

## Literary Lessons in Law: Legal Culture in a Changing Welfare State

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### Abstract

*Can literary fiction provide a specifically advantageous framework for discussions about law and legal culture in an increasingly diverse society? This study addresses the challenges that some aspects of postmodernity pose to legal culture and legal thinking in the Danish welfare state. Showing how literature can take an open space in public debate I venture into an analysis of two Danish literary creations – the poem ‘The Coffee Break Team’ [Da: Kaffeholdet. My translation] from 2013 and a novel Pelle, The Conqueror, written 1907-10. As a third dimension a small sample of students is inquired about the poem. They are studying to become welfare state professionals and hence bearers of the relation between the state and its citizens. I discuss my literature samples against changes that have taken place in the Danish nation building project involving inclusion or exclusion of groups of the population. In a concluding section I balance my findings in relation to the initial question and place them within the law and literature tradition.<sup>1</sup>*

Can fiction as a creative expression provide a specifically advantageous framework for discussions about law and legal culture in an increasing diverse society? My question is motivated by a desire to contribute to the establishment of a framework for debating who we are in terms of the law in such a society. In addressing the overarching problem – inclusion into political society and the state- I draw inspiration from Hanne Petersen who has shown how literature possesses the ability to catch the novel and still unsaid as well as the unexpressed repressions, lending a voice to groups that have been excluded from public affairs (Petersen: 2014, 310). I hope to show how – in this ongoing battle - literature can offer insights into the functioning of the law.

What has urged me to address the problem is the diagnosing of profound changes in the Danish welfare state as an integrated part of a globalized world, sparking off a whole new understanding of who we are as a state and a society. As such I deal with a concrete case and I make no claims to a wider validity of my findings. I ask if in in two specific samples of literature I can find reflections of legal culture and whether those reflections may

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1 This paper has made its way in a long working process where I have benefitted from thoughtful suggestions from my colleagues at Metropolitan University Collage as well as valuable response from law professor Hanne Petersen, Copenhagen University Law Faculty and the generosity of several other colleagues from Copenhagen University.

provide a platform for debating the law, casting a light on its blind spots and dark corners of relevance to the inclusion of groups into society in the nation building project. The authors of the samples are Yahya Hassan (born 1995) and Martin Andersen Nexø (1869 – 1954). The samples are: 1. The poem *The Coffee Break Team* (My translation) [*Da.: Kaffeholdet*] by Yahya Hassan from his 2013 collection of poems; 2. the novel *Pelle the Conqueror* by Martin Andersen Nexø, written 1907-10. Both texts have drawn massive attention from their contemporaries. As was the case with the rise of the original Law and Literature movement at the US law faculties, (White: 2011, 33; Weisberg: 2011, 51) there is a pedagogical perspective to my enterprise with a view to include the diversity that we see unfold as a result of the changes. I aim to support my students' ability to navigate as professionals in a democratic and constitutional state with an increasing cultural diversity. I test the poem in conversations with a few students learning constitutional and administrative law, looking for a way to open up their interest for the functioning of the law in practice in state and society.<sup>2</sup> I also want them to assert themselves more actively in the legal argument, being more attentive to various aspects of reality in ascertaining the relevant facts and devoting attention to the consequences of a legal decision, weighing the facts, as opposed to simply quoting the code and make a simple syllogism. I denote my student interviews 'conversations' to indicate an approach that differs from a traditional qualitative inquiry. I am the students' teacher. However, I made clear to them that I also sought their advice on how to advance classroom discussions about law. I decided that the way to go about this challenge would be to address the context openly and regard my presence as one of participation in the vein of action research. In this approach I found inspiration in the WLSA research methodologies that contain in them also a mixture of different roles, asymmetrical relations and educational projects, (Julie Stewart:1997, 41-43)<sup>3</sup> as well as in Shirin Zubair's inquiries on literature as a mediator of identity in a society with conflicting values (Zubair:2006, 249-271).

### The Invitation – Law as an identity project

An entry into my analysis is the understanding of law as culture. What has inspired me was Lawrence Rosen's notion that a 'fit of legal sensibility and cultural style will take place whether we try to ignore it or not, and it is by grasping the very nature of culture and law's place within it – grasping the symbiotic relation of a culture's constituent domains and the

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2 I am grateful to my colleague Anne Nyland who has transcribed the conversations for me and willingly – together with Pia Freil - offered her comments and observations.

3 <http://www.wlsazim.co.zw/index.php/home.html> Accessed July 16, 2014. WLSA stands for Women and Law in Southern Africa Research and Education Trust and seeks to advance women's rights in an action oriented approach.

ways in which they are interlaced – that the place of law in the ordering of relationships may most realistically be sought’ (Rosen, p. 199). On this note Rosen extends an open invitation to think about who we are and what we are, using the law and legal institutions as an entry for this activity (Rosen: 200). Applying Rosen’s anthropological insight of law as being a part of a culture that can be empirically examined, I shall look for characteristics of Danish legal culture, not in empirical examinations of legal institutions, but in literature samples. Law as reflected in literary narratives becomes my focus when identifying legal culture. Because culture has a ‘capacity for creating the categories of our existence and with that imperative it traverses all fields of our lives, knitting them together, thereby making sense of life for us while bridging the gaps’ (Rosen: 4), I look for the ability of legal culture to bridge the gaps between the individual and the community and amongst various communities in society. Given that there might be a tension, can it be mended by an overriding narrative as a tale of who we are? This is Jerome Bruner’s focus when he emphasises the ability of the narrative to characterize who we are, to understand the mind of the other – and moreover having the potential to wander from its narrative status to into the law, thereby contributing significantly to the legitimacy of law, because we recognize the narrative of the courtroom from our daily narrative (Bruner: 2002, 47-49; 65-68).

