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Four Faces of Political Legitimacy

An Analytical Framework



Four Faces of Political Legitimacy
An Analytical Framework

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aan de Universiteit van Amsterdam
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In Memory of Jos de Beus

It hardly seems necessary to point out the importance of a concept as political legitimacy for political theory. The question when politics is legitimate has been the driving force of the long tradition of democratic and liberal thought. Political legitimacy, however, is not just a preoccupation of intellectuals and theorists as politics as a practice can hardly be fully understood without a notion of legitimacy. Political actors, actions, decisions, positions and institutions are in constant need for legitimacy – a legitimacy that cannot always be presumed quasi-naturally and unproblematically. If political legitimacy is not only a theoretical, but also a practical problem, it would be wrong to suggest that political legitimacy is relevant only for liberal democratic political systems. Indeed, legitimacy is relevant for just about any situation in which somebody claims a *right to rule* – be it the pater familias, the teacher, the general manager, the monarch or the dictator.¹

While the relevance of the concept can hardly be disputed, its meaning is less than clear. Political legitimacy is understood in so many different ways by so many different disciplines, approaches and theories that the concept at times seems to explode in sheer complexity while at other times seems to lack any real substance at all. This thesis aims at a clarification – it tries to understand the meaning of political legitimacy. Such an ambitious project must, however, be immediately qualified. The goal of clarification is restrained by three boundaries. A first boundary concerns the fact that I aim for an *empirical* and not a normative understanding of political legitimacy. I aim for an empirical understanding not because I think normative theory is irrelevant, but because I think that a genuine critical theory is hardly possible without a solid understanding of the empirics of politics. Although I will not be developing a critical theory of contemporary politics at this stage, I hope that this thesis will be a helpful contribution towards such a theory.

A second boundary concerns the claim that political legitimacy is only socially and politically relevant if it is, in principle, accessible for the actors involved, i.e. I aim for a *subjective or actor-centered* approach. When legitimacy becomes the judgment of the philosopher instead of political actors involved it threatens to become a counter-revolutionary or a paternalistic concept – or both. Instead of such an outsider's conception we should recognise that legitimacy is an inherent political concept itself, i.e. it does not stand outside politics, but is an intrinsic part of it. At the same time, if we do pursue an actor's perspective we should not reduce legitimacy to a function of social order – political legitimacy is not a form of behaviour – and neither should we withdraw the notion into 'subjectless' structures of rational political procedure. If actors cannot recognise legitimacy when

¹ For the entire dissertation it holds that by using in general the pronoun 'he' instead of 'she', I do not intend to reproduce any kind of gender inequalities or prejudices. My intentions solely concern issues of readability.

they 'see' it, what is its empirical relevance? What does it mean for politics when actors have to be forced to accept legitimate politics? What does it mean for theory when legitimate politics is not perceived as such in practice? We should bring back the *subject* in political sociology, instead. This thesis therefore tries to analyse political legitimacy from an action theoretical perspective and, as such, tries to build on the solid foundations of Weber's sociological framework of political legitimacy written almost a century ago. Bringing back the subject in sociological theory does not mean that we reduce political legitimacy to a psychological or individualistic phenomenon. Social action theory aims at understanding the relation between subjective orientations and social structures. Legitimacy, from this perspective, is an inherently *social* phenomenon that must be *subjectively* guaranteed.

Finally, ambition is restricted by the fact that I am not trying to clarify legitimacy in general, but *political* legitimacy specifically. This obviously means that we need to come to some understanding of what politics is. That is no sinecure. The general approach of this thesis can be summarised by the claim that there is no singular essence of political nature and that, as a consequence, how we can understand political legitimacy depends upon what we perceive politics to be. Therefore, this thesis does not present an empirical theory of political legitimacy, but a more modest *analytical* framework through which such empirics can be understood. Depending upon how one perceives the nature of politics – as domination, conflict, coordination or argumentation – this analytical framework presents *four faces of political legitimacy* – four analytical frames with which to approach political reality.

