

Public values and the Danish Court Reform –
A tentative project description

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1.0 Introduction

The overall purpose of this Ph.D. dissertation is to critically assess the ongoing Danish Court Reform through the lens of public value theory. The basic claim is that a public value based analysis holds great potential towards providing new insights into the workings of public sector reform through its ability to shed light onto the complex milieu in which values – often unique to the public sector – constantly are forged and challenged by external and internal impulses.

A common feature of public sector reform strategies – particularly during the eighties and nineties – has been a stark reliance on concepts and ideas stemming from the mindset broadly known as *economic individualism*¹. The philosophical basis for economic individualism can, among other things, be defined as “*a philosophy emphasizing in matters economic the values and interests of the individual*”². In more concrete terms, economic individualism manifests itself in the form of *privatisation theory* and *New Public Management (NPM)*³. Common to these manifestations is a stringent focus on a relatively narrow set of values such as *efficiency* and *profitability* which often leads to a somewhat unbalanced approach when it comes to providing adequate answers to questions concerning public sector reform.

Unlike the analytical approaches grounded in the philosophy of economic individualism, public value theory offers an alternative argument based on the concepts of public interest and public values. The core argument of public value theory is the claim that the public sector contains an uniqueness that severely complicates – if not even renders it all but impossible – the full transcendence of market economy based forms of management into the public sector. This is so because the public sector is not simply a market, and accordingly should not be treated as such⁴.

This particular analysis therefore joins rank with a much broader body of work critical of the past decades of market oriented dominated reform initiatives with the public sector⁵. Not so because there is nothing the public sector cannot learn or adapt from its private cousin, nor because that said uniqueness of the public sector renders it incapable of change – but rather because there is a present need to provide a counterbalance towards the dominating economically based

¹ Bozeman (2007) provides an excellent introduction to the concept of economic individualism

² Bozeman 2007 pp. 3-4

³ Kelly et al (2002) p. 9

⁴ A more thorough introduction to the differences between the two approaches is provided below

⁵ Antonsen and Jørgensen 1997, Bozeman 2002 and 2007, Jørgensen 2006, Jørgensen and Bozeman 2007, O’Flynn 2007

pervasiveness, and consequent one-sidedness, of much of the public reform work currently carried out. In this particular study we look at the Danish Court Reform for a number of reasons which we shall attend to in more detail below.

2.0 Research question and general assumptions

The main assumption underlining the research thesis is that the Danish courts enjoy a unique position within the public sector due to their *historical heritage* and *constitutional position* and because they constitute the *ultimate interpreters of the law*⁶ (constitution) which ideally should demarcate public value boundaries⁷. When taking into account the general lack of public administrative grounded research within the legal domain in Denmark, we therefore end up with an interesting foundation for a critical case study in which we can test the salience of values in public sector reform.

This brings us to the general research question: *whether new reform tendencies and ideas are absorbed wholeheartedly in their own right by the judicial sector or if they are first processed and converted in accordance with the prevailing institutional value doctrine?*

Central to the debate – as we have already pointed out – is the question of *values*. Institutional values act as the lens through which new policy initiatives and proposals are perceived and subsequently addressed. And in doing so, values constitute a normative factor that has to be taken into account every time decisions are made regarding the production of a specific output regardless if they are services or administrative functions.

So whenever an organisation is confronted with demands – be they endogenous or exogenous – for reform, these demands are indivertibly setting the scene for a deliberation over what values should constitute the core of the reform.

⁶ Bozeman 2007 p. 15

⁷ One could argue that there exist somewhat of a time-lag between the written law and values in the society at any given moment, since values tend to fluctuate and develop with a faster pace than laws are adjusted

2.1 Thesis structure

The dissertation will be divided into two principal sections. The first section will be preoccupied with the workings of value theory, that is, what are the theoretical limitations and how could the theory be further developed allowing for a wider application in public administration research. Particularly the question of how to creditably measure and apply public value data will be addressed in this section.

The second section of the dissertation will attempt to apply the theoretical findings to the empirical case of the Danish Court reform. The objective is twofold; firstly to test the usability of public value theory in real world analysis, and secondly; to provide empirical knowledge about a (political science wise) neglected area of the Danish public sector.

In the following section I will briefly introduce in more detail some of the aspects that I find particularly interesting in this regard.

