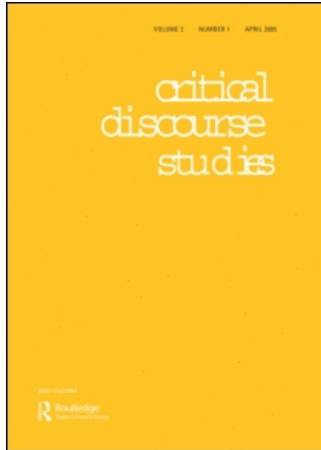


This article was downloaded by:[Andersen, Niels åkerstrøm]  
On: 15 February 2008  
Access Details: [subscription number 790638644]  
Publisher: Routledge  
Informa Ltd Registered in England and Wales Registered Number: 1072954  
Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



## Critical Discourse Studies

Publication details, including instructions for authors and subscription information:  
<http://www.informaworld.com/smpp/title~content=t713695016>

### The world as will and adaptation: the interdiscursive coupling of citizens' contracts

Niels åkerstrøm Andersen <sup>a</sup>

<sup>a</sup> Department of Management, Politics and Philosophy, Copenhagen Business School, Copenhagen, Denmark

Online Publication Date: 01 February 2008

To cite this Article: Andersen, Niels åkerstrøm (2008) 'The world as will and adaptation: the interdiscursive coupling of citizens' contracts', Critical Discourse Studies, 5:1, 75 - 89

To link to this article: DOI: 10.1080/17405900701768869

URL: <http://dx.doi.org/10.1080/17405900701768869>

PLEASE SCROLL DOWN FOR ARTICLE

Full terms and conditions of use: <http://www.informaworld.com/terms-and-conditions-of-access.pdf>

This article maybe used for research, teaching and private study purposes. Any substantial or systematic reproduction, re-distribution, re-selling, loan or sub-licensing, systematic supply or distribution in any form to anyone is expressly forbidden.

The publisher does not give any warranty express or implied or make any representation that the contents will be complete or accurate or up to date. The accuracy of any instructions, formulae and drug doses should be independently verified with primary sources. The publisher shall not be liable for any loss, actions, claims, proceedings, demand or costs or damages whatsoever or howsoever caused arising directly or indirectly in connection with or arising out of the use of this material.

## The world as will and adaptation: the interdiscursive coupling of citizens' contracts

Niels Åkerstrøm Andersen\*

*Department of Management, Politics and Philosophy, Copenhagen Business School,  
Copenhagen, Denmark*

A new form of contracts has emerged between public administration and the single citizen within the last 15 years. The present article will attempt to situate citizens' contracts in a larger systemic framework, in order to understand more fully an increasingly complex public administration that is making new and contradictory demands on public managers. Citizens' contracts emerge naturally as a form in which the individual can undertake a reconnaissance of communication. The contracts are able to connect the codes of law, care, and economy because they can be constructed differently from the perspective of their different codes without losing its character of unity. The semantic incommensurability of the systems of communication that are coupled through the contract is constitutive for the test of will of the single citizen which function a premise making machine of help and support decisions.

**Keywords:** active citizenship; the form of contract; contractualism; contractualisation of citizenship; structural couplings; Foucault; Luhmann; inter-discursivity; will and subjectivity; public administration; social policy; reflexive law; self-help; incommensurability of systems of communication

In the starting days of the Republic, a lot was said about a syndrome of *learned helplessness*, which meant that everybody had to stand for himself and herself in the economic sense (one of the catchphrases of the first Estonian government was, *The State helps those who help themselves*). Homeless people emerged plus others who had proved to be weaker than life. The very same people who had 'sung' themselves free and had felt the power to defend their freedom with their bare hands, were suddenly declared to be helpless and they felt helpless indeed.

(Ruus, 2001)

### Introduction

Since the beginning of the 1980s, as part of the new public management movement, contracts have been increasingly deployed in the public sector throughout the Western world. Initially, this trend comprised privatizations and the outsourcing of public responsibilities, with varying success (Andersen, 2000; Vincent-Jones, 1998; Vincent-Jones & Harries, 1996). The second wave, which began towards the end of the 1980s, consisted of the contractualization of relations *within* public administrations. The creation of independent agencies has gone hand in hand with an increase in the use of contracts between public authorities, and authoritative statements have been replaced with so-called 'quasi-contracts' (Andersen & Born, 2000; Freedland, 1994; Freedland & Silvana, 1994; Greve, 1997, 2000).

---

\*Email: aakerstrom@cbs.dk

In the early 1990s, a new wave of contractualization began, this time between the public administration and its citizens. These contracts were initially seen in Australia, New Zealand, and England. England, for example, established jobseeker contracts under the Jobseekers Act of 1995, juvenile delinquency contracts under the Youth Justice and Criminal Evidence Act of 1999, and contracts between school and home under the School Standards and Framework Act of 1995. We have seen the rise of a 'new contractualist discourse' whereby individual freedom cannot be presupposed but must be created through contracts (Yeatman, 1997, 1998). This discourse linked citizens' contracts with the figure of 'active citizenship', anchored in ideals of empowerment (Lister, 2001; Stevenson, 2003; White & Hunt, 2000), and contracts have since become a regulatory strategy designed to promote citizens' ability to choose, and to be independent and self-regulating (Lewis, 2002; Sullivan, 1997). It has been argued that the peculiar mix in social work contracts of legal and disciplinary forms of power might work as a way of protecting the administration against public law (Nelken, 1987), and that citizens' contracts provide poor conditions for contractual norms regarding voluntary obligation, since the citizens do not have an actual choice. Some have warned that the administration and the citizen run the risk of watering down and damaging the weave of norms which normally apply in relation to contracts – norms about the way we understand voluntary action, mutual agreements, promises, and proportionality (Vincent-Jones, 2000).

It is the aim of this paper to shed light on a paradoxical mechanism in the discourse on citizens' contracts in Denmark that depends on the incommensurability of communication in the relevant social systems. While there is no question that the current trend challenges our traditional understanding of contracts, there is reason to believe that contemporary welfare societies depend on communicative paradoxes of a very particular kind to maintain stability.