### From the welfare state to Postmodernity and the competition state

In Danish society ‘law is a matter of policy which is located in the national parliament, the Folketing and to some extent in the local municipalities .... ‘Nothing above and nothing besides the Folketing’ was a catchword in the late 19th century and it is still a part of the tale’ (Schaumburg-Müller:2010, 73). The quote is from a seminar discussing law and literature in Denmark. Schaumburg-Müller will not exclude authors and filmmakers from telling stories about culture relevant to jurists. However, he holds law, politics, and economics for equally important storytellers (op.cit,76-77). Fiction, then, will not provide the specifically advantageous position that I maintain.

The catchphrase ‘Nothing above and nothing besides the Folketing’ was coined in 1878 by a Danish politician fighting for the decisive legislative power of the Folketing against the upper house with its privileged members (Thorsen:1972, 16). In the subsequent constitutional struggle the privileged chamber lost. A constitutional custom was established that favoured the Folketing. In this respect the catchphrase is a part of a modernization project involving universal suffrage, and thus an example of the struggle for gaining access to a say in public affairs. The modernist project was fortified by the

welfare state granting a large extent of social equality, compared to other parts of the world. The battle was won. But does this mean that the war is over?

Zygmunt Bauman- the sociologist of postmodernity - has identified its qualities as an awareness of the containment of the features that modernity produced inadvertently: Institutionalized pluralism, variety, contingency and ambivalence (Bauman:1993, 187). With the fall of communism the West has lost 'the other' against whom it has defined itself.<sup>4</sup> A phase of redefinition occurs (Op. cit., 175-186). In this context also welfare bureaucracies could find themselves in the lurch, since their features are ascribed to modernity: rational planning and the organic and ordering agency of the state. The postmodern changes are echoed in the indicators that political scientists find for a number of structural, correlated and radical changes in Danish state and society. They call for a new characterization – or diagnosing - of the state as the competition state. The development is interwoven with trends in the global community that have affected the Danish welfare state radically. The competition state seeks to actively involve its citizens to participate in global competition as opposed to the welfare state that would seek to compensate and shield its citizens and enterprises against the cyclic trends in the economy. It is a state making its citizens responsible for their own lives. It regards the community as part and parcel of work life and freedom as a right to enact your own needs instead of the welfare state ethos of community as democracy and freedom as a right of participating in political activity: We go from welfare to workfare. While the welfare state would seek stability, the competition state advances dynamic and constantly ongoing changes (Pedersen: 2011, 11-12).

A number of specific changes go together with this overriding characterization, contributing to a blurring of categories and multiplication of diversity. Immigration to Denmark has increased and more than half of the immigrants are from non-western countries.<sup>5</sup> This particular group also includes a larger proportion of persons of Muslim belief, some of them with limited or no education compared to the population as a whole, as well as refugees with socio- psychological problems rooted in the traumas inflicted on them as refugees. Others have a higher education but are unable to find work meeting their qualifications. The enlargement of the EU has opened for an influx of workers from the East to the West: Today Denmark has 82,000 workers from East Europe.<sup>6</sup> EU

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4      The recent revival of East-West in Europe has not decreased the ambiguity.

5      [http://www.denstordanske.dk/Samfund,\\_jura\\_og\\_politik/Sociologi/Grupper/indvandrere](http://www.denstordanske.dk/Samfund,_jura_og_politik/Sociologi/Grupper/indvandrere) (Accessed June 25th 2014)

6      <http://politiken.dk/oekonomi/dkoekonomi/ECE2222470/der-er-tre-gange-saa-mange-oe-starbejdere-som-ventet/> (accessed 14 July 2014)

regulation guarantees free movement of labour within the union. This mobility has put the Danish welfare system under pressure, exemplified by a decision from the European Court of Justice to nullify as discriminatory and hence unlawful a Danish national statute protecting Danish student welfare benefits.<sup>7</sup> Thus national legislature and courts answer to a human rights discourse that takes its legitimacy from international conventions and the application of professional courts rather than daily debate in democratic assemblies. Job security or stability in job functions is not necessarily the order of the day in the competition state – fundamental rights are not stretched that far. A new concept – the precariat - has entered into the vocabulary: members of the workforce met with uncertain terms of working conditions (Standing:2013). In a Danish context this situation could apply even to young academics with degrees in law, economics and social science.<sup>8</sup> From previously being guaranteed a formative role in the nation's identity project, a member of the educated class might now be included in the non-working proletariat. The educated class has obtained an ambiguous quality.

All amounts to a transformation of state and society into to the postmodern condition. Open borders, contingency, flux, absence of fixed categories and with that lack of predictability. Some ties of regulation have been slackened, as when the requirement of membership of a specific workers' union cannot be enforced by law, since it violates the European Convention of Human Rights clause on freedom of association. Power has flowed from the people's assemblies to the more aristocratic courts. Thus regulation has become more complex, more undefined and the call is for more initiative on the part of the individual who at the same time does not have a stable road map to navigate by, since categories have become less fixed, redefined and ambiguous. The demands on the individual are more undefined and boundless, obviously leaving more strain on the individual, more room for conflict and diversity and less for consensus. Demands have been passed on to the individual to define on his own, the internal pressure – the self-exploitation - being much more efficient than the external one (Han:2010, p. 26). In addition, interface with public offices is increasingly being expressed in the binary language required by information technology, a language that hardly reflects the ambiguity of the time.

