



# freedom's right

The Social Foundations  
of Democratic Life

AXEL HONNETH

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*The Social Foundations of Democratic Life*

Axel Honneth

Translated by Joseph Ganahl

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# Contents

Preface	vii
Introduction: A Theory of Justice as an Analysis of Society	1
<b>Part I Historical Background: The Right to Freedom</b>	<b>13</b>
1 <i>Negative Freedom and the Social Contract</i>	21
2 <i>Reflexive Freedom and its Conception of Justice</i>	29
3 <i>Social Freedom and the Doctrine of Ethical Life</i>	42
<i>Transition: The Idea of Democratic Ethical Life</i>	63
<b>Part II The Possibility of Freedom</b>	<b>69</b>
4 <i>Legal Freedom</i>	71
4.1 <i>The Reason for the Existence of Legal Freedom</i>	73
4.2 <i>The Limitations of Legal Freedom</i>	81
4.3 <i>Pathologies of Legal Freedom</i>	86
5 <i>Moral Freedom</i>	95
5.1 <i>The Reason for the Existence of Moral Freedom</i>	97
5.2 <i>Limitations of Moral Freedom</i>	104
5.3 <i>Pathologies of Moral Freedom</i>	113
<b>Part III The Reality of Freedom</b>	<b>121</b>
6 <i>Social Freedom</i>	131
6.1 <i>The 'We' of Personal Relationships</i>	132
6.1.1 <i>Friendship</i>	134
6.1.2 <i>Intimate Relationships</i>	141
6.1.3 <i>Families</i>	154

6.2	<i>The 'We' of the Market Economy</i>	176
6.2.1	<i>The Market and Morality: A Necessary Preliminary Clarification</i>	178
6.2.2	<i>The Sphere of Consumption</i>	198
6.2.3	<i>The Labour Market</i>	223
6.3	<i>The 'We' of Democratic Will-Formation</i>	253
6.3.1	<i>The Democratic Public Sphere</i>	255
6.3.2	<i>The Democratic Constitutional State</i>	304
6.3.3	<i>Political Culture – Prospects for the Future</i>	329
	Notes	336
	Index	394

## *Preface*

It has taken me nearly five years to complete this book. And at the end of each day of work on it, I saw a need to include many more arguments and empirical evidence in the future. This feeling of not being finished despite all the effort I have put into this work has not yet left me, without me knowing what I could do to be rid of it. This feeling of having come up short is likely due to the ambitious goal I had set for myself when I first undertook work on the book. I sought to follow the model of Hegel's *Philosophy of Right* and develop the principles of social justice by means of an analysis of society. As I had realized a few years prior while studying Hegel's famous text, this project could only succeed if the constitutive spheres of our society are understood as institutional embodiments of particular values whose immanent claim to realization indicates the principles of justice at work in each specific social sphere. Of course, this procedure demands that we first get a clear sense of the values that are to be embodied within the various spheres of our social life.

For this reason, the introduction to this book, which also follows the model laid down by Hegel, demonstrates that in modern liberal democratic societies these values have been fused into the single value of individual freedom in its various familiar meanings. The initial premise of my study is that each constitutive sphere in our society institutionally embodies a particular aspect of our experience of individual freedom. The modern idea of justice is thus divided into as many aspects as there are institutionalized spheres of the promise of freedom. In each of these systems of action, 'just' treatment takes on a different meaning, because the realization of



freedom requires specific social preconditions and mutual consideration. On the basis of this fundamental notion, the central and most comprehensive part of the analysis will consist in what I call a 'normative reconstruction', which will allow us to examine, by following the historical development of each of these social spheres, the degree to which the understanding of freedom institutionalized within them has already been socially attained.

It is at this point in my investigation, where I begin with the attempt at a normative reconstruction, that the difficulties begin and the inevitable feeling of incompleteness takes over. I have underestimated the fact that Hegel stood at the very beginning of the formation of sophisticated modern societies, which allowed him to determine the principles of legitimacy underlying individual social spheres without concern for future developments and by resorting to a few individual scientific disciplines. By contrast, I find myself in the middle of a two-hundred-year long process of conflictual and non-linear realization of these principles – a process that I have had to reconstruct normatively in order to be able to assess the opportunities, dangers and pathologies of the freedoms within each of these spheres. Although this more sociological approach allows more flexibility with regard to the historical material than would a strict historical account, I am still faced with the task of having to present enough findings and evidence from various fields of knowledge to convince less normatively minded readers that the direction of development I have proposed and the resulting conclusions are in fact plausible. In hindsight, much is still to be done in this regard, as we would have to take into account how all presumed paths of development have unfolded in various different nations, while also going into much greater detail when it comes to diagnosing the present.

Nevertheless, I hope that the result of my study is clear: We will only be able to get a clear sense of the future requirements of social justice if we recall, by addressing the struggles that have been fought on the normative foundation of modernity, the claims that have not yet been redeemed in the historical process filled with social demands for the realization of institutional promises of freedom.

I would never have been able to write this book without the help of a number of people and without the generous support of various institutions. Because German universities allow professors little time for research work, a familiar lament, I have had to rely on occasional emancipation from the normal semester routine.

This began with a research semester funded by a generous grant by the Volkswagen foundation for a research project at the Institute for Social Research on 'Structural Transformation of Recognition in the 21<sup>st</sup> Century'. I was then able to benefit from month-long visits to the Sorbonne, Paris I, and the École Normale Supérieure in Paris; owing to the friendly and reserved atmosphere, I was able to make great progress in a relatively short period. Finally, I was able to finish my study due to a further sabbatical allowing me to engage in a university project entitled 'The Formation of Normative Orders' organized by the Goethe University in Frankfurt. But, most of all, I have profited from the workshops in which I was able to present portions of my work over periods of several days to colleagues and students. A seminar organized by Christoph Menke and Juliane Rebentisch in the Institute of Philosophy at the University of Potsdam, as well as a master's course in Goslar organized by the Research Institute for Philosophy at the University of Hanover, were to prove especially fruitful. I have also benefited greatly from a colloquium at the University of Marburg in connection with my Christian-Wolff-Lecture. I owe a great deal of gratitude to everyone involved in the preparation and coordination of these visits and workshops. This is especially true for my colleagues, who supported me with critical objections, references and theoretical proposals. In this regard my thanks go to Titus Stahl above all, assistant at the Institute of philosophy at the Goethe University, Frankfurt, who over the course of two years put me under extremely instructive pressure with his analytical intelligence and perseverance, though I have not been able to implement all the differentiations he called for. I also profited from the support of many other individuals at various points in my work: Martin Dornes, Andreas Eckl, Lisa Herzog, Rahel Jaeggi, Christoph Menke, Fred Neuhouser and, in many conversations on literary sources, Barbara Determann and Gottfried Kößler. I have been extremely fortunate to have had such a supportive atmosphere in writing this book: Frauke Köhler did her best to decode my handwriting, keep order of the various parts of the text and put it all in the proper form. Stephan Altemeier was helpful when it came to finding important literature and also, together with Nora Sieverding, put together the index for the German edition. I am grateful to all three of them for their cooperation. I also thank Eva Gilmer for the many years of intensive and serendipitous cooperation; she is a kind of lector whom I thought only existed in the correspondences or autobiographies of older authors. She read the manuscript line for line, made

many suggestions for improvements and pushed me to make the deadline. I would like to extend my gratitude to Joseph Ganahl, the translator of the English edition, who for many years, and with a great deal of care, skill and theoretical understanding, has translated my works into English. I can hardly imagine any other translator with the same friendliness and nonchalance, who nevertheless manages to put together texts in which I recognize the very same intention and tone as in my own original work. I would like to thank him again for the many years of fruitful and uncomplicated collaboration. There are finally not enough words to express the gratitude I owe to my wife, who spent many hours discussing with me and plunging into the manuscript – it is to her that I dedicate this book.

Axel Honneth, August 2013

## *Introduction: A Theory of Justice as an Analysis of Society*

One of the major weaknesses of contemporary political philosophy is that it has been decoupled from an analysis of society, instead becoming fixated on purely normative principles. Although theories of justice necessarily formulate normative rules according to which we can assess the moral legitimacy of social orders, today these principles are drawn up in isolation from the norms [*Sittlichkeit*] that prevail in given practices and institutions, and are then 'applied' secondarily to social reality. This opposition between what is and what should be, this philosophical degrading of moral facts, is the result of a theoretical development that started long ago, one that is closely linked to the fate of Hegel's *Philosophy of Right*. After his death, Hegel's intention to reconstruct rational institutions, i.e. institutions that guarantee freedom, on the basis of prevailing social relations came to be understood in two very different ways. On the one hand, his work was regarded as a conservative theory of restoration, and on the other hand, as a theory of revolution. This division into Right Hegelians and Left Hegelians<sup>1</sup> made it possible for later generations, after nearly all revolutionary ideals had died out, to shove the entirety of Hegel's political philosophy into the conservative camp. All that seemed to remain of Hegel's notion that a theory of justice must be based on social analysis was the somewhat primitive idea that given institutions must be given an aura of moral legitimacy. This nearly sealed the victory of a Kantian or Lockean theory of justice, which stipulates that the normative principles according to which we judge the moral legitimacy of social orders may not stem from within existing institutional structures, but must stand alone

outside of this institutional framework. Little has changed up to the present day.

Of course, there have been numerous objections and counter-proposals to the dominance of Kantianism over the theory of justice. In the second half of the nineteenth century, British Neo-Hegelianism – which for political and cultural reasons never caught on in Germany – sought to revive certain Hegelian motifs and make them the basis for an alternative theory of justice.<sup>2</sup> And more recently, the works of Michael Walzer, David Miller and Alasdair MacIntyre have proven that efforts to overcome purely normative theories of justice and revive the project of social analysis have never really slackened.<sup>3</sup> But these same endeavours also show just how far we have strayed from the path Hegel laid down in his *Philosophy of Right*. Current attempts to overcome the deficits of Kantian theories of justice that ignore existing institutions nearly always attempt to hermeneutically adapt normative principles to existing institutional structures or prevailing moral beliefs, without proving whether the substance of these institutions is itself rational or justified. And yet these attempts remain unconvincing because of their tendency to accommodate normative principles to official theories not supported by social reality. Hegel, by contrast, sought to unify these two approaches in his *Philosophy of Right*<sup>4</sup> by demonstrating the largely rational character of the institutional reality of his time, while conversely showing moral rationality to have already been realized in core modern institutions. He gave the name 'Right' to those elements of social reality that, by virtue of enabling and realizing individual freedom, possessed both substance and legitimacy.<sup>5</sup>

In reviving Hegel's project nearly two hundred years later, I realize of course that both social relations and styles of philosophical argumentation have undergone significant changes. We can no longer merely rehash the intention and argumentation of his *Philosophy of Right*, and social reality, whose institutions and practices enjoy the status of moral facts, differs entirely from that of the early industrial, constitutional monarchies of the early nineteenth century. The institutional relations upon whose normative stability Hegel could rely blindly have shed their original form over the course of an accelerating, 'reflexive' modernization process and have largely been replaced by new structures and organizations that impose much less stringent demands on behaviour. Moreover, given the experience of a 'breach of civilization', i.e. the realization of the possibility of a holocaust within civilized societies, we can no

longer share Hegel's optimism that modern societies follow a continuous path of rational development. Furthermore, the theoretical premises of philosophical discussion, the framework of what can ultimately be thought, have undergone a major shift since Hegel's time. We, the children of a materially enlightened era, cannot hold onto the idealistic monism in which Hegel anchored his dialectical concept of Spirit.<sup>6</sup> Hence we are forced to find another footing on which to base his idea that objective Spirit is realized in social institutions.

Nevertheless, we would do well to take up once again Hegel's endeavour to develop a theory of justice on the basis of the structural preconditions actually existing in society. The premises of such an endeavour cannot be so easily justified in advance, rather they can only be revealed in the course of the investigation. On the other hand, we cannot avoid outlining in advance the preconditions that make the structure and procedure of the study comprehensible at all. As long as I have not at least given a sketch of the general premises that guide my investigation, my reasons for developing a theory of justice in terms of the idea of freedom will remain entirely opaque. The aim of constructing a theory of justice as social analysis depends entirely on the *first* premise that social reproduction hinges on a certain set of shared fundamental ideals and values. Such ethical norms not only determine 'from above', in the form of 'ultimate values' (Parsons), which social measures or developments are conceivable, but they also determine 'from below', in the form of more or less institutionalized objectives, the guidelines that each individual's life path should follow. The best example of such a conception of society remains the action-theoretical model developed by Talcott Parsons, a model that clearly stands in the tradition of Hegel, Kant, Marx and Max Weber. According to Parsons, the ethical values that constitute the ultimate reality of a given society flow into its individual sub-spheres via the cultural system, determining the actions of its members by imposing role expectations, implicit obligations and socially inculcated ideals – in short, through an entire arrangement of social practices. Members of society, whom Parsons views in a very Freudian sense as agonistically integrated subjectivities, normally act in accordance with norms that have been established as specific objectifications of higher values in various subsystems. According to Parsons, even the economic system is 'ethically' imbued, and unlike Luhmann or Habermas, Parsons views the economy as a normatively integrated sphere of action – which today, for instance, revolves around the

principle of achievement. The unique characteristic of this model of society – and what makes it especially suitable as a tool for updating Hegel's intentions – is its claim that all social orders, without exception, must legitimate themselves in the light of ethical values and ideals that are worth striving for: 'No normative order [i.e. society, A. H.] is *self*-legitimizing in the sense that the approved or prohibited way of life simply *is* right or wrong and admits of no questions. Nor is it ever adequately legitimated by necessities imposed at lower levels of the hierarchy of control – e.g. by the fact that things *must* be done in a *specific* way because the stability or even survival of the system is at stake.'<sup>7</sup>

Even the existence of 'heterogeneous' societies marked by ethnic or religious diversity has little effect on this 'transcendental' necessity of normative integration. Although in these societies ethical values need to be formulated in a more comprehensive and general manner so to make room for the ideals held by minority cultures, material reproduction and cultural socialization must comply with a set of shared norms. In this weak sense, every society embodies objective Spirit to a certain extent, because its institutions, social practices and routines reflect shared normative beliefs about the aims of cooperative interaction. Later we will have to show that this concept of 'objective spirit' must be further enriched in order to truly justify all the aims of a theory of justice as an analysis of society.

The *second* premise of this project is that the normative point of reference employed by a theory of justice should draw on those values or ideals that, as normative claims, also constitute the conditions of reproduction of a given society. For Hegel, as well as for Marx and other authors in the Hegelian tradition, the idea of justice is not an independent and free-standing notion that can be explained on its own terms, which explains why these thinkers seldom use the term in a constructive and non-polemic fashion. In the classical sense handed down to us from antiquity, 'justice' refers to the 'binding and permanent intention to render to everyone his due' (Justinian, Cicero, Thomas von Aquinas). This essentially means that each person should be treated in a way that does justice to his or her personality, which can entail both the equal and unequal treatment of different individuals. Hegel is convinced that when it comes to defining what constitutes just treatment, we cannot draw on any independent standard within the concept of justice itself. We cannot adopt a neutral perspective, so to say, that would allow us to analyse which personal qualities we should

take into account, because our relation to that person is necessarily permeated by practices in which we are both involved. For Hegel, therefore, what it means to 'render everyone his due' can only be derived from the internal meaning of previously established practices. And because this meaning derives solely from the ethical value prevailing in a given sphere within the ideal overall structure of society, the criterion for determining what counts as just can ultimately only be judged in terms of the ideals actually institutionalized in that society. Therefore, that which is 'just' is that which promotes adequate treatment – in terms of the role assigned to each different social sphere in the context of the ethical 'division of labour' in a given society.

By merely calling for an immanent analysis, however, I have not yet sufficiently distinguished this approach from conventional, 'Kantian' theories of justice. After all, the latter also present their 'constructively' derived principles as an expression of a certain value orientation. Both Rawls' theory of justice<sup>8</sup> and Habermas' theory of law<sup>9</sup> provide good examples of an approach that has its point of departure in the historical congruence between independently derived principles of justice and the normative ideals of modern societies. Unlike these theories, we should follow Hegel in abstaining from presenting a free-standing, constructive justification of norms of justice prior to immanent analysis; such an additional justification becomes superfluous once we can prove that the prevailing values are normatively superior to historically antecedent social ideals or 'ultimate values'. Of course, such an immanent procedure ultimately entails an element of historical-teleological thinking, but this is ultimately inevitable – just as it is for theories of justice that assume a congruence between practical reason and existing social relations.

But even this distinction does not suffice to capture what makes the particularity of the endeavour to found a theory of justice on an analysis of society, for even immanently derived principles of justice can be understood as having been only secondarily applied to social reality as a criterion for judging the moral quality of institutions and practices. In this case, nothing would have changed; we would only have presupposed a certain reality set up by a third party, to which we then apply normative standards after the fact. This would only retain the division of labour assumed by traditional conceptions of justice between the social sciences and normative theory, between empirical disciplines and philosophical analysis. And yet this is precisely what Hegel sought to avoid in his



*Philosophy of Right*: an external determination of how social reality must be constituted, a reality whose justification Hegel sought to determine through the analysis of that reality itself. Hegel was just as unwilling as Marx, who in this regard was a loyal student of Hegel, to leave the business of social analysis to the empirical studies of social scientists (political science, political economy). Because of the idealistic premises upon which Hegel founds his analysis, it is only with great effort that we can grasp the methodological procedure he employs in opposition to this traditional division of labour.<sup>10</sup> In order to spare myself from having to recount complicated discussions, I will only use the term 'normative reconstruction' to refer to this notoriously misunderstood strategy. This procedure implements the normative aims of a theory of justice through social analysis, taking immanently justified values as a criterion for processing and sorting out the empirical material. Given institutions and practices will be analysed in terms of their normative achievements and recounted in order of their significance for the social embodiment and realization of socially legitimated values. In the context of this procedure, 'reconstruction' thus means that out of the entirety of social routines and institutions, we will only pick out those that are indispensable for social reproduction. And because the aims of social reproduction are essentially determined by accepted values, 'normative' reconstruction means categorizing and ordering these routines and institutions according to the impact of their individual contribution to the stabilization and implementation of these values.

Although it might appear that Hegel's procedure in no way meets the demands of a theory of society, it nevertheless overlaps with the works of various classical sociologists to a surprising extent. Both Durkheim and Parsons, to name just two of the most prominent authors, analyse the material they derive from their studies of modern societies not merely in terms of the material or technical constraints of social reproduction, rather they focus on those social spheres or subsystems that make an especially significant contribution to securing and realizing the dominant institutional values of modernity.<sup>11</sup> Both sociologists carry out a normative reconstruction by investigating the metabolism of social reproduction in terms of how it preserves certain socially accepted values and ideals. Similar to Hegel in his *Philosophy of Right*, they determine the order of social spheres according to the respective function they fulfil when it comes to stabilizing and realizing the modern hierarchy of values. Neither Durkheim nor Parsons, however, employ structural socio-

logical analysis in order to develop a theory of justice; instead they restrict their purview to potential threats to normative integration, whereas Hegel seeks to locate within these processes the social conditions that, taken together, constitute the principle of justice in modern society.

The *third* premise for basing a theory of justice on social analysis is therefore the methodological procedure of normative reconstruction. To avoid the danger of merely applying immanently derived principles of justice to given reality, we must not assume that we have already sufficiently analysed social reality itself; instead we must throw into relief the essential features and particularities of that society by demonstrating the contribution that each respective social sphere makes to securing and realizing the values that have already been institutionalized in society. The image of contemporary, highly modern societies that thereby emerges may deviate in many ways from the prevailing, official image found in the social sciences; after all, we will be dealing with institutions and practices of which we generally take little notice, while pushing into the background other occurrences that generally enjoy greater attention. But such shifts between the foreground and the background, between the significant and the negligible, are not uncommon in the social sciences – a discipline whose concepts are nearly all controversial.<sup>12</sup> In the context of the present investigation, these shifts follow from our aim of presenting only those social practices and institutions whose normative character serves to realize socially institutionalized values.

By emphasizing the structural conditions of contemporary societies, we produce a systematic sketch of what Hegel once termed 'ethical life' (*Sittlichkeit*). Soon after Hegel's death this notion was discredited along with his entire philosophy of right. It would soon be viewed in enlightened and progressive circles as a clear indication that he sought to preserve only those customary practices and moral institutions that worked to uphold the dominant order. However, contrary to the then prevailing tendency of moral philosophy, Hegel sought to draw attention to the network of institutionalized routines and obligations in which moral attitudes not only take the shape of moral principles, but social practices as well. For Hegel, whose methodology remained largely Aristotelian when it came to practical philosophy, there was no question that intersubjectively practised customs and not cognitive beliefs are what define the homestead of morality.<sup>13</sup> Yet Hegel did not intend his notion of ethical life to be a mere description of already existing forms of life;

the very procedure he employed – the above described procedure of ‘normative reconstruction’ – demonstrates that his approach was more selective, typifying and normative than would be permitted by Aristotelian positivism. For Hegel in his *Philosophy of Right*, of all the diverse ethical forms of life, only those that could be proven to contribute to the realization of universal values and ideals of modern societies could be included in the concept of ‘ethical life’. Anything that contradicted these normative requirements by representing merely particular values or embodying backward ideals could not be viewed as suitable objects of normative reconstruction.

Even so, the concept of ethical life still seems to have a tendency to affirm the existing order. After all, the only social forms of life that can be viewed as ‘ethical’ are those that embody a universal value by virtue of the fact that the practices suitable for their realization have already taken shape in society. But if we take a closer look at Hegel’s procedure, we will see that he did not merely wish to affirm and reinforce current practices and institutions, but also to correct and transform them. In the course of normative reconstruction, the criterion of ‘rationality’ applied to those elements of social reality that contribute to the implementation of universal values not only asserts itself in the uncovering of already existing practices, but also in the critique of existing practices or in the attempt to anticipate other paths of development that have not yet been exhausted. It is difficult to find an appropriate characterization for this corrective, or rather, critical side of Hegel’s notion of ethical life. The point is not simply to outline a certain desired state of affairs, and thus to follow a purely normative approach, but to examine contemporary reality in terms of its potential for fostering practices in which universal values can be realized in a superior, i.e. a more comprehensive and suitable fashion. By making such corrections and anticipatory proposals, Hegel in no way intends to abandon the reality of social life; social reality remains the criterion for all normative considerations, and we cannot make abstract and largely unrealistic demands on social behaviour. Wherever Hegel criticizes social reality or, just as frequently, proposes reforms in the name of justice, his normative reconstruction looks just beyond the horizon of existing ethical life in order to explore the possibilities for making as many changes as can be realistically expected given the circumstances. In this context, therefore, we should recall the methodological concept of ‘objective possibility’ developed by Max Weber in his attempt to describe empirically tested ways of anticipating social developments.<sup>14</sup>

Hence a further, *fourth* premise for developing a theory of justice on the basis of social analysis is that the procedure of normative reconstruction always offers room for criticizing social reality. The point cannot be merely to uncover and reconstruct instances of already existing ethical life, rather it must also be possible to criticize these findings in light of embodied values. And the relevant criteria for this form of critique are the very same that guide normative reconstruction itself. For instance, if an instance of ethical life is whatever represents universal values or ideals in the shape of a bundle of institutionalized practices, then we can also draw on these same values in order to criticize given practices as being unsuited to what it is they are supposed to represent. In the context of such 'reconstructive criticism', we do not merely confront given institutions and practices with external criteria; rather, the same standards according to which these institutions and practices are picked out of the chaos of social reality are used to criticize insufficient, still imperfect embodiments of universally accepted values. Thus the character of our corresponding normative judgements is gradual rather than categorical, because what we criticize is the fact that an institution we regard as 'ethical' could embody the values that serve as an overarching guideline for the reconstruction of ethical life in a better, more perfect or comprehensive way. A good example of this 'critical' intention of Hegel's concept of ethical life in his *Philosophy of Right* is his account of 'corporations' at the end of the section on 'civil society'. Hegel maintains that within the division of labour for realizing overarching values, such corporations are assigned the institutional task of providing the members of different economic strata with an ethical sense of their constitutive contribution to market-based reproduction. This implies a series of social practices whose function is to foster a sense of honour in belonging to a given estate and to proclaim the intention to serve the general welfare. In §253 of his *Philosophy of Right*, Hegel points out phenomena of ethical decay that he traces to the failure of corporations to fulfil their assigned task in a sufficiently comprehensive manner:

When complaints are made about that luxury and love of extravagance of the professional classes which is associated with the creation of a rabble (§244), we must not overlook, in addition to the other causes [of this phenomenon] (e.g. the increasingly mechanical nature of work), its *ethical* basis as implied in what has been said above. If the individual is not a member of a legally

recognized corporation . . . he is without the *honour of belonging to an estate*, his isolation reduces him to the selfish aspect of his trade, and his livelihood and satisfaction lack *stability*. He will accordingly try to gain *recognition* through the external manifestations of success in his trade, and these are without limit, because it is impossible for him to live in a way appropriate to his estate if his estate does not exist.

This criticism of conspicuous consumption on the part of the bourgeoisie is obviously grounded in the claim that the guilds, as institutions of ethical life, do not integrate their members to the extent required by their function in the social division of labour. Hegel's critique thus does not draw on an external standard, rather he points out 'reconstructively' the neglected potential of already existing institutions.

By outlining these four premises, I have only given a rough sketch of the very general, methodological presuppositions of the present study. The attempt to develop a conception of justice on the basis of social analysis must, as a *first* premise, assume that the given form of social reproduction in society is determined by shared universal values and ideals. The aims of both social production and cultural integration are ultimately regulated by norms that are ethical in the sense that they embody conceptions of shared goods. The *second* premise claims, as a first approximation, that the concept of justice cannot be understood in isolation from these overarching social values; social practices and institutions are 'just' to the extent that they are capable of realizing generally accepted values. Only with the *third* premise do we have a more detailed definition of what it means to develop a theory of justice on the basis of an analysis of society: Out of the diversity of social reality, we select – or to put it in methodological terms, we normatively reconstruct – those institutions and practices that are truly capable of securing and realizing general values. Finally, the *fourth* premise should guarantee that in applying this methodological procedure we do not merely affirm existing instances of ethical life. If we strictly follow the procedure of normative reconstruction, we will have to develop the latter to a point that clearly demonstrates the extent to which ethical institutions and practices do not represent the general values they embody in a sufficiently comprehensive or perfect fashion.

Of course, it is not enough to assemble these four premises in order to understand what is meant by 'justice' in the present inves-

tigation. This preface is a mere sketch of the theoretical framework within which it makes sense to found a theory of justice on an analysis of society. At any rate, it should have already become apparent that every step of this project depends on how we define the universal values inherent in present societies. Only after we have accomplished this task can we begin in earnest with the business of normatively reconstructing our current, post-traditional ethical life.



## **Part I**

# **Historical Background: The Right to Freedom**





Of all the ethical values prevailing and competing for dominance in modern society, only one has been capable of leaving a truly lasting impression on our institutional order: freedom, i.e. the autonomy of the individual. Of course, other conceptions of the good, from the deism of the natural order to romantic expressionism,<sup>1</sup> have lent new accents to our experience of the self and its relation to others for over two centuries. But in terms of their social impact, once these values go beyond the narrow circle of an aesthetic or philosophical avant-garde and inspire imaginations within the lifeworld, they are quickly subsumed under the notion of autonomy, to which they ultimately only manage to add new layers. Today, at the beginning of the twenty-first century, it is nearly impossible to articulate one of these other values of modernity without immediately grasping them as facets of the constitutive idea of individual autonomy. Whether it is a matter of invoking a natural order, idealizing an inner voice, upholding the value of community or authenticity, these are all but mere additional elements of what we mean by individual self-determination. As if by magical attraction, all modern ethical ideals have been placed under the spell of freedom; sometimes they infuse this idea with greater depth or add new accents, but they never manage to posit an independent, stand-alone alternative.<sup>2</sup>

The enormous gravitational force exerted by the notion of autonomy derives from the fact that it manages to form a systematic link between the individual subject and the social order. Whereas all other modern values refer either to the horizon of the individual or the normative framework of the society as a whole, the idea

of individual freedom establishes a connection between the two. Its conceptions of what the individual regards as the good also contain indications of what constitutes a legitimate social order: The idea that the value of human subjects lies in their capacity for self-determination, an idea which has only gradually attained such a dominant position, has changed our perspective on the rules of social interaction as well. The normative legitimacy of the social order increasingly depends on whether it does enough to ensure individual self-determination, or at least its basic preconditions. As a result, notions of social justice and considerations on how to ensure that the way society is organized does justice to the interests and needs of its members have become inseparable from the principle of individual autonomy. Although other ethical aspects might also play an important role in the modern discourse on justice, they are overwhelmed by the value accorded to the freedom of the individual. Conceptions of justice and concepts of freedom have become so intertwined that it has become nearly impossible for us to recognize the specific place that various theories have accorded to the central value of individual freedom. Only after painstaking reconstruction can we see that even these theories of justice place individual autonomy at the centre of all other ethical relations.<sup>3</sup> For instance, it took years to see that even the 'postmodern' ethic, supposedly critical of the subject, ultimately represents a more deep-seated variety of the modern idea of freedom. These theories sought to tear down what were previously regarded as natural limits to individual self-determination – the biological identity of the sexes or certain conceptions of the human body – by demonstrating their origins in cultural determinations.<sup>4</sup> Hence no social ethic and no social critique seems capable of transcending the horizon opened up two centuries ago by linking the conception of justice to the idea of autonomy.

What is true for philosophy is no less true for contemporary social movements. Ever since the French Revolution, hardly any group that has struggled for social recognition has failed to paint the slogan of individual freedom on its banners. National revolutionary movements and the champions of women's liberation, the labour movement and the civil rights movement – all have fought against legal and social forms of disrespect they saw as irreconcilable with their claims to self-respect and individual autonomy. The adherents of these social movements were convinced, right down to their moral sensorium, that justice demands equal opportunity for freedom; and even where achieving this aim has meant restrict-

ing individual freedom, the postulate of freedom still serves to legitimize these movements' objectives. In modernity, the demand for justice can only be shown to be legitimate by making some kind of reference to the autonomy of the individual; it is neither the will of the community nor the natural order, but individual freedom that forms the normative foundation of all conceptions of justice.

This close bond between justice and individual freedom, however, is more than a mere historical fact. It is true that the fusion of these two concepts represents the outcome of a centuries-long learning process, in which the classical idea of natural law first had to be freed from its theological framework in order to declare the individual subject an equally entitled author of social laws and norms. The difficult and agonistic path that would have to be travelled before individual self-determination could become the reference point for all conceptions of justice runs from Thomas Aquinas via Grotius and Hobbes to Locke and Rousseau.<sup>5</sup> But the outcome of this ethical alloy represents more than a fortunate coincidence of two independent conceptual histories. Rather, it demonstrates irreversibly that when it comes to positing just norms, we cannot rely on forces that are not given to individual human minds. Our individual self-determination and our insistence that a social order be 'just' are joined by an indissoluble bond, because our desire for justice is merely an expression of our subjective capacity for justification. The ability to question social orders and demand proof of their moral legitimacy is the basis for the whole perspective of justice; therefore, individual self-determination, i.e. the power to arrive at one's own judgements, is not just some contingent human quality, but the essence of our practical-normative activity. To demand justice, to even assert a certain aspect of justice is to strive to (co-)determine the normative rules of social life.<sup>6</sup> But once we have discovered this internal connection, as soon as we know that justice and individual self-determination are mutually referential, any resort to older, pre-modern sources of legitimacy must appear to exterminate the perspective of justice altogether. It is no longer clear what it would even mean to demand a just social order without simultaneously calling for individual self-determination. Therefore, this fusion between conceptions of justice and the idea of autonomy represents an achievement of modernity that can only be reversed at the price of cognitive barbarism. And wherever such a regression actually occurs, it inevitably provokes moral outrage 'in the hearts of all its spectators (who themselves are not involved in the show)'.<sup>7</sup>

This teleological perspective, an inevitable element of modernity's self-understanding,<sup>8</sup> strips the above-described fact of its contingent historical character. For reasons that claim universal validity, we can now regard the idea of individual self-determination as the normative point of reference for all modern conceptions of justice. That which is 'just' is that which protects, fosters or realizes the autonomy of all members of society. But even after we have established an ethical link between justice and a supreme value, we still have not determined how a social order needs to be constituted in order to deserve the predicate 'just'. When it comes to further defining what justice in fact entails, everything depends on how we further define the value of individual freedom, for the idea of autonomy itself is too heterogeneous and multi-layered to determine the standard of justice on its own. Neither the methodological form nor the substantive determinations of such a conception can be appropriately determined merely by linking this conception to the guarantee of individual freedom. Although freedom might constitute the 'point' of justice,<sup>9</sup> this does not yet establish the relation between the ethical goal and the principles of justice, between what is good and what is right. Instead we must offer a rational explanation not only of the extent, but also of the implementation [*Vollzugsweise*] of the kind of individual freedom that is to serve as a touchstone for a theory of justice.

Ever since Hobbes' day, the category of individual freedom – both in terms of its substance and its logical structure – has been one of the most controversial notions of modernity. The discourse on the semantic meaning of freedom not only involves philosophers, legal and social theorists, but also social movements that seek to publicly articulate their specific experience of discrimination, degradation and exclusion.<sup>10</sup> In the course of this as yet unsettled debate, it has become clear that as the propagated idea of freedom changes, so does the image and even the methodological conception of justice. By expanding what we view as part of the 'self' of individual self-determination, we not only alter the substantive principles of a just order, but also the laws of its construction. The more capacities and preconditions we regard as necessary for truly enabling the autonomy of the individual, the more we must consider the views of those to whom these principles are meant to apply. Hence, in order to justify which idea of justice should be taken as our starting point, we must distinguish between various models of individual freedom; a process of elimination should allow us to find the model of freedom best suited to formulating a conception of justice.

We can begin with the observation that in the moral discourse of modernity, in the bitter conflicts over the meaning of freedom, three clearly distinct models have emerged. Upon closer inspection we will see that the differences between these historically prevalent ideas of individual freedom are linked to distinct understandings of the structure and character of individual intentions.<sup>11</sup> According to their increasing degree of complexity, we can distinguish between *negative* (I), *reflexive* (II) and *social* (III) models of freedom. Within this tripartite distinction, we will only indirectly address Isaiah Berlin's famous differentiation between merely 'negative' and 'positive' freedom.<sup>12</sup>



# 1

## *Negative Freedom and the Social Contract*

The idea of negative freedom was born out of the religious civil wars of the sixteenth and seventeenth centuries. Although even at this time the aim of these conflicts could have drawn attention to the reflexivity of freedom, that is, to the fact that subjects can only want what they reflexively view as right, Hobbes skilfully steers the combating parties toward a negative conception of individual freedom. In one famous passage of *Leviathan*, Hobbes writes, 'By Liberty, is understood, according to the proper signification of the word, the absence of externall Impediments.'<sup>1</sup> At its most elementary level, Hobbes views freedom as the mere absence of external obstructions that might hinder a body's ability to move naturally. By contrast, internal impediments deriving from the material structure of simple bodies cannot be viewed as restrictions on freedom, because they belong to the individual's dispositions and therefore are caused by the subject itself. On the basis of this initial, and still naturalistic definition of freedom, Hobbes draws a conclusion about the freedom of human beings who, unlike mere bodies, possess a 'will'. Human freedom thus consists in being unhindered by external impediments while realizing one's own aims. A free person is therefore someone who is not faced with obstacles which 'may oft take away part of a mans power to do what hee would; but cannot hinder him from using the power left him, according as his judgement and reason shall dictate to him'.<sup>2</sup> Therefore, in the case of human beings as well, internal hindrances cannot be regarded as restrictions on freedom, because psychological factors such as fear, weakness or a lack of self-confidence can only be traced to the individual's capacities, and thus cannot



count as external impediments. But more importantly, Hobbes objects to the notion that the type of aims an individual pursues should play any role when it comes to determining whether a certain act is 'free' or not. All aims that, according to a person's 'own judgement and reason', are 'the aptest means thereunto' are to be regarded as intentions that can be thwarted by external restrictions on freedom.<sup>3</sup>

For Hobbes, these few extremely paltry considerations sufficiently characterize what he regards as the 'natural liberty' of human beings.<sup>4</sup> What is decisive here is the internal connection he draws – almost unnoticeably – between the exclusion of internal impediments and the potential aims of free action. Because human freedom consists in doing whatever is in one's own immediate self-interest, any motivational complications vaguely associated with a lack of clarity about one's own intentions cannot count as restrictions on free action.<sup>5</sup> The idea that the aim of freedom consists in fulfilling any and all desires, provided they serve the subject's self-assertion, allows Hobbes to restrict his purview to external sources of resistance. Potential haziness, confusion or restrictions of the human will cannot be taken into account when defining natural liberty, because as observers we are not entitled to judge what a subject should or should not desire.

Before inquiring into the consequences of this minimal definition of freedom for our conception of justice, we must first briefly discuss the reasons for its dominance in the history of ideas. Although Hobbes' definition of freedom is extremely simple and even primitive, it managed to survive in the face of heavy theoretical resistance and would later, in more expanded form, come to represent the core of a dominant idea of freedom. Thanks to the research of Quentin Skinner, we now know that Hobbes originally sought to counter the growing influence of Republicanism during the English Civil War. By proposing that freedom merely be understood as the externally unimpeded realization of human aims, he sought – with theoretical skill and rhetorical brilliance – to counteract any conceptions of freedom that might encourage the desire for civil associations.<sup>6</sup> But the political strategy behind Hobbes' idea of freedom would soon become irrelevant, and what remained was an extremely thin, merely negative formulation of liberty. The fact that it has managed to survive at all and resist all normative attacks even today must be due to a kernel of intuitive truth that virtually transcends all of its strategic usefulness. The reason for this idea's enduring attractiveness becomes apparent once we pursue

the idea of negative freedom beyond Hobbes' starting point and search for what it has in common with the ideas of freedom that would follow.<sup>7</sup> As much as Hobbes' original idea would later be improved upon by Locke, John Stuart Mill or Robert Nozick, the idea remains that the purpose of freedom is to secure a protected free-space for egocentric action, unimpeded by the pressures of responsibility toward others. If individuals in their endless particularity had not been able to constantly appeal to the idea of negative freedom, Hobbes' theory would never have had a future.

The idea that the freedom of the individual consists in pursuing one's own interests unhindered by 'external' obstacles touches on a deep-seated intuition of modern individualism, according to which subjects are entitled to a certain amount of individuality, even if their intentions and desires are not subjected to higher principles.<sup>8</sup> Contrary to his own intentions, Hobbes' unleashing of the legitimate purposes of free action led to the rise of a concept of freedom whose primary aim is to defend idiosyncrasy. This feature of negative freedom, however, only becomes clear once individuality loses its elitist character and becomes a cultural achievement of the masses.<sup>9</sup> At the height of twentieth-century individualism,<sup>10</sup> it became apparent that Hobbes' doctrine was also an expression of the tendency to grant people the opportunity to be narcissistic and eccentric. Both Sartre's existentialism and Nozick's libertarianism represent variations on this theme of negative freedom.

On the one hand, the concept of freedom developed by Sartre in his philosophical masterpiece is not tailored to the kind of questions that stand at the centre of modern political philosophy. While the latter deals with the type and extent of freedom that should be granted to the individual, the former primarily focuses on the ontology of freedom.<sup>11</sup> But on the other hand, wherever Sartre's argumentation touches on the conceptual horizon of the lifeworld, his concept of freedom seems to radicalize Hobbes' concept of freedom. For Sartre as well, though for different reasons, neither a weak will nor psychic burdens represent restrictions on freedom; these internal hindrances are 'expressions' of a choice humans have already made about the possibility of existence they choose. At this fundamental level, the will is absolutely free of all attachments. Neither personal biography nor principles, neither identity nor consideration for others restrict us once we are compelled to choose a certain kind of life. According to Sartre, in the moment of existential choice there are no standards by which we could 'justify' ourselves to ourselves or to others.<sup>12</sup> Rather, we create ourselves

spontaneously, without reflection, drawing on one of the endless possibilities for existence offered to us by human life.

We need only shift our perspective slightly to see that Sartre 'outdoes' the concept of negative freedom developed by Hobbes three hundred years prior with naturalist means. If we see the core of such a negative conception not in the idea that only external hindrances can stand in our way, but in the idea that the type of aim we choose reveals nothing about whether we are truly free, then the same tendency to eliminate all reflexivity will become apparent in Sartre's conception as well. Like Hobbes, Sartre also assumes that a certain degree of deliberation cannot be regarded as a part of the concept of individual freedom; Sartre views such a decoupling as an existential imperative, whereas Hobbes regards it as a normative fact. For both thinkers, therefore, the freedom of the individual merely consists in choosing certain aims, whether they stem from sources of 'spontaneous consciousness'<sup>13</sup> or from certain given desires. There is no need for the additional step of reflection, because the justification of aims in the light of higher principles does not represent a part of freedom. This type of freedom is 'negative' because a person's aims are not judged according to whether they themselves meet the conditions of freedom. Regardless of which existential choice one makes, and regardless of which desires are fulfilled, the pure, unhindered act of choice suffices for the resulting action to qualify as being 'free'.

This evidence of an underlying affinity between Hobbes and Sartre is only meant to support the claim that the idea of negative freedom has become part and parcel of the modern conceptual world because it justifies a striving for individuality. Contrary to his original intention, Hobbes' proposal that we define individual freedom in merely external terms has contributed to a conceptual tradition in which, today, an action is 'free' as long as it can be regarded as an expression of individual choice. In the existentialist pathos of unconditional freedom, we find the endpoint of what once began as the inconspicuous claim that only external impediments pose an obstacle for human action. But even more clearly than Sartre, Robert Nozick demonstrates the radical significance that Hobbes' concept of negative freedom would one day acquire. Nozick's book *Anarchy, State, and Utopia* is an instructive example of a methodological perspective on a just order, one whose point of departure is the idea of negative freedom.<sup>14</sup>

In his theory of justice, Nozick employs the same concept of freedom upon which Hobbes and Locke based their theories of a

just political order. Nozick also conceives of individual freedom merely as the chance to realize one's desires and intentions unhindered by external obstacles. But unlike these two English philosophers, Nozick does not have in mind the subjects of a monarch who are fighting for religious freedom, but the radical individualists of the twentieth century. For the latter, freedom means being able to achieve as many egocentric, entirely selfish life aims as are reconcilable with the freedom of one's fellow citizens. From such an individualist perspective, even the mere expectation that one should be reasonable when it comes to fulfilling one's desires must appear an unreasonable demand, as this would impose a rational restriction on individual freedom.<sup>15</sup> The fact that humans, in their 'individual existence',<sup>16</sup> are on their own, and that their aims are opaque to each other given the 'enormous complexity' of their drives, inclinations and attachments,<sup>17</sup> means that we can only judge life aims in terms of whether they are reconcilable with the aims of all others. Even these few remarks make apparent just how much Nozick adapts the idea of negative freedom to the conditions that prevail in pluralistic, extremely individualized societies. On this view, the expectation that we subject our desires and intentions to minimal standards of rationality already counts as an 'external' restriction of freedom. For Hobbes, the empty form in which we conceive individual freedom is still restricted by the condition that a person's self-interest be rational, while Nozick removes even this minimal condition: All life aims, however irresponsible, self-destructive or idiosyncratic, must be viewed as part of the aim of realizing freedom, provided they do not violate the rights of others.

But even this extreme variation on the meaning of negative freedom, which gradually detaches freedom from any internally limiting conditions, does not change the fact that the methodological perspective on justice remains largely the same. Almost without exception, the formulation of a just political order begins by portraying a fictional state of nature. With descriptions that vary in terms of strength and comprehensiveness, these authors posit how social interaction might have taken place in the absence of a political authority.<sup>18</sup> But before these descriptions take on a more narrowly defined methodological function, they usually serve to give some plausibility to the hardly uncontroversial premise of negative freedom. The individuals that are imagined to have lived in this pre-political order are assumed to accept as few restrictions as possible and to act solely according to their own desires. The extremely minimalist notion of freedom employed in all theories of justice in

the Hobbesian tradition is thus projected back into a state of nature, making the presumption of natural bonds and mutual affection simply unthinkable. The result is that humans are assumed to be isolated beings whose primary interest consists in acting according to their own preferences with as few hindrances as possible.<sup>19</sup>

Beyond this core commonality, however, the various versions of social-contract theory differ significantly when it comes to defining the state of nature in detail. The further these theories move away from Hobbes, the more they tend to restrict subjects' striving for freedom by imposing moral laws. Although they retain the notion that human beings naturally strive to pursue their interests with as few restrictions as possible, they impose external limits on this egocentric instinct, which also derive from a kind of natural law that is assumed to be valid.<sup>20</sup> To this day, it is not entirely clear how such imperatives of natural law can be reconciled with the striving for negative freedom. Either we must understand obedience to moral principles as an inherent element of freedom, which would mean that we would no longer be dealing with a purely negative concept, or we must view this obedience as a mere reaction to external circumstances, which would entail massive restrictions on negative freedom even in the state of nature. Any attempt to do away with the drastic war-like character of Hobbes' state of nature by implanting moral restrictions necessarily runs up against the limits of the model of negative freedom. After all, the effectiveness of such a morality could only be conceived as a type of individual self-restriction, meaning that freedom would contain an element of reflexivity from the very start.<sup>21</sup>

However these conceptual difficulties might be resolved in each individual case, the fictional state of nature has retained the central role it is bound to play in theories of negative freedom. The principles that are to prevail in a political order are always determined in the same way: a thought experiment, a kind of fictitious questionnaire presented to subjects in the state of nature. What kind of a political order would free individuals be willing to consent to if their aim was to improve their overall condition? It is easy to see that even this procedure of justification employs a principle of consensus; any answer given to the question of how a legal order should be designed is only justified on the condition that, hypothetically, all subjects in a pre-political state could consent to it. What is equally apparent is that the variations on this legal order always depend on the moral principles that have already been projected into the state of nature. The alternatives run from Hobbes' coercive

state, which he justifies without the use of founding moral principles, to Nozick's 'minimal state', which he justifies normatively by presupposing a significant amount of moral restrictions within the state of nature. What is most important for our purposes, however, is the fact that this procedure of justification reveals the type of social justice that arises from the perspective of negative freedom.

Obviously, the concept of freedom at the heart of these theories affects the status and scope of their conceptions of justice. This begins with the fact that such a thought experiment only offers subjects the choice of pursuing purely individual calculations. Any considerations other than those of strategic prudence are filtered out by simply presupposing that individuals are merely interested in preserving and securing their own freedom. This restriction then shows up in the outcome of the thought experiment, whose future validity relies solely on subjects' strategic consent. Any political and legal order derived in this manner can only count on the approval of its subjects to the extent that it succeeds in fulfilling each of their individual expectations. In this kind of legal order, subjects have no opportunity to examine and refresh their consent to political measures by participating in the drafting and revising of legal principles. Instead they are conceptually restricted to a one-shot act of approval, which means that they can only judge the legitimacy of the political order according to their own individual interests. By presupposing merely negative freedom, the theory prevents citizens from viewing themselves as the creators and 'renewers' of their own legal principles, for that would require that we ascribe an additional, higher-order element to the striving for freedom, one that would justify the assumption that subjects have an interest in cooperating with all other subjects.<sup>22</sup>

But there is more to the issue than these two outcomes, because the concept of negative freedom also asserts itself in the extent and even the shape of the principles of justice formulated by these theories. Because this concept assumes that the individual's will to freedom will rationally be restricted to the desire to encounter as few restrictions as possible, the principles of a just political order can only convey the value of freedom by ensuring as much space for personal decisions as possible. Such a liberal conception of justice can thus only justify as many restrictions on individual freedom as are needed to ensure the peaceful interaction of all individual subjects. The right socially accorded to individual freedom is thus reduced to a sphere in which all subjects pursue their own, occasionally egocentric and even idiosyncratic aims. It extends

neither to the formulation of law nor to any interaction with fellow legal subjects. In a certain sense, therefore, such a purely negative definition of freedom seamlessly passes over into the negativism of the resulting conception of justice. Its normative perspective is fixated, for the sake of security, on restricting the negative freedom whose preservation is its central purpose.

All the flaws inherent in the idea of negative freedom ultimately derive from the fact that they stop short of the threshold of individual self-determination. In order to conceive of a type of freedom that would also include an element of self-determination, subjects' aims would also have to be understood as the outflow of freedom. What individuals achieve when acting 'freely' would have to be regarded as the outcome of aims determined by the individuals themselves. By contrast, the concept of negative freedom focuses entirely on the 'external' liberation of action, while its aims are left up to the play of causal forces. For Hobbes, the nature of individual self-interest is what determines the aims a subject chooses; for Sartre, it is the spontaneity of pre-reflective consciousness; and finally, for Nozick, it is the contingency of personal desires and preferences. In none of these cases does the freedom of the individual entail the ability to select the aims it wishes to achieve in the world; instead, the causality of an inner nature or an anonymous spirit guides the subject's actions and choices 'behind its back'. It is only by crossing this threshold that we can see the outlines of the concept embodied by the modern understanding of self-determination. This comprises two different forms of freedom, the first of which is *reflexive* freedom.



## *Reflexive Freedom and its Conception of Justice*

Whereas the idea of negative freedom has hardly any precursors in antiquity or the Middle Ages, the notion of reflexive freedom reaches all the way back to the intellectual prehistory of modernity. Ever since Aristotle, a number of thinkers and philosophers have claimed that in order for individuals to be free, they must be able to arrive at their own decisions and influence their own will.<sup>1</sup> The historical asymmetry between these two concepts of freedom demonstrates that the idea of reflexive freedom cannot be viewed merely as an expansion or more profound version of the ideal of negative freedom. It would be careless of us to regard the notion of an externally secured free-space as a merely preliminary stage of a model of freedom which then resolutely focuses on the internal. Negative freedom is an original and indispensable element of modernity's moral self-understanding; it conveys the demand that all individuals be entitled to act in accordance with their own preferences, without external restrictions and without having to submit their motives to rational judgement, provided they do not violate the right of their fellow citizens to do the same.<sup>2</sup> By contrast, the idea of reflexive freedom focuses solely on the subject's relationship-to-self; according to this notion, individuals are free if their actions are solely guided by their own intentions.

But even this general determination shows that we can attach very different conceptions to the idea of reflexive freedom. After all, what is meant by an individual's 'own' intentions? What does it mean to be 'guided' by them? We can think of a number of different answers to these questions and a variety of combined meanings. Isaiah Berlin, who spoke of 'positive' rather than 'reflexive'



freedom, distinguishes between two versions of this type of 'internally' directed freedom. The notion that subjects are free only to the extent that they are able to determine their own actions has developed in two different directions: the idea of 'autonomy' and 'self-realization'.<sup>3</sup> Picking up on the work of Berlin, Raymond Geuss has even proposed that we distinguish between five variations on the concept of 'positive' or 'reflexive' freedom; he claims this one idea can be divided into various sets of meanings, each taking into account all the different aspects or modes of what it means to act according to one's own will.<sup>4</sup>

Historically, the idea of reflexive freedom centres on the proposal that we distinguish between autonomous and heteronomous acts – a distinction that goes back to Rousseau and completely realigned the meaning of individual freedom in one stroke: In order to count as free, it is no longer enough for an act to be carried out in the external world without resistance, rather the act must also be traceable to the will of the agent. The modification of human nature required to justify such a distinction can be found in Rousseau's *Émile*; the chapter entitled 'Confessions of a Savoyard Vicar' proposes ideas about human will that anticipate much of what Kant would have to say about moral autonomy three decades later.<sup>5</sup>

Already in *The Social Contract*, published only a few months prior to *Émile*, Rousseau noted that humans cannot be free as long as they remain enslaved by the 'impulse of mere desire'; they are only free once they practice 'obedience to self-imposed law'.<sup>6</sup> Rousseau does not further pursue this divide in human nature, in which 'ethical freedom' conflicts with 'desire', and it is not until *Émile* that he asks how children are to become capable of self-determination. The considerations that Rousseau puts in the mouth of the vicar begin with a claim that appears to be a critique of the idea of merely negative freedom: 'When I give myself up to my passions, I act according to the impulse of external objects . . . I am a slave through my vices.'<sup>7</sup> An action that occurs as a reaction to sense impulses cannot be described as 'free', because this is merely the uninterrupted continuation of the 'law of bodies', i.e. natural causality, in human activity. Unlike heteronomous actions that the subject feels compelled to perform, it 'feels' that true acts of its free will have come about in a different way, and it feels that it has managed to realize exactly what it has set out to do. In the first instance Rousseau grasps the distinction between heteronomous and autonomous actions as a difference in terms of the self-perception of the acting subject: 'I consent or I resist; I am vanquished or I am conqueror, and I feel

perfectly within myself, when I do that which I would do, or when I only give way to my passions.<sup>8</sup> Once humans succeed in realizing what their will imposes, rather than their desires, they are capable of feeling free. Humans thereby interrupt the natural laws that dictate their impulses by obeying not an external demand, but the imperative of a previous decision. Nevertheless, Rousseau has trouble explaining the features of this puzzling entity called the 'will'. Drawing on Leibniz, he understands it as an 'immaterial substance',<sup>9</sup> which enables subjects to turn rational insights or the stirrings of their conscience into effective motives for action. At the same time, he assumes that such a rational or moral will cannot automatically enable acting subjects to prevail over the onslaught of their natural inclinations. On the one hand, and almost by definition, wherever a 'free will' exists, it should always be able to cause the action it performs; but on the other hand, only subjects seem to have the power to obey either their will or their own passions. Rousseau does not yet possess the conceptual tools to resolve these contradictions. Neither is it clear what exactly he means by 'will', nor is he capable of understanding what this 'weakness of the will' really means. However, his exploratory considerations on autonomy or self-legislation (*Selbstgesetzgebung*), as well as his definition of free action, were groundbreaking and fruitful enough to lay the foundation for two versions of the modern idea of reflexive freedom.

Only a quarter-century later, Kant would build on Rousseau's analysis in order to complete his own account of self-determination; what is significant about Rousseau's work for Kant is primarily that part which presents freedom as the result of autonomy.<sup>10</sup> During this same period, Rousseau's concept of freedom shows up in a second intellectual current, which is less concerned with reason than with self-determination; what primarily interests the latter school of thought, mostly made up of early Romanticists and marginal figures within German Idealism, are those passages in Rousseau's writings in which he demonstrates that freedom is dependent on the articulation of real or authentic desires.<sup>11</sup> The intellectual effect of Rousseau's ingenious, though not always coherent, analyses of the distinction between autonomous and heteronomous actions unfolds in two different directions. Although in both cases the aim is to disclose the reflexive structure of individual freedom, the content of that reflexivity, its particularity, is answered in virtually opposite ways, though with recourse to one and the same author.

As mentioned above, Kant builds on those parts of Rousseau's theory that interpret freedom in terms of autonomy. Subjects are 'free' if and because they have the capacity to self-legislate and act in accordance with these self-imposed laws. While Rousseau is vague about whether these laws are merely empirical intentions or rational principles, Kant makes a resolute turn toward the transcendental. He is utterly convinced that such self-legislated laws can only bring about freedom if they derive from an insight into correct, that is, rational reasons.<sup>12</sup> Kant arrives at this claim by taking three bold steps, thus removing the ambiguities that afflict Rousseau's concept of the will. First, he points out that when it comes to rational beings, desiring something does not merely mean following one's inclinations. To have and formulate an intention implies resisting the laws through which nature influences our intentions. For Kant, therefore, the mere fact of human will is enough to prove that humans are capable of freedom. But it is only by taking the next step that Kant arrives at what he wants to prove with regard to Rousseau: In order to prove that humans cannot help but obey rational laws, he argues that as soon as individuals formulate an intention and thus inquire into what guides their actions, they only have the criterion of potential universality: Subjects can only obey principles they can also want everybody else to obey. 'Since I have robbed the will of every inducement that might arise for it as a consequence of obeying any particular law, nothing is left but the conformity of actions to universal law as such, and this alone must serve the will as its principle. That is to say, I ought never to act except in such a way that I can also will that my maxim should become a universal law. Here bare conformity to universal law as such (without having as its base any law prescribing particular actions) is what serves the will as its principle, and must so serve it. . . . The ordinary reason of mankind also agrees with this completely in its practical judgements and always has the afore-said principle before its eyes.'<sup>13</sup>

In the final step of his argumentation, Kant claims that this principle of universality also conveys an attitude of universal respect, for as soon as I ask whether all other subjects could agree to the maxim I obey in my own actions, I respect their rationality and treat them as ends in themselves. It is in his formulation of the categorical imperative that Kant captures most coherently the moral yield of his argumentation, which demands that each rational being 'treat himself and all others never merely as a means, but always at the same time as an end in himself'.<sup>14</sup> Therefore, humans are free

precisely because they can obey the moral laws they have imposed upon themselves. Kant concludes by remarking that individual self-determination is identical to the fulfilment of the rational moral principle: 'As a rational being, and consequently as belonging to the intelligible world, man can never conceive the causality of his own will except under the Idea of freedom; for to be independent of determination by causes in the sensible world . . . is to be free. To the Idea of freedom there is inseparably attached the concept of autonomy, and to this in turn the universal principle of morality – a principle which in Idea forms the ground for all the actions of *rational* beings, just as the law of nature does for all appearances.'<sup>15</sup> The reflexive freedom Kant has in mind consists in the insight that we have the moral duty to treat all other subjects as autonomous beings, just as we would expect them to treat us.

Those theorists who do not primarily regard Rousseau as a theorist of autonomy, but as an advocate of integrity, offer an entirely different interpretation, according to which the reflexivity of individual freedom consists in the fact that individuals only truly become individuals once they have acquired and articulated their own, authentic will through a lengthy process of reflection. This second current in the tradition of Rousseau also justifiably invokes elements of Rousseau's notion of freedom. Already in *Émile*, but above all in *Confessions* and *Julie, or the New Heloise*, Rousseau emphasizes that we are only free once we have the 'feeling' of having achieved precisely the desires and intentions that we truly have within ourselves.<sup>16</sup> This ideal of self-realization, which opposes Kant's idea of moral autonomy by placing the individual good before the general good,<sup>17</sup> finds a direct continuation in the writings of Johann Gottfried Herder. In his work *On the Cognition and the Sensation of the Human Soul*,<sup>18</sup> Herder outlines the reflexive process in which individuals learn to realize their 'inner I'<sup>19</sup> in the 'medium' of 'language'.<sup>20</sup> Herder believes that nature grants each individual a unique soul which, like a seed, only requires proper care in order to grow and prosper while unfolding its potential. Analogous to living organisms, individuals achieve perfection only once they have brought to bear all of their inner powers and sensations to the extent that they can experience their own action as the execution of authentic freedom: 'The more deeply someone has climbed down into himself, into the structure and origin of his noblest thoughts, then the more he will cover his eyes and feet, and say "What I am, I have become."<sup>21</sup> The reflexive freedom that Herder has in mind consists in an act of acquisition, in the course of

which I learn, by learning the general laws of language, to articulate the authentic core of my personality.

These two models of freedom, both of which were developed at the close of the eighteenth century and were heavily influenced by Rousseau, represent two versions of the idea that individual freedom can only be the product of a reflexive act. Both Kant and Herder are convinced that merely negative determinations of freedom are insufficient because they do not penetrate the space of reasons, thus regarding subjects as free in a merely external sense without taking account of whether their realized intentions themselves meet the conditions of freedom. In order to correct this grave omission, both thinkers adopt Rousseau's idea that individual freedom rests on free will. Subjects are only truly free if they restrict their actions to intentions or aims that are free of any trace of compulsion. But when it comes to how subjects carry out such a purification process, the two thinkers part ways: Whereas Kant proposes that we interpret the free will as the product of rational autonomy, Herder assumes that the purification of the will is a matter of discovering one's own, authentic desires. This opposition between self-determination and self-realization, between autonomy and authenticity, laid down the path followed by the idea of reflexive freedom throughout the philosophical discourse of modernity. The reflexive acts that we must always keep in mind when we speak of individual freedom are to be understood, according to Kant and Herder as well, either as a kind of rational self-restriction or as a diachronic process of self-discovery. However, as the discourse would continue to develop, both of these conceptual models would get pruned back to a more modest scope than these authors had originally intended.

Kant's transcendental concept of autonomy would later be weakened either by empirical reinterpretation or by an intersubjectivist correction of its reflexive achievements. In the first case, what Kant viewed as the rational capacity of noumenal subjects would be interpreted as a bundle of empirical skills; the reflexive acts required for the exercise of individual freedom would be described as the outcome of a process of socialization in which all subjects learn to regard themselves as co-authors of morally valid laws. Such empirically reductionist interpretations of moral autonomy can be found today across an entire spectrum of competing positions; both Freud's moral-psychological speculations<sup>22</sup> and Piaget's theoretical investigations on child development<sup>23</sup> are seen as empirically demonstrating how children gradually arrive at an understanding of themselves as morally responsible actors. Furthermore, such rein-

terpretations of what were once transcendental acts can now be found in moral-philosophical analyses; here we find attempts to prove that nearly existential constraints compel subjects to spontaneously adopt the perspective of moral autonomy.<sup>24</sup>

Kant's original conception has since been stripped of its transcendental features, not only by having been translated into empirical claims, but also by having been reformulated in intersubjectivist terms. This detranscendentalization undertaken by Karl-Otto Apel and Jürgen Habermas, drawing on Peirce and Mead, locates the moral subject within a communicative community;<sup>25</sup> what was previously the act of a solitary, self-referential subject thus came to be interpreted, through a speech-theoretical turn, as the communicative product of the members of a speech community. The argument goes that the normative presuppositions of speech compel individuals to view themselves as participants in a discourse in which each person must respect the autonomy of the others. The idea of reflexive freedom, still an entirely methodological matter for Kant, thus took on an intersubjective significance, which in turn gave this notion of freedom a much stronger foothold in the social structures of the lifeworld. On this view, individuals gain autonomy by being socialized into a communicative community in which they learn to regard themselves as addressees of the universal norms they bring about in cooperation with others. But as we will see later, the expansion of the 'I' into the 'We' of autonomy is not sufficient for fully grasping the import of the idea of intersubjective freedom, for it entirely ignores the fact that both the 'I' and the 'We' can only achieve self-determination once institutional relations within social reality offer opportunities to achieve these aims.

The same fate that befell Kant's concept of self-determination by the twentieth century at the latest would also befall Herder's notion of self-realization soon after his death. Step by step, Herder's theory would also become detached from its metaphysical premises and adapted to the intellectual conditions that gradually began to prevail within a more sobered modernity. After Nietzsche and Freud, it would become increasingly difficult to conceive of the process of self-realization as the reflexive liberation of a primitive and – furthermore – natural core of one's personality. In modernity, a person's 'self' is assumed to be something that is formed socially; we can withstand these formational processes to a certain extent, but not as a core that already contains the entirety of our individual character. Along with the abandonment of the notion that we have a certain personality core, the idea

would soon fade that self-realization is a process of discovery, of finding out the truth about oneself. If there is no primal, 'true' self, then self-realization cannot be understood as a process of self-discovery, but only as an essentially constructive process that demands standards other than those of reflection or identity with oneself. The outcome of all of these theoretical restrictions is that the discovery of one's own authentic desires has increasingly been set in opposition to the process of self-realization. The internal link that Herder simply assumed to exist between these two processes was in danger of being torn asunder, because the loss of the premise of an antecedent personality core also entails the loss of any possibility of unifying these two processes. The consequence is that even today, the ideas of authenticity and self-realization remain alienated from each other. Whereas the freedom that consists in acting solely according to one's own true desires is largely interpreted as a one-time act of identification or articulation, the freedom of self-realization is viewed diachronically as the capacity for creating the story of a unified self.

Harry Frankfurt has certainly ventured the furthest when it comes to defining authenticity by assuming a stage-like hierarchy of the human will. Unlike animals, humans are able to view first-order desires from the perspective of a higher-order desire, accepting, rejecting or affirming the former.<sup>26</sup> For Frankfurt, even if we act on a desire we judge to be acceptable or worthy from a higher-order perspective, our actions are not yet completely free. What is needed is a separate act of identification, of emotional agreement, in order to turn a desire into a motive for action that can truly be felt as 'free'.<sup>27</sup> The distinction between this idea of authentic freedom and all models of self-realization becomes apparent once we recognize that for Frankfurt, the possibility of completely identifying with a given desire does not depend on biographical continuity. I do not need to be able to grasp a desire which fulfils me entirely as a new stage or component in the process of my personal development in order to act authentically. By contrast, the ideal of self-realization necessarily assumes biographical continuity. As much as the fictional character of such continuity is now emphasized, freedom in the sense of self-realization still must be grasped as the outcome of a reflection on the diachronic whole of our biography.<sup>28</sup> What Herder regarded as a unity between authenticity and self-realization has now been torn in two: The acts demanded by reflexive freedom are entirely different from those presupposed in the formation of an authentic will.



Just like the idea of negative freedom, the various concepts of reflexive freedom have led to various specific conceptions of how we must approach the issue of social justice. While the first idea of freedom seemed to present a clear connection between the concepts of freedom and justice, it becomes utterly opaque once we turn to reflexive freedom. The concepts of autonomy and self-realization represent two ideals at odds with each other, whose implicit conceptions of justice can hardly be boiled down to a common denominator. When it comes to moral autonomy, the corresponding relations are relatively apparent: Because individual freedom is interpreted in the Kantian tradition as a kind of self-determination guided by the principle of universal respect, the principles of social justice must be conceivable as the outcome of cooperation among the totality of individual free actors. In essence, the idea of moral autonomy amounts to a procedural conception of justice. The procedure of individual self-determination is transferred to a higher stage of the social order once it is viewed as a shared process of will-formation in which equal citizens deliberate and decide on the principles of what they consider to be a 'just' social order. The 'substantive' content of such a conception of justice is thus not offered by the theory itself, as the latter restricts itself to determining the procedure of collective will-formation, perhaps along with a few principles that, for reasons of fairness or equal opportunity, precede these procedures.<sup>29</sup> It might also name a 'system' of individual rights that give shape to the procedures for forming a constitution;<sup>30</sup> but otherwise, the concrete definition of justice is the outcome of the procedure of collective self-determination. Just as the idea of negative freedom ultimately leads to a conception of justice that promotes a social system based on individual egotism, the idea of moral autonomy necessitates a procedural conception of justice that serves a social system based on cooperation or democratic deliberation. However, in the second case, the substance of this system is not determined in advance, because for conceptual reasons the theory cannot anticipate decisions that autonomous subjects must make on their own.

As clear as the methodological connections between the idea of freedom and the conception of social justice might be when it comes to self-determination, they become all the more ambiguous once we interpret reflexive freedom in terms of 'self-realization' of 'authenticity'. As we saw above, the modern understanding of justice depends almost exclusively on an idea of individual freedom. If we think of freedom as a reflexive act, and if we



interpret this act as a life-long process of self-articulation, the resulting conception of justice will necessarily be a social system in which each subject can pursue self-realization without harming others. In this case, the cooperating subjects play a much smaller role when it comes to determining the actual substance of that just order than in the case of the ideal of autonomy. After all, the theorist has at least a rough idea of the social conditions under which subjects strive for self-realization. Unlike the pluralism that is characteristic of conceptions of justice that define freedom as self-determination, conceptions of justice guided by the ideal of self-realization usually have some substantive content. Though they must not anticipate the aims or the direction of individuals' self-articulation, they can present external knowledge of the social conditions that individuals require for pursuing their aims.<sup>31</sup>

Yet the conceptions of justice stemming from the ideal of self-realization can be further divided into two sub-classes, as it is possible to grasp the idea that individuals can only attain freedom by articulating their 'true' selves in both an individualistic and collectivist manner. In the first case, in which the reflexivity of self-realization is interpreted as the exclusive act of individual subjects, the corresponding conception of justice must have an individualist character: Here a just order is generally understood as a sum of social resources and cultural conditions that allow individual subjects to freely articulate their authentic selves over the course of their lives. The best example of such a conception of justice are without a doubt those parts of John Stuart Mill's writings that do not present a merely negative idea of freedom, but are instead guided by an ideal of self-realization.<sup>32</sup> Drawing on Wilhelm von Humboldt, Mill argues that government has the duty to create a social 'atmosphere of freedom'<sup>33</sup> through appropriate educational measures and by reliably ensuring the pluralism of public opinion – an atmosphere in which the members of society can 'unfold' their individual 'faculties, capacities and susceptibilities' to the fullest possible extent.<sup>34</sup> For Mill the freedom of subjective self-realization – which the state must secure by means of basic educational measures, diversity of opinion and cultural life – is restricted solely by the famous 'harm principle'.<sup>35</sup> Within the limits that are to prevent subjects from violating the equal rights of other subjects, all individuals enjoy what ultimately amounts to a claim, vouched for by the state, to discover their own 'originality' and realize it in their own lives.<sup>36</sup>

Contrary to such individualist notions of self-realization, which amount to no less individualist conceptions of social justice, col-

lectivist approaches grasp the achievement of self-realization as an eminently communal, cooperative endeavour.<sup>37</sup> According to this view, individuals cannot achieve self-realization on their own, because their authentic self is so much an expression of a social community that it can only be unfolded in collective action. Therefore, the notion of freedom presupposed here is the outcome of a reflexive act that can only be performed by a collective. The conception of justice to which this notion of self-realization leads can take on various forms, but all share the methodological necessity of viewing a desirable social order as one that embodies the actions in which subjects realize the aims they have in common. The democratic version of this conception of justice is represented by liberal republicanism; according to this view, advocated by Hannah Arendt or, to a lesser extent, Michael Sandel,<sup>38</sup> members of society come together to discuss and publicly negotiate their common affairs, such that intersubjective debate in the public sphere must be grasped as a collective form of self-realization. The connection between this notion of self-realization and a corresponding conception of justice lies in the fact that given institutional arrangements are examined in terms of whether they can preserve the necessary solidarity among the citizenry. What counts as 'just' is ultimately whatever is capable of promoting social attitudes of solidarity, a necessary prerequisite for shared activity in the public sphere. The substance of this abstract idea of justice depends on what we regard as necessary for guaranteeing the social integration of the political community; the spectrum of possibilities runs from social-egalitarian approaches that urge the social inclusion of all citizens to forms of political elitism that can also occasionally be found in Hannah Arendt's work.<sup>39</sup>

It is extremely difficult to determine whether this version of reflexive freedom that focuses entirely on the periodic, momentary identification with one's own desires can produce an independent idea of justice; after all, there are many indications that the concept of authenticity leads to the same model of a just order that we saw in the individualist notion of self-realization. Even if we interpret self-realization not as a continuous process but as a discontinuous series of acts of identification, the decisive criterion for judging whether a given social order is just or not must be whether the members of society are given sufficient space and resources to perform such acts. On the whole, however, this conception of authenticity is not comprehensive enough to produce an independent idea of justice. Therefore, we are probably justified in stating

that this conception of freedom is neutral, or rather, indifferent to matters of justice.<sup>40</sup>

As we have seen in this rough overview, it is not easy to find a common denominator for the conceptions of justice that go together with the idea of reflexive freedom. It is true that they all differ from the conception of justice linked to the idea of negative freedom by focusing on cooperation rather than a social system founded on individual self-interest. The degree to which subjects must cooperate in order to achieve the social conditions needed to realize reflexive freedom is significantly higher than in the case of negative freedom. Beyond this rather formal commonality, however, we find a variety of differences related to the fact that reflexive freedom can be understood in terms of both autonomy and self-realization. And depending on which model we apply, the basic institutions that make up a just order, that is, the institutions intended to guarantee the realization of freedom, are characterized in very different ways. Nevertheless, the methodological procedure for determining the corresponding conceptions of justice remains the same: On the basis of reflexive freedom – whether as self-determination or as self-realization – we deduce ideas about which institutional circumstances are needed to guarantee that all individuals can realize either notion of freedom.

Therefore, neither of these two models of reflexive freedom interpret the social conditions that enable the exercise of freedom as elements of freedom itself. Instead, these conditions do not come into view until the issue of a just order is raised, and thus the social chances for realizing these prerequisites. So in essence, ideas of reflexive freedom stop short of the conditions that enable the exercise of freedom in the first place; they artificially bracket out the institutional circumstances and forms that are crucial for the successful completion of the process of reflection. After all, a key element of self-determination consists in the institutional availability of moral aims; and part of self-realization is the actual availability of the goods required for realizing our desires. In both cases, social circumstances only come into play once the exercise of freedom has already been defined; they are then added externally, as elements of social justice, but not as an inherent aspect of the exercise of freedom. An exception to this 'after-the-fact' logic is the discourse theory of reflexive freedom: Because the act of reflection is tied to participation in discourse, the latter cannot be interpreted as a merely external extension of freedom, but must be viewed as one of its core elements. Such an institutional expansion of the concept

of freedom serves as the criterion for the third, *social* concept of freedom, according to which the idea of reflexive freedom cannot be realized without taking into account the institutional forms that enable its realization.

## *Social Freedom and the Doctrine of Ethical Life*

The communicative discourse model developed by Karl-Otto Apel and Jürgen Habermas offers a concept of individual freedom in which social freedom lies within the territory of reflexive freedom. Unlike traditional, monological views of reflexive freedom, the authors claim that only intersubjective discursive interaction can enable the kind of rational self-control that represents the innermost core of freedom.<sup>1</sup> What makes this new, discursive view of freedom 'social' is the fact that it regards a certain institution of social reality no longer as a mere addition to freedom, but as its medium and condition. On this account individual subjects can perform the reflexive acts required for self-determination only if they interact socially with others who do the same. The given institutional setting, discourse in this case, is no longer something that needs to be added to a given concept of freedom in order to arrive at a conception of social justice, rather, it constitutes an element of freedom itself. Only if such institutions are given in social reality can individuals relate to their own wills within that framework in a way that ensures reflexive freedom.

In discourse theory, this social turn remains suspended between transcendentalism and institutionalism, between normative idealism [*Geltungsidealismus*] and social theory. The fact that individuals depend on discursive partners in order to formulate their own will and thus experience freedom is sometimes viewed as an ahistorical, rational fact, and sometimes as an historically potent necessity.<sup>2</sup> The authors never draw the conclusion from their premise – according to which freedom is necessarily intersubjective – that structures of institutionalized practices are necessary in order to

initiate the process of reciprocal self-determination. In discourse theory, 'discourse' is understood either as a transcendental event or as a meta-institution, but never as a particular institution in the multiplicity of its social appearances. There is a lack of commitment to provide the historical concretion needed to gain an insight into the institutional foundations of freedom. Hence, the approach undertaken by Apel and Habermas could not cross the threshold to a social concept of freedom, even though their entire theory refers to it. Only by looking back at Hegel can we see how it might be possible to grasp specific institutions as media of reflexive freedom.

Hegel develops his own conception of freedom, which, picking up on the terminology employed by Frederick Neuhaus,<sup>3</sup> I will refer to here as 'social' freedom, primarily in the *Philosophy of Right*. He begins with a critique of two different conceptions of freedom that are largely similar – though not in the details – to the two ideas of freedom already presented above: While the idea of negative freedom – to use our own terminology – must fail because the 'content' of action cannot itself be grasped as 'free', the idea of reflexive freedom is insufficient because it opposes the actions it views as free in substance, viz. as self-determined acts, to an objective reality that must continue to be regarded as completely heteronymous.<sup>4</sup> Obviously, Hegel's objection to the second model of freedom complements his critique of the first model. While the first model of freedom is criticized for not extending into the relationship-to-self, the subjectivity of the individual, the decisive deficit of the second, reflexive model lies in the fact that although freedom now extends inward, it does not extend outward to the sphere of objectivity. This second line of thought becomes somewhat less abstract once we relate it to the formulations already used to characterize reflexive freedom. We saw that the idea of freedom presupposes a reflexive act on the part of individual, who must either perform an act of autonomy or determine his or her own desires. Hence we are only free to the extent that we are capable of directing our actions toward aims that we have set autonomously, or toward desires that we have uncovered authentically. If we now relate Hegel's objection to this conception, we see that there appears to be no guarantee that reflexive aims can in fact be achieved. Although the inward extension of freedom ensures that we only pursue aims that are not determined by an external authority, the actual chances for their realization are not taken into account at all. Clearly, Hegel is searching for a third model of freedom that overcomes this flaw by subjecting the objective sphere of reality to the criterion of freedom.

Not only must individual intentions be developed without any external influence, but the external, social reality must be able to be conceived as being free of all heteronomy and compulsion. The idea of social freedom, therefore, is to be understood as the outcome of a theoretical endeavour that expands the criteria underlying the notion of reflexive freedom to include the sphere that is traditionally set in opposition to the subject as external reality.

However, the mere mention of this theoretical endeavour makes apparent just how difficult it is to achieve. When it comes to individual plans and aims, we have enough everyday criteria that can help us distinguish between what is free and not free, but we appear to lack any such intuitions when it comes to the sphere of social reality. In any case, we cannot simply and spontaneously present criteria that would allow us to distinguish between different degrees of freedom in the sphere of social institutions. Hegel, however, does seem to invoke everyday experience when, in the addition to §7 of his *Philosophy of Right*, he claims that 'friendship' and 'love' represent examples of freedom in the external sphere of the social: 'Here, we are not one-sidedly within ourselves, but willingly limit ourselves with reference to an other, even while knowing ourselves in this limitation as ourselves. In this determinacy, the human being should not feel determined; on the contrary, he attains his self-awareness only by regarding the other as other.'<sup>5</sup> Although Hegel wishes to restrict these elucidations to the level of mere 'feelings', the key to his conception of freedom is contained in his formulation of being 'with oneself in the other'. This idea is rooted in a conception of social institutions in which subjects can grasp each other as the other of their own selves.

The term 'mutual recognition' has always been the key to Hegel's conception of freedom.<sup>6</sup> As isolated subjects, and despite their reflexive freedom, human beings remain cut off from the external world of social settings and institutions. As much as subjects might be able to focus their actions on the pursuit of autonomous aims, they remain uncertain about whether these aims are realizable in objective reality. The striving for freedom no longer forms an element of merely subjective experience as soon as we encounter other subjects whose aims complement our own. Indeed, now the ego can see an element of the external world in the strivings of its partners in interaction – an element that allows it to implement its autonomous aims objectively. In the first instance, therefore, 'mutual recognition' merely refers to the reciprocal experience of seeing ourselves confirmed in the desires and aims of the other,

because the other's existence represents a condition for fulfilling our own desires and aims. Once both subjects recognize the need to supplement their respective aims, thus seeing their own aims in the other, merely reflexive freedom becomes intersubjective freedom. Hegel draws a connection to the concept of the institution or the medium by viewing behavioural norms as a social precondition for recognizing the complementary nature of aims and desires. Subjects must have learned both to articulate their own aims to the other and to understand the other's articulations in order to recognize each other in their dependency on each other. Hegel believes that such reciprocal comprehensibility is ensured by the institutions of recognition, that is, by bundles of behavioural norms that 'objectively' integrate individuals' aims. They ensure that subjects can recognize in the behaviour of their alter ego the desires whose fulfilment represent the condition for the fulfilment of their own. Because the individual's striving for freedom can thus be fulfilled only within – or with the aid of – institutions, the 'intersubjective' concept of freedom expands once again into a 'social' concept of freedom. A subject is only 'free' if it encounters another subject, within the framework of institutional practices, to whom it is joined in a relationship of mutual recognition; only then can it regard the aims of the other as the condition for the realization of its own aims. 'To be with oneself in the other' thus necessarily entails a relation to social institutions, for only established and routine practices can guarantee that subjects will recognize each other as the other of their self. And only this form of recognition can enable individuals to implement and realize their reflexively determined aims at all.<sup>7</sup> As long as Hegel still believed that he could explain the ethical unity of modern societies directly on the basis of subjects' emotional connectedness, he could convince himself of the social nature of freedom primarily by referring to the love between a man and a woman. In the relationship of love, we find a reflexive kind of freedom that goes beyond mere desire and becomes a state of erotic affection between two subjects who recognize each other as two persons who are aware of their dependency on each other: 'Desire thus frees itself from its relation to pleasure and becomes an unmediated unity between the two in their both being for themselves, or it becomes love. And pleasure is, in this self-reflection, consciousness in the existence of the other.'<sup>8</sup> Hegel's own comments in the margins of the text, in which he lists older historical, e.g. more chivalrous forms of love, make apparent that he had a specific institution in mind when it came to this 'immediate' form of recognition.<sup>9</sup>



Only under the historical condition that such relationship patterns have been replaced by the modern, romantic ideal of love can two subjects relate to each other by reciprocally fulfilling their erotic freedom in the other. Therefore, Hegel's early conception of love already referred to the institution he would later regard as a social precondition for the emergence of the corresponding relationship of recognition.

Hegel would soon seek to expand his theory of recognition after having acquainted himself with the emerging science of economics. If, as this new discipline claimed, the structure of modern societies was characterized by an independent economic sphere, the market, then the ethical unity of society could no longer be understood merely on the basis of the recognitional relationship of love. Instead, the expanding domain of the market must also harbour its own potential for freedom, for otherwise we could not explain how large parts of the population could so quickly come to morally agree to its existence. In the face of this new challenge, and in order not to have to abandon his original insight that freedom necessarily represents an institutionally anchored relationship of recognition, Hegel had to explain how the market could represent such an institution of recognition. The ingenious solution he came up with in Jena was to assume that in the sphere of the market, subjects must recognize each other reciprocally, viewing each other as subjects whose economic offers guarantee the satisfaction of their own, purely egocentric needs. Therefore, Hegel can conclude that even in what seems to be the entirely atomized sphere of the market, freedom bears the institutional structure of an interaction, for it is only by recognizing their mutual dependency that individuals can achieve their respective aims. To grasp the market as a new, indirect form of 'being with oneself in the other' means learning to understand that this institution creates a relationship of recognition through which individuals can expand their freedom.<sup>10</sup>

As a consequence of having included the market in his conception of social freedom, Hegel learns to grasp the society of his day as a layered arrangement of recognitional relationships. Ultimately he comes to differentiate in his *Philosophy of Right* between three institutional complexes that differ from each other in terms of the purposes or aims satisfied by reciprocal recognition in each case. But throughout the book Hegel maintains that the freedom of individuals ultimately only begins once they can take part in institutions whose normative practices ensure mutual recognition. Hegel originally arrived at this peculiar conception only as a way of com-

pleting a purely logical operation: On the one hand, the purely negative concept of freedom lacks subjectivity, which must somehow be capable of being understood as free; on the other hand, the resulting concept of inner, reflexive freedom lacks objectivity, because external reality is still only regarded as a heteronomous sphere. In order to overcome the deficits of both these conceptions, Hegel needed a third concept of freedom that reconciled subjectivity and objectivity, the particular and the general. But as soon as Hegel begins to elucidate this merely conceptual construction, thus coming closer to our actual lifeworld experience, it becomes apparent that he is onto an extremely persuasive idea. In proposing that we include objectivity in the determination of freedom, he is right that we cannot experience ourselves as free as long as the preconditions for the implementation of our autonomous aims cannot be found in external reality. In the first instance, all of Hegel's criticisms of inner, reflexive freedom amount to the same finding: If we only interpret freedom as a 'capacity', as the ability to pursue purely self-defined aims, then we will see 'the relationship of freedom to what it wills, or in general to its reality, merely as its *application* to a given material, an application which does not belong to the essence of freedom itself'.<sup>11</sup>

Now, we can also distinguish between a strong and a weak version of this third position, according to which the objective preconditions for the realization of freedom belong to the 'essence of freedom itself'. What makes Hegel's idea of social freedom unique is the fact that it offers a decisively specific interpretation of the stronger version. According to the weaker version, the inclusion of objectivity means that our conceptions of 'autonomy' or 'self-realization' remain incomplete as long as we leave out the social resources needed to realize our goals. One variety of this view is advocated today by Joseph Raz, who shows that the circular relationship between our chosen aims and institutional arrangements makes it highly implausible to not include such 'social forms' within the concept of autonomy itself.<sup>12</sup> But as close as Raz's account might come to certain aspects of Hegel's doctrine of freedom, he is still far off from Hegel's central intuition. Hegel, after all, not only searches within social reality for the conditions that enable the realization of autonomous aims, he also aims to thaw the frozen 'material' of reality just enough so that it once again conveys objectively the structure of reflexive freedom itself. The world of objectivity should accommodate individuals' striving for freedom in the sense that it should want of its own accord, so to say, what subjects

reflexively intend. This strong, ontological requirement is only fulfilled if other subjects pursue aims that demand that we achieve our own aims. Then we can conceive of the objectivity embodied by others in such a way that objectivity asks or demands of subjectivity that the latter realize itself in its own reflexive freedom.

It is this strong interpretation of a concept of freedom that takes into account objective preconditions which Hegel sought to defend with his concept of 'recognition'. He uses this concept to characterize the structure of reconciliation not only between subjects, but also between subjective freedom and objectivity. In the relationship of recognition, subjects encounter a (subjective) element of reality through which they see themselves affirmed or challenged to realize the aims they have developed reflexively. Only by doing so can this objective element be satisfied, because just like the subject, it too pursues aims whose realization demands that others seek to realize their intentions. However, the obvious consequence of this construction is that Hegel must assume that both sides only pursue aims or intentions that are 'universal' [*allgemein*] in a very demanding sense: Mutual recognition can only arise if the aims of both parties can only be fulfilled in a complementary fashion. The 'need for completion' [*Ergänzungsbedürftigkeit*] mentioned above therefore represents a precondition for the type of freedom realized in the relationship of recognition. In order for individual freedom to come about in reality, and thus to be reconciled with reality, the subject must seek to realize aims that presuppose other subjects who pursue complementary aims. So before social freedom can be attained, Hegel must posit a process in which subjects learn to essentially formulate desires and intentions that are 'universal' in that they need others to complete them; once a subject has set such aims, it can experience being '*with itself* in this objectivity'<sup>13</sup> within the corresponding relationships of recognition.

Hegel also assigns the task of universalizing desires and intentions to the institutions to which he dedicates his entire doctrine of freedom, thereby following the ultimately Aristotelian idea that subjects learn, under the influence of institutionalized practices, to align their motives with the inherent aims of such practices. At the end of such a process of socialization, there stands a relatively stable, habitualized system of endeavours ensuring that subjects will cultivate the very normative habits previously anchored in their practices.<sup>14</sup> When individuals grow up with institutions in which normative practices of reciprocity are permanently established, then in Hegel's view they will learn in the course of their

'upbringing' [*Bildung*] to develop desires and goals that can only be satisfied through the complementary actions of others.<sup>15</sup> As if in a closed feedback loop, socialization ensures by means of institutional complexes of recognition that subjects will learn to pursue universal aims that require complementary action, aims that can only be achieved through the reciprocal practices that sustain these institutions.

In Hegel's doctrine of freedom, therefore, there are essentially two tasks to be fulfilled by the institutions that embody established relations of recognition. First they are to ensure, as media of transmission, that certain classes of behavioural expressions can be understood as invitations to realize complementary aims together; only on the basis of such intersubjectively binding rules and symbols can individuals agree to identify with each other as members of a general community and to realize their aims and intentions reciprocally. Institutions of recognition are thus not mere addenda or an external condition of intersubjective freedom. Because subjects cannot become aware of their mutual dependency without such institutions, the latter are at once the basis and the space of realization for this kind of freedom. Second, these same institutions must enable individuals to acquire an intersubjective understanding of their freedoms in the first place; only by 'growing into' practices aimed at the shared realization of complementary aims do subjects learn to view themselves as self-conscious members of communities that guarantee freedom. Hegel can therefore conclude that individuals can only experience and realize freedom if they participate in social institutions characterized by practices of mutual recognition.

Although this concept of social freedom might seem downright peculiar, and even eccentric, it has been much more influential than might appear at first glance. In his early writings Marx is guided by Hegelian intuitions, though perhaps not consciously so, when he declares social cooperation to be the model of freedom.<sup>16</sup> His starting point lies in the concept of individual self-realization, which, as we already have seen, is a particular form of the idea of reflexive freedom: Human beings are only truly free to the extent that they are capable of articulating their 'true', authentic needs and desires and realizing them. For Marx, however, this once widespread model remained far too abstract as long as it was only conceived of in relation to language and poetic creativity, as was the case with Herder and his disciples. Instead Marx draws on Hegel, with whose *Phenomenology of Spirit* he had been very familiar with

since 1837,<sup>17</sup> and grasps the process of self-realization as an activity in which individuals objectify the 'specific character of their individuality' and enjoy their own personal abilities 'in contemplating the [produced, A.H.] object'.<sup>18</sup> For Marx, however, self-realization is not a monological process, but one that is related to the needs of other humans from the very start. To satisfy their needs, all individuals depend vitally on the products that others produce; thus their labour is directed toward the needs of those from whom they expect the products they require for the satisfaction of their own needs. Through their respective self-realization, therefore, subjects complete each other, because they contribute to the expansion of each other's aims by performing their respective work. Subjects' reciprocal need for the complementary activity of the other in order to satisfy their own needs<sup>19</sup> explains Marx's claim that humans both 'affirm' others and see themselves 'confirmed' by others in their own self-realization: 'I would have the . . . satisfaction . . . in my labour' of being 'the *mediator* between you and the species, thus I would be acknowledged by you as the complement of your own being, as an essential part of yourself. I would thus know myself to be confirmed both in your thoughts and your love.'<sup>20</sup>

At this point, Marx is not far off from Hegel's model of recognition in claiming that the freedom of self-realization relies on that freedom being supplemented by other subjects. In his view, our attempts to realize ourselves through objectifying labour remains incomplete as long as there is no counterpart that contributes to the satisfaction of our own needs by his or her own productive self-realization. Only under the condition that others can reliably ensure this satisfaction can we conclude the process we have begun and thus 'take pleasure' in all our skills in the finished product. A necessary part of enjoying our own freedom is thus the awareness of being dependent on our partners in interaction, on relying on them to 'complement' our 'own essence'. And because all subjects are dependent on others, all are connected to each other through relationships of recognition. Marx is aware, however, that such a loose connection between the members of a community is impossible without an external, objective medium. He thus provides for a social institution in which this form of mutual recognition loses its fleeting character and is made binding for all. In cooperation, understood as the true 'bond' of our common production,<sup>21</sup> subjects are aware of their essential reciprocal need to find a complement in the other. For Marx, cooperative production represents the institutionalized medium between the individual freedoms of all

the members of a community; if they do not participate in this institution and are thus excluded from cooperation, they will not be able to realize themselves in their productive activity, because there is no other subject that recognizes their needs in its own productive activity.

Marx retains this specific concept of social freedom for the rest of his life; he remains convinced that individuals' reflexive freedom can only be truly attained if they manage to achieve their own productive self-realization in concert with others' self-realization. Already in his early writings, of course, Marx uses this concept as a normative template for developing a critique of society that goes far beyond what Hegel intended to accomplish with his doctrine of freedom. While Hegel sought to provide liberalism with a conceptually broader and deeper foundation by demonstrating its dependency on institutions that guarantee freedom, Marx intended to criticize the capitalist mode of socialization as a whole: As soon as individuals' productive activities are no longer directly connected through the medium of cooperation, instead being coordinated by the 'alien mediator'<sup>22</sup> of money, Marx claims that subjects will lose sight of their relationships of mutual recognition, and in the end each subject will experience itself as a 'self-interested', self-enriching, isolated being. Capitalism, which substitutes monetary exchange for the medium of cooperation, creates social relationships in which 'our mutual supplementing of each other is equally but an *appearance*, based on our mutual plundering of each other'.<sup>23</sup> Although Marx would modify and refine this image over the course of his work, its basic features remain intact up into his later writings. Even in his completed critique of political economy, *Das Kapital*, he criticizes the capitalist social formation primarily because it creates the material appearance of social relations mediated solely by things, causing us to lose sight of the intersubjective structure of freedom.<sup>24</sup> Even after Hegel and Marx, the two forefathers of the concept of social freedom, there have been various attempts to interpret social institutions as an intrinsic part of individual freedom, yet the categorial emphasis has shifted so often that the result has not been a more profound understanding, but a harsh critique of the modern individualism of freedom. Arnold Gehlen stands at the forefront of this development, pitting institutions against the pathos of freedom he finds in the Hegelian tradition.<sup>25</sup> In his view, Hegel and his leftist disciples base their considerations on the Fichtean formula that subjects remain unfree as long as they have not made all objectivity, all materiality and all

that is not spiritual into a product of their own conscious activity. In this tradition, therefore, each institution and external regulation of behaviour must be regarded as a fundamental obstacle to individual freedom. For Hegel and Marx, in Gehlen's view, the mere existence of stabilized habitual practices is a problem, because subjects are thereby prevented from experiencing themselves as free in the immediate activity of producing their world. Already at this early point, however, Gehlen makes the mistake of not distinguishing between an individualist and an intersubjectivist interpretation of reflexive freedom. He simply ignores the fact that Hegel's doctrine of freedom is not based on the monological approach of Fichte's *Wissenschaftslehre*, but on the intersubjective doctrine found in his study of 'natural right'.<sup>26</sup> Neither Hegel nor Marx adopts an idealistic understanding of individual freedom as a reflexive recovery of an initially alien objectivity. Instead, both assume that individuals can only realize their reflexive freedom if they are confirmed by other subjects whose reciprocal action enables them to pursue their own aims. They make no mention of dissolving all materiality in the producing consciousness of the individual. If Hegel suggests anything of the sort, then he does so only to point out a kind of objectivity that must contain the preconditions under which autonomous aims find 'objective' confirmation.

Because Gehlen ignores this other, intersubjective path taken by German idealism, he can then act as if Marx and Hegel needed to be reminded of the role of institutions in securing freedom. In his view, when it comes to realizing freedom, institutional structures grant individuals the behavioural certainty without which their subjectivity would lose all contours: 'Man can only *indirectly* retain a *lasting* relation to himself and his peers, he must find himself via a detour, externalizing himself, and that is where institutions lie.'<sup>27</sup> To externalize ourselves in institutions means to identify with their normative behavioural rules so strongly that our own subjectivity can only attain its identity-forming aims and principles via those institutions. Gehlen is convinced that human subjects by nature have too little internal motivation, are too dependent on impulses and too formless to be able to formulate goals on their own.<sup>28</sup> Therefore, subjects must first perform an act of externalization, handing themselves over to institutions, before they can be capable of performing the basic acts generally considered to be preconditions of individual freedom. Hence for Gehlen, freedom derives from identifying with institutional structures; whoever does not let himself or herself be guided by their rules, whoever evades them



and attempts to act on his or her own impetus, will be susceptible to far too many impulses to be capable of individual freedom at all.

Of course we could regard even this conception as a model of social freedom. Similar to the intersubjectivist Hegel, whom Gehlen does not permit to speak, freedom is predicated on participation in institutionally organized practices. Here as well, institutions are not viewed as external conditions or supplements, but as an internal medium of individual freedom. But what this medium is supposed to be good for, that is, the function it is supposed to perform, differs so starkly that the common denominator shared by these two approaches conceals their fundamental differences. For Hegel, institutions belong to the concept of freedom because the intersubjective structure of freedom must be relieved of the necessary task of coordinating subjects: In the routine practices objectified in an institutional structure, subjects can almost automatically recognize which contribution they need to make in order to realize their aims, which is only possible in concert. Hegel thus cannot include just any institution in his concept of freedom, rather he must limit himself to institutional structures with established relationships of recognition that enable the lasting possibility of mutually realizing individual aims. The category of recognition, which for Hegel is the key to determining the intersubjective nature of freedom, is also the decisive foundation for his notion of institutions: Because such complexes of regulated behaviour must provide subjects with social conditions that allow the reciprocal realization of freedom, institutions must constitute congealed forms of mutual recognition. In Hegel's doctrine of freedom, therefore, institutions only appear as lasting embodiments of intersubjective freedom.

Gehlen, on the other hand, would be unable to make any sense of the claim that only those institutions that embody freedom can be viewed as guarantors of freedom. For Gehlen, even those institutional structures whose sole function consists in prescribing strict rules of behaviour necessarily guarantee freedom. This grave difference results from the fact that for Gehlen, there is no such thing as pre-institutional individual freedom. According to his view, we can only set aims for ourselves once our amorphous impulses to act receive clear and unambiguous directions in the form of concrete institutional guidelines. But because Gehlen does not possess any criteria for defining freedom independent of its respective institutional embodiments, he cannot distinguish between institutions in terms of their respective relation to the concept of freedom. Instead he must view all institutional structures as guaranteeing freedom to



the exact same degree.<sup>29</sup> Again, one could regard this as a model of 'social freedom' as well, but then we would have to clearly distinguish between two different versions. While for Hegel freedom is 'social' because institutions of 'objective spirit' open ways and stations for subjects to mutually realize their aims, Gehlen refuses to accept any such lack of compulsion within social systems of order. For him, what makes freedom 'social' is the fact that institutions exercise a disciplining force that allows subjects to be individually free at all.

Finally, these differentiations illustrate that Gehlen's concept of social freedom, unlike that of Hegel or Marx, does not represent an original approach to the issue of justice. We saw that along with every new idea of freedom emerging in the philosophical discourse of modernity, there has been a change in the concept of social justice. From Hobbes and Rousseau to Kant and Herder, the structure of individual freedom not only becomes increasingly reflexive, but the methodological demands on a theory of justice grow as well. A conception of how individual freedom can be created through institutional pressures is so primitive and elementary that it hardly allows us to draw any conclusions about the methodological construction of a just order. At the very most, we could perhaps say that for Gehlen, freedom is socially anchored whenever stable institutions prevent sensory overload and excess impulses; but even this causes us to lose sight of the fact that Gehlen makes any internal connection between the concept of freedom and a conception of justice impossible. Only the idea of social freedom formulated by Hegel is truly capable of attaining a novel perspective on the question of a just order.

Of course, neither Hegel nor Marx can accept or be persuaded by the conceptions of justice entailed by the concepts of freedom advanced by their predecessors. Both even raise the same objection against the theoretical construct of the social contract, often used by theoreticians of negative freedom to determine the contents of social justice: If the hypothetical contract is supposed to represent a consensus among subjects solely interested in their own well-being, then the resulting social order will amount to nothing but a well-ordered system of private self-interest; and this would fail to capture both the truth and the opportunity of a kind of freedom in which each helps the other toward self-realization.<sup>30</sup> But only Hegel can object to the other conceptions of justice held by his predecessors; Marx has little interest in making any further differentiations, since he claims that abstract principles of justice

merely reflect the need to legitimate the prevailing social order.<sup>31</sup> Although Hegel also makes little effort to differentiate between different conceptions, he does at least indicate why he rejects Kantian proceduralist approaches, arguing that such theories are caught in a vicious circle: Their proceduralist standpoint presupposes an entire culture of freedom, yet they cannot regard such institutional and habitual conditions as having been justified. While these theories add contents or material substance as mere external aspects that can only be the result of such a procedure, in fact these external, social circumstances are necessary to carry out the procedure in the first place: 'This method leaves out of account what is alone essential to science – with regard to the content, the *necessity of the thing* [*Sache*] in and for itself . . . and with regard to the form, the nature of the concept'.<sup>32</sup> For Hegel, there is no doubt that this circularity is linked to the deficits of the presupposed concept of reflexive freedom: Because proceduralist theories employ a concept of individual freedom in which subjectivity itself is regarded as 'free', though not its external reality, when it comes to defining justice they can content themselves with presenting a reflexive procedure without taking into account the institutional reality of society. Hegel thus sees an internal connection between the concept of reflexive freedom and proceduralist theories of justice, because the exclusion of objectivity is reflected in the theory's focus on merely formal principles when it comes to defining the contents of justice. Hegel is thus opposed to divorcing procedural justification from the subsequent application of the presumed outcome to a given object; if the presupposed concept of freedom already contains indications of institutional relations, then the elucidation of this concept must produce the epitome of a just social order virtually automatically. In this case, according to Hegel, the logical gap between justification and application often asserted by Kantian proceduralist social theories could not possibly arise. If we give a sufficiently careful description of the objectivity of reflexive freedom, then an overview of the communicative practices and institutions which define the conditions of social justice should emerge.

In his critique of proceduralist theories of justice, therefore, Hegel outlines an alternative procedure in which institutional structures of individual freedom are included in the understanding of individual freedom itself, which allows him to describe the outlines of a just social order at the same theoretical level. This, however, raises a problem in its own right, because Hegel must now determine in advance which aims can only be realized in free, unforced

reciprocity. While Kant's proceduralist approach can suppose all imaginable aims and intentions as long as they meet the conditions of (moral) reflexivity, Hegel cannot be satisfied with this kind of pluralism. Because he seeks to equate a just order with the sum of social institutions necessary for realizing intersubjective freedom, he must determine in advance the aims that individuals can achieve together solely through reciprocity. Now, Hegel is not exactly transparent when it comes to defining these aims; his account is so wrapped up in the language of his metaphysics of reason that it can be neither justified nor even presented apart from that language. But perhaps, if we use our own terminology, we could say that Hegel employs a method that is meant to create an equilibrium between historical and social circumstances and rational considerations. As he proceeds to compare reflections on which aims individuals should rationally pursue and the empirical determinations of the socialization of needs [*Bedürfnissozialisation*] in modernity, the aims that subjects must realistically pursue in order to achieve self-realization under given conditions should gradually emerge. In order to make Hegel's intention more clear, we could label this search for a balance between a theoretical concept and the historical reality a 'normative reconstruction'. By following the general determination of what rational subjects can rationally want, the aims these subjects actually pursue with the greatest possible proximity to the conceptual ideal should be gleaned from historically given relations. In his attempt to name in advance general purposes of freedom, Hegel must take up the perspective of both the social theoretician and the philosopher at the same time. He must provide a purely conceptual outline of the aims that all human subjects should rationally set for themselves, in order to then compare these aims with the actually existing, empirical intentions that individuals develop by virtue of their upbringing in the culture of modernity. In the end, the aims that historically situated subjects pursue as rational beings should appear in nearly ideal form.