Denmark follows international trends in the deployment of citizens' contracts (Andersen, 2003b, 2004, 2007). For example, a number of public schools have introduced student contracts. One school, for example, refers to these as 'terms of agreement with goals and measures'. These contracts are part of a system that also includes recurring meetings about the student's personal and academic development. The agreement is signed by the student, the parents, and the teacher, and might include stipulations that the student is to work at emitting positive signals to the adults, be more active and patient, think about the way he or she affects others, do his or her homework, write more neatly, and take more time for homework.<sup>1</sup>

Another example is the so-called *youth contract* in Danish criminal law. In May 1990, the Danish Parliament decided that 15–17-year-old offenders who commit minor offences could strengthen their sense of responsibility through youth contracts. The contracts are used instead of the usual penalty, and concern the responsibility of the adolescent for his/her own life and for ensuring, through education, employment, and hobbies, a transformation into a non-criminal and responsible citizen (Ministry of Justice, Council for the Prevention of Crime, & Ministry for Social Affairs, 2001; Vestergaard, 1991).

A third example is the so-called *family contract*, which municipal social services departments established for use with socially challenged families. Family contracts address the way these families work as families, and represent an attempt to commit the families to being responsible and to establishing themselves as well-functioning families – always, of course, as defined by the social services department. In one municipality (Karlebo), for example, contracts are written up for families with criminal children. They deal with the upbringing of the children and with the conversations to have with the children – which themes and under which circumstances. Money is withheld from the social welfare payments to these families if they do not observe the contract. The contract may include an agreement to keep the child away from public spaces after 10 pm, or it may establish that the family has to share at least one meal a day and talk about what is going on and what the adolescent is doing. The municipality sees

these contracts as helping families reestablish the role of the parent(s). Another Danish municipality (Vojens) writes up family contracts with single mothers about their motherhood and sex life. These contracts may oblige the client to receive medical treatment for alcoholism and/or to seek employment. They may also include stipulations for the mother to desist from intimate relations with new men until she has a better handle on the upbringing of her children; alternatively, they may require the mother to get a contraceptive implant which provides contraception for several years. A breach of contract might lead the municipality to consider providing assistance only in relation to the children. This could mean removing the children from the home. While it has been criticized in some circles, this practice has been adopted in a broad range of social welfare settings.

Annette Carstens (2001) has shown that the introduction of citizens' contracts in Denmark has led to the emergence of some rather peculiar linguistic games. Negotiating a contract is a matter of reaching agreement about a transfer of resources. Clients are construed as investment opportunities, and the contract negotiation is an opportunity for the client to sell this opportunity to the state. Internally motivated and responsible clients are seen as good investments. These are clients who are guided by autonomous will, by a drive of their own; they are motivated, flexible, responsible, and capable of responding to offers of help as occasions for self-help. However, clients who are too willing – those who display what is described as a disposition towards adaptation – represent bad investments. They are unable to help themselves and they do not take responsibility for their lives. If they are motivated at all, they are externally motivated. At bottom, the contract negotiation is an occasion for the social worker to determine whether the client's relationship with the welfare state is based on will or adaptation. Indeed, Carstens calls it a 'test of will' (2001, p. 205).

The guiding idea of welfare as an investment poses a challenge for welfare providers, because it is very hard to observe the aspects of a client's disposition that will make the client a good investment. It is certainly difficult to spot a client's inner will. Carstens points out that it is common to distinguish between will and mere willingness. Whereas will is inner, and hence invisible, willingness is external and therefore has observable qualities. Willingness is a question of adaptation, whereby the client visibly bends to the will of the social worker; will is a question of inner inclination where, we might say, the client invisibly bends to the will of the social worker. 'Coerced will is no will. It is merely adaptation,' as Carstens puts it (2001, p. 205). However, the difference seems to be essentially a question of whether the social worker observes the act of conforming. More to the point, it is a question of whether social workers become reflexively aware of their own acts of coercion.

Carstens demonstrates that economy and help come to represent mutually exclusive perspectives on the client:

It is economic compulsion that establishes willingness as possibility and/or goal as opposed to will . . . economic compulsion and inner willingness are incompatible. They are used as inverse proof of each other, so to speak.

(Carstens, 2001, 238)

She observes how economic incentives are deployed to get clients to put less emphasis on economic incentives. Reference is made to compulsory intervention as a means to bring the client's contentment with willing adaptation to an end (Carstens, 2001, p. 239). The result is a linguistic game in which economic and philanthropic considerations are coupled in an absurd way. The help system only ascribes sincere motives to the client when the client does not overtly admit to economically rational considerations. The client is defined as a good investment once the help system has spotted inner motivation and will. Carstens provides numerous examples of this paradoxical 'test of will' from her fieldwork.

The present paper will attempt to situate citizens' contracts in a larger systemic framework, in order to understand more fully an increasingly complex public administration that is making new and contradictory demands on public managers. Complexity passes down through the administration and emerges at the boundary between the public administration and the individual citizen, where citizens' contracts occupy a central place. The guidelines for their negotiation have not been established, and I will show that this installs them in a strange framework for the interpretation of individual communication, shifting between different discourses and expectations. Drawing on Danish social policy papers, I will show how citizens' contracts link heterogeneous discourses and heterogeneous considerations in social administrative decisions. Today it does not suffice for a social decision to be legal; it also has to work as a form of self-help. The client must pass the 'test of will' in order to qualify as a good investment, and this test occasions a double bind. The state, it would seem, helps those who help themselves. It is the task of discourse analysis to explain how society is able to sustain such paradoxes; indeed, how it is able to use them to stabilize itself in the face of social change.

### **Analytical strategy**

This article is based on some 200 documents from the public sector in Denmark, spanning from 1970 to the present time. They are mainly reflective administrative texts in which public institutions, interest organizations, and politically interested researchers reflect on social policies and problems of prioritization. Reflective texts are not written with reference to individual cases or individual decisions, proceeding instead from policy considerations; concepts appear in an elaborated form, supported by argumentation. These are mainly texts such as council deliberations, public reports, and campaign papers, plus more comprehensive essays and articles in critical journals and union publications. What ties these texts together is the fact that they all articulate the problems of prioritization in social policy.

I read these texts in accordance with two complementary analytical strategies, both inspired by Niklas Luhmann's systems theory (Andersen, 2003a). First, a semantic analysis undertakes the observation of observations by distinguishing concept from meaning (Luhmann, 1993). Second, a coupling analysis undertakes the observation of observations through the guiding difference of coupling/differentiation. Since both analyses proceed by the observation of observations, they can be called second-order analytical strategies (Luhmann, 2002).

