

Niklas Luhmann
Political Theory in the Welfare State

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Political Theory in the Welfare State

Translated and introduced by John Bednarz Jr.



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0. Translator's Introduction

Political Theory in the Welfare State [*Politische Theorie im Wohlfahrtsstaat*] was originally published (Olzog, Munich) in 1981. The present English translation, which is an enlarged version of this text, differs from the original in that it contains material that has been written and published subsequently, in addition to material that appears here for the first time. In a way this should come as no surprise to those familiar with the work of its author. But for someone who is coming to Luhmann for the first time I would like to explain that throughout a very productive career the author has continually developed and refined his position. This is readily apparent to anyone who reads works of Luhmann's that are separated by even as few as five years.

In large part, this is the situation with the present work. Although not written, as a single piece, but arranged as a compilation of works of varying length from relatively different periods, it is unified by its theme in a way that allows the reader to follow the more recent developments of its author's thinking that would not have been possible even for the reader of the original work. This, of course, should not be read as a rejection in any way of the contents of the original – on the contrary, all but the original's concluding chapter is included unchanged here in the English translation – but as an explanation of the fact that the author has continued to pursue this theme and wishes to present the results of his more recent efforts here.

Political Theory in the Welfare State is, as its title indicates, a theoretical work. But it is also more than this. It brings together a general theoretical model – in this case, systems-theory – with a specific empirical content – the political system – both in order to locate what Luhmann believes is the central problem in the latter as it has developed to the present and to suggest the direction theory must take in order to deal with it more satisfactorily. In this way *Political Theory in the Welfare State* tries to accomplish for the political system what other works by Luhmann – *Die Funktion der Religion*, *Refle-*

xionsprobleme im Erziehungssystem, Rechtssoziologie, Liebe als Passion and *Die Wirtschaft der Gesellschaft* – have done for other social systems – for the systems of religion, education, law, the family and the economy respectively. This also indicates the key to understanding the work. The disclosure of this key is, I believe, at the very least extremely helpful, if not downright indispensable, not only because it reveals the uniqueness and originality of Luhmann's approach (which might serve to cause problems in the comprehension of a thematic content – viz. politics – with such a long and established conceptual tradition of its own) but also, and perhaps more importantly, because it focuses attention on the central problem and the way in which Luhmann approaches its solution. The key of which I speak here is the idea of the functional differentiation of society. This idea provides the context within which the themes of *Political Theory in the Welfare State* become clear.

The functional differentiation of society is at the very core of Luhmann's general theory of society. It signifies the distinct way in which modern society has evolved. It is an historical achievement of society itself that is preceded by other modes of differentiation.

Initially, society (archaic, pre-civilized societies) was differentiated by means of segmentation. Here a defining feature of society is the essential *equality* of its differentiation. Society is differentiated into subsystems whose principles of self-selective system formation are either descent, settlement or a combination of both. Inequality, of course, may occur here, but only as an effect of environmental conditions. It does not possess a *systematic function itself*.

Inequality acquires a systematic function, i. e. it becomes a principle of self-selective system formation, only with the advent of stratified (traditional) societies. In this case society is differentiated in terms of strata (subsystems) that are essentially *unequal* due to differences of wealth and power. Equality occurs in this case only *within* a stratum. And because of its hierarchical structure the whole of traditional society could be – and indeed was – represented by one part (stratum, subsystem): the top of the hierarchy, the highest stratum.

By the end of the eighteenth century this situation had changed. Modern society was no longer differentiated by means of stratification, but by means of function. Functional differentiation means that the subsystems of society are assigned their own separate functions. They

become, in Luhmann's terminology, "function systems." And while the principle of self-selective system formation in preceding forms of differentiation had been based either on equality (segmentation) or inequality (stratification), functional differentiation includes both of these. It is *unequal* because no function system can ever substitute for (perform the function of) another. But at the same time functional differentiation is *equal* because there must be "equal" access for everyone to all function systems. In other words, the respective environments of the different function systems are viewed (by each function system) as an environment of equals.

An important consequence of the functional differentiation of modern society is the resulting *autonomy* of the separate function systems. Autonomy corresponds to the above mentioned inequality of function systems, and, in Luhmann's terminology, it signifies that function systems constitute themselves "self-referentially" (reflexively). Through the development of their own codes and programs the separate function systems are specialized to different functions and operate *exclusively* on the basis of these codes and programs. In this way their specific modes of operation are *closed* to other systems and operate only on themselves. Of course, this closure in no way precludes the capacity of one function system to react to ("to observe" in Luhmann's terminology) other function systems, quite the contrary. But it does mean that any function system reacts to changes in its environment (to changes in other function systems) only in accordance with *its own* specific mode of operation (its own codes and programs).

Self-referentiality (reflexivity) is infected with a particularly insidious theoretical flaw. Its direct or immediate operation is tautologous, empty. This "symmetry" of direct self-reference has to be interrupted, refracted, "asymmetricized," in Luhmann's terminology. One way asymmetry can (indeed must) be introduced into the self-referential operations of function systems (in order for them to operate non-tautologously, non-emptily) is through the use of time. Another is structurally through the introduction of internal differentiation, i. e. a system/environment difference within a system.

Self-referentiality can be "interrupted," "refracted" [*unterbrochen*], only by choosing *system-external* reference points that specify to what in the environment of a system the system will react and to what it will be indifferent. These are not external points of contact or exchange

between the system and its environment but rather aspects of the system's environment that it can observe *from within* and use to guide its own operation. Time, for instance, according to Luhmann, provides such system-external reference points.

In contrast to an understanding of time as (the experience of) motion or its measurement, Luhmann defines it as, "the interpretation of reality with regard to the *difference* (emphasis added) between past and future." An extremely important consequence of this interpretation is the pre-eminence accorded the present as the ultimate integrator of time and reality. Everything must start from, take its point of departure in, the present – any present – because this is what distinguishes (differentiates) the two temporal horizons: the present past (the past for *this* present) and the present future (the future for *the same* present). These two horizons – *especially the future* – provide the system-external reference points that "interrupt," "refract," the self-referentiality of system operations. A system, then, is able to base the selection of its operations on the prospect of future (external) states; either in the sense of trying to achieve such states or trying to avoid them. It goes outside itself to "recruit," as Luhmann says, the "additional meaning" [*Zusatzsinn*] (system-external reference points) necessary to "fill" the emptiness, tautology, that results from the direct operation self-reference – e. g. "legal is what is legal." In this sense *self-reference* is at the same time *other-reference*. It can operate non-tautologously, non emptily, only if it is "refracted," "interrupted," by passing through external reference points; even if these external reference points are merely possible future states of the system.

This general theoretical context is a direct consequence of the functional differentiation of society. It holds for all differentiated function systems; of course, in different ways depending on the way they have separately evolved. The political system is one of these.

Traditional (pre-modern) society had been differentiated by means of stratification. Politically this meant a hierarchical order of domination [*Herrschaft*] whose top, highest level could plausibly claim to represent the whole of society ("*l'état c'est moi*"). With the transition to modern society this was changed by the new mode of differentiation. No function sytem could claim to perform the function of (to replace) any other. Society was deprived of any "privileged place" (top, center) from which it could be represented as such. This effect, of course, was

felt most dramatically within the political (function) system because this, traditionally, was where this privileged place was located. Instead, Luhmann makes clear that the evolution of the modern political system was bound up with the elimination of arbitrariness in the exercise of power by the top of the political hierarchy. This, of course, did not result in the elimination of the highest political authority but in the paradox of a "bounded" highest political authority; of an authority above which there was no greater but yet "bounded" at the same time. What bounded this highest authority was the law. The result was the "state founded on law," the constitutional state.

The modern political system evolved in conjunction with, and dependent on, the law. The law functioned to restrict the arbitrary exercise of political power by those who possessed it. But Luhmann believes that this is only one side of the state founded on law: the side that is seen from the perspective of jurists. At the same time there is a second side: the side seen from the perspective of politicians where the law is the (sole) instrument of planning and implementing political policies.

Restricting the arbitrary use of political power through the law is a condition of the institution of democracy. But in the case of democracy the law also functions as its instrument to create and carry out its policies. If the law plays such an essential role here, then politics is also at the mercy of the law. "Whatever politics would like to attain and implement," says Luhmann, "would not function without the law and *with the law it does not function particularly well*" (emphasis added). Nowhere is this more apparent than in the case of the welfare state.

The welfare state, according to Luhmann, is more than just a "social state": a state that compensates for the (negative) effects of industrialization through measures of social help. It is certainly this. But in the evolution to the welfare state more than just those affected by industrialization have been compensated (social help) for disadvantages. And more than just the disadvantages of industrialization have become an issue. The achievement of the welfare state requires the inclusion of the *entire population* – not just those affected by industrialization – within the *political* (function) system. The interests of the entire population thereby become the concern of the political system. As one can see, this then is no longer simply a matter of

compensating for disadvantages but also of the discovery of ever new problems (for the political system) ranging from securer docking facilities for Sunday sailors to hot-air hand dryers in public rest rooms.

This kind of all-encompassing political inclusion, which is a functional necessity, opens the political system to every politicizable theme. But on the other hand, the means available to the political system to address these themes – law and money – are rapidly overextended and this itself creates problems that these means cannot solve, in addition to producing an increase in bureaucratization and the attempt to steer the economy by the political system. An analogous situation holds for politicians who are forced by political inclusion to take positions on a greater number of issues, even when they, as Luhmann says, “cannot do anything” about them.

This contradictory, paradoxical situation – i. e. a system whose own operations obstruct their own continuation, and not only in the most direct sense of the ever growing costs of financing the welfare system and its attendant growth in bureaucracy, but also in the sense in which industry produces increasing changes in the environment that society cannot bring under control except through political means (exhaustible resources, non-(re)usable waste) and finally in the sense that the all-encompassing (political) inclusion of the welfare state changes the motivational situation of the entire population (especially the young) in such a way that, despite all its efforts, it cannot assume the willingness of the population to make use of what it offers, or that it is grateful for this, and that consequently the population will be loyal to it – can be resolved (de-paradoxed) through political course-decisions. These are made possible by (political) *options* that provide choices not only of political programs but also of the determination of the societal situation from which politics begins and which politics processes to specific results.

From the political point of view, (political) options are the basis for a many party system, for political opposition. The allowance of political opposition had been, as Luhmann recognizes, one of the greatest achievements of modern societal development. Democracy, after all, depends on it. From the systems-theoretical point of view, it forms one half of the binary code by which the (democratic) political system defines its identity: government/opposition. The introduction (allowance) of political opposition enables the binary coding of all political

communication. This closes the political system operatively. In this sense, then, whatever affects and modifies the chances of the government and the opposition is identifiable and attributable *as political*. But, as Luhmann indicates, this coding cannot be practiced "purely," i. e. directly, because it would lead to the tautology: whatever helps the government and hurts the opposition or vice versa is political. As indicated above, this tautology has to be interrupted, refracted, through the specification of external reference points. Structurally this occurs through the openness of the political system to *public opinion*.

The public represents an internal differentiation within the political system coded according to the difference of government/opposition. The binary coding of the political system according to government/opposition excludes third values. It is precisely this exclusion that creates the (excluded) third value, in this case "the public."

Following Michel Serres, Luhmann describes the relationship of government/opposition and the public as "parasitical". The public is a parasite insofar as it is a third party that benefits from the association of two other ones. As the excluded third value it offers the political system (government/opposition) external reference points to react to. Although neither the government nor the opposition it is able to regulate the actions of the political system as long as these are sensitive to its *opinion*. And in democracies this opinion cannot be ignored because a change of government is never further away than the next election. There are always different (future) options open to the public. And the asymmetric structure of time guarantees the possibility of pursuing different (opposed) political policies (options, e. g. restrictive vs. expansive welfare state policies) successively and to make these options election issues.

The process of the modern (democratic) political system reflects this (always possible) change of policies and programs (political options) that accompanies democratic changes of government. Nor can the future of democracy be separated from it. The future of democracy, in this sense, requires the preservation of the (binary) coding of the political system. Conversely, whatever militates against the effective operation of this binary coding jeopardizes democracy's future. Luhmann believes that the question of legitimation brings this particular problem into focus because even if, as he says, legitimation is not the topic it may have once been in the recent past, it does draw

attention to a problem with the effective operation of the binary coding of the political system.

Since Jellinek and Weber, legitimation had been equated with consensus and its more recent advocates connected its attainment with greater participation. In fact, says Luhmann, in the case of Germany, greater participation has only led to greater disappointments and consequently the two concepts have faded.

On the other hand, this does not mean that the concept of legitimation has to be abandoned. But if one wishes to retain it, he says that it has to be, "placed on the more abstract level of concepts like social system, communication, action, complexity, selection, evolution, self-reference etc." In other words, it must be re-interpreted in the context of a self-referential (autonomous) political system. In this sense, then, the question of legitimation can be raised only in reference to the conditions of the preservation of a political system operating according to the principle of binary coding (government/opposition). But even this creates problems, too.

In the democratic political system political options – different political programs and policies – are (re)presented by specific political parties or party-groups. Thus a decision in favor of one party or party-group is a decision for a determinate program or policy that differs from the programs and policies of other parties or party-groups. This is the only way in which the course of politics can be made an election issue in the democratic political system. But the (re)presentation of specific programs and policies is bound up with political risks that accompany taking a political stand on (perhaps very) controversial issues. By taking specific positions on issues, political parties also expose themselves to the need to defend their positions against criticisms that may reveal their – the programs' and policies' – weakness(es). In the democratic political system this may result in a lack of public support.

It should come as no surprise, then, if parties shun such risks. They do this by (re)presenting their programs as kinds of panaceas. The stringencies of these programs and the willingness of parties to say what they *cannot* do is not attributed by the parties to the programs themselves, but instead to the shortcomings of the party leadership, i. e. to persons. In this way attempts to compensate for weaknesses turn from *programmatic* controversies into *moral* ones. Persons (party

leaders and representatives) are attacked as (morally) unfit for political office, and there is a call for greater rectitude. Luhmann believes that this type of "morally drunk" politics inhibits rather than facilitates the operation of the political system because it allows only one side of the schema of government/opposition to appear as good and worthy of political office while the other is not.

The effective operation of the democratic political system, however, requires that different political options are viable; that a change of government is possible. It must then take place on what Luhmann calls a "level of higher amorality" in the sense that the political schema of government and opposition does not become entangled in a moral one that says that only *our* side is right and fit. Only if it demonstrates this kind of "moral abstinence" can political questions focus on programmatic options instead of on a tacit behavioral culture of politicians.

This is the (societal) reality that political theory must reflect *politically*. Hence, it cannot understand the unity of the political system any longer *as unity* because the latter is no longer controlled by a unity. Instead, the political system is controlled by a difference: the difference of government and opposition that has replaced the unity of the sovereign. This is the reason why Luhmann believes it is no longer appropriate to speak of society as such in terms of "domination" [*Herrschaft*] and why the "critique of domination" in the political, or even the economic, domain is not the form in which the pressing questions of the present can be raised.

This, of course, does not mean that the political system is no longer unified. But political *theory* must now understand this unity as duality. For Luhmann, this is best accomplished by means of a theory of self-referential systems that starts from and is guided throughout by difference, but which *as theory*, at the same time, reflects the *unity* of the difference.

I. The Representation of Society Within Society

In the second half of the eighteenth century all the basic concepts of the European political tradition changed their meaning. An epoch, that of *societas civilis*, of political society, had come to an end, and a new one began. This change had long been under way by the time the Bastille was stormed. It cannot be traced back to the French Revolution, but through this it received a politico-ideological stamp which still today makes it difficult to approach political concepts with political impartiality. Since then, as regards political concepts — e. g. freedom, equality, democracy, legitimacy, representation, participation — we have been assisting in the political struggle which began with the French Revolution, and this, only this, conflict makes clear where the progressive and where the conservative forces are.

If as sociologists we wish to distance ourselves from this conflict of ideologies and political trends, we must take into consideration the complex development already in progress at the level of the history of ideas, before entering into the analysis of historical realities. First, we must take account of the changes of meaning in the conceptual heritage of the ancient European tradition which are connected with the dissolution of the concept of civil society. Words like “legitimacy,” “representation” and “participation” undergo a profound change of meaning, whose causes must be sought in a structural change in the societal system. And on the other hand, there is a growth of political interest in these concepts which, historical rather than accidental, is determined through Revolution and Restoration.

Given this state of things, it may be advisable to leave aside the consequences of the French Revolution for the moment, and so, too, the use of the term legitimacy in the context of Restoration politics, and concentrate instead on the period shortly before the French Revolution. It seems to me that in the two or three decades preceding the French Revolution, rather than after it, one can see why the old

European semantics of "the social" and "the political" lost their plausibility, and why new ways of posing the problem distorted the ancient concepts.

Let us look at how the right to exercise power of government was justified. Essentially, there are two answers. The "English" solution, which was also welcomed as such in Paris, lay in the separation of powers and thus in the principle of the balance of political forces. The other was supported by the Physiocrats, especially by Le Mercier de la Rivière. Governing power is set up through the formula of "legal despotism." Both these proposals had something in common: they no longer deduce what we would call legitimacy from the law. The concept of legitimacy in general recedes or in any case loses its character as a juridical concept. On the other hand, political authority was considered the solution to a problem, be it that of the control of arbitrariness or of the scientific orientation of the direction of the state. Occasionally, formulations emerged that gained acceptance for the first time only in the second half of the nineteenth century. Authority was seen as nothing more than the effective tenure of power: "sovereigns enjoy it because they enjoy it. The very exercise of their power is their title to it," Linguet states in his *Théorie des lois civiles*.¹ This in no way means the ruler can do everything he wants. The old problem of tyrannical despotism had dissolved itself. In its own interest, authority is restricted through the ecological and economic assumptions of social development, and in fact even more strongly than it could be controlled by juridical regulations or moral appeals.

Economic problems of social development, those of the agrarian economy, so strongly dominate that the ruler can also be described as the proprietor of sovereignty. On the hand, this means that "mere caprice becomes his rule."² And on the other, the scope of his actions is restricted by the rules of the economic system. Authority is thus the realization of what is economically necessary, and it is legitimated through the economic result. "The spirit of the laws is property" is a statement that Marx found in Linguet and he noted it.³

¹ S. N. H. Linguet, *Théorie des lois civiles, ou Principes fondamentaux de la société*, 2 vols., London 1767. The citation is from volume 1, p. 73.

² S. N. H. Linguet, *Lettres sur la Théorie des lois civiles*, Amsterdam 1770, p. 40.

³ See Karl Marx, F. Engels, *Werke*, XXVI, vol. 1, Berlin 1965, pp. 320 ff.

It is not difficult to see that this is still true two hundred years later. Hypotheses about the economic system and the interdependence between economics and politics have been refined. One can undoubtedly relate the problem of political legitimacy to the fact that wealth, as a source of political legitimation, has collapsed. Wealthy politicians, such as a Rockefeller, are suspect to us. On the other hand, political legitimation has been related to economic results that the politician himself has not created and indeed cannot by any means fully control. The effects of politics on the economy, and of the economy on politics, have led to new problems: for example, what can politics do about the elimination of unemployment? Or, how can the economy calculate its economic investments when the interest rates are politically manipulated? Despite such problems with which reality has to deal, it does, however, seem that positive economic development is the single decisive factor in keeping a government in power, while, on the other hand, recessions are politically dangerous.

Despite some evidence for this connection, such an evaluation is superficial. We have inadvertently equated legitimacy with popularity. This is evidently quite common, with the result that opinion polls and press reports treat legitimacy like stock market trends or employment figures. One then finds that they begin to reject the opinions of the government, or to accept the judgments of the opposition. But this only produces fictitious descriptions whose socio-theoretical relevance remains obscure. I therefore propose going back to the eighteenth century and questioning both our authorities, Linguet and Le Mercier, once again. This time, the central question must be: who is specifically authorized to speak on behalf of society? Who really, as part of the whole, can represent the whole?

Linguet replies very clearly to this question: many, and therefore no one. "In France, for example, the monarch calls himself the nation; the parlements call themselves the nation; the nobility calls itself the nation; only the nation is unable to say what it is, nor even if it is. Waiting for this point to be clarified, everything stays confused; everything serves as material for claims and disputes."⁴

⁴ S. N. H. Linguet, "Tableau de l'état politique actuel du globe," in S. N. H. Linguet, *Mélanges de politique et de littérature, extrait des Annales*, Bouillon 1778, p. 13.

A few years earlier, Le Mercier still thought in terms of the general sovereign, the legal despot. He alone was considered. He alone represented the unity of the system in the system, and indeed, in the old sense of representation, in the sense of the tangible presence of something that cannot appear as such, "the majesty of the sovereign and his despotic authority ever-present, even in those parts of his empire most distant from his person."⁵ But already the disaster was becoming clear. The parliamentarism of particular interests cannot represent unity. It would be meaningful only if politics lacked clarity; thus only if it were not possible to establish what was legal.⁶ Indeed, this was to become clear a little later. Representation must indeed become parliamentarized, and thus the fiction of the general will must be created. The legitimacy of parliamentary representation must then be grounded in the fact that a representation of unity, a representation of the system in the system, is no longer possible. Since then, "representation" has been a hopeless, romantic category. This emerged not least of all from the discussion of the doctrine of constitutional law in the Weimar Republic.⁷

My argument is that the problems of the legitimacy of political power are linked with this impossibility of representation. The capacity to represent the entire system within the system, the whole of society within society, is the source of legitimation. Whoever can represent all of society within society is thereby legitimate. Representation gives him the right. It is his right. If it dissolves, then this means that whoever still wishes to rule legitimately must then invoke values and ultimately produce results. Starting from the premise that a part of the whole can represent the whole within the whole, the right of authority is a natural right. In lieu of a contrary case or alternatives, this is the task of the *maiores partes*, who clearly stay within the law and who, in the event of its infringement, must expect justified resistance.

This world has passed and, with it, its semantics of self-observation and self-description. In place of *civilitas* we have civilization; in place

⁵ *Op. cit.*, p. 138, (original edition p. 180).

⁶ Cf., *op. cit.*, p. 106 (original edition pp. 137–138).

⁷ See in particular Carl Schmitt's emphatic affirmation of the relation of identity and representation in *Verfassungslehre*, Munich–Leipzig 1928, pp. 204 ff.

of the good life, the difference between values and circumstances; and in place of the representation of unity, the representation of difference. Authority has been dissolved into nothingness. How can this change be explained sociologically? And to what extent do the changes experienced in the meaning of political semantics help us in this?

I believe that the explanation lies in a modification of the primary principle of societal differentiation: in the re-organization of the social system of stratification into functional differentiation. This transformation gives modern society its character. In the eighteenth century this development was more or less clearly grasped, and this is why the conceptual universe of old Europe lost its plausibility.

The problem that forms our point of reference, the representation of the system within the system, plays a role in both social orders. One can thereby compare the old and the new, the traditional and the modern society on the basis of the question of how they are represented within themselves. And the difference appears, on the semantic as well as on the socio-structural level, to lie in the fact that the basic acceptance of a hierarchy in one instance corresponds to reality, and in the other does not.

From a logical viewpoint, there is a paradox in both cases, a refusal of logical levels or "types" which must be produced if one wants to analyze the self-referential relations involved.⁸ However, this is not an objection against the possibility of real systems. These do not collapse because of a logical error. Evolution is not a "logical construction (or de-construction) of the world." All differentiated systems share the problem that they function as a unity in relation to their surroundings. But at the same time they are differentiated internally into partial systems, none of which as a partial system can represent the unity of the whole system. For, as *everything* within, be it a subsystem, a process or an operative element, is *only a part*, they lack the ability to be what they are. They exist notwithstanding their logical impossibility: as a paradox. But as this is clearly possible, one can only ask in what forms does the system experience the paradox of its existence, how can it be elaborated, and how can it nevertheless reproduce itself.

⁸ See in this regard, P. G. Herbst, *Alternatives to Hierarchy*, Leiden 1976; Y. Barel, *Le paradoxe et le système: Essai sur le fantastique social*, Grenoble 1979.

The classical answer to this question is in the form of hierarchy. Hierarchy was the evolutionary achievement produced to resolve this problem. In fact, it was a discovery of genius. The unity of the system was re-introduced into the system as difference, and in fact as a difference which reconstructs the problem with which we are dealing exactly: as a difference of rank. The unity of the system is the difference of ranks, with a double significance: it gives each part a rank, and so lets the part participate by means of the difference. And it uses the same difference to represent itself in the supreme rank at the top of the system. It is unity as difference, since difference permits the representation of the unity of the system through the *maiores et sanior pars*. Hierarchy is the paradox dissolved, paradoxicalness reflected within itself, as it were. And it thereby becomes conjoinable. This is the precise sense in which it was discussed in the old European semantics of participation and representation, service and authority. Whoever uses these words today outside this context must be aware that he or she is taking on the responsibility of giving them a new meaning.

We can now only dream of this fine artistic product of social imagination. Socio-cultural evolution has gone far beyond it. It has replaced the stratification of society as the form of primary system differentiation with re-differentiation in terms of function systems. This destroyed the plausibility of the semantic hierarchy. When we experience stratification, we do so as if it was a contingent, not a necessary structure: as class structures, without legitimating power. No function system, not even the political one, can take the place of hierarchy and its top. We live in a society which cannot represent its unity within itself, because this would contradict the logic of functional differentiation. We live in a society without a top and without a center. The unity of society no longer appears within this society. And so, for us, legitimacy is a question of the popularity of the current government.

However, we shall remain romantics and, what amounts to virtually the same thing, we shall remain critics if we have to be satisfied with this explanation. Even if our society can no longer represent itself as a unity, there still remains the paradoxicalness of each differentiated system. And if this paradox no longer takes the form of hierarchy, it remains for us to ask in what other form it will now appear. The basic problem in fact remains unchanged; every operational act, every structured process, every partial system participates in the society, and is

society, but in none of these instances is it possible to discern the existence of the whole society. Even the criticisms of society must be carried out within society. Even the planning of society must be carried out within society. Even the description of society must be carried out within society. And all this occurs as the criticism of a society which criticizes itself, as the planning of a society which plans itself and always reacts to what happens, and as the description of a society which describes itself.

With the benefit of two hundred years' hindsight we can perceive the formation and development of reflection-theories which restrict themselves to particular systems of functions and deal with their specific problems. At the beginning, in the eighteenth century, these theories still appeared almost like theories of society; as though they involved jointly providing the reflection of society. This is the reason why Kant sought the road to moral law and systematic organizations in the theory of cognition and, consequently, in his reflections on the conditions of the possibility of science. And by taking this route he achieved an unparalleled influence on movements seeking profound social reform. The Physiocrats also viewed their economic theories as political theory as well as a theory of law. The concept of society is more or less limited to economic relations, so that reflection on the economy can at the same time serve as a theory of society. Marx was perhaps the last to have followed this approach in grand style. The result of his work, however, was only that the theory of society subsequently appeared in sociology as a desideratum and as a coercive, ideological position.

Clearly, today's official and academic sociology is remiss in lacking a description of society in the sense of a theory of reflection, a regulated theory of the unity of the system. Many writers on sociology, or even opponents of it, are involved in this task — even people who criticize it as a presumption. And in fact, how should sociology resolve a problem of this stature? How should it as a mere science, if this is not too strong a description, perform the representation of society within society? How might we obtain the ability to give form to the paradoxicalness of the self-reference of the societal system which might serve to guide society? Or, to refer back once again to Linguet, sociology is not the nation within the nation. It participates, at most, in the claim

to be such, and for that reason its relations with society remain confused.

Marxism has sought with great logic to turn this problem around by proposing itself as the unity of science and ideology, a particular kind of science. In line with this, it expresses its own theory as a condition of legitimation. This can only appear dogmatic. A science is involved in issuing certificates of authenticity, and thereby becomes a science of *appellations contrôlées*. However, what is good for wine is not thereby valid for science. This may admittedly be a good way of resolving the paradoxicalness of representation of the system within the system. But it is not the only one.

In any event we must begin from this in order to establish our distance from such an approach a precise manner. But then one very quickly sees that there are many more possibilities than the ones provided here. I want to propose only three possibilities which lie, so to speak, on the threshold, and they are:

(1) a perfecting of theoretically oriented *historical analysis*, with the aim of clarifying the identity and difference of modern society in relation to older social formations;

(2) a precise analysis of the problematic area of *self-referential systems* in connection with an interdisciplinary and persistent discussion;

(3) a clarification of the logic and consequences of the *functional differentiation* of the societal system on the premise that it is possible to obtain from this a better understanding of the positive and negative characteristics of the modern one.

One would not readily expect that this would produce a theory of society capable of serving as a universally accepted representation of the system within the system. What might emerge, however, is a clearer recognition and foundation of the reasons why this is a very difficult problem in the modern, functionally differentiated society.

However, the consequences for the problem of legitimation with which we are concerned lie at hand: legitimation under modern conditions can only be self-legitimation.⁹ Every action which causes dam-

⁹ For a more detailed examination in this regard, see: Niklas Luhmann, "Selbstlegitimation des Staates," in N. Achtenberg, W. Krawietz (eds.), *Legitimation des modernen Staates*. Supplement XV of the *Archiv für Rechts- und Sozialphilosophie*, Wiesbaden 1981, pp. 65–83.

age today calls for legitimation, and only criminals take the liberty of renouncing this. So, whether this concept is confined to the political system, or whether one thinks primarily of legitimation of the law through a "higher law," or whether every function system should function so that educators or doctors should be questioned about their "legitimation," in every case the answer can only be the same: they do it because they do it. Or to formulate this in a less provocative way: every action in a system finds its legitimacy in the fact that it is made possible through other actions of the same system. Function systems can only legitimate themselves. That is, no system can legitimate another.

More than one error can be eliminated at a stroke. The health service legitimates itself not as the application of a science but rather in its capacity to make further medical service possible. The legal sentence legitimates itself not as the result of a legitimate political decision, but rather as the transfer of a normative quality from one action to another. The structures of function systems have long been organized around these real situations. Only the false descriptions are irritating as regards the vain search for legitimation from outside, above, through basic values or through a consensus based on rationally ordered discussion. For this reason our society tries to include the population in all the function systems, e. g. as the democratization of politics, or to ensure the solvency of everyone, even the poor. We know that this has occurred only in very limited cases, but the type of concern reveals something about the type of legitimation. This should be interpreted as an *endowment of the function system with the faculty of self-legitimation*. And a *functionally differentiated society can provide nothing else to its subsystems*.

The social clothing of the legitimation problem can thus no longer be formulated "hierarchically." Rather, it expresses itself as the imperative to legitimate itself. So it is not enough to replace authority by value-relations or discussion, and with this modification retain the model of hierarchy. We must take a radical position, and the central question in this matter seems to me to concern the socio-structural importance of the functional differentiation of environmentally dependent, but also self-referential, subsystems.

We are, to use the current terminology, in a hopeless "legitimation crisis." What is lacking is not, however, a real legitimation but rather a better insight into the particularity of our societal system.

II. Political Theory in the Welfare State

1. The Goal and the Reality of the Welfare State

1. *The Goal and the Reality of the Welfare State* – 2. *Obsolete Theory* – 3. *Socio-Theoretical Foundations* – 4. *Welfare State: Political Inclusion* – 5. *Politics as a Self-Referential System* – 6. *Hierarchy and Cycle* – 7. *Self-Observation* – 8. *Environmental Reference* – 9. *Instability and Change* – 10. *Three Examples from the Economy, Education and Science* – 11. *Function and Performance* – 12. *Digression About Political Theory's Concept of Politics* – 13. *Law and Money: The Means of Effectuating the Welfare State* – 14. *Bureaucracy* – 15. *Political Rationalization in the Administration: Organization, Programs, Personnel* – 16. *Political Options* – 17. *Political Responsibility and Political Theory* – 18. *Towards Practice*

The welfare state that has come into being in the highly industrialized countries of the world is not understood adequately if one interprets it as a social state, viz., as a state that reacts to the effects of industrialization with measures of social help. This is and remains an important aspect of its general purpose. But, in the present situation, welfare means and requires more than just social help and more than just compensation for injuries.

Today, the classical concept of the social state¹ seems to have disappeared all by itself. On one hand, social scientific analysis increasingly deepens the awareness of how conditioned the scope of human action and human fate is. In one way or another, everything an individual experiences appears as socially conditioned and, consequently, as an undeserved fate requiring compensation, including his

¹ Cf., as an example, Hans-Hermann Hartwich, *Sozialstaatspostulat und gesellschaftlicher Status quo*, Köln – Opladen 1970.

own action. This is no longer a matter of the "consequences of industrialization," as it was in the nineteenth century. On the other hand, the particularly prominent and difficult social problems are typically those in which the motivation of those who are disadvantaged plays a role, whether this is in the emergence of disadvantages or for the effectiveness of help.² This problem is identified but not solved by using slogans like "Helping others to help themselves" [*Hilfe zur Selbsthilfe*]. Help, then, has to include a change in the cognitive and motivational structure of personalities, their perception and their intentions. It has to adjust to the individual situations. And this takes the social state to the limits of its capabilities and, morally, to the problem of the justification of its intervention.

If one is allowed to speak of a "logic of the welfare state," then this should be characterized in terms of a principle of compensation. This is a matter of compensation for these disadvantages that befall the individual as a consequence of a particular way of living.³ Experience, however, has taught us that the concept of compensation tends towards universalization because, according to the way the problem is presented, all differences can be compensated and yet differences always remain or new deficits appear that require compensation themselves.⁴ If everything has to be compensated, then this requires compensation, too.

² Of course, this problem has thoroughly classical roots – as, e. g. in the relationship of social help and motivation to work. See, e. g. Henry J. Aaron, *Why is Welfare so Hard to Reform?* Washington 1973, pp. 35 ff. from the perspective of an "obstacle to reform."

³ To cite a typical reference: "The essence of this ("ideal" N. L.) component is compensation to the individual for the negative consequences of a particular organization of life" (Berenice Madison, "The Welfare State: Some Unanswered Questions for the 1970's," in *Social Service Review*, vol. 44 (1970), pp. 434–451).

⁴ According to Odo Marquard even the historical analysis of the concept points to this: "In the journey of guilt concerning compensation, starting from an economically providential God via a nature concerned with balance to the emancipatory program of socialization of an absolute pedagogue, a problem of compensation (is perennially renewed): the problem of compensation for the negative effects of compensation." (Article "Kompensation," *Historisches Wörterbuch der Philosophie*, vol. 4, Basel – Stuttgart 1976, pp. 912–918 (917).)

The concept and process of compensation become reflexive. But in this way the competence to compensate reaches both its conceptual and material limits and touches on the problem of the competence to compensate for incompetence.⁵

As soon as it is accepted and used as a basis for making claims, the concept of compensation sets a dynamic in motion that leads from the social state to the welfare state; one that ultimately excludes nothing and consumes itself – provided that this is not noticed and its facade abandoned. In this situation, then, the question of a still possible theory of the welfare state has to be raised.

Alongside these problems of the conceptual foundations and argumentative machinery of the welfare state, at least three experiential domains prevent the reduction of the concept of the welfare state to that of the social state and determinate it more generally – and perhaps more restrictedly at the same time! These domains are closely connected with and burden one another reciprocally – in the sense that better solutions of the problems of one domain can increase the problems in another.

One domain comprises the rapidly increasing changes in the environment produced by industrial society that cannot be brought under control without invoking political measures. This is true for the problem of exhaustible resources just as much as for the problem of handling unusable waste.

A second domain arises out of the growing costs of the welfare state. These not only form a daily financial problem but also threaten the differentiation of the political and the economic systems because of the increasing relative size of the state budget in relation to other means.

Ultimately, one will have to begin from the fact – although it is particularly difficult to determine causes in this case – that, by means of industry, political guarantees of well-being, formal education, mass media and goods for leisure consumption, modern society changes what one can typically expect to motivate people, especially the coming generations. This means that one cannot consistently count on a readiness to enjoy, and a gratitude for, this kind of state and an

⁵ Thus Odo Marquard for philosophy. See: "Inkompetenzkompensationskompetenz: Über Kompetenz und Inkompetenz der Philosophie," in *Philosophisches Jahrbuch*, vol. 81 (1974), pp. 341 – 349.

accompanying political "loyalty" from those who ought to welcome the welfare state and work for the politics of well-being.

In all these regards, political action in the welfare state has to begin from the fact that the circumstances towards which it directs its efforts are changed in unexpected ways by the effort itself. Politics already is in a position where it constantly has to deal with *self-created realities*. The needs, the unpleasanties, the almost unsolvable problems that it faces are partially its own work. One only has to consider the topic of bureaucracy. In the long or short run, the consequence will be a fractured relationship with its own goals.

Politics receives help in this situation from calculations, temporal horizons and goal-settings with relative short temporal spans. In general, the temporal horizons relevant for action in highly complex societies are abbreviated presumably because the relations needed for longer-term planning are too complex. Moreover, politics has a time structure of its own imposed by the short-term rhythm of elections. In the case of short temporal horizons many interdependencies can be ignored. They do not appear. Reflecting on the past, one can forget that one created the problems with the very principles one plans to use in the future. And for the future one can hope that the far-reaching and incalculable consequences of present planning will remain within the domain of what is controllable. Short temporal horizons relieve action, and this is an advantage not to be underestimated.

On the level of *political mentality* there may be different ways of adjusting to this situation, perhaps something along the lines of the self-styling of politicians or being satisfied with short-term indicators of success, e. g. press reaction or small percentage displacements in the results of political elections. On the level of *political theory* the same problems appear in a different form. Here politics must and can become a theme within the context of its social reality. And this requires extending the temporal horizons, abstracting and including self-referential relations, and in our case, the participation of politics in the creation of the reality that becomes a problem for it.

The following considerations keep to this level of political theory. They seek a political theory *for* the welfare state. Therefore, the concern is not only with a scientifically justified theory *about* the welfare state. Rather, such a theory can also be used to spark the very reflections that are to be brought about within the political system itself. Insofar

as it does this, it is political theory *within* the welfare state. In this way a strict separation of science and politics in the sense of different social systems, different criteria and different responsibilities is not questioned. However, it is assumed that communication nevertheless remains possible.

2. Obsolete Theory

Whether we know it or not and whether we remember it or not, the political ideas that determine our daily orientations, and are associated with concepts like constitution, politics, democracy, basic values, constitutional state and social state, have a theoretical foundation. This does not mean that there is a theoretically oriented science that concerns itself with them. This may be the case! But it is more important that such concepts and the institutional achievements following from them have been introduced into the political system with the help of theory.

This is even more important in the current situation because it implies a different relation to time and history and even a different relation of theory to practical politics. Scientific efforts to discover the structures and processes of politics restrict themselves, of course at the very least, to a description and explanation of what they find. To a certain extent they may also concern themselves with developmental processes. Their political application, however, extends much further. It transcends the level of the expression of cognitive science because it introduces views, concepts, opinions and results into politics and with their help promotes or obstructs it.

In this sense the creation of the modern state in Europe was accompanied by a political theory that, insofar as it was visible, reflected its development, reacted to its problems and offered solutions of a legal and institutional kind. This kind of political reflection is quickly absorbed by politics itself and in this way becomes an aspect of the object on which it reflects. It descends, so to say, from the heights of pure theory into the murky atmosphere of reality and in this way is deflected, exploited, reified and thus becomes an aspect of whatever a

new theory tries to discover. Our institutions are a relic of such processes and therefore need political re-flection from time to time.

When in the sixteenth century new kinds of political concentrations became apparent for the first time, they had been conceived originally as a tightening of earlier conceptual figures and means of reasoning – perhaps as the theologico-juristic idea of a natural authority coming immediately from God (Molina, Suárez, Conring), as Bodin's concept of sovereignty, as the concept of a particular reason of state or finally as the recognition of an unavoidable aspect of arbitrariness in the directing of state (Filmer, Hobbes). The reaction, then, to these theories and their realization in the "absolute" state formed the modern reality.

The component of arbitrariness (autonomy) at the apex of the state proved to be a stumbling block. It could no longer be reconciled with the moral distinction of good and bad (despotic) domination and a corresponding order of rights to resist. It determined the advent both of the constitutional state and democracy. On the level of institutional achievements there was an already complex instrumentarium corresponding to this that gained political acceptance from the time of the French Revolution. For one, there was the idea of a constitution. This could solve the problem of a legal justification of law – if not logically, then at least in practice. For another, there was the idea of the separation of powers. This could channel arbitrariness through the law to the extent that an organ of state could accept decisions from another only when they satisfy the form of law. Finally, there was the idea of the democratic vote and the term of office in parliament or government through which the legally inaccessible aspect of ultimate, sovereign arbitrariness could be brought under control, at least under the obligation to consider one's own political interests.

The realization of this theoretical advance, that became apparent in the nineteenth century, forms the basis for a development towards the welfare state. As a result of popular representation the general populace acquired relevance. More and more aspects of individual life and particularly the countless complications of the consequences of industrial development could be introduced as themes of political life. This outlook became the point of difference for political parties that have become organizationally entrenched since the end of the nineteenth century. It has become part of the generally accepted canon of political legitimization in the form of basic rights, basic values and party programs

based on values. This transfers the problematic of arbitrariness to one of making claims that compete for political relevance and of diluting, equalizing, delaying or even defending claims to improve the "quality of life."

In its development towards the welfare state the nineteenth century offers a materially and regionally fragmented, i. e. very obscure, complex picture.⁶ Only in the twentieth century does the situation become simpler and thereby theoretically graspable. Only now have the tendencies become the trend. There is a change from thinking about "help" (where it may be a precept of political wisdom to grant it) to thinking about "claims." A kind of extra-parliamentary voice in cementing and distributing all achievements comes into being. Capitalism itself becomes "corrupted" by the welfare state, not least of all through the (negative) connection between welfare and unemployment. And above all, this is when, viz., after the welfare state has become well established, that the recursive process starts in which the welfare state itself creates the circumstances and problems to which it reacts.

The following considerations begin from the presently discernible reality of a self-propelled, self-driven welfare state. The accompanying historical situation, however, lacks a corresponding political theory – in any event a theory on the same level as the one on which the tradition had raised and solved the problem of the arbitrariness of the exercise of political power. The daily guidance of political action can be accomplished by those theories that are part of the institutions and which are transformed by the constitution into norms. One can start, for example, from the concept of the state, from the array of government agencies, from the legal constraints of the constitution, from the rhythm of political elections and from the programmatic of basic values. In addition, one also has to deal with new demands that come across one's desk daily. All these institutions are answers to historically conditioned problems. And the question is whether one at present would also have to take additional problems, indeed an entirely different context of problems, into account.

The theoretical baggage that we encounter in the institutions had been accumulated in the centuries when the concern was the realization

⁶ Cf. vor this, Asa Briggs, "The Welfare State in Historical Perspective," in *Europäisches Archiv für Soziologie*, vol. 11 (1961), pp. 211 – 258.

of the modern society vis-à-vis the aristocratic society of the old world. Its occasion was the differentiation of a specifically political system towards greater functional autonomy as a result of the relinquishing of control by the upper stratum of society and organized religion. Its theme was to secure and to attenuate this autonomy, to make the arbitrariness of the exercise of political power possible and to restrict it. Its hidden problem was the complexity of the relations with which politics has to deal under modern conditions. This development has come to its conclusion. Its achievements cannot be given up. They define the system structures of modernity. But the problems that are presently visible in this system of society can no longer be understood with the help of theories that reflect the process of its realization. As theories – not as legal forms and as institutions! – they are historically surpassed. We are faced with an entirely different reality, a self-styled, politically co-created reality that, nevertheless, one cannot affirm unrestrictedly and without concern for the future.

In this historical situation the goal cannot be to say that reality (measured by ideals or utopias) is inadequate. And even less to “criticize” the theoretical and institutional achievements on which the modern welfare state is built – viz., the constitution and the constitutional-democratic domestication of arbitrary authority. Tendencies of this kind, of course, can be observed, above all within the context of a politically reactivated Marxism. But they employ much too simplified a reasoning. Essentially, the latter revolves around a transference of the critique of domination from politics, where it has lost its persuasive power, to the economy.⁷ Those who are economically powerful are called “capitalists” and are immediately rejected without pursuing the analysis any further. How much the undoubtedly significant theoretical work of Karl Marx is of importance here need not be examined. The historical development has proceeded too fast – not least of all as a

⁷ Notwithstanding the recent interest in the “theory of the state,” this remains unchanged. See, e. g. the presentation of the money crisis of the welfare state as a “structural crisis of finance of the advanced intervention state resulting from the production system,” in Rolf Richard Grauhan/Rudolf Hickel (eds.), *Krise des Steuerstaats? Widersprüche, Perspektiven, Ausweichstrategien*, Opladen 1978 (citation p. 18).

result of attempts at a political realization of Marxist theory – for one to be able to return to this critique.

Against all appearance, Marxism and similar “leftist” theories lack radicality – not political radicality but rather theoretical radicality. In view of the present state of scientific development, their conceptual apparatus is not abstract enough. The dialectical structure of their theory requires rigorously simplified starting points for negation. Thus the single question of the ownership of the means of production is taken for the pivotal question of modern society. This permits the transference of the critique of domination from politics to the economy. But it does not permit a penetrating analysis of social realities at the end of the twentieth century.

No less fatal, however, is the simple welcoming of a “turn of direction” that views a disaster in the leftist politics of ideas as if it was an unexpected gift. Just because an attempt to understand society has failed does not mean that we have to give up on such an attempt. The tempo with which social circumstances change prohibits letting things drift along. One has to come to terms with the fact that only now has modern society become aware of the conditions of its possibility, and indeed by considering its environment. If this is true, then the critique of domination in the political and/or economic domain is not the form in which the pressing questions of the present are to be taken up but, rather, system/environment analysis.

3. Socio-Theoretical Foundations

Every political theory is guided explicitly or implicitly by socio-theoretical premises, because politics is a social phenomenon. In contrast to the old European assumption of a political foundation of society, the nineteenth century had recognized the idea of the separation of state and society. This was purchased very dearly by restricting the concept of society to the system of needs: in other words, to the economy. In many ways the effects of this theoretical inclination can still be felt today. Thus the politician and above all the constitutional jurist frequently sees society as something that is “opposed” to the

state.⁸ One says that the state has to do with "social forces." But the state is nothing outside society. It is one of its function systems. Therefore, it is advisable to use a different linguistic device. Society is the all-encompassing social system that orders all possible communication among human beings. The political system is one of its subsystems alongside other subsystems for religion, science, economy, education, family life, medical care etc. The individual subsystems actualize society from their specific point of view according to correspondingly specific system/environment perspectives. Thus the economic and education systems belong to the environment of the political system, and conversely the political system belongs to the environment of education and the economy. This distinction does not exclude extensive reciprocal dependencies. Instead, it assumes demands on and increasing fulfillment of the function systems in society.

Human beings, concrete individual persons, take part in all social systems. But they do not enter into any of these as determinate parts themselves nor into society itself. Society is not composed of human beings, it is composed of the communication among human beings. It is important to keep this starting point in mind. It distinguishes the systems-theoretical theory of society from the older tradition of political thought and forms an indispensable condition for an analysis of the environmental relations of the system of society and its subsystems – an analysis on which we decisively depend.

Beginning from this premise, one can understand social development to the present as an *enhancement of communicative performance* (but not as an enhancement of man in the sense of Rousseau or Nietzsche). Using cultural achievements that we will not specify here, no less discuss, the chances for successful human communication were developed by overcoming increasing improbabilities. Two principles have cooperated in this: the differentiation of a separate upper stratum of society with internally facilitated, successful communication and the differentiation of a separate functional focus, at first of a religious, militarily political and commercial kind. Against this background modern society acquires its particular, historically unique profile. It is characterized by a primacy of functional differentiation with the con-

⁸ See for this tradition and its continued effect, Ernst-Wolfgang Böckenförde (ed.), *Staat und Gesellschaft*, Darmstadt 1976.

sequence of an immense enhancement of highly specialized communication and communicational successes. In this way human potential for action can be organized, specialized and co-ordinated as never before. Scientifically proven truth, money and power, that is politically organized and shared in the form of law, precipitate action when this concerns behavior that a person of himself, viewed anthropologically, would never perform. That which is improbable becomes possible, indeed routinely expectable. It can increase in its effects, reinforce itself and, along with all this, have profound effects on the environment of society, on the eco-system of the planet including man himself.

As a result of this development a plurality of social systems have come into being that combine intense *sensibility to specific questions* with *indifference towards everything else*. The limited capacity to guide oneself by means of a complex environment is established at different places in different ways but always has to be purchased with indifference in all other respects. Any continuation of this development increases sensibility and indifference at the same time. And it increases *indifference overproportionally* because the indifference to *everything else* must accompany every determination of attention.

In other words, civilization and its consequences are a result of the differentiation of human communicative performances from their natural conditions. From the viewpoint of socio-cultural evolution, a stage has thereby been attained at which the system of society changes its environment profoundly and, with it, the conditions on which its own differentiation depends. In order to adapt to this situation communication remains the sole possibility. And it is questionable whether and how the traditional conditions of successful communication, above all scientifically qualified truth, legally qualified power and money, can satisfy these requirements.

One of the most important insights that focuses this problem dramatically is that a society which is structured according to function systems has *no central agency*. It is a society without an *apex* or *center*.⁹ Society is not represented within itself by one of its own, so

⁹ That we have to name two concepts – center and top – has its reasons that lie concealed in the old European tradition and are connected with their distinction of ethics and politics. In connection with this Aristotelian distinction, social ethics was worked out as the theory of friendship directed

to say, special subsystems. In the societal systems of the past this was precisely the function of the nobility, which had been the *maiores partes*. The ethics of the nobility had taken account of this and, seen from the point of view of functions, politics and religion competed for primacy in the guidance of society. Society was understood as "*societas civilis*" or as "*corpus Christi*." The structural conditions for this representation of the whole within itself resided in a system-differentiation of a hierarchy of strata and have disappeared with them. Modern society is a system without a spokesman and without internal representation. Just because of this its basic orientations have become ideologies. One looks in vain among the social function systems for an *a priori*. And one complains just as futilely about the decline of culture and the crisis of legitimation. This is a matter of a structurally conditioned phenomenon: of the condition of complexity and the respective functional performance-capacity of modern society.