Of course, Hegel would have used none of these terms to characterize his own methodological procedure. Instead it seems that he sought to derive the aims that subjects freely determine directly and immediately from the concept of an historically unfolding spirit. Nevertheless, we can use an independent descriptive language to show the validity of Hegel's method even if we detach it from his spiritual metaphysics. As we saw above, Hegel was faced with the problem of having to define the substance of the aims and desires that subjects seek to fulfil in modernity within the framework of

their individual freedom. He thereby seeks to determine the institutional complexes, the institutions of recognition, that would constitute a just order in modern society. If the reflexive comparison between a theoretical concept and the historical reality now shows which aims subjects should ideally pursue under given conditions, Hegel can begin to assign to them the corresponding institutions, each of which is to ensure that subjects experience their freedom as something objective, since they must perceive the external conditions of the realization of their individual aims in the institutionalized role of the other. The number of institutions between which Hegel must differentiate depends entirely on the number of universalizable purposes he can assume individuals to have. Each of these goals must correspond to an institutional structure in which practices of reciprocity ensuring intersubjective satisfaction have been permanently established.

Hegel, as is well known, used the Aristotelian term 'ethical life' to describe the entirety of these structures, thus ultimately providing an outline of how social justice can be ensured in line with the modern ideal of freedom. For Hegel, in order for a modern social order to be 'just', it cannot merely embody the outcome of a fictitious social contract or a process of democratic will-formation, for these proposals ascribe to subjects a kind of freedom they can only enjoy by participating in institutions that are already just. Modern theories of justice conceal this contradiction by presupposing concepts of individual freedom that do not take account of the fact that freedom depends on an objective medium, on being fulfilled in reality. If being free merely means acting without external restrictions or taking up a reflexive stance, then subjects can be seen as being sufficiently free even before they become involved in a social order. But if we grasp subjects as truly 'free' only on the condition that their aims can be fulfilled or realized within reality itself, then we must reverse the relationship between legitimating procedures and social justice: We must first regard all subjects as integrated in social structures that ensure their freedom, before they then participate as free beings in a procedure that monitors the legitimacy of the social order. Hegel must outline a just social order prior to any legitimating procedure, because subjects only acquire the individual freedom they need to participate in such procedures within institutions that are socially just by virtue of ensuring freedom. Therefore, Hegel's entire theory of justice amounts to an account of ethical relations; it presents a normative reconstruction of the layered order of institutions in which subjects can realize their

freedom in the experience of mutual recognition. And it is only within a context of existing institutional structures, each of which corresponds to one of the general purposes that modern subjects aim to achieve, that the legitimating procedures from which other theories of freedom seek to derive their conceptions of social justice can be justified.

For Hegel, reversing the relation between the social order and legitimating procedures does not at all mean denying that such procedures have a role in developing a theory of justice. Instead, their function lies within the framework of a social order that has already been proven 'just'; instead of founding that order, their role lies in judging individual questions of legitimacy. Hegel rounds out the methodological structure of his conception of justice by entitling individuals, on the basis of their social freedom, to examine given institutions in terms of whether the latter live up to their own standards. Both 'legal freedom' and the act of 'examining one's conscience' [*Gewissensprüfung*] – neither of which Hegel grasps as an ethical structure – should allow us to step back from all the relations of recognition to which we owe our social freedom.<sup>33</sup> Hegel obviously intends thereby to integrate the other two forms of freedom dealt with above into his system of ethical life; our entitlement to 'abstract rights' should allow us to make use of our negative freedom under precarious circumstances, whereas the recognition of our 'morality' should allow us to assert our beliefs, arrived at through reflection, against the prevailing order. However, Hegel only permits both these freedoms to the degree that they do not endanger the institutional structures of actual, social freedom. They are intended as a supplement to the ordered system of ethical institutions, granting individuals the right to legitimately renounce the demands these institutions make, without representing the source of a new order. Whether Hegel would have been prepared to include the rejection of the system as a legitimate exercise of legal and moral freedoms, provided this renunciation is shared by a sufficiently large portion of the population, is an interesting question, but one that will not be pursued any further here.

With that, we can conclude our account of the methodological consequences Hegel believes he can draw from his concept of freedom for a theory of justice. Because he is convinced that individual freedom only unfolds within institutions of recognition, he cannot make the shape of such institutional structures contingent on the hypothetical consensus of all potential members of society. After all, that would mean that the consensus (embodied by a social

contract or brought about by democratic will-formation) would have been brought about by subjects who, lacking institutional involvement, are not sufficiently free to possess a well-considered perspective and opinion. As we saw above, Hegel must construct a just order, viz. a system of institutions that guarantee freedom, prior to the decisions of first isolated, then unified subjects. These institutions of recognition within which subjects can achieve social freedom must be designed before the subjects, in a further step, come to a considered position on that order. In short, recognition within institutions must precede the freedom of atomistic individuals and discursive subjects. At the same time, Hegel does not want to drift too far from the actual beliefs of historically situated subjects; he understands his own account of the ethical order not as a 'construction', but as a 'reconstruction', not as the draft of an ideal, but as the tracing of historically given relations. Hegel does not simply draft up the institutions that are to serve as stations of social freedom, rather he aims to distil these institutions out of historical reality by employing his concept of freedom, identifying and describing those institutional structures that best meet the corresponding demands. Of course, this methodological procedure is also marked by Hegel's teleological notion that the present always stands on the forefront of an historical process in which rational freedom is gradually realized. Only because he is convinced of such inevitable historical progress can Hegel be so sure that he will in fact find institutions in society that provide a space and a foundation for a social, developed form of freedom. But even if we strip this historical confidence of its metaphysical foundations and objective teleology, enough of it will still remain. Hegel's confidence would merely signify the assumption that in the vital preservation of institutions, we see the conviction that members of society belong to a social reality that, compared to the past, deserves the active support of its members. According to such a 'transcendental'<sup>34</sup> interpretation of Hegel's confidence in historical progress, he can take the fact that institutional structures embodying freedom are, in his view, filled with 'Life' as an indicator of a general awareness of historical progress. The fact that subjects actively preserve and reproduce free institutions is theoretical evidence of their historical value.

At this point, we can only continue to follow the structure of Hegel's theory of freedom and justice by turning to its substance. Hegel's conception is more historical than the other models of justice that we have reviewed in our reconstruction of modern ideals

of freedom: Because the kind of freedom he has in mind can only be realized through participation in concrete institutions, he must do much more than Hobbes, Locke or Kant to demonstrate and examine the historical reality of these institutions. Hegel gives the conception of justice an historical index, one that makes it impossible to reduce justice to general principles or procedures. Instead we need to examine his theory of institutions, which forms an integral element of his conception of social justice. On the other hand, we have reconstructed his theory enough to claim in summary that Hegel's idea of social freedom is much more in line with pre-theoretical intuitions and social experiences than all other modern conceptions of freedom ever could be. For modern subjects, it is obvious that our individual freedom depends upon the responsiveness of the spheres of action in which we are involved to our own aims and intentions. The more we feel that our purposes are supported and even upheld by these spheres, the more we will be able to perceive our surroundings as a space for the development of our own personality. As beings who are dependent on interacting with our own kind, the experience of such a free interplay with our intersubjective environment represents the pattern of all individual freedom.<sup>35</sup> The schema of free activity, prior to any tendencies to retreat into individuality, consists in the fact that others do not oppose our intentions, but enable and promote them. This is the experience that Hegel sought to capture with his formulation of 'being with oneself in the other', thus defining our intuitive conceptions of freedom even below the level at which they are discussed once we address individual subjects.

Of course, other modern ideals of freedom also assert elements of freedom that make up a permanent part of our everyday experience: The fact that we occasionally feel free when we resist unreasonable demands reality makes upon us, or when we insist on the validity of our beliefs, all obviously make up an essential aspect of what we call individual freedom in the thick netting of our social praxis. Such feelings, however, are secondary in the sense that they represent reactions to conflicts that arise in our interactions with other subjects. We must already be entangled in such interactions before we can assert the freedoms entitled to us as individuals or as moral subjects. Our dealings with others, our social interaction, necessarily precedes the act of detachment captured in relations of negative or reflexive freedom. Hence we must define that antecedent layer of freedom located in the sphere in which humans relate to each other in some way. If we follow Hegel at this point, freedom



signifies our experience of being free from coercion, of unfolding our personality – a kind of freedom that results from our purposes being promoted by those of others.

However, if we understand this kind of social freedom as the core of all our conceptions of freedom, of which all other such conceptions represent mere derivatives, then like Hegel we too must revise our traditional conceptions of justice. What we now call 'just' can no longer merely be measured by whether and to what extent all members of society enjoy negative or reflexive freedoms, rather justice must entail granting all members of society the opportunity to participate in institutions of recognition. This means that certain normatively substantive and thus 'ethical' institutions requiring legal security, state authority and civil support shift to the centre of our idea of social justice. Only within a division of labour between law, politics, and the public can we preserve the institutional structures to which members of society owe the different elements of their intersubjective freedom, and thus their culture of freedom on the whole. However, we can also learn from Hegel that recognitional institutions can only be preserved if we have the officially certified opportunity to examine this institutional setting in light of our own intentions and beliefs and even to depart from it if necessary. The interpretive schema offered by both negative and reflexive freedom must be capable of being applied to ethical institutions as a justified standard for measuring their legitimacy. By thus including 'subjective' freedoms in the corpus of institutionalized ethical life, the theory develops a dynamic, open and transgressive character, which makes it difficult to normatively point out any stable institutions of recognition at all. After all, if individual objections and institutional reality are related to each other in such a way that ethical institutions first enable individual autonomy, whose exercise can in turn lead us to revise these institutions, then we could no longer find the fixed point within this spiralling movement, one that would represent a solid system of ethical institutions.

As mentioned above, it is not entirely clear whether Hegel regarded his own concept of justice as having such a procedural character. There are many indications in the additions to his *Philosophy of Right* that for Hegel, the stylized, and decidedly normative description of ethical institutions also entailed the possibility of criticizing them in the future;<sup>36</sup> if that is the case, then he would have left his own theory of ethical life open to dynamic, even revolutionary change that could later arise out of the frictions he points to in his system of social justice. According to Hegel's own



understanding, his *Philosophy of Right* was not a book for the rest of human history, but for the transitional phase in which he lived. On the whole, however, he tends to view the process of the realization of freedom in the institutionalized ethical life of modernity as having been completed. Hegel appears to view the institutions of the bourgeois family, the corporatistically restrained market and the state as the culmination of the moral history of humanity. Of course, in attempting to pick up Hegel's project again after two hundred years, we know better. The forces of individualization and autonomy, the potential of negative and reflexive freedom have unleashed a dynamic that influenced Hegel's own system of ethical life and that has left no institution in the normative state he once described. Today the culture of freedom has taken on a completely different shape, one that we must once again normatively reconstruct for the brief moment of a historical epoch. We have already partially uncovered the theoretical means required for doing so in our account of Hegel's concept of freedom; we need to take a historical and sociological approach in order to uncover the normative practices in which subjects currently seek to realize their individual freedom in the experience of commonality. Of course, it is unclear what it means for different practices to form a unified institution that serves the reciprocal fulfilment of individual aims. Only after this normative reconstruction will these structures be shown to entail standardized patterns of social action implying categories of mutual obligation. Furthermore, the essential task consists in marking and outlining the exact location occupied by negative and reflexive freedom in post-traditional ethical life. After all, we have learned from Hegel that the promise of freedom in modernity demands that individuals with all of their legitimate rights be entitled to their proper place in the social order.

## *Transition: The Idea of Democratic Ethical Life*

The introductory considerations presented in the first part of the book demonstrate that there are at least two reasons not to restrict our conception of justice to the presentation and justification of merely formal, abstract principles. First, we could raise the methodological objection that such a theoretical purification faces us with the problem of subsequently having to reconnect to social reality. This would mean justifying principles of justice without taking account of the facticity of social relations, in order to then re-establish a connection – at a second (or third) stage – with current social conditions by gradually introducing empirical circumstances. Theory therefore could not know in advance whether the gap between normative claims and social reality can be bridged at all; in such idealistic self-absorption, we would run the risk of constructing principles of justice that would then prove completely untenable once faced with the stubborn reality of institutions and cultural habits. This methodological problem of having to reconnect to reality *ex post* can only be overcome if we develop a theory of justice that represents a normatively guided reconstruction of social development. This will require a significant amount of empirical effort, but it ultimately has the great advantage of presenting principles and norms that represent actually socially valid criteria.<sup>1</sup>

Of course, this does raise the problem of having to justify at the outset the normative point of reference for such a reconstruction of social development. In order to avoid having to make a mere normative assertion, we would do well to adopt Hegel's strategy of picking up on values and ideas already institutionalized in society. However, such an immanent approach is only possible if we can

show through normative comparison, at least indirectly, that these established values are not only socially but also morally valid – that they have more purchase when it comes to the aim of justice. The social order prevailing in the society we are to reconstruct could be understood as an institutionalized structure of systems of action in which culturally acknowledged values are realized in their respective functional manner. All central subsystems, to use a term by Talcott Parsons, must embody specific elements of the overarching ideas and values that ensure the legitimacy of the social order as a whole. To normatively reconstruct such an order would thus mean to analyse whether and how culturally accepted values are in fact realized in the various different spheres of action, and which norms of behaviour ideally prevail. By taking this reconstructive path, we see that the demands of justice turn out to be the essence of the norms that contribute to the most appropriate and comprehensive realization of prevailing values within various different systems of action.

Up to this point, we have not yet given any substance to the term 'justice'; until now it has meant nothing more than the adequate realization of the values of a certain social sphere, which are accepted socially within a society at a given time, and are thus responsible for ensuring the normative legitimacy of that society. At a metatheoretical level, the meaning of the idea of justice is entirely dependent on its relation to ethical values, for the demand that we be 'just' to others is meaningless as long as it is not founded in a conception of the good; otherwise we would not know what it would mean to owe others what is 'theirs'.<sup>2</sup> Only if we have a clear understanding of the ultimate ethical purpose [*Worumwillen*] of our common action will we have a criterion for determining the necessary standards of just action.<sup>3</sup> When it comes to modern societies, we assume along with a number of other authors such as Hegel, Durkheim, Habermas and Rawls that there is but one value that forms the basis for the legitimacy of social orders. Embodied in the different systems of action within modern society is the ethical idea that all subjects must enjoy equal support in their striving for individual freedom. What 'justice' entails depends on the meaning that individual freedom takes on in the differentiated spheres of action in accordance with their respective function. There is not just *one* demand of justice, rather there are as many demands as there are specific applications of the one, all-encompassing value of freedom. And yet, in modernity, there have always been different, competing interpretations of what constitutes individual freedom; and each

of these core conceptions seems to have enough attractiveness, plausibility and intellectual influence to form the normative foundation of a powerful, structure-forming institution. Not only must we assume that the one value of freedom has taken on an institutional shape in various functional spheres, we must also assume that the various respective interpretations of this one value are in fact embodied in such institutional spheres of action. Only then can we see the second reason for not limiting our conception of justice to justifying purely formal principles.

In our review of the various models of freedom in modernity, we saw that we can distinguish between three core conceptions, each of which entails different assumptions about the social-ontological preconditions of individual freedom. The first, negative conception of freedom assumes that a legally protected sphere in which subjects can act on their own unreflected preferences is a crucial part of individual freedom; by contrast, the second, reflexive idea claims that freedom depends on the performance of intellectual acts, which are nevertheless regarded as normal acts performed by every competent subject. Only the third, social idea of freedom takes account of additional social conditions, linking the realization of freedom to the condition that other, accommodating subjects confirm my own aims. By emphasizing the intersubjective structure of freedom, we can glimpse the necessity of mediating institutions that inform subjects in advance about the interdependence of their aims. Hegel's idea that individual freedom must be 'objective' thus merely means that appropriate institutions, viz. institutions of mutual recognition, are needed to promote the actual realization of individuals' reflexive freedom. The consequence of reconnecting freedom to institutions is that a conception of justice based on the value of freedom cannot be developed and justified without simultaneously giving an account of the corresponding institutional structures. It is not enough to derive formal principles, rather theory must reach out to social reality; only there do we find the conditions that provide all individuals with the maximum individual freedom to pursue their aims. In other words, an ethical relation to the idea of freedom requires a theory of justice to depart from a purely formal framework and cross the threshold to social reality. To elucidate what it means for individuals to be free necessarily implies determining the existing institutions in which they can experience recognition in normatively regulated interaction with others.

If we summarize these two objections to a purely formal conception of justice, we can already see the outlines of our approach.

Normative reconstruction demands that we gradually etch into relief those individual spheres of action in liberal-democratic societies in which the value of individual freedom has taken on an institutional shape. We must also take into account that this idea of freedom has been interpreted in various ways over the course of its historical development, which suggests that we once again distinguish between these institutional complexes in terms of the kind of freedom they embody. On this basis of our analysis in the first part of the book, we should distinguish between institutional complexes of negative and reflexive freedom and those systems of action in which forms of social freedom have taken on an institutional shape. While the first two spheres represent spheres of action and knowledge within which individuals can assure themselves of their intersubjectively accepted and socially anchored possibilities of retreating from the social lifeworld, the third type of institution provides spheres of action in which social freedom can be experienced in various forms of communicative action. The dependent and merely potential character of individual freedom embodied in the first two spheres will become apparent once we recognize the social pathologies that typically emerge as soon as these types of freedom are asserted alone.<sup>4</sup> Therefore, we cannot elucidate the particularities of these systems of freedom without at the same time outlining the anomalies that derive from the autonomization [*Verselbstständigung*] of individual forms of freedom. The institutional spheres of social freedom are entirely protected from such dangers, for here there can be no chance of one type of freedom gaining independent existence, because the entire existence of such spheres depends on subjects mutually completing each other on the basis of shared norms of action, such that they are safe from the danger of a single understanding of freedom becoming passively petrified.

Once we reconstruct and introduce these very different conditions for the existence of freedom, we will see that the categories of law or right [*Recht*] will not be sufficient for grasping the social forms and the specific foundations of freedom. Many of the load-bearing structures, particularly in the spheres of social freedom, do not consist in juridical relations, but in practices, customs and social roles.<sup>5</sup> The further we proceed in our normative reconstruction, the further we will move away from the merely negative sphere of freedom, and the more we will rely on concepts that stem from social theory and sociology rather than modern law. I am explicitly opposed to the tendency to develop the foundations of a theory of

justice solely on the basis of juridical concepts. Nothing has been more fatal to the formulation of a concept of social justice than the recent tendency to dissolve all social relations into legal relationships, in order to make it all the easier to regulate these relationships through formal rules. This one-sided approach has caused us to lose sight of the fact that the conditions of justice are not only given in the form of positive rights, but also in the shape of appropriate attitudes, modes of comportment and behavioural routines. Most of our individual freedoms, which have become the epitome of a contemporary conception of social justice, we owe not to legal entitlements granted by the state, but to the existence of a web – one which cannot be so easily untangled – of routine and often only weakly institutionalized practices and customs that give us social confirmation or allow us to express ourselves freely. The fact that these conditions of freedom are difficult to determine and largely evade legal and constitutional categories cannot be regarded as a reason to simply exclude them from the framework of a theory of justice.<sup>6</sup>



## **Part II**

# **The Possibility of Freedom**





## *Legal Freedom*

I will not begin filling in the theory outlined in the previous chapters by presenting those social spheres that cannot be disclosed completely and exhaustively through legal concepts. Although freedom can ultimately only be realized in spheres of action that go beyond legal relations, the prerequisite for freely participating in these spheres is an entirely different category of freedom. In modern liberal societies, there has always been widespread agreement that individuals can only view themselves as independent persons with their own individual will if they enjoy subjective rights guaranteed by the state, which grant them a space in which they can explore their preferences and intentions. This idea that the basis of all freedom consists in legally guaranteed private autonomy has changed little over the years; what has changed over the last few decades is the scope of these 'subjective' rights. Social movements and various political and moral arguments have managed to make new, complementary additions to the original, strictly 'liberal' categories, but they have in no way changed the ethical meaning and social function accorded to 'legal freedom' in dominant conceptions of justice.

In seventeenth and eighteenth-century Europe, the legal system gradually became more positive, while the normatively unjustified privileges enjoyed by the estates came to be replaced by a network of rules, guaranteed and sanctioned by the state and intended to ensure that each citizen enjoy the same degree of private autonomy. The establishment of this egalitarian legal order brought forth an independent sphere of action characterized by a set of norms that neither demand moral consent nor depend on ethical agreement,

but merely require an instrumental acceptance that, if necessary, can also be obtained by means of state force. However, the various functions required for creating, implementing and enforcing positive rights can only be fulfilled if the state manages to obtain a new source of legitimacy in the unified will of all the citizens affected by its actions. The emergence of a new system of subjective freedom was thus accompanied, in a unique historical parallel, by the rise of the democratic constitutional state, under whose rule the addressees of these positive rights could view themselves as their common authors.<sup>1</sup>

Although these two aspects of this newly emerging freedom might be very closely linked due to their strictly complementary relationship, we should avoid putting them in the same category of conditions of social justice. As addressees, subjects can exercise their rights in a purely private fashion, free from any requirements of social interaction; but as authors, they can only understand themselves as being in active cooperation with others. This structural asymmetry explains the peculiar fact that the modern, egalitarian legal order must be divided into two different freedom-guaranteeing spheres, which, due to the differences in their design and structure, should be placed at opposite ends of our endeavour to normatively reconstruct democratic ethical life. This reconstruction must begin with the manner in which the system of law or right [*Recht*] guarantees individuals a space of private autonomy in which they can retreat from all existing role obligations and attachments in order to explore the meaning and aims of their individual lives. And at the end of our reconstruction (III.6.3), the same legal system will reappear in a different light as a system that grants collective autonomy to socialized citizens who deliberate in civil cooperation on the rights they grant each other and on how they are to be implemented. In this second, active and cooperative sense, the institution of modern law demands more than purposive-rational rule-following; it also relies on democratic attitudes, practices and convictions, without which the collective impulse to recognize each other's rights would be extinguished. Therefore, we will postpone the issue of how the legal system enables collective autonomy until we discuss the institutional spheres of social freedom, viz. the sphere Hegel terms 'ethical life'.

First, in order to grasp the ethical meaning of legal freedom, and thus its position within a conception of social justice, we need to understand the functions performed by its core juridical elements with regard to private autonomy. The sum of all subjective rights

– in the manner they are formulated today at the beginning of the twenty-first century – can be understood as the result of efforts to secure for each subject a sphere of action protected from external – state and non-state – intervention; within that protected sphere, we can explore and experiment with our own conception of the good free from any communicative demands. The negative freedom guaranteed by the state is thus based on the right of individuals to a purely private disclosure of their own will (1). This mode of freedom, however, runs up against the fact that in order to successfully determine our own aims, we require a form of social interaction that legal freedom cannot provide. In order to realize legal freedom, it must be accompanied by the very kind of communication from which legal freedom threatens to exclude individuals due to its purely private structure (2). Just how incomplete freedom is when it is conceived solely in terms of individual rights is made most apparent by how the exclusive appeal to this kind of freedom tends to hollow out and undermine the existing network of social relations. Indeed, defining our freedom solely as a set of legal claims means perceiving informal, non-juridical obligations, attachments and expectations as mere barriers to our own subjectivity (3).

#### **4.1 The Reason for the Existence of Legal Freedom**

Already in the work of Hegel, ‘abstract right’, and thus the sum of all subjective rights, seems to have a peculiarly dual nature: Externally, it grants subjects a merely purposive-rational form of decision-making, while protecting their ability to ethically form their will all the more effectively. As individuals who encounter each other in legal relationships, they represent for each other subjects that are free to act ‘at will’ and thus in accordance with their individual preferences. But from the internal perspective of subjects whose motives remain opaque to each other, the rights they reciprocally grant each other represent a kind protective shell behind which they can explore the depths and shallows of their subjectivity without fear of reproach. I will explain this dual nature of subjective rights by beginning with what is probably its most perplexing element, the right to property. From there I will go on to develop the normative standard that will allow us to follow the development of the sphere of legal freedom right up to the most recent debates.

Alongside the freedom of contract, the individual's right to property has always formed a core element of the modern legal system. The robustly economic character of this first generation of rights has fostered a tendency to regard subjective rights primarily as an instrument for organizing the rapidly developing capitalist economic system. Marx in particular viewed basic liberal rights as nothing but a handful of ideological instruments for codifying economic property relations and justifying the intensified exploitation of the working class.<sup>2</sup> This functionalist interpretation, of which weaker forms can still be seen today,<sup>3</sup> causes us to lose sight of the fact that subjective rights can also serve an entirely different purpose. It was not with reference to the freedom of contract, but to the right of property that Hegel showed what an ethical interpretation of the substance of basic liberal rights might look like. For Hegel, the basic right of all (legal) subjects to own private property was not grounded in the necessity of providing equal means for the satisfaction of elementary needs;<sup>4</sup> positive rights were not what ensured people's 'livelihood', rather the market for labour and goods within 'civil society', a market that could only live up to its own standards if it in fact ensured overall economic subsistence.<sup>5</sup> On his view the rational justification for private property lay in giving all subjects the chance to assure themselves of the individuality of their will in external objects they legitimately own. Perhaps we can best understand what Hegel means when he, at a previous point in the *Philosophy of Right*, speaks of the need to 'alienate' [*veräußern*] one's free will by considering the following: In the system of positive rights, which represents the first institution of modern freedom, subjects recognize each other as free beings inasmuch as they ascribe to each other the ability to detach themselves from all determinations of their own will and thus refrain from violating that of others.<sup>6</sup> Therefore, subjects exist for each other only as abstract personalities that can 'abstract from everything'<sup>7</sup> and are capable of respecting their fellow legal subjects' individual sphere of freedom. But this would mean that subjects could not know whether that which they recognize as free is in fact their 'own' will. Although we could regard ourselves as 'persons' with the capacity to renounce our 'desires' and 'incidental impulses', we would have no way of identifying ourselves as concrete individual wills. According to Hegel, we can close this gap through a right accorded equally to every individual: the right to own property. In order for our 'free will' to become an 'actual will',<sup>8</sup> each person requires a claim, guaranteed

and protected by the state, to exclusive possession of an indefinite number of objects.

Although Hegel is somewhat inconsistent on this point, sometimes stating that it is the 'free will'<sup>9</sup> and sometimes the 'subjective will'<sup>10</sup> that is actualized in property, the individualistic essence of his argumentation is clear. In order to prevent subjects from no longer being able to recognize themselves as individual personalities due to the pressures of abstraction within formal law, subjects must enjoy the fundamental right of exclusive ownership to a number of lifeless, external things through which they can assure themselves of the individuality of their will. However, it is not yet clear why these objects of private property should enable us to see them as embodying the individuality of our free will. Hegel's answer, according to which legal persons make their 'will a thing' [*Sache*]<sup>11</sup> or let it 'become objective'<sup>12</sup> in property, is certainly unsatisfactory; only if we follow Jeremy Waldron and emphasize the temporal dimension of Hegel's concept of property does the argument become plausible: A privately owned object can embody an 'individual' will, because over the course of time it becomes apparent whether one's own intentions or plans have changed or remained the same.<sup>13</sup> If we formulate the point in a way that takes us even further away from Hegel, we could say that the changes in one's own personality over time are reflected in objects of long-lasting private ownership. In the traces left by their use, and in the uses made of them, these objects of exclusive ownership show which particular will is concealed behind the 'protective mask' (Hannah Arendt) of the legal personality.

Once we extract these considerations from their Hegelian context and place them in the horizon of everyday conflicts, we get a clearer view of the ethical significance of the right to property. In a very profane sense, the objects we have acquired and which we exclusively own allow us to examine all those attachments, relations and obligations in which we are involved; we can best explore the kind of life we would like to lead in light of the existential meaning these things have acquired for us over time. This is why Virginia Woolf, in an almost utopian manner, insisted on the right of all humans to their own room;<sup>14</sup> and this is why the material dimension of the right to private property entails the legal protection of the private sphere.<sup>15</sup> Hegel anticipated that the right to property would be grounded in the task of giving over those objects to exclusive use that can be used to experience one's 'actual' will, i.e. that part of one's general existence as a legal person that

can be called one's 'own'. He defines the 'negative' sphere of the completely opaque decision-making process, which constitutes the system of subjective rights, as a legally protected space for ethical self-examination.

This first result gives us an essential tool for normatively reconstructing the development of the expansion of subjective rights up to the present day. As diverse as the social reasons and political-moral conflicts might have been, the expansion and reformulation of liberties has essentially followed the idea that we all deserve a sphere of negative freedom that allows us to retreat from the communicative space of mutual obligations and take up a reflective and critical stance. Therefore, what externally must have seemed to other legal subjects to be a (legally permitted) stance of merely strategic consideration and observation, could be used internally by the individual bearer of rights as a protected space for ethical self-problematization. Looking back, the first attempts to grant all mature citizens a sphere of legal freedom appear rather quaint compared to the efforts undertaken today to develop the technological capacity to supervise and control. According to the first generation theorists of freedom, subjective rights are negative rights that protect a space of individual action by justifying the entitlement to reject illegitimate interventions into a person's freedom, life and property.<sup>16</sup> Soon, however, a more exact formulation of the rights entailed by the demand for such a protected space would be needed, and the bitter disputes in the Anglo-Saxon world<sup>17</sup> would play a major role in giving rise to individual freedoms of religion, speech and opinion, which even today form the core of the liberal legal system.

At first sight, however, it is not easy to see how these subjective rights in fact create an individual protected space within which individuals can examine their own ideas of the good, as these rights instead seem to protect the expression and practice of an already formed conviction, not its antecedent examination and exploration. We only get sight of how these rights are related to the principle that subjective rights ultimately serve to enable ethical self-examination once we, along with John Stuart Mill, grasp the right to freedom of religion, speech and opinion guaranteed by the state as a guarantee of as many alternative conceptions of the good as possible. The interplay of these rights can then be understood as an institutional condition for forming our own beliefs about the kind of life we would like to lead in light of a variety of competing value conceptions.<sup>18</sup> Ethical self-examination demands both that

we possess a minimum amount of private property, and that we have a richly contrasting horizon of different visions of a good and well-lived life. Absent such alternative conceptions, this process of self-exploration would be extremely limited, as there would be no intellectual incentives to conceive of entirely different life aims. The subjective rights that enable all individuals to freely articulate and stand up for their convictions are also intended to ensure precisely this kind of ethical pluralism. With each individual who enjoys a legally protected claim to freely express his or her conception of the good, there arises a permanent stream of images and visions of a well-lived life, constantly providing individuals with new alternatives of ethical self-assurance [*Selbstvergewisserung*].<sup>19</sup>

With the revolution in communications technology that has taken place over the last century and half, there has obviously been a major expansion of the freedom to shape our own lives, as well as a continuous improvement in the ability of the state to control that freedom. These developments have given rise to ongoing negotiations over the relation between subjective liberties and the security concerns of the state; each expanded opportunity for individuals to reach agreement on individual life aims with the aid of new communication technology and free from outside interference has been followed by efforts on the part of government authorities to break through this technologically created barrier and, for reasons of security, make this space accessible to state supervision.<sup>20</sup> In the liberal democratic West, the efforts of constitutional courts to secure basic individual rights within these conflicts have gradually concretized subjective liberties: The introduction of the telephone was soon followed by the legal guarantee of privacy; the state's improved ability to gather data was soon followed by the enforceable right to data protection; the rapid expansion of the internet has led to the gradual institutionalization of rights to 'informational self-determination' and the secrecy and integrity of information-technology systems.<sup>21</sup> This last formulation makes especially clear that the normative purpose of subjective liberties has been preserved in the face of all challenges raised by technological advances. The internet has brought forth cultural practices of virtual communication and role-playing that greatly facilitate the exploration of, and experimentation with, alternative life aims while being completely protected from the eyes of others – followed by increased opportunities for using anonymous data transfers to spread illegal propaganda or engage in criminal conspiracies. When the German Constitutional Court, for instance,



points out that each individual enjoys 'the constitutional protection of privacy and integrity', then this merely serves to update the meaning of subjective liberties to suit computer-aided communication technologies. The right to privacy on the internet can only be restricted by the state under the extremely demanding condition that there are judicially verifiable reasons to assume a threat to a 'legal good of paramount importance'.

While it is relatively easy, conceptually speaking, to bring all these instances of expanded and reformulated positive rights in line with the original meaning of subjective rights, which consists in granting individuals a space for ethical self-assurance, the same can hardly be said for the later development of entirely new categories of rights.<sup>22</sup> It is clear that the normative significance of the so-called first generation of subjective rights consists in the fact that they allow individuals to take up a stance of purely private self-examination. But their relation to later generations of rights, i.e. the connection between these original core liberties and more recent rights of political and social participation, remains controversial to this day.<sup>23</sup> When it comes to normatively reconstructing modern legal relations, the historical circumstances and the sequential order in which these different classes of rights came to be established are of little importance. More important is what the normative connection between all these categories of rights says about the kind of individual freedom provided by the positive law [*Recht*] of modern societies in general. From this perspective it makes sense to interpret the introduction of social rights as an attempt to guarantee the material conditions under which all individuals can exercise their freedoms more effectively.

This tight connection between liberal and social categories of subjective rights is not empirical but conceptual. This is not to claim that legal subjects must necessarily understand the social rights that entitle them to share in social wealth, the material basis for realizing their legal freedoms. Instead the normative meaning of these social rights is that they enable all individuals to make effective use of the private autonomy guaranteed by liberal rights. Jeremy Waldron in particular has shown how the normative idea of legal freedom is not complete until it is supplemented by social rights as well, since the idea of 'having' or 'possessing' certain rights implies that subjects also possess the material resources to make use of them.<sup>24</sup> Conceptually, therefore, liberal rights must be supplemented by social rights that ensure the economic security and material well-being needed to retreat from social interaction and privately explore

our own life aims. These supplementary rights of social participation differ from the right to private property in that they are not meant to enable the visualization of previous life aims, but to free individuals from any material pressures that might impact their ability to reflect on their future goals. Any attempt to restrict these social rights or make them contingent on good behaviour undermines their normative relation to the state's guarantee of private autonomy.

What is much more difficult to grasp than the extremely tight link between liberal rights and social rights is that between liberal rights and all the later rights meant to ensure chances for political participation and co-determination. While in principle the first two classes of rights form an invisible protective barrier behind which individuals can retreat, the third class of rights seeks to overcome individuals' resulting isolation. After all, political rights necessarily involve an activity that can only be carried out in cooperation, or at least in exchange, with all other fellow legal subjects. The significance of the difference between liberties and social rights of participation on the one hand, and political rights of participation on the other hand, is not only empirical but also conceptual: The first two categories of rights can only be appropriately understood and implemented if individuals use them to form a private 'I', while the third category of rights must be viewed as an invitation to engage in civil activity and thus in the formation of a common will. Related to this fundamental difference is the fact that, depending on which category of rights they lay claim to, legal persons can take on two very different roles. As long as they remain inside the private sphere constituted by liberties and rights of social participation, they can view themselves as passive beneficiaries of liberties; but once they exit this sphere and avail themselves of their political rights, they must switch from the role of addressee to that of author, thus taking part in the cooperative shaping of the rights they have previously accepted in a merely passive fashion. The tension between private and collective autonomy that characterizes the liberal democratic system of rights, due to the fact that it is both utilized and created by the bearers of these rights,<sup>25</sup> lies within the individual subjects themselves: If the latter make appropriate and sensible use of the first category of rights, they cannot act as democratic citizens, because they remain isolated, but if they make appropriate use of the second category of rights, they can no longer remain in a stance of merely individual self-assurance, because they must take part in the communicative praxis of common will-formation. The first

set of rights suggests that subjects reflect solely on their own will, which is precisely the kind of reflection that the second set of rights attempts to interrupt by demanding that subjects engage in democratic interaction.

This asymmetry constitutive of liberal democratic states reveals that political rights essentially give rise to a different type of individual freedom than that envisioned by liberal rights. We saw that the freedom enabled by the institutionalization of liberal rights and rights of social participation consists in the opportunity to retreat from the public space of mutual obligations and take up a position of purely private self-assurance. These rights form a kind of protective barrier around individual subjects, allowing them to create an externally protected free space that they can use to question and examine their own life aims without interference; political rights, on the other hand, seem to want to extract the same legal subjects from this contained private sphere by providing them with a series of legal opportunities to actively participate in democratic will-formation and influence political legislation. The more involved individuals become in such a shared praxis, the more they will exercise a kind of freedom whose constitutive dependence on other subjects differs entirely from the freedom of private retreat. The fact that the latter type of freedom can be gradually expanded represents a crucial distinction from the previously discussed form of freedom: While the existence of private freedom is not affected by whether individuals exercise it or not, since it consists only in the chance for ethical self-assurance, the existence of the kind of freedom enabled by political rights depends entirely on how willing citizens are to participate in social cooperation. After all, the individual exercise of this latter type of freedom depends on the accommodating activity of other subjects; it does not merely consist in the enjoyment of subjective rights, but relies entirely on the willingness of fellow legal subjects to work toward its realization. Therefore, this new type of freedom cannot be adequately described by simply producing a list of principles. Although the constitutions of modern liberal-democratic societies consist in more or less comprehensive catalogues of rights to political participation, the normative significance of the kind of freedom they enable can only be explained in relation to all of the social attitudes and practices required for their common realization. When it comes to positive rights, the legal relationship points ahead to a social sphere of freedom whose existence is predicated on a whole ensemble of ethical modes of behaviour.

## 4.2 The Limitations of Legal Freedom

Private autonomy, which is socially founded on liberal rights and social rights, thus brought forth a specific type of individual freedom in modern societies: Externally, individuals gained the right, guaranteed and enforced by the state, to be safe from any interference on the part of the state or other actors; internally, subjects were granted a sphere in which they could examine their life aims in total privacy. 'Private autonomy' meant that these legal subjects possessed a generally accepted and individually actionable protective space into which they could retreat from all social obligations and attachments and, in an unburdened state of self-reflection, rethink and define their individual preferences and value orientations. The core of legal freedom therefore consists in a sphere of individual privacy; the fact that it not only contains corresponding sets of norms and interpretations, but also (government sanctioned) regulations, reveals why legal freedom already represents an institutionalized sphere of action:<sup>26</sup> Exercising legal freedom means taking part in a socially institutionalized sphere of action regulated by norms of mutual recognition. These systems of action must fulfil three conditions in order to count as spheres that harbour a kind of freedom that ultimately can only be understood in intersubjective terms:<sup>27</sup> First, there must be a fundamental level of socially differentiated, institutionalized systems of practices in which subjects cooperate with each other by recognizing each other in light of a commonly shared norm; second, this relation of continuous recognition must consist in a mutual status ascription that equally entitles the participants to expect a certain kind of behaviour from all others, i.e. normative respect; third, these systems of action must entail a specific relation-to-self that enables participants to train the skills and attitudes required for participation in the constitutive practices.<sup>28</sup> These three conditions should be briefly clarified before moving on to the associated limitations and restrictions:

(a) Already in his *Philosophy of Right*, Hegel viewed the system of 'abstract right' as being characterized by a special class of social practices brought forth by the common acceptance of the norm that each subject should 'be a person and respect others as persons'.<sup>29</sup> Although his specific concept of property could have permitted a broader interpretation, he focuses on the special case of economic

transactions enabled by contract law. If we retroactively undo this restriction, we will see that the institutionalization of subjective rights enables a type of social interaction in which subjects encounter each other under abstraction from their personal motives and value orientations, and thus with the mutual assumption of purely arbitrary interests. What moves the others, what truly causes their actions, is irrelevant for their communication at this point, and all participants have a variety of possibilities for concealing and even playing with their true intentions. The anonymity of their motives and the merely successful coordination of their externally visible interests are the two central elements of this new type of social interaction enabled by the system of legal freedom.<sup>30</sup>

(b) This anonymous form of social communication can only arise if the subjects involved ascribe to each other the normative capacity to perform any act that is reconcilable with the system of subjective rights without need of public justification. They recognize each other reciprocally, in Hegel's terms, as persons who are entitled to decide for themselves which purposes they choose to pursue within the law. What is special about this form of recognition known as 'personal respect'<sup>31</sup> is that it forbids any examination of ethical and personal motives. Regardless of what causes others' actions, and regardless of the ethical motives that are also supposed to play a role, as a legal person I am obligated to respect their decisions as long as they do not violate the principles of positive right to which we all consent. Of course, our respect for the decisions that are only revealed in the legally coordinated actions of others presupposes that we assume other subjects to be willing and able to fulfil the obligations they have accepted. The underlying recognition norm therefore consists in the mutual expectation that each person be treated as a subject that can accept legal norms and follow them freely and without compulsion.

(c) The establishment of this relation of recognition produces that special form of subjectivity we call a 'legal personality'. On the one hand, this type of subject must have learned to abstract from its own moral and ethical beliefs in order to not act on them in its legally mediated interaction with others. It must be able to mentally bracket, so to say, the moral norms or ethical principles it regards as right if the coordination of action via the law is to be successful. On the other hand, the same type of subject is also required to trust in the willingness of its counterparts to obey legal norms autonomously despite all the opaqueness of the latter's true intentions and motives. This presupposes a high degree of trust, self-control and tolerance, because the legally justified actions of others must be

accepted even if one suspects these actions to conceal attitudes that diverge from and even contradict one's own beliefs. On the whole, legal persons who have attained a kind of elementary self-respect by participating in this sphere of recognition<sup>32</sup> must have learned to distinguish between the surface and the background, between permitted actions and the intentions they conceal – both their own and those of others. This demands an act of differentiation that, in extreme situations, can even go as far as sacrifice and self-denial.

The schema of behaviour thus imposed by the system of the law is that of isolated actors with ostensibly strategic aims: As long as subjects encounter each other solely as bearers of rights, they must recognize that they can only influence each other when it comes to successful communication. Of course, the participants generally are aware that their reciprocally recognizable intentions usually conceal other motives and beliefs tied to their respective self-understanding, but the manner in which they communicate excludes the possibility of bringing this self-understanding into play and perhaps even demanding that the other account for it. This neutralizing effect of the law gives an initial indication that the principle flaw of all legal freedom consists in the fact that it secures a form of private autonomy that can only be sensibly exercised once we go beyond the sphere of law [*Recht*]. After all, in order to assess our life aims and to arrive at a true understanding of what constitutes the good, we must take up a stance that includes others as ethically motivated subjects, either mentally or actually, in our own calculations. Within private autonomy, therefore, legal relations enable a kind of freedom for whose successful exercise it cannot provide the basis. We could even say that the law promotes attitudes and practices that block the exercise of the kind of freedom it enables.

As mentioned above, the rights to freedom and social participation guaranteed by the force of the state primarily serve to provide to all subjects an individual protected space within which they can weigh, examine and experiment with their life aims. Wherever it is not a matter of securing one's own life and safety, these rights should give individuals access to certain spaces and activities in which no other subject or authority may be allowed to interfere, even for the most plausible and generally accepted reasons. The logic of such individual rights implies that they form a purely private, monological space, as every individual subject should be entitled to exit the network of communicative action and free itself

of any normative obligations. Subjects that make their decisions on the basis of this legal freedom cannot take into consideration whether their decisions can be accepted by their partners in interaction; they are instead encouraged and even obligated to retreat behind a protective barrier and decide for themselves what is good and right for their own life. That is not per se a reason to criticize legal freedom. Although, as we will see in the next section (Part II, ch. 4, section 4.3), this freedom can have pathological consequences for social behaviour if it becomes autonomized [*sich verselbstständigen*], it does offer each individual an indispensable element of radical emancipation from all social obligations. Nevertheless, the legal stance prevents any access to the world of intersubjective attachments and responsibilities; as long as subjects merely question obligations and play out alternative life plans monologically, they will remain in a decision-making vacuum and thus in a state of almost total indeterminacy. Even the act of mentally examining former attachments or anticipating new obligations would demand that we abandon the stance of legal freedom and no longer perceive our partners in interaction as mere actors with strategic aims. The latter would have to take on the individuality and colour that they cannot possess as long as they are only conceived of as fellow legal subjects with opaque values. On the basis of legal freedom, therefore, ethical reflection is not even possible in the mode of virtual conversation and deliberation; we must therefore abandon our role as legal persons before we can make any attempt at an internalized dialogue over life aims. In short, subjective rights serve only to examine and re-examine our existing conception of the good, but not to develop and formulate new ones.

What is true for ethical self-reflection becomes all the more significant the closer we move toward the real world of social attachments and dependencies. Here, we cannot pursue any life aims or take part in any interactions unless we have already exited the sphere of legal freedom and accepted the intersubjective obligation to justify our decisions. In our everyday communicative action, we cannot merely invoke personal freedom in order to reject pleas or demands that we offer reasons for our decisions. Although in the lifeworld we normally act on reasons that we share pre-reflectively with our partners in interaction, as soon as we dissent, we are obligated to explain why. In these situations, exercising our subjective rights would mean breaking off communication; we would then no longer trust that a discussion of conflicting reasons is capable of repairing unsuccessful interaction, and we would thus invoke



our right to act on our subjective reasons alone. But as long as we remain in such a position, we cannot even want to attempt to fulfil our conception of the good and what we regard as our essential aims. Instead we must suspend all our intentions of self-realization, having resolved to exercise a merely strategic influence on others and thus to no longer consider them as partners with whom we cooperate, pursue common projects and cultivate relationships.

In no way, therefore, does legal freedom as such represent a sphere or a space of individual self-realization. It might allow us to suspend, question or end our own projects and attachments, but it does not give us the opportunity to realize our aims. On the contrary, as long as subjects adopt the stance of legal personalities, they cannot carry out the kind of reflection or activity required for realizing their life aims. When we invoke our guaranteed right to free speech, we necessarily relate to others who contest our right in a way that prevents us from grasping the others as addressees of what we intend to say. Whoever exercises the individual right to divorce as a means of separating from one's spouse has destroyed any possibility of commonly discussing their separate life paths in the future in light of their shared experiences. And finally, whoever insists on the right to his or her own opinion will not simultaneously be able to assert his or her beliefs in the public space of will-formation. In each case, the exercise of subjective rights only creates a kind of temporary situation in which the actual purpose of our autonomous life planning is suspended or bracketed. Legal persons cannot reflect on or realize their primary life aims in the manner required by their ethical autonomy once they treat their partners in interaction merely as actors with strategic interests, even though the latter's discursive positions or advice might play an important role in the former's decision-making.<sup>33</sup> Although legal freedom always implies ethical deliberation or life planning, it cannot provide the required subjective attitudes or modes of comportment. Instead it establishes a moratorium in which decisions can be made privately, until the chance to reconnect to lifeworld routines of reciprocal justifications and obligations arises again.

This merely negative character of legal freedom, the fact that it only guarantees the suspension of personal decisions but not their ethical shaping and implementation in the lifeworld, is expressed most generally by the fact that the value of the corresponding (subjective) rights derives from intersubjective preconditions that they cannot bring about by virtue of the attitudes and stances they promote.<sup>34</sup> What was shown to apply to a small set of such rights



can easily be shown to apply to the entire spectrum of liberal rights; in each case, the legal protection of minorities, the legal guarantee of the freedom of contract or the legal protection of privacy all enable a kind of social praxis whose existence and prosperity depend on non-legal relations or feelings of commitment to pre-legal norms. The members of social minorities can only profit from the legal ban on discrimination if they can sustain their own culture with the aid of cooperative practices; actors on the market can only enjoy the freedom of contract if they also recognize their obligation to respect certain arrangements, conventions and norms. And individuals can only exercise their legally guaranteed right to privacy if they can rely on the communicative background of a lifeworld that itself has not come about as a result of legal processes.<sup>35</sup> In short, we could say that the law produces a form of individual freedom whose conditions of existence it can neither create nor maintain. It depends on a merely negative, interruptive relation to an ethical context of praxis that in turn relies on the social interactions of non-legally cooperating subjects.

### 4.3 Pathologies of Legal Freedom

In the context of social theory, a 'social pathology' indicates any social development that significantly impairs the ability to take part rationally in important forms of social cooperation. Unlike social injustice, which consists in an unnecessary exclusion from or restriction on opportunities to participate in social processes of cooperation, social pathologies are found at a higher stage of social reproduction and impact subjects' reflexive access to primary systems of actions and norms. Whenever social developments prevent members of society from adequately grasping the significance of these practices and norms, we can speak of 'social pathologies' – misdevelopments or disorders that represent, to use a term by Christopher Zurn, 'second-order disorders'.<sup>36</sup> They represent deficits of rationality in which first-order beliefs and practices can no longer be acquired and implemented at a second order; such pathologies certainly cannot be interpreted as a social accumulation of individual pathologies or psychological disorders. Someone who is unable to comprehend the purpose of a certain socially institutionalized practice is not psychologically ill, but has only lost the ability, due to social causes, to practice adequately the normative grammar of an intuitively familiar system of action.

The symptoms typical of such social pathologies thus do not appear in the form of conspicuous individual behaviour or character deformation, but whenever the behaviour of members of certain groups tends toward a certain rigidity [*Verhaltenserstarrung*] in their social behaviour and relation-to-self – often expressed by diffuse moods of depression or a loss of orientation.<sup>37</sup> Such moods of ‘reflexive consternation’ [*reflexive Betroffenheit*] are a first indication of a social pathology;<sup>38</sup> however, only rarely can we directly perceive these kinds of symptoms in empirical investigations. The analytical tools used by sociological researchers are generally too blunt to capture such diffuse moods or collective sentiments; therefore, the best approach for diagnosing such pathologies remains, just as in the time of Hegel or young Lukács,<sup>39</sup> the analysis of indirect displays of these symptoms in the aesthetic sphere; novels, films or works of art still the best source of initial insights into contemporary tendencies toward higher-order, reflexive deformations of social behaviour.

The institutionalized system of legal freedom represents a gateway to such pathologies for the mere reason that it demands a great deal of abstraction from its participants and thus regularly invites misinterpretation. All that is needed is an extraordinarily rapid increase of options for action in everyday social life in order to motivate subjects to cling fast to their legal claims and understand their own freedom in terms of their rights. The meaning of legally mediated communication thus gets misunderstood in a one-sided manner, because subjects no longer see that the retreat into legal freedom only enables them to reject intersubjective obligations, while offering no alternatives for individual life planning. Instead of grasping the negative meaning of legal freedom, subjects take the latter to be the whole point of freedom and make it the exclusive point of reference for their own relation-to-self. Already in his *Philosophy of Right*, Hegel observed tendencies toward an autonomization of legal freedom, though only in the form of singular personalities who ‘stubbornly’ insist on their legal claims in a way reminiscent of von Kleist’s ‘Michael Kohlhaas’.<sup>40</sup> Given the strong increase in the legal formalization of social relations today, such pathologies have long since ceased to represent mere isolated incidents and have now become virtually endemic. With the increasing inability to grasp the primarily negative, temporary nature of subjective rights, there is a much greater diversity of these behavioural symptoms. We no longer merely find an insistence on legal rights, but also the secondary effects of having pushed the boundaries of

legal freedom too far out: the constant putting-off of obligations or the exclusive focus on a juridical model of society.

In order to give a first overview of the issue at hand, I want to distinguish between two contemporary forms of legal freedom. My impression is that, first, in the case of social disputes or conflicts we see stronger tendencies to focus so much on our role as bearers of rights that we lose sight of the potential for arbitration through communicative action, and thus often the original reason for the dispute. Freedom is thereby reduced to the sum of our individual rights, such that the means of our action become its ends (a). A second pathology of legal freedom is more indirect in that it essentially invokes the function of legal freedom as a model for the increasingly difficult endeavour to find one's own identity. In these cases, the idea of temporarily freeing oneself from intersubjective obligations with the aid of individual rights loses its temporary character and becomes the general point of reference for our own relation-to-self. Here the epitome of individual freedom is no longer defined in terms of subjective rights, but in terms of its essence as a suspension of obligations, turning the means of freedom into an ideal of life (b). In both cases, the cause appears to lie in the inability to adequately grasp and implement the meaning of the protected space opened to us by the law. Instead of viewing this space as a chance to temporarily free ourselves from all communicative demands of justification and to focus solely on succeeding in our aims, this interruption of communication is misunderstood as the adequate method for coordinating all further interaction with others. Whereas in the first case this autonomization is closely followed by a gradual reformulation of our own aims and needs as mere legal claims, thus reducing subjectivity to the empty shell of legal personality, in the second case this autonomization is accompanied by an unlimited postponement of all obligations to decide, thus engendering a purely legal personality.

(a) While Michael Kohlhaas, the literary figure created by Heinrich von Kleist, still represented a personality type whose initially intact sense of right gradually takes on a life of its own after being the victim of constant intrigue and harassment, ultimately passing over into a lust for revenge, today the everyday routine of a mostly unbiased, class-neutral jurisprudence has mostly eliminated this type of exceptional autonomization of the notion of right. Of course, Kohlhaas misunderstands the meaning of the newly established system of legal freedom by taking an injustice in

the guise of formal law as grounds for personal revenge, but such a dramatic escalation is not what we have in mind when we speak of an autonomization of the legal personality. We often insist on our own rights not because we have experienced injustice, nor are we motivated by revenge; rather, we have an externally inconspicuous willingness to retreat into a shell of subjective rights in which we encounter each other merely as legal subjects. It is not easy to give a sociological explanation for why the institution of legal freedom has become so dominant over the last several decades, or for why it has often become the determining principle for subjects' relation-to-self; the major factor is likely the increasing legal codification of spheres of life that were previously organized in a largely communicative manner, along with the 'ideological' effect of the growing legalism of political discourse.

The process of legal codification, which began to take hold of the family, schools, leisure time and culture in the 1960s, originally with the intention of providing government protection for particularly exposed groups and individuals, quickly led participants in these previously informally regulated spheres to view each other as bearers of rights.<sup>41</sup> While previously accustomed to reaching agreement with each other by resorting to shared values, norms and customs, we are now increasingly able to take up a strategic stance in order to successfully push through our interests against others with the aid of the law. Of course, in the case of conflicts or imminent injury, both individuals have the advantage of being able to insist on their right to reject existing obligations and re-examine their existing attachments; the freedom of those individuals previously bound by informal rules of interaction thus grows along with the negative free-space that comes about by virtue of no longer having to obey the norms and values that are valid within a certain sphere of action – at least temporarily. Each additional step of legal codification of those life spheres previously organized along purely communicative lines correspondingly expands the legal freedom of the individual. But only if we also consider the simultaneous process through which the medium of law has come to increasingly dominate public affairs as well can we explain the emergence of the first pathology of legal freedom, one that is characterized by the fact that in Western liberal-democratic countries we increasingly adjust the way we act in the case of social disputes and conflicts so as to improve our prospects in court, thus gradually losing a sense of any affairs and intentions that cannot be articulated in legal terms.

What has been always regarded as one of the downsides of increasing legal codification is the fact that the juridification of communicative areas of life subtly compels subjects, both the directly and the indirectly affected, to take up an objectifying stance toward their highly individuated interaction. By subordinating the life-world under the medium of the law, subjects are forced to abstract from their concrete experiences and recognize their needs only to the extent that they fit into the schema of generally typified interests, thus undermining overall communicative life.<sup>42</sup> As soon as this compulsion to abstract pushes out beyond the courtroom and takes hold in everyday social life, subjects learn to observe their own intentions and those of their peers solely in terms of their legal import. They lose the ability to distinguish between the strategic foreground and the lifeworld background, and what remains of the person is but a sum of legal claims. This shift of attitudes ultimately leads to the belief that my freedom and that of all others only extends as far as is allowed given the abstraction demanded by a legal perspective; my freedom thus cannot reach beyond the typifying descriptive borders of the law. Instead of individualized needs, we assert only universal interests; instead of routine norms and values, we resort to principles of legal conformity; instead of settling conflicts through communication, we immediately resort to judicial arbitration.

The dynamic of this social pathology, which I regard as typical for the legal system of action, is convincingly illustrated by the film *Kramer vs. Kramer*.<sup>43</sup> Even though the film has a number of narrative flaws, e.g. failing to explain the wife's motives for divorce and thus reinforcing prejudices against women's liberation, the film occasionally manages to give a good impression of how the protagonists constantly calculate the legal consequences of their actions, as well as the effects this has on their intentions and their personality. But it is the plot, rather than the aesthetic form of the film – the camera angle or even the specific sequence of the images – that represents the decisive diagnostic medium. Only at this narrative level does the film illustrate the process through which individuals are transformed into mere 'character masks' of the law; this transformation becomes particularly striking when Ted Kramer learns that his now separated wife has changed her mind and decided to fight for legal custody of their child after all. At this point, the husband, as if steered by an invisible hand, begins to calculate all his daily actions in terms of how they will affect the decision of the judge. After he is fired from his job, he takes a much lower-paid job just

so that he can prove his ability to provide for his child by finding steady work; during the divorce proceedings, he perceives his son's freak playground accident merely as having a negative affect on his own demands for custody. In fact, his entire interaction with his son increasingly becomes a public demonstration of parental care, love and affection, causing not only the male protagonist, but also the viewer to doubt whether his actions are an expression of true feelings rather than mere displays of good behaviour that can stand up in court. Soon we suspect that the father indeed merely seeks to conform to legal demands and to prove his own rectitude. The film is at its best when it causes the viewers to anticipate this transformation in themselves; by following the actions onscreen, we see for ourselves what it means to view and judge all our affairs from the perspective of the law.

Even if this film displays a number of special characteristics and emphases associated with the particularly emotional case of a custody battle, it does reveal the general course the first pathology of legal freedom can take. Throughout the divorce proceedings, the parents, who are compelled by the law they themselves invoke to calculate the effect of their actions on the future judgement of the court, lose sight of the fact that behind their reciprocally apparent strategic intentions, communicative needs and dependencies remain. The more they block out this lifeworld background, the stronger the other participants are drawn into the same current, and the greater the tendency to regard the kind of strategic interaction recognized by the law as a legitimate form of breaking off communication as the only possible form of strategic interaction. A stance originally intended as a legitimate means of temporarily refusing lifeworld obligations thus becomes the mode of everyday action; instead of basing our actions on reasons that our partners in interaction can agree to, we merely implement purely private calculations and purposes. This turns the opportunity offered by the law in the form of negative freedom into a style of life.

We should not, however, let this specific example cause us to make the individuals involved responsible for the misinterpretation of their legal practices. The cause for the widespread willingness to adopt the perspective of legal freedom so completely that the requirements of intersubjective action are ignored lies in the social tendency to immediately, and almost automatically, regard the system of law as the appropriate means for solving social disputes and conflicts. There is hardly any institutional experimentation with alternative methods of conflict resolution, and the

language of law increasingly pervades the public sphere; even in the schools, the needs of children are increasingly presented in the form of legal claims.<sup>44</sup> Given the social priority accorded to the medium of law, its stylization as the most appropriate instrument for resolving conflicts, it has become more and more difficult for individuals to get a clear sense of the degree to which the opportunities and freedoms offered by the law require supplementation. As if these freedoms represented the entirety of our social autonomy, they no longer reveal their own dependency on our reconnecting to the flow of lifeworld communication.<sup>45</sup> But there is a second pathology that reflects the primacy of the law even stronger than the formation of a purely legal personality; it consists not in the social autonomization of juridical forms of action, but in the imitation of their deferring, purely interruptive character.

(b) It might seem far-fetched to claim that indecision and indolence are the result of a pathology of legal freedom. After all, the novels of classical modernity are full of characters who suffer from ennui or are entirely incapable of formulating intentions. But whereas indecisiveness in these older literary works is usually traced back to nihilistic moods (just think of Chekov), the modern version of this indecisive personality or of a person who merely 'drifts along' [*Getriebene*] does not seem to suffer from any clear lack of values and convictions.<sup>46</sup> Oddly, they do not suffer from an inability to develop attachments, nor from an existential crisis, but instead have a light-hearted and often self-ironic tendency to put off any major decisions. Just as in classic instances of diffidence and vacillation, here we have inability to form a will – not a weak will, nor the incapacity to implement one's beliefs, but a lack of will itself.<sup>47</sup> But beyond this shallow commonality, there seems to be no sense of crisis in contemporary forms of indecisiveness. The afflicted individuals are neither distraught nor unsettled by their lack of long-term ambitions, rather they seem to have come to terms with their tendency to put off decisions. In my opinion, we can only explain the emergence of this new personality type if we recognize that the ideal of legal freedom can affect our personalities even outside of the legal sphere. What defines these characters is not their exclusive focus on individual rights, but on their freedom from all communicative obligations permitted by these rights.

According to this thesis, therefore, the conception of freedom tied to modern law can be misunderstood not only by replacting inter-



subjectivity with subjective rights, but also by cultivating the refusal of obligations, though without filling the emptiness with subjective rights. In these cases, legally allowed behavioural options are not viewed as the entirety of freedom, but as the postponement and interruption of all communicative demands, preventing the formation of ambitions and lasting beliefs. We could describe this social pathology as a kind of indecisiveness and a state of merely 'drifting along' [*Getriebensein*]: The individual's subjectivity has not become petrified into a legal personality, rather the individual imitates the manner in which rights suspend obligations by freeing himself or herself from having to make any commitments.

Hardly any other literary work provides a more striking illustration of this kind of pathology than the novel *Indecision*.<sup>48</sup> Benjamin Kunkel's anti-hero Dwight Wilmerding cannot manage to form beliefs or intentions that last beyond the space of a day. Having grown up in an academic milieu, he is not content to simply accept the indecisiveness he has come to regard as unbearable; as a substitute for his lack of ambition he develops a virtually obsessive desire to find the cause of his disorder. But when he finds that the term 'chronic aboulia' characterizes nothing more than the medical term for his 'indecisiveness' without making the causes any clearer, he agrees to be a test patient for the experimental use of a drug-like antidote. After he realizes that the attempt to cure him has been a complete failure, the novel ends where it began – with the protagonist's complete lack of will. Only now, after his unpleasant upbringing, he is aware that his lover has much the same problems as himself.

Certainly, much of the novel seems to be a mere illustration of a peculiar social diagnosis. A series of other contemporary narratives are able to present the oppressive mood of indecisiveness and aimlessness much more convincingly, since they do not address it constantly.<sup>49</sup> Nevertheless, Kunkel's novel does represent a first, extremely illustrative piece of evidence that such pathologies have now come to play a stronger role in our individual self-understanding. A growing number of individuals seem to feel a lack of will, though without any feeling of crisis, since they appear to lack any more profound value attachments and beliefs. We must go a step further in order to claim that such disorders in our relation-to-self derive from a general misunderstanding of legal freedom; for lack of better arguments, we could resort to speculations and sociological fantasy in order to find the possible causes for this pathology.



The process of increasing legal codification we mentioned above now affects adolescents as well, given laws on family life and education. More than ever, children and adolescents see that existing attachments get abandoned and strategic attitudes replace communicative orientations as soon as legal conflicts threaten. This is not to claim that the more frequent perception of such disruptions in our interaction is enough to make long-term ambitions and obligations seem futile. On the other hand, we cannot exclude the possibility that adolescents, due to the growing significance of legal forms of interaction in their everyday lives, are permanently sceptical about longer-term value attachments and pre-emptively form a merely temporary self-understanding.<sup>50</sup> As if in order to prepare for the ever present possibility of the abandonment of mutual obligations, they unconsciously guard themselves from forming long-term ambitions. If this were a plausible explanation for the social formation of an erratic, aimless character, then we would indeed be dealing with a growing pathology of legal freedom; the merely postponing and interruptive function of the institutionalized form of freedom would thus be misunderstood as the suggestion that we live our lives with permanent reservations, avoiding the formulation of any profound aims.

## *Moral Freedom*

Before the social idea that individual freedom consists in an ego-identity exclusively based on moral principles could even become historically possible, there would first need to be a long-term development of greater foresight, stricter self-control and the 'regulation of momentary impulses'.<sup>1</sup> The result of this century-long formative process, which according to Norbert Elias originated in the behavioural conflicts in the courts of nobility at the close of the Middle Ages,<sup>2</sup> has been a growing 'psychologization' and 'rationalization' of individual self-understanding [*Seelenhaushalt*], allowing individuals to base their actions on maxims or principles they consider right. This, however, only created the psychological-cultural basis upon which the judgement of human behaviour could be made contingent on the extent to which individuals display self-control.<sup>3</sup> But in order to get from here to the much more demanding idea that individual freedom can be realized by being subjected to, or guided by, moral principles that we regard as right and proper, a good deal of further conceptual refinement and reflexive penetration would be needed. Without a doubt, the climax of this categorial refinement is found in Kant's practical philosophy, which has always served as a source and reference point for understanding individual freedom as moral autonomy. The institutionalization of the associated conception of freedom, however, took a different course than the idea of legal freedom. While subjective rights, as embodiments of private autonomy, became binding norms of action and formed a 'regulative' institutional

complex, the conception of moral autonomy has never been an obligation enforced by the state, making it instead a weakly institutionalized cultural pattern.<sup>4</sup> Nevertheless, it would be misleading to view this modern idea of freedom as a merely symbolic system of knowledge and not as a system of action. Just like legal freedom, the institutionalization of moral autonomy is accompanied by certain practices of mutual recognition; here as well, subjects ascribe to each other a certain normative status and expect a specific individual relation-to-self. Just like the private autonomy guaranteed by the modern legal system, the principle of moral autonomy, which is also organized as a system of action, only enables freedom and does not realize it institutionally. Here as well, individuals are only given the opportunity, granted by the culture though not enforced by the government, to retreat from intersubjective obligations in order to then reconnect, in the light of a specific moral perspective, to a lifeworld previously experienced as divided.

But before we can point out the limits of moral freedom, we first need to give an account of its value within the ethical makeup of contemporary societies. To this end I will pick up on the work of Kant and the advanced conceptions of 'moral autonomy' found in the works of Christine Korsgaard and Jürgen Habermas. This will enable us to recognize that the culturally anchored conception of moral freedom deserves a legitimate spot in the institutional web of advanced societies, because it recognizes a subjective stance in which every individual can justifiably reject social demands to take on roles and accept obligations (1). The limitations of this type of freedom become apparent once we realize that the universalizability of moral reasons can only be viewed as an independent fact as long as its attachment to already given and accepted beliefs has not yet become obvious. 'Moral consciousness' in this sense is only a momentary stage in a process of examination in which individuals are not yet convinced that their own standpoint has in fact been realized in social reality (2). Just as in the case of legal freedom, the misunderstanding of moral freedom's temporary and exceptional character leads to social pathologies of habitual one-sidedness and rigidification [*Verhärtung*]. Whereas in the case of legal freedom tendencies to codify social relations were what gave social expression to misinterpretations, here it is the increasing willingness to interpret our own personal autonomy in categories of rights and moral obligations rather than in concepts of the good (3).

## 5.1 The Reason for the Existence of Moral Freedom

No sooner had Kant formulated his idea of moral autonomy than it began to culturally influence lifeworld beliefs, becoming a powerful everyday authority for the articulation of claims and demands.<sup>5</sup> Of course, this particular conception of freedom was not entirely new, having already been anticipated in various ways in the seventeenth and eighteenth centuries. The political notion that states are sovereign by virtue of laying down their own laws; the anthropological idea that humans represent divided beings whose conception of the good is dictated by either reason or passions; finally, the theological conception that the will of god can and should be determined by moral laws – Kant took all of these ideas and turned them into the novel conception that true freedom consists in obeying that which is judged to be right, that is, rationally accepted moral laws.<sup>6</sup> As we saw above, Kant develops this idea of moral autonomy in two steps, each containing demanding presuppositions: first, he agrees with Rousseau that we are only truly free if our actions are not (causally) determined by natural impulses of some kind, but (rationally) by our acceptance of reasons. Here Kant can rely on the everyday intuition that freedom must entail not being merely driven or influenced in our actions, but the ability to act independently and on the basis of our own beliefs. Second, Kant seeks to justify the claim that the reasons we can reasonably present for our actions must be capable of universal consent, which means that our self-determination also implies respect for all other actors as self-determining subjects. Here as well, Kant seems to rely on a familiar everyday intuition, occasionally citing the golden rule, according to which we should act towards others only as we would have them act toward us.

By combining both these assumptions, Kant arrives at the conclusion that allows him to make the far-reaching and radical claim that we are only free as long as we obey moral law. Any subject that does not examine whether its own actions could be accepted by all others and thus be a ‘universal law’ is not free, because it does not let itself be guided by rationally examined motives, but by ‘natural laws’ [*naturngesetzlich*]. Of course, the philosophically relevant question at this point is whether Kant’s argument is plausible that rationality ultimately means obeying the principle of universalizability and thus moral law. Here we have a series of alternatives that range from the strict rejection of such an equation to its

well-meaning reformulation.<sup>7</sup> The important issue for us, however, concerns the ethical value of the notion that we are only individually free as long as we take up the moral perspective of universalizability. What makes the Kantian idea of moral autonomy relevant for our question is not – at least not yet – its moral implications, but its specific conception of freedom.

Soon after Kant's notion of autonomy took effect in social reality, it not only unleashed peculiarly authoritarian conceptions of duties, such as were criticized by John Dewey,<sup>8</sup> but also emancipatory strivings of moral resistance to unjustified social relations. Although such resistance movements might have taken it for granted that their rejection of certain social conditions was based on the latter's lack of moral universalizability, Kant's moral philosophy was what allowed them to grasp this negative position as the exercise of an unwritten freedom to which they are in fact entitled. As human beings, regardless of the nature of the legal order, we are all equally free to reject demands or social institutions that cannot be consented to by all those affected. In modern societies, this kind of 'inalienable freedom', which Rainer Forst elegantly terms a 'right to justification',<sup>9</sup> is thus primarily conveyed by its polemical and critical dimension. In the first instance, Kant's idea of moral autonomy does not instruct us on how we should in fact structure our lives and our actions, rather it conveys the ever-present possibility of questioning the legitimacy of existing social relations. Kant himself makes the clear and convincing claim that the exercise of moral freedom is not tied to any social or psychological preconditions; because the principle of universalizability, i.e. the 'categorical imperative', shows up in our moral-practical considerations with 'transcendental' necessity, subjects require neither certain mental virtues nor social power in order to take up such a critical stance. All individuals, regardless of social position or mental capacities, are always free to question what is demanded of them. To that end, and for reasons that Kant sees as a universal necessity of our rationality, individuals do not merely apply their own standpoint as a moral yardstick, but also take into account the perspective of all other subjects. If a given demand proves unacceptable and thus unjustified from the perspective of the entire human community, then the individual is justified in disobeying that demand. Hence in this negative form, Kant's notion of moral autonomy consists in the freedom to reject unreasonable social demands or circumstances that do not stand the test of social universalizability. Once we can prove that a given demand cannot be met with universal

approval, and thus cannot be regarded as a 'universal law', no legal order can prevent us from publicly asserting our veto and rejecting that demand.

But again, this only touches on the critical side of the doctrine of freedom that Kant develops in his moral-political writings. According to this doctrine, every human can demand respect as a moral individual whose reasoned judgements must be heard publicly and taken into account in legislation. This version of moral autonomy would quickly be adopted in developing Western societies. In Germany, Schiller's dramas, which even found their way into the workers' movement in the nineteenth century,<sup>10</sup> ensured the rapid popularization of this concept, while in hindsight it can be viewed in other countries as the best interpretation of the constitutional principles fought for in various revolutionary struggles. The idea that we are morally free to reject unreasonable social demands and role expectations by examining their universalizability became a cultural pattern of orientation that penetrated the pores of the social lifeworld through literary works and political discourse. And the idea that every human, regardless of status or cultural particularity, is entitled to a certain kind of 'dignity' would not remain untouched by this shift in normative mentality. Wherever the notion of dignity was previously understood in a universal fashion, and not in the sense of hierarchically connoted traditional conceptions of honour,<sup>11</sup> it was founded on theological premises such as in the idea of 'equality with god'; but after the shift induced by Kant's moral philosophy, it would receive a more secular foundation. Thus human 'dignity' was no longer seen to be grounded in the fact that humans, as creatures of god, at least partially share his features, but rather in the fact that, morally, they represent aims in themselves [*Selbstzweckhaftigkeit*] and can thus demand that all other humans treat them as independent persons who are capable of rationally justifying their actions.<sup>12</sup> Individuals are normatively equal and unique inasmuch as they must be recognized as moral persons whose aims cannot be ignored when it comes to the individual justification of norms. These results of the semantic transformation of dignity would soon become a stable background for the everyday culture of modern societies, and today, they constitute an inevitable, normative final argument in moral discourse.

Yet all of these transformations in everyday moral beliefs, which provide a rough sketch of the ethical law of moral freedom, do not get at the true core of the Kantian understanding of autonomy. It is true that the very notion that we are free insofar as we can reject

existing expectations and obligations due to a lack of universalizability decisively changes our self-understanding as members of society; it allows us to view ourselves as subjects whose moral beliefs must be heard when it comes to setting up social relations. The universalistic idea of 'dignity', which has become an indispensable part of the normative self-understanding of liberal-democratic societies, reinforces the significance of moral autonomy by granting all individuals the ability and the right to determine the criteria for their own action. The validity of these conceptions is conveyed most clearly by changes in child-rearing practices; today, children are to become morally independent at an earlier age by being involved as communication partners in as many issues as possible.<sup>13</sup> But despite all of these social-cultural changes, it is not so readily apparent what Kant meant by 'moral freedom' in a positive sense. After all, for Kant, moral freedom implied that we are only truly free if we not only examine demands in terms of their universalizability, but base our actions 'from within' on universalizable reasons. The concept of 'self-legislation' [*Selbstgesetzgebung*] at the heart of the idea of moral autonomy means that when subjects reflexively examine their intentions, they cannot help but obey universal laws that recognize all other subjects as ends in themselves and thus as moral persons. Because freedom entails a rational break with the forces of nature, being 'free' implies turning mere impulses and drives into rational reasons; it means acting on the basis of the impartial perspective of morality. We can distinguish between two interpretations of this extremely strong thesis, which goes far beyond the negative application of the notion of moral freedom. While the one interpretation understands deliberative examination according to the standard of universalizability as a transcendental necessity, the other interpretation views this as the outcome of an historical change in our conception of morality. Both understandings, however, abstract from the demands they make on 'morality' when it comes to the normative integration of modern societies, as well as from the social-cultural preconditions that precede any act of individual self-legislation in the form of moral circumstances.

Christine Korsgaard has further developed Kant's theory, claiming that when we form a practical identity, we can only transform our 'natural' and immediate inclinations into rational reasons if we measure them against the moral principle of universalizability, distinguishing between intentions that are 'wrong' and 'right'. This means that our freedom, which consists in the fact that we are not

causally determined by our impulses, is linked to the application of the categorical imperative.<sup>14</sup> The argument Korsgaard presents in order to justify this claim has several stages, which I can only briefly outline here. She begins with the anthropological premise that as natural beings we are compelled by the reflexive structure of spirit to decide which of our given inclinations or impulses we turn into the reason for our actions.<sup>15</sup> To put it in Kant's terms, we act in the world by breaking the causal forces of nature within us and replacing them with a free act in which we determine our own intentions. Korsgaard, however, argues that the reasons that allow us to come to a decision can only stem from universal laws of which we are the source. In order to determine the direction of our actions, we must have laid down rules for ourselves, thus enabling ourselves to act with a certain consistency over time and exclude the possibility that our actions are merely accidental.<sup>16</sup> Therefore, just as Kant had proposed, every reflexive determination of our action demands that we obey self-imposed laws. Unlike Kant, however, Korsgaard claims in the next step of her argumentation that we should view moral imperatives not only as the source of universal laws, but also of our practical identity. She argues that self-legislation implies a desire to express the kind of persons we would like to be by means of our reflexively determined actions over time. Only via this detour, which allows her to put a more existentialist and thus modern spin on the notion of self-legislation,<sup>17</sup> does Korsgaard arrive at the claim that enables her to equate freedom and universal morality. When it comes to subjects who from among their many given inclinations choose those that best express their own desired identity, making these inclinations their reasons for action, if doubts are cast on the concrete obligations that stem from their ethical choices, they will ultimately only be able to retreat to the demand that, despite all their given attachments, they be recognized as human beings and thus as ends in themselves.<sup>18</sup> At the base of all our efforts to arrive at a practical identity lies our self-worth as persons who embody humanity inasmuch as we are capable of self-legislation like all other humans. In Korsgaard's terms, we cannot avoid viewing the 'humanity' in ourselves as an end in itself.<sup>19</sup> From here we need only take a small step to conclude that we are obligated to respect this 'humanity' in all other subjects everywhere and at all times. Just as our particular, ethical identities obligate us to obey the corresponding obligations and demands, our ultimate and most profound identity as human persons demands that we equally respect all others as persons as well.<sup>20</sup>



What we have depicted here in five short steps should prove, in Christine Korsgaard's view, that we should regard our individual freedom as a moral obligation we have toward all humans. As soon as we become sufficiently aware of the implications of our own practical identity, we will realize that we must obey this universal moral principle.<sup>21</sup> Hence the idea of moral autonomy not only entitles each individual to take up a moral stance on concrete behavioural expectations, but also enables us to completely equate morality and freedom. We are ultimately only 'free' if we view ourselves as persons who impose laws on ourselves, which obligate us to respect all other humans. In a similar fashion, though with a stronger dose of historical argumentation, Jürgen Habermas has recently sought to defend the thesis that in modernity we can only understand individual freedom as moral self-legislation. He thus turns this Kantian conception into the empirical claim that individuals now possess a 'postconventional moral consciousness'.

Habermas prefers to use the term 'moral freedom' in the context of socialization, where it indicates the highest stage of moral consciousness in highly developed societies.<sup>22</sup> This empirical application of the concept shows that contrary to Korsgaard, we should not understand Kant's idea in the originally intended sense as a transcendental presupposition of rational self-reflection [*Selbstverständigung*]. Instead, Habermas views moral autonomy, i.e. the ability to obey self-imposed moral principles, as the final stage of a developmental process that all competent subjects must inevitably undergo. This learning process is assumed to begin with the 'natural' identity of infants, who aim to maximize their pleasure and, in the case of conflict, obey behavioural expectations they perceive in rewards and punishments meted out by their primary caretakers. If we can even speak of 'moral consciousness' in this case, then it can only be in the sense of a general willingness to obey heteronymous rules in order to avoid displeasure. Only after children gradually learn to adopt the role of family members and later as members of a group can they distinguish between concrete behavioural expectations and the general norms they accept as moral guidelines for their own actions. Even here, such obligations are still understood as the result of dictates, not as products of their own will; nevertheless, there arises a concept of moral 'ought', one that is categorially opposed to the sphere of one's own desires and intentions. 'Moral consciousness' thus takes the form of an accepted, reflexive willingness to look for amicable solutions to morally relevant conflicts of action, enabling the acceptance

of the normative rules of the corresponding reference group. For Habermas, the next stage in the process of moral formation comes when adolescents learn to distinguish between various particular systems of norms and general norms; only then do individuals learn that traditional and routine group identifications can prove 'wrong' or 'irrational' by conflicting with principles seen to be beneficial to all involved and thus universalizable.<sup>23</sup> At this third stage, 'moral consciousness' represents a long-term acceptance that in the case of conflict, our actions depend on moral norms to which all those directly and indirectly affected could be expected to agree; but even if mature subjects are guided by moral laws they can understand as self-imposed to the extent that everybody could agree to them in principle, Habermas still feels that this is not enough to realize 'moral freedom'. After all, our own needs, which we previously have understood as 'natural', also play a role in the formation of morally appropriate action. Obviously, Habermas thereby seeks to overcome the opposition Kant posits between nature and ethics, i.e. his two-world doctrine, by including individual inclinations in the act of moral self-legislation. He thus assumes that in the last phase of moral development subjects realize that in the case of conflict they must follow moral norms about which all involved have reached an agreement through coercion-free discourse, which is open for the possibility of reinterpreting and unfreezing [*Verflüssigung*] our own needs.<sup>24</sup> But even today, it remains unclear how we are to reshape individual intentions and dispositions within moral discourse, if we must assume that all involved should have been able to come to an agreement on universalizable norms within a limited period of time.

In any case, like Korsgaard, Habermas conceives of individual freedom as an attachment to moral norms that must have a strictly universal character. In his terms, the post-conventional individual 'retracts his ego behind the line of all particular roles and norms'<sup>25</sup> in order to be able, in the case of conflict, to determine the reasons for his action from the perspective of agreement with all other humans. At this point, it is only of secondary importance whether this orientation toward universal moral principles is grasped as a kind of rational necessity of our ethical self-reflection or as the historical outcome of a socio-cultural learning process. What is decisive is that both notions are based on the Kantian idea that in conflict situations we detach ourselves from all existing attachments and obligations in order to determine our action anew in light of universalizable reasons. This pairing of radical detachment

*and* general consensus, of detachment from all givens *and* universal agreement, is what ultimately makes up the value of this idea of freedom for modern society. As soon as we come into conflict with others, we should be able to exit, in reality or only imagined, the flow of our lifeworld norms without losing the consent of the community of all human beings. This synthesis is what makes the notion that we are only free to the extent that we obey universalizable norms so attractive. It promises individuals and cooperating groups that in bracketing their social lifeworld by following ethical laws, they will not lose the consent of the rest of humanity.

Just as was true of the idea of legal freedom, the moral conception of freedom has become an integral part of the institutional structure of modern societies; it not only enables subjects to view themselves as capable of rejecting existing relations as 'irrational', but also grants them the intellectual capacity to go beyond given systems of norms in a justified fashion. Individuals who, according to traditional conceptions of morality, are tied to the concrete ethical norms of their lifeworld, are now, thanks to the notion of moral self-legislation, empowered in the name of freedom to adopt a perspective from which they can oppose existing norms and constructively propose new systems of norms. The downside of this emancipation, however, becomes apparent as soon as we realize how easily it can lead to one-sidedness and thus to social misinterpretations. Such pathologies, however, can only be named once we have taken a look at the systematic bounds of moral freedom.

## 5.2 Limitations of Moral Freedom

Moral autonomy, whose cultural institutionalization was brought about by the rapid dissemination and popularization of Kant's thought, constitutes the second type of individual freedom in modern societies, one that would soon become a normative foundation of all social relationships. On the condition that they respect the given legal order, individuals are empowered by virtue of cultural norms to obey only those principles to which they can agree after having examined their universalizability. 'Moral freedom' therefore entails that individuals have a generally accepted and informally permitted space for obeying only those moral norms to which they can rationally consent because these norms could be consented to by all those directly or indirectly affected. Hence the sphere of action covered by this type of freedom encompasses all

the social life-spheres for which the political authorities have laid down no rules or norms. Wherever we are not obligated by law to behave in a certain way, we are 'free' in the sense that we must only obey principles we regard as rational.

However, this last point makes clear that we cannot merely grasp the institution of 'moral freedom' in modern societies as a kind of placeholder for the public, shared practice of rational deliberation. This type of freedom takes effect not only when individual subjects impose laws on their own actions in common deliberation, but also in their everyday lives; after all, they are always involved in interactions that demand a rational resolution of conflicts for which each individual is personally responsible. We fail to grasp the value of 'moral freedom' if we immediately view it as the form of self-legislation that we always already carry out cooperatively in processes of public discourse.<sup>26</sup> As a generally shared body of knowledge, moral freedom is relevant to every individual as an independent authority that grants individuals the opportunity to legitimately question given norms of action and, if necessary, to overstep them. On the basis of a post-conventional understanding of morality, and in the context of juridically unregulated conflicts for whose resolution each is responsible, subjects grant each other the chance to take up a perspective in which they appear to abstract from all given obligations and decide solely in accordance with universalizable reasons. In principle, therefore, we can have no further objections to the outcome of this presumptively rational process of will-formation, for it must be interpreted as the expression of each individual's conscience, guided by ethical law. Even if the preconditions of such interactions are not established in the form of government sanctioned regulations, but are only erected on the shaky foundation of a few informal sanctions such as feelings of guilt and moral shame,<sup>27</sup> they nevertheless form the scaffolding for a culturally institutionalized system of action. Exercising moral freedom means taking part in a sphere of interaction that has emerged on the basis of shared and internalized knowledge – a sphere that is regulated by norms of mutual recognition. Just as was true of the system of legal freedom, there are three conditions that must be fulfilled here: Certain practices of mutual recognition must exist, a special type of normative status must be ascribed to individuals, and finally, a specific form of individual relation-to-self must be expected. I will briefly explain these preconditions for the sphere of moral freedom before going on to point out the associated limitations and restrictions:

(a) The cultural idea of 'moral autonomy' enables – to the degree that it is socially accepted and produces stable dispositions – a type of social interaction in which subjects assume that their partners in interaction are willing and able to come to reasoned judgements, and thus enable each other to take up a moral stance. In the case of conflict each trusts the other to make judgements on the basis of generally justifiable and universalizable reasons, which means that the other's moral beliefs must be respected to the same degree as one's own. The individual freedom that the participants grant each other is therefore the freedom to self-legislate, to base their actions exclusively on principles that they take to be right on the condition that their reasons could in principle be accepted by all. Unlike the exercise of 'legal freedom', therefore, 'moral freedom' is predicated on the mutual willingness to justify decisions intersubjectively and to offer acceptable arguments. If, in the sphere of legal interactions, I am 'free' to act as I please within the limits of existing laws and without any obligation to justify my actions, in the sphere of morally determined actions I can only claim the 'freedom' to determine the guidelines of my action if I am also willing to present intersubjectively comprehensible reasons for why these actions should be universally acceptable.

(b) Because members of society can only encounter each other as 'morally free' individuals provided they are willing to justify their actions, they must first ascribe to each other the normative capacity to obey universalizable norms or principles. When it comes to legally mediated interaction, it is enough to assume that others have the purposive-rational capacities required for individual calculations and legal compliance, whereas the ascription of rationality is much more demanding in the case of morally mediated interaction. In order for us to be free to base our actions on principles we view as right, we must be viewed by our communication partners as capable of controlling our intentions through higher-order acts of will and of obeying universally acceptable principles. What makes this form of mutual recognition special, which I will term 'moral respect', is the fact that it combines the respect for the irreplaceable individual with the latter's involvement in the community of humans, thus joining individuality to universality. By viewing individuals as normatively capable of justifying the reasons for their actions to others, we also permit them to articulate only those principles that they themselves view as right.<sup>28</sup> Both these aspects are expressed in the concept of 'conscience', which is the product, so to say, of a Kantian redefinition of an instance of authority [*Inстанz*] originally understood in a much more particular

manner; the right to invoke our 'conscience' should not be seen as promoting the justification of our actions merely on the basis of individual principles, but presupposes the willingness to present these principles as universalizable.

(c) Through the cultural institutionalization of this relationship of recognition, a special form of subjectivity forms that we can term 'moral'. On the one hand, moral individuals must have learned to reshape their primary impulses for action, through reflexive efforts, into reasons for action they view as right. This, of course, requires more than a tolerance for frustration and a certain amount of will-power, but also the rational ability to distinguish between reasons that are right and wrong. According to our everyday understanding, this consists in the ability to judge the reconcilability of our own reasons for action with the interests and intentions of all those who are affected by our actions. To do what is 'right' in this sense means forming our will in a way that does not violate the will of others, thus respecting them as ends in themselves.<sup>29</sup> But this also means that moral subjectivity not only demands self-referential abilities, but also socially directed abilities. In order to be guided by universalizable reasons, individual actors must have learned to take up the perspective of those who could be affected by their actions. The ability to do so therefore also belongs to the bundle of elementary capacities we must assume subjects to have in order to for them to exist socially as bearers of moral freedom. Once individuals have achieved this social existence by virtue of being ascribed the corresponding capacities, they can grasp themselves as subjects that are entitled to the freedom of moral self-legislation.

The schema of behaviour thereby imposed on subjects within the sphere of moral freedom is that of communicative actors with universal orientations. In the case of intersubjective conflicts not regulated by law, individuals are expected to be able to detach from their previous role obligations and normative attachments in order to make their decisions in terms of universal consensus. But if we take a closer look, we will see that these reciprocal expectations contain a type of necessary illusion, which is the assumption that by gradually bracketing their existing attachments, moral subjects can arrive at a point at which they can neutrally assess the universalizability of their potential principles. According to this notion, we should conceive of other subjects in a way that does not assume that we already have a certain preliminary agreement about institutional matters and norms, such that we can measure

the appropriateness of our reasons for action against this unbiased and detached agreement. Although this fiction is inevitable, it remains a mere semblance, and it reveals the limitations of moral freedom – even where moral subjects are placed in intersubjective relationships so as to deprive them of pure self-referentiality. In both cases, the act of (individual or cooperative) self-legislation must be described in a way that allows subjects to adopt a perspective, through reflexive detachment from all given norms, from which they can judge the universalizability of moral principles in an entirely detached and thus unbiased manner. For the subjects that ascribe to each other such a perspective in their social practices, this means that their individual freedom can be tested and ‘ventilated’, but not realized.

The impossibility of arriving at a point from which we could pass unbiased judgement on the universalizability of our reasons for action through a process of moral deliberation can be seen from different angles. Certainly this does not include the mere realization that we cannot take up a neutral perspective for the very reason that we must use language that is dependent on communicative usage and thus steeped in historical experience. Even if this were true, it does not inform us about the possibility of detaching from given roles and norms within the horizon of an intersubjectively shared language to an extent that would allow us to adopt an unbiased or universal standpoint under given historical conditions. In the context of moral freedom, neutrality or universalizability cannot mean a lack of historical awareness, which Kant occasionally seems to suggest; to distance ourselves from our own, previously accepted obligations does not imply that we must adopt a perspective ‘from nowhere’,<sup>30</sup> rather it only stipulates that we make judgements that are as unbiased as possible. The presumption that subjects are able to detach from concrete attachments and thus from obligations, but not from the institutional arrangements in which they are involved, is a more serious objection. According to this view, at some point in our efforts to take up a perspective that is as unbiased and unprejudiced as possible, we will run up against normative rules we cannot ignore, because we must view them as the epitome of our social lifeworld. This concern represents one side of the objection that Hegel raises against Kant’s construction of the moral standpoint, and even today, despite all the necessary qualifications, this objection has lost none of its relevance.

As we saw above, in the system of moral freedom, subjects reciprocally demand from each other, under the condition that all follow



principles they individually consider to be right, that they can offer universalizable reasons for the legitimacy of their actions. The perspective that each must be willing to adopt at any time is that of an unbiased actor capable of judging conflicts not regulated by law and without regard for existing attachments and obligations. Indeed, in our everyday lives in society, we probably assume that others are willing to take up such a perspective; hardly anyone would view others as competent partners in interaction who justifiably follow their own principles unless they were assumed to be capable of presenting reasons for their actions that can be agreed to by all those potentially affected. This mutual ascription of moral autonomy has become a cultural technique, so to say, without which we could no longer imagine how we could deal with everyday conflicts not regulated by the law. When it comes to this presumed ability to detach or decentre, however, we must distinguish between two different stages of abstraction that are not always sufficiently differentiated from each other. In the gap between these two stages we can see where the limitations of moral freedom lie.

At the first stage of abstraction, morally autonomous subjects must take up the perspective of *all* those potentially affected by their actions by abstracting from their original bias toward individual subjects. For subjects who we assume are capable of following appropriate principles, their closeness to or distance from others cannot be allowed to play a role when it comes to morally relevant conflicts. Of course, the result of this first abstraction, this first stage of detachment, should not be confused with the requirement that we take up a depersonalized and entirely affectless perspective on our surroundings. Impartiality is not identical to depersonalization, as the former only demands that we do not privilege our own personal affairs, but it does not require that we be deaf or numb in relation to our private attachments or social relationships.<sup>31</sup> Our sense of emotional gradations of closeness and distance remains intact when we take up a perspective in which the desires and intentions of all involved are, in the first instance, equal. We only wish that our judgements and actions in the case of conflict should not be influenced by the fact that we favour our own interests, preferences and attachments. This type of abstraction is therefore indispensable for participating in the system of moral freedom; only then can individuals be subjects who base their actions on principles they consider to be right and 'self-legislated'. Incidentally, this understanding of impartiality also implies that, at this first stage of abstraction, those alienating effects often spoken of by Bernard



Williams in his critique of the moral standpoint do not yet arise.<sup>32</sup> At this point, being impartial in moral conflicts only means doing our best to abstract from our own affairs and personal entanglements in order to arrive at a solution that is as fair and even-handed as possible. This stage of abstraction is necessary, provided there is sufficient time for consideration, for only then can we view a decision as 'right' for ourselves.

Now, at least in the Kantian tradition, there is a further step of abstraction that has not always been sufficiently distinguished from the abstraction described above. According to this second step, in order to be morally autonomous, we must not only be capable of putting aside our own personal interests, but also of abstracting from the social meaning of the relationships in which we are always already involved. The distinction between these two different stages of abstraction consists in the fact that, in the first case, we do not automatically favour existing attachments in conflict situations, while in the second case, we also ignore what it means to have such attachments at all. We can illustrate this difference with the example of the university professor who notices a relatively harmless act of plagiarism on the part of a close colleague and considers the appropriate action to take. Would it be right to inform the chancellor immediately? Should he try to speak with the colleague or just let it go? Doing what is right demands first and foremost that he ask himself how those directly and indirectly affected would judge this violation. In his first considerations, he must, and he will, obviously attempt to mentally bracket his attachment to this colleague in order to make an impartial judgement about the gravity and the consequences of the violation. As long as we can assume that the other is interested in a resolution of the conflict that is morally 'right', this first step of decentring is indispensable. After all, the predicate 'right' can only be understood here in opposition to bias or partiality, which means that one must take up a perspective that contains the presumed judgement of as many participants as possible.

According to Kant and those in the Kantian tradition, the professor will have to be able to take an additional step of decentring, abstracting from already existing norms of friendship and collegiality. The morally appropriate judgement to which the 'autonomous' person must come has to be based on principles that could be agreed to by all, such that existing rules of social comportment cannot be allowed to play a role. But once we turn to the moral-practical considerations of the professor, we will realize that this

imperative cannot be applied in any reasonable manner. After all, what should it mean for the professor to put himself in the position of universal legislator over all moral beings, when he is merely interested in finding an 'appropriate' solution as a friend or colleague? The professor cannot simply abstract from the norms implied by such a relationship, because they already restrict the spectrum of possible answers to the moral conflict. He is interested in figuring out the appropriate course of action in the case of plagiarism by a colleague not as just any person, but as a friend and colleague. Therefore, it is impossible for the professor to perform such a second step of decentring; his practical considerations will encounter immovable resistance once he arrives at the layer of those moral norms that have always already regulated his social relationship to his colleague. The decentring that takes place at the first stage must occur from the perspective that is tied to the role in which the subject is faced with a moral conflict; and this role is in turn defined by social rules that determine the nature of the relation between the subjects in specific spheres of society.

This objection is similar to that of Hegel in the sense that he also sought to prove that the Kantian procedure of examining one's maxims can take place only when certain rules of social life have already been accepted. Whenever we apply the categorical imperative, at some point we will run up against the constitutive norms of our form of society, which we cannot grasp as being authorized by ourselves, because we must in the first place accept them as institutional facts.<sup>33</sup> Therefore, Hegel disputes the notion that we can be morally autonomous or free in the Kantian sense, because in his view, we are incapable of determining the principles of our action from beginning to end. When it comes to our moral judgments and actions, we are instead constantly compelled to antecede-ntly recognize institutional facts that appear to us in the shape of socially foundational norms for our respective form of coexistence and are thus absolutely valid for each individual.<sup>34</sup> For our professor, this means that he cannot simply ignore the implicit norms of friendship and collegiality. However he may judge the situation and whatever he may end up doing, he must relate to these norms in some way, for they determine, virtually externally, both the starting point of his moral conflict and the possibilities for finding a solution.

These restrictions on moral self-legislation reveal the boundaries of the form of individual freedom that, following Kant, we have termed 'moral'. In the exercise of our freedom, which should allow

us to base our actions solely on self-legislated principles we view as right, we will constantly run into normative rules that we cannot view as self-legislated. Instead, we are forced to accept these rules as institutional facts that can be interpreted in different ways, but that cannot be wilfully bracketed or overridden. It makes little difference whether moral self-legislation is conceived of as a monological or as a cooperative, discursive act, for even subjects that engage in coercion-free discussion and attempt to reach an understanding about the universalizability of their norms of action will constantly be faced with moral rules that they cannot merely override. The meaning of friendship, constitutional norms, obligations between parents and their children – these are all institutional facts with normative substance which the moral discursive community, despite its combined efforts, cannot put aside. These norms penetrate into the procedure of shared will-formation and restrict it from within in the shape of obligations that have more or less already been accepted. In other words, all moral discourse presupposes elementary forms of mutual recognition that are so constitutive of the social environment that they cannot be questioned or suspended by its members.

Once we recognize the boundaries of moral freedom, we will also see that its ethical value lies in our ability to gain merely negative distance from already established practices. If we attempt, as individuals or as members of a discursive community, to examine the universalizability of the principles of our actions, we do so because we wish to arrive at a rational, consensual resolution of conflicts, whose roots lie in the tension of an ethical lifeworld that we cannot entirely control. Just as was true of legal freedom, moral freedom essentially has the character of an interruption, a postponement. Whoever exercises moral freedom seeks to gain reflexive distance in order to reconnect to a social praxis, in a publicly justified way, that has faced him or her with unreasonable or irreconcilable demands. However, this imbues moral freedom with a transformative power that legal freedom does not have: Whereas in the case of subjective rights we retreat from our ethical life context in order to gain the freedom to determine our personal life aims, in the stance of moral freedom we can contribute to the transformation of the given society in the sense that the universality of this freedom permits us to publicly question given interpretations of norms in the lifeworld. In the protective space of legal freedom, we retreat into ourselves with the consent of all others, but in the reflexive moratorium represented by moral self-legislation we must arrive at

intersubjectively justifiable solutions to conflicts, which means that our individual decisions always have effects on others. The value of moral freedom thus goes beyond that of legal freedom: The former merely entitles us to change our lives without being disturbed by others, while the latter entitles us to exercise influence on the public interpretation of moral norms.

### **5.3 Pathologies of Moral Freedom**

As we saw above, social pathologies arise whenever some or all members of society systematically misunderstand the rational meaning of a form of institutionalized praxis. Instead of following the rules in a more or less creative way, whose common exercise makes up the social value of such a system of action, they are guided by interpretations that falsely reflect the social meaning of these rules. Such misinterpretations or disorders at the level of the reflexive appropriation of social practices generally lead to individual or collective modes of behaviour that make it more difficult to take part in the process of social cooperation. Those who are capable of appropriately interpreting the normative substance of institutionalized practices become isolated from the rest of society, whose members are socially integrated by virtue of commonly mastered forms of mutual recognition. Therefore, social pathologies represent the outcome of a violation of the social rationality embodied, as 'objective spirit', in the normative grammar of institutionalized systems of action.

Like the system of legal freedom, the system of moral freedom displays a number of entry-points for such misinterpretations that can then manifest themselves as social pathologies. With regard to its rational substance, this sphere of interaction is based on the mutual ascription of individual freedom, which in the case of unregulated conflicts or demands consists in the permission to follow principles that subjects individually consider to be right, provided they can present generally comprehensible, universalizable reasons. In this kind of communicative context, the possibility of misinterpretation arises whenever individuals are not sufficiently aware of the degree to which they are bound to the already existing morality of society when it comes to determining their own principles of action. As soon as we abstract from the fact that our relation to each other is always already regulated by norms of action that we cannot control at will, the illusion of being unsituated spreads, potentially leading

to various pathologies of moral freedom. This can include confusing an unbiased and impartial perspective with the perspective of a subject that is so free of any obligations related to its respective roles that it can determine the principles of its action solely in terms of their universalizability. In this case, however, the subject's own life, or the social world, is reduced to a field of circumstances or events that should be shaped solely in accordance with moral reasons. In the first case, this illusory blindness to all normative facticity turns into uninhibited moralism (a), while in the second case it transforms into morally justified terrorism (b). In both cases, the value of moral freedom in our societies is systematically misunderstood because of a failure to recognize its inherent boundaries, leading to a rejection of the merely critical, suspending function of freedom.

(a) When it comes to moral freedom, just as in the case of legal freedom, the pathological logic consists in the fact that subjects do not grasp its internal boundaries and thus make its practice the entirety of their life praxis. The habitual consequence of such an autonomization is that individual action becomes rigid and fixed, reflected in symptoms of social isolation and a loss of communication. Because subjects cannot see that the freedom granted to them only offers the limited possibility of reflexively repairing shattered or disrupted intersubjectivity, they perceive this freedom as the source of their entire self-understanding and thus deprive themselves of the chance to reconnect to lifeworld interaction. Here, however, is where the analogy between the pathologies of legal and moral freedom ends, for although we can describe both as a way of turning a mere means into an end in itself, it is only in the second case that we can speak of a truly false exercise of freedom. Those who succumb to pathologies of legal freedom do not actually misunderstand the exercise of subjective rights, rather they push it beyond any sensible, adequate limits. As we saw above, they become legalistic personalities, seeing their freedom in their possession of rights, even where other forms of social interaction are required. By contrast, those who fall prey to the pathology of moral freedom misunderstand the act of moral self-legislation itself. They become character masks of a moral ethos, because they attempt to determine their reasons for action from a universalist perspective for which already existing norms of social interaction are entirely invalid. They perceive themselves as legislators over the entire world of human beings, as if the world before them was not

already marked by a series of normative rules that bound the horizon of our moral considerations. Whoever thus ignores the moral facticity of the social lifeworld will develop a tendency to base their life path primarily on aims that satisfy the criterion of universal validity. Such a 'moralistic' deformation of personal autonomy represents the first pathology of moral freedom.<sup>35</sup>

For people who enjoy moral respect, obligations arising from social relationships normally act as limiting conditions on their moral deliberations; from the perspective of their already adopted roles, they consider how to act in a certain conflict situation by considering the interests of those involved as impartially as possible. In the first instance, this merely means that morally autonomous persons do not forget the nature of their relationships with others; they consider what is morally right not as detached, unsituated beings, but as mothers, colleagues, friends, etc. This bounded nature of our moral deliberations in no way implies blind partiality to those who are closest to us; the search for the 'right' solution, for which all are individually responsible and which constitutes the essence of our moral freedom, demands that we decentre our perspective, enabling us to consider the possible reactions of all involved. But this does not mean that we bracket out the norms of parenthood, collegiality or friendship that determine our personal identity, but that we treat them as perspectival limits of which we are always aware. The answer we come up with will consist in a determination, which is as even-handed as possible and takes into account our existing obligations, of a principle that we attempt to follow in dealing with the conflict at hand. Even in cases in which we question unreasonable demands, we do not usually argue from a standpoint that lies outside of 'all particular roles and norms'.<sup>36</sup> Instead, these socially existing obligations form the normative context within which we attempt to present universalizable reasons for why the tasks associated with these obligations have been distributed unjustly or misinterpreted. But as soon as we ignore this context, as soon as we act as if we were not already committed to certain elementary norms, the fiction of an uninhibited subject arises, one that must derive all its principles from the abstract perspective of universal humanity. The life aims that such a subject will be able to set will ultimately lack any personalized character, for in the exercise of its individual autonomy it must abstract from all the concrete commitments that, as normative preconditions of our intersubjective relationships, make up the core of our identity.