### **Semantic analysis**

A concept condenses a multiplicity of expectations to form semantic reservoirs, which are then made available to communication and can be identified by semantic analysis. Concepts, however, are never unambiguously definable. If we are told that someone is a social worker, this immediately creates a horizon of different expectations, such as, for example: 'S/he categorizes people'; 'S/he is probably a liberal'; 'S/he is social and caring'; 'S/he smokes a pipe'; 'S/he removes children from their homes.' Thus, a concept structures expectation. Using a specific concept in specific communication activates specific expectations. These expectations, condensed by concepts, are the meaning of the communication.

There cannot be a concept without a counter-concept to keep the concept in its place (Koselleck, 2004, pp. 155–192; Luhmann, 1991, pp. 15–17). The counter-concept defines restrictions for the concept. A social worker, for example, is only a social worker in relation to a client, and what can be expected of a social worker therefore depends entirely on the expectations that attach to the counter-concept of client. The struggle over the meaning of 'social worker' takes

place in the description of clients and the expectations that are attached to them. The range of possible descriptions is condensed in the concept of client, who may be 'self-reliant, active, and independent' or 'dependent, helpless, and weak'.

A semantic analysis is always a historical analysis, employing an historical perspective for the enlightenment of the current reservoir of concepts. Semantic analysis asks: How are meaning and expectations formed, and how are these condensed and generalized into concepts, which then establish a semantic reservoir for systems of communication? How are concepts displaced and given new counter-concepts, for example? Here the counter-concept may become the counter-concept of a new concept, or simply remain unspecified, occasioning a struggle to fill it out.

### *Coupling analysis*

Social systems are recursive networks of communication. When communication connects to communication it simultaneously draws a boundary between system and environment. This is called operative closure and the system/environment boundary is a semantic boundary, i.e. a boundary that marks the difference the conditions under which meaning is produced inside and outside the system. Although systems are operatively closed, insofar as they connect communication only to communication, they are cognitively open. This means that different social systems can observe and communicate about each other, but they cannot communicate with each other. This opens up the possibility of structural couplings.

A coupling analysis is an investigation of how different closed systems are linked to each other through mutual observation and mutual productive misreading of each other's communication. Social systems are autopoietic systems that independently create their internal communicative elements such as rules of argumentation, themes, codes, and actor fictions. No system is able to create the communicative elements of another system. However, through mutual productive misreading, structural couplings can provide the systems with a continual flow of disorder against which they can create and transform themselves (Luhmann, 1992b). A specific law about pollution, for example, can be a structural coupling between the legal system, the political system, and the economic system. At the same time, the specific law can be productively misread as a normative expectation that is observed by the legal system, as a successful implementation of a particular environmental program by the political system, and as an expenditure by the economic system.

A coupling analysis therefore consists of two parts. The first part is a study of communicative differentiation and the production of mutually closed systems. The second part is a study of the conditions of mutual productive misreading. Structural couplings between systems of communication presuppose system differentiation. However, a coupling cannot exist in the space between systems of communication. An 'in between' does not exist. A coupling has to exist inside the individual systems, forming a place that both connects and separates the systems. Therefore, a coupling analysis has to specify the way in which a coupling opens up for a particular form of irritation in relation to a system of communication, and the way that it also ensures indifference. A structural coupling might be regarded as the unity of the difference between productive misreading of the other and ignorance of the other.

## **Semantic analysis: the differentiated meaning of citizens' contracts**

### *The allowance in the legal system for non-legal considerations*

In the 1960s, the legal system began to withdraw steadily from other social systems, while a shift in the programming of social legislation has allowed for communication in social services

administration that goes beyond strictly legal concerns (Dalberg-Larsen, 1984, 1989; Hydén, 1989; Teubner, 1983).

We may distinguish between three prevailing legal programs in the past 100 years of social legislation: formal law, substantial law, and reflective law. These three legal programs have not succeeded but rather supplemented each other, and have as such also affected each other. Today reflexive law can be said to be the hegemonic program in social law though still containing formal and substantial elements. The purpose of this section is only to show the way in which the legal system opens up for alternative codes of communication and still adapts its programs so that it is able to consider that which is foreign to it. A more fully and complex description of the legal development of social law is not the ambition.

Formal law is conditionally programmed and can, at least with respect to social law, be traced back to the end of the 1800s. The fact that it is conditionally programmed means that it is directed at the conditioning of individual actions through so-called *if-then* legal provisions. For example, if particular circumstances exist, then someone can receive a particular kind of assistance. In social policy terms, this is referred to as rule-based help, and until the Social Security Act of 1974 (Law 333 of 6-19-1974) this legal program has dominated the Danish welfare approach. Formal legislation does not leave room for other codes of communication – for references outside the sphere of law. This means that social policies can only provide services in the case of an explicit legal claim for assistance. Under formal legislation, the question of providing services to a client is solely a question of right or wrong.

Substantial law programs the law according to objective. This has happened in social law since the late 1960s. The law turns in the direction of regulation of the objective and the result of social processes, but does not prescribe individual acts. The law distinguishes between means and objective, and only establishes the definition of a legal objective. Most often, the means remain entirely or partially unmarked. Subsequently, it becomes the responsibility of the social services department to choose between different means and to make a professional decision regarding the most appropriate intervention in a particular case. Substantial law allows for professional assessments of needs and the professional prioritization of alternative means of realizing the formally established objective. This leads to independence as regards the communication of help and care in social services departments, but they do not have the right to define the objective of the help.

Reflective law programs the law according to procedures. This has taken place in social law since the end of the 1980s. The law no longer prescribes individual acts. It also does not prescribe the precise objective of the help but, rather, regulates structural circumstances through procedures. For example, in relation to the removal of children from the home, the legislation no longer formulates the legal objective of potential removal. Instead, there are legal requirements upon the social services department to formulate, together with the parents and child, an action plan which establishes a concrete objective, and which then forms the basis for a plan of specific interventions and sub-goals. This not only allows for non-legal considerations to enter into the determination of means, it also allows for an indefinite number of considerations in the determination of the means, to the extent that an objective is in fact established and the process follows the established procedures. Thus, the law is drawn back in favor of individual case-dependent weighing of non-legal considerations.

