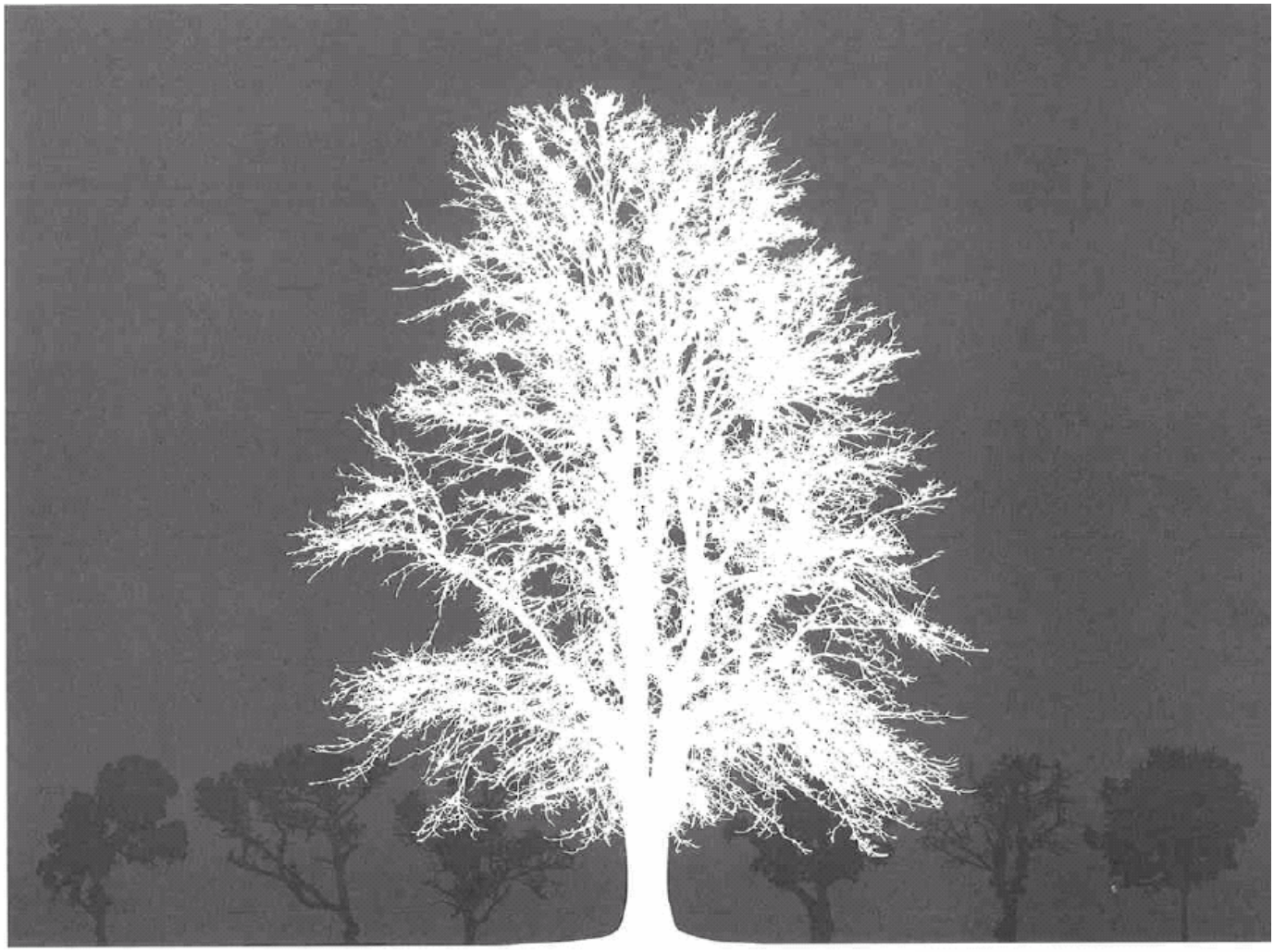
Working Papers on University Reform



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Who Speaks for the University?

Legislative frameworks for Danish university leadership 1970-2003

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- Legislative frameworks for Danish university leadership 1970-2003

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Working Papers on University Reform
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This working paper series is published by the research unit ”Transformations of universities and organizations” at the Department of Educational Anthropology at the Danish University of Education. The series brings together work in progress in Denmark and among an international network of scholars involved in research on universities and higher education.

”Transformations of universities and organizations” aims to establish the study of universities as a field of research in Denmark. The field has three components: International and national policies to revise the role of universities in the knowledge economy; the transformation of universities as organizations; and changes in teaching and learning in higher education. The research unit aims to understand each of these components in the context of the others and explore the links between them. The central questions are: How are different national and international visions of learning societies, knowledge economies, and new world orders spurring reforms to the role and purpose of universities and to the policies and practices of higher education? How do university reforms introduce new rationalities of governance, systems of management and priorities for research and teaching? How do managers, researchers, and students negotiate with new discourses, subject positions and forms of power arising from university reforms? What kinds of changes are students, academics and university managers themselves initiating, and how do these interact with reforms coming from governments and international organizations? This interaction is central to the work of the research unit.

The unit draws together ideas and approaches from a range of academic fields and collaborates internationally with other higher education research environments. Currently the unit’s main activity is a research project, ‘New management, new identities? Danish university reform in an international perspective’ funded by the Danish Research Council (2004-2007). The unit holds seminars and there is a mailing list of academics and students working in this field in Denmark and internationally.

Members of the unit include professor Susan Wright, Danish University of Education, associate professor John Krejsler, Danish University of Education, assistant professor Jakob Krause-Jensen, Danish University of Education, Ph.D. student Gritt Bykærholm Nielsen, Danish University of Education, and research assistant Jakob Williams Ørberg, Danish University of Education.

Further information on the research unit and other working papers in the series are at http://www.dpu.dk/site.asp?p=5899. To join the mailing list, hold a seminar or have material included in the working paper series please contact professor Susan Wright at suwr@dpu.dk or at the Danish University of Education, Department of Educational Anthropology, Tuborgvej 164, 2400 Copenhagen NV, Denmark.