3.0 Looking at public values – Theoretical implications

The body of work preoccupied with the study of public values has been growing significantly during recent years. But what is actually the prime focus when speaking about public values? Is it a question of improving the quality of the public sector and its subsequent output which arguably could be perceived as a strategy of good management?⁸ Or is it perhaps a question of identifying the relative pervasiveness of specific values in the public vs. private sector in comparative studies?⁹ Finally, some scholars choose to apply a more normative approach to the whole question of values arguing that the public sector with its corresponding values constitute a unique setting which should be treated accordingly¹⁰. This last body of work constitutes, in my opinion, the most interesting, but also potentially controversial approach to the question of public values, since its claims are susceptible to outside critique of an overtly biased (normative) reading of what constitutes public values. This is obviously not a problematic that has gone unnoticed by the authors writing within this particular paradigm and consequently much work has been done to refute the critique. Despite these attempts I nevertheless believe that the credibility of the theory would stand to gain from a more rigorous application of its practical enactment – particularly with respect to measurement validity. In the following section we shall therefore in a few words review some of the many implications one might encounter when attempting to measure public values.

3.1 Measurement validity in value studies – room for improvement?

A critical question always present when dealing with the measurement of values is whether our findings in fact represent what they claim to do? None withstanding the growing body of literature preoccupied with the importance of public values, more attention could be paid to the particular question of measurement validity.

The question of measurement validity is an inherently difficult issue once the scope of potential public values are broadened so as to include “softer”, non-pecuniary variables¹¹. As long as the focus is limited to issues of a pecuniary nature – such as; “whether individuals prefer more

⁸ Moore 1994 and 1995, Horner et al 2006, Stoker 2006

⁹ Van der Mal et al 2008

¹⁰ Antonsen and Jørgensen 1997, Bozeman 2002 and 2007, Jørgensen 2006, Jørgensen and Bozeman 2007, O’Flynn 2007

¹¹ Hechter et al 2005, Hecter 1992, Hill 1981, Schuman and Johnson 1976

money to less” – the task at hand is relatively manageable since most people would assume when dealing with individual values that a person would always prefer more money to less in a given situation. This allows the researcher “...to specify *ex ante* the values of the expected outcomes of the set of feasible course of action”¹² as it is often the case with approaches grounded in the philosophy of economic individualism where people are assumed to maximize their own utility in social relations. But once the analytical scope is broadened and values of a non-pecuniary nature is introduced, the problems begin to emerge when it comes to securing a creditable level of measurement validity – because what exactly constitutes *benefit* and *cost* of a given action that does not involve the allocation of tangible benefits such as money ?¹³. This problem calls for a stratification between the different types of values one may encounter.

One possible approach to distinguishing between the different forms of values is to employ the concept of *instrumental* and *immanent* values¹⁴. Instrumental values are in this regard those values that provide means to an end and which do not carry any deeper form of meaning to its user, whereas immanent values carry their own (independent of the surrounding society) inherent meaning. A useful example to exemplify what these differences entail under real life circumstances could be to imagine that you have been invited to a party by a colleague. In this case you could ask yourself; “*why was I invited to this party?*” was it because the host genuinely wants to see you (immanent) and spend time with you or is it perhaps because he/she has some sort of ulterior (instrumental) motive unknown to you? Perhaps you are in a senior position at work which could open up for a series of conspiratorial – perhaps unfounded – speculations of why exactly one was invited. The above example, albeit primitive, highlights some of the fundamental problems of distinguishing between immanent and instrumental values. We may very well encounter the same type of problems when looking at the court reform. For instance, are the court staffs simply paying lip service to the essence of the reform when asked by outside researchers or do they genuinely believe in the reforms intentions?

Jørgensen (2006) presents another take on this problematic by ordering values according to grounding. Four basic categories are in this case used to rank the relative intensity and strength of a given value, spanning from desired *preferences* (type III) over *consequence* (type IIA) and *consensus* (type IIB) based values to the most robust form of values expressed in *principles* (type I). If we juxtaposition this categorisation with the immanent/instrumental dichotomy we can

¹² Hechter et al 2005 p. 91

¹³ Ibid

¹⁴ Hechter 1992 p. 216, Rokeach 1979 p. 48

argue that there are some similarities, at least in terms of their practical application. For instance, following the logic of the grounding model, individuals would normally be more inclined towards changing their type III values if the right motivation was provided whereas it would take very strong measures, if at all possible, to change the type I values. Likewise instrumental values are inherently less stable than immanent values, and the former can consequently easier be manipulated or adapted to changing circumstances, since they only serve an instrumental purpose whereas immanent values are deeply rooted in the individual.