Time and again political theory — from Hegel through Treitschke to Leo Strauss and Hannah Arendt — has tried to counter this diagnosis and to conceive the state or politics as the guiding center for everything that occurs in and with it. Typically — and characteristically! — this happens through recourse to the Greek, Platonic or Aristotelian, concept of politics. An outdated, long since superseded conceptual apparatus appears to gain new plausibility due to new kinds of demands.¹⁰ One of the basic questions concerning the theoretical and political orientation of the present is therefore whether one can tolerate the idea of a centerless society and see in this the conditions for an effective, democratic politics. Or whether, in view of the entire situation of the system of society, one believes one can or even has to attribute a central responsibility to politics that might possibly destroy its present bound-

towards a center, towards a heightened, increased, perfect friendship that would exist only for paradigms of virtue (Panaitios, Cicero). The theory of political society (*societas civilis*) remained, with its idea of order, hierarchically structured. The difference itself may have had a semantic function in diffusing attention. In any event, it leaves behind the possibility of formulating what we lack in modern society as the center or top.

¹⁰ Cf. for this, Stephen T. Holmes, "Aristippus in and out of Athens," in *American Political Review*, vol. 73 (1979), pp. 113–128.

aries and the laborious procedures of the democratic determination of opinions.

The present theoretical diagnosis answers this question in the first sense. One cannot functionally differentiate society in such a way as to make politics its center without destroying society. But it is clear that this consideration can be included in the political sphere only as an option and that it also has to be represented politically as political theory.

A further consideration leads to the same problem. At present, the dominant form of differentiating the system of society has such decisive effects on its environment, on natural and motivational resources, on things and persons that the environment begins to become the central factor concerning the future. One has to come to terms with the fact that the rapidly increasing relevance of the environment exacts extensive adjustments in the internal structure of the differentiation of the system of society and, on the whole, will diminish the significance of its internal differentiation, too, i. e. will lower its level of aspiration in reference to special functions. Changes in mentality that precipitate this process are observable – above all, in the pursuit of ways of living that, on the whole, distance themselves from the scheme of differentiation of society, in the reviving of political regionalism, in experimenting with self-help groups, in returning to relatively simple, natural and local preferences and the like. But this raises the question whether a function-system for politics differentiated as democracy can carry out this process of adjustment when, at the same time, it is its victim. Or whether the acceptance of the inevitable is politically the more convenient and more intelligent way to preserve a democratic politics. In any event controversies and party divisions that are exclusively concerned with the extent of state control of economic production and distribution do not provide a sufficient framework of any kind for deciding this basic question.

4. Welfare State: Political Inclusion

The welfare state is characterized most often as a state that supplies extensive social benefits to particular classes of the population and consequently has to find constant sources of revenue for this. It is very easy to predict then that this undertaking will not succeed in finding these constant sources of revenue. But this diagnosis and its resulting therapy of economization (or of a necessary, constantly forced economic growth) grasps only symptoms and not the social deep-structure of the phenomenon. Therefore – following T. H. Marshall – we will formulate a different concept of the welfare state with the help of the sociological principle of *inclusion*.¹¹

The concept of inclusion means the encompassing of the entire population in the performances of the individual function systems. On one hand, this concerns *access* to these benefits and, on the other, *dependence* of individual modes of living on them. To the extent that inclusion is achieved, groups disappear that do not or only marginally participate in social living.¹² The organization of the population ac-

¹¹ Cf., T. H. Marshall, *Class, Citizenship, and Social Development*, Garden City, N. Y. 1964; cf., also, with an emphasis on communal formation and social integration, Talcott Parsons, *The Systems of Modern Societies*, Englewood Cliffs, N. J. 1971, especially pp. 11, 92 ff., and (in connection with Marshall and Stein Rokkan) Peter Flora/Jens Alber/Jürgen Kohl, "Zur Entwicklung der westeuropäischen Wohlfahrtsstaaten," in *Politische Vierteljahresschrift*, vol. 18 (1977), pp. 707 – 772.

¹² Therefore the conscious retention of such marginality, the barring of entire segments of the population from participation in social performances, could be called *exclusion*. In connection with this, the question could be raised whether the *evolution* of modern living conditions in Europe can be characterized as a gradual inclusion, while the *planned* development of other regions and that which is *accelerated through planning* requires preliminary exclusions. On the other hand, the history of Europe, at the same time, is not entirely devoid of exclusions. For this aspect of the puritanical ethos cf., with special reference to present-day South Africa, Jan J. Loubser, "Calvinism, Equality, and Inclusion: The Case of Africaner Calvinism," in S. N. Eisenstadt (ed.), *The Protestant Ethic and Modernization: A Comparative View*, New York 1968, pp. 367 – 383. See also Jeffrey C. Alexander,

according to amount of participation recedes (although, perhaps, higher strata are still distinguished by greater participation in all functional domains) and its place is taken by the group of universally and equally relevant individuals who assume complementary roles in the individual function systems.

The phenomenon that is designated as inclusion has a historical character of its own. It came into being only with the dissolution of the stratified society of European "estates." This had assigned each person (more exactly: each family) to one and only one stratum of society. The person was defined by his or her condition, his or her estate and thereby socially localized and subsumed. Thus through the differentiation of society man was determined as well as fixed as a social being differentially. With the transition to a differentiation guided primarily by functions, this order had to be abandoned. For it is obviously impossible to distribute people over systems for religion, the economy, science, education and politics so that every individual lives in one and only one of them. Rules of access replace the old order. As an individual, a person lives outside the function systems. But every individual has to have access to every function system if and insofar as his or her mode of living requires the use of the functions of society. Seen from the point of view of the system of society, this requirement is formulated by the principle of inclusion. Every function system encompasses the entire population; but only with the respective sections of its mode of living that are functionally relevant. Everyone enjoys legal status and the protection of the law. Everyone is educated in schools. Everyone can acquire and spend money etc. Against the background of this precept of inclusion the *inequality of factual opportunities* becomes a problem precisely because it is no longer supported by the differentiation scheme of society but reproduced a-functionally.

The realization of the principle of inclusion in the functional domain of politics ultimately leads to the welfare state. The welfare state is the realization of political inclusion. Consequently this involves not only

"Core Solidarity, Ethnic Outgroup, and Social Differentiation: A Multidimensional Model of Inclusion in Modern Societies," in Jacques Dofny/Akinsola Akiwowa (eds.), *National and Ethnic Movements*, London 1980, pp. 5–28.

the securing and continuous improvement of the minimal standards of social well-being for everyone¹³ but also specific problems of the most diverse kind that can become serious for anyone who gets into these difficult situations. Therefore, improvement proceeds not only in the direction of raising minimal standards, but also in the direction of the discovery of ever new problems — safer docking facilities for Sunday sailors, hot-air hand dryers in public rest rooms etc. — as public goals.

The encompassing of ever broader aspects of modes of living within the domain of political guarantees has developed gradually. It parallels and is conditioned by the differentiation of the political system. The first step of the newly arisen territorial state was to guarantee the secure protection of the law over a particular area. Political authority was defined by theory (since Bartolus) as jurisdiction. To the extent that lawmaking and taxes were added and the conditions of state activity could be called upon, the problem of encompassing the population fell within this sphere. It was solved through the active participation of the population in parliamentary democracy. But the realization of democracy meant the end of the theory of the limited state goal.¹⁴ The constantly expanding inclusion of the needs and interests of the population in the domain of possible political themes resulted from this.¹⁵ Since politicians have to win the approval of the population to attain office, it is advisable for them to address its interests, to propose improvements and to point out problems. And the increasing

¹³ Thus the definition of Harold L. Wilensky, *The Welfare State and Equality: Structural and Ideological Roots of Public Expenditures*, Berkeley Cal. 1975, p. 1: "The essence of the welfare state is government-processed minimum standards of income, nutrition, health, housing, and education, assured to every citizen as a political right, not as charity."

¹⁴ Cf. for this and for attempts at a reconstruction, Klaus Hespe, *Zur Entwicklung der Staatszwecklehre in der deutschen Staatsrechtswissenschaft des 19. Jahrhunderts*, Köln — Berlin 1964.

¹⁵ In this development Germany counts as an exception in many respects — above all, because it often rejected tendencies already recognizable in western Europe or even reacted in anticipation of them. Cf. for this, Flora et al., *ibid.* (1977); Wolfgang Zapf, "Modernization and Welfare Development: The Case of Germany," in *Social Science Information*, vol. 18 (1979), pp. 219 — 246.

artificiality of living conditions after the industrial revolution provided more than enough occasion for them to do this.

Political inclusion does not have to grant legal claims to all qualities of life. Its semantics, however, has clearly changed from "benefit" to "claims". It does not suit the self-consciousness of the free citizen (i. e. of the interest organizations) to plead for benefits. This means: to presume rejection. One makes "claims" and "is not compensated." This style is part of the requirements of presentation in the struggle for political success. And the same evaluation is made by the allocative authorities. So one should not be surprised if ingratitude disappears when benefits no longer exist.¹⁶

A theory that reflects this situation may tend to assume that politics conditions the attained level of living completely-and thereby may fall back into the earlier model. A reversal of the development of the differentiation of politics and the economy has often been confirmed. Such thinking ultimately permits differentiation only within the organizational apparatus that politics tries to use in order to realize its plans. The socialist states of the eastern block deliberately take this path and supply clear evidence for what, given these premises, political realization can be.

The concept of the welfare state does not force one to go this far – either in politics or in practice. The mistake resides in assuming something like a zero-sum game: the more political determination the less determination elsewhere; the more state the less freedom. In this way the increasing complexity of social life, the proliferation of ways in which something can be determined, is not taken into account. Under the condition of high social complexity there can also be relations of amplification¹⁷ in which a gain in political realization, economic productivity or scientific progress can be combined with a greater

¹⁶ To be sure, Saint-Evremond already had these doubts. They go back to the seventeenth century: "There are not as many ungrateful persons as one believes; because there are not as many generous ones as one thinks" (Charles de Saint-Evremond, "Sur les ingrats," in *Oeuvres*, Paris 1927, vol. 1, pp. 153–158 (153)).

¹⁷ This is an argument recognized in sociology since Durkheim. Cf., Emile Durkheim, *Über die Teilung der sozialen Arbeit*, German trans., Frankfurt 1977, pp. 233 ff.

repertoire of possibilities of individualized, personal modes of living – *of course, only under very specific conditions*. Formulated abstractly, the welfare state does not lead to the problem of totalization and de-differentiation but rather it is a question of the conditions under which opportunities can be combined and if necessary recombined.

At this point it would be worthwhile to look back once again at the bases on which the concept of *interest* had been introduced into the political discussion in the seventeenth century.¹⁸ Whatever it may have concerned: interest is something that the person interested can judge only him- or herself. Only he or she can say whether he or she has specific interests or not. Just because of this, one believed that it was necessary to include it in the process of the political formation of the will. Not only passive (a state based on law) but also active (democracy) political inclusion presupposed this self-referential concept of interest. Only later – as a result of the inclusion of the entire population and of ever widening fields of political care – did doubts about the “maturity” of the citizen appear and, with them, the corresponding custom of inferring interests from social scientific theories or statistical analyses that uncover inequalities. Thus, in a certain way, the social sciences themselves contribute to the de-maturation of the citizen that they lament when they calculate in his or her interests.¹⁹ The socio-political and “practically” attractive inference from comparison to interest is a false one.²⁰ One cannot seriously assume that everyone

¹⁸ Cf. especially, J. A. W. Gunn, *Politics and the Public Interest in the Seventeenth Century*, London 1969; also Felix Raab, *The English Face of Machiavelli: A Changing Interpretation 1500–1700*, London 1965, pp. 157 ff., 246 ff.; Wolfgang Hirsch-Weber, *Politik als Interessenkonflikt*, Stuttgart 1969; Hartmut Neuendorff, *Der Begriff des Interesses: Eine Studie zu den Gesellschaftstheorien von Hobbes, Smith und Marx*, Frankfurt 1972; Albert O. Hirschman, *Leidenschaft und Interesse: Politische Argumente für den Kapitalismus vor seinem Sieg*, German trans., Frankfurt 1980.

¹⁹ Therefore the concern is less with concrete research accounts or results than with a fundamental way of seeing things connected with this that, at the same time, creates protest against itself. In this context cf., Friedrich H. Tenbruck, “Die unbewältigten Sozialwissenschaften,” in *Zeitschrift für Politik*, vol. 27 (1980), pp. 219–230.

²⁰ This conclusion is also supported by the fact that the welfare state uses the communication media of law and money, that are capable of revealing

has an interest in correcting all salient inequalities – for instance, the inequality of education. It remains a problem that the ability to have interests (not only to formulate them and get them accepted) is unequally distributed. But welfare state plans with this in mind have a much narrower field to work in than the one that includes everything that can be initiated on behalf of assumed interests.

On further reflection this consideration leads to the differentiation of education and politics. While education is able to deal with the development of interests and has its own principles and mechanisms of inclusion for this (above all: the obligation of universal schooling), politics can be connected only with existing interests. For persons who show no interests – and this can be a problem of youth as well as of age – political effort is the wrong way of doing things because one encounters immanent constraints on political inclusion and, at the same time, indications of its dependence on developments in the economy, education and social stratification. It would tax the possibilities of the welfare state and also be a striking overestimation of oneself if one wanted to extend this in the sense of providing the population with interests.

5. Politics as a Self-Referential System

Inclusion is an “open” principle insofar as it determines *that* but not *how* everyone deserves political attention. To the extent that the individual determines his or her own interest, the attraction of attention, political selection and thematization of interests become a concern that can be regulated only within the political system itself. This requires *communication*. Whatever can become politically relevant results from a connection with whatever already possesses political relevance. Whatever counts politically reproduces itself. And this occurs by encom-

minimal differences and arousing interests for or against changes that would otherwise remain unnoticed, to attain its goals. To this extent the welfare state entangles itself in its self-created reality. We will return to this again in section 13 of this chapter.

passing and absorbing interests from the social environment of the political system. Politics conditions its own possibilities – and apparently becomes sensible thereby to what its environment offers or requires. It is not understood adequately as a closed or an open system. It is both at the same time.

The difficulties that theory-formation and on-going scientific research encounter here are rooted in their object. We will subsume them under the concept of “self-referential system.”

A system is called self-referential that *produces and reproduces* the elements – in this case political decisions – out of which it is *composed itself*.²¹ Although such a system originates exclusively out of its elements, a specific order of these elements can reproduce itself. From the necessity of maintaining the ability to constantly reproduce new elements within itself, self-reference becomes the condition for all system operations. Therefore, a self-referential system can carry out operations only in self contact, i. e. only through co-ordinating its operations with other operations of its own. Just as with the brain, there are no direct stimulus/response relations for such systems. Instead, everything that the system is able to do is determined with regard to what takes place within it. Every individual decision refers to other decisions of the same system, otherwise it could not be a decision. And the individual decision possesses meaning only in such relations, perhaps as a contribution to the promotion or obstruction of other decisions, as a link in a chain, as dependent for success on its connection with other decisions or – for all these reasons – as the decision not to decide because premises or possibilities of connection are not sufficiently definite.

Thus, such a system itself makes possible the elements that constitute it. It does not procure them from the environment but constitutes them within itself. Therefore it can be constituted out of elements that are not present in its environment (or only within other self-referential systems) – for example, out of actions or decisions that cannot exist at all individually. But, despite all the processes of exchange with the

²¹ Cf., the concept of life in Humberto R. Maturana/Franzisco J. Varela, *Autopoiesis and Cognition: The Realization of the Living*, Dordrecht 1980, as well as the argument that for a living order no other system than a self-referential one is possible.

environment, despite the dependence on matter and information, this is possible only if an order of self-referential reproduction can be kept intact and on-going. Maintaining it becomes an indispensable part of the constitution of every single element so that every element — in our case: every political decision — always refers to this network of constitution, whatever else it may signify for the system and the environment.

This self-referential mode of operation has long since been criticized for being logically circular and therefore empty. It has also been suggested that self-reference should be read as a kind of “egoism” and rejected. Only in the past few years has systems research seriously begun to include the problem of the self-reference of systems. And quite likely this research will also contribute to the stimulation of political theory.

Viewed sociologically, self-reference is a result of evolutionary system differentiation and political self-reference, a result of the social differentiation of specifically political systems. The development of self-referential modes of operation corresponds exactly to the requirements of this historical development. And it imposes them to the extent of its realization: self-reference makes possible system openness to changing themes with a relative constancy of the structures guiding the operations (party organization, ministerial organization, law etc.). And it makes possible the inclusion of the entire population within the scope of politics — regardless who determines what is a political theme. Therefore one has to begin from a practically inevitable development of structures that binds us to use social functions in this way. More and more depends on understanding this phenomenon adequately, protecting it against misunderstandings and revealing its structural problematic.

A more precise analysis will have to begin from the fact that only chains of communications, not persons can be differentiated (see above section 3 of this chapter). It is the processes of communication through which politics sensitizes itself, i. e. makes itself sensitive to problems and tasks, through which it relates itself to the social environment. Thus this is the way, for example, that the political relevance of “themes” (and the relevance of persons) is created, reinforced and then discredited within the internal communication processes of the political system, even if it does not have to correspond exactly to the changes

in the environment. The political discussion itself secures its conditions – and becomes discouraged after a period of futile effort. Accordingly, there are generally accepted premises, perhaps basic values, for which one can already presuppose a consensus when beginning a campaign of communication. And there is a kind of historical consciousness about the “circumstances” for which a short-term memory of the participants suffices. Intuition regarding what is immanently possible is an important condition of participation. Contacts with the environment remain indispensable. They provide suggestions for initiatives or even arguments for what “does not go.” But the real condition of operation, the indispensable condition of participation and the hallmark for ascribing communication to the political system resides in political self-reference: in the continual reference of politics to politics.

The idea of welfare as a political goal (instead of *pax et iustitia*, as in the Middle Ages) is the exact semantic correlate of political self-reference. Self-reference is a primarily tautological, welfare a correspondingly indeterminate principle. Therefore the advancement of welfare can always be a goal of welfare and constitute welfare at the same time. “Welfare is of unlimited scope.”²² It has no end. It presupposes itself for the production of its possibilities and problems. Similarly, the principle of compensation and the control mechanisms of equality and security are not constraints, only guidelines in the pursuit of fields of activity for the welfare state. The unity of self-reference and the idea of welfare signify the unity of the recursive closure and thematic openness of politics. Its semantic trappings correspond to the structure that already comes into play with the functional differentiation of the political system. This, however, changes the problems with which such a system has to deal.

While in earlier social formations with a hierarchically structured politics the danger of despotism, arbitrariness or the misuse of power constituted the point where politics became a problem and a threat to itself, in the welfare state there are additional problems that result from the self-referential mode of operation. This does not make the question of the misuse of power obsolete nor the state based on law and a constitution superfluous. But these categories no longer fully

²² Says William A. Robson, *Welfare State and Welfare Society: Illusion and Reality*, London 1976, p. 174.

comprehend the disadvantages of a precarious development of structure. And there are symptoms for developments in entirely different directions that are a cause for concern. They amount to deficiencies in environmental awareness and are not corrected by the controls imposed by a state based on law.

A typical problem of self-referential systems (and, indeed, of those that are well-structured) lies in the tendency of self-reference to *short-circuit, undercut*. Political systems above all, with their formula of government/opposition, provide a good example of this. A lot of "politics" is conducted within the scope of this difference. A mistake by the government is chalked up as a victory by the opposition and vice versa. An attack on the "impotence" of the government proves the vitality of the opposition almost immediately. Short-circuiting, undercutting resides in the technique of representing itself in the critique of its counterpart. In the specific case of the public, this is by no means simply an example of talking to a brick wall as a simplistic critique of parliamentarianism would have it. For one must still ask whether and how far the public will go along with it. But surely this is the simplest way of transforming self-reference into communication for any themes with any content.²³

The case is similar regarding what one could call the special code for politics: the classification of themes as either "progressive" or "conservative."²⁴ It seems to belong to the conditions of the capacity

²³ Apart from this problem of the self-referential short-circuiting of opposition, there are also investigations that point to the fact that the evolution of the welfare state is propelled by party competition based on class differences. And, to be sure, under this condition all parties (and not just those that represent the interests of the lower classes) increasingly concern themselves with a welfare-state programmatic. Cf., Charles F. Cnudde/Donald J. McCrone, "Party Competition and Welfare Politics in the American States," in *American Political Science Review*, vol. 63 (1969), pp. 858–866; Edward T. Jennings, Jr., "Competition, Constituencies, and Welfare Politics in American States," in *American Political Science Review*, vol. 73 (1979), pp. 414–429. This is even more remarkable, because usually it is very difficult to ascribe differences to party *difference* empirically.

²⁴ See for this, Niklas Luhmann, "Der politische Code: 'konservativ' und 'progressiv' in systemtheoretischer Sicht," in *Zeitschrift für Politik*, vol. 21 (1974), pp. 253–271.

of themes to be political that they can be assigned to this formula (foreign policy offers a notable exception). These ascriptions makes self- and other-ascriptions to one side or the other possible, and once again: the short-circuiting of self-reference. One then can communicate about the content of the themes using extreme simplifications.

Important social domains of communication can be organized on the basis of binary codes of this type – for instance, true/false, legal/illegal, healthy/sick. But the question is whether and to what extent politics can actually succeed in bringing its problems under control in a society where, as it is, things change very rapidly. The danger is that, using the option of this code, one can make decisions about one's options too quickly.

But one can also make non-decisions. In addition to the problem of short-circuiting, complex self-referential systems are inclined to *use* their internal connections *negatively*. One could also talk of relatively low thresholds of discouragement. Since action is possible within the system only when the proper conditions are present and one has suitable actions to connect, it is better to relate actions and expectations to oneself negatively. This means doing nothing as long as this does not put one in a position of "blame." In the restricted domain of politics one speaks of non-decisions;²⁵ in administration of negative co-ordination.²⁶ This phenomenon is made all the more significant since earlier theory had always feared too much use of power, not too little; feared arbitrary activity and not inactivity. In any event this is a very common problem that cannot be dispatched as an idiosyncrasy of "bureaucracy" nor combated with controls.

Although the linguistic domain of political self-reference exhibits simplifications of this kind and probably depends on them, this does not exclude communication that is more complexly oriented. Short-circuiting and negative use make the empty circularity even clearer – and even less satisfying. All self-referential systems have to break up such internal circles – I'll do what you want if you do what I want.

²⁵ See Peter Bachrach/Morton S. Baratz, *Power and Poverty: Theory and Practice*, New York 1970.

²⁶ See Fritz Scharpf, "Planung als politischer Prozeß," in *Die Verwaltung*, vol. 4 (1971), pp. 1–30; reprinted in Scharpf, *Planung als politischer Prozeß*, Frankfurt 1973.

And this happens in part by referring to their own *history*, in part by referring to the *environment*. In order to establish concepts for further use we want to call this the *breaking up of interdependence* through *historization* and through *externalization*. N. B.! both of these are processes of interpretation that unfold within the system itself and do not permit apodictic inferences about how history really was or what actually is happening in the environment.

With the help of this conceptual apparatus one can formulate the argument that in modern, complex, dynamic societies the choice between the strategies of *historization* and *externalization* cannot be left to chance. Things change too fast for this. Of course, historical consciousness increases, too. And historical sociology's most recent research on the state²⁷ emphasizes the dependence of all "modernization" on the historical process. This is particularly important for developing countries that are still in the process of differentiating their function systems. For fully industrialized countries that aim at modern living conditions, however, the environment becomes the focus of orientation. And this makes the externalization of self-reference the primary strategy.

For these reasons, we will begin our critique in what follows by limiting ourselves to an analysis of the externalization typical of the welfare state. But to do this we first have to understand the structures of the internal differentiation of the political system more clearly. For this determines where and how the environment has to interrupt the circularity of political communication.

²⁷ Cf., S. N. Eisenstadt, *The Political System of Empires*, New York 1963; Eisenstadt (ed.), *Post-Traditional Societies*, New York 1974; S. N. Eisenstadt/Stein Rokkan (eds.), *Building States and Nations*, 2 vols., Beverly Hills 1973–74; Charles Tilly (ed.), *The Formation of National States in Western Europe*, Princeton 1975; Peter Flora/Jens Alber/Jürgen Kohl, "Zur Entwicklung der westeuropäischen Wohlfahrtsstaaten," in *Politische Vierteljahresschrift*, vol. 18 (1977), pp. 707–772; Gianfranco Poggi, *The Development of the Modern State: A Sociological Introduction*, Stanford, Cal. 1978; Bertrand Badie, *Le développement politique*, Paris 1978; Bertrand Badie/Pierre Birnbaum, *Sociologie d'état*, Paris 1979.

6. Hierarchy and Cycle

To the extent that all pre-modern societal systems were able to differentiate particular institutions for politics, they developed them hierarchically alongside the stratificatory structure of society. For Aristotle, all social orders are distinguished in terms of dominating and dominated parts. In this sense the state of the early modern period was also based on the difference of superior and subordinate. This repeated the stratificatory difference of above and below for the political institutions and strengthened it. Within the political institutions too – especially within the early developing bureaucracies – the principle of hierarchy was repeatable. One could form connections of power that ran all the way to the top. In this way the hierarchical system of stratification was translated into a command hierarchy of organization. And order was understood (at least in the European literature) as conditioned by the unity of the authority to command.

The effects of this historical period can still be felt today through a considerable carryover in the formation of consciousness and theory. Government and its subordinate administration continually regenerate a social model that is superseded by structural developments both on the level of the societal system and that of the political system. In view of this situation, political theory acquires the important – even politically important – task of adjusting consciousness to the actual social structures.

The transition from stratificatory to functional differentiation has changed things decisively on the level of the societal system. This has been accompanied by a corresponding *transition from a twofold to a threefold differentiation* on the level of the political system. (In the system of science the transition has been from a hierarchical order of the sources of knowledge to a differentiation of (scientific) disciplines; and in the economic system a transition from a hierarchical differentiation of the “budget” to a differentiation according to production/market/consumption.)

The twofold/threefold distinction designates ways of addressing communication that are available within the system. This is fundamentally important for the kind of communication that is permitted

as well as for the scope of further system differentiation that the system provides for itself. All hierarchy can be reduced to a binary scheme. It distinguishes an "above" and a "below" and repeats this distinction within itself when needed for greater complexity. Therefore it is expedient for a hierarchical order to effect communication in the binary scheme: command/obedience. Internal differentiation does not have to be pushed very far for this. It suffices if positions of authority appear as roles in the communication process.²⁸

The advanced political systems of today are structured in an essentially different way. They are based on the threefold differentiation of *politics*, *administration* and *public* where authority and command hierarchies can be completely integrated, especially in the domain of administration. Above all, progress lies in a considerable expansion of the type of communication, in a greater dependence on internal communication and, accordingly, in a more rigorous differentiation of subsystems within the political system that, with increasing reciprocal interdependence, view and treat one another as environment so that they can simplify and filter the communication process.

The re-structuring has proceeded gradually. Beginning from the organizationally and institutionally given fact of the "state" ("government") and its internal differentiation according to the plan of the separation of powers, the democratization of the political system led to the differentiation of a politically relevant *public* that affects the meaning of all political operations (and not just its "own" actions, elections). Moreover, through the differentiation of political parties as permanent organizations since the end of the nineteenth century, a separate domain of specifically political communication has come into

²⁸ The Indian caste system demonstrates that this connection of (hierarchical) order and authority to govern, that is typical for the development of the idea of hierarchy in the west, is not the only possible one. Here too, there is a hierarchical arrangement of society. But not on the basis of command and obedience, rather on the basis of "pure" and "impure." This difference makes it possible for India – otherwise than in Europe – to automatize subsystems to a great extent and to let interdependencies run their course as the problem of domestic management. Cf., for this Louis Dumont, *Homo Hierarchicus: The Caste System and Its Implications*, English trans., London 1970.

existence between state and public to mediate their relations. With such a structure politics can no longer be understood as the basis of acts of domination or as influence on those with power. It is a separate system for *politics* within the political system; thus a complex, autonomous social system that acts and suffers under its own structural limitations. The differentiation of public and (genuine) politics necessarily changes what one earlier had understood as the "state" and equated with the political system. In order to account for this, in the following we will speak only of *administration* (in the widest sense of legislation and government) and mean thereby the totality of institutions that create binding decisions pursuant to political viewpoints and political mandate.

The transition from a twofold to a threefold differentiation profoundly affects what is experienced as political reality and transformed into action. This confers new meaning even on the traditional structures of the state based on law and the separation of powers. We can notice two prominent changes in this that indicate how profound the transformation is:

(1) The political system is rigorously directed towards the *environments created within itself*. Thus, on one hand, the administration is directed towards politically posited and variable (or invariable) premises and, on the other, towards public resistance and greater public accessibility. This gives greater significance to the self-referential mode of operation and as such filters more rigorously the possibilities of perceiving problems of relevance for the whole of society or problems of other function systems like education and the economy.

(2) Political power loses its linear-asymmetrical character of "from above to below" and is brought into the form of a *cyclical dynamics*: through political elections the public influences politics. Politics sets the boundaries and priorities for administrative decisions (of course, always understood to include legislation). The administration uses the decisions to bind itself and the public, while the latter, in turn, can react to the decisions through political elections or other expressions of opinion based on them.

So, in effect, a system without a center is one that comes into being predominantly through self-orientation but without a central orientation. It cannot be understood, let alone criticized, with the old domination-oriented categories of the political tradition. In the last two

decades the downright neurotic forms of the critique of domination only serve to indicate that this terminology has lost its grip on its object and that it therefore has to exaggerate matters.

The communication cycle that is produced as a result of this threefold differentiation must be more clearly defined. Since the function-groups of politics, administration and the public had been initially identified with the "state organs" of parliament, government/administration and the electorate, the traditional hierarchy model had been translated into one of a power cycle that runs in one direction. The parliament makes the laws and provides the means to get things done. The executive carries out the programs decided politically, while the public obeys the decisions and elects the parliament. Power runs in one direction, even if this is cyclically, like a sweep hand, as it were. In reality, however, this power cycle induced a counter cycle as soon as it was established. The administration drafted the bills for politics and dominated parliamentary committees and similar institutions. Politics, with the help of its party organizations, suggested to the public what it should vote for and why. And the public exercised its influence on the administration through various channels, like interest groups and emotional appeals.

This counter cycle appeared illegitimate as long as one still thought hierarchically. One spoke of the "new despotism" (Lord Hewart) of bureaucracy and lamented the efforts at persuasion on the part of politicians and the machinations of the lobbies. In the meantime, these relations had become accepted even if they were without a theoretical basis. One can show, however, that the inducement of this counter cycle is connected with efforts directed towards a welfare state; that it is about an unintended, even if politically reducible, effect. The reason for this lies in the typology of power sources.

The official cycle of power rests on legally regulated authority and, therefore, is capable of prevailing in cases of conflict. The counter cycle rests on an overburdening with complexity and, therefore, can prevail in normal cases. With the development of the welfare state the complexity of decisions increases, too. The administration can affect its public in ever more domains if the latter is ready to cooperate, provide information and can effect its own wishes. Increasingly, political decisions can be made by the administration only on the basis of a tiresome sifting of alternatives. And, in practice, most of the time it accepts or rejects decision proposals that are presented with no alter-

natives. Everything else would mean an overburdening with complexity. Correspondingly, the public requires that the selection of persons running for office, indeed even their place on the ticket and the reasons for their election, is decided in advance. The more open, variable and complex the themes that are handled in this cycle, the more this kind of influence will try to gain acceptance; the better it will appear to be able to manage conflict, at least with the weapons of rejection and resignation; and the less it depends, in practice, on who is capable of prevailing in legally regulated cases of conflict. (That this possibility nevertheless forms the foundation for the entire system is not even questioned.)

These analyses can be summarized as follows: the development of the welfare state tends towards the ever greater inclusion of themes and interests as politically relevant. This takes account of the increasing uncertainty and dynamics that results from the transition from the twofold to the threefold differentiation. This means a change of power-oriented communication from asymmetric (hierarchical) to cyclical structures. A kind of balance of formal and informal power, of the official and the counter cycle, then arises within this. And with ever increasing internal complexity this balance is displaced more and more towards the informal. In view of such a development, it makes little sense to plead for reinstating official power and blocking counter power, i. e. to appeal for restorative reforms. But it remains an open question how political responsibility is possible at all under such conditions.

The profundity of this structural transformation can hardly be overestimated. It changes the social problematic of politics and the meaning of all political concepts right to their basic aporias. The old problem of arbitrariness (despotism) at the top that results from the need to concede decisional freedoms recedes. Who controls the controllers used to be a pointless question. Now the answer runs: "the control's control is the system."²⁹ For every subsystem now the control of the controls resides in a membership in a communication network in which it (the

²⁹ Thus in this context of a cybernetics of self-referential systems, all Ranulph Glanville, "The Form of Cybernetics: Whitening the Black Box," in *General Systems Research: A Science, a Methodology, a Technology*, Louisville, Kentucky 1979, pp. 35 – 42 (39).

subsystem) has to supply input and output at at least two system internal boundaries. For the administration this occurs in relation to the public and to politics. The natural separation of powers and differentiation of control apparatuses — accounting offices, courts, journalistic vigilance etc. — are still necessary. But the aporia that expresses why politics has to operate for society as a *whole* through a *subsystem* has been displaced: it no longer lies in the problem of arbitrariness, in the misuse of the necessary freedoms of decision. It lies in the attainment and reproduction of communicative openness through system-necessary reductions.

7. Self-Observation

The ways in which a system can observe itself change with its form of differentiation.³⁰ To see this, one can and has to return to very general theoretical foundations.

First, there is no privileged place within differentiated systems (for example, an omniscient control center) from which the entire system, including the control center, could be observed.³¹ Instead, differentiation always means that a plurality of subsystems, that cannot reciprocally observe or calculate one another exactly and with certainty, is created within the system. Nevertheless, these subsystems affect one another and develop with respect to one another more or less proven

³⁰ The concept of "observation" is used here in the formal sense of general systems-theory. It includes not only (but also) human sense perceptions and refers to every kind of registering of information, thus also to the relationship of the cells of an organism to one another or to the introduction of information to the communication processes of social systems.

³¹ For the critique of such assumptions (that, of course, are never represented openly but often in the sense of a possible approximation) cf., Charles E. Lindblom, *The Intelligence of Democracy: Decision making Through Mutual Adjustment*, New York 1965. Cf. also, Giovan Francesco Lanzara/Francesco Pardi, *L'interpretazione della complessità: Metodo sistemico e scienze sociali*, Naples 1980.

experiences that can be formulated into commonplace, everyday theories [*Alltagstheorien*]. Thus a politician believes that he knows what the public's attitude is towards particular changes in the political system and how it will react to them. The technical term for this kind of observing of other systems is "black box." Therefore, black box is a concept that refers to the observation (and eventually simulation) of one system by another. It designates circumstances that are not independent of observation. Underlying observation is the assumption (that cannot be tested) that observed regularities in the behavior of the observed system are reducible to unobservable internal causal structures. No subsystem can explain the actual states of affairs of the others any further. It has to be satisfied with black-box observations. And this is true vice versa, thus for the evaluation of politics by the public in our example.

Should one conclude from this that there can be no internal transparency and therefore no rational relation to reality and no rational self-control within a differentiated system? This conclusion would be premature. Of course, differentiation necessarily creates black-box relations within the system. And an increase in differentiation increases this necessity. In this way self-transparency becomes only more distant. On the other hand, the black-box form of observation makes transparent rules for dealing with other systems possible and, with their help, the gaining of experience. On the basis of reciprocal opacity, relations of interaction develop among the subsystems. And transparency (in any event "higher," although not "basic" transparency) can be acquired for these relations. Therefore it is the acceptance of the limitations of all observations that leads beyond the opacity of reality, because the behavior based on this acceptance forms relations of interaction with greater transparency. Of course, one never knows what is going on in the black box. But one knows how to deal with and use it.

One can, for instance, use this observation- and utilization-knowledge which subsystems, that are black boxes for one another, test and prove with respect to one another as a basis for a stabilizing feedback on systems. And even if sufficient behavioral regularities for this are not available, the systems view themselves as if this were the case, i. e. they view themselves as exposed to the pressure of a projected reality

of their own construction to which they have to adjust if they want to continue their external relations.

If one uses this general theoretical concept³² and considers (observes!) the differentiated political system, then one can easily recognize that and how black-box relations, observations and evaluations develop within the subsystems of politics, administration and the public. "Bureaucracy," for example, seems to be one of these black-box concepts by which politics (because it thinks that the public values this) divulges the opaque insides of the process of administration.³³ In every election one can observe how politicians think that public output is motivated by input (of politicians). Conversely, specific expectations about the way politics functions are determined for the public precisely by being restricted in this way. Thus, to retain this example, the election gains a genuine transparency for politics and the public that still has nothing to do with the complex motives and interests that supposedly really determine behavior (exactly how, no one knows). The transparency of the system detaches itself from that of reality without thereby losing anything to reality. In a real sense the system acquires possibilities of reciprocal internal observation that depend on distancing itself from the reality that underlies it.

Such a situation cannot be comprehended with the usual epistemological models that presuppose or require that the existence of an object does not depend in any way on its mode of observation. In this case observation – and precisely the observation of something that is opaque to it – always enters into the constitution of reality. One, therefore, always finds corresponding "everyday theories" already given. The situation is no different for a scientific analysis of such circumstances. This too remains a black-box observation. It may, then, observe the self-observing system as a black box, propose research routines for dealing with such objects and, subsequently, attain suffi-

³² Suggestions for this originate again from the cybernetics of self-referential systems. See particularly Heinz von Foerster, "Kybernetik einer Erkenntnistheorie," in Wolf D. Keidel et al. (eds.), *Kybernetik und Bionik*, München 1974, pp. 27–46; Ranulph Glanville, "Inside Every White Box There Are Two Black Boxes Trying To Get Out," Ms. 1979.

³³ See especially pointedly: Ulrich Lohmar, *Staatsbürokratie: Das hoheitliche Gewerbe*, München 1978.

cient clarity from its experiences with these routines (for example, in the methodology of empirical research). In this way, however, scientific analysis simply constitutes new relations of observing interaction. And these relations are the only ones made transparent by it. It refers to the relation between the system of science and that of politics, but not to the reality that actually determines itself step-by-step, from event to event in the basic operations of the systems.

Nevertheless, a clear understanding of the complexity of these reductions of complexity is of considerable practical importance. On one hand, this concerns the inherent objective constraints on scientific research that appear precisely when research tries to proceed empirically, i. e. to base itself on observations of itself. But it concerns, above all, the inferences that one can draw from these observational conditions to the establishment and the internal dynamics of systems that can constitute and stabilize themselves only through self-observation. This is precisely the category in which the welfare state belongs.

As a political system that is differentiated from other systems and internally differentiated, too, the welfare state draws its own dynamics from relations of observation that detach it from its own reality and make it possible for its subsystems to affect one another. It rests on the simplified evaluations and everyday theories articulating them that make observation possible. These are not simply unreliable "pre-scientific" opinions but constitute a part of the object itself. The welfare state proceeds smoothly, facilitates things for itself, when it supports itself on assumptions about the functioning of the different observed systems; assumptions that cannot be refuted so quickly and which explain the observations adequately. These assumptions are by no means "false." They are formed *in agreement with the requirements of differentiation, self-referential autonomy and inclusion*. They account for the expectations that result from these global conditions. Without them, the behavior of others in the system could not be explained convincingly. Therefore, the behavior of politicians, for example, becomes comprehensible and explainable to the administrative official when he thinks that they want to "dip into the political pork-barrel."³⁴ Thus the black boxes are, at least to this extent, adjusted to

³⁴ We can take this occasion to indicate once again how old such ideas are: the citation comes from Christian Weise, *Der politische Näscher*, Leipzig 1676.

reality. But they also make it difficult for someone to convince himself that, on the basis of the underlying realities, things could be different. As such, they retain expectation-situations that can be handled plausibly.

These internal observation processes and their global judgments, however, refer primarily only to other subsystems in the same system domain. And they clarify themselves only in this respect. This is what is of most importance for them — in the case of the administration, for example: to be able to evaluate what it can expect from politics and the public. This is not yet a case of the self-observation of the political system from within the political system. A self-observation of this kind would have to include the respective observing systems and bring these to self-reflection. This can occur only through an *observing of observing*,³⁵ i. e. through continuing and increasing the ability to make global judgments and not through the epistemic processes that perceive the total reality better. The latter are still excluded for the more encompassing system.

On this level of reflection one will have to call on political theory (or, more generally and validly for other function systems: reflection-theories). In any event political theory is an attempt to co-ordinate processes of self-observation and to equip them with possibilities of self-critique.

A “spontaneous” reflection would presumably lead every subsystem to take itself more or less for the whole, because the remaining subsystems are observable only as black boxes. Thus the administration takes itself for the “state.” The public relies on a democracy where everyone can signify his or her own interests. Politics begins from its own leadership performances. From its own respective standpoint and

³⁵ We find ourselves once again at a point where similarity and difference in the relationship of the scientific and political systems become clear. In the *scientific system*, since it is specialized for the *acquisition* of knowledge, the recursive knowledge of knowledge and the controls lying therein are, as it were, tools, in any event an unconditional methodological requirement for *daily operations*. In the *political system* a corresponding, recursive observing of observing becomes topical only at the *level of reflection*, i. e. only when it is (exceptionally) advisable to see the differentiated system, in which one participates, as a unity and to represent it to others as such.

corresponding experiential horizons, the entire system is presented plausibly in each case only for one of its subsystems. One could attempt to correct these kinds of hypostatizations by introducing political theory into the system. Of course, such a theory would have to give up the belief that, as a science, it could grasp, explain and improve reality better, more completely and concretely than those who work in the system daily and know the environment. Instead, it would have to be – and this would be its acid test – erected on an observing of observing. This is the only perspective from which one can understand and correct those prejudices that result from the reciprocal black-box experiences. And this again might be a condition for the welfare state gaining a critical relation to itself.

8. Environmental Reference

On one hand, the political system has a *societally-internal environment* that includes family life, a market-oriented production and consumption economy, scientific research, religion and much more. On the other, it finds itself in part directly, in part indirectly, confronted with the *societally-external environment*: with nature and flesh-and-blood persons. In both kinds of environmental references one can – and this counts not only for politics, but equally well for the other function systems, namely the economy and science – observe that the typology of environmental references has changed drastically in recent times. *It has turned from point-for-point relations to relations between inter-dependencies.*³⁶

This formulation is unfortunately abstract. But at least it enjoys the advantage of being able to encompass numerous observations and

³⁶ With Parsonian theoretical means one can, again, understand this quite clearly as an aspect of the differentiation of function systems. Cf., Talcott Parsons, "Some Problems of General Theory in Sociology," in John C. McKinney/Edward A. Tiryakian (eds.), *Theoretical Sociology: Perspectives and Developments*, New York 1970, pp. 27 – 68 (30 f.).

interpret very heterogeneous phenomena. It simplifies the search for orientation.

By point-for-point relations one can understand something like: crime and punishment, sickness and healing, food production and consumption. This includes: concentration of dependencies, risks and opportunities. It suggests the possibility of a directly engaged politics of problem solving, interest satisfaction and of the improvement of specific situations. Short, terminable causal processes prove satisfactory for this. As a result of greater societally-internal communication performances,³⁷ however, this way of connecting system and environment has begun to give way to forms that *claim greater complexity* on both sides, in the system and the environment, and above all *presuppose greater interdependencies among the individual contributions*. A money economy, for instance, makes increasingly artificial connections within society possible. Scientific research enhances the ability to analyze and recombine all its objects. And the complete development of society increases the necessity (or at least makes it extremely attractive) of actualizing the resulting possibilities.

The interdependencies in nature that have become usable, disturbable and destructible now find no point-for-point correspondence among the societally-internal interdependencies. They cannot find any units of perception, planning or action with which to co-ordinate. And society's self-control of societally-internal interdependencies fails in the same way, because here, too, internal system/environment relations have to be activated that undoubtedly let information pass through but which cannot mediate complex, interdependent states of affairs outside system boundaries. One can form generalizing global judgments, but this does not do justice to the *interdependence of what is specific*.

As a result of this basic problematic a multiplicity of individually familiar phenomena arise. Problems cannot be treated at their source. Instead, they have to be treated elsewhere. One cannot remove them by going back to their causes. They are only passed on, transformed and deferred. At the same time this makes theories of society that postulate an unattainable, concealed, ulterior cause like capital attractive, because the latter symbolizes interdependencies. In fact, any at-

³⁷ See section 3 of this chapter.

tempt to solve problems in such a system finds itself faced with the consequences of solutions that one cannot reproblematize, or can do so only with ever increasing difficulty. One is confronted with a self-created reality whose basis is still valid and valued, but whose consequences, mediated by extensive interdependencies, have already started to become unacceptable.

These are precisely the findings that have led some to infer a "failure of the state."³⁸ But, basically, a complaint syndrome (critique, crisis, ungovernability, failure) signifies little more than the lack of a theory of society. One complains before understanding. Besides, if one wanted to be consistent, then one would also have to speak of the failure of science, education, the economy, religion, law, family life etc.: failure everywhere because no system can control the interdependencies of its environment adequately (law of requisite variety).

Such a universally effective regulation excludes global solutions just as much as it excludes a global responsibility of politics for the welfare of society.³⁹ But this by no means portends a pessimistic diagnosis or suggests a state of resignation. To be sure, one gives up impossible expectations. But with them one also gives up self-deception (and self-disappointment). One has to begin from the inadequacy of system-internal modes of preception and communication. And then from this one can inquire whether and how system-internal information processing can be improved.

As for systems as such, it is primarily the form and extent of internal differentiation that are decisive for the thematic scope of the environmental contact of the political system. Beginning from here, one can

³⁸ See, e. g. Martin Jänicke, *Wie das Industriesystem von seinen Mißständen profitiert: Kosten und Nutzen technokratischer Symptombekämpfung: Umweltschutz, Gesundheitswesen, Innere Sicherheit*, Wiesbaden 1979; Jänicke, "Zur Theorie des Staatsversagens," in *Aus Politik und Zeitgeschichte*, vol. 14 (1980), pp. 29–30.

³⁹ This argument, moreover, exactly parallels the "black box" argument outlined above in the chapter about self-reference. In the case of a "black-box" this is a matter of system/system relations. Above, in the text, it was a matter of system/environment relations. In both cases it is true that no system is capable of building into itself a complete description of itself, of other systems or of its environment.

assume that the transition from twofold to threefold differentiation changed the possibilities of perceiving and handling the environment essentially. The hierarchical form of differentiation suggested placing the most important environmental contact at the top (or to assume that it was there). And this is actually what occurred in historical societies where the highest stratum enjoyed the widest contact (in regional, business and conflictual regards). To the extent that hierarchies are built into the modern political system, especially into the executive and within political parties, this concentration of extensive contacts can continue to occur – of course, without a foundation in a prescribed stratum and only through control of a large-scale organizational apparatus.

Beyond this, however, the circumstances have undergone a radical change. While the leadership stratum of traditional societies was bound to its stratum-specific ideas and prejudices about the world, today this “prepossession” has been replaced by a different, much less visible one. And while in the old world prejudices could assume the form (however elastic and exploitable) of a moral code, today a relation to actions is to be made only very indirectly. (The debates of the last decades about principles of legitimation and crises of legitimation seem to confirm this.) In this way one comes to the awareness of a system- and corresponding environmental-complexity that is no longer controllable through action. And it becomes probable that action is guided increasingly by the internal environments of its own system and by self-referential relations. The environment becomes relevant to the extent that it appears on the screen of its own system. (The career of the fashionableness of the word “relevance” is a proof of this.) The system “flies blind” (instrument flying) depending on proven, internally controllable indicators. This may proceed well when the formation of the indicators – in this case, the politization of themes – functions well. But how can we control this? And what are the standards for good and not so good functioning? Postponing the discovery of failure?

In societies that have differentiated politics as an autonomous, self-referential system there can be no external standards in the above sense. All standards for politics are political standards and are formulated in the process of political communication itself. This is also true of the relations of politics to “its” environment. One can, however, describe more exactly how self-reference is interrupted in particular systems

through "externalization" and, accordingly, how the environment is expressed within the system.

If, following the guidance of these theoretical ideas, one investigates the environmental relation of actual political orientations, then one can discover that the threefold system differentiation introduces a radically different kind of environmental orientation than the one that had been common in hierarchies. The change is traceable to the fact that, instead of the simple difference of "above" and "below," now three different inter-system relations are distinguished that are no longer reducible to a formula or an all-encompassing ethics. The relations between the public and politics (or politics and the public), between politics and administration (or administration and politics), and between administration and the public (or the public and administration) are ordered self-referentially in each case — just because the complementary relation is equally possible and always included in the calculation. Just to give one example of this: no politician can forget, in his or her dealings with the public, that the public is oriented towards politics. And when he or she considers the public, he or she is also included in the picture himself. He sees himself as if in a mirror. This condition is necessary because mutually offsetting possibilities of exercising power exist in both directions (double cycle). This *forces an externalization of its own kind for every inter-system relation*. And these externalizations articulate the forms in which the political system adjusts to its environment.

One may doubt whether and to what extent there exist different, separate orientations and corresponding dominant principles of externalization for these three inter-system relations, these three divisions of general political self-reference. Certain focal points, however, have become noticeable. And it might suffice for a first analysis of this theoretical concept to indicate these guiding orientations.

For the relation of the *public and politics*, environmental reference occurs through *public opinion* which is presented by the mass media. However factual the content of reports may be, they are effective if for no other reason than no one has the time (or at best only in exceptional cases) to research them him- or herself. This applies on both sides: for persons who live and act as the public as well as for politicians. Therefore, at any given moment, the public as well as politics has to accept something as given that it itself cannot change:

a foundation of resonance for activities and events that can be influenced by its own action but not entirely controlled. What escapes control are not so much the individual events as the context to which public opinion refers and in which it acquires its own sense.

For the relation of *politics and administration* the functional equivalent seems to lie in orientation towards *persons* who hold offices or who can be considered for holding them. The personal factor is often underestimated by sociology (when it characterizes modern society as a mass-society). In reality it has extraordinary significance, at least for the domain of the interconnection of politics and administration. In this case persons are the limiting factor for all practical politics. A knowledge of human nature, in addition to physical toughness, is one of the most important assets of a politician, while personal contacts and what Max Weber calls "mechanisms of personal domination" are an indispensable means of success. Typical for the mentality resulting from this is a dominating interest in persons as well as the inclination to immediately reduce all proposals to career ambitions.

