Wars of forms: constitutional challenges to the continental concept of "empire" and the rise of the German nation (1848-1863)

abstract:

In modern Europe, most existing states are understood as nation-states. Nevertheless, concepts of kingdoms and princes are omnipresent in childhood stories and narrations. Every boy at one time acts out as a prince on a white horse and every girl understands herself as a little princess. Roles of prime minister or secretary of state do not come near the popularity level of their royal antecedents.

Today, the European kingdoms and empires are mostly extinct, with royal households being mostly intra-constitutional safety measures and popularizers of "nationality". But the continuation of royal households and fragments of earlier political empires, such as the Danish Realm (rigsfællesskab) with Greenland, The Faroe Islands and the Danish State, poses the important question: how did the replacement and reformation of the European political system happen?

I argue, that we can observe a semantic, both political and military, war between the two forms, the post-napoleonic, Fichtean notion of nationality (1807-8) and the historical notion of imperium. “Nationality” entered the political semantics with such a force and shook the existing political order of empires to the ground because of its simplicity, compared to the absolutist understanding of nationality as patriotism and loyal subjects to the monarch. It did so also because of superior management of the temporal dimension.

In the present paper, I compare two cases from the uproar of revolution in 1848 until the dismantling of the one empire, whereas the other kept its existence for another 70 years. The Danish and Austrian cases fascinate by their similarity, as they both were partially connected to the holy German empire, but with major parts of the realm located outside the borders of the “Reich”. Both had to cope with separatist uprisings and apply appropriate forms of response.

To unravel the two complex cases of political ‘management’ of the rise of german nationality, I have to open up the semantic complex of “crown”, “state”, “kingdom”, prince and government, as they are used in governmental, internal communications, dispatches and international treaties.
The Case

In 1848, the Danish crown could look back on about 900 years of existence. From its emergence as a unification of feuding Viking clans as a defensive pact, it soon enacted regional laws\(^1\) which emanated from regal powers. The Code of Jutland (*Jyske lov*), enacted in 1241, the Scanian Law (*Skånelagen*) from around 1216 and the three Zealandic Laws from the thirties of the thirteenth century. From the 13\(^{th}\) to the 17\(^{th}\) century, a privy council (*Rigsråd*) elected the king and forced upon him a coronial charter (*håndfæstning*), which limited royal powers. On the other hand, it reduced the probability of the opposition by the nobility. The crown settled with Copenhagen as its main residential city, where the ever growing administration located itself in the Copenhagen Castle (*København Slot*), together with the royal chamber (*Rådstuen*). In the tumultuous 17\(^{th}\) century, Danish and Swedish armies met yet again. Swedish expansionist politics bore fruit and forced upon the Danish Crown a slashing defeat with the peace of Roskilde. In the second Nordic War (1658-1660), Frederic III (1648-1670) succeeded with a coup d’état and instituted absolute monarchy, but failed to regain the lost territories Scania (*Skåne*), Halland (*Halland*) and Blekinge (*Blekinge*).

To succeed, he tricked the diet (*Stænderforsamling*) and decreed a state of emergency (*undtagelsestilstand*), which suspends some normal legislations in case of emergency. He then decreed a new royal law, the Lex Regia (*Kongeloven*) in 1665.

When the Danish King Christian V instituted the Danish Code (*Danske Lov*) in 1683, he did so on the background of the loss of the eastern provinces to the Swedish crown. The unification of the Danish Kingdom had succeeded in the largest territories, and the Danish Code established a uniform legislation throughout the kingdom.

The Danish Code succeeded *Jyske Lov* in the middle and northern Jutland, on Fyn and Zealand, but not in duchies Holstein and Slesvig. The two duchies had evolved from fiefs in feudal and dynastical connection with the House of Oldenburg on the Danish Throne into mostly autonomous duchies (since 1474). In 1660, they had their own legislation, administration and dukes. This is why the *Jyske Lov* kept in force and was only replaced by the introduction of German Civil Code (*Bürgerliches Gesetzbuch*) in 1900, whereas the Danish constitution entered into force for the remaining parts of Slesvig in 1865 with the peace Treaty of Wienna.