It is perhaps at this point important to point out that although one may distinguish between immanent and instrumental values, it is far from a given which values belong to what category. Rather, this is a highly context depended question and only in extreme matters such as life and death can one with some credibility speak of a static distribution of values¹⁵. In most other cases one can only with a small degree of certainty claim a priori that some values are immanent whilst others instrumental, instead the categorisation must be based on real world analysis of the social setting in question.

And this is where the above theoretical distinctions may be of some assistance. Given the extrovert nature of instrumental values they are normally easier to identify since they usually amount to some form of tangible result (i.e. observable behaviour) and therefore are, in principal, subject to empirical testing¹⁶, whereas immanent values may lack such measurable characteristics. We therefore need to employ a “negative” application of the value concept by arguing that immanent values are only truly measurable when a person acts at the expense of his or her instrumental values¹⁷ - that is, choosing some form of action that renders your personal (instrumental) outcome worse off compared to what could have been the case (i.e. staying loyal, even when such action is deemed unpopular by the surround society etc.).

It is within this field – i.e. the measurement of whether people are willing to sacrifice their own (instrumental) utility in order to safeguard their (immanent) principles – that I believe public value theory need to focus in order to increase its explanatory potential. I will return to the more practical aspects of the subject in the last section of this paper.

¹⁵ Hechter 1992 and 1999 provides a novel study of advance directives to substantiate this claim

¹⁶ Bozeman 2007 p. 123

¹⁷ Hechter 1992 p. 221 and Jørgensen 2006 p. 514

4.0 A brief reading of the Danish Court Reform

In this section we briefly go through some of the most important aspects of the Danish Court Reform. The current court reform was initiated by the Danish Ministry of Justice in April 1998 with the purpose of examining a series of questions related to the structure of the Danish courts and their administrative practices¹⁸. The reform was primarily targeted at the city courts, with only minor recommendations concerning the higher courts. The basis of the reform was for a substantial part provided by a report published by the Courts Standing structure Committee in 2001¹⁹ and a number of reports from the Council of Administration of Justice²⁰.

4.1 General structure of the Danish court system

Prior to the ongoing reform initiative the Danish city courts was organised in 82 separate jurisdictions as a result of the previous reform dating back to 1972. The 82 jurisdictions were quite different in terms of size and manning, with as many as 48 jurisdictions employing only one judge whereas the City Court of Copenhagen with its 42 judges constituted the other end of the spectrum.

Apart from the courts of the first instance, Denmark also has two high courts covering respectively the western and eastern parts of the country (Østre og Vestre Landsret) and The Supreme Court (Højesteret) located in Copenhagen. Finally there is The Maritime and Commercial Court which deals exclusively with issues pertaining to business and trade.

4.2 Key points of the court reform

The court reform can be subdivided into three main areas. The first area is **Jurisdictional Reform** (Retskredsreform) concerning the reduction of City Court jurisdictions from 82 to 24. This part of the reform constitutes the structural basis upon which the other, more substantive, reform initiatives would be implemented.

Secondly there is the **Content Reform** (Indholdsreformen) which contains the more substantive changes and recommendations primarily pertaining to legal matters. Of these,

¹⁸ Betænkning 1398 (2001) p. 15

¹⁹ Betænkning 1398 (2001)

²⁰ Betænkning 1348 (1997), 1352 (1998), 1401 (2001) and 1436 (2004)

particularly the *minor case process*, *group legal action*, *jury reform* and *legal conciliation* initiatives constitute a break with the traditional procedures of the city courts and they have the potential to significantly increase the authority – and workload – of the courts of the first instance.

Finally, the third part of the reform deals with **Land Registration** (Tinglysningsreformen). Prior to the reform, land registration constituted to a significant part of the daily work load of the city courts taking up almost one third of the personal. With the reform, land registration will be centralised to one location and citizens will in the future have to use the internet (digital signature) in order to access the service.

4.3 Structural recommendations by the Standing Court Structure Committee

The Standing Court Structure Committee has provided the majority of the preliminary work in terms of the structural changes needed for the reform to be effective²¹.

The point of departure for the Committee has been the growing number of demands exerted upon the city courts to provide more and increasingly complicated services. Some of these new services can be encompassed within the existing court framework, or with only minor structural alterations, whereas others are of such a magnitude that they require a profound reorientation of the entire system. One service belonging to the latter category pertains to the introduction of first instance rulings in civil cases, which requires collegial deliberations amongst several judges, which is problematic given the current staffing level with most jurisdictions have only one appointed judge.