None of this should be taken to mean that, in the final analysis, politics proceeds humanly. The point is rather that orientation towards persons here, in this inter-system relation, serves to externalize self-reference. In this case persons have the exact same characteristics as public opinion. Seen in the long term, they too are the result of office-holding and/or political behavior. Seen in the short term with the properties ascribed to them, they are political data and decision premises in the offices they exercise. Just like public opinion, at any time they are not simply reflections of the politico-administrative constellation but independent reference points of calculation for these.

Law fulfills the same externalizing function for the relation of *administration and the public*. And here, too, it is true that, although in its statutory foundations law rests on the political system itself, it has to be assumed as an external fact binding both sides of the relation of administration and public in all their individual activities. In other words, wherever politically created power becomes tangible, it is obstructed from regulating relations by itself and always succeeds or fails as a result of the power relationship vis-à-vis members of the public. This would be even more pernicious in view of the tendencies of the welfare state to give the public power over the administration in the counter cycle. In principle, therefore, and as the expression of the

principle of equality, the "state based on law" follows the rule: to realize the capacity to succeed against everyone and in every case, but only within the context of law. And the legal situation provides "external" points of support where the participants have to come to an agreement about the extent of their cooperation with the programs of the welfare state. Not least of all it is the condition for the voluntary and uncoerced practice of cooperation in this case.

The three perspectives of externalizing public opinion, persons and law have been treated here in succession, and they each have their own focus, their functional necessity at specific system boundaries. Yet, since this deals with functions of a unified political system, there are overlapping relevances. Persons and personal decisions are an important topic of public opinion. Even the assignment of political offices is tied to boundaries that are drawn by law. Even the administrative enforcement of law in wide areas where it does not occur compulsorily but is left to chance will not succeed without consideration of public opinion and is more than once re-politicized by the press. These interdependencies also belong in the picture and prove that in the communication process of the political system the reference to unavailable external givens can be transferred from one system boundary to another. Besides, one must remember that the self-references institutionalized in the entire system and, above all, in the narrower domain of politics, viz., the principle of opposition and the political code, also play a part. All in all, this deals with a very complex structure that is utilized to process communication (and ultimately political power) in a differentiated, self-referential system.

One has to assume that the welfare state, to the extent that it realizes the above mentioned (sections 4–6 of this chapter) aspects of inclusion, differentiation as a self-referential system and internal differentiation, will increasingly rely on corresponding simplifications. It will then progressively use the suggested externalizations of public opinion, persons and law as the basis for selecting environmental information. If there are circumstances that play a role in public opinion, that, so to say, stand in for individual persons biographically, or, for whatever reasons, can be transformed into law, then communication in the political system can refer to them. Whatever does not meet these conditions does not have much of a chance to find entry. The trademarks, so to say, of politico-legal relevance are missing (and this always

means: the possibility of assuming that other processors in the system would accept this as relevant).

The political discussion of the last two decades, based on earlier research on political "apathy," propagated an entirely different code word. It spoke of a "de-politization" of the structural foundations of industrial society. If one formulates the program in this way, "criticism" and practical consequences are set on an entirely different track. One then retains the long-standing premise of a kind of supremacy of politics over society, views de-politization as a misdirection (usually one says: in the interests of "capitalism") and requires a kind of re-politization, either through participation or, where necessary, through violence. The rejection of violence leads this theory to resignation. The weakness of this concept – the dependence on an unattainable political "activation" – lies, however, only in the misplacement of the problem, above all in the lack of an adequate theory of society: one incapable of being replaced by reference to "capitalism." Instead of interpreting de-politization as the avoidance of themes in the sense of a reproach, one ought to investigate the system conditions of political communication itself. This is the only way one can acquire a reasonably realistic picture that explains the reasons why it is difficult to activate the time, enjoyment and energy for politics in the population, particularly the youth. The practical consequences, then, have to be increasingly addressed to the system of political communication itself.

The theory outlined here sees the point of departure for this as the way in which self-references are practiced. Only a reasonably realistic apprehension of this system process permits one to raise the question again whether, under these conditions, the system is able to operate adequately with respect to its environment. In other words, whether it can perceive and address problems within other subsystems of society (above all: the economy and education) and problems in the broader environment of the system of society when and insofar as these require a political solution. As difficult as it is to estimate the possibilities of political solutions: one will hardly be able to expect that a capacity for thematization given in these forms suffices for the three focal points of public opinion, persons and law. Even with the lack of objective, scientifically established criteria of what is genuinely political or of what essentially belongs to state activities, one will have to investigate whether these three sluices that the system opens or closes out of

internally self-referential necessities provide enough information and decision potential from the existing societal situation of politics. The danger is that the system operates *too selectively* in these forms and remains tailored too much to meet *its own* functional necessities.

While it is universally and inescapably true that self-reference can neither be avoided nor a fully satisfactory capacity for data processing attained, room for development certainly exists in the domain of compensatory institutions. The concept of "compensatory institutions" is meant to indicate all that helps to mediate the circularity of self-reference – for example, externalizations – and whatever enables a system to attain long-term stability in its environmental relations in spite of its own inadequate complexity – for example, abstractions. Therefore, one does not need to assume well-tested orientation premises. The externalizations of "public opinion," "persons" and "law" are smooth-working, tried and true mechanisms. But they are not the only correct principles. They are successfully tested guiding viewpoints. They may be capable of being supplemented or reformed by other, more theoretically oriented bases of orientation that are more closely attuned to the requirements of self-observation (section 7 of this chapter). Above all, they could be enriched with other contents, if one considers their function of mediating between system and environment alone.

For it is the task of political theory to introduce a description of the difference of system and environment within the system itself. This requires intentional simplifications,⁴⁰ i. e. abstractions, since no system can contain a complete description of itself within itself, not to mention a complete description of its environment and the relations existing between the system and the environment. To find plausible simplifications while the scientific world-picture constantly grows more complex and the interdependencies that have to be considered increase may appear an almost insurmountable task. On the other hand, the presently practiced forms of self-thematization regarding the environment remain so far behind what is conceivable that it is not unrealistic to expect that improvements are possible.

⁴⁰ Cf., e. g. Lars Löfgren, "Recognition of Order and Evolutionary Systems," in Julius T. Tou (ed.), *Computer and Information Sciences II*, New York 1967, pp. 165 – 175 (174).

9. Instability and Change

Politics finds itself determined in the welfare state predominantly by a basic opposition of progressive and conservative orientations. The code progressive/conservative represents the opposition that is expressed as the change or maintenance of the structures of the societal system (including the structures of the political system itself that is coded in this way). This makes self-referential processing⁴¹ in the system easier because the code permits a beginning from simple inverse relationships. Whoever or whatever is progressive is not conservative and vice versa. With the help of this code one can co-ordinate one's own politics with one of these two positions while rejecting the other. In this way, with little environmental sensibility and information absorption, one can always say something, always make decisions and carry out the progressive or the conservative option.

Although such coding agrees well with the requirements of self-referentially closed communication and is therefore functional, it appears unsatisfactory, however, if one applies it to the relations of the political system to its environment, viz., to a dynamic society. Since the latter is already in a state of rapid change, the political code has to be reduplicated within itself. For example, for the sake of preservation the conservative position may require that many changes are made. And the progressive position depends on preserving things the way they are, at least on preserving those structures and measures through which it wants to create change. Every option includes the opposite within itself. In this way the code tends to operate circularly and it clarifies the underlying motives of the scheme of political opposition: that alongside the governing party there must be an opposition that prepares for its fall from power. In this way the logic of the difference of government and opposition may require that a progressive party in power carry out a conservative politics, while a conservative opposition has to develop ideas of change – not to preserve something but in order to come to power.

⁴¹ See for this section 5 of this chapter.

From the theoretical perspective, such a situation appears, on one hand, understandable, on the other, problematic. Following the scheme that it does, it observes the requirements of self-referential processing too strictly. This may be triggered and corroborated by the fact that the environmental sensors of the political system, presented in the previous section of this chapter, are inadequate. Correspondingly, one then depends, internally, on severely simplified theories – like those that maintain that there are forces that want to change society and others that want to keep it the way it is.

However, if one begins from the uncontested fact of a dynamic society,⁴² then it becomes immediately clear that the opposition of change and preservation does not suffice to establish a relation between politics and society and that even the reduplication-within-itself of this opposition only conceals this scheme, but does not preserve it. Instead of this, *every* schematization in this situation has to refer to *change*. Then the question can only be whether changes put the system into *unstable* states where it begins to react to its own instability or whether they *transform what is ordered into what is ordered* and preserve the stability that is a condition for its own complexity and the preservation of a corresponding style of living.⁴³

One can translate this general, systems-theoretical concept into a social scientific language if one operationalizes stability/instability with the concept of *expectations*. Then the question is primarily whether reliable or unreliable expectations about the future can be formed within a changing society. In the case of a rapidly changing tempo that reveals profound changes within the lifetime of individual persons, uncertainty of expectations is more likely. And this is true even more so where there is greater interdependence and incalculability of the consequences of events.⁴⁴ Here the horizon of the future becomes

⁴² Whether one attributes this dynamic to “capitalism” or to the functional differentiation of the societal system is a secondary question that we will postpone here for the time being.

⁴³ Cf. for this basically, Sir Geoffrey Vickers, *Freiheit im kybernetischen Zeitalter: Der Wandel der Systeme und eine neue politische Ökologie*, Stuttgart 1974, pp. 120 ff.

⁴⁴ Though a reliable empirical and especially historico-comparative proof of this much maintained instability is lacking. Cf. for this, Peter Flora, “Kri-

shorter and more foreboding. One becomes less sure about what the future holds. And whatever one can expect with some certainty is unpleasant. At the same time, this increases the probability that the societal system has to concern itself with its own instability and the reactions to this and that this binds more and more forces.

In this sense societal change, today, is no longer the main problem (towards which one can relate positively or negatively), but societal instability. Instability can be triggered by too much or too little change. And at present it is probably conditioned by both at the same time. In such a situation neither progressive nor conservative programs are very convincing. Therefore the public withdraws from the political system if it is faced with these alternatives alone.⁴⁵ This problem is not solved by an acceleration or deceleration of societal change in general which, besides, is not easily available to the political system; and even less with an announcement of corresponding intentions. The problem lies in an adequate expectational reliability that is capable of including the expectation of the change of expectations.

If the analyses of the modern societal system attempted in section 3 of this chapter are correct, one cannot solve this problem by representing the whole of society somewhere within society itself. The corresponding unity of the cognitive and normative bases of expectations that was symbolized in the past by the concept of nature is no longer reproducible in the present societal system. Therefore it is misleading if one looks around for "foundations." Instead, one would have to take a vital interest in that context of conditions in which instability creates change and change again instability. If one grasps such interconnections with the necessary clarity, then in many cases points where this circle can be interrupted reveal themselves and the change reproducible within it can be redirected towards more stable bases of expectations.

senbewältigung oder Krisenerzeugung? Der Wohlfahrtsstaat in historischer Perspektive," in Joachim Matthes (ed.), *Sozialer Wandel in Westeuropa: Verhandlungen des 19. Deutschen Soziologentages*, Berlin 1979, Frankfurt 1979, pp. 82–136.

⁴⁵ The effect appears then as political apathy, as deideologizing, as loss of representativity by political parties. Cf. for this, Carlo Mongardini, *Le condizioni del consenso*, Rome 1980.

The welfare state produces instability to the extent that it is faced with a necessity of reacting that it itself creates but cannot foresee, i. e. to the extent that it invokes the competence to compensate for incompetence and to the extent that its measures are absorbed by this. This can be seen when politics clashes with the bureaucracy it has created and constantly nourishes; or when “educational planning” pursues a policy of extending the time a person must spend in schools and universities to complete his or her course of studies and seeks to correct the results of this by campaigning for its shortening; or when the present German university laws are not concerned with conditions for research and instruction but with how the “democratization” of the conditions introduced by these laws can be regulated so that its effect is not democratization.⁴⁶

Ultimately, such a preoccupation with the negative results of action is reducible to the inability to control complicated interdependencies. One is faced here with constraints on self-transparency that prevent the system from fully depicting interdependencies within itself. This problem cannot be solved by the planning techniques known today. These provide a constant source of surprise and instability. On the other hand, the present political system has by no means reached the limits of what is possible so that it is always meaningful to extol more planning – or simply: more reflection on interconnections.

10. Three Examples from the Economy, Education and Science

While politics, by means of the self-referential processing of political communication, on one hand extends and on the other reduces its own perception possibilities, *structural problems of a previously unknown*

⁴⁶ Cases of this kind recall the well-known theory of the “double bind” that describes the genesis of schizophrenia. Cf., Gregory Bateson et al., “Toward a Theory of Schizophrenia,” in *Behavioral Science*, vol. 1 (1956), pp. 251–264.

kind arise in other differentiated subsystems of society. These too are connected with the boundaries of functionally specific expansion, and indeed more closely than in the case of politics, with the boundaries of what the ecological system or the environment of the societal system can bear.

Such problems cannot be analyzed in detail within the context of an investigation directed at the political system. But we have to present some examples because questions directed at the political system or even demands to act from it are always created by the problem situation of other function systems.

For the *economy*, for example, the problem of *exhaustible resources* is raised (by the societal environment) with increasing urgency. The supplies of almost all the material and energy sources used today are limited. The dominant tendency seems to be to translate this fact into the language of prices and costs. That this does not always work can be read in oil prices. (At present they are not too high. They were simply too low previously!) In addition, one will have to ask whether the language of the medium of money as such offers an adequate form of expressing and reacting to this problem of exhaustibility; whether the problem, at least for the economy, can be solved by taking opportunity costs into account; whether the distribution of the goals of expenditure can be left to the price mechanism alone etc. If one doubts this, then questions of political intervention in the economy come up that have to be answered entirely independent of whether the economy itself can or ought to be planned and entirely independent of the old discussions about capitalism and socialism.

The problem of *pedagogical and social selection* is an equally explosive one within the *education system*. Beginning from the (certainly not completely false) thesis of the unlimited ability to educate human beings, the professional establishment of the education system today tends to educate every person as well as possible and for as long as possible. This leads to the situation that young persons spend ten to twenty or even more years of their lives, often well into maturity, within the instructional system in the form of attending classes that possess very specific forms of interaction that are not typical for life.⁴⁷

⁴⁷ Cf., for this and especially for eclipsing a natural and social maturity by the length of education, Talcott Parsons/Gerald M. Platt, "Age, Social

As the discussion of the "hidden curriculum" indicates,⁴⁸ considerable effects on developing individuals begin from specific forms of interaction in the classroom, independently of all the topics and intentions of education. One cannot help but suspect that there has to be demographic fallout if the entire population is forced by systems of interaction into schools and universities well into their maturity and beyond. Accordingly, politics no longer has to deal with the consequences of the industrial revolution. It finds its perhaps most difficult problem today in the consequences of the "pedagogical revolution" (Parsons).

In reaction to the tendencies of lengthening education that, in the last two decades, have passed for a reform goal the discussion today centers on proposals for shortening and restricting education. This may be significant to a limited extent. But, as a rule, a politics of lengthening or shortening is not very convincing because with one hand it takes away what it had given with the other. One can solve this problem only through a more rigorous selection within the education system so that one grants extended education only to those who have proved themselves within the system and have not been visibly affected by it in a negative way.

Even for other reasons, the problem of pedagogical and social selection (and not the problem of courses of instruction and curricula) is the focal point where politics and education come together. Obviously, it is a problem that the education system cannot solve by itself. As a result of its own internal logic it has to strive to provide the best possible education for everyone, demand the necessary means to do this and refuse to make selections when this means rejecting further possible education. But the tendency to avoid making selections signifies upward assimilation. And so one tries to incorporate the intermediate school students, if not the intermediate schools, into the secondary schools. Accordingly, qualifying credentials are devalued and the actual

Structure, and Socialization in Higher Education," in *Sociology of Education*, vol. 43 (1970), pp. 1–37; translated with abridgments in Klaus Hurrelmann (ed.), *Sozialisation und Lebenslauf: Empirie und Methodik sozialwissenschaftlicher Persönlichkeitsforschung*, Reinbek 1976, pp. 186–202.

⁴⁸ See particularly, Robert Dreeben, *Was wir in der Schule lernen*, German trans., Frankfurt 1980; Jürgen Zinnecker (ed.), *Der heimliche Lehrplan*, Weinheim 1976.

selection is left to the occupational system, i. e. to the economy. In effect, this leads to a widespread refusal to handle one's own criteria in the education system because criteria are effective only if they sort things on both sides, if they are able to designate good and bad. So education and selection cannot even be separated on the operative level of school classes. This raises the question for the political system whether it must, can or ought to accept politically the overwhelming ideological demands that the education system has incurred and, in view of the optimal fulfillment of its own function, perhaps has to incur.

The domain of *science* ultimately comes to a similarly basic problem as a result of the realization of complexity. Science increasingly advances into domains where it can no longer control the interdependencies that it can still grasp and even technologically create. In contrast to a religiously grounded awareness of finitude or to a philosophical skepticism founded on principles, today one increasingly finds a precisely determined inability to predict and, in a new way along with it, *conscious ignorance*.

Just to give some striking examples, consider the problem of the safety of nuclear plants, the problem of thresholds of tolerance in disturbing ecological balances and the problems of the evolution of resistant pathogenic agents resulting from the use of highly active medicines.⁴⁹ Regarding its performance in relation to politics, science here assumes a kind of anxiety-producing and -warning function without offering the possibility of a risk-free solution. Politics, then, finds itself in the (for it unpleasant) position of having to employ its own measures of absorbing risk, viz., effecting decisions on the basis of power. And, taking an overall view of the problems, it is chance that dictates whether the political system has to act (as in the case of nuclear plants) or can wait (perhaps for resistant pathogenic agents, and new diseases for civilization) in most cases. Considering the unity of deciding and not deciding, responsibility is the same in both cases.

The questions resulting from such analyses that have to be addressed to the welfare state concern its capacity for thematization. It is by no means self-evident that the problems that arise in the course of societal

⁴⁹ Our own analysis in the chapter on self-observation is a further example of this situation.

life are perceived in the political system and made the subject of communication. The self-reference of all politics that alone determines what is politically possible does not logically exclude anything. But it does inhibit indifferent, free communication. It leads, for example, to the situation that one can take up new themes only if one "has reached an agreement" and if one can at least outline ideas towards a solution. Is providing stimuli to reflection a matter for politicians? Or who, possibly, can afford this in the posture of "elder statesman?"

It is quite understandable that one would like to avoid communication that, in the final analysis, only documents its own confusion. On the other hand, this obstacle inhibits taking up themes that obviously overburden politics. The examples just given illustrate this sufficiently. The best possible fulfillment of the political function, as it appears in the rule of law, democracy and the welfare state, does not immediately guarantee that political communication can grasp structural problems that are grounded in the relation of *other* function systems to their *own* structure, to *society* and to the *environment* of the societal system. And yet there is much that points to the fact that problems of order for which society requires political decisions arise out of the autonomy of other function systems. Indeed, here – more than in the old formulas of capitalist vs. socialist, progressive vs. conservative, right vs. left choices – is where the point of reference lies for making radical distinctions about political opposition depending on the willingness of politics to take responsibility and intervene. Problems like exhaustible resources, pedagogical selections and technological risks defy politics because they cannot be stuffed into the traditional concepts any longer. Instead, this requires a different kind of thinking and especially the ability to make theoretical abstractions, because the challenge to politics and the necessity of intervention arise here from the autonomy of other systems, and this need exists only as long as autonomy is conceded to begin with.

One will have to begin from the fact that, as an actual political subject, communication about such themes is difficult, indeed improbable and that if it succeeds in one case this in no way affects the others. On the other hand, there is no reason for interpreting "improbable" as "impossible."

11. Function and Performance

In the following we will turn our attention to the societal context in which the political system acts and investigate the inter-system relations within society. As in all differentiated systems, one has to begin from a fundamental difference: every subsystem maintains a relation to the *whole system* to which it belongs, in this case to society. But it also maintains relations with *the other subsystems* in society, e. g. the political system maintains relations with the economic system, the education system, the religious system etc.

This is another way in which fundamental changes have occurred in the transition to modern society. In the aristocratic societies of the past the upper stratum of society was related to the whole as its representative. It was the "good (proper) society." A hierarchical order obtained among the subsystems that distinguished styles of living (and also, but not only: specific duties, "*officia*") according to rank. This changed with the transition to a non-hierarchically, functionally differentiated societal system and, consequently, all the traditional concepts and theories became obsolete.

In functionally differentiated societal systems the relation of a subsystem to the whole is determined by a specific *function*; while relations to the other subsystems can be designated as *performances* and described in terms of input/output models. It is important to separate function and performance carefully, because otherwise one eliminates the possibilities of analyzing the consequences of functional system differentiation. The conflation of function and performance is a typical mistake of "technocratic" theories of society that view society as a kind of recipient of performances although the performance carriers themselves are a part of society.

The *function* for which the political system is differentiated can be characterized as *supplying the capacity to enforce collectively binding decisions* (Parsons).⁵⁰ In brief (and inexactly), one can also speak of

⁵⁰ See, e. g. Richard Rose, "Pervasive Problems of Governing: An Analytic Framework," in Joachim Matthes (ed.), *Sozialer Wandel in Westeuropa: Verhandlungen des 19. Deutschen Soziologentages, Berlin 1979*, Frankfurt 1979, pp. 29 – 54 (31 ff.).

the production of binding decisions; whereby "binding" is *collective* in the sense that it (always until further notice) binds the decision makers themselves as well as the addressee(s) of the decision to the selection that is made.

This function presupposes the differentiation of decision processes that can exercise political power, ultimately physical violence. A political system that locates the focal point of the control of physical violence anywhere else cannot survive. Max Weber, therefore, had viewed – correctly – the "billeting" of physical violence and the monopolization of its control as the indispensable condition of the formation of the modern state and of the rationalization of modern living conditions.

A certain obviousness with which this achievement functions in our part of the world and the relative lack of official application of physical violence should not mislead one to underestimate the significance of this aspect. Here lies the quintessence of all politics, the indispensable condition of the differentiation of a political system and the condition of the possibility of all political performances. One must always keep this in mind, especially since the usual discussion of the welfare state has lost sight of this aspect of the capacity for action.

Of course, such a theoretical disposition is motivated by the realities of the welfare state. The latter expands its performance domain, and so this is where it believes almost all of its problems lie. Political *performances* are found wherever the other function systems of society require (collectively) binding decisions. Notwithstanding the autonomy of the other function systems, this is, to a great extent, how things actually occur. Just as the political system depends on performances elsewhere (in other function systems). For example, by the beginning of the nineteenth century it was clear that in the case of the relationship between politics and the economy a political guarantee of private rights would be necessary and that the relationship between politics and education would require the political effectuation of universal schooling and the organized constitution of a school and university system. Since then many new themes have been added: almost immediately thereupon, a rapidly increasing political responsibility for the social consequences of the autonomization of economic processes, then a kind of limited political guarantee of the scope of economic functioning and for the weakening of the cycles of economic prosperity, as well as an increasing political responsibility in the education system for curricular

guidance of the contents of educational processes. Therefore one of the central tasks of political theory today is: to supply the bases for judging this expansion into the performance domain of politics. Above all, what are the impelling factors? Where do significant consequences appear? And what are the boundaries of what is politically possible, i. e. the boundaries of what is still compatible with the function and effectiveness of politics?

Performance is possible only if the means of the sending system, in this case the effectiveness of binding decisions, can be adapted to the structures of the receiving system. Returning to the examples of the economy and education, then, this raises the question: what fundamental effect do collectively binding decisions as such produce in these systems? To a great extent, both systems rest on a flexible capacity for arrangement dictated by the situation. Neither system has a central steering authority that the political system could address. (At best, organizational associations can help to produce politically stimulated emergency solutions for this problem.) The economy controls the communication medium of money that creates a diffuse scattering of all causally directed intentions because money has extremely versatile applications. In other words, the spending of money produces effects that cannot be steered or bound – when the money is subsequently (re)spent – by the goals of the initial act of spending, as is the case in command hierarchies. Education controls the, from outside unobservable, process of instruction in the classroom, i. e. a highly complex interaction whose “technology” is uncertain and whose results cannot be influenced, let alone improved, by the political administration. In other words, there are “natural” guarantees of autonomy within these systems that the political system seeks to influence through binding decisions. This does not mean that these systems would fulfill their own functions optimally without political prerequisites. Instead, it means that they depend on communication media and other effective mechanisms that are unavailable to the political system when it is specialized by its function to do this.

If one misinterprets these boundaries of effectiveness, then one creates bureaucracies at the boundaries between these systems (in public administration as well as in the management of the economy, schools and, if one will, in private medical practices). This means that too many decisions are accompanied by further decisional necessities rel-

ative to the success that can be attained through them. Thus "bureaucratization" is the direct consequence of increasing political performance in domains where one can attain success not simply or even primarily through the production of binding decisions. Of course, there are also the system's own grounds for bureaucratization in each case, e. g. for accounting in the case of firms or for restructuring pedagogical planning in that of schools. But the more irritating forms of bureaucratization are found where inter-system relations force "external performances" to take the form of bureaucracy.

This is not simply an avoidable inconvenience. Or, in any event, an inconvenience that is unintentionally created and reproduced. Instead, within the political system itself there seem to be well-founded reasons and compelling factors that push for more performance. These lie, above all, in the tendency towards increasing inclusion, i. e. in the development from a legal via a politically active to a social citizenry (cf. section 4 in this chapter). This impulse structure is affirmed in the welfare state, its understanding of basic values and its party platforms. It is represented positively. Moreover, because of public opinion (cf. section 7 in this chapter) it is taken as the public view that politics has to accept and carry out through democracy. The internal self-references, the coding of progressive/conservative and the opposition schema of parties work in the same direction. Progress is measured by more performance. And the competition of parties stimulates one-upmanship vis-à-vis the other side. What works "conservatively" is then no longer the, in itself, legitimate tradition but the more serious consideration of the side effects of programs of action and the boundaries of their possibilities. On the whole, the welfare state runs by itself under these conditions and through them stimulates a growth of what one can call political performance.

It is almost impossible to criticize this development without intruding on the fundamental structural questions of the political system. However, political theory – and it can feel supported in this by an increasing skepticism about growth – is confronted with the question whether and how this trend can be understood as a problem. Not much is to be gained either theoretically or practically merely through rejection or a program of reversal – perhaps in the sense of a "zero-growth rule." By displacing the focal point of operation and legitimation from mere functional guarantees to the domain of performance, the political

system seems to follow its own commands. And one has to ask whether this can be stopped or even avoided politically.

But if one looks more closely at how inclusion is translated into political communication more precise definitions of the problem can be obtained. The political process that promotes inclusion by means of favoritism begins from individual persons or groups of persons to whom a better situation is to be granted: from the unemployed or "guest-workers," those with a criminal record or middle class entrepreneurs, people who live along borders, retirees on pensions, people who rent, domestics, traffic offenders, bankruptcy creditors etc. Of course, there are also programs of assistance with less precisely defined addressees. But the point of difference between the given and desired state refers throughout to persons or groups of persons for whom life ought to be better or more in accordance with their supposed wishes. In other words, one uses a formula for reducing problems that is suitable for politics. And this formula simplifies so rigorously that one can imagine causal models with foreseeable effects and can implement them.

The reference to persons, however, is a technique of defining problems that underemphasizes *existing interdependencies*. One is thus spared the trouble of a preliminary analysis of the relevant function systems' own problematic or if one tries this one can quickly ignore it (as, e. g. in the consideration of reforms in the education system). Thus political performance is not guided by a concept that originates from the social system for which premises have been posited. Therefore whether and to what extent the binding effect of politico-administrative decisions can be applied within the context of further (non-political) communication is not or not adequately tested. Instead, guidance from groups to which one gives assistance offers an apparently realistic, but in reality, however, very simplified perspective in which the socially mediated interdependencies recede.

Connected with this is the fact that the politics of the welfare state that promotes inclusion prefers those function systems whose functions can be recalculated quickly and convincingly into gains for persons or groups. These are the economy, education and the health system. Under these circumstances the advancement of science leads a marginal existence, although the whole situation of society could very well provide

reasons to think here on a very different scale and with different priorities.

In summary: the expansion of the welfare state into the performance sector of politics works here, again, selectively – both with regard to the selection of fields of problems and with regard to the formula for their analysis. And under these circumstances one has to expect that whatever is possible politically is in part overexploited, in part unexploited.

12. Digression About Political Theory's Concepts of Politics

We would now like to re-examine the distinction of function and performance and the determination of the political function in terms of binding decisions, presented in the preceding chapter, as “questionable” assertions of political theory. Such conceptual dispositions remain disputed within the system of science. Even in the present case one cannot resort to consensus as the basis for recommending them to politics, let alone to truth in the sense of certification or of an indisputable transportability. But precisely because of this an open scientific discussion permits us to evaluate what is attained through particular conceptual dispositions and what one has to reckon with if one then proceeds according to them.

The critique of a functional definition of the political that focuses on binding decisions is capable of showing that this concept cannot grasp the totality of the activities that occur within the juristic and institutional framework of the state and communities. Measured by this standard it remains incomplete in view of phenomena like schools and hospitals, institutions of social work, mail service, construction of roads etc. Considering the totality of public services, it would leave out important areas.⁵¹ But it is true that, in many unspecified areas of

⁵¹ Thus as it is correctly presented by Thomas Ellwein/Ralph Zoll in *Berufsbeamtentum – Anspruch und Wirklichkeit*, Düsseldorf 1973, p. 13, note 3.

political activity, the function of binding decisions is indispensable for the acquisition of finances and for organization. Consequently, it appears appropriate to attach such domains — i. e. those on the level of organizational systems — to the state and communities or to incorporate them within these. At the same time, this makes it extremely inappropriate to look for an all-encompassing concept that seeks to make the avoidance of salt in dietary meals, checking the calculations of mass use in the construction of bridges, the performance of appendectomies in hospitals, the establishment of seating arrangements in classrooms and the like part of political action. The concept of the state as such appears to be burdened by the effort of defining a *societal* function system on the level of *organization*. The consequence is that the concept lacks the capacity to discriminate, that it uncritically takes part in any growth that finds expression in the organization and that it acts conservatively, viz., preserves everything that would take place anyway.

These indications may suffice to clarify the problem that is connected with choosing a conceptual apparatus for political theory. The usual distinctions of a more formal or more “material” understanding of politics do not provide much towards a solution. Just as unsuitable is a characterization along the lines of a conservative versus progressive theory. Since the welfare state as it is changes and since it projects values guiding this change, the politics that by its own estimation is progressive is in reality conservative because it wishes to preserve this very mode of value-oriented self-change. An intentionally material (perhaps emancipatory) understanding of politics proceeds precisely along these lines. Even this concept does not seek to make corrections but refers only more emphatically to the final goals that guided the transition from a class understanding to the modern understanding of politics. Such a theory pursues unredeemed promises and requires increased efforts. It is critical to the extent that it measures reality according to its own projections — according to those theoretical projections that, at the same time, are the very ones of the political reality of the welfare state. But it is completely uncritical of this projective character of political reality and of what results from it. And this is precisely the reason for its political success in the sixties and early seventies.

By focusing on binding decisions, political theory commits itself to a critique of the welfare society. Critique, however, does not mean rejection. It means that in choosing a theory one must leave open the possibility of arriving at rejections. Only one who can say no is in a position to be critical: including no to more freedom, equality and security. Then political options are not guaranteed by the guiding values alone. This happens only if and to the extent that the use of binding decisions is possible and justifiable.

Even this concept is exhorted to self-correction. The starting point for this lies in the distinction of function and performance. As far as the history of theory is concerned, it is introduced as a reaction to certain shortcomings of early functionalism that had proclaimed the function as a more or less unchallenged orientation of the system and thereby treated it almost as a value concept. So if a causal interpretation of functions as the effects of political action still was maintained (and this dominated functionalism in the fifties), then this suggested a global "technocratic" interpretation of politics that could easily be connected with planning hopes that themselves had their guarantees in systems-theory. Today the critique of this syndrome has gained acceptance in science (although often with very inadequate arguments). It results from experiences with planning in political reality.

It is only through the distinction of function and performance that political theory reaches an adequate level of complexity. Only in this way does the determination of politics through binding decisions become acceptable, because the question can always be asked: who benefits from a (political) action? Therefore this concept leaves open the question whether particular performances (e. g. capital accumulation) can or have to be achieved through binding decisions and whether this changes under changing historical conditions or not. Accordingly, the creation of this mode of binding is not a value in itself and even less a criterion of rationality. It is just something that has to be presupposed so that greater rationality can be attained elsewhere.⁵² And, nevertheless, this is where the specific function for which the political system has to be differentiated and kept in readiness lies,

⁵² It is well known that Max Weber saw the value of the certainty of a formal and calculable rationality of bureaucratic decision-making in the same way.

because a central control and extension of power with binding force is otherwise impossible.

Not least of all, the distinction of function and performance specifies the place occupied by the political theory that makes this distinction. We will return to the logical problem of this "re-entry," i. e. of theory's entry into the domain of its own distinctions, once again.⁵³ Here we will only say that the difference of functional and performative orientations, together with the difference of corresponding system-references (society or other subsystems), stimulates reflections that political theory has to satisfy.⁵⁴ The difference of function and performance provokes efforts to reflect in the form of theories; the distinction of function and performance within theory allows these theories to comprehend this; it allows theory to balance itself.

Whether this game that theory plays with itself is capable of transforming itself into politics is questionable. But it may be an aspect of the intellectual certainty of political reflection, and with it an aspect of the practical significance of the choice of words and communication, if political theory can permit itself to culminate in this form of self-reference.

13. Law and Money: The Means of Effectuating the Welfare State

When a system participates to such an extent in the determination of its boundaries, tasks and the selection and formation of its environment, there are no neutral standards for acceptable sizes and degrees of complexity. If the political system constantly has to treat itself and a partially self-created reality in the way described above, there are no objective "indicators for the boundaries of state activity" with which

⁵³ Cf., below section 17 of this chapter.

⁵⁴ A similar problem is raised for the education system in Niklas Luhmann/Karl Eberhard Schorr, *Reflexionsprobleme im Erziehungssystem*, Stuttgart 1979.

one could compare reality in order to determine whether the state sector cuts out too much or too little for itself. Any research of this kind would depend on prejudices that it would share with politics (or, in any event, with politicians of a particular inclination). Through a global consideration, one can ascertain, better than is possible here how boundary lines actually run, determine trends and discuss their positive or negative side effects. But this alone – simply to repeat the argument of a differentiated, autonomous political system – provides no bases for political decisions.

In view of such constraints on the possibility of doing normative research, a different way seems more advisable. One can begin from the typology of means that are available to a political system for its functioning and performance and then investigate how far these reach and what their side effects are. To do this the evidence about these means must be made precise. In the preceding chapter we characterized the political instrumentarium as binding decisions whereby the binding effect belonged to the functional, the content of the decision and its consequences to the performance domain of politics. This evidence can be worked out with the help of a *theory of symbolically generalized media of communication*.⁵⁵ And it is part of our basic position that only *communication systems* can be differentiated as autonomous.

Communication media provide the premises for decisions and in this way are able to transfer the binding effect of these. In the political system *law* and *money* are used for this on the basis of political power,⁵⁶ and for the latter's technical diffusion. Both of these media have important advantages within the context of the political system. They can be used abstractly – i. e. without a very precise pre-determination of the situations in which they are used concretely. Their long-term effects can be worked out, especially with the help of organizations. And they offer the possibility of a centralizable global use,

⁵⁵ In general, for this see Niklas Luhmann, "Einführende Bemerkungen zu einer Theorie symbolisch generalisierter Kommunikationsmedien," in Luhmann, *Soziologische Aufklärung*, vol. 2, Opladen 1975, pp. 170–192. Cf. also Talcott Parsons, *Zur Theorie der sozialen Interaktionsmedien*, (Stefan Jensen (ed.)), Opladen 1980.

⁵⁶ For power as a symbolically generalized medium of communication, see Niklas Luhmann, *Macht*, Stuttgart 1975.

e. g. in the form of the enactment of laws for as yet unforeseeable isolated cases or in the form of monetary appropriations. With the help of legislation and financing, a central agency can attain political results – without considering the factual consequences of such measures. *That* such decisions with their binding effect have results can be seen from the extensive evidence of these media. And in political communication the intention that underlay the decision can take the place of the effects. *Which* results occur may remain unknown or become the subject of later political discussions as one can see, for example, in the recent reform of German divorce law.

In many respects these communication media meet the needs of the welfare state – especially the need to preserve the central authority over their use, notwithstanding the demands of extensive complexity. One could even say: the need for central democracy. On the other hand, one must realize that such a demanding achievement has to be purchased at the cost of disadvantages. It has its dark side, its boundaries.

Thus law and money increase the visibility of and the sensibility to changes. Even minimal increases or decreases in monetary amounts that would normally go unnoticed are perceived just because they are the result of decisions. Even changes in legal positions that are unusual or perhaps not topical become important as a result of the decision process. For example, the organization of German universities that is determined and fixed by law makes clear what groups would be affected by which changes in the law. Out of the mass of regulations – how could it be otherwise – come the experience and need for changes and at the same time reasons to resist such changes. Interests are ensnared in the system that promotes them and immobilize matters as built-in interests “to be considered.” The threshold of sensibility is lowered, the probability of resistance is raised wherever decisions lead directly to disadvantages. Therefore these perceptual thresholds by and large channel the political performance of the welfare state towards improvements while the resulting “changes for the worse” have to be displaced so that they are not perceived (or in any event not with equal speed and facility).

Equally important, if not more so, are the boundaries of the effectiveness of these media. Law and money provide external reasons for adjusting one’s behavior to specific conditions. What cannot be attained

through law or money is the changing of people themselves. The whole socio-political domain that is discussed today under the title of people changing (people processing) cannot be steered causally and technically by means of law and money. This is true of education as well as of concerns with social therapy, of rehabilitation measures and of the help for individuals who cannot solve their psychical and social problems themselves. To be sure, all professional activities within this domain depend on law and money. But their results cannot be guaranteed by these conditions. A state that controls law and money will overextend these means if it enters this field of activity without also establishing an adequate (or even apparent) relation to results.

The immanent constraints on the expansion of the welfare state can be shown quite well with this example. The principle of inclusion seems to find boundaries at the place where persons themselves have to be changed so that they can exploit the opportunities offered by society. Moreover, people changing is the most dangerous goal that politics can set itself. And even where adequate legitimation exists for the intrusion of "help," centralized technologies interested in responsibility and results are not available. One can decide on a policy of assistance, of uncertain expenditures, of merely "trying." But then one approaches the boundaries of what can be accomplished with the political means of binding decisions.

Notwithstanding such (however centrally important) problems that more or less escape a treatment in the welfare state, one can detect quite generally an overloading of these means and even the effects of this overload. In the case of money, the welfare state costs too much. It promotes inflationary tendencies that in turn ruin it. And the clearer the selectivity of the possibilities of the intervention of public means becomes, the more urgent the question why one should spend so much money for this (instead of for something else). In the case of law, the current "expansion of the legal domain" [*Verrechtlichung*] into many areas of living has attracted increasing attention.⁵⁷ So the problem lies

⁵⁷ Cf., from among the extensive literature, Hans-Dietrich Weiß, "Verrechtlichung als Selbstgefährdung des Rechts," in *Die öffentliche Verwaltung*, vol. 31 (1978), pp. 601–608; Rüdiger Voigt (ed.), *Verrechtlichung: Analysen zu Funktion und Wirkung von Parlamentarisierung, Bürokratisierung und Justizialisierung sozialer, politischer und ökonomischer Prozesse*, Königstein 1980.

not only in the amount of rules that one's own problems of knowledge and application raise but also in the question whether the boundaries of what can be handled adequately by legal means are overstepped.⁵⁸ Therefore overloading can be read not only in the rules themselves but also in the absence of their application.⁵⁹ Very detailed analyses of the sociology of law would be necessary to pursue this. Moreover, in both domains, in money and law, one may not overlook the fact that the conditions of the possibility of these means ultimately have to be guaranteed outside the political system: in the economic system and in the legal system,⁶⁰ and that this imposes constraints on political use.

These considerations can be used to suggest a proposal for "task-analysis." Tasks are complex causal constellations in which a positively or negatively valued effect can be attained or inhibited through the variation or addition of individual causes that one can control.⁶¹ It is never the case that all the causes necessary to perform a task successfully are accessible to a person. So the task gradually slips away from one if only a few of the causes can be controlled or when their reaction to the interplay of other causes is uncertain and if it is uncertain whether one can count on further necessary causes in general. The welfare state tends to extend tasks, particularly in domains where binding decisions about law and money work only in very uncertain causal connections.

⁵⁸ In this connection see the complaints about the ruinous consequences for juristic dogmatics; further the problem whether law overextends itself with the claim to consider consequences and to control them. See for this Niklas Luhmann, *Rechtssystem und Rechtsdogmatik*, Stuttgart 1974; Thomas W. Wälde, *Juristische Folgenorientierung: "Policy Analysis" und Sozialkybernetik: Methodische und organisatorische Überlegungen zur Bewältigung der Folgenorientierung im Rechtssystem*, Königstein 1979.

⁵⁹ See for this Rudolph Dieckmann's impressive investigation of the Hamburg poisonous waste scandal, "Aktuelle Problemfelder bei der Umsetzung von Bundesgesetzen," in *Verwaltung und Fortbildung*, vol. 8 (1980), pp. 155–164.

⁶⁰ That is, we follow neither the "national theory of money" (see the book with this title by Georg Friedrich Knapp, Leipzig 1905) nor the "positivist" theory of law.

⁶¹ Cf., D. J. Mathew, "The Logic of Task Analysis," in Peter Abell (ed.), *Organizations as Bargaining and Influence Systems*, New York 1975, pp. 103–113.

One speaks of "incentive programs" — as if with the provision of incentives the task would be fulfilled.⁶² Thus the definition of success is withdrawn into the administration as if the institution of an advisory board, a youth center or social ward is the effect that is desired and intended as such.⁶³ A remarkably significant part of the goals of bureaucratic administration is sought from the very beginning only within the bureaucracy.⁶⁴ Then the "improvement of the working conditions of the personnel" can count as an indicator of the success of welfare politics.⁶⁵ Correspondingly, the difficulties in carrying out programs and the reason for their frequent failure are often sought only in the domain of organized co-operation⁶⁶ — and not in the

⁶² Cf. for this, H.-J. Dahme/D. Grunow/F. Hegner, "Aspekte der Implementation sozialpolitischer Anreizprogramme: Zur Überlappung von Programm-entwicklung und Programmimplementation am Beispiel der staatlichen Förderprogramme für Sozialstationen," in Renate Mayntz (ed.), *Implementation politischer Programme*, Meisenheim am Glan 1980, pp. 154–175; Mayntz et al., *Die Neuorganisation der ambulanten Sozial- und Gesundheitspflege: Empirische Implementationsstudien in zwei Bundesländern*, Bielefeld 1980, especially pp. 338 ff. A skeptical view is presented in Renate Mayntz, "Regulative Politik in der Krise?" in Joachim Matthes (ed.), *Sozialer Wandel in Westeuropa: Verhandlungen des 19. Deutschen Soziologentages Berlin 1979*, Frankfurt 1979, pp. 55–81 (especially p. 62).

⁶³ See for this also the examples that Franz-Xaver Kaufmann und Peter Schäfer provide within the context of a four-phase model of politico-administrative production of service performances for the final phase (!): the drawing up of an administrative ruling, supplying of a community nurse for the bedridden elderly, advisement of a child by a school psychologist (see "Bürgernahe Gestaltung der sozialen Umwelt — ein Bezugsrahmen zur Problemexposition," in Franz-Xaver Kaufmann (ed.), *Bürgernahe Gestaltung der sozialen Umwelt*, Meisenheim am Glan 1977, pp. 1–44 (18)). If one does not go beyond what the public administration can do in the way of binding decisions, he ends up with task descriptions where success is screened off.

⁶⁴ Richard Rose, *Managing Presidential Objectives*, London 1977, pp. 90 ff. ascertains 75 % "inside objectives" for 1974, 65 % for 1975. In this case this surely is connected with the situation at the top of the organization under investigation.

⁶⁵ See Dahme et al., *Die Neuorganisation*, *ibid.*, pp. 302 f.

⁶⁶ American investigations seem to have provided essential suggestions for this Cf., Martha Derthik, *New Towns In-Town: Why a Federal Program Failed*,

unsuitability of the media of money and law for attaining desired goals. This makes it attractive to suspend the question of the constraints of the political operation of the welfare state and to redevelop it as a goal of its own.

Such a tendency towards self-satisfaction that has parallels in politics,⁶⁷ the domain of professional ethics⁶⁸ and in the secondary organizations of social politics and the politics of distribution⁶⁹ – so that one can almost talk of a conspiracy of the welfare state – would have to be counteracted by the analysis of tasks.

Washington 1972; Jeffrey L. Pressman/Aaron Wildavsky, *Implementation: How Great Expectations in Washington are Dashed in Oakland*, Berkeley, Cal. 1973; Helen Ingram, "Policy Implementation Through Bargaining: The Case of Federal Grants-in-Aid," in *Public Policy*, vol. 25 (1977), pp. 499–526; further, Fritz W. Scharpf/Bernd Reissert/Fritz Schnabel, *Politikverflechtung: Theorie und Empirie des kooperativen Föderalismus in der Bundesrepublik*, Kronberg/Ts. 1976.

⁶⁷ Cf., e. g. Wilhelm Aubert, "Einige soziale Funktionen der Gesetzgebung," in Ernst E. Hirsch/Manfred Rehbinder (eds.), *Studien und Materialien zur Rechtssoziologie*, Köln–Opladen 1967, pp. 284–309; Leon H. Mayhew, *Law and Equal Opportunity: A Study of the Massachusetts Commission Against Discrimination*, Cambridge, Mass. 1968.

⁶⁸ Cf., Helge Peters, "Das Verhältnis von Wertsystem und Sozialwissenschaften innerhalb der beruflichen Sozialarbeit," in *Soziale Welt*, vol. 16 (1965), pp. 246–259. Cf. for this also, Robert A. Scott, "The Selection of Clients by Social Welfare Agencies: The Case of the Blind," in *Social Problems*, vol. 14 (1966), pp. 248–257; Bernard Beck, "Welfare as a Moral Category," *ibid.*, pp. 258–277.

⁶⁹ Cf., Horst Baier, "Herrschaft im Sozialstaat: Auf der Suche nach einem soziologischen Paradigma der Sozialpolitik," in Christian von Ferber/Franz Xaver Kaufmann (eds.), *Soziologie und Sozialpolitik*, special edition, vol. 19 (1977) of the *Kölner Zeitschrift für Soziologie und Sozialpolitik*, pp. 128–142. Whether one can speak of "domination" right here is a question that is not so easy to answer; in any event, it would be a rather ineffectual kind of domination.

14. Bureaucracy

Law and money are communication media that are instituted throughout society. Their foundation lies on the level of the system of society where they are guaranteed by specific function systems. Their abstractness and mode of functioning belong to the characteristics of modern society. Even the political system of the welfare state would be inconceivable without them. However, as an institution of the welfare state they have a twofold way of working. On one hand, they make an enormous extension of "private commerce" possible through the divestment of traditional, moral, local, familial and class conditions and, on the other, the establishment of large organizational systems. The latter deserve particular attention within the context of a theory of the welfare state. And we choose the title "bureaucracy" to indicate this problematic.

Bureaucracy grows constantly – simply because the welfare state finds the possibility of discharging duties only within bureaucracies. The old correlation of rights and duties contained in the concept of *ius* is dissolved and its place is taken by the relation of citizen and administration. The welfare citizen, however, claims only his rights⁷⁰ (that can be conditioned with the help of bureaucracy), not his duties. And all joint behavior subject to obligations must discharge these by means of (compensated) membership roles in organizations. This imbalance is not resolved through "citizen initiatives." On the contrary, these only underline and strengthen it.

However, it would be a mistake to view the problems of politics in the welfare state exclusively or at least predominantly as problems of its bureaucracy. The problems of the organization are still not the same as those of society. If one wants to do justice to the realities of modern society, then the point of departure has to be the fact that the societal system includes all human communication and therefore transcends all organizations. At any given time society is the all-encompassing social system. Organizations, however, are formed as particular social systems

⁷⁰ This has often been referred to. See William A. Robson, *Welfare State and Welfare Society: Illusion and Reality*, London 1976, p. 82 and elsewhere.

of (in) society. They have special rules to which one submits in entering into them and which one can forgo by leaving them.⁷¹

It is characteristic of modern society that this difference between societal system and organizational systems has become more pronounced. In the theoretical developments of the seventeenth and eighteenth centuries this became evident through the dissolution of the traditional corporative (organismic) understanding of society and especially through the institutionalization of (religious and then ideological) tolerance within society. Subsequently, it became particularly clear that none of the important functional domains of society could be represented and effectuated as the unity of an organizational system: neither the economy nor education, neither law nor the system of health care, not even the traditional corporatively (organismically) understood function systems for religion and politics (in part, as church and state). Society is and remains everywhere dependent on non-organized activities for the fulfillment of its central functions.

Viewed historically, the concept and critique of "bureaucracy" originated against this background and is understandable only in relation to it. This is how one protects oneself against the "domination of offices."⁷² But every political critique of bureaucracy⁷³ refers to a self-created, self-desired, self-affirmed phenomenon. Therefore it has to start from a reflection on a theory of society.

Any technical critique of organizations is faced with the decisive point that only the communication media of law and money enable the establishment of large organizations and that, at the same time,

⁷¹ For a similar concept of organization see Niklas Luhmann, *Funktionen und Folgen formaler Organisation*, Berlin 1964; Luhmann, *Organisation und Entscheidung*, Opladen 1978.

⁷² In the professional sociological literature the concepts of organization and bureaucracy have been unfortunately confused, especially by Max Weber and those relying on him. For the return to socio-theoretical and socio-political perspectives cf., Wolfgang Schluchter, *Aspekte bürokratischer Herrschaft: Studien zur Interpretation der fortschreitenden Industriegesellschaft*, Munich 1972.

