

Popular Sovereignty as Procedure

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In view of its impressive historical influence, the French Revolution can "scarcely be compared with any other historical event."¹ This one undisputed statement explains why almost any other statement is subject to debate. In our day a new controversy has arisen: whether the Great Revolution has ceased to be relevant.

Under the banner of postmodern farewells, we are now also supposed to distance ourselves from that exemplary event whose effects have been felt for the last two hundred years. The eminent Leipzig historian of the Revolution, Walter Markov, still claimed in 1967 that "The French Revolution has been experienced by no subsequent generation as a self-contained episode or museum piece."² At that time François Furet and Denis Richet had just published an impressive analysis of the Revolution in terms of the *histoire des mentalités*.³ A decade later, when the self-criticism of the Left in Paris developed into the more extreme poststructuralist critique of reason, Furet could laconically conclude that "the French Revolution has ended."⁴ Furet wanted to escape the hold of a "testamentary historiography" that conceived the French Revolution as the action-orienting origin of the present. He declared the French Revolution finished, so that the "contamination of the past" by narcissistic reference to the present would stop.

This impulse toward a more dispassionate, scholarly approach must not be confused with the most recent attempt to faith heal an allegedly contaminated present by normalizing and leveling out

another, *negatively* charged past. The clocks of collective memory keep different time in France and Germany. In France, liberal and socialist interpretations of the Revolution have determined the nation's self-understanding. In contrast, since the initial enthusiasm of the Revolution's contemporaries died down, we Germans have constantly been suspicious of the terrorist consequences of the "ideas of 1789." This was not only true of the earlier Prussian self-understanding of the German nation. Traces of a conservative, even aggressively hostile, historiography were still to be found on this side of the Rhine up to 1945.⁵ International differences in reception history do not, by themselves, say anything about the truth of a thesis, but the same thesis takes on a different significance in different contexts. Furet was responding to the tradition in which the French Revolution stands as a model alongside the Bolshevik revolution. This dialectical relation supports his thesis of the end of the French Revolution—and simultaneously relativizes it.⁶

A nonhistorian cannot contribute much to that controversy. Instead, I want to take the perspective of political theory and address the question of whether the orienting power of the French Revolution is exhausted. I am concerned with the normative issue of whether the shift in mentality that occurred during the French Revolution still represents, in some respects, an unclaimed heritage. Can we read the "revolution in ideas" of 1789 in a way that might still inform our own needs for orientation?

1

1.1

We can discuss the question concerning the still promising aspects of the French Revolution from various points of view.

(a) In France, the Revolution in part made possible, in part only accelerated, the development of a mobile bourgeois society and a capitalist economic system. It furthered processes that had occurred in other countries without a revolutionary reorganization of political authority and the legal system. Since then, this economic and social

modernization has become not only permanently crisis-ridden but overtly secular as well. Today, with its dysfunctional side effects, we are more aware of the dangers; we now experience the inexorable development of productive forces and the global expansion of Western civilization more as threats. One can no longer coax an unredeemed promise from the production-centered capitalist project. The workers' social utopia is exhausted.

(b) Something similar holds for the rise of the modern state apparatus. As Alexis de Tocqueville already saw, the French Revolution by no means signified an innovation in the development of state bureaucracies. At most, it accelerated trends that were already under way. Today, the integrative capabilities of the state continue to diminish under the pressure of regional movements, on the one hand, and worldwide corporations and transnational organizations, on the other. Where the ethos of instrumental rationality still survives, it hardly finds any support in the unpredictable organizational accomplishments of self-programming government administrations.

(c) We find a genuine product of the French Revolution, however, in the nation-state that could require universal conscription of its patriotic citizens. With national consciousness, a new form of social integration developed for enfranchised citizens who were released from the bonds of estates and corporations. This French model also guided the last generation of states emerging from decolonization. But, with their multiethnic societies, the superpowers of the United States and the Soviet Union have never fit into the nation-as-state scheme. And the contemporary heirs of the European system of states, having taken nationalism beyond its limits, find themselves on the path to a postnational society.

(d) There seems to be only one remaining candidate for an affirmative answer to the question concerning the relevance of the French Revolution: the ideas that inspired constitutional democracy. Democracy and human rights form the universalist core of the constitutional state that emerged from the American and French Revolutions in different variants. This universalism still has its explosive power and vitality, not only in Third World countries and the Soviet bloc, but also in European nations, where constitutional patriotism

acquires new significance in the course of an identity transformation. This, at least, is the opinion recently expressed by Rudolf von Thadden at the German-French meeting in Belfort: "With immigration at seven to eight percent, nations run the risk of changing their identity; soon they will no longer be able to understand themselves as monocultural societies, if they do not provide any points of integration beyond pure ethnic descent. In these circumstances it becomes urgent that we return to the idea of the citizen as the *citoyen*, which is at once more open and less rigid than the traditional idea of ethnic belonging."⁷

Of course, if the institutionalization of equal liberties were the only still promising idea, it would suffice, as many believe, to draw upon the heritage of the American Revolution: we could emerge from the shadows of the *terreur*.

Von Thadden does not draw this conclusion. Moreover, it is unlikely that the occasion of his speech (the opening of the celebration of the two-hundredth anniversary of the Great Revolution) is enough to explain why he reaches back to specifically French ideas. In the spirit of Jean-Jacques Rousseau, he contrasts the *citoyen* with the *bourgeoisie*; in line with the republican tradition, he links civil rights and participation with fraternity or solidarity. One can still hear the echoes of the old revolutionary slogans in what he says: "The Europe of citizens that we must build needs the forces of fraternity, of mutual aid and solidarity, so that the weak, the needy, and the unemployed are also able to accept the European Community as an advance over existing conditions. This appeal for the promotion of fraternity, connected with the idea of citizenship, must be the central message of the celebration of the two-hundredth anniversary of the French Revolution."⁸

Unlike the American Revolution, which was, so to speak, the *outcome* of events, the French Revolution was *carried forward* by its protagonists in the consciousness of a revolution. Furet also sees in the consciousness of revolutionary practice a new modality of historical action. One could even say that the bourgeois revolutions—the Dutch, English, and American—became aware of themselves *as* revolutions only in the French Revolution. Neither capitalistic economic

trade (a, above), nor the bureaucratic form of legal authority (b), nor even national consciousness (c) and the modern constitutional state (d) had to emerge from a radical change experienced *as* revolution. "France, however, is the country that invents democratic culture through the Revolution and reveals to the world one of the foundational postures of conscious historical action."⁹ Our current posture has two features: we still appeal to the readiness to act and to the political-moral orientation to the future, on the part of those who want to rebuild the existing order; at the same time, however, we have lost our confidence that conditions can be changed by revolution.