### ***Help as a scarce resource: the necessity of prioritization***

At the beginning of the 1980s, economy emerged as a communicative code alongside law and help. This was initially articulated in terms of social policy being economically squeezed between increasing expenses and a stagnating or decreasing tax base. Social assistance

became no longer merely a question of choosing between alternative means, but also a question of economic prioritization of cases and time.

This dilemma was first articulated in social policy in 1979. The Association of Social Services Executives in Denmark wrote: 'The social services and health departments and in particular their management is being squeezed because they have to run faster just to make ends meet' (Foreningen af Socialchefer i Danmark, 1979, p. 7). A year later, the squeeze metaphor became prevalent and was even presented as a cartoon, shown in Figure 1. The monster in the middle of the cartoon is named 'Crisis' and represents the development of society. The left prong represents increased social needs and the right prong represents public budget cuts. The man on the left is a user of the help system, and thinks about increased services. The man on the right is a taxpayer and thinks about lower taxes. The squeezed people below are the social workers and the users. The caption reads, 'Who will be squeezed by what?' in a situation described as a squeeze between growing social problems and increased demands for social services on one side, and a service machine which has stopped growing on the other (Maltesen, 1980, p. 7).

Again and again, the economy emerged as the limit for services. For example, in 1984, *The Social Worker*, an agenda-setting trade journal, noted that

social problems have increased – there are more clients, the problems are more substantial, and there has not been a proportionate increase in staff for handling these problems. This has created an exceptional workload in the social services departments and has led to deterioration in the quality of the social work.

(*Socialrådgiveren*, 1984, p. 7)

This articulates the issue of scarcity. However, it is not thought of as a problem to be remedied by supplying more resources. The problem of scarcity is translated into an economic question involving priorities and planning.

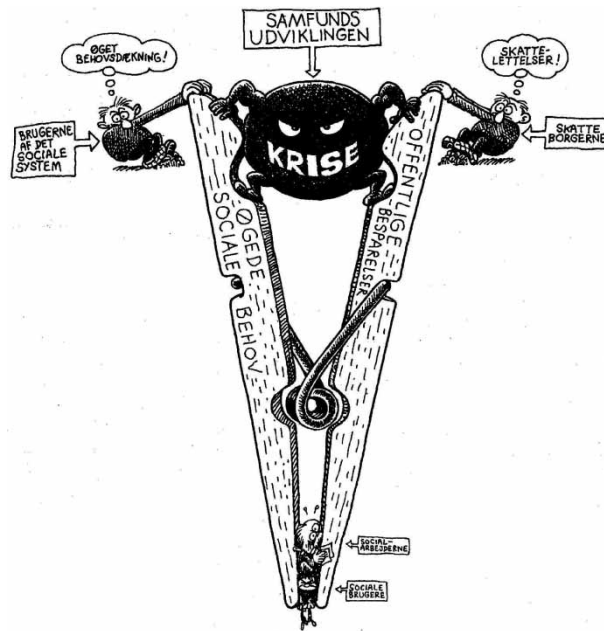


Figure 1. The economic squeeze.

The established resources need to be adjusted to the needs of the clients. That entails a mapping out of the needs of the clients, however, because resources most often are insufficient, it also entails a prioritization of which tasks to address first. If this prioritization does not take place and the effort is not conscious, systematic and focused, it means that the overall effort becomes random and diffuse.

(*Socialrådgiveren*, 1984, p. 19)

We might say that economic decisions are invoked in order to relieve decisions about services. From the perspective of the economic logic of prioritized decisions, help appears as something characterized by a lack of reason – a ‘random and diffuse’ effort, as it is described here.

Thus, the economic code entered social services administration alongside law and help. The economic code is a totality and, like the other codes, it divides the world in two. Economy divides the social world into paying or not-paying members, into haves and have-nots, where having is obviously seen as better than not having. Scarcity does not precede the economic perspective. Scarcity is the effect of an economic observation. When the world is divided into what can be had and not had, this inevitably produces an awareness of not being able to have everything, of not being able to pay for everything at the same time, and therefore having to choose, which unavoidably leads to a sense of scarcity (Luhmann, 1989, pp. 51–63, 1994).

In the economic discussions of the 1980s, help was viewed from the perspective of the economic code as a scanty resource, which has to be paid for. This creates the question of prioritization. However, because help is a scarce resource, it is translated into organizational terms in order to be dealt with – as, for example, economizing with one’s time, relaying decision procedures, planning, increasing efficiency, or delegating responsibility.

### ***Help as investment and responsibility as security***

At the beginning of the 1990s, however, the economic perspective was re-programmed. Help was no longer characterized merely as an expense. Some forms of help were characterized as an investment that creates yields by transforming welfare recipients into workers on the labor market. As we will see, this changed the way in which law, help, and economy can clash.

The time of the squeeze was over. The shift was clearly marked at the annual meeting of social services executives in 1991:

In other words, in the future resources will primarily be allocated towards clients in relation to which it can be expected for the help to be seen as an investment, whereas groups of clients who we do not expect to contribute to a positive change of their own situation in the foreseeable future are going to have fewer possibilities.

(Foreningen af Socialchefer i Danmark, 1991, p. 8)

Help is seen as an investment, and some clients deserve higher dividends than others. We should note that the clients who are seen as good investments are the ones who ‘contribute to a positive change’. This implies a link between an investment paradigm and a self-responsibility paradigm. I will return to this point. For now, note the natural passage to the idea of priorities, which constitutes a kind of welfare triage:

In the future, social services departments will be forced to divide clients into different categories and solve tasks based on the motto of ‘must do’, ‘can do’ and ‘should do’. The ‘must-do clients’ will receive ‘gilt-edged’ treatment, with the departments employing all necessary resources with respect to both personnel and services. These resources will be diverted from other areas, which can be described as ‘can-do’ or ‘should-do’ cases.

(*Socialrådgiveren*, 1991c, p. 4)

Once the investment perspective is employed on clients, they are soon rated according to their expected yields, and the metaphor from the stock market about gilt-edged security is transcribed into social policy, with gilt-edged treatment reserved for the highest-ranking clients.