⁷³ See, e. g. Heiner Geißler (ed.), *Verwaltete Bürger-Gesellschaft in Fesseln: Bürokratisierung und ihre Folgen für Staat, Wirtschaft und Gesellschaft*, Frankfurt 1978.

they also contribute to the differentiation of organizational levels vis-à-vis those on which the society as a whole already exists. The conditions for the establishment of an organization are at the same time the conditions for the differentiation of organizations and society. The reason for this is that law and money function as communication media and as a means of creating systems only when they function in the environment of the system, too. Thus their use presupposes an encompassing unity, i. e. society. This is the reason why in the nineteenth century, the century of freedom and organization,⁷⁴ the development of private commerce and the development of organizations went hand in hand. The origin of theories like anarchism, that oppose law and money that understand society as entirely unorganized, or like Marxism, that tend to identify the societal system and organizational systems, belongs in this picture, too.⁷⁵ Thus the point of difference between eastern and western politics of society lies in making society and organization coincide – and not in the absolutely indispensable process of social and economic planning. It can be symbolized by the idea of freedom. But this does not offer an adequate explanation of the structural problematic of society. Decisive is the fact that neither the possibilities of the development of the societal system and its functional differentiation nor the possibilities of a technical rationalization of organizations can be fully exhausted if both system types are fused into one. And, besides, this requires restricting law to disciplinary functions and money to functions of distribution within the context of an organization encompassing the whole of society.

Obviously, a societal order that incorporates organizations within function systems and then refuses to establish the unity of these systems

⁷⁴ To cite one title: see Bertrand Russell, *Freedom and Organization 1814–1914*, London 1934.

⁷⁵ Important aspects of the Marxist social policy can be derived from this basic decision, e. g. the critique of capitalism and “commodity fetishism” (i. e. the monetarization of living), the centralization of production or reproduction as an organizational function, the socio-technical, almost sociology-of-the-firm interpretation of law and much more. Cf., specifically for the interpretation of law, Klaus A. Ziegert, *Zur Effektivität der Rechtssoziologie: Die Rekonstruktion der Gesellschaft durch Recht*, Stuttgart, especially pp. 94 ff.; Kálmán Kulczár, *Rechtssoziologische Abhandlungen*, Budapest 1980, especially pp. 221–242.

— or even society itself according to the model of organized unities of decision and action — is not without problems. This occurs, for example, if society emphasizes the market within the economy and the unorganized, free formation of public opinion within politics; and not only emphasizes but also views as essential components of the best possible fulfillment of their function. One might assume that the problem of “bureaucratization” is less urgent in this case. But this would be a premature conclusion. The boundaries of the suitability of organizations to perform societal tasks manifest themselves precisely when one places them — within the context of function systems — under the pressure to deliver. And this only increases when the demand increases. Only if the political system of society is not established as an organizational unity, not restricted in advance to what is possible organizationally, but communicates within the interplay of public, politics and administration (section 6 of this chapter), will one be able to expect that a kind of organizational overuse arises on which wishes and promises, unsolved problems and the compensation for injuries can be unloaded.

Transcending what is organizationally possible or acceptable manifests itself in at least two different forms: as the stipulation of an excess of conditions and in the use of law and money to attain goals for which these means are not at all or hardly suitable.

Law and money have the basic advantage of simple binary models that can easily be used to determine whether one or the other value is present: whether one is acting or not acting legally or illegally and whether one has or does not have a determinate sum of money. This enables one to make conditions. Which of these two values is assigned can depend, or be made to depend, on conditions. Stipulating conditions for elementary processes (in this case, action) is the form of differentiating and structuring systems as such.⁷⁶ It is necessary in order to equip a system with a complexity of its own and with a resistance to

⁷⁶ For the general significance of conditioning for the constitution of systems, see W. Ross Ashby, “Principles of Self-Organizing Systems,” in Heinz von Foerster/George W. Zopf (eds.), *Principles of Self-Organization*, New York 1962, pp. 255–278, reprinted in Walter Buckley (ed.), *Modern Systems Research for the Behavioral Scientist: A Sourcebook*, Chicago 1968, pp. 108–118.

environmental influences.⁷⁷ Binary models facilitate such conditionings and enable the addition of ever more conditions. But they do not place constraints on such growth. This is precisely the flip-side of their distinct bivalence: there are no specifically legal grounds for less law and no financial grounds for less money. The models contain no rules of limitation, no grounds for restricting the scope of additional conditionings. Thus a bureaucracy built on these media finds no boundaries to further growth within them. It tends to malfunction as a result of overload. At the very least one is faced with the question: to what extent increasingly complex, far-reaching conditionings, that one would like to use to control distant, often merely suspected causalities, can still be contained by organizational rationalizations.

The second critical value that causes trouble for bureaucracy concerns tasks that by their nature cannot be solved by law or money (although, of course, not without law and without money). The prominent example of this are the tasks that presuppose the cooperation of people in their own change: education, rehabilitation, secondary socialization, educating the elderly etc., what Americans call "people processing."⁷⁸ This area of work requires resources like the mobilization of people and a commitment and flexibility of interaction that cannot be supplied by law and money nor whose failure can be controlled centrally. The conditions of success or failure here lie predominantly in the people themselves and their system of interaction.

⁷⁷ The organizational affinity of conditioning should also be emphasized, at least in passing. Among the conditions that determine whether decisions are possible legally or financially is the consent of other positions that are themselves again conditioned by or can be made to depend on the consent of other positions. In this way the complexity of programs and organizations intertwine with the result that the entire complex's capacity for action closes itself off from access and stimuli to action from above and outside.

⁷⁸ Cf., e.g. Yeheskel Hasenfeld/Richard A. English (eds.), *Human Service Organizations: A Book of Readings*, Ann Arbor, Mich. 1974. For the beginnings of attention to this problem connected with a critique of Max Weber's all-too uniform model of bureaucracy, see especially Talcott Parsons, "Some Ingredients of a General Theory of Formal Organization," in Parsons, *Structure and Process in Modern Societies*, New York 1960, pp. 59–96 (71 ff.). Cf. also, Paul Halmos, *The Personal Service Society*, London 1970.

They cannot be supplied or justified centrally – not least of all because the scientifically proven technologies are lacking. So it is not surprising that a nevertheless necessary organization imposing its idiosyncrasies is deplored as bureaucracy. And not by the public but mainly by the members of the organization themselves.⁷⁹

If this cursory analysis is roughly correct, there are several problem sources that can be characterized as bureaucratization. No doubt, this is a matter of a characteristic feature of modern society. But, in contrast to Max Weber, one hesitates to characterize this societo-structural context by means of an action- oriented type of rationality and thus to understand bureaucracy as the unavoidable flip-side of a rationalization pervading all of society; if not as the iron law, then at least as the iron cage of modern rationality. The concept of rationality does not explain enough. Instead, the pivotal point connecting society and organization seems to lie in the readily schematizable communication media of law and money that are available in adequately complex societies for the formation of organizations. Under specific conditions – and we have in mind here particularly the differentiation of specific functions – these media stimulate the exploitation of opportunities to condition organizational behavior; precisely where this overloads the guidance and decisional capacities of individual positions and even where there are no proven causal technologies. This results in growth impulses that overstep the boundaries of what is acceptable and that can be controlled by politics and administration only through a kind of self-reflection for which there, formerly, was very little support.

⁷⁹ For the attitude of the professionally committed employee to his own bureaucracy cf., e. g. Gerald Moeller, "Bureaucracy and Teacher's Sense of Power," in Robert R. Bell/Holger R. Stub (eds.), *The Sociology of Education: A Sourcebook*, 2nd ed., Homewood, Ill. 1968, pp. 236–250; James A. Conway, "Test of Linearity Between Teachers' Participation in Decision Making and Their Perceptions of Their Schools as Organizations," in *Administrative Science Quarterly*, vol. 21 (1976), pp. 130–139. The results show a rather ambivalent attitude and, in any event, not the often supposed radical rejection of organization as "bureaucracy."

15. Political Rationalization in the Administration: Organization, Programs, Personnel

The possibilities of rationalizing large-scale welfare state organizations are not yet definitively determined by the above considerations of the problem of bureaucracy. We do not have in mind here the rationalization of the details of the daily work-grind on which the administration itself ceaselessly and successfully works. The paperwork and records, the timeplanning of workflow and the replacement of human labor by that of machines – all this belongs to a constant routine of a higher order that establishes routines of a subordinate kind and constantly improves their adjustment to changing circumstances. The concept of administrative policy⁸⁰ ought to go further and raise the question whether there is not, in addition, a kind of total political responsibility for rationality in the administration that cannot be left to the administration itself. A politics that tends to overload itself and its administration constantly, because this is part of the logic of functional differentiation, has to focus its ideas in a different way than the administration does. And, above all, it also has to plan – even here “self-referentially” – its own effect on the administration into the latter’s rationality.

The term “bureaucracy” provides only a very preliminary “black box”-description of administrations.⁸¹ Nor does the assumption of a “critique of bureaucracy” accomplish any more; especially since politics all too easily forgets its own role in stimulating the growth of bureaucracy. In order to be able to go further one must consider how and whether general aspects of the *political rationalization* of the administration can be formulated – aspects that clarify how the administration, with all the self-reference of its daily operation, remains dependent on political impulses, on political “inputs” as the conditions of rationality. Of course, this is not only a matter of deterring politicians from annoying interventions, from protection in individual cases and from

⁸⁰ The same concept is found at the same time in a more diffuse and detailed sense in Hans Peter Bull (ed.), *Verwaltungspolitik*, Neuwied 1979.

⁸¹ We refer back here to section 7 on “self-observation.”

uncomfortable, naive questions. This would presuppose that the administration with the network of its self-referential operations – it does what it does – can guarantee its own rationality adequately. But, since it is only a subsystem of the political system and operates under corresponding observer conditions, this is not the case.⁸² Self-reference is a principle of maintenance, not a principle of rationality. Therefore one has to look for possibilities of the political rationalization of the administration.

A simplifying glimpse of the administrative process encompassing countless numbers of decisions becomes possible if one disregards the contents of the individual decisions and the very distinctive task areas for the moment and, instead, asks the question which decisional *premises*⁸³ form the source of decisions. By decisional premises we mean conditions that influence the content of decisions but which are assumed unquestionably at the moment of decision. Every decision, of course, depends on a countless number of decisional premises, on positive and especially on negative information about the world. Some of these decisional premises are created artificially in organizational systems, or constituted as variable.

These kind of artificial and contingent decisional premises can be classified into three types.⁸⁴ Either they are *decisional programs* that fix the conditions of the correctness and suitability of decisions and, basically, bring the administrative tasks within the decision process. Or they are *organizationally fixed competencies and channels (networks) of communication*, i. e. office organizations. Or they are ulti-

⁸² See again section 7 on "self-observation."

⁸³ The term "behavior premises," later "decision premises," was introduced by Herbert Simon. For its theoretical development see Herbert A. Simon/Donald W. Smithburgh/Victor A. Thompson, *Public Administration*, New York 1950, pp. 57 ff.; Herbert A. Simon, *Administrative Behavior: A Study of Decision-Making Processes in Administrative Organization*, 2nd ed., New York 1957, pp. XXX f.; Simon, "Administrative Decision Making," in *Public Administration Review*, vol. 25 (1965), pp. 31–37 (34 ff.).

⁸⁴ For the derivation of this threefold division from the concept of "position" (established post, office) cf., Niklas Luhmann, "Allgemeine Theorie organisierter Sozialsysteme," in Luhmann, *Soziologische Aufklärung*, vol. 2, Opladen 1975, pp. 39–50.

mately *persons* who make decisions, viz., their attitudes, motives, capabilities, knowledge, personal contacts, career aspirations etc. One can call attempts to steer an administrative system by these premises "planning."⁸⁵ One can speak of the politics of administrative planning in the narrow sense to the extent that the rationality of the administrative process itself is the goal of planning and not political performance (in the sense defined above in section 9 of this chapter). Thus the politics of administrative planning is the form of access to a political rationalization of the administration.

It is important to realize the advancement in guidance that resides in this concept of planning and its concentration on decisional premises. It undoubtedly makes it possible but does not force one to secure decisional behavior by means of decisional premises. Basically it suggests that one uses global perspectives to guide oneself. And this is especially necessary for the tasks of the political rationalization of the administration.

Therefore, if one considers organisational policy, declared intentions and personnel policy as alternative forms of access to administrative processes of rationalization, then the chances of changing things are very different in these three areas. The *organizational structures* are essentially retained and can hardly be changed in a direction towards greater rationality.⁸⁶ This is especially true for hierarchies and monocratic leadership. It is also true of the typically German mixture of functional differentiation (department principle) at the top and unified office organization on the district level. Thus sociological organizations research has hardly concerned itself with the improvement of rationality but primarily with the improvement of motivation and the chances of self-realization for the members of organizations, without being able to show any notable success.

Any changes in the *program policy* can hardly be proposed without consideration of the relevant issues in each case. Therefore they are not the primary form of access to administrative rationalization, al-

⁸⁵ For more detail on this Niklas Luhmann, *Politische Planung*, Opladen 1971, pp. 66 ff.

⁸⁶ Fritz W. Scharpf expresses somewhat more confidence in, "Public Organization and the Waning of the Welfare State: A Research Perspective," in *European Journal of Political Research*, vol. 5 (1977), pp. 339–362.

though there certainly are programs that make the list of "things to be abolished" because of an excessive expense to the administration, or whose regulation has to be modified in the interest of automation. Seen on the whole, however, this is where the contents of the policies of the welfare state are at stake, so that administrative rationality alone cannot be the leitmotiv of reform.

One might be able to find untapped possibilities of rationalization in *personnel policy*. Here rationalization would mean: to improve the co-ordination of personnel capabilities and job (position) demands. This can occur only through processes of movement (hiring and firing, transfers and especially promotion). Actually, mobility within the German public service (with the single exception of promotions) is extremely restricted.⁸⁷ There is room for improvement and a better use of existing possibilities.

The proposals devised by the commission to study the reform of the (German) public service law (1970–1973) had essentially this aspect of reform in mind. Ever since, this is where ideas have concentrated and concretized.⁸⁸ Efforts at reform had begun under considerable political difficulties. And they have not been continued because of political resistance.⁸⁹ Narrowing the topic down to the "unity of the public service law" frustrates decisions in view of the existing plurality of interest groups and differences of opinion. The fact of the matter is that it is in no way necessary to restrict reform to this question and thereby to make it politically undecidable.

⁸⁷ Cf., the findings of Niklas Luhmann/Renate Mayntz, *Personal im öffentlichen Dienst: Eintritt und Karrieren*, Baden-Baden 1973, p. 135 (table 6.2) and also the report of the commission to study the reform of public service law, Baden-Baden 1973, pp. 179 f.

⁸⁸ Christian von Hammerstein provides a description of the state of these efforts before they were broken off, in "Reform des öffentlichen Dienstrechts in der Krise?" in Hans Peter Bull (ed.), *Verwaltungspolitik*, Neuwied 1979, pp. 136–159. See also Hanns-Eberhard Meixner, "Ergebnisorientierte Zielsetzung im Personalwesen," in *Ziel- und ergebnisorientiertes Verwaltungshandeln*, Schriften der Bundesakademie für öffentliche Verwaltung, Special Ed. 4, Köln 1979, pp. 175–213.

⁸⁹ Specifically for this all, Niklas Luhmann, "Reform des öffentlichen Dienstes: Ein Beispiel für Schwierigkeiten der Verwaltungsreform," *Vorträge der Hessischen Hochschulwoche*, Bad Homburg 1974, pp. 23–39.

This case illustrates what was presented in an abstract way above in the chapter on self-observation: that politics can perceive the administration only as a black box, only from abbreviated, totalizing perspectives, and that it is thereby in danger of taking the (*for it*) standard perspectives – in this case, the so-called status difference between officials and employees/workers and the accompanying difference of organizations representing interests – for the basic structure of the administration itself. One can surmount this hurdle of a hastily accepted political undecidability only through a more rigorous, theoretically guided observation that, of course, ought to consider its own ignorance⁹⁰ as well.

16. Political Options

The preceding analyses have revealed a kind of contradiction that ought to be treated now as a possibility, indeed the necessity, of political policy decisions. We can characterize the underlying structural problem from several points of view depending on whether we begin from the problem of inclusion, from the status of politics as a subsystem of society or from the logical problem of self-referential closure.

The inclusion of the population is a functional necessity for the welfare state. Accordingly, the self-referential order of political communication binds the system to openness for every politicizable theme. On the other hand, the means of effectuating the welfare state that are capable of being implemented in the form of binding decisions are

⁹⁰ In the present case this ignorance resides in the possibility of measuring capacities and requirements, in the estimation of results that a system of co-ordination established necessarily with inadequate means will have as well as in the learning capacity that can be built into such a system on the basis of experiences of itself through statistical controls etc. Thus it is typical for today's scientific situation (see section 10 of this chapter) that one can calculate risks only by taking them and making the corresponding arrangements. And this can occur only through the cooperation of theoretical analysis and political decision.

limited, and overtaxing them produces problems that cannot be solved by using the same means. Politics has to strike a balance here. Above all, it has to find a concept to guide itself within this tension of openness and restriction, of suggestions for goals and means for attaining them.

A second consideration leads to the same question. It arises out of the differentiation of the societal system. Politics finds itself restricted to the function and effectuating possibilities of the political system. This system, however, is a subsystem of society. And society itself is a system in an environment that increasingly reacts to society to the extent that it is changed by it. Therefore the necessity of guidance significantly transcends the possibilities of action. And the politician finds him- or herself called on to take a stand even where he or she cannot "do anything." He or she may then resort to rhetorical warnings and appeals. But admonitions will hardly convince anyone if they do not also find support in a presentation of the way they relate to reality.

If one begins from the theorem of self-referential closure, then this means that saying yes as well as saying no, wanting something as well as not wanting something, being able to do something as well as not being able to do something, have to be grounded in political communication. Furthermore, this has to be done through communication in terms of the underlying understanding of politics. The constitution, viewed politically as the instrument of differentiating the political system,⁹¹ offers important assistance. But, in view of a certain obsolescence of its underlying theories, it is in need of a political interpretation. Here, too, the question remains: how can a politician or a political party orient itself within this situation of openness and restriction, of overall view and proposal for action, of logically recursive infinity and justification for saying yes or saying no?

This situation requires *options* within the political system. The concept of option is used here to designate the unity of the interpretation of society as well as that of the choice of programs. This concerns not only the choice of decisions or strategies but also the determination of the societal situation from which politics begins and which it

⁹¹ For this Niklas Luhmann, *Grundrechte als Institution*, Berlin 1965: Luhmann, "Politische Verfassungen im Kontext des Gesellschaftssystems," in *Der Staat*, vol. 12 (1973), pp. 1–22, 165–182.

processes into specific results. Thus a political option contains the choice of an interpretation and the choice of decisional programs, of interpretation and realization. In distinction to the way that historical materialism supposes, the political option cannot be replaced by knowledge. There are no necessary laws of societal development that would be left to political action to carry out. And a sociological theory that would have to produce such laws would be overburdened scientifically as well as politically.⁹² In any event a systems-theoretical analysis of modern society that works with concepts like system differentiation and self-referential autonomy does not lead to one-track formulas but to the presentation of structured options between which choices can be made, and not from the viewpoint of true or false but from that of political responsibility. Social scientific research finds itself here in the situation – just as in many cases the natural sciences do today – that it can estimate risks and dangers, sources of error and resulting problems only after it has begun from the realization of what causes them.⁹³

Viewed politically, the structural justification for a many party system is to be found in this necessity of (political) options. Precisely because ultimate certainty about what is true cannot be obtained in advance, it makes sense to talk about alternatives, to present these as co-existing and to oppose them to one another. Only in this way do options become the subject of political communication. Similarly, this is where one finds the real measure for testing a many party system. It lies within the societo-political range where options can be formed and articulated against one another. To the extent that demands for this increase, a “theory of society orientation” regains its significance.

If one follows a system-theoretical concept of society as a political option, then one is immediately confronted with the problem of a society without a top or a center. This raises the question whether politics should or should not try to occupy a central place in society and therefore accept a kind of total responsibility for it. If society wanted

⁹² This is true not only for Marxist but also for technocratic ideas about the relationship of sociology or the theory of society to politics. Similarly, sociology finds itself today in full retreat from such claims or demands on meaning. Cf. for this, the representative introductory address of Joachim Matthes at the Bremen Sociology Convention 1980.

⁹³ See for this above section 10 of this chapter.

to do so, then it would have to ignore the fact that this can happen only in contradiction to the principle of functional differentiation. It could argue that there has to be a point in every systemic order where the system contradicts itself and that this is just what politics does in society. It goes without saying that this claim is attractive – and precisely because it tries to occupy a position that does not exist but is still sought, viz., the center. The revitalized, ancient concept of politics, Hegel's concept of the state, the caring and supportive socialism of the welfare state and finally the politicism of an extra-parliamentary opposition (radical groups) in the last two decades demonstrate its attractiveness. These can be exploited politically. On the other hand, this option necessitates ignoring the inherent constraints on political means (law and money). Through the inclusion of responsibility for other functional domains – e. g. education and the economy – it weakens the functional specification of politics and endangers its capacity for consensus. But, above all, it would not be able – as can be seen in the Aristotelian as well as the socialist concept of politics – to establish a relationship with religion that, for its part, cannot accept a subordination to politics.

A reduction of politics to its function of satisfying the need for collectively binding decisions alone would fit better within the context provided by the functional differentiation of society. But in this case one would have to begin from the fact that a humanly satisfying life, the “good life” (Aristotle), is still possible in a social order that always employs the individual only within roles, only in specifically functional relations, and no longer offers him or her a counterpart, someone to whom he or she could turn in situations of need and who would pay more for production during poor harvests and buys up the surpluses in good ones. One has to assume a different understanding of humankind here; one that had certainly been formulated by the year 1800 under the title of freedom, independence, individual and world, art and love, but also about which no one knew for sure whether it would last and for whom. In any event the enthusiasm with which modern man had been discovered has waned. The pursuit of compensation for the social decentralization of human life has been directed specifically into the domain of intimate personal relations.⁹⁴ A politics that begins by

⁹⁴ An impressive presentation for this is Jules Michelet, *L'amour*, Paris 1858.

opting for functional self-constraint would have good reason to take up topics like love and marriage and view them as more than a mere exercise field of demands for equality and support. It would have to be able to presuppose possibilities of enriching the meaning of personal life to which it could contribute nothing.

The interpretation of inclusion in the welfare state is split over the same question. If one begins from the fact that, when push comes to shove, societal existence is always political existence, then this lowers the threshold of politicizing topics and problems. Above all, inequalities (or in any event undeserved inequalities) can then count as an occasion for demands. Furthermore, the problems that are unsolvable in other systems would almost automatically become political problems. And political gain could be made through their discovery and propagation. It would be a sufficient reason for political intervention in the economic or education process if the most efficient functioning of these systems created systematically incorrect, humanly unsatisfying results. At present at least, it is certainly easier to attempt a political correction. But it is just as apparent that the political system's possibilities of planning and acting are inadequate for such a broadly extended area of demands and that many solutions to problems remain stuck in the institution and staffing of bureaucracies. If one wants to retain the expansive understanding of politics, then one must – and this seems reasonable in view of a differentiated domain of politics within the political system – consider responsivity more important than efficiency.

The test of the consistency with which one maintains options of this kind resides ultimately in the causal-technical use of law and money to bring about results. As soon as one goes beyond immediately attainable results – the payment of a sum of money causes the payee to have the money and to be able to spend it – one enters a complex causal field in which success also depends on additional factors that one does not control, and is burdened with side effects that one has to offset.⁹⁵ In this case an expansive understanding of politics will tend to try to do at least something, even with uncertain or unclear bases of action. Or should one leave addicts to themselves simply because one does not know which treatment promises success in a rational

⁹⁵ References above section 13 of this chapter.

relation to the expense? Lacking satisfactory results, a restrictive understanding of politics will tend, instead, to push the problems off into other societal contexts or simply to correct them only where they can be treated politically and legally, perhaps where punishment is effective. The boundaries are not sharply drawn. The, in principle, contrary options lose mutual exclusivity in concrete application. And it becomes increasingly difficult to generalize the principles of a political program over different political fields. But even here one can recognize a political option, regardless whether one rates one's own chance of being effective in causally complex constellations as high or low.

But the lines that delimit political options become blurred not only in the muddle of opportunities to effect things that are difficult to estimate. Outside the political system and within other function systems of society structural problems arise that require a re-thinking of political options independently of the classical opposition of planning/freedom, socialism/liberalism and expansive/restrictive politics. Some of these structural problems were presented in section 10 of this chapter. Thus the question of handling exhaustible resources in properly economic or political categories as the problem of prices or as the problem of rationing and allocation has to be discussed from entirely different viewpoints than the ones that the classical opposition of planned economy/market economy provided for. Concerns about just distribution are replaced by an outside pressure that asserts itself with or without planning. And the problem of gaining time for gradual adjustments replaces the controversy about greater rationality.

Such problems place politics in new kinds of situations. Henceforth the issue is no longer the extent to which individual behavior should be influenced by law and money or left on its own. Instead, one is faced with the questions: to what extent can society withstand its own principle of functional increase brought about by resolving itself into autonomous, self-referential subsystems and to what extent does it have to correct itself internally? These are the questions that destroy the opposition models of progressive/conservative and socialist/liberal. One can only suppose that new kinds of alternatives will appear depending on whether one tends to transform society into a giant organization that recognizes only internal differentiations of jobs (positions) or whether one retains different levels of system formation,

i. e. still distinguishes societal system and organizational system⁹⁶ and experiments with possibilities of functional differentiation directly on what is experienced on the level of the societal system.

17. Political Responsibility and Political Theory

By political responsibility we mean here the *actual making of selections* within the political system – either through decisions or through refraining to decide. Selection binds the system to a (system-) state that could also be different. And, accordingly, responsibility is the use or non-use of political power that binds the system, *although it could also be different*.

This choice of concepts purposely leaves open whether and to what extent the choice of a particular policy does justice to normative assertions, basic values and the like. Political responsibility cannot be grasped adequately by referring to norms or values, because this leaves open too large a range of conformative behavior or omission of behavior. Furthermore, we do not assume that central agencies alone bear political responsibility. In principle, all action/omission bears responsibility insofar as it belongs to the political system and has effects. An individual's participation or non-participation in political elections is just as politically responsible as the "thoughtless," routine carrying out of administrative directives. The extent of the centralizability of the control of consequences, and thus of responsibility, is a variable that depends greatly on organizational precautions and, nevertheless, can assume changing values from situation to situation and from topic to topic.

Instead of focusing on guidance from norms and centralization (and in this sense responsibility), political responsibility in the sense defined here refers to a problem. Responsibility presents itself one way or another through the selectivity of action and omission. The problem

⁹⁶ For this also Niklas Luhmann, "Interaktion, Organisation, Gesellschaft," in Luhmann, *Soziologische Aufklärung*, vol. 2, Opladen 1975, pp. 9–20.

is whether and to what extent it is explicit and consciously perceived. In other words, is there a possible cognitive, conscious equipping for responsibility that, one way or another, has to be accepted within the political system of the welfare state? Democracy, to put it briefly, depends on this, because it determines whether and how actors in the political system can observe one another reciprocally.

Democracy is, above all, the capacity of the political system to observe itself. Only through this capacity can politics refer to politics and thereby constitute a recursively closed, autonomous system. But all self-observation depends on the assertion of differences. Events can be experienced and processed as information only in relation to differences. Therefore the basic questions are: which differences can be assumed in politics and can they be assumed in agreement?

As the basic scheme for creating differences the welfare state primarily uses basic values and lists of desiderata connected with these. The organizing difference appears in this context as the distance one is from what one desires. Thus the difference works as the demand for realization. Accordingly, self-observation operates through making claims valid. All politics is drawn into this. If it wants to stimulate more democracy, more self-observation, more critique, then this means that it has to induce claims, ultimately the welfare state's claims to redeem the promises of freedom, equality and security.

This kind of difference-steered self-observation, however, has become aware of itself today.⁹⁷ It can already recognize its own consequences. It has itself become an object of self-observation. The question is then merely: what difference makes this self-observing of self-observation possible, this transcending of the welfare state's typology of information processing?

Only neo-Marxist analyses have presented serious attempts at providing an answer.⁹⁸ Their difference-creating schema is given the name of

⁹⁷ Underlying this, more abstractly, is the logical assumption that distinctions that structure a domain (figure/ground, this instead of that, system/environment) are to be understood as operations and in this way bring themselves into the relation. Cf., the basic work for this problem of "re-entry" by George Spencer Brown, *Laus of Form*, 2nd ed., New York 1972.

⁹⁸ Cf., Claus Offe, *Strukturprobleme des kapitalistischen Staates: Aufsätze zur Politischen Soziologie*, Frankfurt 1972; also the introduction to Wolf-Dieter Narr/Claus Offe (eds.), *Wohlfahrtsstaat und Massenloyalität*, Köln 1975.

“capitalism.” But this concept quickly loses contour. Besides, it leads to the problem that there are systems that understand themselves as no-longer-capitalist, that already have an established theory and from which one would also require the capacity of self-observation. Recent political events in Poland demonstrate that such a development is possible, indeed that it can even culminate in a kind of class consciousness of the working class – although not where Marxist theory had suspected but, following an implicit cunning of dialectics, in a domain of its own and as a reaction to its own attempt at realization. Thus theory itself becomes the difference-creating factor that increases the transparency of the system for itself.

The attractiveness of systems-theory in the present situation is conditioned not least of all by the fact that it provides new points of departure in this matter. It begins from the difference of system and environment and assumes that this difference can be made available, i. e. reflected, within the system. This means then that all information processing can be carried along in this difference of system and environment and is constantly used to call attention to the boundaries of its own possibilities.

Whether one now accepts this theoretical context or not; in order to make a judgment about current politics and achieve democracy one not only has to know what is happening but also understand the context in which things happen. To do this it does not suffice to know the criteria of choice that the actor used to determine his actions. There are plenty of wishes and values. Depth of insight also depends on the fact that one can grasp how the actor generates (engenders, creates) differences by choosing a problem and how he locates it in reality. This is also the only way that one can make a comparison that leads to the preference for particular directions. Mere value judgments lead very quickly to controversy. And if the controversy is not already pre-programmed by the contrast schema or the political code, it becomes pointless to formulate opposing values. Thus the difference schema of politics is reduced to the difference of political parties or even to the difference of their “top candidates.” The best that this version can do is to provide direction for political elections but not for the entire context of political decisions.

Using theoretical analyses to relate valuations back to societal reality makes it difficult to have a merely verbal opposition. One projects

what is commonly assumed as reality. This may remain a projection or be contradicted. But the discussion of assumptions about reality and their theoretical conditions possesses a quality different from the mere opposition of values and makes a different, more complex level of observing political action possible.

In order to provide foundations for this, politics has looked for *possible advice from science*. In turn, this possibility itself has become the subject of scientific investigations, specializations and conferences etc. with the result that it has produced a very complex, frazzled picture with many “ifs” and “buts” that, in general, has caused a rather skeptical judgment to prevail. Above all, one has, to a great extent, given up the belief that the social sciences could develop a kind of causal technology that (scientific) practice would simply have to apply. This is also true of the noticeably more moderate version of a carefully limited assumption about what would result from this that is associated with names like Hempel, Oppenheim and Popper. Instead, at present the danger exists that research on applied research dissipates the last remainder of trust in this possibility. Thus one has to warn against unreasonable skepticism. In any event not much has remained of the specter of a scientifically based, technocratic domination that already determines everything outside the political domain.

In any case this entire situation means that the relationship of political theory and political responsibility cannot be understood as one of alleviation, not to mention as technocratic domination. The point cannot be that a theory derived from outside and equipped with the quality of truth is offered to the political system or forced upon it and that the latter cannot reject this because it would amount to a political (!) mistake. Instead, one could, however, try to use social scientific analyses to initiate a process of political reflection that enters into political responsibility as the central feature and cannot be eliminated from it. This emphasizes the differentiation of the scientific and political systems, and indeed more clearly than in the model of “applied science.” The context of transformation is retained only in the ambiguity of the concept of “political theory” as a theory about politics or within it.

Such a transition from “applied science” to “political theory” affects the understanding of political responsibility. So then the point is still – but not only – the responsibility for consequences. The causing of

effects, effectiveness in the enforcement of decisions and the foreseeing and having to answer for side effects still remain an essential factor. Politics can never be merely cognitive self-satisfaction. But what does it add? And how is it enriched when it is guided by political responsibility and, in addition, has to answer for this guidance?

One has always known that the classical causal perspective is in need of supplementation: one has to know in advance *what* one wants to cause. To do this one has to set goals and perform valuations. Max Weber, and many others since, thought that politics could maintain its independence vis-à-vis scientific knowledge through the determination of value relations. But causal knowledge and valuations can only be separated analytically. In each case selection is steered in both domains by considering the other. And, above all, one has to ask whether this schema of causal knowledge and valuation grasps the meaning-structures of practice adequately.

If the problem is broached only by means of causal hypotheses and valuations, then this leads to an inadequate attitude towards the complexity of societal circumstances. Wherever one cannot survey the factually occurring causal relations any longer, then value-assertions are all that remains for one to advocate and support. They form the foundation and the ingredients of party-programmatic explanations. And then structural concepts and statements (e. g. market economy) are treated in this context like value statements. To repeat: causal knowledge and valuations remain indispensable, assumed. But they are inadequate as forms of political reflection.

The way in which political theory expresses itself cuts across this, as it were. Its ultimate goal is neither admonition nor technical help. It articulates self-observation within the political system. In this case what matters most is the formulation of concepts of difference that make it possible for events to appear as information and to leave traces behind within the system. Thus political theory is concerned primarily with the sensibility of the system – its system! – and this always means with its own sensibility. In a certain way it is the strenuous effort to counteract its own prognosis,⁹⁹ viz., to increase sensibility without taking indifference into account.

⁹⁹ Cf., above section 3 of this chapter.

Notwithstanding all the exact theoretical study that has been done, one should begin here from the difference of society and politics. Starting in this way¹⁰⁰ politics presents its consciousness of the problem against the background of a concrete analysis of the historical situation of the societal system. Presently available scientific concepts can be used in this analysis, as far as it goes, just as Thomas Hobbes and Karl Marx had done at their time. In this way, however, one escapes (at least today, but this is also true for the seventeenth and nineteenth centuries) the zone of scientifically disputed theories. To be sure, there are differences in scientific quality, and one should not commit oneself unadvisedly. But the responsibility for selecting how political theory is to be applied politically can reside only in the political system itself. It is an inherent aspect of political responsibility, especially of the responsibility for the intellectual styling of political commitment.

With the help of political theory politics gains in comprehensibility. Its premises, options and their alternatives appear more clearly. This also means that different political parties can distinguish themselves from one another more clearly than was possible on the basis of a commonly affirmed constitutionality and its resulting basic values. So within the area of "people changing" different parties see different boundaries. Thus a more rigorously selective education system could be affirmed or denied. Or one may hold that the exclusively monetary recalculation of the problem of exhaustible resources is temporarily adequate or in need of completion. In any event an analysis of society multiplies the number of fundamental problems for which alternative politics can be developed. But, above all, it creates a constantly accompanying consciousness of the peculiarities and performative constraints on specifically political possibilities of solving problems. Political theory forces a reflection on what a political system can expect from modern society as such. And a consciousness of political responsibility can arise only when one sees that this question cannot be answered simply with "everything."

¹⁰⁰ This is not the only conceivable way to handle this. But at the present there is no other alternative on this level if one excludes for the time being recourse to ancient concepts that began from the difference of house and city (*oikos* and *pólis*) and therefore identified politics and society (*koinonía politiké*).

Not all of this can be included within the province of science. Political theory is not a research program. In this way it distinguishes itself from the theories of political science. Just as little, however, can one give up contacts with science when this concerns reflective efforts in the functional domains. Above all, this is true of efforts that assume the form of theory: for theory of law, pedagogy and for political theory as well. This is not a matter of scientific theories in the strong sense, but perhaps, if one is allowed, of *scientifically subverted theories*. There are certain truth allowances, above all precepts of avoidance, that science can contribute. No kind of quality control like “made in Scientia” can be gained in this way. But the necessity to remain compatible with what is scientifically proven or possible places system reflection under important constraints. In any event it cannot be formulated as the mere valuation of its own function or as a mere expression of will.

18. Towards Practice

The concept of practice belongs to those parts of the tradition whose misuse suggests its ironic application. Aristotle had in mind something like swimming, i.e. an action that in the course of events refers primarily to itself. Subsequently, others have used the concept of practice to designate kinds of acts that are rational or at least valuable (value-rational) in themselves. In any event practice is to be distinguished from the mere production of effects. Thus the concept is appropriate wherever someone has to act without knowing and often without being able to know what he or she causes by acting in this way. In this sense the demonstration of good intentions, for example, is a pure case of political practice. The demonstration of theoretical guidance would be another.

The practice of politics is communication and, indeed, according to the interpretation represented here, communication that revolves around binding decisions. This is true for the administration, the public and politics in the narrow sense. A unified treatment of the practice of these three domains is not possible – simply because they observe

themselves reciprocally, and “black box” relationships result from this.¹⁰¹ Therefore I restrict the following considerations to the domain of politics in the narrow sense, because this is where the problems of communicative practice in the political and practical regard culminate: because this is where one must be able to swim.

In the political system and especially in politics, just as in other function systems,¹⁰² there is *more of a need for guidance than for other possibilities of action*. The politician has to be able to say more than he can do. This situation results from the differentiation of systems, more exactly from the fact that the political system is a subsystem of society that is constituted along with society but sees it from the perspective of a social function and cannot control it. How is this difference bridged?

There is the possibility of making promises that are not fulfillable and not fulfilled. There is the possibility of choosing buzz-words that are compatible with failing programs.¹⁰³ There is the possibility of focusing on generally accepted values and allowing society to represent itself through a general consensus about basic values.¹⁰⁴ And there is the possibility of political theory.

While the practical use of the first three possibilities is widespread, political theory – at least in the political systems of the west – is lacking. Here theory is viewed as an artifact of science that is difficult “to apply,” if at all. Along this line lie the (today fast receding) hopes that one had had for “critical rationalism” in Karl Popper’s sense.¹⁰⁵ A scientific theory, however, is nothing but a research program. It can be applied only within the scientific system, and only to research

¹⁰¹ See the analysis of this situation on section 7 of this chapter.

¹⁰² See for another example the role of the intellectual in the scientific system according to Talcott Parsons/Gerald M. Platt, *The American University*, Cambridge, Mass. 1973, pp. 267 ff.

¹⁰³ Cf., Murray Edelman, *Political Language: Words That Succeed and Politics That Fail*, New York 1977.

¹⁰⁴ Cf., Niklas Luhmann, “Grundwerte als Zivilreligion,” in *Archivio di Filosofia*, No. 2–3 (1978), pp. 51–71; also in *Kerygma und Mythos* VII, vol. 1, Hamburg 1979, pp. 67–79.

¹⁰⁵ Cf., Georg Lührs et al., *Kritischer Rationalismus und Sozialdemokratie*, with a preface by Helmut Schmidt, Berlin – Bonn 1975.

procedures. Politics cannot understand itself as the product of a scientific theory. But there are reflection possibilities within the political system that assume the form of theory and on its level can be made to agree with whatever can be made as a scientific statement. This is the sense in which we have spoken of political theory. As far as practice is concerned, political theory fulfills the function of bridging the difference between a need for guidance and the ability to act. In this sense it exists only in political communication. To the extent that it is developed and used, it is an aspect of political practice. It is itself a part of politics.

This is just as little a matter of a "unity of theory and practice" (in the sense of philosophies influenced by Hegel) as it is of applied theory. Speculation here is not directed towards unity. It is a matter of a precisely localizable problem of social structure resulting from system differentiation that arises in all political practice and – not only but also – can be solved with the help of its own theoretical guidance. Politician must be able to talk about more than they can change through their action. They have to overstep their responsibility communicatively in order to be able to determine and delimit it. This is their practical situation. And the theoretical guidance that is communicated in this can signal a certain thoughtfulness and consistency of attitudes. And it can make it possible to gain distance from the practice of empty promises, smooth talk and admissions of values that, otherwise, would occupy these functional positions.

In order to clarify how this is meant we will, once again, go back to some of the political domains that we touched on in the course of our analyses. We will leave the problems of a political rationalization of the administration, that are to be solved within the political system, aside and concentrate on the question how politics is affected by the fact that the present society changes the environment on which it nevertheless depends as never before in history. Therefore this is a matter of raising a problem that can be handled only through a twofold system reference: the environment of the societal system as a problem for the political system within society.

A very rough outline reveals that two problems areas are distinguishable: (1) the natural environment of limited resources and self-reproductive life on the earth and (2) the human environment as the totality of persons formed organically and psychically. In very different senses

both environments are conditions of the continuation of social communication that then again, in turn, is the condition of the continuation of human life. In both domains society produces changes without being able to control how these changes react upon itself. Even politics cannot expect to regulate this feedback relation – although cybernetic models constantly predict this. Such ideas fail not merely because of the complexity of causal and value constellations. They fail primarily because of the internal differentiation of the societal system itself that assigns only one of its many function-domains to politics.

If one accepts this theoretical presentation (which one politically, of course, does not have to do!),¹⁰⁶ then one reduces politics to its functionally specific mode of action: to binding decisions based on power. At the same time it becomes clear that other function systems trigger environmental problems directly, are responsible for these and notice this. Schools produce failures, dropouts and an unmotivated, disinterested youth. The medical system produces viruses that are possibly resistant to medicines. And both again have to deal with their own products. To a greater extent the same is true of the economic exploitation of nature, natural resources and human work capacity and for the consequences of science's increasing analysis of the knowable world. All this can, again, but does not have to, become a problem for politics if and to the extent that a need for collectively binding decisions is unavoidable in such contexts.

From the standpoint of politics, a whole group of problems is introduced with the question: which *other* function systems depend for the solution of *their* environmental problems, and particularly for breaking the self-destructive cycle of their environmental relationships, on the use of political power in the form of binding decisions? The "liberal" answer, that the economy depends on legal guarantees from the state, is undoubtedly too narrow in this case. But it can serve as a model for raising the question. When it goes beyond this "liberal" answer, the practice of politics finds itself in situations where the gap between talk and action becomes greater. It may suspect or it may come to realize that modern medicine promotes the evolution of resistant viruses. But what can it do? Forbid antibiotics? Or determine the

¹⁰⁶ See section 16 on political options.

cases where they may be applied? It may suspect or it may come to realize that a monetarily integrated economy calculates the exhaustibility of resources only in the form of opportunity costs. And often – one need only remember oil prices up to 1973 – not even this. But what can it do? Fix prices itself? Divest? Fix pre-emptive rights? The education system may produce children who are unmotivated. But what can the political system do about this? Impose more stimulating curricula? Prescribe the special treatment of such cases in school classes? Provide for more possibilities of course selections in school (which presupposes, however, that the voter has particular interests)? Or prescribe tests for dropouts so that they can go out into life with some kind of certification even if they are not prepared?¹⁰⁷ The large number of persons who cannot succeed in life, who have problems with themselves and with others, who resort to drugs or violence may also become a problem for politics. But what can it do? Should it rely on bureaucratic organization or on the professionalization of therapists or both? On the help of others or on self-help or both? If one says “on both,” then the answer in every case is correct – and not binding. One must then perform a much more penetrating analysis in order to be able to discover how one rather than the other direction of solving the problem is suitable for each situation. And then one is always confronted with the problem of not knowing to what extent the means of binding decisions available to politics can be used effectively in this area.

Such situations and ones like them indicate the tension of self-overload and self-restriction that is found on every agenda and that characterizes the political intention of the welfare state. The attempt to downplay this problem with self-deception and the deception of others seems illusory. Its style of practice fools no one. Among the political system’s public – especially the youth and academics – skepticism about the possibilities of forming a politics is widespread. Therefore relevant modes of presentation have to be found that are convincing.

¹⁰⁷ This proposal stems, moreover, from an important educational politician – from Wilhelm von Humboldt. See “Königsberger Schulplan,” in *Werke*, 2nd ed., Darmstadt 1969, vol. IV, pp. 168 – 187 (186).

This suggests a problem that the present considerations also have to address and that has remained unresolved. A presentation in a theoretical language is at the same time a presentation that is not suitable for political purposes. It always refers exclusively to abstractly mediated contexts and to possibilities connected to the scientific system that cannot be transferred into the political system. The politician is only interested in knowing *that* a scientific statement has a solid basis, not *how* this basis was attained. He or she does not need a scientific theory – because he or she does not want to do research – only, as we have formulated above, a scientifically subvented theory.

The languages of science and politics diverge. This is an unavoidable result of the differentiation of their “discourse.” The boundary today is drawn relatively sharply. One can balance on it, perhaps, for a moment but not erect complex conceptual works that have equal chances for success on both sides. Any attempt to overplay this problem through linguistic virtuosity is lacking in seriousness and would ultimately deprive politics of what it needs: contact with what can be said representatively by science. Everyone would respect this rule in the case of nuclear physics or biochemistry or economic analysis. It is also valid, perhaps a little less clearly, for the theory of politics, too.

So a decision had to be made concerning the practice of language, writing and style of reasoning. The text presented here raises for itself and the reader the claim of being a contribution to the *scientific* development of a theory of politics. In this regard it is not a concession that would dilute everything! The formulation we have given the investigation addresses the question whether a theory of the political system is possible *within the political system* itself. Through its content our text suggests a positive, through its form a negative answer to this question.

This contradiction could be justified as a theoretical necessity. Can it be resolved practically? This cannot be decided in advance. But one has to try.

III. State and Politics: Towards a Semantics of the Self-Description of Political Systems

I

The following analyses deal with themes from the history of ideas in the domain of politics. But they are not conceived as a history of the discipline, as a history or pre-history of political science. Nor do they follow the classical canon of the critique of ideology presented by the "sociology of knowledge." They are not a mere relating of ideas to strata, classes or groups harboring offensive or defensive attitudes in order to provide an all-encompassing explanation of these ideas. They wish to go beyond a mere descriptive narration of the change of meaning of specific words or concepts in the process of history. And so they are neither the history of a discipline, nor a critique of ideology nor even a seemingly neutral history of ideas. But what possibilities remain when one chooses not to take these well-trodden paths?

We will try to find a solution in the dense interweaving of structural and semantic aspects.¹ The weaknesses of previous attempts are those of sociological theory. Only an adequately complex (and this always means: abstract) sociological theory provides the possibility of tracking down the interconnections between structural and semantic developments. Analysis of relatively concrete thematic questions requires adequate theoretical complexity. The way to concreteness leads through abstraction, precisely through a measure of abstraction that is quite

¹ For further efforts in this direction cf.: Niklas Luhmann, *Funktion der Religion*, Frankfurt 1977; Niklas Luhmann/Karl Eberhard Schorr, *Reflexionsprobleme im Erziehungssystem*, Stuttgart 1979; Luhmann, *Gesellschaftsstruktur und Semantik: Studien zur Wissenssoziologie der modernen Gesellschaft*, 2 vols., Frankfurt 1980–81; Luhmann, *Love as Passion: The Codification of Intimacy*, Cambridge, Mass. 1986.

alien, uncommon to present-day social science. Or formulated differently: the precision with which one can reconstruct the meaning and change of meaning of ideas varies with the complexity of sociological theory. This is the only way in which one can even approximately do justice to the differentiated relations between structural and semantic aspects, between social structure and cultural achievement.

As far as sociological theory is concerned, systems-theoretical accounts offer the best points of departure for this undertaking, especially when they are conceived so as to be able to include the traditions of action theory and communication theory. This requires the inclusion of self-referential figures within theory so that not only theory itself but also its object is understood self-referentially. Therefore we will begin from a theory of self-referential systems. Of course, we cannot present all the implications of such a theory within this context.² We have to content ourselves with drawing out the most directly important basic ideas for the following analyses and making them plausible in their application, not in their theoretical context.

II

Complex systems are incapable of grasping their own complexity fully. If they could do this, it would mean that they would be more complex than initially because the system would then, in addition, contain a description of its own complexity. Therefore all operations within complex systems are structured reductively. This applies to the complexity of the environment as well as the system's own complexity. Complexity forces selection. And this counts in all cases, even for attempts to thematize complexity itself. Therefore every self-observation and self-description must rest upon self-simplifications. Viewed

² Important here are: Edgar Morin, *La Méthode*, vol. 1, Paris 1977, vol. 2, Paris 1980; Humberto R. Maturana, *Erkennen: Die Organisation und Verkörperung von Wirklichkeit*, Braunschweig 1982. See also Milan Zelený (ed.), *Autopoiesis: A Theory of Living Organization*, New York 1981. Furthermore Niklas Luhmann, *Soziale Systeme*, Frankfurt 1984.

abstractly, there are different possibilities for this, e.g. focusing on specific meanings, sublimation (latency) or even the underspecification of goals.³ In any event they do not contain a complete depiction of themselves within themselves. Nevertheless, under conditions yet to be discussed, they require possibilities of self-observation and self-description, i. e. an "identity" of their own, to guide their own operations.

Thus the concept of self-observation is directed towards complexity. It assumes that one does not know oneself. Only under these conditions does the attempt to gain information about oneself through one's own efforts have any meaning. And this is the only reason that one employs difference schemas (especially, but not exclusively: system/environment) which makes it possible to interpret information as contingent selections – as this and not something else. The same thing is meant when one says that a system exposes itself to chance through self-observation. The better self-observation is equipped semantically, the more it can make its internal operations depend on external events that have to be handled as chance (regardless whether the world is determined or not).

An aspect of self-observation is built into all social systems. It resides in the fact that the complex interconnections of the communicative processing of information that constitute social systems are reduced to actions. Actions are selections that can be attributed. One can use attribution to direct observation and conjoining behavior. Always depending on the theme, communication leaves open a wide repertoire of reaction possibilities. Action brings into clear relief who said what, simply by the fact that one can guide oneself through the understanding of communication.

One can speak of self-observation only if and to the extent that the system's own mode of operation is at work. The self-observation of psychical systems involves consciousness. That of social systems involves communication. Both media have to be distinguished according to the logic of systems even if one has to concede that they, in fact, presuppose each other because social systems presuppose psychical

³ For the last named variant cf., for example, Gordon Pask, "The Meaning of Cybernetics in the Behavioural Sciences (The Cybernetics of Behaviour and Cognition; Extending the Meaning of "Goal")," in John Rose (ed.), *Progress of Cybernetics* vol. 1, London 1970, pp. 15 – 44.

systems as their environment and vice versa. Moreover, the peculiarity of self-observation does not reside in a privileged access to special sources of information (introspection), but in the non-exchangeability of the self. Therefore there are no controls and also no criteria for self-observation. Only an external observer can use what others observe in the same object in similar situations to guide himself.