These three boundaries together provide the foundation upon which the analytical framework of political legitimacy that I present in this thesis is build. In the two introductory chapters I will elaborate upon this foundation. In chapter 1 I will provide some *analytical building blocks* with which it will be possible to approach the four different faces of political legitimacy and to analyse the political theories and sociological traditions which belong to each face. We will discuss the difficult relation between normative and empirical theory, define legitimacy in most general terms as the subjective validity of objectively valid norms and define the general contours of politics as an object of analysis. In chapter 2 I try to shed light upon the inherent relation between the nature of politics and our understanding of political legitimacy by looking at the complicated relation *between normative and empirical theory* present in the liberal democratic tradition of political thought that lies at the basis of modern democracy and political theory. It shows that we cannot reduce the nature of politics to a single essence a priori and, as a consequence, that an analytical framework should be open to different faces of politics and legitimacy.

In the second part of the book I will present the actual analysis of *four faces of political legitimacy*. In chapter 3 we will discuss how we can understand political legitimacy if we perceive *politics as domination*, as a command-obedience relation. The entire chapter will be concerned with a coherent interpretation of Weber's action theoretical understanding of legitimate domination. Special attention will be given to his famous but under-theorised concept of legality. The main conclusion is that we cannot understand legitimate domination solely in terms of social action (*Handeln*) but must especially understand it in terms of meaningful being-in-the-world (*Existenz*).

In chapter 4 we will understand *politics as conflict*. We will discuss the tradition of the democratic realists that tries to face the disenchanting and conflictive picture of democratic politics that Weber's modernisation and rationalisation thesis introduced. This tradition is quite diverse and includes rational action theories that understand political conflict in the analogy to market competition, pluralist theories that understand political conflict foremost as social conflict and, finally, cybernetic system theory that understands political conflict as a conflict between the political system and its environment – state and society. As all these theories of political conflict are ultimately 'output' oriented, the main question that structures this chapter is whether political output can explain political legitimacy; whether strategic-rational action can explain value-rational orientations. I will conclude that a genuine explanatory relation between political legitimacy and political effectiveness can only be grasped in terms of a dramaturgical perspective – a perspective that forces us to distinguish between politics as a strategic game and politics as theatre. A perspective, furthermore, that differs fundamentally from Weber's work by introducing the core notion of time.

In chapters 5 and 6 we will discuss *politics as coordination*. In chapter 5 I will introduce the complex world of media system theory as developed by Luhmann. In the first part of the chapter I explain how we must understand legitimate power as a symbolic medium that coordinates the political system. In the second part I show how power as a medium reduces and absorbs social complexity and, at the same time, leads to an increase in social complexity at different analytical levels of the political system in terms of social contingency, ambiguity and risk. In chapter 6, subsequently, I discuss how this increased vulnerability in a complex 'risk-society' necessitates forms of political trust which can explain political legitimacy. This means that we first have to understand the equally contested concept of trust and especially its *normative dimension*. Trust, I conclude, can explain political legitimacy on conditional and strategic grounds in contrast to Weber's emphasis on unconditional value-rationality.

Finally, in chapters 7 and 8 we will discuss *politics as argumentation*. In chapter 7 I try to understand political argumentation from three general models: the discursive model, the public

sphere model and the lifeworld model. All three models, I will claim, have their analytical problems, but the lifeworld model as developed in Habermas' communicative theory seems most appealing for understanding the relation between public argumentation and political legitimacy. However, Habermas' model, I argue, is too preoccupied with social consensus, epistemic truth and functionalism. Hence, we need to reconstruct this lifeworld model to attune it to complex modern society – to social plurality and non-foundationalism, without discarding rationality all together. In chapter 8 I try to do just that, by giving Habermas' model a critical realist re-reading and to approach lifeworld from what we can call a performative perspective. From this latter perspective we can understand social order not in terms of generalised norms and rules, but in terms of context-specific performances that allow their own kind of generalisation in terms of narratives. In this chapter we will discuss three kinds of narrative – cultural narratives, ontological narratives and discourses – which give rise to three symbolic spaces – imagination, worldview and authority. Based upon this performative analysis of lifeworld we are able to understand the complex relations between argumentation in public spheres and political legitimacy. Indeed, public argumentation, but also culture and everyday practices, shape the symbolic space of authority in which politics can legitimate itself. The lifeworld concept enables a completely different notion of rationality than the one Weber developed – and, maybe, a notion that does not necessarily lead to his pessimistic conclusions.

