things indicate that the consciousness of the individuals as well as of the human race develops from a concretizing into a generalizing perception. Children have from the beginning a very concrete perception of their surroundings, whereas the ability to make and understand generalizations and concepts develops along with growing maturity. So it also appears from analyses of the history of language that universals develop gradually on the basis of a summing up of experiences. Thus it is emphasized by the Danish classical philologist

3 See Jorgensen, Stig, *Law and Society*, *l.c.* note 1, Ch. I.

Hartvig Frisch in his book on power and law in antiquity[4] that the abstraction "good" does not occur in the Greek language until in the 6th century at the earliest. Before this time the concept occurs in a functional or instrumental sense as "good at" something.[5]

"Good" (↔ evil) as an abstraction develops on the basis of the practical experiences of many generations. So it is also assumed by the two prominent legal historians, *Max Kaser* and *H.J. Wolf*[6] that the concept of right as idea has arisen as a number of conflicts between individuals and groups has been settled in a certain way, which eventually develops into an established practice gradually making people expect a similar conflict to be settled in the same way. As such expectations gain ground, they separate from the concrete conflicts and result in the creation of the abstraction "right". Thus, historically it is a right of petition (writ), which gives rise to creation of the abstraction "right", and later on the acceptance of the existence of an individual right gives ground for the putting forward of a legal petition. As late as the classical Roman law they have not detached themselves from the starting point, as it is the legal petition (actio), which constitutes the subjective right. A corresponding situation is found within English mediaeval law (writ).

If we turn to the Nordic provincial laws from the 12th and the 13th centuries, we can observe, how corresponding legal actions are dependent on the existence of a special access to complaint, which is left to private initiative. As in the original Roman law the case is a private matter between two individuals, who put the conflict in the hands of a mediator or an arbitrator chosen jointly by the parties. It is a generally accepted view among legal sociologists and legal ethnologists that the embryo of an organized solution of conflicts must be sought for in such an institution of mediation and arbitration, which is replaced by actual organized courts concurrently with the formation of a central political power. In the old Greek city-states and in the Nordic peasant communities it was originally the people's assemblies, which convened and settled the conflicts in an attempt to maintain peace in the communities.[7]

4 Frisch, Hartvig, *Magt og Ret i Oldtiden*, 1944, p. 278 ff.

5 See, Jorgensen, Stig, "Symmetry and Justice", in *Values in Law*, 1978, p. 59.; *Legal Positivism and Natural Law*, p. 103 ff.

6 Kaser, Max, *Das altrömische Ius*, 1949, and, *Lex und Ius civile*, Landesreferate z. VIII. Intern. Kongress für Rechtsvergleichung, ed. by E. v. Caemmerer and Konrad Zweigert, 1967, p. 3 ff.; Wolff, H.J., "Debt and Assumpsit in the Light of Comparative Legal History", in *Irish Jurist*, 1966, p. 316 ff.; Westrup, C.W., *Rettens opstaen*, 1940, p. 36 ff.

7 Eckhoff, Torstein, "The Mediator, the Judge and the Administrator in Conflict Resolution", in *Acta Sociológica*, 1966, p. 36 ff.; Jorgensen, Stig, Symmetry. . . , *l.c.* note 5, p. 65 ff., and *Legal Positivism*. . . , *l.c.* note 5, p. 114 ff.

It is obvious that at any rate the Roman jurists have had rather unambiguous ideas of private rights, among these also of a special property right consisting in a person's special dominion over a thing (dominium), and an obligation consisting in a bond between two persons (nexum, obligatio). Only a much later posterity has in these ideas interpreted complete property rights and obligations in the form of a *ius in re* and a *ius ad rem*. No more than the Roman legal conception recognized any fundamental distinction between *ius in rem* and *ius ad rem* and any fundamental distinction between procedural law and material law existed any distinction between private law and public law. All in all the concepts and contents of ownership could be said to be identical with the possibilities that the system of procedure implied to the person who claimed to have dominion over a thing. In Roman law as well as in the early mediaeval societies the execution of the judicial decision was left to private enforcement.

Concurrently with the development of the medieaval feudal societies there is a change of the conception of ownership in real property, which is presumed to belong to the king or on the Continent to the emperor. The king or the emperor enforced his vasals with larger or smaller territories, which are then given to the peasants as tenancy. However, it would be incorrect to describe such feudal rights of use as rights of private or public law in land in a modern sense.