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7 Se the judgment of 21 February 2013. [http://www.euo.dk/upload/application/pdf/8d-faf478/C0046\\_2012%20DA%20\(2\).pdf%3Fdownload%3D1](http://www.euo.dk/upload/application/pdf/8d-faf478/C0046_2012%20DA%20(2).pdf%3Fdownload%3D1) Accessed on 21 July 2014.

8 <http://www.djoefbladet.dk/blad/2014/01/akademiker-boom.aspx> (Accessed 25 June 2014)

## The open space and the entry of art

In politics new dichotomies appear. The definition of the new 'other' unfolds, drawing on tradition and cultural discourse: The nation state and the EU; welfare and workfare; Danish citizens and migrant (or 'illegal' workers); Ethnic Danes and Non-Western Immigrants – often being equated with the assisting dichotomy Danish Church members and Muslims. Thus political discourse opens up to dichotomies potentially ruled unlawful as discriminatory by the EU court or European Court of Human Rights, inspiring politicians – playing the game – in new codes - to construct smart criteria to fit the unlawful dichotomies.<sup>9</sup> Through this politicians contribute to installation of a static nationalistic identity project that might exclude a growing fraction of the population. The culture project reflected in this chain of events is a static and rooted concept, in that it implies that there is a more or less fixed and identified Danish culture that can be distinguished from equally static cultures firmly rooted in other parts of the world (Hansen: 1987, 66-70). One politician even took resort to de-humanizing his 'other' by labelling migrants from East Europe 'locusts', alluding to the Exodus tale of the plagues of Egypt.<sup>10</sup> There is a close correlation, then, between the coded language of the law and the dichotomies.

I wish to emphasize that in my choice of dichotomies I do not maintain that there is a stronger hostility to immigration in Denmark compared to other parts of Europe, that dichotomies could not appear with other ethnic groups than Danish, or that dichotomies do not appear in other policy sectors, such as crime or gender equality. I also have not explored to which extent the dichotomies appear. I have singled out these examples simply because they unquestionable are a part of public debate and they correspond to a duality unfolding in a large part of Hassan's poems. With this they open up to discuss literature's potential for offering an alternative narrative. A few examples from Hassan's poems should suffice as illustrations of his dual identity: some poems are written in broken Danish, similar to the fashion of uneducated Middle East immigrants (Hassan: 2013, 121-22), while others have a sophisticated treatment of the Danish language (op. cit., 65-66; 74); in one poem the poet is an Arab prince (Ibid., 11), in others he is Danish, although expressing himself in a broken tongue (Ibid., 154; 37); in some he contains both Arab and Danish qualities (Ibid., 53-54). And yet we are assured that it is the same person, the same voice speaking. Dichotomies have been deployed while at the same time falsified in the simple fact that one person contains them all. Hassan makes a mockery

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9      <http://www.b.dk/politiko/brasilien-skoser-venstres-syn-paa-verden> (Accessed on 26 August 2014)

10     <http://www.bt.dk/politik/mikkelsen-oesteuropaeere-suger-som-graeshopper> (Accessed 25 August 2014)

of the safe haven of dichotomies and fixed categories – while also reflecting the hurt they can do to those innocently taking them seriously (Ibid., 5-7). In a third position he contains the conflicting qualities as a multicultural identity (Hansen: 127). There is a splintering of the grand narrative of the rooted and static identity that preconditions the dichotomous discourse. Different perspectives have been inserted and the defining difference has vaporized. A bridge has been established with several dynamic, third positions to encompass the Danish and the Palestinian identity, the hoodlum and the intellectual.

Recently the Danish literature scene has witnessed a number of works in the autobiographical genre,<sup>11</sup> where the writer mixes biographical elements with fiction and in some cases sets himself in front of his work. Hassan's poem, then, is a part of a larger fusion of genres as well as an example of a certain border crossing to be seen also in other areas: Art moves from the galleries into public space and enters into a dialogue with people passing by.<sup>12</sup> Or art and law explore the tension between rule and creativity and thereby in a dialogue inform our understanding of politics and aesthetics.<sup>13</sup> In a US context the law and literature movement has started to redefine itself in broader terms, including Native American ceremonies, hip-hop or documentary theatre, forwarding performing elements and with this providing for a new social community. (Sarat et.al.: 2011, 3: 25). Drawing on Bauman, this brings to mind the defiance of postmodern art of a synchronic and diachronic order and its reservoir of a pool of resources that can be picked at will and random (Bauman: 1992, 27-28).

### The Poet in front of His Work: The Empty space occupied

As has already been pointed out by Hanne Petersen, Yahya Hassan as a poet and an angry young man contains several seemingly conflicting characteristics. He declares himself a stateless Palestinian with a Danish passport (Petersen: 2014, 318). Upon his debut as a poet he also was a drug pusher. He is a ghetto boy and an intellectual. He is a public figure but he is also a young man who was institutionalized for committing crimes.<sup>14</sup> He

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11 Vor tids helt [A Hero of Our Time] by Jacob Skyggebjerg; Den hemmelige socialdemokrat [The Secret Social democtate] by Anonymous; Livet, det forbandede. [Life. The Cursed] by Ken Rasmussen.

