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A tightrope walk between two spheres of logic : observations-- and self-observations-- of a social scientist in parliamentary politics [enqÃ»ete commissions]

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**A TIGHTROPE WALK BETWEEN TWO SPHERES OF LOGIC**

**Observations—and Self-Observations—of a  
Social Scientist in Parliamentary Politics**

*[enquête commissions]*

*Legislative bodies & Germany (West) & Committees.  
Parliamentary practice &  
Federal Republic of Germany. & Bundestag & Rules  
and practice.*

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Rolf Rosenbrock

**A TIGHTROPE WALK BETWEEN TWO SPHERES OF LOGIC  
Observations — and Self-Observations —  
of a Social Scientist in Parliamentary Politics**

In order to facilitate the "preparation of descisions on large and important issues," the Deutscher Bundestag — the federal parliament of the Federal Republic of Germany (FRG) — has adopted the use of so-called "enquête commissions." <sup>1</sup> As a rule, such commissions consist of 9 members of parliament (MPs) and 8 experts. The MPs are chosen proportionally, according to the representation of their respective parties in the Bundestag; the experts are appointed by the President of the Bundestag on the recommendation of the parties. This process is meant to emphasize the formal independence of the experts from the parties. In the work of the commissions, both MPs and experts have the same rights and duties, especially equal voting rights. The chairperson is an MP.

Because of the expense and the danger of public (over-) saturation, enquête commissions have only rarely been constituted: in the history of the FRG, there have been less than 20 such commissions. In the present legislative period — which will end with all-German elections in late 1990 — there are a

commissions ended the active portion of their work in the Spring of 1990 with the completion and publication of extensive Final Reports. <sup>3</sup>

Being a member of two such commissions represents a sizable burden of work, which hardly allows room for a "normal" professional life. In their nearly three years of work, the GKV Enquête met 47 times, the AIDS Enquête 78 times, for entire days. Of these full day meetings, over 9 (GKV) and 22 (AIDS) meetings included public hearings that sometimes stretched over several days. Moreover, there were over 100 subcommittee meetings, an intensive production of working papers, and the processing of approximately 20 external expert opinions and of the more than 1,000 documents and publications introduced by the members and staff of the commission itself.

Beyond the actual time and work implications, the appointment of social scientists to the world of parliamentary politics represents a challenge to their understanding of themselves and their professional roles. Scientists in this parliamentary scenario are supposed to produce, together with representatives of other disciplines — in this case physicians, economists, and jurists — and with academically trained non-scientists — the MPs — a kind of book. Such a task is of course comparable to the work done in large empirical studies, but everything is nonetheless completely different. This is due to two differences.

For one, the members of a scientific project team operate, for the most part, on common assumptions. Battles over fundamental scientific questions usually take place between project teams, not so often internally within a single team. In this regard, there is also a basic difference for policy advising,

Working in a parliamentary commission looking into one's own area of expertise — in this case, public health/public policy — would seem to simplify the hurdles involved in translating this desire or perhaps even will into workable policy. There is, of course, a high price to be paid: the scientist must subject him/herself to a logic different from that of typical scientific projects, that is, one must think and act differently. <sup>4</sup>

As a scientist, one cannot simply enter parliament draped in an invisible ivory tower, and one cannot except when requested take an *ex cathedra* position regarding one's area of speciality. In contrast to this, it is expected that one sensibly and sensitively participate in the shaping and negotiating of the full scope of the problem. One must often "cross borders" in two sense: the borders of one's own "area of responsibility," but also the borders of the usual processes governing scientific examination, inferences, findings, and conclusions. The knowledge at one's disposal must be "sorted" — sometimes using tactical power-plays — under the aspect of its applicability for the political statements to be included in the reports. There is an additional mechanism, which strengthens the tendency to use this approach: it is true, on the one hand, that the independence of the experts is respected, but there is of course, on the other hand, mild peer as well as partisan pressure. "Science" and "scientific considerations" often become a kind of camouflouge — one used by all sides — for the desire to shape the political process and outcome. The expert is faced with two possibilities, between which he/she walks a dangerous tightrope: either (1) he can come complete with his standard papers and arguments and pay no attention to the give-and-take and the political context of his co-commission members; in this case he condemns