The alienating effect associated with the adoption of the moral perspective<sup>37</sup> does not automatically arise once we seek to be impartial, rather only if we do so in a manner that ignores both our selves and our context. Each further step of abstraction from the fact that we can only maintain personal relationships by respecting the obligations upon which they are socially based reinforces the illusion that we morally self-legislate in an entirely detached and unsituated manner. The context in which we are socially involved becomes forgotten once and for all as soon as we feel we must take up the perspective of all human beings in order to deal with a moral challenge. In this case, a subject defines what is relevant and good for its own life exclusively in terms of what is morally right. Because it no longer allows itself to make judgements and act as a person already committed to others, it must lose any sense of the value that social relationships and attachments have for the totality of a person's life.

The rigid moralism associated with such a de-differentiation of self-legislation can be found wherever personal relationships are given up without hesitation and accepted role obligations are needlessly abandoned in the case of moral conflict. Here the imperative of impartiality inseparably associated with moral freedom is not understood as the decentring of a socially situated subject with diverse commitments and obligations, but as the abandonment of all personal identity. In the world of literature, we often find characters motivated by moral absolutes but blind to the obligations already embedded in their given situation. They consider how to act in light of universalizable reasons, without taking into account or even perceiving the fact that they are already obligated to other persons in specific ways by virtue of their social roles. An author who regarded such pathologies of moral freedom to be the hallmark of modernity was Henry James. In his novels we find several protagonists who, in their zeal for universal moral principles, begin to forget what their immediate obligations are, or where a moral evil should in fact be fought.<sup>38</sup> James illustrates such autonomizations of moral freedom in a particularly striking manner through characters whose rigid moral orientations end up causing the misfortune they so resolutely seek to prevent. Frederick Winterbourne, for instance, the male protagonist in *Daisy Miller*, increasingly drives his beloved Daisy into a trap of self-destructive behaviour by telling her how she fails to meet the demands of an abstract, detached morality. Only after the young girl dies, having caught a fever during a defiant visit to the Roman Coliseum, does he realize



that his rigid moralism was what triggered the process of her self-destruction.<sup>39</sup> In a similar fashion, though this time with the artistic use of a classic ghost story, Henry James describes in *The Turn of the Screw* how a governess destroys the lives of the children entrusted to her by seeking to convince them, in her missionary-like moral zeal, that the ghosts in her hallucinations in fact represent real and terrible dangers. Just like in *Daisy Miller*, it is the absolute will to the good that triggers, in a kind of paradoxical reversal, a chain of events ending in disaster.<sup>40</sup>

When it comes to his diagnosis of a fatal tendency towards moralism in modernity, Henry James is even in agreement with his brother William, with whom he otherwise has little in common. The philosopher of the two siblings was convinced that an 'impartial test' can only be obligatory where it is embodied 'in the demand of some actually existent person'.<sup>41</sup> Both Henry and William James agree that the modern idea of moral autonomy is misunderstood once it is perceived as the demand that we take up an absolute, socially detached moral perspective. As we can see in the one brother's novels and in the other brother's philosophical writings, we are always already involved in a dense web of particular roles and obligations, a starting point for our moral deliberations which we must not ignore.<sup>42</sup>

The social pathologies that can arise within the sphere of moral freedom due to the overextension of its inherent principle of self-legislation must not, however, be confused with the social abuse of Kantian morality that John Dewey had in mind when he sought the intellectual roots of national socialism.<sup>43</sup> Dewey felt that Kant's deontological ideas intellectually paved the way for a kind of fatal obedience to authority, because the exclusive focus of morality on absolute duties could, if based on the legislative power of the state, easily be misunderstood as the demand that we obey authoritarian obligations. But regardless of whether the seeds of such a misdevelopment can be found in Kant's morality – and there are good reasons to reject Dewey's interpretation<sup>44</sup> – the obedience to duty he traces genealogically must not be confused with the pathology of moralism described here. Moralism, as an exclusive orientation toward moral good, arises once self-legislating subjects no longer accept the attachments and obligations in which they are immersed; the authoritarianism of conventional obedience to duties, on the other hand, comes about as soon as self-legislation is abandoned entirely and gets replaced by obedience to existing laws. The former truly is a pathology of moral freedom, while



the latter represents an exonerating emancipation from moral freedom.

(b) If we stick to the political and cultural evidence offered by modernity, it becomes clear that a second form of social pathology can arise from the foundation of moral freedom. The cause for this misdevelopment is the illusion, fed by the institution of moral autonomy itself, that we can ignore all of our already existing norms of action and take up the perspective of a universal, detached legislator. This time, however, this dedifferentiation [*Entgrenzung*] is not the act of an individual that gets trapped in the depths of an exaggerated moralism, but a collective striving for political change. In modern societies, the institutionalization of moral freedom is accompanied by the endemic phenomenon of morally motivated terrorism; the origin of this phenomenon is the same: A social group develops moral doubts about the legitimacy of the prevailing social order, because it views this order as violating the criteria of mutual universalizability. In the first instance, therefore, there are good reasons to take political measures that can contribute to exposing the presumed injustice of the existing society, but this path opened up by moral freedom is abandoned once the questioning of the existing order gradually descends into the questioning of all existing rules. Among such political activists, the notion comes to dominate that one can take up a moral standpoint from which the interest of all potential victims can be generalized to an extent that every given institutional arrangement can be viewed as unjustified. Once moral deliberation has been detached from the institutional basis of the existing society, the participants come to regard all means as morally justified for attacking an unjust social order.

Certainly, this turn to terrorism can only be understood as a pathology of moral freedom in which what were originally truly universalist intentions and considerations pave the way for political action. There are other forms of terror in modernity that do not invoke a violation of general interests, rather the defence of particular values;<sup>45</sup> but in cases in which activists let themselves be guided by ideas of moral universalism, it is the cruel consequence of such an absolutist exercise of justified self-legislation that inspires their terrorist convictions: Because they exclude already existing norms from the justification of their own actions, considering only the abstract and anonymous interests of a suppressed segment of humanity, what were originally good intentions would turn into

delusions of grandeur and revolutionary violence. Alongside a number of protagonists in the novels of Dostoyevsky, who offers a number of good examples of this transformation of moral absolutism into political terrorism,<sup>46</sup> we might think of the Red Army Faction in Germany. If we concentrate on Ulrike Meinhof, who advanced what are by far the most moral reflections among the members of this terrorist group, we can clearly see how this perversion of moral freedom took shape.

Like other members of her generation who grew up in the 1930s in Nazi Germany, the key experience in Meinhof's political socialization was the West German government's plan to introduce so-called emergency laws into the country's federal constitution. Up until the middle of the 1950s, the young journalist regarded the *Grundgesetz* ('Basic Law') of the FRG, which went into effect in 1949, as the normative basis for a legal order based on freedom, in which there was simply no room for arbitrary restrictions on freedom or for attempts at remilitarization.<sup>47</sup> Once this moral consensus seemed to dissolve as a result of the Social Democratic Party's gradual willingness to accept emergency laws that would restrict certain fundamental rights, Meinhof, who by then had become the editor-in-chief of the journal *konkret*, reacted with increasing anger and outrage. The tone of her numerous articles in the late 1950s and early 1960s became sharper, her moral agitation stronger, but her arguments still resembled a critical application of the principles of the German Federal Constitution. The writings published by Meinhof up until 1968 can all be understood as the result of claims to the moral freedom that modern free societies normatively grant all members of society. In the manner of an 'advocate', she lamented political developments and circumstances that she felt she could convincingly show to be violations of constitutionally guaranteed principles, and thus of the conditions of moral universalizability.<sup>48</sup>

But why the constantly growing outrage that set in around 1970, masterfully documented in the TV movie *Bambule*, all of a sudden turned into terrorist fanaticism, and which considerations would ultimately motivate Meinhof to abruptly abandon her livelihood – none of this can really be reconstructed, rather only presumed in hindsight. Certainly, this politically active journalist did not immediately abandon all her moral convictions on the threshold of her adult life. Instead, she must have arrived at a point in her intact universalism at which it all of a sudden seemed morally justifiable to fight violently against the social order she regarded as unjust.

Here, in an extreme intensification of historical events, we see the transformation of moral freedom into a pathology. In Meinhof's moral considerations, if we can even use the term in light of her increasing delusions, she systematically bracketed all institutional circumstances in her social surroundings. In the end, what remained was an entirely abstract, detached universalism of the 'wretched of the earth' [*Unterdrückten aller Länder*]. From this perspective, in which the subject takes up the fictitious role of a legislator for a possible world of pure purposes, not only must constitutional norms lose their validity, but any binds of friendship and family life as well.<sup>49</sup> All that remains is the phantasmagoric idea of having to fight with terrorist means against what is on the whole a morally corrupt social order.

## **Part III**

# **The Reality of Freedom**



In our reconstruction of the social conditions of individual freedom, we have discussed two institutional complexes in which this kind of freedom has been established as the possibility to retreat from routine practices of interaction in the lifeworld or to question them morally. In principle, the institutions of legal and moral freedom in the developed societies of the West secure for each individual the right, enforced by the state or granted intersubjectively, to reject social obligations and attachments as soon as they prove irreconcilable with their own legitimate interests or moral beliefs. In view of the three most influential conceptions of freedom brought forth by modernity, we could also say that the first two – negative and reflexive freedom – have attained social reality in these two systems of action. The institution of legal freedom should give individuals the chance, regulated by the rule of law, to suspend ethical decisions for a certain period of time in order to assess what it is they desire; the institution of moral freedom grants them the opportunity to reject certain demands on the basis of justifiable reasons. What has also become clear is that both types of freedom feed off a social life-praxis that not only precedes them, but provides the basis for their right to exist in the first place: Only because we have already entered into everyday obligations and have already developed social attachments or find ourselves in particular communities do we need the legal or moral freedom to detach from the associated demands or to examine them reflexively. Because these practices of individual freedom do not generate any new substantial contexts of action along with obligating attachments, they only represent ‘possibilities’ of freedom. They represent opportunities

for examining, rejecting or decoupling from given relations of interaction, but they do not form an intersubjectively shared reality within the social world.

But as we saw above, this 'reality' of freedom is only given if we encounter each other in mutual recognition and can understand our own actions as a condition for the fulfilment of others' aims. Under this condition, we can experience the realization of our intentions as something that is entirely unforced and thus 'free', because it is desired or strived for by others within social reality. This conception of freedom, developed by Hegel and those in the Hegelian tradition, has certainly had an impact on social reality; in fact, it has had the greatest amount of influence on the formation of the constitutive rules and purposes of a number of modern institutions. To name just two examples, we can grasp neither the recent institution of 'romantic' love nor the capitalist system of the market if we analyse them exclusively in terms of legal or moral freedom. These institutional complexes owe their social legitimacy and their binding force to the fact they can be understood as the realization of that type of individual freedom we could term, following Hegel, 'social' or 'objective' freedom. However, there has always been a tendency in the history of modern societies to misunderstand the element of social freedom in the previously named institutions. Instead, weaker, either legal or moral ideas of individual freedom have had to serve as descriptions for the 'actual' spirit of institutional complexes such as marriage, family or the market. In order to counteract this deep-seated tendency, I propose that we first outline the connection between a certain type of institutionalized system of action and social freedom. Only then can I pick up the thread of my normative reconstruction where I left off in my description of the institution of moral freedom.

The systems of action associated with individual freedom, i.e. legal and moral freedom, are also regulated by norms of mutual recognition. Subjects only manage to grant each other a state-protected space for egocentric detachment or the entitlement to a morally justified position once they have ascribed to each other a certain status in light of a shared norm – a status that entitles them to the consideration shown them by other subjects. But the behaviour that these subjects can expect does not itself serve to realize their aims, but only grants them the chance to examine these aims from afar, or to commit to them and have that commitment be respected by others. Hence we could say that the consideration they can expect does not represent a sufficient condition for carrying out their own aims in

society, rather they only serve the clarification, internal qualification and intersubjective validity of their goals. We must distinguish this limited function of recognitional behaviour from a different case in which reciprocal consideration forms the indispensable condition for the realization of our aims. Our actions remain incomplete, as it were, as long as others do not act in accordance with the norm to which we both have implicitly committed in our mutual recognition. In this second case, the reciprocal ascription of a normative status, which makes up the substance of all relations of recognition, differs from the previously described systems of action. Here, the status granted to us enables us to expect from others a kind of behaviour that enables us to fulfil our own aims.<sup>1</sup> In the first case, the consideration subjects can normatively expect allows them to formulate their aims in a free and self-determined fashion; in the second case, the intentions of the subjects involved are interlaced in a way that allows them to formulate and execute their intentions only if they can expect the consideration of others. In the first type of systems of action, foundational norms of recognition 'regulate' actions in a way that ensures intersubjective coordination, while in the second type, they 'constitute' a kind of action that the subjects involved can only carry out cooperatively or together. We can label such systems of social practices, following Talcott Parsons, 'relational institutions'<sup>2</sup> or, following Hegel, 'ethical spheres'.<sup>3</sup>

These systems of action must be termed 'relational' because the activities of individual members within them complement each other; they can be regarded as 'ethical' because they involve a form of obligation that does not have the contrariness of a mere 'ought', without, however, lacking moral considerateness. The behavioural expectations that subjects have of each other within such 'relational' institutions are institutionalized in the shape of social roles that normally ensure the smooth interlocking of their respective activities. When subjects fulfil their respective roles, they complement each other's incomplete actions in such a way that they can only act in a collective or unified fashion. The reciprocally expectable behaviour bundled in these social roles therefore has the character of a subtle duty, because the subjects involved regard it as a condition for the successful realization of their common practices. Nevertheless, the role obligations entailed by cooperative action bear traces of what we customarily call 'morality', for each person must treat the others in a way that allows their respective purposes to be achieved.<sup>4</sup> Here, 'morality' does not consist in the mutual granting of opportunities for self-determination, but is



an intrinsic part of the social practices that combine to make up a relational system of action.

However, these systems of action only form spheres of social freedom if subjects can truly grasp constitutive role obligations as reflexively acceptable. If they experience these obligations as socially imposed or feel coerced into obeying them, subjects will not be able to view the mutual supplementation of their actions as an 'objective' realization of their own freedom that is desired and strived for externally. Hegel thus made the existence of 'ethical' spheres contingent on a general reflexive acceptance of complementary role obligations. In his *Philosophy of Right*, this was to be ensured by antecedent and permanently accessible systems of law and morality, each of which was to ensure that subjects can retreat from given attachments and obligations in order to examine the latter's legitimacy.<sup>5</sup> Once this condition has been fulfilled, that is, once the role obligations belonging to each specific sphere have been subjected to the condition that they be acceptable reflexively and can thus be viewed as consciously desirable, then we are justified in viewing relational systems of action as spheres of social freedom. In these systems of action, to cite Hegel's lofty formulation, we 'willingly limit ourselves with reference to an other, even while knowing ourselves in this limitation as ourselves'.<sup>6</sup> The particularity of these forms of individual self-restriction is that they allow individuals to regard their respective obligations as something that corresponds to the realization of their own aims, needs or interests. Moral restrictions need not be felt as hindrances that stand in the way of our own personal inclinations, but as the expression and social embodiment of the purposes we regard as constitutive for our own person.

Of course, this should not lead us to assume that the role obligations found in a given ethical sphere always have an obvious and transparent content. The behavioural demands normatively bundled in such social roles, as well as the activities that subjects can expect from each other, are usually open to interpretation and thus leave room for social negotiation.<sup>7</sup> Even in traditional societies, role ascriptions in various social spheres could not be allowed to become so rigid as to leave no room for situational interpretation at the margins. But the more the pressure of tradition and custom subsided in the wake of increasing individualization, the more open institutional complexes thus became for social deviation and rearrangement, the more role obligations in individual spheres would have to offer opportunities for intersubjective inter-

pretation. Today, the behavioural demands in nearly all relational subsystems of highly developed societies only represent vague sketches, making their prescriptive substance ever more unclear. Many individual interpretations and negotiations regarded today as legitimate would have been unthinkable fifty years ago.<sup>8</sup> Nevertheless, the members of these societies are still capable of drawing clear boundaries between different systems of action and distinguishing between them in terms of their normative structure.<sup>9</sup> The ability to distinguish between different roles in different areas of social life, i.e. to recognize the distinctions between obligations at work and in the family, has remained largely intact, even though the rigidity of these roles has been significantly reduced. There is nothing surprising about the persistence of this capacity for differentiation, because it is a part of a socially necessary store of knowledge without which elementary processes of coordinating social action would be impossible. For this we need a basic stock of commonly shared differentiations that intuitively inform us about the rules, norms and routines expected of us in the various spheres of our social environment.<sup>10</sup> A central element of this lifeworld background knowledge is our familiarity with the boundaries surrounding the domains of various role obligations, such that we can easily move from one sphere of action to the next, despite the realization that the various respective obligations are increasingly open to interpretation, without losing sight of the fact that we must potentially adopt different roles.

A normative reconstruction can pick up on this 'moral grammar' employed by the members of modern societies in order to uncover the spheres of action that guarantee freedom. We can follow the premise, outlined above, that individual freedom can only become a socially experiential and lived reality within institutional complexes marked by complementary role obligations, whereas in the 'official' spheres of law and morality they merely serve as a means of detachment or reflexive examination. Therefore, in order to determine the 'reality' of freedom in our current social relations, we need to reconstruct the spheres of action in which mutually complementary role obligations ensure that individuals can recognize each other's free activities as conditions for the realization of their own aims. Picking up on the distinctions that have become routine in the lifeworld, I will operate on the assumption, though I cannot yet offer a sufficient justification for it, that we can find such relational institutions today in the *institutional sphere of personal relationships* (III.6.1), in the *institutional sphere of the market*

*economy* (III.6.2) and in the *institutional sphere of the political public sphere* (III.6.3).

In each of these three systems of action, we will filter out the specific pattern of mutual recognition and complementary role obligations on the basis of which subjects can exercise forms of social freedom under current social conditions. We will have to distinguish between two levels of normative reconstruction, between empirical facticity [*Faktizität*] and normative validity [*Geltung*]. The point is neither to analyse factual relations nor to derive ideal principles, but to carry out the difficult task of uncovering those social practices that are most suitable as forms of intersubjective freedom. Therefore, the major stock of normative rules we will reconstruct in each of these three spheres will not necessarily be what subjects actually practise in their everyday lives. In fact, in the course of our reconstruction we will often be faced with individual deviations from these 'ideal-typical' patterns of action,<sup>11</sup> which will prove to be especially true of certain tendencies in the present. But here, such deviations must be interpreted as social misdevelopments – provided they do not merely represent contingent appearances – because they fail to meet the demand of social freedom underlying the respective sphere of action.

The difference between such misdevelopments and the pathologies we have already discussed consists in the fact that, in the first case, we were dealing with deviations that were not engendered or promoted by the corresponding system of action: The pathologies of legal and moral freedom represent social embodiments of misinterpretations for which the rules of action themselves are at least partly responsible; after all, the normative practices in both of these spheres are incomplete on their own and require supplementation by lifeworld relations, without, however, this being made apparent in the performance of these practices. Such pathologies could thus be said to derive from an 'invitation' on the part of the underlying system of action to perceive the mere 'possibility' of freedom as the entire 'reality' of freedom. The social spheres we will turn to now are free from such temptations, because they are based on normative rules whose rationality does not depend on external practices. Although in individual cases it will be necessary to supplement these systems of action 'externally' with additional norms and sanctions in order to meet the conditions of reflexive acceptability, the specifically institutionalized freedom itself is already realized in intersubjective practices. Ethical spheres are self-sustaining in the sense, and only in this sense, that we do not

have to reconnect to the life world in order to rationally follow their constitutive rules. Therefore, the misdevelopment that we will encounter in our discussion of relational institutions does not consist in systemically induced deviations; they are not 'pathologies' in the true sense, but rather anomalies whose sources must be sought elsewhere, not in the constitutive rules of the respective system of action.



## *Social Freedom*

The three relational systems of action we have already briefly dealt with – personal relationships, the market and the political public sphere – differ structurally from each other in more than one way. One difference concerns the manner in which the constitutive role obligations are institutionalized in the respective spheres, and we will find it helpful to distinguish between contractual and non-contractual roles in order to get a sense of the different extent to which these obligations are legally anchored. If we follow traditional descriptions, then it seems we can assume that non-contractual role obligations dominate the spheres of personal relationships and the democratic-political public, while contractual obligations prevail in the established systems of the economic market.<sup>1</sup> Upon closer inspection, however, we will see that a series of legally non-sanctioned obligations are constitutive for the market as well, a fact that is often ignored by the dominant theories. But there is a second, more important distinction concerning the type of individual purposes realized in the relational systems of action through the corresponding interweaving of roles. Here as well, we should follow traditional conceptions in order to arrive at a first, still very tentative differentiation that allows us to make a broad assumption about what in fact takes shape and is realized intersubjectively in the various systems of action: individual needs and properties in the sphere of personal relationships, particular interests and abilities in the sphere of the market, and individual aims of self-determination in the political public sphere. With these still very preliminary distinctions, we are equipped to begin our normative reconstruction in the place where, in an ontogenetic sense,

we have our first experiences of social freedom: the sphere of personal relationships.

### 6.1 The 'We' of Personal Relationships

For more than two hundred years now, the broad field of personal relationships stretching from friendship to love has been regarded as the social domain of a special form of freedom, one that is difficult to characterize. Already in Schiller's 'On Grace and Dignity', we read that 'love alone is thus a free emotion';<sup>2</sup> as we saw above, Hegel is just as emphatic when he writes that it is only 'in friendship and love' that we can be completely with ourselves in the other;<sup>3</sup> and Schleiermacher was the father of the idea that in 'modern friendship' the different emotional powers of two subjects are joined in 'free play'.<sup>4</sup> But also less romantic thinkers such as Feuerbach or Kierkegaard entertain the idea that there is a special kind of freedom in personal relationships, in which two persons enable each other to consummate their own selves.<sup>5</sup> Finally, there are countless novels, narratives, and plays that articulate experiences in which individual freedom grows, and ultimately only comes to fruition, in and through love.<sup>6</sup>

All of these philosophical and literary considerations, however, are merely a weak reflection of more profound changes simultaneously taking place within the lifeworld. Starting among the bourgeois classes and then spreading throughout the population, personal relationships were gradually freed from considerations of economic advantage or the formation of social alliances, thus creating a space for emotional experiences in which people could see in each other a chance and a condition for their own self-realization.<sup>7</sup> What we now call 'love', 'intimacy' or 'marriage' is fundamentally different from what was meant by these terms among the nobility and in the division of labour centred around the household. Lovers, friends and spouses can now be understood as persons to whom we are bound by nothing except sexual desire, esteem or affection, allowing us to experience these bonds, externally and internally, as a free expression of our spontaneous impulses. In modern society, therefore, in the midst of anonymization and isolation, personal relationships represent social relations in which our inner nature is set free by mutual confirmation.

It did not take long for this new social form to become institutionalized in the form of reliable role patterns. Stable networks of

practices would soon be established in all the various personal relationships that had emerged by the end of the eighteenth century, and within these networks members of society could be relatively certain about each other's behavioural expectations. For the largely same-sex friendships of the time, behavioural rules differed from the intimate relationships originally intended to be heterosexual, which were in turn regarded as a merely preliminary stage of – or as a side track to – the relations of marriage and family more strongly regulated by the law. Of course, on the margins of these different systems of practices, it is always difficult to draw clear boundaries, a fact which has led to a number of misunderstandings and role conflicts as found in the stereotyping of role conflicts in works of literature. And there is no doubt that the respective rules of action always afforded a significant privilege to men, in the sense that they were entitled to a higher degree of authority. But at least according to the dominant idea, we can say that these complementary role obligations were designed in a manner that allowed the participants to realize what they regarded as their essential features through reciprocal confirmation, support and aid. Friendships were thus more or less constituted by the rule of intimate [*vertraulich*] authenticity and deliberation; in intimate relationships, females were to provide sexual satisfaction in exchange for economic and social security, while the norm of mutual, long-lasting care and support dominated in the family.

At the same time, this one-sided focus on the feelings of the participants ensures that the institutionalized modes of comportment within these personal relationships are never fixed, but always exposed to the pressure of becoming increasingly one-sided.<sup>8</sup> The more these bonds were relieved from external pressures and social tasks, and the more they came to centre on the emotions of those involved, the more space there would be for the individual articulation of subjective feelings. Women in particular have sought in their decades-long struggles within the private sphere to assert their own, structurally disadvantaged needs within established practices in order to change the rules to their own advantage.<sup>9</sup> Thus in the two-hundred-year period following the development of the freedom of personal relationships, this institutionalized sphere has undergone changes and transformations that are no less socially significant than those in the economy or the social structure. None of these social forms remained as they were; all of them were drawn into an accelerating vortex in which gender identities and their attendant roles would be radically redefined. Today, personal



relationships are much different than they were at the start of the twentieth century; it is not only in Western societies that the institutional connection between sexual relationships, marriage and family has been largely dissolved. Not only are heterosexual relationships now accompanied by publicly recognized patterns of attachment between homosexuals, there have also been significant changes in the institutional structures of friendship.

A normative reconstruction that seeks to show that personal relationships are a first sphere of social freedom must address these new, developing forms of intimacy and privacy. It will have to focus on identifying the more stable role patterns among these rapid transformations, roles whose reciprocal fulfilment allows us to experience the intersubjective realization of our respective individuality. We would be well advised to start with the personal relationship that has the least institutional anchoring, which is the variant of social freedom found in friendship (a). Here we find a weak, only marginally standardized form of the modes of comportment that are much more differentiated in intimate relationships (b) and families (c) due to the increasing value [*Eigenwert*] of physical relationships.

### 6.1.1 Friendship

The very fact that Schleiermacher, in his writings on ethics, makes a distinction between 'antique' and 'modern' friendship<sup>10</sup> is a first indication that even this highly informal type of relationship is not without a certain degree of social institutionalization. We often hear that friendship cannot be said to represent an 'institution' in the sociological sense because it does not possess a self-reproducing structure, thus making its identity entirely dependent on the self-understanding of the persons involved.<sup>11</sup> The objection goes that friendship is not defined by the degree of agreement with already existing rules of action, but solely by the compact formulated by the parties involved. This claim, however, is contradicted by the empirical finding that even in our everyday life, we still take it for granted that there is a difference between 'genuine' and 'false' friends, between 'true' and 'inauthentic' friendships.<sup>12</sup> Here we are not drawing on the self-understanding of the persons involved, but on a vague web of practices that we use as a criterion for our judgments. It is not only externally, from the perspective of the observer, that certain norms of action are tacitly implied, but also in internal

communication between friends. These norms come up whenever crises arise; and even in these cases, the corresponding rules are not merely drawn from the self-interpretations that have developed over the course of the relationship, but are regarded as something that exists even outside of the respective friendship in the social world. The norm of friendship is thus socially institutionalized insofar as there is a shared body of knowledge about the practices that, taken together, describe what constitutes the normatively appropriate realization of friendship. Deviations from these intuitively understood rules are experienced as a crisis, and grave violations of the attendant norms are perceived as a way of putting an end to the friendship.<sup>13</sup>

The distinction between 'antique' and 'modern' friendship employed by Schleiermacher refers to an institutional transformation that gave birth to our current understanding of this type of relationship.<sup>14</sup> Although we know relatively little about the actual praxis of friendship in antiquity or the Middle Ages, and thus can only make more or less justified presumptions, we can be relatively certain that because of the social hierarchy, for the most part only men were accorded the privilege of cultivating informal, 'friendly' relations within the narrow limits of their social class [*Stand*], while women, due to their forced attachment to the court and/or the household, were almost entirely prohibited from entering into such relationships.<sup>15</sup> In the Middle Ages, male friendships in the upper classes still retained a rather ceremonial character, aimed at the formation of advantageous alliances, while in the lower classes, informal social relationships between men were to be found only within neighbourhoods or the workplace.<sup>16</sup> In general, all these 'friendly' relations between men were characterized by their connection to political or business aims, founded less on mutual affection or esteem than on mutual interests. Accordingly, the complementary role obligations, which did not necessarily have to be distributed equally, were tailored to the fulfilment of tasks that served to benefit the other in a broader sense. Despite all the ethical distinction that Aristotle accords to the selfless and virtuous nature of friendship,<sup>17</sup> the world of male friendships would remain marked by pure calculations of benefit all the way into modernity. Although they were often disguised by ritual forms of mutual esteem, especially in the upper classes, they essentially constituted social networks of patronage and protection.

The fact that individuals could not decide whether to enter into or abandon these institutions of friendship is enough to disqualify

them as a sphere of social freedom. Not only were class distinctions to be strictly obeyed, but a common perception of overlapping interests was required for such alliances to come about at all. There were also forms of fellowship and male camaraderie among the lower classes, but these were often rather sporadic and could not rely on culture or routine practices, and thus could never take the shape of a social institution. According to what we know about the history of friendship, only the rise of economic trade and the capitalist market would change this situation by bringing forth a growing need for an alternative sphere [*Gegenwelt*] of private retreat. This is where, as Allen Silver has shown, Scottish moral philosophy first raised the notion that (male) market actors need 'friendly' relationships as a form of relief and as a counterweight, completely free from commercial calculations and founded solely on sympathy and sentiment.<sup>18</sup> Although it is always somewhat problematic to speak of the 'birth' of an idea or institution, it does seem reasonable to see in the writings of Ferguson, Hume, Hutcheson and Adam Smith the founding documents of the modern form of friendship. Here we see for the first time a systematic outline of the notion that there is a second form of social relationship in addition to family attachments, one in which subjects are bound to each other solely by mutual affection and attraction.

The enormous impact of this notion that friendship constituted a form of social relation opposed to commercial society can be seen in the fact that only a few decades later, Kant and Hegel take this idea for granted. Wherever they treat friendship as a distinct kind of relationship, which they do quite often, they might also have Aristotle's ethical characterization of friendship in mind, but above all, they are thinking of the ideal upheld by Scottish moral philosophy and already practiced rudimentarily in society. The same is true of the Romantic movement, in which 'friendship' would soon join 'love' as an ideal form of social relationship; here as well, the characteristic features of friendship are not merely derived from classical literature, but found in social practices that had already taken on certain contours in everyday life.<sup>19</sup> In Europe, the institutionalization of this idea could no longer be stopped, and in all centres of intellectual life, men would begin to establish friendships opposed to the world of economic calculations and interests, relying instead on open affection and mutual supplementation.<sup>20</sup> However, the social proliferation of this new type of friendship must not be overestimated; practices of communication-oriented and sentimental companionship would long remain the preserve of

the educated classes. But the model that began to develop and take shape in such initial experiments appeared to be without precedent: Here subjects taught themselves to adopt rules obligating them to be benevolent and sympathetic to their peers and their changes of opinion. What made these forms of companionship novel was not only the fact that they called for understanding and sympathy for other members of the same sex, something which had been taken for granted within the family and among relatives, but also the fact that feelings and dispositions for which there had been no public forum were suddenly brought up in everyday conversation. Within the horizon of such experimental 'romantic' friendships, role patterns and practices gradually arose that both sides regarded as an increase of individual freedom enabling them to experience the social realization [*Verweltlichung*] of their own feelings in the benevolent attentiveness and reflection of others. This is how friendship would come to be associated with freedom, as well as the reason for Schleiermacher's remark about the 'free play' of feelings in this new form of companionship.

Another 150 years would have to pass, however, before this new social form would transcend the narrow limits of the educated classes and take hold among the general population. All significant changes to the interaction between women or between men in the decades following the high point of the Romantic period can be understood as a step-by-step expansion of these altered conceptions of same-sex companionship. In the nineteenth century, even young girls and unmarried women began to discover this new form of interaction, especially in boarding schools and reformatories, through 'soul mates' with whom they could talk about their feelings.<sup>21</sup> In males-only clubs that usually served to organize economic and political interests, a kind of camaraderie formed in which private affairs were discussed beneath the threshold of official business contacts.<sup>22</sup> All of these hesitant signs of the spread of friendship as a social institution ran up against the limits imposed by the inability, especially among men, to express their own feelings and sentiments to others. In various social milieus, the centuries-old image of robust men in control of their emotions continued to dominate – so much so that men had but few chances to confide in others when it came to their personal concerns and uncertainties.

Hence the modern ideal of friendship could not establish itself as an institutionalized praxis until barriers to the articulation of personal life aims were torn down at nearly all levels of society and for both genders. We would probably be right in locating the

historical moment of such a comprehensive and socially influential relaxation [*Entkrampfung*] after the end of World War II, when a wave of economic prosperity washed over most of the West and processes of individualization accelerated.<sup>23</sup> Up until this point, due to male dominance in the family, in war and in the economy, traditional gender roles that offered little space for personal self-exploration remained largely intact, whereas now they came to be replaced by identities that were significantly more open and emotionally flexible. In Western societies, the time for purely private friendships had come; women and men of all classes were now culturally capable of practicing the already existing social form of trusting, friendly companionship, participating selflessly in the fate of others. The remaining constraints of social etiquette that had previously ensured that friendships could only be cultivated among members of the same sex gradually began to disappear. Men and women could now enter into private relationships of friendship without being embarrassed or ostracized – relationships that could span a lifetime.<sup>24</sup>

Ever since then, that is, since the 1960s, friendship has come to be cultivated at all levels of society. Although male camaraderie or instrumental alliances have never been abandoned entirely, friendship is only considered to be an ‘appropriate’ or ‘authentic’ realization of a basic normative pattern if selfish calculations are replaced by mutual interest in the well-being of the other.<sup>25</sup> The role obligations underlying this social relation, already anticipated within Scottish moral philosophy, are usually learned as early as puberty<sup>26</sup> and thus become institutionalized norms despite the absence of any legal enforcement. Subjects intuitively master the normative rule that ‘true’ friends owe each other the willingness to attend to their respective concerns and consult on difficult decisions; that they treat each other’s secrets with discretion and not pass such information on to others; that in cases of individual crises, they should be there for each other with advice and care; and that they should offer sympathy even if they disagree with the other’s decisions.<sup>27</sup> As Aristotle was well aware,<sup>28</sup> friendships that obey these vaguely outlined rules, which are always open to interpretation, normally presuppose reciprocal esteem not only for each other’s externally perceptible actions, but also for the beliefs and decisions that motivate them. Friends value each other for the way they manage their own respective lives.

Recently there has been a number of attempts to work out the significance of these ‘ethical’ features of friendship as a condition for a

well-lived life in general and for moral development in particular. In the first context, the old Aristotelian concept has re-emerged that selfless friendship is a necessary prerequisite for a good life because it offers a chance to reflexively view and examine our own life decisions in a context of shared and unforced deliberation.<sup>29</sup> Especially in times of increasing atomization, it is often emphasized that we need the social counterweight of long-term friendship, because the duties of accountability inherent in friendship protect us from missteps resulting from a purely privatistic orientation toward the good.<sup>30</sup> Within the second, thematically narrower context, there is now a broad consensus that close, trusting relationships exert a gentle and informative pressure to adjust our own moral principles continually to situational circumstances, thus making these principles less rigid.<sup>31</sup> Socialization theory emphasizes, in the tradition of Jean Piaget, that friendship among peers enables both children and adolescents to learn the social meaning of moral obligations and principles.<sup>32</sup> But of course, all these considerations and claims do not even come close to determining the extent to which currently practiced forms of friendship represent a first institutional sphere of social freedom. Personal companionships as they are currently understood and taken for granted within certain normative limits might promote the well-being or moral development of the individual in many different ways, but they in no way explain why we should regard friendship as a social embodiment of freedom.

What is decisive for our purposes is that modern friendship enables us to experience our own will as something whose articulation is desired by a concrete other and thus can no longer be closed off internally. The complementary role obligations that define friendship today enable the mutual display of feelings, attitudes and intentions that would find no expression without a concrete other, and thus could not be experienced as something capable of being expressed. So much do we take for granted this experience of having our will 'freed' in friendly conversation and togetherness that we can hardly use the term 'freedom' to describe it, even though it is the only term that explains our primary interest in cultivating friendships, and that captures the place friendship occupies within our social life. Friendship constitutes an institutionalized form of pre-reflexive commonalities marked by the implicit desire to reveal our own feelings and attitudes without reservation. The role obligations of which we are implicitly aware intertwine in a way that ensures mutual trust and the certainty that even our most idiosyncratic and odd desires will be taken seriously and not be

betrayed. It is this experience of self-articulation, both desired and fulfilled, that makes friendship a homestead of social freedom. In friendships, individuals can and should reveal to others the experiences to which they have privileged access, thus eliminating the boundaries required in everyday communication. When it comes to friendship, being with oneself in the other means entrusting one's own desires in all their diffuseness and tentativeness to another person without compulsion or fear.

Again, this is probably not the kind of freedom we currently associate with the value of friendship in our individual lives. What plays a much stronger role is the desire for support in extreme existential situations, for advice about difficult decisions, or for the pleasure of sharing interests with others. The increase of freedom that goes along with the ability to share our feelings and experiences without reservation is peculiar in that it represents an experience that is difficult to capture in words. It exists without our consciously being aware of it, and thus it cannot be articulated clearly; rather we experience it indirectly in feelings of sudden relief and ease which are typical for communication between friends. Even novels that revolve around the unique experience of friendship offer little more than individual accounts of feelings of relief and relaxation [*Befreiung und Verflüssigung*]. Even here we search in vain for evidence that could help us ascertain whether a previously unknown form of freedom can be found at the core of friendship.<sup>33</sup> But this phenomenological difficulty should not prevent us from retaining the insight of Scottish moral philosophy and the Romantic movement that it is only within a kind of friendship that is free from instrumental considerations that we find a special form of intersubjective freedom. Here, the other does not represent a limitation on my individual freedom, but its condition; the other gives me the chance to abandon the constraints imposed on the articulation of my desires and thus to attain a 'public' space for ethical self-exploration. In friendship, just as in all other relational institutions, we only experience an increase of freedom if we accept complementary role obligations that ensure the durability of practices that guarantee freedom. The moral stance in which are committed to our friends in accordance with generally practiced rules is therefore the indispensable condition of freedom.

Recently, however, because of increasing individualization and more intense pressures to perform, the very existence of the social form of personal friendship is seen to be at risk. Because we experience ever greater pressure to succeed in the workplace, and



because the growing flexibility of working life makes a privatistic orientation toward our own career chances an everyday necessity, we have no opportunity to practice the kind of selfless willingness to express personal sympathy, which is indispensable for maintaining friendships based on trust.<sup>34</sup> It is not easy to determine how accurate such sceptical prognoses in fact are; there have been few serious investigations on this issue, and we must typically rely on generalized observations of everyday experience or on works of art that are a commentary on the present. Here we do find a tendency to instrumentalize friendships in order to make advantageous connections,<sup>35</sup> but at the same time, the few empirical studies in this area indicate with surprising uniformity that members of society continue to understand and practice the rules of friendship and react to violations with informal sanctions.<sup>36</sup> Just as in the recent past, any attempt to instrumentalize friendships is regarded as a violation of the attendant normative practices. And we still believe that friends owe each other a large degree of personal commitment to each other's well-being. The relevant research shows that wherever individuals deviate from these social norms, the corresponding private relationships are no longer referred to as 'friendships' in the strict sense – but as 'camaraderie', 'cronyism' or mere 'working relationships'. On the whole, there is little reason to doubt the stability of the modern institution of friendship; in fact, of all the personal relationships of our day, it might even be the most resilient in the face of accelerating processes of individualization and flexibilization. If we also consider the fact that such friendships increasingly reach across class lines, neither follow ethnic divisions nor are bound to a common location, then perhaps we can see friendship as the most elementary foundation of democratic ethical life.

### 6.1.2 Intimate Relationships

The fact that we view relationships of intimacy and love as an independent social form at all is the result of a process of differentiation in personal attachments that has only recently been completed. It is true that the institutional shape of love as we know it, that is, as a form of personal relationship based entirely on sexual desire and mutual affection, did not emerge until the end of the eighteenth century. At that time there was a great transformation in the relationship between men and women, leading to the gradual acceptance of passionate attachment as the principle according to



which people chose their partners.<sup>37</sup> But two hundred years would have to pass before this new relationship pattern would be fully 'democratized' by permitting not only the existence of heterosexual but also of homosexual couples.<sup>38</sup> Today, intimate relationships have become so institutionally decoupled from marriage and family as to represent a legitimate form of relationship for all members of society, regardless of their sexual orientation, even if those involved have no intention of entering into a longer-term, government-sanctioned relationship. Even to speak of intimate relationships before the end of the eighteenth century is probably a conceptual misunderstanding. In antiquity and the Middle Ages, we do of course find relationships of passion, sexual affairs and homosexual attachments, but there was no institutional pattern of intimate closeness and openness to support any of these forms of attachment based on affection or attraction. These were strictly regulated exceptions or deviations from the official rules, which stipulated that sexual intercourse could only take place within the socially legitimate relationship of marriage – which, moreover, was to obey strict class limits and the economic considerations of the heads of the family. For the propertied classes in Europe all the way up to the seventeenth century, it was taken for granted that the heads of the family were to arrange the marriage of their daughters or sons; in no way were emotional harmony or individual happiness taken into account, only the long-term advantages for the relatives. Hence it would be misleading and highly problematic to use the term 'intimate relationship' during this era, which, after all, implies a measure of freedom to mutually explore individual feelings.<sup>39</sup>

Shakespeare's sonnets and *Romeo and Juliet* are generally regarded as the first literary testaments to the gradual transformation in cultural attitudes about marriage and love. What makes these works novel is the fact that they describe attachments based on feelings of passion, using poetic means to distinguish these attachments from dominant social practices.<sup>40</sup> At least in the aristocratic courts of Spain, France and England, there seemed to be a certain shift over the course of the seventeenth century, bringing forth niches that allowed experimentation with attachments based on passion or affection.<sup>41</sup> However, the public reaction to these attempts at emancipation was extremely negative, as can be easily seen in popular self-help books, medical handbooks and sermons of the time. For most of the population, the notion continued to dominate that only sexual intercourse after marriage brought about the feelings required for a harmonious and stable relationship between

men and women. Just like modern, trusting friendship, the process of the social institutionalization of modern love based on romantic feelings did not get underway until near the end of the eighteenth century. In this time of profound transition, in which nearly all decisive prerequisites were created for the culture of recognition characteristic of modernity, we begin to see in the everyday practices of the upper classes the notion that only mutual affection can provide a legitimate basis for marriage between a man and a woman. From the very beginning, this new conception of sexuality and of the relation between the sexes was associated with a transformation in the architecture of individual freedom. Not only should the individual be freer than ever to enter into life-long relationships free from parental commands and based solely on personal sentiments, but freely chosen relationships between men and women were now regarded as a social arrangement that embodied a special form of freedom. Hegel was not alone when he attempted to show in his *Philosophy of Right* how it is only in marriages founded on affection alone that the needs of the individual partners can unfold in a mutually desired manner, thus finding fulfilment in 'free' interaction.<sup>42</sup> In the philosophy of a 'unity of opposites' [*Vereinigung-sphilosophie*] that can be traced back to Hölderlin, we even find the notion that it is only in love that human freedom is fully realized, for only here do individuals offer each other a chance for free self-realization.<sup>43</sup>

In the sober everyday reality of marriage at the time, however, this idealistic enthusiasm was hardly to be found; due to predominant gender ascriptions, women had little opportunity to articulate their needs in a free and unforced manner. As is well known, and in accordance with the institutionally fixed role distribution of the time, women were obligated to perform subordinate tasks in the household and to raise the children, while men enjoyed the privilege of being socially active in public and thus earning the family income.<sup>44</sup> Moreover, over the course of the nineteenth century, the institution of semi-official concubines developed, as a kind of continuation of older institutions of this sort that once allowed upper-class men to satisfy their sexual needs outside of marriage with the acceptance of all involved. There are innumerable novels, mostly of French origin, which describe how single women from poor households could earn a certain livelihood and standing by offering sexual services in exchange for material support by wealthy married men.<sup>45</sup> On the whole, the nineteenth century is a typical period of transition in which a new model of relationship was socially

institutionalized, but not yet implemented in everyday life as was actually demanded by the normative principle. Sexual relations were freed from the constraints of parents' material calculations and given over entirely to the feelings of the partners involved, but officially, they remained embedded in the framework of marriage and thus reserved for heterosexual practices. Within marriage, now thought of as 'free', the principle of gender equality normatively prevailed, though traditional roles and male violence ensured that the distribution of household duties remained extremely unequal. There can thus hardly be any talk of the intersubjective freedom that Hegel and his contemporaries had in mind when they praised the new forms of interaction between the sexes. At any rate, the principle that intimate relationships were to be a matter of free decision between equal partners is what enabled women over the course of the same century to take their passionate feelings more and more seriously, rebelling against the prevailing order. Once again, the epoch's classical novels had an enormous influence and shine the clearest light on women's strivings for emancipation.<sup>46</sup>

Such attempts to assert the already institutionalized principle of 'romantic love' for women and sexual minorities are what led in the twentieth century to a gradual democratization of intimate relationships governed solely by feelings and unhindered by legal constraints. The two world wars delayed this process of emancipation by engendering collective moods and mentalities, in a traumatic echo of catastrophic events, that encouraged a clinging to traditional, male-dominated practices. Thus in the 1920s and 1950s, the institution of marriage with all its male domination and authority returned to full bloom, even though a number of alternative intimate relationships had already begun to become established in the social underground and beyond the law: Homosexual couples lived together illegally, men and women had life-long relationships without marrying, and women increasingly began to have extramarital affairs. But it was only after the last retarding effects of World War II had faded and economic prosperity in the West enabled accelerated individualization that all this could lead to institutionalized practices and become a legitimate part of everyday social life. Starting with a series of social struggles and conflicts in the 1960s, which represent the outcome of a socially expanded free-space for the articulation of one's own needs and identity, women and sexual minorities managed to achieve a series of legal and ethical reforms that succeeded in changing attitudes towards marriage, the family and sexuality. Birth control was legalized and

became largely democratized with the help of the pill; the ban on homosexuality would be lifted in most Western countries, thus creating at least official tolerance for same-sex couples; women were not only given the same legal status as men, but became increasingly integrated into the social labour process; the government made divorce laws more flexible, thus making it much easier for both sides to remarry; taboos on premarital and extramarital sex began to fade and made room for greater tolerance of sexual experimentation; and finally, child-rearing practices in school and within the family changed, giving greater weight to children's rights and nearly eliminating physical punishment.<sup>47</sup> What took place in these legal and cultural shifts, which would later be boiled down to the term 'sexual revolution', can best be described in hindsight as a gradual deinstitutionalization of the nuclear family, at the end of which we find the institutional autonomization of relationships of intimacy and love.<sup>48</sup> Intersubjective attachments based on sexual and emotional motives have been so decoupled from the institutional complex of family life and child-rearing that they now represent an entirely independent system of social practices that in principle is accessible to all mature members of society.

Of course, beyond these reforms, a few other changes of attitude in everyday social life would be necessary before this new system of behaviour could truly be established in a widespread and sustainable manner: Only in recent years do lesbian and homosexual couples appear to be as accepted in public as other, heterosexual relationships; and only recently have women been able to take the initiative, without misunderstandings or imputations, in starting a romantic relationship. At the same time, it would certainly not be premature to claim that in contemporary Western societies, intimate relationships of limited duration now represent for all mature subjects, regardless of their sexual orientation, a possibility of personal attachment in its own right. We are both legally and culturally free to attach ourselves to men or women to whom we are sexually and emotionally attracted. However, entering into such relationships requires that we recognize our obligations to observe normative rules that guarantee the identity of these relationships beyond the immediate moment. In the shape of merely intuitive practices, these rules determine complementary role obligations whose fulfilment in turn enables a special form of social freedom.

Even though modern intimate relationships have been freed from their class-specific character and opened to all members of society, the normative rules at work in these relationships have

not changed in any fundamental way over the last two hundred years. Whoever enters into a relationship of love, be it heterosexual or homosexual, still expects to be loved for the qualities that he or she regards as central to his or her identity.<sup>49</sup> Reciprocal love should not be based on just any arbitrary qualities, but on the very desires or interests that a person sees as crucial elements of his or her own self-understanding. The fact that the qualities and inclinations people regard as constitutive for their own identities change over time results in a form of reciprocal obligation related to the partners' future together. We form the 'We' of an intimate or loving relationship to the extent that we assume that we will not only be valued by others for our current constitutive qualities, but also for the inclinations and interests that we might develop at some point in the future. The future-oriented nature of this 'We' distinguishes such personal attachments from all intimate relationships that are merely temporary in the eyes of those involved, and should thus be distinguished, even today, from 'liaisons' or 'affairs'. As soon as the temporal perspective of both partners in these types of relationship opens toward the future, causing them to expect a reciprocal interest in future possible qualities of the respective other, we can speak of a relationship of intimacy or love.<sup>50</sup>

It is essentially this future-oriented dimension of love from which many of the complementary role obligations derive that regulate the institutionalized praxis of intimate relationships today. In the mind of both those involved and of any close observers, this type of relationship only fulfils its inherent norm if both partners are constantly attentive to any behavioural changes that indicate a shift in the constitutive preferences or interests of the other. Even if the mutual expectation of being able to perceive such signals does not represent an explicitly agreed-upon obligation, the disappointment of this expectation does signify a breach of the rules, revealing the institutional limitations of the intimate relationship. Only where two people mutually agree to support each other's personality development, even when it takes a direction that cannot be anticipated, can we speak of an intersubjective relationship that earns the moniker of 'love'. Whether or not this anticipatory affection in fact suffices in the face of profound changes of identity is an empirical question, whose answer has no effect on the status of this mostly implicit promise made at the outset.<sup>51</sup> In terms of its temporal structure, therefore, relationships of love represent a pact to form a community of memory [*Erinnerungsgemeinschaft*] in which looking back on a commonly shared history should be so encouraging and moti-

vating as to last longer than the changes in both partners' personalities. Even today, sobered by the brevity of many a relationship originating in infatuation, we still regard the anticipation of such a self-reinforcing history of a retrospective 'We' as a crucial element of love. Here we need only think of the many objects that couples acquire in order to secure for the future the memory of the togetherness they currently share.<sup>52</sup> Up to this point, we could take the current social form of love to be a kind of intensive friendship; both social forms share the implicit obligation to show interest in the constitutive intentions of the other and to do everything necessary to help them realize these intentions in a satisfactory manner. Even the obvious expectation that each can count on the other's support or advice in times of personal crisis makes up a central element of both friendship and love. Although only love is characterized by the anticipation of a commonly shared history that is experienced as a strengthening element of the relationship from the very start, there is a weak reflection of this special temporal structure in some forms of friendship as well. What distinguishes love from all forms of friendship and what makes it a unique form of personal attachment is the mutual desire for sexual intimacy and the comprehensive pleasure in the other's physicality.<sup>53</sup> There is no other place, perhaps with the exception of the intensive care unit or rest homes, where the human body is so socially present in all its uncontrollable independence and fragility as it is in the sexual interactions of two loving partners.

Compared to the time in which the idea of romantic love emerged in European culture, sexual intimacy is marked today by a much greater degree of openness when it comes to articulating individual inclinations. Not only does the cultural schema of interpretation according to which women have no need of their own for sexual intercourse no longer play a role, and not only have taboos about homosexuality largely disappeared, but the notion that there is such a thing as 'sexual perversion' has lost much of its previously central position over the last few decades. Today, these all represent legitimate forms of sexuality to which both partners have consented within the framework of their moral autonomy.<sup>54</sup> This does not mean, of course, that the realm of sexual interaction has been liberated from all binding rules, it is just that these have shifted away from the surface of physical sexual acts down to the level of reciprocal attitudes. What is deemed a 'perversion' or a deviation from the norm are no longer certain practices or types of sexual intercourse, but only those forms of sexual desire that undermine

partners' perception of each other as sexual objects.<sup>55</sup> Almost everything that can count as an accident of personal sexual preference is no longer taboo, as long as the expression of these preferences does not violate the precondition that the partner must also be capable of experiencing himself or herself in the other as an object of sexual desire. What serves today as a standard against which we judge sexual preferences to be perverse is the mutual enablement to view ourselves as the source and the object of the other's sexual excitement. Whatever deviates from that, such as in the case of paedophilia, is perceived as a violation of the implicit norms that regulate the field of sexual interactions in present everyday life.

But it is not only reciprocal desire that can serve as an indicator of the fact that couples, in the first instance and for the most part, experience themselves as a physically unified *We*, rather also the dominant presence of physical gestures of intimacy. Each reacts to the other almost reflexively by indicating through subtle gestures, facial cues and body movements how important and desirable the other's physical presence is. If such shorthand for physical intimacy disappears or goes unrequited, this counts as a first signal that something is wrong. This attentiveness to the physical dimension of togetherness intensifies whenever a person must cope with being apart from the person they love. The absence of the other often feels like physical pain, as if one's body was missing some vital component it needs to function. Relationships of love cannot be separated from everyday physical feelings; they cause the physical borders that normally divide individuals to dissolve into a physical *We*, in which each person physically completes and expands the other.

However, we cannot fully describe intimate relationships of this kind without taking into account the fact that today, heterosexual couples can still legally marry. Even if they have no intention of having children and forming a family, men and women are free to give their love the form of a legally registered marriage and thus outfit their relationship with a whole ensemble of rights and duties. Certainly, the legal consequences of formal marriage have long since ceased to be perceived as the means by which the substance of emotional affection is first created. Over the course of the personalization of the understanding of marriage set off by the romantic revolution of relationship forms, the government sanctioning of marriage has come to be understood as a merely declamatory act that merely formally acknowledges what already exists.<sup>56</sup> However, in no Western democratic country has this two-hundred-year-long transformation of the concept of marriage,



which amounts to seeing 'true' marriage even in forms of relationship that are not legally acknowledged, led to the abolishment of the institution of marriage. On the contrary, official marriages have become even more legally regulated in the twentieth century. Although the internal relationship between couples has been largely freed from legal constraints,<sup>57</sup> their 'external' relationship, which concerns their obligations to provide for each other, has been subordinated to a new set of laws. Entirely in accordance with the welfare state principle, which we have only barely touched on in our normative reconstruction, the partner responsible for the household, viz. usually the married woman, was seen to need protection from the threat of losing all claims to a livelihood after the end of the marriage, or after the death of her partner. Although the advances that have been made in this regard over the last few decades have not been sufficient, they are nevertheless remarkable insofar as marriage has come to be regarded as a community in which spouses are obligated to care for each other, and in which the partners can profit from their relationship: In Germany, the partner who does not work is entitled to half of the wealth the other partner has earned – though throughout Europe all of these laws are currently undergoing constant changes.<sup>58</sup>

Because of the parallel liberalization of intimate relationships, this 'external' legal formalization of marriage in favour of the economically dependent partner has led to a paradoxical situation: Although homosexual life partnerships are culturally and legally tolerated, they still remain at a decisive disadvantage compared to heterosexual couples. After all, they still are not able to legally marry, and thus have no legal opportunity to commit to the economic security of the partner who does not earn an income. As long as legal equality does not exist, everything in these relationships must flow from the well-meaning agreement of the two people involved, while in the case of heterosexual marriage, the state can enforce the corresponding agreements. The consequences of this discrimination against sexual minorities are especially significant when it comes to the privileges accorded to married couples and thus denied to homosexual couples. This of course includes certain tax advantages, but no less discriminatory is the denial of the right to adopt children. In most Western democracies, marriage law is still marked by a persistent prejudice for which there are no scientific arguments, and which hardly finds any echo anymore in public opinion: Only if a man and a woman enter into a stable relationship are they justified to call on the state to recognize this relationship



as a 'marriage' and thus provide the conditions for a series of legal consequences. The legal solution that has been implemented in order to remove this inequality by granting a weak legal status to 'non-married' life partners can only be regarded as temporary. In the long term, the source of the reasons used to justify excluding homosexual couples from the legal privileges of officially sanctioned marriage will dry up, leaving only the option of abolishing marriage completely or granting every kind of intimate life partnership the official right to marry. In the first case, the legal consequences of marriage would only take effect once the couple decided to form a family, leaving childless couples to arrange their future financial support in the form of private contracts. In the second case, all couples, regardless of their sexual orientation, would have the legal option of 'officially' registering their relationship and thus enjoying the corresponding legal rights and obligations.

But what constitutes the experience of social freedom in love today is certainly not created by contractual obligations imposed by the state on officially recognized marriages. The subjective rights thereby created can only engender individual claims that protect each partner's own private autonomy against the other, but they cannot produce those forms of complementary reciprocity that belong to the essence of social freedom. But more importantly, this type of freedom in loving relationships cannot come from state (marriage) law because it can be experienced even if a couple decides not to marry at all. Even Fichte was aware – within the cultural restrictions of his time, of course – that freedom in these relationships is a matter of a 'union of hearts and wills' and not of legal regulations.<sup>59</sup> It is the experience of sexual intimacy and physical closeness between lovers that lays the groundwork for the unforced reciprocity that constitutes the form in which social freedom is exercised. This is easier to grasp phenomenologically in connection with the reciprocal supplementation found in physical togetherness than in the case of friendship, which is largely mediated via speech. As we saw previously, the normative rules of friendship ensure today that two individuals complete each other within the framework of friendship by bearing trustworthy witness to the existential decisions of the other and by providing advice. Each individual is the condition of the freedom of the other insofar as each helps the other to gain a clearer sense of his or her own will, thus enabling more thought-out decisions. Unlike this form of social freedom, which can hardly be experienced as an independent form of freedom, love is marked by much greater intimacy,

because in this relation of reciprocity the partners' entire physical identity is involved. The two individuals supplement and complete each other not only by promoting and supporting each other's ethical formation, but also and especially by satisfying each other's physical needs, which each views as especially important for their own vitality and well-being. Therefore, in the social form of love as we know it today, each person is a condition for the freedom of the other by becoming a source of physical self-experience for the other; each person's natural being thus strips off its socially imposed constraints and recovers in the other a piece of his or her original freedom [*Ungezwungenheit*].<sup>60</sup> In the intimacy of love, being with ourselves in the other therefore means recovering the natural neediness of our own self in physical interaction, without fear of being humiliated or hurt. The moral rules that implicitly govern love today are to ensure that each partner need not fear revealing himself or herself physically to the concrete other. If either side violates these rules, the other will view that as sufficient grounds for ending the relationship.

Because this special exercise of freedom is something that partners can experience as such in their interactions, it is easy to see the significance of the modern form of love for the entire social structure of our freedoms. There is hardly any work in recent literature that does not describe the experience of requited love as a subjectively experienced expansion of our personality, one that changes our entire relationship to ourselves and to the world. In the state of such a physical 'We', these figures seem to break free of all the restrictions that previously separated them from their surroundings; thanks to such a physical union, they are described as feeling a previously unknown kind of ease in everything they do – which is why authors often resort to religious metaphors or images of interaction with nature in order to evoke the increase of freedom caused by love.<sup>61</sup> If, however, we take film or literature as the most accurate indicator of the social constitution of such relations of interaction, then we will have to recognize that there has been a recent move in the direction of growing purposelessness and inability to form attachments. Often, protagonists are described as no longer having the motivational willingness to accept the normative obligations required for long-term intimate relationships.<sup>62</sup> Such observations coincide at many points with sociological descriptions that attempt to show that today, egocentric motives of self-realization or individual advancement increasingly prevent individuals from making the commitments that are constitutive

of long-term intimate relationships. Partly as a result of new forms of employment, which blur the lines between work and free time, and partly due to shifts in our self-understanding that place greater cultural value on mobility, members of society are increasingly unwilling to follow the normative rules that provide personal relationships with the required stability in the first place. As Ann Swidler describes it in her now famous essay, the result of these motivational changes is that individual career goals tend to outweigh necessary feelings of commitment, self-realization takes priority over the still necessary willingness for sacrifice, and claims to sexual freedom are more important than the demand of fidelity once taken for granted.<sup>63</sup> Therefore, as Niklas Luhmann summarizes the issue, 'the alternative to breaking off the relationship and instead going it alone' is now 'taken seriously . . . and meets with understanding'.<sup>64</sup>

The empirical accuracy of these claims is of course difficult to determine, just like the corresponding prognoses about the stability of friendship. Certainly, the institutional autonomization of intimate relationships, which has removed any external anchoring in social tasks and expectations of relatives,<sup>65</sup> has led to a situation in which only individual feelings of affection and attraction determine the stability of a relationship. As soon as these emotional resources dry up, it seems that without external demands it is ever more difficult to make the commitments required for maintaining loving relationships. Moreover, as Ann Swidler and Arlie Hochschild have observed,<sup>66</sup> the increasingly blurry lines between work and free time have made it more difficult to completely separate personal attachments from career planning. This does not necessarily mean that love is being re-embedded in the context of social reproduction; rather, these are symptoms of the fact that individual capacities for attachment are being hollowed out due to the necessity of evaluating all personal relationships in terms of career advancement. Therefore, the institution of 'pure' intimacy linked to the reciprocal acceptance of certain role obligations, which had just recently been fully democratized and made available to the entire population, now seems to be in crisis once again. In any case, the rising divorce rate, the growing number of single households and the many reports of the increased susceptibility of personal relationships to conflict indicate subjects' decreased capacity for the self-restriction so crucial for long-term attachments.

In addition to these negative descriptions, however, there are other analyses that offer a different interpretation of such statis-

tical data and alarming findings, one which sees them merely as problems of adjustment that inevitably accompany the establishment of the democratized institution of pure intimacy. From this perspective, the institutional fact that all members of society can now equally take up free and equal romantic relationships must be understood as a challenge that, at least in its historical beginnings, makes crises and appearances of decay seem entirely natural. According to this view, empirical indicators pointing to a decline in the social form of love do not reflect symptoms of lost capacities for attachment or growing needs for self-realization, but merely the entirely normal learning difficulties accompanying the social generalization of an institutional principle. According to this alternative thesis, many of the observations described above lose their negative connotation and allow much more optimistic interpretations. The rising divorce rate could also be interpreted as a sign that attachments based purely on affection are taken much more seriously today than in the past; the fact that individuals stay single longer can be interpreted as a desire to explore subjects' own need for attachment; and the increasing conflicts found in personal relationships can be viewed as an indicator of the everyday difficulties, especially for men, of implementing the principle of equality that has already been normatively accepted.<sup>67</sup> Furthermore, we should remember that homosexual relationships have managed to establish themselves alongside heterosexual relationships as a legitimate social form. Hence the growing number of failed relationships of the classical sort is at least partially compensated by the fact that on this new terrain, the first patterns of a new and officially accepted form of togetherness have successfully emerged. Finally, we must not underestimate the level of reflexivity and even ironic awareness with which couples continue to cling to the principle of long-term attachment and mutual love in times of sobering statistics. They mobilize anything that serves to convey their common history and thus to counteract the inevitability of falling into mere routine, just so that they can secure the social freedom of unforced togetherness.<sup>68</sup>

Nevertheless, the indisputable fact remains that greater career demands on flexibility, mobility and constant availability have made it more and more difficult for couples to put into practice the normative rules of socially emancipated intimate relationships. The reciprocal obligations of physical support and care often cannot be fulfilled because the increased demands imposed by the partners' careers prevent them from taking up the corresponding attitudes

and stances. What recently has been described as the 'capitalistic' reshaping of subjectivity<sup>69</sup> is probably beginning to conquer the sphere of love as well. Forced by the dedifferentiation of social labour to be constantly available, members of society are less and less capable of accepting the hardly calculable dependencies associated with maintaining personal attachments. If that is the case, then the institution of social freedom is in danger of being hollowed out from within; and the source of this danger is found in the capitalist market, whose tendencies for expansion and autonomization undermine intimate relationships founded on romantic love by robbing subjects of the dispositions required for long-term attachments. In the absence of these dispositions, the structure of democratic ethical life, which relies on the interplay of different forms of social freedom, would no longer be the same. It would be deprived of its foundation, whose significance for the members of society consists in the feeling that their natural neediness is institutionally protected – a specific experience of mutual recognition from which they derive elementary self-confidence.<sup>70</sup> Hence we will have to determine the normative limitations of the economic sphere of social freedom, viz. economic action on the market, in a reconstructive manner that prevents the danger of a colonization of neighbouring spheres of social freedom from arising in the first place.

### 6.1.3 Families

While the structure of the spheres of personal attachment we have already reconstructed is consistently dyadic, families represent a third sphere typically characterized by the fact that at least one additional person, viz. a child, joins the two attached persons. With regard to their intersubjective constitution, families represent triadic rather than dyadic relationships;<sup>71</sup> this general determination, however, rests on a great number of historical conditions, as the pre-modern family household often included further family members such as the service personnel, grandparents or unmarried uncles and aunts,<sup>72</sup> whereas today, the number of single-parent households is on the rise, making the former case a much more complex relationship pattern and the latter case a dyadic relationship. Nevertheless, the intersubjective structure of the modern family that began to develop about 250 years ago and that currently constitutes the institutional normality should be grasped as a

triadic relationship. At the same time, it no longer matters whether the parents are married and heterosexual, or whether they are in fact even the biological parents of their children. What matters is only that the relationship between the two loving adults be mediated by the additional relationship to the child or children. For the social freedom we speak of when it comes to the modern family, this constitutive triangularity is crucial.

As we now know from various investigations, the family is not a biological constant of human history. Its institutional shape is in constant flux and its core function – the socialization of children – has been fulfilled in various different ways. During the later Middle Ages and the early modern period, it was taken for granted that child-rearing was to conform to the rhythm of the everyday labour to be performed in the patriarchal ‘household’ or in the royal courts of nobility. Whereas the children of farmers and craftsmen were to help perform agricultural and household labour from an early age, children in upper class families were to learn the functions of representation. In this period, therefore, there was no ‘childhood’ as we know it today,<sup>73</sup> nor was there any intimacy within family life. The fact that marriage was often based on purely material calculations, that the household contained a number of additional members, as well as the spatial arrangement of the living quarters, all prevented the development of the intense feelings between father, mother and child that we now regard as characteristic of a family. Such a warming of the family climate (Edward Shorter) did not occur until the emancipation of marriage from external, strategic constraints also brought about the idea of romantic love, for in this new pattern of recognition, married couples were not only expected to form a family and have children as soon as possible, but were also to show the same affection and love to their children as they felt for each other. Due to the equating of marriage and parenthood, therefore, the modern family was initially nothing but the ‘natural’ form of the dyadic heterosexual relationship couple supplemented by a child.

However, before this relationship pattern could be established in the modern family, further historical developments would be needed in addition to the romanticization of love – developments we can only mention here: In a long process led by the bourgeoisie, family life would have to be freed from all those who did not belong to the triad formed by father, mother and child;<sup>74</sup> moreover, a strict division of labour would have to be established within this triad, assigning all responsibility for the household work and the

emotional care of the children to the mother, and assigning the exclusive responsibility for earning the family income to the father;<sup>75</sup> finally, with the aid of ceremonial precautions and everyday rituals, the special atmosphere of 'domesticity' would have to be created in order to ensure that the tight bonds of emotional affection and support could develop between the members of the family.<sup>76</sup> A glance at Friedrich Schleiermacher's writings on family life gives a strong impression of how this emotional process would take place in the Christian framework.<sup>77</sup> After all these preconditions were historically established at least in the families of the bourgeoisie, i.e. around the end of the eighteenth century, a complex relationship pattern could come about, one upon which authors such as Hegel or Schleiermacher would base their image of the family as a central forum for the realization of social freedom.<sup>78</sup> The freedom of one family member should be confirmed and fulfilled by the freedoms of the other family members, because institutionalized and mutually complementing role obligations would ensure that the woman can satisfy her emotional needs as mother and wife, the man can pursue his 'appetite' for public honour by earning an income and the admiration of his wife and children, while the children could attain through parental care and affection the individual independence expected of them socially. All components of the idea that we attain our (natural) freedom only by reciprocally fulfilling role obligations seemed to be realized so ideally in the bourgeois family that its imaginary portrait characterized the normative self-understanding of modern society for at least a century and a half.

Of course, the many fictitious and empirical descriptions of husbands' extramarital affairs and wives' attempts to break out of their roles made very clear that there was something wrong with this idealized image of a harmonious relationship of mutual supplementation within the modern family. Hardly any other part of nineteenth century society was so strongly examined in terms of personal tensions, conflicts and symptoms of decay than the family life of the bourgeoisie – here we might think of Ibsen, Flaubert and a number of Russian authors. However, there was still no clear boundary between the dyadic intimate relationship and the triadic constellation of the family, because in a certain sense such a distinction did not yet exist in the institutional reality of the time. Sexual intercourse was regarded as a way of consummating the marriage, which was in turn interpreted as a preliminary stage of founding a family, making it unclear whether the conflicts arising



within the family were due to the patriarchal constraints of love or to the one-sided division of labour within the family. Only today, after the emotional attachment between two persons has become institutionally detached from the family, can we draw the boundaries necessary to make such ascriptions. At any rate, there is much to suggest that women in the nineteenth century not only rebelled against male-dominated morality, but that they also began to attack the oppressive relations prevailing within the bourgeois family. The right of the husband to exclusive control over the family income, his authority to make all crucial decisions about the family's future, the highly unequal division of labour that placed the entire burden of emotional care and everyday household labour on the woman, the more or less strict refusal to allow women to take up academic studies and thus have successful careers – these are all instances of discrimination within family life that gave rise to the first cries of discontent and protest as early as the nineteenth century.<sup>79</sup>

Just how little effect this female resistance – a 'feminism avant la lettre' – ultimately had can be seen in the fact that even in the middle of the twentieth century, Talcott Parsons could still base his sociology of the family on largely the same premises as Hegel at the start of the nineteenth century. In the intervening hundred-and-fifty years, so little had changed in the actual relations of the family that even Parsons could see their normative core in a relation of complementary role obligations that assigned all parental care and housework to the wife, and the task of earning the family income to the husband. Although Parsons viewed what he called the modern 'nuclear' or 'small family' as the paradigmatic case of a relational institution due to the fact that it is marked by symmetrical patterns of mutual care and sympathy, he saw this egalitarian structure of recognition undermined by a gap of authority based on the unequal role obligations of fathers and mothers. Because the institutionalized division of labour in (middle-class) families calls for the father to ensure the livelihood of all family members and thus to determine its social status, he enjoys greater decision-making authority in family matters, which is in turn repaid by admiration on the part of the rest of the family.<sup>80</sup> However, even in the early 1960s, Parsons was prescient enough to see the first indications of a renewed structural transformation in the modern family. On the one hand, he anticipated that with the progressive loss of the function of the family, i.e. the increasing delegation of child-rearing and child-care to social institutions (day care, schools and the welfare state), the relationship between the members of the



family would take on a stronger emotional character more responsive to each member's needs. He especially thought that the attitudes of parents toward their children would change dramatically in the absence of the previously necessary pressure to conform, and that they would be replaced by increased attentiveness to the children's individual personalities.<sup>81</sup> Whereas Parsons believed these developments would primarily benefit the children, who instead of being 'forced' into independence through discipline would be 'led' into independence through attentive care,<sup>82</sup> he anticipated that the second process would primarily benefit mothers and wives. Even if the latter, as he occasionally remarked, sought to compensate for the lower social status resulting from their purely household activities by emphasizing their physical attractiveness, in the long run this would not suffice to make up for their lack of public recognition given the increasing emptiness of household activities. Therefore, Parsons assumed that sooner or later, mothers would strive to enter the labour market, where they could independently attain the social esteem they only enjoyed in the home as a reflection of the status of their husbands.<sup>83</sup>

As we now know, both of these developments were much stronger than Parsons could have ever imagined. Over the last sixty years, the inner structure of the family has undergone substantial changes and now possesses a degree of intersubjective discursivity and equality that bears hardly any resemblance to families at the beginning of modernity. Researchers agree that the dominant conceptions of child-rearing have shifted in the very direction Parsons had anticipated. The parental fixation on 'orders' and 'obedience' has now largely been replaced by a focus on negotiation, which is supposed to better suit children's independent personalities and thus aid in developing their own free will.<sup>84</sup> While it was once taken for granted that children's impulses needed to be 'broken' in order for them to accept social behavioural expectations, today children's desires are regarded as deserving to be recognized in principle, even when they conflict with social demands. This transformation in the relationship of recognition between parents and children is much more significant than it might seem at first sight. To put it in Hegelian terms, this means that the constitutive triangularity of the modern family has changed from an 'an sich' to a 'für sich', because a previously silent third person has now been recognized and included as an independent entity. Father and mother no longer negotiate 'over' their children, but whenever possible 'with' their children, allowing the latter to have their 'own voice'.<sup>85</sup>

But before these new conditions could be fully established, which in turn presuppose that the father and the mother are equal partners, the second process of transformation predicted by Parsons would have to get underway. As we saw above, up until the epochal threshold of the 1960s, despite all claims to symmetrical love and care, there remained within the modern family a strong gap of authority that granted the father, due to his role as the breadwinner, both legal and cultural decision-making power over all social matters of marriage and the family. This dominance was based on much more than the contingent demeanour of the husband, but was instead institutionally anchored in the form of a 'father symbol' that generally conveyed the fact that the father must fulfil the decisive task of retranslating social values and demands into the internal communication of the family.<sup>86</sup> Going beyond Parsons, we now know that the role of the woman has also been generalized into a corresponding symbol, which in the expressive schema of 'maternal love' required that mothers ensured the embedding of fatherly authority in the process of child-rearing.<sup>87</sup> Both institutionalized symbolic complexes – both that of the 'father' equipped with social authority and that of the 'good mother' – came under significant pressure once women, toward the end of the 1950s, began to enter the labour market to an unprecedented degree.<sup>88</sup> The more that wives began to contribute to the family income, the more difficult it became for fathers to present convincing reasons for their own previously unquestioned dominance. The two decades following the student protests of the 1960s thus represent a time of extended struggle for recognition in which men and women battled over paternal and maternal roles. At the conclusion of this time of upheaval, the traditional father symbol had largely disappeared along with the institutional image of the 'good mother', both being replaced by the model of the 'caring father' and the career mother.<sup>89</sup>

This gradual change in symbolic interpretive patterns had such a strong impact on the structure of the modern family that it is difficult for us to grasp all its implications today. Once the role of the father within the family began to shift, making it impossible to justify his superior authority as breadwinner and obligating him to help maintain the household and raise the children, the basis for the traditional relationship of dependency between the parents was lost. Not only could mothers, who were previously only responsible for activities within the household, now claim the same authority to decide on family matters due to their willingness to earn an income, but they also had good reason to demand that their spouses

help with household chores. With the massive arrival of women on the labour market, the power relations between the father and the mother underwent a much stronger shift than could have been initially presumed. For the first time since the Romantic movement brought forth – along with the notion of love based purely on romantic feelings – the notion of symmetrical care and sympathy within the family, there were no longer any ideological hindrances for institutionalizing equality in the family. This also required that the normative expectations of both sides when it came to marriage and family life increase dramatically. Because the old traditional role constraints had begun to disappear, parental interaction under participatory conditions also seemed to entail the promise that both sides could freely realize their own personality within the family. After all, the intersubjective substance of transformed family life, that is, the original intimate relationship of the still childless couple, was already faced with the novel demand that it represent a wholly free relation liberated from all sexual taboos. At the same time, it was not clear to anyone involved which forms of life and work would accompany these new chances for equal interaction within the family. Men in particular, having lost their symbolic power as heads of the family, often coped with their rapid loss of recognition by clinging to the previous role distribution, as they had not at all been socialized to accept such alternatives. The transition from 'patriarchy to partnership'<sup>90</sup> that began with the transformed role of women within the family was thus initially embodied by a series of inner-family tensions and upheavals, in which the historically new family roles began to appear beneath the old crust.

The first consequence of these upheavals in the structure of the modern family has been a rapid rise in the rate of divorce in all Western countries since the end of the 1960s.<sup>91</sup> Even if sociologists have not reached any agreement on the causes of this sudden increase, there is no question about the decisive role played by the collision of newly arising claims to self-realization with an anxious clinging to traditional role patterns.<sup>92</sup> The state quickly gave in to the pressure exerted by increased desires for divorce and shifted away from the principle of guilt to the principle of irreconcilable differences in the course of the 1970s. This followed the general view that in a highly pluralized society, there can no longer be any binding code of behaviour for marriage, which could then allow the courts to determine who has deviated from the norm and thus deserves blame.<sup>93</sup> In the early phase of these relaxed rules on divorce, it quickly became apparent that children were largely

regarded as a barrier to the desire to get a divorce. Wherever concerns over their well-being prevented a divorce entirely, parents learned to cooperate in most cases even after the divorce in order to ensure the proper upbringing and the caring support of their children.<sup>94</sup> These empirical findings are rightly seen to have a tendency to define family relationships as much stronger in terms of the common need to care for the well-being of the children.<sup>95</sup> Whereas in the traditional nuclear family the caring support of the child was almost exclusively regarded as the task of the mother, such that she remained solely responsible even after the divorce, the already mentioned shift in attitudes that made the father an equal and equally obligated partner in the interaction with potentially independent children had already taken place. Within the family, therefore, the levelling of the division of labour had caused a shift in the self-understanding of the parents, making them equally responsible for the development of the child's autonomy. Couples no longer primarily regarded themselves as couples that took care of their dependent family members within a division of labour, but as a parent-child relationship that represented the 'We' of a life-long form of primary community.<sup>96</sup> Hence the constitutive triangularity of the family became a self-conscious unity even in the eyes of the parents. Married and unmarried couples were increasingly aware that they formed together with their child (or children) a triangular relationship composed of both the spousal relationship and the parent-child relationship. The greatest factor in this transformation was the subsequent involvement of the father in the affective, caring socialization process<sup>97</sup> – a process that, as we saw above, was traditionally the responsibility of the mother. Once both parents began to share the responsibility for the emotional care and the raising of the children, the role obligations within the family began to disappear ever more rapidly and their substance became increasingly diffuse, causing all involved to learn to view each other as whole persons who can expect love and care from each other for their own special individual features.

However, the fact that it has become customary for parents to share the responsibility for the fate of their children even after divorce has led to a rapid pluralization of family forms; depending on which form of relationship parents continue to have after their divorce, their child or children might sooner or later become a member of two new families, gaining step-siblings and later half-siblings. There seems to be no limit to these new arrangements, the so-called patchwork families, due to the astounding

willingness of parents to maintain a kind of cooperation even after the failure of their marriage.<sup>98</sup> Of course, this often demands such a high degree of emotional elasticity and flexibility on the part of the children that it raises the question as to whether they are perhaps overwhelmed by such ordeals and thus become psychologically scarred. The empirical research is not yet far enough along to give us a clear answer to this question; this research necessarily restricts itself to the psychological effects of divorce, and thus cannot simultaneously explore the burdens involved in growing up in two different relationship structures at once. Furthermore, we must not overestimate the number of such patchwork families, despite the symbolic value they have for contemporary observers. Certainly, we all know somebody close to us who has grown up in family constellations with an astounding level of emotional permeability and complexity, but the reason why the number of such constellations is generally considered to be so high is that they still represent a spectacular exception to what remains the rule. According to the reliable data provided by Hans Bertram in 1995, more than eighty per cent of children born in 1970 reported having lived with both their biological parents until the age of 18.<sup>99</sup> And the official statistics provided by the German government show similar percentages, with only slight variations.

A much greater role in everyday personal relationships is played by a much longer average life expectancy, which has significantly extended the duration of marriage and thus of family relationships. It is likely that nothing has changed the family experience more over the last fifty years than the enormous expansion of the period of time that people spend near to or far from their own parents: 'Today, fathers can assume that they will spend more than fifty years with their first-born children, while for mothers this time period can last up to sixty years.'<sup>100</sup> This temporal expansion of family relationships has led to a novel phenomenon that some sociologists have described as a tendency toward 'multi-locational cross-generational families' [*multilokale Mehrgenerationenfamilie*]. While it was typical in the case of the classic nuclear family that Parsons had in mind for emotional bonds to grow out of the time spent together under one roof, such bonds have now become detached from shared experiences in one location, and more often than not, they even grow stronger after the children have moved out and later extend to the grandchildren from a distance.<sup>101</sup> The focus of familial intimacy on the phase of the socialization of children up until the end of adolescence has been increasingly replaced by the

notion that emotional relationships last a lifetime and can even become more intense as the parents get older. Spatial distance no longer represents an obstacle, because it can easily be compensated by the use of technical means of transportation, telephone and the internet. For most parents, their children and grandchildren are by far the most important partners in interaction after retirement. In short, whatever affective intensity family life might have lost as a result of mass media and the demands of school and work has long since been made up for by the temporal expansion of emotional relationships and the rise of 'intimacy at a distance' (Leopold Rosenmayer).

Hence in retrospect, we are justified in making a much stronger distinction in liberal-democratic societies between dyadic partnerships and families than once seemed necessary. Whereas in the institutionalized practices of intimate partnership the principle of terminability is now taken for granted, within the institution of the family this principle has perhaps even less legitimacy than ever before. Parent-child relationships are not only legally and normatively interminable, in the last fifty years they have even undergone a process of 'structural solidification',<sup>102</sup> making them the central focus of the life-long attentiveness and concern of the parents. Both the conscious restriction of the number of children, which has led to strongly decreased birth rates, and the increased willingness to cooperate in taking care of the children even after divorce can be interpreted as a tendency to view responsible parenthood as the moral core of the family.<sup>103</sup> The fact that family bonds last longer than almost any other personal relationship, and that most people give them an almost automatic emotional priority, is the result of this almost paradoxical increase of self-conscious triangulation in modern families.

If it is true that families now understand themselves in their diverse forms (married/unmarried parents, biological/'social' children, heterosexual/homosexual parents) as a relationship involving three equal members whose roles and tasks change in accordance with the phases of their time spent together, then this allows us to draw conclusions about the implicit norms prevailing in current family life. Over the last few decades, we have seen that the notion that was once so dominant, according to which fathers and mothers have fixed, complementary roles of social authority and loving care, thus contributing to raising children with a mixture of discipline and affection, has now largely disappeared. This patriarchal ideal of the family is gradually being replaced by an ideal

of equal partnership which not only stipulates that both parents are to share the work of child-rearing and housework as fairly as possible, but that they also involve their children as much as possible in family communication. Obviously this structural transformation has not been without complications and the usual delays, which means that for a certain time we will have to expect the constant revival of the old role fixations. On the other hand, almost all empirical data indicates that this new ideal is inevitable, because the non-coercive power to assert a normative surplus exercises a permanent pressure that will sooner or later destroy any remains of traditional practices. What has gradually begun to emerge from this conflict-ridden process is the realization of a normative promise that has accompanied the modern family since its beginnings in romantic love: Each of the three family members – father, mother and child – are equally entitled in the individuality of their subjectivity to be included in the family and thus to receive the care and sympathy that suits their needs. Once women's increasing participation in the labour market undermined the legitimacy of the old ideology according to which mothers fulfil their 'true' nature in the sacrificial acts of housework and child-rearing, the first hindrance of the realization of the underlying principle of recognition had been overcome. The epochal transformation in child-rearing practices, which was accompanied by the cultural normalization of the anti-authoritarian movement in the 1960s, also knocked down the second hindrance. According to this new normative principle, all three family members, regardless of whether there is one child or many, represent equal partners in interaction who can each expect the degree of sympathy, affection and care they require in their respective life-stage. At a normative level, this is precisely the consequence of the fact that the triangularity of the family has started to shift from an 'an sich' to a 'für sich'.

The normative obligations previously tied to fixed institutional roles in the family have lost their rigid and static character over the course of this de-traditionalization and have become much more situation-specific. Today, an unchanging type of well-meaning activity is demanded neither of parents in their relationship to each other nor in their relationship to their children; instead the extent and the substance of such non-contractual duties essentially depend on the needs that derive from the respective position or age of the individual members of the family. The little empirical information we have on the normative practices in contemporary, so-called 'postmodern' families proves that these obligations have



become increasingly flexible and have taken on a stronger temporal dimension.<sup>104</sup> Much stronger than ever before, fathers restrict their career ambitions when their children are young in order to find more time to take care of and show playful affection for their children; both partners make use of either implicit or formalized schedules in order to give each other the time and the room to pursue their own respective interests. As children get older, their parents demand that they take on household chores or help take care of their younger siblings, so that the parents can have more free time for themselves. And at the first sign of illness or fragility in old age, the now mature children usually take more intensive care of their parents than pessimistic contemporary diagnoses might suggest. Furthermore, the tendency toward multi-locational cross-generational families, which are a consequence of the significant rise of average life expectancy for both men and women, has led to the formation of a temporally expanded pattern of reciprocity between parents and children, representing a real historical novelty. Because parents do not generally die until their children are between the ages of forty-five and sixty, their children can provide the care and affection to their parents in old age that they once received from them as children.<sup>105</sup> If we were to summarize all this evidence of a rise in situation-specific obligations, we could say that a successful family now understands itself more than ever as a community of solidarity, in which each supports the other in different phases of life in order to meet the existential challenges of a life marked by constant threats. Contrary to widespread complaints about the decline of the family and the dissolution of moral cohesion, most elderly now report that in times of crisis they can rely on their (biological or social) children.<sup>106</sup>

The fact that inner-family obligations now vary to a much greater degree depending on the abilities and needs of individual family members obviously entails a rising need for communicative understanding.<sup>107</sup> If what is expected of individuals within the family is no longer automatically determined by the role assigned to them, the members will have to agree on what each person in a given concrete situation needs to contribute in accordance with the principle of solidarity. As soon as the mental development of children allows it, parents usually involve them in the process of shared will-formation. Although it is taken for granted in most social milieus that care and loving affection are the appropriate style of child-rearing, soon after children enter school, they are faced with the demand to display a degree of individual autonomy that would



have been unthinkable at the zenith of the patriarchal family. Along with the communicative flexibilization of rights and duties, there is a growing tendency within the family to make the willingness to fulfil norms dependent on actual feelings of affection or animosity. Now more than ever, individual family members are only willing to accept negotiated responsibilities if they see themselves emotionally accepted by the other members of the family.

This tendency to place affective reservations on the fulfilment of one's own duties has motivated some moral philosophers to conceptualize the type of moral obligation in today's families according to the pattern of duties between friends. The idea is that because grown children only see themselves obligated to care for and support their parents if their relationship is still marked by love and affection, we should abandon the notion that these are role-specific or even 'natural' duties, and instead resort to the normative model of friendship. Just as in relationships in which only moral norms rooted in mutual affection prevail, the constitutive obligations within the family also result solely from feelings of attachment and devotion.<sup>108</sup> However, this proposal merely repeats the mistake made in relation to universal duties, which we saw in the case of the principle of 'moral autonomy', as it suggests that mature individuals can detach themselves from all institutional meanings in their social life-praxis, in order to then impartially examine which feelings they have for their parents. What this suggestion overlooks is the fact that our feelings for our 'father' or 'mother' are always already marked by the expectations linked to the actual performance of both these roles. Our own feelings for our parents depend not least upon whether they have fulfilled the normative claims we make on them as children. Therefore, the positive or negative feelings that later determine how obligated we are to care for them have an entirely different history than our feelings of attachment in the case of friendship. The former are still tied to experiences of the fulfilment or non-fulfilment of elementary functions that remain characteristic for families even if they are no longer tied to rigid role schemata. We cannot artificially reach back beyond the institutionally fixed meaning of parenthood and the role of children, which are fundamentally determined by the taboo of incest, by physical closeness and interminability. Therefore, the moral obligations currently prevalent in the family are rooted in intersubjective attitudes that differ strongly from those between friends.

However, the fact that family members today make their willingness to fulfil obligations of support and care dependent on

the degree of their emotional attachment is not really a historical novelty. Ever since the family came to be interpreted as a social relationship founded upon mutual love, the way in which family members accept such duties has been dependent on the feelings they actually have for one another. Here we need only think of the many shades of feeling that accompany the exercise of family roles in the family novels of classical modernity.<sup>109</sup> What is new is instead the fact that as a result of the diffusion of roles, the chance to express such feelings has grown. The feelings that family members have for each other are no longer normatively predetermined by rigid roles, and can thus be articulated much more freely, allowing them to also play a significantly greater role when it comes to making decisions about the degree of their moral commitment. This is not to say that the moral, self-restricting achievements within the family are accompanied by deviating feelings; rather, the fact that such deviations can make a real difference in behaviour is what makes this phenomenon so novel. Over the last fifty years, the modern family has been transformed from a patriarchal social union with strictly organized roles to a social relation of partnership in which the normative demand that the members are to love each other as complete individuals in all their concrete neediness has been institutionalized. If there are no such feelings of love, and if family members no longer feel they are accepted in their own particularity, they will feel normatively justified in neglecting the duties they are expected to perform.

This 'purifying'<sup>110</sup> of the modern family of all externally imposed role obligations is what constitutes both its strength and its weakness. As we saw above, the weakness of the modern family consists in its radically increased fragility as a social union due to the fact that its members can articulate feelings of affection and belonging much more freely than ever before. Once feelings of lost love or lacking attachment have been expressed, there are no longer any argumentative possibilities of referring to role obligations in order to motivate that family member to stay with the family. This real and substantial increase in options for exiting the family, of which both adolescent children and parents can take advantage, has the positive consequence that families can rely on the actual, unforced consent of their members to a much greater degree. If parents and children stick together through times of crisis and division, then all involved can be certain that their lasting cohesion will not be the result of social conventions or internalized role clichés, but of mutual affection. Therefore, despite rising rates of divorce and

separation, the inner cohesive strength of this triangular relationship has in fact grown over the last several years. Hence it is only today that what has always been regarded as a special form of freedom in modern families can truly attain social reality.

Even in the early stage of this development, it was not really clear which specific feature of the modern, bourgeois family was capable of promoting not only individual but intersubjective freedom. As much as German idealists and early Romantics might have agreed that friendship and love represent forms of social freedom, there was little consensus about whether and how this kind of freedom should be realized within the family. As we saw in our brief account of Hegel and Schleiermacher, in general it was assumed that the complementary role obligations of father, mother and child would lead to a higher-order form of freedom. Each member's specific activity would supplement that of the others, such that they could only realize the individual aims deriving from their respective natural determination together. Therefore, the disclosure of the element of freedom within the modern family relied on strongly naturalistic assumptions according to which the father seeks to satisfy his claims to authority, the mother seeks to fulfil her maternal instinct and the child seeks to gain support and orientation. Because the roles assigned to the different members of the family were institutionally tailored to the mutual fulfilment of these needs, the image of an almost perfect relation of complementarity arose, which seemed to justify the claim that the family represents a sphere of social freedom. But alongside this notion, whose effects can even be seen in Parsons' sociology of the family,<sup>11</sup> we also find the opposite notion, according to which the founding of a family ultimately puts an end to the freedom realized in the intimacy of love. Here the addition of children to the romantically interpreted relation of marriage is viewed as a threat to social freedom because it engenders duties that threaten to disrupt the free flow of communication between spouses. The notion that prevailed overall, however, was that the integration of three different complementary tasks in the family created an opportunity to realize a very special, natural form of social freedom.

Today, such descriptions of freedom within the family are no longer convincing, since the gradual dissolution of fixed roles has also begun to dissolve the traditional idea of a functional relationship of complementarity. The presumption that the special freedom enabled by the modern family consists in the fact the family members' natural aims complement each other must appear

anachronistic as soon as their affection and sympathy for each other gets directed at the person as a whole. A second idea, also developed during the Romantic age, is thus much more suitable for emphasizing the special form of social freedom that can be realized under favourable conditions in the modern family. According to this conception, which can be found in Hegel, but also in Friedrich Schlegel or even in Goethe's *Wilhelm Meister*,<sup>112</sup> children represent 'the objective and concrete form of their union',<sup>113</sup> and elsewhere Hegel writes that children are for their parents 'not only the reflection of themselves, but of their love'.<sup>114</sup> Although we might have a difficult time directly applying this conception to our present day, they nevertheless hold the key to understanding why a peculiar form of intersubjective freedom is contained in the triangular relationship between parents and their children. Hegel and his contemporaries most likely viewed the 'objective and concrete form' of children in which parents see a reflection of their own love as a direct product of the parents' agreement to have children. Because children really were the natural result of their sexual union, children represented a life-long testament to their past affection for each other. Today, however, when many fathers and mothers raise children that are not their 'own' in the biological sense, this element of Hegel's conception has lost all plausibility. What a loving couple has in their 'own' child is no longer necessarily the product of their sexual relationship, forcing us to correct the idea that the social freedom in the family is related to children mirroring their parents' recognitional relationship. The same is true of the fact that Hegel and his contemporaries construe this mirroring solely from the perspective of the parents. These authors do not discuss the possibility that children can also view their parents as a kind of reflection of themselves, most likely because it was much more common for the parents to die while their children were still very young. If we were to apply Hegel's conception to the present, in which family relationships last much longer, we would have to consider the perspective of all family members and ask in which sense all family members can be a mirror for the others. After all, both parents and children view each other as embodiments of an existential experience that is necessarily linked to the rhythm of family life.

If, after making these two corrections, we wish to retain the notion that social freedom in contemporary families is connected to a kind of essential mirroring, an elementary 'objectification' or 'symbolization', then we must specify who can embody which experiences for the others. It makes sense that we should look for

the answer in an existential sphere that takes on a form found in no other institution of personal relationships, neither in friendship nor in love, as it is in the family. It is only if family members can mirror for each other life acts that cannot be experienced anywhere else with the same intensity and closeness that we are justified in claiming that the family represents a special form of social freedom. If, in addition, we consider the fact that families today remain in close personal contact much longer than they did a century ago, then we are almost forced to see the core of this mutual mirroring in the temporal dimension of human life, in its biological course as a whole. In no other personal relationship is the physical nature of humans so present over such a long period as within the family. It begins with the nourishment and care of infants, continues in adolescence with the latent sexuality of the parents, normally includes periods of illness and fragility, and concludes with the death of the father or the mother, unless the child dies beforehand. In all of these phases, which can occasionally overlap, family life revolves more or less consciously around the organic rhythm of human life. It is the organizing pole in the affective relationship between family members. But the latter not only perceive each other in constantly new states of physical development, which sometimes give cause for care and concern, and sometimes for joy and confidence, they also see in each other's organic constitution the image of their own past or future. Children and their parents reflect for each other the life phases that are either past or still to come. Therefore, they not only gain a sense of the periodicity of human life as a whole, but also of the uncontrollable element of their own biologically determined lives.

Nevertheless, this represents at best a gain of knowledge and maturity, but it would still be far from constituting an enrichment of individual freedom as long as communication within the family did not also have the chance to cope with this uncontrollability in a playful manner. Because of the physical closeness between family members, which has now become taken for granted, there is the constant possibility of going beyond the merely cognitive reflection of others' experiences and actually putting oneself in the position of other family members. When playing with their children, father and mother can see themselves called upon to regress to their children's level of development, just as children can be encouraged in their interaction with their parents to experiment with and try out the latter's level of development. In this peculiar process of regression and progression, the boundaries between the genera-

tions become blurred, and the uncontrollable element of our nature is briefly undone through this act of experimental role-switching [*Einverleibung*]. Children can experiment with being their father's or their mother's partner in interaction, while parents can free themselves from the biological circumstances of their age by acting as their children's play buddies. In both directions, this dedifferentiation at work not only in the family members' imaginations, but also in their practical interaction with each other, represents a kind of emancipation, because it enables them to take a more relaxed perspective on the periodicity of our organic life and suspend it for the duration of their play with each other. In these moments, we can move forwards and backwards in our organic existence as if our external and inner nature imposed no limits upon us.

For this kind of intersubjective freedom, e.g. for the playful bracketing and suspension of age differences, there is no other place in the institutional web of our societies than the modern democratic family. Only here do we find, over a much longer period of personal intimacy and familiarity, a sustained opportunity for physical interaction between the generations.<sup>115</sup> What Hegel sought to grasp when he spoke of children as the 'objectification' of the love between their parents in order to find an element of intersubjective freedom within the family must therefore be understood in an entirely different sense as the mutual symbolization of past and future stages of life. By playfully learning to cope with their natural barriers in this manner of mutual 'mirroring', family members realize in their institutional togetherness a unique form of freedom.<sup>116</sup>

There is a second achievement of modern families that is closely connected with this form of social freedom, which upon closer inspection we can probably only describe as an increase of freedom. As a consequence of the inner equality of family members and the significantly longer period of familial attachment, over the last several decades the modern family has become a community for life, in which the elementary functions of the various members can virtually be reversed over the course of the family's existence – unless of course such demands undermine the family's cohesion. Children who have been raised in loving care by their mother, their father or both become the loving caretakers of their parents in old age, thus becoming, so to say, the parents of their helpless parents. The reversal of generational roles only experimented with in the playful mutual regressions and progressions described above thus become reality.<sup>117</sup> In their growing fragility and lack of orientation, parents almost literally become just like their children once

were, who at the peak of their adult life must now provide the care they once received as children.<sup>118</sup> This cyclical phenomenon, which Hegel and his contemporaries could not even imagine, because the average life expectancy did not allow it, provides a measure of consolation that might not reconcile us with death, but nevertheless relieves us of some of its graveness. By becoming the 'parents' of their parents, adult children symbolize the cycle of life at a level of human sociality. This is not to say that this caring return to the start of the parents' life can remove the solitude and fear surrounding death, but perhaps this peculiar force of de-realization [*Derealisierung*] can create the healing and consoling illusion that our life within the circle of the family will return to its beginning and thus find a proper conclusion.<sup>119</sup> If we see an element of freedom here, a measure of relief from the oppressive solitude and fear of death, then this is also due to the intersubjective practices that were initially institutionalized in the modern family. This has become one of the few places where subjects can receive secular consolation, since they are able, at least in their imaginations, to see themselves as a part of an eternal whole.

Of course, all these new normative practices, which began to emerge within the family as a result of the equality and temporal extension of its internal relationships, can only take hold and prosper if the corresponding preconditions in the socioeconomic environment are given. And at present, government family and labour policies are in no way formulated so as to guarantee the special kind of social freedom in the democratized families of our time. What these families need most in order to realize their potential for coping with existential life risks in solidarity is plenty of time to interact with the children, the freedom to equally distribute duties over the entire duration of the family's life together, and reliable prospects of stable careers that provide a sufficient livelihood. But we are a long way off from the socioeconomic relations that ensure such conditions for the entire population. When it comes to spending time with children, there is a certain pressure on parents to calculate materially, since the temporary absence from the labour market can cause them to fall behind the rest of the working population. Social security systems are still based on the traditional model of marriage, so that entitlements in cases of illness, unemployment and old age can only be acquired through gainful employment, and not at all through the time spent with one's own children.<sup>120</sup> This obvious disadvantage, which can force parents to limit the time they spend with their children, could only be removed by funda-



mental reforms with the aim of providing social support to those who sacrifice opportunities for gainful employment in order to care for their children or grandchildren. The calculation of entitlements to social support would have to take into account the time dedicated to interacting with the next generation.

Of course, such structural reforms would only fulfil the function assigned to them if there was also a change in the public mind about the traditional tripartite division of our lives into an early phase of socialization, a middle phase of gainful employment and a later phase of retirement. In view of the fact that moral obligations within the family have become temporally and socially unbounded, since each member must help the others depending on their needs and social situation, it no longer makes sense to link the exercise of specific functions to one of these three phases: 'Phases of learning, working, family activity, child-rearing, and perhaps social solidarity in a life that lasts on average 75 to 77 years for men and 80 to 82 years for women can be combined in entirely new ways than in a life that lasts between 60 and 65 years.'<sup>121</sup> We already see indications that when it comes to mothers and fathers, the phases of learning, working and family time alternate in ways that would have been previously unthinkable. If we also take into account the fact that grandparents today are much more involved in the raising of their grandchildren than they were fifty years ago, thus refuting the stereotype of idle retirees, then it becomes clear just how absurd it is to apply the old tripartite distinction of our life history to modern family life. The official family image prevailing in social policy must take much greater account of the gradual structural transformation of people's biographies, in which the phases of learning, working and family togetherness overlap more than ever. This increased awareness of familial triangularity and the institutional realization of the family as a community of solidarity would then be translated into political and economic measures that could enable all members of the family to switch back and forth between different family functions without being economically disadvantaged as a result.