12 <http://us2.campaign-archive2.com/?u=76ba27ae829c3bf75050c-c36a&id=b6a977392a&e=fec59a4ab2> (Accessed on 2 July 2014)

13 <http://www.kultur.lu.se/en/research/symposium-art-life-and-the-rule-of-law/> (accessed on 2 July 2014)

14 <http://www.bt.dk/danmark/laes-hele-digterens-historie-yahya-hassans-kamp#kap1> (Accessed on 3 July 2014)

possesses contrasts and dual characteristics and already as an individual he challenges our understanding of categories. He transgresses borders. In his poems he spells out his anger in capital letters. In other words: he is a young person containing seemingly contrasting identities, something that he holds in common with other youths trying to adjust to conflicting requirements originating from for instance a clash between traditional values on the one hand and westernized ones on the other (Zubair: 2006, 263). He occupies an open space – a third position between the dichotomies.

Contrary to what would be expected from a collection of poems it was a huge sales success. The collection – all poems written in capital letters- was published in October 2013 and by the end of 2013 it received a print of 100.000 copies.<sup>15</sup> Translated into German the collection received good reviews with the *Frankfurter Allgemeine Zeitung* and Hassan's reading at the Leipzig Book Fair drew attention in *The New York Times*.<sup>16</sup> Media coverage attests to the fact that Yahya Hassan's story struck a chord with a wider forum than a homebred Danish one.<sup>17</sup> We are talking about popular literature in the objective sense that it awakes wide spread interest, perhaps also owing to the fact that its author as a young man of Palestinian extraction addressed a series of problems hitherto the hallmark of the nationalist discourse: That some members of Muslim communities skim the cream of welfare benefits, while at the same time turning their backs to society, living in the dichotomy of black and white such as believers / infidels; allowed / forbidden.<sup>18</sup> In other words: His opposition to dichotomies goes both ways. In March 2014 Yahya Hassan participated in a debate with another young poet, Theis Ørntoft. The two of them recited their poems from the stage and went into a discussion. The event drew headlines in a leading newspaper, declaring the event a 'summit meeting'.<sup>19</sup> It all amounts to a fusion of poetry, music, performance and political debate into a theatrical format, distributed through viral channels.<sup>20</sup> As spectators we gain access to a direct experience of the relationship between the individual and the community, setting the public scene for a narrative alternating the public dichotomy and the creation of a new community, from which something new can appear (Han: 30-31).

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15 <http://politiken.dk/kultur/boger/ECE2161023/rekord-yahya-hassan-runder-de-100000/> (Accessed on 3 July 2014)

16 [http://www.nytimes.com/2014/04/03/books/young-immigrant-in-denmark-lashes-out-inverse.html?\\_r=0](http://www.nytimes.com/2014/04/03/books/young-immigrant-in-denmark-lashes-out-inverse.html?_r=0) (Accessed on 15 July 2014)

17 [http://www.youtube.com/watch?v=3frM5\\_F71FY](http://www.youtube.com/watch?v=3frM5_F71FY) (Accessed 3 July 2014)

18 <http://www.youtube.com/watch?v=gIP3djcrFdA> (Accessed on 3 July 2014)

19 <http://politiken.dk/kultur/boger/ECE2248646/hassan-og-oerntoft-samlet-til-poetisk-topmoede-paa-hvidovrevej/> (accessed 3 July 2014)

20 <http://www.youtube.com/watch?v=N839DIASGkA> (Accessed on 3 July 2014)



### The poem *The Coffee Break Team*. The setting and the narrative

Could this dynamic approach to society and identity provide a platform for discussing the law in the welfare state? As a test case I chose the poem *The Coffee Break Team*. It is set a state financed institution that rehabilitates young criminals and other young persons with serious psycho- social problems as opposed to the harsh and repressive prison.<sup>21</sup> I chose this poem because it relates directly to my students' curriculum involving welfare state institutions.

What do we experience, then, when we deal with the poem *The Coffee Break Team*? What does its narrative reveal to us? And what can it tell us about the law?

The poem opens with a matter-of-fact piece of information about a note posted on the bulletin boards of all the wards of 'The Sun Garden'. On the note a telephone number is written down. Not much alarming about that. We also hear that the pedagogues can make use of it if they are unable to control the characters of the ward – the characters being the young people institutionalised in the Sun Garden. We are still in the realm of the daily 'business as usual' humdrum. When this number is activated – however - assistance will come from the other wards as well as from friends of the warden and other farm folks. In this one line the poet has drawn up a picture of an almost massive invasion of people from three different directions. It continues:

*AND WHEN ALL HAVE BEEN THRASHED  
AND BEEN SENT TO THEIR ROOMS  
COFFEE WILL BE DRUNK  
OVER BLANK FORMS FOR REPORTING THE USE OF  
FORCE (My translation)*

One striking feature about the poem is its objective, impersonal narrative: Everything is being related as an almost naked narrative, a step-by-step recipe or a habitual set of actions – like a culture. The choice of words does not reveal any emotion. And yet the capital letters spell it out: 'Look here – isn't this despicable'. Form and content contrast each other. And the contrasts multiply: the city boy is being beaten up by farm folks; pedagogues deposit their influence in unqualified personnel; enforcement in a state financed institution is taken over by the warden's acquaintances; the young people are