Therefore self-observation is – and all this will be important for the semantics of the “state” – less arbitrary and less informative than other-observation. It is less arbitrary because it uses the operations of the system itself in observing, i. e. it cannot choose their conditions of use arbitrarily. It must use consciousness for conscious (psychical) systems and communication and its constraints for communicative (social) systems. However, an external observer can profile such systems against the background of what is latent for them, e. g. observe them according to the schema conscious/unconscious or communicable/incommunicable.⁴ Thus one then has to compensate for loss of certainty with increase of information – the problem of all critics of ideology, psychotherapists and similar professions.

One often encounters the statement that, for logical reasons, a differentiation of levels, i. e. a hierarchical organization, is necessary for self-observation.⁵ But this exaggerates a compulsion to make logic agree with reality. In any event there are also forms of consciousness and modes of communication that draw their stimulation precisely from the breakdown of this logical requirement – e. g. paradoxes, metaphors and jokes. We can also leave open whether the distinction of many levels actually has to be arranged hierarchically. We shall content ourselves with distinguishing the relevant semantics, viz., the semantics of politics and the semantics of the state. In this way one of

⁴ Although the history of these schemata of other-observation has not been written, one would not go wrong in supposing that they appeared for the first time in the eighteenth century and indeed in the novel written initially for the reader (other-observer). In this way the Enlightenment and the onset of the “modern state” created the possibility of a counter culture from the very beginning.

⁵ Cf., e. g. Henri Atlan, *Entre le cristal et la fumée: Essai sur l'organisation du vivant*, Paris 1979, p. 70.

these can – always according to the circumstances – guide the other and vice versa.

Guided by these general preliminary remarks, in what follows we will deal with the characteristic of the semantic steering of the self-observation of a particular kind of social system: the political system. From the general theoretical context we derive the fact that this semantic steering, even if it engages consciousness and thus always triggers external observation of social systems by psychical systems, is realized on the level of social communication and it functions there, as it were, by itself; in any event without seeking the agreement of other (external) observers. Thus the conceptuality that is developed for this steers a (more or less adequately conscious) process of communication. It provides this process with references that facilitate understanding and conjoining behavior but which can also bring conflicts into focus. In every case it depends on *selections* and requires the *reduction of complexity* in order to provide identical points of guidance within the interplay of communicative themes and contributions. It focuses self-observation with the help of *self-descriptions*, i. e. with the help of meanings that are capable of outlasting the act (event) of communicating self-observation and which can be reproduced whenever necessary. Self-descriptions reconstruct the complexity of the system in such a way that they can be re-introduced into the system in a simplified form (e. g. as unclear goal-settings) and used as a guidance factor.

In the cybernetic literature one often finds the concept of “model” in this functional position of “self-description.” A system regulates itself with the help of models. In this case, however, one usually believes that the model of the regulator is to be found outside the states to be regulated:⁶ a thermostat has to model the world as a hot/cold world. But this model does not include the possibility that the world could overheat or undercool itself. This restriction is superseded by the concept of self-description.

⁶ Cf., e. g. Roger S. Conant/W. Ross Ashby, “Every Good Regulator of a System Must be a Model of That System,” in *International Journal of System Science*, vol. 1 (1970), pp. 89–97.

III

A glance at the different theories and sciences of the state and politics reveals a confusion concerning the concepts of the state and politics that is difficult to resolve. The old concept of the political that was determined in terms of a difference vis-à-vis family and was approximately identical with "civil" (indeed in the seventeenth century was correspondingly widened)⁷ has been superseded. The political has, if not conceptually then at least customarily, taken on a reference to the state. According to the present understanding, politics concentrates in the state and on the state. The attendant necessary, because central, clarification of the concept of the state is still to be achieved. The theory of the state still contents itself with the triad of national people, national territory, national authority without questioning the unity of this triad. At the same time, the lack of a genuine "threefold" conception of unity cements the "state founded on law"; there is a hidden reference to the fact that the concept of unity of the self-description of the political system must be conferred by another function system, viz., by the legal system. It resides in the concept of the legal person.

The concept of politics is thereby increasingly encouraged to separate itself from the concept of the state without having a clear idea of the direction which it should then take. The functional definition of politics as the production of collectively binding decisions for the societal system might be the only effective one at the present time. But it remains disputed because, in part, it is taken too broadly and, in part, too narrowly.

The confusion of the conceptuality of politics and the state can be resolved by using the theory of self-referential systems outlined above. One sees, then, immediately that the semantics concentrating on the concept of the state makes a self-description of the political system possible. The state then does not enjoy the form of an immediately

⁷ Cf., Volker Sellin, "Politik," in *Geschichtliche Grundbegriffe: Historisches Lexikon zur politisch-sozialen Sprache in Deutschland* vol. 4, Stuttgart 1978, pp. 789–874, especially pp. 814–830. Also Gotthardt Frühsorge, *Der politische Körper: Zum Begriff des Politischen im 17. Jahrhundert und in den Romanen Christian Weises*, Stuttgart 1974.

accessible fact, of a section of the world, of the people, of a collection of persons that stand to one another in a relation that needs to be specified further (as e. g. in the eighteenth century: public vis-à-vis private relations, more precisely since 1800: national allegiance, submission to authority etc.). The *state* is the *formula for the self-description of the political system of society*.

For social systems, "self-description" can be discussed only in reference to communication. Thus the state does not exist, as it did for Max Weber,⁸ in the consciousness of the individual who guides the meaning of his action in terms of the state. Instead, a political system describes itself as a state if communication that uses this formula is treated as understandable and is understood (whatever actually occurs in the consciousness of the individual). Communication that refers to the state not only wants to produce consciousness. It wants to direct further communication. And this alone is the source of the need for synthesis through collective concepts.

The self-description of the political system as a state makes a significant semantic increase of the political medium of power possible. Interpreted as state authority, this power can legitimate itself as necessary, while all political activities are politically relevant precisely because the decision could always have been otherwise. Thus the concept of the state can be used to charge politics with meaning and, at the same time, to limit its use. It is more and also less than "mere politics."

For this reason the concept of the state does not provide an exhaustive (even if simplifying) definition of the political. Politics is not determined as *state* but *in reference to the state*. The political is always, but not exclusively, oriented towards the state. This distinction has its basis not least of all in the universalism that the differentiated function system for politics shares with all function systems. Political inaction is just as politically relevant as political action. Only action and inaction together form the complete universe of the political that, at all times, permits one to ask why specific themes were not addressed politically. Or in other words, no politician can avoid his or her function through inaction. The opposite is true for the state. If binding decisions have

⁸ Cf., the fundamental clarifications in *Wirtschaft und Gesellschaft*, 3rd ed., Tübingen 1947, p. 6.

not been made by the state or if it is legally impossible for it to make a certain decision, this does not mean that a different form of decision making (e. g. a non-decision) has been realized by the state. It simply means that no decision has been made by the state at all. And the consequences have to be met politically (but precisely not by the state).

According to these clarifications, one can determine that the difference of politics and state serves to transfer the universalism of functional relevance to the self-restriction of the system. The same is meant when one asserts that the function of politics is to enable and produce collectively binding decisions.

To begin with, this general theoretical concept permits an historical utilization. Accordingly, the need for a specific semantics of the state is connected with the history of the development of the societal system and with the differentiation of a universalistic, functionally specified subsystem for politics. This agrees with the, at present, generally accepted interpretation that the concept of the state has assumed a formulation related to the political domain only since the second half of the eighteenth century,⁹ and that only gradually has it taken on the present meaning of a collective person having legal status to whom actions with consequences can be attributed.

In this way one can quickly dismiss the debated question whether a state had existed in the Middle Ages or not; or whether the ancient *polis* had been a state or whether it can be described only from its specific historical properties. What was lacking in those societal relations was the need for the introduction of a terminology of self-description of a functionally related type. This does not mean that one was incapable of making the self-description, but that one had to use direct characterizations: city (*polis*), community (*communitas*), *civitas*, domination. And if the etymological terminology of "state," viz., "status," was used, then this was only as a meaning-supplementing addition of a general type, especially of an option within the general

⁹ Cf., for the pre-history of this in which "status" had referred to the general difference of fixed/movable, certain/uncertain and thus always required a semantic addendum (e. g. *status civitatis*), Wolfgang Mager, *Zur Entstehung des modernen Staatsbegriffs*, Wiesbaden 1968; Paul-Ludwig Weinacht, *Staat: Studien zur Bedeutungsgeschichte des Wortes von den Anfängen bis ins 19. Jahrhundert*, Berlin 1968.

distinction of fixed/changing or certain/uncertain. This semantics of the direct reference to and expression of augmentation and perfection breaks down only with the increasing complexity and differentiation of social relations. And its place was taken by the need for a consciously focusing, unifying terminology; one that can be used within the system for the system's self-description and which enables a continuous co-orientation in terms of the unity of this system (in contrast to other systems or environment). And at this point the "state" becomes the element of a new terminology of difference – whether in the international context of the world of "modern states" or in connection with functionally related formulations of difference like state and society, state and economy, state and school.

If one is guided by the difference of system and the self-description of the system outlined in section II, then this leads to the following hypothesis that can be tested by material from the history of ideas.

(1) The need for self-descriptions arises with the increasing *differentiation* of the corresponding systems. Thus on the level of societal subsystems it arises because, in the transition to modern society, these systems are differentiated as functionally specified.¹⁰ For the political system this occurred gradually: at first in the form of the differentiation of a specific apparatus of rule that culminated in the "absolute state"; then through making the relations of power reflexive, through making all political power recursively subordinate to power and in including the public in the differentiation of the political system. The general title for this is "democracy."

(2) With increasing differentiation the *autonomy* of the system increases (whether one considers this good and desirable or not). In the domain of politics autonomy means that the political system can regulate only itself and only through self-regulation react to environmental problems. Since the second half of the sixteenth century this has been conveyed by the medieval, but currently reformulated, concept of "sovereignty." This concept depends primarily on hierarchical connotations, for the need to postulate an apex with partially unexplainable properties always constitutes a part of the concept of hierarchy. This

¹⁰ This is also the common guideline of the works cited above (footnote 1) concerning the interconnection of societal structure and semantics in modern society.

“coming to a point” [Zu„spitzung“] of autonomy appeared in the political context of the seventeenth century as the unavoidability of an aspect of arbitrary authority at the top. But then, the more the socio-structural fact of autonomy within society became accepted as the context of interpreting political semantics, the more urgent became the need to organize the controls over the arbitrary use of political authority with the means of the political system itself and not to leave this question to universal natural law or to collective societal morality. The result of this was the “constitutional state.”

(3) The progressive differentiation and autonomization of the political system of society places the semantics of the good life — by which political society has been understood to the present — under pressure to adjust. Seen from a purely logical point of view, two ways opened up which, at first, were both taken. In part, one tried to follow the development through adjusting the concept of the political. Political was almost synonymous with civilized, superior, intelligent and remained related to societal behavior in general. In part, then, the formula of the good life was reduced to purely physical survival — a quasi-materialistic theory that restricted politics to protecting mankind against itself, used this as the basis of political rule and strengthened it for this.¹¹ The widening of the understanding of politics got lost in fruitless moral exhortations because it held fast to its relation to society in general. Only the above mentioned reductive semantics brings the problem of the arbitrariness of political rule to a head.

(4) This focal problem of political arbitrariness reveals a state of affairs that one can reformulate generally: to the extent that systems are released to functional autonomy through differentiation, they are also the *causes* (at least partial causes) of their own problems. Thus the paradox of a necessarily arbitrary and, at the same time, controllable political authority becomes a problem for the political system

¹¹ For secondary literature concerning this, see for example, Hans Maier, “Die Lehre von der Politik an den deutschen Universitäten vornehmlich vom 16. – 18. Jahrhundert,” in Dieter Oberndörfer (ed.), *Wissenschaftliche Politik*, Freiburg 1962, pp. 59–116; Oberndörfer, *Ältere deutsche Staatslehre und westliche politische Tradition*, Tübingen 1966; Bernard Willms, *Die Antwort des Leviathan: Thomas Hobbes’ politische Philosophie*, Neuwied 1970.

itself. When such situations were discovered, Europe approached them at first through paradox or paradoxical metaphor. Their possibilities were tested in the period between ca. 1650–1750. In the domain of religion one need only think of Pascal. The semantics of *amour passion* provides many further examples.¹² the “invisible hand” became the authority for ordering science (Joseph Glanvill) and economics (Adam Smith).¹³ For the political system one need only refer to “*l’état c’est moi*.”¹⁴ Further development, however, no longer accepts such forms of self-description. They contain too little instruction and are therefore replaced by new kinds of reflection theories.

(5) If self-descriptions, so runs our next hypothesis, have to accomplish more than merely to offer a foil for continual self-observation, then this leads to *reflection theories*. The semantic instrumentarium of self-description is brought to the corresponding complexity.¹⁵ The reference to the system’s unity (despite plurality) is not only *generalized*, it is also *abstracted* in order to provide a basis for connection to and support for very different consequences (e. g. through the separation of powers, human rights, allowing of opposition parties, the principle of representation etc.). In this way the old kind of dualities for gen-

¹² For more detail on this, see Niklas Luhmann, *Love as Passion*, *op. cit.*, pp. 48 ff.

¹³ Usually this formula is ascribed to Adam Smith and associated with “liberalism.” Among others cf., Robert Nozick, *Anarchy, State, and Utopia*, New York 1974, p. 18. But it was in use long before this. In the text, I cite Joseph Glanvill, *The Vanity of Dogmatizing*, London 1661, reprint Hove, Sussex 1970, p. 180.

¹⁴ I have not been able to find a satisfactory interpretation. The question whether Louis XIV actually thought this (cf., Fritz Hartung, “L’état c’est moi,” in *Historische Zeitschrift*, vol. 169 (1949), pp. 1–30) is unimportant as far as the dramatic effect of the formula are concerned. Nor do I find Weinacht’s watered-down interpretation (*op. cit.*, p. 51) – concerned only with the old concept of *état*, i. e. simply with a quasi-tautological formulation – convincing. At any rate, it does not explain the formula’s real stimulus.

¹⁵ Despite this, observers who now observe this again (e. g. Edmund Burke) complain about the “simplifications” of these new reflection theories without providing a proper understanding of the necessary interconnection of complexity and simplification.

eralization: "*vires ac consuetudines*," "court and country," "country and rule," "authorities and subordinates," "family and political rule" are excluded as inadequate because they cannot be specified.¹⁶

In this context reflection "theories" do not mean something equivalent to scientific theory in the sense of an hypothesis that guides research or a research program of the scientific system. Their boundaries were not yet sharply drawn in the eighteenth century, the century of the "*gens de lettres*." And this is precisely what fostered the origin of reflection theories for the individual functional domains. That the now necessary self-descriptions are brought to a theoretical form simply means that conceptual models are used that enable comparisons between quite heterogeneous states of affairs. These comparisons now serve not only to reconstruct the *analogia entis*, not merely to demonstrate the immanent universality and rationality of the essence of all created things, but they establish a perspective in reference to which equal and unequal can be differentiated with consequences for resulting conjoinable action. One can measure progress here through a comparison of the head/limbs (body) metaphor with theories of equilibrium and ultimately with reference to structure and function that began to make inroads in the eighteenth century.

(6) The concept of the state is complete when it can be used as the formula of unity for the self-description of the political system. In view of the many-leveled and fluctuating meanings in the long history of the term status/state, it is not easy to provide even an approximately exact point in time when this occurred. One could mention Hobbes.

¹⁶ Investigations of the philology of antiquity as well as ethnological investigations have brought attention to the generalizing performance of such dualities. I am not aware of any investigations of their incursion into the early modern period. Cf., for example, Ernst Kemmer, *Die polare Ausdrucksweise in der griechischen Literatur*, Würzburg 1903; Adhémar Massart, "L'emploi, en égyptien, de deux termes opposés pour exprimer la totalité," in *Mélanges bibliques*, (Festschrift André Robert), Paris 1957, pp. 38–46; Louis Dumont, *Homo hierarchicus: The Caste System and its Implications*, (Eng. Trans.), London 1970, especially pp. 42 ff.; (concerning pure/impure). For the political formulas that interest us, moreover, it often remains unclear to what extent a mere enumeration is meant and to what extent the semantic possibility of applying an opposition to express unity is also used.

But he still uses state as synonymous with *civitas* and commonwealth and handles it according to the old metaphor of the body. Nor is he concerned with establishing a new concept but with emphasizing the artificiality and contrivance of human order.¹⁷ As a test of the new meaning of the concept one could use the question: at what point does one say that the operative terminology of the political system begins to refer to the state? At what point, e. g. can one say and understand that the state is ruled (and not merely that the state is the genuine permanence and certainty of rule and to be preserved as such).¹⁸ For the transition and corresponding vagueness in this question see, for instance, the definition in Zedlers Universal Dictionary: as a state one designates "the government or form of rule and organization between authorities and subordinates in a country. In this sense one says that a state is ruled monarchically or aristocratically etc.,"¹⁹ (which, looked at more closely, would mean that the government is ruled). A little after this one can talk of the individuals "out of which a state arises."²⁰ For the Enlightenment's state practice then a concept of the state is already available that no longer distinguished itself from the concept of civil society, i. e. introduced what is new using a conceptuality that is much too wide.²¹

¹⁷ The well-known place in the introduction to the *Leviathan* should be quoted once again: "For by Art is created that great LEVIATHAN called a COMMON-WEALTH, or STATE, (in latine CIVITAS) which is but an Artificall Man," quoted from *Leviathan*, Everyman's Library Edition, London 1953, p. 1.

¹⁸ Bases for this change of meaning seem to have been the *ratio status* theory as well as the natural right contractual constructions of western provenience. The former requires while the latter justifies the abstraction of a unity of reference in view of which statements can be made and ascribed to operations.

¹⁹ *Großes Universal Lexikon* vol. 39, Halle – Leipzig 1744, p. 639, quoted according to Weinacht, *op. cit.*, p. 105.

²⁰ This is, for example, "The fate of the individuals who make up the state," in Simon-Nicolas-Henri Linguet, *Théorie des loix civiles, ou Principes fondamentaux de la société*, London 1767, vol. 1, p. 11. The Physiocrats also use *Nationa*, *Etat*, and often *pays* as synonymous.

²¹ Svarez speaks, for example, of the „civil societies that we call states“ – quoted from Hermann Conrad, *Staatsgedanke und Staatspraxis des aufklärten Absolutismus*, Opladen 1971, p. 24.

(7) The concept of the state changes the meaning and reference of all political concepts, including the concept of politics itself, to the extent that it assumes the functional position of a formula for the self-description of the political system. These political concepts are separated from the old European concept of *societas civilis* and attributed to the concept of the state. In the eighteenth century a concept of politics gradually became accepted that only concerned the use of power by the state (and not primarily the conditions of the good life in society).²² Henceforth the possibilities open to politics vary with the scope of activities that the state is authorized to perform. They depend on the interpretation of the state and show themselves right away as capable of being constitutionalized. This was the understanding accepted by Humboldt who attempted in 1792, under the pressure of the French Revolution, "to determine the boundaries of the effectiveness of the state." Correspondingly, politics was nationalized (precisely because the French Revolution had concentrated on what was immediately changeable) and bourgeois society was de-politicized – a process that Hegel and Marx then would not accept (which led both of them in different ways to their own peculiar understanding of politics).

(8) The absolute state gained acceptance vis-à-vis *religious* divisions. To this end it had promoted the differentiation of central state power. In the eighteenth century the problem of *external* division was superseded by the problem of *internal* division.²³ Accordingly, the constitutional state had to assure *legal neutrality* vis-à-vis *political* divisions of interests. It had to weather the French Revolution, the new regime and the restoration. It had to preserve independence not only vis-à-vis society but also vis-à-vis politics. It is precisely this situation that makes it necessary to introduce the formula of the state into the political system and to reconstruct the identity of the latter so that it becomes

²² Cf., Sellin, *op. cit.*, pp. 831 ff.

²³ I focus intentionally on problem-awareness, whereby this also means that the difference of external and internal clarifies itself only in the process of the differentiation of the political system. At the time of the religio-political civil wars of the sixteenth and seventeenth centuries religious and political motivations, that in hindsight can easily be distinguished, were inextricably intertwined. In one's own party religion was viewed as a goal, for one's opponent as a pretext and vice versa.

compatible with the establishment of political parties. The already existing political system thereby reached a new level of complexity: it could interpret its unity as the state and combine it with political differences. Only if this is possible can quick action in response to political conflicts of societal forces be released. The nineteenth and twentieth centuries experimented with institutional solutions to this problem and used "constitutions" as the instrument to settle and vary them.

(9) The state thus obtained a constitution. This enabled a reintroduction of system complexity within the system, and indeed with the help of conditionings specific to the system. Conditioned are the specific operations of gaining consensus and exercising force: the former through the principle of representation, the latter through the principle of a state founded on law. Accordingly, the old *unity* of *status* and *potentia* had to be replaced by the *difference* of political authority and legal controls.²⁴ The coupling of both conditioning apparatuses augmented the reconstituted complexity so greatly that liberal constitutional theory – a Madison perhaps – could hope that the complex unity of the state could supply sufficient protection against the merely political unity of a majority will.²⁵

(10) A further utilization of the distinction between the system and its self-description concerns hypotheses about *time relations*. In the theoretical account chosen here one has to begin from the fact that a self-observation can occur only if something observable is present; and that self-observation requires self-description only if its object is too

²⁴ This innovation must, of course, be faded out if one wants to complete the history of the semantics of *potentia/potestas/authority*. Cf., for this Kurt Röttgers, "Andeutungen zu einer Geschichte des Redens über die Gewalt," in Otthein Rammstedt (ed.), *Gewaltverhältnisse und die Ohnmacht der Kritik*, Frankfurt 1974, pp. 157–234; Wolfgang Lienemann, *Gewalt und Gewaltverzicht: Studien zur abendländischen Vorgeschichte der gegenwärtigen Wahrnehmung von Gewalt*, Munich 1982.

²⁵ Within a context of theoretical comparison, cf., from this point of view, Harlan Wilson, "Complexity as a Theoretical Problem: Wider Perspectives in Political Theory," in Todd R. LaPorte (ed.), *Organized Social Complexity: Challenge to Politics and Policy*, Princeton, N. J. 1975, pp. 282–331 (especially pp. 302 ff.).

complex for a purely situative description and reactivation in every single case. This is true even more so when invoking reflection theories for self-description. According to all this, one will have to begin from the fact that the development of a semantics for self-descriptions follows socio-structural developments, honors them, summarizes and makes them capable of being handed down.

On the other hand, however, socio-structural evolution assumes a kind of semantic accompaniment because it has to occur within the societal system, i. e. in the form of communication. To this extent there are always groups of ideas that, viewed from hindsight, act like anticipations and can be used in their contemporary context even if their later function in no way comes into consideration. Borrowing a concept from cultural anthropology, one could call these ideas preadaptive advances.

Only both hypotheses together explain (although they seem to postulate the opposite) the historical development of the semantics of the state starting from a general supplementary concept designating a kind of perfection capable of accompanying whatever is to be emphasized through an independently existing concept capable of attribution (perhaps in the context of monarchy) up to the modern concept of the state. The concept attained independence in the seventeenth century in view of observably differentiated state powers. It attained its function of self-description within the context of reflection theories, and thereby its specifically modern character, only in the course of constitutional movements at the end of the eighteenth century.

In the interim a kind of transitional semantics held sway. Society itself was interpreted more clearly in terms of the guiding distinction between those who ruled and those who were ruled. Then the state could be represented either as the rulers and their bureaucracy or as the society as such that was constituted by this difference. In the latter case the state amounted to a *societas perfecta*, i. e. the perfection of the society as such.²⁶ This idea of perfection declined in the second half of the eighteenth century. Its final impulse was the French Revo-

²⁶ These variants of the meanings of the word have been worked out in detail, above all by Weinacht, *op. cit.*, pp. 173 ff.

lution.²⁷ Along with it the guiding distinction between ruler/ruled was replaced by the distinction between state and society.²⁸ And with the help of this distinction one can begin to recognize functional differentiation – whether one understands society as a solely economic order of needs and interests or limits the state to the tasks prescribed by the constitution.

(11) If, as a result of the structural and semantic differentiation of the political system, politics and the state can be distinguished, even with a state-relatedness of politics, then this has far-reaching consequences. The concept of the state was still overlaid with political exigencies in the nineteenth century. This is visible in many controversies concerning the theory of the state – e. g. in the distinction of a more cooperative as opposed to a more institutional concept of the state or in the related distinction of order and organization (“bureaucracy”). Such conceptual differences can be resolved if one distinguishes

²⁷ But it is also found in Edmund Burke – under the new title of state! “It is a partnership in all science; a partnership in all art; a partnership in every virtue, and in all perfection” (*Reflections on the French Revolution*, 1790, new edition 1973, quoted according to the Everyman’s Library Edition, London 1929, p. 93).

²⁸ *This difference* has its own unity in the fact that it became accepted historically in opposition to the, at that time, customary unity of state and civil society. Thus its unity is *itself a difference*, viz., a difference directed historically against unity. Therefore it convinces without much conceptual effort; ultimately as a historical difference. This complex state of affairs explains the difficulties in the history of research on the terminology of the difference of state and society. Reinhard Koselleck formulates this very well in *Preußen zwischen Reform und Revolution*, 2nd ed., Stuttgart 1975, p. 52, “The Prussian *Allgemeine Landrecht* does not recognize a civil society separate from the state. But it also does not provide precise definitions of these concepts because they were no longer identical even before they were distinguishable.” Cf. also, Adalbert von Unruh, *Dogmengeschichtliche Untersuchungen über den Gegensatz von Staat und Gesellschaft vor Hegel*, Leipzig 1928; Werner Conze, “Staat und Gesellschaft in der frührevolutionären Epoche Deutschlands (1958),” and Erich Angermann, “Das Auseinandertreten von ‘Staat’ und ‘Gesellschaft’ im Denken des 18. Jahrhunderts (1963),” both reprinted in Ernst-Wolfgang Böckenförde (ed.), *Staat und Gesellschaft*, Darmstadt 1976.

between politics and state. Then the political system can be interpreted as a self-regulating, autopoietic system of the exercise of power in which all power is exercised on power and is subject to the exercise of power itself: a recursively closed, symmetrical, non-hierarchical system²⁹ that makes communication possible through the communication code of power and does not permit the exercise of power in any other way.

The self-description of this system as the state at the same time makes it possible to orient oneself in terms of a hierarchical order that gives the force of law to the binding effect of political decisions. One knows that the imposition of this binding effect by itself is insufficient politically. But despite this one can, at the same time, put a further understanding of politics and an asymmetrical relationship of decisional preferences into practice. Once this order, usually associated with "democracy," gets underway, then it becomes superfluous to endow the concept of the state with metaphysical, ethical or community-related connotations. Then it can be understood through its function: through its function of asymmetricizing politics.

These important remarks may suffice as references to a research program that utilizes the "material" of the history of ideas from theoretical points of view. Would this "material" provide adequate confirmation, then it would be an important point of support for the fact that the concept of the state actually formulates the self-description of the political system and that the introduction of the early modern transformation of the semantics of *status*, *estat*, *Stand*, *stat* and *Staat* is to be explained through its entry into this function of self-description. But the distinction of system and self-description illuminates not only the pre-history of state and politics. In addition, it offers insights into

²⁹ Concerning this characteristic of autopoietic systems that cannot exclude any of their elements from the recursive closure of autopoiesis, cf., for the case of organic systems, Gerhard Roth, "Biological Systems and the Problems of Reductionism," in Gerhard Roth/Günter Schwegler (eds.), *Self-Organizing Systems: An Interdisciplinary Approach*, Frankfurt 1981, pp. 106–120. Concerning the consequences for the interpretation of evolution, Roth, "Conditions of Evolution and Adaption in Organisms as Autopoietic Systems," in D. Mossakowski/G. Roth (eds.), *Environment Adaption and Evolution*, Stuttgart 1982, pp. 37–48.

the genuine conception of the modern constitutional state and perspectives on the actual problems of the welfare state. We would now like to turn ourselves to these questions.

IV

By the year 1800 “the state” existed as a formula for the self-description of the political system. It represented a collective that could be identified through further determinations. This was a matter of a bearer (subject) of national authority over a determinate national territory that now was carefully distinguished from private property (even that of the monarch). At the moment of its birth this new concept of the state also acquired an historical determination: one spoke, without being clear about its boundaries in the past, of the “modern states”³⁰ and saw this as an essential aspect of modernity. The state was a legal person, i. e. possible bearer of rights and duties. In this way the separation from every natural person was accomplished, although this idea still provided Hegel with difficulties.³¹ As a being of its own kind the state also did not need goals to legitimate itself. It existed as a factual necessity,³² and legitimation amounted to the effective enforcement of state power. Previously, one’s impression about the state – especially within the context of the formulation *ratio status* – was that it meant the totality of the conditions of successful political action whose betterment was at the same time the goal of this action. These

³⁰ At first in the plural. The singular version gained acceptance only starting from 1830 in connection with the debates over early German constitutionalism. See for this, Stephan Skalweit, “Der ‘moderne Staat’: Ein historischer Begriff und seine Problematik,” *Proceedings (G 203) of the Rhenish-Westfalian Academy of Sciences*, Opladen 1975.

³¹ See the famous/infamous passages about the monarch in the *Grundlinien der Philosophie des Rechts*, especially § 279.

³² F. C. Dahlmann calls this, “An original order, a necessary state,” in *Die Politik, auf den Grund und das Maß der gegebenen Zustände zurückgeführt* vol. 1, 3rd ed., Leipzig 1847, p. 3.

conditions could be understood very broadly. They could include all of society and even concern, for instance, the lack of enemies or other adverse circumstances. In any event the formula could be defined situatively. Henceforth the state was reformulated from a concept of totality with tendencies of perfection to a concept of unity whose necessity one acknowledges. Thus the state became something determinate – among other things.

We will now turn our attention to the complementary aspects of this understanding of the state: to the constitution, constitutional theory and the ideological controversies surrounding them. But first we have to explain what it means when the political function system secures its own identity through such an understanding. This is the way that politics is able to solidify and grasp what it refers to meaningfully. The political meaning of anything is revealed in its reference to the state, whatever else it may mean or intend. Through building-in such self-descriptions the political system becomes equipped with an *accompanying self-reference*. In everything that occurs politically the identity of the system, called the state, is kept in view. Otherwise a functional differentiation of specific modes of political communication could not be realized. Too often it would remain unclear and often it would be too late to recognize which communications are to be attributed to the political system and which not.

Viewed historically, this is the point at which accompanying self-reference stepped in for accompanying other-reference. Previously, the reference to God – God's assistance is necessary in all works – occupied this functional position. As a sociologist one could maintain that the God-formula expressed the concealed self-reference of the societal system, viz., that a conferring of religious meaning appears in society as a relevant principle of selection. In any event meaningful reference here was formulated other-referentially, not self-referentially. It was a question of transcendence. In the seventeenth century the relation of this meaningful reference to the need to base the autonomy of the function systems on the form of accompanying self-reference became strained. The state-formula – at first still introduced as immediate divine legitimation of immediate (i. e. independent of consensus) rule³³ – became independent. It had already earlier been main-

³³ Cf., for instance, Lodovicus Molina, *De justitia et jure* (1593), tr. 11, disp. XXII, 9 and XXVII. Quoted from the Mainz edition 1659, col. 115 and 127.

tained as *natural* rule; and nature, for the politics of ideas, always meant at that time that theologians were not the only ones competent to make interpretations. Soon thereafter religious interpretation foundered on its inability to supply clear criteria for the important question of the right to resist. This is the precise problem that forced religion to withdraw from the business of political legitimation and hand it over to the state – and ever since, theology has had problems with the state.³⁴

The political system is not the only one that has to institute an accompanying self-reference in order to be able to translate its autonomy into distinctions and operations. A comparison with an exactly analogous situation in the economy may serve to clarify what is meant. The differentiation of the economy is also made possible by a perspective of accompanying self-reference. Here money fulfills this function. All operations that claim to belong to the economy have to demonstrate this in reference to payments of money. This also counts for labor and, in capitalist economic systems, even for the investment of capital. Thereby, a monetary system can function only as a unity (as the abbreviated expression of the unity of the entire system of the economy), which is confirmed not least of all in inflations and deflations.³⁵

We cannot enter here into a detailed analysis of a money reference and state reference. Then we would have to include problems of centralizability/decentralizability, media structure, organizational dependence and the formation of subsystems in the economy and the polity. This would lead us too far astray. We must be satisfied with presenting the principle of accompanying self-reference as the general principle that also occurs in other cases – not least of all, of course,

³⁴ And, to be sure, particularly Lutheran theology. Cf., for this, Martin Honecker, "Evangelische Theologie vor dem Staatsproblem," *Proceedings (G 254) of the Rhenish-Westfalian Academy of Sciences*, Opladen 1981. One should not be surprised that the break with tradition turned out less sharply for theology and that the two-kingdom theory can still be cited. Even today, the situations for making observations, distinctions and identifications are different for theology than they are for other observers of society.

³⁵ More detail concerning this is presented in Niklas Luhmann, "Das sind Preise," in *Soziale Welt*, vol. 34 (1983), 2, pp. 153–170. See also Luhmann, *Die Wirtschaft der Gesellschaft*, Frankfurt 1988.

in the most famous case: the ego representation of psychical systems (consciousnesses). This means that all the operations of such systems are equipped with a double reference; that they always refer to themselves and to their environment; and that in this way they realize systems that are closed and open at the same time, closed within the domain of their circular self-reference and open with regard to everything that can be associated with this as environmental information.³⁶

If one takes this formulation of the question as the point of departure, then classical problems of political theory appear in a new light. Still adhering to a hierarchical conceptual model, the political system had raised the question: how — as sovereignty — could the unavoidable aspect of arbitrariness at the apex of the state be foreseen and still controlled? Well into the modern period this question was referred to society as a whole and handled through the body analogy. Just like a human being, society was a body. Like every body it needed a head that rules. But this head could fulfill its task only if it took into consideration the other members (limbs) of the body. This restricts its arbitrariness. And so the problem was solved through a reference to the nature of bodies in general and of political bodies in particular.

Since the sixteenth century this interpretation has increasingly come under pressure — one could say under the pressure of complexity. It was assailed from diverse political perspectives: from moderate-estatist to radical-absolutist. Furthermore, it was connected with the doctor/patient metaphor. The prince treats society like a doctor does the body of a patient.³⁷ This expressed a new trust in art (*ars*) and ability that still, however, was based on nature as an effectual medium. And the awareness of the component of arbitrariness in political action, without which the reference to nature would have been superfluous, grew

³⁶ This corresponds to recent developments in systems-theory where closure/openness is no longer to be understood as an opposition of different types of systems but as a relationship of amplification. If one sees things this way, then the conditions under which greater openness is attained through more rigorous closure gain in importance. For the application of this to problems of the political system cf., chapter II this volume.

³⁷ For both viewpoints cf., references in Paul Archambault, "The Analogy of the Body in Renaissance Political Literature," in *Bibliothèque d'Humanisme et Renaissance*, vol. 29 (1967), pp. 21 — 53.

accordingly. Parallel to the increasing differentiation of a political system in society, the guiding formula of political theory took the form of a paradox: it is a matter of (freely?) bounded arbitrariness.

The theory of the constitutional state was able to take up this paradox and handle it successfully within the rules of constitutional determinations.³⁸ One can infer from this that the classical paradox did not formulate the problems adequately. We will replace it by the paradox of closure as the condition of openness, of accompanying self-reference as the condition of sensibility to environmental information.

Regarding the problem of the controls of arbitrariness, the political theory of the constitutional state had worked out important complementary devices to pure self-reference ("I will what pleases me"). At any time they open the system to information and influences that are not yet fixed. Looking back, perhaps the most important invention resides in the institution of parliamentary representation with allowable opposition as the basis of the choice of government. Borrowing a term from systems-theory, one could call this "redundancy of potential command."³⁹ This means that the expression of the unity of the system is transferred from the *act* of ruling or from the *authority* who rules (and this is necessarily the top of the hierarchy) to an expression of redundancy. Then the unity of the system resides in the production of a *superfluity of self-steering possibilities* and in the *selection* that this makes necessary. Superfluity means: fixed on what is still indeterminate, i. e. sensitivity to conditions. It is not surprising that this principle was discovered through investigations of the brain and then generalized. It rests on the interplay of closure and openness. And it enables an increase in both directions. In this way the system is formed in terms of underdetermined goals and underdetermined complexity. It depends on further conditions. The result can also be persistent conflicts,

³⁸ The perhaps most important condition for this was that *allspite this* the law had to be made paradoxical as the positive-legal regulation of the grounds of validity of positive law.

³⁹ See, in connection with this formulation of McCulloch's, Gordon Pask, "The Meaning of Cybernetics in the Behavioural Sciences (The Cybernetics of Behaviour and Cognition; Extending the Meaning of 'Goal')," in John Rose (ed.), *Progress of Cybernetics* vol. 1, London 1970, pp. 15–44 (especially pp. 32 ff.).

“ungovernability” and self-destruction. In this way the symbiosis of environmental sensitivity and the practice of power-i. e. the unlimited capacity to politicize themes – becomes a problem with a new kind of urgency. The ruler cannot in fact care about everything. Absolute power is little power. Autonomized, underdetermined, self-determining political power is dangerous in an entirely different way. It is opposed by *human rights*. Although formulated historically in opposition to the absolute state and based on natural law, these receive their true function only in democracy and protect the other societal domains as well as individual persons here against the universalism of possible politics.⁴⁰

Even the organizational arrangement that was reformulated through the principle of separation of powers and opposed to the principle of the unity (sovereignty, ultimate arbitrariness) of state authority can be interpreted in this systems-theoretical context. The *separation of powers* possesses a kind of filter effect. It allows only legally permissible communication to pass through. In a way it substitutes the unity of law for the old unity of authority. The result is redefined by the formula of the state founded on law. Law now means positive law that is reducible to decisions.⁴¹ The legal system is similarly restructured. It becomes more dependent on the political premises of law-making and consolidates more precisely what is politically possible – especially insofar as changes in the law required a high degree of specification and insofar as this costs time and consensus.

Above all, by means of the separation of powers, the state founded on law and some further precautions immanent to the law (particularly contractual freedom) one reaches something that could be characterized, in analogy with the money system, as the *coining and decentralization* of political authority. In the form of subjective rights, just as in the form of money, the accompanying self-reference is available at all times in a fashion that can be chosen almost arbitrarily. One can sue for subjective rights and claim state authority for enforcement even if the state did not participate in the establishment of these rights and if their justification is not subject to any kind of political controls. This

⁴⁰ More detail on this is presented in Niklas Luhmann, *Grundrechte als Institution*, Berlin 1965.

⁴¹ Cf., Niklas Luhmann, *Ausdifferenzierung des Rechts: Beiträge zur Rechtssoziologie und Rechtstheorie*, Frankfurt 1981, especially pp. 113 ff., 154 ff.

latently political function of private rights, which however has been removed from state control, was of considerable importance in the introduction of the syndrome of the democratic constitutional state. And one can still read how improbable and how contextually dependent such an achievement is in the present animosities to the availability of private rights. It rests, like all the institutions that we have discussed here, on the distinction of the political system and its self-description as the state. And one would strike right at its core (as well as at representative constitutions, basic rights, the separation of powers and the state founded on law) if one would go back to the old unitary concept of political rule.

V

The functional balancing – around 1800 one would have probably said beauty and purposiveness – of the constitutional state also merits greatest admiration precisely when one reanalyzes it systems-theoretically. No less astonishing is the fact that the eighteenth and nineteenth centuries were able to *introduce it into the system with the help of theory*. The semantics of the state, once invented, could work as the point of crystallization for political theory. In particular, it made the political systems of the continental states susceptible to theory-oriented influence.⁴²

Thereby, as already said, political theory does not mean a scientific theory about the objects of the political system, i. e. is not a research program that develops according to the rules of the theory of science. Instead, political theory here means the conceptual and comparative orientation of political communication. Political theory is involved whenever political communication uses concepts of meaning that imply a comparison – when, for instance, the topic is a social market economy (and this means not only that the economy may not be

⁴² This has remained foreign to Anglo-Saxon thinking to this day. Cf., for this, Kenneth H. F. Dyson, *The State Tradition in Western Europe: A Study of an Idea and Institution*, Oxford 1980, p. 17 (with references).

planned but also that the market may not determine the price of labor – however convoluted the “theories” may be that seek to justify such strange views). Political theory is in play when associations of state officials boast of the “independence of civil servants” as a principle of the German interpretation of the state. Because this also means that, in case of the opposite, the path would be cleared for political corruption and for significant political instability in the public administration where it can do much damage. Thus political theory is a theory of the system within the system – just like the theory of science for the scientific system or the theory of law for the legal system or theology for the system of religion. To the extent that a reference to the identity of the system accompanies this, such theories also contribute to the performance of the system. To the extent that the unity of the system is grasped and justified, one can speak of reflection-theories.

With the help of this concept of a “theory of the system within the system” one can begin to realize that, in the process of the transformation of its societal system towards functional differentiation in the seventeenth and eighteenth centuries, European society began to formulate system-internal theories of this type in very different functional domains. This is true not only for large-scale systems like science, the economy and politics. The semantics of love also reflects the fact that lovers were guided by it. In the novel, too, we find theorization about the novel (and not, as one might expect, for the first time in the Romantic period but already in the seventeenth century). This is a case then of the very general phenomenon of the internal securing of new kinds of functional autonomies that no longer find adequate support in the general morality of society and traditional hierarchies of perfection. One then has to look for explanations in the theory of society. And this means for our specific case of constitutional theories: neither in the history of science nor in the particular characteristics of the functional domain of politics.⁴³

⁴³ Because of this, detailed analyses of the history of the theory of functional domains are, of course, by no means dispensable. Quite the contrary, this is the only way that one can come to generalizations that are capable of being attributed to society as a whole or to the form-type of functional differentiation. Cf., as an example, Niklas Luhmann/Karl Eberhard Schorr, *Reflexionsprobleme im Erziehungssystem*, Stuttgart 1979, 2nd ed., Frankfurt 1988.

A general trend, that is also found specifically in the semantics of the state and its accessories, resides in the normative and value-thematic exaggeration of its object. In the eighteenth century the thrust of this trend was still directed against the existing regime and against the old world. After the establishment of the modern state it suddenly found itself on its own. Now the state was treated like a national shrine. This converges with a not yet completely trivialized concept of positive law. The state is the guardian of the law and therefore the guardian of freedom. It can require one to bring it sacrifices; to die for it.

This had obvious advantages for state theories of all kinds. They can begin from their object's normative identity and willingness to defend itself and investigate how apparent dangers can be handled and how deviations can be eliminated. Borrowing from the language of cybernetics, we can say that they can reckon with a kind of control mechanism; they can use all the advantages of negative feedback. Accordingly, the state is like a healthy body that protects itself against illnesses and must be assisted in this. The theory of the system within the system outlines appropriate mechanism for this. It adjusts itself completely to the self-description of the system. In this way it is a political theory that no longer understands itself as political theory, but as state theory.⁴⁴

The theory of the state has no place for the future. It leaves the future to "societal development." It may know that the demands on state activity change as a result of industrialization. It may be more or less open to the requirement of a "social politics." It projects no transition to another form of state, to another form of the self-description of the political system. It does not anticipate – and who would expect it? – the welfare state. It creates it.

While the constitutional state can be considered a product of theoretical reflection, the welfare state is a result of evolutionary develop-

⁴⁴ In Treitschke, for example, one can see why it is that Aristotle assumes a fascination once again in this situation of a self-positivizing theory of the state. However, in the present situation, this can only amount to a forcing of the state-orientation. See also Manfred Riedel, "Der Staatsbegriff der deutschen Geschichtsschreibung des 19. Jahrhunderts in seinem Verhältnis zur klassisch-politischen Philosophie," in *Der Staat*, vol. 2 (1963), pp. 41–63; Skalweit, *op. cit.*

ments. This should not be taken to mean that no one wanted it; that it arose unintentionally. It is entirely the result of the establishment of political goals, even if unreflected political goals.

The semantics of the state continues to be written. Since the end of the Second World War one speaks increasingly of the welfare state. But the concept includes – although still centrally fixed on the “state” – a problematic result of politics rather than an axiom. With the change of focus from constitutional state, state founded on law and even democracy to the welfare state, the self-description of the political system reacts to a new kind of political feeling. The concept comprehends this feeling in the function of self-description directed towards unity – but at first without the guidance of theory.

VI

If one were to characterize the welfare state in the briefest possible way, then one could speak of the *excessive burden that politics places on the state*. Already in the Weimar period in Germany the state had been diagnosed pessimistically, and expressions of a crisis-of-state thinking, of an illusionary state, ersatz state, vestigial state and even of the end of the state were common.⁴⁵ At that time, the problem was the problematic of a national state politics and the ability to enforce a democratic politics. The welfare state is concerned with entirely different questions. Now it seems to lie in the logic of politics itself to create situations which confront politics with ever greater problems. It could very well be that the idea of the state has played a part in this. We must remember that the state is nothing more than the self-description of the political system. Accordingly, it involves a continuous excessive self-burdening of the political system that is organized with

⁴⁵ Cf., Alfred Weber, *Die Krise des modernen Staatsgedanken in Europa*, Stuttgart 1925; Otto Hintze, “Wesen und Wandlung des modernen Staates,” (1931) reprinted in Hintze, *Gesammelte Abhandlungen zur Allgemeinen Verfassungsgeschichte*, 2nd ed., Göttingen 1962, pp. 470 – 496; Carl Schmitt, *Der Begriff des Politischen*, (1932), reprint Berlin 1963.

the help of a specific self-description, more exactly with a focusing on the state.

This in no way means that the problematic of the welfare state could be reduced to a simple semantic mistake: as if all one required was a new theory and the problem would be solved! Nor even is this a matter of a mere adjustment of scientific (i. e. external) instruments of observation, of a better (and then helpful) investigation of the phenomenon. A system has a small degree of freedom regarding its own self-description. It has to be a self-description in the twofold sense of a description of the system by its own operations.⁴⁶ Formulated differently and with regard to social systems, self-description has to function communicatively. It presupposes an organizational and legal substrate within the political system (just like coins, bank bills, bank notes and corresponding devices within the economy). By means of the history of the semantics of the state we have been able to trace a process of revolutionizing the political self-description. But, shifted somewhat temporally, this process ran parallel to the differentiation of the political system itself. It accompanied, paid tribute to and helped to bring about this structural differentiation. And *in this connection* the *influence of theory* on the newly created semantics of self-description also became possible. The structural and semantic evolution had to deal with new kinds of phenomena. And what was to be eliminated had its source in a different type of society. The present situation cannot be compared with this. It results from the fact that modern society finds itself confronted with its own reality. And, accordingly, the functional positions for self-observations, self-descriptions and similar terminologies are already occupied. Referring to the state works well when one changes governments, acts for or against rearmament, elects parliaments, proposes party programs and demands resources for the construction of schools, roads and youth employment. And it also works well when all this is accompanied by the feeling that it is somehow incorrectly or inadequately set up. The self-description that is the state

⁴⁶ We will leave aside here the theoretically important question: to what extent internal distance has to be established and to what extent specific roles can be instituted for this. In this way one would arrive at the question of functional equivalences for what political theory up till the neo-Stoics had called wisdom (*sagesse*).

is not only established in the institutions. It is also in claims and expectational attitudes. It determines the communicatively indispensable addressee. And it does this not *ad hoc* but as the unity for countless operations of the entire system. For the time being one cannot see how it can be replaced. Therefore the concept of the state still remains the point of reference for a systematization of political ideas and interests. It can be used as such only consciously, e. g. employed to present the unity in the multiplicity of the political self-expression of a political direction, party or governmental program.

What one can expect under these circumstances is a gradual change in the meaning of the guiding terminology that has developed around the concept of the state. Changes in the structure of reference of the meaning of "state" as well as changes in the societal situation develop evolutionarily. They can be traced, understood only in hindsight. Accordingly, scientific observation finds itself in an entirely different situation than two hundred years ago. Instead of on ideas, it can fix on what is at hand. But this is precisely what makes its task difficult. Specifically, it is no longer connected to the network of political communication. The difference between the system of science and that of politics has increased. This process is reinforced not least of all by the fact that scientists agitate politically in a way that is incomprehensible, uncoordinatable to politics.⁴⁷

Despite all these uncertainties that have to be included in this situation, one can still try to continue the theme of state and politics. And in this respect the idea that the state is nothing more than the self-description of the political system may help. We would like to attempt this with several hypotheses about this situation that can be true or false individually, independent of the supertheoretical version within whose context they are presented here.

(1) Societal and political evolution has not lead here – and this is true perhaps in general – to an equal distribution of all possible diversity. Instead, it has developed dominant structures that, for their part, work selectively on secondary and tertiary developments. As the dominant form – particularly but not exclusively in the political

⁴⁷ And this with the concept of politics that was already out of date in 1843 (and had to be reintroduced by a counter movement) when Marx published his treatise on the Jewish question.

domain – one observes, since Weber and Michels, the *bureaucratic* form of carrying on business. In relation to classical sociology, however, the theory of bureaucracy has to be transferred to a different level of conceptuality. It is not a matter of a particular *typology* of labor or of mentality or of role behavior. Instead, it is a matter of a certain kind of “ecological” *relation* between administration and public.⁴⁸ The functional equivalent of this for the economy is the market, understood similarly as the relation between highly complex production organization and relatively simple consumption.

Such a relation between bureaucracy and the public is dominant in the sense that other constructions can crystallize around and become dependent on it. One assumes its existence, activatability and functioning. Thus politicians implicitly assume the existence of a bureaucracy that carries out their decisions. In other words, dominance is the starting point for parasitical developments. It does not mean – and this must be emphasized particularly for the political system – that there exists the possibility of a central control, of a power that is capable of assuming responsibility. On the contrary, even the centers of power are parasites of bureaucracy. They profit (with their politics – especially with their politics of promises) from the fact that bureaucracy exists as a dominant structure. “Ecological domination,” as Edgar Morin puts it quite generally, “does not mean domination.”⁴⁹ There is no bureaucratic domination, neither as domination over the bureaucracy nor as domination by means of the bureaucracy nor as domination of the bureaucracy. There is only the bureaucratized system/environment relation and its parasites. This can ultimately end up in an enormous, centrally uncontrollable system of supply and authorization⁵⁰ that is then called the “state.” Bureaucracy then functions like an enormous water supply network. And experience points to the fact that this network will be retained even if the water has been turned off.