The great Nordic war (1700-1721) once and for all settled the connection of Skåne, Halland and Blekinge as belonging to the Swedish Crown. With the peacy treaty of Frederiksborg, the dutchy Slesvig was integrated into the Danish kingdom. The integration merged the ducal crown with the royal Danish crown, converting Slesvig to Crown Land and thereby the Lex Regia. The ducal crown of Holstein was still placed on a sideline of the Oldenburgian family.

Holstein only kept it’s autonomy because of an intervention by the German Emperor, as Holstein at that time was part of the Holy Roman Empire of the German Nation. When in 1721 the last duke died by assassination, the Danish king Frederic IV gained the ducal crown of Holstein by succession according to the . But Holstein stayed outside the Danish Kingdom. The relation between the two units were in the person of the Danish king, who held both crowns, and thereby later was conceptualized as the king-duke. The duke was (also) a king, but for Holstein, he was the duke. The two dutchies (?) held their own coin and highest court of appeal in the city Slesvig.

In 1773 the line of Holstein-Gottorp mate changed inherited ducal rights for Oldenburg and Delmenhorst and the transfer of ducal rights to the king of Denmark as natural body was legally sanctioned. When the Holy Roman Empire ceased to exist in 1806, Holstein gained complete souvereignty. The Danish king in his function as both king og Denmark and duke of Holstein decreed by the patent of 9th September the incorporation of Holstein into the Danish Monarchy, equal to the status of Schleswig as Crown Land.

But because the Danish King had chosen to partake in the revolutionary wars at the side of Napoleon, the peace treaty of Vienna forced upon the king to cede Norway, to which the line of Danish kings had been kings since the Calmar Union in 1521. The peace treaty also forced the cancellation of the incorporation of Holstein, which then regained it’s autonomy and entered the new German Confederation (Norddeutscher Bund). The peace treaty of Vienna, later codified as the “Wiener Schlußacte” in 1820, also forced upon every member to create regional diets (Landstände), where provincial political life would gain a forum to express their political beliefs and enact local government², with neither the capacity nor the right to intervene in monarchical politics³, changes of the constitution or legislation regarding the whole of the empire.

This, in short, was the case for the Danish Monarchy and Christian VIII as a monarch, bearer of the the Danish crown and the Holsteinian ducal crown, even though regular crownings ceased legal relevance after 1660, where “the crowns” kept their place on the head of the dynasty according to the laws of succession.

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² Wiener Schlußacte, §§54-61
³ Wiener Schlußacte, §58
Seen in a temporal perspective, the act of election as temporalization of possession of the crown by an agreement between the (potential bearer) and the Nobility in the Privy Council was enacted in the coronial charter, was converted from temporality to eternity⁴, and the anointment changed it's meaning from an act of selection to an act of (Godly) affirmation. The absolutist Danish kings were legally understood as kings of God’s grace, as formalized title of the sovereign king Frederic III in the Lex Regia from 1665.

The constitutional movements, the ideas of the French Revolutions and with it the concept of nation and nationality emerged full force throughout European politics (Wehler 2001). Although the Holy Alliance between Russia, Austria-Hungary and Prussia, which all other European ‘states’ later entered with the Wiener Schlußacte from 1820, became emblematic of the period characterized by the term Restauration. Deeply shaken at its foundations, European politics struggled to regain a strong, post-revolutionary form, that were to implement backward-orientered, although sensitive towards future trends by the means of political inclusion of regional oppositions through regional diets and by censure.

This double perspective of the restauration: implementing old concepts in a new political environment, meant, that the Revolutions in 1830 and 1848 were not met unprepared in the central bureaus of governance, but as revolution soared through Europe⁵, the existing political form of European political differentiation was yet again shaken at its roots.

All over Europe, the new concept of nationality arose, but as I limit this exploratory study to the “German Nation”, the Deutsche Nation and its multiplicity of concurrent, diverging and battling concepts, such as Small-German (Kleindeutsche Lösung) vs. Great-German (Großdeutsche Lösung), stood their test in the courts of the houses, who were bearer of a crown connected to the German Federation (Deutscher Bund).