as a stalling mechanism, a tool for public agenda setting, or are simply seen as an apt symbolic use of politics; they can also result as the byproduct of agreements reached in other political arenas or serve as an instrument of institutional legitimation. Despite these often hidden motivations, the work of these commissions is in no case without effect. The previous two commissions dealing with health policy have had — under sometimes different formal frameworks — a widespread influence on the political climate and debate in the FRG. The Social Enquête (1966) <sup>6</sup> proposed the further development of the German system of uniform and universal medical insurance through proportional contributions according to income level (under the joint purview of unions and employers), a principle which has remained until today. And the Psychiatry Enquête (1975) <sup>7</sup> introduced a number of reform proposals and project models designed to improve the treatment of the mentally and psychologically ill.

Likewise, the GKV Enquête and AIDS Enquête only seemingly served legislative purposes:

- At the time the GKV Enquête was constituted, the governing coalition of conservatives and liberals (the Christian Democrats [CDU/CSU] and Free Democrats [FDP]) planned for a significant structural reform of the state Illness Fund. The opposition Social Democratic Party (SPD) felt that such significant reforms — in the highly charged and interest-laden arena of medicine and insurance politics — could only be undertaken with broad parliamentary support; with this justification an enquête commission was recommended as a scientific clearing house for such an undertaking. The governing coalition rejected this

for a statewide intensification of the treatment of AIDS as a contagious disease (including mandatory testing, reporting, and severe restrictions of civil rights up to the quarantine of those infected with the virus, measures that were in part introduced in Bavaria). On the other hand, the government agreed with the European Community's call for social education and information, although in practice, the development of such programs was still insufficient. This highly thematized circumstance of two opposing strategies in the FRG to combat AIDS was reflected in the fact that of the four expert selections allowed the governing coalition, three were informally "occupied" by the CSU. In turn, the important chairmanship was awarded a Christian Democratic MP who supported the public health principles and strategies of the government. The over-proportional representation of MPs propounding conservative if not repressive arguments led to a struggle between two distinct approaches: (1) a strategy of searching out and identifying, which asks: how do we identify the greatest number of HIV infected individuals? what can we do to neutralize these potential sources of infection? And (2) a strategy of education and learning, which seeks to answer questions like: how do we organize education processes as quickly, as far-reaching, and as long-lasting as possible, processes with which individuals, institutions, and society as a whole can deal with the — as yet ineradicable — HIV virus? And how can infection prevention be maximized while minimizing discrimination against and ostracism of socially vulnerable at-risk groups such as gay men, IV drug users, prostitutes, and foreigners? <sup>9</sup>



effective incorporation into the commission's findings and report requires from the scientist a serious and sensitive response to the — sometimes unspoken — needs and pressures of the other experts and the MPs.

## **2. Outlining the Report and Setting the Agenda.**

Before a scientist can begin work on a publication, he/she needs — among other things — an outline. This outline is developed according to the epistemological logic of the subject in question and is then tested according to the logic of the presentation. In a parliamentary commission, this process is driven by quite different motives. The outline of the report is simultaneously the agenda the commission has or will set for itself; depending on the order of the report's headings, a different timing and other points of emphasis emerge that produce potentially differing results, both in the public as well as in the report. This is not a matter of negotiation based on epistemology, logic, division of labor, or user-friendliness (although these are constantly offered as rationales). Rather, the agenda-setting decisions reflect the various political interests at play and are therefore also a question of power.