The later European natural law is the first to make fully developed ideas of subjective rights as a concept.[8] The European natural law originates in the Catholic moral philosophy. However, in accordance with the classical tradition the Catholic moral philosophy operates with the concept of the "law of nature" (*lex naturae*), whereas the Protestant so-called rationalist natural law of the 17th and the 18th centuries operates with the concept of "natural right" (*ius naturae*). This reflects the development, which has taken place in the experience of man's situation from the 13th to the 17th century. In the meantime we have the great discoveries and the economic development especially within urban trade, which lays the groundwork for the Renaissance and individualism, and consequently for the idea that each individual has special natural rights.

The conceptions of state and law in the late Middle Ages were based on the presumption that God's law, which is eternal and unchangeable, together with customary law is prescriptive to human life, whereas the secular princes have the task of maintaining peace and

[8] See to the following, Jorgensen, Stig, *Legal Positivism. . .*, *l.c.* note 5, p. 117 f., and *Vertrag und Recht*, *l.c.* note 1, p. 141 ff., and Olivercrona, Karl, *Law as Fact*, *l.c.* note 1, p. 142 ff.

order in the name of God. During the Renaissance the conception arose that there is a human legislative power, a sovereignty, which is originally believed to lie with the secular prince. By this the groundwork for the conflict between emperor and pope was laid, in which among others *Dante* –as we already know– opposed the pope. –This idea had its consistent form in Machiavelli and in the later European absolute monarchies, where the sovereignty lay with king (the State that's I!).

While the theorists of the Renaissance assumed that the sovereignty, i.e. the legislative power, lay with the prince, it was assumed by *Hugo Grotius* and his imitators in the 17th century that the sovereignty lay with each individual. From this the conclusion was drawn that lawmaking in any form therefore has to seek its grounds in each individual's own rational will. The laws of the society had to be based on a so-called social contract consisting in the individuals' presupposed approval of the social institution. Only through this it was possible to justify the intervention in the freedom of the individuals which the laws and the enforcement of the laws implied.

It was a natural consequence of this starting point that the creation of rights according private law was conceived as the individual's own self-legislation, and for that reason it was just as unlimited as the legislation according to the social contract. A consequence of this was the adoption of a general freedom of agreement, which was a disengagement from the traditional types of contracts within Roman law.

The English philosopher *John Locke* considers –as mentioned below– private property as a natural right on the same lines as human rights and legislative authority. Everybody is entitled to the profit of the work that he has performed. –Therefore, "Danske Lov" (1683) V.1.1. prescribes that everybody is bound by his oral as well as by his written promises. By the promise some of the liberty of the promisor is transferred to the promisee, who then by virtue of a special moral power has a right (ius) over the promisor. This primary right based on the promise is supplemented by a secondary right of the promisee to use force against the promisor. This force is considered to be based on the social contract, which legitimates the power of the state.

Private property is also believed originally to be based on such an access to make a claim against another person, but in accordance with a traditional conception private property is considered to be justified by a special dominion (*dominium*) over a thing. However, this dominion automatically implies obligations to everybody and a right of the owner to make a claim against the person, who interferes in his-

property rights. But consequently any right is taken to involve an obligation for one person or an indefinite number of persons.

It is self-evident that such a conception of law reflects the interest of the growing middle classes. Concurrently with the economic development of the urban trade a political self-consciousness arose and there was a desire for having a share in the social influence. Referring to the sovereignty of the people the French Revolution in 1789 and the later bourgeois revolutions during the 19th century were carried through.

As the revolutionary philosophy deriving from natural law drained away in bourgeois democracies there was a need for legitimating the creation of law of the new society independently of each individual's will. Therefore, the 19th century is every-where characterized by an extensive legal positivism, which conceives objective law as the orders of the sovereign, i.e. the state. As early as the end of the 18th century *Immanuel Kant* had separated law from moral and in doing so founded the legal positivism. The German legal theorist *von Savigny* saw to the further development of these ideas; in continuation of Kant's liberal theory of the state he wanted to keep private law out of the sovereignty of the state. Consequently Savigny introduced a fundamental distinction between public law, which was considered to be based on the will of the state, and private law, which was considered to be based on the will of the individuals. The object of the state is only to create the outer framework and a system of compulsion for the realization of the private social life, the so-called "watchmanstate".[9]

Another consequence of this is that it is possible to define the private subjective rights as a power of will, a power founded on the private will, but secured by the objective law. By the distinction between private law and public law Savigny has introduced a distinction which makes it difficult conceptually to justify social limitations of private property. However, by principally recognizing legal positivism a door has been opened to a recognition in principle of any social limitation of the private property, which is in accordance with the constitution in force at the time in question.

This was the consequence that the Danish jurist *A.S. Orsted* draw from this theory at the beginning of the 19th century. As a prominent official and politician A.S. Orsted influenced the Danish legislation during the first half of the 19th century.[10]

[9] Dilcher, Gerhard, "Der rechtswissenschaftliche Positivismus, wissenschaftliche Methode, Sozialphilosophie, Gesellschaftspolitik", in *Archiv für Rechts- und Sozialphilosophie*, 1975, p. 497 ff.