⁴⁸ Cf., for this especially, Dieter Grunow/Friedhart Hegner/Franz Xaver Kaufmann, *Bürger und Verwaltung*, 4 vols., Frankfurt 1978.

⁴⁹ In *La Méthode*, vol. 2, Paris 1980, pp. 44.

⁵⁰ I found the concept of the “Erlaubniswesen” (system of authorization) in a district administration of the German Democratic Republic.

If one keeps this bureaucratic complex in view, then one could perhaps define the state as the *rule for transforming information into programs*. To be sure, this concept is still taken too broadly.⁵¹ It has to be restricted to the domain of collectively binding decisions, to the domain of political function. One could mention here Kelsen's legal concept of the state. We mean not only the creation of the legal validity of programs but the integration of Kelsen's legal and his sociological concept of the state.⁵²

In any event daily parlance (and also the daily parlance of politicians) has this bureaucracy in mind when talk of the "state" occurs. As "bureaucracy" it is the subject of extensive criticism. As "state" it is held for necessary. As "bureaucracy" it ought to be reduced, if not eliminated. As "state" it is likewise the object of new needs and wishes. Thus the terminology of the state serves as bureaucracy's protection and screen. It enables the continual renewal of a positive re-evaluation of what is valued negatively. This is the way it is. The theory of the self-description of complex systems, however, makes it possible to ask whether this is how things ought to stay.

(2) Bureaucracy is perhaps the most striking but not the only phenomenon that characterizes the recent structural development of the political system. The democratization of the formation of the political will and the active as well as passive inclusion of the total population in the political system have lead to a switch from obstructing deviation to reinforcing it, from negative feedback to positive feedback. The democratic state takes its direction from the needs of the population and, particularly in the institutionalized competition for access to power (redundancy of potential command), seeks to improve its ability to satisfy these needs. As a consequence, needs themselves increase. Aspiration levels rise and one finally expects performances from the "state" that, technically, cannot be produced through political means at all, through collectively binding decisions.

⁵¹ See, for example, the concept of "apparatus" in Edgar Morin, *La Méthode* vol. 1, Paris 1977, pp. 239 ff.: "apparatus has the power to transform information into a program, i. e. into an organizational constraint" (p. 239).

⁵² Cf., Hans Kelsen, *Der soziologische und der juristische Staatsbegriff: Kritische Untersuchung des Verhältnisses zwischen Staat und Recht*, Tübingen 1922; Kelsen, *Allgemeine Staatslehre*, Berlin 1925.

This mechanism of self-amplification cannot find a measure and boundary within itself. It is incapable of being regulated politically. All that one can do is to cut off its supply of energy. Inhibition, in other words, has to set in on a different level of reality. And it occurs, in a way that can no longer be ignored today, through the limiting of monetary resources. The duality of self-amplification and inhibition is a very general principle of "pattern formation."⁵³ It also seems to be typical that reinforcement of deviation through positive feedback takes *specific* paths (e. g. concerns *particular* claims) while limitation is forced through *generally* scarce resources. But in this way one cannot tell under which particular conditions this interplay of self-amplification and inhibition creates stable forms. (And theory probably will be less capable of generalization in this question of special conditions than in the general version indicated here.)

(3) Even if one considers only the two points of view mentioned above of bureaucratization and creating excessive self-demands (and political evolution could presumably be described in detail from many other aspects), doubt arises whether and to what degree the semantics of the state still is capable of following this development and grasping what is essential. If one adheres to Hermann Heller's theory of the state,⁵⁴ then one can acknowledge a reduction of the concept of the state to an organized unity for making and effectuating decisions. One can also acknowledge a broadening of the concept of politics corresponding to this reduction in an exact way. It lies particularly in the fact that one can talk of politics not only when it is a matter of domination over the state as a whole but also in appealing to state authority in order to realize sub-goals.⁵⁵ These are important, but by no means adequate concessions. Above all, in the reduction to state

⁵³ Cf., Alfred Gierer, "Generation of Biological Patterns and Form: Some Physical, Mathematical, and Logical Aspects," in *Prog. Biophys., Molec. Biol.*, vol. 37 (1981), pp. 1–47; Gierer, "Socioeconomic Inequalities: Effects on Self-Enhancement, Depletion and Redistribution," in *Jahrbuch für Nationalökonomie und Statistik*, vol. 196 (1981), pp. 309–331. Cf. also, D. Stanley-Jones, "The Role of Positive Feedback," in John Rose (ed.), *Progress of Cybernetics* vol. 1, London 1970, pp. 249–263.

⁵⁴ Hermann Heller, *Staatslehre*, Leiden 1934.

⁵⁵ *Ibid.*, p. 205.

organization (which corresponds completely to the daily language of political communication) the reference of the political system to society is lost from view – which then is answered by Karl Marx with a renewal of his renewal of a societally all-encompassing concept of politics.

One cannot secure a planned development in reference to structural or semantic changes, although planning plays a more or less significant role in development. The transformation of the political system occurs through evolution. It depends on system states that have been reached at any time just as well as on chance. And dependence on chance – there is much that points to this – is increased, not decreased by more planning. More information means more internal disorder, more problems in producing order out of order and disorder; accordingly, there is a heightened need for decision and stronger appeals to all the classical mechanisms that are supposed to be concerned with combining sovereignty with the control of arbitrariness, authority with consensus, force with legitimation. And it is still unclear whether and how the constitutional state can withstand this.

VII

A theory of political evolution is not available. While the theory of cognition, and to a certain extent economic theory, have made efforts to connect concepts from evolution theory with the rationalist traditions of their own system-domains, there is, as far as I see, nothing like this in political theory. There is much here that speaks for the fact that one would have to replace the idea of rational, goal-directed planning with a difference-oriented observation of evolution; and that the problem then no longer resides in the material complexity of the object nor simply in the legitimation of the transference of power and of the trust that this requires. More important is the difference of other-observation and self-observation, of black-box analysis and internal political communication (where the darkness even *within* the box can be downright impenetrable).

If one considers why self-descriptions are used, one encounters the already mentioned difference of negative and positive feedback. The distinction of retroaction and interaction used by Pizzorno also points to this difference, at least partially.⁵⁶ In the first case the system reacts to changes that reveal themselves in self-determined variables and their concrete values that have to be tolerated. It measures itself, so to say, according to its own expectations and corrects itself correspondingly. However, if it is a question of a mere causal interconnection between system and environment, perhaps of an increasing population and feeding them, the environment ultimately corrects the growing system. It no longer supplies adequate material or energy and thereby forces the system into adjustments that within the system itself are not foreseen.

Despite its openness to changing political contents, the self-description of the constitutional state employed a retroactive model. Deviations were to be eliminated wherever they appeared, if necessary by constitutional courts. One began, perhaps somewhat naively, from the belief that in this way the continual adjustment to societal changes could also be secured. But the political system of the welfare state, even with intact constitutional mechanisms, had become involved in self-amplification, i. e. in the reinforcement of deviation through positive feedback. The development of its system/environmental relations can still be corrected only interactively (in Pizzorno's sense), i. e. only through the withdrawal of energy supplies. *In the self-description of the welfare state the increasing scarcity of means has no positive sense!* But this also means that beyond its constitutional functions the self-description loses meaning. And with this the meaning of the semantics of the state and its reflection theories recede for the self-steering of the system. Norms, values and theories that are related to the complex of state and law lose their power to convince. Their functions are retained, and one cannot say that the constitutional state is replaced by the welfare state. But formed as the welfare state, the political system is involved in a reference to society *that it itself cannot regulate any*

⁵⁶ Cf., Alessandro Pizzorno, "L'incomplétude des systèmes," in *Connexions*, vol. 9 (1974), pp. 33–64; vol. 10 (1974), pp. 5–26 (47 ff.).

longer. Like a swarm of locusts it is forced to end its flight because its glucose (money) is exhausted.⁵⁷

If this is true, then the last word about the semantics of the state has not yet been spoken. But one will have to reconsider this question within the broadening as well as restricting context of a theory of self-referential systems. Should the self-description guiding political systems remain bound to the concept of the state and its organizational substrate? And precisely what can be retained with the help of this concept in view of the evolutionary change of the political system? Normative foundations seem to have lost their power. The idea of an organized steering mechanism encounters increasing doubt. On the other hand, the need for an addressee who has to provide and watch over the quality of life remains unbroken. One can already observe in the case of the socialist states how the state can then become an comprehensive formula for sophistication in the daily business of procurement and authorization – a very derived, hardly still graspable state of affairs. “*Res publica*” to be sure – but how far from the moral tradition of this concept!

If one accepts this formulation of the question, then one must be clear about the theoretical advantages. A self-referential social system arises only out of communications, i. e. only out of events.⁵⁸ It must continually reproduce itself through the communicative operations out of which it arises. And self-descriptions are indispensable for this. Thus the question is how will a political system reproduce itself if it contains its self-description as “state” and guides its reproduction by this?

Furthermore, the theory says that one cannot reintroduce the complexity of the system into the system as a description of it. All self-descriptions are self-simplifications, a long since familiar state of affairs to psychological research but also relevant for social systems. From this point on bridges can be built to evolution theory. Self-descriptions with the help of selective simplifications – and the theory of the state is a paradigmatic example of this – lead necessarily to a deviant

⁵⁷ For this parallel cf., T. Weis-Fogh, “An Aerodynamic Sense Organ Stimulating and Regulating Flight in Locusts,” in *Nature*, vol. 164 (1949), pp. 873–874.

⁵⁸ In a more developed presentation one would have to say: out of a combination of events.

reproduction. And deviant reproduction is the process that can be described in its structural effects as evolution. Here, moreover, it becomes clear once again how inaccurate it is if one assumes "conservative" tendencies in systems-theory. Quite the contrary, the latter shows that an exact reproduction would be an illusory program.

While in this way classical themes like the unavoidable arbitrariness of the use of sovereign power, the contingency of all decisions, the ideological structure of political preferences etc. are more deeply embedded in the theoretical apparatus (for the basic concepts draw their explanatory power from general systems-theory and not only from political theory and the theory of society), at the same time the concept of self-description reveals the true narrowness and inability to correct the semantics corresponding to this. No one can convince a political system that it is not a state. And it finds no place to start a self-correction within itself when ongoing communication has semanticized its accompanying self-reference in terms of the concept of the state. Self-description cannot be shaken by other-description. And, as far as its identity-reference (reflection) is concerned, it functions within itself without controlling criteria. Transformations then depend on subtle changes of meaning and on the gradual withdrawal of plausibility. Structurally as well as semantically, self-substitution is the only possibility of delaying for some time the ultimately expected destruction.

For such a constellation it may have great significance that a discussion of political concepts has begun within the scientific system and has initially remained incomprehensible for politicians. They may react by suspecting theory or even with political attributions. Fashionable concepts may become accepted for use in the business of political cosmetics. In any event the idea that science and politics can be coupled in a theory/practice connection has suffered so many disappointments that it is still held only by incorrigible optimists. The language of empirical social research, e. g. with the help of "variables," is already bound to other-description and cannot enter into self-descriptions because this commits the system to variation possibilities that it itself could never activate. Or formulated differently, the terminology of "variables" presupposes the exchangeability of observers and corresponding criteria for keeping the object identical which does not occur in self-observation. Even if the language of science could now and again come up with successful applications, the constant production

of hopes and disappointments would outweigh this. Political science should not be afraid to work with ambitious theories. This is the way in which it can observe better. Observing means discriminating. This requires supplying the context of reference, especially the underlying system-reference. Every reference can be introduced – if science rejects the path to dogmatism – only by referring to another reference. When used, the language that is necessary for this develops a kind of virtuosity. None of this can be expected of politics – simply because no politician can present it as something he or she him- or herself produced or conceived.

The differentiation of function-systems for politics and science, the separation of autonomous domains, of their semantics, their determination of reproduction, their self-references is from the point of view of societal planning a problem, indeed a barrier on the way to the desired result. If one considers the same situation from the perspective of evolution theory, it might be judged differently. In the non-integratable communication and consciousness-forming possibilities that our society supplies in superfluity there may be the chance of keeping the societal system adaptable for an as yet unforeseeable, but possibly not very distant future.

IV. Societal Foundations of Power: Increase and Distribution

I

If one looks within sociology, one will not find enough empirically justified knowledge or a consensus among the experts to permit one to judge relationships of power. One could almost say: everyone sees the matter differently and has different ideas about formulating the problem and research proposals. The reasons for this are, in part, conceptual and theoretical and, in part, methodological. The matter is too complex to permit an approach with established and proven methods. This complexity of the actual conditions and references of power is, for its part, the condition for the fact that one can guide the conceptual instrumentarium in advance by means of pre-judgments and societally critical intentions without immediately running the ship of theory aground.

With the science in this state, I simply cannot tell what the case is: who has power and how he or she uses it. From the outset, the very question of the possession and distribution of power is a problem. Instead, we are faced with the necessity of being confronted with controversies from the beginning and of having to start from a clarification of the conceptual and theoretical options.

The problems of beginning lie in the concept of power itself. However one understands power and whether and however one wishes to distinguish it from other forms of influence or the ability to effect things, power is always a matter of a social relation in which *action could always have been different on both sides of the relation*. Whoever is subject to power experiences it and submits to it only if one sees and would prefer other possibilities of action for himself. But even the person who enjoys power exercises it only if he or she does not have to do so like an automaton, i. e. only when he or she deliberately decides to carry out a specific course of action. Whoever feels himself

forced by the circumstances to behave in a specific way and thereby to influence others does not think of himself as someone who enjoys power but attributes the power to the circumstances that force him.

One can use the old term of "contingency" to designate this possibility of being able to act otherwise. Contingency means: neither impossible nor necessary. Accordingly, power arises under the condition of *double contingency* on both sides of the relation. This means that for *the person who has power* as well as for *the person who is subordinate to it* the relation must be so defined that *both* could act otherwise. Thus in this sense: doubly double contingency.

With this surely realistic assessment one already lands oneself in considerable practical and methodological difficulties. For even if one could determine that A does what B tells him to do, how can one be sure that this is done under the condition of the renunciation of alternatives? How can other alternatives be determined if they are not realized at all? How urgently must they intrude, what degree of intensity must they demonstrate in order to become relevant in relationships of power as such? Do they have to be conscious? Or is it sufficient for them to demonstrate a kind of beneficiality for life, and then according to what criteria? Do they have to fit within an order of preferences and be rationally calculable within its context?

The answer to these questions would be a necessary premise of empirical research. Since they typically remain unanswered, sociological theory is relatively free to select its concept of power with the help of attitudes towards society. If one is convinced in advance that the society in which we live is constructed improperly, then one will choose a very broad, limitless concept of power. One then tends to understand the "other possibilities" in terms of an anthropology of a humanly dignified life and to characterize everything that obstructs its realization and that forms and maintains society according to this obstruction as domination, authority or power. In this way one devises for oneself and others an addressee of criticism. But whoever begins from the society in which we live and concerns himself with the problems of the operative use of power and its efficiency will tend, instead, towards a narrow concept of power that is more controllable empirically and theoretically. One will, for example, have to assume consciously considered alternatives and a fixed order of preferences.

From this understanding of the discussion I have drawn the conclusion not to define the concept of power any longer on the level of actual behavioral causality (which, of course, remains unchallenged as such) but to view it as a *symbolically generalized medium of communication*.¹ This corresponds to recent developments in the psychology of attribution according to which behavioral causality always depends on selective processes of the perception and attribution of effects to causes, i. e. never operates "originally" and free of presuppositions. Therefore we have to begin from the fact that power is recognizable and practiceable only if the behavior of the participants is ascribed to a symbolic code that describes the situations as one of power. Thus power is present only when the participants define their behavior in reference to a corresponding medium of communication. Accordingly, the theory of power would then have to concern itself primarily with the conditions and consequences of the institutionalization of such a power-code that is available for typical situations and regulates the attribution of causality.

To characterize this symbolically generalized medium of communication (i. e. power), the concept of *negative sanction* is indispensable. Obviously, it makes a difference to the natural, daily orientation of behavior whether one does something because one is rewarded for it or because one is threatened with disadvantages for not doing it. This difference is so psychologically important that no social norming of behavior can simply ignore or circumvent it. Even if we wanted, we could not regulate the exchange behavior of economic life with a power-code based on the control of access to negative sanctions. This could not gain acceptance, could not be understood, could not function.

But we have to clarify what it means to say that the symbolism of the power-code refers to negative sanctions. Guiding power by means of negative sanctions does not mean that power resides in the application of negative sanctions — as, for example, the submitting of valuable consideration is part of economic behavior. Negative sanction is only one available alternative — an alternative which, in the normal case on which power is based, *both* sides would prefer to avoid rather than actualize. Power then results from the fact that the person who

¹ Cf., Niklas Luhmann, *Trust and Power*, (trans.) Chichester 1979.

has it is more likely to withstand the exercise of negative sanctions than the person who is subordinate to it. Precisely because it is not used and as long as it is not used, the possibility of imposing negative sanctions is a source of power. Power, therefore, comes to an end if the exercise of this possibility can be forced. The exercise of physical violence is not an application of power but an expression of its failure — or, at best, a presentation of the considered possibility of *being able* to apply sanctions repeatedly.

II

All of this was a preparation — indispensable preliminary work in view of the diffuse and controversial understanding of the discussion. Now in the main part of the essay I would like to restrict myself to three central theses in characterizing relationships of power in modern society:

The first concerns the *law of the transformation of positive sanctions into negative ones* (section II). In connection with this it must be demonstrated that *organization, not stratum, is the true source of power in modern society* (section III). And third it must be demonstrated that for these reasons *significant differences between real power and attributed power* emerge accompanied by *inflationary or deflationary trends* in power-communication (section IV). These three theses are interconnected, mutually support one another and taken together provide a concept for analyzing the conditions for increasing and distributing power in modern society.

The first thesis concerns the sources of power. To be sure, the primary societal source of power is always: controls over clearly superior physical violence. This is what the state is built upon. Without it the state would be impossible. And even the law presupposes control over these means of sanctioning. The prospect of maintaining the upperhand in the use of physical violence has specific properties that can appear as suitable for establishing the foundation of power. It is (1) generalizable, i. e. applicable in very different contexts; viz., independent of what is enforced through the threat of physical violence. It

(2) presents itself as relatively reliable, i. e. independent of the type and intensity of motives for resisting it. And it is (3) capable of being organized well. In other words, it can be transformed into decisions by others about the application of physical violence, and these decisions can be conditioned and programmed.

All this is and remains the foundation of law and politics in modern society and, thus, indispensable for living together in society. At the same time, however, one has to say that the contemporary welfare state is not adequately characterized on this basis of power alone nor can it be based on it alone, especially *politically*. In looking for other foundations of politics, the state enters a terrain of power that evinces problematic aspects; one that can be characterized by tendencies to transform positive sanctions into negative ones.

In introducing these concepts, I had refrained from showing how difficult it is to delimit negative from positive sanctions. This is a question of interpretation, of defining the situation. If one clearly expects and relies on positive performances, then their withdrawal becomes a negative sanction. I do not view this as an objection to the conceptual distinction but, instead, as a reference to factual tendencies to transform the one kind of sanction into the other. And these tendencies have far-reaching significance in social life — all the more so since they elude political controls.

If assistance occurs with a certain regularity, if services are expected, if the contributions of others to one's own living are customary, then their loss becomes a threat, their withdrawal a possible sanction. One can lose a good job, long-standing cooperation can come to an end, a church can progressively lose worshipers because another church is built that has more parking spaces, regular customers can be lost because they have found better bargains elsewhere, one is not promoted although, according to one's own reckoning, it's "one's turn." The more that one becomes accustomed to advantages, the more that potential power grows as a result of possibilities that have accrued to negative sanctions: the potential power of withdrawal. The finely woven net of legal regulations and monetary valuations also makes a contribution to the increase of sensibility to subtle differences. In this way social power is increased: as the power of helpers and caretakers; as the power of those who participate; as the power of those who grace an affair with their consent or their presence or who draw

attention to this fact through their rejection of it; as the power of all those who can change things by saying "no!" to existing expectations.

To be sure, this kind of power will, in part, be harmless, in part, excluded — perhaps through the protection of claims as legal and political maxims. Despite this, chances of transforming positive sanctions into negative ones continually arise through the ever increasing services provided by others. These become sources of power with politically dangerous properties. They are (1) not capable of being centralized (unless through the centralization of all assistance) and remain distributed diffusely. Therefore (2) their use cannot be controlled. And they are suitable (3) mainly for obstructing instead of promoting specific behavior. The power of withdrawal becomes a political problem as the power to block.

A comparison with the structural particularities of physical violence shows — and this is precisely why I drew attention to it — that there are sources of power with and sources of power without an affinity to a system of centrally steered (state) politics. Of course, this does not mean a demand for the return to the classical foundations of political authority without a consideration of the circumstances under which we live. But one should consider whether and how, under the present circumstances, politics can come to differentiate adequate power for change and to maintain it centrally as capable of making decisions (i. e. as democratically controllable).

III

This diffuse arrangement of the sources of power that is no longer comprehensible within the context of the total societal system can apparently be "set in order" only through organization. Accordingly, my second thesis runs: power is no longer exercised in modern society on the basis of social stratum but on the basis of formal organization.

The relationships of power in the contemporary societal system cannot be understood if one begins from the concept of a ruling (dominating) stratum, class or elite. Of course, there are persons who occupy positions of leadership. And contacts are facilitated within such

leadership groups. But membership in such leadership groups does not manifest itself as family or social refinement but arises out of the perception of organizational positions. And anyone who has power in this leadership network for even a quarter of their life has it for a longtime. In the courts of the seventeenth century there were still great lords with and without offices.² This has changed. Unlike former societies, one cannot assume that a stratum of society creates solidarity among its members. And it is improbable that stratum-specific modes of behavior direct the process of the exercise of power successfully. This would correspond to a type of society in which political power still resides essentially in the control of access to superior physical violence. This is, as just said, no longer the case.

Today, any increase, material diversification and refining of power depends on formal organization. This is notably true in the case of the development of longer and more permanent chains of power, for indirect forms of its use in directing the exercise of power by others and for its increasing effectiveness in the sense that with *one* decision a person can trigger *many* resulting decisions that, individually, cannot be anticipated but which are nonetheless essentially connected with this one decision. Of course, in order to support interconnections within organizations and along their lines of command there still can be personal mechanisms of domination. These should not be denied or underestimated. But they are guided by the logic of the organization and remain dependent on the occupation of positions within this.

The organization is a mechanism that differentiates and distributes power. But here, this is not a matter of the distribution of a pre-given commodity. Instead, distribution, for its part, creates and changes whatever is distributed. The bourgeois theory of society had wanted to introduce the mechanism of differentiation into the theory of the separation of powers and the theory of economic competition in order to limit power and to reduce it to what is legally permissible or economically rational. But in implementing this program one unavoidably discovered that the formation of organizations also multiplies power – even if not in centrally controllable forms. In this way the problem situation was gradually displaced. And today the question is

² Cf., e. g. du Refuge, *Kluger Hofmann*, Frankfurt – Hamburg 1655, pp. 228 ff.

not so much that of the misuse of power as whether, through organizations, our society does not produce too much unsable power.

Organizational power is ultimately nothing more than a case of the application of the transformation of positive sanctions into negative ones. It rests on the fact that membership in organizations and especially the occupation of higher positions can be bestowed as an *advantage*, and its non-bestowal or withdrawal can be affixed as a *negative sanction*. This power of sanctioning, for its part, can be conditioned in detail. One must fit oneself into a pre-given structure of tasks and positions and carry out directions (or give directions!) in order to avoid being dismissed. The conditions can be changed, the change can, for its part, be conditioned and so on.

Naturally, this way of backing power by hiring and firing is much too crude to steer typical work behavior. It is suitable only for use as a rule to decide serious conflicts. Thus it comes into play only in extreme situations and has meaning (as is typical with power-conferring negative sanctions) only insofar as the sanction *is not exercised*. One does not allow conflicts to arise that could threaten membership, unless one had already decided to leave the organization and created a final heroic conflict to serve as a pretext for this. Moreover, power is also refined through control of personnel decisions. As empirical research has shown, organizations are replete with often exaggerated, quite unrealistic expectations about promotion. And in the handling of personnel matters a cultivation of sensitivity has developed that is hard for outsiders to understand and which draws great attention to minimal differences in positions or pay. Thereby, how high one's position is on the organizational ladder becomes an instrument of power. And non-promotion, indeed reorganization itself accompanied with a redistribution of certain disadvantages, becomes an instrument of power to which one adjusts through anticipating one's superior.

As every type of power, organizational power also has its own peculiar boundaries. These are mainly reducible to the fact that every increase in power leads to an overburdening of the control centers. The latter, then, depend on the pre-selection of their decisions by their subordinates and, in connection with this, on their empathy and the willingness to cooperate. And this occasionally gives the subordinates the power to indicate (or still more modestly: to present their inter-

pretations with such a strong commitment that it becomes evident) that cooperation cannot be taken for granted.

I cannot go into detail about the research connected with this. One can, however, say that the problems of balancing power within organizations are relevant not only within organizations. They become important for society as a whole to the extent that, in its most significant functional domains like politics, the economy, education, science, health care and the military, society depends on and distributes power by means of organization. These internal organizational characteristics of the unfolding and blocking of power then produce differences of perspectives, depending on whether one views an organization from within or from without. With this I come to my third point, to problems of the attribution of power. And this point leads back into analyses of society as a whole.

IV

A consequence of the existence of complex organizational systems within society is the fact that organizational power is assessed differently from outside the organization than from within. Viewed from outside, the homogeneity of the organization and the ability to implement organizational power is typically overestimated. Power is attributed to the top, while in truth complicated balances of power exist that vary, especially with topics and situations. As one knows from research on the perception and attribution of causality, the process of attribution depends on simplifications in order to be able to localize causes univocally. In the case of organizations this process takes its direction from the formal hierarchy. As a result, more power is attributed to the top than it actually has.

This process of causal attribution does not remain – and this makes the relationships even more complicated – without an effect on the actual relationships of power. Outwardly, the organization has to honor the attribution of power, for otherwise a person in the environment would not be able to see and treat the organization as an order. But for outsiders to deal with the organization simplifications are necessary

that permit commerce with the outside. Similarly, the prestige of the top's power has to be promoted and sustained. In this way the external attribution of power becomes a power-factor in internal conflicts. Top level persons can threaten to leave the organization or otherwise create situations that make it apparent to the environment that the organization does not function like a decisional and implementational unity. This forms the basis of a kind of informal power of the formal top that rests merely on the fact that power is attributed to it and this attribution, as a symbolically generalizing process, is sensitive to information about facts. Of course, this applies to individual organizations in quite varying degrees; for political parties more than for universities, for organizations in the area of mass media more than for the postal service, for the military more than for banks.

Therefore fictive and illusionary components that become reality as a result of perceptual differences between environment and system, and consequently take effect as reality, enter into the composition of organizational power. This process of symbolic generalization, that is the result of causal attribution, must still be distinguished from the recent, much debated problems of the legitimation of power which – according to the general understanding – are concerned with the justification of the exercise of power. Questions of legitimation presuppose that attribution – and indeed exaggerated, simplifying attribution – functions. Therefore it does not make much sense to solve problems of legitimation with measures that in turn react upon the attribution of power and destroy or confuse it.

Finally, a reference to an interesting and recently increasingly noted theoretical development: the concept of symbolic generalization makes it possible to transfer the concepts of *deflation* and *inflation* from the theory of money into the theory of power. As with a money economy, there also seems to be an *limitedly meaningful overdraft of resources* in the domain of power that is comparable to credit. The holder of power makes more decisions and has more of his or her decisions complied with than he or she could effect in cases of conflict. In the modern situation he or she is aided in this by the difference of societal system and organizational system and by the process of attribution. If the holder of power makes *too little* use of the power attributed to him and limits himself to the power that he “really has,” he triggers a *deflationary* trend. He operates too close to his means of sanctioning.

And the danger in this is that he does not escape the zone of threatening to exercise power into that of successfully exercising it. Conversely, if the holder of power relies *too strongly* on the power that is merely attributed (to him), he triggers an *inflationary* trend. In this case he becomes dependent on visible successes that demonstrate that he has power. At the same time he is also made vulnerable by crises that show that he cannot cover his decisions with sanctions.

This is as far as one can go with purely conceptual formulations. Only now do the really interesting questions begin. Above all, one must consider and examine empirically whether there are structurally conditioned (i. e. difficult to correct) tendencies in our societal system towards the inflation of power. The amount of difference between attributed power and the reality of organizations leads one to suspect this. If this is correct, then one could see an already detectable result of permanent inflations in the current discussion of ungovernability, crisis and deficit of legitimation.

For most of the problems of the formation, increase and distribution of power that I have addressed there is, at present, no knowledge that is certain. And this is not simply a deficiency that will soon be corrected but is conditioned by the complexity of the problem situation itself. Therefore sociology has not gone beyond proposals for analysis and conjectures. Whoever maintains more than this will have to prepare oneself for the swift destruction of his argument from the criticism.

But the alternative cannot remain: knowledge or ignorance. Even analytical instruments have a varying degree of reliability and a varying capacity for finding application in research and practice. They have to be complex enough in order to be able to say something. One important thing that can be said here is that the conceptual apparatus of the analysis of power clearly enables one to go beyond bourgeois society's program for controlling power; the program that had been responsible for creating our constitutions. Moreover, one can go beyond a mere rejection and criticism of a power that arises out of the structures of our societal system.

It also makes good sense – even without empirically proven knowledge about the distribution of power in our society and about the conditions of its change – to offer a differentiated analysis and in this way to stimulate scientific research and political reflection. For analysis is always itself an aspect of societal life. And societal situations become different if we learn to interpret them differently.

V. The Theory of Political Opposition

I

The invention of political opposition and its legitimation, indeed its institutionalization in the political system, is celebrated as one of the greatest achievements of the development of modern society. For many, this constitutes the nucleus of the definition of democracy. Accordingly, the principle of allowing opposition is represented as a value-concept and introduced into political communication as a value. Of course, this may not be the case everywhere. Seen from the point of view of world politics, the allowance of opposition is the exception rather than the rule. And in effect (regardless of the theory), only a fraction of the world's population lives under a government that allows political opposition and in this sense is a democracy. If in the political system's self-description opposition is considered good or, for whatever reasons, is rejected or circumvented, this is something of significance. It is something entirely different to provide descriptions of it that satisfy scientific demands and are capable of finding resonance within a larger-scale research program.

Even if one holds the principle of "value-free" scientific analysis for a very poorly formulated postulate, one still has to distinguish system references. The political system's descriptions of itself is one thing, the external description of it by science is another. A person's "affirmation of democracy" may be received positively by the political system or it may lead to prison. An external observer would have to work with different commitments than these "blind" ones if he wanted to provide a scientific analysis as given in the self-description of the system of science. Above all, a theory of political opposition would have to pay attention to the distinction of system references, no matter how this distinction is used as the basis for implementing this theory. Yet one can also interpret this admonition circularly: only if a theoretical description succeeds can the scientific analysis of politics separate itself

from political affirmations and options (which does not mean to ignore the fact that there are such affirmations and options).

In order to "mark" our position outside the political system we will begin from an extremely formal position. One can speak of opposition only within the context of distinctions. An opposition distinguishes itself from whatever it opposes. In the case of the political system this means that one can speak of opposition only by indicating one side of a distinction whose other side is to be understood as government. The concept of opposition has meaning only as a factor in the distinction of government and opposition. It does not indicate an independent phenomenon.

It is unlikely that this will be contradicted. But if one takes this as one's starting point, one becomes involved in the context of a further distinction. One has to ask: from what is this distinction of government/opposition distinguished? One can initiate and continue concrete analyses beginning from any distinctions. But in this way one produces, at first purely operatively, a difference from what would result had one begun from a different distinction, e. g. that of capitalism and socialism. If one understands this, then one can proceed within limits (restrictedly, blindly) and continue further, provided he holds the initial distinction for valid. But one can also succumb to the temptation to distinguish the very distinction that one had begun with and use it to generate theory. Such a procedure leads to ever new distinctions of distinctions — and this is precisely the reason that we spoke of "marking" above. With the processing of the distinction of distinctions and the theory selections that accompany it, science distinguishes itself from other function systems that may also proceed recursively but which use different distinctions. Marking the difference between the system of science and its environment can itself be reflected as a distinction. But this would have to occur as the theory of science.

II

We can use a readily available historical distinction — that of modern (functionally differentiated) society and traditional (differentiated according to center/periphery and social strata) societies — to introduce

the supposedly complex network of distinctions that we will need. Besides enjoying the advantages of being able to be proved empirically, this distinction can also be introduced within itself again, because the difference of modern/traditional can be reflected within modernity which, for this reason, defines itself as an historical difference.¹

In the traditional society of old Europe, out of which modern society grew, political opposition possessed no legitimacy. In describing the political domination embedded in a system of social strata, one began from the fact that, as an aspect of the natural order of society, a lord is necessary to preclude a catastrophic dissolution of all order (anarchy). But the lord was always exposed to rivalry precisely because of the stratification of society and always in danger of violent death. Just because of this, domination was proclaimed as the right to domination. Whoever tried to oppose the lord found himself thereby in the position of a rival who had to present legal arguments. A lord who through usurpation or practice put himself on the wrong side of the law was not a lord (*rex, princeps* etc.), but a tyrant who had to be resisted.² In a certain way lawfulness was a predicate of existence, and legitimacy was a concept of law.³ The code of legal/illegal was superordinate to the political code so that all political rivalry had to bring itself into accord with this distinction. Political rivalry was possible but only as a legal conflict that often enough, of course, may have been nothing more than a camouflage or excuse for violence.

Things changed as far as the guidance of the state or government was concerned only with the transition to what one – in accordance with a new political concept that postulates sovereignty (in a correspondingly new sense) – calls the state. The state usurped the decision

¹ As can easily be seen, this is not true for traditional society. The distinction of *antiqui/moderni* had an entirely different meaning for it: a predominantly rhetorical one conferring praise and blame. Traditionalism (in contrast to tradition) appears only in the conservative ideologies of the modern period.

² Proof is found in practically all the treatises on political theory up to and including the seventeenth century. See, e. g. Georg Lauterbeck, *Regentenbuch* (1556), reprint Frankfurt 1600 folia 2 r, 79 r ff.

³ We should remember that this concept had no specific political reference at that time. There also were (and this way of speaking has continued till today) legitimate owners, inheritors, fathers, children (but not mothers) etc.

over (what was) legal and illegal. From then on this decision was no longer defined ultimately as nature but as arbitrariness. And for the sake of peace arbitrariness was then permitted at only one place in the system: the top.⁴ In any event this is what was maintained by the unitary self-description of political society that tried to consolidate arbitrariness and, in this way at least, to make it observable and inhibit its diffusion. Accordingly, a literature devoted to court counsel and administration arose that focused on observing the top and, in this sense, on observing the observer. And correspondingly, the catalogue of virtues and the medieval and Renaissance descriptions of offices were transformed into prudential formulas that concentrated on the avoidance of error.⁵

The description of offices and the constitutional version of this maintain that this is the way that the sovereign becomes sovereign: the *highest* lord, subordinate to no one (*superiorem non recognoscens*), justified in making *any* decision.⁶ But it is utterly impossible to think of sovereignty *as such*. In actuality, it is the distinction of government/governed that dominates the system. The old double possibility of formulating political theory in terms of "*cives*" and in terms of "*subditos*"⁷ is reduced to a binary scheme that henceforth assumes the

⁴ According to the thesis of the royalist legists in France who finally triumphed with Richelieu. As a document of this triumph, see the work of a member of the council of state: Cardin Le Bret, *De la souveraineté du Roy*, Paris 1632.

⁵ The transition is very clear (although not with quite this pointedness) in the material that Bruno Singer offers, *Die Fürstenspiegel in Deutschland im Zeitalter des Humanismus und der Reformation*, Munich 1981. See also J. A. Fernández-Santamaria, *The State, War and Peace: Spanish Political Thought in the Renaissance 1516–1559*, Cambridge, Eng. 1977, and *Reason of State and Statecraft in Spanish Political Thought 1559–1640*, Lanham 1983.

⁶ This helps the *difference* between the late medieval and modern conception of sovereignty mainly to conceal the self-reference of the concept. One can formulate things as they are in the text above.

⁷ This is already found in the sixteenth century with ideological, if not ideopolitical overtones. As, for example, when, in the interest of the Roman patriciate, Marius Salamonius de Alberteschis tries to grasp and bind the prince as "*cives*" in *De Principatu* (1513), quoted from the Milan edition of 1955.

function of a code for the political system that is now called the state. The governed profited from the order that was attained in this way (particularly after the hostile confusion of the epoch ending around 1650). This distinction was reflected by government and given back to the governed in terms of service. This, in turn, led to an explicit paradox: domination proclaimed as service, the distinction of ruler and ruled re-introduced within itself.

Within a broader theoretical context one can recognize that this was the way that the symbolically generalized medium of power was coded. Like every communication medium, this one is structured circularly. Through the code of government/governed an asymmetry is built into it without destroying the basic condition of circularity. Only in this way could the problem of legitimacy, rediscovered at the end of the nineteenth century, arise. To be sure, this problem could no longer be handled, as in earlier society, by the legal code made available to politics by political theory.⁸ One therefore required a further distinction, that of legitimate and illegitimate, and thereby triggered an enormous amount of intellectual effort in distinguishing this distinction itself, e. g. regarding the procedure by which the decision between legitimate and illegitimate could be made.

It is obvious in this distinguishing of distinctions that the procedure has to be established "free from domination," in any event, free from political domination. For otherwise the distinction of government/governed could not be distinguished according to legitimate/illegitimate. To what extent the concept of "freedom from domination" possesses a further meaning, perhaps as the exclusion of any kind of external determination, is another question. One would then require a further distinction, as Jürgen Habermas hopes to discover through reference to a rational (as opposed to a technical or a strategic) praxis.

Today, one can, as an uninvolved observer, notice that this entire line of discussion has differentiated itself. Above all, it has differentiated itself from actual politics as it occurs in national capitals. And it is noteworthy that no theory of political opposition has resulted from it. Instead, this very technique of making distinctions has itself unexpectedly become the opposition without being able to establish itself within

⁸ That (or whether) this is a mistake needs not to be discussed here.

the political system in this way. In the meantime, one can see that this has become firmly entrenched. But the distinctions that we need now obviously cannot develop from these starting points.

III

It is this, in many respects, scholarly discussion about legitimacy that could provide the starting point for considering whether there have not been subsequent developments within the political system itself that point towards the further development of the capacity for making distinctions but which themselves cannot be grasped adequately with the question whether "domination" is legitimate or not. It is no accident that a mere hundred years ago Jellinek⁹ and Max Weber related this formulation of the question somewhat archaically to the concept of domination. And it is no accident that this paralleled attempts to meet disconcertment within a political system on the way from strata dependencies towards democratization with a rejuvenation of an interest in "ethics" (around 1880), the neo-Kantian value-apriori, value relations etc. It is also no accident that almost at the same time political parties attempted to establish an extra-parliamentary organizational base which then, for its part, drew upon itself the repugnance of (political) observers (Weber, Michel). Gradually the time came to understand this

⁹ Even Jellinek, who inspired this discussion as no one else, could not free himself from the legal character of the concept of legitimacy. In his *Staatslehre* he says, "Only someone who adamantly maintains a continuous order of natural law over and above positive state law or civil law and thereby misunderstands the meaning of the relationships of power for the life of the state may advocate the theory of the principle of legitimacy." See Georg Jellinek, *Allgemeine Staatslehre* (1900), quoted from the sixth printing of the third edition Darmstadt 1959, p. 285. Therefore, Jellinek's real influence comes through his theory of the validity of law, through the conditions of the "normative force of the factual." (See *ibid.*, especially pp. 344 ff.) See also Luis Legaz y Lacambra, "Legalidad y Legitimidad," in *Revista de Estudios Políticos*, vol. 101 (1958), pp 5–21.

constellation historically and not to try to use it as a source of theoretical inspiration any longer.

That political systems changed during this period and how becomes understandable when one raises the question of what the government distinguished itself from. The old answer was: from the governed. This has remained. But at the same time a new counter concept has been added. One also distinguishes government and opposition. The counter concept to government is not simply exchanged,¹⁰ but supplemented by another one. Ever since, the concept of government finds itself at the focal point of *two* distinctions. In this way it has become stable and indispensable – and paradoxical. Now it indicates the same thing and difference, depending on what it is distinguished from. One could suspect that a problem is concealed by making the concept paradoxical. And one is likely to suspect in addition that it is the old problem of sovereignty that has been concealed in this way. More recently, i. e. since this transformation, the system's self-description and its description from outside no longer agree. And it is no accident that a "theory of the state" has arisen on one side and a sociology on the other – and a political science that cannot decide between these two possibilities and fluctuates between them.¹¹

Obviously, this change has organizational bases. Otherwise it would not be possible. It presupposes organizationally differentiated political parties that are distinguished from parliamentary factions. In this sense political parties have to be able to survive the change from the role of government to that of opposition and back to that of government, however painful the process may be for persons and programs. But this organizational stability that first attracted one's attention is only

¹⁰ For "antonym substitution" in this sense, see Stephen Holmes, "Poesie der Indifferenz," in Dirk Baecker et al. (eds.), *Theorie als Passion*, Frankfurt 1987, pp. 15–45.

¹¹ Cyberneticians believe that this is a particularly highly developed form. See, e. g. Stein Bråten, "The Third Position: Beyond Artificial and Autopoietic Reduction," in Felix Geyer/Johannes van der Zouwen (eds.), *Sociocybernetic Paradoxes: Observation, Control and Evolution of Self-steering Systems*, London 1986, pp. 193–205. One can see in this the further expectation that antinomies can be negated dialectically. But this has yet to be achieved as far as political science is concerned.

a part, a substrate, of the real phenomenon – like an instrument on which politics from now on must be played. Decisive is the fact that an entirely new counter concept that increasingly absorbs political attention is added to what previously had been the government vis-à-vis the governed. Ever since the establishment of this distinction, the political system has not been controlled by unity but by a difference, a top that is bifurcated. Henceforth this makes it entirely inappropriate to speak of “domination.”

This distinction parallels the codes that are used in other function systems in an astonishing way, e. g. ownership/non-ownership (or operatively: spending/not-spending), legal/illegal, true/false.¹² The schema is always set up as binary, excluding third possibilities. It always contains a value that provides for continuation within the system (property, payment, law, truth and, in our case, government) and another one that serves only as a counter value whose primary purpose is to make clear in communication that everything that happens in the system does so contingently and could always have been otherwise. The basic logic of this arrangement manages with two values. Although anyone who understands the model can, with Gotthard Günther, propose a many-valued logic that is able to present the distinction of the acceptance and rejection of the primary value distinction equally well¹³ (and who would not immediately think here of the “extra-parliamentary opposition” that had tried to claim for itself the (function of this) rejection-value in regard to the distinction of government and opposition within the accepted context; see Figure 1).

¹² See also Niklas Luhmann, *Ökologische Kommunikation: Kann die moderne Gesellschaft sich auf ökologische Gefährdungen einstellen?* Opladen 1986, pp. 75 ff.; Luhmann, “Die Codierung des Rechtssystems,” in *Rechtstheorie*, vol. 17 (1986), pp. 171–203; Luhmann, “‘Distinctions directrices’: Über Codierung von Semantiken und Systemen,” in Luhmann, *Soziologische Aufklärung 4*, Opladen 1987, pp. 13–31.

¹³ See especially the contributions: “Das metaphysische Problem einer Formalisierung der transzendental-dialektischen Logik” and “Cybernetic Ontology and Transjunctional Operations” in Gotthard Günther, *Beiträge zur Grundlegung einer operationsfähigen Dialektik* vol. 1, Hamburg 1976, pp. 189 ff. and 249 ff.

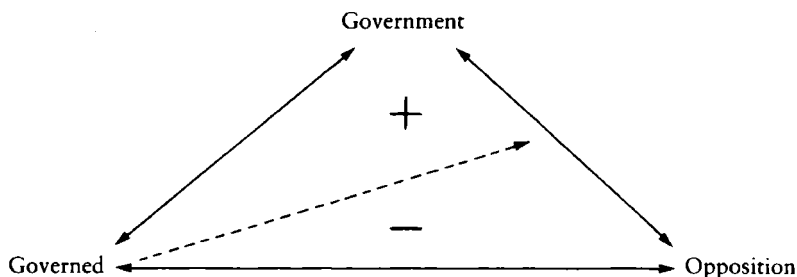


Figure 1

If the binary code of government/opposition is accepted as “democracy,” then all attempts at a transition to an additional distinction in terms of acceptance/rejection of the primary distinctions are “undemocratic.”¹⁴ One can control this easily using Figure 1. If one wants to go beyond this, then one has to assume that the schema of acceptance/rejection becomes sovereign and can be practiced in all directions – thus as a rejection of the distinction of governed/opposition by the government that still continues to govern. Or, in other words, the model called democracy here has a political complexity that is quite capable of being practiced. But as tempting as it may be conceptually (because there are no limits to complexity) the transition to a many-valued logic would entail a regression to the simple distinction of those that govern and those who are governed.

¹⁴ This surely is connected with the fact that the operations that decide about the acceptance/rejection of *distinctions* have to be treated *asymmetrically*. Their object – the distinction – cannot itself be accepted or rejected. They have one object, no counterpart. Translated back into political terminology, this means that they claim a sovereignty that does not submit itself to any democratic controls.

IV

In the following we will not consider this post-democratic case nor that of an extra-parliamentary opposition to the model of government/opposition, nor the third case of rejection, viz., a political terror from below that no longer distinguishes between those who govern and those who are governed but thinks everyone is evil (except themselves).¹⁵ In other words, we assume that only acceptance-values are possible in reference to the admitted distinctions and that this is the sense in which democracy functions. Even with these simplifications a political theory conceived according to the theory of difference provides suggestions enough for further analyses.

As noted above, a large-scale socio-theoretical comparison demonstrates that other function systems of modern society are also guided by basic distinctions that are arranged as binary codes and consequently entail that the system can distinguish its own operations from those of other systems. Everything that occurs in the system appears, in the light of such codes, as related to the choice of one or the other side of the code – e. g. as the decision to pay a specific price or not to pay it, to hold a hypothesis for true or for false, to view a claim as legal or as illegal. Besides, it also demonstrates that in every system-operation both sides of the distinction are always in view; that it is never simply a question of one side but always of the distinction itself and that just because of this the operations of a system distinguish themselves from those of other systems and constitute a differentiated function system.

There is much that speaks for the fact that the very recognition of opposition functions as an aspect of such a code and that its political significance lies precisely therein. This would lead to the hypothesis that all political opposition is guided by a binary scheme, i. e. tries to discover whether it promotes the prospects of the government or of the opposition. Furthermore, the comparison from the viewpoint of coding enables one to understand the asymmetry contained in the

¹⁵ Another possible example is the aristocratic “ultras” of the French restoration who went so far as to treat a constitutionally governed society as a vulgar one.

distinction. Every code has a positive value that symbolizes the system's capacity to continue (one can do things only with truths, not falsehoods, only with money that is spent, not with money that is not spent). It also has a negative, counter value that symbolizes that things could also have been different. This upholds the contingency of the system in spite of its constant reduction by continuous operations. It is not difficult to see that this is true even in the case of the distinction of government/opposition. Only the government can continue to act officially within the political system. Only the government has legitimately applicable political power at its disposal. Only the government is a component of the distinction of those who govern/those who are governed. On the other side, only the opposition guarantees continual reflection and the constant presence of a mirror in which one can see that things could also be otherwise or had possibly been otherwise.

Since the system has only one type of operation (let's say: collectively binding decisions), the code-orientation entails that the reflection of contingency goes over to the side of the government or at least rubs off on it. If a binary-coded system continues for some time, it eventually experiences operations as contingent – truth becomes hypothetical, law becomes positive, spending becomes a question of economic rationality – and even governing becomes the choice between political possibilities through which one seeks to prevent the opposition from getting a chance to win.

One can actually observe such an outpour of the reflection of contingency. It subverts the political relevance of ideologies. While in the nineteenth century (before the full establishment of the code of government/opposition) one could assume that the opposition would represent other program-points (perhaps socialist ones) and believed that the right was destined to govern and the left to be in opposition, things have in the meantime balanced out. And while in the nineteenth century one could assume a superiority of reflection on the side of the left (e. g. a theory of capitalist society and the use of this by the opposition as a foundation for theory) and the enjoyment of decision making, cult of personality and power on the side of the right, today this distinction has disappeared. And the parties experience great difficulty in polishing their political programs with the remnants of those traditions in order to provide at least a semantic and rhetorical appearance of being opposed to each other; while the voters are apparently

guided by events that have attracted their attention before the election. In view of such findings it is surprising that the intellectuals in the universities still, as a rule, adhere to the association "left/opposition/reflection/spirit" and thereby effectively exclude themselves from politics, for things have not been this way for a long time.

V

The generalization of the contingency orientation that is observable in systems has consequences that deserve more attention than they have hitherto attracted. And this is where a theoretically abstracted analysis that is attentive to the form of distinguishing and its consequences could be instructive. If a system has become differentiated by means of a binary code that excludes third possibilities and if all its operations, whether they are observable and capable of continuation as such, reflect their own contingency through this: what would be the consequences of such an arrangement?

If one looks about, many models can be discovered that concern themselves with this problem. In part, they use metaphors, in part distinctions. But they have developed independently of one another. It might then be profitable to compare and abstract them to a general theory of coding or at least to a general theory of political opposition.