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21 <http://www.socialstyrelsen.dk/born-og-unge/kriminalitet/ungdomssanktionen-ny/hvad-er-ungdomssanktionen/baggrunden-for-ungdomssanktionen> (Accessed on 14 July 2014)

thrashed and yet the relevant forms testify to the opposite; a mere anonymous notice on a bulletin board can carry a sign, a representation of a violent episode; the thrashing goes together with a coffee break.<sup>22</sup> And to top it all, the place where this violent episode unfolds is a state welfare institution with the name Sun Garden. The violent clashes in the text give rise to the question: How can one person contain these contrasts? As the usage of capital letters in the text seems to imply, the containment is no routine matter. There is no soothing logic, no grand scheme, no benevolent system to which these contrasts can be referred – or perhaps there is a logic, but it is not benevolent. Contrasts come together in the face of the individual who must create himself on these premises. This is the existentialist challenge that the text conveys to us. Where were you, God? I do not claim that Yahya Hassan with his recital style implies that God has died and each one of us is our own god. However, I see that the art form he has chosen for his recitals – in the eye of many spectators or listeners- refers to believers hailing the power of creation (Petersen: 2013, 318). This lends an additional significance to the poem as an indication the creation of self, also a condition of postmodernity.

The narrative of the poem corresponds to one in court. As pointed out by Bruner, narratives wander back and forth between literature and legal institutions. At the court of first instance in the Danish city of Ålborg the events that took place at the ‘Sun Garden’ are now (September 2014) being unravelled in a criminal case against staff members at the institution. A number of them have been indicted for breach of the criminal code. Indictments include assault, crime against personal liberty, threat against witnesses, and criminal damage. A decision was to have been given in March 2014. However, with strong emotions rampant and the number of witnesses having exploded to 150, it is clear that judgment will not be passed until the end of 2014. Under the course of the proceedings the judge remarked: ‘Until now we have heard mostly about emotions. Maybe now finally there are a few facts.’<sup>23</sup> [My translation]. Apparently the case is not entirely about lawyers’ rational concept of law. Popular narratives have wandered into court – all 150 of them, including our poet.

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22      Court proceedings also revealed another meaning of the word coffee break: When staff members were going to sanction or react against a young person, the word would spread that ‘coffee is being served’. This would unleash an influx of personnel to crowd the youngster. (From the author’s notes from court on August 28 2014)

23      <http://ekstrabladet.dk/112/article2245964.ece>

### The law: Gangs and hierarchies

This leads me to ask: What kind of law has wandered into the poem? In the poem the battle unfolds between two crowds or gangs. The hierarchy is there. There are two of them – the near hierarchy represented by the warden and the more distant one, the intended receiver of the forms for reporting the use of forcible measures. Both hierarchies have abdicated, the warden through active will by delegation of powers to his friends and the imaginary recipient of the form – the city hall supervisor – through passive escape, since the forms will never reach her.<sup>24</sup> Everything then becomes about the fight for territory between the crowds, initiated – as if it were a computer game – through the activation of a message on the bulletin board. And in the end, what happened? The forms were not filled out. Nothing – apart from our poet – testifies to the violence. It might as well not have happened and yet we feel that it could happen again and again at any welfare institution – the poem inscribes the event in the culture. There is a repeating, routinely nightmare quality to the poem. We learn that the ‘farm folks’ are friends of the warden. We sense a private force cutting its way through the institution, beating up on the guys they meet. Hassan holds up a drama where enforcement makes a mockery of the welfare state legal culture as well as the will of the Folketing.

If this is law and order being enforced what is then its source and which theory is behind and supports it? On the concrete level the source of law is the note on the bulletin board. It authorizes the administration of thrashing as a way of treatment. The institution has established its own, home-grown law, the deployment resting upon a discretionary decision of a random sample of pedagogues present at any time.<sup>25</sup> The authorization covers use of violence growing haphazardly from three different directions – or four, if we count the pedagogues making the original call. The enforcement depends on the connections amongst all the groups gathering in the block. The result – isolation of the youngsters – flows directly from the explosion of violence and only indirectly from a legal consequence articulated in a source of law. A horizontal relationship has replaced the vertical one. A theory covering this pattern more fully than a hierarchical ordering of written legal sources of law could be Deleuze’s and Guattari’s concept of the rhizome as a set of relations. The concept is borrowed from biology. Examples of rhizome orders would be the onion or animals running in packs or arts. The rhizome grows in multiplicity. It is always there, even when it breaks and deterritorializes, it is cast back and hits its own

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24 Testimony in court shows that in fact the supervisor received plenty reports on the use of force and also dealt with them. (From the author’s personal observations from court proceedings on 27 August 2014.)

25 Testimony in court had it that only 3 staff members out of 70 had a pedagogical education, while others were craftsmen and unskilled workers.

lines again. Dualism or dichotomies cannot be established within the rhizome order itself. Each element relates to the other without a hierarchical order being imposed. While the tree represents the hierarchy and the top or central point of order, the rhizome order will oppose the hierarchical order. One consequence is that genealogy or roots becomes irrelevant for understanding its evolution. A new understanding of the written text can emerge: not as a reflection of the world, but connected with it. The adaption of one element to the other should not be understood in terms of reflection, copying or mimicry (Deleuze and Guettari:2005, 9 - 15). In case of the gangs and the youths, both groups enter into a combined rhizome, feeding on each other, creating a common destabilization of the institution. A new law is set and the rhizome as a concept fit its foundation. Both groups have become tribes (Bauman:1992, 134-35), dangerous drop-outs from postmodern seduction society (Op. cit., 97-98), hence left to the control of repression (Ibid, 112). To this corresponds the discourse in the Ålborg court, where witnesses for the defense talks of the specific dangers being part and parcel of these youngsters and the 'Sun Garden' as the last station.<sup>26</sup> Another corresponding link is the fact that the 'Sun Garden' is not the only institution where similar cases have piled up.<sup>27</sup> And we have seen an increased interest from city hall in engaging volunteer workers for a number of tasks. We even have heard claims made to the effect that the survival of the welfare state depends on municipalities being able to do this.<sup>28</sup>