1.2

The revolutionary consciousness gave birth to a new mentality, which was shaped by a new time consciousness, a new concept of political practice, and a new notion of legitimation. The historical consciousness that broke with the traditionalism of nature-like continuities; the understanding of political practice in terms of self-determination and self-realization; and the trust in rational discourse, through which all political authority was supposed to legitimate itself—each of these is specifically modern. Under these three aspects, a radically this-worldly, postmetaphysical concept of the political penetrated the consciousness of a mobilized population.

Of course, looking back over the last two hundred years can arouse the suspicion that this understanding of politics has become so far removed from its intellectual and cultural origins that the revolutionary consciousness has ceased to be relevant at all. Is it not precisely the revolutionary signature, specifically inscribed on the years between 1789 and 1794, that has faded?

(a) The revolutionary consciousness was expressed in the conviction that a new beginning could be made. This reflected a change in historical consciousness.¹⁰ Drawn together into a single process, world history became the abstract system of reference for a future-oriented action considered capable of uncoupling the present from the past. In the background lay the experience of a break with

tradition: the threshold to dealing reflexively with cultural transmissions and social institutions was crossed. The process of modernization was experienced as the acceleration of events that were open, as it were, to single-minded collective intervention. The current generation saw itself burdened with responsibility for the fate of future generations, while the example of past generations lost its binding character. Within the enlarged horizon of future possibilities, the topicality of the present moment acquired excessive prominence in contrast to the normativity of an existing reality that merely protruded into the present. Hannah Arendt associated this emphatic confidence with our "natality," the moving affection that is always aroused on seeing a newborn infant and that brings the expectation of a better future.

This vitality, however, lost its revolutionary form long ago. For the reflexive liquefaction of traditions has by now become permanent; the hypothetical attitude toward existing institutions and given forms of life has become the norm. The Revolution has itself slipped into tradition: 1815, 1830, 1848, 1871, and 1917 represent the caesurae of a history of revolutionary struggles, but also a history of disappointments. The Revolution dismisses its dissidents, who no longer rebel against anything except the Revolution itself. This self-destructive dynamic is also rooted in a concept of progress, already discredited by Walter Benjamin, that dedicates itself to the future without remembering the victims of past generations. On the other hand, the effects of student revolts and new social movements in Western-style societies lead one to suspect that the cultural dynamic unleashed by the French Revolution is having an effect in the less-conspicuous value transformations of broad strata of the population, whereas the esoteric consciousness of contemporary relevance, penetrating continuity, and violated normativity has retreated into areas of post-avant-gardist art.

(b) Revolutionary consciousness was further expressed in the conviction that emancipated individuals are jointly called to be authors of their destiny. In their hands lies the power to decide about the rules and manner of their living together. As citizens, they give *themselves* the laws they want to obey, thereby producing their own life context. This context is conceived as the product of a coopera-

tive practice centered in conscious political will-formation. A radically this-worldly politics understands itself as the expression and confirmation of the freedom that springs simultaneously from the subjectivity of the individual and the sovereignty of the people. At the level of political theory, individualist and collectivist approaches, which respectively give priority to the individual and the nation, have no doubt competed with one another from the beginning. But political freedom has always been conceived as the freedom of a subject that determines and realizes itself. Autonomy and self-realization are the key concepts for a practice with an immanent purpose, namely, the production and reproduction of a life worthy of human beings.¹¹

This holistic concept of political practice has also lost its luster and motivating power. As the equal participation of all citizens in political will-formation was laboriously institutionalized according to the rule of law, the contradictions built into the concept of popular sovereignty itself became manifest. The people from whom all governmental authority is supposed to derive does not comprise a subject with will and consciousness. It only appears in the plural, and *as* a people it is capable of neither decision nor action as a whole. In complex societies, even the most earnest endeavors at political self-organization are defeated by resistant elements originating in the stubborn systemic logics of the market and administrative power. At one time, democracy was something to be asserted against the despotism palpably embodied in the king, members of the aristocracy, and higher-ranking clerics. Since then, political authority has been depersonalized. Democratization now works to overcome not genuinely political forms of resistance but rather the systemic imperatives of differentiated economic and administrative systems.

(c) Revolutionary consciousness was expressed, finally, in the conviction that the exercise of political domination could be legitimated neither religiously (by appeal to divine authority) nor metaphysically (by appeal to an ontologically grounded natural law). From now on, a politics radically situated in this world should be justifiable on the basis of reason, using the tools of postmetaphysical theorizing. Doctrines of rational natural law, that is, social-contract theories, were proposed with this purpose in mind. Such theories translated the Aristotelian concept of political authority—the self-rule of free and

equal persons—into the basic concepts of the philosophy of the subject. In doing so, they finally satisfied the demands of individual freedom as well as those of universal justice. Revolutionary practice could thus be understood as a theoretically informed realization of human rights; the Revolution itself seemed to be derived from principles of practical reason. This self-understanding also explains the influence of the “sociétés de penser” and the active role of the “ideologues.”

This intellectualism did not just awaken the suspicion of conservative opponents. The assumption that political will-formation is immediately receptive to theory, that it can be guided by a prior consensus on moral principles, had consequences that were unfortunate for democratic theory and disastrous for political practice. Theory must cope with the tension between sovereign will-formation and the apodictic insight of reason; practice must deal with the false apotheosis of reason, such as that manifested in the cult of the supreme being and the emblems of the French Revolution.¹² In the name of an authoritarian reason prior to every actual process of mutual understanding, a dialectic of spokespersons unfolded that blurred the difference between morality and tactics and ended by justifying “virtuous terror.” Hence, thinkers from Carl Schmitt to Hermann Lübbe, from Cochin to Furet, have denounced the discourse that converts power into word; that is, they have portrayed it as a mechanism that inevitably gives rise to the consensually veiled domination of intellectual spokespersons—in other words, avant-gardism.¹³

1.3

Our review seems to suggest that the mentality created by the French Revolution became both permanent and trivial: no longer surviving today as revolutionary consciousness, it has forfeited its explosive utopian power and much of its rhetorical power as well. But has this transformation of form also depleted its energies? The *cultural* dynamic released by the French Revolution has obviously *not* come to a standstill. Today, for the first time, this dynamic has created the conditions for a cultural activism stripped of all high-cultural privi-

leges and stubbornly eluding administrative manipulation. To be sure, the highly diversified pluralism of these activities, which are not confined by socioeconomic class, is opposed to the revolutionary self-understanding of a more or less homogeneous nation. Nevertheless, the cultural mobilization of the masses goes back to this source. In urban centers one can discern the emerging contours of a social intercourse characterized by both socially de-differentiated forms of expression and individualized lifestyles. The ambiguous physiognomy is not easy to decipher. One is not quite sure whether this “culture society” reflects only the commercially and strategically “exploited power of the beautiful”—a semantically desiccated, privatistic mass culture—or whether it might provide receptive ground for a revitalized public sphere where the ideas of 1789 could finally take root.