One of these models bears the title: "*Le parasit.*"¹⁶ It postulates that when two parties come together a third benefits from it. A good example of this would be how when people come together for a banquet rats benefit from this. Or another one taken from early modernity, would be a marriage, that frees the wife, and her lover. In our case the example is the political parties that are forced by the code to locate themselves either within the government or opposition and then the public (as the parasite). Understood formally, this is a question of the re-inclusion of the excluded third value. Whoever is excluded assumes a position through the exclusion from which one surreptitiously, se-

¹⁶ See Michel Serres, *Le parasit*, Paris 1980.

cretly, unnoticed (!) sneaks oneself back in. One will object that modern politics provides for the public and therefore the latter is not excluded. This is a mistake! Just as before, those who are governed are provided for and, for some time now, the voters, too. Therefore there is a transformation of the experiences of being governed into voter behavior. And to this extent there is a (system of the) "public." But the unity of the excluded third possibility exists only through exclusion, thus only in the illusion of politics. The omnipresence of the public is actualized through the schema of government/opposition just as much as the secret power of this parasite. The invisibility of the parasite is created along with and concealed by the so-called mass media. They make the invisible visible when they push it back into invisibility. And they enable politics to worship the invisible God. From this point of view it is called "public opinion."¹⁷

One could also provide a further model: Baudelaire's dog.¹⁸ It has a bit more empirical content because it rests on an experiment. The dog is not interested in the exquisite scents from the perfume bottle that Baudelaire uses to try to attract it, only in assorted filth. "You are just like the public," Baudelaire tells him, "to whom one should never give delicate perfumes that annoy it, only carefully chosen filth." This explains why political rhetoric prefers to concern itself with the deliberate choice of dirt.

This brings us to a further metaphor: the mirror. The complexity of the public's moods, opinions and willingness to act is so great that it works opaquely. Politics can only polish this opacity – which is nothing more than the opacity of its own system – e. g. with edifying speeches. Then it works just like a mirror in which it views itself.¹⁹ In the earlier literature that used this metaphor two things were meant: (1) one sees oneself as better than one really is, e. g. as more moral or at least as

¹⁷ Cf., "Societal Complexity and Public Opinion."

¹⁸ From "Le chien et le flacon," quoted from *Oeuvres complètes*, Paris 1954, pp. 289 f.

¹⁹ As for the analogous situation of the "market," see Harrison C. White, "Where Do Markets Come From?" in *American Journal of Sociology*, vol. 87 (1981), pp. 517 – 547.

trying to be better. One primps before the mirror.²⁰ And (2) one sees oneself in context, i. e. by looking over one's shoulder one sees something else — e. g. one's competitors.²¹ The mirror makes it possible to see oneself in a context of something that one could not see if one *only* saw something *else*. But it does not make it possible to see one's own seeing (and to this extent the metaphor of the mirror remains limited).²²

One can use systems-theoretical methods to go beyond this technique of a metaphor-induced increase of insight. The question then becomes: how does a system (one for politics) observe another system if its observation is in terms of the distinction of government and opposition? We can spell this out by using the case of the observation of the economy by politics.²³

To a great extent, politics has quite clearly become involved in "steering the economy" — whatever this may in effect mean. The involvement has become so entangled that "politico-economic" observers doubt the separability of the systems. But since steering the economy by the political system (if one understands by this the production of intended results) does not succeed (because every differentiated system can only steer itself), another explanation must be found for the

²⁰ From the secondary literature, see Singer, *ibid.*, and especially Herbert Grabes, *Speculum, Mirror and Looking-Glass: Kontinuität und Originalität der Spiegelmetapher in den Buchtiteln des Mittelalters und der englischen Literatur des 13. bis 17. Jahrhunderts*, Tübingen 1973.

²¹ See e. g. Guillaume de La Perriere, *Le miroir politique*, Paris 1567 folio A III, "As in a mirror, he who looks attentively at his reflection sees reflected not so much his face as the greater part of the room in which he is."

²² The rejection of the idea of the eye that sees its own seeing, that persisted in the philosophical tradition till Fichte, was a precise counterpart to the use of the metaphor of the mirror. On the other hand, the use of this metaphor to supplement the theory of knowledge based on the sense of sight was unable to lead to an adequate theory of the observation of observation.

²³ For the converse case of the observation of politics by the economy, see Dirk Baecker, "Die Beobachtung der Politik durch die Wirtschaft," in Manfred Glagow/Hellmut Willke (eds.), *Dezentrale Gesellschaftsteuerung, Probleme der Integration polyzentrischer Gesellschaft*, Pfaffenweiler 1987, pp. 65 – 73.

persistence of the attempt. This is where the theory of distinction-guided observation can come in. With whatever distinctions politics scans the economy: whether with regional or temporal comparisons, whether with economic programs, unemployment figures, increasing or decreasing frequencies of bankruptcies, whether with changes in the GNP or with international (i. e. regional) balances of payments or services, there is always a model of government and opposition in the background. One can then assume that politics needs and creates intervention in the economy as a constant source of stimulation and to be able to supply energy to the model of government/opposition that otherwise would stagnate or subside. Here too it would not be possible for politics itself to question the distinction with which it ultimately works or even to problematize its unity, i. e. to question the idea of an economically successful politics as such. Only an observer outside of politics could come to the idea that there cannot be an economically successful politics, only an economically successful economy and that the political system is limited to practicing the coding of difference peculiar to it. This, in turn, entails observing economic policy as *successful* and as *unsuccessful* (thus paradoxically for an external observer) depending on whether the point of reference for observation is observation by the government or by the opposition.²⁴

Finally, we can use the difference of code and program to explain that and how the exclusive binary model of government and opposition entails a reference to something else. The system uses the code of

²⁴ For the sake of clarification it should be mentioned that this argument lies on the level of a second-order cybernetics, on the level of the theory of the observation of the observer. Of course, this does not mean that the government is observed as successful or the opposition as unsuccessful or vice versa. Instead, it means that the *government* applies the schema of successful/unsuccessful to the *government* or *opposition* in *one* sense and the *opposition* uses it in the other. And so the meaning of the program of "economic policy" is simply to extrapolate the ambivalence necessary for this from one election period to the next. Therefore, empirically testable possibilities of prognosis occur only on the level of a second order cybernetics. One can predict that the government will observe political steering of the economy as successful and the opposition will observe it as unsuccessful, even though this is a matter of the observation of *one* system by *another*, where in practice they both use the same data.

government/opposition to define its identity (unity as duality). The code is therefore invariant and consequently completely insensitive. Were it negated (or rejected in the sense of the remarks to Figure 1 above), the system would regress to a simpler, less differentiated level of order. One would then be left, once again, with the difference of those who govern and those who are governed. And on the side of those who govern this would amount to a weakening of functional differentiation and a reliance on stratificatory structures. In contrast to codes, programs are variable. They do not define the system's identity, but its capacity for adaption.²⁵ This distinction makes it possible to re-introduce third, fourth, fifth ... values into the system (as programs) that on the level of codes cannot be accepted as an addition to government and opposition because the model has to remain binary. One cannot say: government, opposition, peace, justice, prosperity, because in this case this would be a category mistake.²⁶ But one could easily use such values for guidance if they are stabilized in their indeterminacy and if the programs that actually instruct correct decision making are retained as variable. At the same time, one can use this to come to the realization that, regarding the same values, government and opposition disagree over programs and that their effects or initiatives for change can be judged *differently*.

The same ordering structure reveals itself in other function systems. In science, for example, the code of true/false is, according to general agreement, not by itself a criterion of truth. Theories and methods are still required to guide research processes. Similarly, the economy is guided by the code of the payment/non-payment of specific prices. But it also needs programs for investment or household maintenance (budgets). Therefore, this seems to be a case of a proven form of ordering the structure of complex function systems and not just a special achievement of the political system.²⁷

²⁵ As throughout the passages above: in the eyes of the political system. Whether this might also mean identity or the capacity for adaption in the eyes of a third observer can only be determined if one identifies this and observes which distinctions one used to make this observation.

²⁶ As a counter example see the erstwhile list of princely virtues: maintenance of the peace, sobriety, justice, establishment of schools and libraries etc. in Lauterbeck, *ibid.*, folio 56 ff.

²⁷ See for this also, Luhmann, *Ökologische Kommunikation*, pp. 89 ff.

The five examples (of the parasite, Baudelaire's dog, the mirror, political intervention in the economy and coding/programming) can certainly be supplemented. This would reveal further possibilities of concretization. But in the other direction one can see that something common underlies these accounts. Obviously, a coding, like that of government/opposition, exacts a disclaimer. Or, in other words, it creates a need for supplementation, for instruction, for "more than just this." One can interpret this theoretically in different ways. For a theory of self-referential systems the following argument is likely: coding creates an operative (recursive, self-referential) closure of the system. In our case: only what affects and modifies the prospects of the government or the opposition is recognizable and attributable as political. But this coding cannot be practiced strictly because it would lead to the tautology: whatever helps the government and hurts the opposition, or vice versa, is political. Therefore, for the sake of de-tautologizing, the system also needs a mechanism for reference – whether this is external reference or self-reference. The system must asymmetricize itself in one or the other way. Otherwise it would never get started. On the structural level this can be achieved through internal differentiation.²⁸ But this makes it only more difficult to represent the unity of the system within the system. The examples described above seem to be theoretical versions of this problem. Politics sees itself (reflects itself) within the context of whatever it takes as "public opinion" and refers itself to this ultimate arbiter which distributes favor/disfavor upon the government and opposition. And only because this happens is it actually this way.

VI

If opposition is not merely a matter of the invention of "checks and balances," i. e. not merely an elaborate mechanism – which is how it was presented to facilitate its introduction – but a matter of a new

²⁸ Cf., chapter II, especially section 6; Luhmann, "Machtkreislauf und Recht in Demokratien," in *Zeitschrift für Rechtssoziologie*, vol. 2 (1981), pp. 158 – 161.

coding of the political system, then one has to reckon with far-reaching consequences. Its invention was proposed as a result of the desire of those who were governed to be governed in an orderly way and to retain control over this (or, in any event, this is the way it was presented). This desire has not been fulfilled, however. Instead, the functional differentiation of the political system has, as if by a cunning of unreason, gained acceptance and perfected the appropriate coding for this. What can be seen to result from it?

If the analysis attempted here is correct, the consequences of the general restructuring of society towards functional differentiation and the specifically political consequences of coding in terms of government/opposition can hardly be separated. So we will not try to do this. One can, however, in general ascertain the temporalization and acceleration of societal and even political processes.²⁹ Such general concepts conceal, however, distinguishable aspects that one can expose as soon as a theory with a greater capacity for making distinctions becomes available.

Included in the differentiation of a specific system of communication is the fact that the system reproduces itself through the events that it itself produces. There is no other basis of its existence. Everything else is environment. The real "system compulsion" [*Systemzwang*] resides in the fact that every event always has to be followed by another, thus every communication always by another. So reproduction is not replication, and the continuation of communication cannot reside in the fact that one repeats what was said. One has to add something to it or, what is simpler, say something against it. This is the reason why the system prefers conflict as a mode of communication and the model of government/opposition reproduces the positions necessary for this. Every utterance can be assigned to one of these two sides. And the other side knows that the code requires that it says something against this. And the question is then simply: what should it say? Thus in the political system verbal conflicts, one could even say illusory conflicts, are created as a form of openness through which societal interests can then be assigned to one side or the other. Conflict is played out here as in a compulsory ritual. And if society creates conflicts that cannot

²⁹ See Reinhart Koselleck, *Vergangene Zukunft: Zur Semantik geschichtlicher Zeiten*, Frankfurt 1979.

be resolved through law, then it can use this already existing mechanism. This is the basis of the "politics of law." And law is treated as if it had to decide conflicts that do not yet exist or even conflicts that would not exist if there was no law.

To maintain this state of conflict the political system creates, in agreement with a corresponding need of the mass media, topics that it just as quickly exhausts. They are ascribed to "public opinion."³⁰ They are created as forms that grab the medium of "public attention" for some time — and then release it again for other commitments. In this self-created hectic state, that does not react to environmental changes that may proceed more slowly or faster, the system cannot take the time to wait for the success of long-term political planning. (This would, moreover, be dysfunctional for the coding of government/opposition since it would enable the government to secure a long period in office merely through the choice of long-term projects).³¹ The system remains sensitive on the level of results. From one moment to the next, it co-ordinates itself with other environmental events in order to derive suggestions from them for its own antagonistic communication. But it cannot synchronize itself with the environment, cannot change with it in order to function like a unified system with sections of the environment.³² One cannot deny that such overlapping system formations are possible in many areas, e. g. in the relationship between the political system and the education system and even in the area of a subvented economy, of central banks etc. But they presuppose the transition to another type of system formation: organization.

If the political system is autodynamic in this sense, then this of course, does not mean that it is faster than the environment and races ahead of it into a time that is the future for all others. If one omits

³⁰ See for this also, Niklas Luhmann, "Öffentliche Meinung," in Luhmann, *Politische Planung: Aufsätze zur Soziologie von Politik und Verwaltung*, Opladen 1971, pp. 9–34.

³¹ The present order by no means excludes the possibility that things *can* come to this. But this is due then to *special circumstances*. See Mrs. Thatcher.

³² For such "systemic linkages," see Charles P. Loomis, "Tentative Types of Directed Social Change Involving Systemic Linkages," in *Rural Sociology*, vol. 24 (1959), pp. 383–390. See also Loomis, *Social Systems: Essays on Their Persistence and Change*, Princeton 1960.

the effects of psycho-physical stress on the politician and the corresponding effects of selection – sensibility to the environment is what changes. The effects of this would merit investigation. In any event the system is forced to react to events immediately. This favors, e. g. the political technique of fomenting demonstrations and exceeding a newsworthy threshold of violence. But on the other hand, it also suggests the reaction of waiting things out until the excitement abates. In any event if one includes the ambitions of the political reformers of the second half of the sixteenth century (e. g. de l'Hopital) or in the second half of the eighteenth century (e. g. the Physiocrats and Turgot) and compares them with the perspectives at the end of this century, the political observation of society shifts from long-term perspectives to *ad hoc* reactions – even and precisely in a society that is faced with upheavals of enormous proportions (e. g. in the area of technology or environmental intervention).

It cannot be the task of science to transform such insights into exhortations and appeals. One can do this if one operates at system boundaries. Or one can neglect to do this. For science itself, however, a theory of political opposition (a theory of coding, a research program planned according to the theory of differentiation) could be an immensely fruitful task that would have to adjust itself to presently unsuspected abstractions and new ways of formulating problems while politics continues (or so hope the supporters of “democracy” anyway) to observe itself and its environment according to the code of government and opposition.

VI. Two Sides of the State Founded on Law

I

The concept of the state founded on law [*Rechtsstaat*] designates a significant tradition in German constitutional history and, if one includes the “rule of law,” of the entire European-American understanding of constitution. In view of the meaning of this idea it may be surprising that the determination of the form of state contained in article 20 of the constitution (of the Federal Republic of Germany) does not expressly name the concept of the state founded on law. Therefore, the Federal Republic of Germany does not explicitly designate itself as a state founded on law. But it follows from the very fact that a constitutional law is in effect subordinating all state activities to the law and regulating lawmaking, including that of constitutional law itself, that an additional conceptual determination of the state as one founded on law would be superfluous and confusing.¹ It would only re-emphasize what is already the case. So it has been omitted in the interest of an economical use of regulative measures. It would have introduced nothing new. At best it would simply have lead to investigations of the meaning of this addition.

Although in a strictly juristic sense the concept is unnecessary, this does not free us from a political and historical analysis. Viewed juridically, every decision of the state is bound to the law. Considerable scope of freedom may be conceded to it (e. g. in the area of the doctrine

¹ Whether there are theoretical, perhaps logical, objections to such self-reference has been discussed. See H. L. A. Hart, “Self-referring Laws,” (1964) in *Essays in Jurisprudence and Philosophy*, Oxford 1983; Carl Friedrich Ophüls, “Ist der Rechtspositivismus logisch möglich?” in *Neue Juristische Wochenschrift*, vol. 21 (1968), pp. 1745–52; Alf Ross, “On Self Reference as a Puzzle in Constitutional Law,” in *Mind*, vol. 78 (1969), pp. 1–24.

of "political questions"). But it must at least be legally permissible. This is nothing special in itself because, according to the modern understanding, it is something true for all actions. There are no situations that are exempt from the law. The law is an autonomous function system of society that by itself determines what it regulates and subjects all matters about which it communicates to the binary code of legal/illegal.² If the system of law communicates about behavior, the ultimately decisive question for it is whether the behavior is in accordance with the law or not. This holds in a way that had been extremely uncommon in earlier societies, viz., for behavior in the family, thus also for the education of children. It also holds (but this is nothing strange) for those who exercise political power. If the precept of the state founded on law was a norm, then this norm would only confirm what holds anyway. The law would only say that it is valid and that it would still be valid if those who exercise political power had the power to break it.

Is the state founded on law then a triviality, a tautology, the mere repetition of the statement that legal is what is legal? And so it is in fact. But, viewed sociologically, this fact is an extremely uncommon one. And perhaps this is the reason why one has felt it necessary to emphasize the tautology.

Therefore we have to take the first step in analyzing exactly what gives the tautology of the state founded on law this significance and where, viewed sociologically, the problem lies.

Obviously, this is not a matter of the problem of an inadequate enforcement of the law, not of what one calls today "implementation." There are any number of different reasons why people do not resort to legal measures even when they are legally justified in doing so.³ Penal justice would become paralyzed if it had to judge all criminal

² See (also as a theoretical basis for the following): Niklas Luhmann, "Die Einheit des Rechtssystems," in *Rechtstheorie*, vol. 14 (1983), pp. 129–154; Luhmann, "Die Codierung des Rechtssystems," in *Rechtstheorie*, vol. 17 (1986), pp. 171–203.

³ Cf., the empirical findings of Erhard Blankenburg in, "Die Mobilisierung von Recht: Über die Wahrscheinlichkeit des Gangs zum Gericht, die Chance des Erfolgs und die daraus folgenden Funktionen der Justiz," in *Zeitschrift für Rechtssoziologie*, vol. 1 (1980), pp. 33–64.

acts.⁴ The implementation of many a political program clothed in legal form is frustrated by practical difficulties.⁵ This can be a source of vexation. But on the other hand, one also frets about the "increase of legal regulation" [*Verrechtlichung*].⁶ Indeed, one even believes that the reasons for the difficulties in enforcement lie in the flood of laws. So there is too much and too little law at the same time which, in the European tradition, is a complaint that has been heard for a long time.⁷ But this does not seem to be the problem of the state founded on law.

What is historically new here is something that one can call the "differentiation of the system of law,"⁸ along with the differentiation of other function systems for science, the economy, politics, education and religion. Like these other systems, the system of law is a structurally determined one that can specify what behavior is in accordance with the law and which is not only through its own structures and claims sole authority for this in society. The historical innovation in this case is the differentiation of a specific function system that, at the same time, claims *universal* relevance for all questions of law. Only law determines what is legal and illegal through reference to legal norms and decisions. This decision can no longer be made through an appeal to religious, political or scientific authorities or even from texts that are not specifically legal. Whenever the problem of "legal or illegal"

⁴ Cf. Heinrich Popitz, *Über die Präventivwirkung des Nichtwissens: Dunkelziffer, Norm und Strafe*, Tübingen 1968.

⁵ See, for the results of a larger project group, Renate Mayntz (ed.), *Implementation politischer Programme: Empirische Forschungsberichte*, vol. 1, Königstein 1980, vol. 2, Opladen 1982. For a case study cf., Gerd Winter, *Das Vollzugsdefizit im Wasserrecht: Ein Beitrag zur Soziologie des öffentlichen Rechts*, Berlin 1975.

⁶ This has become a fashionable expression within the last ten years. Cf., e. g. Rüdiger Voigt (ed.), *Verrechtlichung*, Königstein 1980; Voigt (ed.), "Gegentendenzen zur Verrechtlichung," in *Jahrbuch für Rechtssoziologie und Rechtstheorie*, vol. 9 (1983), Friedrich Kübler (ed.), *Verrechtlichung von Wirtschaft, Arbeit und sozialer Solidarität*, Baden-Baden 1984.

⁷ Cf. Émeric Crucé, *Le nouveau Cynée* (1623), quoted from the edition of Thomas W. Balch, Philadelphia 1909, pp. 247 ff.

⁸ See Niklas Luhmann, *Die Ausdifferenzierung des Rechts: Beiträge zur Rechtssoziologie und Rechtstheorie*, Frankfurt 1981.

appears, the system of law is authoritative — and no one else. This involves law makers and courts of law, attorneys and other offices of legal advice and especially the daily communication that has legal relevance — e. g. conflicts with the police, one's neighbors or at work. Communication about law can be conducted only in reference to further communication about law. If and insofar as one does this, one participates in the system of law — whether as a layman or jurist, whether as a politician or manager or as a stewardess who refuses to serve someone alcoholic beverages and does so by appealing to her authority to make such decisions, or to a regulation.

Only modern developments in systems-theory make it possible to provide a univocal theoretical foundation for this interpretation.⁹ They make a presentation of the system of law possible as an operationally closed and simultaneously informationally open communicative context that differentiates itself through its own operations within a societal environment and delimits and determines at the same time the ways it allows itself to be determined by its environment. The system is specified exclusively by its own structures. There is no law that could be introduced from outside into the system and, conversely, no law that could be exported from the system into the environment. All communication that is processed legally is processed within the system. It has to support itself recursively on already established law and use this to contribute to the reproduction of law. But just because of this, the system is able to react to any communication that it can handle internally as a legal problem — just as, in its operations, the brain is a fully closed nervous system that, on the level of its own operations, maintains no contact with the environment and precisely for this reason is able to process very few (e. g. photochemical) stimuli from its environment in highly complex ways.

⁹ Cf., e. g. Warren S. McCulloch, *Embodiments of Mind*, Cambridge, Mass. 1965; Humberto R. Maturana/Francisco J. Varela, *Autopoiesis and Cognition: The Realization of the Living*, Dordrecht 1980; Francisco J. Varela, *Principles of Biological Autonomy*, New York 1979; Heinz von Foerster, *Observing Systems*, Seaside, Cal. 1981; Niklas Luhmann, *Soziale Systeme: Grundriß einer allgemeinen Theorie*, Frankfurt 1984.

II

The initially incomprehensible fact that the idea of the state founded on law seems to formulate a trivial tautology can be made comprehensible on the basis of this theory. And at the same time we can use it to clarify the historical context in which this idea received a specific direction. Basically, the “state founded on law” means nothing more than the fact that the law is valid because it is valid, even for politics. Even politics is subject to the law. The early modern significance of this maxim resulted from the fact that the modern state proclaimed itself as “sovereign” and, as such, claimed control over the law. At first, religion, morality and natural law were accepted as externally given constraints on state activity. But this remains, as one easily sees, a verbal affirmation without factual significance if one leaves the formation of positive law in the hands of the state. With the waning of ideas concerned with natural law at the end of the eighteenth century and with the rise of constitutional lawmaking founded on positive law (that still appealed for its legitimation to natural law principles), the problem of sovereignty became acute. And the idea of the state founded on law served to postulate the binding of sovereign authority to the law.

The concept of sovereignty goes all the way back to the Middle Ages.¹⁰ At first, however, it amounted to nothing more than the proclamation of the independence of territorial domination. The actual drawing of boundaries of political authority lay, as in all earlier systems of domination, in the fear of rivals and in the resulting necessity of coming to terms with those who were powerful in the land. Still, the early modern literature concerning “reason of state” (approximately 1590 – 1650) was determined by this problem¹¹ and therefore was not

¹⁰ Cf. Helmut Quartsch, *Staat und Souveränität, vol. 1: Die Grundlagen*, Frankfurt 1970.

¹¹ See the work that for a long time characterized the concept of “reason of state” as a problem and formed the point of departure for discussion: Giovanni Botero, *Della Ragion di Stato*, Venice 1589, quoted from the edition of Bologna 1930, especially pp. 120 ff. This literature repeatedly emphasizes that one must tolerate offenses against the law and take no

able to distinguish between a particular lord's retention of domination and the retention of the state. Things changed in this respect only with the internal political consolidation of the modern state from about 1650 onwards.¹² This same move, however, made the problem of sovereignty insoluble. The highest authority in the state cannot be understood as bound because otherwise it would not be the highest authority and therefore not sovereign. On the other hand, it is unacceptable that the sovereign should proceed arbitrarily. He makes his decisions free of the law,¹³ thus not bound to it. But also, one hopes, not in opposition to it. Thus the identity of the modern state is constituted paradoxically, viz., as an unbounded authority that is bound. And the idea of the constitutional state founded on law serves to resolve the central paradox. The state has the law at its command – but only in accordance with the law.

The liberal constitutional movement of the second half of the eighteenth and nineteenth centuries was quickly associated with a reconstruction of history that no longer understood the absolute state within its own historical situation but formed its own ideas about it. This produced the legends of the powerlessness of justice and that of the arbitrary violations of law by monarchs.¹⁴ The new age of political liberalism celebrated the triumph of the constitution which subjects the state, that makes the law, to the law and, in this way, situated the

notice of them if they are widespread or committed by those who are powerful, because this "dissimulation" is necessary for the preservation of the state. Among others cf., Lorenzo Ramírez de Prado, *Consejo y Consejero de Principes*, Madrid 1617, quoted from the edition of Madrid 1958, pp. 81 ff.

¹² Cf., Theodore K. Rabb, *The Struggle for Stability in Early Modern Europe*, New York 1975.

¹³ For the background and meaning of this maxim for the state founded on law cf., Dieter Wyduckel, *Princeps Legibus Solutus: Eine Untersuchung zur frühmodernen Rechts- und Staatslehre*, Berlin 1979.

¹⁴ See Regina Ogorek, "De l'Esprit de légendes, oder wie gewissermaßen aus dem Nichts eine Interpretationslehre wurde," in *Rechtshistorisches Journal*, vol. 2 (1983), pp. 277–296, and Ogorek, "Das Machtspruchmysterium," in *Rechtshistorisches Journal*, vol. 3 (1984), pp. 82–107. For the relevant theories of justice of the nineteenth century, see also Ogorek, *Richterkönig oder Subsumtionsautomat? Zur Justiztheorie des 19. Jahrhunderts*, Frankfurt 1986.

political paradox therein. In legal theory the concept of the state – originally a concentrated description of the political system¹⁵ – finally became the concept of law.¹⁶ The focus of politics on the state, then, meant that the political will had to assume legal form in order to find application to the state. In this interpretation the state is a juristic person, an creation of the legal system. And the actions of a politician who does not understand this have no effect, at least no legal effect.

III

If in this way one views the state founded on law as an achievement that subjects the power of politics to the law and confers effectiveness on it only as practice in accordance with the law, then the problem appears as one of constitution. As a legal precept the constitution has the function of domesticating politics in this sense or, if this does not succeed (as in Germany in 1933), at least of allowing it to appear as a constitutional offense. Actually the guarantee lies more or less effectively in the procedure that the law provides for conferring legal validity on decisions – starting from political elections through lawmaking and procedures of jurisprudence to parliamentary rules of order where, when things proceed as they should, motions that aim at an inadmissible change of the constitution are defeated.

¹⁵ Cf., Niklas Luhmann, "State and Politics: Towards the Semantics of the Self-Description of Political Systems," this volume, chapter III.

¹⁶ This hardly needs a reference citation. See e. g. Hans Kelsen, *Der soziologische und der juristische Staatsbegriff. Kritische Untersuchung des Verhältnisses zwischen Staat und Recht*, Tübingen 1922. Noteworthy as a deviation from this that focuses on liberal constitutional theory is the strong opposition to it in the theory of the state during the Weimar period in Germany and especially to the concept of the transformation of the basic norm as a rule of the juridification of the politics affecting the state. For Hermann Heller, the concept of organization surfaces here with the realistic view that the politician does not conceive the state as a legal person but as an organized unity of decisions and actions. See Hermann Heller, *Staatslehre*, Leiden 1934.

Viewed realistically, however, this is an extremely one-sided representation of the relationship of politics and law. It is historically comprehensible because of the supersession of the absolute state by the liberal constitutional state and factually grounded in the fear that someone who has enough political power could break the law in order to extend his or her position of power and withdraw it from democratic controls. As important as the premise of the constitutionality of the exercise of political power still is and as much as a politically open democracy still depends on it, the legality of political, collectively binding decision making goes far beyond it and has consequences that appear with the development of the welfare state. In this sense the state founded on law has a second side. This rests on the fact that the political system uses law as an instrument and consequently is subject to this instrument. Whatever politics would like to achieve and implement will not function without the law. And even with law it does not function particularly well.

Limited to the immediate threat of violence, politics would only be able to effect a very small and simple repertoire of actions. In this sense those who exercised "absolute" power in early societal orders, even if they were the only ones who exercised it, had very little power. They depended on loyal supporters in order to extend their power, especially territorially.¹⁷ And they often were the victim of these supporters. Bringing political power under the law appears at first like a restriction of arbitrariness. But actually it is an immense extension of the applicability of power. This is true of the almost arbitrary specification of rules and regulations. But it is also true of the procedure of enforcement. For, as one can see especially in the area of environmental law, not only is the government concerned with enforcing the law against the resistance of those who are affected by it, but also interested citizens, environmental protection groups and organizations like "Greenpeace" track down law-breaking or the omissions of governmental agencies and demand the enforcement of the law.¹⁸ In this way

¹⁷ Cf., as a sixteenth-century analysis of this, Etienne de la Boétie, *Discours de la servitude volontaire* (1574), quoted from the *Oeuvres complètes*, reprint Geneva 1967.

¹⁸ Cf., Gerd Winter, "Bartering Rationality in Regulation," in *Law and Society Review*, vol. 19 (1985), pp. 219 – 250.

governmental agencies are inhibited from proceeding in an indulgent, compromising or, on the local level, "political" way regarding the enforcement of the law. The authority of the state is bound, from outside as it were, to its own fetters. Political power receives a much greater range than it could obtain on its own through the acceptance of its being bound to the law. And a return to the arbitrary use of power would involve a considerable reduction of its political applicability.

This aspect of the state founded on law has not received much consideration so far from political theory and the theory of law. Nevertheless, it has a long history. One can, if one wants, go back to Jean Bodin who viewed a territory's unification of law as an essential instrument of the politically sovereign state.¹⁹ And the complexity of regulations resulting from this, together with all its bewildering effects, has long since been observed. Why must it be so ordered, asked the Marquis de Mirabeau, for the welfare of the button maker that buttons cannot be made from the same material as the rest of the garment?²⁰ Complaints about the stupidity and formalities of officials who administer the law are just as old. Today, however, the problems appear differently. On one hand, one has given up hope of using simple bourgeois principles like freedom of contract or the free disposition over property to eliminate this specter once and for all. On the other, the production of laws is at present connected to the democratic process of the formation of the political will with the result that year after year new regulations are crammed into an already highly complex legal structure that is accessible only to a few.

But perhaps the most important consequence is that the law, if it is continually changed, brings to light changes for those affected by this that otherwise would have remained unseen. Every change of the law creates persons who benefit from it and those who do not. It stimulates political hopes and political resistance. And as the proverbial wisdom of the Romans already knew: *spes addita suscitāt iras* (added hope

¹⁹ See Jean Bodin, *Six livres de la République* (1576), reprint of the edition of Paris 1583, Aalen 1961.

²⁰ Following Victor de Riqueti, Marquis de Mirabeau, *L'ami des hommes, ou Traité de la population* (1756), quoted from the edition of Paris of 1883, p. 90. See also pp. 123 f.

rouses anger). One may also assume that with the help of law (and equally with the help of the distribution of money) politics creates dissatisfaction that it feeds back into the political system as a further impulse.

Here too we have the state founded on law, although the other side. The political system should be bound to the law for the sake of inhibiting the misuse of political power. But now it finds itself entangled in the law by the fact that the law is at its disposal. Because of an apparently secure state founded on law the discussion today in the Federal Republic of Germany concerns itself primarily with questions that have been raised as a result of this political instrumentation of the law.²¹ The discussion records disappointments that occur as a result of the implementation of political intentions; as if one should expect that politics can achieve its goals with the help of the law. What has been established empirically speaks rather against this. But there is no theoretical explanation for it.

IV

The theoretical situation is basically different if one replaces the idea of an instrumental use of law by the theorem of the functional differentiation of systems. From the perspective of the politician, the law remains an instrument for the planning and carrying out of politics. From that of the jurist, the law remains a form of restricting politics and deterring the arbitrary use of power. From the perspective of a third observer, however, that of the sociologist, this is merely a matter of complementary modes of observation, of two sides of the state founded on law. The idea of the state founded on law formulates the boundary between politics and law where politicians can see, as in a

²¹ Among recent works see Gunther Teubner (ed.), *Dilemmas of Law in the Welfare State*, Berlin 1986; Rüdiger Voigt (ed.), *Recht als Instrument der Politik*, Opladen 1986.

mirror, only political possibilities. While jurists can see, as in the same mirror – but from the other side! – only legal possibilities.²²

A systems-theoretical description leads to the, at first sight, remarkable thesis that both the political system and the legal system are operationally closed systems, processing at any time only their own operations, and that it is precisely this closure that makes an intensive reciprocal influence possible. No theory of action, no instrumentalistic concept, no perspectives of “social engineering” could ever describe this state of affairs adequately because too many unintended consequences are in play. One would be better off not to speak of intervention or steering any longer – or only when one uses these to describe the ideas that a system creates of its environment.²³ If one, however, begins from a systems-theoretical basis then it can be shown that it is precisely the closure of the system and the accompaniment of self-referential controls that enable all operations to establish extremely high internal complexity. And through this the system can react to stimuli and irritations from its environment and particularly to changes in its environment, even more so than a system directly connected to its environment. Precisely because the political system only has politics in mind in all its decision making can it take up and “politicize” various questions of law in accordance with the political constellation. And precisely because the system of law processes all legal questions juristically can it open itself to political impulses. Then it can examine every stimulus to see how it can be transformed into law and with

²² This metaphor is suggested by a parallel with economics where the market has similarly been described as a mirror in which the producers see themselves and the consumers see themselves. Cf., Harrison C. White, “Where Do Markets Come From?” in *American Journal of Sociology*, vol. 87 (1981), pp. 517–547.

²³ At present, Gunther Teubner and Helmut Willke represent a very deliberate retention of concepts like steering and intervention. Cf., Gunther Teubner/Helmut Willke, “Kontext und Autonomie: Gesellschaftliche Selbststeuerung durch reflexives Recht,” in *Zeitschrift für Rechtssoziologie*, vol. 5 (1984), pp. 4–35. Cf. also, Helmut Willke, *Entzauberung des Staates: Überlegungen zu einer sozietaalen Steuerungstheorie*, Königstein/T. 1983; Gunther Teubner, “Das regulatorische Trilemma: Zur Diskussion um post-instrumentale Rechtsmodelle,” in *Quaderni Fiorentini per la storia del pensiero giuridico moderno*, vol. 13 (1984), pp. 109–149.

which structural changes the system of law would react to it. In this way whatever appears politically opportune is prevented from becoming law. But just because of this the political system is also free to form its own impulses purely politically without triggering immediate legal reactions and being burdened by them. Whether the political intention is capable of being transformed into law and how this is done and with what desired or undesired consequences is something that can be tested, and if necessary decided, only in the system of law itself.

Both systems, the political and the legal, learn to adapt to each other (just as to their societally internal and external environment in the broader sense) on the basis of their autonomy and the modes of observation provided by it. Precisely because both systems are determined by their own structure and at the same time, in the age of positive law, operate dynamically in the sense of continual structural change, they are in the position to react to each other's operations (that they themselves could never perform). Or to quote a typical statement from the research complex of modern systems-theory, "Our modern societies meet many problems that have not appeared before in the preceding age. This is a direct consequence of the growth of autonomy of social steering processes which lead to the discovery of new heteronomy, that could not be understood before."²⁴

Through the use of economic models, classical sociology had described this increase of performance as the effect of the "division of labor."²⁵ Differentiation, therefore, was understood as role-differentiation. This is something that has remained correct and important especially for the economy and particularly on the level of formally organized systems. But if one wants to describe modern society as a whole, it is more correct to focus on the functional differentiation of systems and attribute their success to the fact that society can achieve more independence and, on this basis, more dependence of the function systems on one another, i. e. it can achieve greater complexity as such. Whether this is for the greater good of mankind is something that today is increasingly questioned.

²⁴ Following Arnold Cornelis, "Epistemological Indicators of Scientific Identities," in Robert Trappl (ed.), *Cybernetics and Systems Research* vol. 2, Amsterdam 1984, pp. 683 – 690 (684).

²⁵ Cf., Georg Simmel, *Über soziale Differenzierung*, Leipzig 1890; Emile Durkheim, *De la division du travail social*, Paris 1893.

V

This concept offers different points of departure for comparative studies of the law. As before, one can investigate to what extent Western countries have implemented the institutions of the state founded on law, especially in politically sensitive areas like voting laws (if political elections occur as voting at all) or in questions of bureaucratic or police corruption.²⁶ But in this way one would examine only one side of the state founded on law, viz., the side that has been developed in the constitutional theory of political liberalism. This would be an extremely one-sided choice of themes. Still, within this point of view one could consider how far politically concentrated authority is prepared to cover and enforce claims that are grounded in private law. The *political* relevance of *private* law (that used to be called civil law in Europe, i. e. law of the political citizen)²⁷ is one of the most neglected themes. The political miracle of liberalism resides not only in the allowance of political opposition (and in this sense, democracy) but especially in the fact that at the same time it makes politically organized force available for the enforcement of legal claims whose emergence cannot be controlled politically.

Entirely different questions result from the instrumental use of law by political authorities, i. e. from the other side of the state founded

²⁶ An entirely different, much more difficult question is the one about the corruption of the politician. Whether this question is meaningful and how one is able to distinguish corruption from non-corruption (omitting extreme cases of official venality) would have to be discussed. Clear criteria arise only if and to the extent that politicians come to hold state offices (and even if this is as members of parliament) and thereby accept a special law governing their own behavior. Where the text talks of bureaucracy, this should be understood to apply in this case, too.

²⁷ In our context it is perhaps interesting to note that, according to an established theory, the prince is bound to the law because, as a member of the political community, he is himself a citizen (*civis*). Cf., e. g. Marius Salamonious de Alberteschis, *De Principatu* (1513), quoted from the edition of Milan 1955, especially pp. 28 ff. This theory was finally dissolved with the advent of the absolute state.

on law. There are numerous studies that show that and how political intentions encounter resistance to their implementation; that and how they are "rendered harmless" or are destroyed within the network of organizational authorities.²⁸ From the present account it would be interesting to find out how much a political intention is distorted by the fact that it assumes legal form and has to adapt to the existing system of norms even if, and precisely because, it wants to change. A good test case for this would be that of a politically explosive and pressing environmental law that has to be brought into agreement with the existing laws concerning the inspection of work places, regional planning, commerce, taxation and expenditure and many others.²⁹ And even here it would be an important question to ask whether and to what extent the implementation of the law should be left to the bureaucracy alone or whether it also depends on the perception of subjective rights by citizens and their filing suits or their monitoring the bureaucracy and putting pressure on it through spontaneous organizations (the so-called citizens' initiatives).

There are legal orders that operate in close connection with the state and therefore depend on the bureaucracy (e. g. Brazil's) and others that use subjective rights to delegate the motive forces for the implementation of the law. In one case the law is hamstrung by the inactivity of the bureaucracy, in the other by the apathy of the citizens. And both can be a thoroughly rationally calculated attitude (it does not pay; the prosecution of the action is risky and its outcome is uncertain). The choice of legal forms can be used within a limited range to steer whose attention and energy, whose legal consciousness or indifference it is that is called upon in order to enforce the law. On the other hand, the law is not free to avail itself of this because the forms that depend on bureaucracy as well as the system of suable subjective rights rest on highly complex social preconditions that are historically determined,

²⁸ Cf., the references above in footnote 5; cf. also, Jeffrey L. Pressman/Aron Wildavsky, *Implementation: How Great Expectations in Washington are Dashed in Oakland*, Berkeley, Cal. 1975.

²⁹ See for this, Niklas Luhmann, *Ecological Communication: Can Modern Society Adapt Itself to the Exposure to Ecological Dangers?* London/Chicago 1989, pp. 63 ff.

change from country to country and cannot simply be assumed as given.³⁰

On one hand, the perspectives of the law, the sociology of law and sociology in general have to be interconnected. On the other, adequate theoretical foundations have to be developed for this. The description of modern society as a social system that is arranged as an autonomous, operationally closed and thereby open function system is, I think, a productive theory. It releases the conceptuality of the state founded on law from political liberalism's theoretical perspectives concerning the constitution as well as from the political instrumentalism of this century's theories of steering without contesting the system-relative correctness of these points of view. Of course, the fruitfulness of this account does not exclude that other, competing descriptions could be developed. Till now, little of this has been seen. But, in principle, the complexity of modern society resides not least of all in the fact that many descriptions of this complexity can be formulated and not just one correct one.

³⁰ As a case study for this, see Volkmar Gessner, *Recht und Konflikt: Eine soziologische Untersuchung privatrechtlicher Konflikte in Mexiko*, Tübingen 1976.

VII. Societal Complexity and Public Opinion

I

Like so many political concepts the concept of public opinion stands under the spell of a long tradition. The distinctive character it still possesses today can be traced back to the eighteenth century. Previously it had long been part of political theory that the prince's fortress lies in the hearts of his people¹ and that he must heed the opinion of his subordinates.² And the list of the prince's virtues always reflected the people's expectations. Until the eighteenth century, however, the conceptual development of these ideas had been determined and obstructed by two different distinctions: by the old (not least of all legal) distinction of public and private and by the distinction of public and secret.³ This obfuscated the status of the counter concept of "public." The private individual was presented as the *civis* of the *res publica*. But at the same time the essence of important things in nature and in the civil republic

¹ In Niccolò Machiavelli, e. g. *Discorsi sopra la prima deca di Tito Livio* II, cap. 24, and *Principe* cap. 20, quoted from *Opere*, 7th ed., Milan 1976, pp. 288 and 110. This has, in time, become a standard quotation.

² See, e. g. Giovanni Botero, *Della Ragion di Stato*, 1589, quoted from the Bologna edition of 1930, pp. 78 ff. (Here on p. 138 there is also a kind of two-step flow theory: the prince must first win over the religious, *literati* and *virtuosi* and then with their help the remainder of the population.) Giovanni Antonio Palazzo, *Discorso del Governo e della Ragion vera di Stato*, Venice 1606, pp. 85 ff. with the requirement: to grant the freedom of speech in the republic (p. 86).

³ For the history of the concept see Lucian Hölscher, *Öffentlichkeit und Geheimnis: Eine begriffsgeschichtliche Untersuchung zur Entstehung der Öffentlichkeit in der frühen Neuzeit*, Stuttgart 1979. But the material presented here already contradicts the thesis (p. 7) that the distinction of public/secret had been replaced in the eighteenth century by that of public/private.

were also viewed as "secret." And more than two centuries of scholarly endeavor was needed to eliminate this semantics of the secret.

It was not until the eighteenth century that both distinctions were brought together and only then, in the last third of this century, did the modern concept of public opinion arise as the "secret" sovereign and as the invisible authority⁴ of political society. Public opinion was stylized as a paradox, as the invisible power of the visible. And in this semantic form it became the culminating idea of the political system. For the first time the result of communication itself was taken as substantive,⁵ and thereby became the medium of further communication. This fusing of two distinctions into one was purchased at the cost of a severe overloading of the concept which was accompanied with an equally strong idealized concept of the individual. For those who advocated this new idea, public opinion itself now assumed the task of censorship and exercised it objectively and impartially. While more conservative authors looked upon this impartiality with skepticism because it appeared to them one-sidedly directed towards critique and change.⁶

Equipped with this disputed semantics, one entered the world of the modern state, of the establishment of constitutions, and so of the distinction of state and society. Equipped with this semantics, and with strong words, one demanded a freedom of the press.⁷ Complexity was

⁴ Formulations of this kind that are typical for the time, e. g. Jacques Necker, "De l'administration des finances de la France," 1784, quoted from *Oeuvres complètes*, vols. 4 and 5, Paris 1821, reprint Aalen 1970, vol. 4, pp. 49 ff.

⁵ See Hölscher, *op. cit.*, pp. 105 ff.

⁶ Cf., e. g. Ernst Brandes, *Über einige bisherige Folgen der französischen Revolution in Rücksicht auf Deutschland*, Hannover 1792, p. 58 f.: "The desire to say something new is very attractive. It is much easier to excel in attacks on constitutions, standards and persons than in their defense where, in all honesty, one almost always must concede weaknesses and imperfections ..." p. 59.

⁷ Strong words under the motto "speak the truth among one another!" e. g. in Carl Theodor Welcker, *Die vollkommene und ganze Preßfreiheit nach ihrer sittlichen, rechtlichen und politischen Nothwendigkeit, nach ihrer Uebereinstimmung mit deutschem Fürstenwort und nach völligen Zeitgemäßheit dargestellt in ehrerbietigster Petition an die hohe deutsche Bundesversammlung*, Freiburg 1830. For the same emphasis in another context cf.,

never mentioned. And it was not until today that authors have come to the conclusion that the problem of complexity had already covertly guided the pens (or better: the presses) at that time.⁸

Actually this was not exactly the case. Otherwise one would never have been able to form a clear concept of public opinion as the opinions of individuals (at least of literate and thereby enlightened individuals). Otherwise one would not have been able very well to attribute to public opinion the function of a kind of arbiter in the political domain. And, above all, one would not have been able to expect that a consensus of public opinion – measured by what actual persons actually think – could ever arise. Talk of “public opinion” causes a misunderstanding of the problem of complexity within the concept. If one raises the empirical question, which concrete states and operations of which psychical and social systems are the source of this opinion, the concept in its conventional understanding dissolves. This does not have to mean that it must be abandoned. But it needs a reconstruction starting from a radical beginning. Only in this way can one validate the empirical reference and claims of precision of contemporary social sciences. And only in this way can one extract political implications from the concept that are explainable only through its history and which today cannot be employed scientifically or politically.

II

I will try to perform such a reconstruction in several steps – not least of all in order to make clear that at each step other options would lead to different results.

(1) The concept of public opinion refers to the social system of society. It does not refer to what actually occurs in the consciousness(es)

Johann Paul Anselm von Feuerbach, *Betrachtungen über die Öffentlichkeit und Mündigkeit der Gerechtigkeitspflege*, Gießen 1821.

⁸ As in Harlan Wilson, “Complexity as a Theoretical Problem: Wider Perspectives in Political Theory,” in Todd R. La Porte (ed.), *Organized Social Complexity: Challenge to Politics and Policy*, Princeton 1975, pp. 281 – 331.

of individual/many/all persons at a particular point in time.⁹ Thus what is meant is not what actual persons actually think, what they perceive, what attracts their attention or what they can remember. If this is what was meant, it would amount to an indescribable chaos of simultaneous difference, if and the impossibility of any co-ordination; for no other reason than for the simultaneity of experience. Therefore the restriction to the system-reference of society (instead of psychical systems) appears to be unavoidable if one wishes to save anything of the tradition of the concept.

Accordingly, public opinion is a matter of a communication network that does not force participation – in distinction to many other forms of private knowledge (for example, in the career area or wherever “education” [*Bildung*] makes a difference). Whether one reads, watches TV or listens to the radio or not, whatever one chooses remains at one’s discretion without having this intrude on the ideas about public opinion. One need not be astonished then that the effects of public communication – apparently perversely – can be observed as a loss of orientation for individuals.¹⁰

This only increases the problem of creating attention for anyone who wants to work in the medium of public opinion.¹¹ Attention is the psychical version of the “loose coupling” of public opinion. And without attention public communication cannot continue. Nevertheless, the assumptions about attracting attention follow social, not psychical, laws. Otherwise than in the court politics of the baroque state, they do not presuppose a knowledge of human nature. And as far as psychically mediated effects are concerned, they may reveal themselves as unrealistic.

⁹ Normally one presupposes the opposite as self-evident even if one has rejected the old idealizations. “‘Public opinion’ in this discussion may simply be taken to mean those opinions held by private persons, which governments find it prudent to heed,” is how it is presented in the, at that time, influential text of V. O. Key, *Public Opinion and American Democracy*, New York 1961, p. 14.

¹⁰ See Elisabeth Noelle-Neumann/Heinz Maier-Leibnitz, *Zweifel am Verstand: Das Irrationale als die neue Moral*, Zürich 1987.

¹¹ For such rules of attention cf., Niklas Luhmann, “Öffentliche Meinung,” in Luhmann, *Politische Planung*, Opladen 1971, pp. 9–34 (16 f.).

(2) In distinction to psychical systems, society is a social system that is constituted by communications and only communications. Of course, communication comes about only through a continual coupling with conscious (psychical) systems.¹² But the continual reproduction of communication through communication (autopoiesis) is specified and conditioned in its own network, regardless of what occurs in the minds of the psychical systems.

(3) Therefore communication cannot be understood as a “transference” of information, reports or elements of meaning from one side to another. Early information theory’s concept of information had already given up the metaphor of transference – and essentially the distinction of sender and receiver – when it defined information as a selection from a repertoire common to both sides.¹³ Thus an indispensable component of information already had to be present on the side that was to receive information. And so communication can only be understood as the dissemination of information within a system – as a dissemination that uses information to lead to information and in this way changes information as well as the state of the medium in which the information creates forms. Communication is the creation of an emergent reality, namely of society, that, for its part, resides in the continual reproduction of communication by communication. This may be the source of binding effects on individual conscious systems¹⁴ just as much as the source of fleeting or permanent irritations, dissociations and distrustful rejections, too. Whatever a consciousness initiates through its own communicative experiences remains its own business and leads to an indescribable multiplicity of forms. The emergence of an auto-dynamically reproduced communicative network merely offers

¹² Cf., Niklas Luhmann, “Wie ist Bewußtsein an Kommunikation beteiligt?” in Hans Ulrich Gumbrecht/Karl Ludwig Pfeiffer (eds.), *Materialität der Kommunikation*, Frankfurt 1988, pp. 884–905.

¹³ Cf., Klaus Kornwachs/Walter von Lucadou, “Komplexe Systeme,” in Klaus Kornwachs (ed.), *Offenheit – Zeitlichkeit – Komplexität: Zur Theorie der Offenen Systeme*, Frankfurt 1984, pp. 110–165 (116 ff.).

¹⁴ This is emphasized by Terry Winograd/Fernando Flores, *Understanding Computers and Cognition: A New Foundation for Design*, Reading, Mass. 1987, pp. 58 ff., 76 f. in connection with the theory of speech acts (Searle).

the opportunity to have such experiences again and again. It does not determine them.