### Conversations with students: What to do about the Sun Garden?

I had conversations with 12 students, indicating two themes for our talk: (1) If you received the information in this text, how would you handle the case, given that you were a supervisor at City Hall?; (2) What is your general opinion of the way you are introduced to law- textbooks, exercises and classroom discussion?<sup>29</sup> What I try to explore in these conversations is my assumption that Hassan's poems has a potential for student involvement and the creation of a 'real-life' setting and with that activating the students' talent for reasoning and arguing in a chaotic practice field. Apart from telling the

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26 As for instance the former inmate telling the court how his social worker had recommended 'Sun Garden' because a stay there would spare the young man several stays at other, more lenient institutions.

27 <http://www.tvmidtvest.dk/indhold/opholdssted-under-skaerpet-tilsyn> (Accessed 8 September 2014)

28 <http://www.kl.dk/Momentum/momentum2012-11-3-id115189/> (Accessed 8 September 2014)

29 In the following student quotations I have used other names for the students. Our discussions were elaborate and my analysis only covers a small part. I am grateful to my students for taking the time to engage in the conversations.

students that the poem took place in an institution for young people, I gave no further introduction.

The poem proved efficient in offering an ‘adventure’ as a basis for discussion. It both stirred and surprised them. I received responses such as: ‘All alarm bells are ringing’, ‘This is fierce’. The students’ own moral judgment came into play, as when one student indicated that it was selfish of the thrashing team to drink coffee at this time of the procedure. Some students had initiate instincts as to a course of action, saying ‘I would shut up that place’ and Karl: ‘I would fire the whole rotten bunch and employ new, qualified staff’, or Youssouf: ‘I would call in the police’.<sup>30</sup>

The interesting thing in their next reaction was that even though they initially were emotionally involved, all of them turned around and suggested a course of investigation. This was couched in various phrases: ‘I would start an investigation’; ‘talk to the warden’; ‘talk with the staff/ the inmates/ relatives’; ‘talk to witnesses’; ‘talk to the members of the staff, individually.... Find out what really happened’. Marta went one step further in that she imagined how the interaction might take place when she entered into the institution to ascertain facts, how she would affect the employees and how she could act to keep a dialogue, thus sensing that an objective investigation could be an illusion.

From here basically three different approaches appeared: To some this scenario faded gradually into some kind of measure for the future: ‘I would initiate a dialogue’; Karl: ‘I would have a workshop – In fact, my first reaction would be to sack the whole bunch. But in doing so, I would risk law suits from all of them. So trying to mediate the situation would be preferable’. In other words: a clear cut legal solution was discarded at an early stage.

Interestingly enough, the students simultaneously indicated a view of the law as being binary and hierarchical. One student, Karl stated that his idea of law was that it was black and white. There was legal and illegal. ‘My thinking is very Weberian.’ Other students expressed something in the same vein, although differently, as Jill: ‘It is exciting to know what is right and what is wrong’. Or, in the wording of Nick: ‘A good administrator is a person who can separate his job from himself – Weberian like’. To Karl the law and legal

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30 In fact, one of the city hall supervisors on the behalf of her department and the municipality reported the institution to the police. This is clear from the testimony given in court on 27 August 2014.

method will hold the answer, the correct ‘verdict’. The modernist concept of law gave them a platform from which to criticize the practice in ‘Sun Garden’.

A second approach was suggested by two students who saw the need to bring in the police. This was not founded in expressed assessment of a violation of the criminal code (which is not a part of their curriculum). It could testify to a folk law concept – a subtle feeling that this could border on a criminal offence. Also they took resort to the hierarchy, to an authority to help sort out the mess.

The third approach was suggested by Klaus. He stood out from the rest in that he was unable to feel empathy for the youngsters at the institution – or the staff for that matter. A fellow student had informed him of the text, its author and the setting. He found both parties playing a blame-game or seeking the role of the victim. He pointed out that the youngsters were at the institution for some reason and that they were probably rough guys from crime ridden neighbourhoods. Even so his first step also would have been an investigation into what had happened. Interestingly enough he did not mention dialogue or workshop as a part of his repertoire, having no confidence in the truthfulness of either party. In this his viewpoint was similar to the understanding of both groups as a part of the rhizome. To break it he would put up surveillance, comparing the situation to that of central Copenhagen and London, where there were cameras all over the place as a preventive measure against crime. In this he inserted a competing narrative, different from the one the other students had drawn on. His knowledge of the context helped him frame the case as one involving crime. It also made it obvious for him to point to a technical solution to the problem of ‘what really happened’, thus resorting to a modern panoptical solution and inserting a hierarchy in place of the missing ones in the text and finding the ‘objective’ solution where the decision-maker could draw the line between ‘black’ and ‘white’, adversarial paradigm of the law, in other words: the positivist assumption that by sorting out the facts we will get to the bottom of the problem.

### The novel *Pelle The Conqueror*

In the Hassan poem I found a striking absence of welfare state legal culture. So – if ‘*Kaffeholder*’ represents the way we do not want to order our social relations in a state institution – where can we find a narrative of welfare state legal culture?

The most authentic and coherent product I can find to picture this is the novel *Pelle, the Conqueror*, written by Martin Andersen Nexø from 1907 to 1910.