The above mentioned problem points towards one of the most essential elements of the court reform, namely the classical proximity vs. specialisation/centralisation dilemma. It is often readily assumed that the distance between citizens and government should be as little as possible on grounds of representation, oversight and legitimacy – something which the committee also addresses as a potential caveat of the reform²². Despite the potential problems of diminishing proximity, the committee nevertheless recommended that the reform proceeded towards fewer and bigger jurisdictions since the economic and practical costs associated with upholding the existing structure was too high. Consequently the vantage point of the committee proposal for a reform was

²¹ Betænkning 1398 p. 32

²² Betænkning 1398 p. 34

a significant reduction of jurisdictions and a subsequent upgrading of the remaining courts to a standard suitable for the growing legal and administrative demands.

5.0 Applying theory to the case

A series of challenges presents themselves once the theoretical and empirical aspects of the dissertation have been addressed: how does one fuse the two into an applicable analytical tool?

Firstly there is the question of how values are transposed from the level of the individual to an organisational level? Are values at the organisational level simply an aggregated version of the plural of individual values found amongst its constituency? And if so, how are this myriad of values organised and potentially ranked in relation to one another? Rokeach offers a distinction between the two by arguing that individual values can be defined as “...*socially shared cognitive representations of personal needs and the means for satisfying them*” whereas institutional values are “...*socially shared cognitive representations of institutional goals and demands*”²³. Given that the above definitions are true we should therefore not run into significant problems when moving from the individual to the institutional value level. But obviously, this is most likely a subject which would require a great deal of further deliberation in order to be satisfactorily addressed in the final analysis.

Another significant challenge is how to determine what values matter and should be studied and – equally important one might add – what values should be discarded from the analysis due to their (perceived) irrelevance. The task is twofold, in that first a comprehensive mapping of the values located within the institution in question must be carried out in order to gain an initial overview of the potential value spread. Secondly, the selected values must be stratified according to relevance and relative strength. This step is particularly challenging since values tend to be context depended²⁴, meaning that whereas a given value may be highly salient in one particular setting it may likewise be of less or no importance in another setting. This is not to say that values within the public sector in general are organised according to completely arbitrary principles, since this is far from the case. Some general criteria for appropriate institutional behaviour will most likely always

²³ Rokeach 1979 p. 50

²⁴ Bozeman and Jørgensen 2007 p. 358, Jørgensen 2006 p. 525

exist within the public sector, so we are rather dealing with the finer nuances than actual shifts on a paradigm level²⁵.

The challenge is therefore to conduct an initial mapping and ranking of the values existing within the Danish court system and subsequently to compare this with data from other surveys made within the Danish public sector. This first step will allow for a general conception about what values constitute the core of the Danish court system.

Once the initial mapping and ranking of the dominant values within the court system is completed, we must turn to how these values interact with the values embedded in the reform. In order to do this we must repeat the value mapping exercise but now focus on the reform in order to unveil what values underpin the initiative thereby creating a suitable standard of reference for the analysis.

5.1 Data selection and compiling

The data selection and compiling will utilise a combination of qualitative and quantitative methods. The following tentative procedure is proposed:

Initially random qualitative interviews are conducted with different groups of the court personal in order to gain an basic understanding of the employees own perception of what values they believe to be important in their daily work. This is combined with text analysis of official written material from the courts concerning codes of conduct, institutional values, institutional objectives etc. Some group observations may also be conducted so as to observe daily work routines; meetings etc. which can further underpin the value mapping effort. The qualitative investigation will also serve as a crucial foundation for the development of the questionnaires that follows.

The questionnaires constitute the perhaps most important part of the value mapping effort in that they are used to unravel the distinction between immanent and instrumental values through an (hopefully) elaborate set of questions. The answers of the questionnaires will subsequently be run through several statistical tests in order to illuminate the various causal relations and hopefully establish – in partnership with the qualitative findings – a solid base for understanding which public values that dominate within the Danish court system.

²⁵ Vrangbæk (2003) offers a comprehensive survey of the values of civil servants in the public sector which supports this claim

The questionnaire and subsequent data analysis are essential to the analysis but it also amount to the biggest challenges in the entire project, since much work has to be done in terms of creating a suitable dataset.

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