In what follows, I must leave this question open and restrict myself to normative arguments. My aim is simply to determine how a radically democratic republic might even be *conceived* today, assuming we can reckon on a resonant political culture that meets it halfway. A republic of this sort is not a possession we simply accept as our fortunate inheritance from the past. Rather it is a project we must carry forward in the consciousness of a revolution both permanent and quotidian. I am not speaking of a trivial continuation of the revolution by other means. One can already learn from Büchner’s *Danton* how soon the revolutionary consciousness became enmeshed in the aporias of revolutionary instrumentalism. Melancholy is inscribed in the revolutionary consciousness—a mourning over the failure of a project that *nonetheless cannot be relinquished*. One can explain both the failure and this unrelinquishable character by the fact that the revolutionary project overshoots the revolution itself; it eludes the revolution’s own concepts. Hence I will endeavor to translate the normative content of this unique revolution into our own concepts. In view of the double anniversary of the years 1789 and 1949—and stung by other “anniversaries”—a leftist in the Federal Republic must consider this undertaking an imperative: the principles of the Constitution will not take root in our souls until reason has assured itself of its orienting, future-directed contents. It is only as a historical project that constitutional democracy points beyond

its legal character to a normative meaning—a force at once explosive and formative.

From the viewpoint of political theory, history is a laboratory for arguments. The French Revolution comprised in any case a chain of events fortified with arguments: the Revolution robed itself in the discourses of modern natural law. And it left behind prolix traces in the political ideologies of the nineteenth and twentieth centuries. From the distance available to later generations, the ideological struggles between democrats and liberals, between socialists and anarchists, between conservatives and progressives—to summarize loosely—display basic patterns of argumentation that are still instructive today.

2

2.1

The *dialectic between liberalism and radical democracy* that was intensely debated during the French Revolution has exploded worldwide. The dispute has to do with how one can reconcile equality with liberty, unity with diversity, or the right of the majority with the right of the minority. Liberals begin with the legal institutionalization of equal liberties, conceiving these as rights held by individual subjects. In their view, human rights enjoy normative priority over democracy, and the constitutional separation of powers has priority over the will of the democratic legislature. Advocates of egalitarianism, on the other hand, conceive the collective practice of free and equal persons as sovereign will-formation. They understand human rights as an expression of the sovereign will of the people, and the constitutional separation of powers *emerges* from the enlightened will of the democratic legislature.

Thus the starting constellation is already characterized by Rousseau's answer to John Locke. Rousseau, the forerunner of the French Revolution, understands liberty as the autonomy of the people, as the equal participation of each person in the practice of *self-legislation*. Immanuel Kant, as a philosophical contemporary of the French Revolution who admitted that Rousseau first "set him straight," formulates this point as follows:

The legislative authority can be attributed only to the united will of the people. Because all right and justice is supposed to proceed from this authority, it can do absolutely no injustice to anyone. Now, when someone prescribes for another, it is always possible that he thereby does the other an injustice, but this is never possible with respect to what he decides for himself (for *volenti non fit injuria*—"he who consents cannot receive an injury"). Hence, only the united and consenting will of all—that is, a general and united will of the people by which each decides the same for all and all decide the same for each—can legislate.¹⁴

The point of this reflection is the unification of practical reason and sovereign will, of human rights and democracy. A rational structure is inscribed in the autonomy of the legislative practice itself, so that the reason that legitimates political authority no longer has to rush ahead of the sovereign will of the people and anchor human rights in an imaginary state of nature, as it did in Locke. Because it can express itself only in general and abstract laws, the united will of the citizens must perforce exclude all nongeneralizable interests and admit only those regulations that guarantee equal liberties to all. The exercise of popular sovereignty simultaneously secures human rights.

Through Rousseau's Jacobin disciples, this idea kindled practical enthusiasm and provoked liberal opposition. The critics insisted that the fiction of the unified popular will could be realized only at the cost of masking or suppressing the heterogeneity of individual wills. In fact, Rousseau had already imagined the constitution of the popular sovereign as something like an existential act of *sociation* through which isolated individuals were transformed into citizens oriented toward the common good. These citizens comprise the members of a collective *body*; they are the subject of a legislative practice that has been freed from the individual interests of private persons who are merely passively subjected to legal statutes. All the radical varieties of Rousseauianism labor under this moral overburdening of the virtuous citizen. The assumption of republican virtues is realistic only for a polity with a normative consensus that has been secured in advance through tradition and ethos: "Now the less the individual wills relate to the general will, that is to say customary conduct to the laws, the more repressive force has to be increased."¹⁵ Liberal objections to Rousseauianism can thus draw on Rousseau himself: modern societies are not homogeneous.

2.2

The opponents emphasize the diversity of interests that must be brought into balance and the pluralism of opinions that must be brought into a majority consensus. In fact, the critique leveled against the "tyranny of the majority" appears in two different variants. The classical liberalism of Tocqueville understands popular sovereignty as a principle of equality that needs to be limited. It is the fear the *bourgeoisie* have of being overpowered by the *citoyen*: if the constitutional regime with its separation of powers does not set boundaries on the democracy of the people, then the prepolitical liberties of the individual are in danger. With this, of course, liberal theory falls back into its earlier difficulties: the practical reason incorporated in the constitution once again comes into conflict with the sovereign will of the political masses. The problem Rousseau sought to solve with the concept of self-legislation reappears. A democratically enlightened liberalism must therefore hold on to Rousseau's intention.