The novel is in four parts in which the main character, Pelle, rises from the life of a herd boy into being the leading figure of the workers' cooperation movement. In this journey he epitomizes the emerging proletariat and he represents the hope for change of capitalist society into a socialist one. After having failed to reach its audience through established channels of distribution, the novel obtained a print of 70,000 copies in subscription directly to its target group. This is probably as close to viral distribution as one could come at the time. To the contemporary encyclopaedia of the educated the novel depicted the workers' situation with 'equally great poetic fervour as fanatic one-sidedness'.<sup>31</sup> Just as Yahya Hassan, Andersen Nexø occupied an open space. Part one of the novel about Pelle's childhood was adapted for the screen and won the Academy Award for best foreign film in 1988. All four parts of the novel have been widely translated into foreign languages – not the least because of the author's popularity with the Soviet regime. Hence the novel testifies to a global popularity in the bipolar world system – however perhaps for diverse reasons. The story about the bright boy climbing up the ladder in capitalist society appeals to Western thinking, while the story about capitalist oppression appealed to the Soviet dominated world. The novel's narrative, then has been widely adopted.

The third part of the novel is entitled *The Great Struggle*. Here the author depicts the conflict taking place between the factory owners and the workers who in the end were granted the right to collective bargaining. Today the 1899 settlement is the manifestation of the origin of the 'Danish Model', regarded officially as the foundation of the welfare state.<sup>32</sup> Nexø pictured an epoch-making event that unfolded in his own time and he put it into a fictional story 10 years after it had taken place. Nevertheless we should not regard the novel as a realistic or historical novel. By involving all elements of society: State institutions, law, Christianity, and organizations in bourgeois society and replacing them with their socialist counterparts he presents us with a creation myth of a new society where social justice rules. With Rosen we might say that Nexø knits together human fields into a comprehensive whole.

### The law in the novel

In the novel *The Great Struggle* bourgeois or private law equals injustice, institutional brutality. The law and Christian hypocrisy are contrasted with social justice, solidarity and the promise of a new community of man on earth, in line with a Marxist understanding of macro development. The narrative elements of the Christian gospel are being replaced

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31 <http://runeberg.org/salmosen/2/17/0945.html> Accessed on 16 July 2014

32 <http://denmark.dk/en/society/welfare/flexicity/>

with socialist solidarity, and the saviour is the young man who stands up for the oppressed. The law is interlaced with this dialectic movement. Every time a conflict unfolds in the epic of *The Great Struggle* we see an underlying theme of a conflict between private law and social law and institutions distributing social justice – the point made being private law's incapability to solve the social problem involved. While witnessing the failure of private law, we are – at the same time - introduced to social institutions that serve as alternative narratives and an entry to a rehabilitating state. This happened at a time when the workers' movement functioned parallel to the political forum, since many workers were excluded from voting rights. In other words: It is a part of the struggle for inclusion into the state. The novel is a harbinger of the new order, in line with Hanne Petersen's observations on literature to catch novelties (Petersen: 2014, 309-10).

Hence the law and state institutions are omnipresent. Returning to the issue of the legal culture of the welfare state, the question then is: How is social justice to be installed into society – how are these people to be included? The novel is perhaps not so specific about this. However, there is a clear allusion to the hierarchy. Pelle is the epitome of the socialist movement, organizing his people in the struggle, and victoriously leading them to a demonstration in front of the King's palace as a warning to him that he – Pelle - will replace him as the top of the hierarchy and the workers will sweep their way into the state. The dialectic forces will work for a replacement of one hierarchy – the bourgeois - with another – the socialist.

Hence the novel and its black-and-white ethos harks a new layer in the nation building process of the late 19th century while also providing a baseline for our sense of the rational and modern welfare state. In 2004 the author was awarded a place in the Danish literary canon. Before that generations of Danish school youths have read excerpts from the novel.<sup>33</sup> Thus – through the secondary socialization of the school it has been internalized by those exposed to the public school system (Berger and Luckmann: *passim*) in full correspondence with the catchphrase 'Nothing above or besides the Folketing'.

### Balancing the findings

Using culture as my playground I have – from different directions – approached my question if fiction as a creative expression can provide a specifically advantageous framework for discussing law and legal culture in an increasing diverse society. Rosen's anthropological concept of law as culture has been an inspiration to search for Danish

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33      <http://pub.uvm.dk/2004/kanon/> (Accessed 8 September 2014)



legal culture as reflected in two samples of literature and in conversations with students, holding up a static understanding of culture against a dynamic one.

My conversations with students confirmed that Hassan's poem provided a framework for discussions about the law and its conditions in an institutional setting in a welfare institution. The poem, in combination with other poems in the collection, moreover, could lead to a discussion on legal culture, identity and the postmodern condition, involving the focus of the practitioner, which is: how to handle the case, which also invites the reader to ask additional questions, such as: How do I read the situation in the institution and how do we see the role of the practitioner? The question then is: Why use literature, when social science analyses of society obviously carry information on the changes that I want to address? The answer to that question lies mainly in reactions that I received to the poem. All students got involved, some of them perhaps identified with the youngsters, some did not. However, the personal standpoint was alerted when my students imagined themselves act in the field as practitioners and with that the opportunity to critically question one's own position. Hence the conversations on literature brought forward another dimension of culture apart from the empirical concept, namely the normative or ethical and educating or forming aspect of culture (Hansen: 63-64). This corresponds closely to the reading that law professor Agnete Weis Bentzon chose when she took elements from Lion Feuchtwanger's novel *The Oppenheims* as a yardstick for her analysis of a possible infusion of Nazi norms into the Danish environment and hence a standard for the humane (Bentzon:1987).