For a democratic society, it would not be difficult to gain consent for the kind of financial redistribution this kind of family and social policy would entail. It is true that political liberalism, whose principles continue to define the normative self-understanding of our societies, has always neglected the sphere of family and child-rearing, viewing it as a kind of historical given, without giving any further thought to the conditions under which the family could



contribute to the political and moral reproduction of democratic societies.<sup>122</sup> Little attention has been paid to both the internal constitution of families and to the prerequisites of socialization that enable children to become future citizens. Occasional references to the democratic value of an upbringing in an environment of affection and loving care, such as can be found in the work of John Rawls,<sup>123</sup> have done little to change this unfortunate situation. But if we recognize how much a democratic community depends on the ability of its members to learn a kind of cooperative individualism, then we will no longer be able to ignore the political and moral significance of the family. The psychological prerequisites for nearly all of the attitudes that individuals must have in order to use their individual skills and abilities to participate in the affairs of the greater society, beyond all attachments to particular communities, are all created in intact, trusting and egalitarian families. Hardly any other social theorist was more aware of this than Émile Durkheim; in his 'sociology of morality', which was intended as a 'normative reconstruction' of all the moral and 'ethical' rules of behaviour whose validity was to be guaranteed by the preservation of a cooperative democracy, Durkheim treats the family as a 'secondary organ of the state'.<sup>124</sup> The liberal conception, according to which the family is to be regarded merely as a given and fixed element in the political-moral structure of modern societies, would have been entirely alien to him. He took it as self-evident that a democratic community would have to do everything in its power with the help of state laws and corresponding policies of redistribution to enable families to realize their independent forms of interaction, which would then ultimately promote attitudes of social cooperation.

As we saw above, the modern family is currently on a path of normative development that allows it to train and practice democratic and cooperative forms of interaction better than ever before in its brief history. Over the last fifty years, owing to a number of social struggles and the legal reforms in their wake, the members of these institutions that remain fragile as a result of being held together largely by emotional bonds have been freed from rigid roles and now encounter each other in conscious triangularity as equally valuable individuals. The relationship between father and mother, whether married or unmarried, heterosexual or homosexual, revolves more than ever around the well-being of the child, whose thriving development and future happiness is now regarded as the true function of the family. This shift in the institutional self-

understanding of the family has also changed the communication patterns and methods of child-rearing in the family, which are no longer hierarchically ordered around the authority of the father, but have taken on a deliberative form in which each member is called upon to take a position. The inner-familial duties, which used to be strictly tied to the role of father, mother or child, have also changed their character fundamentally in the course of this democratization process. These duties are no longer tailored to the fulfilment of role-specific tasks, but serve almost reciprocally to provide care and assistance in situations of particular existential burden for individual family members. Hence the members of families today recognize each other as human individuals who form a unique community of solidarity bounded by birth and death, because they enable each other to make the transition into public life. They help each other to be the person they would like to be in society on the basis of their own individuality.

Even though this has not made the modern family into a small-scale democratic community, since it does not serve the purpose of deliberative discussion and decision-making with regard to public affairs, the family has come to represent in its successful forms the nucleus [*Keimzelle*] of all the attitudes and dispositions required for such forms of cooperation. The time has past when the bourgeois family was a hotbed of authoritarian behavioural characteristics that could not nourish ego-strength because of its empty, disciplinarian character.<sup>125</sup> In today's families, under favourable socio-economic conditions, children can experience early on what it means to participate as individuals in shared cooperation. By internalizing inner-family rules of recognition, they learn to set aside their egocentric interests once another member of the family is in need of their help and support. All the abilities and dispositions that belong to this kind of 'cooperative individualism' can be acquired in principle by participating in the binding practices of the family: the ability to develop the intellectual schema of a generalized other, from the perspective of which inner-family duties must be distributed in a fair and just manner; the willingness to actually accept the duties that are implicitly contained in one's own position on the deliberative negotiation of such responsibilities; finally, the tolerance required whenever other members of the family cultivate lifestyles or preferences that fundamentally conflict with one's own. Because the family has become a kind of school for all these modes of comportment in the process of its own institutional changes, political liberalism is mistaken in continuing to treat it as

a virtually natural precondition of liberal-democratic social orders. On the contrary, every democratic community must have a vital interest in creating the socioeconomic relations under which all families can truly adopt the practices that are already institutionally available. After all, such a community can only sustain itself if the following generations also learn the modes of comportment that are regarded, even within these generations, as the epitome of democratic virtues.

## 6.2 The 'We' of the Market Economy

Today it would probably seem absurd to view the system of the market economy [*marktvermitteltes Wirtschaftshandeln*] as a sphere of social freedom. Due to the political dismantling of various different barriers to the market over the last two decades, the capitalist economy has taken on a social form that flouts the promise of complementary role obligations, and thus of an institutionalization of social freedom as well.<sup>126</sup> Debate continues over how to interpret the so-called 'neoliberal' economic reforms; it is uncertain whether they merely represent a new wave of expansion for capitalist profit-seeking or the 're-feudalization' of fundamental market institutions.<sup>127</sup> At any rate, there can be no doubt that the current economic system in the developed countries of the West in no way represents a 'relational' institution and is thus not a sphere of social freedom. It lacks all the necessary characteristics of such a sphere: It is not anchored in role obligations to which all could agree, and which interweave with each other in a way that would enable subjects to view each other's freedom as the condition of their own freedom; it therefore lacks an antecedent relation of mutual recognition from which the corresponding role obligations could draw any validity or persuasive power. But how then should a normative reconstruction, which aims to uncover the social conditions of our 'true', intersubjective freedom in currently existing institutions of personal life, economic activity and political praxis, find anything of the sort in the capitalist economic system? Must we, for lack of 'normative facticity', resort to a method of moral constructivism in order at least to indicate, in a kind of thought experiment, the normative rules that would allow the reciprocal enabling of individual freedom in the economic system?<sup>128</sup>

But if we did so, we would have capitulated before we had even begun to examine the normative relations within the capitalist economic system. We would, like most critics of capitalism, leave the description of the current economic sphere to the proponents of the contemporary economy, without at least questioning whether the concepts and assumptions of their models are in fact empirically appropriate. After all, these theoretical premises have been highly controversial ever since the beginnings of modern economic theory, ultimately going back to Adam Smith's groundbreaking work on *The Wealth of Nations*.<sup>129</sup> What came to be called the 'Adam Smith problem' soon after the death of this great scholar and philosopher, and which essentially deals with the question of how to reconcile his economic thought with his moral philosophy,<sup>130</sup> was essentially the same debate over whether the promise of freedom inherent in the modern market economy should be conceived of in terms of strategically calculating economic actors or in terms of intersubjectively related partners in communication. When it comes to how we can differentiate between various modern models of freedom, we could say that in the moral self-understanding of modernity, it has always been unclear whether the establishment of the market should expand negative freedom or establish social freedom in the sphere of the economy. Because at first sight it is uncertain which empirical object of study we are in fact dealing with in beginning our normative reconstruction of the market economy, we need a preliminary conceptual clarification. Unlike personal relationships, where both the participants and the observers have referred to the normative idea of 'love' since the arrival of the Romantic age as a new pattern of recognition, here we must first determine in what sense the capitalist market can be considered a 'relational' institution of social freedom at all (a). Only after we have managed to identify the implicit assumption that the modern market should establish and expand social freedom can we begin the process of normative reconstruction itself. We will therefore need an empirically informed explanation of the institutional mechanisms that serve to secure social freedom in the sphere of consumption (b) and in the sphere of production and services (c). At the end of this reconstructive process, it will be easy to see that the current removal of barriers to the capitalist market represents a social misdevelopment, one that hollows out and undermines the normative potential of the market.

### 6.2.1 The Market and Morality: A Necessary Preliminary Clarification

According to almost all economic historians and social theorists, the historical moment in which the capitalist economic system emerged was when the processes of production and consumption required for the material reproduction of society could become so exclusively determined by supply and demand – with the help of the universal means of exchange, i.e. money – that these processes could take place independent of all normative expectations and moral consideration, without any ethical embedding. Whereas previously, in subsistence economies or in feudal society, the production and distribution of goods was still tied to personal relations of dependency and communication, now the mute language of the market prevailed, rapidly and easily informing private economic actors about where, due to growing demand, it is worth investing time and effort in the production of certain products.<sup>131</sup> Of course, both domestic and foreign markets existed even before this ‘Great Transformation’, as Karl Polanyi termed the ultimate social establishment of the capitalist market.<sup>132</sup> These markets enabled the economic exchange of goods and services that either were not available locally or within the borders of a given political territory, so that they had to be purchased abroad for money and at prices determined by demand. But according to the customary view, it is only with the emergence of capitalism that the relations between all those involved in economic reproduction – workers, consumers and entrepreneurs – only relate to each other via market-mediated transactions. If we follow Polanyi’s famous account,<sup>133</sup> not only certain goods, but also labour itself, as well as land and money, are included in the market; their prices are determined by supply and demand, and due to the constant competition between private actors interested only in maximizing their material advantage, economic productivity could rise appreciably and take on wholly new, ‘effective’ forms. But before such a generalization of market interaction could take place, the subjective, equal rights we have termed ‘legal freedom’ would have to be institutionalized. Individual, usually male actors had to be accorded the status of private, self-responsible ‘legal personalities’ before they could enter into individual contracts with other economic actors, which would in turn allow them the most profitable sale of their goods, labour-power or land. Therefore, as Hegel was already aware,<sup>134</sup> the gradually

emerging constitutional state created the institutional preconditions for the development of a sphere of legally domesticated relations of exchange between strategically acting private economic actors. The capitalist economic system, which claims to be free from any government influence, owes its existence historically to the massive intervention of the state – from transport corridors and protectionist measures to the legal prerequisites of the freedom of contract.<sup>135</sup>

From the very beginning, the unique character of this new economic system was seen in the fact that exclusively purposive-rational, self-interested calculations seemed to free this system from any individual considerateness or value-orientations. It was intended to satisfy the various needs of a constantly growing population quicker and more effectively, because sheer self-interest rather than moral attitudes drove all actors on the market to maximum performance in the production and distribution of needed goods. The chain of economic transactions intended to raise the productivity of the economy as a whole started with individual wage-labourers, who should be willing to sell their labour at the highest possible price in order to feed their families; it continued with capitalist entrepreneurs, who should make maximum profitable use of the workers they hire in order to increase their property; and it concluded with financial speculators, who should lend money for under-financed enterprises in order to earn interest. All the contractual agreements between the different actors on the market – for labour, goods and services, and capital market – were supposed to intensify and accelerate economic production, thus providing the population with more and better goods in less time.

However, soon after this web of what seemed to be purely strategic market relations had been established in the countries of Western Europe, the new, capitalist economic order was seen to threaten or to inflict significant harm on social life. The epitome of these changing relations of production was usually seen in the 'homo oeconomicus', the self-interested businessman, who in the novels and dramas of early modern England had already made an appearance as a caricature, as a frightening example or as a future model of behaviour.<sup>136</sup> Hardly any intellectual at the time was not concerned by the issue of whether the historical emergence and social diffusion of this type of human subject in fact threatened to hollow out social bonds. Depending on their respective temperament and political beliefs, some regarded this new style of behaviour as a chance to transform 'passions' into 'interests' – to turn

hardly controllable passions into calmer calculations of advantage that would be easier to control; others viewed it as the first indication of a rapid erosion of moral attitudes and of social relationships based on personal trust.<sup>137</sup> In England, the gradual expansion of 'commercial society' was countered by the ideal of intimate friendship based on mutual affection;<sup>138</sup> in Germany, Schiller lamented the mechanization and commercialization of social life, which in his view would turn a man into a mere 'imprint of his occupation'.<sup>139</sup> Wherever one turned in the economically advanced European countries over the course of the eighteenth century, there was a spreading intellectual disquiet about the social consequences of the rapid growth of the market and the attendant strategic attitudes and calculations of economic advantage.

This debate, however, remained largely restricted to the cultural effects of the new economic system; it was not concerned with the social-structural upheavals that accompanied the emergence of capitalist profit interests, nor the tendencies of social immiseration or degrading labour. Instead it revolved around the communicative and atmospheric changes to social life that seemed to result from the spread of this new, materially self-centred personality, the *homo oeconomicus*. Not until the nineteenth century does the criticism, not least under the influence of 'sociological' thinkers such as Hegel or Saint-Simon,<sup>140</sup> take on a stronger socio-theoretical form that reveals the more profound, structural problems of this rapidly spreading economic system. Two issues came to dominate the thought of intellectuals and scientists who discussed the legitimacy and the limits of the new economic order; both revolved around the opportunities for the expansion of individual freedom, but approach the topic from such different angles that they come to nearly diametrically opposed conclusions.<sup>141</sup> For the sake of simplicity, I will label these two issues according to the names of the authors whose works are most clearly associated with them. The one could be termed the 'Marx problem', and the other could be called the 'Adam Smith problem', picking up on an already familiar formulation.<sup>142</sup> Marx summarized the various different objections already raised by the early socialists against the capitalist system of the market, and developed the critical thesis that this mode of production cannot make good on its promise to increase individual freedom, because the true economic actors – the workers or producers – have no alternative but to enter into seemingly 'free' labour contracts. On his view, the market economy, whose legitimacy stems from its enabling of legal freedom, not only under-



mines the conditions of social freedom that would be possible in planned cooperation, but even violates its own promise by leaving workers no other choice but to agree to contracts entailing degrading labour and economic exploitation.<sup>143</sup>

Alongside this problem raised by Marx, and which from this point on would dominate the intellectual discourse of capitalism, a second issue concerning the advantages and disadvantages of the market economy would arise over the course of the nineteenth century, one that is indirectly connected to a seemingly unsolved problem in the work of Adam Smith. Hegel got the debate started with his *Philosophy of Right*, which was published as a book in 1820 in Berlin, and it was concluded by Émile Durkheim at the end of the century with *The Division of Labor in Society*, published in 1893.<sup>144</sup> Both authors – who were aware of Smith's writings but did not explicitly refer to their internal tension – asked whether the successful establishment of this new economic order demand that it be either preceded or accompanied by value orientations and corresponding institutional structures if it is to garner the consent of all involved. According to Hegel and Durkheim, the market can only fulfil its function of harmoniously integrating individual economic activities in an unforced manner and by means of contractual relations if it is embedded in feelings of solidarity that precede all contracts and obligate economic actors to treat each other fairly and justly. Neither of these two authors conceived of such a system of pre-contractual moral rules as a merely normative addition to the market economy, as if it had to be externally imposed on blindly interacting material calculations. Instead, they took it for granted that such attitudes of solidarity and fair treatment would necessarily arise, since the reliable operation of the market mechanism depended on it. For Hegel, therefore, the possibility of integrating egocentric interests mediated by supply and demand required that the participants respect each other's 'honour' as economic citizens and thus show consideration for each other while working to secure each other's economic security.<sup>145</sup> Durkheim believed he could show that the entire system of the modern market economy can only be free of anomalies, and thus succeed in its integrative task, if there is equal freedom and fair wages, as well as 'meaningful' work for all.<sup>146</sup>

As different as their respective descriptions might be, Hegel and Durkheim largely share the same underlying perspective: The new system of the market economy cannot be analysed without taking account of an antecedent class of non-contractual moral rules;



otherwise, this system would not be capable of fulfilling its function of harmoniously integrating individual economic interests. We could express the same thought in Hegel's terms by saying that the coordination of merely individual material calculations can only succeed if the subjects involved antecedently recognize each other not only legally as parties to a contract, but also morally or ethically as members of a cooperative community. Without such an antecedent sense of solidarity, which obligates the subjects to do more than merely respect the terms laid down in a contract, the opportunities offered by the market could be used to cheat, to pile on wealth and exploit others. With regard to the problem named after Adam Smith, this would demand that we understand his *Theory of Moral Sentiments* as the preliminary stage or foundation of his analysis of the 'invisible hand' in *The Wealth of Nations*. What he says in the latter work about the possibility of universal benefit by means of exchange between purely self-interested individuals<sup>147</sup> can only be regarded as realistic and probable if subjects have previously taken up a beneficent and trusting attitude toward each other.<sup>148</sup> But far beyond suggesting a mere retrospective solution to the 'Adam Smith problem', the analyses of Hegel and Durkheim enable us to give an accurate description of the system of the market economy; both make the surprising assumption that such a description must remain incomplete as long as it does not take into account a certain class of non-contractual but nevertheless binding rules. Of course, neither Hegel nor Durkheim felt that these non-contractual norms of recognition would be applied always and everywhere. In many cases, as Hegel explicitly concedes in his account of the 'rabble', the mechanization of labour and 'ostentatious' enrichment,<sup>149</sup> and as Durkheim points out in his diagnosis of anomies, subjects can violate these rules of mutual respect and esteem. But both insist that such occurrences constitute violations of the implicit demand for solidarity inherent in the market, and argue that the social conditions needed to ensure that the order of the market economy can develop in an undisturbed manner will only obtain if these norms are generally respected, that is, only if the market is grasped as a sphere of social freedom.

Clearly, the issue of which institutional prerequisites must be viewed as a part of the capitalist economic system logically precedes the issue that Marx addresses. Whether the market in fact represents a purely coercive relationship, thus excluding any form of individual freedom, is a question that can only be answered if we have already determined how to best describe this new economic system. The

answers given by Hegel and Durkheim sounded a bit too idealistic in the ears of their contemporaries to be pursued any further: Why should the institutional sphere of the market intrinsically contain pre-market rules based on mutual consideration, if the entire point of the new order was to harness the interest in individual gain? And is it not an illusion to claim that competition on the market is necessarily domesticated or given an ethical character by antecedent bonds of solidarity between partners in cooperation? Obviously, Hegel and Durkheim did not sufficiently clarify their claims about the moral foundations of the market economy. Although we can be sure that neither author understood such pre-contractual rules as a merely external, normative addition to the market, and that both sought to avoid positing such mere 'oughts', it remains unclear how we are to grasp these purported moral norms as elements of the market economy. One possible interpretation is that they represent functionalist claims about the conditions of reproduction of capitalist markets. If this economic system is embedded in a whole series of intersubjective, non-egocentric norms, then its existence will depend on a constant inflow of non-market, moral attitudes. Aside from the fact that a rule or institution cannot be explained by merely referring to its functional requirements,<sup>150</sup> this functionalist analysis also seems to contradict the actual historical development of the market system. After all, the enormous expansion of the capitalist economy throughout the nineteenth century was in no way morally constrained, nor did it seem to be bothered by the misery of large portions of the population. Therefore, both methodological considerations and sheer historical observation seem to contradict the interpretation that the claims made by Hegel and Durkheim about the moral foundation of the capitalist market represent a functional analysis. At any rate, there seemed to be no reason to claim that this new economic order necessarily relied on the precondition of non-contractual relationships of solidarity.

One way out of the difficulty of defining the status of the descriptions offered by these two social theorists would be to interpret them as a rather demanding, somewhat normative functionalism; the latter's point of reference would thus not be the sheer existence of an institutional sphere, but the values and norms it embodies, provided that the members of society regard them as a condition for being able to consent to the economic order. According to this interpretation of their claim, the market economy relies on an 'ethical' framework of pre-contractual norms because it is only under this normative condition that it can garner the consent of all economic

actors. Just like any other social sphere, the market also relies upon the moral consent of the participants, such that its existence cannot be explained without reference to the supplementary norms that legitimate the market in the eyes of economic actors. This interpretation makes sense when it comes to Hegel – to whom functionalist terminology was of course alien – because his concept of ‘objective spirit’ subjects all core institutions of modernity to the condition that subjects can view them as justified in principle. The new economic order could thus only fulfil this condition if it also went beyond contractual rules, embodying moral norms that secure the ‘civil’ honour of all market participants as well.<sup>151</sup> Durkheim ultimately made the same argument when he traced the pathologies of the modern, market-mediated division of labour to the fact that it violated certain conditions of fairness and justice; he likewise believed that the stability and intactness of the new order was measured by how it lived up to moral norms to which everybody could consent in principle.<sup>152</sup> Both authors thus had to include in their concept of the market all the pre-contractual, ethical norms that can ensure that all participants can agree to its institutional existence.

It is only with great hesitation that the opportunity to continue the normatively functionalist analyses presented by Hegel and Durkheim has been seized in the twentieth century. Soon after the Russian revolution in February 1917, one year after Durkheim’s death, the discussion on the value of the market order focused so strongly on the alternative between capitalism and communism, between the market economy and the planned economy, that a mediating or balanced view was hardly to be found in any political group. Either the sphere of the market was rejected entirely, because it was seen to represent a state of coercion and alienation for workers, or it was defended at all costs, because in spite of the ups and downs of the business cycle, in the long term it was said to lead to an enormous increase of the gross domestic product and thus of the individual standard of living. Economics, which did all it could to establish itself in the early twentieth century as an independent discipline and which grew ever stronger in academia, played an unfortunate role in this interpretive conflict from the very beginning.<sup>153</sup> Any memory of its past kinship with history and the social sciences was pushed aside in order to construct a purely self-interested actor whose behaviour was to constitute the artificial point of reference for all economic activity. Viewed in isolation from non-economic factors such as desires for legitimacy and strivings for justice, the market could now truly appear as an institutional

sphere in which all actors pursue the same self-interested motives and in which only the laws of the competition between supply and demand prevail.<sup>154</sup> In the eyes of the public, this economic science, which recognized no non-contractual rules of fairness and denied any considerations of 'moral economy', played into the hands of the proponents of an unregulated market economy. This new discipline thus confirmed the political demand that all barriers to competition on the market be dismantled by making this relationship of competition between isolated actors the methodological, a priori premise of its own approach. In the decades following Durkheim's death, there seemed to be only two sides to the debate over how to evaluate the market economy: the bitter critics and the ardent proponents. The fact that Adam Smith's economic analysis of the blessings of the market economy was preceded by his tract on the requirements of moral sympathy; that Hegel embedded the market in an ethical framework; and that Durkheim linked economic contracts to the condition of pre-contractual solidarity – all this had apparently been forgotten.

Yet this impression is misleading, since social movements had meanwhile formed in England and France, with programmes that were at least partially influenced by Hegel or Durkheim. In France, the moderate wing of the syndicalist movement invoked Durkheim's book on the division of labour in society, calling for total equality of opportunity by means of co-determination through workers' councils and occupational groups,<sup>155</sup> while in Great Britain, Hegel's ideas on the ethical pacification of the market economy had a major social-political impact on the so-called Neo-Hegelians, whose thought would later be a constant source of influence for the Labour Party.<sup>156</sup> But, even more so than these isolated movements, individual thinkers managed to transfer the nineteenth century notions of Hegel and Durkheim to the new century; in their attempt to posit an alternative to mainstream economics, they relied on considerations similar to those of both Hegel and Durkheim, even if they were not always aware of their intellectual kinship. From the variety of authors who worked on such counter-proposals in the middle of the twentieth century, two scientists stand out due to the particularly striking originality and precision of their work. The first is Karl Polanyi, an economic historian from Hungary, to whom we owe the classic work *The Great Transformation*;<sup>157</sup> the second is Talcott Parsons, whose contributions to the moral foundation of the market have all but been forgotten.<sup>158</sup> Although both authors represent the same type of functionalism and can thus be placed in the

same camp as Hegel and Durkheim, their approaches to describing anew the capitalist system of the market are very different. Whereas Polanyi's concept of the 'embedded market' directly names a criterion for normatively judging the modern economic order, Parsons' approach is subtler and more indirect, seeking to prove the actual dependence of this economic order on normative rules. Nevertheless, the works of both authors can be interpreted as an attempt to base the success of market transactions on the precondition of a series of protective institutional mechanisms that can secure the market's moral justifiability for all participants.

Polanyi takes an historical approach in order to show that as soon as the various interconnected markets lose all political and normative order, capitalist societies will be haunted by lifeworld upheavals and thus a collective malaise. Whereas the beginning of European industrialization was still marked by laws and ethical agreements that protected the wage-dependent population from impoverishment and exploitation, the gradual and state-supported deregulation of the market initiated a process that began to destroy the independent norms of the lifeworld. Where secure social status and feelings of social involvement once prevailed, there now dominated an increasingly widespread sense of having been uprooted and having lost control of one's own destiny.<sup>159</sup> In order to avoid the danger of merely describing one specific phase of a particularly extreme form of capital accumulation in the nineteenth century, Polanyi makes a systematic effort to find structural causes for the immanent connection between deregulation and social upheavals. As is well known, he bases this approach on the thesis that certain goods should only be introduced to the market under strict supervision due to the potentially grave consequences for the social environment. Hence, from Polanyi's perspective, an unregulated labour market undermines and violates individuals' abilities; if money is left up to the unrestricted competition of supply and demand, there will be uncontrollable financial speculation; and finally, if land becomes a commodity on a deregulated market, the plundering of nature and environmental damage will be the immediate result.<sup>160</sup> On the basis of these considerations, which are to justify nothing less than a doctrine of the unbreakable boundaries of capitalist commercialization, Polanyi develops his famous theory of 'counter-moves', which represent a necessary element of modern society. He argued that as soon as the impression takes hold within the social lifeworld that the limitless commercialization of labour, money and land leads to disastrous consequences, political forces will emerge

and push for measures that put constraints on these markets.<sup>161</sup> It is not hard to see that Polanyi's historical-sociological claim is an indirect, empirical demonstration of Durkheim's theory of anomies: If the capitalist market is robbed of its pre-contractual supports in the shape of commonly shared norms of solidarity, and thus becomes afflicted by an 'anomy', Polanyi claims that the resulting unwillingness of the population will necessarily be expressed in social movements demanding the moral intervention of the state.

Just like Hegel and Durkheim, Polanyi's historical analyses of market society are based on a kind of normatively expanded functionalism. The failure of the capitalist market not only manifests itself in economic inefficiency or periodic crises, but in citizens' rejection of its legitimacy in the name of their justified claim to economic security and social recognition. The conclusions that Polanyi draws, however, are far more radical than those of his theoretical predecessors. Because he views economic markets as social structures that can be shut down, channelled and politically shaped at will, he assumes that they can be subordinated to 'a democratic society'.<sup>162</sup> This is accomplished primarily through government measures that remove labour, money and land from the market; instead of leaving the determination of prices up to the unrestricted competition of supply and demand, he claims they should be determined through a process of democratic negotiation in the interest of those affected.<sup>163</sup> Polanyi thereby takes the arguments developed by Hegel and Durkheim developed in order to contain the capitalist market and turns them into a market-socialist programme – which is not such a great leap, once we claim that market transactions are only legitimate to the extent that they can obtain the universal consent of the participants.

By contrast, Talcott Parsons' treatment of the capitalist market is significantly more reserved and in a certain sense is more in conformity with the system of the market. The only reason for placing him in a row with these other authors is that he also believes that the social integration of the modern economic system can only be fulfilled if non-economic, moral imperatives are institutionalized.<sup>164</sup> Like Polanyi, Parsons also views purely self-interested market exchange as being limited by the fact that human labour power cannot be decoupled at will from the labourers themselves. Therefore, both authors view the integration of employees in the labour market as one of the key problems that the capitalist economic system must solve; but unlike Polanyi, Parsons feels that the modern market economy can live up to this challenge and thus

need not remove labour from the market; on the contrary, he maintains that institutional mechanisms have already been developed for managing just such a conflict. All the ideas about the moral economy of capitalism that we owe to Parsons lie in this analysis of conflict-reducing institutions of the market society.

There are two institutional complexes in the existing economic systems of the West that Parsons regards as suitable for solving the virulent problem of integrating workers in the market. Both mechanisms have the task of bridging the normative gap between the affective values of the social lifeworld and the achievement principles of the sphere of labour.<sup>165</sup> According to Parsons, here entirely in line with Durkheim, the first of these institutional precautions is found in the labour contract, in which he sees a pre-contractual, virtually moral component. Therefore, far beyond the instrumental dimension of these contracts, which consists in the mutual agreement to exchange services, each contract tacitly implies the normative demand that each side commit to the obligations stemming from the generally accepted value system in society.<sup>166</sup> For workers, this second, implicit component means that they not only have a claim to symbolic recognition within the company, but can also count on undertaking 'worthwhile' activity.<sup>167</sup> And for the entrepreneur, the moral element of the labour contract means they can legitimately expect loyalty and responsibility from the workers. Therefore, in Parsons' view, the labour contract entails much more than what has been put in writing; both sides commit to follow norms that determine, from outside of the market, what it means to treat each other in a fair and just manner.

The second institutional complex within the capitalist economic sphere that Parsons regards as suitable for overcoming the gap between the market and lifeworld morality consists in what he calls 'occupational roles'.<sup>168</sup> He believes that between our everyday family life and the market economy, a process of socialization prepares individuals for having to adapt to the imperatives of economic performance. Through the educational process, which begins in early childhood and ends with professional training, every (male) subject learns to internalize the values that later dominate in the performance-based working world. According to Parsons, no worker enters the market with an ethically indifferent or even negative attitude; rather, they have been socialized in such a way that they can only gain psychological satisfaction and self-respect by fulfilling their professional duties.<sup>169</sup> The individual fulfilment of these duties in turn demands that companies



do everything they can within the bounds set by their economic position to fulfil the expectations of the workers. In Parsons' eyes, this not only means providing job security, health and safety precautions, and meaningful work, but also the guarantee of a stable family income.<sup>170</sup>

It is not difficult to see that Parsons interpreted labour contracts and occupational roles as two institutions in the existing economic system that have essentially the same function that Hegel and Durkheim regarded as necessary for the social integration of the market system. In order to ensure that all participants regard their self-interested interaction on the market as ethically justified, the market must be anchored in norms that ensure the fair and benevolent treatment of all. Although Parsons himself does not make such a connection to the market system's general need for legitimation, viewing it instead, in line with systems theory, as a problem of adaptation between two normatively disconnected spheres of action, he also argues that the capitalist economic order can only reproduce itself without implicit or explicit resistance if it is also capable of fulfilling non-economic, moral imperatives.

The intellectual tradition of the ethicality of market society, which had its starting point in the nineteenth century in the works of authors such as Hegel and Durkheim, did not end with the grand theories presented by Polanyi and Parsons. Even in the second half of the twentieth century, there has been a number of authors who have raised objections against the concept of the market that prevails in mainstream economic theory by pointing to its dependence on antecedent agreements concerning the type, extent, social arrangement and limits of exchange processes. Some authors, such as Amitai Etzioni, base their theory on the insights of organizational sociology in order to show that decisions on the market become more rational once they take into account the need for social responsibility. Here we find terms such as 'encapsulated competition', according to which both the general acceptance and the economic efficiency of market competition increase to the extent that this competition is restrained by moral rules that are binding to various degrees.<sup>171</sup> Still other representatives of this tradition of capitalist criticism, such as the economist Fred Hirsch, use the tools of modern economics to prove that moral restraints on individual self-interest are needed in order for the market to function. On this view, access to goods that are intrinsically scarce and thus status-relevant should be restrained by means of drastic tax increases and income decreases, until the competition over these goods subsides



and egocentric, competitive inclinations weaken.<sup>172</sup> However such proposed solutions might look in detail, whether they rely on the revitalization of communitarian responsibilities or the morally beneficial effects of income equalization, all of these approaches make it apparent that even today, the sources of a moral economism have not yet dried up completely.

At the same time, this variety of therapies demonstrates that the tradition of the normative functionalism of the market outlined here cannot be boiled down to a common denominator. Although all the various models share the theoretical premise that market processes cannot be analysed outside of the framework of communicative obligations, their conceptions of what these non-market and pre-market norms actually consist in differ significantly. Whereas Hegel places all his expectations in the prior existence of mutual esteem secured by the 'corporations' of socialized commercial firms, and Durkheim similarly focuses on the moralizing effects of the discursive negotiation of social arrangements by occupational groups,<sup>173</sup> Polanyi and Parsons have no such hope in the civilizing role of intermediary groups and bodies. While Polanyi proposes that the market be socially restrained by means of far-reaching constraints on the price mechanism, Parsons places his trust entirely in the hope that institutional precautions within the labour market will ensure the sufficient implementation of comprehensive values of justice and fairness. Etzioni and Hirsch, finally, no longer have any hope that the social or institutional counter-forces needed for the moral embedding of the market can be found within the market itself. Both locate these containment processes in the near future, be it because of the revival of communitarian obligations or the socially negotiated restriction of income, but not in the social reality of existing market processes.

With this preliminary and still vague summary, we have reached a point at which we can draw conclusions from this historical-theoretical sketch that can be applied to the problem raised by Marx. Even though these authors' basic theoretical assumptions differ significantly and they belong to different political-cultural milieus, they all agree that the economic market must not be isolated from the ethical value horizon provided by the surrounding liberal-democratic society. Instead, in the economic processes of exchange, strategic actors who encounter each other in competition over supply and demand remain embedded in this framework of pre-market norms and values even when they violate or deviate from it, because then subjects would no longer be willing to actively

participate in the economy. There is an intrinsic connection between the conditions of competition on the market and the norms of the lifeworld, because market competition can only be viewed as legitimate and justified on the condition that it take these norms into account. Regardless of whether such problems of motivation are measured in terms of economic efficiency or normative legitimacy, different markets must be able to reflect the rules prevailing outside the market to a certain degree in order to be able to fulfil their function of coordinating economic action. If this reflection on the prevailing, generally accepted norms no longer takes place, then we can expect not only a disruption of the market mechanism itself, but also a subtle or publicly articulated withdrawal of legitimacy on the part of the population. We could give a preliminary summary of this normative functionalism by saying that the institutional sphere of the market cannot be understood as a 'norm-free system'; if we regard it as legitimate merely because it meets the legally accepted conditions of negative freedom, then we will entirely lose sight of the degree to which the social acceptance of this system depends on the fulfilment of pre-market norms and values.<sup>174</sup>

However, such a normative description of the market does not yet tell us which values must restrain processes of exchange and how. The authors we have dealt with so far give very different answers to the first of these two questions. When Polanyi names the normative threshold beyond which the deregulation of markets necessarily engenders social countermoves, he draws on relatively vague assumptions about how the social lifeworld must necessarily ensure the status and social esteem of its members. Parsons is more specific, but empirically open in his claim that the labour market must take account of generalized values and norms – which have been internalized through the process of socialization in the family – in order to be motivationally anchored in the social system of personality. Only the responses given by Hegel and Durkheim show none of this blurriness and vagueness, because they essentially remain on a more formal level. Both are convinced that the competition institutionalized by the market must be able to be understood as a form of cooperation in order to count as understandable and legitimate in the eyes of the participants. Here, anthropologically or empirically fixed values are not the limiting conditions, but those norms that allow us to view the relations of competition, established for the purpose of increasing economic efficiency, as being in the interest of all involved. If we translate this notion into the terminology we have used so far, this means that the purely

individual self-interest constitutive of market behaviour must be able to fulfil the normative condition that all participants can understand it as a suitable means for the complementary realization of their own respective purposes. Negative or contractual freedom, whose institutionalization is what enables the dynamism of the capitalist economy, is limited by a threshold beyond which actors can no longer regard this freedom as a form of their social freedom. In this sense, both Hegel and Durkheim, unlike the other representatives of the tradition mentioned here, make the existence of the market economy contingent on the realization of a higher-order freedom that is not merely negative. The laws of the market should not find their normative limits in lifeworld imperatives or in the values of neighbouring subsystems, rather in the promise upon which their legitimacy is founded, which is that exchange processes must contribute to the complementary realization of individual aims.

Hegel and Durkheim therefore base the institutional sphere of the market on the normative demand of the realization of social freedom. What makes interaction on the market legitimate and understandable is not the permission to pursue our interests ego-centrally, but the fact that the anonymous integration of such individual self-interests enables the freedom of one to be the condition of that of another. In short, both thinkers subject market processes to the normative condition that they institutionally reflect these underlying claims to social freedom, thus ensuring that the participants remain aware of these claims. Only if the competition of supply and demand enables the participants to view the market as a system of complementary role obligations can Hegel regard it as ethical and Durkheim as free of anomies. Expressed in terms of recognition, this means that economic actors must have recognized each other as members of a cooperative community before they can grant each other the right to maximize individual utility. And the degree of these negative freedoms must be measured in terms of their reconcilability with the requirements of antecedent recognition.

The immanent, and nevertheless quite formal criterion that both thinkers apply when it comes to the normative judgement of the market also allows them to give a productive answer to the second question mentioned above. In light of the problem of how the necessary consciousness of shared cooperation must be seen as anchored within the market economy, Hegel and Durkheim do not focus on stable institutional complexes or periodic, compensating

countermoves. Instead they ask the outright proceduralist question of which mechanisms of consciousness-formation can prove suitable for motivating the participants to go beyond their merely self-interested strategies. The basic idea guiding both thinkers is that, contrary to the official doctrine, the interests of market participants are not fixed once and for all. Naturally they are compelled to optimize their utility on various markets, but they can pursue these strategies with more or less concern for the interests of the other participants. Hegel and Durkheim attempt to penetrate this blind spot of economic theory, the plasticity of individual interests,<sup>175</sup> by searching for existing mechanisms that can influence the process by which interests are defined in favour of greater consideration for cooperative responsibilities. It is no accident that both find such mechanisms on the same level of the social process, where groups of people sharing the same occupation regulate their economic relationships. As soon as such communities are forced to reach agreement on how to arrange market transactions, the generalizations and switching of perspective required for negotiation will cause them to take greater account of the underlying principles of their cooperation when it comes to defining their interests. Whether we think of Hegel's corporations or Durkheim's occupational groups, at the abstract level of consciousness-formation each had the task of reminding the participants, by means of a discursive flexibilization of seemingly objective constraints, of the pre-market obligations of solidarity and encouraging them to commit to these obligations as much as possible. If we further generalize this line of thought, we can claim that within the market economy, chances for morally restraining the market will emerge whenever groups or bodies have formed that demand consideration for the interests of other market participants. And the more such discursive mechanisms become anchored in the market, the greater the chance to preserve a cooperative awareness of mutually supplemental responsibilities.<sup>176</sup>

But when it comes to possibilities for institutionalizing principles of pre-contractual solidarity within the market system, Durkheim is the last to rely solely on the effects of social occupational groups. Even more so than Hegel, he is aware that the official, non-moral rules of the system enable private actors to accumulate enough wealth to be able to dictate contracts at will. Therefore, Durkheim proposes a series of legal reforms intended to adapt the existing legal norms of the market to an antecedent consciousness of reciprocal dependencies and obligations. Expressed in terms of social recognition, this means that the extent of negative, legally

sanctioned freedom on the market must be restricted significantly in order to take account of the requirements of mutual recognition between cooperating partners. Within the system of the market, Durkheim sees true equality of opportunity as an essential condition for such a relation of recognition. Only if all market participants have the chance to discover and develop their true capacities; only if they find fulfilling work and can enter into employment contracts without any internal or external compulsion can they view themselves as equals among equals in the division of social labour.<sup>177</sup> Alongside educational reforms, measures to prevent the illegal accumulation of wealth occupy a central place in the catalogue of legal reforms Durkheim had in mind. He does not even shy away from occasionally demanding a radical restriction of inheritance law, for in his eyes any wealth not derived from actual work is a primary cause for asymmetries of power in contractual relationships.<sup>178</sup>

But it is not Durkheim's reform proposals that interest us here, seeing as how they are closely connected to the circumstances of his time. More important are the underlying concepts, for they allow us to return to the problem raised by Marx with regard to the capitalist market. Like Hegel, Durkheim believed that the sphere of the market can only be grasped as an 'ethical' relationship that ensures freedom if it can be described as a system of economic activity founded on pre-market relationships of solidarity. Therefore, both authors had to search for mechanisms within the market that could motivate individual economic actors to be more sensitive to the interests of other actors and thus take into account the underlying principles of their cooperation. Both authors see occupational bodies modelled on antique corporations or guilds as examples of such mechanisms, because the deliberation within these groups and the negotiation between them force each participant to take up the perspective of the other, thus enabling them to see each other primarily as partners in cooperation instead of as competitors. But Durkheim does not stop at such discursive mechanisms, because he is aware that unjust, forced contracts can also come about as a result of an unequal pre-market distribution of wealth; he thus resorts to a legal framework that can restrict contractual freedom in a way that prevents such asymmetries from arising within the shared coordination of the division of social labour. This brings us to the place in the system of the market at which Marx's consequential criticism of capitalism sets in. In the Marxian tradition, which constitutes the second alternative to the prevailing market ideol-

ogy alongside the moral economism of Hegel and Durkheim, there is no possibility of 'ethically' embedding the market, because the market denies the majority of the population the opportunity to exercise the negative freedom promised to it.

If we set aside the valuable insights we owe to Marx's analysis of the autonomization of the imperatives of capitalist valorization, there are basically two issues around which his considerations on the market revolve. First, Marx doubts that those who have no other commodity to sell besides their own labour power could ever be capable of being equal contractual partners, whose consent to the negotiated conditions thus cannot be regarded as free. He believes instead that the owners of the means of production, the capitalists, will always have enough power to dictate the conditions of the labour contract to the workers or producers.<sup>179</sup> Second, Marx assumes that no wage, no matter how high, could ever compensate for the actual work performed by workers, because exploited labour is the sole source of economic value-creation. All debates over the just or fair price of labour power thus appear to him to be mere propaganda intended to conceal the deeper reality of capitalist exploitation.<sup>180</sup> This second objection has come to be doubted even by Marxists; not only are the premises of the labour theory of value highly questionable, because it is not clear how Marx arrives at his standards for comparison,<sup>181</sup> it is a mystery why labour in the service sector, administration or the sciences should play no role in economic value-creation.<sup>182</sup> Given these concerns, the claim that all employment in capitalist enterprises necessarily entails the 'exploitation' of labour becomes a purely empirical thesis; whether it is true or not depends on whether and how that portion of a company's proceeds that has not been reinvested is directed back to the employees.

If we set aside the second objection that Marx advances against the capitalist market economy, we are left with the grave judgement that such a system prevents the overwhelming majority of the population from exercising even its negative freedoms on the market.<sup>183</sup> It is not hard to see that this argument combines categorical and empirical considerations that cannot easily be separated from each other. The categorical side deals with what can be regarded as a sufficient condition for the exercise of contractual freedom. Because this certainly entails the ability to turn down a contract, Marx views the fact that wage-labourers have no choice but to sell their labour-power in order to survive as proof that they are in fact not free. They cannot even exercise the elementary freedom of the

capitalist market system, the right to enter into contracts at one's own will, because they have no opportunity to reject such a contract. Yet it is precisely this circumstance that Durkheim referred to in order to justify why the market economy depends on greater pre-contractual equality in terms of people's economic situation: 'If one class in society is obliged, in order to live, to secure the acceptance by others of its services, whilst another class can do without them, because of the resources already at its disposal, which are not however necessarily due to any social superiority, the second unjustly dominates the first. In other words, there cannot be rich and poor at birth without there being unjust contracts.'<sup>184</sup> Marx himself could not have made more explicit that labour contracts entered into under the pressure of mere survival cannot be viewed as satisfying the criterion of free consent and thus of negative freedom. The only difference is that Marx sees this as an inevitable part of the market system, whereas Durkheim believed that free contractual relationships could be institutionalized under market conditions. Therefore, the issue at hand becomes entirely empirical: Whether or not it is possible within the capitalist market economy to establish the preconditions of universal freedom of contract cannot be decided in advance, but must be examined in a process of reforms that aim to fulfil this purpose.

Furthermore, if we take into account the fact that there do not seem to be any practical alternatives to the economic system of the market, then there is good reason to translate the deficits Marx sketches in his critique of capitalism into the horizon opened by Hegel and Durkheim: Neither the problem of exploitation nor that of enforced contracts should be grasped as structural deficits that can only be removed by abolishing the capitalist market economy, but as challenges posed by the market's own normative promise, which can thus only be solved within the market system itself. Only the tradition of moral economism begun by Hegel and continued by Durkheim offers us a theoretical perspective from which we can manage to describe these problems systematically as deviations from the norms underlying the market system. This would require more than the terminology of self-interested individuals whose actions are coordinated by an invisible hand, because their economic transactions could also be shown to entail expectations of cooperation in solidarity. This is the broader kind of moral perspective that Hegel, Durkheim and their descendants outlined, refusing to describe the activities on the market solely in terms of economically successful coordination. They seem to take for granted that



processes of exchange must always be judged according to whether they satisfy the demands of the shared, cooperative life that market actors assume these processes are supposed to fulfil. If we describe the sphere of the market in this manner, we must find a place for moral elements such as feelings of injustice, discursive mechanisms and norms of justice, which then become indicators of the degree to which the underlying principles of solidarity have already been realized.

As for our question as to what a normative reconstruction of the currently existing market economy can build on in order to get sight of still institutionalized principles of social freedom, the attempt to uncover an alternative tradition has led to a clear result: Only if we uphold the image of the market developed by Hegel and Durkheim will we be capable of seeing the normative claims inherent in the economic transactions of liberal democratic societies – claims that can be understood as generally accepted assumptions of social freedom. In our normative reconstruction, therefore, we should proceed by attempting, in an idealizing manner, to uncover the path in the historical development of the capitalist market that has led to a gradual realization of its underlying principles of social freedom, principles that secure its legitimacy and have emerged under the pressure of social movements, moral protests and political reforms. After what has been said, the institutional mechanisms we will have to focus on the most, since they serve the factual realization of these regulative ideas, will primarily consist in discursive procedures for coordinating interests, as well as bastions of equality of opportunity. Consequently, normative advances in the sphere of the capitalist market should become apparent wherever such mechanisms have been successfully established, while normative misdevelopments will emerge wherever such institutionalizations, in spite of public pressure, remain absent over time or are rescinded.

By laying down this path for our normative reconstruction, i.e. by basing it on the model of moral economism, we nevertheless expose ourselves to the accusation of being unacceptably idealistic. Nothing seems less likely in contemporary sociology and economic theory than the claim that the integrative function of the market primarily derives from a normative agreement grounded in the idea not of negative but of communicative freedom. Certainly, both Marxist economic theorists and Neoclassical economists have always doubted that the market could be understood as fulfilling demands of legitimacy. In their view, the exchange processes in the



capitalist or modern economic order underlie functional restraints – be it capital accumulation or profit maximization – that are so strong as to exclude any possibility of inner normativity. With the processes of economic globalization that have left no segment of the market untouched, such doubts have only multiplied, seizing large segments of the social sciences. Due to the internationalization of the markets, functional constraints, which nobody has ever denied, have suddenly seemed to become so inevitable that it now seems entirely impossible to subject the market to demands for legitimacy. Wherever we look, we seem to find a tendency, combined with an odd bit of triumphalism, to once again refer to the modern market order as a ‘norm-free system’, as an anonymous process without any demands of normative consent. The functional imperatives to which economic decisions are subjected are examined under total isolation from the expectations of meaning and legitimacy held by market participants, as if their normative reactions of self-doubt, feelings of injustice, expectations and role obligations were not a part of the market itself. As a result of this division between facts and norms, we no longer have any sense that economic interests can be re-shaped and are in fact open to interpretation; that even market processes represent discursive mechanisms in which actors adopt the perspective of others; that collective actors are also usually involved in processes of exchange, whose intentions cannot merely be described as a sum of individual self-interests; and that, finally, even the globalized economy is subject to the officially confirmed claim of universal equality of opportunity. Contrary to these tendencies of atrophy and one-sidedness, our approach picks up the tradition of moral economism and normatively reconstructs the existing market economy in terms of the opportunities and institutional structures for realizing social freedom. Again, this will mean focusing on discursive mechanisms and legal reforms in particular, because here the development of the underlying principles of solidarity is embodied most clearly.

It almost goes without saying that in performing such a reconstruction, the description of normative misdevelopments, always measured against presupposed principles of legitimacy, play a more prominent role than positive developments.

### 6.2.2 The Sphere of Consumption

The rapid spread of the capitalist market economy throughout Western Europe in the twentieth century was for the most part

explained by Max Weber, according to whom the motivational foundation for the necessary work ethic and self-discipline lay in a number of currents of Protestantism that linked God's mercy to the fulfilment of professional obligations.<sup>185</sup> Over the last few decades, a number of sociological studies have shown that a new culture of consumerism emerging in eighteenth century England played an equally important role in the growing dynamism of the market.<sup>186</sup> However we interpret the rapid growth of consumer needs on the threshold of social modernity, whether we trace it back to religious roots<sup>187</sup> or to growing desires for personal authenticity,<sup>188</sup> it is clear that both the rapid growth and the social legitimacy of the capitalist market were, already at an early stage, largely due to its apparent capacity to inform companies about the goods that are increasingly demanded by 'private' consumers. It is no accident that Hegel begins his account of the market economy with a chapter on the 'system of needs', a term that refers to the increasing satisfaction of ever more sophisticated individual needs, far beyond the bare necessities, through economic competition.<sup>189</sup> Of course, the picture that Hegel draws of the sphere of private consumption is nearly idyllic compared to the developments that would soon follow. He often mentions that 'opinion' determines what counts as a need to be satisfied by produced goods, and he also mentions the tendency of the 'English' in their desire to be 'comfortable' to acquire a sheerly endless number of new desires,<sup>190</sup> but for the most part, all these 'multiplied' ways and means remain tied to the natural basis of 'food, drink, clothing, etc'.<sup>191</sup>

What Hegel's considerations on the 'system of needs' demonstrate is that he was more aware than any of his contemporaries that the gradually emerging market economy was accompanied by an additional dimension, a new form of individual freedom that, as a system of previously unknown practices, would have a significant influence on the culture of modern society. By means of the opportunities offered by the market, subjects would learn to see themselves as consumers who are free to determine their personal desires, and thus their identity, in the search for and acquisition of commodities. Hegel treats consumerism, to use a term that would later become increasingly pejorative, as an attitude [*Einstellungssyndrom*] that conveys a significant advance in the institutional establishment of individual freedom.<sup>192</sup> More than any of his disciples, Hegel recognized that the entire sphere of consumption, despite all its 'proliferation of arbitrariness',<sup>193</sup> represents an intersubjective 'quality of being recognized'.<sup>194</sup> Like Adam Smith, who

was very insistent on this point,<sup>195</sup> Hegel also emphasizes that the interests of consumers and producers harmonize with each other, because the satisfaction of each side's interest depends on that of the other.<sup>196</sup> Hegel even goes so far as to speak of having to 'fit in with other people', because both sides must take into account the 'opinion' or intentions of others in order to achieve their own respective purpose, be it consumption or production.<sup>197</sup> For the author of the *Philosophy of Right*, therefore, the market for consumer goods represents an abstract medium of recognition that enables subjects to realize their individual freedom together through complementary activities. Consumers recognize producers as enabling them to satisfy their needs, just as producers recognize consumers as enabling them to earn a livelihood. As consumers we are not 'sovereign' actors who decide on our 'preferences' in complete isolation, but market participants who are willing to recognize others and are constantly aware of our dependency on producers.

However, Hegel has little to say about precautions that could prevent this relationship of recognition between consumers and producers mediated by the market from getting out of control. Although he invents a public authority, the 'police' [*Polizey*] charged with the restriction of the 'freedom of trade and commerce' in order to ensure affordable prices and product quality,<sup>198</sup> he mentions no institutional mechanisms that could protect consumers from the distortion or manipulation of their needs. This is all the more astounding given the fact that Hegel was prescient enough to foresee the emergence of just such dangers. At one point, he is almost clairvoyant in remarking that certain consumer needs are 'created . . . by those who seek to profit from [their] emergence'.<sup>199</sup> Elsewhere he remarks no less presciently that such a need will seek 'to assert itself through some distinctive quality'.<sup>200</sup>

Both of these possibilities, the commercial manipulation of needs and ostentatious consumption in the interest of displaying status, would become reality soon after Hegel's death and significantly change the entire market for consumer goods. Whereas in the eighteenth century wealthy consumers – the tiny minority that could afford more than the bare necessities – mostly sought to achieve a greater level of comfort in their everyday lives, over the course of the following century they became more interested in displaying status, symbolically distinguishing themselves from others and simply showing off. Only now does the phenomenon emerge that Thorsten Veblen (1899) would term 'conspicuous consumption' and Pierre Bourdieu would call 'symbolic distinction' 80

years later.<sup>201</sup> The most striking insight into the resulting changes of the sphere of consumption can be found, once again, in the numerous contemporary novels that addressed this issue. In Thackeray's *Vanity Fair*, Zola's novels on the 'Rougon-Macquart' family and Balzac's *Comédie humaine*, we find a series of illustrations of the degree to which the production of luxury goods in the nineteenth century was driven by the bourgeoisie's seemingly unlimited interest in the expressive stylization of even the smallest status distinctions.<sup>202</sup> But these developments, which would slowly spread to the rest of the population along with a general increase in the standard of living, represent only one of the changes Hegel anticipated. The other transformation would result from a learning process in which commodity-producing enterprises would begin to realize that they could influence consumer needs through various manipulative techniques. The first use of advertising for the purpose of giving commodities a social or psychological significance in order to promote sales is generally traced to the time when public forums and media consumption such as large stores, shopping arcades, advertising columns and the mass media would emerge in the metropolises. These advertisements no longer referred to the functional qualities of products such as 'convenience' or 'comfort', but instead emphasized those qualities that would give their products a place in consumers' social status – be it real or imagined.<sup>203</sup> This is still a long way off from the giant marketing departments of major twentieth-century corporations, but these early advertising techniques do indicate the direction this development would take. The needs of consumers – those of the wealthy at first, and later those of the entire population – were regarded as something to be influenced through increasingly professionalized methods in order to accelerate the sale of standardized goods and to guard against the threat of capitalist overproduction.

Both these processes represent only a narrow range of the many changes to the institutional sphere of consumption since Hegel's day. Although this system has always entailed the normative claim that it provides for all the necessities of the population thanks to the rapid reaction of companies to growing demand, it would soon fail to meet this challenge – and the consequences would be disastrous. Because investments in the production of affordable food, clothing and housing were often not sufficiently profitable, throughout the nineteenth century we find a constant lack of goods, causing a level of suffering for the impoverished proletariat that would be unimaginable today.<sup>204</sup> Social uprisings and revolts were often

the consequence, as the poor demanded their right as consumers to receive the basic goods that corresponded to their financial means.<sup>205</sup> Because we do not want to merely reduce the market to economic transactions in the narrow sense, such 'bread riots' and boycotts must be viewed as moral reactions to events in the market-mediated sphere of consumption. Consumers and producers thus do not merely encounter each other as 'supply' and 'demand', but are joined by a much more complex relationship of interaction that can also entail normative objections, the refusal to consume and protests.<sup>206</sup> Upon closer inspection, consumers thereby seek to remind producers that the latter are committed to a relationship of recognition inherent in the market, one that compels them to respect the intentions of the other side. But because such respect, due to the persistence of interests in capitalist accumulation, could only rarely be directly achieved by protest movements, state authorities often saw themselves obligated to intervene in the sphere of consumption in order to guarantee affordable food prices. The suspension of market mechanisms in order to ensure the provision of basic necessities would thus become a common sight in late eighteenth century and early nineteenth century Europe.<sup>207</sup>

As early as the nineteenth century, however, the moral reactions of consumers no longer merely concerned legitimate prices for elementary goods, but they also subtly raised the issue of whether certain goods should be sold on the market at all and where the boundaries of socially acceptable consumption lie. Of course, the idea that consumers make their purchase decisions in a 'sovereign' fashion guided solely by considerations of individual benefit should have been considered questionable even then; after all, many buyers were influenced by various ethical traditions, which imposed significant restrictions on what could count as legitimate objects of financial pursuit on the market.<sup>208</sup> Throughout the nineteenth century, there were repeated instances of consumer rejectionism, by which various movements conveyed their moral disapproval of the seemingly uninhibited awakening of new consumer interests.<sup>209</sup> There was also a number of debates, though not on the main stage of the political arena, over which objects should be turned into commodities in the first place – the most well-known examples being whether alcohol and sexual services should be considered legitimate 'commodities' for sale.<sup>210</sup> All these tendencies make clear that even as early as the nineteenth century, the sphere of market-mediated consumption was no longer a norm-free area of instrumentally calculating actors; however, the moral debates

between consumers and producers still lacked the discursive mechanisms that could help make these issues a matter of public interest.

The first such mechanism, a trace of the 'socialization' [*Vergesellschaftung*] of the consumer marketplace, would soon emerge in England, though in a one-sided form, where dire economic circumstances had forced the poorer classes to help themselves by forming consumer cooperatives. Adopting the ideas of Richard Owen, for whom Karl Polanyi would later express his great admiration in *The Great Transformation*,<sup>211</sup> the first consumer cooperative was founded in 1844; workers, craftsmen and farmers joined together to purchase basic goods in large quantities and subsequently distribute them to their members according to criteria of fairness in exchange for money.<sup>212</sup> Within a few decades, the English model would spread throughout Western Europe, where a variety of cooperatives were founded, all of which aimed to protect their members from chronic and excessively high prices by fairly redistributing commodities purchased in large quantities. Like their counterpart in Hegel's 'corporations' or, later, production cooperatives, these groups were also places of moral socialization, in which the members would learn to subvert the accumulation strategies of private capitalist enterprises enabled by the market.<sup>213</sup> The beginnings of such a socialization of the sphere of consumption 'from below', which did not eliminate the market but sought to make it useful for collective interests, can often be found in the first half of the twentieth century – and the fact that they only play a marginal role today is a first indicator of a misdevelopment of the capitalist market economy.

In the nineteenth century, the normatively sensitive nature of the market-mediated system of consumption, which cannot merely abandon the promise to fulfil all 'private' needs that can be satisfied through economic exchange, is not only made evident by the moral reactions of consumers but also by the regulations that states imposed on producers. Although these interventions varied significantly from country to country – even at this time, we find what are now called 'varieties of capitalism'<sup>214</sup> – some basic commonalities are apparent. The market itself, viewed purely as an informational medium for the coordination of economic action, possesses no tools for normatively influencing the behaviour of market actors, which is why we regard the many restrictions and regulations added to the market once it has been socially institutionalized as embodiments of the pre-contractual basis of its legitimacy. In the interventions that Hegel assigns to the 'Polizey', which mediates between the state and the market, we see the first outlines of these normative

principles. As we briefly mentioned above, this organ's tasks not only consisted in monitoring the legality of economic transactions and providing necessary infrastructure, but also in protecting consumers. Hegel probably had in mind something like regular quality inspections, along with the constant monitoring of suppliers who tend to raise their prices as high as possible.<sup>215</sup> Again, Hegel did not view such precautionary measures as externally imposed restrictions on the market for consumer goods, rather, entirely in line with his moral economism, he took for granted that these measures represented normative mechanisms that belong to the institutional reality of the market itself. If we follow his claim that 'the freedom of trade should not be such as to prejudice the general good',<sup>216</sup> then we have a slightly idealizing, but nevertheless helpful guideline for normatively reconstructing state intervention into the sphere of consumption during the nineteenth century.

During this time, however, there was no system of consumer protection as we know it today – which still remains too weak by the standards implied by the underlying principles of the legitimacy of the market. And it is only at the end of the nineteenth century that we begin to see rudimentary beginnings of social and welfare policies intended to aid the poor in their role as consumers by providing legally guaranteed support for obtaining housing and clothing. If we take the case of Germany, the Prussian trade laws offered a series of legal regulations that contained elements of consumer protection, but were still strongly tied to security considerations of a more general kind, aiming primarily to protect the market from 'dubious' intentions and actions.<sup>217</sup> With these exceptions, of which Hegel's 'Polizey' is an illustrative example, there was such a complete liberalization of the market in nineteenth century Western Europe that there can be no real talk of state intervention in the interest of consumers. Once the last remains of pre-capitalist social measures were eliminated in the 1830s in England, as Polanyi points out in his book *The Great Transformation*,<sup>218</sup> there was no longer any protection for the dependent classes when it came to acquiring elementary goods. As Polanyi also points out, this situation did not change until the economic crisis of 1873; as a reaction to the catastrophic effects on the majority of the population throughout Western and Middle Europe, various political forces began to push for state intervention in the economy.<sup>219</sup> Although the economic situation differed significantly between Victorian England, the Third Republic in France, Bismarck's Prussia and the Habsburg empire, starting in the 1880s we do find legislation in



all these countries restricting the market and focusing largely on public health, social security, worker protection and the common good. In the wake of these reforms, for the first time we find a form of consumer protection as we understand it today.

At first, this legal protection was not seen as the epitome of a new and original branch of law. Instead these regulations were often embedded in a revision of traditional commercial law, which had proven outdated in the face of the economic crisis.<sup>220</sup> Nevertheless, the arguments presented in favour of consumer protection in parliamentary debate display all of the considerations that would later lead to the formation of a more or less independent branch of consumer rights. The basis for the justification of such rights almost always consisted in the notion that most private consumers require special legal protection because they are helplessly exposed to the schemes and machinations of 'dubious firms' [*bedenkliche Gewerbetreibende*].<sup>221</sup> This was an implicit blow to the previously standard conception, still heard today, that consumers largely dictate activity on the market through the sum of their individual purchase decisions. Here for the first time do we find the opposite view, according to which consumers are the 'officially' weaker and structurally inferior member in exchange relationships, because they are constantly in danger of being cheated through intentional disinformation and manipulative influence. The so-called 'Socialists of the Chair' [*Kathedersozialisten*], who as representatives of the historical school of economics were still influenced by Hegel's moral economism, maintained a particularly radical and forward-looking position on this issue. As can be seen in the writings of Gustav Schmoller, these theorists believed that the state must provide support for often uneducated consumers, who were intentionally kept uninformed, because private transactions would otherwise take place without any 'public' supervision.<sup>222</sup> Here consumer protection suddenly appears as a legal tool that could potentially be used to publicly monitor the 'justice' of market transactions; it would not have been absurd to build on this argument and see discursive mechanisms for examining shared interests as a suitable means for morally restricting the market; however, the influence that the small group formed around Gustav Schmoller exercised on the German Reichstag did not last long enough for such political consequences to have any chance.<sup>223</sup>

For the most part, at the threshold to the twentieth century, the idea that the interests of consumers needed to be strengthened vis-à-vis the market power of companies remained within a corset of



only moderately reformed commercial law. Putting aside national differences for a moment, we find measures to protect borrowers, obligations to adequately inform consumers about the price and quality of goods, as well as bans on unfair competitive methods such as false advertising. In principle, Hegel saw all these precautions already installed in the market, but without realizing the extent to which these devious business strategies would expand in the years to come. The lengths to which the consumer goods industry would go to promote the sale of their goods after the economic crisis would not become clear until after the end of the nineteenth century. It was no longer enough to raise awareness for one's products with amateurish newspaper advertisements and placards; nearly all large companies now began to add independent advertising departments that were to promote consumer interest with the use of various professional methods. In the first decade of the twentieth century, we see a revolution in advertisement; advertising art and advertising psychology represented two systematic disciplines whose emergence and logic are owed entirely to the aim of strategically influencing consumers. Even in countries such as Germany, where large companies have always lagged behind the general trend toward intensified advertising, a rapid transformation turned advertising departments and their employees into a normal part of the sphere of consumption.<sup>224</sup>

The fact that the population of Western countries had largely been relieved of concerns of survival thanks to the globalization of the market and the worldwide decline of prices for agricultural products at the same time made the members of the poorer classes susceptible to the promises made by advertisements for consumer goods – and only at this point do we see the arrival of mass consumption.<sup>225</sup> Companies' increased awareness of the need to promote consumption with the help of advertising corresponds to the gradual expansion of a consumer mentality among the population. Although there are national differences here as well, as the image of the 'consuming citizen' had already been established in the USA and in England by the beginning of the twentieth century, it had not yet gained a foothold on the continent. Even before World War I, members of both the 'blue-collar' and 'white collar' subsections of the working class, as well as civil servants, gradually began to regard themselves as active consumers.<sup>226</sup> However, this historically novel mentality, in which consumption is accorded almost the same ethical position as labour, remained tied to elementary conceptions of reciprocity, at least

when it came to the poorer sections of the proletariat and the rural population. A 'decent' diet, especially meat and vegetables, was regarded as a symbol of a decent existence, which demanded that consumers be treated 'fairly'.<sup>227</sup> Even during this time, therefore, the notion had not yet been extinguished that the market-mediated sphere of consumption represents an institution of social freedom in which various interests complement each other. It not only lived on in the widespread expectations that the market for consumer goods must be 'fair', but also in the collective consciousness of the many consumer cooperatives that made consumption a social activity. At the beginning of the twentieth century, therefore, it did not take long for political parties to address the interests of consumers; even representatives of the labour movement abandoned their inhibitions when it came to viewing their clientele not only as a collective of producers, but also as consumers whose desires and needs required protection in parliament.<sup>228</sup> The result of this general shift in mentality was an intensification of consumer-oriented policies in government, with expanded laws on food inspection as well as a certain measure of government influence on prices through the bureaucratic management of foreign trade.<sup>229</sup>

It would not be worth the effort to pursue these two lines of development within the sphere of market-mediated consumption up until the second half of the twentieth century. During this time, both the growing methods for influencing consumers through commercial advertising as well as experimentation with the 'socialization' of the market for consumer goods 'from below' and 'from above' were delayed or halted by both world wars due to the exigencies of wartime production and military operations.<sup>230</sup> In general, we could say that during the interwar period, not only did the industrial production of status-relevant consumer needs in the West grow to a previously unknown extent, so did desires and interests for goods that were totally alien in the nineteenth century.<sup>231</sup> During this interim period, a broad and widespread current of intellectual critique of consumerism arose; although it picked up on certain pre-war traditions, it was much more radical and polemic than ever before. For the first time, there was not only a criticism of individual items of luxury consumption or the culture industry, but of the entire consumer attitude toward the world, of its materialistic perspective and its inclination to short-term consumption, of the ease in seducing consumers through industrially produced incentives, and thus their growing 'ego weakness' [*Ich-Schwäche*].<sup>232</sup> Although such contemporary diagnoses in philosophy or sociology

did not have much influence on the labour movement during the Weimar Republic, we do find in these disciplines a growing resistance to the gradually autonomizing tendencies of consumerism. Brecht's dramas, the writings of Trotsky and the novels of Sinclair Lewis are what contributed most to practices of consumer abstinence and frugal living within proletarian milieus.<sup>233</sup> Finally, consumer cooperatives, which always represented an institutional avant-garde in the socialization of the market for consumer goods, grew more rapidly than at any other time in their short history. Shortly before the National Socialists came to power, they represented the only true mass organization in the labour movement.<sup>234</sup>

Before we proceed from this rough historical reconstruction to an assessment of the opportunities and limitations of social freedom in the contemporary, market-mediated sphere of consumption, it is probably wise to summarize what we have already discovered about the normativity of this sphere. In the tradition of moral economism, the market for consumer goods can be understood as an institutionalized relation of mutual recognition, provided that the relationship between sellers and consumers contributes to the complementary realization of each party's legitimate interests. Therefore, consumers can only realize their freedom to satisfy their individual interests by offering companies an opportunity for profit maximization through consumer demand on the market. Conversely, companies can only maximize profits by actually producing the goods that consumers demand. But none of these variables is determined by the market itself – neither the profit margin of companies, nor the kind of needs that can be satisfied on the market, nor the means for awakening needs, nor the manner in which consumption is realized. Instead, there are a number of alternatives between which we can only decide on the basis of normative considerations. In our brief reconstruction, the moral plasticity of the market for consumer goods becomes clear wherever collective actors conscious of the underlying principles of the legitimacy of the market push for changes to the dominant order. This includes social movements that demand 'fair' prices in the face of massive supply shortages, ethically motivated movements that demand restrictions on luxury consumption, political forces that call for government protection of consumers, and finally, numerous consumer cooperatives. None of these movements viewed their moral demands as being external to the market; rather, all were convinced that their demands were a part of the normative claims, and thus the conditions of justification, of the market economy itself. They did not think in terms

of the alternative between the market economy and the planned economy, but reflected on the moral foundations of the prevailing economic order itself.

If we recall the spectrum of possible interventions raised by the conflicts and movements described above, it is easier to see just how much the institution of the market-mediated sphere of consumption rests on antecedent normative decisions. To begin with the basics, it is not at all self-evident which objects or services should be permitted to be exchangeable commodities at all. In the nineteenth century, this question remained vague and only appeared in debates on the legitimacy of marketing female sexuality or alcohol; but over the course of the twentieth century, the normative urgency of this issue grew along with technological progress and an increased consciousness of individual perfectibility, which led to a rapid rise in the demand for goods that were previously unknown.<sup>235</sup> The 'bread riots' and boycotts of the nineteenth century illustrate that in the eyes of most participants on the market, the prices for certain elementary commodities should not merely be left up to the competition between supply and demand. Therefore, it would not be long before state organs responded to such moral reactions by either legally regulating or subsidizing housing and food. Here as well, therefore, the sphere of consumption rests on general political regulations that, upon closer inspection, express just how much the market economy must meet the normative demand that elementary consumer interests be satisfied. A third category addresses how extensive, luxurious or private the needs satisfied on the general market for goods should be. In the nineteenth century, we find many ethical and religious reservations based on the notion that any transgression of natural or 'God given' needs is sacrilegious. Later, with the social explosion of luxury consumption, socialist and ecological ideals would come to dominate, making the pursuit of individualizing, status-relevant needs appear irreconcilable with the demands of equality and the imperatives of survival.<sup>236</sup> Fourth, the rapid spread of consumer cooperatives starting in the mid-nineteenth century illustrates that we cannot take for granted how goods are bought and sold on the market; the cooperative acquisition and subsequent distribution of goods according to principles of fairness offers an alternative, non-privatistic form of consumption. Unlike what the theoretical forefathers of the market economy seemed to suggest, the market for consumer goods is not exclusively tailored to transactions between companies and individual consumers; there is also room

for collective actors on these markets, guided by moral motives and the desire to realize the underlying principle of the general satisfaction of needs.

These four classes of normative criteria, which play a key role in the institutional shape of the sphere of consumption, have all been reconstructed from generalizations about the demands and objections that had already been made in the nineteenth century. Although the moral claims on the consumer market became more intense in the first half of the twentieth century due to the increasing cultural and political power of the labour movement, the spectrum of alternatives has mostly remained the same – leaving aside the alternative of a planned economy. With this last alternative, which was of course proposed by a great number of organized workers at the time, we are obviously not dealing with the principle of the reformability of market-mediated consumption, but with an entirely different model of centralized (equal) distribution of goods produced under government control. But if we restrict our reconstruction to the social movements and currents that pushed for internal corrections to the market for consumer goods, then they share the aim of socially modifying market conditions so that they at least approximate the requirements of social freedom. Therefore, ensuring that the market can be viewed by all participants as an institutionalized medium of exchange by which both sides, consumers and producers, can help each other realize their respective interests requires coordinating the needs of consumers, constraining the profits of companies, and ensuring that goods offered for sale are in fact ethically acceptable. Of course, even during the hundred-and-fifty year period we have roughly sketched here, the market power of companies grew so rapidly through processes of concentration, sophisticated marketing strategies and the internationalization of trade that these reform efforts often ran the risk of being turned into mere shallow, capitalism-friendly ideologies. This was all still a far cry from a truly effective reform of the consumer goods industry, despite the welfare state that had become partially institutionalized within Western Europe. The legal protection of consumers remained tightly constrained, the industrial awakening of ever new, usually status-relevant consumer needs took on entirely new forms in the 1920s, and only the expanding consumer cooperatives were able to function effectively as a discursive, cooperative counterweight.<sup>237</sup>

Nevertheless, the various, mostly uncoordinated movements of anti-consumerism, consumer protection, social welfare and

consumer cooperatives combined to place some constraints on the progressive privatization of market-mediated consumption. The increasingly individualistic, even negative understanding of freedom on the market for consumer goods was thus faced with fragile and mostly powerless demands that the sphere of consumption not merely serve the 'individual' but – to quote Hegel – the 'general good'. Up until the end of the Weimar Republic, there was a practical consciousness, anchored in social movements, that market-mediated consumption, according to its own claims, must represent a system of social freedom.

The first signs that the prospects for this 'general good' had dimmed after the end of World War II can be seen in the decline of the consumer cooperative movement. While such organizations once viewed themselves as a 'market-socialist' alternative to private trade and consumption, after the devastating experiences of war and mass extermination such aims found hardly any interest among the population. The majority of consumers in Western Europe, sceptical about political 'ideologies' of any kind, which they often regarded as the reason for the catastrophes they had just overcome, primarily sought to regain access to all the goods that could guarantee a satisfying life. Due to this de-politicization in the post-war era, the consumer cooperative movement had no other choice but to advertise itself as a method of 'rational budgeting [*haushälterische Vernunft*].<sup>238</sup> For the most part, these cooperatives quickly abandoned the normative aims of the past, instead promising inexpensive wholesale shopping, hoping to thereby attract enough members to be able to compete with the model of purely private consumption. This strategy was in fact successful during the 1950s and membership increased significantly during the post-war economic boom, but the old market-socialist claims were of course abandoned.<sup>239</sup> Even today, consumer cooperatives have not found their way back to the moral self-understanding that once made them an avant-garde in the fight for the socialization of the consumer goods market – not even in Switzerland, where they continue to play an economically significant role.

After World War II, things did not look any better for the anti-consumerist critique that had established itself in workers' parties and bourgeois reform movements during the Weimar Republic. Although the traditional Marxist critique of commodity fetishism and the culture-critical diagnosis of consumerism – e.g. *Dialectic of Enlightenment* by Horkheimer and Adorno, or *The Human Condition* by Hannah Arendt<sup>240</sup> – would quickly regain their intellectual

significance, these philosophically motivated reservations would find no echo among the broader population. If there was a time in which privatistic attitudes towards consumerism could spread almost entirely unhindered by any forms of social resistance, it was during the economic boom of the 1950s and 1960s. As a result of the gradual rise in the standard of living and the expansion of the welfare state, the cultural significance of class membership began to fade,<sup>241</sup> making specifically 'proletarian' forms of resistance hard to find. The bourgeois classes were far too busy with regaining their past living standards and conveniences to provide an intellectual impulse for restricting private consumption. By producing one new kind of luxury good after another, the consumer goods industry in the West knew how to take advantage of the widespread willingness to compensate for the bitter years of wartime sacrifice through the rapid acquisition of as many consumer goods as possible.<sup>242</sup> This began with the mass production and marketing of televisions, continued with the stimulation of automobile sales, and finally led to the explosion of the tourism industry. Only now did a 'capitalist culture' establish itself in the sphere of consumption, as individuals developed the motivational disposition to appropriate the symbolic value of commodities and base the interpretation of their own personal identity on them. Consumer interest was no longer focused on the useful character of the goods on offer, but on the promise of happiness and personal development professionally built into these products.<sup>243</sup> Of course, such motives did not remain entirely unrestricted and without protest; and they were probably even constrained by other kinds of ethical beliefs; but there was no discursive mechanism and no sign of an intersubjective will-formation that would have allowed individuals to express any reservations.

As a consequence of this increasing atomization of the consumer, the structural imbalance that had always existed between companies and consumers grew even stronger. Capitalist suppliers, whose economic power continued to grow in spite of the war due to processes of concentration, were totally free to determine prices and control the development of needs through various marketing techniques. This exposed the ideology of 'consumer sovereignty' once and for all, which has always been the legitimizing principle of a liberal, not social, conception of the market. After all, there can be no talk of the power of consumers to decide what gets produced, and how it gets produced, through the aggregation of their individual demand if companies are able to strategically influence their needs and arbitrarily determine prices through cartel arrange-



ments.<sup>244</sup> Of course, the welfare state, which would quickly become a fundamental part of almost all Western democracies after World War II, can always undertake market-constraining interventions in the sphere of consumption when it comes to ensuring the widespread supply of elementary goods; economic subsidies of the agricultural sector in order to secure the food supply and government restrictions on house prices in order to ensure housing for all would soon become the rule. However, these measures remained a far cry from the kind of active consumer protection demanded by the idea of social freedom in the sphere of consumption.

This sobering situation – which almost forces us to capitulate in our attempt at a normative reconstruction of market-mediated forms of social freedom – would begin to change again over the course of the 1960s. Both from ‘above’ and from ‘below’, both in government and in cultural movements, we see renewed efforts to influence the consumer goods market in order to redeem the promise, at least rudimentarily, of the mutual satisfaction of needs. The effect of John F. Kennedy’s legendary special message to Congress on protecting consumer interests in 1962 went far beyond the borders of the USA;<sup>245</sup> the basic rights it accorded to consumers in order to ensure their freedom to decide against the increasing threat of fraud and individual harm would soon be implemented in nearly all European countries.<sup>246</sup> Although these protections are often vague and lack any economic conceptualization, they do manage to fulfil the purpose set by the institution of legal freedom: If we summarize the various laws in this sphere, we could say that they ensure the private autonomy of individual consumers by protecting their right to health, security and their economic interests, to compensation in the case of obvious injustice and to product information.<sup>247</sup> Of course, none of this suffices to create the discursive mechanisms needed within the market-mediated sphere of consumption to influence the interests of companies. After all, there is no talk of the right of consumers to co-determination, and there is no hint of the possibility of collective representation of their interests. Instead, these laws refer exclusively to individual consumers, as if they did not share any common interests with other actors. If there had been no additional changes to consumer rights since the 1960s, we would have to say that these laws are essentially tailored to a merely liberal understanding of the market; the latter would continue to operate on the assumption of private autonomy for both suppliers and consumers, though it was obvious even at the time that consumers lack equal market power. However, the



outlines of a new, practiced critique of consumerism would soon emerge, even during the era of John F. Kennedy. This critique was to have longer-term effects on state consumer policy, for even if the international student movement of the late 1960s on the surface aimed to abolish capitalist relations of production, its primary long-term contribution consists in having morally questioned privatistic consumer habits.<sup>248</sup>

That the student movement managed to subject the expanding consumerism of the post-war era to public moral pressure, and thus to open the entire sphere of consumption to discourse, can already be seen in the significant restriction of luxury consumption over the course of the 1960s. Not only in the centres of student protest, i.e. France, Italy and Germany, but also on the periphery, there was growing criticism of consumer needs in the face of continuing worldwide poverty and misery. This change of attitude becomes most explicit if we look at the gradual and subtle reversal of the burden of proof: No longer were those who rejected consumerism forced to publicly justify their actions, but those who happily indulged in it. As a consequence, not only were everyday expenditures for individual consumption subjected to stricter standards of austerity, their reconcilability with the needs of society as a whole came in for much closer inspection. Once again, this cultural transition was captured best by contemporary films and novels,<sup>249</sup> and it would soon be reflected in ever stronger tendencies to criticize advertising and marketing techniques. What was taken for granted in the first two decades following the end of World War II, viz. the development of ever more sophisticated methods of influencing needs, would now be increasingly scandalized in order to draw attention to the economic and moral costs associated with the industrial encouragement of private consumption.<sup>250</sup> Even if this was not the central aim of the student movement, the latter did address the problems of dominant forms of market-mediated consumption, and the effects changed both the existing interpretation of needs as well as the way in which companies sought to influence them. After a long period in which private, conspicuous consumption could expand without any hindrances, this movement reconnected to earlier movements which insisted that there is a need for an antecedent generalization of interests and intentions even within this sphere of the capitalist market.

Of course, this phase of consumer critique would have remained but a brief episode had it not been for the longer-term political movements and government activities that institutionalized this

critique. Everything we now describe as a 'moralization of the market'<sup>251</sup> probably has its roots in the development of moral sensibilities to which student protest and unrest once contributed. The various civil rights movements and parties that would emerge from the rubble of the student movement, which failed to achieve its own revolutionary aims, soon began to reformulate the norms and values articulated by their predecessors, turning them into practicable standards for judging political and economic activities. Through this 'long march through the institutions', more and more voices in the public and in parliament demanded greater attention to normative criteria when it came to the production of consumer goods. Motivated by alarming reports on the limits of industrial growth, ecological considerations began to occupy a more central place in various restrictions on producers. In addition to fair prices, a well-balanced supply and the protection of workers' interests, environmental protection now began to play an ever more important role. Along with the attempt to increase consumer awareness of the consequences of their purchases, companies finally demonstrated environmental awareness as well, their interest in capital accumulation long having caused them to ignore the social and environmental consequences of their actions.

Depending on the negotiating power of the corporations and companies involved, the reform efforts instigated by these initiatives were quite successful in many parts of Western Europe. In any case, both national parliaments and the emerging European parliament managed to introduce laws that obligated industry to respect standards of social and ecological sustainability in their factories. A significant role in achieving this relative success was also played by the fact that the law refocused on the protection of consumer interests. While up until the end of the 1960s we only find legal measures that can at best be described as 'conforming with the market',<sup>252</sup> opposition movements inside and outside of parliament soon brought about a significant change of attitude. More and more legal experts began to examine the neglected material with the much more radical intention of expanding consumer rights by giving them more direct authority over prices and product development.<sup>253</sup> The spectrum of alternatives now ran the gamut from finding ways for consumers to negotiate with suppliers to the notion of strengthening the power of consumers through union-like organizations or by directly strengthening labour unions.<sup>254</sup> Even though these plans based on the recognition of companies' dominance over the market have not yet been realized, their mere

mention in the political public sphere has significantly contributed to improving the possibilities for interventions in favour of consumers. In any case, the juridical discourse in most European countries and in the USA has significantly strengthened the authority of governmental authorities that monitor cartels and monopolies, making the monitoring of the price policies, product development strategies and advertising techniques of large corporations possible – at least in principle.<sup>255</sup> Such reforms were a source of support for opposition parties and civil rights movements in the 1970s and 1980s, which sought in various ways to establish normative constraints on the production of goods. This reciprocal strengthening of advocacy and government initiatives can thus be viewed as a certain advance in terms of strengthening the interests of consumers vis-à-vis the interests of business. Despite all the negative consequences for the organization of labour, which we will deal with later, this even included the privatization – instigated by the European parliament – of government-owned companies, e.g. in telecommunication, which has significantly lowered prices for consumers.

One outcome of this transformation that is often emphasized has been the so-called ‘moralization’ or ‘ethicization’ of consumer behaviour. More than ever, citizens are said to follow ecological, social and moral considerations when they make their purchases.<sup>256</sup> When it comes to choosing which kinds of food, household appliances, holiday trips or energy to buy, at least in more educated circles, environmental and social concerns undoubtedly play a greater role. In these so-called ‘post-material’ circles, purchase decisions usually depend on whether the products themselves or the way they are produced meet moral standards, such as protecting natural resources and preserving social cohesion.<sup>257</sup> And it cannot be denied that this change of attitude in one part of the population has moved many firms and corporations to show greater respect for these values in their production processes, and to emphasize these norms of quality in their advertising.<sup>258</sup> Here we could say that companies, in their own business interest, have followed the moral signals sent by certain groups of consumers by changing their buying habits and have increasingly fulfilled their task of serving the satisfaction of consumer needs. Therefore, we might be inclined to view these tendencies of a ‘moralization’ of the market for consumer goods as a movement that offers prospects for more reciprocity between consumers and companies. Along with growing opportunities for intervening politically in the latter’s decision-

making processes, this would mean that the altered buying habits of one part of the population has led to the real possibility of realizing social freedom in the sphere of consumption.<sup>259</sup>

But this image could also lead us to ignore a number of serious and opposing tendencies, beginning with the fact that the number of consumers who actually apply moral criteria has been largely exaggerated. According to the empirical data presented by Lucia Reisch and Gerhard Scherhorn, only twenty percent of the German population belongs to the 'post-material' milieu that makes its purchase decisions on the basis of moral criteria, while half the population should still be considered either 'pro-material', i.e. classically consumerist, or as displaying signs of disorientation.<sup>260</sup> If we also take into account the fact that Germans' environmental consciousness is comparatively high,<sup>261</sup> then it can be assumed that the percentages are at best the same in other Western European countries. The widespread understanding of the importance of moral criteria in consumer decisions does not necessarily get put into practice, since material need, feelings of powerlessness or basic egocentrism represent serious obstacles. For this reason, little has changed and privatistic buying behaviour continues to prevail, because there is no institutional motivation to exchange knowledge with others and thus increase pressure on one's own behaviour. The fact that there is still a lack of public forums for commonly examining consumer needs, despite the apparent reorientation of a segment of the population, also plays a significant role; there are no institutionalized functional equivalents for consumer cooperatives, and existing consumer organizations are often far too large and bureaucratic to represent vital forums for calling specific consumer interests into question. The only alternatives for such discussion forums can be found on the internet, which we will discuss in connection with current developments in the democratic public sphere. On the whole, however, there is a lack of discursive mechanisms, places of negotiation and spaces for discussion that can encourage consumers to adopt a different perspective, either among themselves or between consumers and companies. Only citizens' initiatives and certain NGOs, both of which, however, focus merely on individual issues, represent occasional arenas or tools for opening consumer interests to public discussion [*Verflüssigung*].

This lack of discursive mechanisms, a clear indicator that the supposed 'moralization' of the market has not been all too successful, is repeatedly expressed by the revival of conspicuous and purely status-related consumption. While the student movement

of the 1960s once placed a general taboo on such spending behaviour, over the last twenty years 'pro-material' consumers in the wealthier classes have let go of any such inhibitions. Where there is enough wealth, we find no efforts to ethically restrict consumption, consumers show obvious pride in investing in as many luxury goods as possible that have no other function but to demonstrate the gap between themselves and the poorer classes. This return to conspicuous consumption helps us explain why major sections of the consumer goods industry have recently succeeded, through the skilful use of advertising strategies, in massively reviving demand for luxury goods once considered superfluous or harmful. For example, whereas in the late 1970s it was widely assumed that the car of the future would be entirely functional and have very low emissions, Europe's major cities have now been flooded with SUVs, whose technical performance and energy consumption are all out of proportion with the way they are used in daily life.<sup>262</sup> The same is true in other branches of the consumer industry, such as gastronomy or tourism, where not too long ago luxury goods were viewed as problematic, while today, they are once again met with enormous demand.

What makes this development so astounding is that there is no mention or explanation of its relation to the moralization of consumption in other strata of the population. The market-mediated satisfaction of needs does not so much represent a 'proliferation of arbitrariness', as Hegel put it two hundred years ago, but rather a sharp opposition between two very different groups of buyers, between which there seems to be no exchange of interests and preferences. Alongside the social milieus whose members struggle to acquire the bare necessities, there are two further large groups of consumers, the first of which is guided strongly by ethical motives, while the second indulges in the purchase of luxury goods with regained innocence. Due to the lack of media of communication, the conflict between the ways different classes make use of consumer goods remains entirely unexplained. Whoever uses a high-performance SUV to take care of daily tasks not only contributes to the destruction of the environment, but also threatens the constantly growing group of ethically motivated bike-riders, just as the ecologically minded consumer who will do everything to subject food to strict environmental regulations can cause the prices of these goods to become unaffordable for the growing ranks of the poor. At the moment, there is almost no discursive coordination of consumer behaviour, the very precondition of social freedom

in this sphere. There does not even seem to be an implicit agreement among consumers that could unify demand and exercise pressure on prices and product development. Consumer protection organizations are relatively powerless in the face of such misdevelopments, because their purely negative, monitoring function and their detachment from their clientele deprive them of almost any chance of influencing consumer opinion. Unlike the consumer cooperatives of old, they do not have the socializing power to communicate other, more cooperative forms of utilizing the market to their members.

Clearly, the companies and corporations active on the market for consumer goods are profiting from this situation. Due to the clear segmentation of consumer interests, they are capable of serving all three consumer groups at the same time, or of dividing them up amongst themselves. The best example of the first alternative is the German automobile industry, which, despite the financial and economic crisis, has managed to drastically increase sales over the last few years by diversifying its product range and opening up foreign markets. Whereas thirty years ago high-performance, high-emission automobiles were said to be on the way out, sales now flourish because of their high symbolic value. An example of the second alternative, the more or less coordinated division of the market, can be found in the food industry, where producers and traders have often concentrated on a single segment of the market. Here we might think of the exclusive luxury franchise *Rungis*, whose significance for the consumer habits of the conspicuously consuming European rich has become so great as to spark the revolutionary fantasy of leftist resistance groups.<sup>263</sup> It would probably be wrong to put this down to the increased market power of companies over consumers. Not only do they almost completely dominate the communication system, which allows them a much greater amount of influence over consumer needs and preferences, thanks to their ubiquitous media presence their controlling power has also transcended the borders of their own economic territory and penetrated into the smallest pores of everyday life. The alarming extent to which teenagers, and even children, are obsessed with brands,<sup>264</sup> as well as the astounding speed with which widespread advertising campaigns manage to penetrate people's imagination and govern their self-image and identity,<sup>265</sup> are both clear signs of the social reversal that has turned consumers into characters that can be influenced beyond their shopping habits. Successful companies in the consumer goods industry, originally and institutionally

intended to be market participants that serve consumers and react sensitively to their changing needs, have thus accumulated a power to control that even the most bitter realists of the nineteenth century could not have predicted.<sup>266</sup>

Hence, as much as it would accommodate the intention of a normative reconstruction, we cannot speak of a 'moralization of the markets' from below. It is true that we can find isolated tendencies of ethical self-control in consumer behaviour; that the European Union has imposed principles of sustainability on companies; that the legal power of cartel authorities has grown in many countries; and that in several countries the introduction of class-action lawsuits on the American model for consumer protection organizations are being considered, in the last few decades the power of companies to control the market for consumer goods has grown rather than shrunk. The extreme imbalance on these markets, in contradiction to their inherent norms and regulative ideas, can only be explained by an 'elective affinity' between economic transformations and cultural shifts. In the same period in which the power of companies began to grow as a result of the internationalization of production and trade, the disappearance of discursive counterweights has also allowed consumers to become increasingly privatistic, making them increasingly defenceless.

So it seems we must acknowledge the sober reality that the market-mediated sphere of consumption has not become an element of democratic ethical life over the last several decades. Even though it could have normative potential with the aid of discursive mechanisms and corresponding regulations, today it neither trains us to adopt the perspectives of others, nor does it teach us how to constrain our needs. On the contrary, despite the much vaunted moralization of consumer behaviour, a mentality of private consumerism and purely individual accumulation of short lived pleasures dominates<sup>267</sup> – an attitude that opens up an enormous amount of freedom for companies to realize their own, largely autonomously defined aims. At the moment, these misdevelopments are all the more severe, because consumers need intersubjective coordination and agreement more than ever; after all, not only does the coming climate catastrophe demand that we reduce our high levels of consumption in Western countries, but ever more goods are being introduced on the market whose suitability for exchange is extremely questionable from an ethical perspective. With regard to environmental challenges, especially in the areas of energy, food and transportation, financial incentives could conceivably bring



about a reduction of consumption, but merely monetary strategies such as consumption taxes levied on non-necessary goods, which thus spare some hardship on lower-income individuals, are flawed in that they promote opportunistic attitudes and thus strategies of avoidance. Over the long term, only public discourse can ensure the effective reduction of consumption already normatively required by the regulative principles governing consumption. The more consumers relate to each other through discursive organs and forums, and the more they can exercise long-term influence on each other's needs, the more they will be capable of willingly, and thus reflexively, dialling back their consumption.<sup>268</sup>

Without question, the same goes for the second current threat to the sphere of consumption, because the latter is hopelessly divided between privatistic consumers and companies that are solely interested in their own economic advantage. Over the last twenty to thirty years, medical advances have rapidly increased the need for goods that are intrinsically tied to the functions of the human body. This primarily includes certain human organs whose transplantation can allow patient survival, but also surrogate motherhood, which usually allows childless couples the opportunity to become parents of children whom they can biologically regard as their own.<sup>269</sup> While in the first case it is morally forbidden to discredit the motives involved, in the second case there are certainly ethical doubts about whether the underlying interest can always be regarded as legitimate. But despite their differences, both cases raise a question that can only be answered publically: the degree to which such goods should be made available for sale. As we saw above, this is not the first time that such questions have been raised in the history of the consumer goods industry. The expansion of this market has always been accompanied by more or less agonistic discussions about whether certain goods should be removed from the market due to their addictive qualities or their degrading consequences. However, it seems that never before have consumers, i.e. the large group of all directly or indirectly affected subjects, been so little involved in the relevant decision-making processes. The shortage of intermediary groups in this sphere, the lack of space for discussion and thus of mechanisms for generalizing interests, prevents the formation of generalized opinions or even an atmospheric mood that would need to be publicly recognizable. Therefore, although various political groups have made repeated efforts to draw attention to interest groups, decisions on market regulation are still made within a narrow circle of government organs and



expert committees in which consumers do not participate at all. Again, we will come back to the shifting power of internet forums to intervene in such processes.

According to the criteria we have uncovered with the aid of moral economism, the market-mediated sphere of consumption lacks all of the institutional prerequisites that could make it an institution of social freedom. There can be no real talk of institutionalized reciprocity in the satisfaction of interests or needs, for consumers possess hardly any discursive tools for generalizing their many diverse preferences in a way that would allow them to obligate companies to respect these preferences if they want to stay in business. To the extent that a mentality of privatistic consumption has taken hold, further accelerated by the decline of consumer cooperatives, the always present and always problematic power gap on the markets for consumer goods has become so large that the suppliers can easily influence consumer needs to their own advantage. Having been split up into various subgroups between which there seem to be no communication, rather only anonymous procedures of habitus formation, consumers can no longer develop an awareness of cooperatively realizing an element of their individual freedom together with producers.

The greatest obstacle to strengthening the power of consumers through communicative uniformity and corresponding legal norms has proven to be the growing differences between social life-situations and income levels. Even the law can only make a minimal contribution to increasing the leverage of consumers by expanding the authority of consumer organizations, which is due to a lack of the social prerequisites for consumers to view each other, prior to all purchase decisions, as equal members of society. Discursive spaces for the reciprocal correction of consumer needs have only emerged where social life-situations have not grown so far apart as to prevent consumers from putting themselves in each other's position. All efforts to realize social freedom at least rudimentarily within the sphere of consumption must fail as long as the socio-economic gaps between social strata are so large as to produce entirely different future prospects and consumer opportunities. In order to examine the social developments that have caused such social differences to emerge, we must now shift our normative reconstruction from the sphere of market-mediated consumption to the market-mediated division of labour. After all, the position that individual members of society occupy in the social structure is obviously not decided by their role in the process of economic

circulation, but, to put it in Marxist terms, by their position in the system of capitalist production.<sup>270</sup>

### 6.2.3 The Labour Market

Although Hegel begins his analysis of the new, capitalist economic order as a sphere of social freedom with the market for consumer goods, he is aware that the actual heart of the economy lies in the market-mediated sphere of social labour. Much stronger than the act of consumption, which even if appropriately organized contributes little to individual self-esteem, the objectifying activity of labour relies on mutual recognition in an overall social framework, because this is what the entire 'honour' and freedom of modern humans, or more precisely, modern men, depends upon.<sup>271</sup> However, Hegel realizes from the start that the labour market, though it is supposed to provide this recognition and thus realize social freedom, is in constant danger of failing to fulfil this task. The author of the *Philosophy of Right* is convinced that in the absence of government intervention, the labour market will bring forth a constantly growing mass of impoverished and undernourished people, the 'rabble'.<sup>272</sup> At the same time, under the pressure to increase productivity, work will become ever more 'mechanical', thus eventually making all productive activity unworthy of recognition.<sup>273</sup> Both structural problems would lead to social deformations going far beyond what Hegel could have ever imagined; and we would not be wrong to regard the first of these two misdevelopments as the central challenge of the nineteenth century, and the second misdevelopment as the central challenge of the twentieth century. In its initial state, the history of the capitalist organization of labour was accompanied by long waves of physical impoverishment forcing large segments of the underclasses to struggle to merely survive. And once their social situation improved after the gradual establishment of the welfare state, the technologically driven dequalification and hollowing-out of work struck with similar impact, thus confronting the same segment of the population with an entirely different problem: the gradual emptiness of their occupations.

While Hegel was busy with the new science of economics at the beginning of the nineteenth century, the social organizational form of labour was in radical upheaval. In the previous centuries, labour was performed under largely patrimonial circumstances,

in which the poor classes were obligated to work for the feudal lord or the political authorities in exchange for personal remuneration. Marginal exceptions could be found only in small economic niches, in which guilds determined labour conditions, initial forms of contractually regulated wage labour were performed or even, on the periphery of Western Europe, the trade and employment of slaves was permitted.<sup>274</sup> With the start of the industrial revolution in England, this relatively stable organization of labour gradually began to change. Enterprises with 'capitalist spirit' increasingly began to make use of technological advances in order to finance the construction of factories in which workers from the countryside were paid next to nothing and worked under almost entirely unregulated conditions, all in order to produce surplus value. These forms of wage labour, which Marx describes as 'primitive accumulation', remained embedded in a whole series of other, 'proto-industrial' forms of employment, such as the so-called 'putting out system' run by wealthy merchants, peasant labour and craft guilds with their traditional systems of protection.<sup>275</sup> Hence before the free labour market could be fully established, these intermediate forms of labour organization had to disappear. With the freedom offered to us by a normative reconstruction, we could say that the process of purifying labour relationships of all traditional elements of compulsory labour had reached a climax around 1800. In the run-up to the French Revolution, and under the leadership of Turgot, patriarchically organized guilds were abolished along with the so-called 'beggar depots',<sup>276</sup> in England, the conflict between feudal lords and the liberal bourgeoisie came to a head over the future of the still patrimonially organized poor laws;<sup>277</sup> in Germany, finally, which displayed a far lesser degree of industrialization, the authoritarian government began to regulate trade and dismantle the privileges of land owners, thus allowing the poorer classes to 'freely' enter the emerging labour market.<sup>278</sup> Although many of the previous forms of labour continued to survive until the end of the nineteenth century, these conflicts and reforms pointed the way for the further development of the capitalist labour market.

The gradual removal of all institutional barriers stemming from former systems of employment and social security gave rise to a situation that Robert Castel has cleverly termed the 'ground zero of the condition of wage labour'.<sup>279</sup> The workers who for the most part had been driven from the land, robbed of their traditional safety nets, but were now legally free, were thus compelled to sell their labour power, through formal contracts, under conditions

determined entirely by the demand of employers for their skills. Certainly, proto-industrial forms of labour continued to exist in the countryside or in smaller towns, but these were gradually driven out by the pull of the large industrial labour markets.<sup>280</sup> In this initial phase, described in precise detail by the Realist novels of the time,<sup>281</sup> workers had no social or economic safety net in cases of unemployment, illness, physical degradation and old age. Labour laws as we know them today obviously did not yet exist, and companies were not obligated to provide any compensation in cases of illness or injury. If workers lost their wages, they immediately fell into the most bitter poverty, and there was no traditional safety net to catch them. Under such conditions, it is not easy to imagine which of the normative promises of this new system of the market economy wage labourers could possibly accept. The previous processes of moral and religious indoctrination helped to ensure discipline and a willingness to work,<sup>282</sup> while the market's promise of freedom most likely motivated workers to accept the conditions imposed upon them. But on the whole, it is probably the sheer necessity of survival which ensured that workers would accept the harsh conditions of employment governed by the laws of supply and demand. In any case, it would be somewhat foolish to believe that these first generations of 'pure' wage labourers already possessed the work ethic that would allow them to put up with their miserable conditions merely because they had committed to provide a service. What is certain is that the centuries-long revaluation of labour also had an effect on the social underclasses, who like the bourgeoisie ethically condemned any wealth not derived from labour. But unlike the bourgeois interpretation, this consciousness largely remained within the bounds of the traditional conception according to which moral decency dictates correcting the laws of the market in favour of those who are needy and without any means.<sup>283</sup> In the first half of the nineteenth century, such ideas often influenced the many self-help organizations that formed, especially in England and France, to provide protection against the adversities of the entirely unregulated and unprotected life of wage labourers, thus carrying on similar practices from pre-industrial times. Similar to the practices of 'solidarity' that Hegel expected professionally organized 'corporations' to perform,<sup>284</sup> English friendly societies and their French partner organizations, the 'mutuelles', ensured that labourers and their families could count on financial and sometimes even charitable support in the case of illness, unemployment, old age and death.<sup>285</sup>

So while the underclasses in the industrial centres of Western Europe reacted to the rapid waves of physical impoverishment with a mixture of fatalism, collectively organized self-help and traditional sentiments of injustice, the intellectual wings of the rising bourgeoisie were faced with the task of finding a theoretical explanation and normative legitimation for these new phenomena of crisis. After all, the catastrophic conditions in many countries directly contradicted the narratives of justification often provided, in line with an optimistic market liberalism, for the expansion of the unregulated labour market. The word that came to be used not only to describe the extent of poverty that had taken hold, but also to explain it somehow, was 'pauperism'. This term denoted an especially extreme form of impoverishment, whose particularity consisted in the fact that those affected had also lost any remains of civil decency and manners.<sup>286</sup> The kind of social conditions described by Victor Hugo in his novel *Les Misérables*<sup>287</sup> probably only existed in regions where major industrial production had already taken hold, while in the countryside and in smaller towns where peasant labour and craft guilds still defined the organization of labour, traditional safety-nets were still in place, making the fall into physical and psychological misery somewhat softer. But the situation in the major industrial centres was enough to move the intellectual advocates of the wealthy bourgeoisie to invoke the image of the 'dangerous' classes. With a mixture of fear and disgust, which would become part and parcel of 'class racism' (Robert Castel), the new de-socializing forms of poverty were traced back to tendencies of social neglect that nature had bestowed on the members of the underclasses.<sup>288</sup> Even today, such a naturalistic conception, according to which unemployed and underemployed segments of the population are inclined to primitive behaviour and a 'decline of morals', thus making them potentially dangerous, periodically shows its ugly face as soon as the failure of the capitalist labour market requires a narrative that justifies the kind of misery it has produced.