The socio-phenomenological perspective already emphasized this independence of the "social construction of reality."¹⁵ But viewed methodologically as well as theoretically, this version still always presupposes a "subject" to which something appears as a "phenomenon." The question of why this subject is forces the postulation of the "person" (in the singular). But there is no empirical reference for this. The result is a description of the phenomena without stating anything about their subject.¹⁶ It is perhaps better, then, to go over to a theory of self-descriptive systems.

(4) If we start from these premises, public opinion can be understood as a *medium* in which forms are created and again dissolved through continual communication. Therefore, following Fritz Heider,¹⁷ we will distinguish medium and form. Media reside in a loose coupling of elements that are present in overabundance, while forms reside in the selection of such elements for a strict coupling. Forms can stamp a medium. And they assert themselves because of the underdeterminacy of the relations that are possible for the medium. Even the sounds and optical signs available to oral and written linguistic usage are forms in an underlying perceptual medium. And meaningful propositions are forms in the medium of language. If we assume all this — the idea of "public opinion" presupposes that conscious states are the medium that can be coupled to specific forms of meaning. This concept of medium, i. e. the medium/form distinction, is presupposed when we no longer view communication as the transfer of information but as the processing of information in a medium through which forms are

¹⁵ For application to research on mass media cf., Enric Saperas, *Los efectos cognitivos de la comunicación de masa: Las recientes investigaciones en torno de la comunicación de masas: 1970–1986*, Barcelona 1987, pp. 142 ff.

¹⁶ A typical representative of this position is Achille Ardigò, *Crisi di Governabilità e mondi vitali*, Bologna 1980.

¹⁷ See Fritz Heider, "Ding und Medium," in *Symposium*, vol. 1 (1926), pp. 109–157. Cf. also, Karl. E. Weick, *The Process of Organizing*, New York 1979, passim.

created and again dissolved; through which the state of the medium is continually changed.¹⁸

Of course, this is and remains a fiction cloaking the real conditions. In reality, conscious systems are structurally determined systems. They are what they are and do what they do. Therefore one can only speak of loose coupling because they are coupled only loosely to one another.¹⁹ Thus only in the case of the social system of society is there a public opinion that exists as a medium to establish strict couplings. In this case there is nothing that speaks for the possibility of attaining actual agreements. But there is a public communication that rests on this fiction and that also keeps it going. In other words, this particular kind of communication sees the opportunity of giving public opinion ever new forms. And it finds in this opportunity the law of its own autopoiesis. On the basis of the factual self-referential closure and uncoordinatability of conscious systems, it can imagine a medium that resides in this loose coupling of enormous amounts of elements. And thereupon — without any insight into the internal states of the conscious systems — it can assume that the forms that are treated as the opinions of public opinion actually bind this medium. Whatever is contained in the unity of the concept of “public opinion” is thus medium and form at the same time.

This radically changed theory design has far-reaching consequences of which only two are to be mentioned here:

(5) In relation to the tradition, this concept of public opinion renounces any implications of rationality as well as any manifestation of the specific irrationalities of “mass psychology.” Adequately rigid forms factually assert themselves in their specific medium, as for example

¹⁸ See also (with a surely different concept of medium) Kornwachs/von Lucadou, *op. cit.*, p. 120: “The dissemination of information is to be understood on the model of Huygen’s principle; i. e. a physical carrier’s property of being a channel is disseminated ... Every step is then sender and receiver simultaneously. At the same time this process of dissemination is attributed the characteristic of changing the very medium that carries it.”

¹⁹ This is, it should be reminded, unavoidable simply because they are active *simultaneously* and therefore cannot be co-ordinated causally or communicatively, something which co-ordination over longer sequences would presuppose.

perceptible things in the medium of air and light, prices in the medium of money, calculations in the medium of quantity. This is neither rational nor irrational. It happens by dint of the difference of loose and strict coupling. This is what is responsible for the "manipulability"²⁰ bound to a specific capacity. Judgments of rationality, however, are always judgments of an observer. And if one wants to know what one holds for rational or irrational, one must know one's criteria, one must observe the observer.

(6) The matter stands differently with the concept of medium in relation to the usual talk of so-called "mass media." The medium is public opinion itself. The press and broadcasting give form to this medium. They "transfer" nothing. They stam the medium that is tailored to and arises with them. And they owe their effectiveness to a long learning process in dealing with this medium.²¹ But this effectiveness cannot be measured by what people actually think. It lies solely in the capacity to couple and uncouple the medium and to use this to keep communication of a specific type going.

III

Public opinion is not presented and fixed by the press and broadcasting in just any forms whatsoever. Instead, specific forms of forming come into play. Thus the production of form itself is subject to restrictions

²⁰ "Public opinion has become so mighty a regulator of conduct, not because it has grown wiser, but because of the greater ease of ascertaining, focusing and directing it," believes Edward A. Ross, *Sin and Society: An Analysis of Latter-Day Iniquity*, Boston 1907, p. 25, in a, for all and intents and purposes, strenuous attempt to direct this public opinion himself.

²¹ Moreover, a learning process that set in during the first decades after the invention of printing, i. e. already in the fifteenth century, long before the invention of the concept of public opinion. A detailed investigation of this can be found in Michael Giesecke, *Der Buchdruck in der frühen Neuzeit: Eine historische Fallstudie über die Durchsetzung neuer Informations- und Kommunikationstechnologien*, Habilitationsschrift Bielefeld 1988.

that for their part rest on the fact that individual consciousness remains inaccessible. Forms always rest on distinctions. Therefore one must look for underlying distinctions with which themes can be created as forms of public opinion. Of course, this is always a matter of contents: of names, places and events. But notwithstanding this, one can also distinguish more general form-producing forms with which the continual coupling and uncoupling, the continual binding and renewal of public opinion works. These are distinctions of time, quantity, and in the social dimension, distinctions of positions of conflict.

It is known only too well that the press and broadcasting always have something new to report. They live off of discontinuity, off the events of the day; but also off of reports that underline the innovative value of opinions, fashions and misfortune. This contrasts them with the great deal of repetition that characterizes the lives of most persons. Participation in this innovative value is, thus, for the individual an opportunity to escape the routine of daily life with a glance through the window – even and precisely because one can always depend on the fact that the newspaper will be delivered every day at the same time and that broadcasted news will always be on the air every day at the same time. (It is no accident then that the metaphor of the window was also a popular metaphor of romanticism, of the first cultural style completely organized by writing and printing.) Thus the rhythm of life and that of reports is a matter of an organized difference that rests on the fact that an integration is impossible – which does not deny the fact that events trigger actions; that indeed like Chernobyl, they can create a downright disoriented (because extraordinary) pressure to act. Entire routines of creating reports live off of this difference. If nothing (unusual) happens on Sunday, then there is sports. The traffic accidents of the day are taped in order to be presented later. Events of central importance like elections and summit conferences are preceded and followed by analyses. In this way time becomes reflexive while the news resides in the fact that one can report that one does not yet know in what this news resides. Thus in Europe we have the cleverly chosen shibboleth of “1992.” And there is the similar argument of addressing a topic too late.²²

²² Cf. for this, Paula B. Johnson/David O. Sears, “Black Invisibility, the Press and the Los Angeles Riot,” in *American Journal of Sociology*, vol. 76 (1971), pp. 698 – 721.

As a result of this temporal structure of public opinion one cannot freeze its topics in. There can be topic areas (sports, stock market reports) in which new events occur routinely and which consequently gain a fixed place in reporting.²³ But the topics themselves acquire a history and go through a career starting from their discovery, introduction, high points through a phase of familiarity finally ending in redundancy. One can see this in the case of AIDS or de-forestation. Many topics enjoy a good chance of reactualization (terror, drugs) and result from a series of spectacular events. Others, above all reform subjects, cannot hold their own on the daily agenda. From time to time one must invent new names and points of attack in order to make them a subject of discussion. On the whole this presents a jumbled picture that, nonetheless, can be reduced to a unified principle: to the necessity of discontinuity, movement, temporal rhythmization. And consequently it belongs to political savvy to know in which phase in the career of topics one takes them up, uses them to promote oneself, profits from being on their bandwagon or, better, from jumping off the bandwagon.²⁴

All of this is well known. It is the subject of managerial staff planning and needs no further comment. A second form-creating form, however, works almost unbeknownst. Or in any event it has not yet attracted the same amount of attention. I mean the form of quantity. It makes a contribution to the ordering of the dimension of public communication. Like the temporal distinction of before/after, it is a form of difference, a two-sided form of more or less. And like time, quantity possesses a clarity that rests on the fact that there are only these two sides. One cannot supplement the binary form with further aspects; e. g. before/after/better or more/less/more useful. Valorizations have to be introduced in a way that cuts across these forms, i. e. they have to have their foundations outside them.

²³ It is surely no accident that these are domains in which quantification must take place so that anything new at all can appear as new. We will come back to this presently.

²⁴ These are old views of mass media research. For the resulting need for conclusive decisions (demand for closure), see e. g. Gordon W. Allport (Janet M. Faden, "The Psychology of Newspapers: Five Tentative Laws," in *Public Opinion Quarterly*, vol. 4 (1940), pp. 687 – 703 (702 f.).

Daily life has little to do with exactly determined quantities and with how to handle them. Husserl had already expressed the suspicion that idealized Galilean-Cartesian mathematics does not correspond to the concrete needs of the "life-world."²⁵ But only today has research begun to investigate the abstract distance of mathematics from the needs of the life-world and to try to ascertain the relevance of dealing with quantities in daily life and which forms of calculation actually come into play.²⁶ In any event one result of quantification is an explosive increase in the need for action and decision. It uncovers distinctions that otherwise would not have been noticed. Prices and their use in the motivation of consumers are a spectacular example of this. Educational reform movements would not have been able to get started without quantitative comparisons. And the same is true of the feminist movement. The data that guide economic policy are aggregate quantities and, I should like to say, completely different data from those in which businesses are interested. This again is the basis for the economic sciences and justifies their mathematization as a research strategy. And precisely because one cannot determine from a mere number whether it is good or bad, favorable or unfavorable, quantitative data are suitable for application to topics and interests. In this regard they do not attract suspicion.

Differences of time and quantity can easily be combined. The most recent statistics, increases and calculations demonstrate that specific values, market rates and quotas have gone up or down. To the extent that this becomes a topic of public opinion, an occasion for comment, if not an intervening action, arises. Quantities are thereby treated like facts. But this, of course, happens only if and to the extent that they

²⁵ Cf. Edmund Husserl, *The Crisis of European Sciences and Transcendental Phenomenology*, Edward Carr (trans.), Evanston, Ill. 1966.

²⁶ See Terezinha Nunes Carraher, David William Carraher, Analúcia Dias Schliemann, "Mathematics in the Streets and Schools," in *British Journal of Developmental Psychology*, vol. 3 (1985), pp. 21–29; Terezinha Carraher, Analúcia D. Schliemann, David W. Carraher, "Mathematical Concepts in Everyday Life," in G. B. Saxe/M. Gearhart (eds.), *Children's Mathematics*, San Francisco 1988, pp. 71–87; Jean Lave, "The Values of Quantification," in John Law (ed.), *Power, Action and Belief: A New Sociology of Knowledge*, London 1986, pp. 88–111.

bind the medium of public opinion and thereby direct the autopoiesis of public communication in one direction or the other. The medium/form-complex of public opinion forms an independent, self-moving, differentiated reality. It uses specific forms to produce forms, and it needs structural coupling with available attention, i. e. readers, listeners, watchers to do this. But it does not need any states of these systems themselves for this. It is not carried by conscious systems, it carries itself.

We are back on more familiar territory when we clarify the preference of public opinion for presenting conflicts. There is a form-producing form not only for the temporal and material dimensions but also for the social dimension. And it too is an explicitly two-sided form. A topic is presented as a conflict if one can show who occupies the position "for" and who the position "against." And it is understood that there are also undecided and middle positions. But these depend on the form of conflict and could not appear if there was no conflict to begin with. Conflict, too, is reflected in itself as something that should be brought closer to a "solution." And this is also where the paradox of public opinion, the invisible visible, finds its proper expression: conflicts in public opinion count as undesirable – and for this reason are preferably reproduced.

If one begins from the fact that two-sided-forms fascinate and bind the medium of public opinion in this way, then this has far-reaching consequences. The most urgent question is then: how is the unity of society observed and described if it must appear in this medium – if it must appear as permanence despite change, as a metaquantitative (qualitative?) unity and as a solidarity that relativizes all conflicts? The forms of forms determine what is and what is not seen, what is said and what cannot be said. Beginning from temporal discontinuity, from a quantity that is all too abstract and from social conflicts, society appears only negatively – as what is not grasped by the most fascinating forms, as the totality of what cannot be seen, as "puissance invisible." And perhaps this explains why we who are conditioned by this state of affairs are condemned to search for meaning.

Furthermore, the proposed theory leads to a better understanding of the meaning of time. It totally rejects the belief that what is permanent is better than what is passing or seeks the rationality of opinions in their justification in permanent forms – as if these were permanent

rational grounds or eternal values. Instead, it draws attention to the meaning of temporality for the difference of medium and form. If one were to abstract from time, then the assertion of the unity of loose coupling (medium) and strict coupling (form) would be a flat contradiction. The unity of public opinion and its topics would remain incomprehensible. This unity arises only in time, only out of the fact that the success of bindings has to be purchased at the cost of their dissolvability. Accordingly, forms are more successful but, also for this reason, not as permanent as the medium itself. Or in other words, the medium regenerates itself through the continual coupling and uncoupling of the forms that are possible within it. Just like language, through the constant formation of sentences that are soon forgotten or lose their informative value. Thus the unity of medium and form (the unity of this distinction) presupposes a memory that organizes the reuse of forms, i. e. that can remember and forget selectively.

IV

Far more than other function systems, the political system depends on public opinion. For politics, public opinion is one of the most important sensors whose observation takes the place of direct observation of the environment. Topics of public opinion, reports and commentaries in the press and broadcasting possess an obvious relevance for politics which at the same time conceals with its obviousness what actually is the case. It simply has to appear in the papers.

By fulfilling the function of concealing obviousness, public opinion plays the same role as tradition in earlier societies: to offer something to which one can adhere in a way that saves one from reproach. But while tradition included a semantics of a handed-down secret, the concealing function of public opinion remained unmentioned. It itself becomes "secret." This is offset by the rapid change of topics and an openness to what is new.

One can clarify this orientation with the help of the metaphor of the mirror.²⁷ In this case we no longer have a mirror of virtues in which the prince can recognize his better self but the possibility of observing how the observer himself *and others* are depicted by public opinion. In any event one does not see oneself in the mirror but only the countenance that one composes for the mirror and shows to it. But this is not all. In addition, by looking over one's own shoulder, one sees others who also act before the mirror: other persons, groups, political parties and versions of the same topic.

Whatever one sees is only a section that is determined by one's own position and movement. The effect rests completely on the intransparency of the mirror, i. e. on an uncoupling from everything that actually occurs in the minds of actual persons at the time in which one looks into the mirror. The differentiation of the medium/form complex of public opinion and the concealment of the true complexity of a great amount of conscious processes make it possible for politics to orient itself according to public opinion.

On one hand, this means that politics can only glimpse itself in the mirror of public opinion, embedded in the artificially chosen context of its own possibilities of movement. On the other, however, the mirror also reflects back to the observer less and at the same time more than merely himself. He also sees his competitors, intrigues and possibilities that are attractive only to others, not to him. Thus the mirror of public opinion, just like the system of market prices,²⁸ makes possible an *observation of observers*. As a social system the political system, accordingly, uses public opinion to make itself capable of *observing itself* and developing corresponding expectational structures. Public opinion does not serve to produce external contacts. It serves the self-referential closure of the political system, the return of politics upon itself. But self-referential closure is brought about with the help of an institution that permits the system to distinguish self-reference and other-reference, i. e. politics and public opinion, in the performance of

²⁷ The same metaphor is applied to the, for the observer, opaque market by Harrison C. White, "Where Do Markets Come From?" in *American Journal of Sociology*, vol. 87 (1981), pp. 517–547.

²⁸ See for this Dirk Baecker, *Information und Risiko in der Marktwirtschaft*, Frankfurt 1988.

its own operations and with it to construct a picture of the boundaries of its own possibilities of action.

In the context of a theory of the political system this transformation of the concept of public opinion has far-reaching significance. First of all, it forces the surely painful renunciation of expectations of rationality and hopes of a revitalization of civil republican "life."²⁹ On the other hand, it clearly indicates that the political system of modern society cannot be understood in terms of a central authority whose suitability (virtus) or unsuitability can be observed by the people. The place of the central authority is taken by the observation of observers, i. e. the self-referential closure of the system. To this corresponds the fact that the political code no longer rests merely on the distinction of those who have power and those who do not (government/governed) but on the side of power is coded with the help of the schema of government/opposition. This is the nucleus to which the concept of democracy must be reduced. Then one will also begin to understand that and how in the eighteenth century the idea of political opposition could separate itself from the old court factionisms and the problem of political rivalry. And why it needed a recourse to the "puissance invisible" of public opinion.

Under such conditions the freedom of the press and opinion cannot be adequately determined as a guarantee of rationality nor as a condition of a free life of the mind. Its suppression surely works repressively and burdens many domains of societal communication including daily behavior towards strangers, instruction in schools and the courage to make intellectual or artistic innovations. To retain the metaphor (of the mirror), this concerns the front of the mirror. Its specific political function resides, however, in transferring the form of self-observation of the political system into the reflexive mode of the observing of observers. For only when public opinion offers more than merely a centralized echo of political activity can a political system develop that maintains itself not only as a successfully effected identity but also attains closure at the level of the observation of observers.

²⁹ Today this is one of the many widely discussed vain hopes. Among others cf., John G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Political Tradition*, Princeton 1975; Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*, London 1981.

VIII. Participation and Legitimation: The Ideas and the Experiences

I

Political ideas and intellectual fashions today are progressively subject to erosion. After barely twenty years of discussion one looks back upon the call for gradually increasing participation as upon a concluded phase of the modern history of ideas. One speaks of the generation of the 68er's whose time has passed. But their intellectual and political ambitions have left traces behind. Organizations have become accustomed to a greater measure of individual recalcitrance. Regulations determining a voice in matters have become a routine part of the life of institutions and have acquired the character of unavoidable bureaucratic formalities. The guiding ideas, however, have lost their effectiveness. Today it is hard to believe how very intense the hopes connected with the calls for participation were and how naive the ideas about what could be attained and of the costs. The protagonists of this movement – today in their best years – complain about the change and talk of “post modernity” as if the future holds the possibility of nothing of importance. They describe, in this way, their own situation: the loss of perspective, of political will, of passionate rhetoric. Obviously, individuals are no longer interested in emancipation (if they ever were) but only in themselves. Obviously, individuals are more individual than had been thought. Or they direct their aggressiveness in other directions. This has come to be known as the “new individualism.”¹

¹ Cf., for example, Ulrich Beck, “Jenseits von Stand und Klasse? Soziale Ungleichheiten, gesellschaftliche Individualisierungsprozesse und die Entstehung neuer sozialer Formationen und Identitäten,” in Reinhard Kreckel (ed.), *Soziale Ungleichheiten*, Special volume 2 of the journal *Soziale Welt*, Göttingen 1983, pp. 35 – 74.

Very similar observations can be made in reference to "legitimacy." This too is a *passé* theme. But this does not mean in any way that the decisions of political big-wigs find more consensus today than they did before or that the popularity of governments is more secure. For Germany, at least, the opposite is the case. But the noisy dramatization of the problem of legitimacy made sense only when one saw the possibility of creating legitimacy — above all, through better participation. As strange as it may seem in hindsight, the expectation was that more participation would lead to more agreement — and not perhaps to more disappointments. To this extent the two themes of participation and legitimation were inseparable, and for this reason they have faded.

In this situation of diminished enthusiasm we have the chance to take a sober look back. What were the ideas? What were the consequences? What did not function as expected and why? And above all: what did we learn about the peculiarity and specific problems of modern democracy?

II

It seems to me appropriate, indeed necessary, to discuss these questions within a broad historical horizon, i. e. in comparison with structural and semantic specifics of pre-modern society. Ultimately, the concepts of participation and legitimation have a medieval origin. And if their transference into modern relationships has not succeeded, then the reason may very well reside in the fact that too much from the old stock of ideas has been carried over into circumstances that have changed.

The old sense of participation means nothing more than what the word says: *to be a part of the whole*. But how can individuals with bodies and souls, with organisms and consciousnesses, be or become part of society? In past society *individuality* was conferred through inclusion, i. e. through social relations. One was an individual only among acquaintances and friends, only as a member of a household, family or stratum — and not as an outsider or vagabond, as a stranger

with poor and meager chances in life. To the extent that modern society developed its own structures, this idea has been abandoned. Most recently, since the second half of the eighteenth century, individuality is defined through *exclusion* – for example, in the well-known and successful formulation: the individual is a subject or even *the subject as such* that underlies everything.

This new order of the semantics of individuality has been necessitated by a structural change in society. Modern society is arranged primarily into function systems for the economy, politics, religion, education etc. This excludes distributing individuals throughout these subsystems in such a way that every one of them belongs to one and only one of these (sub)systems. Instead, everyone has to maintain access to all functions. The principles of inclusion are for their part differentiated functionally. Of course, it is still true that people can live only on the basis of a societal order. But *the* society does not appear *within society*. It almost has the attributes of the concept of God: to be present in a certain way everywhere and nowhere.

Accordingly, the inclusion of the concrete, bodily individual within the whole of society cannot occur within the society differentiated into specific function systems. Inclusion within society means exclusion from all function systems, i. e. exclusion from society. Inclusion within the whole means exclusion from the parts. But what is the whole if it cannot be a part of the whole? If it cannot be represented in the whole by any part?

It strikes one as odd that this paradox could be skipped over by German Idealism with the thesis of the individual as the subject of the world and then turned into a celebration, especially in the concept of “education” [*Bildung*], while at the same time an entirely different reality – one that affects the upper stratum (*ennui*) and lower stratum (alienation) in the same way – is already detectable within a conceptual tradition that starts from “*ennui*” (boredom) and passes through “alienation” to “*homme-copie*” (mass-produced man) (Stendhal). The old concept of participation breaks apart as a result of these tensions. If one pins new hopes on *procedure*, then these hopes are projected, from the beginning, on much too small a scale, without a sense of proportion and a feeling for reality. This is true of regulations about having a voice in organizational matters as well as for the grand idea of a possibly effective “domination-free discourse.”

The situation is analogous with the idea of legitimation. It had meaning only as a legal principle and only under the presupposition of natural law.² It assumed the presence of a hierarchy of legal sources and, on the structural level, a stratified society. These premises, too, collapsed in the second half of the eighteenth century and were replaced by a theory of positive law. Accordingly, legitimation was understood only as a factually competent, enforceable exercise of political authority. And the reintroduction of a materially exacting concept of legitimacy by Georg Jellinek and Max Weber does not come up to the level of the old formulation of the problem at all. It merely aims at a factually prevailing consensus. The more recent discussion of the sixties and seventies shows quite clearly that this label of legitimacy is really used only as a pretext for debates concerning the popularity of governments and political rhetoric. Of course, I do not wish to deny that these are valid themes.³ But one should not let himself be misled to illusionary ideas as a result of the choice of the term "legitimation." It is solely concerned with the predictive and practico-rhetorical problems of re-electing or not re-electing governments — no more, no less.

Against the background of such an analysis the disaster of the twin ideas of participation and legitimation appears, on one hand, as foreseeable and, on the other, as not so bad after all. History does not come to a halt because of it nor do the hopes for democracy, for securing and improving democratic political systems, have to be sacrificed. One need only inform oneself more radically and consistently about the structural character of modern society and, above all, take seriously the historically unique difference that distinguishes modern society from all historically preceding societal formations. As long as one wants to hold fast to historically encompassing concepts, then these have to be viewed more abstractly from the beginning — perhaps

² And if at present, then only in this way, according to Luis Legaz y Lacambra, "Legalidad y Legitimidad," in *Revista de Estudios Politicos*, vol. 101 (1958), pp. 5–21.

³ Cf., for example, Gerhard Franz, "Zeitreihenanalysen zu Wirtschaftsentwicklung, Zufriedenheit und Regierungsvertrauen in der Bundesrepublik Deutschland: Entwicklung eines dynamischen Theorieansatzes zur Konstitution der Legitimität der Regierung," in *Zeitschrift für Soziologie*, vol. 14 (1985), pp. 64–88.

on the level of concepts like social system, communication, action, complexity, selection, evolution, self-reference etc. Historical concepts like participation or legitimation cannot be taken over without controls. Instead, these concepts have been used to place expectations within contexts where they cannot be fulfilled and therefore provoke disappointments. If "critical theory" wants to do this, then it may have to accept the political responsibility for it.

III

The attempt has been made to strengthen the opportunities for participation within organizations and to reintroduce the question of legitimation into political communication. What has come of all this? And above all, how is one to judge what has resulted?

Organizations are social systems that produce decisions with the help of decisions.⁴ Therefore the strengthening of the possibilities of participation within organizations amounts to an increase of decisions. More decisions are necessary if decisions are shifted to committees where those affected or their representatives have to decide whether they want to agree with a decision or not. Such committees have to be prepared, both regarding the subject matter as well as tactically. The decision process is reflexive. Everyone has to decide how one wants to decide. Most of all, this reflexive decision process has to be discussed in advance. In this way the reflexivity of deciding is shifted to a third level. One has to decide about how a representative ought to decide about decisions.

At first, one is struck by conspicuous parallels with normal behavior in bureaucracies. The normal bureaucratic process constantly makes decisions about decisions. Decisions are made possible or impeded by decisions. Or if one cannot decide about this decision, then it is deferred by decision. This is precisely how one behaves in the participatory

⁴ Cf., for this and for what follows, Niklas Luhmann "Organisation und Entscheidung," in Luhmann, *Soziologische Aufklärung* 3, Opladen 1981, pp. 335 – 389.

procedure. Legitimizing strategies also provide striking parallels – for example, the strategy of legitimating one's own plan by providing an impossible alternative.⁵ Like a puppet within a puppet, participation develops into an organization within an organization, into a bureaucracy within a bureaucracy. The result can be condemned as bureaucracy and praised as participation. This double evaluation has an immobilizing effect: one affirms in principle what one condemns in execution. The individual resigns him- or herself and is satisfied with individual strategies of managing, increasing influence and also of defense and self-immunizing.

As far as this result itself has been a goal of structural reforms, the goal has been attained. As far as structural reforms were to have been enacted with it, the procedure has not proved itself. Obviously, democratic bureaucracies are also subject to the law of bureaucracies: to minimize changes.

Wherever one has to produce results within a specified period of time, discernible ineffectiveness, overburdening and stupidity unquestionably obstruct the full realization of the principle of participation. Especially in industrial firms that have experimented with participation the hoped-for participation in power has not brought about the intended decentralization. Investigations in Yugoslavia and Chile have shown this.⁶ Only in universities has a far-reaching realization shown itself as possible. In this case very distinctive symbioses of participation and individuality have resulted that were not foreseen by the semantics of participation. On one hand, the self-crippling of the organization through participation made it possible for teaching and research to be

⁵ Cf., Nils Brunsson, "The Irrationality of Action and Action Rationality: Decisions, Ideologies and Organizational Actions," in *Journal of Management Studies*, vol. 19 (1982), pp. 29–44.

⁶ Cf., A. S. Tannenbaum/J. Zupanov, "The Distribution of Control in Some Yugoslav Industrial Organizations as Perceived by Members," in A. S. Tannenbaum (ed.), *Control in Organizations*, New York 1968, pp. 91–109; Veljko Rus, "Influence Structure in Yugoslav Enterprise," in *Industrial Relations*, vol. 9 (1970), pp. 148–160; Josip Obradović/William N. Dunn (eds.), *Worker's Selfmanagement and Organizational Power in Yugoslavia*, Pittsburgh 1978; Darío Rodríguez Mansilla, *Formación de oligarquías en procesos de autogestión*, Santiago, Chile 1982.

carried out individually, almost as if outside the organization. On the other, the inflated organization that continues to grow in participatory resistance makes an individual existence, as participation-bureaucrats, possible for those who do not succeed in teaching and research as well as an individual reputation regarding their ability to deal with the circumstances. What was always true for bureaucrats is also true for democratic bureaucrats: they are anything but "impersonally" operating "machines." Instead, they are internally transparent and manipulable for themselves precisely as a result of a knowledge of human nature. At the same time this is the best protection against observation and manipulation from outside or from above.

The politization of the theme of "legitimation" has also had peculiar, unintended effects, although in this case it is much more difficult to describe them concretely and to trace them to their causes. My impression is that the thematization of legitimation does not have a neutral effect as far as the politics of legitimation is concerned but tends to greater delegitimation. In other words, if one raises the question of legitimation and articulates it against the background of universal values and goals, then the probability of a negative answer is greater than that of a positive one. The reason for this is simply that the perspectives of values reduce the complexity too severely, i. e. that it is easier to communicate about values than about realities.

The German political parties have — in part regarding German constitutional basic values preferences, in part the heated question of legitimating concepts — committed the mistake of campaigning for values in their party platforms (which is as easy to do as it is superficial) without protecting themselves against unavoidable disappointments through realistic diagnoses. They have gone to the polls with their good wills but not their assessment of societal reality and the boundaries of what is politically possible. In this way they have ventured upon a rhetoric that is trivial and ultimately invites voter decisions based on personalities. Yet they have not succeeded — if you pardon me for this very broad judgment — in finding and offering suitable personalities. The effect is clear: a lofty, self-satisfied, moralism in daily political discourse and the germination of an aversion to the entire "system."

Of course, this evaluation can and has been contested. Of course, a different political judgment is also possible and perhaps even probable.

The reduction of concrete phenomena to a simple lack of semantic control over ideas projects a very simplified picture of societal reality that has to be worked into, and thereby relativized within, a much more complex theory of society. This cannot be presented here even in outline. Above all, those who are committed to questioning the legitimation of persons in power and to the requirement of more participation will not give up their ideas and with it their politico-intellectual identity. They will consider societal circumstances, not the ideas, as the true causes of disappointment. They remain oblivious to this. Today, after extensive research on causal attribution, one knows that attributions can be made in very different ways.

To be sure, one would then have to expect that there actually is a theory of society that explains how a society that, on the level of ideas, is in constant opposition to itself and transfers the most important values and goals to this opposition, reproduces itself. The paleo-Marxist theoretical apparatus – it is better not to speak of the neo-Marxists – tried to do just this. But it viewed the difference of structure and ideas as a transient historical phenomenon that will collapse in the necessary coming revolution. The weakness of the theory was built into the theory itself as the assumption of revolution. Consequently the theory blinded itself to the future because it could not see anything beyond the time of the revolution, i. e. beyond its own weakness. This is unacceptable to the extent that its future becomes our past. Therefore one must begin anew if one wants to retain this formulation of the problem of the interconnection of ideas and social structures that has been made so far *only* by Marxism. And I doubt whether such a reconstruction can provide a more favorable assessment of the enthusiasm for participation and the critique of legitimation than the one indicated here.

IV

For a more *prima facie* mode of consideration, at least, it appears that the theme complex of participation/legitimation has lost steam and has been replaced by new, different themes. No one, however, is willing to

issue its death certificate, because this would appear as if he or she were against participation or straight out believed that the present practice of domination is legitimate. Whoever holds that it is merely the formulation of the theme that is unproductive would do better simply to set it aside and take up new themes. In this way intellectual fashions vary, changes in trends come about, ever new "avant-gardes" are formed without ever rejecting what was abandoned and without establishing a process for gaining knowledge.

The new themes concentrate on the problems of the welfare state and the way in which modern society exposes itself to ecological dangers. The avant-gardists of yesterday view this merely as a deceptive strategy of capitalism and a concealment of the real problems of injustice and poverty.⁷ But instead of being more innocuous, the new themes are more explosive than the old ones. They lead to paradoxes that destroy the old postulates like participation and guidance from values which one had used to acquire legitimacy.

It is paradoxical if one has to see that modern society endangers itself through the structure of its rationality in the economy, science, medicine, education and politics when it creates an environment in which it can no longer maintain itself and continue. For this means that if one acts rightly, then one acts wrongly.

It is also paradoxical if one has to see that the politics of the welfare state creates problems because it solves problems and can solve problems only by creating them. For a long time one could believe that the most important problems of society could be solved through political planning and taxation and that the remaining problems or their unintended consequences lay in the context of acceptable costs or tolerable inconveniences. Today the situation appears the opposite: work on many minor daily problems develops into large problems that are no longer solvable.

Thus could it be that our society is a paradoxical system or at least that this forces its self-reflection to describe its unity as a paradox? If this is true, then it is obvious that such a structural problem cannot

⁷ Cf., for example, Norman J. Faramelli, "Ecological Responsibility and Economic Justice," in Ian G. Barbour (ed.), *Western Man and Environmental Justice, Attitudes Towards Nature and Technology*, Reading, Mass. 1973, pp. 188–203.

be solved by requiring more participation or by determining that society constantly disregards the values to which it feels bound.

I refuse to hand this problem back to theology which one traditionally assumed had a competence for paradoxical communication.⁸ I am also unconcerned with a therapy of counter-paradoxing presented by some Milanese therapists.⁹ But one might consider whether democratic politics does not offer the possibility of de-paradoxing the paradox when it resolves it into a sequence of opposed, simultaneously-impossible options.

One is accustomed to conceive the spectrum of political parties as a permanent antagonism of right and left political orientations. One can speak of democracy only when the antagonism is legally and morally permitted in such a way that it is not the case that only one side is presented as good and permissible while the other is presented as bad and forbidden. Only under this condition can the voters elect, i. e. determine the governing group through their decision. This presupposes not only a legal but also a moral neutralizing of options. Those in the government are required to give moral respect to the opposition and vice versa.¹⁰ The democratic attitude reveals itself in the acknowledgment of the morality of one's opponent. This is the condition for the functioning of a binary political code that guides all of politics according to the question of who is in the government and who is in the opposition.

This code is the instrument for de-paradoxing politics because it – not always effectively! – excludes the possibility of one party being in power (in the government) and out of power (in the opposition) at the same time. On this basis there can be alternating options that succeed one another in the government and in the opposition. The politics of the welfare state can then be pursued restrictively and expansively – not simultaneously, but successively and under the

⁸ Cf., Niklas Luhmann, "Society, Meaning, Religion – Based on Self-Reference," in *Sociological Analysis*, vol. 46 (1985), pp. 5–20.

⁹ Cf., M. Selvini Palazzoli/L. Boscolo/G. Cecchin/G. Prata, *Paradosso e Controparadosso*, Milan 1975.

¹⁰ In particular, see for this, Talcott Parsons, "'McCarthyism' and American Social Tension: A Sociologist's View," in *Yale Review*, vol. 44 (1955), pp. 226–245.

observation and assessment of its results. Similarly, ecological problems can become so urgent that they take precedence over economic considerations in order then, in turn, to give way to these. The asymmetrically directed structure of time makes it possible to do opposed things in succession and to put decisions about this to the vote. Of course, this can function only if an adequate measure of liquidity or liquidifiability of resources and commitment is guaranteed or if constantly new problems arise for which politics is not yet equipped.

If this analysis accurately grasps essential premises of democracy, it is obvious that nothing can be accomplished through regulations granting a voice in organizational affairs and that questions of legitimation can be raised at best only in regard to the conditions of maintaining an open, coded system. Government and opposition are interconnected and form a code through the ease with which they can change places – or they remain so general, so ideal, so indeterminate and so trivial that they do not distinguish political options and contribute nothing to actual politics.¹¹

Within this concept much of what was established under the title of participation can be retained and developed. This is true particularly for the organized representation of interests. It is precisely when political choice opens the possibility to a radical change of direction with irrevocable consequences that an institutionalized forum of those affected is advisable. Procedures are also necessary to test and gain the consensus of those whose cooperation is needed to carry out these measures. But these are old maxims that are exalted by the term “participation.” They belong rather in the domain of what one today calls “new corporatism.” This has nothing to do with the original intention of the concern for more participation, with an improvement of the chances of individual self-realization. But if the formulation of

¹¹ Remarkably, there are adequate conceptual formations for this only in the somewhat inaccessible domain of philosophical theories about personality, freedom and weaknesses of will. Cf., among others, Harry G. Frankfurt, “Freedom of the Will and the Concept of a Person,” in *Journal of Philosophy*, vol. 68 (1971), pp. 5–20, or Richard C. Jeffrey, “Preferences Among Preferences,” in *Journal of Philosophy*, vol. 71 (1974), pp. 377–391.

the problem is switched, one should also switch the terminology in order to avoid constantly reproducing false expectations.

Thus it would perhaps be better if a theory of democratic politics was uncoupled entirely from ideas about participation and about legitimation through values and, instead of this, the options with which the people can determine and re-determine the political course for some time were worked out in detail better and then put to the vote.

IX. The Future of Democracy

I

The future of anything is an occasion for concern. This is its sense. And, naturally, this is also true for the future of democracy. The more possibilities the future holds, the greater the concern. And this, now, is true especially for democracy, because democracy is, if anything at all, an immense field of possibilities of future choice.

Around 1800 the concept of democracy began to be valued precisely because of its internal impossibility: as the illusionary component of all future constitutions, as the concept of the future. This appears to have become commonplace, but it does not seem to agree well with the concept itself. Today, we are not satisfied with an illusionary concept nor do we have as much optimism concerning the future.

If one is to judge the chances of and the endangerments to the future, one would surely like to know what it is about. It is not enough here to join in the current discussion between the avant-gardists of stagnation and the post-gardists of modernity that is conducted under the title of "post modernity." For systems-theory it is not surprising that there are two possibilities of formulating a paradox. But in the matter of democracy this does not get one very far. Depending on which concept of democracy we choose, the future of democracy appears different. And each different future also creates problems in the present that one believes others do not see or do not take seriously enough. If democracy is about reason and freedom, about emancipation from societally conditioned tutelage, about hunger and need, about political, racist, sexist and religious suppression, about peace and about worldly happiness of any kind, then things, in fact, look pretty bad. And indeed so bad that the probability is great that everything that one does to counter this only makes matters worse. I will leave it to others to talk about these things.

But even with a narrower concept of democracy, restrictive decisions have to be made if one wants to stand on firm ground. In other words,

here, too, impossibilities and extreme improbabilities must be excluded from the concept. Democracy is *not*:

(1) *Domination (Herrschaft) of the people over the people*. It is not short-circuited self-reference in the concept of domination. Thus it is not the determinate negation [*Aufhebung*] of domination, the annulling of power by power. In the language of the theory of domination this is the only possibility for expressing self-reference. And this may also be the reason why the word "democracy" has survived. But, theoretically, the assumption that the people can dominate itself is unusable.

Democracy is *also not*:

(2) *A principle that states that all decisions have to be made in such a way that they are capable of being participated in*. For this would mean that all decisions could be resolved into decisions about decisions. The result would be an never ending increase of decisional burdens, a gigantic tele-demo-bureaucratization and a hopeless opacity in the relationships of power that favors insiders who can penetrate this; who can see and swim in these murky waters.

Instead of this, I propose to understand democracy as the *bifurcation of the top*: the bifurcation of the top of the differentiated political system by the distinction of government and opposition. In the terminology of systems-theory, one can also speak of the *coding of the political system*, whereby coding means nothing more than that the system orients itself according to the difference of positive and negative value: according to the difference of true and false in the case of science, of the difference of immanence and transcendence in the case of the religious system and, in the case of the political system, according to the *difference of government and opposition*.

This coding solves a fundamental paradox that appears in all systems with organized differences of power. If within a system – I exclude external relations here – there is superior and inferior power, then one also finds in it a true powerlessness of those who hold power and, conversely, a power of those who do not. The theory of the absolute state had already dealt with this problem and understood it as a kind of balance. The differentiation of government and opposition has given form to it; has, so to say, de-paradoxed the problem. The opposition does not have the power of the government. Therefore it can assert the power of those who are out of power.

As long as society as a whole was ordered hierarchically according to the principle of stratificatory differentiation, such a bifurcation of the top was inconceivable or had been associated with experiences like schisms and civil wars, i. e. disorder and calamity. Only if society is structured so that, as society, it no longer needs a top but is arranged non-hierarchically into function systems is it possible for politics to operate with a top that is bifurcated. In this, at present, unavoidable situation politics loses the possibility of representation. It cannot presume to be – or even to represent – the whole within the whole. But it acquires the possibility of its own coding.

One can easily test this statement. As soon as politicians with Mosaic pretensions appear and wish to order society as a whole, democracy presents them with problems. They experience democracy as an attempt to obstruct them in the fulfillment of their task. As Marcel Gauchet has shown quite elegantly, they operate with another difference in mind: with the difference of how things are and how they ought to be or with the difference of immanence and transcendence. In this way they create a system-internal opponent, more precisely enemies, and legitimate their position in this internal difference by contrasting it with the external difference.

Although everyone talks about democracy there are no adequately precise ideas about this coding of politics. As with all codes, one has to distinguish a positive value “government” and a negative value “opposition.” Although the one value is reflected in the other and a reciprocal relationship exists, the structure is asymmetrical – so to say, symmetrical and asymmetrical at the same time. It is also remarkable that one avoids the simultaneous rule of government and opposition à la Roman consuls and can still synchronize the binary structure. The opposition is present in everything the government does just as the opposition always takes its lead from the government – for from where else? The code is instructive precisely because both do not rule together, i. e. precisely because a consensus is not forced. It constantly produces system-internal information that, then, determines the meaning of what is advantageous to the government and what is advantageous to the opposition. All this is achieved because of a small temporal difference: the possibility that governing and opposition parties will switch places in the next election.

It is no exaggeration, then, if one considers this bifurcation of the top, this coding of the political system, a highly improbable evolutionary achievement. Political power is primarily coded otherwise, viz., through the distinction of superior and inferior power or, as in the theories of the state of the second half of the eighteenth century, through the distinction of (superior) public and (inferior) private power. The univocality of the difference of power had been the driving force and goal of the differentiation of a specific political system. This, of course, has not been abandoned, but relativized, through a kind of binary coding, through the supercoding of the superior power into a positively and negatively valued position. And at the same time one refuses to endow the authority of the government with the authority of right opinion. Instead, there is a "public opinion" that changes capriciously, at one time favoring the government at another the opposition. The highest authority is made unstable. And it would be a self-deception to confer it now, as the covert sovereign, on public opinion or even the people. The structural gain lies rather in the instability as such and in the sensibility of the system that is created by it.

For its part, this structural achievement correlates with the differentiation of the political system as one of the many function systems of society. This differentiation means that the political system must operate within – not above – a highly complex societal environment that is constantly changed by auto-dynamic function systems. The economy fluctuates. Science creates atom bombs, contraceptive pills, chemical changes of all kinds. Families and schools no longer produce the coming generation that the military would prefer. In brief, things are made chaotic for politics. And therefore it can continue to operate only as a closed, I would like to say, autopoietic system that has to code and program itself for contingency. The structural innovation emerging from this as a result of mere historical chance has received the name of democracy.

II

Of course, there are other concepts, other theories, other possibilities of judging the circumstances. But if things are as I believe: then what would be the future of democracy? Or more exactly: what would be the present of this future and what could appear within the present political reality as the problem of the future and as the point where this truly improbable structure is endangered?

If the whole is highly improbable, then there is much to indicate that it cannot be maintained but will degenerate into so-called popular democracies. If the code is to be retained, this will surely require special efforts and especially, as an optimist concerning theory, I believe, a more exact – i. e. restrictive – description of the phenomenon. With such a description one can, at least, bring attention to points where functional shortcomings can be acknowledged. Without making any pretension to completeness, I will select three such points.

(1) The code that stipulates that everything that can be made politically relevant – that serves either the government or the opposition – seems to guarantee a great measure of openness to events and information. It also seems to function like a kind of built-in continuous stimulus for pursuing themes and innovations. On the other hand, once spontaneity is guaranteed, structures are formed on its basis that restrict further possibilities. Expectations and practices become fixed. Everything that ensues has to conform to these structures or try to change them in a specific way through measures that either conform to the structures or try to change them in specific ways etc. until imagination, resources or the willingness to cooperate are exhausted.

This self-despontaneification – a great part of this word I owe to an American colleague – is a very general developmental process of autopoietic systems. The political system is no exception. Even alternative groups and Green parties find themselves exposed not only to an imposed order, not only to pressures to adapt but also to this process of self-despontaneification. In the course of time they begin to lose steam. To counter this, attempts can be made to reintroduce disorder into the system. Art provides good examples of this through an almost simultaneous and therefore rapid process of “creating works only for museums” [*Musealisierung*] and reintroducing disorder. In politics this

process does not proceed any faster than public opinion allows. Even if it succeeded, the alternation of *self-despontaneification and recreating chaos* is part of the political system's own dynamic process *with no inherent guarantee that important socio-structurally pre-given themes are adequately expressed in it*. The political system always reacts – through binary coding – primarily to itself and only secondarily – through self-produced information – to whatever it can observe in the environment.

(2) With my second point I would like to tailor this formulation of the problem somewhat more precisely to the structural properties of party democracy. Today one can assume (which in the nineteenth century one could not) that the liquidity of the code is supported by a fixed party structure so that, in the form of political parties, the political efforts of organizations can outlast the change from government to opposition or from opposition to government. So far so good. But this makes another problem even more serious: using the code-difference to decide important political questions.

Under democracy one believes that by electing of one party or party group a decision is made about a political program that differs from that of other parties. This would assume that party programming is of a contrary nature – perhaps of the type: conservative/progressive or, since this no longer holds, restrictive/expansive welfare state type of programming or, if for economic reasons there is no margin for this any longer, ecological versus economic preferences. Only in this way can possible directions of the political line be put to the vote in political elections. The parties, however, seem to shun the risk connected with this. They present their programs as if they were like the water of Contrexeville: good for the kidneys, blood, liver, circulation, lungs and everything else. And it is well known how “tasty” this water is. Austerities or even the willingness to say what one *cannot* do occur, if at all, not on the level of programs but – as a result of a kind of power failure of the party-internal leadership selection – in the form of persons.

(3) Thus a moral controversy is enacted instead of a programmatic one, as if everything now depended on compensating for these weaknesses. Apparently, there is a kind of political law here: if money runs out as a political means, interject morality in its place. Politicians today typically act as if what matters is to instruct the people concerning

who is to be respected and who is not – respect or disrespect used as a moral sanction against the whole person or the whole party. But people really do not want to know this. Thus the impression arises that positions are chosen in important matters in terms of moral confrontation. And very often the moral polemic slides into forms that raise the question of the education and behavioral manners of important politicians. But even if things are not this severe, the problem remains. Johannes Rau [Prime Minister of North Rhine-Westphalia] calls out “to preserve decency,” and emphasizes this personally in large advertisements in the daily newspapers; of course, not in order to say so directly but in order to suggest that his political opponents are not upstanding individuals. “To preserve distance” one should reply – distance from the type of politics that is drunk with morality.

I know quite well that hard decisions are made in committees. I also know that in the relationship of government and opposition a different style of political situation is possible. In Berlin the names of von Weizsäcker and Vogel come to mind. I am even less concerned with an ethical solution of the problem of morality – perhaps of the establishment of a commission that would have to work out the appropriate guidelines. My point is that political action regarding democracy must take place on a *level of higher amorality*.

Viewed historically, this is a matter of the bastard child of “reason of state” and morality. The theory of “reason of state” had developed originally from a medieval basis in natural law and then in political theory. Its problem was a typical problem of paradox: the necessity of a legal legitimization of offenses against the law for the sake of a higher interest – at first of the church and then of princes. After considerable agitation, especially in the literature of the counter-reformation, this problem was solved hierarchically: connected with the idea of an unavoidable arbitrariness at the top of every hierarchy. This “sovereign” distance from morality cannot be included within democracy, within a system with a bifurcated top. Instead, democracy needs a different style of higher amorality – the renunciation of the moralizing of political antagonism. Neither the government nor the opposition should entangle the model of government/opposition in a moral scheme in the sense that one side (our’s) is the only good and respectable one, while the other side acts immorally and reprehensibly. For this would inhibit the very idea of a change from government to opposition as

such and the idea that democratic rules work. Whoever remembers Senator Joe McCarthy has a good example of this. As soon as he accused the Democratic Party of communist sympathies and undercurrents his career was over. For in a democracy one cannot treat one's opponent as if he or she were not capable (worthy) of being elected. But this is precisely what one does when one makes the political scheme coincide with the moral one.

III

It's time for me to summarize. If one supports and reveres democracy as an ideal, then one has to explain, as always with ideals, why it is not given a chance. Instead of this, I consider democracy an achievement that is evolutionarily improbable, full of presuppositions but politically realizable. This means, first of all, that one should not begin with the critique of its states and circumstances but should marvel that it functions at all and then ask how long it will continue. Starting from this, theory becomes a specific kind of instrument of observation. From now on the concern is to discover where and in what respects possible dangers reveal themselves. It is just as easy as it is irresponsible to set up ideals which the circumstances do not satisfy and then to complain about the ever unredeemed promises of the bourgeois revolution. I do not see a theory in this attitude, let alone a critical one. Instead, if one begins from the improbability of what functions normally, one can see more clearly and, above all, more precisely where the system operates inconsistently and self-threateningly regarding its own structural requirements.

If one accepts this point of departure, this way of formulating the problem, one can always establish, consider valid, test and reject very different theories of the political system. The concept that I have attempted to indicate here says that a determination of the function of politics – perhaps the production of collectively binding decisions – is certainly indispensable, but not yet sufficient. In addition to this, function systems are defined through binary codes. And if you follow me in this and view the code of politics according to the scheme of

government and opposition, then some uneasy questions and critical observations on contemporary politics result. I would like to draw attention once again to two points in particular.

(1) Is it not the case that politics' own dynamics is guided too rigidly, too centrally by the code of government/opposition for it to provide enough possibilities for combining controversial societal themes like genetic engineering and financing the welfare state, or foreign relations, rearmament and currency policy and to put them to the vote?

(2) And if everything ultimately comes down to who is in power and who in opposition, can one expect or even demand to conduct political communication without moralizing – especially if one must at the same time give up the requirement of strata-specific socialization and education and, therefore, an assumed behavioral culture of politicians?

It may be that these questions seem relatively unimportant to you in comparison with the great societal and political themes. But if the structurally important problems of democracy addressed above provide significant difficulties, then how can one imagine that democracy will bring about more equality and freedom, more subjective self-realization and peace, better ecological balances and just distribution?

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