[10] Jorgensen, Stig, "Grundzüge der Entwicklung der skandinavischen Rechtswissenschaft", in *Juristenzeitung*, 1970, p. 529 ff., and in *Legal Philosophical Library*, ed. by Enrico Pattaro, 1980, p. 25 ff.

The English philosopher *Jeremy Bentham* rejects the existence of subjective rights, which he conceives only as fictive manifestations of the sovereign's orders through the objective law; also within German theory it is assumed that rights do not exist —they are nothing but mere forms of thought that make possible a survey and control of complicated sets of rules of law. This is the conception of law that we shall meet in the modern so-called realist theories of law.

However, at the end of the last century it became still more evident that objective law as well as subjective rights are not mere conceptual constructions or public or private expressions of will. It is recognized that the law is a means of achieving human objects which again derive from fundamental human interests. As objective law is the result of a struggle between political forces, subjective rights become a legally protected interest. By this it has been recognized in principle that objective law and subjective rights are political results of socially effective interests.

Although the European constitutions contain provisions which recognize the inviolability of private property, it is recognized, however, in § 73 of the present Danish constitution that private property must yield to the public interest. —Private property must be given up or tolerate restrictions when it is required out of consideration for the public good, but only in return of full compensation. However, at the same time it is recognized that private property is not unlimited. Private property must not be exercised spitefully, and concurrently with the growth of the society and the social development during the 20th century it has been recognized to an increased extent that private persons must endure general limitations of private property in so far as it is necessary for the social planning and the social welfare. On the other hand, such general limitations of private property do not involve any claim to compensation. An important problem is, however, to limit the general restrictions of private property, which do not admit the owner to compensation, from expropriations, which incur an obligation to pay compensation in full to the owner.

The so-called realistic theories of law have all by virtue of a fundamental positivism of law left this decision to the legislature, which is said to give a more precise definition and delimitation of private property in its laws. Private property is —as expressed by the Danish legal theorist *Alf Ross*— nothing but a terminological auxiliary concept connecting a set of legal facts with the legal effects provided by the laws.[11] Characteristically, therefore, in his handbook of constitutional

[11] Jorgensen, Stig, *On Law and Justice*, 1974, p. 177 ff.

law Alf Ross goes very far in the direction of assuming that in principle the legisture can pass any limitation whatsoever of private property.

It is not possible here to amplify the legal philosophical debate on the concept of right. As already mentioned some theories will completely empty the concept of right of any content and make it a linguistic designation of objective law concerning the relationship between persons and objects. Others consider subjective rights as mere reflexes of the system of procedure. However, it is common to these conceptions that "right" and "private property" have no independent content.

Another Nordic tradition dating back to the end of the last century does not empty the concept of right and especially the concept of private property of all content, even though it breaks up private property into several legal relations and several actual and legal rights of the owner.[12] According to this conception private property contains four rights: 1) the right to an actual use of the object in so far as it does not conflict with limitations, if any, provided by the law, 2) the right to legal disposal of the object, 3) the right to use the object as a security when raising loans, and 4) the right to pass on the object.

I shall not here make a detailed evaluation of the different conceptions of the concept of right. I only want to point out that in my opinion one ought to be wary of defining objective law as well as subjective rights as monistic concepts.

It is beyond doubt that the concept to right is attached to important human functions and interests, as it appears from history. This is a fact that one has to take into consideration when discussing the concept of right in a legal political sense. If the concept of right is to be discussed in a legal dogmatic sense, it will on the other hand be more natural to use the so-called realistic concept of right, which conceives the rights as an abbreviated expression of the rules embodied in the objective law.

However, it can not be ignored that the choice of concept of right has an ideological aspect, which in case of doubt can determine the argumentation. To a Liberal conception the freedom of action is fundamental, so limitations of this must have a specific legitimation; therefore, it is natural here to conceive private property (and the other private rights) as something more than the total of the rules of the objective law. Private property (and other rights) has according to this conception specific contents which secure the legitimate freedom of action in relation to an object to such an extent that it

12 Kruse, Vinding, *Das Eigentumsrecht*, 1931, p. 156 ff.

does not conflict with the limits, if any, put on it in the positive law, i.e. a constitutional right. On the other hand, a Socialist conception, which does not primarily let the individual freedom of action come before other considerations, will to a higher degree be inclined to conceive the rights as mere reflexes of the objective law, i.e. a "social function".