⁴ "Rigens Raad og samtlige Stænder, Adel og Uadel, Geistlig og Verdslig [blev] dertill bevæget deris forrige Kaar og Wallrettighed at affstaa og begiffve, den tillforne aff Os underskreffne Haandfestning med alle sine Gienparter, puncter og clausuler død, magtesløs og till intet at gjøre, Os fra Voris Eed, Vi giorde, der Vi først traade i Regieringen, udj alle maader og uden nogen exception qvii at førri at erklære, og saaledis Os oc de aff Os, saasom Hoffvedet og første Eyere, ved rett lowlig Egteskab needstigende Mand og Qvinde Linier, saa lenge nogen aff dennem i Lifvve ere, ArrfveRettigheden till disse Vore Kongerigere danmarck og Norge sampt alle Iura Majestatis, absolute Magt, souverainetet og alle Kongelige Herligheder og Regalier utvungen og uden nogen Voris tillskyndelse, anmoding eller begiering aff eygen frii Villie og fuldberaad Huu allerunderdanigst at andrage og offverantvorde,” (Lex Regia, November 14., 1665, enacted by Frederic III. (my cursivation)

⁵ This in itself is a fascinating area of study: how monarchical regimes acted on anticipated possibilites and how alternative forms acted and re-acted on the governmental actions. The history of the diffusion of revolutionary concepts through mass media as well as the records from cabinet and ministerial meetings enlighten us on the great capacity to envision divergent possible future directions of outcomes from current actions, enact a decision and still uphold the sensitivity towards possible alternatives and the openings to re-create another possible future. The capacity to juggle with concurrent futures, or what I call ‘temporal agility’, is a main condition for sustaining the political form of the moment. In temporal analysis, the main distinction between revolt, revolution and reform are in the difference in their formation of new futures. I will not here follow this otherwise fascinating thread.
To select the cases, were concepts of nation and nationality broke existing monarchical political power-differentiation, three cases emerge: the cases Holstein⁶, Austria and Luxembourg. All three were political entities and their sovereignty symbolized by a crown. All three crowns, the ducal crown of Holstein, the ducal crown of Austria and the grand-ducal crown of Luxemburg were placed on royal heads, who were bearer of more than one crown.

Prussia itself had a large polish-speaking and very active nationalist movement, but without distinguished sovereignty, they were left as subordinated regions of the Prussian crown, that in itself was intensely ‘German’ in the sense of political and military coordination and strength.

The Luxemburgian case is quite easy, as the solution was the acceptance of a pure personal union between the King of the Netherlands and the Luxemburgian grand-ducal government. The king therefore was king was the bearer of two distinct and otherwise principally unrelated sovereignties.

The contrasting cases Holstein and Austria are more equal in regard to the inherited political order in 1848. Both were historical empires; build in the guise of warfare against supreme enemies. For the Danish empire, Sweden was the main enemy, but long periods of warfare against ‘german’ armies, the English, later british Navy and potentially a devastating war with Russia forced together the historical lands of the Danish Crown and king. The Ottomanian invasion, their defeat and continued treat towards central European political order was continuously present and kept the defensive ‘union’ as an empire together.

Both cases from the 16th century and onwards involved in integrating and state-building processes. Austrian political theory developed the concept of historical-political individualities (historisch-politischen Individualitäten), that were the lands of the crown (Kronländer). As refereed above, the argument whether Schleswig still upheld it’s sovereignty as a duchy after the final mate change treaty of Zarskoje Selo in 1773 between the Danish Monarchy and the head of the duke of Holstein-Gorrorp, the later Zar Paul I of Russia, or if the ducal crown was merged into the Danish crown, ceasing souvereignty and it’s legal status as anything else than a crown land with borders defined by history.

But there is one main difference: whereas the Austro-Hungarian Empire through numerous iterations of constitutions kept its unity, the Danish Monarchy was by all means shaken and broken in the years 1848-1864. Why did this happen, and how did it happen?