At this end of the political spectrum, the critique led not to a limitation but to a redefinition of the principle of popular sovereignty: such sovereignty should express itself only under the discursive conditions of an internally differentiated process of opinion- and will-formation. In 1848—hence before John Stuart Mill, in his "On Liberty" (1859), united equality and liberty in the idea of the discursive public sphere—the German democrat Julius Fröbel issued a flyer in which he conceived the idea of a total will along completely nonutilitarian lines. This will should emerge from the free will of all citizens through discussion and voting: "We seek the social republic, that is, the state in which the happiness, freedom, and dignity of each individual are recognized as the common goal of all, and the perfection of the law and power of society springs from the mutual understanding and agreement of all its members."¹⁶

A year earlier Fröbel had published *System der sozialen Politik* (System of Social Politics),¹⁷ in which he connects the principle of free discussion with majority rule in an interesting way. He assigns to public discourse the role that Rousseau ascribed to the supposedly universalizing force of the mere form of the legal statute. The nor-

mative meaning of the validity of laws that deserve general assent cannot be explained by the semantic properties of abstract and general laws. Instead, Fröbel has recourse to the communicative conditions under which opinion-formation oriented to truth can be combined with majoritarian will-formation. At the same time, he holds on to Rousseau's concept of autonomy: "A law exists only for the one who has made it himself or agreed to it; for everyone else it is a command or an order" (p. 97). Hence laws require the justified assent of all. The democratic legislature, however, decides by majority. Consensus and majority rule are compatible only if the latter has an internal relation to the search for truth: public discourse must mediate between reason and will, between the opinion-formation of all and the majoritarian will-formation of the representatives.

A majority decision may come about only in such a way that its content is regarded as the rationally motivated but fallible result of an attempt to determine what is right through a discussion that has been brought to a provisional close under the pressure to decide: "The discussion allows convictions as they have developed in the minds of different human beings to have an effect on one another, it clarifies them and enlarges the circle in which they find recognition. The . . . practical specification of law results from the development and recognition of the theoretical legal consciousness already present in the society, but it can . . . succeed in one way only, namely that of voting and deciding according to the majority" (p. 96). Fröbel interprets the majority decision as a conditional consensus, as the consent of the minority to a practice that conforms to the will of the majority: "Certainly one does not require that the minority, by resigning their will, declare their opinion to be incorrect; indeed, one does not even require that they abandon their aims, but rather . . . that they forego the practical application of their convictions, until they succeed in better establishing their reasons and procuring the necessary number of affirmative votes" (pp. 108f.).

2.3

Fröbel's position shows that the normative tension between equality and liberty can be resolved as soon as one renounces an overly concrete

reading of the principle of popular sovereignty. Unlike Rousseau, who focused on the mere form of general law, Fröbel does not imbue the sovereign will of a collectivity with practical reason but anchors the latter in a procedure of opinion- and will-formation that determines when a political will not identical with reason has the presumption of reason on its side. This preserves Fröbel from a normative devaluation of pluralism. Public discourse mediates between reason and will: "For the progress of knowledge, a unity of convictions would be a misfortune; in the affairs of society, a unity of aims is a necessity" (p. 108). The majoritarian production of a unified will is compatible with the "principle of the equal validity of the personal will of each" only in connection with the principle "of reducing error on the way to conviction" (p. 105). And the latter principle can be asserted against tyrannical majorities only in public discourses.

Fröbel therefore proposes popular education, a high level of education for all, as well as the freedom to express "theoretical" opinions and to campaign (*Propaganda*). He is also the first to recognize the constitutional significance of parties and of their political struggles for the majority of votes conducted with the instruments of "theoretical propaganda." Only open structures of communication can prevent the ascendancy of avant-garde parties. Only "parties" and not "sects" should exist: "The party wants to validate its separate aims in the state, the sect wants to use its separate aims to overcome the state. The party seeks to come to power in the state, the sect seeks to impose its own form of existence on the state. By coming to power in the state, the party seeks to dissolve into it, whereas the sect, by dissolving the state into itself, seeks to come to power" (p. 277). Fröbel stylizes the loose parties of his day as free associations that specialize in bringing influence to bear, primarily through arguments, on the process of public opinion- and will-formation. They represent the organizational core of an enfranchised public citizenry that, engaged in a multivocal discussion and deciding by majority, occupies the seat of the sovereign.

Whereas with Rousseau the sovereign embodied power and the legal monopoly on power, Fröbel's public is no longer a body. Rather, it is only the medium for a multivocal process of opinion-formation that substitutes mutual understanding for power and rationally mo-

tivates majoritarian decisions. Party competition in the political public sphere thus serves to establish the Rousseauian act of the social contract for the long run, in the form of a "legal and permanent revolution," as Fröbel puts it. Fröbel's constitutional principles strip the constitutional order of everything substantial. Strictly post-metaphysical, they delineate not "natural rights" but simply the procedure of opinion- and will-formation that secures equal liberties via general rights of communication and participation:

With the constitutional compact the parties make an agreement to have their opinions affect one another through free discussion alone and to forego the implementation of any theory until it has the majority of citizens on its side. With the constitutional compact the parties agree to the following: to determine the unity of aims according to the majority of those supporting the theory; but to leave publicity for the theory to the freedom of each individual; and to give further shape to their constitution and legislation according to the outcome of all the individual efforts as shown by the votes. (p. 113)

Whereas the first three articles of the constitution establish the conditions and procedures of a rational democratic will-formation, the fourth article rules out the unchangeability of the constitution as well as every *external* limitation on proceduralized popular sovereignty. Human rights do not *compete* with popular sovereignty; they are identical with the constitutive conditions of a self-limiting practice of publicly discursive will-formation. The separation of powers is then explained by the logic of application and supervised implementation of laws that have been enacted through such a process.

3

3.1

The discourse over liberty and equality is carried on at another level in the *dispute between socialism and liberalism*. This dialectic, too, was already built into the French Revolution: it appeared when Jean-Paul Marat opposed the formalism of legal statutes and spoke of "legal tyranny," when Jacques Roux complained that the equality of legal statutes was aimed against the poor, and when François Babeuf,

appealing to an equal satisfaction of the needs of each, criticized the institutionalization of equal liberties.¹⁸ This discussion first acquired clear contours in early socialism.

In the eighteenth century, the critique of social inequality was directed against the social effects of political inequality. Legal arguments, that is, arguments based on modern natural law, provided a sufficient basis to plead for the equal liberties of constitutional democracy and bourgeois private law in opposition to the ancien régime. However, as constitutional monarchy and the Code Napoléon were implemented, social inequalities of *another* kind came to light. The inequalities connected with political privilege were replaced by ones that first appeared in the process of institutionalizing equal liberties according to private law. The social effects of the unequal distribution of a nonpolitical economic power were now at issue. When Karl Marx and Friedrich Engels denounced the bourgeois legal order as the juridical expression of unjust relations of production, they were borrowing arguments from political economy, thereby enlarging the concept of the political itself. No longer was just the organization of the state open to our control but the arrangement of society as a whole.¹⁹

With this change in perspective, a functional relationship between class structure and the legal system came into view. This connection made it possible to criticize legal formalism, and thus to criticize the substantive inequality of rights that were formally equal (i.e., equal according to their literal meaning). However, this same shift in perspective simultaneously made it difficult to see the problem that arises for political will-formation once the social is politicized. Marx and Engels, satisfied with allusions to the Paris Commune, more or less put aside questions of democratization. The philosophical background of these authors could also partly explain their blanket rejection of legal formalism (in fact a rejection of the legal sphere as a whole). Specifically, one could argue that they read Rousseau and Hegel too much through the eyes of Aristotle; that they failed to appreciate the normative substance of Kantian universalism and the Enlightenment; and that their idea of a liberated society was too concrete. They conceived socialism as a historically privileged form of concrete ethical life (*Sittlichkeit*) and not as the set of necessary

conditions for emancipated forms of life about which participants *themselves* would have to reach an understanding.