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Introduction: Clearly spoken universities

In the project 'New Management, New Identities? Danish University Reform in an International Perspective'[1] we are increasingly experiencing a paradox in our attempts to study the reform of universities. We study universities as made up of a range of voices belonging to students, academics, managers and politicians across the higher education and research sector who each claims the right to define what the university is or ought to be. These multiplicities hardly make up consistent voices to be identified as e.g. 'the University of Copenhagen', 'Roskilde University', or 'the Danish University of Education', yet increasingly we hear voices presenting themselves with precisely these labels. At my own work place, the Danish University of Education (DPU), we follow on the intranet communication platform, 'plenum', among offers to swap apartments, notices of lectures on the historical shaping of a Danish bourgeois ethos, and an advertisement for a mushroom gathering excursion, news of a distinct voice claiming to be DPU's and addressing the national media as well as the ministry responsible for universities. We hear that 'DPU assesses' the perspectives in negotiating a merger with University of Copenhagen to be marginal. In a document called News from the Management it says that 'DPU is happy' that the minister for science, Helge Sander of the Liberal Party (V), confirms DPU's right to exercise its freedom in relation to possible future mergers (DPU 2006). The document is signed by rector Lars-Henrik Schmidt and chairman of the governing board, Kjeld Holm. Unlike the leaders of DPU, the leaders of University of Copenhagen refrain from calling the university 'happy' or 'sad,' and their chairman, Bodil Nyboe Andersen, never speaks *as* University of Copenhagen, but always *for*. The University of Copenhagen's more audible voices are those of the rector and pro-rector, in a duo called 'Lykke and Ralf'. This duo runs an internet blog about the challenges facing Copenhagen University and how it deals

Figure 1:
'Lykke and Ralf' of University of Copenhagen as presented on their blog-page.
(source: http://blogs.ku.dk/lykkeogralf/)

[1] This paper builds on research done as part of the project 'New Management, New Identities? Danish University Reform in an International Perspective', funded by the Danish Research Council. It draws on arguments developed together with professor Susan Wright of the Danish University of Education as part of a study of the policy background of the current reforms of Danish universities. Susan Wright also kindly assisted me in revising the text. The overall project further includes fieldwork based studies by Dr Stephen Carney from Roskilde University on changes to university governance and management, by Dr John Krejsler of the Danish University of Education on academics' responses to changing management and working conditions, and by Gritt Nielsen, PhD student at the Danish University of Education, on students' participation both in their own learning and in university governance**.**

with them. The recent deadline for input into the ministerial planning of a new map for the Danish landscape of research and higher education is compared to the duo's memories of important deadlines when they were students (Hemmingsen 2006). 'Lykke and Ralf' both defines the top management of the university in a very precise way, and seeks to overcome perceived distance between the top management and the reader of the blog. This is done through an informal presentation of pro-rector Lykke Friis as married to Peter and interested in European politics and football, and of rector Ralf Hemmingsen as father of three with an interest in history and European capitals (University of Copenhagen 2006). At Roskilde University (RUC), a 'reform' university constructed in 1972, things are, as could be expected, different. Although chairman Dorte Olesen on September 14, 2006, wrote in her letter to the minister about mergers that 'RUC' is in favour of a merger with the government's research institution AMI (Roskilde University 2006), the subject of RUC seems a bit more contested than that of, for example, DPU. A memorandum to the board of RUC produced by the then university director, Lars Kirdan, and rector Poul Holm on April 11, 2006, speaks of RUC as suffering from a 'mental split' between its central management and its local units (Roskilde University 2006b). The memorandum calls for the board's support in addressing this situation and turning the split-personality of RUC into an up-to-date organization with a visible management structure and a modern profile and communication strategy. This is, in a way, a call from the management for support *against* the university it is hired to steer, and the aim is the establishment of a clear, unified, and consistent voice to call RUC's.

As Cris Shore (2006) has shown, university managements are increasingly described as *being* their universities. In describing the New Zealand situation he points out that the developing identification of the leaders as the university has even in some places led to listing staff and students among the universities' stakeholders along with business interests, governments, and research-supporting foundations. This reformulation of what it means to be a university is hardly recognisable in what Gritt Bykærholm Nielsen refers to as 'the medieval idea' of a university (Nielsen 2006). As Nielsen points out 'university' is derived from Latin 'universitas' meaning 'whole,' and we usually associate this whole with either a global academic community, the academe, or a localised society of scholars and students, the collegium, institutionalized in universities. Nielsen questions this whole and proposes we should study universities through the sites of their production rather than as objects *sui generis*. The recent development of the idea of the university as an organisation, capable of management, and with a consistent subjectivity suggest that Nielsen is making her call at a time when universities are set up and act like consistent wholes more than ever before. The observation made by Cris Shore on the other hand suggest that this new 'whole' of universities is increasingly disassociated from academe and collegium. To understand this double movement one would both have to understand the restructuring of universities that makes them capable of acting and expressing themselves in a consistent way and the context within which this consistency makes sense. This paper attempts to draw up the different attempts made by the Danish government to organize universities as wholes through legislation in the period from 1970 to 2003. The following is a detailed reading of the major laws on university governance from the period, and the

question guiding this reading has been: what kinds of voices and subjects of the universities are set out in these laws, and how has this been changing?

I will focus on two sides to the legislation. Each of the laws both decides who is legitimate to speak for the university and who has the authority to decide for or at the university. At the same time the laws sets out certain situations in which the 'university' is meant to act as an entity. The 1970 law states that universities decide for themselves what research to carry out, and the 2003 law makes clear that it's the universities' own responsibility to secure 'academic freedom.' Who speaks for a university is not complicated, but how this voice is made legitimate, to who it is accountable, and how it is decided what it should say, and in which situations it should speak, is a more complex matter. It depends heavily on the internal decision making structure at the university, which is dependant on its legislative framework. This internal construction of the university as an acting subject is, given the fact that it is set out in national legislation, contingent on the wish from parliament for a certain kind of subjectivity to address. The different legislations could be seen as different ways for the parliament or the state to create universities as a subject. The use of 'subject' here refers both to the universities being or becoming subjects of the state, and to attempts to construct universities as acting subjects.

However, to speak of universities as subjects brings forward images of universities as consistent bodies or at least somewhat capable of embodying a certain perspective, and the aim here is to trace the emergence of such an understanding of universities rather than reconfirming it. To speak of universities having a subjectivity would be to use the model of today's universities to grasp the universities of the past. As is apparent from the following it is not clear that universities previously could be described as subjectivities. Universities might on the contrary be described as multiplicities that are only defined as coherent bodies, subjects, and voices in law. As Marilyn Strathern points out universities may have both diverse and conflicting aims, while they are often judged on their ability to achieve unity, on their ability to eliminate contradictions (Strathern 1996: 11). The following should be read as an account of how the Danish parliament and the Danish state at different times have sought to *organize* this presumed unity and thereby establish the Danish universities as coherent organizations.