As mentioned, seeing help as investment makes it possible to divide clients up into groups of good and bad investment objects. It is this investment-based ranking of clients that represents the new agenda. The situation in the municipality of Thisted represents a microcosm: the municipality has published a list of priorities, which means that approximately 250 families with chronically ill children and families in strained financial circumstances are able to receive counselling and advice only once. After that, social services have nothing to offer these families (*Socialrådgiveren*, 1991a, p. 3).

Such explicit lists of priorities naturally lead to a great deal of debate. At the end of the year, the parliamentary ombudsman got involved and inquired whether the ‘is-it-worth-it-perspective’ was legal or not (*Socialrådgiveren*, 1991c, p. 4). The ombudsman reached the following conclusion:

Generally I find myself in agreement with the municipality of Thisted about the necessity of ongoing prioritizations of resources in order to ensure the best possible utilization. Attention to resource-related considerations is not in itself against the law; the important thing is that the prioritization happens within the legal framework.

(Ombudsmand, 1993, p. 1)

This is a noteworthy statement because it is so clearly tautological: the prioritization is not illegal if it is not illegal. Thus, the statement says as much about the law’s ability to observe as about that which the law is seeking to observe – that is, the economic perspective on public assistance. The law shows an understanding of economic necessity but is reduced to understanding within the framework of right and wrong (Majgaard, 1994, p. 42, 1995).

Thisted became famous for its list of priorities, but what has spread to many municipalities is not a fixed list of priorities but rather the manner in which individual social workers approach individual cases and consider whether particular clients represents a good investment or not. Investment, responsibility, and citizens’ contracts are thereby united. As soon as social assistance is referred to as investment it becomes possible to make the link to another concept, which emerged at the beginning of the 1990s as a prevalent idea – the concept of the empowerment and self-government of the client (Andersen & Born, 2001; Born & Jensen, 2001; Cruikshank, 1999; Dean, 1994, 1998). Whether an investment is seen as good or bad is determined merely by whether the client is actively motivated or not. A good investment is an investment by which clients change their current situation and take responsibility for their own lives. This makes it possible for the economic perspective to enter the form of the citizen’s contract: ‘The clients obtain influence on and responsibility for their own future through the “contracts”... The contract holds people to their words’ (*Socialrådgiveren*, 1991b, p. 16). The basic idea is to negotiate the contracts with the clients about the assistance they receive in exchange for self-help and individual effort. The social services executives are a little more blunt: ‘The coverage of needs must be based on a higher level of self-government and self-help’ (Foreningen af Socialchefer i Danmark, 1994, p. 5).

### **Summary**

With the differentiation of codes, particularly law, economy, and help, the social services administration grows polyphonic (Andersen, 2003c; Andersen & Born, 2007) – it no longer has only one language, one set of distinctions, organizing possible expectations between social services departments and clients. Instead, we see different clusters of incommensurable expectations. Legal communication brings one set of expectations, economic communication opens up a

different set of expectations, etc. These expectation clusters are incommensurable because it is impossible to determine whether law is better than help. Each code defines its own horizon of communication, and no horizon is capable of encompassing them all. The problem with differentiation is that, until the code has been established, my possible expectations of your expectations remain open.

The concept of judgment allowed for individually matched deliberations about different considerations within the legal horizon of expectations. As we have seen, even such internal deliberations created a wealth of questions and problems. Now, the issue is judgments about judgments, so to speak. The differentiation of codes for communication about administration and about the client compels a kind of second-order policy about judgment. The differentiation of codes creates second-order expectations about individually matched communications, expectations about communication which not only allow for decision premises to be given different weights in individual circumstances but also allow the basic disposition of the communication, its code, and its horizon of expectation to vary. The contract is seen as the form in which reconaissance of the communication's individual conditions of possibility can take place.

### **Coupling analysis: citizens' contracts as interdiscursive coupling**

Contracts establish a specific medium through which people can observe each other. The citizen's contract establishes a particular form through which clients and social workers observe each other and themselves. The contract becomes a particular communicative and expectation-creating perspective on the world. Luhmann has identified the guiding distinction of contracts as being obligation/freedom (1981, p. 249). A contract links the freedom of the communicating parties with their duties; there is no obligation without the parties' freedom to limit their own freedom. On the other hand, there is also no real freedom without the realization of freedom through mutual relationships of obligation. Ownership, for example, only becomes possible by entering into a relationship of obligation with someone else, who then realizes his or her freedom. Although contract operations include communication about obligations, they also presuppose the freedom of the parties as the necessary outer aspect of the contract.

Traditionally, contracts are described as an agreement about an exchange between individual wills. Teubner contends that modern contracts can hardly be perceived as such. Rather, a contract today 'can only be an interrelation between discourses' (Teubner, 2000, p. 403). Contracts should therefore be seen as agreements of obligations between systems of communication rather than as agreements between individuals. There is a paradox in this way of putting it: a contract necessarily has to be both one and many. This means that a contract is not an autopoietic system of communication, but rather a coupling of different systems of communication. A contract has to presuppose the freedom of the systems of communication as the outer side of obligation, but obligation cannot mean the same to the different systems of communication, as every system has its own boundary of meaning and must therefore define obligation within its communication in its own way (Derrida, 1988, p. 125). At the same time, however, obligation has to have the same meaning, because otherwise there would be no connection. Teubner sums it up like this: 'The unity of contract today is fractured in the endless play of discourses. It sounds paradoxical, but one contract is in reality broken into a multiplicity of contracts' (Teubner, 2000, p. 403; see also Andersen, in press; Muetzelfeld, 2001, pp. 107–108).

In the development of social policies we can establish the differentiation of at least four distinct discourses, along with their systems of communication, in the emergence of the citizen's contract. Each system of communication – the legal system, the help system, the economic

system, and the political system – communicates through its own medium and code, and thus the systems remain operatively closed to one another.

The legal system communicates through the medium of existing law and is closed around the code right/wrong. Legal communication is always about making reservations in relation to conflicts, and is only able to define these as either right or wrong (Luhmann, 1992a, 2004).