- In the **GKV Enquête**, the governing coalition would have preferred to limit the scope of the commission to the financing and organizational reform of the Illness Fund. This desire seemed to correspond to the typical, three-pronged "policy reduction" approach of state governments in this sector,<sup>11</sup> namely (1) health policy is reduced to the problem of patient care; (2) problems in patient care are reduced to cost considerations; and (3) if costs can be (re-) directed, such costs are

and across the board criminal law and contagious disease/quarantine measures and, if necessary, to "strengthen" the provisions of existing health laws. Such a proposal could have effectively stressed its proximity to the stated purpose of the enquête, namely advising the legislature. It would, however, also have meant reducing the manifold and multivalent problems of AIDS to their legalistic aspects only. It was therefore a success — one supported and driven by a majority of commission members — to first address the issues of "Social Implications of AIDS," "The Natural History and Clinical Manifestations of AIDS," and "Primary Prevention." Once these issues had been investigated in the Interim Report (Spring 1988),<sup>12</sup> the legal and juridical aspects of AIDS could no longer be viewed in isolation, rather only in light of the necessity of education, outreach, and the creation of an atmosphere of trust in those groups mainly affected by the virus.

To summarize, the structuration and outline of a problem, and its presentation in the form of a book or report, is no less important nor less complicated in a parliamentary forum than in scientific work. The crucial determining factors in the former, however, are dictated by political considerations and priorities that are often realized only after long battles involving openly political argumentation and negotiation. The failure of one's own concepts and proposals in the outline-setting process can often hardly be compensated for in the subsequent work of the commission.

and experts tend to disappear. Compromises are negotiated between the experts themselves as well as between experts and MPs. More important than the official or unofficial status of negotiations is the mutual acceptance of informally recognized representatives, a role that can pass from commission member to commission member according to the topic at hand or simply as time goes by. The resulting negotiation is, of course, not merely a question of scientific methodology: proportional compromises, "unholy alliances," and all kinds of trade-offs become possible if not accepted procedure.

During public testimony, specialist panels are often constituted that — measured against the state of available knowledge — are often less than optimal. The process around the selection of these panels is taken very seriously, since the testimony of witnesses becomes a kind of "documented proof." What enters the record unchallenged becomes the *de facto* policy position of the commission and is therefore "true." As a result, it becomes important during the hearing of testimony to elicit through questioning those statements that "fit" one's own overall views and strategy. Under this not very scientific point of view, it is, for example, a great mistake to dispute the claims of an "opposing" specialist during testimony, since this individual is then given an opportunity to enter his/her "undesirable" point of view into the record a second time. Rather, it is much better to criticize an "opposing" viewpoint by posing a question to a "friendly" specialist. Quite different than scientific work, every argument made during a hearing has — tendentially — the same weight and legitimacy. At the root of this situation lies the fiction that the commission seeks and finds the best available professional and academic testimony for each and every issue. This fiction can be maintained under very different constellations:

The results of all this gathering of information, evidence, and knowledge are then transcribed in draft form, partly by commission members, partly by subcommittees, and partly by the commission's scientific secretariat. (As a rule, this secretariat consists of 5-6 scientists under the leadership of a scientifically trained Bundestag official. The personnel is usually sympathetic with the chairperson.) The drafts correspond to the chapter headings of the report and are either amended or — after at least three readings — approved. This process of repeatedly poring over the draft word-by-word, chapter-by-chapter, is painful, and not just for the scientists on the commission. This process is also the site of constant negotiation, haggling, and searching for compromise. The effort so typical in the scientific arena to formulate statements as succinctly and objectively as possible has little place in this process. Those who are successful are those who can craft compromises in such a way that they can just barely — or indeed must — be accepted by the other side.