1970: From professor-rule to inclusive 'universitas'

In the wake of the 1960s student rebellion, Copenhagen University's rector Mogens Fog (1968) wrote a book on the challenges facing the Danish system of higher education, in particular at the University of Copenhagen. In it he acknowledged the rebelling students' claim for influence over the workings of the university and in particular over the teaching they were offered. Fog refers continuously to a 'we' - the people responsible for universities (ibid.: 8), which he specifies to be the university professors. They were at the time the only people eligible to sit on the various councils and committees ruling the university. Students, university teachers without a professorship,

and the administrative and technical personnel were all excluded from influence. Fog embraced the validity of claims to transform the leadership at the university, and argued that such claims in a sense should have come from the professors themselves. The attacks on the university system, however disrespectful, were in his mind equal to the striving for 'universitas,' the non-authoritarian ideal of universities as a fellowship of teachers and students, shared by the professors as well. Although not agreeing with students' claims for a certain percentage of representation in each committee he did agree that an increased exchange of arguments across the different groups of teachers and students would strengthen 'universitas' (ibid.: 23-24). Fog's 'we,' or the 'universitas'-version of the university he was evoking, was, it seems, moving from being the professors, and the debates between them, into becoming an expanded community including both students and all university teachers. The university support staff were still at this point not a constituent of the university.

This transition was set out in the law on university governance in 1970 ('Universiteternes Styrelseslov (lov nr. 271 af 4. juni 1970)') (K. E. Hansen 1971), and in a more radical way than rector Mogens Fog had hoped for. The law's first section states that universities are state institutions supervised by the Ministry of Education. This is not new for the University of Copenhagen, but this law transformed Aarhus University from a self owning institution to a state institution. The first interesting section of the law for my inquiry here is section 2 part 2, where it is stated that the university itself decides what research to do. Who is the subject making these decisions? If one reads on, it becomes clear that Fog's 'universitas' is changing. In section 3 of the law it is stated that the university is led by a rector in association with a senate and other faculty, department, and programme committees. Although this is in fact a centralization of powers in the rector's position, a point I will return to shortly, the rector of this section of the law is not exactly absolute. The rector is accountable to the minister of education as well as to the senate, which the law designates as the highest authority of the university, and other boards and committees mentioned in the law and further specified in each university's statutes. What exactly was entailed in the rector's accountability is a bit vague in the law (K. E. Hansen 1971: 12-15). Concerning the rector's relationship to the senate, accountability consisted in a duty to act in accordance with the wishes and decisions of the senate. Since the rector now incorporated the powers of the former university curator (I will expand on this below), the rector was responsible for the probity of the university's actions and for its spending to be in accordance with funding conditions (ibid.: 15). It is important to remember that the budgetary powers of the university still at this point were limited to the submission of a budget proposal to the ministry.

The centralisation set out in the 1970 law mainly consisted in a transferral of the financial oversight of the university to the rector from the university curator who had hitherto approved or rejected all spending decisions made by the rector and senate.[2] The

[2] The University of Odense had, since its establishment in 1966, already had a united academic and financial management, while the University of Aarhus had the financial responsibility located in a committee (K.E. Hansen 1971: 14). The development described here is in this sense specific to University of Copenhagen, although all Danish universities were subject to the resulting 1970 law.

institution of curator was the result of a continuous centralisation of the University of Copenhagen's financial administration. This process had started back in 1796 and gained speed around the English 1807-bombing of Copenhagen (Slottved 2006). The bombing left the university with an enormous need for rebuilding, which demanded strong central coordination. A new office designated to the management of higher education that was set up in the state administration in 1805 played a key role in this, and in 1836 the first royally appointed university treasurer was finally installed to administrate finances, real estate, and staff. Up until then the professors had each administered their part of the university's estate, and together they decided on issues of both academic and financial importance in the senate. The position of university treasurer was replaced by the royally appointed curator in 1936 whose prime purpose was to monitor the appropriateness of the university's spending, and to be the university's supreme financial manager. The position as curator was abolished by the 1970 law, but its functions were to a certain degree continued in the position of the 'university director'. According to the law's section three part seven, the university director was to be the managing director of the university's administration that was established to service the rector, the senate, and other elected committees. The position was to be filled by someone with a relevant degree - usually law studies - and as a state official the university director was an employee of the king (and later the queen) (K. E. Hansen 1971: 15). One present-day university director interviewed for this project considered that the conditions of employment at that time made the university director accountable to the ministry for the legal and proper operation of the university. According to the 1970 law, the university director was subject to the commandments of, and accountable to, the rector (K. E. Hansen 1971: 15), but the claim of the interviewed university director has some legal backing since the elected rector could only be dismissed according to the rules applying to professors (ibid.: 13) whereas the university director was a regular civil servant. In addition, the law of 1970 was replaced by a new law in 1973, which opened up the possibility for the university director to submit concerns over the legality of the rector's and the governing committee's decisions to the minister.

In the 1970 law, the new, more powerful, rector was elected from the university's pool of professors. All full time employed researchers and teachers at the university, and student representatives in committees at faculty level, were voting as well.[3] This was a serious break with the earlier dominance of the professors, who used to appoint the rector amongst themselves, but the rector was still primarily accountable to the academic community of the university, although in its expanded form.

Section 6 of the 1970 law defines the role and constitution of the senate ('konsistorium' in Danish). It consists of the rector, the deans of faculty, representatives of the scientific personnel, and student representatives who make up a third of the senate members. The powers of this committee were to decide on all major issues concerning the university

[3] Although the student voters were limited to student representatives in faculty committees their numbers were still high enough to nominate their own candidate (K. E. Hansen 1971: 18). One could see this as an ability for the students to make vertical strategic or tactical alliances with different categories of staff in the organization.

as a whole (unless the minister set out rules to the contrary!), and to appoint subcommittees to act in its place concerning e.g. the formulation of the university budget. Those universities which were organised into faculties had additional faculty committees which ruled in all cases concerning the faculty as a whole. The dean was the elected chairman of the faculty committee, and the committee consisted of both full-time scientific personnel, part-time scientific personnel, and students, who made up a third of its members. Each faculty was divided into departments ('institutes' in Danish) according to its relevant areas of research. The department was to be led by a department committee ('institutråd') consisting of all full time scientific employees and part time senior lecturers in the department as well as representatives from both students and 'other' employees. The department committee was to appoint a governing board or a leader to run its daily business and represent it. In addition, a study board for each major education programme had to be set up in accordance with section 10 of the law. This study board governed on issues concerning the content of studies, the planning of teaching and exams, and the appointment of assistant teachers or instructors.