The help system, in turn, communicates through the medium of care and is closed around the code help/no help. When a client appeals to the help system, it can either place the appeal on the side of help or on the side of no help. Only the help system can determine whether or not there exists a need for help, and the precondition for this is typically a diagnosis of the problem. From the perspective of the social help system, problems in the environment are indefinite until the help system has established a diagnosis – that is, until it has determined whether or to what extent there is a need for help. Problems presented to the social worker by a client from the help system's environment are considered indefinite needs for help. These indefinite needs for help do not in themselves warrant action. Through diagnosis by the system, the indefinite need for help is transformed into a definite need for help or a specific non-need for help. This allows for social policies to intervene in a methodical way (Cour, 2002; Moe, 1998).

The economic system communicates through the medium of money and is closed around the code pay/no pay. Economic communication simply communicates by means of payments, which continuously redistribute solvency and insolvency. Anything can be the object of communication in terms of money. Everything can be given a price, although economic communication can only define a theme as economic once it can be paid for – that is, once it can be made the object of economic circulation and be given a price. That happens when something is regarded as a commodity (Luhmann, 1994).

Finally, the political system communicates through the medium of power and is closed around the code govern/governed, according to which it is always better to govern than to be those who are governed (King & Tornhill, 2003, pp. 70–72; Luhmann, 1990, pp. 174–178). From the perspective of politics, social policy is a question of being in control of social problems and reducing, accordingly, the difference between problem and solution.

Today, all four systems of communication are imprinted, connected, and mutually deflected in the citizen's contract. In order for this to take place, however, all four systems of communication have to be able to attach their meaning, and their communicative afterlife, to the citizen's contract.

It is essentially a question of how the citizen's contract can be observed from the four different communicative codes and, in each case, how this contributes to a judgment that decides between the will and the adaptation of the client. This decision becomes possible because citizen contracts are a peculiar kind of contract. When the public organization offers the client a contract, the offer is actually not simply an exchange of obligations. What is offered is a second-order contract (Andersen, in press). If we regard a contract as a mutual promise defining obligations based on individual freedom, then a citizen contract is a promise about later promises. With a citizen contract, the administration will oblige clients to mould themselves in order to be able to take responsibility and accept subsequent obligations. So the public administration offers the client a contract on the condition that the client has a will to will. Having the will to will means that the client in the contract communication will not simply adapt to the expectations the administration has of clients in general. Clients have to show that they are able to consider their inner capacity of will under the gazes of the different systems of communication.

In the form of the citizen's contract, the decision of a social services department is not merely a legal decision. As a minimum, it is at once a legal, a care-related, and an investment-related decision. From the perspective of the law, the citizen contract represents

not only a promise that can be read as a program for who is right and wrong – it also represents a promise from the client to make him/herself capable of making promises and distinguishing right and wrong (Luhmann, 1992a, p. 175). From the perspective of the help system, the citizen contract represents not only a program for help, but also a program for self-help whereby clients are obliged to view themselves via a self-care perspective. The citizen contract is meaningful in the help system precisely because of its shift of focus from first-order needs to second-order needs, whereby help does not just solve a problem but provides ways to establish self-help, which in turn requires the active participation of the client. The contract makes sense in relation to the programs of the help system precisely in its linking of help and self-help. It opens up the possibility that treatment can be exchanged for self-help. From the perspective of the economic system of communication, a citizen contract represents not only an agreement about payment, but also an agreement that the citizens will regard themselves as investments expected to yield dividends in the form of clients who grow out of their dependence and into the work market where they will become good taxpayers. Finally, from the perspective of the political system of communication, the citizen contract represents not only a specific form of implementation viewed on the basis of the code to rule/be ruled, but also a specific form of political decision-making as clients accept the need to empower themselves and become active citizens. The citizen contract implies the possibility of individualization and of the enhancement of the power of the administration by enhancing clients' power over themselves.

This is the sense in which a citizen contract is situated not just in one system of communication, but in one and many at once. We can now connect the heterogeneous considerations in the contract. In order to be able to link the systems, the obligations established in the contract have to be translatable and actively transformed in different ways in accordance with the expectations of the different systems. The negotiation of a citizen's contract must also be perceived as oscillating between codes, as an attempt to equate singular communicative values rather than to deflect individual wills. The contract negotiation tests goals and obligations in relation to the different meaning boundaries of the codes without being able to ever reach a shared meaning, and the obligations that become stabilized never become shared obligations but rather couplings of independent obligations.

Couplings only occur between mutually closed systems. Structural couplings between systems of communication presuppose system differentiation. However, this linkage between coupling and differentiation has to be a part of the very form of the coupling. As coupling, the contract is not something that exists in the space between systems. As coupling, the contract has to be inside each system, from where it both joins and separates the systems (Luhmann, 1992b, p. 1433). Contracts create mutual irritation through obligation. Contracts irritate each individual system of communication, producing a commitment to an internal translation of obligation that lets it grow and create structures in the internal communication. Freedom, on the other hand, is not merely individual will. Freedom, understood as the outside of irritation, defines a necessary indifference to the translation of obligation in the other implicated systems. Contracts connect systems of communication by committing each individual system to translating the contract and simultaneously allowing for freedom in translating. Without the freedom to translate the contract, there can be no contractual obligation (Teubner, 2000).

## Conclusion

This paper began a discussion of the 'test of will' that Annette Carstens (2001) has identified in the contract negotiations that take place between social workers and clients in Denmark. It has sought to explain the function of this test by tracing the movement from an unambiguously formal to a more ambiguous procedural law in public administration. This shift has created

expectations about individually matched communication, and has had a significant impact on the way welfare is seen to encourage self-help and constitute a good investment. Citizens' contracts emerge naturally as a form in which the individual can undertake a reconnaissance of communication. They are able to connect the codes of law, care, and economy because the contract can be constructed differently from the perspective of the three codes without losing its character of unity. From the perspective of the law, the contract represents a promise, from the perspective of care it represents a program for self-help, and from the perspective of economy it represents an exchange. The citizen's contract establishes a form in which the definition of the communicative condition is created in the interaction between administration and client. The semantic incommensurability of the systems of communication that are coupled through the contract is constitutive for the test of will – a will the client must at once display and conceal so as to adapt without seeming too adaptable.

The administrative focus of social policy has been displaced from decision to negotiation, but the conditions under which the negotiation takes place need to be established in the negotiation itself. The very communicative code and hence also the horizon of expectations for the negotiation, and the character of the negotiation as negotiation or decision, are to be established in the creation of the contract. The only fixed element is the expectation of an individual reconnaissance of possible expectations. The structure of expectations is adrift.