⁶ Strongly connected, but without relevance for the unfolding analysis, is the duchy Lauenburg, which also had placed it’s sovereignty in the hands of the Danish king.
Conventional history tells the story of the rise of nationalism and of power struggles between Prussia and Austria inside the German Federation. The Prussian need for a Harbor could sufficiently be remedied with the city Kiel, and the struggles in 1848-51 and again in 1864 were opportunities for Prussian policy to exclude Austria from the German Federation, in which it succeeded with the Prussian Victory at Königgrätz 1866 and the German unification as the German Empire or German Realm (Deutsches Reich) with the Prussian king as Kaiser (Bilag 2).

As a sociologist, the above only serves as an introduction. Far better historical books have been written on the subject. But for the historical sociologist, the seemingly indifference toward the use of words, implied theoretical positions and the mere understanding, that sequencing of facts can shed light on general processes of societal evolution, differentiation and stabilization. It is easy to speak of state-building or nation-building in today’s terms (Fukuyama XXXX), but what forms challenged each other, and can these processes be generalized, so that we gain a better understanding of societal changes, e.g. in our case: the demise of an empire?

The historical sociologist Charles Tilly argued, that state formation happened as an unlikely result of a specific constellation of relations among concentrations of capital and specific relations between concentrations of coercion (Tilly 1992: 47, cf. Spruyt 1994: 30, 86ff).

In his analysis of competitive forms to the modern state, Spruyt (1994:184) poses a relevant perspective:

*Historical analysis indicates that institutional evolution proceeds in two stages. In the first stage a dramatic change in the overall environment leads to new political coalitions. Such coalitions will favor institutional arrangements that correspond to the coalitions of ideological preferences and material interests. In the second stage the different types of institutions exert competitive pressure on each other, and particular arrangements will emerge as more effective and more efficient than others. Some forms of organization are also more compatible with others and hence become preferred systems of rule.*

Institutions observe a radically different environment and react on anticipated future events, which is what Spruyt observes as ‘new political coalitions’. New coalitions mean the production of new possible futures, with which the institution can structure itself after.

The evolutionary selection of institutions selects those, who can unfold it’s actions with greater effect and higher efficiency. Sadly, Spruyt and others are mostly concerned with nations, states and empires and neglect sub-entities such as duchies and other principalities as merged or dependend parts of political entities of higher order such as states, realms, kingdoms and empires.
I believe that it is possible to create an explanation for exactly why the Danish kingdom was annihilated in 1864, whereas the Habsburgian realm kept its outer unity. I believe, that the key to understanding the different outcomes of the Habsburgian and Danish cases, lies in the capacity to create, re-create and arrange possible futures and thereby enlarge the possibilities of political decision-making. In short, a political order can be evaluated by history and by sociology on the basis of its temporal agility. History defines existence, a sociological analysis describes existence.

My hypothesis is, that the complexity of the political order and the temporal agilities of different political forms condense in the form of “status quo ante”. Used in tracts and treaties, the expression marks the self-observation of political change and action: status quo ante let’s time re-enter itself and thereby creates a future, which from a specified point of view resembles a given past. The analysis is not oriented towards the political theory of state formation as 2nd order observation of itself in the reflection theory in the political system. Nor will it be an analysis of global societal structures and differentiation of society.

The proposed analysis will be an analysis of operative semantics, that is, reflexive communication about the operative forms in their internal differentiation inside the political system and the changes of the landscape of political organizations. An analysis of semantics will always be bound by the recursiveness of communication. When processing, new communications attach to old, now gone communications and impose a path-dependency as limitation to contingency of communication. The analysis observes political communication with the system-reference fixated on partial self-descriptions with a high degree of mobility within the political system. But even though concepts of representation, democracy, liberalism and power gain a distinct meaning in the web of political science and philosophical discourses, I observe how political organizations (empires, states) understand themselves and their unfolding environment. This means to dive into competing forms of self-description. For example, Austria-Hungary was “gerade im 19. Jahrhundert in

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7 And neglecting how the past is dependent on the observer.