Section 4 part 2 of the 1970 law states that the rector represents the university to the outside, but as the above account suggests the rector must be seen as the representatives of quite a multiplicity of semi-independent units and committees. The law constituted the academic community that the rector was to speak for as a complex organism heavily influenced by both scientific personnel, students, and the ministry. I started the above description by asking, who was 'the university' that was to decide what to teach and what research to do ? This does not have a simple answer. The rector represents to the outside world a community of academics and students, but the rector does not have the powers to manage them. Instead the rector is empowered by this community, and the voice of the rector is legitimate only when corresponding to it. It is the boards and committees at all levels that have decision making powers, and the rector must, while being the sole agent allowed to act for the university, be in accordance with them. So, although the rector embodied the voice of the university, the power or clarity of this voice was dependant on the consistency of all the different parts of the academic community and of the rector's resulting mandate. Reflecting this, Ove Nathan, who was the rector of the University of Copenhagen from 1982 to 1994, once described himself as 'a janitor without a budget.' (University of Copenhagen 2006b).

1973: Work place democracy or academic community ?

In fact, Ove Nathan became rector after the next law, in 1973, came into effect, but I have included his statement above in order to deflate a bit the argument that the rector's position was seriously strengthened in the new law. The ambivalence of the rector's position, as a leader with only very few executive power**s,** was identified as a major problem with the 1970 law, and critiques of the law hoped for a new law to solve this. A strengthening of the rector's position was one of the key proposals in a book by the director of the University of Odense, Bengt Bengtson (1972), about university management. The title of the book was highly suggestive of the debate at the time: *They*

can be managed - the universities ('De kan styres – universiteterne'). In the introduction he described universities as 'complicated organisms,' the steering of which is a highly debated and contested issue (ibid.: 7). As the title suggested he was nevertheless optimistic, and ended his book by sketching out a new model for university steering, with a more clearly defined university management that the ministry could hold accountable (ibid.: 65-87).[4] The law of 1970 was always meant to be revised after a few years, in the light of experience, and although Bengt Bengtson's model was not followed in the new law of 1973, the law did make a move in somewhat the same direction.

In the notes that the government published to explain its proposal for the new law (Undervisningsministeriet 1973), it is stated that the provisions were especially motivated by the need to clarify the responsibilities and powers of the different committees and elected leaders (ibid.: 14-17). Both at the universities and in the ministry there had been problems with lack of transparency and slow or even stalling decision making. This was explained by lack of clarity over who was responsible for what and heavy work loads for the elected members of the different governing committees. The government set out to clarify these issues by making more frame-like legislation with more clearly defined rules for the minister, the rector, and governing committees. A number of issues were also to be set out in the university statutes in order to lift some of the administrative burden away from the ministry and allow the law to apply flexibly to a number of additional institutions across the higher education sector (ibid.: 20-26).

The new law, 'Law no. 362 of June 13, 1973, on the government of institutions for higher education' ('Lov nr. 362 af 13. juni 1973 om styrelse af højere uddannelsesinstitutioner' (cf. Betænkning 1985: 64-75)), applied to universities, university centres, and other institutions for higher education under the Ministry of Education. The University of Aarhus, which formerly was a self-owning institution, and the University of Copenhagen, which was founded with permission from the pope in 1475, and had developed itself alongside the Danish state, but not as an integral part of it, had both had their designation as 'state institutions' and their positions *within* the state hierarchy cemented by the 1970 law. In the 1973 law the word 'university' was no longer used to define their status; it was only used to name the institutions to which the law applied.[5] The three long-established universities became part of a whole group of

[4] Bengt Bengtson's book raised the interesting issue of the new liaison or work committees being established between employers and employees in all public institutions at the time. The committees were to coordinate between management and employees and were meant to be an instrument for employees to influence management. In the university this lead to some contradictions insofar as the employees were also part of the management through their representation in the governing committees.

[5] The 'institutions of higher education' under the Ministry of Education were: The University of Copenhagen, The University of Aarhus, The University of Ódense, Roskilde University Centre (RUC), Aalborg University Centre (ÅUC). The Polytechnic College (Den polytekniske Læreanstalt), Denmark's Technical College (Danmarks Tekniske Højskole), The Copenhagen Dentist College (Københavns Tandlægehøjskole), The Aarhus Dentist College (Århus Tandlægehøjskole), the Royal Danish School of Educational Studies (Danmarks Lærerhøjskole), the Royal Veterinary and Agricultural University (Den kg. Veterinær- og Landbohøjskole), Copenhagen Business School, (Handelshøjskolen I København),

institutions of higher education governed by the same law, something which radically altered the 'special' position of universities in the higher education sector, at least legally. Much later, in 2003, all the higher education institutions were named 'universities'. From 1992 the law governing institutions of higher education was renamed 'The Law on Universities,' and, finally, the 2003 university law recast all the different institutions as 'universities'.[6]

What constituted the voice and subjectivity of the 'institution' in the 1973 law was a bit different from that of the 'university' in the 1970 law. Section three of the new law was similar to the old. Each university was lead by a rector in association with the senate and other committees with responsibilities for educational and research activities. However, section four of the law specified that the rector was responsible for the daily management of the institution and allocated to the rector all managerial duties not specifically placed by law with any of the governing committees. Section 5 gave the rector the responsibility of presenting issues to the senate and other governing committees, and, if appropriate, prescribing directions for the handling of these issues. It also made the rector responsible for controlling the legality of the senate's, and other committees' conduct. The rector (who was consistently referred to as 'he' in the law's text) could be authorized by the senate to make decisions on recurring and unproblematic issues, and section 5 point 2 of the law authorized the rector to decide in case of urgency. Finally the rector could demand that the university's committees discussed and commented on any issue of importance to the institution. The rector had in short a number of new and better defined responsibilities and executive powers according to the 1973 law. But it was still the senate, of which the rector was automatic chair, that held the general executive power in cases concerning the university as a whole - of course except where the minister was entitled to decide.

Like in the 1970 law, the 1973 law set out a structure of committees all the way down to department level made up of representatives from the institution's researchers, teachers, and students. As an innovation, the 1973 law also included representatives of the technical and administrative personnel on committees all the way up to the senate level. The technical and administrative personnel gained equal strength of representation on

Aarhus Business School (Handelshøjskolen i Århus), the Danish Academy for Engineers, Lundtofte campus (Danmarks Ingeniørakademi i Lundtofte).