While 'rational choice' is the constitutive framework for the entire contractual game, this way of thinking is explicitly eschewed in the administration of welfare services. This creates a paradoxical situation that actually stabilizes the negotiation game. On the one hand, clients are considered worth helping only when they are not seen as being economically rational. They are excluded as too 'willing' and 'adaptable' when they are interpreted as speaking rationally. In other words, if clients have conspicuously rational motives for entering into a contract agreement and represent themselves as economically interested, they thereby disqualify themselves as investment objects and have to negotiate from a significantly less favorable position, because they are not opening up to that which the social contract is actually supposed to be about – a self-motivated process of change. If, on the other hand, clients are obviously incapable of representing their own usefulness, this is defined as a lack of self-awareness, and in this case they have to be empowered to act independently. Clients must demonstrate their will by hiding their willingness and become worthy of help by showing that they can help themselves.

## Note

1. These examples are taken from an anonymous collection of student agreements in 2001 from Kastrup School, Vordingborg.

## Notes on contributor

Niels Åkerstrøm Andersen PhD, born 1964, is Professor at the Department of Management, Politics, and Philosophy at the Copenhagen Business School. He is also the research manager for the School's politics group, which consists of 12 researchers. He has worked with discourse analysis and systems theory for many years. His focus has been on diagnoses of present within the empirical field of public administration in a very broad sense. He has published eight books, including *Discursive Analytical Strategies: Understanding Foucault, Koselleck, Laclau, Luhmann* (Policy Press, 2003), and more than 40 articles.

## References

- Andersen, N.Å. (2000). Public market: Political firms. *Acta Sociologica*, 43, 43–62.
- Andersen, N.Å. (2003a). *Discursive analytical strategies: Understanding Foucault, Koselleck, Laclau, Luhmann*. Bristol, UK: Policy Press.

- Andersen, N.Å. (2003b). *Borgerens kontraktliggørelse [The Contractualisation of the Citizen]*. Copenhagen: Hans Reitzels Forlag.
- Andersen, N.Å. (2003c). Polyphonic organisations. In T. Hernes & T. Bakken (Eds.), *Autopoietic organization theory* (pp. 151–182). Oslo: Abstrakt, Liber, Copenhagen Business School Press.
- Andersen, N.Å. (2004). The contractualisation of the citizen: On the transformation of obligation into freedom. *Social Systems*, 10, 273–291.
- Andersen, N.Å. (2007). Creating the client who can create himself and his own fate: The tragedy of the citizens' contract. *Qualitative Sociology Review*, 3, 119–143.
- Andersen, N.Å. (in press). *Partnerships: Machines of possibility*. Bristol, UK: Policy Press.
- Andersen, N.Å., & Born, A. (2000). Complexity and change: Two 'semantic tricks' in the triumphant oscillating organization. *System Practice and Action Research*, 13, 297–328.
- Andersen, N.Å., & Born, A. (2001). *Kærlighed og omstilling: Italesættelsen af den offentligt ansatte*. Copenhagen: Nyt Fra Samfundsvidenskaberne.
- Andersen, N.Å., & Born, A. (2007). Heterophony and the postponed organisation: Organizing autopoietic systems. *Tamara Journal for Critical Organizational Inquiry*, 6, 176–186.
- Born, A., & Jensen, P.H. (2001). Aktivering og handleplaner som integrationsinstrumenter: Hvor ligger mulighederne for kritik? In J.G. Andersen & P.H. Jensen (Eds.), *Marginalisering, integration, velfærd*. Ålborg, Denmark: Aalborg Universitetsforlag.
- Carstens, A. (2001). *Aktivering: Klientsamtaler og socialpolitik*. Copenhagen: Hans Reitzels Forlag.
- Cour, A. (2002). *Frivillighedens pris [The price of volunteer work]* (Doctoral dissertation 21). Copenhagen: Sociologisk Institut.
- Cruikshank, B. (1999). *The will to empower democratic citizens and the subjects*. London: Cornell University Press.
- Dalberg-Larsen, J. (1984). *Retsstaten, velfærdsstaten og hvad så*. Copenhagen: Akademisk Forlag.
- Dalberg-Larsen, J. (1989). Lige linjer, cirkler, trekanter eller spiraler i rettens og samfundets udvikling. In A. Born, N. Bredsdorff, L. Hansen, & F. Hansson (Eds.), *Refleksiv ret*. Copenhagen: Nyt fra samfundsvidenskaberne.
- Dean, M. (1994). A social structure of many souls: Moral regulation, government and self-formation. *The Canadian Journal of Sociology*, 19, 145–168.
- Dean, M. (1998). Administrative asceticism. In M. Dean & B. Hindess (Eds.), *Governing Australia* (pp. 87–107). Cambridge, UK: Cambridge University Press.
- Derrida, J. (1988). *The ear of the other*. London: University of Nebraska Press.
- Foreningen af Socialchefer i Danmark. (1979). *Social idébank*. Copenhagen: Author.
- Foreningen af Socialchefer i Danmark. (1991). *Årsberetning 1991*. Copenhagen: Author.
- Foreningen af Socialchefer i Danmark. (1994). *Tendenser og perspektiver i socialpolitikken*. Copenhagen: Author.
- Freedland, M. (1994). Government by contract and public law. *Public Law*, 86, 86–104.
- Freedland, M., & Silvana, S. (1994). *Public services and citizenship in European law: Public and labour law perspectives*. Oxford, UK: Clarendon Press.
- Greve, C. (1997). Målstyring, kontraktstyring og udlicitering i den offentlige sektor. *Økonomistyring og Informatik*, 13, 109–131.
- Greve, C. (2000). Exploring contracts as reinvented institutions in the Danish public sector. *Public Administration*, 78, 153–164.
- Hydén, H. (1989). Retlige styringsmodeller i retsstaten og velfærdsstaten: Mod en retsstatslig velfærdsmodel. In E.M. Basse (Ed.), *Regulering og styring* (pp. 135–156). Gad: København.
- Justitsministeriet, Det Kriminalpræventive Råd, Socialministeriet. (2001). *Ungdomskontrakter*. Copenhagen: Statens Information.
- King, M., & Tornhill, C. (2003). *Niklas Luhmann's theory of politics and law*. New York: Palgrave Macmillan.
- Koselleck, R. (2004). *Future past*. New York: Columbia University Press.
- Lister, R. (2001). Towards a citizens' welfare state. *Theory, Culture and Society*, 18, 91–111.
- Lewis, J. (2002). Individualisation, assumptions about the existence of an adult worker model and the shift towards contractualism. In A. Carling (Ed.), *Analysing families* (pp. 71–76). Florence, KY: Routledge.
- Luhmann, N. (1981). Communication about law in interaction systems. In K. Knorr-Cetina & A.V. Cicourel (Eds.), *Advances in social theory and methodology: Toward an integration of micro- and macro-sociologies* (pp. 234–256). London: Routledge & Kegan Paul.
- Luhmann, N. (1989). *Ecological communication*. Chicago: University of Chicago Press.