Only a few authors at the time – such as Hegel and, somewhat later, the Utopian socialists – distanced themselves from such reactions and sought the true, socioeconomic causes of social conditions of neglect. With a sober eye for changing conditions, these authors recognized that as long as there was a free labour market, major industrial enterprises would always bring forth a massive army of entirely exposed unemployed, because they would be forced to lay off large numbers of workers as soon as their sales numbers appeared to drop. Along the intellectual paths that work their way

hesitantly through such attempts at explanation, the phenomenon described by the term 'pauperism' would soon enter the shadow of the much greater problem that would come to be termed the 'social problem'. For the first time, the representatives of the newly emerging market economy would realize that the precarious situation of the working classes was not their own fault, but connected to the removal of all social restraints on the capitalist labour market.<sup>289</sup>

The fact that the poorer classes began to practice stronger, morally articulated forms of resistance made a significant contribution to politicizing the analysis of the social consequences of the new organization of labour. After the initial state of shock, which perhaps resulted from the fact that the confrontation with the lifeworld consequences of an unregulated labour market often took place within just a few generations, the reaction to these catastrophic conditions employed the vocabulary and protective mechanisms of the traditional moral economy: Factory owners and political authorities were accused of permitting working conditions that were irreconcilable with the dignity and honour of the 'common man'; self-help associations were founded that served to fend off the worst excesses.<sup>290</sup> But over the course of the conflicts that were occasionally fought out with the vocabulary of class struggle, wage labourers gradually adopted the normative ideas that the proponents of the new system themselves used to justify this new organization of labour. Instead of resorting to traditional principles of moral decency, they increasingly invoked principles that referred to the implicit foundations of the legitimacy of the capitalist economic order. This subtle transformation is made most clear by the fact that the vocabulary of resistance suddenly employed legal categories that seemed to take the normative promises of the market seriously. There were calls for a 'right to work' – a term that from then on would become a permanent fixture of labour protests; there were also demands for worker safety and basic protections in the case of illness; and of course, the accusation of 'exploitation' would soon show up.<sup>291</sup> It is not difficult to see that all these demands and accusations only make sense if the whole idea of a 'free' labour contract has been normatively accepted or at least tolerated. If workers call for a 'right' to work, then it must be the case that people are no longer compelled to work; if worker safety and sick pay are demanded, then workers must be convinced that the labour contract obligates employers to provide a series of protective measures; and, finally, if 'exploitation' becomes a common accusation, then workers must implicitly be legally entitled to the product of their labour. Within the space of a

few decades, and as the result of a rapid learning process, the forms of resistance on the part of those industrial workers affected by the waves of impoverishment changed in such a way that the point of reference was no longer to be found in the traditional rules of moral decency, but in the normative demands of the new organization of labour itself. Even before the actual development of an organized labour movement, workers had turned into parties engaged in a bitter interpretive conflict that from then on would revolve around the moral implications of the institution of a 'free' labour market.

Once the different wings of an organized labour movement had formed throughout nineteenth century Europe, there was a confrontation between two sides over the 'social question', each of which can be understood within our normative reconstruction as a representative of one of two opposing interpretations of the promise of freedom underlying the labour market. Simplifying perhaps a bit too much, we could say that the one side, the private capitalist actors, stood for a purely individualistic understanding of the freedom of contract, according to which it is entirely up to the owners of the means of production to decide upon the conditions under which they employ labour; the other side, the industrial workforce, believed that the system of contractual freedom normatively implied social conditions under which this freedom could in fact be realized. Certainly, such gross simplifications run the risk of overly abstracting from the internal dynamics and the particular course of class struggles in various countries of Western Europe at the time, thus doing violence to the historical reality. In England, France and Germany, to name only three countries, the social struggle over the capitalist organization of labour took on a different shape in each country, not only because the degree of industrialization and the composition of the socioeconomic classes varied, and not only because of the unequal political clout of these classes, but also and especially because the intermediary role of the state in each of these countries differed depending on their respective political and legal traditions.<sup>292</sup> But this abstraction from individual, and often profound differences seems to me to be justified, as my analysis is only concerned with the profound moral grammar of these debates over the 'social question'. And if we also abstract from the very different constellations of the class struggle in the middle of the nineteenth century, we could say that the various wings of the labour movement, apart from those that were strictly Marxist, fought for a radical socialization of the freedom of contract presupposed by the capitalist labour market by defining income,



social protections and an adequate recognition of their labour skills as core elements of this freedom.

The gradual development of the welfare state, which began to emerge throughout the liberal countries of Western Europe near the end of the nineteenth century, is usually explained by pointing to the massive pressure exercised by a strongly organized labour movement on public opinion and parliamentary committees. Because private charity, state measures and numerous self-help organizations were not enough to fight off the repeated waves of pauperization, and due to the challenges presented by the militant labour struggles, governments in England, France, Sweden, Austria and Germany saw themselves compelled to introduce laws that would provide protection and social security for wage labourers, which would represent a significant restriction on the interests of private capitalist enterprises.<sup>293</sup> But especially in Germany, which under Bismarck's leadership would play a pioneering role in establishing such social regulations,<sup>294</sup> this approach leaves significant gaps, because it does not show that the corresponding measures were often merely intended as a way of pacifying or controlling the working population. As has been argued in the case of Germany and England,<sup>295</sup> in anticipation of the growing power of the labour movement, not only political elites, but also employers' associations had a strong interest in integrating wage labourers into the existing system by granting them social security and imposing various regulations in the interest of worker safety. The ambivalence of such innovations in social policy at the end of the nineteenth century, expressed by the tension between these two explanatory approaches, conveys the fact that the regulative ideas of freedom in this new, capitalist organization of labour could initially only be institutionalized in the one-sided form of subjective rights.

As we saw in the tradition of moral economism, an adequate institutionalization of social freedom within the sphere of the capitalist labour market demands, alongside the legal guarantee of equality of opportunity, the establishment of discursive mechanisms that allow workers to influence the interests of their employers. This is why, already at this time, Durkheim called for the revival of occupational groups with the task of corporatively organizing economic relationships on the market.<sup>296</sup> Even though this model has certainly become obsolete, being tied to the historical precondition of clearly distinguishable occupational roles and activities, it does enable us to get a sense of the ambivalent nature



of these initial social policy initiatives in Western Europe. The measures introduced during the last third of the nineteenth century as a way of protecting wage labourers from the adversities of an unregulated labour market generally issued laws obligating employers to respect fixed working hours, take a number of safety precautions and pay compensation in cases of workplace injury. Furthermore, in some countries, especially Germany, first steps were taken towards establishing government insurance programmes that provided financial assistance in cases of illness, unemployment and old age.<sup>297</sup> It is not difficult to see that all these regulations were formulated as individual legal claims that the state must guarantee; individual workers now enjoyed a legal entitlement to protection from the risks of employment solely according to the criteria set by the profit interests of employers. For the first time in the brief history of the capitalist market economy, the vague outlines of a novel kind of wage dependence (Robert Castel) emerged, one that aimed to do more than 'sporadically' compensate workers for having performed certain tasks, instead equipping them with elementary legal claims that gave them access to services beyond the remuneration of their labour agreed upon in the labour contract.<sup>298</sup> Be it because of the successful struggles of the labour movement or because of the long-term security interests of the state, 'paupers' were now on their way to enjoying the protected status of wage labourers in the twentieth century.

However, the price for these initial improvements, which were doubtlessly a normative advance, was an almost unstoppable process of individualization. In the decades before the advent of government social measures, disenfranchised wage labourers had developed rudimentary forms of collective resistance, and they managed to face up to the daily threats to their livelihood by providing mutual aid, coordinating common interests and taking up each other's perspective. The self-help organizations mentioned above, along with consumer cooperatives and the many educational associations that formed in the middle of the nineteenth century, all had the (latent) function of creating class consciousness, thus offering workers the opportunity to cooperatively coordinate the necessary defence measures.<sup>299</sup> Although these groups and organizations obviously did not have the right to negotiate with and influence employers' associations and state committees directly, they were able to work their way into the sphere of capitalist production. Through boycotts, strikes, manipulation of machines or the self-organization of the labour process, the members of these associa-

tions made very clear that they sought influence over wages and working conditions.<sup>300</sup> These forms of collective resistance were further accelerated by the growing awareness of their significant contribution to economic growth through the productivity of their labour. Pointing to the social value and dignity of their work, wage labourers now laid claim to the achievement principle propagated by the bourgeoisie for over a century and previously applied solely to upper-class professions. The socialization of the labour market from below, the attempt to cooperatively co-determine the conditions of the exchange of labour power, now encountered a budding social policy that did not necessarily block these tendencies, though it did work against them. The social claims granted by the state were exclusively addressed to individual workers, thus administratively extracting them from the communities they had managed to establish. Here again we see the de-socializing effect of subjective rights: By enabling individuals to fend off unreasonable expectations and burdens, these rights tend to 'alienate' these same individuals from their communicative surroundings, turning them into self-centred, 'monological' legal subjects. A similar effect can be seen at the end of the nineteenth century in the various protective measures and social services provided by state authorities seeking to resolve the 'social question' and eliminate the threat posed by the regular waves of impoverishment among the labouring masses. Because all these overdue precautions were provided in the form of subjective rights, in the case of conflicts and debates they necessarily suggested a return to merely individual action, thus crippling growing impulses for collective self-organization.<sup>301</sup>

Of course, this does not mean that we should question the improvements brought about by the social reforms of the time or cast doubt on their progressive substance. But in light of the criteria of social freedom, such as those upon which Durkheim founded his considerations on occupational groups, there is a dark side to the blessings of all these state measures, which is that they undermine the associative efforts of wage labourers and thus undermine their cooperative influence on the labour market. Although as individual workers employees were now better protected than ever before in the history of the capitalist system, they lost a good deal of their spontaneous capacity for viewing themselves as members of an increasingly self-aware class and undertaking efforts to reshape the sphere of production. As we saw in relation to Durkheim, the establishment of social freedom in this sphere, that is, the expansion of the labour market into a 'relational institution', demands that it be

institutionally equipped with discursive mechanisms that allow participants to influence the interests of the others and thus gradually give shape to the overall cooperative aims of the group. On both sides, wage labourers and employers, institutional rules must take effect that can anchor the social, cooperative meaning of economic activity in the minds of the participants. By joining together in clubs, cooperatives and self-help organizations, workers had taken a first step toward preventing egoistic and strategic behaviour and awakening overarching feelings of responsibility. But insofar as these tendencies toward a stronger socialization of the market were slowed down or undermined by social policy initiatives, the chances for social freedom within the capitalist organization of labour deteriorated as well. Therefore, the welfare state necessarily has a dual character: On the one hand, the social security it provides enables workers to achieve individual self-worth, but on the other hand, it hinders the community-building efforts of workers by means of its de-socializing effects.<sup>302</sup>

During this same period of earnest struggle to institutionalize welfare state measures,<sup>303</sup> the property relations within capitalist enterprises had begun to change dramatically. Up until the middle of the nineteenth century, factories and large companies were generally owned by an individual private entrepreneur who could determine the aims and risks of production; but with increasing economic productivity, the size of production grew so dramatically that legal means had to be found for enabling other owners of capital to share in promising investments. Marx, who covers this topic in a fascinating chapter in the third volume of *Capital*,<sup>304</sup> was still around to see the transformation of a number of previously private capitalist firms into joint stock companies. Due to the reduction of the owner to a mere 'manager' and the corresponding rights of shareholders to make company decisions, Marx regarded this transformation, a bit too optimistically, as a 'point of transition towards the transformation of capital back into the property of the producers'.<sup>305</sup> But in fact the prospects for such a 'socialization of production' from above depended entirely on the corresponding laws on securities trading in various countries. Certainly, all stakeholders in the company, from the investors and the customers to the suppliers and the employees, sought regulations that would ensure their respective needs for security, such that a high degree of social generalization in such anonymously directed enterprises was to be expected. At the same time, however, legislation in individual countries ultimately had to determine the degree to which

the securities trade could obligate powerful joint stock companies to serve the public interest and the common welfare. A pioneering role in this regard was played by the governments of those countries that, due to their later industrialization, were forced to undertake a greater amount of state intervention, as they sought to use joint stock companies as a lever of public influence.<sup>306</sup> Especially in Germany, political organs managed to take early advantage of this re-composition of capitalist property to compel companies to organize themselves in a way that forced them to respect social obligations.<sup>307</sup>

These two paths of development – the intensification of social policy and the stronger integration of capitalist property – are what combined in the first third of the twentieth century to bring forth a socioeconomic formation that in hindsight has been termed ‘organized capitalism’.<sup>308</sup> The labour market displayed a far higher degree of normative regulation than in its initial phase, with wage labourers not only possessing a relatively secure status with corresponding legal claims, but also a certain influence on employers’ decisions via their unions. The ‘specific insecurity’ of proletarian life<sup>309</sup> resulting from the fluctuations of the labour market and largely unsupervised factory conditions was temporarily reduced, even though there could not yet be any talk of equality of opportunity due to the continuing wealth differences and educational obstacles facing the working class. The relations of recognition in this economic sphere, which according to Hegel and Durkheim must be egalitarian in the sense that participants must respect each other mutually as ‘honourable’ and willing economic citizens in light of the overarching principle of cooperation, continued to be highly asymmetrical. Although individual wage labourers now had social rights that protected them from economic insecurity and the arbitrariness of their employers, they were still regarded as entirely inferior to the various strata of the bourgeoisie in terms of their value for social reproduction and their striving for progress and productivity.<sup>310</sup>

The only organizations that would have been in a position to combat such extremely unequal relations of recognition through a demonstrative display of the true contribution of the workforce were the unions. After the decline of the many traditional self-help organizations in the wake of the general rise in living standards, unions had come to be viewed by most wage labourers as the almost self-evident representatives of their interests, called upon to form a kind of counterweight to organized capital.<sup>311</sup> However,

within the intellectual circles of the labour movement, the tasks of the union in the dispute over the future of capitalist production remained a matter of debate. There is no other issue during this time, the first third of the twentieth century, that produced such rancorous and challenging discussions as the question as to which interests of the industrial workforce the unions should defend and which means they should use to do so. If we restrict our purview to Germany, the spectrum of alternatives ran from the liberal conception of Lujo Brentano, who assigned unions the market-conformist, guild-like function of protecting the workforce from being worn out and deteriorated,<sup>312</sup> to the reform-oriented views of Goetz Briefs, who assigned unions the 'external aim' of fighting against the 'objectification' [*Verdingung*] of workers as well as the 'internal' task of removing the 'social inferiority' of wage labourers,<sup>313</sup> to the anti-capitalist critique of Eduard Heimann, according to whom unions should become organs for socially reshaping the market economy.<sup>314</sup> If we focus on the last two versions, those of Briefs and Heimann, then we certainly could view unions not only negatively as cartel-like 'protective shells against the commercialization of human labour power',<sup>315</sup> but also positively as moral agencies in the struggle for recognition, a struggle aiming to achieve social esteem for the industrial activity of the working class. In short, these organizations could have seen themselves called upon to fight for a radically expanded interpretation of the previously strictly 'bourgeois' principle of achievement in order to encourage the reformulation of the dominant principles of the social status order. But for reasons that we will discuss in a moment, the unions were never able to arrive at such a normative self-understanding. Already in the formational phase of organized capitalism, they essentially remained interest-organizations, incapable of raising the problem of unequal relations of recognition in the economic sphere or of fighting against them.

One cause for such a self-restriction might be the fact that from the beginning of the twentieth century in all Western capitalist countries, two new development processes emerged that would pose entirely new questions about the organization of the labour market. Already in the last quarter of the nineteenth century, sophisticated technological methods of organizing production had been developed, allowing time-saving measures that would not be applied throughout industrial production until the twentieth century. The consequence of these new, 'Taylorist' organizational principles was a rapid increase in the mechanization of labour, which faced wage

labourers with the problem of no longer being able to view their work as being worthy of recognition and reflecting their skills.<sup>316</sup> While these transformations took place in the economic sphere, a second shift would prove no less significant for economic conflicts and disputes. With the emergence of 'white-collar' salaried workers, a new and distinct stratum of wage labourer was born, whose work and thus mentality were so different from traditional wage labourers that they did not appear to fit into the previous perceptual scheme of the labour movement.<sup>317</sup> Within just a few decades, therefore, the industrial workforce had not only taken on an entirely different shape, but there now emerged a second type of gainful employment that seemed to call for independent forms of representation in the struggle over the social organization of labour.

As mentioned above, Hegel had already anticipated the mechanization of labour, and he was especially interested in the possibility of replacing human labour with machines.<sup>318</sup> What he could not have predicted, however, was that this increase of mechanical production would one day produce conditions in which wage labourers would have difficulty recognizing their own concrete activity in the factory as their own labour. Such a radical shift in the labour process would not begin to take place until the end of the nineteenth century, when the engineer Frederick Winslow Taylor began to scientifically revolutionize methods of industrial production. His groundbreaking idea was to gradually remove all elements of craftsmanship from industrial production, until workers would only have to make minimal movements previously planned by management with precise knowledge of the functioning of the machines. The point, of course, was to lower the cost of individual labour power and thus increase its productivity, as Taylor never tired of pointing out. By constantly reducing the amount of knowledge and skills workers would need, their wages could be reduced in proportion to their needed qualifications, and each temporal unit of labour could produce more value, given the increased tempo of production.<sup>319</sup>

Not long after Taylor published his organizational conception, it was almost immediately employed by major industrial enterprises in the capitalist countries of the West. In the USA, England, Germany and France, even before the end of World War I, most factories switched to these new production methods. Professionals in management rationally broke down the required labour process into individual movements and divided up the resulting minimal labour functions among individual groups of low skilled workers.

As can be seen in various contemporary studies,<sup>320</sup> these changes entailed the dispossession and devaluation of workers' craftsmanship. Only decades prior, despite their insecure livelihoods, they were still able to halfway control their own labour, to employ their traditional skills on their own initiative and make flexible use of the knowledge they had acquired; but now, their skills were expropriated and placed in the hands of management for the purpose of accelerating production. It does not take much imagination to realize that from the very beginning, such deskilling processes would be viewed as an attack on the traditional self-understanding of the industrial workforce. Almost overnight, what was once the source of their pride and sense of achievement as workers, that is, the skills and physical strength involved in craftsmanship, was now taken from them, thus robbing them of any reason for collective distinction. Here as well, personal reports and novels give us a much better sense of the mood among workers at the time than the scientific literature, which has a difficult time conveying workers' collective fears and concerns.<sup>321</sup>

However, these tendencies of rationalization during the 1910s and 1920s did not impact every part of the industrial workforce in the same way. In more technologically advanced factories, a new worker elite was formed, distinguished by its comprehensive qualifications and easier workload. Here, the traditional craftsman ideal could live on in a different form, because these occupations demanded skills and technological knowledge to which these workers could lay exclusive claim.<sup>322</sup> These internal differences within the working class related to stark contrasts in their qualifications faced unions with the problem of how to unify these various interests in their struggles on the labour market. On the one hand, they had to fight against the hollow and one-sided nature of labour processes in order to serve the interests of workers on the factory lines; on the other hand, they could not make a frontal attack on the increasing technical advances in production, because these benefited another, smaller segment of the workforce. Unions often sought to resolve this dilemma by restricting themselves to political and economic demands that could be accepted by both sides; any further aims, such as those described by Briefs and Heimann in their talk of the need to fight for the 'dignity' and 'honour' of manual labour, had to be abandoned in the interest of such compromises. Nevertheless, from this point on, the 'humanization' of the world of work would become a crucial part of the vocabulary of the labour movement. These ideas had already emerged when indus-



trial workers resisted the expropriation of their traditional skills,<sup>323</sup> and they continue to resurface today whenever secure employment allows workers to question the quality of their working conditions.<sup>324</sup> In any case, these early struggles for 'meaningful' and 'humane' work sharpened an awareness within the labour movement that the complete realization of social freedom in the sphere of production also requires freeing jobs on the market from merely mechanical activities that do not challenge the worker. As Durkheim was already aware,<sup>325</sup> work that requires neither skill nor initiative deprives workers from seeing themselves as making a valuable contribution to social cooperation. The idea of 'humanizing' work, which is usually understood to mean the avoidance of repetitive work that requires no initiative on the part of the worker, is therefore intrinsically related to the aim of realizing social freedom on the labour market.

But the difficulty of representing such interests at all, and furthermore, combining them with the interests of the highly qualified workforce, was not the only challenge facing unions in the 1920s. Due to the rapid expansion of trade, production and banking, the narrow and relatively well-paid strata of office workers quickly grew into an almost independent class of professional employees; although they too were dependent on wages and had a correspondingly insecure livelihood, their *habitus* and work were so different from the traditional industrial workers that their interests could hardly be represented by the traditional organs of the labour movement.<sup>326</sup> While workers had once regarded themselves as 'proletarians' and saw themselves on the lowest rung of the social hierarchy, regardless of whether they belonged to the less qualified groups or the better educated 'elite', these new salaried employees often claimed a higher social status. Depending on the type of company and their specific function, this self-awareness was based on their sharing in the reputation of management, on pretensions associated with the acquisition of cultural goods and often on their patriotic convictions.<sup>327</sup> Even after the various organizations of salaried workers were integrated into the unions as a result of the political riots and uprisings at the end of World War I, such as in Germany, the problem remained that salaried workers were more against the pursuit of worker interests than for them. Although isolated groups of salaried workers occasionally went on strike, e.g. in order to fight for co-determination, the large majority of their representatives resisted any organizational 'proletarianization' and insisted on greater social prestige vis-à-vis industrial workers.<sup>328</sup> It is hard to



criticize the unions here, for they were almost powerless in the face of the dilemma of having to represent salaried workers because of their objective position on the capitalist labour market, while being aware of their continuing pride of being against all things proletarian. The efforts to resolve this disunion within the organization not only cost a great deal of energy that could have been spent on the fight to improve conditions for workers, but they also caused workers to lose sight of the aim of increasing their social standing.

Over the course of the 1920s, not least due to the massive pressure exercised by the labour movement, the social achievements of organized capitalism were consolidated to an extent that gradually gave the organization of social labour more progressive features. Certainly, the Taylorist factory model was now established in all major industrial centres, making assembly lines and repetitive work largely lacking in initiative and creativity the norm.<sup>329</sup> On the other hand, welfare-state institutions were established throughout Western Europe, which provided protection for workers against the most serious forms of poverty in cases of unemployment, illness and old age. And furthermore, many countries introduced initial discursive mechanisms that granted workers a certain amount of co-determination. When it comes to our normative reconstruction, the purpose of which is to analyse the development of the capitalist sphere of labour in terms of the enablement of social freedom, it is this last point that most deserves our attention. During World War I, the demands for increased production and the high concentration of capital allowed unions a certain amount of co-determination on matters of wages and working conditions.<sup>330</sup> For the first time in the history of capitalism, wage labourers were involved in determining their own working conditions, despite the private or joint-stock control over the means of production. After the war, when the world economic crisis eliminated the incentives for large corporations to cooperate with the unions, instead relying on corporatist agreements with government administrations,<sup>331</sup> the memory of this interim phase in which the influence of the workers was not only tolerated, but also desired, was obviously not lost. On the contrary, the recovery of these rights of co-determination became a permanent goal of union efforts, and the majority of unions viewed these rights as an opportunity for ensuring a gradual and peaceful transition to economic democracy.

In Germany, the most vigorous advocate of these ideas was the socialist theorist Rudolf Hilferding. He not only coined the term 'organized capitalism', but also believed that agreements between

companies and the state to restrict competition represented a transitional stage to the final socialization of the market.<sup>332</sup> Although the image that Hilferding draws of this final stage oscillates between a pure planned economy and more market-socialist conceptions, he was certain that the increasing integration of joint-stock companies, banks and the state would sooner or later necessitate the involvement of workers' organizations in the social planning process as well.<sup>333</sup> For the unions during the Weimar Republic, Hilferding's ideas helped mobilize workers, since they presented a kind of continuity between the previous experiences of co-determination and the future aims of the movement. Economic rules, agreed to collectively and democratically, and enabling workers along with their representatives to assert public interests in processes of economic decision-making, could now be seen as a crucial goal in labour struggles. Recalling Durkheim's discussion of the role of discursive mechanisms, we could say that co-determination represented an institutional prerequisite for driving back egoistic behaviour on the market and replacing it with commonly agreed upon rules for economic action. Even if the workers' struggles were not very successful, as unions only managed to achieve minimal rights of co-determination during the Weimar Republic, the idea of a stronger democratization of business now represented a permanent element in the intellectual reservoir of the labour movement.

The fact that the prospects of achieving this goal improved dramatically in Western Europe after the end of World War II is most likely due not only to the requirements of accelerating economic growth, but also to the feelings of solidarity typical of such historical moments. Measured in terms of the demands for social freedom, not much had been achieved with regard to normatively embedding the labour market up until 1929, the beginning of the world economic crisis. Certainly, wage labourers possessed rudimentary social rights thanks to various welfare-state measures that provided them a minimum amount of basic goods and services, but the psychological burdens of long-term unemployment and feelings of powerlessness in the face of the economic cycle had not lost any of their impact over the decades.<sup>334</sup> It is true that the general right to an adequate education had been achieved in all Western European countries by the beginning of the twentieth century, seemingly increasing workers' prospects for earning a qualification, but there was hardly any improvement when it came to equality of opportunity for children from the lower classes, since subtle barriers continued to block their access to higher level schools

and the university.<sup>335</sup> On the whole, chances for co-determination were perhaps slightly improved by the legalization of unions and workers' councils, but this was still a far cry from discursive mechanisms that could enable workers to influence company decisions. And as much as technological progress had contributed to more qualitatively demanding and better paid jobs, at the bottom end of the production process there remained a broad base of jobs whose monotony and heteronomy were so great as to prevent any chance of recognizing one's place in the system of the social division of labour.<sup>336</sup> In short, even after one hundred years of struggle, things did not look good for the achievement of social freedom in the sphere of social labour. Up until the arrival of National Socialism and World War II, very little had been achieved in terms of wage and job security, true equality of opportunity and democratic co-determination.

Again, the fact that the chances for achieving these goals had improved after the end of World War II might have ultimately been due to the general need to revive the economy and to wartime feelings of national cohesion. And the socioeconomic situation obviously varied throughout Western Europe: Germany was both politically and economically dependent; certain dictatorships survived (Spain); the victors were not in much better economic shape; and then there were the states that remained neutral. But almost everywhere, there was a basic feeling of social egalitarianism that demanded state intervention in the economic sector and thus accommodated a stronger regulation of the labour market. It would take us too far off topic to go into the various forms of organized capitalism that emerged in Western Europe during the 1950s; it is enough to point out that in France, a more centralized form of economic control took shape, based on a high number of state-run companies and policies that aimed primarily at ensuring full employment, while in West Germany a network of companies, large banks and state organs developed soon after the country's independence, organized on a federal basis and focused on market integration.<sup>337</sup> What these two economic models had in common – and initially the British system of economic direction was only marginally different<sup>338</sup> – was the attempt to ensure the common good within a private capitalist framework in order to contain class conflict and perhaps even eliminate it. The aims of expanding social freedom were accommodated by such economic measures, because the conditions necessary for bringing about cooperation on the market were institutionalized with the help of intermediary agree-

ments. Not only did state-guaranteed minimum wages become the norm, but the level of unemployment pay rose in almost every Western country by being adjusted to individual wage levels.<sup>339</sup> Depending on the kind of economic direction, unions, as representatives of the workforce, received a more or less secure right to co-determination in matters of investment, working conditions, wage levels and social compensation plans in cases of lay-offs. Finally, the general climate encouraged discussions over the need to 'humanize the working world', which led to a re-examination of the possibilities for decreasing the monotony, time-pressures and complete lack of creativity of work.<sup>340</sup>

These measures aimed at reducing competition brought about a slight improvement in the relations of recognition within the sphere of the capitalist organization of labour.<sup>341</sup> This is not to say that the work of industrial labourers – i.e. what they actually contribute to economic value-creation – received more social esteem. The historically established hegemonial interpretation of the principle of achievement remained, according to which a given labour activity's social value rises with every apparent increase of intellectual creativity and initiative, such that in the hierarchy of social recognition, management and academic professions remained superior to service professions, which in turn were superior to industrial 'manual labourers'.<sup>342</sup> But in many other respects, which have less to do with the type of activity than with the sheer right of existence and collective bargaining power, the improvements discussed above did contribute to strengthening workers' common self-awareness.<sup>343</sup> The members of the labouring classes were now at least marginally involved in the decisions of the firm via the unions; they no longer had to regard their situation as inevitable or as the result of uncontrollable economic processes. And thanks to the increased rights accruing to their new status, they could share in the overall increase of social wealth. After all, we must not forget how much the increased opportunities for consumption in the 1950s and 1960s, even for workers, contributed to a rise in their self-respect: collective privileges such as paid vacations and Christmas bonuses, and the normality of life-long employment in a single company. Finally, comprehensive educational reforms would soon be introduced throughout Western Europe, the official aim of which was to improve equality of opportunity, and which also contributed to the feeling that workers were on the path to gaining greater control over their working conditions in general. Full employment compelled governments to lower the barriers between individual

stages of education in order to better promote workers' talents and skills.<sup>344</sup> Even though the motives behind these reforms were hardly egalitarian, instead seeking to prevent a lack of qualified labourers, their effect on social relations of recognition must not be underestimated. Whereas higher education was previously unattainable for the lower strata of wage labourers, that is, the majority of the workforce and lower-level salaried workers, workers now had more opportunities to send their children on to higher education and offer them a path to social advancement.<sup>345</sup> The aim of true equality of opportunity that Durkheim had in mind when he spoke of the unrestricted right of each individual to discover and develop his or her professional skills was thus brought a step closer. There was still a clear lack of equal starting conditions, especially due to lacking preschool institutions to compensate for initial deficits arising from a shortage of cultural education in the family, but there was still a feeling of having taken a first step toward greater justice on the labour market.

During this same period, however, these status gains and appreciable improvements in the relations of recognition in the sphere of social labour were offset by a number of developments caused by a further differentiation of the labour market. Shortly after World War II, in what was at the time an extremely influential work, Jean Fourastié predicted the unstoppable rise of the service sector and expected this to solve all evils associated with technological rationalization. He was convinced that the increase in demand for personal, administrative and organizational services would cause a certain type of activity to dominate the social division of labour, one whose relatively low labour productivity would not only be protected from labour-saving rationalization measures, but would also improve chances for breaking free of monotony and physical burdens in the workplace.<sup>346</sup> Few of the promises made by this early theory of the service economy would actually be realized. Although prominent sociologists such as Daniel Bell supported Fourastié's claims,<sup>347</sup> the sober reality would soon set in as more and more empirical investigations showed that the majority of service employees were in fact not more highly qualified; just as in the industrial sector, there was a growing polarization of qualification profiles.<sup>348</sup> The rise of an extremely well educated and highly paid class of technological executives and administrators, the so-called *cadres*,<sup>349</sup> is probably the only change that remains of the fundamental structural transformation that Jean Fourastié and Daniel Bell predicted. Although the percentage of salaried employees had

already grown to encompass nearly two-thirds of all employees, only a tiny minority held jobs that truly promised intellectual complexity and security. In the wake of this transformation, however, the industrial workforce, which had only minimal qualifications, once again lost the status gains it had previously achieved. Within a span of two decades, thanks to the increased demand for workers in the expanding service sector, not all workers managed to find the kind of secure and challenging jobs that the industrial workforce had hoped for during its rise, but at least the technically and administratively highly qualified among them. In these social shifts, Robert Castel sees the formation of a 'peripheral' strata of wage labourers comprising the hardly qualified segments of the industrial workforce as well as those involved in trade and commerce.<sup>350</sup>

Robert Castel dates the beginning of this development, which he terms the 'segmentation of the labour market', back to the mid-1970s. This was before the 'neoliberal' transformation of Western European economic systems would lead to a far-reaching liberalization of the labour market; the 'corporatist' or 'centralist' forms of organized capitalism that provided a measure of security for the industrial workforce still reigned. But even at this point the system of employment was beginning to divide, resulting in a gradual segmentation of the labour market: In both the manufacturing and service sectors, there was a protected core of technically challenging jobs requiring a high level of qualification, along with a largely unprotected zone of non-creative employment. At first, industrial sociologists were undecided as to whether the growth dynamics of the first kind of employment should be regarded as a historical chance to abandon mass production and thus the drudgery of monotonous assembly-line production once and for all. For a brief moment, when rationalization in the centres of industrial production pointed to the development of more 'holistic' work [*Verganzheitlichung*], there was hope of a final end to heteronymous labour.<sup>351</sup> But it would not be long before it became clear that there is a darker side to higher qualifications among one segment of workers in industry, trade and administration, which consists in producing a merely auxiliary form of labour at the margins for which there is no need for training of any kind. Whereas the upper end of production and services is marked by a concentration of responsibility and flexible specialization, at the lower end we find labour that requires little to no qualifications and often demands little more than the rapid application of elementary skills.

According to Robert Castel, as soon as these 'vertical divisions' begin to appear in the world of work, separating the various branches of wage labour into an 'above' and 'below',<sup>352</sup> the traditional industrial proletariat will perceive these divisions as the beginning of a process of collective degradation. Not only will these workers lose the aura of a potentially revolutionary class of manual labourers, but an increasingly large part of this class will join the lower strata of salaried employees with whom they share unqualified labour and a sense of heteronomy.<sup>353</sup> It is during this period, the 1970s, that a comprehensive re-composition of 'proletarianness' took place. This concept not only refers to all workers in the area of industrial production, but also characterizes the condition of those working on the lower end of the production and service chains. Or to put it the other way around, 'a new form of worker' was established 'in the world of salaried employees'.<sup>354</sup>

However, employment conditions for this reconstituted proletariat remained relatively protected as long as the liberalization of the labour market had not yet begun in the Western European countries, coinciding with the dissolution of organized capitalism. As we saw above, up to that point, large corporations were halfway embedded in a social framework that was due to the obligations either imposed and directed by the state or established with the aid of corporatist arrangements. The threshold for profitability within individual enterprises remained relatively low as a result of such arrangements, the level of employment comparatively high, and laws on worker co-determination ensured that workers could exercise a measure of influence on the social, personnel-related and business affairs within the company.<sup>355</sup> In the West German variety of organized capitalism, which would later be termed 'Rhein Capitalism', unions were on the supervisory boards of major corporations, which gave them the opportunity to assert community interests even at the higher level of investment decisions and financing operations.<sup>356</sup>

Of course, all of these achievements in economic policy, which in hindsight represent essential steps along the path to establishing social freedom in the market-mediated sphere of social labour, were successively dismantled over the course of the 1990s. Many major corporations began to focus more exclusively on their profits and their share prices, the state restricted its mediating and socializing activities to the mere oversight of the economy, and as a result the unions lost the role granted to them by co-determination. If we attempt to find the causes for this about-face, we find a whole



bundle of factors, without thereby adequately explaining their interaction and individual influence. Under the increasing pressures of globalization, political actors began to change their economic interpretations and policies, calling for lower taxes and fewer regulations on the financial markets; at the same time, the composition of the stock exchange was dramatically altered by the fact that a growing number of large institutional investors had taken the stage, marginalizing the more passive small investors and, with the aid of their widespread investments, pushing for rapid returns. Furthermore, intensifying sales competition on the world market drove many companies to restructure for the sake of maintaining their competitiveness, economizing on wages and production at the cost of the employees. Finally, the demand for company executives underwent a qualitative shift, placing less and less weight on a manager's experience within the company or on traditional management values, instead looking for purely 'objective' financial knowledge.<sup>357</sup>

On the whole, these various transformative processes have led to a renewed disorganization of the capitalist economy in Western European countries, which implies more than the mere return of a largely uncontrolled market, and thus is not adequately captured by the term 'neoliberal'. The result of the 'elective affinity' between these economic shifts is instead a gradual autonomization of the imperatives of the financial and capital markets, which not only has consequences for the labour market, but also for the neighbouring social spheres. Within the capitalist labour market, which has shown tendencies of dividing into a protected core and an unqualified periphery ever since the 1970s, and yet still retained relatively secure labour laws and the welfare-state features, unrestrained capitalist profit interests, transnational corporations and product strategies have now eroded the normative status of wage labour, forcing us to recognize the real loss of several achievements of workers' long struggles.<sup>358</sup> Above all, we see a continuous fall in wages, caused by the combination of moderate union demands and the expansion of low-pay employment. Over the last two decades in many Western European countries, and especially in Germany,<sup>359</sup> growing levels of unemployment have forced unions to abstain from fighting for higher wages so as not to endanger jobs. During this same period, the labour market has become increasingly deregulated, making part-time and temporary employment along with internships the norm, where wages lie below the subsistence level and must therefore be supplemented by state welfare payments.<sup>360</sup>



Apart from the dangers this poses for child care and retirement, there has also been a massive devaluation of gainful employment. After all, as we have learned from Talcott Parsons, if wage levels are a symbolic expression of the measure of social esteem enjoyed by a given instance of labour, then the state-induced reduction of income and the growing precariousness of employment in general are indicators of a collectively experienced loss of recognition. In addition to these tendencies toward lower wages, job insecurity has come to be taken for granted. Not only has lifelong employment in a single company with reliable career advancement become a rare exception, but an awareness of the constant threat of being laid off or forced to move has become so widespread that fatalistic feelings of powerlessness prevail, even if they are not always justified by a worker's own particular situation.<sup>361</sup> In addition to these developments on the labour market, there is what sociologists have termed the 'dedifferentiation' of working conditions, i.e. the growing demand that wage labourers make themselves 'marketable' and internalize external demands.<sup>362</sup> So it can be no surprise that there is a widespread feeling of injustice, because conditions in the market-mediated sphere of labour do not adequately value work and demand an excessive degree of flexibility.<sup>363</sup> We should not be surprised that workers have cooperatively subverted many of these growing burdens through a variety of subtle violations in order to be able to fulfil obligations to family and friends,<sup>364</sup> nor by the fact that the political representation of all these feelings of injustice and all these practices of resistance has been regarded as wholly inadequate.

If we attempt to identify the 'moral underground' (Lisa Dodson) that asserts itself here in the form of silent violations and everyday condemnations, we will find the outlines of the very same social and moral view of the economic market we have demonstrated with reference to Hegel and Durkheim. The institution of the capitalist labour market is regarded as unjustified or illegitimate as soon as it no longer guarantees participants a living wage, does not adequately honour work in terms of wage levels and social reputation, or no longer offers a sense of being cooperatively involved in the social division of labour. Measured against the institutional achievements of organized capitalism in terms of the expansion of social freedom during the 'social-democratic era' (Ralf Dahrendorf), the current state of the labour market must be regarded as the result of a misdevelopment. For the majority of wage labourers over the last twenty years, the opportunities for being an equal

among equals, involved in the cooperative activity of the capitalist market, have decreased dramatically.

And yet, these problems in the sphere of social labour, which have been subjectively registered and regarded as 'unjust', have given rise to almost no collective resistance, such as the kind termed 'outrage' by Hegel.<sup>365</sup> All the 'negations' within the social reality of the labour market are characterized by peculiarly 'silent' and often individualized strategies of evasion, which seem to lack the capacity for self-articulation. In empirical social research, we find reports of subversive practices of support that help individuals to fend off unreasonable demands.<sup>366</sup> There is an increasing number of cases in which workers deny illness in order to survive in the competition for jobs,<sup>367</sup> and the 'job-related' suicides at *France Télécom*, which have been ascribed to pressure to perform as a result of privatization, have attained notoriety far beyond the borders of France.<sup>368</sup> Such individualized resistance, helpless struggles with no attempt to address others, have become part and parcel of everyday life in the current world of work in almost all countries throughout the capitalist West. Wherever investigative journalists or social researchers cast their gaze, whether at the lower end of the growing service sector (retail, maintenance, geriatric care, parcel service) or the de-qualified periphery of the shrinking industrial sector (in construction or in the automobile industry),<sup>369</sup> nowhere do we find a collective articulation of interests, rather only privatized forms of resistance. The degree of association in these zones of monotonous labour has been extremely low for the past several years (in Germany, for instance, since 1998 only 18 per cent of workers in the service sector are union members, and only 39 per cent of low-qualified industrial workers),<sup>370</sup> a communicative process of understanding about common interests hardly takes place at all, and any recollection of the efforts of the labour movement to socialize the market from below seems to have been extinguished.

The reasons for this discontinuity – which for our normative reconstruction poses the problem that we can hardly find any trace of collective efforts to normatively contain the market within the sphere of the labour market – are only partially connected to the entirely altered composition of the proletariat we discussed earlier. There are good reasons for explaining the tendencies of the privatization of resistance and for the absence of public outrage by pointing to the fact that the majority of workers threatened today by precarious jobs, low pay and flexibilization are found in the service sector, where there is hardly any tradition of labour struggle and where

the chances for cooperation in solidarity are rather low. Especially informative in this regard is the recent investigation by Friederike Bahl and Phillipp Staab, who attempt to locate the causes for the dominance of moralizing views of workplace conflict and the total absence of descriptive categories to realistically grasp the nature of one's own situation in lower-level service jobs.<sup>371</sup> Unlike the traditional industrial proletariat, which can look back upon a history of successful struggles and was compelled to develop forms of collective resistance within the workplace and whose 'manual labour' was a powerful symbol of their own achievements, the new service proletariat not only lacks a collective history and all prospects of productive and successful work, but also chances to identify workplace domination. Bahl and Staab presume that whoever works in consumer-oriented or social services, e.g. retail clerks, nurses in elderly care, or delivery workers, hardly gets a chance to see his or her employer, so that their social experience is often limited to their interactions with customers and colleagues.<sup>372</sup> However appropriate these interpretations might be for illustrating the lack of structure in the image of today's proletariat, they are nevertheless inadequate to capturing the full extent to which publicly visible outrage has disappeared. Even in those parts of the middle class also threatened by precarious employment and lower wages,<sup>373</sup> over the past two decades there has been no increase in efforts to collectively resist the progressive deregulation of the labour market. Even here, where education and proven communication networks should make it easier to share and articulate concerns, there seems to be a willingness to privatize discontent, as if people were solely responsible for their own impending termination or transfer. It is perhaps in this last impression, in this feeling of being solely responsible for one's own occupational destiny, that the key lies to explaining the oppressive silence with which all the growing insecurity and flexibility in the sphere of social labour are currently accepted. Whereas over forty years ago the dominant opinion was that workers had to watch out for each other and support each other in dealing with the adversities of the labour market, thus collectively ensuring the social restriction of the market, today each person is viewed as responsible for his or her own survival and success on the labour market. If this were true, then over the past quarter century there really would have been a massive individualization of responsibility with regard to people's career biographies and occupational destinies. But then, however, this missing outrage would reveal more than a merely personalized social image of the

new lower classes or a kind of insecurity among the middle classes that has not yet been mastered. This would mean that for the first time since the end of World War II, and maybe since the first steps toward the establishment of the welfare state, an interpretation of the capitalist market would have come to dominate according to which the market constitutes a sphere of individual rather than social freedom.

As we have already seen, in modern Western European societies there has always been a confrontation between two views of the market, whose differences can be measured in terms of whether they grasp the market as a social institution that enables either the mutual satisfaction of interests or individual advantage. The efforts not only on the part of the labour movement, but also by many charity organizations, 'bourgeois' parties and state organs to place social restraints on the market by establishing social rights, taking measures to humanize labour and permitting opportunities for co-determination were all an expression of a certain dominance of the first of these two conceptions of the market. With the aim of continual progress in mind, legal, educational and workplace conditions were to be institutionalized, thus ultimately enabling all wage labourers to see themselves involved in the social division of labour under conditions of true equality of opportunity. That in turn would allow them to secure their own, satisfactory livelihood in the economic exchange of services and to assure themselves of being recognized as fully valued members of society. In our idealizing reconstruction, which assumes such upward progress, we have not only seen how much resistance such attempts to realize social freedom have encountered in the profit interests of capitalist enterprises, but also that with each victory in the struggle for social freedom, the extent of the normatively required measures seems to grow. The establishment of social rights that were to protect workers from the most severe risks of wage labour was followed by the realization of the necessity of educational reforms to improve equality of opportunity; soon after, it became clear that even monotonous and purely routine activities had to be eliminated because they prevented any experience of cooperation in a division of labour; and finally – now we are in the middle of the twentieth century – there arose the belief that only the active involvement of wage labourers in decision-making processes within the firm could tame the profit interests of the company and lead to the cooperative restraint of the market. Of course, hardly any of these insights over the course of a century

and a half of social conflict have been even partially institutionalized. Reform efforts have continually been abandoned or have failed due to the overwhelming economic power of major corporations, or ran aground due to budget shortfalls, or, despite initial successes, ultimately succumbed to a change of mood in economic policy. Nevertheless, in light of this discontinuous and yet easily recognizable progress of social reforms across the generations, it seemed possible to grasp the gradual reform of the labour market as a social project supported by a broad agreement with the social-moral view of the capitalist economy. Equality of opportunity had to be improved, degrading forms of monotonous and gruelling labour had to be abolished and the wage labourers' right to co-determination in the workplace had to be expanded, all because people basically and tacitly, if not explicitly, shared the belief that the economic market should benefit all participants. Conscience seemed to dictate that the market should be understood as an institution of social freedom. If it is true, for which there are many indications,<sup>374</sup> that over the last few decades the responsibility for success in the market economy has been strongly individualized, such that it is no longer 'we,' but *he* or *she* who is responsible for his or her own economic success, then this would suggest that precisely this background normative conviction has been abandoned. This would mean that the market is no longer primarily viewed as a social institution that offers everybody the opportunity to satisfy their interests in free reciprocity, but as an organ of competition over how to best maximize individual utility. According to this altered interpretation of the market, everything that could once be regarded as a necessary step toward market-mediated cooperation would at best be viewed as pacifying reforms aimed at suppressing class struggle, and at worst a superfluous product of social beliefs that threatens to cripple the efforts of individual economic subjects and unjustifiably attenuate the pressure of competition.

It is certainly too soon to pass judgement on whether this general change of attitudes about the concept of the market really has taken place over the last few decades. And the mere consideration of such a shift probably belongs to precisely that class of sociological hypotheses about which we will never attain true clarity because they cannot ultimately be empirically proven. Yet there is hardly any other interpretation that can explain the relatively sudden disappearance of all visible 'outrage' at flexible labour markets, which makes it advisable to further pursue these vague presumptions of a shift in the public perception of the market.

If we investigate the social causes that could have brought about such a change of attitudes, then we quickly encounter just those measures taken by business and the state that initiated the disorganization of capitalism roughly twenty years ago. When under the pressure of economic globalization, governments reduced social interventions and large institutional investors began to determine the profit margins of major corporations, much more than the mere re-autonomization of capitalist profit imperatives was at work. Instead, at the height of the belief in the efficiency of competition on the market, the paradigm of the calculable profitability of all sectoral investments, initially applied to major corporations, was now transferred to other spheres as well, putting public services and the entire educational sector under pressure to attain financial competitiveness.<sup>375</sup> The consequences for public authorities, educational institutions and charity organizations of an increased focus on reducing individual cost factors and developing a strategy of internal and external marketing included a massive alteration in the attitude of employees toward their activities. Much earlier than ever before, these factors were to be viewed as variables in a comprehensive cost-benefit analysis, meaning that the necessity of individual self-marketing began to spread here as well, just as in private companies. Such a generalization of strategic self-optimization presumably increases tendencies to perceive society as a network of actors concerned solely with their own benefit. And it seems obvious that we should regard this as the cause for the individualization of responsibility, which we previously saw to be the decisive factor in the return to a de-socialized view of the economic market. As soon as employment conditions and social measures, whose provision could previously be viewed as a community service provided by a democratically organized civil society, were subjected to the dictates of commercialization and the need to maximize the economic yield of all expenditures, the image of the market as a whole probably changed in the self-understanding of the participants. The market is no longer viewed as a social institution for which we all share responsibility as members of a cooperating community, but as an arena of competition in which the aim is to maximize the utility for which we are all individually responsible.

But again, to assume such a causal connection between the rising dominance of conceptions that guide the financial markets and a cultural shift in the prevalent image of the market means emphasizing one potential causal chain among others and declaring it to be

the sole cause. It could be that in the future other alternative interpretations will prove far better suited to explaining the current individualization of responsibility in the sphere of the market economy. But the current state of affairs, in which the norm of shared social responsibility is becoming more and more hollow, can hardly be doubted. Not only empirical investigations but also literary works illustrate that success and failure on the market are increasingly seen as being traceable solely to individual skill, initiative and good fortune.<sup>376</sup> If such a change in the concept of responsibility forms the semantic surface concealing a fundamental transformation in the collective perception the market, then this would explain the confusing disappearance of all visible 'outrage' at the increasingly unconstrained nature of the labour market. Whereas previously, up until the 1970s and 1980s, a still relatively intact conception of the cooperative embedding of the market ensured that any attempt at such flexibilization would encounter recognizable public resistance, today a largely de-socialized conception of the market is responsible for the tendency to articulate moral discontent in a purely private manner and to resort only to non-verbal forms of resistance.

This misdevelopment, which represents more than a mere autonomization of the imperatives of finance capital, but also a corresponding shift in the cultural interpretation of the market, poses a problem for our normative reconstruction. As I pointed out above, we are faced with the difficult situation that we cannot rely on normative countermoves. The core elements of the democratic ethic, whose chances for the present we are attempting to uncover, is thus missing, because the prospect for a complete embedding of the labour market decides whether the members of society can see themselves as being involved in a system of cooperation. This type of social freedom, however, which has always constituted the basis for the legitimacy of the market, seems to have all but disappeared from the institutional sphere of wage labour. According to the official, widespread doctrine, every livelihood and every economic success depends solely on the ability of the individual to compete, as if individuals were not actually determined by their class position and the educational opportunities afforded by their family background. Therefore, the traditional ideas according to which equality of opportunity, improvements in the workplace and co-determination are essential for fulfilling the normative promise of the labour market have long since been replaced by all-sided self-activation, which suggests with pure cynicism that each indi-



vidual is solely responsible for his or her fate on the market.<sup>377</sup> The degree to which this current state of the market-mediated sphere of social labour represents a misdevelopment can be precisely gauged by the re-transformation of the promise of social freedom into the promise of merely individual freedom.

It seems that an alternative to these regressive developments can only be found wherever there are organized struggles to impose constraints on the labour market at the transnational level. Because individual national governments in Western Europe have lost much of their capacity over the last few decades to use their own influence to regulate profit conditions in the spheres of production and services, only an internationalization of oppositional movements can revive the original intentions of the minimum wage, job security and even co-determination. Due to the efforts of transnational unions and non-governmental organizations, initial procedures have been created that enable a certain measure of influence over the norms of what has long since become the global regulation of labour. Certification procedures for labour standards and for monitoring labour contracts, along with international publicity campaigns, seem to be the paths that must be followed today in order to reconnect to the interrupted history of the gradual socialization of the labour market.<sup>378</sup> The stronger these transnational communities are, and the more they attain publicly supported veto-power with which they can enforce the norms of social freedom within the deregulated labour conditions inside global corporations, the more they will create prospects for a moral re-civilization of the capitalist market economy.<sup>379</sup> However, if we take into account the extent of the misdevelopments that have taken place over the last few decades, the social recovery of such a project will only be able to take back a territory it had once successfully conquered.

### 6.3 The 'We' of Democratic Will-Formation

Whoever attempts to capture the 'reality' of freedom in the advanced societies of the West and thereby disclose the chances for a democratic ethical life will necessarily have to turn to the political sphere of public deliberation and will-formation in order to find the core element of that democratic ethical life. Even Hegel proceeds in his reconstruction of modern ethical life by giving an account of the institution of the 'state', without, however, following his own precept that such spheres must represent institutions of



unforced reciprocity in the satisfaction of needs, interests and aims. His description of the domestic political order is so centralistic and full of substance, and he saw so little need for institutional precautionary measures in the relationships between citizens, that his doctrine of ethical life has been justifiably suspected of not being in any way interested in truly realizing democracy.<sup>380</sup> We will therefore have to depart from the model presented in Hegel's *Philosophy of Right* in order to begin the normative construction of this third sphere, which in turn can only be analysed adequately if we understand it as an embodiment of social freedom: the institution of the democratic public or 'public sphere', a social space in which citizens form generally acceptable beliefs through deliberative discussion, beliefs that form the principles to be obeyed by the legislature in accordance with the rule of law.

According to the dominant conception, the constitutional state is what fulfils the ultimate purpose of the various freedom-securing spheres we have dealt with in our reconstruction, because it is here that citizens exchange their opinions on the constitution and come to a shared conclusion about political principles. Although the capitalist market is usually removed, implicitly or explicitly, from the legislative authority of the people represented in parliament, the question as to the institutional shape of the spheres of personal relationships and economic activity are left up to democratic will-formation in accordance with the rule of law. However, as we saw at the end of our 'historical illustration', such a 'proceduralist' conception must either ignore or downplay the dependence of deliberative decision-making on 'free' conditions in the other constitutive spheres of society.<sup>381</sup> If the conditions of social freedom are not realized in personal relationships and on the market, then the social relations that enable citizens to take part in the process of democratic will-formation in an unforced and unrestricted manner will be absent. Therefore, in contrast to most contemporary theories of democracy, we should not view the political public sphere as a kind of supreme court, regulated by the rule of law, which freely determines the conditions to be established in the other two spheres. The relationship between these three spheres is far more complex, because the realization of social freedom in the democratic public sphere depends at the very least on the partial realization of the principles of social freedom in the spheres of personal relationships and the market. From the very beginning, therefore, deliberative will-formation in the many different forums of the public sphere is bounded; the latter can only live up to its principles of legitimacy

if it learns, in a process of continuous debate over the conditions of social inclusion,<sup>382</sup> the necessity of supporting struggles for social freedom in the two other spheres.

But before we can explain this relation between the various spheres of democratic ethical life, we must first prove why the institution of the political public sphere that arose during the nineteenth century represents a system of social freedom in the first place. This seems to contradict the fact that the space for public discussion of different opinions, a characteristic feature of present societies, emerged from the social generalization of liberal freedoms, and can thus only be understood as an institutional embodiment of individual freedom. It might seem that as soon as we implant complementary role obligations in the democratic public sphere, we deprive it of its essence: the constitutional enabling of merely private will-formation through public debate. To refute this objection, I will first attempt a normative reconstruction of the historical development of the democratic public sphere, showing how the dependence of this sphere on communicative practices reveals its current deficits (a). This will enable me, second, to trace the development of the modern constitutional state in order to analyse the current state of social freedom (b). In the final step I will return to the relationship of mutual dependence between the individual ethical spheres and give a sketch of what a political culture of democratic ethical life would have to look like today (c).

### 6.3.1 The Democratic Public Sphere

Although a democratic public sphere did not emerge in Western Europe until the second half of the nineteenth century, we would do well to begin our normative reconstruction of this institutional sphere by turning to its bourgeois or 'literary' predecessors. After all, the whole idea that there is a need for a public space outside of the state apparatus, one in which people can form political opinions in a free and unforced manner in discussion with others, is the expression and implementation of the revolutionary uprising of the bourgeoisie against the traditional rule of nobility. A 'public sphere' in this sense, not yet understood as a source of the democratic legitimacy of state action, but solely as a forum for economically independent citizens to form their opinions in opposition to the traditional political order, arose in the developed countries of Western Europe over the course of the eighteenth century.<sup>383</sup> Under

the protection offered by gradually expanding liberties, an intermediate social space developed between the private sphere of the patriarchal family and the apparatus of the state, a space in which male representatives of the propertied classes came together to discuss their common affairs, taking advantage of the proliferation of newspapers and journals.<sup>384</sup> Although at first these forms of communication were reserved for the economically independent bourgeoisie and did not yet seriously contest the power of the court or the nobility, we do see here the beginnings of a new principle of legitimacy, which only a few decades later would take on an enormous explosive force: All acts of government, i.e. the exercise of power over the internal and external well-being of a political community, were to face up to the 'public opinion' that took shape in the discursive exchange of arguments within the forums of the public sphere.<sup>385</sup>

But before such a universal democratic principle could find public articulation in Western Europe, not to mention social institutionalization, a series of social, political and legal transformations would have to occur, of which we can only give a cursory reconstruction here. The initially somewhat 'literary' but gradually politicized public sphere that had developed in the urban centres of the continent and in England over the course of the eighteenth century was initially reserved for male members of the propertied classes. We can presume that these men primarily discussed matters of business, though the emerging daily press showed that they would soon begin to discuss cultural and political affairs of broader interest in order to form more universalizable judgements. As unimaginable as it might have been for these clubs, located between the sphere of the family and the feudal lords, to allow males from the lower classes or even women to participate in their discussions, they nevertheless obeyed the tacit rule that all interested parties must be included in the discussion. After all, the public reasoning of which they felt capable with regard to art, bourgeois manners and political norms was ultimately supposed to lead, via the mutual relativization of their individual views, to judgements that could claim universal validity and truth.<sup>386</sup>

Of course, it was not merely due to the prejudices of the time that the representatives of these initial forms of a civil public sphere contradicted their own principles by not granting membership to other social groups and strata. The much stronger reason for this praxis of social exclusion, one that was virtually taken for granted at the time, was probably the fact that in most eighteenth-century

Western European countries, civil liberties had taken hold only gradually and had not yet been expanded to cover all members of society: women, day labourers and the economically dependent were excluded from the elementary rights of freedom of contract and work, depriving them of the status of full citizens. Although these members of society, especially in England, also profited from the expanding freedom of press and opinion, which made the emergence of the civil public sphere possible in the first place, they remained excluded from the deliberative exchange of opinions. It was simply taken for granted that only men from the economically independent classes could participate in such mediating processes of public will-formation, which entailed that the commonalities between these participants' individual beliefs were always held to be what was right 'in general', as well as the complete ignorance of all other emerging public spaces among the 'rabble' or the 'plebes'. During the eighteenth century, at the bottom of society, social clubs had formed in which topics of public interest were also debated, without, however, claiming universal validity for the results of their shared discussion.

The clubs, relief funds and charity organizations that emerged in the second half of the eighteenth century among (male) manual labourers and early wage labourers certainly did not display the same sense of enlightenment progress and representative universality that prevailed among their bourgeois counterparts. For the most part, as we saw in connection with the emergence of the labour market (Chapter III.6.2.3.), they were based on pure necessity and served as a means of mutual aid, and had already begun organizing strikes and labour struggles. Wherever they managed to form a kind of subculture with the help of custom, traditional songs and practised rituals, they certainly increased these classes' collective self-respect.<sup>387</sup> But even in these communities forged by necessity, despite their proximity to the workplace and despite the great significance of their experience as labourers, there was also a growing tradition of public debate and exchange of opinion. Perhaps these debates were inferior to bourgeois circles in terms of the level of cultural education, but this certainly could not be said of the social significance of the issues they discussed. The challenges of working life as well as issues of general political interest were debated here as well – not in salons and coffee houses, but in club houses and public houses, where the members would reflect on the norms of social cooperation and questioned the legitimacy of feudal rule.<sup>388</sup> Even before the French Revolution with its

'democratic convulsions' (Jürgen Osterhammel) during the first half of the nineteenth century, a 'proletarian' public sphere had been established in the intermediate sphere between the private life of the family and the feudal government. This represented a morally vehement attempt, though with less claim to universality, to question the bases of the legitimacy of all previous forms of rule. And it would not be long before the major ideas of the bourgeoisie would reverberate so strongly among these discursive communities that from that point on they could also be understood as organs in the sphere of civil will-formation.<sup>389</sup>

At the height of the French Revolution, when the universal rights of man were declared, and before the start of the 'reign of terror', the notion of human rights emanated throughout Europe and dramatically improved the conditions for these various publics by establishing the idea that all citizens are equal, thus giving the latter an intellectual instrument for attaining legitimate legal status. As Thomas Marshall has illustrated impressively, while the eighteenth century was largely an epoch in which liberal rights of freedom were universalized, the nineteenth century was the period in which political rights to participation were achieved.<sup>390</sup> The various different publics we have described so far, whether they refer more to the culture or to the workplace, whether 'bourgeois' or 'proletarian', not only shared novel forums for the discursive dispute between different opinions in order to improve society, but they also led to the experience that the results of their intersubjective deliberations, despite the great publicity they generated, were of little consequence for the exercise of political power, because there were still no opportunities for legitimately influencing the state authority. In England, of course, there had been a parliament entrusted with legislative tasks alongside the Crown ever since the Glorious Revolution, but parliament remained so much under the control of upper-class landowners that up until the end of the eighteenth century it managed to isolate itself from the 'public opinion' reflected in the lively press organs.<sup>391</sup> And where the power of the state had not yet been tamed by parliament, the various public spheres – which existed alongside each other without ever really coming into contact – possessed even less political clout. Because the rule of the monarch was by nature non-representative, there could be no conception of a political addressee for the demands of public opinion, even though the sole aim of the shared deliberations and disputes within these forums was to decentralize state power. With the French Revolution, or more precisely, with

the final overthrow of Napoleon, this awkward situation for the already existing publics changed; throughout Western Europe a process of 'constitutionalization' began, which led to the expansion of democratic participation through the introduction of voter rights or parliaments. In some countries, e.g. nineteenth-century Germany, the right to vote was granted to all men of a certain age, but without a corresponding increase in the power of the democratically elected parliament; in other countries, e.g. England, the right to vote remained tied to the possession of property and was thus only partially extended to male adults, while the parliament possessed far more decision-making authority.<sup>392</sup> At any rate, by the end of the nineteenth century, the right to vote, to assemble and to form associations gave citizens – though not women, and less for wage labourers than for the propertied classes – a series of opportunities for political influence, which would fundamentally change the role, the composition and the character of these already active publics. From now on, their areas of focus and the issues they discussed would be far more intertwined; these associations could increasingly grasp themselves as individual organs within one and the same political framework of nation-states striving to establish constitutions.<sup>393</sup>

The normative structure of these three rights, which were then established with some delays and in various stages in the constitutions of all Western European countries that understood or would soon understand themselves as nation states, was entirely different from that of previously established liberties. Although there was a tendency throughout the nineteenth century to view these political rights, especially the right to vote, as a 'subordinate fruit' (Thomas Marshall) of liberal rights, because in some places both sets of rights were predicated on the possession of economic wealth, any ties to economic status were erased from almost all national constitutions by 1918 at the latest – only women remained deprived of the right to vote in many countries. It must have been clear at the time that political rights afforded a much different kind of normative instrument than liberal rights to freedom. While the intention of the latter was to provide a protective zone for the freedom of the individual, political rights enable subjects to do what that they could not do alone and in a stance of individual retreat. Even though there were many good reasons for the secrecy of the ballot box,<sup>394</sup> to vote was to perform an act of decision that could in principle be justified to all other legal persons because it was related to the good of the entire community.<sup>395</sup> Therefore, political rights, and even the seemingly

individualistic right to vote, were not addressed to the individual as an individual, but to the citizen as a member of a democratic community of rights. Liberal rights of freedom were not meant to remove the burden of justification imposed by citizens' political-moral surroundings; on the contrary, they were to enable citizens to take up such deliberative communication in the first place in order to delegate the implementation of their intersubjectively examined resolutions to a corresponding committee. However, what the universal right to vote still managed to conceal, because it was also intended to protect individual citizens from illegitimate influence, was made clearly visible by the other two political rights forged in the nineteenth century. The right to assemble and to form associations created the fundamental conditions in most Western European countries for communicatively interacting citizens to organize politically and give public expression to their discursively agreed-upon beliefs under the protection of the state. Over the course of the eighteenth century the mere demand of the various publics for influence on state policy by means of discursively agreed-upon opinions became a guaranteed right to determine the principles of all government action through a complex network of associations and clubs.

To judge by the result of this protracted and conflict-laden process leading to the establishment of the basic constitutional framework of the political public sphere in the nineteenth century, either by revolutionary struggle or by concessions from above, we could view this process as the institutional preparation for a third sphere of social freedom. With the gradual synthesis of the universal right to vote with the right to assemble and form political associations, the communicative conditions arose, more incidentally than intentionally, under which citizens in free association could reach an understanding about which practical and political principles should be enforced by the representative bodies involved in parliamentary legislation. Here, in the heart of the recently born constitutions of democratic nation-states, just like in the spheres of personal relationships and economic activity, an idea of freedom was institutionalized that no longer permitted a merely individualistic interpretation. Instead, individual citizens were to achieve their new freedom to influence political legislation by forming an intersubjectively examined opinion, in discursive exchange and dispute with other citizens, about the policies to be implemented by elected representatives of the people.<sup>396</sup> The emergence of this sphere of general will-formation went hand in hand with the dif-



ferentiation of mutually supplementing role patterns that could have been practiced in the 'publics' of the previous century, but for which there were no legal foundations at the time. All participants in the myriad political associations and clubs springing up like mushrooms, thanks to the constitution, had to be able to put themselves in the role of public speaker and public listener. Depending on the situation, they either had to present arguments to the public or to consider arguments from the public; in the social practices that began to take institutional shape through the exercise of such roles, a principle of reciprocal recognition emerged, one that must have been completely new to all participants after centuries of political tutelage and corporative [*ständisch*] hierarchies. All adult (and usually only male) members of society should now be capable of recognizing each other as equally entitled citizens within the nation-state, because the formation of a democratic will accorded the same weight to one citizen as it did to another.

However, neither the proliferation nor the fundamental character of these new practices should be idealized in any way. Just as little as the romantic idea of social freedom was immediately realized in personal relationships during the nineteenth century, the democratic principle of a mature and associatively combined public sphere would not immediately become social reality. Although practices of public deliberation could be found in the educated clubs and 'plebian' public houses of the eighteenth century, and although these practices had found an institutional setting due to political rights of participation, for the time being the idea of unforced will-formation among equal citizens was realized in social struggles, but not in social reality. The cultural borders between class-specific milieus continued to exist wherever the absence of the nation-state had not brought forth the consciousness of belonging to a single national community. In such politically fractured territories, there was no overarching forum for public communication in which local publics could have come together;<sup>397</sup> even in the middle of the nineteenth century, a sphere of civil society had not yet been successfully institutionalized in Western Europe; the necessary mentality was still lacking, e.g. the internalized stance of political equality, as well as the necessary legal conditions, i.e. truly universal suffrage.<sup>398</sup>

However, this sober look back at the newly emerging democratic public sphere also illustrates how wrong it would be to reduce the practices in this sphere to the public give-and-take of universalizable arguments. Precisely this protracted initial phase



in the struggle for political rights of participation, when it was still necessary to erect barricades in the streets and spread propaganda through rather cumbersome methods, shines a bright light on the fact that the democratic exchange of opinion also included a material substrate of tangible political work: Organizing discussion meetings, mobilizing supporters, holding demonstrations and producing leaflets – these were all tasks that required democratic procedures of unforced will-formation as well as public deliberations in the narrower sense.<sup>399</sup> If citizens were not willing to take on such ‘menial’ and non-discursive tasks, the discursive exchange of opinions would have come to an immediate halt, simply because these opinions would have had no chance of capturing the attention of the public. The technical aspects of hanging up placards, renting discussion rooms and organizing demonstrations must be taken care of in a cooperative manner before individuals can exercise their freedom to influence political legislation by reaching an understanding about their shared principles. Therefore, the social freedom that the members of society practice in the institutional sphere of the democratic public is comprised of more than the mere reciprocal acceptance of the roles of speaker and listener. It also depends on the fulfilment of rather instrumental tasks coordinated in a way that serves the vital exchange of competing opinions.

Since the middle of the nineteenth century, the development of the political public sphere would be driven primarily by two enormously dynamic processes: first, the transformation of political spaces of communication; second, advances in media technology. At the very beginning, when the different, class-specific publics hardly had any rights to democratically influence the action of government through their own negotiated opinions, large-scale political forums could only be found in England and France. Here the borders of merely local public discussion were torn down as early as the eighteenth century, with London and Paris developing into cultural centres where everything that could be regarded as an issue of national importance was to be a matter of public debate.<sup>400</sup> The emergence of comparable communicative spaces in many other Western European countries was not possible until after the French Revolution, when conceptions of political equality proliferated that required the creation of artificial, ‘imagined’ communities in which the members of society could regard each other as equal.<sup>401</sup> But once these ideas had become culturally established, national movements emerged wherever nation-states did not yet exist, e.g. in Germany and Italy. In the wake of these

movements, political communication increasingly moved beyond local communities and emerged on a national scale.<sup>402</sup> A political public sphere, understood as a discursive sphere of democratic will-formation among a people that regards itself as sovereign, thus only emerged along with the nation-states of the nineteenth century, in which internally unbounded and externally bounded communicative spaces allowed issues of common interest to be identified and publicly negotiated. Even the labour movement in these various countries – though not without internal ruptures and intense debate – would soon be integrated into this political framework, thus placing the national loyalty of its members above their internationalist convictions.<sup>403</sup> From the middle of the nineteenth century onward, in good times and bad, the existence of a democratic sphere of will-formation would be tied to the cultural precondition of the national ‘identity’ of a ‘people’. Only to the extent that citizens learned to view themselves as members of a nation-state could they look past their pre-political differences and comfort themselves in the dubious illusion of being affected by the same events in the same way.

This first stage in the development of the political public sphere would not have been possible if not for the communications technology that allowed citizens to cover great distances and accelerate the circulation of information. Even during the early days of politically impotent bourgeois publics, the newly formed daily press enabled communication between different locations within one country on events in the economy, culture and politics.<sup>404</sup> And even these limited clubs born out of necessity could only communicate with each other by circulating brochures within local communities, providing information about their respective moods and intentions.<sup>405</sup> But after the emergence of the constitutional framework for a political public sphere in the narrower sense, thus enabling a nationally unified public to engage in democratic will-formation, the need for such media obviously increased dramatically. The more that this process of will-formation began to detach from the concrete arenas of citizen assemblies and expand to anonymous masses throughout the nation, the greater the dependency on the technical production of a virtual exchange between speakers and listeners, authors and readers. At first this task was carried out exclusively by print media, e.g. newspapers, journals and publishing houses which, after initial difficulties with official censors, would soon become the dominant medium of will-formation in the nationwide communicative spaces of the political public sphere.

Publishing companies adjusted entirely to these new groups of readers, i.e. shifting away from the educated bourgeois audience and gravitating toward the information and entertainment needs of the lower classes. The issues discussed in these publications were certainly broader and more diffuse than those in the early bourgeois publics, but they could occasionally capture the attention of the entire population of a nation, because they were tailored to 'nationally' defined problems and events. In such rare highlights of the political public sphere at the end of the nineteenth century, it was possible to have discussions across existing class borders over questions raised by articles in the daily press: How to deal with the nation's defeat in war? Is the construction of a nationwide railroad system in the general interest?<sup>406</sup>

At some points in these heated nationwide debates, the dangers inherited by these first shapes of the political public sphere after having been integrated into the nation-state began to emerge. Although the nation-state framework in principle only created the legal structure within which political equality should come about, that did not protect this framework from other interpretations in which a person's belonging to a *Volk* or even race played a decisive role. The hostile and even aggressive mood that characterized public opinion on both sides during the Franco-Prussian War conveyed the ambivalence of a public sphere that viewed itself exclusively in terms of the nation-state. But this is even more true of a political scandal that was unique in that it brought together an entire nation in the context of a raging debate: the Dreyfus affair in late nineteenth-century France.<sup>407</sup> When Alfred Dreyfus, a Jewish officer in the French Army's General Staff, was found guilty of espionage by a French military court in 1894, the subsequent debate brought anti-Semitic resentments throughout the population to the surface. This resentment was based on a conception of a natural and ultimately biological connection among the unified 'French' citizens of the nation. The Catholic church and the anti-Republican military elites were particularly skilful in whipping up nationalist fervour with the help of cooperative organs in the press, and they did not shy away from the insane myth of a Jewish world conspiracy.<sup>408</sup> It would not be long before even the lower strata of the French population, whom Hannah Arendt calls the 'mob',<sup>409</sup> intervened in these heated disputes by personally terrorizing the small host of Dreyfus supporters, the so-called Dreyfusards. Partly under the direction of the French Army's General Staff and partly incited by the reactionary daily newspapers, those who publicly

defended the Jewish officer were persecuted: Stones were hurled at the house of Émile Zola and other advocates were attacked in broad daylight.<sup>410</sup> Here was a case in which the political public sphere, having just arisen from the equal integration of all citizens into democratic self-government within a constitutional nation-state, suddenly put on an entirely different face in the land of its revolutionary birth. Overnight, the associations and political organizations that were supposed to represent the organs of general opinion and will-formation turned into xenophobic patrols armed with a naturalistic conception of national belonging.

As is well known, the political events subsequent to Dreyfus' conviction offered only a glimpse of the anti-Semitic hate that would soon take hold of Germany, particularly during the twentieth century. From that point on, throughout most of Europe, with the exception of the Scandinavian countries, one could find extremely nationalistic attitudes within the political public sphere, whose aim was to prevent individuals defined as foreigners from enjoying their civil rights.<sup>411</sup> In retrospect, we can say that this fundamental ambivalence within the institution of the public sphere is connected to a deep-seated misunderstanding about the type of political unity within which members of society, through processes of mutual recognition, began to form a many-voiced 'We' of public will-formation. On the one hand, it seemed obvious that membership in society was based entirely on a person's formal and procedurally determined belonging to a given nation-state; on the other hand, the element of 'state' could easily be subtracted from this structure, making a person's membership in the community contingent on their membership in a somehow defined 'nation'. And the more this 'national' element came to be understood in an essentialist manner, as a cultural or even biological feature of a people, the easier it was to withhold previously existing civil rights from certain groups due to their lack of these collective features.<sup>412</sup> The founding of the liberal nation-state in the nineteenth century – arising from the political transformation of already existing territorial states in England and France, ushered in by movements of national unity in the case of Germany and Italy, and emerging from the collapse of transnational empires in the case of Austria and Hungary<sup>413</sup> – must therefore be regarded as an extremely ambiguous event. It was to be at once the condition for a unified political public sphere and the source of a dangerous form of nationalism. What would turn out to be decisive for the path a nation would later follow was usually the question of whether the relationship

among the citizens was understood as an expression of some pre-political, ethnic or biological unity, or instead as the embodiment of the new, universal principles of freedom and equality. In Germany, which went down the first path, a naturalistic notion of the people [*Volk*] substituted for a lack of political unity, opening the door to a racially defined [*völkisch*] nationalism.<sup>414</sup> For much of France's later history, which took the second path, the idea of the republic determined the unity of the citizenry, allowing the nation to resist this threat on its own power.

A marvellous example of an attempt to establish a political concept of the *demos* in the wake of the Dreyfus affair can be found in Durkheim's lectures on 'civic morals'.<sup>415</sup> His writings have already served us a number of times as a kind of bridge between Hegel's doctrine of ethical life and the present; and they also prove useful here in the normative construction of the democratic public sphere. In his lectures on the *Physik der Sitten und des Rechts* ('The Physics of Norms and of Right'), which he began to give in Bordeaux in 1896, Durkheim addresses what he terms 'civic morals', by which he means all the written and unwritten moral norms that enable the members of a democratic state, despite their mutual respect for each other's individual differences, to participate in shared deliberations and negotiations over the generally binding principles of government.<sup>416</sup> But before Durkheim could begin to define such civic duties in detail, he had to address a problem that was apparently more urgent in the face of the still smouldering Dreyfus affair: What kind of sentiments can motivate the members of a society to put aside their individual preferences and focus on the good of the democratic community, acting together to ensure its prosperity?<sup>417</sup> Referring back to the institution of the democratic public sphere, which Durkheim mentions in the same context, he inquires about the source of the sentiments of solidarity required to commit otherwise different citizens to the common task of public deliberation.

It would not be an exaggeration to view Durkheim's answer to this question as a first proposal of the idea of constitutional patriotism [*Verfassungspatriotismus*].<sup>418</sup> The finding with which he begins his considerations on the need for affective supplementation in all democratic publics is sobering: Because citizens will only be willing to participate in opinion-formation within the democratic state if its aims and values are regarded as worthy of striving for and defending, a certain measure of 'patriotism', of emotionally anchored commitment to the good of the community, will always

be necessary.<sup>419</sup> But already in the next step of his argumentation, Durkheim concedes that the existence of such patriotic convictions also harbours the danger that all universal moral principles might be subordinated to the 'purposes of the nation', thus defining any group regarded as foreign to be an enemy. Durkheim remarks laconically: 'As if one could only prove one's attachment to the national group to which one belongs as long as this group is in conflict with another group.'<sup>420</sup> In order to prevent this tendency of aggressive nationalism, Durkheim attempts in the last step of his argument to place the patriotism he regards as necessary on an entirely different foundation of moral universalism. In his view this will only be possible if the purpose of democratic states, emotionally confirmed by the citizens as being worthy, is understood as a particular realization of the universal human goals of freedom and justice: 'As long as states exist, there will always be societal self-love. And nothing could be more legitimate. But instead of directing their self-love and ambition toward becoming the richest and the most powerful, they could seek to become the most just, the best organized societies in the best moral condition.'<sup>421</sup>

The reference, which is missing in these formulations, to the embodiment of these universalistic moral norms in the constitutions of democratic states is found in the previous pages of his work. There he emphasizes in various ways that the nation-states emerging in the wake of the French Revolution are all founded on constitutions anchored in the proclamation of universal civil rights. Therefore, the concept with which Durkheim seeks to banish the constant threat of an excluding nationalism amounts to an early form of what we now refer to as 'constitutional patriotism'. By viewing the constitution of their democratic community as an inspiration to realize and perfect the universal moral principles contained in these documents in light of their own historical experiences, citizens can gain confirmation of their political cohesion and emotional connection to each other. Durkheim is so aware of the need to address 'national pride' when explaining individuals' willingness to participate in democratic life that he does not shy away from positing a moral competition between democratic states. According to Durkheim, the more citizens can see that realizing the principles of their constitutions is a matter of moral competition with other communities that also strive for moral perfection, the more resolute they will be in pursuing their common cause.<sup>422</sup>

But his thoughts on constitutional patriotism are not the only way in which Durkheim broke new theoretical ground at the end

of the nineteenth century. The part of his lectures on 'civic morals' dedicated to the role of the democratic public sphere was far ahead of its time, containing a number of determinations that recall the groundbreaking work published by John Dewey 30 years later.<sup>423</sup> As we saw above, the synthesizing and constitutional achievements of the nation-state contributed to initial forms of a public sphere that transcended class distinctions in many European countries; in these public forums, the male members of society could participate to a certain extent in political decision-making. Certainly, some of these national communicative spaces periodically served as a stage for the display of nationalist and occasionally racist attitudes, while other spaces lacked a sufficiently dense web of civil organizations and political parties to be able to function as an arena for nationwide debates. On the whole, however, we find an institutionalized culture of discussion in which the advantages and disadvantages of political aims could be publicly debated and judged; at the same time, however, there were still far too few attempts to give these public spaces a conception of their own essence. In educated circles in Germany one could recall Kant's principle of publicity,<sup>424</sup> and we can find elements of a theory of the public sphere in France and England in Tocqueville's reflections on American society<sup>425</sup> and John Stuart Mill's plea for diversity of opinion,<sup>426</sup> but there was still no consistent and comprehensive definition of the political role of the public sphere in democratic societies. Obviously, Durkheim sought to remove this intellectual deficit by regularly dedicating a part of his lectures to the indispensable function of public debate in the political process.<sup>427</sup> The idea that Durkheim attempts to outline here is similar to the sketch that Dewey would develop a few decades later in that it concentrates exclusively on the epistemic value of a process of reflection that is as inclusive and publicly comprehensible as possible.<sup>428</sup>

Durkheim begins by claiming that all government is the result of a cognitive effort, based on observation and supervision, to find intelligent solutions to social problems. In Durkheim's terminology, therefore, the state is the specialised 'organ of social thought'.<sup>429</sup> But as he goes on to claim, this thought process will take place under highly restrictive conditions as long as political isolation prevents those in charge from getting a clear enough picture of the social problems at hand. In centralistic systems, those who govern are 'sealed off from society' by 'impenetrable partitions',<sup>430</sup> giving them no knowledge of events in the life of society. Durkheim concludes that this epistemic barrier can only be overcome by building



bridges of communication between the organs of government and the population, over which information can flow not only from top to bottom but also from bottom to top, from the 'collective masses' to the top of the government. And the more people who can make their needs and concerns known to the public by means of such information channels, thus the more people are involved in the public exchange of experiences, the more intelligent the solutions to urgent social problems will be. As soon as these processes of reciprocal communication take on a reflexive form by passing over into shared deliberations on communicated issues, the state's solution to these problems will be all the more intelligent. After all, this means that each side subjects the other to intellectual supervision which compels those involved to make known anything that can help ensure a well-considered reaction to social problems. It is only at this threshold, at which public institutions of 'deliberation' and 'consideration'<sup>431</sup> are socially institutionalized, that Durkheim uses the term 'democratic public sphere'. The latter constitutes the epistemic guarantee that political action in complex societies based on a division of labour will be capable of rationally dealing with social problems: 'Everybody asks the same questions asked by the government, and everybody reflects on these questions or at least has the possibility of doing so. In a natural process of give and take, all the scattered reflections that arise have an influence on the thinking of the government from which these considerations emanate in the first place. As soon as the people ask the same questions as the state, the state can no longer ignore what the people think when it comes to the solution. . . . Therefore, there is a need for more or less regular consultations.'<sup>432</sup>

However, such a strong emphasis on the cognitive role of the democratic public sphere overshadows the fact that according to its normative idea, this sphere is also supposed to represent a sphere of social freedom. The right of the citizenry to come to an agreement through public deliberation on the principles to be implemented by the government, a right rudimentarily anchored in the constitution of these countries, was intended as an instrument not only for improving the capacity for political problem-solving, but also and especially for establishing the communicative conditions under which citizens can clarify and realize their own political intentions in an unforced manner and by reciprocally taking up the role of speaker and listener. There is hardly a word in Émile Durkheim's lectures about this promise of freedom inherent in the democratic public sphere. John Dewey places much more emphasis on this



issue, though he does so under social and cultural conditions that greatly differ from those of the founder of French sociology.

For Durkheim, newspapers and journals were still the central medium of opinion and will-formation. He constantly emphasized, likely with the Dreyfus affair in mind, that without print circulation it would have been impossible for an anonymous audience to engage in the collective reflection that characterized the public sphere.<sup>433</sup> Although there was a public telephone network in almost all European countries even before the turn of the century, it was almost certainly used more for the long-distance exchange of private affairs than for discussing political issues.<sup>434</sup> The telegraph, which was used in the USA as early as 1850, was primarily a means of rapid data transfer for business, but not for the proliferation of information within the political public sphere.<sup>435</sup> A more recent revolution in communications technology, which had a lasting effect on the public exchange of information and opinions, began with the introduction of the radio; the technical prerequisites for this new medium had been created before World War I, but the first major broadcasting networks did not emerge until the 1920s. Whereas prior to World War I, especially in Germany, the nationalist moods that had built up in the European public were primarily spread via the printed press, comparable mobilizations in the near future would be carried out with the help of the radio.<sup>436</sup>

Almost paradoxically, a significant factor in this development was the fact that radio stations were run by the state in most European countries in order to prevent radio broadcasters from acquiring the kind of power exercised by the newspaper industry. By organizing this new media technology as a public or semi-public agency, these countries sought to avoid the economic processes of concentration that had already been going on in the press for half a century under private capitalist conditions, and which had led to the emergence of monopolies with almost uncontrollable possibilities of political influence.<sup>437</sup> And this seemed to work during the first decade of radio, the time of the Weimar Republic: In England, France and Germany, a series of state-controlled broadcasting agencies were founded with the task of informing and educating the public. As we now know from the works of Walter Benjamin,<sup>438</sup> these broadcasters were often pioneers in the exploration of aesthetic innovations such as daily reporting and radio shows. In general, the radio seemed much more suited to the task of ensuring media communication in a widespread public sphere than the newspapers, because radio made it possible to include the reactions

of the listeners directly in the broadcast itself. This made it possible to stage such spontaneous exchanges of opinion in front of a mass audience, which would normally only be possible among people physically present in one location. Thus in the early years of radio, there were innumerable experiments aimed at animating the audience to take over speaking roles in order to help invigorate the process of democratic will-formation.<sup>439</sup> As we will see later, this initial optimism would soon subside once the government authorities in Nazi Germany began to use public radio as a systematic means for spreading political propaganda.<sup>440</sup> While the press had already lost its original innocence after being used by monopolies to manipulate opinion, the Fascist consolidation of radio illustrated that the public control of the media also entailed dangers for democratic opinion and will-formation.<sup>441</sup>

This was a period of turbulent structural changes to the public sphere, starting before the political instrumentalization of public radio, but after the rise of newspapers and journals, amidst the extension of political rights of participation to previously excluded groups, and yet nevertheless accompanied by periodic revivals of nationalist attitudes in the Western democracies. This is also the period in which John Dewey published his account of the democratic public sphere. Even though the intellectual context of his intervention differs from that of Durkheim, as Dewey was responding to two books by Walter Lippmann calling for the rule of a democratic elite,<sup>442</sup> the central aim of his argument essentially coincides with Émile Durkheim's primary intentions without explicitly naming them. Just like the French sociologist, this American philosopher also viewed democracy as a 'form of domination by reflection' (Durkheim) which, according to its own epistemic standards, functions better the more members of society are included in it through processes of public deliberation and will-formation. Dewey would probably even have agreed to Durkheim's astounding conclusion that 'the moral superiority of democracy' primarily consists in the way it enables people commonly seeking to 'emancipate' themselves from the 'laws of things' and translates them into beneficial conditions of rational action.<sup>443</sup> At any rate, there are enough passages that would allow us to conclude that for Dewey, democracy is a superior form of government primarily because it makes use of the intelligence of all subjects involved when it comes to reflexively dealing with social problems.<sup>444</sup> But Dewey is prevented from developing such an exclusively epistemological justification of democracy by the idea, which he entertained since

his youth, that cooperative interaction in public will-formation is both the means and the end of individual self-realization.<sup>445</sup> Dewey conveys this idea of social freedom in his book on the 'public' especially clearly whenever he criticizes the growing commercialization of the media.

In the fifth chapter of his book, after he has presented his famous notion that the democratic public sphere is a type of experimental research community that explores the social conditions of peaceful interaction in order to develop a shared conception of what is politically desirable and worth striving for,<sup>446</sup> Dewey turns to the conditions of such a free and unforced exchange of opinions. Alongside the basic constitutional conditions of freedom of speech and political participation, whose restriction constitutes a violation of the 'rule of the people', this also includes the 'art' of establishing social relations of communication in a way that allows the 'free circulation of ideas'.<sup>447</sup> Dewey speaks of 'art' here, because a greater level of skill is needed to find ways of presenting issues relevant to the public, issues that reveal the social challenges beneath 'the crust of conventionalized and routine consciousness'.<sup>448</sup> But before Dewey begins to outline the basic features of the 'art' of public communication, he first addresses the gap between this ideal and the reality of his day; and it is in this critique of the decay of the public sphere that we gain an indirect insight into the normative ideas of social freedom that are missing from the justifications provided by Dewey and Durkheim for the public sphere of unforced will-formation.

Although Dewey decried growing 'apathy' in his home country,<sup>449</sup> he was also puzzled by the fact that nationalist attitudes continually showed up in Western Europe.<sup>450</sup> But what disturbed him most about the state of public will-formation was the fact that the authorities in charge of the exchange of opinion – especially in the printed press, which he still regarded as more important than the relatively new medium of radio – had taken on a shape that strictly contradicted their actual task. In his view, the previous decades, going back to the middle of the nineteenth century, had seen a structural transformation in the newspaper industry caused by the unregulated pressure of competition faced by publishers previously committed entirely to the needs of their audience. Due to the pressure to increase circulation by boosting demand, newspapers turned into capitalist enterprises that had to be able to sell their products according to the criteria prevailing on the market. As a result of this commercialization process, as Dewey notes throughout his study,<sup>451</sup> both the conditions within these enterprises as well

as the manner in which they report the news in both daily and weekly newspapers changed significantly. The autonomy of the editors and reporters was restricted, making them mere employees in a hierarchically organized, profit-oriented enterprise that selects and presents material almost exclusively with the interest of rapidly stimulating the interests of buyers. In a sentence that is astounding for the fact it could just as easily have been written today, Dewey summarized the meaning of 'publicity' in his day: 'advertising, propaganda, invasion of private life, the "featuring" of passing incidents in a way which violates all the moving logic of community, and which leaves us with those isolated intrusions and shocks which are the essence of "sensations"''.<sup>452</sup>

In this critique of the commercialization of the press, Dewey was in complete agreement with Max Horkheimer's and Theodor W. Adorno's indictment of the 'culture industry',<sup>453</sup> even down to his wording: he not only spoke of the artificial creation of 'sensations', but also of the production of arbitrary 'distractions'.<sup>454</sup> The difference between their two approaches consists in the fact that Dewey measures the state of the newspaper industry according to the ideal of the free exchange of opinions, while Adorno and Horkheimer deal with non-mainstream art. For Dewey, therefore, these developments could be regarded as the epitome of a 'social pathology',<sup>455</sup> as he calls it, because the dominant presentation of news contradicts the true tasks of these authorities in the democratic culture. Their real task, in fact the entire reason for their existence, consists in informing citizens in an understandable and comprehensible manner about which new issues in the life of society they should rationally consider in their shared will-formation. Instead, however, they restrict themselves almost exclusively to presenting such events in a way that produces as big a 'shock' as possible – Dewey cites examples that could have been taken right out of the present: 'crime, accident, family rows, personal clashes and conflicts'.<sup>456</sup> According to Dewey, this deviation from the ideal of objective, informative and sociologically enlightening reporting is so harmful and fatal because it essentially prevents the formation of a public in the first place. In his view, that would require that a group of people, brought together by the interdependence of their individual actions, reach an understanding about the 'consequences' of their 'associated activities' and thus about which of these they take to be desirable. Only if such a communicative understanding about the consequences of their associated action in the group comes about can we speak of the 'We' of the public.<sup>457</sup> If this group is as

large as the population of a nation-state, whose members cannot all meet face to face, though their actions remain highly interdependent, their common evaluation must take place with the help of the media. According to Dewey, newspapers, journals and the radio serve to spread information about social affairs, which allows an anonymous audience to understand the consequences of their actions and thus to take up a generally agreed-upon stance. Dewey uses the term 'democratic public' to describe the totality of all the communicative processes that enable the members of 'large societies' with the help of the news media to take up the perspective of such a 'We' while judging the consequences of their actions. It constitutes a form of social freedom by enabling individuals, in communication with all other members of society, to improve their own living conditions.

However, Dewey formulates this idea of social freedom much more emphatically than is conveyed by this somewhat pale description. He expects the already mentioned 'art' of communication – which we now know demands a 'subtle' and 'sensitive' illustration of the still unknown consequences of social interaction – to do no less than unleash the creative intelligence of all members of society. If all citizens were enabled, with the help of the media, to contribute their own proposals to the public debate over the appropriate means for perfecting the community, then in Dewey's view a state of free cooperation will have been attained that would truly deserve the name 'democratic freedom'. He invokes the work of Walt Whitman, which oscillates between the exaltation of mystic nature and the community,<sup>458</sup> when he attempts to summarize the idea of freedom enabled by public communication: 'When the machine age has thus perfected its machinery [i.e. media of communication] it will be a means of life and not its despotic master. Democracy will come into its own, for democracy is a name for a life of free and enriching communion. It had its seer in Walt Whitman. It will have its consummation when free social inquiry is indissolubly wedded to the art of full and moving communication.'<sup>459</sup> If we subtract the sentences that derive from Whitman's democratic vitalism, then we are left with a relatively sound definition of social freedom in the democratic public sphere. As soon as the media fulfil their task of providing the general knowledge required for dealing with social problems, the members of society will be capable, under conditions of equal rights to freedom and participation, to commonly explore appropriate solutions and work cooperatively toward the experimental consummation of their community.

The 1930s, the time when John Dewey published his study on the democratic public, were anything but suited to giving these ideals a chance for social realization. If we stick to the indicators we have already mentioned – the extent and generalization of political rights, the existence of communicative spaces across all social classes and the state of media technology – then it could appear as if the institutionalization of a civil sphere of democratic will-formation was on a path to success. World War I had given a boost to women's suffrage, and the example set by many Scandinavian countries was followed by the Netherlands in 1917, Germany, Austria, Poland, Sweden and Czechoslovakia in 1918, the USA in 1920 and Great Britain in 1928; France (1944) and Switzerland (1971) were the last in line.<sup>460</sup> In most of these countries, there was a nationwide communicative space, promoted by the unifying experience of having survived World War I and focused around the gravitational centre of the Capitol. Any information considered newsworthy was spread overnight to the furthest provinces; and the important political events in the provinces flowed back to the news agencies in the Capitol, from where they would be passed on to local intermediaries. This rapid circulation of information within the borders of the nation-state was ensured by highly developed media technology encompassing the telegraph and the telephone as well as newspapers, journals and radio. It is above all this last medium that spread most rapidly and became the 'people's receiver' [*Volksempfänger*], as it was fittingly called in Germany, capable of circulating even more complicated news and political positions among the population.

But this raw data concealed social upheavals and political attitudes that would cast a much bleaker light on the national public sphere of the time. In some European countries, there were national or ethnic minorities who were excluded from the democratic public sphere by being deprived of political rights; and even where they were conceded such fundamental rights, they rarely had any realistic prospects of contributing their own beliefs to the process of discursive will-formation because of the open disregard for their cultural distinctiveness.<sup>461</sup> The situation was similar for women in most countries, who despite suffrage continued to be deprived of an active role in public debates. A mixture of male prejudice, a forced attachment to the role of housewife and internalized self-conceptions ensured that the democratic public would remain a male domain in which women would only occasionally intervene, be it individually as intellectuals or artists, or collectively in the

form of feminist groups.<sup>462</sup> In addition to this more or less formalized exclusion, the nationally bounded communicative spaces were strongly divided along class lines. Many social milieus developed their own small public spheres despite the centring power of the nation-state; within these niches and with the aid of brochures and newspapers, dissenting opinions were cultivated. Although this potential for dividing the political public sphere also had the advantage of offering minority beliefs a chance to survive at all – just think of the bizarre conservation of monarchism during the Weimar Republic<sup>463</sup> – it often led to a far-reaching decentring of public opinion, undermining the common ground of overarching will-formation between the parties. This fracturing [*Versäulung*] of public discussion in the years shortly before the Nazi seizure of power has since become a constant challenge for liberal democracies: As long as there is not a sufficiently pluralistic spectrum of opinion that guarantees a balance between centrifugal and centripetal forces within the sphere of public will-formation, this sphere would constantly be exposed to the danger of social fragmentation, because dissenting groups would be forced to carve out isolated niches for themselves.

During this same period, however, there was also a concern about the opposite danger, that is, a strong homogenization of the democratic public. This is demonstrated by the critical diagnoses of the conformist effects of mass media; in the eyes of many contemporary intellectuals, the development of both the press and new media such as radio and film contradicted their task of communicating information and knowledge relevant to the public. As we saw above, John Dewey was strongly convinced at the end of the 1920s that the American daily and weekly news had been subjected to capitalist profit interests, causing them to focus on the stimulation of a relaxed attitude rather than on the encouragement of a critical-rational stance. Although this remained mere speculation for the time being, Dewey concluded that these developments would promote a 'facile optimism' in large parts of the population, giving any crisis the polish of a purely personal stroke of fate.<sup>464</sup> In Western Europe, where major newspapers maintained relatively high standards because they could count on a large audience in the cultural centres, similar conclusions were drawn about radio and film: Radio, initially expected to bring about a democratic revival, had lost its glamour within the space of a few years, not only because it merely seemed to promote further distraction, but because it significantly reduced the distance to the listener and thus offered



an easier target for political manipulation than did daily newspapers.<sup>465</sup> And with film as well, which spread rapidly in the 1920s, an initially interested and even optimistic attitude quickly gave way to the general scepticism that this new medium primarily communicated a fantasy world that would merely glorify social reality for a culturally obsessed middle class.<sup>466</sup> On the whole, therefore, the intellectuals of the time tended to locate old and new media within the 'culture industry', as it would later be called by Adorno and Horkheimer. The current state of radio, cinema and the daily press – at least in Dewey's view – was more suited to awakening a desire for conformism in large parts of the audience than to stimulating non-coercive deliberations within the public sphere.

If we add to these critical diagnoses what has already been said about the danger of fracturing [*Versäulung*] and various exclusionary mechanisms, the democratic public in the West at the start of the 1930s presented an extremely sobering picture. There was no notable expansion of the freedom promised by the principle of democratic will-formation, because the required exchange of opinions either legally or informally excluded many groups within the population; other groups refused to participate because of cultural self-isolation, and finally, the 'middle' of society showed little interest in participating, because essentially it had fallen under the spell of the individualizing promise [*Privatisierungsversprechen*] of the mass media. Certainly, this is a coarse description that does not do justice to the many civil activities, disputes and discussions that took place during this period. But within the context of our normative reconstruction of the democratic public sphere, this is only intended as a typifying sketch of an intermediate historical stage that we must recall in order to be able to properly assess the current state of this sphere.

Furthermore, this description emphasizes an aspect of the freedom anchored in the public sphere that distinguishes it from the social freedoms in the spheres of personal relationships and economic action. If we attempt to recall the causes for the restrictions on these freedoms during the 1920s, we not only find legal or informal, government-sanctioned or culturally effective hindrances; rather, there seems to be a general lack of motivation to engage in the public discussion of opinions and the process of will-formation. This sphere, in which we supplement each other as politically arguing citizens, is not an institutional complex, not a relational institution in which we must take part from the very beginning, be it because of given needs or because of crucial



interests. Whereas we always seek involvement in the other two spheres of social freedom, because our 'natural' desires or objective constraints of survival compel us to, we must first resolve to engage in the sphere of democratic will-formation. Therefore, it is only in this last step of our normative reconstruction that a problem arises that we could not have been faced with before: the sheer disinterest in institutionally promised freedoms. The concept Dewey used to describe this threat is 'apathy',<sup>467</sup> other terms depicting similar phenomena include 'privatization' or 'de-politicization'. We will repeatedly encounter these concepts in our account of the development of the democratic public up into the present.

Shortly after this intermediate phase, however, there was an interruption in the hesitant process of institutionalizing the democratic public. In 1933, the National Socialists took power in Germany, a party whose ability to mobilize the masses would bring enormous suffering to all of Europe. Although the Dreyfus affair had revealed that the political public forums in European democracies could suddenly become arenas for the display of nationalistic fervour, after the Nazi seizure of power in the German Reich this same kind of shift took place with unmatched speed, perfection and brutality.<sup>468</sup> Within the space of a few years, the fascists managed to use both political terror and political propaganda to fuel feelings of nationalist resentment and anti-Semitism within the German population stemming from the time of the Weimar Republic, thus mobilizing the masses in order to exclude groups classified as 'foreign to the species' or hostile. As mentioned above, public radio, which was quickly put under the authority of the Ministry for Propaganda in order to skilfully insert nationalist messages and slogans into extremely popular entertainment programmes, played a significant role in engendering this violent, and yet broadly supported process of creating a 'national community' [*Volksgemeinschaft*].<sup>469</sup> Later, the staged omnipresence of such a national community, its constant visibility in the public space – here we might think of the perfectly organized mass assemblies, the film aesthetic of Leni Riefenstahl and the cultural instrumentalization of classical music – would be described as the epitome of a 'fascist public sphere'.<sup>470</sup> The use of this category, however, blurs the fact that the reference to freedom of speech and unforced will-formation, which has been an inherent part of every concept of the 'public sphere' since the beginning of social modernity, was not merely faked, but replaced by staging a unified will of the people. Hence it would be better to abstain from using the concept at all in connection with National Socialism,

and instead to speak only of a new appearance of a 'national community' engineered with the aid of propaganda and any available media. Here, the ambivalence within the political sphere that had emerged in the nineteenth century at the latest, when the circle of legitimate participants began to be reduced to citizens belonging to the 'nation', passed over into the one possible extreme for the first time. The only people who participated in what was still euphemistically described as the formation of the will of the people, despite the dictatorial measures involved, were those who could prove their 'natural' German nationality.

The violent destruction of any true public sphere in Germany, which began with the legal exclusion of the Jews from the civil sphere, set off political reactions throughout Europe which would put an end to all efforts to expand democratic freedoms. Even though a totalitarian regime had been established in Italy before the Nazis' seizure of power, and although the Spanish Civil War was instigated by Franco's military coup in 1936, none of these events would have as disastrous an effect on the democratic culture of Europe as National Socialism. The initially secret, but increasingly visible plans to eradicate the Jews, the hardly concealed intention of military conquest, the bizarre and purely strategic pact with Stalin – all of these obvious warning signs moved the liberal states of Europe to take political precautions that threatened previously existing liberties and opportunities for political participation. With the outbreak of World War II following the German Army's attack on Poland, any opportunity for unforced public will-formation was lost in Europe. Of the voluntary associations and civil institutions that previously served as organs of critical publicity and constituted the democratic public sphere, there often only remained national resistance groups or alliances of partisans, while the task of defending the rule of law and democracy was left to the Allied armies and their secret services.

The majority of civilized nations responded to the crimes against humanity committed by the 'Third Reich' after the end of World War II by founding the United Nations. When the General Assembly issued the Universal Declaration of Human Rights in 1948, there was a significant improvement in the protection of the democratic public sphere in Western countries, because from that point on, nationally guaranteed constitutional rights were subordinated to international laws.<sup>471</sup> Whereas the National Socialist state had still been able to arbitrarily restrict the liberties and participatory rights laid down in the Weimar Constitution without having to face

international sanctions, now there was at least rudimentary restriction of such national sovereignty. In the future, therefore, constitutionally guaranteed rights in Western European constitutional states remained relatively untouched, even though there were occasionally severe violations in these countries as well, and despite the fact that dictatorships continued to exist in the neighbouring countries. The countries that ratified the UN Declaration of Human Rights not only provided the basic legal framework for democratic will-formation, but also the first opportunities for civilizing activities beyond national borders. One of the first non-governmental organizations founded on European soil with the aim of enforcing basic human rights and calling public attention to any violations was the Russell Tribunal, founded by Bertram Russell in 1966, which would represent a model for later practices of publicly exposing state arbitrariness and political terror.