[6] If this shift in language signified a shift in the way the universities were generally viewed is hard to say. It had its practical origins in that the new law also applied to institutions that were not labelled universities. However, the law did integrate the universities into the general planning of education in society in a significant way. With section two part one of the 1973 law, the minister of education was given the power to decide in which subject areas the 'institutions' were to offer education. This allowed the ministry to coordinate the availability of different programmes across the country. Part three of the same section also gave the ministry more thorough control of programme content and admittance. Although the ministry historically had great influence over university finances through the curator, the attempt to directly integrate the universities into ministry strategies for education does seem like a real shift in 'what kind of place' or 'what kind of community' the universities were perceived as. When the Danish People's Party MP, Jesper Langballe, in 2003 talked of the 'multiplicity of institutions arbitrarily named universities by the ministry' (Ørberg 2006: 10), he could have been referring to the levelling out of differences between the 'old' universities and other institutions of learning and research, which we see here at its beginning in the law of 1973.

the senate as students- half that of the academic staff. Since the rector was to be elected by all members of the senate and of the faculty committees, the 1973 law also made the technical administrative staff equal constituents of this position. The professors on the other hand no longer had a vote by virtue of their position alone: only professors who were represented in the university democracy could vote.

According to the 1973 law, the rector could be elected from among any of the full time employed professors and lecturers at the institution, whereas it used to be only from among professors.[7] This made the rector a representative of all employees at the institution, and the rector was answerable to a senate consisting of all groups with a daily business at the institution. The rector's role in the 1973 law, which was now also to represent technical and administrative staff, was in this sense a break from the traditional role of the rector as a representative of the collective of scholars in the 'universitas,' understood in the sense of *academe*. The subject or voice of the university had gone from uttering the will of a collective of professors, via representing a collective of all scholars and students, to representing a collective of all those employed by or using the institution, whether engaged academically or otherwise.[8] Meanwhile, although the complexity of the 'will in the voice' increased with the 1973 law, that law was an attempt to embody the subjectivity of the university more firmly in the single body of the rector position than before and to root out the confusion over executive powers stemming from the 1970 law.

[7] Please see Else Hansen's paper 'Danish university politics 1945-1975 - with and outlook to Sweden'('Dansk universitetspolitik 1945-1975 – med udblik til Sverige') (2006: 11) for details of changes in the university job structure that made this shift possible. Else Hansen's paper also provides excellent background information for a discussion of the meaning of 'democracy' in relation to the Danish universities. The laws of 1970 and 1973 have often been heralded as the world's most democratic because of their representational management system. Else Hansen points out how, at the time, 'democratization' was seen as the development that reflected the broader base from which staff were recruited to the universities, which occurred in the 1950s and 1960s. In the current (2006) debate on university reform yet another concept of university democracy is being discussed: the Danish parliament's influence or lack of influence on the now self-owning institutions (the problem of 'democratic deficit').

[8] Whether the inclusion of technical and administrative staff in the management committees actually affected the nature and functioning of their meetings is a separate question. According to one university director (interviewed for this project) with a long administrative career in universities behind him, technical and administrative staff were never effectively organised at the universities and played only a small role in university governance. The group was, according to him, more active in protesting their loss of influence in the 2003-law than in using their influence from 1973-2003.

1992: The rector as president

The 1973 law was left untouched, with just a few amendments, all the way until 1992, even though it was being continuously criticised and proposals to change it were presented to parliament on a number of occasions. From 1980 onwards a thorough revision of the law was being prepared in the Ministry of Education. In 1982 the institutions themselves were consulted, and a draft to a new law proposal was prepared in the ministry on the basis of these consultations. However, instead of presenting the draft proposal to parliament, the minister of education, Bertel Haarder of Denmark's Liberal Party, established 'the committee for the preparation of a revised law on the governance of higher education institutions'('udvalget til forberedelse af en revision af lov om styrelse af højere uddannelsesinstitutioner') (Betænkning 1985: 1). Established in spring 1984, this committee was to investigate possible changes to the law that would be more in line with the agenda of the conservative-liberal coalition government, which had taken office in 1982 and which aimed at a general 'modernisation' of the Danish public sector (cf. Ørberg 2006b).[9] The mandate of the committee was to develop principles for a revision to the university law that would enhance the status of research within the institutions, ensure the development of educational programmes reflecting research developments and societal needs, increase the interplay between research and education, and make the institutional administration and leadership more effective (ibid.; 3). The committee was to propose a way to further these ambitions while continuing the independence and self government of the institutions on the one hand and making them commit to the demands for effective leadership put forward by 'society' on the other (ibid.: 2).

The committee pointed out in its report (Betænkning 1985: 10) that the lack of a clear division of responsibilities and powers continued to be a problem at the institutions. Although admitting that the rector-position was rather well-defined in the 1973 law, the committee called for a higher degree of clarity in the division of responsibilities and powers down through the organization. As it pointed out, deans, institute leaders, and study board chairmen did not have defined executive powers. To further this point, the report quoted the explanatory memorandum for the law of 1973, in which the government explained the motives behind and the intended consequences of the law's text. The document called for a degree of 'good will and flexibility' at the universities in order to make the system set out in the law function (ibid.). As the committee behind the 1985 report saw it, the best way to secure and strengthen the independence of the institutions was to amend the law so as to transform them into strong and trustworthy dialogue partners for the public authorities (ibid.: 20-21). It seemed to the committee that people at the institutions were most interested in who was included in the decision making process, rather than focussing on what consequences decisions might have or

[9] Lecturer Erik Nilsson of the Danish Technical University was a member of this committee. Nilsson was also a co-author with Bertel Haarder, a top figure in the Liberal Party (Venstre) and minister of education (1982-1992) of the book 'Neo-liberalism and its roots'('Ny-liberalismen – og dens rødder'), which, came out in 1982 (Haarder et al. 1982).

who was to be held accountable for them (ibid.: 21-22). According to the committee, the principle of group representation at the institutions, where the governing committees were constituted on the basis of a division of their seats between interest groups internal to the institution, was a main problem for the effectiveness of the governance at the institutions. The principle often led to inexpedient consensus-seeking decisions, and even a lack of decisions, for the sake of keeping up 'domestic peace' (ibid.: 23). The committee did not find the argument that group representation secured democracy at the institutions relevant since the institutions were meant to further their purpose - not to further 'democracy' as such. Internal democracy was rather to be seen as a means to integrate knowledge into the decision making process and to secure the institutional independence from public authorities (ibid.: 15).[10] The motivation behind a further definition of the responsibilities and executive powers of the different elements of the institutions' organization was in this sense a wish to install a more functional management that could be held accountable and unite the organization in the effort to further its purpose (ibid.: 19-20). The committee wanted efficient, transparent, and accountable institutions, but it took until 1992 before the commission's work was finally implemented in law.