The expanded concept of the political was not matched by a deeper understanding of the functional modes, forms of communication, and institutional conditions of egalitarian will-formation. The holistic notion of a politicized society of workers remained central. The early socialists were still confident that the convivial forms of life of freely associated workers would emerge spontaneously from properly organized production processes. Faced with the complexity of developed, functionally differentiated societies, this idea of workers' self-governance had to fail—and fail even if the workers' social utopia was imagined, with Marx, as a realm of freedom to be established on the basis of an ongoing, systemically regulated realm of necessity. Even Lenin's strategy, the seizure of power by professional revolutionaries, could not make up for the lack of political theory. The practical effects of this deficit are evident in those aporias that to this day still grip bureaucratic socialism, with its political avant-garde frozen into *nomenklatura*.

3.2

On the other hand, achieving the social-welfare compromise has been a disappointing experience for the reformist unions and parties that operate within the framework of constitutional democracy. That is, they had to be content with an adjusted version of bourgeois liberalism and forego the redemption of radical democratic promises. The intellectual kinship between reformism and left liberalism (between Eduard Bernstein and Friedrich Naumann, still the godsons of the social-liberal coalition) rests on the shared goal of universalizing basic rights from a social-welfare perspective.²⁰ Normalizing the status of dependent wage labor through participatory political and social rights is supposed to provide the mass of the population with the opportunity to live in security, social justice, and growing prosperity. On the basis of a capitalist growth that is both domesticated and nurtured, the parties in power are supposed to operate the levers of administrative power so as to implement these goals via interventions. According to orthodox Marxism, social

emancipation was to be achieved through a political revolution that took possession of the state apparatus only to smash it to pieces. Reformism can bring about social pacification solely by way of social-welfare interventions, but in doing so parties are absorbed into an expanding state apparatus. As parties become arms of the state, political will-formation shifts into a political system that is largely self-programming. To the extent that it succeeds in *extracting* mass loyalty from the public sphere, the political system becomes independent of the democratic sources of its legitimation. Thus the flip side of a halfway successful welfare state is a mass democracy in which the process of legitimation is *managed* by the administration. At the programmatic level, this is associated with resignation: both the acceptance of the scandalous "natural fate" imposed by the labor market and the renunciation of radical democracy.

This explains the relevance of the *discourse between anarchism and socialism* that has been carried on since the nineteenth century. What was already practiced in the petit bourgeois revolution of the sansculottes finally received rational justification and partial theoretical elaboration in anarchist social criticism and the idea of council democracy. Here the techniques of self-organization (such as permanent consultation, imperative mandates, rotation of offices, and interlocking powers) were probably less important than the organizational form itself: the model of the voluntary association.²¹ Such associations displayed only a minimal degree of institutionalization. The horizontal contacts at the level of face-to-face interactions were supposed to coalesce into an intersubjective practice of deliberation and decision making strong enough to maintain all the *other* institutions in the fluid condition of the founding phase, more or less preserving them from coagulation. This anti-institutionalism coincided with the classical liberal idea that associations could support a public sphere in which the communicative practices of opinion- and will-formation would occur, guided of course by argumentation. When Donoso Cortes complained that liberalism erroneously made discussion into the principle of political decision, and when Carl Schmitt likewise denounced the liberal bourgeoisie as the discussing class, both had the anarchistic, hence *power-dissolving*, consequences

of public discussion in view. The same motive still drives the numerous disciples of Schmitt in their shadowboxing with the intellectual instigators of a "European civil war."

In contrast to the individualistic, natural-law construct of the state of nature, the organizational form of voluntary association is a *sociological* concept that allows one to think of spontaneously emergent, domination-free relationships in noncontractualist terms. Then one no longer needs to conceive of domination-free society as an instrumental and hence prepolitical order established on the basis of contracts, that is, through the self-interested agreements of private persons oriented toward success. A society integrated through associations instead of through markets would be a political, yet nevertheless domination-free, order. The anarchists trace spontaneous sociation back to a different impulse than does modern natural law, that is, not to the interest in the useful exchange of goods but rather to the willingness to solve problems and coordinate action through mutual understanding. Associations differ from formal organizations in that the purpose of the union has not yet become functionally autonomous vis-à-vis the associated members' value orientations and goals.

3.3

This anarchist projection of a society made up entirely of horizontal networks of associations was always utopian; today it is still less workable, given the regulatory and organizational needs of modern societies. Media-steered interactions in the economic and administrative systems are defined precisely by the uncoupling of organizational functions from members' orientations. From the actor's perspective, this uncoupling manifests itself as an inversion of ends and means; processes of utilization and administration appear to acquire a fetishistic life of their own. But the anarchist's suspicion can be given a methodological turn; indeed it can be turned critically against both sides: against the system-blindness of a normative theory of democracy that disregards the bureaucratic expropriation of the grassroots level, and against the fetishizing gaze of a systems

theory that dismisses all normative considerations. By methodological fiat, systems theory excludes the possibility of communication in which a society could examine itself as a whole.²²

The classical theories of democracy start with the assumption that society has an effect or influence on itself through the sovereign legislature. The people program the laws, and these in turn program the implementation and application of law, so that through the collectively binding decisions of administration and judiciary the members of society receive the benefits and regulations that they themselves have programmed in their role of citizens. This *idea of an action-upon-self programmed by laws* appears plausible only on the supposition that society as a whole can be represented as an association writ large, which governs itself through the media of law and political power. Today we know better, now that sociological analyses have enlightened us about the actual circulation of power. We also know that as an organizational form, an association lacks the complexity necessary to structure the social fabric as a whole. But this is not my concern here. I am interested, rather, in the conceptual analysis of the reciprocal constitution of law and political power. Such an analysis already shows that, in the medium proper to action-upon-self programmed by laws, there exists an *opposing, self-programming circulation of power*.