Whereas the legal prerequisites for democratic will-formation were relatively secure in European constitutional states after World War II, there would soon be dangers and encroachments from an entirely different corner. If we recall the indicators employed above (the extent of political rights, the existence of class-transcendent communicative spaces and the state of media technology) and add a fourth element, i.e. the extent of civil participation and the kind of activities we dealt with in reference to John Dewey, then it will quickly become clear that the further expansion of social freedom in this sphere, at least in the view of a number of leading intellectuals, was initially obstructed by the apathy of the population – an apathy that was reinforced by the media. In retrospect, it is still astounding how much the two authoritative analyses of the public sphere in the late 1950s, viz. those by Hannah Arendt and Jürgen Habermas,<sup>472</sup> agree on this diagnosis. For all the differences between these authors in terms of their historical accounts and their conceptual interpretation of the ‘public sphere’, they both agree that the latter’s existence as a sphere of political communication was threatened primarily by the rising dominance of private consumerism.

In the decades following the Declaration of Human Rights, it certainly would be wrong to claim that a mood of political apathy prevailed throughout Western Europe. Although West Germany was marked by a generally apolitical tendency and a retreat into the private sphere, which manifested itself as an oppressive quiet about the crimes that had just been committed, Great Britain and France were home to intense public debates, as the post-war

years offered a chance for a political beginning and called for decisions that would point the way toward the future organization of society. The same was true of the USA as well, where the civil rights movement began to attack the continuing existence of racism and the discrimination of minorities. So we cannot say that a general reluctance of the population to discuss political and practical problems or a general retreat from the space of democratic will-formation was what motivated Arendt and Habermas to warn of the danger of a privatistic hollowing out of the public sphere. However, as we saw above, once we consider the fact that during this same time, the gradually recovered standard of living also brought forth a massive proliferation of attitudes of individual consumerism, we will see an unmatched tendency across national and class borders to compensate for the years of deprivation during the war by purchasing as many consumer goods as possible, a kind of wealth that symbolized security and comfort. In addition to this development, which Arendt and Habermas both place at the centre of their critical diagnoses, the mass media seemed to deviate more and more from their actual task. With television, a third medium of communication arose alongside radio and film, and its privatizing and manipulative effects went much further than any other previous form of media. The lines between entertainment and information seemed to blur more than ever, the flood of images would prove to be more distracting, the attitude of the viewers more passive and the influence of advertisements even stronger.<sup>473</sup>

Even if there is no mention of such initial reactions in the analyses of Arendt and Habermas – *The Human Condition* makes no mention of television at all, while it is noted in only three places in *The Structural Transformation of the Public Sphere* – they must have had a strong subliminal impact on the atmospheric background of both authors' extremely negative view of the mass media. Neither believed radio, film or television capable of enlightening an anonymous audience through critical reporting on the principles to be considered in the formation of public opinion. Their sceptical assessment of the developments in the daily press further confirmed their belief that the political public sphere was being subtly re-privatized. This sphere of social freedom, originally intended to be a place of communicative arbitration of political disputes (Arendt) or of rational deliberation over universalizable aims (Habermas), seemed to be turning into a space exclusively occupied by privately acting consumers.

There is no need to mention the historical and political developments that contradicted these prognoses of decay even at the time. We have already mentioned the civil rights movement in the USA, which successfully made state racism a topic in the mass media; we could also point to the stronger presence of socialist alternatives in the national publics of France and Great Britain. The analyses provided by Arendt and Habermas can obviously be traced to the normative exaggeration of an original model whose unquestionable disappearance had such a strong impression on both authors that other tendencies slipped into the background. Among the circumstances that seemed to support their pessimistic diagnoses was the fact that the social underclasses had a much more difficult time awakening the interest of the media in their issues and problems, because they could no longer resort to an organized proletarian press as they could prior to the rule of National Socialism. It was not until the 1950s and 1960s – after the unprecedented rise in living standards and the resulting ‘equalization’ of lifestyles caused the labour movement’s distinct culture to dissolve – <sup>474</sup> that the social selectivity of reporting in the media became more apparent, hence the attempt of many authors to create a kind of ‘proletarian literature’ in which the daily affairs of the lower classes could find an audience in the political public sphere.<sup>475</sup> One of the social developments that clearly contradicted the diagnoses offered by Arendt and Habermas was a gradual intensification of public debates that gradually put an end to the process of coping with the consequences of the war in many countries. The raging controversy over Germany’s rearmament or, a few years later, over the emergency laws; the militant conflicts over the legitimacy of France’s continuing colonial policies in North Africa; the growing struggle over the future of economic policy in England – all these disputes indicated a revitalization of the democratic public that ran counter to the claims of spreading privatization and apathy. The ability of the press to criticize policy and raise social problems was also a good deal stronger than Arendt and Habermas would have us believe. Radio and television in Western Europe were still entirely in public hands and subject to media regulations that reflected the experience of the National Socialist propaganda machine by excluding all political influence and explicitly reserving a certain portion of programming for impartial reporting. The quality of the press was satisfactory on the whole, since after World War II newspapers and journals were often founded or re-founded as smaller enterprises, and the process of economic monopolization had not yet set

in. Even though it might not have been the sensitive organ of an enlightened public Dewey had hoped for, the press was nevertheless sophisticated and curious enough to convey the various beliefs of the middle and upper classes. Above all, however, the aesthetic avant-garde of Western Europe had been forced during Nazi rule to suppress their innovative spirit and their lust for experimentation so much that these forces now exploded in film, theatre and even in radio, where they developed new, and previously unexplored forms of representation. Here we might think of neo-realist Italian film, existentialist French drama and the series of groundbreaking radio shows on West German radio – all of these were works of art that challenged an educated audience and provoked a number of reactions, without finding any mention by Arendt and Habermas.<sup>476</sup>

Although these authors' prognoses of decay could be seen as deriving from a certain stylization of a traditional form of the public sphere, this normative fixation would also prove to have a good side. Indeed, after having been written down and made public, the form of social freedom that both authors saw in the traditional public sphere would serve as a demand and as a critical standard that would accompany all further historical developments. And we would be right to presume that Habermas' category of the discursive public had just this kind of influence during the 1960s and 1970s, while Arendt's category of the 'public space' would become more influential in the 1980s, when civil resistance against the communist dictatorships in Eastern Europe began to take shape.

Habermas clearly derived his concept of a reasoning public from the literary salons and discussion circles of the bourgeoisie in the eighteenth century. In his historical analysis of the structure of the public sphere, he did not further pursue the question of how these practices of public opinion and will-formation could be socially generalized into the fragile structure of democratic nation-states in the nineteenth century, instead skipping ahead to the twentieth century and discovering a process in which this original social model was in the process of being hollowed out. Despite the many disadvantages of such an approach – including the fact that his neglect of the nation-state framework blinds our view for nationalist instrumentalizations<sup>477</sup> – it had the great advantage of recalling the norms and ideals originally tied to public will-formation in their pure and historically undiluted form. Habermas was able to show – more convincingly than Dewey before him and more poignantly than any author since – a connection between the increase of knowledge and of freedom in the historical form of the bourgeois

public sphere, one which would become an indispensable element of the normative self-understanding of liberal democratic societies. Without being able to go into detail here,<sup>478</sup> the central insight of Habermas' historical study is that the eighteenth century bourgeois identification of public opinion with the rationality of political life can only be maintained in a convincing and consistent manner if all people affected by these decisions can be viewed as participants in a non-coercive process of will-formation. From the very beginning, therefore, there was an intrinsic connection between his intention to make politics more rational through a shared process of reasoning and the idea of communicative freedom, because political decisions can only claim to be rational and right if all citizens are equally entitled, without coercion, to participate in the process of decision-making.<sup>479</sup> Certainly, this conception of the deliberative public is similar in many ways to that of Dewey, though Habermas' historical account made clear for the first time that the idea of cooperative interaction in the public sphere was not merely a well-intentioned construction, but an already institutionalized claim that was valid as long as political action intended to be rational.

Even though we can hardly claim that Habermas' critique of the post-war state of the mass media, a critique which was based on these normative ideals, had any direct influence on the formation of the initial public discussion of press and television in the early 1960s, a critical movement would emerge soon after the publication of *The Structural Transformation of the Public Sphere* with the aim of demonstrating the conformist and manipulative tendencies of the now seriously altered media landscape. The democratic public saw itself faced with a number of challenges during this time, of which only the growing power of the media was initially brought up for debate. With the Treaty of Rome signed in 1957, the European Economic Community (EEC) was brought to life in Western Europe, which was to be followed by stronger political integration, without raising the problem of how nationally defined citizenries should be realigned.<sup>480</sup> Since the mid-1950s at the latest, there began a wave of immigration into many Western European countries either of citizens of former colonies (England, France, Belgium) or of guest-workers invited in from abroad (West Germany), which sooner or later would raise the question of whether and how these new members of society should be involved in processes of democratic self-determination.<sup>481</sup> Finally, at about the same time, women began to stream into the labour market – slowly at first, but with growing force and increasing self-confidence. This made a mere



façade of the traditional distinction between a private sphere dominated by females and a public sphere dominated by men, and it necessitated a search for ways to extend the process of democratic will-formation.<sup>482</sup> The gradually forming student movement in the 1960s would pick up on none of these new challenges that affected the degree to which civil rights of participation in fact took on institutional shape and the size of the respective communicative space. In Germany, France and Great Britain, questions of legal exclusion were not raised, despite the visibly growing disadvantages of political and economic immigrants, while the problem of the cultural – be it national or gender-based – exclusivity of the democratic public sphere did not seem to exist at all. To the extent that the student movement aimed to expand this form of social freedom at all – a kind of freedom that was established within the public sphere through the conceptual institutionalization of non-coercive will-formation – it was focused on the radical critique of manipulation by the dominant mass media. Either through his lectures or by word of mouth, Habermas' study on the public had a major impact on students' outrage at increasing processes of concentration in the newspaper industry and the creeping trivialization of journalism.

The debate within the democratic public over the conditions of its own existence would now be refocused on the state of the mass media. For the time being, the urgent problems associated with the constitutional or cultural prerequisites of access to democratic will-formation would slip into the background. The many doubts raised about the suitability of the media for democracy started off with the West German student movement's critique of the Springer publishing house.<sup>483</sup> The latter's publications represented a glaring example of everything Habermas had already described in his study of the media – the tendency to 'personalize' political developments and blur the lines between the political and the private – so that there was no doubt that it had failed to fulfil its duty of enlightening the public. The objections that would soon be raised in West Germany and many other European countries against the privatizing effects of television could have been copied straight out of Habermas' study, even if the latter did not address this relatively new medium in its own right. The hopes expressed thirty years prior that radio would allow the public to reconnect to its democratic role reappeared with the rise of television,<sup>484</sup> but would soon give way to scepticism and severe misgivings after public television came under increasing pressure to improve ratings, which in turn made it increasingly dependent on the advertising industry.



Whether the programme structure and the modes of presentation employed by this most influential of all media tools only fulfilled the need for de-politicizing relaxation, or whether it also provided information and a forum for the exchange of opinions, would soon become a source of constant dispute within the democratic public sphere's discussion of itself. For over thirty years, this debate was marked by a steady back and forth, because each time it seemed proven that television had a stupefying effect on its audience, a cultural-sociological counter-movement would come along and point to this medium's subversive and emancipatory potential,<sup>485</sup> until the expansion of the media market then provided a glaring illustration of how a broadcast monopoly could lead to undue political influence and the domination of public opinion. Today, as we will see below, a feeling of sheer horror prevails about just how little the largely privatized medium of television can still manage to fulfil its original task of informing and enlightening the public.

Compared to these questions concerning the politics of media, which could be answered by resorting to the corresponding studies by Dewey and Habermas, the entirely different problem of the legal and cultural conditions of access to what remained a nationally constituted public sphere had faded from view. Over the course of the 1970s, the gradually growing number of immigrants from other cultures and ethnicities in Western European countries, along with the increasingly loud protests of the women's movement against their informal exclusion from public will-formation, all represented challenges that demanded a redefinition of the 'We' of democratic self-determination. As we saw above, this 'We' had come about through a drawn-out institutionalization of a national public in which only the male members of the propertied classes were involved, as they were the only ones entitled to vote. After male wage labourers had also successfully gained suffrage, which in many European countries did not occur until the beginning of the twentieth century, this 'We' now officially included all citizens within the nation-state community. But below the surface, a series of cultural mechanisms of exclusion continued to prevent many members of the lower classes from having their voice heard in the public exchange of opinions. Not only did one have to have the legal attributes of a citizen, but also a mastery of the cultural modes of comportment, which Bourdieu would later summarize in his concept of the 'bourgeois habitus'.<sup>486</sup> These informal disadvantages would also be reinforced by the thematic and stylistic selectivity of the mass media, which had the task of mediating the public

exchange of opinions beyond the local and class-specific centres of communication. Whether in the printed press or in radio, there was an overwhelming dominance of beliefs and views, in terms of both content and presentation, that corresponded to a background consensus secured by cultural hegemony. The labour movement, by attempting to provide both the space and the media attention needed for the articulation of dissenting opinions, would provide a counterweight to this dominance, but this often merely had the effect of further shutting out previously marginalized views.

Once women finally attained political rights and were thus formally included into this very hierarchical 'We' of democratic will-formation (the result of social struggles that in some countries lasted until after the end of World War II), the already mentioned cultural mechanisms of exclusion were applied in an even stronger and more blatant manner. While the male members of the lower classes were often subtly denied the ability to participate in the public exchange of opinions because of a supposed lack of education, women were almost officially faced with the prejudice of not being sufficiently qualified to take part in public discussion, since their tasks in the home supposedly prevented them from having any competent political views. These descriptions remained culturally in force up until the 1960s, and often enough they were even explicitly confirmed in debates within national parliaments. So despite the rights that women had managed to attain, they had not yet been truly included in the 'We' of the democratic public. A cursory glance at the autobiographical accounts of female politicians and journalists who began their careers in the post-war era is enough to prove how matter-of-factly they were denied any capacity to form political views.<sup>487</sup> Only after the first groups of feminine resistance formed in the wake of the student movement were such naturalistically justified stereotypes slowly discredited; of course, this usually only meant that open prejudices were merely replaced by hidden mechanisms of exclusion involving *habitus* and manners which, a half-century earlier, had excluded the male members of the lower classes from the public exchange of opinions. Instead of being denied the ability to contribute anything substantial to male-dominated democratic will-formation because of their traditional roles, women were instead excluded informally because of a supposed shortage of political decisiveness and an inability to be reasonable.<sup>488</sup> At best, they were regarded as the addressees of self-legislation, but not as its involved subjects.

At roughly the same time that the feminist movement began to attack this male-dominated definition of the 'We' of the democratic public, there was also an attack on its national foundation, which until this point had been taken for granted. There had simply been no question as to whether citizens of other cultural backgrounds should be included in public self-legislation. Of course, even in the past a shortage of labour-power had occasionally led to increased immigration from the poorer corners of the continent, such as Polish immigration to the Ruhr Valley in the second half of the twentieth century, but this immigration did not raise any legal issues of integration, because the masses of wage labourers did not possess any rights to democratic participation.<sup>489</sup> Democracy thus remained largely the domain of wealthy citizens. In the 1970s, however, the situation changed completely once the number of family members arriving in Western Europe from other cultures and ethnicities began to dramatically increase. After all, all the members of these societies enjoyed the entire spectrum of civil rights, such that citizens of other national backgrounds could no longer justifiably be denied these rights by invoking already existing legal inequalities, be it the discrimination of wage labourers or women. The consequential normative implications raised the question of whether the 'We' of democratic self-determination should sever its ties to a national cultural background.<sup>490</sup> We have already seen such ideas in the works of Durkheim, who proposed that democratic societies cultivate a kind of 'constitutional patriotism' in order to prevent the danger that an aggressive, excluding nationalism could arise from the feeling of national solidarity. But now, seventy years later, his proposal had turned into a question of survival for Western democracies, because the cohesion of the citizens could no longer be derived from a common national culture if migrants were to be included as well. As we have seen in the course of our reconstruction, the idea of the democratic public was to include everybody affected by decisions about the future political order in the free process of will-formation. From the very beginning, this democratic process depended on a common political culture and the associated loyalties, because otherwise, the individual willingness to participate in the process of will-formation and to accept majority decisions differing from one's own beliefs would not have been conceivable. But there was no inherent reason why this indispensable background culture had to have a national character, as if the sovereignty of the people had to be tied to the national identity of the citizenry. Countries with overwhelmingly immigrant popu-

lations such as the USA and Canada offered an entirely different example that Western European countries would have to follow by attempting to open their previously nationally homogenous political cultures and including citizens who did not share the same national origin but were nevertheless affected by democratic decisions.

In the 1970s, however, there was not yet a clear awareness of these challenges. The number of newly arriving immigrants, often the family members of invited or tolerated immigrants, was still small, allowing politicians and civil actors to ignore a problem that was already visible on the horizon. Even the student movement, which continued on in the form of various factions or newly founded parties, did not address the issue since the exclusion of members of foreign cultures or women from the democratic public sphere was never an instigator of political revolt, allowing biased critics to later accuse it of nationalist or patriarchal blindness. Only after the number of immigrants rose again a decade later could the problem no longer be ignored, having gained weight, size and visibility. In addition to the growing number of migrants, other domestic cultural minorities demanded respect for their collective identity and insisted on being included in the democratic process of will-formation. The women's movement had gained enough power to publicly attack the still existing mechanisms of exclusion; and in their wake, sexual minorities were able to organize themselves enough to make independent demands for the recognition of their cultural particularities within the majority culture.<sup>491</sup> In the space of a decade, what was originally a merely peripheral problem involving the access of people of foreign ethnicities and cultures to the democratic public sphere in their new home country would become a test called 'multiculturalism': 'The majority culture, supposing itself to be identical with the national culture itself, has to free itself from its historical identification with a *general* political culture, if all citizens are to be able to identify on equal terms with the political culture of their own country.'<sup>492</sup>

At this point, we should briefly interrupt our normative reconstruction in order to get an overview of the conditions of social freedom in the democratic public sphere that we have already uncovered. If there is one key conclusion that we can draw from the almost two hundred years of social and political struggles to realize communicative freedom within the newly created space of general will-formation, then it is that individual rights granted by the government to express one's opinion and participate politically

are in no way sufficient. Although such constitutionally guaranteed rights are a necessary condition for being able to take part in the democratic process of collective self-legislation through discursive exchange with all others affected by future political decisions, there are still a variety of other hindrances to the actual inclusion of all citizens in shared practices of will-formation – hindrances that only came to light in the course of the self-referential application of the principle of popular sovereignty.<sup>493</sup> If we keep to the five criteria mentioned above, we can name the following additional conditions in the order in which they historically entered the consciousness of the public, and all of which can be considered indispensable for the equal exercise of social freedom in the democratic public sphere. Beyond the *first* condition of indispensable legal guarantees, in the transformation of the 'bourgeois' public into the 'democratic' public we saw, *second*, the need for a class-transcending, universal communicative space that enables different groups and classes affected by political decisions to enter into an exchange of opinions. At first, that is, in the long and conflict-laden nineteenth century, such a space of common attention and affectedness was created by modern European constitutional states charged with national identity, whose dark side appeared whenever the unifying variety of nationalism switched into its excluding variety. In the meantime, due to international interdependencies, the decisions made by one nation-state have come to affect more than merely that state's own citizens, while such individual state decisions have generally become much more dependent on international arrangements and agreements. Because of this decreasing 'congruence between those involved and those affected' (Habermas), it no longer seems rational to contain the democratic communicative need within the borders of individual nation-states. Although even today international crises or natural catastrophes quickly cause public debate to return to the nationally restricted communicative space, over the long term this space seems to be undergoing two different developments: transnationalization and thematic diversification.

If the existence of such a shared communicative space merely means that participants in democratic will-formation can identify certain actions or affairs as being in their common interest, then in larger societies public discussion over how to politically evaluate these actions or affairs will largely be enabled by the media. Therefore, *third*, as could be seen at the end of the nineteenth century at the latest, when the penetration of the printed press by capitalist profit interests led to a first round of 'popularization' in newspa-

pers and journals, a highly differentiated system of mass media is needed, one which enables its audience to take part in informed processes of will-formation by providing enlightening information on the emergence, causes and possible interpretations of social problems.<sup>494</sup> Almost eighty years ago, and as we saw above, John Dewey developed the notion of the 'art of communication' that was tailored to precisely this *third* condition of social freedom. In order for the members of an anonymous audience – whom Dewey assumed to be citizens of a nation-state – to be able to engage with each other, take turns speaking and listening, and thereby come to an agreement on the most desirable solution to social problems, mass media would have to learn to use a special language that was both sociologically precise and comprehensible, one that made the specific context clear and yet was generally understandable. The state of technology attained by print media, radio, television and film would nowadays easily enable the development of such an art. Radio and television in particular, if they are at all subjected to ethical standards of media and not entirely subordinated to capitalist profit constraints, could offer plenty of opportunities for researching social problems in the form of 'group experiments',<sup>495</sup> thus making this research understandable to a larger audience. In fact, however, even in Western Europe these media have developed in an entirely different direction, becoming more and more dependent on private forms of production and the advertising industry, while allowing less and less space for the independent ethos of media professionals. John Dewey was only the first in a long line of intellectuals who attempted to illustrate the commercialization of the mass media with regard to how journalists have transformed from reporters on publicly relevant affairs into compliant entertainers.<sup>496</sup> Whether or not the explosive proliferation of the internet – a third, digital generation of communicative media – is suitable for resisting these developments by 'socializing' journalistic activities and media-mediated interactions is a question we will have to deal with in more detail once we have completed our normative reconstruction.

A further, *fourth* condition of social freedom in the democratic public sphere is the willingness of the citizens to provide unpaid services in the preparation and execution of audience-related events in which the opinions of various groups are presented. Contemporary theories of democracy often pretend as if the exchange of opinions so crucial to democratic will-formation is restricted to the reflexive acts of speaking and listening. Although they

generally emphasize that lively discussion over alternative views also necessitates coming together face to face, demonstrating publicly and even practicing civil disobedience,<sup>497</sup> the element of material mediation in these events often goes unmentioned. The idea of disputes and discursive negotiations almost always follows the model of face-to-face conversation and is then transferred to the great mass of anonymous citizens with the aid of technical means of communication, without considering the degree to which these media-supported deliberations depend on the symbiotic connection to experiential concrete interactions.<sup>498</sup> Even if the mass media were in ideal shape, there could be no public exchange of opinions without the willingness to re-concretize our communicative interaction over a longer period of time. Therefore, in order to be able to share the freedom of democratic self-legislation at all, citizens must do more than merely switch back and forth between speaker and listener, author and reader. It is crucial that they also be willing to resist the dissolution of the public sphere by dividing up the necessary voluntary services needed for the material preparation and execution of actual events.<sup>499</sup>

However, this necessity reveals the decisive importance of the *fifth* condition of social freedom in the sphere of the democratic public – a condition we saw in the danger of political apathy diagnosed by John Dewey, which he traced back to the tendencies of decay in the political culture of civil participation. Unlike the other spheres of social freedom, we saw that participation in the democratic public, and thus the exercise of our individual freedom to put the pursuit of the common good ahead of our own private aims and act in cooperation with others to improve the conditions of social life. As Durkheim was aware, the motive for such commitment to the public good in modern democracies generally springs from the binding force of solidarity among citizens, which obligates the members of society to feel responsible for each other and make the necessary sacrifices. Therefore, the existence of a political culture that nourishes and permanently enriches such feelings of solidarity is an elementary precondition for revitalizing the democratic public and even for bringing it about in the first place. If this sphere is not to remain an empty space, constitutionally guaranteed but left hollow by its members and unused for the purpose of expressing opinions, then the civil commitment of citizens is needed who, despite their unfamiliarity with each other, are certain of their political commonalities. In the past, as we also saw above, this background consensus was long secured by the cultural hegemony of the dominant



groups that were able to control access to the public expression of opinion. In the nineteenth century, the normative substance of national identity, until recently the sole source of solidarity among citizens, was originally determined almost exclusively by the male members of the bourgeois classes,<sup>500</sup> and later by the wage-dependent males as well, before the feminist movement managed to break the male monopoly on the interpretation of the public sphere and open it up to a much broader understanding. Meanwhile, due to the further pluralization of life-forms, the national basis of solidarity among citizens is in the process of dissolving, giving way to a somewhat bizarre and relatively productive search for other, even more abstract forms of solidarity in which the cultural connection between all citizens can be preserved. We will see at the end of our reconstructive procedure how the idea of constitutional patriotism, invented by Durkheim and further pursued by Habermas with reference to Dolf Sternberger,<sup>501</sup> can perhaps be filled with narrative substance in a way that removes some of its emotional pallor and its tendency to merely state what is morally desirable.

Clearly, these five conditions do not exhaust all the social preconditions needed to allow all members of the increasingly heterogeneous societies of the West to take advantage of their constitutional right to participate in democratic self-legislation. Alongside a communicative space that is not too large, informative mass media, the willingness to actively take part in a political culture that is capable of keeping democratic virtues alive, we require various social measures that guarantee the livelihood needed to take part in the non-coercive exchange of opinions in public. At this point, it is easy to see that the social freedoms offered by the institution of the democratic public link up with those social freedoms promised by the capitalist market. Only when the latter's principles of legitimacy are at least partially realized, thus providing the conditions for non-coercive reciprocity in the economic satisfaction of interests, will all the still existing social obstacles to the equal exercise of equal civil rights have been removed. As soon as we have completed our reconstruction of the sphere of public will-formation, we will be able to see the normative obligation that results from the intrinsic connection between these two spheres of democratic self-legislation.

Picking up our normative reconstruction where we left off, we see that in the 1980s, in addition to the developments already mentioned, the theory of the public sphere developed by Hannah Arendt had become increasingly important and almost pushed Habermas'



account into the background. This was largely related to the fact that Arendt's conception seemed to offer superior interpretive tools for the civil resistance that arose in the communist dictatorships of Eastern Europe. Compared to Habermas, who mainly focused on the normative implications of the public in order to measure its decay in the present, Arendt placed a much stronger emphasis on the dynamic and even revolutionary role played by popular efforts to conquer the public space throughout history. She found instances of a successful public sphere in the antique polis, as well as in the American Revolution and the uprisings of workers' councils, which she referred to in order to show how quickly a sphere of communicative freedom could arise once a group of like-minded individuals has decided to fight for it.<sup>502</sup> This 'associational' model of public space, as Seyla Benhabib has termed it in order to distinguish it from the other model, likewise presented by Arendt, of a more representative public sphere founded on individual self-displays,<sup>503</sup> seemed to contain all the necessary theoretical elements for providing an encouraging conception of their own formative power to the forces of resistance in Eastern Europe. As soon as a sufficiently large group of people was determined to conquer a space for publicly discussing their common affairs, the power relations within these politically stale, authoritarian systems would be forced to shift in the direction of a democratic civil society. Along this detour via these countries under communist dictatorship, where such ideas were obviously taken up eagerly and where they contributed to the political self-definition of various oppositional groups,<sup>504</sup> the 'associational' model found its way back into Western democracies, where it would revive the debate over the social requirements of a functioning public sphere. Compared to twenty years earlier, when the Habermasian conception dominated political debate, there was a stronger emphasis on the dependence of democratic will-formation on non-state, voluntary associations capable of continually providing public debate with fresh impulses and creative proposals 'from below'.<sup>505</sup> In the discussion set off by this development, however, the category of 'public space' often melded so seamlessly with the more diffuse concept of 'civil society'<sup>506</sup> that the debate ran the risk of losing sight of the normatively demanding preconditions in terms of the constitution and the media ethics needed for democratic will-formation. What often remained of the many institutional requirements that Habermas regarded as indispensable for the free and equal exercise of popular sovereignty in the public were merely more or less organized forums and civil

associations, without it being clear how the latter should be capable of breaking the power of the media and combating continuing social disadvantage.<sup>507</sup>

Perhaps it is the gap between the exuberant belief in the vitality and innovative quality of such voluntary associations and reality that led, over the course of the 1990s and after a number of sobering experiences, to the finding that the politically charged debates over 'civil society' faded away as fast as they had come to the forefront of public consciousness. The revolutionary changes in Eastern and Central Europe, partly set in motion by the resistance of peaceful civil rights movements, had helped establish formal democratic conditions in which the opinion-forming associations quickly lost their central role due to the rapid capitalization of the economy. Around the same time in Western Europe and the USA, either shortly before or after the fall of the 'Iron Curtain', a series of empirical studies suggested that the activities and the members of such civil organizations were fewer than had been hoped for only a decade prior. In general the sociological explanation for this phenomenon was that the degree of individualization in Western countries had increased so radically that the willingness of the members of society to engage in political activity and participation had gone into rapid decline.<sup>508</sup> The suggestive power of these two snapshots – the accelerated decline of the civil movements in the East and the increasing privatization of citizens in the West – put a quick end to any hopes of a resilient and continuously vibrant civil society. Although the term civil society had not lost its meaning for individual scientific disciplines over the 1990s, where it functioned as a conceptual placeholder for the organizational forms of a democratic public sphere,<sup>509</sup> its political impact and its almost revolutionary aura had been lost. The previously dominant issues of the menacing apathy of the 'masses' and growing de-politicization had returned to the intellectual and journalistic discussions on the state of the public sphere.

The rapid rise and fall of the idea of civil society was a first warning sign that any theoretical discussion of the public was in danger of ending up in a confusing and paradoxical state of dependence on given developments within its own object domain. Due to the enormous broadening of its sphere of influence, the assimilation of information processing strategies and the resulting reinforcement of its power to control the public's attention, the power of mass media to form opinion had grown so much as to make it ever more difficult for the audience to distinguish reality from the

image presented by the media. By skilfully placing a topic in the media and having it wander through all channels and features sections, television and newspapers could create entire pseudo-worlds that would have a real influence on political and even academic debates. Even the claim that the growing individualization of life plans and value orientations in the West had led to the almost total disappearance of all public involvement was largely the product of this kind of self-referential construction of reality by the mass media and other opinion-forming organizations. Certainly, there were enough empirical indicators suggesting the social proliferation of privatistic attitudes focused solely on individual advancement, but the dramatizing and reinforcing effects of media reporting turned this into the explosive claim that commitment to social affairs had dramatically decreased and that all individuals were only interested in their own happiness. In reality, neither had membership numbers in leisure clubs and political associations sunk by an alarming amount, nor had the willingness to make donations declined to any notable degree.<sup>510</sup> We could thus say without exaggeration that both the beginning and the end of this short period in which 'civil society' and its powers of resistance came to be glorified was a media-created fiction. First, there was a tendency to succumb to the empirically unexamined notion that in Western Europe, similar to Eastern Europe, there was an energetic network of actively involved civil associations; this illusion was dropped immediately once the media manufactured the image of spreading individualization. For the first time, a theory of the democratic public had wound up caught in the trap of the medial self-referentiality of its own object domain. There thus arose a tendency to remain caught up in the short-lived notions that the public had of its own condition due to the interpretations of reality circulating in the mass media and think tanks.

This increased capacity of the mass media and other organizations to produce virtual descriptions of social reality by reciprocally reinforcing the same issues, which then impacted the behaviour of the audience, has certainly been one of the greatest challenges for the sphere of the democratic public since the 1990s. It is not that such a tendency to create self-referential constructions of reality had not previously existed in daily newspapers, television or radio, but it was not until this time that the liberalization of electronic media in Europe and the increasingly intense competitive struggle on the newspaper market raised the pressure to improve ratings and circulation numbers so much that issues would have to be

presented with as much sensationalism and as big an impact as possible in order to gain the attention of the audience. And under the pressure to not ignore such attention-seeking contributions for fear of losing their competitiveness, all other organs of mass media would further spread these topics, until in the end a bit of self-enclosed, purely fictional reality had arisen, whose fictional nature, however, was invisible to the audience.<sup>511</sup> These virtualizing tendencies of traditional media pose a significant difficulty for our normative reconstruction; according to the criteria inherent in the democratic public sphere itself, these tendencies must be regarded as a misdevelopment because they no longer sufficiently inform the public, but rather produce reality self-referentially. Even stronger than in other social spheres, the communication processes in the public sphere have been so dramatized by media reporting that it is quite difficult to separate reality from fiction and get a sober look at real social developments. Here we might think of the impact the accents and coloration imposed by mass media has had on the public's image of how society is coping with the problems of cultural integration. In order to not be trapped by such feedback effects, we must exercise caution when it comes to historically completing our normative reconstruction of the public sphere, more so than in the other spheres.<sup>512</sup>

The various social developments over the last quarter century that have significantly changed the shape of democratic will-formation in the official sphere can best be summarized by describing them, on the one hand, as intersecting processes of the increasing power and stratification of the public sphere and, on the other hand, of increasing openness and vitalization. The decisive question here is whether a political culture is on the rise, or at least conceivable, which could be capable of integrating these opposing tendencies to the extent necessary for public self-legislation. We have already referred to one of the processes that has led to the increasing power and even massive heteronomy of the public exchange of views: the media production of social artefacts. Instead of carefully examining social problems as Dewey had hoped, the media often deliver gravely exaggerated images aimed at awakening the curiosity of the viewers in order to capture their attention and thus succeed in economic competition. Certainly, there are notable exceptions to this rule. There still are newspapers, television channels or broadcast companies that continue to cultivate a sense of journalistic responsibility and investigate social events as exhaustively as possible in order to allow the audience to come to informed and

reasoned judgements. The chances for such stubborn organs to remain true to their democratic task of impartial and informative reporting will increase the more they gain independence from the influence of political groups or private capitalist profit interests. To judge by the historical experiences of the last half century, this kind of independence can only be secured over the long term if the mass media are subjected to government control, as is still the case in many European countries. A glance at the programmes of these broadcasters is enough to see how different they are from the purely commercialized channels, despite the tendencies of 'popularization' in public television as well.<sup>513</sup> Sooner or later, therefore, the democratic exchange of views will be faced with the question of whether, given the precarious position of almost all independent daily newspapers in Europe, the public institutionalization of the press will be necessary as well.<sup>514</sup> A shocking example in such future debates could be found in the case of Italy, where the darkest visions of the chapter on the 'culture industry' in *Dialectic of Enlightenment* have become reality, ever since the oligopoly control of media power has successfully been transferred over to the stable power of government.<sup>515</sup>

Whereas recent developments in Italy demonstrate that even the most stable democracies in Western Europe are not safe from the danger of a hollowing-out of the public sphere of will-formation once purely profit-oriented enterprises get hold of mass media outlets,<sup>516</sup> even state guarantees of the diversity of opinions have done little to improve the situation of the democratic public. Those media organs that continue to fulfil their democratic task must not only provide contextual and background information to an audience of informed readers, listeners and viewers, but must also presuppose that the audience is in fact critical and willing to learn. The relation between media and recipient has always been less of a one-sided delivery of information than a mutual exchange in which the receivers should give suggestions to the producers concerning the type of knowledge the former require. The success of such a reciprocal process of enlightenment can be measured in terms of how much the audience is capable of learning and practising critique, both of which are crucial when it comes to influencing reporting. The fewer who possess such skills, the stronger this communication process will shift upward socially and become the exclusive preserve of the educated classes. That part of the mass media still committed to its professional ethos is inevitably approaching just such a state of elitist solipsism, which is not comparable to the situ-

ation in the first half of the twentieth century because of the cultural counterweight provided by the labour movement. The quality European newspapers and the discussion programmes in public television and radio have lost any contact to the still growing part of the population that lacks the necessary education, financial flexibility or even the time required for a responsive discussion of informative and enlightening topics.<sup>517</sup>

The flipside of this stratification of press, radio and television, where even the 'upper' level organs are also affected by tendencies of medial self-referentiality, is the constant growth and spread of a separate 'lower class market'. Whereas one hundred years ago in England, France or Germany, the lower classes had established independent, class-conscious public media, now the advertising industry has helped bring about a kind of entertainment journalism whose sober focus on the sheer need to relax has not even been formally democratically legitimated. The economic expansion of this sector – which has been termed 'lower class television' [*Unterschichtsfernsehen*] by those in Germany who consider themselves better – has been significantly strengthened by the fact that there have been neither public nor private attempts to include the growing number of immigrants into the remaining horizon of media communication. Their relatives, due to a lack of the necessary language skills and cultural knowledge, must either resort to reporting from their home countries or to those media offerings whose primitive, largely visual mode of representation makes it easier for them to follow. The fact that radio is a purely audio medium, and thus lacks any optical pleasure, also explains why it has remained the only medium that has not yet been wholly caught up in the downward cultural spiral set off by the profit-oriented entertainment industry – despite the Europe-wide opening of the electronic network. At least in this point, Bertolt Brecht was right when he presumed that radio, with its concentration on the act of listening, would be relatively immune to capitalist profit interests. The national communicative spaces within which mass media largely remained during the twentieth century<sup>518</sup> are now shaped somewhat like a bowling pin, at the top of which we find the rather small circle of the academically educated and interested, who can discuss social challenges with the help of comparatively reliable reporting, while the taller, cylindrical base can hardly be provided with the required information at all. Finally, in the middle, where the bowling pin gets thinner, there is an invisible border dividing the groups of the population that are involved in deliberative will-formation from

those who are excluded from it. However, this image is incomplete, because as we have already mentioned, national communicative spaces today are becoming increasingly fractured and undermined, as more and more politically relevant information is exchanged, discussed and judged across national borders within constantly expanding networks. Hence the internal social stratification of the public sphere is opposed by a number of tendencies toward the formation of largely de-hierarchical publics on a global scale.

The trailblazers for these transnational communicative communities are certainly the non-governmental organizations that have proliferated since the 1990s; following in the wake of the growing interdependence of individual nation-states, these organizations have formed globally connected alliances, addressing problems, emergencies and injustices that cannot be dealt with on a merely national scale. The spectrum of forms taken on by this *new* collective actor on the political stage, whose influence has been growing constantly without interruption, runs from non-commercial publishing houses that research and document human rights abuses from a single location with the help of informants (e.g. the marvelous series of publications co-founded by Dave Eggers entitled *Voice of Witness*)<sup>519</sup> to large organizations that already represent international negotiating partners: *Amnesty International*, *Doctors Without Borders* and *Greenpeace*. Of course, such a rapid and successful institutionalization of these globally active non-governmental organizations would not have been possible had it not been for the emergence of a new, incredibly high-speed global communication medium, one that is unmatched in terms of the speed, presence and spontaneity with which it can deliver news. Ever since the arrival of the internet, the national borders of public communication can be overcome so easily, and the global exchange of information has become so uncontrollable, that the consequences for the relationship between nationally bordered publics and transnational publics are entirely unknown.

The internet enables physically isolated individuals to communicate instantly with a large group of people throughout the world, whose number is essentially only limited by processor capacity and the attention span of those involved. Because these communication processes are almost entirely unmonitored, they can serve as a forum for exchanging information about any number of topics, from private matters to criminal machinations, and they are not limited to issues that are politically relevant to the public. In the meantime, however, the political use of the internet has become so



broad and so established that there is now an enormous amount of digitally connected publics all across the globe, whose life-span, size and function can vary significantly depending on the occasion. When it comes to short-term events, these public spaces can disappear after a few days; other times they can focus so strongly on a single publicly relevant topic that after a time the people involved can begin to appear like some indefinable secret society.<sup>520</sup> In general, the blurry lines separating these publics are as much a characteristic of these new digital publics as their detachment from all national communicative spaces. Further participants with make-shift English skills can join in these sprawling discussion processes at any time, enriching them with their own contributions, without their origin being of the least significance, which is why the communities that arise in these spaces are not truly transnational but, strangely enough, almost entirely delocalized.

The price for the boundlessness and placelessness of the web-based public is that there are almost no demands on rationality, such as can still be found in the processes of will-formation within the framework of the nation-state; in the latter case, we must still examine our opinions – either in a communication process organized by the media or in face-to-face conversation – with relation to the position taken by either a generalized other or by the concrete conversation partner. Ideally, when we read a newspaper still committed to its task of informing the public, or when we watch a politically informative television program, the spectrum of presented opinions should ensure that our own individual judgments are tested in terms of their universalizability, and thus only flow into the process of will-formation in this rationally cleansed form. By contrast, in the internet forums of the *World Wide Web*, where rather diffuse publics tend to lack even the most rudimentary controls on rationality – not only because it is possible to cease communication at any time, but also because the anonymous interlocutors need not necessarily respond. Certainly, this is less true of the highly-specialized web communities in which the required expertise and the necessary commitment help establish comparable rational constraints, but it is all the more true for the overflowing internet communities that know no such access restrictions and in which the most absurd positions can circulate without comment. In these places, will-formation is not only amorphous and free from any pressures of rational justification, but it also offers space for all sorts of apocryphal and anti-democratic opinions and movements.

For the growing groups of people in Western European countries who, for the reasons analyzed above, have been excluded from communication about publicly relevant issues organized by the classic media, the internet offers a variety of opportunities to regain access to public forums of will-formation. If one has the digital know-how and a computer, which is not always a given, then one can easily get hold of political information and connect up with various preferred web communities. According to the empirical research, however, the long-term political consequences of the generally increased usage of digital platforms remain entirely unclear. Here we find the claim that politically relevant issues are increasingly rejected, as well as the opposite claim that the internet has revitalized political will-formation. And finally, we find the rather plausible assumption of a 'digital divide', a social division in terms of how this new medium is used, one which only reinforces already existing differences in terms of democratic participation.<sup>521</sup> Even if there is currently no empirical certainty on this front – and it is probably one of those questions that can hardly be answered without an admixture of generalizing hypotheses – there should be no doubt that the politically active use of the internet and the multiplying webs of communication, as well as the issues discussed there, transcend national borders and thus favour transnational over national processes of will-formation. Unlike hardly any other mass medium, the computer, because of the placelessness of all the interactions it mediates, is suited to bringing about public spaces focused on specific topics or points of view that run counter to the traditional forums of this democratic process and thus contribute to its further decentring. We should mention, however, that in repressive states, the internet often contributes to the creation of an oppositional public within the framework of the nation-state – here we might think of the recent revolts in Egypt and North Africa, or the civil resistance in Iran or China in order to get a living impression of the effects the internet can have.

However we might empirically assess the current political effects of the internet, whether we regard it as activating or demobilizing democratic will-formation, in the current upheavals its delocalizing forces have proven to be the strongest motor when it comes to the necessary transnationalization of public opinion and will-formation. The growing interdependence of individual nation-states, and the associated loss of national sovereignty, the internationalization of economic, social and cultural relations of exchange – all of this creates a need for democratic legitimation that cannot

be fulfilled by the previously existing forms of political communication alone. Because the nation-state collective of self-legislation is no longer congruent with those actually affected by political decisions, transnational publics in which these decisions can be discussed and legitimated are becoming increasingly necessary.<sup>522</sup> Of course, there are other current developments that have also promoted and accelerated the expansion of such forums of public opinion-formation across national borders: Mass tourism has not only brought about the worldwide proliferation of cultural lifestyles, usually of American provenience, but it has also promoted the cross-border exchange of political opinion. The internationalization of reporting in the classic media, which has increased significantly over the last few years, has increased mutual awareness of problems that can only be solved through concerted action – but when it comes to forming transnational communicative communities, no other means is as suitable as the internet.

However, the centrifugal forces of this new medium are so strong that they only further contribute to the centrifugal tensions within national democracies. Because the internet, as we just saw, promotes an external shift of the democratic exchange of views into chat rooms and interactive networks for which place and time no longer represent constraints, at the same time it deprives public will-formation within a country of the motives of solidarity and the willingness needed to combat the growing stratification and fracturing of the public. We could express the same issue in terms of the indicators we have used throughout this chapter and say that the digitally enabled expansion and unbounding of the political communicative space could have the paradoxical effect of destroying or at least weakening the very political culture in mature democracies that had previously motivated moral efforts to include all citizens in the space of collective self-legislation. This means that the revival of a transnational public would not only intersect with the exclusion of growing parts of the population from national processes of will-formation, but would directly contradict it, causing the normative resources that previously enabled at least the hope of solidarity between citizens to dry up.<sup>523</sup> If this is true, if these two analysed processes strictly contradicted each other, then a transnationally unconstrained space of democratic opinion and will-formation is developing over the heads of the lower classes threatened by political marginalization – the new ‘services proletariat’, migrants and welfare recipients – that are of no help to them in their plight. This would mean that the social freedom of

democratic self-legislation will have increased for the one group, the cosmopolitan elite, but it will have decreased for the others because of their lack of access to publicly relevant information and issues. Of course, just how contradictory these two processes are is a question that can only be answered once we have a clearer sense of the prospects of a culture of democratic inclusion emerging in the wake of political transnationalization. Before I can address this issue in the conclusion of the book, I must first reconstructively examine the effects of these processes of transnationalization on the authority that has always been viewed as the executive organ of the democratic freedom of self-legislation. The task normatively assigned to this institutionalized sphere becomes apparent once we turn to the *sixth* condition of social freedom in democratic will-formation, which has not yet been analysed as an independent prerequisite, because it is implicitly and partially contained in the first condition. The members of society who supplement each other in their communicative exchange of views must feel that the products of their will-formation are effective enough to be practised in social reality. From the beginning of the political revolutions of the eighteenth and nineteenth centuries, the social organ charged with guaranteeing the effectiveness of their convictions has been the democratic constitutional state.

### 6.3.2 The Democratic Constitutional State

Unlike Hegel, who in the final part of his *Philosophy of Right* sketched the foundations of a constitutional monarchy while largely ignoring any opportunities for citizens to influence political decisions, contemporary intellectuals ever since the French Revolution have usually viewed the modern state as an ‘intellectual organ’ – to use a phrase of both Durkheim and Dewey – charged with implementing the democratically negotiated will of the people in an intelligent and pragmatic manner. In the constitutional discussions of the nineteenth and twentieth centuries, there was a number of very different interpretations of this principle that the state is obligated to respect public will-formation. Sometimes they followed Rousseau and called for the population to play a plebiscitary role, while others adopted the more classical liberal position and saw legislative bodies as merely representative institutions. The tradition that has influenced our study, however, stipulates that government institutions implement the result of the social freedom exercised by

citizens who reach an understanding. This interpretive model represented by Durkheim, Dewey and Habermas grasps the relationship between the state and public in a way that is neither plebiscitary nor representative.<sup>524</sup>

According to this third conceptual model, which is primarily guided by the notion that the state must enable and realize social freedom, the result of public opinion and will-formation is not a hypothetical unity that state authorities merely need to put into practice, nor is it so empirically unreliable that it needs to be made more rational through representation. In a truly functioning public that lives up to its own normative demands, either in the form of permanent research (Durkheim/Dewey) or discussion (Habermas), a constantly revisable consensus develops which can, if need be, come about by compromise; its directives are then transformed into binding resolutions made by the political authorities in charge. In this conception of the state, all our normative attention is turned away from state organs and directed toward the conditions of non-coercive self-legislation among citizens, and thus toward the sphere that we have just normatively reconstructed. As long as the research activities or deliberations do not take place under conditions of equal participation, sufficient information and a maximum amount of freedom for all involved, Durkheim, Dewey and Habermas are convinced that any resolution passed by modern states in the name of the people will be subject to the severe reservation of having insufficient democratic legitimation. This reversal of the logical relation of justification and dependency – according to which the state does not found and create the public, but the other way around<sup>525</sup> – results in the claim that all constitutive elements of the modern constitutional state, especially with regard to its legal composition and the division of powers, must be understood in terms of the tasks accruing to the state by virtue of the fact that it must presuppose, protect and implement the will-formation of the citizens – all at the same time. For Durkheim, the state's primary task consists in institutionalizing and expanding the right that citizens have already accorded to each other for the purpose of unforced self-legislation.<sup>526</sup> Around a hundred years later, Habermas would justify the division of powers between the executive, legislative and judicial branches of government by referring to the 'checks and balances' solely intended to serve the examinable and neutral implementation of the deliberatively negotiated majority opinion of the people.<sup>527</sup> In these determinations, the modern state is conceived on the basis of the conditions of social

freedom for members of society who recognize each other's capacity for judgement; it represents the 'reflexive organ' or the network of political authorities that help communicating individuals implement their 'experimentally' or 'deliberatively' derived ideas of the morally and practically appropriate solution to social problems in reality.

Of course, none of these three authors ever believed that the actual behaviour of state authorities could be explained according to this model. Durkheim is known for having been very sceptical of the French government of his time,<sup>528</sup> and we already saw that Dewey held the government's unleashing of the capitalist market to be at least partially responsible for the threat to the public,<sup>529</sup> while Habermas has placed the democratic deficit of the state at the centre of his entire political theory.<sup>530</sup> In all these cases, the normative idea that the constitutional state is to be anchored in the communicative will-formation of its citizens is only viewed as one guideline – one, however, that has long since been institutionalized historically and can thus be regarded as relevant to the legitimacy of the state – according to which we can empirically determine the degree to which state organs have already fulfilled the task assigned to them. This is not an idealizing conception, nor a way of outdoing reality by means of a merely moral concept, rather it is merely the historical outcome of a conception that has been accepted within Western Europe ever since the days of the French Revolution – and we can use this procedure as a methodological foundation for our own normative reconstruction. With the proposal that we regard the modern state, due to its legitimation conditions, as an 'organ' or an agency charged with the practical implementation of democratically negotiated resolutions, we have a tool that enables us to determine the chances for realizing social freedom in this sphere of state activity.

However, if we take a morally sober and realistic view of the development of the modern state, we will see nothing but the continuous growth of an authority whose legitimacy is threadbare at best. Throughout our normative reconstruction, we have implicitly encountered historical events or processes that in retrospect seem to demonstrate the gradual increase of the power of the state to control society. This began with the realization that the state uses tax revenues to wage war; it manifested itself indirectly in the forced unification of various different peoples and ethnicities into nation-states, as well as in the casual observation of colonial ambitions; it was mentioned with reference to the welfare state's means of

control, and finally became apparent in the account of the National Socialists' mobilization of the German population for an act of genocide. If we put aside these opposing tendencies and focus on what these events have in common, viz. the continuous expansion of state authority and control, it seems obvious that the history of the democratic constitutional state can best be described as the perversion of an apparatus originally intended as a means by turning it into an end in itself: a large organization concerned solely with the expansion of its own power. The difference between the welfare state of the bygone 'social democratic' epoch and the totalitarian state built by the 'Third Reich' would then only lie – exaggerating slightly – in the use of 'soft' vs. 'hard' instruments for controlling the 'subjects'.<sup>531</sup> The price of such a radical external perspective, the benefit of which obviously consists in its being immune to any illusions, is nevertheless significant, because this deprives us of any possibilities for evaluating these events and, above all, for making normative distinctions between them. If we abstain from assigning to the state the task of protecting and respecting public will-formation, at least counterfactually, then we can no longer judge the progress and the regressions, the normative achievements of state activity and its misdevelopments.

If we take up the opposing, normative perspective and emphasize the modern state's obligation to legitimate itself, then we cannot simply ignore the already mentioned characteristics of the one-sided exercise of force and control, but they do take on a different historical role and significance, because we no longer view these characteristics as indicators of an intrinsic tendency toward increasing power, but of an illegitimate, often interest-bound use of merely borrowed authority. There are two points in the sphere of activity democratically assigned to the constitutional state at which the latter becomes especially susceptible to abuses of its monopoly on the use of force. On the one hand, it might provide protection or expand the public sphere of democratic will-formation in an incomplete or merely selective fashion; on the other hand, its implementation of the outcome of such a discursive process of self-legislation might be one-sided or even 'partial'. The greater the size and specificity of the selectivity at these two crucial points at which the state is connected to the democratic public, the more likely the state will fail to fulfil its legitimate task, instead serving as a mere 'executive organ' of particular social interests.<sup>532</sup> Of course, a conceptual model that focuses entirely on 'selectivity' remains incomplete, because it ignores the possibility that state organs can influence



processes of democratic will-formation either directly or indirectly. The use of public radio for the spread of fascist propaganda or the terror of the National Socialist state represent two particularly extreme examples of the oppressive role of the state that we have encountered in our normative reconstruction of the democratic public. We could mention several other cases of such extra-legal force on the part of modern states that claim to be 'democratic'.<sup>533</sup> But even this third possible abuse of state power, i.e. its use for the intentional suppression or influencing of public opinion, can only be understood as an 'abuse' and thus as a means of illegitimate rule if we claim that the democratic state requires legitimation. If we give up the foundation of such a concept of the constitutional state, as does Foucault in his theory of power or in 'realist' historiography,<sup>534</sup> then both the 'selectivities' of the modern state and its extra-legal violence can only be viewed as entirely normal applications of state power.

If we take up a normative perspective that gives us the flexibility to perceive such opposing phenomena, then we will be capable of briefly reconstructing the history of the modern state in terms of the realization of social freedom, without succumbing to moral illusions. Even the historical point at which we begin such a reconstruction teaches us of the 'illusory "general" interest in the form of the state' mentioned laconically by Marx and Engels in the 'German Ideology'.<sup>535</sup> In the time of transition from the absolutist monarchy to the modern constitutional state throughout Western Europe in the first third of the nineteenth century, highly centralized state apparatuses with tightly organized bureaucracies on the model of the French Republic were created. These were intended to act in the interest of the entire population, but because their authority was no longer mediatized, the economically powerful classes could take advantage of this authority all the more easily and use it to ensure the fulfilment of their own interests. All the activities that these political authorities were to undertake for the purpose of administering the nation and securing the reproduction of the population essentially consisted in synthesizing and then implementing what the bourgeoisie or, in France and England, the ruling elite composed of citizens and nobles regarded as being important or beneficial. These newly emerging states – in which the governing authority was sometimes concentrated in national parliaments, sometimes in a system of checks and balances between various branches of government, and sometimes in royal dynasties – would only gradually introduce constitutions containing the rights and liberties that

would turn the subjects of feudal societies into citizens with equal rights in a democratic community.<sup>536</sup>

However, in our reconstruction of the democratic public sphere, we have seen just how thin, exclusive and merely formal these civil rights actually were, and that they were granted only to males. To give just one more illustrative example, in France, whose constitution was established as early as 1791, almost three sevenths of the male population was excluded from the right to vote because they were not economically independent.<sup>537</sup> In the first half of the nineteenth century, therefore, we cannot even speak of a halfway intact public in the sense of a sphere in which citizens can form a common will through an exchange of views. If anything, only male members of the bourgeoisie or the nobility,<sup>538</sup> who also had other, non-discursive means of political influence, were represented in the public sphere, while wage labourers had no formal channels for influencing parliament or the constitutional authorities, in spite of the former's existing associations of opinion-formation. It would even be misleading to claim that the modern state during this time only selectively registered the outcome of democratic will-formation. When it came to processing information and issues, no such selectivity was needed as long as political affairs could only be articulated by a few economically dominant classes.

The dark side of this straightforward, and hardly selective, implementation of class-specific interests by the newly established constitutional states – which could thus be called 'bourgeois states' in the literal sense of the term – was the centralized violence exercised either by the police or the military in order to politically exclude and discipline wage-workers.<sup>539</sup> Certainly, the degree to which such violent means were actually used varied from country to country; sometimes these measures were allowed by the already existing constitutions, other times they lay far outside constitutional bounds, but throughout Western Europe working class demands for greater political rights and participation were usually violently suppressed. However, political movements – in some countries consisting of coalitions between representatives of the workers and the bourgeoisie, since the members of the economically independent classes in these countries were also excluded from all democratic rights of participation – gradually managed to change power relations in favour of stronger popular representation. Even in France, the European motherland of the idea of democratic self-legislation, a dualistic interpretation of the new constitution prevailed up until 1830, according to which the monarch, as a *pouvoir neutre*, was to

remain superior to parliamentary representatives in order to put the latter in their place.<sup>540</sup> But after the July Revolution, a new wave of parliamentarization set in, which would soon wash over many other countries as well. The legislative role of popular representatives in parliament increased while that of the monarch decreased, creating the rough outlines of the institutional structures of a democratic constitutional state in England, France, Belgium and the Netherlands. Although these structures continued to be veiled by monarchical elements, they were already anchored in the principle of popular self-legislation.<sup>541</sup> Only Germany remained cut off for a time from the parliamentarization of the political system, taking the unstable *Sonderweg* that left the monarchy constitutionally superior to democratic will-formation.<sup>542</sup>

The democratization of European constitutional states launched by political uprisings and intellectual strivings was not, however, accompanied by the parallel revaluation and opening of the political public sphere as a space of non-coercive will-formation. The more the legislative function of parliament expanded in the second half of the nineteenth century, the more intense the class-specific mechanisms of selection became. The legislative organs in these gradually democratizing states went to little or no effort – neither legally nor organizationally – to enable the working class to participate in public will-formation. Although political parties were now permitted in most countries as intermediary organs between civil society and the state, thus replacing or supplementing the clubs of dignitaries [*Honoratiorenverbände*], the purest expression of unbroken class rule, the organizations of the labour movement were denied any public right to exist. The right to vote was still reserved for the male members of the economically independent classes, and political uprisings from ‘below’ aiming to achieve democratic rights to participation were often suppressed with the use of military force. A legendary event in this regard, one that could almost count as a Kantian ‘historical symbol’, was of course the Paris Commune in 1871.<sup>543</sup> But even here, where despite all these practices of exclusion the propertyless classes – the industrial proletariat, the peasants or early salaried workers – managed to publicly voice their demands, their interests were not taken account of sufficiently in parliamentary committees due to preceding mechanisms of selection. This is especially true of what was generally called the ‘social question’, which only managed to find its way into ‘bourgeois’ dominated parliaments after having been put through the system of filters made up of the prevailing national canon of values and the bureaucratic process.<sup>544</sup>

During the last third of the nineteenth century, however, there was also an accelerated differentiation and institutional revitalization of various political organs within the emerging constitutional states. The increased power of national parliaments was accompanied by the further centralization and bureaucratic refinement of the administrative authorities, as delegates' gradually increasing spectrum of responsibility went along with a rise in the number of tasks to be performed by the state. In Germany alone, which like Italy had meanwhile achieved national unification, at least a half dozen new government authorities were created under the supervision of the monarchy, performing functions that previously were not regarded as justifying the existence of separate administrative authorities.<sup>545</sup> This expansion of administrative authority and its relative independence from the other two state organs – political processes of differentiation that had begun somewhat earlier in the already existing nations of Western Europe – represented a new type of state activity that would come to characterize the development of the democratic constitutional state. Much more than the image of the 'laissez faire' state might suggest, European governments did intervene in the economic sphere, establishing transportation infrastructure, taking compensatory measures to ensure the reproduction of large segments of the population or waging colonialist wars.<sup>546</sup>

However, this more indirect, only occasionally active economic policy would now be transformed into a permanent policy of state intervention. In my account of the history of the labour market I have already touched on the question of whether this transformation – primarily characterized by the expansion of social welfare measures – of what were previously purely 'bourgeois' states should be traced back to these states' growing need for control or to the parliamentary processing of public pressure. The truth probably lies somewhere in the middle: an expansion of the functions of the state that was both forced and enabled by the massive resistance of the labour market.

The emergence of state social policy, pioneered in the 1880s by the introduction of social insurance in the German Empire, slightly increased the opportunities for political participation by the end of the century, but the democratic effect of these policies must not be overestimated. The minimum level of subsistence that Western European states began to provide in cases of unemployment, illness and old age<sup>547</sup> expanded opportunities for political activity in the public sphere, and it certainly strengthened feelings of

national belonging, but it was accompanied neither by a thorough expansion of the right to vote nor by measures to legally secure the free exchange of opinions. The institutionalized concept of modern constitutional states, which obligates these authorities to include all mature citizens in processes of democratic will-formation, thus remained dependent on a relatively narrow, parliamentary mediation between economic elites, bourgeois parties and governments. A significant factor in the continued political exclusion of wage labourers and thus the preservation of class rule can be found in the increasingly rooted bureaucracies within the state apparatus. Although these state agencies, according to their constitutional role, were supposed to neutrally implement legally defined tasks and be placed under the supervision of both the executive and the parliament, the persons charged with these tasks also enjoyed a measure of power when it came to political decisions.<sup>548</sup> A civil service whose members were generally of bourgeois extraction and had not yet internalized ideas of democratic equality tended to take advantage of their decision-making power in everyday bureaucratic proceedings in order to reinforce their own position of power or that of their class. At the turn of the century, the members of the lower classes had similar experiences of systematic, class-specific arbitrariness in their confrontation with the courts. Just like the administrative apparatus, the judicial branch was constitutionally defined as a neutral authority whose task was to apply the resolutions of democratic government to various social conflicts; the courts were to make 'authoritative' decisions on individual cases with regard to 'what was right or wrong in each case',<sup>549</sup> while remaining within the framework of legislation. But just as in the bureaucracy, the flexibility allowed by the courts' authority could be taken advantage of by individual office-holders for the purpose of stabilizing bourgeois class rule. Up until this very day, the talk of 'class justice' reflects the experiences of the propertyless classes reaching back to the late nineteenth and early twentieth century of being powerless in the face of a legal system motivated by prejudice, hostility and a clearly recognizable interest in domination.<sup>550</sup>

At this point, we should again interrupt our highly summarative reconstruction in order to take stock of the normative significance of what has already been said. Over the course of the nineteenth century, the modern state in no way broke free of its historical origins in the bourgeois liberation movements that fought for the recognition of this emerging class's political power. The abolition of the feudal hierarchy in the wake of the French Revolution gradu-

ally led to the institutionalization of the principle of popular sovereignty in almost all European countries; from that point on, the legitimate exercise of state power was subject to the condition that it respect the democratic will-formation of all citizens. And yet, male wage labourers and all women remained excluded from the promised freedom of deliberative self-legislation. Nevertheless, during this same period, the normative claim of this altered system of political rule had significant organizational effects, with intellectual reform movements leading to a clearer separation between branches of government and a rudimentary system of checks and balances, thus increasing the authority of (bourgeois-dominated) parliaments vis-à-vis the (usually monarchical) head of state, and finally, allowing the existence of parties as intermediary organs of will-formation. Furthermore, the formation of nation-states across Europe brought about a hegemonially defined culture that was nevertheless accepted by all classes, thus creating the intellectual conditions under which the members of the political community could perceive each other as interrelated citizens committed to each other's well-being. When near the end of the century, under the pressure of the labour movement, various states took welfare-state measures to give some material substance to the already existing formal civil rights enjoyed by the male members of society, at least the latter seemed to have prospects of being included in democratic self-legislation. Certainly, in some countries the right to vote was still subject to certain educational qualifications or economic independence, but it was clear that overcoming these last formal barriers would only be a matter of keeping up the fight for historically unredeemed legal claims. At this historical point around the turn of the century, however, a further barrier to the establishment of the constitutional state arose, whose significance in terms of its actual capacity to function cannot be overstated. Even with the legal equality of all citizens, certain parts of the population were seriously disadvantaged because democratic attitudes had not yet been sufficiently established in the government bureaucracy and the courts – a necessary condition for the fair and equal implementation of laws. The terms 'class justice' and 'bureaucratic arbitrariness' signalled the possibility that the habits and views of government personnel lagged behind the normative requirements already established with the formal standards of constitutional reforms. Between the legitimation principles of the constitutional state and their political realization, there not only lay a gap of unredeemed legal claims, but also one of attitudes and institutional

habits. Therefore, any conception whose normative focus is solely on the legal requirements of deliberative will-formation and the democratically legitimated exercise of power will come up short; instead we need to take account of non-legal components such as customs, mores and styles of behaviour if we are not to lose sight of the fact that in the executive organs of the state – the police, the justice system, the bureaucracy and even the military – the principles of legal equality can be implemented in a more or less appropriate, either democratic or authoritarian manner.<sup>551</sup>

The end of World War I, whose events and prehistory showed the capacity of the state to mobilize the population and military means of destruction on the basis of its increased power, represents a profound break in our reconstructive historical account. After all, the revolutions, uprisings or political reforms that followed the either successful or unsuccessful outcome of the war brought forth social measures that were to ensure that wage labourers would be more included in the democratic process. Although Europe remained a patchwork of very different political constitutions with a more or less parliamentary character – liberal monarchies in Belgium, Hungary or Poland, democratic republics in Germany and France, constitutional monarchies with serious internal tensions in Spain and Portugal, where fascist authoritarian dictatorships would soon come to power – there was no disputing the legitimacy of the struggle for political equality. As we have already seen, an almost natural consequence of this altered perception would be the extension of suffrage to women in most European countries. And as we have also seen, such formal legal inclusion would have little effect on cultural mechanisms of exclusion.

During this same period the expansion of the legal authority of modern states was accompanied by opposing efforts to either restrict politically or question intellectually this increase of power in view of the catastrophic effects of the war. This was likely the beginning of the peculiar ambiguous movement that would accompany the development of the constitutional state from this moment on: a back and forth between demands for and objections to the expansion of state responsibility in the name of democratic self-legislation. Many intellectuals began to have doubts about the normative significance of these new state structures, not only due to the fact that these constitutional states – especially the German Empire with its rudimentary democratic constitution – were capable of mobilizing large parts of the population for their military ambitions, but also because of the enormous scale of the weapons they



deployed. At issue was more than the background national culture of these democratic states, which was problematic enough in its own right, viz. the apparently inherent tendency toward administrative interventionism and sovereign control. One of the most enlightening debates on this decisive question took place immediately after the end of World War I between Sigmund Freud and Hans Kelsen.

In his 1921 study 'Group Psychology and the Analysis of the Ego',<sup>552</sup> Freud responded to the events leading up to and during World War I by attempting to explain the ease with which the state power apparatus was able to mobilize large parts of the population. The neglect of psychological factors in the army seemed to him, especially in view of 'Prussian militarism', to be 'not merely a theoretical omission but a practical danger'.<sup>553</sup> Freud's solution to the riddle as to why people are so easily seduced once they have formed groups was that the members of these groups identify with each other to a large extent because they relate to the same object in a stance of admiration and reverential affection, an object to which they each sacrifice their 'ego-ideal'.<sup>554</sup> With the loss of this reflexive aspect, people also lose the ability to distance themselves from the group and formulate objections, causing them to become collectively susceptible to all kinds of commands issued by the object of their affection, which they view as their 'leader' [*Führer*] or 'chief' [*Oberhaupt*]. Freud did regard this assumption as relatively problematic, since armies, churches and states do not merely represent short-lived mass phenomena, but permanent organizations anchored in normative expectations. Individual behaviour is restrained by a series of 'ethical standards',<sup>555</sup> which give back to subjects some of the reflexive attributes of self-consciousness lost in the purely mobile, spontaneous group.<sup>556</sup> Nevertheless, Freud did not conclude that qualitatively different laws governed these two types of groups; in a now famous metaphor, he remarked that the fully obedient masses arising out of nothing 'stand in the same sort of relation to those of the second [i.e. the organized masses] as a high but choppy sea to a ground swell'.<sup>557</sup>

On the basis of these group-psychological observations, Freud concluded that states with comprehensive responsibilities and correspondingly strong legal authority represent a risk to civilization even if they are normatively anchored in democratic constitutions. Their ubiquitous presence and their monopoly on the solutions to the most diverse problems of social life make these institutional structures ideally suited to being adored spontaneously by a variety

of individuals as an 'object of love', thus removing all barriers to transforming these individuals into an easily controllable mass. If these mobile groups, whose members experience them without any detachment, only represent the 'high' waves that can arise at any time from the calm seas of institutionally regulated groups, then the modern constitutional state represents a particularly dangerous example of such a structure, because its expanded power to intervene gives it more uncontrollable energies of attachment than the former, less centralized states.<sup>558</sup> Only one year after Freud hinted at such a pessimistic conclusion, the eminent jurist Hans Kelsen responded with a detailed, almost fifty-page-long discussion published in *Imago*, a psychoanalytical journal edited by Freud.<sup>559</sup> The detailed manner in which Kelsen addressed the issue suggests that his intentions were far more than purely theoretical, and that he also pursued a political aim by opposing the threatening loss of confidence in the constitutional state and emphasizing its normative reliability.

At the heart of Kelsen's critique, despite his constant emphasis of his admiration for Freud, is the distinction he makes between merely short-lived and stably organized groups, between those that arise spontaneously and those that are normatively bounded. According to Kelsen, this differentiation turns out to be far too weak, because it fails to take account of the fact that in the second case, we are no longer dealing with a truly 'psychological' phenomenon.<sup>560</sup> As soon as a variety of individuals join together as organized members within the structure of a state, their relationship to each other can no longer be understood as an 'affective attachment'. Such unions stemming from libidinous sources are replaced by purely legal relations characterized by the fact that subjects can only identify with each other if they commonly and rationally relate to the state as a 'guiding idea'.<sup>561</sup> According to Kelsen, this 'sublimation' of their social attachments prevents the 'regression' that Freud sees as characteristic of every kind of group formation. The critical reflection of normal adults remains intact, because the state must be understood as an ego-ideal, not as an internalized object of love. Kelsen summarizes his objection by saying that the peculiarity of the legal relationships created by state authority can only be uncovered if we take into account the imperative character<sup>562</sup> of norms, which are fundamentally different from the empirical effects of libidinous attachments.

This critique, which essentially amounts to a categorial distinction between normatively regulated and affective social relation-

ships, was somewhat harmless compared to Freud's images of irrational and uncontrolled masses that he obviously derived from the immediate pre-war period. Nevertheless, Kelsen managed to defend the normative idea of the modern constitutional state from the suspicions of psychoanalysis, according to which there only seemed to be a gradual distinction between state authority and affective attachment to a leader. As long as a democratic constitutional state remained intact, Kelsen argued that the normative attitudes of the citizens would prevent the lowering of the reflexive capacities of the ego. In his view, therefore, historical conditions that raised doubts about the legitimacy of modern states would require greater efforts to institutionally revive constitutional principles.

Of course, Hans Kelsen was not alone in defending the democratic constitutional state against doubts arising from the experience of state-engendered jingoism and xenophobia in the 1920s. Many legal theorists went beyond Kelsen in demonstrating the basic democratic principles of the legitimacy of the democratic state in order to point out what distinguishes the latter from all merely instrumental or manipulative uses of the state monopoly on force. Only a few years would pass before a large number of jurists and social politicians throughout Europe argued that the key element of renewed constitutional reform would be to strengthen the social rights of the propertyless classes, enabling them to participate in democratic self-legislation and thwarting the danger of a merely passive acceptance of government resolutions.<sup>563</sup> Just as significant as these legal-theoretical efforts for the normative self-understanding of European states was the fact that the victors of World War I seemed to have learned a moral lesson from the causes and the course of the war. Even during the war, following a proposal by US President Woodrow Wilson, plans were drafted for a kind of future world organization that could secure peace between nations. The plan came to life after 1918 and led to the founding of the League of Nations in 1920. Even though its task was to secure peace and also to protect national minorities, and even though it did not have much success, being unable to prevent either Japan's invasion of China or Italy's conquering of Ethiopia, its pure existence can nevertheless be interpreted as a sign that states were aware of the dangers associated with the unlimited sovereignty of their actions and that they intended to put restraints on that sovereignty. Both of the problems that the League of Nations put at the centre of its mandate would form a constant potential for conflict in the near future of the international community. Even modern

constitutional states would occasionally use their highly centralized instruments of power to conquer territories for geopolitical or economic interests, while the conditions of national or ethnic minorities, even in some democratic states, would still be capable of becoming so threatening that international sanctions or even military intervention would be considered.

Within Western Europe, however, two other problems came to the forefront of the debate over the future of democratic constitutional states during the epoch of the Weimar Republic. On the one side, in parliamentary democratic republics, relatively stable publics developed due to state-guaranteed rights to political and economic participation; and depending on the urgency of the issue at hand, a large number of citizens actively took part in public debates. Parties that now possessed their own organizational power and interest groups that now enjoyed support among the population, both representing the entire spectrum of political beliefs held by the public, now functioned as mediating organs between the civil sphere and parliamentary authorities. But the more the spectrum of these represented interests and ideas were pulled apart, and the more that socialist and communist organizations were able to influence public will-formation, the less suited 'bourgeois' or even militaristic nationalism stemming from the pre-war era was to politically integrating all citizens. The national foundation of constitutional states, which had enabled the social unification of these states in the previous century, now came into increasing conflict with the democratic idea itself, because the latter's normative promise consisted in tying the legitimacy of state action to the self-legislation of all citizens, independent of their background cultural beliefs. During the 1920s and 1930s, in almost all countries in Western Europe – not only in Germany, where the problem was most severe due to the collective feeling of humiliation after the Treaty of Versailles – right-wing movements emerged that did not acknowledge the parliamentary democratic republics to be the 'torch-bearer of the nation's history'.<sup>564</sup> As a result of this dynamic, the democratic constitutional state gradually began to lose its foundation without any of the parties involved seeing where the state could possibly find the resources for politically integrating an increasingly heterogeneous population.

Alongside this problem of a background culture that was generally regarded as unfitting and thus seriously controversial, a second source of conflict would soon be found in the required neutrality of state action. Due to the lack of a well functioning, plu-

realistic civil society, the class-specific selection performed by the respective system of government was never capable of becoming a serious issue of debate within the democratic public. There were many biased and selective mechanisms, and despite the institutionalized independence of the state, its organs were still tailored to 'bourgeois' class interests in matters not only of personnel but also procedure. Nevertheless, this selectivity took place in quiet, so to say, because the other party lacked the means to raise a generally perceivable objection and often had no choice but to raise a political scandal within a more or less isolated alternative public. However, this all changed significantly in the wake of reforms following the end of World War I. There were now civil and parliamentary methods for combating the structural one-sidedness of state organs or their suppression of certain issues by raising public awareness. A constant topic of political debate in the 1920s and 1930s was therefore the question of whether and to what extent the government was beholden to certain 'bourgeois' or 'capitalist' class interests. This bias was not only made obvious by certain individual resolutions or by the behavioural style of certain executive organs ('class justice'), but also by relatively unalterable decisions that were put out of the reach of public discussion and served as guidelines for government activity. Here we might think of the significant role played by the issue of 'private property' in debates within the public sphere, the political meaning of which seemed to decide the question of class rule once and for all.<sup>565</sup> What the majority of a powerless population throughout the nineteenth century took for granted and what Marx regarded as a theoretical banality, viz. the fact that the modern (constitutional) state, for all its claims to represent the general will, was nothing but an instrument for enforcing the particular class interests of the bourgeoisie, was now no longer tolerated and became a topic of public debate. We could say that Western European states, through the gradual institutionalization of the bases of their own legitimacy – the universalization of civil rights by means of the welfare state and rights of political participation – paved the way for subjecting their own operations to the democratic exchange of opinions.

However, the controversial question of whether existing states essentially served to enforce capitalist imperatives concealed the much more fundamental problem of the ethical neutrality of the legal order and of politics in general. According to their own normative self-understanding, democratic constitutional states must be understood as political organs that implement the results of

public will-formation in accordance with generally accepted procedures and in the form of concrete resolutions that serve as guidelines for the fulfilment of further government tasks. In principle, there should be no privileging of the concrete value-orientations of a particular group, neither in legal practice nor in political measures; instead the state should act impartially and neutrally toward all conceptions of the good – at least as long as they are controversial among the population. Certainly, the frailty of this commitment to neutrality on the part of democratic constitutional states had already been made evident throughout the nineteenth century. The status of the Catholic minority in the German Empire was excluded from the constitution, which took on a decisively Prussian Protestant character after the founding of the Empire in 1871.<sup>566</sup> But the debates over the ethical impregnation of constitutional states in various countries before World War I mostly remained restricted to religious minorities and were kept from the larger public, because the legal and cultural prerequisites for the existence of that public had not yet been created. During the time of the Weimar Republic in Germany, Great Britain and France, the debates on the class basis of the modern state – which were carried out not only on the streets, but also in parliament – suddenly brought the question of ethical neutrality to the forefront of public life. The ‘structural’ bias of state activity toward the imperatives of capitalist accumulation, which now represented a bitter conflict between the parties, could not only be viewed as favouring certain, group-specific interests, but an entire ‘capitalist’ way of life. The seemingly insignificant problem of whether the right to private property should be written into the constitutions of democratic states conveyed to the entire population for the first time the major significance and enormous impact of the principle of the ethical neutrality of the state.

The historical causes for the ultimate failure of the European democratic constitutional states can likely be found in a fatal dynamic, through which the two above-mentioned conflicts gradually strengthened each other. Under the pressure of social conflicts over the class character of the state, a type of nationalism that had long since ceased to be integrative gradually turned into the nationalistic ideology of an unquestioned elite. This in turn intensified the deep-seated mistrust of parts of the labour movement in the neutrality of the democratic constitutional state, making both these centres of tension not only mutually dependent, but mutually intensifying.<sup>567</sup> The right wing, which was in no way a German peculiarity during the interwar period, developed plans to revise

both international relations and the constitution. Both were to be adapted to the needs of the nation's destiny, which was seen to have been temporarily interrupted by 'internal' and 'external' enemies of a natural 'people' [*Volk*]. Once Hitler's rise to power turned such nationalist ideas into reality, putting a lid on class conflict through the violent formation of an ideological national community [*Volksgemeinschaft*], excluding and ultimately annihilating all foreign [*volksfremd*] minorities, any chances of further expanding or even consolidating the democratic constitutional state were temporarily lost, both in Germany and in other Western European countries. Not only did right-wing parties throughout Europe sympathize more or less directly with Hitler's plans and offer him support from abroad; even the democratic majority would soon be drawn into the horrors of a second World War started by Germany, one that would far exceed the brutality, dehumanization and victims of World War I. For our normative reconstruction of all the spheres of freedom institutionalized in liberal democratic societies, the period of National Socialist tyranny remains an 'Other' that cannot be integrated into this reconstruction. This 'Other' should demonstrate to any history of progress aimed at the social realization of individual freedom just how fragile, thin and easily torn the thread is that we have attempted to trace through all misdevelopments; each expansion of freedom seems to run the risk of passing over into fear and terror of that expansion.<sup>568</sup>

Although after the disintegration of Hitler's dictatorship, and thus the end of World War II, social moods and strivings in many European countries seemed to point in a different direction, the two conflicts of the democratic constitutional state stemming from the phase of the Weimar Republic remained – even if they had taken on a much weaker form. Before 1950, and not only in Germany but also in Great Britain and France, there were plans to break the structural priority of capitalist profit interests by socializing major industries, thus securing the neutrality of restored parliamentary structures.<sup>569</sup> But it was rare for even the first steps of such plans to be implemented. Sometimes, as in West Germany, they failed to overcome the resistance of the occupying powers, and sometimes they could not stand up to pressures to boost the national economy. Nevertheless, as we have already seen, there were tendencies to strengthen state interventionism, and although they did not abolish the imperatives of capitalist profit interests, they did constrain them in a socially acceptable manner. In the democratic public, whose formal legal conditions were soon restored



even in previously totalitarian states, with the exception of the dictatorships that continued to exist, of course, the legitimacy of the capitalist economic order remained an issue, but not the 'ethical' impregnation of the constitutional state by the particular culture or value orientations of capitalism. Either encouraged by the experience of national victory or by the shame of collective guilt, there was a certain trust in the rule of law and in the fact that the shared freedom of democratic self-legislation had been extended to the political apparatus. This was certainly an illusion, but nevertheless an element of social reality. None of this meant that there would no longer be any doubts that state authorities would neutrally implement the results of public will-formation; the faintest sign of bias toward capitalist profit interests would suffice to revive historical mistrust. The conflicts that arose during the time of the Weimar Republic, when the tensions between the capitalist economic order and the democratic constitutional state would be fought over for the first time, had in no way been extinguished, but had merely cooled off temporarily.

But even the other conflict that had become virulent in the inter-war period – viz. the conflict over the reconcilability of nationalism and the constitutional state, of a nationalistic ethos and republican universalism – would remain present under the surface in Western European countries even after the end of Hitler's dictatorship, without any solution on the horizon. The war had put an end to the cultural reign of the militaristic-authoritarian traditions from which the radical thought of the nationalist right-wing had arisen; moreover, in Germany and Austria, the pressure of the occupying powers led to special efforts to break the social superiority of the military nobility that had made a significant contribution to radicalizing nationalist convictions. Beyond such efforts to dry up the former sources of ethnic [*völkisch*] nationalism, the future of the cultural framework of the democratic constitutional state remained entirely uncertain. In Great Britain and France, economic and political restructuring was initially undertaken with a spirit of restored national pride; in Germany, on the other hand, an oppressive silence about the recent past prevailed,<sup>570</sup> sending the political integration of the country down the negative path of a mute common destiny, before the initial successes of economic reconstruction allowed an atmosphere of private consumerism to emerge. The Universal Declaration of Human Rights issued by the newly founded United Nations in 1948 was able to prevent the heedless restoration of nation-states' former claims to sover-

eignty. Because the basic rights granted and enforced by individual states could now be examined internationally, the cultural self-understanding of citizens in Western European countries could no longer remain 'national' as it had been before World War II. According to their own claims, the conception of these nations' political history had to contain an external moral perspective that would allow an outside assessment of whether a nation's individual legislation conformed to the superior catalogue of human rights.

When it comes to the gradual delegitimation of the old notion of the nation-state, even more significant than this now institutionalized external perspective were the independence movements that arose in the colonies of a number of European states shortly after the end of the war. The struggle for liberation that the countries of Asia and Africa had been fighting against the Western European colonial powers since 1945 not only shattered the latter's belief in the superiority of their own institutions, but also led to internal conflicts over previous colonial policies, often grounded in racism.<sup>571</sup> The war in Algeria, which pushed France to the brink of civil war in the late 1950s, set off a broad oppositional movement to the national pride that had just been restored, and which matched the growing doubts in Great Britain about the exemplary morality of its own national history. When the stream of immigrants from the liberated colonies soon arrived in the former mother countries and introduced entirely different cultures and lifestyles, the question arose – both for state authorities and for the political public – as to whether the political integration of the citizens could still draw on the old sources of a basic nationalist attitude. The tension between nationalism and the constitutional state, which had seemed to die down after the war as a result of nation-state successes, once again rose to the surface and would come to play an ever more crucial role in all Western European states.<sup>572</sup>

But before these two conflicts would break out again, the state apparatuses in all Western European countries would develop increasing capacities for intervention; the tasks of the state expanded considerably, because the increased obligations of the welfare state had to be brought in line with capitalist companies' expanding need for secure profit-making conditions. As a result, wherever the centralized authority of the state to intervene had not yet been established, as it had in France, coordinating mechanisms between the government, employers' associations and unions began to form, which were intended to improve the effectiveness of planned state activity through a system of extra-parliamentary interest

representation: e.g. the '*konzertierte Aktion*' in West Germany, 'social partnership' in Austria and the 'National Economic Development Council' in Great Britain.<sup>573</sup> These forms of 'liberal corporatism', as the new system of government planning would soon be termed,<sup>574</sup> sought to anticipate a democratic process of will-formation that would serve the common good. But in truth, these alliances often merely preceded parliamentary debate and were a way of getting both parties to abstain from obstructing each other's interests and thus a way of reducing or eliminating social conflict. The success of these corporatist arrangements, which basically consisted of 'para-constitutional' instruments of political planning, largely depended on whether the desired effects of securing both the welfare state and conditions of capitalist accumulation could in fact be achieved. If the instrument failed to achieve one of these aims, then the population would either become disappointed and question its legitimacy, or companies would refocus on their own particular interests. In any case, from the very start the new system of government planning stood, in the words of Claus Offe, 'in competition with the "proper" channels of political will-formation, a relation that remains ambiguous in terms of constitutional law',<sup>575</sup> because it preceded these channels or attempted to evade them by establishing guidelines of political action that would require democratic consent.

Though we can therefore describe the formation of political corporatism in light of the principles underlying the constitutional state as a normative misdevelopment, the general public would only become aware of this development during the crisis of government finances that began in the 1980s. As long as the political authorities could finance their broadening spectrum of tasks while simultaneously satisfying welfare claims and capitalist profit interests, the shift of decision-making to the corporatist arena seemed to be tolerated by a population that appeared to benefit from this shift. Of course, political disquiet and social outrage arose whenever certain economic sectors ran into trouble despite such corporatist arrangements, or whenever a cultural sense of security or environmental awareness was violated – typically in those areas for which none of the negotiating parties felt responsible (employers' associations, unions, parties or local authorities). Nevertheless, according to every indicator imaginable, the legitimacy of this para-constitutional procedure was not explicitly called into question by the democratic majority. This situation began to change gradually in the 1980s once the gap between sinking revenues and

increased spending caused a crisis in government finances which made it more and more difficult for the state to satisfy all legitimate interests at the same time.<sup>576</sup> This set off a dynamic in which the reduction of welfare state measures and 'capital flight' – i.e. the shift of production and distribution into countries with cheaper labour and lower taxes – reinforced each other, a process that had to be interpreted by the public as the result of a 'failure' on the part of the state in light of the previously valid background consensus. Ever since that time, the peoples of Western Europe have perceived a tension between the capitalist economic order and the democratic constitutional state. However, this awareness is conveyed less by political protest than by muted moods of 'disenchantment' with politics [*Politikverdrossenheit*] – a diffuse mistrust in which people are not entirely wrong to presume informal arrangements behind every decision that has not been accounted for democratically.

These tendencies of a public turn away from state-mediated politics – which we must not confuse with the 'apathy' dealt with above, because this new phenomenon is not rooted in a lack of interest, but in the experience of mistrust – have been additionally encouraged over the last few years by the almost total absence of organized processes of corporatist arrangements when it comes to state action. In place of such informal negotiations, which are nevertheless made comprehensible via the respective interest groups involved, a widespread system of lobbyism has taken hold in many Western European countries, whose influence can only be measured in terms of the potential that can be mobilized for purposes of obstruction or by the level of promised economic benefits.<sup>577</sup> In accordance with the US political model, political decisions are increasingly removed from parliament or are only seemingly left up to the delegates, while secret deals with large economic groups are made in a space that, while close to the government, cannot be democratically monitored. These practices of patronage, which recall the days of the 'clubs of dignitaries', are often only concealed with the help of the media by presenting the head of government to the public as a person who, with statesmanlike virtues of decisiveness and foresight, makes tough decisions with conviction. This abrogation of democratic procedures that rely upon the mutual relationship between parliament and the public has been matched by the growing nationalization of political parties. Over an extended period of structural change, the beginnings of which have been analysed by Robert Michels,<sup>578</sup> parties that were originally intended as associative organs which, by argumentatively

presenting normative convictions and corresponding socialization processes, were to contribute to political will-formation, have now become largely bureaucratic organizations with the task of recruiting personnel for political office. Obviously there are occasional exceptions, as every newly founded party is characterized by the strength and freshness of a morally motivated collective movement,<sup>579</sup> but on average they have long since become transnational 'cartels of power' (Habermas), which attempt to instrumentalize the democratic public at will in order to provide their personnel with influential and profitable positions.

If we summarize these recent developments and recognize the increasing decoupling of the political system from democratic will-formation, then the phenomenon known today as political 'disenchantment' in fact represents an entirely different and much more normatively substantial reaction. Picking up on the syndromes of the wage-labouring classes we dealt with during the Weimar Republic, today a large segment of the political public once again suspects that state authorities are not committed to the principle of neutrality demanded by the democratic constitution. However, this current distrust differs from all its predecessors in that it is much more abstract and thus less describable: Whereas eighty to a hundred years ago we could point to concrete events that demonstrated the class-specific selectivity of the state apparatus, today the bias of the state in favour of capitalist profit interests seems to be entirely hidden from public view, because the corresponding governmental measures are either not addressed in parliament at all or are justified with reference to objective constraints [*Sachzwänge*].<sup>580</sup> Apparently the mere suspicion, substantiated by occasional journalistic research, that individual state decisions in favour of business add up is enough for citizens to retreat from public arenas of political will-formation. This is not so much due to spreading privatization or political disinterest as to the sober realization that the social freedom of democratic self-legislation has not been extended to the corresponding organs of the constitutional state.

The only way out of this crisis of the democratic constitutional state would be to bundle the public power of organizations, social movements and civil associations in order to put coordinated and massive pressure on the parliamentary legislature, forcing it to take measures to ensure the social re-embedding of the capitalist market (see Chapter III.6.2). The more freedom that business has gained over the last quarter century to pursue its profit interests, the more the state has been put at the mercy of the former's

increased capacity for obstruction. However, the development of a public, multi-voiced opposition is hindered by the fact that the necessary resources provided by a common background culture are gradually beginning to dry up. Political integration within the nation-state, which was once capable of providing moral motives for bundling various social forces, is now constrained by processes of globalization and worldwide migration, without there being any sign of alternative sources of solidarity on the horizon.

The tension between nationalism and the constitutional state, which dominated political debate during the Weimar Republic and moved into the background after the end of World War II, forcefully returned to public awareness in the 1970s. This was not only due to the growth of a partly desired, partly tolerated wave of immigration into the wealthy countries of Europe, which would significantly increase the ethnic and cultural heterogeneity of the population, but also and especially the progressive development of the novel structures of the European Union. With this transnational community, whose self-conception has constantly shifted back and forth between a federal state and a confederation of states, and which over the course of the 1970s and 1980s agreed to cooperate closely in a number of areas, including a common constitution in 1984 with a European Commission and a two-chamber parliament,<sup>581</sup> the days of the classical sovereign nation-state seemed to be over for good, and once again this raised the question as to the relationship between democratic self-legislation and the constitutional state. The authority of public will-formation, the normative centre of all democratic constitutions, could no longer remain in the context of a nationally integrated citizenry once the political bodies representing this citizenry had handed over parts of its sovereign power to a supra-state community whose decisions would affect the members of all countries involved. From the perspective of almost all states involved, the act of creating a central European government with a democratic constitution had to be followed by the transnationalization of public self-legislation, which would no longer take place within nation-state territories, but across national boundaries among equally entitled citizens in all member countries.

However, this project was faced with a number of significant obstacles from the very beginning, and unfortunately, the European Community has failed to cope with them successfully. On the one hand, the expansion of democratic self-legislation to cover a 'European' citizenry demanded a far-reaching equalization of political and social rights, since will-formation must take place under

conditions of legal equality. At the same time, a shared background culture was needed, because only such a culture's power to integrate could bring about the solidarity required for political cooperation among citizens. In the face of these major challenges, and confronted with the dilemma of having to either abstain from political integration beyond the nation-state at the cost of significant disparities in welfare-state structures or to hope for the emergence of Europe-wide solidarity despite all cultural resistance and efforts to equalize rights,<sup>582</sup> the majority of European states have decided for the first of the two alternatives. This seems to have cleared the way for a purely negative European integration aimed exclusively at enabling unhindered economic transactions, thus 'reducing Euro-citizens to the status of mere participants in a neo-liberal marketplace'.<sup>583</sup> At this juncture, both of the tensions that we have reconstructed over a period of eighty to ninety years, viz. the development of democratic constitutional states and nationalism, as well as of the capitalist economy, are locked together in a kind of vicious circle. The more the political integration of the European Community retains a form of will-formation along nation-state lines, the more the transnationalization of civil rights will remain restricted to exclusively liberal rights of freedom, while collective efforts to re-embed the market within the welfare state will be robbed of their foundation.<sup>584</sup>

The tension between nationalism and the constitutional state remains unresolved, even though everything – not only the political unification of European states, but also the increased heterogeneity of their populations – points to the detachment of democratic will-formation and its political organs from the foundations of national identity. There is a general lack of ideas about how the political integration of citizens, whose decisions impact the well-being of other citizenries besides their own, can take place beyond the cultural space of the 'nation'. The idea of constitutional patriotism, which we have run into at several points in our normative reconstruction, continues to have too little attractiveness to count as a sound alternative to national solidarity among citizens. It lacks historical concreteness, a narrative of collective triumphs and defeats in the light of which citizens can view themselves as sharing a common destiny and commit to mutual support. Therefore, at the end of our treatment of the social realization of legal, moral and social freedom, we are faced with the question of where to obtain the moral resources that could enable a democratic citizenry to withstand in solidarity the various misdevelopments we have diagnosed.



### 6.3.3 Political Culture – Prospects for the Future

Our normative reconstruction of the social spheres or relational institutions in which forms of both individual and communicative freedom are realized in the modern societies of the West has led us to a study of the complex structures of democratic will-formation – and for good reason. After all, the self-legislation that occurs in this sphere is generally expected to produce the political and legal principles for the other spheres of freedom as well, making democratic will-formation the active centre of the entire institutional order. But as we have also seen in our normatively stylized account, we run into significant difficulties if we take this notion all too seriously and derive from it the creative power of the democratic process. First of all, our historical review has shown how little the state can influence conditions in the other institutional spheres. Neither in personal relationships nor in the economic system, both of which are founded on their own self-referential norms in turn linked to independent forms of social freedom, have political and legal interventions aided in the realization of these underlying principles. Instead, any advances have usually been the result of struggles that have transformed collective perception and mobilized the corresponding principles of freedom. Often, the law has only subsequently legalized improvements already attained through struggle, and in some cases this legal confirmation was either impossible or superfluous once these advances had taken the shape of changed habits and practices. The motor and the medium of the historical process of realizing institutionalized principles of freedom is not the law, at least not in the first instance, but social struggles over the appropriate understanding of these principles and the resulting changes of behaviour. Therefore, the fact that contemporary theories of justice are guided almost exclusively by the legal paradigm is a theoretical folly. We must instead take account of sociology and historiography, as these disciplines are inherently more sensitive to changes in everyday moral behaviour.

The other difficulty that arises once the democratic process has been equipped with the power to determine and legally realize individual freedom is that we can lose sight of just how dependent this process is on at least rudimentary conditions of freedom in the surrounding social spheres. We certainly would not need a normative reconstruction to grasp the degree to which the consummation of the democratic public sphere relies on social conditions that it

itself cannot bring about. Neither the current relations in the family, which are relatively democratic and marked by equal rights, nor the occasional efforts to 'socialize' the sphere of consumption or the labour market – both of which represent preconditions for unforced participation in public will-formation – can simply be traced back to the initiative of the democratic legislature. Instead they came about through struggles to make the promise of freedom inherent in the respective spheres of action a reality. If we put aside these historical findings and attempt to draw general conclusions, we will see that the chances of equal inclusion in the democratic process increase to the degree that the principles of social freedom institutionalized in the neighbouring spheres of personal relationships and the economic market have been unleashed and realized. If we translate this conclusion back into the language of contemporary debates on political justice, we could say that theories of a deliberative democracy must presuppose 'just' economic and family relations, i.e. relations that correspond to their own principles and thus are not the result of the process that is the focus of these theories.<sup>585</sup> The idea of 'democratic ethical life' takes account of this fact by seeing democracy only where the principles of freedom institutionalized in the various spheres of action have been realized and embodied in corresponding practices and habits. These respective spheres are joined to each other in a relation of reciprocity, the same relation that exists within the individual spheres between the role-specific activities of the individuals unified in a shared 'We'.

The contradiction that begins to emerge here – on the one hand, democratic will-formation presupposes conditions of freedom, and on the other hand, it must be thought of as open and thus as producing freedom – can only be resolved if we conceive of public self-legislation as a normative learning process in which we recall and redeem antecedent freedoms located elsewhere as conditions of their own realization. The political sphere of democratic will-formation can only do justice to its own normative claim of freely involving all participants if the latter learn that the social struggles to realize the demands of freedom institutionalized in the other spheres of action deserve support, because they represent the conditions of one's own freedom. The social system of democratic ethical life thus represents a complicated web of reciprocal dependencies, where the realization of freedom in one sphere of action depends on the realization of the principles of freedom underlying the other spheres. Free market participants, self-aware democratic citizens and emancipated family members – all of whom correspond to the

ideals institutionalized in our society – mutually influence each other, because the properties of the one cannot be realized without those of the other two.

Therefore, there are only two reasons why the sphere of democratic will-formation enjoys priority over the other two spheres. First, in accordance with modern constitutional principles, state authorities invest this sphere with the legitimate power to turn the changes achieved by social struggles in various spheres of action into enforced conditions and thus into legal guarantees. Democratic self-legislation and the constitutional state form an especially prominent centre within other centres anchored in independent norms of freedom, because only democratic will-formation has the generally acknowledged power to interrupt the flow of discourse going on elsewhere and secure the results by means of legislation. Second, the principle of freedom that is the very essence of the sphere of democratic will-formation is that of a sphere of reflexive self-thematization. Although such discursive mechanisms can form at any time in the other two social spheres as the result of struggles and debates, as is demonstrated by the recent developments within the family and in the temporary achievements in the capitalist economy, they are not part of these spheres' institutional structure. This distinction arises from the differences between the forms of social freedom institutionalized in these respective spheres. Only in the political-democratic sphere does interaction consist in an exchange of arguments, i.e. a reflexive process, whereas in the other two spheres, cooperative interaction primarily consists in a reciprocal completion of practical actions, which can only be supplemented secondarily with reflexive mechanisms. This is the case, for instance, whenever the relation between complementary contributions itself represents the topic of unforced negotiation. Such discursive mechanisms can in principle be institutionalized in personal relationships or in the market economy, in order to base the distribution of reciprocal obligations on the reflexive deliberations of all involved, and this would represent a 'democratization' of the family or the economy. But in the sphere of public will-formation, these mechanisms represent the foundation and the structure of the freedom institutionalized in this sphere, where our only real obligation is that we seek, in the form of discussion, a shared conception of how we view the challenges of social development regarded as problems by the responsible state authorities. For the sake of this institutionalized reflexivity, in which communicative interaction only serves to remove what is taken for granted, the

political-democratic sphere enjoys a certain priority over the other two spheres of action that likewise thrive on ideas of social freedom. In public will-formation, everything that has been withdrawn from discussion due to misdevelopments or political oppression can and should be made an issue.

However, as we saw above, the democratic process itself stands under a certain normative pressure, since it can only live up to its own claims if it also encourages and strengthens strivings for freedom in the other two spheres of action as well. After all, the more social freedom has been realized in personal relationships and on the market, the more equal, free and self-confident the involvement of citizens in public will-formation will be. Therefore, those who deliberate and seek to come to an agreement on the well-being of their community cannot be indifferent to the social relationships prevailing in the other two spheres. On the contrary, citizens are subject to a peculiar constraint resulting from the self-referential norms of the democratic process, obligating them to support whatever accommodates the realization of institutionalized principles of freedom at a given historical moment. Without this element of moral bias, without such a moral compass, the freedom of democratic will-formation will become detached from the other social freedoms that have formed an institutional web of reciprocal dependencies ever since the beginning of modern societies. Every theory of democracy that fails to see this connection, and thus deprives the democratic process of all normative criteria, will not be able to grasp the special significance of this sphere as a reflexive authority among the other spheres of action.<sup>586</sup>

Nevertheless, what we have just termed 'moral bias' or 'moral compass' raises particular demands on that bundle of motives that, as elements of a shared background culture, enable the process of will-formation in the democratic public sphere in the first place. Throughout our normative reconstruction of this last sphere, we have repeatedly seen that membership in a community understood as a 'nation' was needed before male citizens (and later female citizens) could receive enough trust and solidarity in order for all sides to demand participation in collective self-legislation. Without the feeling of belonging to such a 'national' community, either by birth or by naturalization, the willingness required to fulfil obligations without complaint and to make the personal sacrifices that might be required by the democratic process of will-formation could not have ever come about. Therefore, we could follow Claus Offe in saying that the 'nation' represents a cultural interpretive schema

that enables citizens – even before they recognize any political authority – to recognize each other ‘as being motivated by – and hence reciprocally worthy of – trust and solidarity’.<sup>587</sup> It would be an exaggeration, and historically odd, to assume that the relations of recognition brought about by a national culture also displays the moral bias we have just claimed to represent a weak demand on the democratic process. Although under certain historical conditions the feeling of national belonging awakens the willingness even of non-affected citizens to fight for improvements in family relationships or on the capitalist labour market, and thus to support the emancipation of women or the abolition of demeaning labour, this has never been the rule, and certainly not a law that governs public will-formation. Nevertheless, political integration along the lines of the nation-state has ensured shared attention to all relevant spheres of action, because each of these spheres had to be regarded as being within citizens’ shared responsibility. These bonds of solidarity extended beyond citizens to members of the family and labourers, for in all these roles the individual not only remained a member of the national community, but in principle also contributed to social reproduction. In short, the political culture of nationalism was characterized by a totalizing view of the entire web of institutionalized spheres of action, a view that assigned to the public the task of being interested in and supporting the interests of all.

With individual states’ gradual loss of sovereignty and the growing heterogeneity of their populations, the significance of this national background culture has gradually declined in the member states of the European Community. The nation-state and national history still occasionally represent figures of identification that play an integrative role; in times of crisis they return to the forefront, and they certainly will not pale any time in the near future; yet, the project of a democratic, and not merely economic, European unification will sooner or later demand an expanded frame of reference for political integration. Of course, this immediately raises the question as to where we could find the resources for such a new European culture of public will-formation. To say the least, we would have to transfer all the functions previously performed by the historically rooted notion of national belonging to individual nation-states: The creation of recognitional relationships based on trust and solidarity, as well as shared attention to all morally sensitive spheres of action that touch on the freedom of individuals. Given the difficulties of finding any indications of such a culture on European soil, we should not be surprised to find a certain amount

of scepticism when it comes to the chances for truly democratic European integration.<sup>588</sup> Although almost all sides concede that only a cross-border process of public will-formation can thwart the dangers associated with a kind of unification based solely on free trade and economic interaction, any conceptions or calls for a European 'demos' have for the most part been abandoned.