The law of 1992, the first to be called The University Law ('Universitetsloven'), was among the last things the conservative-liberal coalition government of the eighties and early nineties got through parliament. In relation to the universities' ability to act as unified subjectivities, the law was especially significant in that it defined the university's leaders much more clearly, while it established the senate more thoroughly than before and included representatives from outside the institution.[11] Although the law mentions the senate before the rector it alters and weakens the position and make-up of this new senate and strengthens the rector. (cf. Folketinget 1993).

The senate was still the institution's highest ruling committee, but it lost some of its executive powers and was beginning to look more like a governing board than an executive committee. Its job was, according to the 1992 law, to protect the institution's interests and set out the long term directions for its activities and development. Section three part two of the law stated that the senate was to approve the organization of the institution, its budget, and its statutes. It no longer developed the budget. Part three of same section gave the senate the right to raise any issue of significance to the organization and activities of the institution, while it was also obliged to discuss any issue put forward by the rector. Where the senate could have up to 32 members before, the new law set its numbers at 14 plus the chairman, which was the rector. The other members were two external members appointed by the Danish Council for Research Policy (Forskningspolitisk Råd) and the chairmen of the education councils (uddannelsesrådene) respectively. Five members were to represent the management,

[10] The committee also points out that the 'democratic' principle of the 1973 law is a 'participatory' democracy ideal typical of the early seventies not to be confused with a representational democracy. It seems to be the committee's opinion that the foundation of the democracy discussion at universities is fundamentally flawed (Betænkning 1985: 15).

[11] The law is called a university law, but the law's text still refers to higher education institutions, not just universities.

including the deans where these existed, two members represented teachers and scientific personnel, two members represented technical and administrative personnel, and three represented students. The rector held the deciding vote in cases of parity.

The executive powers were being put in the hands of the rector who according to section four of the law decided in all cases except where the law specified otherwise. In addition to this, according to section four part three, in special cases the rector was entitled to dissolve the ruling committees from faculty level down, and even to act instead of the senate in exceptional situations. This new kind of rector was elected by all students and employees at the institution for a four year period. As pointed out earlier, according to the 1973 law the rector had been elected by those members of the institution who had been themselves elected to serve in the senate or faculty committees. The new method of election made the rector no longer directly accountable to the governing committees. Now the rector was accountable to all the persons working and studying at the university. This was a shift away from democracy via group representation and participation in the direction of a representative principle. The rector was to be empowered through election by the institution as a whole, but still share power with the governing committees that were still peopled through the group representative principle.

The 1992 law defined the responsibilities and powers of leaders at all levels more clearly. This was especially the case for the deans. Section five of the law sets out a structure for the governing of the faculties quite similar to that of the institution as a whole. The faculty committees' executive powers were reduced and their responsibility was mainly to supervise the dean. The position of dean itself had a whole section in the law. First of all, even though the dean was not chosen by the rector, the person elected by all employees and students at the faculty had to be approved by rector, who then empowered the dean to carry out the daily management of the faculty. This gave the rector a vertical executive power that was not present in the former university laws. The executive powers of the rector were linked to the lower levels of the organization in a much more direct fashion. The approved dean was, however, kept in check by a faculty committee constituted through group representation. The deans' executive powers in this way had similar features to those of the rector, and like the rector, the dean approved the elected leaders lower down in the organization - leaders whose responsibilities and powers were, again, much more clearly defined in the new law than before.

The law of 1992 was a serious alteration of the 1973 law with respect to the voice of the university and the unification of powers to decide for the university. It constituted a system almost similar to the U.S. constitution's with an elected president with all executive powers and a senate/house confined to legislation. At the same time it set up the deans as quite powerful, both as members of the senate and as elected leaders of their own areas of the organization. The rector's person was, with the 1992 law, increasingly becoming representative of the university as a whole, the general election of her or him by the students and employees only underlining this. Although the senate was still the ultimate authority at the university, the rector's mandate to speak and act

for the institution was far less restricted. One could raise the question at this point however, whether the representative for the institution as a whole had much significance in a situation where the leaders of the parts of the institutions, the deans of faculties, were increasingly assuming more power. Here I will limit myself to concluding that the university voice by 1992 had been legally clarified and embodied in the rector's position to a much higher degree than before, and perhaps even since, but that this position was still kept in check internally both by the elected senate, who had the power to demand a new election for the post of rector, and by the fact that the rector had been voted into office by all the students and employees at the institution. If the university was still a multiplicity which was hard to define, at least its voice seemed clearer.

1999: Contracts and the centralization of powers

The 1999 law did little to alter the legal framework for decision making at the higher education institutions (cf. Folketinget 1999). Most of the provisions of the 1992 law remained unchanged in the 1999 law. What is more significant is the change in the situation the institutions were to address. While the university as a subject had a very similar internal constitution in the two laws, the law of 1999 changed the parties which this subject was to enter into relations with. At the same time the nature of these relations was also changed. Both laws' opening statements describe universities as institutions under the ministry of education, but the 1999 law introduces into the law's text another minister - the minister of research. According to section 2 point 3 of the 1999 law, the minister of research had the competence to enter into an agreement with an institution about the objectives of its activities and development, whereas the minister of education was to enter into an agreement with the institution about the institution's development only within the area of education. Likewise section 12 point 3 of the law gave the minister of science the competence to allow institutions to constitute themselves in other ways than what was prescribed in the law as well as to merge with other institutions.

Although these changes did not alter the internal construction of the institutions they are significant in this investigation. The agreement about the university's activities and development, which the law spoke about, was to be negotiated between the institution- that is the subject I am trying to map out here- and its ministerial counterpart. The rector would sign such an agreement, but the law's section 3 part 2 point 4 decides that the rector would have to seek the approval of the senate. The 'agreement' mentioned in the law made way for the introduction of the so-called 'development contracts' being debated at the time (cf. Andersen 2003). These contracts were to collect all the university's activities into one document, agreed between the minister and the university, in order to clarify the mission, objectives, and strategy of the institution, and make these transparent to the greater public (ibid.: 54).