- Luhmann, N. (1990). *Political theory in the welfare state*. New York: Walter de Gruyter.
- Luhmann, N. (1991). *Risk: A sociological theory*. New York: Walter de Gruyter.
- Luhmann, N. (1992a). The coding of the legal system. In G. Teubner & A. Febrajo (Eds.), *State, law and economy as autopoietic systems* (pp. 145–185). Milan: Dott. A. Giuffrè Editore.
- Luhmann, N. (1992b). Operational closure and structural coupling: The differentiation of the legal system. *Cardozo Law Review*, 13, 1419–1441.
- Luhmann, N. (1993). *Gesellschaftsstruktur und semantik, band 1*. Frankfurt am Main: Suhrkamp.
- Luhmann, N. (1994). *Die Wirtschaft der Gesellschaft*. Frankfurt am Main: Suhrkamp.
- Luhmann, N. (2002). Deconstruction as second-order observing. In *Theories of Distinction* (pp. 94–112). Stanford, CA: Stanford University Press.
- Luhmann, N. (2004). *Law as a social system*. Oxford, UK: Oxford University Press.
- Majgaard, K. (1994). Knaphed og prioriteringstvang. *Speciale* (Masters dissertation), Forvaltning, Roskilde Universitetscenter, Roskilde.
- Majgaard, K. (1995). Prioritering under forandring. *Nordisk Socialt Arbejd*, 1, 18–28.
- Maltesen, I. (1980). Socialpolitik i klemme. In Hammer & Maltesen (Eds.), *Socialpolitik i klemme. 80'ernes udfordring*. Socialpolitisk Forenings Småskrifter 52, Forlaget Børn og Unge, Copenhagen.
- Ministry of Justice, Council for the Prevention of Crime, & Ministry for Social Affairs (2001). *Ungdomskontrakter [Youth Contracts]*. Copenhagen: Statens information.
- Moe, S. (1998). *Den moderne hjælpens sosiologi: Velfærd i systemteoretisk perspektiv*. Stavanger: Apeiros Forlag.
- Muetzelfeldt, M. (2001). The facilitative state and the symbolic potency of mutual obligation. *Australian Journal of Public Administration*, 60, 99–110.
- Nelken, D. (1987). The use of contracts as a social work technique. *Current Legal Problems*, 40, 207–232.
- Ombudsman. (1993). *Ombudsmandens redegørelse af 1. april 1993*, j.nr. 1991-504-050 HN.
- Ruus, Viive-Riina (2001). Education in Estonia at the Threshold of the new Millennium, Part II. Contribution to the *Estonian Forum Workshop Education reforms in Baltic States 1987–2000: Critical evaluation and future strategies*, April 6–7, 2001, Tallinn, Estonia. Retrieved from [http://www.haridusfoorum.ee/index.php?page=education\\_in\\_estonia\\_at\\_the\\_threshold\\_of\\_the\\_new\\_millennium\\_part\\_ii](http://www.haridusfoorum.ee/index.php?page=education_in_estonia_at_the_threshold_of_the_new_millennium_part_ii)
- Socialrådgiveren*. (1984, 21: Temanummer). Brug pjecen: Moderniserings- og omstillingsprocessen.
- Socialrådgiveren*. (1991a, 4: 3-5). Kehlet, Thomas (1991). Åbne kort om prioritering.
- Socialrådgiveren*. (1991b, 13: 16-17). Krogh, Kitty (1991). Luft til forsvarligt socialt arbejde.
- Socialrådgiveren*. (1991c, 21: 4). Socialcheferne (1991). Kraftigere prioritering.
- Stevenson, N. (2003). Cultural citizenship in the cultural society: A cosmopolitan approach. *Citizenship Studies*, 7, 331–348.
- Sullivan, B. (1997). Mapping contract. In G. Davis, B. Sullivan, & A. Yeatman (Eds.), *The new contractualism?* (pp. 1–13). Melbourne: MacMillan Education Australia.
- Teubner, G. (1983). Substantive and reflexive elements in modern law. *Law and Society Review*, 17, 239–285.
- Teubner, G. (2000). Contracting worlds: The many autonomies of private law. *Social and Legal Studies*, 9, 399–417.
- Vestergaard, J. (1991). Ungdomskontrakter. *Social Kritik*, 3, 23–36.
- Vincent-Jones, P. (1998). Responsive law in public services provision: A future for the local contracting state. *The Modern Law Review*, 61, 362–381.
- Vincent-Jones, P. (2000). Contractual governance: Institutional and organizational analysis. *Oxford Journal of Legal Studies*, 20, 317–351.
- Vincent-Jones, P., & Harries, A. (1996). Conflict and co-operation in local authority quasi-markets: The hybrid organisation of internal contracting under CCT. *Local Government Studies*, 22, 187–209.
- White, M., & Hunt, A. (2000). Citizenship: Care of the self, character and personality. *Citizenship Studies*, 4, 93–116.
- Yeatman, A. (1997). Contract, status and personhood. In G. Davis, B. Sullivan, & A. Yeatman (Eds.), *The New Contractualism?* (pp. 39–56). Melbourne: MacMillan Education Australia.
- Yeatman, A. (1998). Interpreting contemporary contractualism. In M. Dean & B. Hindess (Eds.), *Governing Australia* (pp. 227–241). Cambridge, UK: Cambridge University Press.