A somewhat different, more favourable description could remind us of the reconstructive path we have taken in our historical treatment of the various spheres of freedom. Certainly, this kind of retrospective should not lead us to believe that, at least within Western Europe, we are on a continuous path of progress in which individual and social freedoms continually expand. In the recent past we have seen too many social threats – which we have termed 'social misdevelopments' with reference to the underlying normative principles of freedom – to various historical achievements to believe in such an automatic progression. But what is much more decisive for our purposes is the fact that none of the developmental paths taken by the different spheres of institutionalized freedom, whether they represent normative progress or regress, could have been described without reference to events or occurrences in various Western European countries. The often conflict-ridden and often violently interrupted realization of the freedoms institutionalized as integrative and legitimating principles in the constitutive spheres of action during the cultural and social breakthrough to modernity took place within such a dense web of interaction and exchange that no occurrence in one country failed to impact other countries, no social encounter on one side of a nation's border failed to lead to conflicts beyond them. Within Europe, or rather, within Western Europe, the struggle to redeem the normative expectations awakened at the end of the eighteenth century by the fact that legal relations, understandings of morality, personal relationships, economic exchange and political rule were all adapted to particular ideas of freedom all took place in a transnational communicative space that easily transcended national boundaries. Of course, this sounding board does not represent the web of interaction that democratic will-formation requires, but for over two hundred years it was enough to allow waves of outrage to spread from one country to the next and produce reactions in various states at the same time. Neither the French Revolution nor the Paris Commune were exclusively 'French' events, nor did Franco's coup represent a challenge for free Spain alone. All of these stations in the struggle to realize already institutionalized norms of freedom

represent – hence the analogy to Kant’s ‘historical symbols’ – historical events upon which the majority of the population throughout Western Europe looks back with the same feeling of either enthusiastic approval in the case of struggles for emancipation, or with disgust in the case of oppression. Such unanimous judgements across national boundaries add up to a collective memory in which everything that has contributed to realizing institutionally promised freedoms is remembered as a symbol of social progress. The narrative that emerges from this archive of triumphs and defeats in the common struggle for freedom contains far more events and historical occurrences than the successful struggle to realize constitutional norms. This collective memory contains achievements in the struggle against demeaning labour conditions or female role obligations, which cannot simply be found in the form of moral demands documented in European constitutions. Whereas the idea of constitutional patriotism remains too closely attached to the medium of law alone, the patriotism inherent in the European archive of collective struggles for freedom aims to realize all the promises of freedom institutionalized in the various social spheres. At a time in which the defence of freedoms that have already been won and the struggle for those that have not yet been fulfilled need a transnational, committed public more than anything else, there remains little more than the hope that on the basis of this historical consciousness, we will see the development of a European culture of shared attentiveness and broadened solidarity.



# Notes

## Introduction: A Theory of Justice as an Analysis of Society

- 1 For the origin and logic of this separation, see Karl Löwith, *From Hegel to Nietzsche: The Revolution in Nineteenth-Century Thought*, trans. David E. Green (New York: Columbia University Press, 1964).
- 2 Thomas H. Green, *Lectures on the Principles of Political Obligation* (Cambridge: Cambridge University Press, 1986); Francis H. Bradley, *Ethical Studies* (Oxford: Clarendon Press, 1967). For a good overview, see Peter Nicholson, *The Political Philosophy of British Idealists* (Cambridge: Cambridge University Press, 1990).
- 3 Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983); David Miller, *Principles of Social Justice* (Cambridge, MA: Harvard University Press, 2001).
- 4 G. W. F. Hegel, *Elements of the Philosophy of Right*, trans. H. B. Nisbet (Cambridge: Cambridge University Press, 1991).
- 5 On this broad concept of Right, see Ludwig Siep, 'Vernunftrecht und Rechtsgeschichte: Kontext und Konzept der Grundlinien im Blick auf die Vorrede' in *Grundlinien der Philosophie des Rechts* (Berlin: Akademie, 1997), pp. 5–30.
- 6 See, for instance, Dina Emundts/Rolf-Peter Horstmann, G. W. F. Hegel: *Eine Einführung* (Stuttgart: Reclam, 2002), esp. pp. 32ff.
- 7 Talcott Parsons, *Societies: Evolutionary and Comparative Perspectives* (Englewood Cliffs, NJ: Prentice Hall, 1966), p. 11.
- 8 See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993). For an account of the Hegelian motifs in Rawls' work, see Jörg Schaub, *Gerechtigkeit als Versöhnung: John Rawls' politischer Liberalismus* (Frankfurt/Main: Campus, 2009).

- 9 Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, MA: MIT Press, 1996).
- 10 See Herbert Schnädelbach, 'Zum Verhältnis von Logik und Gesellschaftstheorie bei Hegel' in Oskar Negt, ed., *Aktualität und Folgen der Philosophie Hegels* (Frankfurt/Main: Suhrkamp, 1970), pp. 58–80; Hans-Friedrich Fulda, *Das Recht der Philosophie in Hegels Philosophie des Rechts* (Frankfurt/Main: Klostermann, 1968).
- 11 Émile Durkheim, *The Division of Labour in Society* (New York: The Free Press, 1964); Talcott Parsons, *The System of Modern Societies* (Englewood Cliffs, NJ: Prentice Hall, 1971).
- 12 Bernard W. Gallie, 'Essentially Contested Concepts', *Proceedings of the Aristotelian Society*, 56 (1955): 167–98.
- 13 Allen W. Wood, *Hegel's Ethical Thought* (Cambridge: Cambridge University Press, 1990), part IV.
- 14 Max Weber, 'Objective Possibility and Adequate Causation in Historical Explanation', in *The Methodology of the Social Sciences* (New York: The Free Press, 1949), pp. 164–88.

## Part I Historical Background: The Right to Freedom

- 1 Charles Taylor, *Sources of the Self: The Making of Modern Identity* (Cambridge, MA: Harvard University Press, 1992), esp. parts III and IV. In what follows, I do not address the notion of 'equality', as influential and consequential as it might be, as an independent value because it can only be understood as an elucidation of the value of individual freedom, as the notion that all members of modern societies are equally entitled to freedom. Everything that can be said about the demand for social equality only makes sense in relation to individual freedom.
- 2 This is the thrust of Taylor's argumentation: p. 503.
- 3 A very nice demonstration of the crucial position of individual freedom can be found in Will Kymlica, *Contemporary Political Philosophy: An Introduction* (Oxford: Oxford University Press, 1990).
- 4 See, for example, Judith Butler, *Gender Trouble* (London: Routledge, 1990). For an account of the more general issue, see Johanna Oksala, *Foucault on Freedom* (Cambridge: Cambridge University Press, 2005).
- 5 See Jerome B. Schneewind, *The Invention of Autonomy: A History of Modern Moral Philosophy* (Cambridge: Cambridge University Press, 1998).
- 6 This link between justice and the condition of mutual justifiability is the kernel of truth in the notion that 'justice' is to be explained with reference to a 'right to justification'. For an approach that builds on the work of John Rawls and Thomas Scanlon, see Rainer Forst,

- The Right to Justice: Elements of a Constructivist Theory of Justice* (New York: Columbia University Press, 2011). However, this virtually analytic principle is of little use when the type and extent of permissible justifiability can only be measured in terms of the social and historical conditions needed to determine what can count as 'justified' in each case. Without taking account of these normative conditions, which represent the object of normative reconstruction, the theory of justice remains entirely empty.
- 7 Immanuel Kant, 'The Contest of the Faculties, Part 2' in *Toward Perpetual Peace and Other Writings*, edited by Pauline Kleingeld (New Haven: Yale University Press, 2006), p. 155.
  - 8 See Axel Honneth, 'The Irreducibility of Progress: Kant's Account of the Relationship Between Morality and History' in *Pathologies of Reason* (New York: Columbia University Press, 2009), pp. 1–18.
  - 9 See John Rawls' classical formulations in 'The Priority of Right and Ideas of the Good', *Philosophy and Public Affairs*, 17, 4 (1988): 251–76, esp. 251f. Here the key phrase is: 'justice draws the limit, the good shows the point.'
  - 10 Unfortunately, I am not aware of any investigation on the conceptual history of freedom that traces the development of this concept in modern societies while also taking account of the performative interventions of social movements and political parties. For the case of Germany, see Peter Blickle, *Von der Leibeigenschaft zu den Menschenrechten: Eine Geschichte der Freiheit in Deutschland* (Munich: Beck, 2003). Unfortunately, the concept of freedom is not included among the major themes in the otherwise excellent global history of the nineteenth century by Jürgen Osterhammel, *Die Verwandlung der Welt: Eine Geschichte des 19. Jahrhunderts* (Munich: Beck, 2009).
  - 11 An interesting proposal for distinguishing between three models of freedom, and one which differs from my own, has been developed by Philippe d'Iribarne, 'Trois figures de la liberté', *Annales HSS*, no. 5 (2003), pp. 953–78. D'Iribarne argues that the particularities of these three conceptions of freedom (negative, communicative and reflexive) result from the cultural customs of their respective country of origin (England, Germany, France). I do not pursue these connections any further here.
  - 12 Isaiah Berlin, 'Two Concepts of Liberty,' in *Liberty* (Oxford: Oxford University Press, 2002), pp. 166–217.

## 1 Negative Freedom and the Social Contract

- 1 Hobbes, *Leviathan* (London: Pelican, 1968), p. 189.
- 2 Hobbes, *Leviathan*.

- 3 Hobbes, *Leviathan*.
- 4 Hobbes, *Leviathan*.
- 5 See Charles Taylor, 'What's Wrong with Negative Liberty', in *Philosophy and the Human Sciences: Philosophical Papers 2* (Cambridge: Cambridge University Press, 1985), pp. 211–29.
- 6 Quentin Skinner, *Liberty Before Liberalism* (Cambridge: Cambridge University Press, 1998), pp. 7–11; see also *Hobbes and Republican Liberty* (Cambridge: Cambridge University Press, 2008).
- 7 See Berlin, 'Two Concepts of Liberty'.
- 8 See Albrecht Wellmer, 'Models of Freedom in the Modern World' in *Endgames: The Irreconcilable Nature of Modernity: Essays and Lectures* (Cambridge, MA: MIT Press, 2000), pp. 3–38, esp. 27ff.
- 9 See Undine Elberlein, *Einzigartigkeit: Das romantische Individualitätskonzept der Moderne* (Frankfurt/Main: Campus, 2000), esp. ch. 5; Charles Taylor, *The Ethics of Authenticity* (Cambridge, MA: Harvard University Press, 1991).
- 10 For just one example, see Ulrich Beck, *Risk Society: Towards a New Modernity* (London: Sage Publications, 1992).
- 11 Jean-Paul Sartre, *Being and Nothingness* (New York: Washington Square Press, 1956), part IV, ch.1.
- 12 Sartre, *Being and Nothingness*. For a critique of Sartre's conception of freedom, see Charles Taylor, 'What is Human Agency?' in *Human Agency and Language: Philosophical Papers 1* (Cambridge: Cambridge University Press, 1985), pp. 15–44; Peter Bieri, *Das Handwerk der Freiheit: Über die Entdeckung des eigenen Willens* (Munich: Hanser, 2001), ch. 6.
- 13 Sartre, *Being and Nothingness*, p. 92.
- 14 Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1977).
- 15 Nozick, 49ff.
- 16 Nozick, p. 38.
- 17 Nozick, p. 313.
- 18 Hobbes, *Leviathan*, part I, chs 13–15; John Locke, *The Second Treatise of Government* (Indianapolis: Hackett, 1980), ch. 2; Nozick, *Anarchy, State and Utopia*, part I, ch. I.
- 19 G. W. F. Hegel offers a critical account of Hobbes' notion of natural law in *Natural Law: The Scientific Ways of Treating Natural Law, Its Place in Moral Philosophy, and Its Relation to the Positive Sciences of Law*, trans. T. M. Knox (Philadelphia: University of Pennsylvania Press, 1975).
- 20 Locke, *The Second Treatise of Government*, pp. 8ff; Nozick, *Anarchy, State and Utopia*, pp. 3–6.
- 21 Consider Nozick's telling formulation: 'More to the point . . . would be to focus upon a nonstate situation in which people generally satisfy moral constraints and generally act as they ought', Nozick, p. 5. With respect to Locke, Rawls claims that these contradictions

can only be resolved if we take account of his basic religious premise that humans are the property of God: John Rawls, *Lectures on the History of Political Philosophy* (Cambridge, MA: Harvard University Press, 2007), p. 136.

- 22 Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge: Polity, 1996). John Rawls attempts to solve this problem by draping his famous ‘veil of ignorance’ over the contract. See his critique on John Locke in *Lectures on the History of Political Philosophy*, pp. 215–40.

## 2 Reflexive Freedom and its Conception of Justice

- 1 On the continuity of this idea going all the way back to Aristotle, see Ernst Tugendhat, ‘Der Begriff der Willensfreiheit’, in *Philosophische Aufsätze* (Frankfurt: Suhrkamp, 1992), pp. 334–51.
- 2 Albrecht Wellmer in particular has emphasized the irreplaceability of negative freedom in ‘Models of Freedom in the Modern World’, pp. 3ff.
- 3 Berlin, ‘Two Concepts of Liberty’, pp. 208ff.
- 4 Raymond Geuss, ‘Auffassungen der Freiheit’, *Zeitschrift für philosophische Forschung*, 49, 1 (1995): 1–14.
- 5 Jean-Jacques Rousseau, *Émile, or On Education* (New York: Basic Books, 1979), pp. 266–313; see Schneewind, *The Invention of Autonomy*, ch. 21, pp. 474–7.
- 6 Jean-Jacques Rousseau, *The Social Contract and Other Later Political Writings* (Cambridge: Cambridge University Press, 1997), pp. 3–150. An extremely convincing interpretation of the role of self-imposed law in ‘*The Social Contract*’ can be found in Frederick Neuhaus, *Rousseau’s Theory of Self-Love: Evil, Rationality, and the Drive for Recognition* (Oxford: Oxford University Press, 2008), pp. 214–17.
- 7 Rousseau, *Émile*, p. 292.
- 8 Rousseau.
- 9 Rousseau, p. 295.
- 10 On the influence of Rousseau on Kant’s notion of moral autonomy, see Schneewind, *The Invention of Autonomy*, pp. 487–92; Susan Meld Shell, *Kant and the Limits of Autonomy* (Cambridge, MA: Harvard University Press, 2009), ch. 2.
- 11 On the literary influence of Rousseau’s ideal of authenticity, see Lionel Trilling, *Sincerity and Authenticity* (Cambridge, MA: Harvard University Press, 1972), pp. 58–67; on its philosophical influence, see Christoph Menke, *Tragödie im Sittlichen: Gerechtigkeit und Freiheit nach Hegel* (Frankfurt/Main: Suhrkamp, 1996), ch. 4c.
- 12 Immanuel Kant, *Groundwork of the Metaphysic of Morals*, trans. H. J. Paton (New York: Harper and Row, 1964).

- 13 Kant, *Groundwork*, 70.
- 14 Kant, *Groundwork*, p. 101.
- 15 Kant, *Groundwork*, p. 120.
- 16 On the ideal of authenticity in Rousseau's *Julie, or the New Heloise*, see Alessandro Ferrara, *Modernity and Authenticity: A Study of the Social and Ethical Thought of Jean-Jacques Rousseau* (Albany: SUNY Press, 1993), ch. 5.
- 17 See Menke, *Tragödie im Sittlichen*, ch. 4; Taylor, *The Ethics of Authenticity*, ch. 3.
- 18 Johann Gottfried Herder, 'On the Cognition and Sensation of the Human Soul' in *Philosophical Writings* (Cambridge: Cambridge University Press, 2002), pp. 187–244; Christoph Menke has published an impressive reinterpretation of this work in *Kraft: Ein Grundbegriff ästhetischer Anthropologie* (Frankfurt/Main: Suhrkamp, 2008), ch. III; on the relation of Herder's work to Rousseau, the best text remains that by Hermann A. Korff, *Geist der Goethezeit: Versuch einer ideellen Entwicklung der klassisch-romantischen Literaturgeschichte* (Leipzig: Koehler and Amelang VOB, 1923), vol. 1, part I, ch. 1.2.
- 19 Herder, 'On the Cognition and Sensation of the Human Soul', p. 197.
- 20 Herder, p. 211.
- 21 Herder, p. 212.
- 22 John Deigh, *The Sources of Moral Agency: Essays in Moral Psychology and Freudian Theory* (Cambridge: Cambridge University Press, 1996); David Velleman, *Self to Self: Selected Essays* (Cambridge: Cambridge University Press, 1996), esp. chs 5, 6 and 12.
- 23 Picking up on Jean Piaget's groundbreaking study *The Moral Judgment of the Child* (1932) (New York: Free Press, 1997), Lawrence Kohlberg in particular has presented Kantian-inspired empirical studies on moral development: *The Psychology of Moral Development: The Nature and Validity of Moral Stages (Essays on Moral Development, Volume 2)* (New York: Harper and Row, 1984).
- 24 Christine M. Korsgaard, *The Sources of Normativity* (Cambridge: Cambridge University Press, 1996).
- 25 Karl-Otto Apel, *Towards a Transformation of Philosophy* (Marquette: Marquette University Press, 1998); Jürgen Habermas, *Moral Consciousness and Communicative Action* (Cambridge, MA: MIT Press, 1990), chs 3 and 4.
- 26 Harry Frankfurt, 'Freedom of the Will and the Concept of a Person', in *The Importance of What We Care About* (Cambridge: Cambridge University Press, 1988), pp. 11–25.
- 27 Frankfurt, pp. 17–20. Frankfurt has further developed this element of his theory of freedom in his later writings. See 'The Importance of What We Care About', in *The Importance of What We Care About*, pp. 80–94; 'On the Necessity of Ideals', in *Necessity, Volition, and Love* (Cambridge: Cambridge University Press, 1999), pp. 108–16 and

- 'Autonomy, Necessity and Love', in *Necessity, Volition, and Love*, pp. 129–41.
- 28 Alasdair MacIntyre exemplifies this idea of self-realization as self-discovery: *After Virtue: A Study in Moral Theory* (South Bend: University of Notre Dame, 1984), esp. ch. 15; see also Dieter Thomä, *Erzähle dich selbst: Lebensgeschichte als philosophisches Problem* (Munich: Beck, 1998), ch. II.
- 29 See John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), ch. 24.
- 30 Habermas, *Between Facts and Norms*, ch. III.
- 31 On Herder's political philosophy, see Frederick C. Beiser, *Enlightenment, Revolution and Romanticism: The Genesis of Modern German Political Thought, 1790–1800* (Cambridge, MA: Harvard University Press, 1992), esp. ch. 8.
- 32 On this divide in Mill's theory of liberty, see Berlin, 'Two Concepts of Liberty', esp. pp. 182; see also 'John Stuart Mill and the Ends of Life', in *Liberty*, pp. 218–51.
- 33 John Stuart Mill, *On Liberty*, (Indianapolis: Hackett, 1978), p. 62; for an account of Mill's conception of justice, see Rawls, *Lectures on the History of Political Philosophy*, esp. pp. 266–83.
- 34 Mill, *On Liberty*, p. 59.
- 35 Mill, ch. 4.
- 36 On the problems involved in this conception, see Alan Ryan, *John Stuart Mill* (New York: Pantheon, 1970), ch. XIII.
- 37 For an account of these differentiations, see the very helpful essay by Charles Taylor, 'Cross Purposes: The Liberal-Communitarian Debate in Nancy Rosenblum', ed, *Liberalism and the Moral Life* (Cambridge, MA: Harvard University Press, 1989), pp. 159–82.
- 38 Hannah Arendt, *On Revolution* (London: Penguin, 1991); Arendt, *On Violence* (New York: Harvest, 1970); Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982).
- 39 For an account of these tendencies in the work of Hannah Arendt, which are related to her degradation of 'the social', see Seyla Benhabib, *The Reluctant Modernism of Hannah Arendt* (Lanham: Rowman and Littlefield, 2003), ch. 5; Hauke Brunkhorst, *Hannah Arendt* (Munich: Beck, 1999), pp. 142–7.
- 40 Harry Frankfurt, 'Equality and Respect', in *Necessity, Volition, and Love*, pp. 146–54.

### 3 Social Freedom and the Doctrine of Ethical Life

- 1 Gerd Wartenberg, *Logischer Sozialismus: Die Transformation der Kantschen Transzendentalphilosophie durch Charles S. Peirce* (Frankfurt/Main: Suhrkamp, 1971), esp. pp. 187ff.



- 2 Within Habermas' work, this tension becomes most apparent in *Between Facts and Norms*, where he first resolves it into a historical concretization.
- 3 Frederick Neuhouser, *Foundations of Hegel's Social Theory: Actualizing Freedom* (Cambridge, MA: Harvard University Press, 2000). For his terminology, see pp. 5ff.
- 4 G. W. F. Hegel, *Elements of the Philosophy of Right*, trans. H. B. Nisbet (Cambridge: Cambridge University Press, 1991), §§1–32.
- 5 Hegel, p. 42.
- 6 See Andreas Wildt, *Autonomie und Anerkennung: Hegels Moralitätskritik im Lichte seiner Fichte-Rezeption* (Stuttgart: Klett-Cotta, 1982); Axel Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts* (Cambridge, MA: MIT Press, 1995).
- 7 By defining 'social freedom' as mutual completion in institutional spheres of recognition, I disagree with Frederick Neuhouser's proposal that refers to Hegel's holistic idea of a 'self-determining entirety'; see *Foundations of Hegel's Social Theory*, pp. 82–4. For reasons that we will deal with later, especially with reference to Talcott Parsons, I regard my 'shallower' determination as better suited to the demands of a sociological theory of society.
- 8 G. W. F. Hegel, *Jenaer Systementwürfe I: Das System der spekulativen Philosophie* (Hamburg: Meiner, 1986), Fragment 21, p. 212.
- 9 See G. W. F. Hegel, *Jenaer Realphilosophie* (Hamburg: Meiner, 1969), p. 202, marginal comment no. 2.
- 10 See Birger P. Priddat, *Hegel als Ökonom* (Berlin: Parera Verlag, 1990); Hans-Christoph Schmidt am Busch, 'Anerkennung' als Prinzip der Kritischen Theorie (unpublished professorial dissertation, Goethe University, Frankfurt/Main, 2009), ch. III. But above all, see my own considerations in part Chapter III.6.2.1.
- 11 Hegel, *Philosophy of Right*, p. 44.
- 12 Joseph Raz, *The Morality of Freedom*. Oxford: Clarendon Press, 1986, esp. pp. 307ff. (ch. 12.5)
- 13 Hegel, *Elements of the Philosophy of Right*, §28, p. 57.
- 14 On the Aristotelian model that doubtlessly influenced Hegel's line of argumentation, see MacIntyre, *After Virtue*, ch. 14.
- 15 Axel Honneth, *Suffering from Indeterminacy* (Amsterdam: Van Gorcum Ltd, 2001) ch. 5.
- 16 On the following, see Daniel Brudney, *Marx's Attempts to Leave Philosophy* (Cambridge, MA: Harvard University Press, 1998); George G. Brenkert, *Marx's Ethics of Freedom* (London: Routledge and Kegan Paul: 1983), esp. ch. 4; Allen W. Wood, *Karl Marx*, London: Routledge and Kegan Paul, 1981.
- 17 On Hegel's concept of labour that Marx draws on directly, see Hans-Christoph Schmidt am Busch, *Hegels Begriff der Freiheit* (Berlin: Akademie, 2002).

- 18 Karl Marx, 'Excerpts from James Mill's "Elements of Political Economy"' in *Early Writings* (London/New York: Vintage, 1975), pp. 259–78, here: p. 277.
- 19 On the concept of 'completing each other' in this context, see Brudney, *Marx's Attempt to Leave Philosophy*, p. 183ff; also, see Brudney, 'Marx' *neuer Mensch* in Hans-Christoph Schmidt am Busch/Christopher F. Zurn, eds, *Anerkennung* (Berlin: Akademie, 2009), pp. 145–180.
- 20 Marx, 'Excerpts from James Mill's "Elements of Political Economy"', p. 277.
- 21 Marx, 'Excerpts', p. 275.
- 22 Marx, 'Excerpts', p. 260.
- 23 Marx, 'Excerpts', p. 275.
- 24 This is the thrust of Georg Lohmann's interpretation in *Indifferenz und Gesellschaft: Eine kritische Auseinandersetzung mit Marx* (Frankfurt/Main: Suhrkamp, 1991).
- 25 Arnold Gehlen, 'Über die Geburt der Freiheit aus der Entfremdung,' in *Philosophische Anthropologie und Handlungslehre: Gesamtausgabe*, vol. 4 (Frankfurt/Main: Klostermann, 1983), pp. 366–79.
- 26 See, once again, Wildt, *Autonomie und Anerkennung*, p. 378.
- 27 Gehlen, 'Über die Geburt der Freiheit aus der Entfremdung', p. 378.
- 28 On this anthropological background, see Arnold Gehlen, *Man, His Nature and Place in the World* (New York: Columbia University Press, 1988), esp. chs 6–8.
- 29 For a critique of Gehlen, see Karl-Otto Apel, 'Arnold Gehlen's "Philosophie der Institutionen" und die Metainstitution der Sprache', in *Transformation der Philosophie I*: 197–221; Jürgen Habermas, 'Der Zerfall der Institutionen', in *Philosophisch-politische Profile* (Frankfurt/Main: Suhrkamp, 1981), pp. 101–6.
- 30 For Hegel, see *Natural Law: The Scientific Ways of Treating Natural Law, Its Place in Moral Philosophy, and Its Relation to the Positive Sciences of Law*; for Marx, who is less explicit on this account, see his critique of the 'ideology' that the state and the law rest on 'free will' in *The German Ideology* (Amherst: Prometheus, 1998), pp. 27–567, here: p. 99.
- 31 On this entire, difficult topic, see Andreas Wildt, 'Gerechtigkeit in Marx' "Kapital" in Emil Angehrn/Georg Lohmann, eds, *Ethik und Marx: Moralkritik und normative Grundlagen der Marxschen Theorie* (Königstein/Taunus: Hain, 1986), pp. 149–73.
- 32 Hegel, *Elements of the Philosophy of Right*, p. 27 (§2); see also John Rawls, *Lectures on the History of Moral Philosophy* (Cambridge, MA: Harvard University Press, 2000), pp. 331–49.
- 33 See Michael O. Hardimon, *Hegel's Social Philosophy: The Project of Reconciliation* (Cambridge: Cambridge University Press, 1994), pp. 164ff.; also: Hardimon, 'Role Obligations', *Journal of Philosophy*,

- 91, 7 (1994): 333–63, esp. 348ff. I will return to this point in Part I, chs 1 and 2.
- 34 See my account in ‘The Irreducibility of Progress: Kant’s Account of the Relationship Between Morality and History’, *Pathologies of Reason*.
- 35 A striking expression of this intersubjective conception of freedom can be found in the work of John Dewey, who ultimately equates liberty with free cooperation: ‘Liberty is that secure release and fulfillment of personal potentialities which take place only in rich and manifold association with others: the power to be an individualized self making a distinctive contribution and enjoying in its own way the fruits of association.’ (John Dewey, ‘The Public and its Problems’, in *The Later Works 1925–1953*, vol. 2 (Carbondale: Illinois University Press, 1988), pp. 235–372.
- 36 See, for instance, Dieter Henrich’s notes on Hegel’s lectures on the *Philosophy of Right* in 1819–1820. In the chapter on ‘civil society’, these notes contain several indications of the justifiable ‘outrage’ of the poor at their plight: G. W. F. Hegel, *Philosophie des Rechts: Die Vorlesung von 1819/20 in einer Nachschrift* (Frankfurt: Suhrkamp, 1983), esp. pp. 187–207. In this context, Hegel even speaks of an ‘emergency right’ of revolt.

## Transition: The Idea of Democratic Ethical Life

- 1 Habermas presents a similar justification for his methodological approach in *Between Facts and Norms*, pp. 64ff. The difference between our projects, however, consists in the fact that Habermas seeks to make the historical development of the modern constitutional state the point of reference for a normative reconstruction, while I, given the tasks of a theory of justice, argue for applying such a reconstructive approach to the entire spectrum of current development in all major institutional spheres of value. Of course, this forces me to claim that these different spheres or complexes of action really do represent specific functional embodiments of the one universal value of individual freedom.
- 2 For a juridical perspective on the issue, see Bernd Rüthers, *Das Ungerechte an der Gerechtigkeit* (Tübingen: Mohr Siebeck, 2009), 3rd edition.
- 3 On the priority of what is ‘good’ over what is ‘right’, though often under different premises, see Hilary Putnam, *Realism with a Human Face* (Cambridge, MA: Harvard University Press, 1990); ‘Values and Norms’, in *The Collapse of the Fact: Value Dichotomy and Other Essays* (Cambridge, MA: Harvard University Press, 2002), pp. 111–34.
- 4 See Part I, Chapter I, Section 1.3 for more details.

- 5 To formulate the matter in a different and more pointed way: Much of what each subject is entitled to in the name of freedom cannot be provided in the form of positive rights.
- 6 The few authors, besides Hegel, who have dared to deal with the non-legal conditions of social justice are the following, ordered according to their importance for my own work: Émile Durkheim, *Physik der Sitten und des Rechts* (Frankfurt/Main: Suhrkamp, 1993); Andreas Wildt, *Autonomie und Anerkennung*; Alasdair MacIntyre, *After Virtue*; Avishai Margalit, *The Decent Society* (Cambridge, MA: Harvard University Press, 1998).

## 4 Legal Freedom

- 1 See Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, chs III and IV.
- 2 See the reconstructions presented by Georg Lohmann, *Indifferenz und Gesellschaft: Eine kritische Auseinandersetzung mit Marx*, pp. 253ff; Gerald A. Cohen, *Karl Marx's Theory of History: A Defence* (Oxford: Oxford University Press, 1978), ch. VIII.
- 3 An example can be found in Sonja Buckel, *Subjektivierung und Kohäsion: Zur Rekonstruktion einer materialistischen Theorie des Rechts* (Weilerswist: Velbrück, 2007).
- 4 G. W. F. Hegel, *Elements of the Philosophy of Right*, § 41 (Addition).
- 5 Hegel, *Elements*, §49, §236 (Addition).
- 6 Hegel, *Elements*, §38.
- 7 Hegel, *Elements*, §35 (Addition).
- 8 Hegel, *Elements*, §45.
- 9 Hegel, *Elements*, §50 (Addition), §52, §57, §65 (Addition).
- 10 Hegel, *Elements*, §71 and §71 (Addition).
- 11 Hegel, *Elements*, §44 (Addition).
- 12 Hegel, *Elements*, §46.
- 13 Jeremy Waldron, *The Right to Private Property* (Oxford: Clarendon Press, 1988), pp. 370ff.
- 14 See a nice account of this in Jeremy Waldron, 'When Justice Replaces Affection: The Need for Rights', in *Liberal Rights: Collected Papers 1981–1991* (Cambridge: Cambridge University Press, 1993), pp. 370–92.
- 15 See also the chapter entitled 'Local Privacy: The Private Home' in Beate Rössler's study *The Value of Privacy* (Cambridge: Polity, 2005), pp. 142–67. Although she does not derive the right of private autonomy from the concept of 'subjective rights', in this context she comes to similar conclusions with regard to the claim to private property.
- 16 On the emergence and development of the modern constitutional system of subjective rights, see Helmut Coing, 'Zur Geschichte

- des Begriffs “subjektives Recht” in *Das subjektive Recht und der Rechtsschutz der Persönlichkeit* (Frankfurt/Main: Suhrkamp, 1959), pp. 7–23.
- 17 Günter Frankenberg/Ulrich Rödel, *Von der Volkssouveränität zum Minderheitenschutz: Die Freiheit politischer Kommunikation im Verfassungsstaat* (Frankfurt/Main: Europäische Verlagsanstalt, 1981).
  - 18 John Stuart Mill, *On Liberty*; see Isaiah Berlin, ‘John Stuart Mill and the Ends of Life’, in *Liberty*.
  - 19 Here as well, see Rössler, *The Value of Privacy*, pp. 146–67.
  - 20 See the historical analyses by Mary Ann Glendon, who begins her account of the influence of technological advances on the broadening and deepening of subjective rights with the sphere of photography: *Rights Talk: The Impoverishment of Political Discourse* (New York: The Free Press, 1991), ch. 3. On the entire complex, see Judith Wagner DeCew, *In Pursuit of Privacy: Law, Ethics and the Rise of Technology* (Ithaca: Cornell University Press, 1997).
  - 21 On the legal situation in Germany, see Milos Vec, ‘Ein neues Grundrecht auf der Höhe der Zeit’, *Frankfurter Allgemeine Zeitung* (28. February, 2008). On the entire problematic, see Reg Whitaker, *The End of Privacy: How Total Surveillance is Becoming a Reality* (New York: The New Press, 1999).
  - 22 The division of subjective rights into ‘civil’, ‘political’ and ‘social’ rights goes back to an influential study in which Thomas H. Marshall investigated the expansion and consolidation of citizenship in England: *Citizenship and Social Class and Other Essays* (Cambridge: Cambridge University Press, 1950).
  - 23 See Habermas, *Between Facts and Norms*, pp. 77f.
  - 24 Waldron, *Liberal Rights*, esp. essays 1, 10 and 13.
  - 25 See Habermas, *Between Facts and Norms*, esp. chs III and IV.
  - 26 Habermas, *Between Facts*, pp. 79ff.
  - 27 I am thankful to Titus Stahl for the clarification of these preconditions.
  - 28 The following determinations will hopefully also lay to rest the concerns that Christoph Menke has raised against my interpretation of Hegel’s account of subjective rights *Suffering from Indeterminacy: An Attempt at a Reactualization of Hegel’s Philosophy of Right* (Amsterdam: Van Gorcum Ltd, 2000); Christoph Menke, ‘Das Nichtanerkennbare. Oder warum das moderne Recht keine “Sphäre der Anerkennung” ist’, in Rainer Forst/Martin Hartmann/Rahel Jaeggi/Martin Saar, eds, *Sozialphilosophie und Kritik* (Frankfurt/Main: Suhrkamp, 2009), pp. 87–108. Even if we explain the value of subjective rights solely on the basis of the enabling of individual caprice [*Willkürfreiheit*], my impression is that their social institutionalization will constitute the establishment of a sphere of recognition. After all, in order to reciprocally grant each other such a sphere of private autonomy, subjects must recognize each other’s ability to

deal with each other without regard to value attachments, merely by respecting each other's sphere of negative freedom, and thus very abstractly. In the following pages I will develop this thought in more detail.

- 29 Hegel, *Elements of the Philosophy of Right*, §36.
- 30 For an account of this issue that lies outside the framework of an ethical theory of subjective rights, see Helmuth Plessner, *The Limits of Community: A Critique of Social Radicalism* (Amherst: Prometheus, 1999), pp. 129–48.
- 31 See Schmidt am Busch, 'Anerkennung' als Prinzip der Kritischen Theorie, esp. ch. III.3.
- 32 For a summary of this issue, see Axel Honneth, *The Struggle for Recognition: On the Moral Grammar of Social Conflicts*, pp. 107–21.
- 33 On the intersubjective character of ethical autonomy, see Jürgen Habermas, 'Individuation through Socialization: On George Herbert Mead's Theory of Subjectivity', in *Postmetaphysical Thinking: Philosophical Essays* (Cambridge, MA: MIT Press, 1992), pp. 149–203; Charles Taylor, *The Ethics of Authenticity*, pp. 47ff.
- 34 Joseph Raz, *The Morality of Freedom*, esp. ch. 10.
- 35 For all these examples, see: Raz, pp. 250–5.
- 36 Christopher Zurn, 'Social Pathologies as Second-Order Disorders', in Danielle Petherbridge, ed., *The Critical Theory of Axel Honneth* (Leiden: Brill, 2011), pp. 345–70.
- 37 See Georg Lohmann, 'Zur Rolle von Stimmungen in Zeitdiagnosen', in Hinrich Fink-Eitel/Georg Lohmann, eds, *Zur Philosophie der Gefühle* (Frankfurt/Main: Suhrkamp, 1993), pp. 226–92.
- 38 Lohmann 'Zur Rolle', p. 289.
- 39 See Georg Lukács, *Soul and Form* (New York: Columbia University Press, 2010).
- 40 Hegel, *Elements of the Philosophy of Right*, §37 (Addition).
- 41 Jürgen Habermas, *Theory of Communicative Action*, vol. 2 (Boston: Beacon Press, 1985), pp. 358–73; see also Rüdiger Voigt, ed., *Verrechtlichung* (Königstein: Athenäum, 1980).
- 42 Habermas, *Theory of Communicative Action*, vol. 2, pp. 369ff.
- 43 *Kramer vs. Kramer*, Columbia Pictures, 1979, Director: Robert Benton.
- 44 For an account of the consequences of this development that is sometimes overly biased and too focused on the specific case of the USA, see Philip Howard, *The Collapse of the Common Good: How America's Lawsuit Culture Undermines our Freedom* (New York: Ballantine, 2002); *Life without Lawyers: Liberating America from Too Much Law* (New York: W. W. Norton, 2009).
- 45 An almost classical formulation of the viewpoint of a pure legal personality can be found in *Indignation* by Philip Roth (Boston: Houghton Mifflin, 2008), in which the protagonist Marcus Messner must defend himself before the dean of his college.



- 46 For an account of the 'Getriebene', see Peter Bieri, *Das Handwerk der Freiheit: Über die Entdeckung des eigenen Willens*, pp. 84–90.
- 47 On this distinction, see Juliane Rebentisch, 'Der Demokrat und seine Schwächen: Eine Lektüre von Platons *Politeia*', *Deutsche Zeitschrift für Philosophie*, 57 (1), (2009), pp. 15–36.
- 48 Benjamin Kunkel, *Indecision* (New York: Random House, 2005).
- 49 There is only one example, though a very impressive one, that I am aware of in German literature: Judith Hermann, *Sommerhaus, später* (Frankfurt/Main: Fischer, 1998).
- 50 For a philosophical defense of such a conception of identity, see Galen Strawson, 'Against Narrativity', *Ratio*, 17 (4), (2004): 428–52; 'Episodic Ethics' in Daniel Hutto, ed. *Narrative and Understanding Persons: Royal Institute of Philosophy Supplement*, 60 (2007), pp. 1–16.

## 5 Moral Freedom

- 1 Norbert Elias, *The Civilizing Process: Sociogenetic and Psychogenetic Investigations* (Oxford: Blackwell, 2000), p. 412.
- 2 Elias, pp. 397–413.
- 3 See Andreas Reckwitz, *Das hybride Subjekt: Eine Theorie der Subjektkulturen von der bürgerlichen Moderne zur Postmoderne* (Weilerswist: Velbrück, 2006), ch. 2; Heinz Kittsteiner, *Die Entstehung des modernen Gewissens* (Frankfurt/Leipzig: Insel, 1991).
- 4 On the distinction between relational, regulative and cultural institutions, see Talcott Parsons, *The Social System* (New York: The Free Press, 1951), pp. 51–8. I return to this distinction in the transition from the 'possibility' to the 'reality' of freedom.
- 5 An attempt to explain the everyday meaning of Kant's conception of autonomy can be found in Julia Annas, 'Personal Love and Kantian Ethics in "Effi Briest"', *Philosophy and Literature*, 8 (1) (1984), pp. 15–31.
- 6 See Jerome B. Schneewind, *The Invention of Autonomy: A History of Modern Moral Philosophy*, esp. chs 22 and 23.
- 7 For the critical side, see Bernard Williams, 'Präsuppositionen der Moralität', in Eva Schaper/Wilhelm Vosskuhl, eds, *Bedingungen der Möglichkeit: 'Transcendental Arguments' and transzendentes Denken* (Stuttgart: Klett-Cotta, 1984), pp. 251–60; for the positive side, see Christine M. Korsgaard, 'Morality of Freedom', in *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press, 1996), pp. 159–87.
- 8 John Dewey, *German Philosophy and Politics* (Ramway, NJ: Quinn and Boden Press, 1915); a similar motif can be found in Julia Annas' essay 'Personal Love and Kantian Ethics in "Effi Briest"'; on Dewey's view



- of the political and social consequences of Kant's moral philosophy, see my introduction to the German translation of *German Philosophy and Politics: 'Logik des Fanatismus: Deweys Archäologie der deutschen Mentalität'*, in *Deutsche Philosophie und deutsche Politik* (Berlin: Philo, 2000), pp. 7–36.
- 9 See Rainer Forst, *The Right to Justification: Elements of a Constructivist Theory of Justice*, pp. 203–28.
  - 10 Wolfgang Hagen, *Die Schillerverehrung in der Sozialdemokratie* (Stuttgart: Metzler, 1977).
  - 11 See Peter L. Berger/Brigitte Berger/Hansfried Kellner, *Das Unbehagen in der Modernität* (Frankfurt/Main: Fischer, 1987), pp. 75ff. ('Exkurs: Über den Begriff der Ehre und seinen Niedergang').
  - 12 See Immanuel Kant, *Groundwork of the Metaphysic of Morals*, pp. 101ff.
  - 13 See Peter Büchner, et al., 'Transformation der Eltern-Kind-Beziehung? Facetten der Kindbezogenheit des elterlichen Erziehungsverhaltens in Ost- und Westdeutschland', *Zeitschrift für Pädagogik*, 37 (1997): 35–52 (Beiheft). I will return to this issue in Chapter 3.
  - 14 Christine M. Korsgaard, *The Sources of Normativity* (Cambridge: Cambridge University Press, 1996); *Creating the Kingdom of Ends*.
  - 15 Korsgaard, *The Sources of Normativity*, ch. 2.
  - 16 Korsgaard, *Sources*, pp. 225ff.
  - 17 Thomas Nagel, 'Universality and the Reflective Self', in Christine Korsgaard, *The Sources of Normativity*, pp. 200–9.
  - 18 Korsgaard, *The Sources of Normativity*, pp. 129.
  - 19 Korsgaard, *Sources*, p. 125.
  - 20 Korsgaard, *Sources*, pp. 132–60.
  - 21 See the example of the Mafioso: Korsgaard, *Sources*, pp. 254–8.
  - 22 See an exemplary case in Jürgen Habermas, 'Moral Development and Ego Identity', in *Communication and the Evolution of Society* (Cambridge: Polity, 1991), pp. 69–94; 'Können komplexe Gesellschaften eine vernünftige Identität ausbilden?' in *Zur Rekonstruktion des Historischen Materialismus* (Frankfurt/Main: Suhrkamp, 1976), pp. 92–126. The category of 'moral freedom' here indicates the highest stage of moral consciousness.
  - 23 Habermas, 'Moral Development and Ego Identity', p. 85.
  - 24 Habermas, 'Moral Development', pp. 90f., 92f.
  - 25 Habermas, 'Moral Development', p. 85.
  - 26 Jürgen Habermas tends toward such a claim in his moral-theoretical writings. See *Between Facts and Norms*, ch. III.2. See the corresponding critique by Albrecht Wellmer in 'Ethics and Dialogue: Elements of Moral Judgement in Kant and Discourse Ethics', in *The Persistence of Modernity: Essays on Aesthetics, Ethics and Postmodernism* (Cambridge: Polity, 1991), pp. 113–231.
  - 27 On the concept of 'informal sanctions', see Peter Stemmer, *Normativität: Eine ontologische Untersuchung* (Berlin/New York: de Gruyter, 2008), chs 7 and 8.

- 28 On the interlacing of these two different forms of respect within moral respect, see Lutz Wingert, *Gemeinsinn und Moral: Grundzüge einer intersubjektivistischen Moralkonzeption* (Frankfurt/Main: Suhrkamp, 1993), ch. 6a.
- 29 On the process of 'learning' these moral skills, see the philosophical, not socialization-theoretical, studies by Barbara Herrmann in *Moral Literacy* (Cambridge, MA: Harvard University Press, 2007).
- 30 See Thomas Nagel, *The View From Nowhere* (Oxford: Oxford University Press, 1986).
- 31 On this distinction between 'impartiality' and 'impersonality', see Adrian M.S. Piper, 'Moral Theory and Moral Alienation', *The Journal of Philosophy*, 84 (2) (1987): 102–18.
- 32 See Bernard Williams, 'Persons, Character, and Morality', in *Moral Luck* (Cambridge: Cambridge University Press, 1981); *Ethics and the Limits of Philosophy* (Cambridge, MA: Harvard University Press, 1984), pp. 19f., 65–7, 103f.
- 33 See Hegel, *Philosophy of Right*, §135.
- 34 See Robert B. Pippin, *Hegel's Practical Philosophy: Rational Agency and Ethical Life* (Cambridge: Cambridge University Press, 2008), ch. 3.
- 35 The expression 'moralism of personal autonomy' can be found in Jeremy Waldon, 'Moral Autonomy and Personal Autonomy' in John Christman/Joel Anderson, eds, *Autonomy and the Challenges to Liberalism* (Cambridge: Cambridge University Press, 2005), pp. 307–29. Here, see p. 323. See also Susan Wolf's diagnoses of 'moral saints' in 'Moral Saints', *Journal of Philosophy*, 79 (1982): 419–39.
- 36 Habermas, 'Moral Development and Ego Identity', p. 85.
- 37 See Michael Stocker, 'The Schizophrenia of Modern Ethical Theory' in Robert B. Kruschwitz/Robert C. Roberts, eds, *The Virtues: Contemporary Essays on Moral Character* (Belmont: Wadsworth, 1987), pp. 36–45.
- 38 See Robert Pippin, *Henry James and Modern Moral Life* (Cambridge: Cambridge University Press, 2000), esp. ch. 2 ('A Kind of Morbid Modernity').
- 39 Henry James, *Daisy Miller* (Oxford: Oxford University Press, 1985).
- 40 Henry James, *The Turn of the Screw and Other Stories* (Oxford: Oxford University Press, 1992). Another excellent example of such pathologies of moral freedom can be found in *The Path of Duty*. A much later literary representation of a pathology of moral freedom can be found in one of Philip Roth's early novels: *When She Was Good* (New York, Random House, 1965). (I owe this last reference to this extraordinary novel to Lisa Herzog.)
- 41 William James, 'The Moral Philosopher and the Moral Life', *International Journal of Ethics*, 1 (3), (April 1891), pp. 330–54, here: p. 342.
- 42 On the implicit moral philosophy of Henry James, see the study by Robert Pippin, *Henry James and Modern Moral Life*, esp. ch. 7.
- 43 Dewey, *German Philosophy and Politics*.

- 44 See Honneth, 'Logik des Fanatismus: Deweys Archäologie der deutschen Mentalität', pp. 7–36.
- 45 On these distinctions, see Rudolf Walther, 'Terror, Terrorismus', in Otto Brunner/Werner Conze/Reinhart Koselleck, eds, *Geschichtliche Grundbegriffe*, vol. 6 (Stuttgart: Klett-Cotta, 1990), pp. 323–443.
- 46 See, above all, the characters surrounding Nikolai Stavrogin in *The Possessed* (London: Penguin, 1953); on the racist terrorism at the close of the nineteenth century as a case of moral consciousness, see Claudia Verhoeven, *The Odd Man Karakozov: Imperial Russia, Modernity and the Birth of Terrorism* (Ithaca: Cornell University Press, 2009).
- 47 Ulrike Meinhof, 'Die Würde des Menschen', in Peter Brückner, *Ulrike Meinhof und die deutschen Verhältnisse* (Berlin: Wagenbach, 2006), pp. 11–14, here: p. 11.
- 48 See Ulrike Meinhof, *Die Würde des Menschen ist unantastbar: Aufsätze und Polemiken* (Berlin: Wagenbach, 2008).
- 49 This last step in the autonomization of moral autonomy, i.e. the suspension of elementary, socially regulated norms of friendship and family, is illustrated most clearly by the letters of Gudrun Ensslin to Bernward Vesper: Gudrun Ensslin/Bernward Vesper, 'Notstandsgesetze von Deiner Hand': *Briefe 1968/69* (Frankfurt/Main: Suhrkamp, 2009).

### Part III The Reality of Freedom

- 1 On the idea of 'consummating' one's own action, see Daniel Brudney, 'Community and Completion' in Andrews Reath, et al., *Reclaiming the History of Ethics: Essays for John Rawls* (Cambridge: Cambridge University Press, 1997), pp. 388–418.
- 2 See Talcott Parsons, *The Social System*, pp. 51ff.
- 3 See G. W. F. Hegel, *Elements of the Philosophy of Right*, §§142–55.
- 4 An essay that has been influential for me in this area is Michael O. Hardimon, 'Role Obligations', *Journal of Philosophy*, 91 (7), (1994), pp. 333–63.
- 5 Frederick Neuhouser, *Foundations of Hegel's Social Theory: Actualizing Freedom*, ch. 7; see also Michael O. Hardimon, *Hegel's Social Philosophy: The Project of Reconciliation* (Cambridge: Cambridge University Press, 1994), pp. 164ff.
- 6 Hegel, *Elements of the Philosophy of Right*, §7 (Addition).
- 7 See Hardimon, 'Role Obligations', esp. pp. 339f; also worth reading with regard to this point is Hans Joas, *Die gegenwärtige Lage der soziologischen Rollentheorie* (Frankfurt/Main: Akademische Verlagsgesellschaft, 1973).
- 8 Instead of a number of obvious examples, here is just one narrative that uses this rapid transformation of our cultural conceptions over

- the last 50 years to alienating effect: Ian McEwan, *On Chesil Beach* (New York: First Anchor Books, 2007).
- 9 See David Miller, *Principles of Social Justice* (Cambridge, MA: Harvard University Press, 1999), esp. ch. 4.
  - 10 See Peter L. Berger/Thomas Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (New York: Doubleday, 1966), pp. 94ff.
  - 11 See especially ch. III.6.2.2 and 6.2.3.

## 6 Social Freedom

- 1 On this distinction, see Hardimon, 'Role Obligations'.
- 2 See Schiller's 'On Grace and Dignity' in *Its Cultural Context: Essays and a New Translation* (translated and edited by Jane V. Curran) (Rochester: Camden House, 2005), pp. 123–70, here: p. 166.
- 3 Hegel, *Elements of the Philosophy of Right*, §7 (Addition).
- 4 Friedrich Schleiermacher, 'Brouillon zur Ethik' in *Philosophische Schriften*, edited by Jan Rachold (Berlin: Union, 1984), pp. 125–263, here: pp. 166ff.
- 5 See Ludwig Feuerbach, *Principles of the Philosophy of the Future* (Indianapolis: Hackett, 1966), §33; on Kierkegaard, whose remarks on love are spread throughout his work, see Søren Kierkegaard, *Works of Love* (Princeton: Princeton University Press, 1995); see also the nice study by Sergio Muñoz Fonnegra, *Das gelingende Gutsein: Über Liebe und Anerkennung bei Kierkegaard* (Berlin/New York: de Gruyter, 2010), esp. ch. II.
- 6 See, for instance, Ian Watt, *The Rise of the Novel: Studies in Defoe, Richardson and Fielding* (Berkeley: University of California Press, 2001).
- 7 See Niklas Luhmann, *Love as Passion: The Codification of Intimacy* (Stanford: Stanford University Press, 1998).
- 8 For a summary, see Anthony Giddens, *The Transformation of Intimacy: Sexuality, Love, and Eroticism in Modern Societies* (Stanford: Stanford University Press, 1993).
- 9 See Claudia Honegger, *Listen der Ohnmacht: Zur Sozialgeschichte weiblicher Widerstandsformen* (Frankfurt/Main: Europäische Verlagsanstalt, 1981).
- 10 Schleiermacher, 'Brouillon zur Ethik', pp. 167f.
- 11 Hardimon, 'Role Obligations', p. 336.
- 12 See Liz Spencer/Ray Pahl, *Rethinking Friendship: Hidden Solidarities Today* (Princeton: Princeton University Press, 2006), ch. 3.
- 13 Michael Argyle/Monika Henderson, 'The Rules of Friendship', *Journal of Social and Personal Relationships*, 1 (1984): 211–37; Gerald

- D. Suttles, 'Friendship as a Social Institution' in George McCall, et al., eds, *Social Relationships* (Chicago: Aldine Publishing, 1970), pp. 95–135.
- 14 Igor S. Kon indicates the institutional transformation of friendship as a process of 'secularization' and 'individualization' in his book *Freundschaft: Geschichte und Sozialpsychologie der Freundschaft als soziale Institution und individuelle Beziehung* (Reinbek bei Hamburg: Rowohlt, 1979), pp. 50ff; the same distinction between 'old', 'aristocratic' and modern 'civil' friendship can also be found in Scottish moral philosophy, which I will deal with later. See Allen Silver, 'Friendship in Commercial Society: Eighteenth Century Social Theory and Modern Sociology', *American Journal of Sociology*, 95 (6), (1990), esp. 148ff.
  - 15 On the minuscule role of female relationships and communities in antiquity, see Louise Bruit Zaidman, 'Pandora's Daughters and Rituals in Grecian Cities' in Georges Duby, et al., eds, *A History of Women in the West, Volume I* (Cambridge, MA: Harvard University Press, 1992), pp. 338–376.
  - 16 On the ceremonial character of friendship in the upper classes during the Middle Ages, see Johan Huizinga, *The Autumn of the Middle Ages* (Chicago: University of Chicago Press, 1997), pp. 46ff.; on the underclasses, see the remarks of Igor S. Kon, *Freundschaft*, p. 48. A historically comprehensive and culturally comparative reconstruction of types of friendship can be found in S. N. Eisenstadt and Luis Roniger, *Patrons, Clients and Friends: Interpersonal Relations and the Structure of Trust in Society* (Cambridge: Cambridge University Press, 1984). This study supports the idea indicated here, according to which friendship has developed historically from highly formalized relations of patronage into intimate, personal relationships of trust.
  - 17 Aristotle, *Nicomachean Ethics* (Indianapolis: Hackett, 1999), chs VIII and IX.
  - 18 Silver, 'Friendship in Commercial Society', pp. 1474–504.
  - 19 See Kon, *Freundschaft*, pp. 61–73; see also Friedrich Tenbruck, 'Freundschaft: Ein Beitrag zur Soziologie der persönlichen Beziehungen', *Kölner Zeitschrift für Soziologie und Sozialpsychologie*, 16 (1964): 431–56.
  - 20 Albert Salomon, 'Der Freundschaftskult des 18. Jahrhunderts in Deutschland: Versuch einer Soziologie einer Lebensform', *Zeitschrift für Soziologie*, 8 (1979): 279–308.
  - 21 Yvonne Knibiehler, 'Bodies and Hearts' in Duby, et al., eds, *A History of Women in the West, Volume IV*, pp. 325–368.
  - 22 This transformation in male relationships is made especially apparent in the realist novels by Theodor Fontane (*Schach von Wuthenow* [1883], *Der Stechlin* [1898]). Unfortunately, I know of no study that specifically addresses this topic in Fontane's novels.

- 23 See Ulrich Beck, *Risk Society*, part II; on the associated proliferation of the ideal of friendship, see Anthony Giddens, *The Consequences of Modernity* (Stanford: Stanford University Press, 1990), pp. 112f.
- 24 For an informative account, see Rosemary H. Blieszner/Rebecca G. Adams, *Adult Friendship* (London: Sage, 1992).
- 25 Spencer/Pahl, *Rethinking Friendship*, ch. 3.
- 26 See Monika Keller/Michaela Gummerum, 'Freundschaft und Verwandtschaft – Beziehungsvorstellungen im Entwicklungsverlauf und Kulturvergleich', *Sozialer Sinn*, I (2003), pp. 95–121.
- 27 Argyle/Henderson, *The Rules of Friendship*.
- 28 Aristotle, *Nichomachean Ethics*, Books VIII and XIV.
- 29 See Ursula Wolf, *Aristoteles' 'Nichomachische Ethik'* (Darmstadt: Wissenschaftliche Buchgesellschaft, 2002), esp. ch. IX.3.
- 30 See Arne Johan Vetlesen, 'Freundschaft in der Ära des Individualismus' in Axel Honneth/Beate Rössler, eds, *Von Person zu Person: Zur Moralität persönlicher Beziehungen* (Frankfurt/Main: Suhrkamp, 2008), pp. 168–207.
- 31 See Marilyn Friedman, 'Friendship and Moral Growth', *Journal of Value Inquiry*, 23 (1), (1989), pp. 3–13; see also *What are Friends For? Feminist Perspectives on Personal Relationships and Moral Theory* (Ithaca: Cornell University Press, 1993).
- 32 Jean Piaget, *The Moral Judgment of the Child*.
- 33 For a true apotheosis of the freedom offered by friendship, see Harry Mulisch, *The Discovery of Heaven* (London: Penguin, 1997); a similarly enthusiastic account that makes a fine distinction between friendship and love can be found in Wallace Stegner's *Crossing to Safety* (New York: Random House, 2002).
- 34 See Vetlesen, 'Freundschaft in der Ära des Individualismus'; Robert N. Bellah, et al., *Habits of the Heart* (Berkeley: University of California Press, 1985), pp. 143ff.
- 35 Jonathan Franzen's *Freedom* (New York: Picador, 2010) is filled with descriptions of such strategic friendships.
- 36 See, among others, Spencer/Pahl, *Rethinking Friendship*.
- 37 Luhman, *Love as Passion*, ch. 13; Lawrence Stone, 'Passionate Attachments in the West in Historical Perspective', in Willard Gaylin/Ethel Person, eds, *Passionate Attachments: Thinking about Love* (New York: The Free Press 1988), pp. 15–26. A highly informative, psychoanalytically enriched history of intimate relationships can be found in Eric Smadja, *Le couple et son histoire* (Paris: Presses Universitaires de France, 2011).
- 38 Luhmann also speaks of the gradual 'democratization' of love: *Love as Passion*, pp. 139.
- 39 See Reinhard Sieder, 'Marriage, Reproduction and Sexuality' in Michael Mitterauer/Reinhard Sieder, eds, *The European Family: Patriarchy to Partnership from the Middle Ages to the Present* (Chicago: University of Chicago Press, 1982), ch. 6.



- 40 On Shakespeare, see Stephen Greenblatt, *Will in the World: How Shakespeare Became Shakespeare* (London: W. W. Norton, 2004), ch. 4; on the transformation of the concept of love at this time see Jean-Paul Desaire, 'The Ambiguities of Literature' in Georges Duby et al., eds, *History of Women in the West*, vol. III (Cambridge, MA: Belknap Press, 2000), pp. 261–94.
- 41 See Luhmann, *Love as Passion*, chs 6 and 7; for a treatment of how French moralists dealt with this transformation, see Louise K. Horowitz, *Love and Language: A Study of the Classical French Moralists* (Columbus: Ohio State University, 1977).
- 42 Hegel, *Elements of the Philosophy of Right*.
- 43 See Dieter Henrich, 'Hegel und Hölderlin' in *Hegel im Kontext* (Frankfurt/Main: Suhrkamp, 1971), pp. 9–40.
- 44 See Joan B. Landes, *Women and the Public Sphere in the Age of the French Revolution* (Ithaca: Cornell University Press, 1988).
- 45 See Émile Zola, *Nana* (Oxford: Oxford University Press, 1992); for a general account of the issue, see Albrecht Koschorke, et al., *Vor der Familie: Grenzbedingungen einer modernen Institution* (Konstanz: Konstanz University Press, 2010). An essay by Heinrich Adolf shines a light on just how long this praxis lasted historically: 'Adornos verkaufte Braut – Rekonstruktion einer Beziehung' in Stefan Müller-Dooch, *Adorno Portraits: Erinnerungen von Zeitgenossen* (Frankfurt/Main: Suhrkamp, 2007), pp. 309–34.
- 46 Alongside novels such as *Effi Briest*, *Madame Bovary* and *Anna Karenina*, let me mention only two extraordinary works: Anton Chekov, 'The Lady with the Little Dog' in *The Lady With the Little Dog and Other Stories* (London: Penguin Classics, 2002); Ivan Bunin, 'Calling Cards' in *Collected Stories of Ivan Bunin* (Chicago: Ivan R. Dee, 2007), pp. 286–291.
- 47 On the legal aspect of this process of transformation, see Jutta Limbach/Siegfried Willutzki, 'Die Entwicklung des Familienrechts seit 1949' in Rosemarie Nave-Herz, *Kontinuität und Wandel der Familie in Deutschland* (Stuttgart: Lucius and Lucius, 2002), pp. 7–43.
- 48 On the process of the 'deinstitutionalization' of the nuclear family, see Hartmann Tyrell, 'Ehe und Familie' in Kurt Lüscher/Franz Schultheis/Michael Wehrspaun, eds, *Die 'postmoderne' Familie: Familiäre Strategien und Familienpolitik in der Übergangszeit* (Konstanz: UVK, 1990), pp. 145–56; instead of further literary references, I refer to my own short research report: Axel Honneth, 'Strukturwandel der Familie' in *Desintegration: Bruchstücke einer soziologischen Zeitdiagnose* (Frankfurt/Main: Fischer, 1994), pp. 90–9.
- 49 On the topic that follows below, see Neil Delaney, 'Romantic Love and Loving Commitment: Articulating a Modern Ideal', *American Philosophical Quarterly*, 33 (4), (October 1996): 339–56.
- 50 In addition to the essay by Neil Delaney, see Amélie Oksenberg Rorty, 'The Historicity of Psychological Attitudes: Love is Not Love



- Which Alters Not [sic] When It Alteration Finds', *Midwest Studies in Philosophy*, 10 (1), (1987): 399–412.
- 51 See the examples provided by Neil Delaney in 'Romantic Love and Loving Commitment: Articulating a Modern Ideal', esp. pp. 345ff.
  - 52 See the remarks by Tilmann Habermas, who derives the significance of personal objects mostly from the perspective of the I, not from that of a common We: Tilmann Habermas, *Geliebte Objekte: Symbole und Instrumente der Identitätsbildung* (Frankfurt/Main: Suhrkamp, 1999), esp. ch. IV, b. On the growing significance of consumer goods for stabilizing modern intimate relationships, see Eva Illouz, *Consuming the Romantic Utopia: Love and the Cultural Contradictions of Capitalism* (Berkeley: University of California Press, 1997). On 'reflexive' romantic love, which he terms 'sceptical-romantic love', see the striking account by Reinhard Sieder, *Patchworks – das Familienleben getrennter Eltern und ihrer Kinder* (Stuttgart: Klett-Cotta, 2008), pp. 41–47.
  - 53 See Delaney, 'Romantic Love and Loving Commitment: Articulating a Modern Ideal', pp. 340ff.
  - 54 See Onora O'Neill, 'Between Consenting Adults', *Philosophy and Public Affairs*, 14 (3), (1985), pp. 252–77.
  - 55 See the instructive essay by Thomas Nagel, 'Sexual Perversion', *The Journal of Philosophy*, 66 (1), (1969): 5–17. The entire difference between the sexual mores of today and those common fifty years ago can be seen in the distinction between this essay and a text by Aurel Kolnai, *Sexual Ethics: The Meaning and Foundations of Sexual Morality* (Burlington: Ashgate, 2005). Here, both homosexuality and non-genital forms of sexual intercourse are ethically rejected with astoundingly transparent arguments that revolve around norms of free reciprocity.
  - 56 See the fruitful article by Dieter Schwab, 'Eheschließungsrecht und nichteheliche Lebensgemeinschaft – eine rechtsgeschichtliche Skizze', *Zeitschrift für das gesamte Familienrecht*, 28 (12), (1981): 1151–6. Highly interesting in this connection is the marriage law formulated by Johann Gottlieb Fichte in the appendix to his work on natural law, in which the shift from a kind of marriage that 'creates' love to a 'declamatory' understanding: Johann Gottlieb Fichte, *Foundations of Natural Right* (1796) (Cambridge: Cambridge University Press, 2000), pp. 264–319. The romantic understanding of love upon which Fichte bases his redefinition of marriage law ('For this reason the state need not pass laws governing the relationship between the two spouses, for their entire relationship is not juridical, but a natural and moral relation of the heart.', p. 281) does not prevent him from subordinating the woman completely to the man when it comes to the moral relation between the sexes (§16).
  - 57 See Limbach/Willutzki, 'Die Entwicklung des Familienrechts seit 1949', pp. 19f.
  - 58 Limbach/Willutzki, pp. 22–8.

- 59 Fichte, *Foundations of Natural Right*, pp. 281.
- 60 It is this idea of love which most likely represents the normative background for Adorno's description of the emaciation of this form of relationship through self-interested calculations. See *Minima Moralia* (London: Verso, 2006), Aphorisms 10, 11, 12, 107, 110.
- 61 A magnificent example can be found in Ivan Bunin, 'Mitja's Love' in *Collected Stories of Ivan Bunin*, pp. 132–86.
- 62 For an example from contemporary film, see *Greenberg* (2007, Director: Noah Baumbach); and for an example from contemporary literature, see the stories from *Reiche Mädchen* by Silke Scheuermann (Frankfurt: Fischer, 2005).
- 63 Ann Swidler, 'Love and Adulthood in American Culture', in Neil J. Smelser/Erik H. Erikson, eds, *Themes of Work and Love in Adulthood* (Cambridge, MA: Harvard University Press, 1980), pp. 120–47.
- 64 Luhmann, *Love as Passion*, p. 155.
- 65 See Giddens, *The Transformation of Intimacy*, ch. 8, pp. 134–57.
- 66 See Arlie Hochschild, *The Time Bind: When Work Becomes Home and Home Becomes Work* (New York: Henry Holt, 2001).
- 67 On this last point, see Kai-Olaf Maiwald, 'Die Liebe und der häusliche Alltag: Überlegungen zu Anerkennungsstrukturen in Paarbeziehungen' in Christine Wimbauer/Annette Henninger/Markus Gottwald, eds, *Die Gesellschaft als institutionalisierte 'Anerkennungssordnung'* (Opladen/Farmington Hills: Budrich, 2007), pp. 69–98.
- 68 See Illouz, *Consuming the Romantic Utopia*, esp. ch. 4.
- 69 For an informative analysis, see Pierre Dardot/Christian Laval, 'Néolibéralisme et subjectivation capitaliste', *Cités*, 4 (2010): 35–50.
- 70 Axel Honneth, *The Struggle for Recognition*, pp. 95–107.
- 71 A key study on this matter can be found in Tilman Allert, *Die Familie: Fallstudien zur Unverwüstlichkeit einer Lebensform* (Berlin/New York: de Gruyter, 1997); for a psychological perspective, see Smadja, *Le couple et son histoire*, pp. 178–93.
- 72 See Edward Shorter, *The Making of the Modern Family* (New York: Basic Books, 1977), ch. 1; the actual number of such large families, however, is much smaller than originally presumed by historians. See Michael Mitterauer, 'The Myth of the Large Pre-Industrial Family' in *The European Family: Patriarchy to Partnership from the Middle Ages to the Present*.
- 73 Philippe Ariès, *Centuries of Childhood* (Pimlico: University of Virginia Press, 1996).
- 74 For a very sophisticated account, see Mitterauer, 'The Myth of the Large Pre-Industrial Family.'
- 75 Karin Hausen makes very clear that this process also derives from a social construction of modernity, through which all family and household labour would no longer be regarded as 'real' work. See her essay 'Arbeit und Geschlecht' in Jürgen Kocka/Claus Offe, eds, *Geschichte und Zukunft der Arbeit* (Frankfurt/Main: Campus, 2000), pp. 343–61.

- 76 See Shorter, *The Making of the Modern Family*, ch. 6.4; on the development and social generalization of the idea of domesticity, of the 'home', see the excellent essay by Tamara K. Hareven, 'The Home and the Family in Historical Perspective', *Social Research*, 58 (1), (1991): 253–85.
- 77 See Friedrich Schleiermacher, *Die Weihnachtsfeier: Ein Gespräch* (1806) (Zurich: Manesse, 1989).
- 78 For Hegel, see *Elements of the Philosophy of Right*, §§ 158–81.
- 79 A very valuable study in this connection is the essay by Michelle Perrot, 'Stepping Out' in Duby, et al., eds, *A History of Women in the West, Volume IV*, pp. 449–81.
- 80 Talcott Parsons, 'Age and Sex in the Social Structure of the United States' in *Essays in Sociological Theory* (New York: Free Press, 1954), pp. 89–103; 'The Father Symbol: An Appraisal in the Light of Psychoanalytic and Sociological Theory' in *Social Structure and Personality* (New York: Free Press, 1970), pp. 34–56. Parsons' analysis of the family in the 1950s is confirmed by Hans Bertram, *Familien leben: Neue Wege zur flexiblen Gestaltung von Lebenszeit, Arbeitszeit und Familienzeit* (Gütersloh: Bertelsmann, 1997), pp. 46–9.
- 81 See Parsons' marvellous essay 'The Link Between Character and Society' in *Social Structure and Personality*, pp. 183–235, esp. 218–20.
- 82 Parsons, 'The Link', p. 219.
- 83 See Parsons' remarks in 'Certain Primary Sources and Patterns of Aggression in the Social Structure of the Western World' in *Essays in Sociological Theory*, pp. 298–322, here: p. 313.
- 84 See Peter Büchner et al., 'Transformation der Eltern-Kind-Beziehung? Facetten der Kindbezogenheit des elterlichen Erziehungsverhaltens in Ost- und Westdeutschland', *Zeitschrift für Pädagogik*, 37 (1997), 35–52; Karl-Heinz Reuband, 'Aushandeln statt Gehorsam? Erziehungsziele und Erziehungspraktiken in den alten und neuen Bundesländern' in Lothar Böhnisch/Karl Lenz, eds, *Familien: Eine interdisziplinäre Einführung* (Weinheim/Munich: Juventa, 1997), pp. 129–153.
- 85 Yvonne Schütze, 'Zur Veränderung im Eltern-Kind-Verhältnis seit der Nachkriegszeit' in Nave-Herz, ed, *Kontinuität und Wandel der Familie in Deutschland*, pp. 71–98.
- 86 Parsons, 'The Father Symbol', pp. 34–56.
- 87 See Yvonne Schütze, *Die gute Mutter: Zur Geschichte des normativen Musters 'Mutterliebe'* (Hannover: Kleine Schwab, 1986).
- 88 For Germany, see the statistical data provided in the essay by Ingrid N. Sommerkorn/Katherina Liebsch, 'Erwerbstätige Mütter zwischen Beruf und Familie: Mehr Koninuität und Wandel' in Nave-Herz, ed, *Kontinuität und Wandel der Familie in Deutschland*, pp. 99–130, esp. p. 123.
- 89 On mothers, see Hans Bertram/Hiltrud Bayer, *Berufsorientierung erwerbstätiger Mütter: Zum Struktur- und Einstellungswandel mütterlicher Berufstätigkeit* (Munich: DJI, 1984).

- 90 See Mitterauer/Sieder, *The European Family: Patriarchy to Partnership from the Middle Ages to the Present*.
- 91 See the detailed analysis by Bertram, *Familien leben*, pp. 39–51. He also makes clear that the influence of historical upheavals on divorce rates mustn't be suppressed either.
- 92 See Swidler, 'Love and Adulthood in American Culture'.
- 93 See Siegfried Willutzki, 'Zum Wandel der Leitbilder von Ehe und Familie in Gesetzgebung und Rechtsprechung' in Kirchenamt der EKD, ed., *Zur ethischen Orientierung für das Zusammenleben in Ehe und Familie* (Gütersloh: Bertelsmann, 1998), pp. 143–168.
- 94 Michael Wagner, *Scheidung in Ost- und Westdeutschland* (Frankfurt/Main: Campus, 1997).
- 95 See Schütze, 'Zur Veränderung im Eltern-Kind-Verhältnis seit der Nachkriegszeit', esp. pp. 93ff.
- 96 Dieter Thomä, *Eltern: Kleine Philosophie einer riskanten Lebensform* (Munich: Beck, 1992), esp. ch. 1.
- 97 On this process of transformation, see the essay, written in the context of an empirical research project at the Institute of Social Research (Frankfurt/Main), by Hans-Werner Gumbinger/Andrea Bambey, 'Zwischen "traditionellen" und "neuen" Vätern: Zur Vieltätigkeit eines Wandlungsprozesses' in Karin Jurczyk/Andreas Lange, eds, *Vaterwerden und Vatersein heute: Neue Wege – neue Chancen!* (Gütersloh: Bertelsmann, 2009), pp. 195–216.
- 98 Sieder, 'Patchworks – Das Familienleben getrennter Eltern und ihrer Kinder'.
- 99 Bertram, *Familien leben*, p. 94.
- 100 Bertram, *Familien leben*, p. 100. Especially informative in this connection is the essay by Matilda White Riley, 'The Family in Aging Society: A Matrix of Latent Relationships', in Arlene S. Skolnik/Jerome H. Skolnik, eds, *Family in Transition* (New York: Pearson, 1997), pp. 407–19.
- 101 Bertram, *Familien leben*, pp. 104–108. The relationships between grandparents and grandchildren play a decisive role in this connection, one that has developed out of the rise in life expectancy: Andrew J. Cherlin/Frank F. Furstenberg, Jr, 'The Modernization of Grandparenthood', in Skolnik/Skolnik, eds, *Family in Transition*, pp. 419–25.
- 102 Rosemarie Nave-Herz, 'Die These über den Zerfall der Familie' in Jürgen Friedrichs/Rainer M. Lepsius/Karl Ulrich Meyer, *Die Diagnosefähigkeit der Soziologie* (Opladen: Budrich, 1998), pp. 286–313, here: p. 306.
- 103 Especially helpful in this regard is the essay by Thomas Meyer, 'Das "Ende der Familie" – Szenarien zwischen Mythos und Wirklichkeit' in Ute Volkmann/Uwe Schimank, eds, *Soziologische Gegenwartsdiagnosen II* (Wiesbaden: VS Verlag, 2006), pp. 199–224.
- 104 For a summary, see Bertram, *Familien leben*, ch. 4.

- 105 Bertram, *Familien leben*, p. 104f. and 143–59.
- 106 Bertram, *Familien leben*, p. 107.
- 107 See Jürgen Habermas, *Theory of Communicative Action* (Boston: Beacon Press, 1985).
- 108 Diane Jeske, 'Familien, Freunde und besondere Verpflichtungen' in Honneth/Rössler, eds, *Von Person zu Person*, pp. 215–53.
- 109 Here I have the novels of Jane Austen in mind, in which the emotional relationships between parents and their children, who are almost always daughters, are described in the most different shades: Jane Austen, *Pride and Prejudice* and *Emma*. On the differences in the emotional relationships between spouses, see George Eliot, *Middlemarch*.
- 110 I have adopted the metaphor of 'purification' from Anthony Giddens, who speaks of 'pure' relationships with reference to the present: Anthony Giddens, *Modernity and Self-Identity: Self and Society in the Late Modern Age* (Cambridge: Polity, 1991), esp. ch. 3.
- 111 Within Critical Theory, the same idea can be found in the work of Max Horkheimer, who always insisted that the classical bourgeois family was a place of social freedom: Max Horkheimer, 'Authority and the Family' in *Critical Theory: Selected Essays* (New York: Continuum, 2002), pp. 47–128.
- 112 On this issue in general, see Hermann A. Korff, *Geist der Goethezeit*, part III: Frühromantik (Leipzig: Koehler and Amelang, 1949), pp. 88–97 ('Die romantische Ehe').
- 113 Hegel, *Elements of the Philosophy of Right*, §175 (Addition).
- 114 G. W. F. Hegel, *Die Philosophie des Rechts: Vorlesung von 1820/21* (Frankfurt/Main: Suhrkamp, 2005), §173.
- 115 Precisely this opportunity, however, entails the danger of sexual abuse in families and educational institutions. See Ulrich Oevermann, 'Sexueller Mißbrauch in Erziehungsanstalten: Zu den Ursachen', *Merkur*, 64 (7), (2010): 571–81.
- 116 Jonathan Franzen offers a masterful account of this special form of social freedom in his novel *Freedom*. The quarrels and conflicts that come about within the initially intact Berglund family as a result of the family members' increasing opportunities to articulate their feelings and moods can ultimately be healed by the caring support of the children for their parents. We could say that the children thereby become the 'parents' of their parents. Unfortunately, I cannot go into the many other aspects in which the freedom of the contemporary family is thematized in this book. They certainly merit an independent study.
- 117 One of the most moving accounts of this reversal of the roles of father and son is found in the novel *Patrimony: A True Story* by Philip Roth (New York: Vintage, 1996).
- 118 This is even the case where, as is usual in our societies, the direct, physical care of the parents is undertaken by hospice workers. Even

- in these cases, there is a reversal of roles, and parents long for their children to be their ‘parents’, while the children address their parents as beings who depend on constant assistance.
- 119 On the consoling power of de-realization, see Axel Honneth, ‘Disempowering Reality: Secular Forms of Consolation’ in *The I in We* (Cambridge: Polity, 2012), pp. 232–8.
  - 120 Bertram, *Familien leben*, pp. 167ff.
  - 121 Bertram, *Familien leben*, p. 169.
  - 122 See John O’Neill’s striking account: *The Missing Child in Liberal Theory: Towards a Covenant Theory of Family, Community, Welfare and the Civic State* (Toronto: University of Toronto Press, 1994).
  - 123 John Rawls, *A Theory of Justice*, chs 70 and 71, pp. 462–71.
  - 124 Émile Durkheim, *Erziehung, Moral und Gesellschaft* (Frankfurt/Main: Suhrkamp, 1984). Unfortunately, the section on the family is missing in the lectures that Durkheim held on the sociology of morality (*Physik der Sitten und des Rechts: Vorlesungen zur Soziologie der Moral* (Frankfurt/Main: Suhrkamp, 1999).)
  - 125 On the connection between the authoritarian personality and ‘bourgeois’ family socialization, see: Institute for Social Research, ed., *Studien über Autorität und Familie: Forschungsbericht des Instituts für Sozialforschung* (Paris: Felix Alcan, 1936).
  - 126 See Wolfgang Streeck, *Re-Forming Capitalism: Institutional Change in the German Political Economy* (Oxford: Oxford University Press, 2012); Wolfgang Streeck/Martin Höppner, ‘Einleitung: Alle Macht dem Markt?’ in *Alle Macht dem Markt? Fallstudien zur Abwicklung der Deutschland AG* (Frankfurt/Main: Campus, 2003).
  - 127 The first interpretation is shared by Wolfgang Streeck in the framework of his historical institutionalism (*Re-Forming Capitalism*, Part III); the second interpretation can be found in Sighard Neckel, *Refeudalisierung der Ökonomie: Zum Strukturwandel kapitalistischer Wirtschaft* (MPIfG Working Paper 10/6, Cologne, 2010).
  - 128 For a constructivist procedure with reference to our current economic system, see Peter Penz’s work on consumer freedom: *Consumer Sovereignty and Human Interest* (Cambridge: Cambridge University Press, 1986). For the idea of a just organization of labour, see Nien-Hê Hsieh, ‘Justice in Production’, *Journal of Political Philosophy*, 16 (1), (2008): 72–100.
  - 129 Adam Smith, *The Wealth of Nations* (1776) (London: Penguin, 1986).
  - 130 An overview can be found in Laurenz Volkmann, ‘Wem gehört Adam Smith? Gedanken zur Auseinandersetzung um das geistige Erbe des schottischen Philosophen und Ökonomen’, *Berichte zur Wissensgeschichte* (2003), pp. 1–11. See also Samuel Fleischacker, *On Adam Smith’s ‘Wealth of Nations’: A Philosophical Companion* (Cambridge, Cambridge University Press, 2004), pp. 48–54.
  - 131 For an exemplary account, see Max Weber, *Economy and Society* (Berkeley: University of California Press, 1978), part I, ch. II, §13;



- Talcott Parsons, *The System of Modern Societies* (New York: Prentice Hall, 1971), ch. 5; Habermas, *Theory of Communicative Action*, vol. 2, ch. IV, 2.
- 132 Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (1944) (Boston: Beacon Press, 2001).
- 133 Polanyi, *The Great Transformation*, Part Two, ch. I.6.
- 134 See his famous formulations in Hegel, *Elements of the Philosophy of Right*, §187.
- 135 On this ‘paradox’, see Polanyi, *The Great Transformation*, p. 140f.
- 136 For a fantastic account, see Laurenz Volkmann, *Homo oeconomicus: Studien zur Modellierung eines neuen Menschenbildes in der englischen Literatur vom Mittelalter bis zum 18. Jahrhundert* (Heidelberg: Winter, 2003).
- 137 See Albert O. Hirschman, *The Passions and the Interests: Political Arguments for Capitalism Before Its Triumph* (Princeton: Princeton University Press, 1997); ‘Der Streit um die Bewertung der Marktgesellschaft’ in *Entwicklung, Markt und Moral: Abweichende Bemerkungen* (Munich: Hanser, 1989), pp. 192–225.
- 138 See Silver, ‘Friendship in Commercial Society’.
- 139 Friedrich Schiller, *On the Aesthetic Education of Man: In a Series of Letters* (New Haven: Yale University Press, 1954), p. 35.
- 140 See Ludwig Siep/Hans-Ulrich Thamer/Norbert Waszek, eds, *Hege-  
lianismus und Saint-Simonismus* (Paderborn: Mentis, 2007); Hans-  
Christoph Schmidt am Busch, *Religiöse Hingabe oder soziale Freiheit: Die saint-simonistische Theorie und die Hegelsche Sozialphilosophie* (Hamburg: Meiner, 2007).
- 141 Helpful in this regard is the already cited essay by Albert O. Hirschman (‘Der Streit um die Bewertung der Marktgesellschaft’), even though he makes different distinctions from the ones I will address here.
- 142 Both formulations, however, lie on different levels, since the ‘Marx problem’ indicates a structural deficit of capitalism, while the ‘Adam Smith problem’ refers to a difficulty in describing of the market economy that Smith himself never raised.
- 143 See the marvellous ironic account given by Marx in *Capital*, vol. I (London: Penguin, 1976), part II, ch. 6, ‘The Sale and Purchase of Labour-Power.’
- 144 Hegel, *Elements of the Philosophy of Right*; Émile Durkheim, *The Division of Labor in Society* (New York: The Free Press, 1984). A mediary between these two essays can be found in John Stuart Mill’s *Principles of Political Economy* (Kitchener: Batoche, 2001), which contains some of the elements of the moral embedding of the market called for by Hegel and Durkheim.
- 145 See Schmidt am Busch, *Anerkennung als Prinzip der Kritischen Theorie*, ch. III, 4. On Hegel’s ‘justice-theoretical’ conception of the market, see also Birger P. Priddat, *Hegel als Ökonom*, ch. 8. (The chapter also



- makes a helpful comparison of Hegel's and Smith's respective conceptions of the market.)
- 146 Durkheim, *The Division of Labor in Society*, Book III, Conclusion, pp. 329–42; see also Axel Honneth, 'Labour and Recognition: A Redefinition' in *The I in We*, pp. 56–74.
- 147 See the famous passage on the 'butcher, brewer and baker' in Smith, *Wealth of Nations*, p. 119.
- 148 On this interpretation, see Alec Macfie, *The Individual in Society: Papers on Adam Smith* (London: Allen and Unwin, 1967), ch. 4; for a summary of the latest research, see Steven Darwall, 'Sympathetic Liberalism: Recent Work on Adam Smith', *Philosophy and Public Affairs*, 28 (2), (1999), pp. 139–64.
- 149 See in this order: Hegel, *Elements of the Philosophy of Right*; *Die Philosophie des Rechts: Vorlesung von 1821/22*, §198; §195. Unfortunately, I was far too late in noticing a very profound study of Hegel's theory of the market economy, which also draws connections to current economic ethics, to be able to take it into account in my own theory: Albenä Neschen, *Ethik und Ökonomie in Hegels Philosophie und in modernen wirtschaftsethischen Entwürfen* (Hamburg: Meiner, 2008).
- 150 See Carl Gustav Hempel, 'The Logic of Functional Analysis' in L. Gross, ed., *Symposium on Sociological Theory* (Evanston: Row, Petersen and Co, 1959), pp. 271–307.
- 151 See Schmidt am Busch, 'Anerkennung' als Prinzip der Kritischen Theorie, ch. III, 4.; Priddat, *Hegel als Ökonom*, ch. 8.
- 152 Durkheim virtually derives his notion of the 'anomy' of the division of labour from its inability to garner the consent of all involved: Durkheim, *The Division of Labor in Society*, Book 3, ch. 2.
- 153 See Gerhard Stavenhagen, *Geschichte der Wirtschaftstheorie* (Göttingen: Vandenhoeck und Ruprecht, 1969), ch. IX.
- 154 See Birger P. Priddat, *Theoriegeschichte der Wirtschaft* (Munich: UTB, 2002), pp. 204–13.
- 155 On the overall topic, see Jean-Claude Filloux, *Durkheim et le socialisme* (Geneva: Droz, 1977).
- 156 On the influence of British Neo-Hegelianism on English social policy, see Andrew Vincent/Raymond Plant, *Philosophy, Politics, Citizenship: The Life and Thought of the British Idealists* (Oxford: Basil Blackwell, 1984).
- 157 Polanyi, *The Great Transformation*; see also the collection of essays *Primitive, Archaic and Modern Economies* (Boston: Beacon Press, 1971). On his life and work, see Kari Polanyi-Levitt, ed., *The Life and Work of Karl Polanyi* (Montreal/New York: Black Rose Books, 1990).
- 158 See the marvellous reconstruction by Jens Beckert, *Grenzen des Marktes: Die sozialen Grundlagen wirtschaftlicher Effizienz* (Frankfurt/New York: Campus, 1997), ch. 3.
- 159 Polanyi, *The Great Transformation*, chs 7 and 8.
- 160 Polanyi, *The Great Transformation*, ch. 6.

- 161 Polanyi, *The Great Transformation*, pp. 149f. With his theory of a 'double movement' inherent in capitalism, Polanyi indirectly contradicts views that assume the linear temporality of the development of capitalist societies. See William H. Sewell, Jr, 'The Temporalities of Capitalism', *Socio-Economic Review*, 6 (2008): 517–97.
- 162 Polanyi, *The Great Transformation*, p. 234.
- 163 Polanyi, *The Great Transformation*, p. 251.
- 164 See Beckert, *Grenzen des Marktes*, esp. ch. 3.3.
- 165 See Talcott Parsons, *The Marshall Lectures* (1953), Research Reports from the Department of Sociology, Uppsala University, no. 4 (1986). I owe the reference to these lectures to Jens Beckert.
- 166 Talcott Parsons, *The Marshall Lectures*, p.105.
- 167 Talcott Parsons, *The Marshall Lectures*, p.110.
- 168 See Parsons, 'The Link Between Character and Society', esp. pp. 205–208.
- 169 See the helpful essay by Talcott Parsons, 'The Motivation of Economic Activities' in *Essays in Sociological Theory*, pp. 50–68.
- 170 Beckert, *Grenzen des Marktes*, p. 251.
- 171 Amitai Etzioni, *The Moral Dimension: Towards a New Economics* (New York: The Free Press, 1988), esp. ch. 12.
- 172 Fred Hirsch, *Social Limits to Growth* (Cambridge, MA: Harvard University Press, 1976), esp. chs 12 and 13.
- 173 See Beckert, *Grenzen des Marktes*, pp. 186–8.
- 174 These remarks obviously allude to Habermas' attempt to analyse market processes with the aid of the system concept that normative orientations and values are not required for the coordination of action. See Habermas, *Theory of Communicative Action*, vol. 2, ch. VI.2.
- 175 See the very useful essay by Albert O. Hirschman, 'Wider die 'Ökonomie' der Grundbegriffe: Drei einfache Möglichkeiten, einige ökonomische Grundbegriffe komplizierter zu fassen' in *Entwicklung, Markt, Moral*, pp. 226–43, esp. pp. 227–31.
- 176 Jens Beckert (*Grenzen des Marktes*, ch. 6) and Amitai Etzioni (*The Moral Dimension*, part III) suggest similar conclusions. In the neo-classical tradition we can find them in John Stuart Mill, who in his work *Principles of Political Economy* gives cooperatives a systematic place in the capitalist market. It is through these kinds of associations that the 'best ends of the democratic spirit' are realized on the market, because they contribute to removing the difference between the 'employed' and the 'listless' part of society and founding all status distinctions on 'personal services and efforts' (*Principles*, vol. 2).
- 177 Durkheim, *The Division of Labor in Society*, book III, ch. 2.
- 178 See Beckert, *Grenzen des Marktes*, p. 182.
- 179 Marx, *Capital*, vol. I, pp. 270–80.
- 180 Marx, *Critique of the Gotha Programme* (Rockville: Wildside, 2008).

- 181 See Cornelius Castoriadis, 'From Marx to Aristotle, From Aristotle to Us', *Social Research*, 45 (4), (1978): 667–738.
- 182 See the classic objections raised by Joan Robinson, 'What Remains of Marxism' in *Collected Economic Papers*, vol. 3 (London: Basil Blackwell, 1965), pp. 158–66.
- 183 For current reformulations of this claim, see Samuel Bowles, 'What Markets Can and Cannot Do', *Challenge*, July/August 1991, pp. 11–16; Gerald A. Cohen, 'The Structure of Proletarian Unfreedom', *Philosophy and Public Affairs*, 12 (1983): 3–33.
- 184 Durkheim, *The Division of Labor in Society*, p. 319.
- 185 Max Weber, *The Protestant Ethic and the Spirit of Capitalism* (Mineola: Dover Publications, 2003).
- 186 See Neil McKendrick/John Brewer/Jack H. Plumb, *The Birth of a Consumer Society: The Commercialisation of Eighteenth-Century England* (London: Harper Collins, 1982).
- 187 See Colin Campell, *The Romantic Ethic and the Spirit of Modern Consumerism* (Oxford: Basil Blackwell, 1987); see also Axel Honneth, 'Wurzeln des Hedonismus' in *Desintegration: Bruchstücke einer soziologischen Zeitdiagnose*, pp. 39–47.
- 188 See Charles Taylor, *The Ethics of Authenticity*.
- 189 Hegel, *Elements of the Philosophy of Right*, §§184–95.
- 190 Hegel, *Elements of the Philosophy of Right*, §191 (The reference to the English is found in the addition.)
- 191 See §189 (Addition).
- 192 This idea of a newly acquired freedom can be found in the marvelous survey by Peter N. Stearns, 'Stages of Consumerism: Recent Work on the Issues of Periodization', *Journal of Modern History*, 69 (1), (1997): 102–17.
- 193 Hegel, *Elements of the Philosophy of Right*, §189 (Addition).
- 194 Hegel, *Elements of the Philosophy of Right*, §192.
- 195 Smith, *The Wealth of Nations*, Book IV, ch. VIII, p.273f.
- 196 Hegel, *Elements of the Philosophy of Right*, §192.
- 197 Hegel, *Elements of the Philosophy of Right*, §192 (Addition).
- 198 Hegel, *Elements of the Philosophy of Right*, §236.
- 199 Hegel, *Elements of the Philosophy of Right*, §191 (Addition).
- 200 Hegel, *Elements of the Philosophy of Right*, §193.
- 201 Thorsten Veblen, *The Theory of the Leisure Class* (Oxford: Oxford University Press, 2007); Pierre Bourdieu, *Distinction: A Social Critique of the Judgement of Taste* (London: Routledge, 1984).
- 202 On the treatment of luxury consumption in nineteenth-century literature, see Alain de Botton, *The Romantic Movement: Sex, Shopping and the Novel* (New York: Picador, 1994).
- 203 See Rosalind H. Williams, *Dream Worlds: Mass Consumption in Late Nineteenth-Century France* (Berkeley: University of California Press, 1982).
- 204 See Friedrich Engels, *The Condition of the Working Class in England in 1844* (Oxford: Oxford University Press, 1993).

- 205 See, e.g., John Stevenson, 'Food Riots in England, 1792–1818', in Ronald Quinalt/John Stevenson, *Popular Protest and Public Order: Six Studies in British History, 1790–1920* (Oxford: Clarendon Press, 1974), pp. 33–74; Manfred Gailus/Heinrich Volkmann, eds, *Der Kampf um das tägliche Brot: Nahrungsmangel, Versorgungspolitik und Protest, 1770–1990* (Opladen: Westdeutscher Verlag, 1990).
- 206 Albert O. Hirschman in particular has repeatedly pointed out this fact in relation to the sphere of consumption by distinguishing between 'voice' and 'exit': *Shifting Involvements: Private Interests and Public Action* (Princeton: Princeton University Press, 1982), esp. ch. 4.
- 207 See, e.g., Wolfgang Störmer von Reichenbach, 'Verbraucherschutz in der Vergangenheit' in Erwin Dichtl, ed., *Verbraucherschutz in der Marktwirtschaft* (Berlin: Duncker and Humblot, 1975), pp. 97–112, esp. pp. 106ff.
- 208 Daniel Horowitz, *The Morality of Spending: Attitudes toward the Consumer Society in America, 1875–1940* (London, Johns Hopkins University Press, 1985); see also the remarks on cultural resistance against luxury consumption as early as the eighteenth century in Hirschman, *Shifting Involvements*, pp. 50ff.
- 209 See, e.g., Noel Thompson, 'Social Opulence, Private Asceticism: Ideas of Consumption in Early Socialist Thought', in Martin Daunton/Matthew Hilton, eds, *The Politics of Consumption: Material Culture and Citizenship in Europe and America* (Oxford: Berg, 2001), pp. 51–68.
- 210 The debate over the legitimacy of the commercialization of female sexuality began in principle with Bernard Mandeville's *A Modest Defence of Publick Stews: or, an Essay upon Whoring*, 1724. On the debates and discussions on this issue in the nineteenth century, see Regina Schulte, *Sperrbezirke, Tugendhaftigkeit und Prostitution in der bürgerlichen Welt* (Frankfurt/Main: Syndikat, 1997); Sabine Kienitz, *Sexualität, Macht und Moral: Prostitution und Geschlechterbeziehungen Anfang des 19. Jahrhunderts in Württemberg* (Berlin: Akademie, 1995); Larry Whiteaker, *Seduction, Prostitution, and Moral Reform in New York, 1830–1860* (New York/London: Garland, 1997). On the debates over the legitimacy of the commodification of alcohol, see Alfred Heggen, *Alkohol und bürgerliche Gesellschaft im 19. Jahrhundert: Eine Studie zur deutschen Sozialgeschichte* (Berlin: Cöpress, 1988).
- 211 Polanyi, *The Great Transformation*, pp. 167–95. John Stuart Mill also refers to Owen's experiments when he speaks of the significance of consumer cooperatives and labour cooperatives for the social integration of the capitalist market: *Principles of Political Economy*, Book IV, ch. 7.
- 212 On the ideas of Robert Owen, see Erwin Hasselmann, *Robert Owen: Sturm und Drang des sozialen Gewissens in der Frühzeit des Kapitalismus*

- (Hamburg: Verlagsgesellschaft Deutscher Konsumgesellschaften, 1959).
- 213 For an overview, see Helmut Faust, *Geschichte der Genossenschaftsbewegung: Ursprung und Aufbruch der Genossenschaftsbewegung in England, Frankreich und Deutschland sowie ihre weitere Entwicklung im deutschen Spielraum* (Frankfurt/Main: Knapp, 1965).
  - 214 See Peter A. Hall/David Soskice, eds, *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* (Oxford/New York, Oxford University Press, 2001).
  - 215 Hegel, *Elements of the Philosophy of Right*, § 236. On Hegel's influence on the notion of consumer protection, see Rolf Geyer, *Der Gedanke des Verbraucherschutzes im Reichsrecht des Kaiserreiches und der Weimarer Republik (1871–1933): Eine Studie zur Geschichte des Verbraucherrechts in Deutschland* (Frankfurt/Main: Lang, 2001), pp. 152–6.
  - 216 Hegel, *Elements of the Philosophy of Right*, § 236 (Addition).
  - 217 See, e.g., Geyer, *Der Gedanke des Verbraucherschutzes im Reichsrecht des Kaiserreiches und der Weimarer Republik (1871–1933)*.
  - 218 Polanyi, *The Great Transformation*, pp. 86–102.
  - 219 Polanyi, *The Great Transformation*, pp. 143–50.
  - 220 On the development of consumer protection in the German Empire, see Geyer, *Der Gedanke des Verbraucherschutzes im Reichsrecht des Kaiserreiches und der Weimarer Republik (1871–1933)*, part II, esp. pp. 9f.
  - 221 Geyer, *Der Gedanke*, p. 10. The expression 'bedenkliche Gewerbetreibende' stems from Johannes Miquel, a delegate in the Reichstag.
  - 222 Gustav Schmoller, *Über einige Grundfragen des Rechts und der Volkswirtschaft: Ein offenes Sendschreiben an Herrn Professor Dr. Heinrich Treitschke* (Jena: Mauke, 1875).
  - 223 On the role of the Kathedersozialisten on the reform of commercial law in the German Reichstag, see again Geyer, *Der Gedanke des Verbraucherschutzes im Reichsrecht des Kaiserreiches und der Weimarer Republik (1871–1933)*, part 3, ch. 7, pp. 146–56.
  - 224 See, e.g., Dirk Reinhardt, *Von der Reklame zum Marketing: Geschichte der Wirtschaftswerbung in Deutschland* (Berlin: Akademie, 1993), esp. ch. II.
  - 225 See, e.g., Hans-Jürgen Teuteberg, ed., *Durchbruch zum modernen Massenkonsum* (Munich: Franz Steiner, 1987); Stearns, *Stages of Consumerism*, pp. 109ff. The latter also gives references to further relevant literature.
  - 226 A very valuable essay on this issue can be found in Christoph Nonn, 'Die Entdeckung der Konsumenten im Kaiserreich' in Heinz-Gerhard Haupt/Claudius Torp, eds, *Der Konsumgesellschaft in Deutschland, 1890–1990: Ein Handbuch* (Frankfurt/Main: Campus, 2009), pp. 221–231. For the case of 'white collar' workers, see Siegfried Kracauer, *The Salaried Masses: Duty and Distraction in Weimar Germany* (London: Verso, 1998).

- 227 Nonn, 'Die Entdeckung der Konsumenten im Kaiserreich', pp. 226. See also Dauntun/Hilton, eds, *The Politics of Consumption*; on the particular case of the working class, see Josef Mooser, *Arbeiterleben in Deutschland, 1900–1970* (Frankfurt/Main: Suhrkamp, 1984), pp. 184f.
- 228 Nonn, 'Die Entdeckung der Konsumenten im Kaiserreich', esp. pp. 224–7. For an example from the time, see Karl Kautsky, 'Consumers and Producers' in *The Labour Revolution* (London: Routledge, 2012), ch. III, 1.
- 229 Nonn, 'Die Entdeckung der Konsumenten im Kaiserreich', pp. 227f.
- 230 For the case of Germany, see Belinda Davis, *Konsumgesellschaft und Politik im Ersten Weltkrieg* in Haupt/Torp, eds, *Die Konsumgesellschaft in Deutschland 1890–1990*, pp. 232–249; Hartmut Berghoff, *Träume und Alpträume: Konsumpolitik im nationalsozialistischen Deutschland*, pp. 268–88.
- 231 This primarily includes everything from new communication technologies such as radios, records, cinema – in short, the consumer goods of the culture industry.
- 232 Werner Sombart's critique of the capitalist advertising industry just prior to WWI was very influential up until the later phase of the Weimar Republic: *Der Bourgeois: Zur Geistesgeschichte des modernen Wirtschaftsmenschen* (Duncker and Humblot: 1913), esp. pp. 230f.
- 233 For a survey of the mass-organizations in the workers' movement that can certainly be regarded as critical of consumerism, see Hartmann Wanderer, *Arbeitervereine und Arbeiterparteien: Kultur- und Massenorganisation in der Arbeiterbewegung (1890–1933)* (Frankfurt/New York: Campus, 1980), esp. ch. 5.2.
- 234 Mooser, *Arbeiterleben in Deutschland*, pp. 188f. On the strong political significance of consumer cooperatives in the Weimar Republic, see also, e.g., Eduard Heimann, *Soziale Theorie des Kapitalismus: Theorie der Sozialpolitik* (Frankfurt/Main: Suhrkamp, 1980), pp. 104–8.
- 235 See the impressive study by Debra Satz, *Why Some Things Should Not Be for Sale: The Moral Limits of Markets* (Oxford/New York: Oxford University Press, 2010).
- 236 For an overview, see the study by Daniel Horowitz, *The Morality of Spending*.
- 237 On the 'golden' age of the consumer cooperative movement, see Erwin Hasselmann, *Geschichte der deutschen Konsumgenossenschaften* (Frankfurt/Main: Knapp, 1971), pp. 401–41.
- 238 Carl Schumacher, a leading representative of consumer cooperatives in Germany during the 1950s, labelled his organization as a 'bulwark of rational budgeting': Hasselmann, *Geschichte der deutschen Konsumgenossenschaften*, p. 638.
- 239 Hasselmann, *Geschichte*, pp. 563–98.
- 240 Max Horkheimer/Theodor Adorno, *Dialectic of Enlightenment* (1947) (especially the chapter on the 'culture industry'); Hannah Arendt,



- The Human Condition* (1958) (Chicago: University of Chicago Press, 1958), esp. §17; Henri Lefebvre, *Critique of Everyday Life*, vols 1 and 2 (1958/61) (London: Verso, 2008).
- 241 On the situation in Germany, see Mooser, *Arbeiterleben in Deutschland*, p. 224.
- 242 On the connection between phases of economic sacrifice and subsequent rises in private consumption, see Hirschman, *Shifting Involvements*, chs 1 and 2.
- 243 On the significance of private consumption in postwar Germany, see Paul Nolte, *Die Ordnung der deutschen Gesellschaft: Selbstentwurf und Selbstbeschreibung im 20. Jahrhundert* (Munich: Beck, 2000), pp. 333–6.
- 244 See, e.g., Norbert Reich, 'Markt und Verbraucherrecht' in *Markt und Recht: Theorie und Praxis des Wirtschaftsrechts in der Bundesrepublik Deutschland* (Neuwied/Darmstadt: Luchterhand, 1977), pp. 179–232, here: pp. 183f. In view of the general critique of the idea of 'consumer sovereignty', it is all the more surprising that David Miller clings to this very idea in his draft of a kind of market socialism: *Market, State and Community: Theoretical Foundations of Market Socialism* (Oxford: Oxford University Press, 1988), ch. 5. With the exception of a 'consumption tax' for especially 'harmful' goods, he believes that on the basis of the liberal principle of neutrality, which forbids any ethical judgement of consumer needs, no government measure is suitable to prevent the industrial manipulation of needs.
- 245 See Eike von Hippel, *Verbraucherschutz* (Tübingen: Mohr, 1974), pp. 161ff.
- 246 Reich, 'Markt und Verbraucherschutz', pp. 186ff.
- 247 Reich, 'Markt und Verbraucherschutz', pp. 187ff.
- 248 This intellectual effect of the student movement is completely ignored by historians who focus entirely on the official aims practiced by the movement's leading protagonists instead of the more subtle forms of critique in the everyday web of family, friends, colleagues, etc. One example can be found in Wolfgang Kraushaar, *Achtundsechzig: Eine Bilanz* (Berlin: Propyläen, 2008). A counter-history that deals with precisely this everyday kind of consumer criticism can be found in Peter Schneider, *Rebellion und Wahn – Mein '68: Eine autobiographische Erzählung* (Cologne: Kiepenheuer and Witsch, 2008).
- 249 For film, see *Pierrot-le-fou* (France 1965) by Jean-Luc Godard and *The Graduate* (USA 1967) by Mike Nichols. When it comes to novels that address this transition, consumer critique is usually dealt with in historical perspective; for Germany, see Jochen Schimmang, *Das Beste, was wir hatten* (Hamburg: Nautilus, 2009). Schimmang pinpoints the end of this change of attitude in 1983 (p. 168).
- 250 See, e.g., Wolfgang Fritz Haug, *Critique of Commodity Aesthetics* (Minneapolis: University of Minnesota Press, 1987). The outlines of



- consumer critique at the time are dealt with very nicely in the following volume: Sven Reichardt/Detlef Siegfried, eds, *Das alternative Milieu: Antibürgerlicher Lebensstil und linke Politik in der Bundesrepublik Deutschland und Europa 1968–1983* (Göttingen: Wallstein, 2010). On the discussion about the commodity aesthetic from then until today, see the informative essay by Heinz Drugh, 'Warenästhetik: Neue Perspektiven auf Konsum, Kultur und Kunst' in Heinz Drugh/Christian Metz/Björn Weyand, eds, *Warenästhetik* (Berlin: Suhrkamp, 2011), pp. 9–44.
- 251 See Nico Stehr, *Moral Markets: How Knowledge and Affluence Change Consumerism and Products* (Boulder: Paradigm, 2008); Rob Harrison/Terry Newholm/Deirdre Shaw, eds, *The Ethical Consumer* (London: Sage, 2005).
- 252 See Reich, 'Markt und Verbraucherrecht', pp. 198–214.
- 253 See Gerhard Scherhorn, *Verbraucherinteresse und Verbraucherpolitik* (Göttingen: Schwartz, 1975); Spiros Simitis, *Verbraucherschutz – Schlagwort oder Rechtsprinzip?* (Baden-Baden: Nomos, 1976); Reich, 'Markt und Verbraucherrecht'.
- 254 On this spectrum, see Reich, 'Markt und Verbraucherrecht', pp. 221–5.
- 255 Reich, 'Markt und Verbraucherrecht', pp. 218–21.
- 256 Stehr, *Moral Markets*, part 8, §5.
- 257 Lucia A. Reisch/Gerhard Scherhorn, 'Nachhaltigkeit, Lebensstile und Konsumentenverhalten: Auf der Suche nach dem 'ethischen' Konsum', *Der Bürger im Staat*, 48 (2), (1998): 92–9, here: pp. 97f.
- 258 See Stehr, *Moral Markets*, part 8, §5.
- 259 This is definitely the optimistic perspective shown by Nico Stehr in his study *Moral Markets*.
- 260 See the empirical data in Reisch/Scherhorn, 'Nachhaltigkeit, Lebensstile und Konsumentenverhalten', pp. 96ff.
- 261 Peter Preisendörfer, *Umwelteinstellungen und Umweltverhalten in Deutschland: Empirische befunde und Analysen auf der Grundlage der Bevölkerungsumfragen 'Umweltbewußtsein in Deutschland'* (Opladen: Leske + Budrich, 1999)
- 262 See Streeck, *Re-forming Capitalism*, pp. 263ff.
- 263 See The Invisible Committee, *The Coming Insurrection* (Los Angeles: Semiotext(e), 2009), p. 123.
- 264 See Martin Lindstrom/Patricia B. Seybold, *Brandchild: Remarkable Insights into the Minds of Today's Global Kids and their Relationships with Brands* (London, Kogan Page, 2003); Andreas Ebeling, *Das Markenbewußtsein von Kindern und Jugendlichen* (Münster: Lit, 1994).
- 265 These processes have been well investigated from a feminist perspective with regard to the body ideals presented in advertisement: Vickie Rutledge Shields/Dawn Heinecken, *Measuring Up: How Advertising Affects Self-Image* (Philadelphia: University of Pennsylvania Press, 2001).