II. *Perspectives*

We have seen, how the concept of "property" has developed through the ages, and how it has got its complete expression at a certain time in a given political, economic and ideological environment.

The concept is systematically connected with the general conceptions of the anthropology and society of man, which (i.e. conception) have arisen partly by virtue of partly in opposition to a historical development. The society can be conceived as a collective whole, of which each individual is part-elements, and as an association of individuals. In the former respect the conception is collectivistic, in the latter respect it is individualistic.

It appears from the historical introduction that primitive societies founded on subsistence economy are organized on the basis of a collectivistic human conception. Here the family is the principal element in the structure of society. Legally it is the family, who has rights and is liable in legal matters; especially, the family is responsible for breaches of law, as it also has a right to enforce the law of reaction. The contract does not play a decisive part, as the status relations guarantee each individual his share of the total economic profits. As a consequence of this fact the right of private property is not of great importance. In the nomadic society the flock belongs to the family, and in the agrarian society of the Middle Ages the land belongs in principle to the king, whereas the right of use is passed on through the families.

It is not until the dissolution of the status relations and the introduction of the division of labour within commerce, shipping, and trade in the urban society that the individuals are conceived as the foundation of the society. Consequently each individual becomes personally responsible for his actions, and he is able to enter into personal obligations by agreement. Money emerges as a means of payment, as at the same time there are a need for and a faculty of making abstract ideas symbolizing private person's power over and interst in the result of his work.

Property is fully developed as a concept in the 17th and the 18th

centuries, and at the same time the economic growth opens up the possibility of an advanced urban economy.

Particularly, the Englishman *John Locke* (1632-1704) emphasized the connection of private property with human rights. In his opinion a natural consequence of the freedom of the individual was that he was entitled to the result of the work that he himself had performed. This connection between freedom and property is already expressed in *Hugo Grotius'* (1583-1645) natural law. According to this the individual's freedom of action is conceived as a right, of which he can dispose and which he can surrender to others by virtue of the individual's power based on his rational will to enter into obligations by agreements and by the laws.

These conceptions of society and property based on humans' being free and equal individuals underlay the bourgeois opposition of the Enlightenment against the despotic state, which had replaced the feudal society of the Middle Ages. These conceptions of human beings and society are expressed in the American constitution of 1776 and the French Declaration of Rights of Man from 1789. Instead of "liberty, equality, and fraternity" it is, however, "liberty, equality, and private property". It is this conception of society gravitating towards Liberalism that becomes predominant in Europe during the 19th century, in Denmark with the constitution of 1849.

It is important to the citizens to emphasize their freedom from compulsion of the state and the corresponding freedom to use their faculties and possibilities of making the greatest possible economic profits. The philosophical basis was found in Kant's (1724-1804) social philosophy, which took as its starting point the freedom of the individuals, which should be the foundation of the state and consequently of right and morality. Considering other people's equal rights to freedom the individual is completely free to arrange his life and act on his wishes. The object of the state should only be to maintain order internally and peace externally and altogether to avoid to interfere with the citizens' private dealings, the so-called "watchmanstate".

Inspiration could be sought in the English "utilitarism" as well. *Jeremy Bentham* (1748-1832) found that the morality had to be in proper relation to the use of the act, i.e. the happiness that it caused, and that the object of the society therefore was to ensure the greatest happiness of the greatest number. *Adam Smith* (Wealth of Nations 1776) founded the economic liberalism in opposition to the mercantilistic economic theory of despotism, which the state considered to be represented in the national product. However, Adam Smith assumed that —without interference of the state and in competition with

others– the individuals' own striving to make his own profits as good as possible tended towards the greatest possible advantage of the society.

It is evident that the condition of this "bourgeois equilibrium state" is that the human beings actually are equally welldeveloped to make the most of the existing possibilities. The conception of private property as a complete freedom to take possession of the profits of one's work and to dispose of real property or movable property acquired without violating others' equal right implies an economy which is essentially based on trade and commerce actually placing the actors in the same strategic positions.

It is evident that this is a philosophy suitable for a small élite who has been sufficiently educated to take part in the public debate, which is the ideological basis of democracy, and who has sufficient means to utilize the economic possibilities. The formal nature of –human rights is emphasized by *Anatole Frances* in his well-known ironic maxim: It is forbidden all Frenchmen to sleep under the bridges of the Seine, to beg in the streets and to steal bread.