The confrontation with literature also introduced my students to a new understanding of the law, quite novel to the one they had experienced in their textbooks. They came to see the law and its enhancements as an element in legal culture.

Another argument for using literature deals not so much with the pedagogical motivation as it addresses the content. It hinges on the border-crossing potential of the literature, art and the aesthetics, reaching out across the open space, bridging the cracks that have appeared in the midst of the postmodern process. My reading of the Hassan poem opened up for an understanding of the law different from the adversarial or the hierarchical one. In the poem the law is represented by force and flows in an interconnected movement between two gangs or tribes. They establish connections, similar to those of the web of the rhizome. Merima Bruncevic in her original deployment of Deleuze and Guertarri's concept of the rhizome shows how the concept of the rhizome allows for connections to create common space (Bruncevic:2014, 37).

In Hassan's poem the situation differs from a number of Bruncevic's analyses. Where Bruncevic shows the benefits of the rhizome view on the law, a rhizome of violence had been established in the dysfunctional institution, described by our poet.<sup>34</sup> Where is the yardstick, then, that we can hold up to rule out this concept of 'dangerous youths, excluded from society'? The answer to this I find not necessarily always in the code, at least not as long as we talk law in action. However, Bauman's understanding of our obligation to 'the other' seems more relevant. We are in a period of time in some ways similar to the one pictured in *Pelle the Conqueror* and the struggle of the late 19th century, when some groups of the population experience barriers to their access to society. I am not in favour of replacing the coded democratic law – or even the less democratic human rights law and court practice with literature. However, when talking about the law's role in a nation building process, we could get a lot wiser by engaging in the inclusive and identity shaping voice of literature (Petersen: 2014, 311; 318-19, channelling the unsaid and the ambiguous into our conversation and questioning our assumptions of the clear cut and simple truth. If – on the limited background of this analysis – I were to advance a tentative characterization of Danish legal culture, I would emphasize its capacity for inclusion of new social groups into state and society, not through repressive regulation, but through custom and institution building.

### Relating to the law and literature movement

An introduction to the interdisciplinary method of law and literature to the legal professions in the Nordic countries mentions the increasing importance of human rights and European law as one of the reasons for a growing awareness of the law and legal institutions, perhaps related to the EU and importance of human rights; 'law and literature is perhaps not a direct answer to this situation; but it is part of a larger questioning of or an investigation into law's cultural or ethical foundations' (Simonsen and Tamm:2010, 8). In this analysis, I have separated the human rights perspective from the cultural one, allowing a discussion about culture as reflected in literature to take a place of its own. I will not claim that literature makes us better persons. Or literature may offer a richer impression. In this way literature and with that the Hassan poem provides a low-cost, low-risk surrogate experience (Posner: 482).

Also literature is open to the reader, while human rights discourse does not do away with dichotomies. When employing the human rights discourse we activate its

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34 I distinguish here between the institution of the poem and the situation being unraveled in the court case.

constitutionally embedded fundamental rights, whether those rights are stipulated in the Danish constitution, in the EU treaty or the European Convention of Human Rights. The discourse takes resort to another hierarchy, two, in fact (or maybe three), while the human rights discourse both implies that the politically elected legislative branch of government may be overruled by the non-democratic judicial one and – moreover – it includes the international dimension in a recourse to both the European Court of Justice and the European Court of Human Rights. However, the human rights courts address the issues in retrospect – in court. But as was the clear in the ‘Sun Garden’ case, the problem is not exclusively about lawyers’ law. To take another example: Debating Danish welfare benefits we have examples of politicians willingly catering to the insecurity, using de-humanizing dichotomies or writing off the fundamental rights perspective as the ‘pettifogger interpretation’, [Da.: *prokuratorfortolkninger*] as it happened when there was a discussion about Danish national regulation to secure student benefits for Danish nationals (Mortensen: 2014, 2; See also above). Either way this bodes ill for the human rights discourse as framework for a dialogue about the legal culture we want to advance, assuming that law is not the exclusive domain of lawyers in court, but also performs a democratic function in public debate, in the education of government officials and in nation building – and, in fact – lends part of its legitimacy from this communality of narratives.

In a world of rapid and uncomfortable changes, forming a fortress of the static concept of culture is perhaps the fastest way of creating solidarity (Bauman 1992: 172, referring to East Europe). But as history shows, it may come at an extremely high price that very few are willing to pay at the end of the day. Human rights were introduced as a reaction to this expulsion. So will human rights – once again – be the answer? It will be part of the answer. But it cannot cover the whole range.

A perspective on this question can be offered when taking a closer look at the origin of the American law and discipline in the US as a reaction against the rise of the human right movement. The law and literature founders grounded their initiative on a refraining to enter into an ‘equivocal discourse that leaves us open to avoidance or even an acceptance of what we thought bizarre but with a straightforward resistance and a strong reaffirmation of the values that the unacceptable discourse had offered (Weisberg:2011, 46-47; 48). Weisberg today has modified his original criticism of the coded approach – just because the coded approach in Nazi Germany has aided expulsion it does not mean that expulsion is coded into it (Weisberg: 2011, 47).

We cannot compare the situation of the USA in the 1970s with the present Danish one. However, the insight still stands that literature can fill the cracks whereas the bright light of the rational coded language will cast shadows that will make it possible to include and exclude.

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