Before law and political power can take on *their own* functions, namely, stabilization of behavioral expectations and collectively binding decisions, they must fulfill functions for each other. Thus law, which borrows its coercive character from power, first bestows on power the legal form that provides power with its binding character. Each of these two codes requires its own perspective: law requires a normative perspective, and power an instrumental one. From the perspective of law, policies as well as laws and decrees have need of normative justification, whereas from the perspective of power they function as means for and constraints upon the reproduction of power. The perspective of legislation and adjudication yields a normative approach to law; the perspective of preserving power yields a corresponding instrumental approach. From the perspective of power, the circulation of normative action-upon-self programmed through laws acquires the opposite character of a self-programming

circulation of power: the administration programs itself by steering the behavior of the voting public, preprogramming the executive branch (*Regierung*) and legislature, and functionalizing the judiciary.

As the welfare state develops, the opposing element that is already *conceptually* present in the medium of legal-administrative action-upon-self also begins to have an empirical effect that gradually increases in strength. By now it is clear that the administrative instruments for implementing social-welfare programs are by no means a passive medium without properties of its own, as it were. To an increasing degree, the interventionist state has contracted into a subsystem steered by power and centered in itself; to an increasing degree, it has displaced legitimation processes into its environment. In fact, this process has progressed to the point where we would do well to consider modifications in the normative idea of a self-organizing society. I thus propose that we make a distinction in the concept of the political itself, consonant with the duality of normative and instrumental perspectives.²³

We can distinguish between *communicatively generated* power and *administratively employed* power. In the political public sphere, then, two contrary processes encounter and cut across each other: the communicative generation of legitimate power, for which Arendt sketched a normative model, and the political-systemic acquisition of legitimacy, a process by which administrative power becomes reflexive. How these two processes—the spontaneous forming of opinion in autonomous public spheres and the organized extraction of mass loyalty—interpenetrate, and which overpowers which, are empirical questions. What primarily interests me is this: insofar as this distinction comes to have any empirical relevance, the normative understanding of a democratic self-organization of the legal community must also change.

4

4.1

The first question concerns the mode of action-upon-self. Because the administrative system must translate all normative inputs into its

own language, one must explain how this system can be programmed at all through the policies and laws emerging from processes of public opinion- and will-formation. The administration obeys its own rationality criteria as it operates according to law; from the perspective of employing administrative power, what counts is not the practical reason involved in applying norms but the effectiveness of implementing a given program. Thus the administrative system primarily deals with the law instrumentally. Normative reasons, which justify adopted policies and enacted norms in the language of law, are regarded in the language of administrative power as rationalizations appended to decisions that were previously induced. Naturally, because of its juridical character, political power still depends on normative reasons. Normative reasons thus constitute the means by which communicative power makes itself felt. The indirect measures by which the administration manages the economy illustrate how influence can be brought to bear on self-regulating mechanisms (e.g., "help to self-help"). Perhaps we can apply this model to the relation between the democratic public sphere and the administration. Communicatively generated legitimate power can have an effect on the political system insofar as it assumes responsibility for the pool of reasons from which administrative decisions must draw their rationalizations. If the normative arguments appended by the system have been discursively invalidated by counter-arguments from prior political communication, then it is simply not the case that "anything goes," that is, anything feasible for the political system.

The next question concerns the possibility of democratizing opinion- and will-formation themselves. Normative reasons can achieve an indirect steering effect only to the extent that the political system does not, for its part, steer the very production of these reasons. Now, democratic procedures are meant to institutionalize the forms of communication necessary for a rational will-formation. From this standpoint, at least, the institutional framework in which the legitimation process occurs today can be submitted to critical evaluation. With some institutional imagination, moreover, one can think of how existing parliamentary bodies might be supplemented by institutions that would allow affected clients and the legal public sphere

to exert a stronger pressure for legitimation on the executive and judicial branches. The more difficult problem, however, is how to ensure the autonomy of the opinion- and will-formation that have already been institutionalized. After all, these generate communicative power only to the extent that majority decisions satisfy the conditions stated by Fröbel, that is, only insofar as they come about discursively.

The assumed internal relation between political will-formation and opinion-formation can secure the expected rationality of decision making only if parliamentary deliberations do not proceed according to ideologically *pregiven* assumptions. Elitist interpretations of the principle of representation respond to this requirement by shielding organized politics from a forever-gullible popular opinion. In normative terms, however, this way of defending rationality against popular sovereignty is contradictory: if the voters' opinion is irrational, then the election of representatives is no less so. This dilemma turns our attention toward a relation Fröbel did not discuss, that between formally structured political will-formation and the surrounding environment of unstructured processes of opinion-formation. The former issues in decisions (and is also the level at which general elections are located), whereas the latter remains informal, because it is not under any pressure to decide. Fröbel's own assumptions compel one to conclude that the democratic procedure can lead to a rational will-formation only insofar as organized opinion-formation, which leads to accountable decisions within government bodies, remains permeable to the free-floating values, issues, contributions, and arguments of a surrounding political communication that, as such, cannot be *organized* as a whole.

Thus the normative expectation of rational outcomes is grounded ultimately in the interplay between institutionally structured political will-formation and spontaneous, unsubverted circuits of communication in a public sphere that is not programmed to reach decisions and thus is not organized. In this context, the public sphere functions as a normative concept. Voluntary associations represent the nodal points in a communication network that emerges from the intermeshing of autonomous public spheres. Such associations specialize in the generation and dissemination of practical convictions.

They specialize, that is, in discovering issues relevant for all of society, contributing possible solutions to problems, interpreting values, producing good reasons, and invalidating others. They can become effective only indirectly, namely, by altering the parameters of institutionalized will-formation by broadly transforming attitudes and values. The manner in which general voting behavior is increasingly affected by opaque mood swings in the political culture indicates that the foregoing reflections are not entirely out of touch with social reality. But here we must restrict ourselves to the normative implications of this descriptive analysis.

4.2

Following Arendt's lead, Albrecht Wellmer has underscored the self-referential structure of the public practice issuing from communicative power.²⁴ This communicative practice bears the burden of stabilizing itself; with each important contribution, public discourse must keep alive both the meaning of an undistorted political public sphere as such and the very goal of democratic will-formation. The public sphere thereby continually thematizes itself as it operates, for the existential presuppositions of a nonorganizable practice can be secured only by this practice itself. The institutions of public freedom stand on the shifting ground of the political communication of those who, by using them, at the same time interpret and defend them. The public sphere thus reproduces itself *self-referentially*, and in doing so reveals the place to which the expectation of a sovereign self-organization of society has withdrawn. The idea of popular sovereignty is thereby desubstantialized. Even the notion that a network of associations could replace the dismissed "body" of the people—that it could occupy the vacant seat of the sovereign, so to speak—is too concrete.