However, it is beyond doubt that the economic liberalism and private property were very important for the economic growth and consequently for the increased prosperity at the end of the 18th century. By this the groundwork was laid for the very process of industrialization, especially in Great Britain and France, which again resulted in a complete change of the practical and the ideological basis of the society. The fact is that industralization caused an increased need for capital and a need for larger markets, in order to be able to start a mass production and make it profitable. The need for capital was ensured through the creation of banks and companies which introduced abstract relations between property, management and responsibility. Concurrently the personal relations between employee –which formerly existed within trade– was dissolved and replaced by impersonal relations. This meant that the wage-earner had to sell his working power in the factories in competition with others without security for a subsistence level. The increased need for markets resulted in an international competition for colonies and raw materials.

As early as the middle of the 19th century *Karl Marx* (1818-1883) had analysed the mechanism of Capitalism and its consequences for the economy and the development of society.[13] He was aware of the fact that private property played another part in an industrialized

[13] Jorgensen, Stig, *Values in Law*, *l.c.* note 5, p. 18 ff.

society; the anonymous relations between Capital and Labour resulted in an increasing impoverishment of the new working classes and in a still growing concentration of capital, as Capital breeds capital. "The surplus value" of the work (i.e. the difference between the result of the work and the wages) is accumulated as "profit". Therefore, Marx prophesied that as a necessity society developed into a Socialist and later into a Communist society, where the workers have jointly taken over the property of the means of production. However, at the same time he and his like-minded persons worked actively for the promotion of these political ends.

In this century it has appeared, however, that the revolution has not taken place, where it —according to Marx— ought to take place: in the highly developed industrial societies of Western Europe, but on the contrary where it ought not take place: in Eastern Europe and in the developing countries. There are several reasons for this but first of all the fundamental circumstance that it has been possible to change society by means of rules of law and agreements. Marx himself believed that the rules of law were part of the "ideological superstructure" derived from the "material foundation" of society, which in his opinion was decisive for the historical development. Therefore, he did not believe that the development could be changed and controlled by means of rules of law. For that reason he was convinced that the rules of law would "wither" together with the state in the future Communist society, where the contradiction between "private" and "public" interests would disappear along with private property.

Experience has proved the opposite and by this in fact denied the "scientific" basis of Marxism. On the contrary it has turned out that by means of a comprehensive legislation and collective agreements on the labour market it has been possible to carry through: 1) a division of the profits of the process of production between Capital and Labour, 2) a redistribution among the citizens in general by means of taxes, rates, and dues, and 3) an extensive social, health and culture legislation, which has completely removed the direct connection between the individual efforts and the final economic profits.

In actual fact the building up of the modern Welfare State started (in Denmark) during World War I, when the State intervened in the economic life by a number of measures to secure production and distribution of goods and services. All over the world the private economy became dependent on the states' financing and control of the war industry, the supplies of foodstuffs, and the need for transportation. When in the 1920s attempts were made to withdraw the engagement of the state in private economy, it was a contributory

cause to the international crisis, which was brought under control together with the recognition of *Keynes'* general economic theory. This theory presupposed a permanent state responsibility for national economics and therefore also for the private economic sector.

The same social political interests resulted in a similar regulation of the agricultural policy. Regard for self-sufficiency and fight against unemployment led to a restrictive agricultural legislation, which made unrestrained parcelling out and amalgamations of farm land illegal. As early as the 18th century the maintenance of optimum undivided holdings had been favoured by means of rules of succession. At the same time a law concerning the preservation of forests was introduced in order to ensure the supply of sufficient ship timbers. And by the Barring an Entail Act of 1916 and the later agricultural legislation it was tried to counteract the amalgamation of landed estates; instead the object was to further the breaking up of estates into smaller holdings. During recent years the economic and technological development has resulted in an opposite movement, which furthers the creation of larger production units. However, the agricultural sector has been thoroughly regulated along with the establishment of the new international market organization (the Common Market a.o.) as part of a common European agrarian policy. To this must be added the general and special rules of depreciation.

The "Kanslergade-compromise" at the beginning of the 1930s was the first step towards this welfare policy in Denmark. In principle it recognized the obligation of society to preserve agricultural industry as well as urban trade and combine them with a social policy ensuring a minimum of social welfare and in this wal also a sufficient demand to keep the economy going. The price of this was naturally increasing taxes as part of a social distribution policy and a fiscal policy with the express purpose of counteracting the strongest fluctuations of the market. Society took over the responsibility for education, pensioning, health insurance and health services, matters concerning communication and roads, supply of energy, and in the post-war era to an increasing extent child-minding and cultural life.

Thus, in recent times there is no limit to the tasks of society in fields, which were earlier considered to be subject to private initiative and responsibility. Consequently there was an acute economic schism between *internal* and *external* costs. When society takes over the costs of education and sickness, of communication and roads and so on, these costs become external costs; i.e. costs that do not enter into the private economic calculation, but are considered as free goods. What from a private economic point of view sems to be a good piece

of business may from a social economic point of view be a bad piece of business. As an example of this is often mentioned the relation between private and collective traffic, in as much as the roads be used free of charge by private persons, whereas trade has to pay for public transportation.