A potential effect of these agreements was to strengthen the central coordination of activities at the institutions thereby cutting into the power of the deans and faculty

boards. As hinted above, the rector was not necessarily the strongest leader at the university. One way to assess the real internal influence of the different constituent elements of university subjectivity drawn up by the laws examined here, would be to study their influence over the construction of the university's budget. As the university budget was for the most part based on the activity at local levels of the organization, in many ways the rector's budgetary powers were limited. Likewise relations between the university and the state administration did not always go through the rector's office, but also to a large extent through direct links from the separate faculties to the ministry. The introduction of agreements or contracts with the rector as signatory for one party could be a first attempt to cut these links and strengthen the rector's position as *the* subject speaking for all of the university. The section in the 1999 law about the possibility of constituting the university in a different way, the so-called exemption section, was perhaps a more extreme sign of the same move. This section made it possible for the rector and senate to dissolve the university and constitute it in an entirely different way. In 2000 this happened at the Technical University of Denmark (DTU), which was reconstructed as a self-owning institution (Ørberg 2006b: 8-10).

2003: The CEO rector and the end to democracy

The centralization of executive powers in the rector in the 1992 law, and the strengthened central coordination of activities in the 1999 law, were followed by the university law of 2003, the law still in function today, which seriously altered the internal constitution of the university and its external voice. The law, drawing on the example of DTU, reconstructed all of the universities and institutions for higher learning as self-owning institutions. All the different institutions in higher education hitherto governed as state institutions were now designated as 'universities' and organized as self-owning institutions under the Ministry of Science, Technology and Innovation (cf. Folketinget 2003). The shift to self-ownership entailed the abolition of elected leadership and the establishment of a governing board, with a chairman and a majority of members external to the institution, as the university's highest authority (Ørberg 2006b). The governing board was to be made up of a majority of external members who were to be chosen for their personal qualifications and not as representatives of an organization or a particular interest. Both students, scientific personnel, and technical administrative personnel were guaranteed representation in the board, whereas the deans were no longer guaranteed a seat and a vote in the university's top committee.

The law's section 11 states that the governing board is accountable to the minister for the activities at the university (it is even allowed to buy an insurance against the effects of this accountability (section 11 point five)). As was previously the case with the senate, the board approves the university budget, sets the strategy for the university, and works out the university statutes (which have to be approved by the minister). In section 10 point eight of the 2003 law, the development contract is mentioned. It is now the responsibility of the governing board (not the rector) to enter into this contract with the

minister. It is also the governing board that appoints the rector, who according to section 14 of the law holds all executive powers in the university except for the power to buy and sell real estate, which lies with the chairman of the governing board and one other of its members. The rector appoints and authorizes the rest of the university leadership including deans and heads of departments. The rector is responsible for drafting the budget, the rector is signatory to the annual report, and the rector approves all commitments that bind the university. The law is in all these senses a strengthening of the ability of the rector and governing board to act on behalf of or *as* the university. The deans have been made accountable to the rector instead of to a constituency among the students and personnel at their faculties. This fact seriously changed the relationship between rector and deans, as set out in the 1992 law. Similarly the rector is no longer formally accountable to any other authority than the governing board, of which the rector is no longer a voting member. There still exists a committee, the academic council, designed to transport the voice of the scientific employees upwards in the organization to the management, but it lacks executive powers except for the ability to make statements.

The voice of the university, as laid out in the law, is separated from the elements that used to constitute or legitimize a university subjectivity. The rector no longer has to be accountable his or her actions to the employees and students of the organization whom he or she acts for. There are of course representatives of both employees and students on the governing board, but since the board has a majority of external members, their influence over the rector is not guaranteed. In addition to this, it is the practice at most universities to publish the agenda for governing board meetings so late that the employee and student representatives have virtually no possibility of aligning their decisions as members of the governing board with the wishes of their constituency. The more controversial issues are often debated under 'closed' points, which prevent the members from reporting back to their colleagues and fellow students, and also hinders any monitoring of the ways representatives have voted. The rector's position is most easily likened to that of a CEO of a corporation. This is a powerful position, but with the 2003 law the rector is no longer the chairman of the highest governing committee at the university. In this sense the university's subjectivity is not united by the rector's position to the degree it was between 1992 and 2003. This also explains the appearance of a new actor speaking for the university, the chairman of the governing board, and we are only now seeing the chairmen's relationship to the rectors' position being actualized.

In some universities, e.g. the Royal Veterinary and Agricultural University, the chairman and rector seem to have a division of labour between them. During the negotiation of KVL's merger with University of Copenhagen in autumn 2006, the chairman Erik Bonnerup of KVL went public with general remarks about his wish for an expedient merger process, while rector Per Holten-Andersen was very active, often in union with the two other rectors involved in the merger, Ralf Hemmingsen of University of Copenhagen and Sven Frøkjær of The Danish University of Pharmaceutical Sciences, in arguing for the concrete content of the merger and the timeliness of a strategic emphasis on life-science. At the University of Education the

rector and chairman have had a shared voice during the merger debates and have often co-signed press releases, but when DPU had a fall-out with the Ministry of Science, Innovation, and Technology about merger process in the early summer it was chairman Kjeld Holm alone who addressed himself to the ministry. In the University of Copenhagen the chairman, although very involved and with her own office on campus, seems more discreet, only stepping forward publicly at central moments and letting the rector and pro-rector ("Ralf and Lykke") speak for the university in most cases. At Roskilde University (RUC) the management crisis, where the previous rector Henrik Toft resigned in the middle of his term and was replaced by Poul Holm in March 2006, has brought the chairman Dorte Olesen into a rather active role. She has been commenting to the media on both the overall institutional future of RUC and on details about RUC's plan to overcome financial problems in 2006. This role reflects the situation at RUC, where the governing board has had to interfere in the management of the organization, and it is too early to say if it will constitute a special RUC variation of the rector-chairman relationship in the long run.

In any case the voice speaking for the university has never been less accountable to those peopling the university, and the subject of this voice has never had more executive powers, or a mandate to act for the university as broad, as that set out in the 2003 law. It is a question continuously debated in the media, and even more so in relation to the 2006 merger process (cf. Thorup 2006), if the 2003 law narrows and tightens the framework within which the universities can act ? It has definitely changed. As Susan Wright and I have shown (2007 forthcoming) the government's new steering model for universities has the potential to bind them tightly to government policies by a close ministerial steering of their cash flow, and a corresponding lack of equity to back up investments not agreed with the minister. On the other hand the 2003 law defines the management of universities with more executive powers than before. As Steven Carney has shown (forthcoming), the way managements have set out to implement the changes inherent in the 2003 reform are very diverse across the university sector. In the 2006/2007 mergers between universities, we are only seeing the beginning of a movement to make some universities into very big organizations with hitherto unheard of budgets for the governing board and rector to manage. These new giants may prove very capable at negotiating their way with the ministry. In this context I find it very important to recognize and investigate the legal construction of the emerging subject position of *the* university.