I will conclude with a general *analytical framework of political legitimacy*. The four faces discussed provide us with different frames for understanding political legitimacy empirically. It also shows that almost a century after Weber's foundational work his action theoretical perspective is still very potent, but is in need for an update. Where Weber tried to come to grips with the problems of modernity, contemporary political sociology must deal with the problems of late-modernity emphasising the importance of time, contingency, ambiguity and plurality – in short, it must deal with social complexity. Politics, furthermore, not only concerns domination, but also conflict, coordination and argumentation. As a consequence, political legitimacy should not solely be understood in terms of value-rational belief, but also in terms of dramaturgy, trust and discourse.

Method – It is fairly uncommon for theorists to comment on their method. It seems as if theoretical exercises either have none or as if theorists do not have to bother with such mundane matters. The method I used, in first instance, concerned the search for a question. Although the object of interest was clear from the beginning – political legitimacy – the question was not. My search for a question was structured by interests, intuition and sheer ignorance. After finding the question – which was the question whether Weber's action theoretical understanding of legitimacy should and could be

‘updated’ – I started to analyse different theories and approaches. Which theories were in or out – a methodological question, for sure – really depended upon the theories I already was familiar with by training, upon the fame and reputation of others or upon theories suggested by people I talked to. As such, in discussing these theories and approaches, I claim in no way to be exhaustive, nor do I claim this selection to be ‘objective’. Yet, the selection is not without its own logic – it is not irrational. Finally, the soundness of a theory often depends upon the strength or persuasiveness of the argumentation. The most important methodological rule for any theorists, in my opinion, is not to succumb to the temptation to hide complexities in order to hold on to the attractiveness of theoretical symmetry, simplicity or unity. Without denying that any theory is a simplification, a theorist must aim, as Weber has already pointed out, for ‘intellectual honesty’ (*intellektuelle Rechtschaffenheit*) (2012:28). This foremost concerns being honest to oneself by constantly asking the question: is this really reasonable or does it just sound impressive? I hope that in what follows I have retained such down-to-earth reasonableness.

Acknowledgements²

Writing a dissertation is first and foremost a learning process. For a large part this process is an individual and lonely enterprise consisting of reading, thinking and intellectual despair, leading to more reading and thinking and the occasional creative bliss. Fortunately, it is also a social enterprise. I would like to take the opportunity to show my gratitude to some people who were especially helpful and supportive over the past years and who helped me to learn.

I would first like to thank Jos de Beus for giving me the opportunity to do this research. Jos always supported me to explore just about any idea or research direction I thought might be worthwhile, even if this meant that I wandered into scholarly traditions beyond both our comfort zones or that I lost sight of what our project was all about. Jos taught me that the core value of science is curiosity. I feel very fortunate to have worked with Jos and it is a great loss, not just for me but for the entire academic community, that such an insatiable and curious mind has left us.

I cannot thank Veit Bader enough, not just for deciding to become my supervisor but especially for believing in the work my mind had wrought when others were hesitant. Working with Veit felt like coming home. It is a privilege to collaborate with such a prominent scholar, who not only studied all the works I was struggling with, but who works and publishes on many of the same topics that interest me, and many more. Whether he likes it or not, I consider Veit to be my teacher. And if there is one thing Veit has taught me it is the voice of reasonableness and the need for a critical science.

² I would like to acknowledge the financial support of the Netherlands Organisation of Scientific Research (NWO), which funded this PhD-project (Project number 311-99-111).