In recent times a number of welfare political, health political and social political factors have been included in the regulation of trade. At the same time it has been required that trade must obtain the permission of the authorities to build and carry on their business according to the rules in the town and planning legislation, in the factory and health legislation. The purpose here is to make the most of the resources invested by the state in the development of towns, in schools and social institutions, and roads, etc. Further objects as to the health and welfare of the population are combined with regard for a reduction of the expenses for injury and medical treatment and lost earnings.

However, the interests of society in securing the citizens' welfare go still further. By means of an extensive fiscal legislation it is endeavoured to direct production and employment indirectly, at the same time as quantitative restrictions in foreign trade are replaced by customs rules. Firstly, these rules favour the division of labour within large international markets, e.g. the E.C.C., secondly, at global level attempts are made to promote an international competition and division of labour; but it is endeavoured as well to protect the trade your own country against unreasonable competition from developing countries with low costs. However, also at international level there are attempts at an intentional governing of national and international economies by means of agreements, at one time regulating and liberating trade by making possible competition on equal terms.

We have seen, how a bourgeois Liberal democracy implies a society of free and equal individuals, who in dialogue and competition with one another promote their own interests with the presumed consequence that it would tend towards the greatest possible benefit to the public, i.e. to society. Thus, ideologically democracy involves a pluralistic society, where the freedom of action can actually be used for choosing between several possibilities. The economic tool of this form of organization is private property, which is supposed to consist in a special tie between a person and his thing and a special "freedom-of-action-sphere" about this relation between person and thing. On the other hand, there is a necessary connection between freedom and responsibility, as the private person is supposed to be able to appro-

priate the profit of his own labour, whereas the values created by the society do not in the same way "naturally" go to private persons.

We have seen that to an increasing extent society is participating in and has taken a considerable general responsibility for the national and the international economy. Thus, it stands to reason that trade cannot claim in the same way as earlier to be responsible for its operations, and nowadays no one withing trade would dream of wishing the state out of economics; already the crisis of the 1920s showed that there was no going back to the "watchmanstate" of the past, and in our time the public sector is of vital importance to economics. In addition to this there is the market policy.

To this must be added —as already mentioned— all the "external" costs, which society has taken over from and pays for trade. And as a new thing in our time must finally be added: various (public) subsidies; originally it was especially agriculture which in the 1930s gave up its "liberal" foundation and by this the maxim: "Let go down, what is not payable!" However, nowadays not only agriculture is subsidized —before the E.E.C.— membership it was national subsidies and afterwards E.E.C. —subsidies— but also shipbuilding industry and house building have obtained special guarantees of the rate of interest and subsidies. And subsidies to trade and regional development have provided capital for works and productions, which had not otherwise been carried into effect.

In so far as society takes over "the costs" of production it is completely in accordance with the ideology of Liberalism that society must assume an increasing part of the responsibility for and thus the influence on trade. At the same time a concentration has —as indicated— taken place at a national as well as at an international level. This development has resulted in an abolition or a weakening of the competition, which is the ideological counterpart to freedom and responsibility, and of the factor, which justifies freedom, as it is presumed to protect the interests of *the public*. For the fact is that it has never been overlooked that democracy must safeguard the interests of the public; otherwise it will become addicted to egoism, dictatorship of the majority or dictatorship of the minority.

Therefore, you ought to be aware of the fact that a real *pluralism* in trade ensuring an actually free choice is an economic condition of a political democracy. Monopolies and international companies endeavouring to abolish competition by means of amalgamations and agreements are probably better fit for developing the national and international markets and for making resources. However, on the other hand they are able to ignore —by restraints of trade— the interests of

the public and the effective development of the resources on a long view to the benefit of society.

At national level attempts have been made to counteract this risk by monopoly control and prohibition of establishment of cartels; at international level it has been argued in favour of the international organizations as a sufficiently strong "defense" against the multinational companies. However, in both cases increasing national and international bureaucracies are required in order to establish a sufficiently strong and expert counteraction to the national and international companies, which have an interest in and can afford the financing of the necessary expertise and which benefit by "having the lead" as far as plans and strategy are concerned.

Here we face one of the greatest problems of our democratic form of life. Our political systems are based on the condition that the population as a rule elects its representatives by a secret vote every four years. Until the next election these representatives are to safeguard their electors' interests and administer their "sovereignity" by passing the necessary acts. The modern technological welfare society has made a considerable instability in the conditions of life, which form the intellectual basis of democracy.