Of course the political semantics in organizations is coded with the polical code coalition/opposition, but the use of the code is different than what has become known as representative governments. Especially the place of the crown was contested and was exposed to hitherto unknown experiments of coding of itself. The constitutional states of the 20th century used the complex concept of constitutions, written or unwritten as a structural coupling and observation of the borders of the system.

I: Form-analysis

Current organizational theories have developed elaborated forms of organograms, illustrating command hierarchies and networks of informal ties and power relations inside the organizations. This made me wonder, if temporal analysis can be visualized, illustrating competing temporal forms at the same time.

Following the Luhmannian reception of Spencer-Brownian calculus of form, every operation is a selection with an inner side (marked state) and an outer side (unmarked state), co-creating the background as it’s condition of possibility (Bedingung der Möglichkeit, Kant). When a crossing from the inside to the outside of the distinction is enacted, the outside becomes the new inside (selection). The form is a two-sided form (Zwei-Seiten-Form), but only one side can be selected at a time (Esposito 1993). It is impossible to select both inside and outside at the same time. It “would infringe upon the purpose of the distinction. It is not possible, it would result in a paradox since one would have to call at once what is different the same” (Luhmann 1999: 18).

Every form is an operation by a system, that by the same operation reproduces itself. Accepting the self-referential modus operandi, the system continuously reproduces itself as distinct from it’s environment. Esposito argues, that every form as an operation co-produce an “orthogonal relation”, the distinction between system and environment (Esposito 1993: 80f).

Forms are observations. Forms are operations. Forms are selections. Form is distinction, but fundamentally, form is difference (Lau 2008:34-40). What is important is the binary temporal and visual concept implied:
the inside has only one outer side, defined by an observer (operator). No secondary or emergency exists, only the crossing as operation generates the outside.

This is very important for the visualization of a form.

Form = marked state/unmarked state

The Form is linear, it is one-dimensional. This is very important to remember, as every extension of visualization of form and forms must continue to limit itself to a 1-dimensional universe.

For example, the forms C and B are both outside form A, but B is in no way “higher” or “better” than C. Both forms have only one quality: being outside form A. If B had to have a visual distinct quality based on its placement in relation to C, then the illustration would break with the basic premise of 1-dimensionality of the form.

In principle, the form cannot be ‘cut’ by another form. This then, would be illegal:

Two forms do not in operative modus ‘sabotage’ each other. A form (distinction) implies “perfect continence” (“Unterscheidung ist perfekte Be-Inhaltung”) (Spencer-Brown 1997: 1). But is it possible to use the above drawn illustration to show something, and continue in observation of the limitation to a one-dimensional space? I think so, and the solution is to be found in an entanglement of system reference and multiplication of temporalities.

The illustration first of all needs a designation of the lead distinction, and I designate A to be our main reference for the time being. The horizontal line on Form A marks the inside, the “marked state = A” of the form. Seen from our designated lead distinction, the Form B has an inside (=B) and it’s inside is placed inside the inside (=marked state) of Form A. In traditional Spencer-Brownian notion, this would be expressed in the following way:
Again, this is only possible because of the limitation to the 1-dimensional space of operations. But if an observer observes two competing forms of definition of the system boundary, Form A and Form B, they may not define the boundary identical. One can think of “Europe” or “the western World” and equal concepts, which do have competing ‘definitions’ or ‘forms’, depending on the discourse used. Formalized, we now can say, that A is challenged by B on the definition of a boundary, where A serves as the lead distinction, the entry point of the expression.

The expression can be enhanced to further encompass a plurality of competing forms:

The three forms C, B, D are called, but no order or hierarchy is implied by the visual sequencing. The above expression only imply three competing forms (C, B, D) to the designated lead distinction A. The expression above implies an unstable definition of the system boundary, whereas

Imply a fixed outside and inside differentiation. The above variations can be combined into one expression that defines, where competing forms compete and where competition is expelled.
Form A is designated as lead distinction. Form C is competing on the definition of the outside, but does not compete (e.g. act as competitor) with Form B. B is challenged by Form D, but Form D does not compete with A, as it accepts (e.g. is indifferent) toward an accepted (=fixed) definition of the system boundary.