In summary, the question of this section can be answered as follows: if a scientist is to see his/her arguments adopted in the final report of the commission, the appropriate selection criteria and means of investigation (hearings, experts, opinions, questioning techniques, and the structuring and discussion of drafts) must be observed and respected from the perspective of producing a political program. In addition, one must adopt behavior which is "actually" foreign to the field of strict science. Such behavior change must be undertaken to prevent one's scientific ideas and beliefs from simply drowning in the calculated morass of majority-minority politics (in which, of course, one has no choice but to participate). One must

or even superficial agreement cannot be found, this often results in more than one opinion appearing in the report (in the form "some feel . . . the others feel . . .").

- ❑ In the final report of the **GKV Enquête**, there are numerous chapters that consist almost entirely of such "split" opinions. The reasons for this can be found in the growing — and resigned — tolerance of the commission members vis-a-vis opposing concepts and also in the elimination of the compulsion to work exclusively towards legislative recommendations.
- ❑ The report of the **AIDS Enquête** contains in its quite extensive chapters on the various legal aspects — constitutional, penal, social, work-related, civil, domestic, and immigration — of the HIV infection hardly a single important legal statement that is not contradicted in the report itself. Still, the recommendations of the commission were approved, for the most part by bipartisan majorities.

In case of irreconcilable disagreement, there exist rules for the inclusion of a minority opinion (on particular statements, chapters, or the entire report). This right is only rarely used — especially regarding entire chapters — since it would relegate one's own views to an honorable but in any case subordinate, position/location.

- ❑ In the report of the **GKV Enquête**, there are two chapters ("The Physician's Role in the Medical System," and "Drug Supply and Pharmaceutical Treatments") in which no uniform text, but rather

mutually referential manner, generally reflecting state-of-the-art discussions. In addition, the reports mirror more or less accurately the power relations in the commission itself. Finally, the sometimes divergent results, conclusions, and recommendations reflect — perhaps better than any other "scientific" book — the state of political and scientific discussions in society at large.<sup>13</sup>

Is this some kind of miracle? Compared to the many illogical, arbitrary, and "unscientific" individual decisions, such a report does appear somewhat miraculous. But it is less miraculous when one considers that all questions the commission poses (which points belong to what topic? what is the relationship of the topics to each other? which facts and sources are relevant? which conclusions are possible and/or necessary?) have been worked through a large number of times. According to the definition of the commission's charge, all sections of the interim and final reports must be discussed and examined in the commission at least 3 times. This is in every respect a difficult and costly procedure. But it appears that the commission can in this way — and perhaps *only* in this way — constantly correct itself: by having the members (both experts and MPs) mutually refine or discard their ideas and viewpoints. Thus, out of this seemingly endless chain of inadequate individual decisions grows a final product that, step by step, approaches the contours of rationality. Of particular importance in this regard is the figure of the chairperson. The chair is more effective the more he does not attempt from the outset to push through his/her own ideas. The chair leads well when he/she gives the meandering, process of disagreement and resolution sufficient room, without missing those — logical and psychological — opportunities that can result in an agreed-upon base of discussion, one that

were specifically rejected by a majority of the commission members, a move that, of course, can also be understood as a fulfillment of the task of legislation preparation.

The question of whether the two worlds of "science" and "politics" can learn from each other must thus be answered in a differentiated way. Enquête commissions are obviously not very well-suited for the scientific development and furtherance of legislative procedures. They do, however, give scientists the opportunity to acquaint themselves with the patterns of perception and the pressures facing politicians and political institutions. If experts wish to have their expertise and viewpoints included in the commission's work, they are practically forced to adapt to — and employ — "unscientific" perspectives and decisions-making criteria. Likewise, the MPs are presented the opportunity to enter what must sometimes appear to be the absurd caverns of scientific reasoning and argumentation. The MPs can learn how precarious the "fundamentals of science" — on which political advisement and consultation is so routinely and self-confidently based — sometimes are. These are the same fundamentals and foundations which are so often taken for granted in the MPs' parties and in other institutions outside of the commissions. Thus, under this aspect, enquête commissions are certainly an expensive but also effective forum for learning.