The time horizon has been widened. In the earlier relatively static society it was reasonable to assume that electoral periods of four years were convenient intervals. Nowadays, however, trade has to plan on a much longer view owing to the depreciation of the heavy costs for development and investment necessitated by the modern form of production. Therefore, private economic life needs the best and consequently the highest paid experts, who in return plan on a qualified basis the future production including the development of new technology.

On the other hand the political system calls for shortsighted decisions, i.e. within the frames of the next electoral period of four years. Thus, it is evident that the politicians are subject to a constant pressure by the inmediate, urgent problems and by the population's wishes to get the unpleasant effects abolished at the shortest possible notice. This pressure may result in the fact that the politicians are fixed on single-problems without getting the opportunity to recognize and draw attention to coherence and the long-term timeframe for balancing unpleasant conditions and advantages. For instance, it may be a temptation to raise loans abroad to finance a deficit on the balance of payment instead of lowering the effective income during a depression, although the future consequences may be extremely unpleasant.

Altogether democracy may tend towards a service democracy granting the population what it thinks it needs of services, which in relation to the individuals are "private", as they benefit from them in the form of free services, whereas, on the other hand, retrenchments are "public" in the sense that their only effect is as abstract tax relief, unless they affect a field, in which the individual has a "private" interest. Therefore, public retrenchments are always met with general approval, until the concrete retrenchments are allotted. The well-earned rights of the recipients as well as the occupational interests of the staff organizations will as a rule be able to stop effective retrenchments on the budget; but they will in return be able to subject the politicians to strong pressure in favour of an increase in the standard.

Another example is the energy debate, where rises in the price of oil and the supply situation seem to speak clearly in favour of a fast development of nuclear technology in Denmark, as there will be an increasing demand for energy in the future. Even though no objective facts indicate that nuclear power involves greater risks than other energy forms a (organized) public feeling has so far thrown obstacles in the way of a political decision. Thus, a lot of things speaks in favour of the assumption that the risk or the waste problem is not the real motive for the organized opposition to nuclear power; it is rather a political exploitation of a public fear of modern technology and its consequences for the social and economic life and effects on the welfare of the citizens.

And now the wheel has come full circle in a way. The economic life has to plan far ahead and in doing so it has to take into consideration the existing technology or the technology to come, because human beings probably cannot help utilizing their possibilities. On the other hand, the democratic system cannot within its time limits invest in long-term planning. Therefore, the economic life has had a relatively free scope to plan for society. The industrial development began during the last century, and railway lines were built regardless of physical and social environments, which were highly changed by pollution in the widest sense. Concurrently with this development the town population was proletarianized partly by ruined workmen partly by in-migrated farm workers. However, all this took place in accordance with the prevailing political ideology at that time, which was the "watchmanstate".

By this in has at one time been indicated that this development had not been tolerated under the political circumstances of our time, which of course is a completely unrealistic assumption, but on

the other hand this development laid the groundwork for the welfare state in our time. Nowadays, however, the development within technology has also resulted in great social changes in spite of the fact that the political ideology has been changed in favour of a politically guided society. —I only have to remind you of the social revolution that private motoring caused especially in the post-war era. Without the car the development of "family houses" outside the towns had been impossible, and therefore also the development (systematically connected with the above mentioned) of the shopping system with supermarkets and discount stores.

On the other hand, we have seen, how the building of such shopping centres do not only influence the structure of trade and industry, but also he need for trafic systems and town planning development. For example the town planning development of the Århus-area was broken up by the establishment of such a centre at a time, when the area was administered by a plurality of local councils competing for tax means and facilities and thrusting on to the neighbouring councils the costs for investments in roads, etc.

These examples are sufficient for the illustration of the present scepticism towards and distrust of trade, which used not to cover the "external" costs (nor has it ever had to do so —at that time it did nothing but what the population wanted it to do—). The prospect of the fact that the EDP-technology and the electronic technology as a whole tend towards a promotion of larger units has given rise to a general fear of the consequences of this development. The division of labour has become still more pronounced, and the individual processes consist to an increasing extent in controlling. Thus, the connection between your own efforts and the finished product and its sale and application becomes still more abstract and consequently incomprehensible. In the same way the political connections between state and social services and between the different elements in politics become completely incomprehensible to ordinary people.

This has resulted in an increasing flood of "people's movements" or "grassroot-movements", especially against a concrete case, like for instance the E.E.C., nuclear power, or pollution. The ideological value adduced in support of these movements is as a rule the request for "participation in decision-making" or "participant democracy", which means that political decisions are to be made by the persons affected by these. Ostensibly these movements are necessary and reasonable tendencies in a democratic process of development tending towards the greatest possible self-determination and liberty of choice. But in actual fact they are a denial of the representativity which is

the condition of democracy's serving the public rather than personal or local interests; especially there is a risk that the weak and uneducated will be exploted by the well-educated ("the terror of the loud-voiced"). Also the irrational rejection of expert knowledge and facts is alarming for a rational creation of opinion, which is the condition of an actual democratic decision-making process and not a dictatorship of the majority.