This may seem odd, but actually, this is the main form of competition in our two cases Austria-Hungary and the Danish kingdom. Form A equals the empire (Reich) as it was before 1848, whereas form C challenges it from different direction. Most prominently, Hungarian separatist movements wanted to separate the lands of the Crown of Skt. Stephan out of the Habsburgian Empire (Form C), which became the de facto solution in 1867. At the same time, the Theresian-Josephinian state as a unified administration and governmental form, integrating the lands of the crown into a great-Austrian state with central government in Vienna, was challenged by a an influential faction of old-hungarian nobility, where the Unitarian state (Form B) was challenged by the quest for autonomy of the Lands (Oktoberdiplom 1861).

Another example are the discussions in the Constituent Assembly (Grundlovgivende forsamling), when they discussed the form of government (constitutional monarchy vs. absolutist monarchy) and the description of the political entity, it was to act as constitution for. Was it to be “Kongeriget Danmark og Slesvig”, leaving unspecified, if the Kingdom from then on was to have the name “Danmark og Slesvig”, or if only Denmark was the kingdom and Slesvig something, that was not part of the kingdom, and yet not a duchy anymore. Was it to be a personal dominion to the house of the king? (Kilde: Forhandlingerne i den grundlovgivende forsamling: 1 . betænkning)

Yet another example is the sudden revival of provincial diets as estate assemblies. How were the estates to be represented? Which areas of discussion were allowed? Were petitions to the king allowed? For which geographical territories would a provincial assembly be responsible? Why was it that the concept of estates only caught on for the years of the holy alliance (1820-1848)? These questions can’t be answered by the expression, but the visualization can illustrate competing forms and the multiplication of temporal regimes become easier observable.

The expression above could also depict the struggles of immigrant families with children born in the new country. The family may struggle between a status as refugees (A) and a family integrated in local society and with capacity to act inside national law, customs in the community and work life (B), while they still cling to their cultural heritage and religious beliefs. A son, born in the new country, at one point may run into a crisis of self-definition. Is he still Turkish (B), or is he a German boy (D)?

There exists no law of nature that defines eternal existence of competing forms. Some forms may arise soon after fade into oblivion and obscurity, as they were tested and didn’t deliver the order and capacity
for recursive communications, which was needed for success. Luhmann describes in one of his best empirical studies, how two competing forms of differentiation struggled to transform early modern society. When the stratified differentiation wasn’t able to cope with the surplus of meaning, it turned into refinement and sub-differentiation of its main “classes”. Slowly, a ‘high nobility’ emerged. But it was to no avail, as the functional differentiation made heritage and title less important and capacity and specialization became the tune of the 17th to 20th century (Luhmann 1993, 1997).

Whatever the object of study. An external observer has the possibility to observe and compare competing forms (expressions) and integrate them into one illustration.

The above generated form of expressions of competing forms is able to add quite a bit of complexity to traditional form- and code-analysis. Yet for our purpose, we need to add another layer of complexity. We need to be able to visualize competing suggestions for the re-organization of political organizations, either as proposals for discussion or as implemented changes in the political structure (Deutsch 1963, 1970).

Illustrating sub-divisions of forms, that is, enhancing complexity also means to identify how the autopoietic systems limit their sensivity to the environment and specialize their output to maximize performance for continued existence. “All self-steering networks have three basic elements: receptors, effectors, and feedback controls” (Deutsch 1963:128). Accepting the notion of autopoiesis, as well as the Spencer-Brownian concept of form-operations, that only can happen on the “inside” of a form, the marked state, receptors and effectors are internally stabilized forms of operations – a specification of the orthogonal relation between self- and environmental reference. The medium, that is, the “nerves” that connect suborganizations are internal constructs projected into the environment of the system (network).