- 266 The Internet platform eBay has not changed this situation at all. This platform might seem at first sight to be a renewed attempt to socialize the market for consumer goods through collectively coordinated reselling, but on the whole, it has served the further stimulation of individualized consumer behaviour. See Ken Hillis/Michael Petit, eds, *everyday eBay: Culture, Collecting and Desire* (New York/London: Routledge, 2006).
- 267 The implicit distinction made here between ‘short-lived’ and ‘long-lasting’ consumer goods, already employed by Hannah Arendt (*The Human Condition*, §17) and systematized by Albert O. Hirschman (*Shifting Involvements*, ch. 2) is ignored by Daniel Miller, when he seeks in his impressive study *The Comfort of Things* (Cambridge: Polity, 2009) to provide private consumerism with a justification in the lifeworld.
- 268 See Claus Leggewie/Harald Welzer, *Das Ende der Welt, wie wir sie kannten: Klima, Zukunft und die Chancen der Demokratie* (Frankfurt/Main: Fischer, 2009).
- 269 For the first case, see Satz, *Why Some Things Should Not Be for Sale*, part III, ch. 9; for the second case, see Margaret Radin, ‘Market Inalienability’, *Harvard Law Review*, 100 (1987): 1849–1937; Elizabeth Anderson, ‘Is Women’s Labor a Commodity?’, *Philosophy and Public Affairs*, 19 (1990): 71–92.
- 270 A very informative account: Reich, ‘Markt und Verbraucherrecht’, pp. 190–4.
- 271 On the need of labour for recognition, see Hans-Christoph Schmidt am Busch, *Hegels Begriff der Arbeit*, ch. II.
- 272 Hegel, *Elements of the Philosophy of Right*, §§241, 244, 245.
- 273 Hegel, *Elements of the Philosophy of Right*, §198.
- 274 For an overview, see Robert Castel, *From Manual Workers to Wage Labourers: Transformation of the Social Question* (New Brunswick, NJ: Transaction Publishers, 2003), chs 2 and 3.
- 275 Castel, *From Manual Workers to Wage Labourers*, pp. 95–103.
- 276 Castel, *From Manual Workers to Wage Labourers*, pp. 149–58.
- 277 Polanyi, *The Great Transformation*, Part II, chs 7 and 8; see also Thomas H. Marshall, ‘Citizenship and Social Class’ in *Citizenship and Social Class*, pp. 3–54, here: p. 14f.
- 278 Helmut Böhme, *Prolegomena zu einer Sozial- und Wirtschaftsgeschichte im 19. Und 20. Jahrhundert* (Frankfurt/Main: Suhrkamp, 1969), ch. 2.
- 279 Castel, *From Manual Workers to Wage Labourers: Transformation of the Social Question*, p. 191.
- 280 On the initial co-existence of ‘proto-industry’ and industrial forms of employment in the early nineteenth century, see Robert Castel, *From Manual Workers to Wage Labourers: Transformation of the Social Question*, pp. 95–138, which draws heavily on Hans Medick’s historical research on ‘proto-industrialization’: Peter Kriedte/

- Hans Medick/Jürgen Schlumbohm, *Industrialisierung vor der Industrialisierung: gewerbliche Warenproduktion auf dem Land in der Formationsperiode des Kapitalismus* (Göttingen: Vandenhoeck und Ruprecht, 1978).
- 281 For England, see Charles Dickens, *Hard Times* (1854); for France, see Émile Zola, *Germinal* (1885). Even earlier than these two publications, Heinrich Heine described the new labour conditions in his reports about London, which he documented in letters in 1827 (published under the title of 'English Fragments'); see Gerhard Höhn, *Heine-Handbuch: Zeit-Person-Werk* (Stuttgart: Metzler, 1997), pp. 257–65.
- 282 See, e.g., for the case of England: Edward P. Thompson, 'Time, Work-Discipline and Industrial Capitalism', *Past and Present*, no. 38 (1967), pp. 56–97.
- 283 Edward P. Thompson, 'The Moral Economy of the English Crowd in the 18<sup>th</sup> Century', *Past and Present*, no. 50 (1971), pp. 76–136.
- 284 The expression 'solidarity' was in fact used by Hegel in one of his lectures on the 'Philosophy of Right', in order to indicate the cooperative services of Corporations: *Philosophie des Rechts: Die Vorlesung von 1819/20*, p. 203.
- 285 On the 'friendly societies', see Peter Henry Gosden, *The Friendly Societies in England, 1815–1875* (Manchester: Manchester University Press, 1961); on the history of the *mutuelles* movement, see Romain Lavielle, *Histoire de la Mutualité: Sa place dans le régime français de la sécurité sociale* (Paris: Hachette 1964).
- 286 Castel, *From Manual Workers to Wage Labourers: Transformation of the Social Question*, pp. 196–205.
- 287 Victor Hugo, *Les Misérables* (1862) (London: Penguin, 1982).
- 288 See, e.g., Louis Chevalier, *Labouring Classes and Dangerous Classes: In Paris During the First Half of the Nineteenth Century* (New York: Howard Fertig, 2000). On the continuity of the image of 'dangerous classes', see the example of the USA provided in Frances Fox Piven, *Regulating the Poor: The Functions of Public Welfare* (New York: Vintage, 1993).
- 289 On this shift in the discussion of pauperism to the 'social question', see for the case of Germany: Florian Tennstedt, *Vom Proleten zum Industriearbeiter: Arbeiterbewegung und Sozialpolitik in Deutschland 1800–1914* (Cologne: Bund, 1983), chs A.I. and II.
- 290 See Edward P. Thompson, *The Making of the English Working Class* (New York: Vintage, 1966), chs 12, 14, 15.
- 291 On this development in the language of protest, see Michael Vester, *Die Entstehung des Proletariats als Lernprozess: Die Entstehung anti-kapitalistischer Theorie und Praxis in England 1792–1848* (Frankfurt/Main: Europäische Verlagsanstalt, 1970), part II, chs I and II.
- 292 For an overview, see Jürgen Osterhammel, *Die Verwandlung der Welt: Eine Geschichte des 19. Jahrhunderts* (Munich: Beck, 2009), ch. XII.

- 293 On this 'social' explanation of the emergence of the welfare state, see the very helpful survey by Peter Baldwin, *The Politics of Social Solidarity: Class Bases of the European Welfare State 1875–1975* (Cambridge: Cambridge University Press, 1990), pp. 1–54. A brilliant example for such an approach can be found in Roger A. Cloward/Frances Fox Piven, 'Moral Economy and Welfare State', in David Robbins et al., eds, *Rethinking Social Inequality* (Aldershot: Gower, 1982), pp. 148–64.
- 294 See, e.g., Tennstedt, *Vom Proleten zum Industriearbeiter*, ch. C; see also Michael Stolleis, 'Die Sozialversicherung Bismarcks: Politisch-institutionelle Bedingungen ihrer Entstehung' in Hans F. Zacher, ed., *Bedingungen für die Entstehung und Entwicklung der Sozialversicherung* (Berlin: Duncker and Humblot, 1979), pp. 387–410.
- 295 See the 'bonapartist' approach in the essays by Jürgen Tampke and Roy Hay in Wolfgang J. Mommsen/Wolfgang Mock, eds, *Die Entstehung des Wohlfahrtsstaates in Großbritannien und Deutschland 1850–1950* (Stuttgart: 1998), pp. 79–91 and 107–30.
- 296 Durkheim, *Physik der Sitten und des Rechts*, pp. 31ff.
- 297 See Stolleis, 'Die Sozialversicherung Bismarcks'.
- 298 See Castel's impressive formulations in *From Manual Workers to Wage Labourers: Transformation of the Social Question*, pp. 303ff.
- 299 On the various forms of these associations within the labour movement during the last third of the nineteenth century, see for the case of Germany: Wolfgang Hardtwig, 'Verein (Gesellschaft, Geheimgesellschaft, Assoziation, Genossenschaft, Gewerkschaft)' in Otto Brunner/Werner Conze/Reinhart Koselleck, eds, *Geschichtliche Grundbegriffe: Historisches Lexikon zur politisch-sozialen Sprache in Deutschland* (Stuttgart: Klett-Cotta, 2004), vol. 8, pp. 789–829, esp. pp. 816–27.
- 300 On these labour struggles prior to the establishment of Taylorist production methods, see Richard Edwards, *Contested Terrain: The Transformation of the Workplace in the Twentieth Century* (New York: Basic Books, 1979), ch. 4.
- 301 See, e.g. Ulrich Rödel/Tim Guldemann, 'Sozialpolitik als soziale Kontrolle', *Starnberger Studien 2 – Sozialpolitik als soziale Kontrolle* (Frankfurt/Main: Suhrkamp, 1978), pp. 11–56; Piven/Cloward, *Regulating the Poor*, ch. 1.
- 302 Claus Offe, 'Some Contradictions of the Modern Welfare State' in Christopher Pierson/Francis G. Castles, eds, *The Welfare State Reader* (Cambridge: Polity, 2000), pp. 67–76.
- 303 For an overview, see Baldwin, *The Politics of Social Solidarity*; Guldemann, 'Die Entwicklung der Sozialpolitik in England, Frankreich und Schweden bis 1930', *Starnberger Studien 2*, pp. 57–112.
- 304 Karl Marx, *Capital*, vol. III (London: Penguin, 1981), ch. 27.
- 305 Marx, *Capital*, p. 569.
- 306 See Streeck/Höpner, 'Einleitung: Alle Macht dem Markt?', esp. pp. 12–14.

- 307 See Hans-Ulrich Wehler, 'Der Aufstieg des organisierten Kapitalismus und Interventionsstaates in Deutschland' in Heinrich August Winkler, ed., *Organisierter Kapitalismus* (Göttingen: Vandenhoeck und Ruprecht, 1974), pp. 36–57.
- 308 See the various essays in Winkler, ed., *Organisierter Kapitalismus*.
- 309 The expression stems from Goetz Briefs, 'Gewerkschaftswesen und Gewerkschaftspolitik', in *Handwörterbuch der Staatswissenschaften*, edited by Ludwig Elster/Adolf Weber/Friedrich Wieser (Jena: 1927), vol. 4, pp. 1108–50, here: p. 1111.
- 310 An almost bizarre polemic from the early phase of organized capitalism in which this latent disgust for wage labourers is clearly conveyed can be found in William Graham Sumner, *What Social Classes Owe to Each Other* (1883) (Caldwell: Caxton, 1995). Since its first publication there have been twelve editions.
- 311 For the case of Germany, see Mooser, *Arbeiterleben in Deutschland*, pp. 190ff.
- 312 Lujo Brentano drafted his theory of unions in his classic work on 'workers guilds' (*Die Arbeitergilden der Gegenwart* (Leipzig: Duncker and Humblot, 1871/72)), later updating this view in a series of articles.
- 313 Briefs, 'Gewerkschaftswesen und Gewerkschaftspolitik'. All the quotations used here can be found in this encyclopaedia entry.
- 314 Heimann, *Soziale Theorie des Kapitalismus*, pp. 251–62. The book also offers a good overview of competing interpretations of the tasks of the unions.
- 315 Briefs, 'Gewerkschaftswesen und Gewerkschaftspolitik', p. 1117.
- 316 See Harry Braverman, *Labor and Monopoly Capital: The Degradation of Work in the Twentieth Century* (New York: Monthly Review Press, 1974); Georges Friedmann, *Industrial Society: The Emergence of the Human Problems of Automation* (Chicago: Free Press, 1955).
- 317 Braverman, *Labor and Monopoly Capital*, part IV.
- 318 Hegel, *Elements of the Philosophy of Right*, § 198.
- 319 Braverman, *Labor and Monopoly Capital*, ch. 4.
- 320 Braverman, pp. 135f.
- 321 See the highly informative report of a priest in Berlin: Günther Dehn, *Proletarische Jugend: Lebensgestaltung und Gedankenwelt der großstädtischen Proletarierjugend* (Berlin: Furche, 1929); for our topic, see ch. 3. For a fruitful historical account, see Stearns, *Arbeiterleben*, ch. 4.
- 322 For Germany, see Mooser, *Arbeiterleben in Deutschland*, pp. 61–7.
- 323 For a summary, see Edwards, *Contested Terrain: The Transformation of the Workplace in the Twentieth Century*, pp. 57–65; Friedmann, *Industrial Society: The Emergence of the Human Problems of Automation*, part II, ch. 5.
- 324 An example of such an update can be found in Oskar Negt, *Arbeit und menschliche Würde* (Göttingen: Steidl, 2008).
- 325 Durkheim, *The Division of Labor in Society*, pp. 371ff.

- 326 See Braverman, *Labor and Monopoly Capital*, ch. 15. For the case of Germany, see the outstanding study by Hans Speier, *Die Angestellten vor dem Nationalsozialismus: Ein Beitrag zum Verständnis der deutschen Sozialstruktur 1918–1933* (Göttingen: Vandenhoeck and Ruprecht, 1977).
- 327 Braverman, ch. VII.
- 328 Braverman, ch. XII.
- 329 See the still impressive diary entries by Simone Weil, who wrote on her experiences in various factories in France during the early 1930s: *Fabriktagebuch und andere Schriften zum Industriesystem* (Frankfurt/Main: Suhrkamp, 1978).
- 330 See Charles S. Maier, 'Strukturen kapitalistischer Stabilität in den zwanziger Jahren: Errungenschaften und Defizite' in Winkler, ed., *Organisierter Kapitalismus*, pp. 195–213, here: p. 197f.
- 331 Maier, p. 197f.
- 332 See Heinrich August Winkler, 'Einleitende Bemerkungen zu Hilferdings Theorie des organisierten Kapitalismus' in *Organisierter Kapitalismus*, pp. 9–18.
- 333 See Rudolf Hilferding, 'Probleme der Zeit', *Die Gesellschaft*, 1 (1924): 1–17.
- 334 On the effects of long-term unemployment, see the classic investigation by Marie Jahoda, *Marienthal: The Sociography of an Unemployed Community* (1933) (New York: Transaction, 2002).
- 335 Marshall, 'Citizenship and Social Classes', pp. 36–40; for the case of Germany, see Ludwig von Friedeburg, *Bildungsreform in Deutschland: Geschichte und gesellschaftlicher Widerspruch* (Frankfurt/Main: Suhrkamp, 1989), ch. IV.
- 336 For a summary, see *Industrial Society: The Emergence of the Human Problems of Automation*.
- 337 On the difference between these two models of organized capitalism, see the groundbreaking study by Andrew Shonfield: *Modern Capitalism: The Changing Power of Public and Private Interest* (London: Oxford University Press, 1965), ch. V (France) and ch. XI (West Germany). Where dictatorships survived, the establishment of organized capitalism was obviously delayed significantly. See José María Maravall, *Regimes, Politics, and Markets: Democratization and Economic Change in Southern and Eastern Europe* (Oxford: Oxford University Press, 1997).
- 338 Maravall, *Regimes*, ch. VI.
- 339 Maravall, *Regimes*, p. 92.
- 340 For the discussion in France, see Klaus Düll, *Industriesoziologie in Frankreich* (Frankfurt/Main: Europäische Verlagsanstalt, 1975); for Germany, see Heinrich Popitz et al., *Technik und Industriearbeit* (Tübingen: Mohr, 1957).
- 341 Robert Castel traces these improvement in France back to 1936, the year in which the popular front succeeded in getting into the



- National Assembly. See *From Manual Workers to Wage Labourers: Transformation of the Social Question*, pp. 316–24.
- 342 See an impressive account in Castel, *From Manual Workers to Wage Labourers*, pp. 319ff.
- 343 This is not true, however, of the many women that flooded the labour market during this time. Their wages and their career chances remain far worse than those of men. On this overall issue that I must neglect here, see Jürgen Kocka/Claus Offe, eds, *Geschichte und Zukunft der Arbeit* (Frankfurt/Main: Campus 2000), pp. 343–61.
- 344 For the case of Germany, see von Friedeburg, *Bildungsreform in Deutschland*, ch. VI.
- 345 For the case of West Germany, see Mooser, *Arbeiterleben in Deutschland 1900–1970*, pp. 113–25.
- 346 Jean Fourastié, *Die große Hoffnung des zwanzigsten Jahrhunderts* (Cologne: Bund, 1954). On the optimism of early theorists of the service economy, see also Friederike Bahl/Philipp Staab, ‘Das Dienstleistungsproletariat: Theorie auf kalten Entzug’, *Mittelweg* 36, 19 (6), (2010), pp. 66–93.
- 347 Daniel Bell, *The Coming of Post-Industrial Society* (New York: Basic Books, 1976).
- 348 Braverman, *Labor and Monopoly Capital*, chs IV and V.
- 349 Luc Boltanski, *Les Cadres: La formation d’un groupe social* (Paris: Éditions de Minuit, 1982).
- 350 Castel, *From Manual Workers to Wage Labourers: Transformation of the Social Question*, pp. 325–42.
- 351 See Michael J. Piore/Charles F. Sabel, *The Second Industrial Divide: Possibilities for Prosperity* (New York: Basic Books, 1986). The argumentation is much more sceptical in Horst Kern/Michael Shumann, *Das Ende der Arbeitsteilung? Rationalisierung in der Produktion* (Munich: Beck, 1984).
- 352 Bahl/Staab, ‘Das Dienstleistungsproletariat’, pp. 72ff; see also Gösta Esing-Anderson, ‘Post-Industrial Class Structures: An Analytic Framework’, in *Changing Classes: Stratification and Mobility in Post-Industrial Societies* (London: Sage, 1993), pp. 7–31.
- 353 Castel, *From Manual Workers to Wage Labourers: Transformation of the Social Question*, pp. 325ff.
- 354 Bahl/Staab, ‘Das Dienstleistungsproletariat’, p. 75.
- 355 See again Snowfield, *Modern Capitalism*, part 2.
- 356 Streeck/Höpner, ‘Einleitung: Alle Macht dem Markt?’, pp. 16–28; see also Kathleen Thelen/Lowell Turner, ‘Die deutsche Mitbestimmung im internationalen Vergleich’ in Wolfgang Streeck/Norbert Kluge, eds, *Mitbestimmung in Deutschland: Tradition und Effizienz* (Frankfurt/Main: Campus, 1999), pp. 135–223.
- 357 See, e.g. Streeck and Kluge, *Mitbestimmung in Deutschland*, pp. 28–34. These transformation processes are also explained very well in Ronald Dore, *Stock Market Capitalism: Welfare Capitalism. Japan and*



- Germany versus the Anglo-Saxons* (Oxford: Oxford University Press, 2000).
- 358 The following considerations are guided by Kerstin Jürgens, 'Deutschland in der Reproduktionskrise', *Leviathan*, 38 (4) (2010): 559–87.
- 359 See Jürgens, 'Deutschland', p. 564, note 11.
- 360 Ulrich Brinkmann/Klaus Dörre/Silke Röbenack, *Prekäre Arbeit: Ursachen, Ausmaß, soziale Folgen und subjektive Verarbeitungsformen unsicherer Beschäftigungsverhältnisse* (Bonn: Friedrich Ebert Stiftung, 2006).
- 361 On this diagnosis, which has now become well known, see Richard Sennett, *The Culture of the New Capitalism* (New Haven: Yale University Press, 2006); see also the panorama-like survey put together by Marjorie L. DeVault, ed., *People at Work: Life, Power and Social Inclusion in the New Economy* (New York: New York University Press, 2008).
- 362 See an exemplary account in Günter Voß/Hans J. Pongratz, 'Der Arbeitskraftunternehmer: Eine neue Grundform der Ware Arbeitskraft?' *Kölner Zeitschrift für Soziologie und Sozialpsychologie*, 50 (1998): 131–58.
- 363 See a study by François Dubet that has received far too little consideration: *Ungerechtigkeiten: Zum subjektiven Ungerechtigkeitsempfinden* (Hamburg: Hamburger Edition, 2008).
- 364 Lisa Dodson, *The Moral Underground: How Ordinary Americans Subvert an Unfair Economy* (New York: The New Press, 2009).
- 365 See part A, note 111.
- 366 See again: Dodson, *The Moral Underground*.
- 367 Stephan Voswinkel/Hermann Kocyba, 'Krankheitsverleugnung – Das Janusgesicht sinkender Fehlzeiten', *WSI – Mitteilungen*, 60 (2007): 131–7.
- 368 Christophe Déjours/Florence Bègue, *Suicide et travail: que faire?* (Paris: PUF, 2009).
- 369 See, e.g., Barbara Ehrenreich, *Nickel and Dimed* (New York: Henry Holt, 2001); Günter Wallraff, *Aus der schönen neuen Welt* (Cologne: Kiepenhauer and Witsch, 2009).
- 370 See Bahl/Staab, 'Das Dienstleistungsproletariat', p. 74, note 51.
- 371 See Bahl/Staab, 'Das Dienstleistungsproletariat', pp. 82–93.
- 372 See Bahl/Staab, 'Das Dienstleistungsproletariat', pp. 88ff.
- 373 Holger Lengfeld/Jochen Hirschle, 'Die Angst der Mittelschicht vor dem sozialen Abstieg: Eine Längsschnittanalyse 1984–2007', *Zeitschrift für Soziologie*, 38 (2009): 379–98. See also the theoretically demanding study by Berthold Vogel, *Wohlstandskonflikte: Soziale Fragen, die aus der Mitte kommen* (Hamburg: Hamburger Edition, 2009), esp. ch. IV.
- 374 For a summary, see Klaus Günther, 'Zwischen Ermächtigung und Disziplinierung: Verantwortung im gegenwärtigen Kapitalismus'

- in Axel Honneth, ed., *Befreiung aus der Mündigkeit: Paradoxien des gegenwärtigen Kapitalismus* (Frankfurt/Main: Campus, 2002), pp. 117–39.
- 375 For the case of public services, see Mark Freedland, 'The Marketization of Public Services', in Colin Crouch/Klaus Eder/Damian Tambini, eds, *Citizenship, Markets and the State* (Oxford: Oxford University Press, 2001), pp. 90–110; for universities, see Sheila Slaughter/Gary Rhoades, *Academic Capitalism and the New Economy: Markets, State and Higher Education* (Baltimore: Johns Hopkins University Press, 2009).
- 376 See the fantastic chapter 'The Cult of Personal Responsibility' in Brian Barry, *Why Social Justice Matters* (Cambridge: Polity, 2005), ch. IV.
- 377 On this transition from the idea of state welfare to the 'private responsibility for security' and the associated activation programmes, see Stephan Lessenich, *Die Neuerfindung des Sozialen* (Bielefeld: Transcript, 2008).
- 378 See Ludger Pries, *Erwerbsregulierung in einer globalisierten Welt* (Wiesbaden: VS, 2010).
- 379 Marie-Laure Djelic/Sigrid Quack, eds, *Transnational Communities: Shaping Global Economic Governance* (Cambridge: Cambridge University Press, 2010).
- 380 See Michael Theunissen, 'Die verdrängte Intersubjektivität in Hegels Philosophie des Rechts' in Dieter Henrich/Rolf-Peter Horstmann, eds, *Hegels Philosophie des Rechts: Die Theorie der Rechtsformen und ihre Logik* (Stuttgart: Klett-Cotta, 1982), pp. 317–381; see also in this context: Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* (Cambridge, MA: MIT Press, 1991), esp. pp. 117–24.
- 381 On the tendency to view this dependence merely as a fortunate coincidence, see Jürgen Habermas, *Between Facts and Norms*, p. 358; see also Robin Celikates/Arndt Pollmann, 'Baustellen der Vernunft: 25 Jahre "Theorie des kommunikativen Handelns"', *WestEnd: Neue Zeitschrift für Sozialforschung*, 3 (2), (2006): 97–113.
- 382 I have taken the idea of such an 'iteration' as a learning mechanism for democratic public spheres from Seyla Benhabib, *Another Cosmopolitanism* (Oxford: Oxford University Press, 2006), esp. pp. 45ff.
- 383 See for the following: Habermas, *The Structural Transformation of the Public Sphere*.
- 384 Habermas, *The Structural Transformation*, §3. See also Hannah Barker/Simon Burrows, eds, *Press, Politics and the Public Sphere in Europe and North America, 1760–1820* (Cambridge: Cambridge University Press, 2002).
- 385 On the concept of 'public opinion', see Habermas, *The Structural Transformation of the Public Sphere*, ch. IV

- 386 Habermas, *The Structural Transformation*, pp. 53ff.
- 387 For the case of Germany, see Andreas Griesinger, *Das symbolische Kapital der Ehre: Streikbewegungen und kollektives Bewusstsein deutscher Handwerksgesellen im 18. Jahrhundert* (Frankfurt/Berlin/Vienna: Ullstein, 1981); for England, see Thompson, *The Making of the English Working Class*, pp. 418–428.
- 388 See Thompson, *The Making of the English Working Class*, pp. 420–3; a fascinating study on such plebian forms of the public sphere in the eighteenth century can be found in Arlette Farge, *Lauffeuer in Paris: Die Stimme des Volkes im 18. Jahrhundert* (Stuttgart: Klett-Cotta, 1993). (I owe this reference to Yves Santomer.)
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- 391 On this development in England, see Habermas, *Structural Transformation of the Public Sphere*, §8.
- 392 On the various paths of political democratization in Western Europe, see Wolfgang Reinhard, *Geschichte der Staatsgewalt* (Munich: Beck, 1999), ch. V.1.
- 393 See Eley, 'Nations, Publics, and Political Cultures', pp. 289–339; on Habermas' exclusion of the role of the nation or the nation-state when it comes to the establishment of class-transcendent publics, see Lennart Laberenz, 'Die Rationalität des Bürgertums: Nation und Nationalismus als blinder Fleck im Strukturwandel der Öffentlichkeit' in *Schöne neue Öffentlichkeit: Beiträge zu Jürgen Habermas' 'Strukturwandel und Öffentlichkeit'* (Hamburg: VSA, 2003), pp. 130–70.
- 394 On the significant differences in voting rights between various European countries in the nineteenth century, see Daniele Caramani, *Elections in Western Europe since 1813. Electoral Results by Constituencies* (London: Macmillan Reference, 2004); Reinhard, *Geschichte der Staatsgewalt*, pp. 431–5.
- 395 On the arguments for public rather than secret voting, see the highly interesting study by Hubertus Buchstein, *Öffentliche und geheime Stimmabgabe: Eine wahlrechtshistorische und ideengeschichtliche Studie* (Baden-Baden: Nomos, 2000).
- 396 On the relationship between private and public autonomy, see Habermas, *Between Facts and Norms*, ch. III.1.
- 397 See Osterhammel, *Die Verwandlung der Welt*, pp. 850–6.
- 398 For an overview, see Reinhard, *Geschichte der Staatsgewalt*, pp. 431–4.
- 399 See the impressive account by Michael Walzer, 'Deliberation . . . and What Else?' in *Politics and Passion: Toward a More Egalitarian Liberalism* (New Haven: Yale University Press), pp. 90–109.
- 400 Osterhammel, *Die Verwandlung der Welt*, p. 855.

- 401 On this process, see Benedict Anderson, *Imagined Communities: Reflections on the Origins and Spread of Nationalism* (London: Verso, 2006).
- 402 On the relation between the formation of the nation-state and the process of democratization, see Reinhard, *Geschichte der Staatsgewalt*, ch. V.2. A systematic analysis of the rise of national forms of communication, and thus of the first forms of nationwide publics, see Karl W. Deutsch, *Nationalism and Social Communication: An Inquiry into the Foundations of Nationality* (Cambridge, MA: MIT Press, 1966), chs 2, 3 and 4.
- 403 For the case of Germany, see Werner Conze/Dieter Groh, *Die Arbeiterbewegung in der nationalen Bewegung: Die deutsche Sozialdemokratie vor, während und nach der Reichsgründung* (Stuttgart: Klett, 1966).
- 404 Habermas, *Structural Transformation of the Public Sphere*, pp. 20ff.
- 405 Thompson, *The Making of the English Working Class*, ch. 1.2.
- 406 On the first question, raised in France after 1871, see Wolfgang Schivelbusch, *Die Kultur der Niederlage* (Berlin: Fischer, 2001), ch. III; for the public discussion of the railroads, see Schivelbusch, *Geschichte der Eisenbahnreise: Zur Industrialisierung von Raum und Zeit im 19. Jahrhundert* (Frankfurt/Main: Fischer, 2000).
- 407 See the impressive analysis by Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt, Brace and Co., 1951), ch. I. 4.
- 408 Arendt, *The Origins of Totalitarianism*, pp. 100f.
- 409 Arendt, *The Origins of Totalitarianism*, pp. 100–9.
- 410 Arendt, *The Origins of Totalitarianism*, p. 103f.
- 411 A highly interesting attempt to systematize the causes for such a transition can be found in Ernest Gellner, *Nations and Nationalism* (Oxford: Basil Blackwell, 1983), esp. chs 6 and 7.
- 412 For a very good overview of where and how nationalism turned into racism in the nineteenth century, see George M. Frederickson, *Racism: A Short History* (Princeton: Princeton University Press, 2003), pp. 49–96.
- 413 On these distinctions, see Reinhard, *Geschichte der Staatsgewalt*, pp. 446ff. Reinhard bases his tripartite distinction on the work of Theodor Schieder, *Nationalismus und Nationalstaat* (Göttingen: Vandenhoeck and Ruprecht, 1991).
- 414 Arendt, pp. 158–170; see also Helmuth Plessner, *Die verspätete Nation* (1959) (Frankfurt/Main: Suhrkamp, 1974).
- 415 Durkheim, *Physik der Sitten und des Rechts*, lectures no. 4–9.
- 416 Durkheim, *Physik der Sitten*, lecture no. 5.
- 417 Durkheim, *Physik der Sitten*, pp. 106f.
- 418 On the history and concept of constitutional patriotism, see Jan-Werner Müller, *Verfassungspatriotismus* (Berlin: Suhrkamp, 2010). Müller's historical account leaves out the intellectual prehistory of this idea, and thus also the significant considerations on the matter as well.

- 419 Durkheim, *Physik der Sitten und des Rechts*, p. 107f.  
 420 Durkheim, *Physik der Sitten*, p. 109.  
 421 Durkheim, *Physik der Sitten*, p. 110.  
 422 Durkheim, *Physik der Sitten*, p. 109.  
 423 John Dewey, *The Public and Its Problems* (1927) (Chicago: Gateway Books, 1946).  
 424 See Habermas, *Structural Transformation of the Public Sphere*, ch. IV, §13.  
 425 Alexis de Tocqueville, *Democracy in America* (London: Penguin, 2003).  
 426 John Stuart Mill, *On Liberty*.  
 427 Durkheim, *Physik der Sitten und des Rechts*, lecture no. 7.  
 428 On an 'epistemological' justification of democracy, see Hilary Putnam, 'A Reconsideration of Deweyan Democracy', in *Renewing Philosophy* (Cambridge, MA: Harvard University Press, 1992), pp. 180–200.  
 429 Durkheim, *Physik der Sitten und des Rechts*, p. 115.  
 430 Durkheim, *Physik der Sitten*, p. 116.  
 431 Durkheim, *Physik der Sitten*.  
 432 Durkheim, *Physik der Sitten*, p. 118.  
 433 Durkheim, *Physik der Sitten*, p. 120.  
 434 See Horst A. Wessel, 'Die Rolle des Telefons in der Kommunikationsrevolution des 19. Jahrhunderts' in Michael North, ed., *Kommunikationsrevolution: Die neuen Medien des 16. Und 19. Jahrhunderts* (Cologne/Weimar/Vienna: Böhlau, 2001), pp. 101–128.  
 435 Jorma Ahvenainen, 'The Role of Telegraphs in the 19<sup>th</sup>-Century Revolution of Communication', in North, ed., *Kommunikationsrevolution*, pp. 73–80.  
 436 See Heinz Pohle, *Das Radio als Instrument der Politik* (Hamburg: Hans Bredow Institut, 1955).  
 437 Habermas, *Structural Transformation of the Public Sphere*, p. 187f.  
 438 Walter Benjamin, 'Hörmodelle' in *Gesammelte Schriften*, vol. IV (Frankfurt/Main: Suhrkamp, 1972), pp. 627–720. On the broader topic, see Sabine Schiller-Lerg, 'Die Rundfunkarbeiten' in Burkhardt Lindner, ed., *Benjamin-Handbuch: Leben–Werk–Wirkung* (Stuttgart: Metzler, 2006), pp. 406–420.  
 439 Instead of listing several different examples, I cite only Bertolt Brecht's proposal to a fictitious programme director: 'Furthermore, instead of prepared presentations you could organize real interviews in which the interviewees have less opportunity to come up with carefully considered lies than they do for the newspapers. Debates between renowned experts are also crucial. And you could organize lectures and discussion of all different sizes.' ('Vorschläge für den Intendanten des Rundfunks' (1927) in *Gesammelte Werke*, vol. 18 (Frankfurt/Main: Suhrkamp, 1967), pp. 121–3, here: p. 122.)

- 440 See Ansgar Diller, *Rundfunkpolitik im Dritten Reich* (*Rundfunk in Deutschland*, vol. 2) (Munich: dtv, 1980).
- 441 The story is somewhat different in the USA, where radio was a private business from the very beginning. This is the subject of Theodor W. Adorno's famous analysis in *The Psychological Technique of Martin Luther Thomas' Radio Addresses* (Stanford: Stanford University Press, 2000).
- 442 In this context, see Robert B. Westbrook, *John Dewey and American Democracy* (Ithaca: Cornell University Press, 1991), pp. 293–300.
- 443 Durkheim, *Physik der Sitten und des Rechts*, p. 131.
- 444 Durkheim, *Physik der Sitten*, pp. 117–22.
- 445 See John Dewey, 'The Ethics of Democracy' in *The Early Works*, vol. I (Carbondale/Edwardsville: Southern Illinois University Press, 1969), pp. 227–49; on the broader topic, see my essay 'Democracy as Reflexive Cooperation: John Dewey and the Theory of Democracy Today' in *Disrespect: The Normative Foundations of Critical Theory* (Cambridge: Polity, 2007), pp. 197–217.
- 446 Dewey, p. 149.
- 447 Dewey, p. 169.
- 448 Dewey, p. 183.
- 449 Dewey, p. 122.
- 450 Dewey, pp. 129 and 171. In this context Dewey surprisingly does not mention the racism that presented a comparable challenge for the public in his own country.
- 451 Dewey, p. 169f., 179ff.
- 452 Dewey, p. 168f.
- 453 Horkheimer/Adorno, *Dialectic of Enlightenment*, pp. 94–136.
- 454 Dewey, *The Public and Its Problems*, p. 170.
- 455 Dewey, p. 117.
- 456 Dewey, p. 180.
- 457 Dewey, p. 151.
- 458 See Walt Whitman, *Leaves of Grass* (Oxford: Oxford University Press, 2005).
- 459 Dewey, p. 184.
- 460 See Reinhard, *Geschichte der Staatsgewalt*, p. 434.
- 461 See Arendt, *Origins of Totalitarianism*, pp. 266–298.
- 462 See, e.g., Anne-Marie Sohn, 'Between the Wars in France and England' in Duby et al, *A History of Women in the West*, vol V, pp. 92–119.
- 463 See Robert S. Garnett, *Lion, Eagle, Swastika: Bavarian Monarchism in Weimar Germany, 1918–1933* (New York: Garland, 1991).
- 464 Dewey, p. 170.
- 465 This shift in the assessment of radio is made very clear in Siegfried Kracauer, 'Literatur und Rundfunk' in *Werke*, vol 5.2 ('Essays, Feuilletons, Rezensionen 1928–1931') (Berlin: Suhrkamp, 2011), pp. 612–15.



- 466 See, e.g., Siegfried Kracauer, 'Der heutige Film und sein Publikum' in *Werke*, vol. 6.2 ('Kleine Schriften zum Film 1928–1931') (Frankfurt/Main: Suhrkamp, 2004), pp. 151–66.
- 467 Dewey, p. 122.
- 468 Arendt, *Origins of Totalitarianism*, ch. III; a dissenting analysis can be found in Franz Neumann, *Behemoth: The Structure and Practice of National Socialism* (Chicago: Ivan R. Dee, 2009).
- 469 See Diller, *Rundfunkpolitik im Dritten Reich*; Inge Marßolek/Adelheid von Saldern, eds, *Zuhören und Gehörtwerden I: Radio im Nationalsozialismus* (Tübingen: ed. Diskord, 1998).
- 470 See the brochure entitled 'Faschistische Öffentlichkeit' in the journal *Ästhetik und Kommunikation*, vol. 7 (1976).
- 471 See the relevant article in Rüdiger Wolfrum, *Handbuch Vereinte Nationen* (Munich: Beck, 1991).
- 472 Arendt, *The Human Condition*; Habermas, *Structural Transformation of the Public Sphere*.
- 473 See Theodor W. Adorno, 'Television as Ideology' (1953) in *Critical Models: Interventions and Catchwords* (New York: Columbia University Press, 2005), pp. 59–70.
- 474 On these developments in Germany, see Mooser, *Arbeiterleben in Deutschland*, ch. IV.
- 475 See the exemplary work of Alan Sillitoe in England: *Saturday Night and Sunday Morning* (1958) (London: Harper Perennial, 2008) and *The Loneliness of the Long Distance Runner* (London: Harper Perennial, 2007), which set off a wave of proletarian novels and films at the end of the 1950s. For Germany, see Max von der Grün, *Irrlicht und Feuer* (Recklinghausen: Paulus, 1963), a novel to which the founding of the so-called 'Gruppe 61' can be traced.
- 476 Because of the significance of art for the revitalization of the public, we might be tempted to view 'aesthetic freedom' – if it represents an independent category of freedom at all – as a crucial part of the sphere of the democratic public, one that always undermines this sphere's tendency for conformism. This view can be found in the extremely interesting study by Juliane Rebentisch, *Die Kunst der Freiheit: Zur Dialektik demokratischer Existenz* (Berlin: Suhrkamp, 2012).
- 477 See again Lennart Laberenz, pp. 130–70.
- 478 On the connection between the concepts of the public, speech and discourse in Habermas, see Maeve Cooke, *Language and Reason: A Study of Habermas's Pragmatics* (Cambridge, MA: MIT Press, 1994).
- 479 Habermas, *Structural Transformation of the Public Sphere*, § 7.
- 480 A relatively early reaction to this problem can be seen in the largely sceptical essay by Raymond Aron, 'Is Multinational Citizenship Possible?', *Social Research*, 41 (4), (1974): 638–56.
- 481 On this problem, see Nina Glick Schiller/Linda Basch/Christina Blank-Szanton, *Towards a Transnational Perspective on Migration: Race,*



- Class, Ethnicity and Nationalism Reconsidered* (New York: New York Academy of Sciences, 1992).
- 482 On this problem, see Nancy Fraser, 'Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy', *Social Text*, no. 25/26 (1990), pp. 56–80.
- 483 See the interesting retrospective by Peter Schneider, *Rebellion und Wahn – Mein '68*.
- 484 Raymond Williams, *Television: Technology and Cultural Form* (London: Routledge, 1974).
- 485 An overview of the discussion at the time can be found in Douglas Kellner, 'Kulturindustrie und Massenkommunikation' in Wolfgang Bonß/Axel Honneth, eds, *Sozialforschung als Kritik* (Frankfurt/Main: Suhrkamp 1982); Angela Keppler, 'Drei Arten der Fernsehkritik' in Barbara Becker/Josef Wehner, eds, *Kulturindustrie Reviewed: Ansätze zur kritischen Reflexion der Mediengesellschaft* (Bielefeld: Transcript, 2006), pp. 183–90.
- 486 Pierre Bourdieu, *On Distinction*, part 3, ch. 5.
- 487 See Simone Veil, *A Life: The Autobiography of Simone Veil* (London: Haus, 2009); Annemarie Renger, *Ein politisches Leben: Erinnerungen* (Stuttgart: Deutsche Verlagsanstalt, 1993); Hildegard Hamm-Brücher, 'Politik als Beruf – ein Erfahrungsbericht' in Maybrit Illner, ed., *Frauen an die Macht* (Munich: Diederichs); Heli Ihlefeld, *Auf Augenhöhe oder wie Frauen begannen, die Welt zu verändern* (Munich: Herbig, 2008), esp. ch. II.
- 488 See, e.g., Pierre Bourdieu, *Masculine Domination* (Stanford: Stanford University Press, 2001).
- 489 On the immigration of Polish mine-workers in the Ruhr Valley after 1870, see the fantastic study by Christoph Kleßmann, *Polnische Bergarbeiter im Ruhrgebiet 1870–1945: Soziale Integration und nationale Subkultur einer Minderheit in der deutschen Industriegesellschaft* (Göttingen: Vandenhoeck and Ruprecht, 1978). On the legal situation of national minorities in Germany during the nineteenth century, see Hans Henning Hahn/Peter Kunze, eds, *Nationale Minderheiten und Staatliche Minderheitenpolitik in Deutschland im 19. Jahrhundert* (Berlin: Akademie, 1999).
- 490 See, also for the following, Jürgen Habermas, 'The Postnational Constellation and the Future of Democracy' in *The Postnational Constellation: Political Essays* (Cambridge, MA: MIT Press, 2001), pp. 58–112.
- 491 See Axel Honneth, 'Redistribution as Recognition: A Response to Nancy Fraser' in Nancy Fraser/Axel Honneth, *Redistribution or Recognition: A Political-Philosophical Exchange* (London: Verso, 2003), pp. 169f.
- 492 Habermas, 'The Postnational Constellation and the Future of Democracy', p. 74.
- 493 Measured in terms of the extremely sober and sceptical concept of the public held by Bernhard Peters ('The Meaning of the Public

- Sphere' in *Public Deliberation and Public Culture: The Writings of Bernhard Peters* (Basingstoke: Palgrave Macmillan, 2008) part I, ch. 2), none of the following five conditions can be fulfilled in principle, though without them, we would not only have to abandon the entire idea that we should grasp the democratic public as a sphere of social freedom, but we would also lose any sense for misdevelopments and impingements on the public. Bernhard Peters himself concedes this at a number of points in his study.
- 494 See Michael Gurevitch/Jay G. Blumler, 'Political Communication Systems and Democratic Values', in Judith Lichtenberg, ed., *Democracy and Mass Media* (Cambridge, MA: MIT Press, 1990), pp. 451–8.
- 495 Friedrich Pollock, 'Group Experiment' in Friedrich Pollock/Theodor W. Adorno, *Group Experiment and Other Writings: The Frankfurt School on Public Opinion in Postwar Germany* (Cambridge, MA: Harvard University Press, 2011), pp. 9–156.
- 496 Alongside Dewey, whose remarks I have already referred to, see Georg Lukács, *History and Class Consciousness* (Cambridge, MA: MIT Press, 1990), pp. 83–222, here: p.100.
- 497 See Jürgen Habermas, 'Civil Disobedience: Litmus Test for the Democratic Constitutional State', *Berkeley Journal of Sociology*, 30 (1985): 95–116.
- 498 On the meaning of such 'symbiotic mechanisms', see Niklas Luhmann, *Trust and Power: Two Works* (Chichester: Wiley, 1979), esp. pp. 147–9.
- 499 See again Walzer, 'Deliberation . . . and What Else?'
- 500 See the impressive chapter entitled 'Bürger und Quasi-Bürger', in Osterhammel, *Die Verwandlung der Welt*, pp. 1079–1104.
- 501 On Sternberger's conception, see Volume X of his collected works, *Schriften* (Frankfurt/Main: Suhrkamp, 1990).
- 502 Hannah Arendt, *On Revolution* (London: Penguin, 2006).
- 503 Seyla Benhabib, 'Models of Public Space: Hannah Arendt, the Liberal Tradition and Jürgen Habermas', in Craig J. Calhoun, *Habermas and the Public Sphere*, pp. 73–98.
- 504 See the contributions in John Keane, ed., *Civil Society and the State: New European Perspectives* (London: Verso, 1988); Rainer Deppe/Helmut Dubiel/Ulrich Rödel, eds, *Demokratischer Umbruch in Osteuropa* (Frankfurt/Main: Suhrkamp, 1991).
- 505 John Keane, *Democracy and Civil Society: On the Predicaments of European Socialism, the Prospects for Democracy, and the Problem of Controlling Social and Political Power* (London: Verso, 1988).
- 506 See my remarks in Axel Honneth, *Desintegration: Bruchstücke einer soziologischen Zeitdiagnose* (Frankfurt/Main: Fischer, 1994), ch. 8, pp. 80–9.
- 507 An attempt to combine both concepts – 'civil society' and 'democratic public' – in a single, historical and systematic approach can be found in Jean Cohen and Andrew Arato, *Civil Society and Political*

- Theory (Cambridge, MA: MIT Press, 1992). This conception has lost none of its significance when it comes to clarifying the conditions of existence of democratic public spaces.
- 508 See Robert Putnam, *Bowling Alone: The Collapse and Revival of American Community* (New York: Simon and Schuster, 2000); Robert N. Bellah, *Habits of the Heart: Individualism and Commitment in American Life* (Berkeley: University of California Press, 2007).
- 509 See the sobering account given by Jürgen Habermas in the preface to the 1990 German edition of *Structural Transformation of the Public Sphere* [*Strukturwandel der Öffentlichkeit*] (Frankfurt/Main: Suhrkamp, 1990), pp. 11–50, here: p. 48]. Peters is even more sceptical in ‘The Meaning of the Public Sphere’.
- 510 For the case of Germany, see the data on club membership in Wolfgang Vortkamp, *Integration durch Teilhabe: Das zivilgesellschaftliche Potenzial von Vereinen* (Frankfurt/Main: Campus, 2008), esp. ch. 4.
- 511 For the case of television, see Pierre Bourdieu, *On Television* (New York: New Press, 1998); for the case of the USA, see Hal Himmelford, *Television Myth and the American Mind* (Westport: Praeger, 1994), 2<sup>nd</sup> edition, esp. ch. 7 with reference to television news. See also Patrick Rössler, *Agenda-Setting: Theoretische Annahmen und empirische Evidenzen einer Medienwirkungshypothese* (Opladen: Westdeutscher Verlag, 1997).
- 512 Precisely because of this need to be sceptical, it is especially unfortunate that Bernhard Peters was never able to finish his ambitious, systematic study of ‘the public sphere’. More than any other theorist, Peters sought to avoid any alarmist or normatively idealizing tendencies in order to give a description of the current state of the democratic sphere that was as realistic as possible. For an account of Peters’ intended study, see Hartmut Weßler/Lutz Wingert, ‘Study of the Public Sphere: Bernhard Peters’ Interest and Contribution’ in Peters, *Public Deliberation and Public Culture*, Introduction.
- 513 Cass R. Sunstein makes a strong case for the public control of the mass media with reference to television in ‘Television and the Public Interest’, *California Law Review*, 88 (2), (2000): 501–64.
- 514 See Jürgen Habermas, ‘Medien, Märkte und Konsumenten – Die seriöse Presse als Rückgrat der politischen Öffentlichkeit’ in *Ach, Europa: Kleine politische Schriften XI* (Frankfurt/Main: Suhrkamp, 2008), pp. 131–137.
- 515 Horkheimer/Adorno, *Dialectic of Enlightenment*, pp. 94–136.
- 516 See the analyses in Gian Enrico Rusconi/Thomas Schlemmer/Hans Woller, eds, *Berlusconi an der Macht*. A more journalistic, but useful report can be found in Birgit Schönau, *Circus Italia: Aus dem Inneren der Unterhaltungsdemokratie* (Berlin: Berlin Verlag, 2011).
- 517 See Benjamin Page, *Who Deliberates? Mass Media in Modern Democracy* (Chicago: 1996).

- 518 See the observations made by Bernard Peters, 'National and Transnational Public Spheres' in *Public Deliberation and Public Culture*, part III, ch. 7.
- 519 See the list of publications published at the end of Dave Eggers' last researched novel *Zeitoun* (San Francisco: McSweeney, 2009), pp. 363ff.
- 520 For a good survey, see Stefan Münker, *Emergenz digitaler Öffentlichkeiten* (Frankfurt/Main: Suhrkamp, 2009).
- 521 On this first thesis, see Anthony G. Wilhelm, *Democracy in the Digital Age* (London: Routledge, 2000); on the second thesis, see Lawrence K. Grossman, *The Electronic Republic* (New York: Viking Penguin, 1995); and on the 'digital divide', see Pippa Norris, *Digital Divide* (Cambridge/New York: Cambridge University Press, 2001); Heinz Bonfadelli, 'The Internet and Knowledge Gaps: A Theoretical and Empirical Investigation', *European Journal of Communication*, 17 (1), (2002): 65–84. A very good overview of this widespread discussion can be found in Martin Emmer/Gerhard Vowe, 'Mobilisierung durch das Internet: Ergebnisse einer empirischen Längsschnittuntersuchung zum Einfluss des Internets auf die politische Kommunikation der Bürger', *Politische Vierteljahresschrift*, 45 (2), (2004): 191–212. The empirical results presented by the two authors point towards a 'virtuous circle' in which an already existing willingness for political participation is reinforced by the use of the internet (p. 207f.).
- 522 See Peters, 'National and Transnational Publics'.
- 523 Paul Dumouchel analyses this growing gap between deterritorialisated publics and nationally excluded minorities in terms of a theory of justice rather than a sociology of the media: *Le sacrifice inutile: Essai sur la violence politique* (Paris: Éditions Flammarion, 2011,) ch. 6.
- 524 See Habermas, *Between Facts and Norms*, pp. 168–93.
- 525 Dewey, *The Public and its Problems*, pp. 37, 47.
- 526 Durkheim, *Physik der Sitten und des Rechts*, lecture no. 5, esp. pp. 89.
- 527 Habermas, *Between Facts and Norms*, pp. 168–93.
- 528 See Durkheim, *Physik der Sitten und des Rechts*, pp. 135–9.
- 529 Dewey, *The Public and Its Problems*, pp. 179ff.
- 530 This is true of all his writings from *Legitimation Crisis* (Boston: Beacon Press, 1975) to *Between Facts and Norms*, pp. 427–46.
- 531 See the astounding formulations in Reinhard, *Geschichte der Staatsgewalt*, p. 29.
- 532 I use the term 'class selectiveness' developed by Claus Offe forty years ago to describe state action in order to make this concept fruitful for the normative reconstruction of the constitutional state. See 'Structural Problems of the Capitalist State: Class Rule and the Political System. On the Selectiveness of Political Institutions' in Klaus v.

- Beyme, ed., *German Political Studies*, vol. 1 (London: Sage, 1974), pp. 31–57. Also helpful in this regard is the essay by Peters, 'Law, State and the Political Public Sphere' in *Public Deliberation and Public Culture*, part I, ch. 1.
- 533 See the instructive overview by Alf Lüdtke: 'Genesis und Durchsetzung des "modernen Staates": Zur Analyse von Herrschaft und Verwaltung', *Archiv für Sozialgeschichte*, 20 (1980): 470–91. On the use of colonial force by constitutional states, see Susanne Kuß, *Deutsches Militär auf kolonialen Kriegsschauplätzen: Eskalation von Gewalt zu Beginn des 20. Jahrhunderts* (Berlin: Links, 2010).
- 534 See Michael Foucault, *Discipline and Punish: The Birth of the Prison* (London/New York: Vintage, 1995); see my critique in *The Critique of Power: Reflective Stages in a Critical Social Theory* (Cambridge, MA: MIT Press, 1991), ch. 6. On 'realist historiography', see, e.g., Reinhard, *Geschichte der Staatsgewalt*, ch. V.
- 535 Karl Marx/Friedrich Engels, *The German Ideology*, p. 53.
- 536 On the varying historical development of constitutions in Western Europe, see Reinhard, *Geschichte der Staatsgewalt*, pp. 410–26.
- 537 Reinhard, pp. 413, 432.
- 538 An illustrative survey of the case of Germany can be found in Jürgen Kocka, 'Zivilgesellschaft in historischer Perspektive' in *Arbeiten an der Geschichte: Gesellschaftlicher Wandel im 19. Und 20. Jahrhundert* (Göttingen: Vandenhoeck and Ruprecht, 2011), pp. 191–202; on the overall issue, see Nancy Bermeo/Philip Nord, eds, *Civil Society Before Democracy: Lessons from the Nineteenth Century* (Lanham: Rowman and Littlefield, 2000).
- 539 See Alf Lüdtke, 'The Role of State Violence in the Period of Transition to Industrial Capitalism: The Example of Prussia from 1815–1848', *Social History*, 4 (2), (1979): 169ff. A marvellous introduction to the literature on this topic can be found in Lüdtke, 'Genesis und Durchsetzung des "modernen Staates"'.
- 540 The key author of this doctrine was Benjamin Constant, 'Principles of Politics Applicable to All Governments' in *Constant: Political Writings* (Cambridge: Cambridge University Press, 1988), pp. 170–305, ch. 2.
- 541 On the various paths of development in these different countries, see Reinhard, *Geschichte der Staatsgewalt*, ch. V.1.
- 542 Reinhard, pp. 426–31.
- 543 Marx was already aware of the historical significance of the uprisings in Paris: 'The Civil War in France' in *Marx's Political Writings*, Vol. 3 (London: Verso, 2010); see also Pjotr L. Lawrow, *Die Pariser Kommune vom 18. März 1871: Geschehnisse – Einfluß – Lehren* (Münster: Unrast, 2001).
- 544 For the case of Germany, see Tennstedt, *Vom Proleten zum Industriearbeiter*, esp. part D; for France, see Castel, *From Manual Workers to Wage Labourers*, esp. ch. 5.

- 545 See Jürgen Kocka, 'Nation und Gesellschaft in Deutschland 1870 bis 1945' in *Arbeiten an der Geschichte*, pp. 241–55, esp. pp. 243f. On the development of the political system in the German Empire, see Hans-Ulrich Wehler, *Das deutsche Kaiserreich 1871–1918* (Göttingen: Vandenhoeck and Ruprecht, 1973).
- 546 See Dennis Sherman, 'Governmental Responses to Economic Modernization in Mid-Nineteenth Century France, *Journal of European Economic History*, 6 (1977/8): 717–36; on the overall topic, see Polanyi, *The Great Transformation*, pp. 135–50.
- 547 Hans-Jürgen Puhle, 'Vom Wohlfahrtsausschuss zum Wohlfahrtsstaat' in Gerhard A. Ritter, ed., *Vom Wohlfahrtsausschuß zum Wohlfahrtsstaat: Der Staat in der modernen Industriegesellschaft* (Cologne: Markus, 1973), pp. 29–68.
- 548 See Wolfgang Schluchter, *Aspekte bürokratischer Herrschaft* (Munich: List, 1972).
- 549 Habermas, *Between Facts and Norms*, p. 186.
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# Index

- absolute monarchy
  - and the democratic constitutional state 308
- adolescents
  - and family life 167, 170
  - and legal freedom 94
  - and moral freedom 103
- Adorno, Theodor W. 211, 273, 277
- advertising
  - and consumption 201, 206, 207, 216, 219
  - and the democratic public sphere 281, 285, 291, 299
- alcohol, consumption of 202, 209
- Algeria 323
- antiquity
  - friendship in 135, 136, 138, 139
  - intimate relationships in 142
- apathy
  - and the democratic public sphere 278, 292
- Apel, Karl-Otto 35, 42, 43
- Arendt, Hannah 39, 211, 264
  - on the democratic public sphere 264, 280, 281, 282, 283–4, 293–4
  - The Human Condition* 281
- Aristotle 29, 48
  - on friendship 136, 138, 139
- assembly, right of 260
- associations
  - and the democratic constitutional state 323–4
  - and the democratic public sphere 257, 260, 261, 294–5, 296
  - self-help organizations and the labour market 225, 227, 230–1, 232
- Austria 265, 322, 324
  - labour market 229
- authenticity
  - and consumption 199
  - and reflexive freedom 36, 39–40
- autonomous/hereronymous acts
  - and reflexive freedom 30–1
- autonomy *see* collective autonomy; individual autonomy; private autonomy
- Bahl, Friederike 248
- Balzac, Honoré de 201
- Belgium 310, 314
- Bell, Daniel 242
- Benhabib, Seyla 294
- Benjamin, Walter 270
- Berlin, Isaiah
  - and positive freedom 21, 29–30

- Bertram, Hans 162  
 Bismarck, Count Otto von 229  
 Bourdieu, Pierre 200, 286  
 Brecht, Berthold 208  
 Brentano, Lujo 234  
 Briefs, Geotz 234, 236  
 Britain  
   consumption 199, 204–5  
   and the democratic constitutional state 308, 310, 320, 322, 323, 324  
   and the democratic public sphere 265, 268, 280–1, 282  
   labour market 224, 225, 228, 229  
   the market economy and Neo-Hegelians 185  
   parliament 258  
   radio broadcasting 270  
   voting rights 259  
 bureaucracies  
   and the democratic constitutional state 308, 311, 312, 313, 314  
 capitalism  
   and the democratic constitutional state 321–2, 324–5, 326  
   and democratic will-formation 254, 331  
   development of the capitalist economic system 176–80, 198–9  
   joint stock companies 232–3  
   and labour market deregulation 245  
   Marx and social freedom 51  
   organized 233, 238–9, 240, 243, 244  
   and property rights 74  
   and social freedom 124  
   varieties of 203  
   *see also* consumption; labour market; market economies  
 Castel, Robert 224, 226, 230, 243, 244  
 categorical imperative in Kant  
   and moral freedom 98, 100–1, 110–11  
   and reflexive freedom 32–3  
 Chekhov, Anton 92  
 children  
   care of elderly parents by 165, 171–2  
   and consumerism 219  
   and divorce 160–2  
   and family life 145, 155, 157–8, 159, 164, 165–6, 169, 170–1, 175  
   and legal freedom 94  
   and moral freedom 100, 102–3  
   and reflexive freedom 30, 34–5  
   socialization of 155, 173, 174, 175  
 China 302, 317  
 ‘civic morals’, Durkheim’s lectures on 266–70  
 civil disobedience 292  
 civil liberties 257  
 civil rights  
   and the democratic constitutional state 319, 328  
   and the democratic public sphere 265, 267, 281, 285, 288  
 civil service 312  
 civil society  
   and the democratic constitutional state 310, 319  
   and the democratic public sphere 261, 294–6  
   Hegel on ‘corporations’ in 9–10  
   and property rights 74  
 class  
   the bourgeois family 156–7, 175  
   and consumption 200–2, 206–7, 212  
   and the democratic constitutional state 309–10, 312–13, 317, 319  
   and the democratic public sphere 256–7, 258, 303–4, 318–19  
   Habermas and the bourgeois public sphere 283–4  
   and the media 264, 282, 286–7, 298–300  
   and intimate relationships 143  
   and the labour market 226  
   deregulation 248–9  
   equality of opportunity 239–40

- class (cont.)
  - salaried workers 235, 237–8, 242–3, 244
  - wage labourers 223–5, 227, 228–9, 230, 233, 244
  - worker elite 236
  - and personal relationships 132
  - friendships 137, 141
- classical theories of justice 4
- clubs *see* associations
- collective autonomy
  - and legal freedom 72, 79–80
- collective resistance
  - and the labour movement 230–2, 248
- collective self-realization
  - and reflexive freedom 38–9
- collective struggles for freedom 335
- communications technology
  - and legal freedom 77–8
  - and the media 262, 263–4, 270–1
  - the internet 291, 300–3
- communicative action
  - and legal freedom 83–4, 88, 90
  - and social freedom 66
- communicative spaces
  - and the democratic public sphere 255, 262–3, 275–6, 289–90, 299–300, 334
- companies, joint-stock 232–3, 239
- conflicts
  - and family life 156
  - and legal freedom 88, 89, 90–2
  - and moral freedom 103, 105, 107–8, 109–12
  - pathologies of 115
  - workplace 248
- conscience
  - and moral freedom 106–7
- constitutional patriotism 267–8, 288, 293, 328, 335
- consumption 177, 198–223, 330
  - and advertising 201, 206, 207, 216, 219
  - anti-consumerism 207–9, 210, 211–12, 214–15, 217–18
  - boundaries of socially acceptable 202–3
  - companies and consumers 212–13
  - conspicuous 200–1, 218, 219
  - consumer cooperatives 203, 208, 209–10, 211, 217, 219, 222
  - consumer protection 204–6, 210–11, 213–14, 219, 220
  - and the democratic public sphere 280, 281
  - and environmental awareness 215–16, 220–1
  - Hegel on 199–200, 203–4, 205, 206, 218
  - and human body functions 221
  - and the labour market 241
  - and the market economy 208–9
  - moralization of 216–18, 220
  - nineteenth-century growth of 200–5
  - and post-war economic growth 212, 214
  - pro-materialists 217–18
  - and the Protestant work ethic 199
  - and social freedom 207, 218–19
  - and social protest 201–2, 209
  - taxes 221
- cooperation
  - consumer cooperatives 203, 208, 209–10, 211, 217, 219, 222
  - and social freedom 50–1
- corporations
  - Hegel on ethical life and 9–10
- cultural hegemony
  - and the democratic public sphere 292–3
- cultural integration
  - and the democratic public sphere 297
  - and ethical norms 10
- culture industry 277, 298
- Dahrendorf, Ralf 246–7
- de-politicization
  - and the democratic public sphere 278

- democratic constitutional states
  - 304–28, 331, 334
  - and bureaucracies 308, 311, 312, 313, 314
  - and capitalism 321–2, 324–5, 326
  - and the democratic public sphere 307–8
  - division of powers in 305, 308–9, 313, 314
  - and the European Union 327–8
  - and extra-parliamentary interest representation 323–4
  - failure of European 320–2
  - and group psychology 315–16
  - interpretive model of 304–6
  - Kelsen's critique of 216–17, 315
  - and the League of Nations 317–18
  - legal systems 312
  - legitimacy of 305, 306–8, 317–18
  - and neutrality of state action 318–20
  - and social freedom 304–6, 308, 326, 328
- democratic ethical life 63–7, 330–1
  - and consumption 220
  - and democratic will-formation 253–4
  - and friendship 141
  - and intimate relationships 154
  - and legal freedom 72
- democratic public sphere 255–304
  - bourgeois/literary predecessors 255–7
  - and civil society 261
  - cognitive role of the 268–9
  - and communicative spaces 255, 262–3, 275–6, 289–90, 299–300, 334
  - and consumerism 280, 281
  - and democratic constitutional states 307–8
  - and nationalism 265–6
  - and political rights 258–60, 261, 262
  - proletarian 257–8
  - and the rule of law 254
  - and social freedom 254–5, 261, 262, 269–70, 274, 277–8, 280, 283, 284, 290–3, 303–4, 331–2
  - and social inclusion/exclusion 255, 256–7
  - will-formation 329–30, 332–3
  - see also* media and the democratic public sphere
- democratic societies
  - and family life 173–6
- democratic will-formation
  - and the future of political culture 329–35
  - see also* democratic constitutional state; democratic public sphere
- desires
  - and negative freedom 22, 28
  - and reflexive freedom 43
  - and social freedom 44–5, 48, 49
- Dewey, John 98, 117
  - and the democratic constitutional state 304, 305, 306
  - on the democratic public sphere 268, 269–70, 271–5, 276–8, 280, 283, 284, 291, 292, 297
- Dialectic of Enlightenment* (Horkheimer and Adorno) 211, 298
- dictatorships 294, 321, 322
- dignity
  - and moral autonomy 99, 100
- discourse theory
  - of reflexive freedom 40–1
  - and social freedom 42–3
- discursive exchange
  - and the democratic public sphere 260, 262, 291–2
- disputes
  - and legal freedom 88
- divorce
  - and family life 160–2, 163, 167–8
  - and intimate relationships 153
- Dodson, Lisa 246
- Dreyfus affair 264–5, 266, 278

- Durkheim, Émile  
 and the democratic constitutional state 304, 305–6  
 and the democratic public sphere 271, 272, 288, 292, 293  
*The Division of Labour in Society* 181–4  
 on equality of opportunity 242  
 on the labour market 229, 231, 233, 239, 246  
 lectures on 'civic morals' 266–70  
 and market economies 181–4, 185, 186, 187, 188, 189, 190, 192–5, 196–7  
 social analysis and theories of justice 6–7, 64  
 sociology of the family 174
- Eastern Europe  
 and the democratic public sphere 295, 296
- economic crisis  
 and consumer protection 204, 205
- economic globalization  
 and consumption 206  
 and market economies 198
- education  
 and the labour market 241–2  
 and the labour movement 230  
 and working-class children 239–40
- Eggers, Dave 300
- Egypt 302
- Elias, Norbert 95
- empirical facticity 128
- employment patterns  
 and labour market deregulation 245–6
- Engels, F. 308
- England *see* Britain
- English Civil War  
 and Hobbes's concept of negative freedom 22
- environmental awareness  
 and consumption 215–16, 220–1
- equality of opportunity  
 and individual freedom 16–17  
 and the labour market 229, 239–40, 241–2, 249, 250, 252–3  
 and market economies 197, 198  
 and reflexive freedom 37
- ethical life  
 Hegel and social freedom 57–62  
 social analysis and theories of justice 7–8, 9–10  
*see also* democratic ethical life
- ethical pluralism 77
- ethical reflection 84
- ethical reservations about consumption 209
- ethical spheres 125–9  
 and the future of political culture 329–35  
*see also* democratic ethical life; market economies; personal relationships; political public sphere
- ethical values  
 and theories of justice 3–4
- ethnicity  
 and friendship 141
- Etzioni, Amitai 189, 190
- European Parliament 216, 327
- European Union 284, 327–8  
 and European integration 333–4
- existentialism  
 and negative freedom 23–4
- families 154–76  
 care of elderly parents 165  
 changing family structures 134, 154–8  
 complementarity relationships in 168–9  
 and democratic societies and family life 173–6  
 and democratic will-formation 330–1, 333  
 division of labour within 155–6, 157, 165



- and divorce 160–2, 163
- emotional relationships in 163
- gender roles in 155–6, 157, 159–60, 163–4
- government policies on 172–4
- grandparents/grandchildren 154, 162–3, 173
- increasing strength of 167–8
- and intimate relationships 142, 145
- legal freedom and family life 90–1, 94
- legal regulation of 133
- mirroring in 169–70
- and moral freedom 166–7
- multi-locational cross-generational 162–3
- patchwork families 161–2
- postmodern 164–5
- and social freedom 168–72
- triadic structure of 154–5, 161, 163, 164, 168, 174–5
- Ferguson, Adam 136
- Feuerbach, Ludwig 132
- Fichte, J.G. 52, 150
- film
  - and the democratic public sphere 277, 291
- financial crises
  - and the democratic constitutional state 324–5
- financial markets
  - deregulation of 245
- food
  - and consumption 201–2, 207, 209, 213, 219
- Forst, Rainer 98
- Foucault, Michel 308
- Fourastié, Jean 242
- France
  - consumerism 204–5, 214
  - and the democratic constitutional state 308, 309, 309–10, 314, 320, 322, 323
  - and the democratic public sphere 265, 266, 268, 280–1, 282
  - Dreyfus affair 264–5, 266, 278
  - July Revolution 310
  - labour market 224, 225, 228, 229, 240
  - Paris Commune (1871) 310, 334
  - radio broadcasting 270
  - syndicalist movement 185
- France Télécom* 247
- Franco, General Francisco 279, 334
- Franco-Prussian War 264
- Frankfurt, Harry 36
- French Revolution 16, 334
  - and the democratic constitutional state 304, 306, 312–13
  - and the democratic public sphere 257–8, 258–9, 262, 267
  - and the labour market 224
- Freud, Sigmund 34, 35
  - ‘Group Psychology and the Analysis of the Ego’ 315–16, 317
- friendship 132, 134–41
  - institutional transformation of 134–8
  - and intimate relationships 147, 150, 152
  - male friendships 135–6, 137–8
  - and market economies 180
  - modern 138–41
  - resilience of 141
  - role obligations of 133, 138, 139, 140
  - same-sex 133, 137
  - and social freedom 44, 139–41
  - and socialization theory 139
  - and working life 140–1
- Gehlen, Arnold
  - on social freedom 51–4
- gender
  - and the democratic constitutional state 309, 310
  - and the democratic public sphere 256–7, 284–5, 286, 287–8, 293
  - gender roles in personal relationships 133

- gender (cont.)
  - families 155–6, 157, 159–60, 163–4
  - friendships 135–6, 137–8
  - marriage 143–4
  - see also* men; women
- German Idealism
  - and organized capitalism 238–9
  - and reflexive freedom 31
  - and social freedom 52
- Germany
  - consumerism 204–5, 208, 211, 214, 219
  - and the democratic constitutional state 307, 308, 310, 311, 314, 318, 320–1, 322, 324
  - and the democratic public sphere 262, 265, 266, 268, 299
  - development of the capitalist economy 180
  - family life 162
  - German Empire 311, 314, 320
  - labour market 224, 228, 229, 240
    - salaried workers 237
  - and moral autonomy 99
  - nationalism 266
  - radio broadcasting 270
  - social welfare policies 229, 230, 311
  - the state and legal freedom 77–8
  - terrorism and moral freedom 119–20
  - voting rights 259
  - Weimar Republic 239, 278, 318, 320, 322, 326, 327
  - see also* Nazi Germany; West Germany
- Geuss, Raymond 30
- globalization
  - and consumption 206
  - and the democratic constitutional state 327
  - and labour market deregulation 245, 251
  - and market economies 198
- Goethe, Johann von 169
- golden rule
  - Kant and moral freedom 97
- Grotius, Hugo 17
- group psychology
  - and democratic constitutional states 315–16
- guilds, medieval 224
- Habermas, Jürgen 3, 35, 64, 280, 282
  - communicative discourse model 42, 43
  - and the democratic constitutional state 305, 306, 326
  - on the democratic public sphere 280, 281, 282, 283–4, 285, 286, 290, 293–5
  - moral autonomy in 96, 102–3
  - The Structural Transformation of the Public Sphere* 281, 284
  - theory of law 5
- Hegel, Georg
  - British Neo-Hegelianism 2
  - concept of social freedom 43–50, 51, 52, 53, 54, 124
    - and ethical spheres 126
    - and justice 54–62
  - on consumption 199–200, 203–4, 205, 206, 218
  - and the democratic constitutional state 304
  - dialectical concept of Spirit 3
  - and ethical life 7–8, 63–4, 72, 253–4
  - on the labour market 223, 225, 226, 233, 235, 246, 247
  - and legal freedom 72, 73, 74–6, 81–2
  - and market economies 178–9, 180, 181–4, 185, 186, 187, 189, 190, 191, 192–3, 194, 196–7
  - and moral freedom 111
  - and personal relationships 132, 136, 144
  - families 156, 157, 158, 168, 169, 171, 172

- Phenomenology of Spirit* 49–50  
 Right Hegelians and Left Hegelians 1  
 social analysis and the theory of justice 1, 2–3, 4–10  
 and social pathologies 87  
*see also Philosophy of Right* (Hegel)  
 Heimann, Eduard 234, 236  
 Herder, Johann Gottfried  
     *On the Cognition and the Sensation of the Human Soul* 33–4  
     and self-realization 35–6  
     and social freedom 54  
 heterogeneous societies, ethical values in 4  
 heteronymous/autonomous acts and reflexive freedom 30–1  
 Hilferding, Rudolf 238–9  
 Hirsch, Fred 189, 190  
 historical symbols 335  
 Hitler, Adolf 321, 322  
 Hobbes, Thomas 17, 54, 60  
     *Leviathan* 21  
     on negative freedom 21–3, 24–6, 27  
 Hochschild, Arlie 152  
 homosexual relationships 134, 142, 144, 145, 146, 153  
     legal regulation of 149–50  
 Horkheimer, Max 211, 273, 277  
 housing  
     and consumption 201, 209, 213  
 Hugo, Victor  
     *Les Misérables* 226  
 human dignity  
     and moral autonomy 99, 100  
 human organ transplantation 221  
 human rights  
     and the democratic public sphere 300  
     Universal Declaration of 279–80, 322–3  
 Humboldt, Wilhelm von 38  
 Hume, David 136  
 Hungary 265, 314  
 Hutcheson, Francis 136  
 immigration  
     and the democratic public sphere 284, 285, 286, 288–9  
 impartiality  
     and moral freedom 109–10, 116  
 individual autonomy 15–19  
     and family life 165–6  
     and justice 16–19, 61  
     and moral freedom 96, 114–18  
     and pathologies of moral freedom 114–18  
     and reflexive freedom 30, 32–5, 37, 40, 43  
     and social freedom 62  
     *see also* private autonomy; self-determination  
 individual behaviour  
     and social pathologies 87  
 individual freedom 71–120, 123–5, 334  
     and consumption 199–200  
     and democratic ethical life 64–5, 66  
     and the democratic public sphere 255  
     and Hegel's philosophy of Right 2  
     justice and social freedom 60–1, 62  
     and market economies 176, 180, 182–3  
     and spheres of action 125–9  
     *see also* legal freedom; moral freedom  
 individual rights *see* subjective rights  
 individual self-restriction  
     and ethical spheres 126  
 individual subjects  
     and legal freedom 83–4  
 individualization  
     and friendship 140–1  
     and intimate relationships 144–5  
     and negative freedom 23, 25  
     and social freedom 60, 62  
 individualized resistance  
     and the labour market 247–8  
 institutional spheres *see* ethical spheres

- institutional structures
  - and social freedom 52–4, 58–9, 61, 65
  - and theories of justice 2–3, 7, 8, 10, 67
- internet
  - and the democratic public sphere 291, 300–3
  - and legal freedom 77–8
- intersubjective freedom 35, 65, 66, 123
  - in families 171, 172
  - and intimate relationships 144, 146–7
  - and justice 61
  - and market economies 176
  - and moral freedom 114, 115, 124–5
  - and relational institutions/ethical spheres 126–7, 129
  - and social freedom 52, 53, 60
- intimate relationships 141–54
  - democratization of 144–5
  - and family life 155
  - homosexual 134, 142, 144, 145, 146, 149–50, 153
  - social freedom in 150–4
  - transformation in cultural attitudes to 141–4
  - and work 152, 153–4
  - see also* love; marriage; sexual relationships
- Iran 302
- Italy
  - and the democratic public sphere 262, 265, 298
  - and the League of Nations 317
- James, Henry
  - Daisy Miller* 116–17
  - The Turn of the Screw* 117
- James, William 117
- Japan 317
- Jews and anti-Semitism 264–5, 266, 278
- joint-stock companies 232–3, 239
- journals
  - and the democratic public sphere 263–4, 270, 271, 274, 291
- judicial arbitration
  - and legal freedom 90–2
- judiciary
  - and the democratic constitutional state 312, 314
- justice
  - and democratic ethical life 63–7
  - and individual freedom 16–19
  - and legal freedom 71
  - and negative freedom 25–6, 27–8, 38, 54, 61
  - and reflexive freedom 37–40, 55, 61
  - social analysis and theories of 1–11, 63–4
  - and social freedom 54–62
  - see also* social justice
- Kant, Immanuel 54, 60, 335
  - and the democratic public sphere 268
  - and friendship 136
  - Kantian theories of justice 1, 3, 5, 55, 56
  - moral autonomy in 32–3, 34–5, 37, 96, 97–101, 103–4, 106–7, 108–9, 110–11, 117
  - principle of universality 32
  - on reflexive freedom 31–3, 34–5, 37
- Kelsen, Hans 315, 316–17
- Kennedy, John F. 213, 214
- Kierkegaard, S. 132
- Kleist, Heinrich von
  - 'Michael Kohlhaas' 87, 88–9
- Korsgaard, Christine 96, 100–2, 103
- Kramer vs. Kramer* 90–1
- Kunkel, Benjamin
  - Indecision* 93
- labour market 223–53, 330
  - and capitalist property relations 232–3

- and consumption 241
- and the democratic public sphere 257
- and democratic will-formation 333
- deregulation 244–9
- and equality of opportunity 229, 239–40, 241–2, 249, 250, 252–3
- and freedom of contract 228–9
- and guilds 224
- and immigration 288
- and the individualization of responsibility 248–53
- and individualized resistance 247–8
- and industrialization 224, 233
- labour laws 225
- and the market economy 179, 187–8, 189, 194, 225
- Marx and the labour theory of value 195
- and pauperism 226–7
- proto-industrial 225
- as a relational institution 231–2
- and the right to work 227–8
- segmentation 243–4
- service sector employment 242–3, 247–8
- and social freedom 229–30, 231–2, 237, 240–1, 250, 252, 252–3
- Taylorism and the mechanization of labour 234–6
- and the welfare state 229–30, 238
- and women 159, 160, 284–5
- see also* wage labourers
- labour movement
  - and co-determination 238, 239–40, 244–5, 249, 250
  - and consumption 210, 216
  - and the democratic constitutional state 310, 313, 320
  - and the democratic public sphere 263, 287, 299
  - development of organized 227–32
  - and the ‘humanization’ of work 236–7, 249
  - see also* trade unions
- League of Nations 317–18
- legal freedom 71–94, 123–5, 329
  - and communications technology 77–8
  - and consumer protection 213
  - and the democratic constitutional state 328
  - limitations of 81–6
  - and market economies 178–9, 180–1, 193–4
  - and moral freedom 95–6, 112–13, 114
  - and negative freedom 73
  - pathologies of 84, 86–94, 128
  - and property rights 73–6, 79
  - and social freedom 58
  - and the state 71–2, 77–8
  - see also* subjective rights
- legal personalities 82–3, 85
- Leibniz, F. 31
- Lewis, Sinclair 208
- liberal rights 79–80
  - and the democratic public sphere 259, 260
  - limitations of 86
  - and social rights 78–9, 81
- liberal-democratic societies
  - and families 173–6
  - and legal freedom 79–80, 89–90
  - and market economies 190–1, 197–8
- libertarianism
  - Nozick and negative freedom 23
- life expectancy
  - and family life 162, 165, 172, 173
- Lippmann, Walter 271
- literature
  - moralism and moral freedom 116–17
- lobbyism
  - and the democratic constitutional state 325
- Locke, John 17, 60
  - and negative freedom 23, 24–5
  - theory of justice 1

- love 132, 136  
 and family life 155, 161, 162–3, 164, 167, 168  
 reciprocity in 146–7, 150–1, 160  
 and social freedom 44, 45–6, 124, 150–1, 154  
 transformation in cultural attitudes to 141–3  
*see also* intimate relationships
- Luhmann, Niklas 3, 152
- Lukács, G. 87
- MacIntyre, Alasdair 2
- market economies 127, 131, 176–253, 329  
 and the ‘Adam Smith’ problem 177, 180, 181, 182, 185  
 and democratic will-formation 330–1  
 development of the capitalist economic system 176–80, 198–9  
 and economic globalization 198  
 and the individualization of responsibility 248–53  
 and legal freedom 178–9, 180–1, 194  
 and the ‘Marx’ problem 180–1, 182, 190, 194–7  
 and morality 178–98  
 and negative freedom 177, 191, 193–4, 195  
 neoliberal reforms 176  
 Parsons on 185–6, 187–9, 191  
 and planned economies 184–5  
 Polanyi’s historical analyses of 178, 185–7, 189, 191  
 and social freedom 176, 177, 192, 198  
*see also* consumption; labour market
- marriage  
 changes in institutional structures of 134, 142–4  
 and economic advantage/social alliances 132  
 and family life 155, 156–7, 160, 162, 168  
 gender roles in 143–4  
 legal regulation of 133, 148–50  
 and romantic love 142–3  
 and self-realization 132  
 and social security systems 172–3
- Marshall, Thomas 258, 259
- Marx, Karl  
*Das Kapital (Capital)* 51, 232  
 and the democratic constitutional state 308, 319  
 and legal freedom 74  
 and market economies 180–1, 182, 190, 194–7  
 social analysis and theories of justice 3, 4, 6  
 and social freedom 49–51, 52, 54–5  
 on wage labour 224
- Mead, G.H. 35
- media  
 government control of 298  
 media and the democratic public sphere 281–3, 285–7, 291, 295–302, 300–3  
 and class 298–300  
 communications technology 262, 263–4, 270–1  
 Dewey on 272–4, 275, 276–7, 283, 291  
 film 277, 291  
 internet 291, 300–3  
 print media 263–4, 270, 271, 272–3, 282–3, 290–1  
 and social problems 290–1  
 television 282, 285–6  
*see also* journals; newspapers
- Meinhof, Ulrike 119–20
- men  
 and the democratic constitutional state 309, 310  
 and the democratic public sphere 256, 261, 293  
 fathers and families 156, 157, 159–60, 161, 162, 164, 165  
 male friendships 135–6, 137–8

- Michels, Robert 325
- Middle Ages  
     families 155  
     friendships 135  
     intimate relationships 142  
     labour market 223–4
- Mill, John Stuart  
     and the democratic public sphere 268  
     and legal freedom 76  
     and negative freedom 23  
     and subjective self-realization 38
- Miller, David 2
- minority cultures  
     and the democratic public sphere 289  
     and ethical values 4  
     and legal freedom 86  
     sexual minorities 144–5, 289
- modernity  
     conceptions of freedom in 123  
     and consumption 199  
     Habermas and moral freedom 102  
     and Hegel's ethical life 62  
     and individual freedom 64–5  
     and intimate relationships 143  
     justice and individual autonomy 17–18, 19  
     and market economies 177  
     and self-realization 35–6, 56–7
- monarchy  
     and the democratic constitutional state 308–9, 309–10, 311, 314
- moral bias/compass  
     and democratic will-formation 332, 333
- moral economism  
     and consumption 204, 205, 208, 222  
     and market economies 178–98
- moral freedom 95–120, 123–5  
     and the democratic constitutional state 328  
     and family life 166–7  
     in Habermas 96, 102–3  
     in Kant 32–3, 34–5, 37, 96, 97–101, 103–4, 106–7, 108–9, 110–11, 117  
     in Korsgaard 96, 100–2, 103  
     limitations of 104–13  
     and moral respect 106–7  
     pathologies of 96, 113–20, 128
- moral universalism  
     and the democratic public sphere 267
- moralism, pathology of 116–18
- moralization of consumption 216–17, 218
- multiculturalism 289
- mutual recognition  
     and consumption 208  
     and the democratic public sphere 261  
     and Hegel's conception of freedom 44–7, 48–9, 50, 53, 58  
     and legal freedom 81–3, 124–5  
     and market economies 176  
     and moral freedom 96, 105, 107, 124–5  
     and spheres of action 128
- nation-states  
     and the democratic constitutional state 313, 322–3  
     and the democratic public sphere 259, 260, 261, 262, 263, 264, 265–6, 267, 274, 283, 290  
     and the internet 301, 302, 303
- nationalism  
     and the political public sphere 265–6, 267, 271, 278, 288, 332–3
- natural law  
     and individual freedom 17, 33
- natural liberty  
     Hobbes on negative freedom and 22
- Nazi Germany 278–9, 282, 307, 308, 321  
     anti-Semitism 265, 278



- Nazi Germany (cont.)
  - radio broadcasting and propaganda 271, 278
- negative freedom 21, 21–8, 29, 65, 66, 123
  - in Hobbes 21–2, 24–6, 27
  - and justice 25–6, 27–8, 38, 54, 61
  - and legal freedom 73, 76
  - and market economies 177, 191, 193–4, 195
  - in Nozick 23, 24–5, 28
  - and reflexive freedom 28, 29, 30, 37, 40
  - in Sartre 23–4, 28
  - and social freedom 43, 60, 62
- neoliberalism
  - and the labour market 243, 245
- Netherlands 310
- Neuhouser, Frederick 43
- newspapers
  - and the democratic public sphere 263–4, 270, 271, 272–3, 276–7, 282–3, 290–1, 296, 299, 301
  - the Dreyfus affair 264–5
- Nietzsche, F. 35
- normative framework of society
  - and individual autonomy 15–16
- normative idealism
  - and discourse theory 42
- normative rules
  - and intimate relationships 145–6
- normative theories of justice
  - and social analysis 1–2, 4–7
- normative validity
  - and social freedom 128
- North Africa 302
- Nozick, Robert
  - Anarchy, State, and Utopia* 24–5
  - on negative freedom 23, 24–5, 27, 28
- objective freedom *see* social freedom
- objective spirit concept
  - social analysis and theories of justice 4
  - and social freedom 54
  - and social pathologies 113
- objectivity
  - and social freedom 47–8, 52
- occupational roles
  - and market economies 188–9
- Offe, Claus 324, 332–3
- opinion, freedom of 76
- Owen, Richard 203
- Paris Commune (1871) 310, 334
- parliaments
  - and the democratic constitutional state 311, 312, 313, 319, 320, 321, 324, 325
  - and democratic will-formation 254, 258, 259
  - European Parliament 216, 327
- Parsons, Talcott 64, 125
  - and the labour market 246
  - on market economies 185–6, 187–9, 191
  - social analysis and theories of justice 3–4, 6–7
  - sociology of the family 157–8, 159, 168
- patchwork families 161–2
- pathologies *see* social pathologies
- patriotism
  - constitutional 267–8, 288, 293, 328, 335
  - and the democratic public sphere 266–8, 288, 293
- patronage
  - and the democratic constitutional state 325
- pauperism 226–7
- Peirce, C.S. 35
- personal identity
  - and moral freedom 115
- personal relationships 127, 131, 132–76
  - changes in institutional structures of 132–4
  - and the democratic public sphere 277
  - and democratic will-formation 329, 331
  - gender roles in 133

- role conflicts in 133
- and self-realization 132
- and social freedom 332
- see also* friendship; intimate relationships
- personal respect 82
- Philosophy of Right* (Hegel)
  - and the democratic constitutional state 304
  - and democratic will-formation 254
  - and ethical life 8, 9–10
  - and legal freedom 74, 87
  - and market economies 181
  - and social freedom 43, 44, 46–7, 61–2
  - ethical spheres 126
  - theories of justice in 2–3, 5–6
- Piaget, J. 34–5
- planned economies
  - and market economies 184–5
- Poland 314
- Polanyi, Karl
  - The Great Transformation*
    - and consumption 203, 204
    - and market economies 178, 185–7, 189, 191
- political culture
  - future prospects of 329–35
- political parties
  - and the democratic constitutional state 325–6
  - and the democratic public sphere 268
- political public sphere 127, 131, 253–329, 330
  - and consumption 216
  - and nationalism 265–6, 267, 271, 278, 288, 332–3
  - see also* democratic public sphere
- political rights 79, 80
  - and the democratic constitutional state 309
  - and the democratic public sphere 258–60, 261, 262, 271, 272, 275, 289–90
  - and the European Union 327–8
- Portugal 314
- positive freedom 21, 29–30
- positive rights
  - and legal freedom 74
- postmodernism
  - and individual freedom 16
- poverty
  - and consumption 201–2, 206–7, 214
  - and the labour market 223, 225, 226–7, 238
- prices
  - and consumption 201–2, 206, 208, 219
- print media
  - and the democratic public sphere 263–4, 270, 271, 272–3, 282–3, 290–1
- privacy
  - communications technology and legal freedom 77–8
  - private property rights 73–6, 79, 81–2
- private autonomy
  - and consumer protection 213–14
  - and legal freedom 71–2, 78–80, 81, 83
  - and moral freedom 96
- privatization
  - and consumption 216
  - and the democratic public sphere 278
- pro-materialist consumption 217–18
- procedural theories of justice
  - and social freedom 55–6
- proletarian public sphere 257–8
- propaganda
  - and radio broadcasting 271
- property rights
  - and the democratic constitutional state 319, 320
  - and legal freedom 73–6, 79, 81–2
- protest movements
  - and consumption 201–2
- Protestant work ethic
  - and consumption 199

- psychoanalysis
  - and democratic constitutional states 315–17
- public sphere
  - democratic 255–304
  - political 127, 131, 253–335
- publishing companies 263–4
- radio
  - and the democratic public sphere 270–1, 276–7, 278, 282, 291, 299
- rationality
  - and moral freedom 104–5
- Rawls, John 5, 64, 174
- Raz, Joseph 47
- reciprocity
  - and democratic will-formation 331, 332
  - in family life 165
  - and intimate relationships 146–7, 150–1
  - reciprocal communication and the democratic public sphere 268–9
  - and social freedom 48–9, 50–1, 55–6
- recognition *see* mutual recognition
- reflexive freedom 19, 21, 28, 29–41, 65, 66, 123
  - and autonomous/hereronymous acts 30–1
  - and democratic will-formation 331–2
  - discourse theory of 40–1
  - and individual intentions 29–30
  - and justice 37–40, 55, 61
  - Kant on 31–3, 34–5, 37
  - and moral freedom 101
  - and negative freedom 28, 29, 30, 37
  - Rousseau on 30–1, 32, 33, 34
  - and self-realization 30, 33–4, 35–6, 37–8
  - and social freedom 41, 42, 43–4, 45, 47–8, 52, 60, 62
  - reflexive thematization 331
- Reisch, Lucia 217
- relational institutions 125–9
- religion, freedom of 76
- religious reservations about consumption 209
- Republicanism
  - and Hobbes's concept of negative freedom 22
- Riefenstahl, Leni 278
- role conflicts
  - and personal relationships 133
- romantic love 45–6, 124, 142–3, 154
  - and families 155, 164
- Romantic movement
  - and families 160, 168, 169
  - and friendship 136, 137, 140
  - and love 136
  - and reflexive freedom 31
- Rousseau, Jean-Jacques 17, 54, 97
  - Confessions* 33
  - and the democratic constitutional state 304
  - Émile* 30–1, 33
  - Julie, or the New Heloise* 33
  - on reflexive freedom 30–1, 32, 33, 34
  - The Social Contract* 30
- rule of law
  - and democratic public sphere 254
- Russell, Bertrand 280
- Saint-Simon, C. 180
- salaried workers 235, 237–8, 242–3, 244
- Sandel, Michael 39
- Sartre, Jean-Paul
  - and negative freedom 23–4, 28
- Scherhorn, Gerhard 217
- Schiller, Johann von 99, 180
  - 'On Grace and Dignity' 132
- Schlegel, Friedrich 169
- Schleiermacher, Friedrich 132, 134, 135, 137, 156, 168
- Schmoller, Gustav 205

- Scottish moral philosophy  
and friendship 136, 138, 140
- self-determination 15–16  
collective 37  
and negative freedom 28  
in the political public sphere 131  
and reflexive freedom 30, 34–5,  
37–9, 40  
and social freedom 42
- self-realization  
and the democratic public sphere  
272  
and intimate relationships 151–2  
and legal freedom 85  
and personal relationships 132,  
134  
and reflexive freedom 30, 33–4,  
35–6, 37–9, 40  
and social freedom 47, 49–51, 56–7
- sentiment  
and friendship 136–7
- service sector employment 242–3,  
247–8
- sexual minorities 144–5, 289
- sexual relationships 146–8  
and family life 156–7  
moral autonomy and sexual  
perversion 147–8  
transformation in cultural  
attitudes to 141–4
- sexual services, consumption of 202,  
209
- Shakespeare, William 142
- Silver, Allen 136
- Skinner, Quentin 22
- Smith, Adam 136  
and consumption 199–200  
and market economies 177, 180,  
181, 182, 185  
*Theory of Moral Sentiments* 182  
*The Wealth of Nations* 177, 182
- social analysis  
theory of justice based on 1–11,  
63–4
- social attachments/dependencies  
and legal freedom 84–5
- social contract theory  
and Hegel's theory of freedom and  
justice 58–60  
and negative freedom 21–8, 54
- social exclusion/inclusion  
and the democratic public sphere  
255, 256–7, 286–7
- social freedom 21, 41, 42–62, 65, 66,  
124, 334  
and consumption 207, 217, 218–19  
and the democratic constitutional  
state 304–6, 308, 326, 328  
and the democratic public sphere  
254–5, 261, 262, 269–70, 274,  
277–8, 280, 283, 284, 290–3,  
303–4, 331–2  
and discourse theory 42–3  
Gehlen on 51–4  
Hegel's concept of 43–50, 51, 52,  
53, 54, 124  
and institutional structures 52–4,  
58–9, 61, 65  
and justice 54–62  
and the labour market 229–30,  
231–2, 237, 240–1, 250,  
252–3  
and love 44, 45–6, 124, 150–1,  
154  
market economies 176, 177  
and Marx 49–51, 52, 54–5  
and negative freedom 43, 60, 62  
and personal relationships 332  
and reflexive freedom 41, 42, 43,  
43–4, 45, 47, 47–8, 52, 60, 62  
and spheres of action 126–9  
*see also* market economies;  
personal relationships;  
political public sphere
- social justice  
and democratic ethical life 67  
and individual autonomy 16  
and legal freedom 72  
and reflexive freedom 37–40  
and social freedom 42, 54, 57–62
- social laws and norms  
and individual freedom 17

- social movements
  - anti-consumerist 208, 210, 211–12, 214–15, 217–18
  - and individual freedom 16–17
  - and legal freedom 71
  - and market economies 185
  - and resistance to consumption 208–9
- social pathologies
  - and the democratic public sphere 273
  - and ethical spheres 128–9
  - of legal freedom 84, 86–94, 128
  - of moral freedom 96, 113–20, 128
- social problems
  - and the democratic public sphere 269, 271–2, 290–1, 297
- social reality
  - and Hegel's concept of ethical life 8
  - and normative reconstruction 9–10
- social rights
  - and liberal rights 78–9
- social roles
  - and the democratic public sphere 261
  - and relational institutions/ethical spheres 125, 126, 127, 128
  - role conflicts and personal relationships 133
  - role obligations of friendship 133, 138, 139, 140
  - role-switching in families 171
  - see also* gender
- social uprisings
  - and consumption 201–2, 209
- socialism
  - and the labour market 226
- socialization theory
  - and friendship 139
- Spain 314
- Spanish Civil War 279, 334
- speech, freedom of 76, 85, 272
- Staab, Phillipp 248
- the state
  - and the democratic public sphere 256
  - and democratic will-formation 254
  - and legal freedom 71–2, 77–8, 83
  - see also* democratic constitutional states; welfare states
- Sternberger, Dolf 293
- student movement
  - and anti-consumerism 214, 215, 217–18
  - and the democratic public sphere 285, 287, 289
- subjective rights 71–80
  - and intimate relationships 150, 154
  - and the labour market 229, 231
  - liberal and social rights 73–6, 81
  - limitations of 85–6
  - and moral freedom 95–6, 112, 114
  - and pathologies of legal freedom 88–9, 92–3
  - political rights 79, 80
  - property rights 73–6, 79, 82
- subjectivity
  - and moral freedom 107
  - and social freedom 47–8, 61
- surrogate motherhood 221
- Sweden 229
- Swidler, Ann 152
- Switzerland 211
- Taylor, F.W.
  - and the mechanization of production 234–5, 238
- the telegraph 270, 275
- telephones 270, 275
- television
  - and the democratic public sphere 282, 285–6, 291, 296, 299
- terrorism
  - and moral freedom 114, 118–20
- Thackeray, W.M.
  - Vanity Fair* 201
- Thomas Aquinas 17

- Tocqueville, A. de 268
- tourism  
and the democratic public sphere 303
- trade unions 215, 233–4, 236, 237–8, 240, 241  
and labour market  
deregulation 245, 247  
in West Germany 244
- Trotsky, L. 208
- unemployment  
and the labour market 225, 226, 238, 239  
pay 241
- United Nations 279–80
- United States  
American Revolution 294  
civil rights movement 282  
consumerism 213, 216  
and the democratic public sphere 281, 295
- Universal Declaration of Human Rights 279–80, 322–3
- universalizability  
and moral freedom 97–8, 98–9, 100, 103–4, 106–7, 108–9, 118  
and reflexive freedom 32
- Veblen, Thorsten 200
- voting rights 259–60  
and the democratic constitutional state 309, 310, 312, 313, 314
- wage labourers 223–5  
and co-determination 238, 239–40, 249, 250  
and the democratic constitutional state 313, 314  
and the democratic public sphere 257, 259, 286, 288, 293  
development of wage labour 223–5  
and labour market  
deregulation 246–7  
and labour market  
segmentation 243, 244  
and market economies 179, 195–7  
and the mechanization of production 234–6  
self-help organizations 225, 227, 230–1, 232  
and social freedom 231–2  
and social rights 249–50  
*see also* labour market
- wages  
guaranteed minimum 241  
and labour market  
deregulation 245–6
- Waldron, Jeremy 75, 78
- Walzer, Michael 2
- Weber, Max 3, 8, 199
- welfare provision  
self-help clubs and associations 225, 227
- welfare states  
and consumption 213  
and the democratic constitutional state 306–7, 311–12, 313, 324, 325, 328  
and the labour movement 229–30, 238, 239
- West Germany  
and the democratic constitutional state 321, 324  
and the democratic public sphere 280  
labour market 240, 244
- Whitman, Walt 274
- the will  
and legal freedom 73, 74–5, 79–80, 92, 93  
and reflexive freedom 31, 32, 33, 34, 36  
*see also* democratic will-formation
- Williams, Bernard 109–10
- Wilson, Woodrow 317
- women  
and the democratic constitutional state 313

- women (cont.)
  - and the democratic public sphere 256, 257, 275–6, 287, 288, 289
  - feminism/women's movement 276, 289, 293
  - in the labour market 159, 160, 284–5
  - and personal relationships 133
    - friendships 137, 138
    - intimate relationships 143–4, 145
    - mothers and families 156, 157–8, 159, 161, 162, 164
    - and voting rights 259
- Woolf, Virginia 75
- worker protection legislation 205
- working life
  - and families 165, 172–3
  - and friendship 140–1
  - and intimate relationships 152, 153–4
- World War I
  - and consumption 207
  - and the democratic constitutional state 314–15, 317, 319
  - and the democratic public sphere 275
  - and the labour market 237, 238
  - and radio broadcasting 270
- World War II
  - and consumption 207, 211
  - and the democratic constitutional state 321, 322, 323
  - and the democratic public sphere 279
  - and the labour market 239, 240, 249
- Zola, Émile 201, 265
- Zurn, Christopher 86