Here the mass media —especially the electronic ones— come to play an important part together with elementary human and therefore also political conditions. The mass media go in for concrete, dramatic, and exotic things, because human beings in general think concretely and to an increasing extent have difficulties about complicated economic and political relations. This results in the fact that the representation of real life becomes still more kaleidoscopic and incomprehensible; besides the media can to a still higher degree be used for a manipulation of the public opinion by making pseudo-events and by arranging events as pseudo-events. The politicians, who have to play on the conditions of the media, get far away from the fundamental ideal of democracy: the qualified debate among sensible people.

Thus, we face several dilemmas. To an increasing extent trade has to tolerate that its basis of decision has been assumed by public bureaucracies, which are to evaluate the concrete projects in relation to labour, environment, town development, and health legislation and sometimes the profitableness. This is the price of society's participating in and sharing the responsibility for private economy. On the other hand it is the trade that has to plan far ahead, as the democratic system cannot operate with a longer timeframe than the electoral period. The various people's movements are symptoms of this dilemma.

Democracy is based on a real pluralism in trade; but on the other hand democracy has difficulty in securing that the control of trade does not fall to the ground, so that trade plans the development of society and not the other way round.

The question is then if democracy in a traditional sense is possible in the future at all, or if an authoritative rule, i.e. Socialistic or Corporatistic, is necessary to prevent the development of society from falling apart in chaos. The question is also how far in actual fact we have already got in this direction in the East and in the West.

In the people's democracies of the East private property of the means of production has formally been abolished, as the public bureaucracies under the leadership of the commissars of the Party plan production and sale from a political evaluation of what are the

real "needs" of the citizens. However, marketing problems demonstrate that articles, quality, and price are not always in accordance with the real "wants" of the population. A Polish economist said last year to the Danish television that a centralistic and bureaucratic economy was suitable only during war revolution and during the building up of a modern production potential. Afterwards nothing but the market mechanism will be able to guarantee an effective exploitation of the resources and a current adjustment to the still more refined demand for goods and services.

It is evident that on the other hand a centralistic and buraucratic economy is fitted for planning far ahead and for ensuring, in the first place the carrying into effect of political objects, and secondly the consideration for essential changes in the factors forming part of the economy, such as the energy. The East European countries can very quickly extend a series of atomic power plants without having to consider the public feeling.

Several Western democracies have already taken the consequences of these circumstances and have established an actual "corporate" bureaucracy consisting of the trade organizations —especially employers' associations and trades union congresses— and a state and local bureaucracy administering the political process of guidance and appropriation. In Sweden they have gone still further, as the State has supported not only trade, but also to a large extent has bought unprofitable parts of the heavy industries, among other things mines and shipbuilding yards, in order to maintain employment. In Norway the politicians have had a decisive influence on the financing, as the State has taken over the majority of seats in the managements of the banks. In Denmark we have so far only indirectly supported certain parts of trade; this fact is due —among other things— to the structure of our trade, which consists of a lot of small works in contrast to few and large key industries.

Trade in Denmark has therefore in principle refused to receive general State aid, realizing the connection between freedom, responsibility and influence. Consequently, it has also rejected the idea of the Danish Trades Union Congress concerning a general system of economic democracy, which was to be based on a central fund consisting of contributions from a general turnover tax. On the other hand, Danish trade has recognized the idea of a spread of the private property of the means of production by voluntary sale of shares and profit-sharing.

It is hard to see, how to make the wage-earners and especially their organizations restrain their were claims, without knowing for certain

that the advantage of this is not capitalized by the factory owners. On the other hand, the competitive power of Danish trade will be seriously threatened, if the inflationary development is not checked, and the raising of loans abroad is not brought to an end. But there is doubtlessly no political majority in favour of such a legislation, which, however, would not contravene § 73 of the Danish Constitution, no more than the Norwegian Bank Act. And if it is true that there is a connection between economic pluralism and representative democracy, it is not recommendable from a democratic point of view, as the financing as well as the production affect the decisions, which are utilized in market economic processes.

This third dilemma between market economy and democracy on the one hand and the demands for the financing of trade by means of central funds on the other is perhaps our greatest political problem. It is difficult to see how to solve the problem. However, there is after all still reason for scepticism on a short view; but on the other hand there is reason for some optimism believing in human beings' practical interests and a sensible process of adaptation on a long view.