We need to incorporate a visual expression of this autopoietic generated, externally projected connection or link. The main distinction in the theory of autopoietic systems is:

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\text{System} = \text{System/Environment} \quad \text{in short: } S=S/E
\]

As a form, it is expressed as:

\[
S = \overline{S \cdot E}
\]

Accepting the premise of autopoiesis, but also the projection into the “inner environment” and the one-dimensionality of the form calculus, a “nerve” can be illustrated as:
As before, the Form S is designated as the lead distinction. Its environment is left unspecified. Inside the system, a nerve (network) is formed and projected onto its environment. This is why the vertical line is placed inside, as it is a production of the system, as well as its naming (N), and only the conversion of the marked/unmarked state signified by the horizontal line, designates Form N as a connection to the envisioned outside world of other systems.

As with the competing self-descriptions, there is no information placed in relation to a multiplication of connections (Deutsch: Nerves) from the vertical arrangement of multiple connections:

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  S
 F
 W
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Neither F nor W as connections have a higher priority or are in any other way in possession of a quality in relation to their placement in the visual expression.

The above expression is a depiction of an excerpt of the state department of the US. The State Department (S) with its secretary of State has under him (no visual support!) under-secretaries with separate bureaus for financial affairs (F) and military affairs (W), especially to the office of foreign affairs and the Department of Defense, placed in the well-known Pentagon in Arlington, Virginia.

It is of prime importance to specify and remember both the orthogonal relation and the system reference, as the above presented toolbox for visual expression of the form and forms of communication otherwise loose their depicted meaning and become artificial constructs without empirical grounding.

The two excluded possibilities have for now been excluded, as their implications have yet to be thoroughly analyzed in the context of form-calculus, autopoietic systems theory and one-dimensional expression.
II: Political order and political orders (the two cases revisited)

It is of prime importance to show the above created form-analysis as a useful tool to illustrate the two cases “Denmark” and “Austro-Hungary” as expressions of competing forms.

Figure 1: the Empire of the House of Oldenburg 1830

Figure 1 shows, how the Oldenburgian Monarchy in 1830 existed as a relatively stable form with most problems placed around the legal position of Slesvig. The question was, if Slesvig was incorporated as a land into the Danish kingdom, or if the ducal crown of Slesvig was incorporated into the kingly crown, which would have the consequence that if Slesvig was to be understood as kronlehn (Dominion of the Crown), it would have to “leave” the form for the Danish Kingdom and move into the form of the Danish Crown, for which Lex Regia ruled since 1665, and which went into force in Slesvig when it was merged (incorporated?) into the Danish kingly crown.

This is also why the Danish Law by King Frederic V never was enacted in Slesvig, as it in his time was a separate ducal crown under the Danish Kingly Crown.
When in 1839 the new king Christian VIII entered his reign, he was acutely aware of the conflicts of understanding in the legal form of the Danish empire. He set out to create a new constitution, not based on hereditary forms, but wanting to serve a clean and modern sheet on which the historical rights were kept in honour, but with a new, all-encompassing constitution. His father, the late Frederic VI, had in 1830 established the provincial diet in Holstein in the wake of the revolution in Paris the same year, even though the Wiener Schlußacte demanded the creation of provincial diets. But as he didn’t want the rest of his monarchy to be viewed as backwards, he also established provincial diets for the Islands in Roskilde, for Jutland in the city of Viborg and for Slesvig in the city of Slesvig. In Holstein, it was held in Plön. Soon after, petitions for the creation of a national diet were forwarded to the king, but Christian VIII did not commission such an assembly. Instead, he used his intense network of highly acclaimed and skilled persons to test alternative concepts of advisory bodies and the change from collegial management to ministerial government (Petersen 1969). He set out to create a council of selected men, with whom the king wanted to discuss and gain legitimization for a future imposed constitution. But the king died of blood poisoning in January 1848, weeks before the outbreak of the new Parisian revolution.

After the death of Christian VIII, his son Frederic VII ascended the Danish throne and immediately promised a constitution. When under the impression of the revolution in Paris, Wien, Munich, Berlin and elsewhere a sequence of meetings were held at the ‘Casino’, hence their name ‘Casino-meetings’. They drafted a petition to the king and demanded a free constitution, the conversion of the monarchy from absolutism to a constitutional monarchy and with it, the abolishment of censure. The King had heard rumors of the actions in the Casino-meetings and met the petition well prepared. He announced that ministerial government was decreed, as well as the abolishment of censorship and the planned constitution. But most of all, he announced himself as constitutional kings with responsible ministers from this day on.