Epilogue: A big head without a body ?

At a recent conference held by students at Copenhagen University to influence their university's new strategy plan, the pro-dean of the Faculty of Humanities,Thorkil Damsgaard Olsen, stated that he used to believe in the 1970s idea of an academic community with equal academic citizens. Today, however, he thought it proper to recognize the inequality of these citizens and to protect the weaker, the students, against the stronger, the teachers, through anonymous evaluation technologies. This comment still implied a 'universitas,' however incomplete it had become. The pro-dean still referred to the workings of a community of scholars in explaining his position on evaluation practices, even if this community was not as ideal as he had hoped for in his youth. In the context of the development described throughout this paper one could ask if this 'universitas' is not only incomplete, but also impotent or perhaps even obsolete for the functioning of a university? It is, at least, increasingly a 'universitas' spoken to rather than for, when the university speaks**.**

The conference was meant for the students and scientific personnel to come together and generate ideas and viewpoints to be incorporated into the strategy for the university, which is currently (winter 2006/7) being developed at management level. The idea was to have a conference for the students to point to when putting forward arguments in the governing board. Although no longer powerful as a constituency, the employees and students of the university continue to seek influence on the university's future. A strong statement about the wishes of scientific personnel and students could prove hard to ignore in a situation where the universities are increasingly struggling to attract the best qualified students and personnel. A consciousness of this situation was reflected in the conference side panel I participated in. Here the management of the university was spoken of as a negotiation partner rather than a representative for the community of academics present.

In my own workplace, the Department of Educational Anthropology at Danish University of Education (DPU), a group of academics has begun to seek influence on the development of their university through a committee formed in order to influence university leaders, politicians, and media, outside formal structures of participation in the university system. The committee, named VIP-forum (VIP being an acronym for the scientific personnel in Danish), had among its activities to invite opposition MPs to present to them the view from the bottom on the ongoing reform of the universities. At the resulting meeting, which I participated in, it was apparent that the politicians had difficulties working out the difference between the official management-voice of DPU and that of the academics in the committee. While the politicians were expressing their frustrations that the universities seemed to comply too easily to government politics and called on the academics instead to make alliances with other universities and opposition politicians against these politics, the academics were insisting on the difference between their university's compliance and their own wishes and interest. It seemed hard to

fathom for the politicians that when they were speaking to the leaders, they were not speaking to *the university* as a whole.

One point arising from the tour through the last four decades of Danish legislation on universities that I have presented here, is that the community of scholars, which seemed to identify with the university before 1970, might still exist, but it no longer has a direct say on the voice speaking for the university, or the subject acting as the university, in the contemporary situation. The recognition of this change could be of crucial importance for the political debate over universities, where universities are often discussed as entities as if they had a unified interest or, rather, were unified in their interest. Recognising this change could also be important when attempting to understand present academic work-life, where the autonomy of the single researcher or research group could prove problematic even in a situation when the 'university' is asserting its independence to an unprecedented degree. While the contemporary university-subject is becoming as active and vital as ever, it could be in danger of losing sight of the very body of people it was supposed to animate and unite, but it could also run the risk of keeping too close an eye on it.

As Marilyn Strathern emphasizes in describing the complexity of the university as institution, it may be crucial for both its creativity and productivity to maintain diverse aims in it, and perhaps even 'hidden niches' in its organization where the genius maverick can thrive (Strathern 1996: 11). The unification of an institution to fulfil a common aim is likely to root out contradictions in order to achieve coherence. But contradiction, she argues, is the engine of the intellect (ibid.). In rector Ralf Hemmingsen's speech at the 2006 annual commemoration at University of Copenhagen he likened the university to a high jumper carrying out a number of very complicated bodily actions in order to drive the body forward until it reaches the bar, and then at that point redirect the forces working in the body to drive it up an over the bar. 'We,' Hemmingsen stated in his speech face a similar problem as the high jumper: how fast can one run and still jump up and over the bar? Hemmingsen was describing government demands for Danish universities to both be more productive and deliver at a higher quality, and in doing so he began the presentation of a common strategy for University of Copenhagen. The strategy he presented seemed to be a balancing act between the two sides of Strathern's argument above: the allowance for diversity and contradictions against the organization around common objectives. The University of Copenhagen is to be united in an collective effort to achieve its aims. The management has already carried through a thorough analysis of the university's organization, and over the winter 2006-2007 it expects to develop a common 10-year strategy for the university as a whole. Meanwhile, the strategy, which is to function as both the 'business card' of and 'roadmap' for the university, is to strengthen basic research. As Hemmingsen put it in his speech, it would have been a tragedy if the university had abolished dusty subjects like middle east studies or Chinese when they seemed unproductive or irrelevant, for today those subjects are as contemporary as ever. Paraphrasing Mr. Møller, legendary former chairman of Denmark's largest corporation, Maersk, Hemmingsen stated that allowing apparently unproductive basic research to exist at the university was 'punctual attention' for the Danish 'knowledge economy.'

Hemmingsen wants to back up this ‘punctual attention’ with a new financing system to allow the internal allocation of funding of basic research at University of Copenhagen to be increasingly based on international quality criteria. The ‘unproductive’ pockets will be tied to the aim for the general performance of the institution one way or the other.

The balancing between the wish for universities to organize themselves so as more efficiently to deliver to society, and the acknowledgement of the need of space for the creation of unpredictable research outcomes that universities are also supposed to engender seems to be an inherent contradiction in the contemporary situation of Danish universities. Deleuze and Guattari have pointed out that Freudian takes on the multiple productions of the subconscious inevitably override their differences and reaffirm the unified identity of the person (Deleuze 1987: 28), the continuous attempts since at least 1970 to organize Danish universities as consistent identifiable subjects may, likewise, run the risk of eliminating the multiple and diverse nature of their functioning. The aim of this working paper has been to give a detailed and comprehensive account of the process, but also to provide a foundation for further research. As the above diversity in the appropriations of the framework of the law suggests, the effect of the legal framework of universities is a matter of practical negotiation. What ‘universities’ are made to mean in the future will be influenced immensely by the way university leaders enact the positions set out in the law.

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