This fully dispersed sovereignty is not even embodied in the heads of the associated members. Rather, if one can still speak of "embodiment" at all, then sovereignty is found in those subjectless forms of communication that regulate the flow of discursive opinion- and will-formation in such a way that their fallible outcomes have the presumption of practical reason on their side. Subjectless and any-

mous, an intersubjectively dissolved popular sovereignty withdraws into democratic procedures and the demanding communicative presuppositions of their implementation. It is sublimated into the elusive interactions between culturally mobilized public spheres and a will-formation institutionalized according to the rule of law. Set communicatively aflow, sovereignty makes itself felt in the power of public discourses. Although such power originates in autonomous public spheres, it must take shape in the decisions of democratic institutions of opinion- and will-formation, inasmuch as the responsibility for momentous decisions demands clear institutional accountability. Communicative power is exercised in the manner of a siege. It influences the premises of judgment and decision making in the political system without intending to conquer the system itself. It thus aims to assert its imperatives in the only language the besieged fortress understands: it takes responsibility for the pool of reasons that administrative power can handle instrumentally but cannot ignore, given its juridical structure.

Naturally, even a proceduralized "popular sovereignty" of this sort cannot operate without the support of an accommodating political culture, without the basic attitudes, mediated by tradition and socialization, of a population *accustomed* to political freedom: rational political will-formation cannot occur unless a rationalized lifeworld meets it halfway. This thesis could appear to be just one more guise for a civic-republican ethos and its expectations of virtue that have morally overburdened citizens since time immemorial. If we are to dispel this suspicion, then we must finally argue for what neo-Aristotelian political theory slips in with its concept of ethos: we must explain how it is possible in principle for civic virtue and self-interest to intermesh. If it is to be *reasonable to expect* the political behavior that is normatively required, then the moral substance of self-legislation—which for Rousseau was concentrated in a single act—must be parceled out over many stages: the process of proceduralized opinion- and will-formation must break down into numerous smaller particles. It must be shown that political morality is exacted only in small increments.²⁵ Here I can illustrate this point only briefly.

Why should representatives base their decisions on correct and, as we are here assuming, more or less discursively formed judgments

and not merely advance legitimating reasons as a pretext? It is because the institutions are designed in such a way that representatives normally do not want to expose themselves to the criticism of their voters. After all, voters can sanction their representatives at the next opportunity, but representatives do not have any comparable way of sanctioning voters. But why should voters base their ballot choices on, as we here assume, a more or less discursively formed public opinion, instead of ignoring the legitimating reasons? It is because normally they can choose only between the highly generalized policies and vague profiles of popular parties, and they can perceive their own interests only in the light of pregeneralized interest positions. But are not these two assumptions themselves unrealistic? Not entirely, so long as we are only normatively assessing the alternatives that are possible in principle. As we have seen, democratic procedures should produce rational outcomes insofar as opinion-formation inside parliamentary bodies remains sensitive to the results of a surrounding informal opinion-formation in autonomous public spheres. No doubt this second assumption of an unsubverted political public sphere is unrealistic; properly understood, however, it is not utopian in a bad sense. It would be realized to the extent that opinion-forming associations developed, catalyzed the growth of autonomous public spheres, and, in virtue of the natural visibility such associations enjoy, changed the spectrum of values, issues, and reasons. This would both innovatively unleash and critically filter the elements of discourse that have been channeled by the mass media, unions, associations, and parties, according to the dictates of power. In the final analysis, of course, the emergence, reproduction, and influence of such a network of associations remains dependent on a liberal-egalitarian political culture sensitive to problems affecting society as a whole—a culture that is even jumpy or in a constant state of vibration, and thus responsive.

4.3

Let us assume that complex societies would be open to such fundamental democratization. In that case, we are immediately confronted

with *objections that conservatives* since Edmund Burke have repeatedly marshaled against the French Revolution and its effects.²⁶ In this final round of reflection, we must take up the arguments that such thinkers as Joseph de Maistre and Louis de Bonald have used to remind overly naive believers in progress of the limits of what can be done. The overextended project of a self-organizing society, so the argument goes, carelessly disregards the weight of traditions, organically developing reserves and resources that cannot be created at will. As a matter of fact, the instrumentalism underlying a practice that directly attempts to realize theory has had disastrous effects. Robespierre already set up an opposition between revolution and constitution: the Revolution exists for war and civil war, the Constitution for the victorious peace. From Marx to Lenin, the theoretically informed intervention of revolutionaries was merely supposed to complete the teleology of history driven by the forces of production. Proceduralized popular sovereignty, however, no longer has any place for such trust in a philosophy of history. Once the subject is removed from practical reason, the progressive institutionalization of procedures of rational collective will-formation can no longer be conceived as purposive action, as a kind of sublime process of production. Rather, today the controversial *realization* of universalist constitutional principles has become a permanent process that is already under way in ordinary legislation. The debates that precede decisions take place under conditions of a social and political-cultural transformation whose direction, though certainly not open to control by direct political intervention, can be indirectly accelerated or inhibited. The constitution has thus lost its static character. Even if the wording of norms has not changed, their interpretations are in flux.

Constitutional democracy is becoming a project, at once the outcome and the accelerating catalyst of a rationalization of the life-world reaching far beyond the political. The sole substantial aim of the project is the gradual improvement of institutionalized procedures of rational collective will-formation, procedures that cannot prejudge the participants' concrete goals. Each step along this path has repercussions on the political culture and forms of life.

Conversely, without the support of the sociopolitical culture, which cannot be produced upon demand, the forms of communication adequate to practical reason cannot emerge.

Such a culturalistic understanding of constitutional *dynamics* seems to suggest that the sovereignty of the people should be relocated to the cultural dynamics of opinion-forming avant-gardes. This conjecture will fuel suspicions against intellectuals all the more: powerful in word, they grab for themselves the very power they profess to dissolve in the medium of the word. But at least one obstacle stands in the way of domination by intellectuals: communicative power can become effective only indirectly, insofar as it limits the implementation of administrative, hence actually exercised, power. And unstructured public opinion can in turn function as a siege of this sort only by way of accountable decision making organized according to democratic procedures. What is more important, the influence of intellectuals could coalesce into communicative power at all only under conditions that exclude a concentration of power. Autonomous public spheres could crystallize around free associations only to the extent that current trends toward an uncoupling of culture from class structures continue.²⁷ Public discourses find a good response only in proportion to their diffusion, and thus only under conditions of a broad and active participation that simultaneously has a *dispersing effect*. This in turn requires a background political culture that is egalitarian, divested of all educational privileges, and thoroughly intellectual.