The problem was, that german nationalistic separatist movements in Holstein heard rumors of the outcome of the petition and saw their opportunity to act. They declared the king as caught by the people of Copenhagen, and as such, he was not able to exercise governance as the absolutist ruler, he still was in Holstein. They established a provisional government and called the German Federation for help. Berlin, Wien and troops from Baden and Hessen assisted from 1848-1850 and Denmark was hurt badly. “German” administration was enacted in both Slesvig and Holstein, whereas Lauenburg steered free of the separatist movements.

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9 In other words, the separatist movement used the old and complex monarchical forms of state, empire and crown to create their legitimate act of freedom.
But times were changing in Germany and both the Austrian and Prussian politicians had their own fights to fight. They had their own competing complexities of forms to handle, and especially in Austria, the uprising in Hungary and the forced fleeing of the royal family from Wien shook most of the liberal and constitutional advances away. What was kept, was the form of constitution, in which it had to be written down. Older constitutions, such as the “Lex Regia” and Danske lov in Denmark, the “Pragmatische Sanktion” in Austro-Hungary. So Danish ministers met with Prussian and Austrian diplomats in London and achieved a peace treaty, which explicitly did not prejudice any form. The situation in Slesvig and Holstein were to revert into the state before the war, that is: “status quo ante”.

But the biggest problem was: what was the “status as it was before (the war)”? As depicted above, the understanding of Slesvig was at stake, but since the 30ies, the concept of nationality had risen to new heights and the European political map was reshaped along the lines of convieved “nationality” (Wehler 2001). But even though the concept of nationality, as proposed by Fichte and Schlegel seemed easy enough, old forms of people and nationality as patriotism were strong. Luhmann has a fascinating footnote on the matter of the perceived uncertainty of nations as the basis for political order:


Sadly, the concept of nation invented their own history. The “Status quo”, as clear a concept it might be, lost it’s capacity as an ordering distinction because of two reasons:

1) The King had no intentions to rule and act absolutist
2) Because the concept of nation was projected backward in time to re-shape the understanding of the Slesvig- and Holsteinian situation.
As a consequence of (1), the King would not enforce another “neo-absolutist” constitution upon his people and lands, and as he didn’t wanted to do away with the new Danish constitution (Grundloven af 1849, Danmarks Riges Grundlov = The constitution of the Danish Empire), it no other position was able to define without opposition, what status quo ante was. The Austrian correspondence on the subject is quite clear. Vienna simply does not understand what makes it so hard to re-impose absolutist rule and start afresh, just as they did themselves (Rantzau 1934, Redlich 1920). That Austria had a far better understanding in both the political elites and at the court, eased the mobility with which they managed to continue the unity of the empire. They too had to develop, what exactly was “status quo ante” in regard to the Hungarian rights and plights. And in Austria, this central European “Vielvölkerstaat”, unity could not be upheld when the forms of nationality grew stronger than the historical unity of the empirical kaiserlich und königliche Hoheit of the Habsburgian House.


And end not being an end
And this is the temporal end of the paper. Not because history or time has ended, but because every ending is a beginning, and this end is the beginning of the presentation and discussion at our symposium in Dubrovnik.

I look very much forward to discuss both concepts and historical analysis with you. The conclusions, that I hope to gain from our discussions, show the direction in which this paper in a nearby future time will unfold itself.
See you in Dubrovnik.

Best regards

/Lars Clausen

**Bilag**

German political entities, 1848


**Bilag 2**

German Realm 1871-1918
Kilde: https://secure.wikimedia.org/wikipedia/commons/wiki/File:Deutsches_Reich1.svg


Tilly, Charles: *Coercion, Capital and European States, AD, AD 990-1990*, Blackwell, Cambridge, Mass., USA