The greatest benefits of the commission's efforts are realized by the public. The final products of the commission's work are relatively complete and exact overviews of complex social problems, not least because they have been criticized and co-crafted by "opposing forces." They are correspondingly better, the less the commission succumbs to the temptation of seeking "safe"

## ENDNOTES

- <sup>1</sup> On the formal and legal makeup of enquête commissions, see: Kretschmer, G. (1986), Zum Recht und Verfahren von Enquête-Kommissionen des Deutschen Bundestages. In: Deutsches Verwaltungsblatt, 101, p. 923-929. On comparable commissions in other countries, see Lompe, K. (1981), Enquête-Kommissionen und Royal Commissions. In: Lompe, K. / Rass, H.H. / Rehfeld, D. (eds.): Wissenschaft und politische Steuerung, Göttingen: Vandenhoeck & Ruprecht. For an overview of political consultation and advisement in the FRG, see Mayntz, R. (1987), West Germany. In: Plowden, W. (ed.): Advising the Rulers, Oxford, New York: Basil Blackwell, p. 3-18. On the special problems of political consultation and advisement facing social scientists, see, Bruder, W. (1980), Sozialwissenschaften und Politikberatung, Opladen: Westdeutscher Verlag.
- <sup>2</sup> See Caplan, N. (1979), The Two-Communities Theory and Knowledge Utilisation. In: American Behavioral Scientist, p. 459 - 470.
- <sup>3</sup> Deutscher Bundestag. Enquête-Kommission "Strukturreform der Gesetzlichen Krankenversicherung" — Endbericht; BT-DS 11/6380, Bonn 1990. Deutscher Bundestag. Enquête Kommission "Gefahren von Aids und wirksame Wege zu ihrer Eindämmung" — Endbericht, BT-DS 11/7200, Bonn 1990. Both reports will be reprinted and published as books in 1990 in the series: Deutscher Bundestag (ed.): Zur Sache: Themen parlamentarischer Beratung, Bonn.
- <sup>4</sup> Hoffmann-Riem, who likewise served as a social scientist on a Bundestag Enquête Commission ("Neue Kommunikationstechnologien" = New Communication Technologies), has published case studies that are quite helpful. In contrast to the examples discussed here, that commission did not complete or present a final report, i.e., it "failed." See Hoffmann-Riem, W. (1988), Schleichwege zur Nichtentscheidung. Fallanalyse zum Scheitern der Enquête-Kommission "Neue Informations- und Kommunikationstechniken". In: Politische Vierteljahresschrift, 29, Vol. 1, p. 58-84. Also, Hoffmann-Riem, W. (1988), Sachverstand: Verwendungstauglich. Eine Fallanalyse zur Politikberatung im Rahmen der Enquête-Kommission "Neue Informations- und Kommunikationstechniken". In: Jahrbuch für Rechtssoziologie und Rechtstheorie, Vol. 13: Gesetzgebungstheorie und Rechtspolitik, Opladen: Westdeutscher Verlag, p. 350-402.
- <sup>5</sup> See von Thienen, V. (1989), Technikfolgen - Abschätzung beim Parlament. In: Neue Technologien: Politische Probleme, 22, Vol. 2, p. 30-48. Also, von Thienen, V. (1990), Beratungswelt und Methode. Parlamentarische Politikberatung in der Perspektive unterschiedlicher Methoden der empirischen Sozialforschung. In: Petermann, Th. (ed.): Das wohlberatene Parlament. Orte und Prozesse der Politikberatung beim Deutschen Bundestag. Berlin: edition sigma rainer bohn, p. 171-215. Von Thienen examines the negotiation and decision-making processes in enquête commissions with an interesting and well-suited mixture of methodologies.
- <sup>6</sup> Sozial-Enquête: Soziale Sicherung in der Bundesrepublik Deutschland, Berlin/Köln/Mainz (1966).



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