There is certainly no necessity that this increasingly reflexive transmission of cultural traditions be associated with subject-centered reason and future-oriented historical consciousness. To the extent that we become aware of the intersubjective constitution of freedom, the possessive-individualist illusion of autonomy as self-ownership disintegrates. The self-assertive subject that wants to have everything at its disposal lacks an adequate relation to any tradition. Benjamin's youthful conservative sensibility detected another time consciousness in the culture revolution itself, a consciousness that turned our attention away from the horizon of our own "future presents" and back to the claims that past generations make on us. But one reservation still remains. The sobriety of a secular, unreservedly egalitar-

ian mass culture does not just defeat the pathos of the holy seriousness that seeks to ensure social status to the prophetic alone. The fact that everyday affairs are necessarily banalized in political communication also poses a danger for the semantic potentials from which this communication must still draw its nourishment. A culture without thorns would be absorbed by mere needs for compensation; as M. Grefrath puts it, it settles over the risk society like a foam carpet. No civil religion, however cleverly adjusted, could forestall this entropy of meaning.²⁸ Even the moment of unconditionality insistently voiced in the context-transcending validity claims of everyday life does not suffice. *Another* kind of transcendence is preserved in the unfulfilled promise disclosed by the critical appropriation of identity-forming religious traditions, and *still another* in the negativity of modern art. The trivial and everyday must be open to the shock of what is absolutely strange, cryptic, or uncanny. Though these no longer provide a cover for privileges, they refuse to be assimilated by pre-given categories.²⁹

Translated by William Rehg

Notes

This was presented as a lecture in December, 1988, and was first published in Forum für Philosophie Bad Homburg, ed., *Die Ideen von 1789* (Frankfurt am Main, 1989), pp. 7-36.

1. E. Schulín, *Die Französische Revolution* (Munich, 1988), p. 11.

2. W. Markov, *Die Jakobinerfrage heute* (Berlin, 1967), p. 3.

3. F. Furet and D. Richet, *La Révolution* (Paris, 1965); citations are from the German translation, *Die Französische Revolution* (Frankfurt am Main, 1968); here see p. 84. An English translation is available under the title *French Revolution*, trans. S. Hardman (New York, 1970).

4. F. Furet, *Penser la Révolution française* (Paris, 1978); citations are taken from the German translation, 1789—*Vom Ereignis zum Gegenstand der Geschichtswissenschaft* (Frankfurt am Main, 1980).

5. Schulín, *Die Französische Revolution*, pp. 9ff.

6. Furet himself has since adopted this relativizing view. See F. Furet, *La Révolution 1780-1880* (Paris, 1988); and his "La France Unie," in *La République du Centre* (Paris,

- 1988); cf. A. I. Hartig, "Das Bicentenaire—eine Auferstehung?" *Merkur* 43 (1989): 258ff.
7. R. v. Thadden, "Die Botschaft der Brüderlichkeit," *Süddeutsche Zeitung*, Nov. 26/27, 1988.
8. Ibid.
9. Furet, 1789—*Vom Ereignis*, p. 34.
10. R. Koselleck, *Futures Past*, trans. K. Tribe (Cambridge, Mass., 1985); J. Habermas, *The Philosophical Discourse of Modernity*, trans. F. Lawrence (Cambridge, Mass., 1987), chap. 1.
11. C. Taylor, "Legitimation Crisis?" in Taylor, *Philosophy and the Human Sciences* (Cambridge, 1985), pp. 248–88.
12. J. Starobinski, *1789: The Emblems of Reason*, trans. B. Bray (Charlottesville, Va., 1982).
13. For an astounding agreement with Carl Schmitt, see Furet, 1789—*Vom Ereignis*, pp. 197ff.
14. I. Kant, *Metaphysical Elements of Justice*, trans. J. Ladd (New York, 1965), p. 78 [translation altered. Trans.].
15. J.-J. Rousseau, *On the Social Contract*, trans. C. M. Sherover (New York, 1984), bk. 3, chap. 1, sec. 159 (p. 55).
16. J. Fröbel, *Monarchie oder Republik* (Mannheim, 1848), p. 6.
17. J. Fröbel, *System der sozialen Politik* (Mannheim, 1847; reprint, Scientia Verlag, Aalen, 1975; intralinear page numbers refer to the latter edition).
18. H. Dippel, "Die politischen Ideen der französischen Revolution," in *Pipers Handbuch der Politischen Ideen*, vol. 4 (Munich, 1986), pp. 21ff.
19. O. Negt and E. T. Mohl, "Marx und Engels—der unaufgehobene Widerspruch von Theorie und Praxis," in *Pipers Handbuch der Politischen Ideen*, vol. 4, pp. 449ff.
20. O. Kallscheuer, "Revisionismus und Reformismus," in *Pipers Handbuch der Politischen Ideen*, vol. 4, pp. 545ff.
21. P. Lösche, "Anarchismus," in *Pipers Handbuch der Politischen Ideen*, vol. 4, pp. 415ff.
22. N. Luhmann, *Political Theory in the Welfare State*, trans. J. Bednarz, Jr. (New York, 1990).
23. J. Habermas, *Die Neue Unübersichtlichkeit* (Frankfurt am Main, 1985).
24. A. Wellmer, "Hannah Arendt on Judgment: The Unwritten Doctrine of Reason," in L. May and J. Kohn, eds., *Hannah Arendt: Twenty Years Later* (Cambridge, Mass., 1996); see H. Arendt, *On Violence* (New York, 1970); J. Habermas, "Hannah Arendt:

- On the Concept of Power," in Habermas, *Philosophical-Political Profiles*, trans. F. Lawrence (Cambridge, Mass., 1985), pp. 173–89.
25. U. Preuß, "Was heißt radikale Demokratie heute?" in Forum für Philosophie Bad Homburg, ed., *Die Ideen von 1789* (Frankfurt am Main, 1989), pp. 37–67.
26. H. J. Puhle, "Die Anfänge des politischen Konservatismus in Deutschland," in *Pipers Handbuch der Politischen Ideen*, vol. 4, pp. 255ff.
27. H. Brunkhorst, "Die Ästhetisierung der Intellektuellen," *Frankfurter Rundschau*, November 28, 1988.
28. H. Kleger and R. Müller, eds., *Religion des Bürgers* (Munich, 1986); H. Dubiel, "Zivilreligion in der Massendemokratie," ms. 1989.
29. C. Menke-Eggers, *Die Souveränität der Kunst* (Frankfurt am Main, 1988); English translation forthcoming (Cambridge, Mass., 1996).