All those scholars at the University of Amsterdam who commented on parts of my work at one time or another also deserve mentioning, but I would especially like to mention three of them. First, I would like to thank Tjitske Akkerman with whom I had very long and intense discussions even, it seems safe to say, we both never really seemed to understand each other. Second, I would like to thank Bart van Heerikhuizen who patiently listened to the ignorant things I had to say about Weber in a discussion we once had. Without him knowing it, this discussion led me to read the works of Weber in great detail, which, for better or worse, made me the scholar I am today. Finally, I would like to thank John Grin. Even if John was not a part of this specific project, he helped me to write my PhD-proposal and never seemed to stop believing in my capabilities as a scholar.

If writing a dissertation is a learning process, this also means that a scholar needs to learn how to deal with the academic institution and its attractive but at times mind-boggling and frustrating practices. I would like to thank the PhD-community of the AISSR for helping me with that process by sharing our mutual experiences in less formal settings. I will not mention you all individually, but I should mention Lutz Hofer and Matthijs Rooduijn specifically.

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PART I

Introduction

Chapter 1

Some Analytical Building Blocks

In this thesis I aim to clarify the meaning of political legitimacy, but this ambition is limited right from the start by three restrictions (see Preface). First, I aim for an empirical and not a normative understanding of legitimacy. Second, I aim to understand political legitimacy from an action theoretical approach. Finally, I am interested in political legitimacy and not legitimacy in general. These three positions are the analytical building blocks with which we will analyse the different faces of political legitimacy and, as such, they deserve some further attention.

1.1 Normative-Prescriptive versus Cognitive-Explanatory Approaches

The difference between a normative and an empirical perspective is often summarised in the difference between 'ought' and 'is'. Normative theories of legitimacy *prescribe* how legitimate politics ought to look like, while empirical theories *describe* or explain how politics is legitimate in practice. This difference accounts for the classical divide between the legalist tradition of moral theory and the empirical tradition of sociology. This thesis pursues an empirical descriptive and explanatory approach to political legitimacy. However, as many have misunderstood the claims of an empirical, explanatory theory of legitimacy we need to elaborate this conception and differentiation a little further.

First of all, the clear-cut divide between normative and empirical theory is often on closer inspection not that articulate. Normative theory can be quite empirical in the sense that it is informed by empirical facts or describes and evaluates empirical practice. For example, many theories of democracy have the implicit normative view that only decisions made by majority-based representative institutions should be considered legitimate. Based upon this presupposition the legitimacy of certain specific institutions is subsequently empirically investigated. We must recognise, however, that despite the empirical orientation these theories ultimately remain normative. Notwithstanding the fact that representation or the ideology of representation might be an important source of legitimacy in empirical practice, these theories use a normative and not an empirical understanding of what legitimacy is. It is the scientist and his theory that establish the standards of judgement of what is and what is not legitimate, and as such exclude other possible sources of legitimacy that might be empirically valid.

Such *cryptonormativism* is quite common and not always easy to recognise. The confusion especially arises because, as Luhmann has already pointed out, the opposite of the normative is not the empirical – normativity can be an empirical fact and empirical facts can be normatively

evaluated – rather, the opposite of normative claims are cognitive claims (Luhmann 1985:33). Cognitive truth-claims aim at describing or explaining empirical reality in terms of factual truth. As such, these claims can in principle be scrutinised by (scientific) procedures and tests in order to establish their empirical truth-value. When the empirical practice defies theoretical description or explanation, it is therefore the theory that has to be revised to realign it with the empirical facts. In contrast, normative-claims are more robust against empirical defiance. When empirical facts do not align with the normative theory of how it ought to be, it is the practice that should be revised, not the theory. The main analytical difference¹ between normative and cognitive-explanatory theories lies therefore in this different relation between theory and practice.²

However, at this stage a second form of confusion is bound to rise. As soon as we talk about empirical facts and scientific truth-claims post-positivists point out that facts and values cannot be separated.³ Over and over again, we are confronted with the ‘discovery’ that all scientific theory ‘structures’ or ‘constructs’ reality and hence that all scientific theory is normative. Instead of pursuing empirical theory and empirical truth-claims, it is said, one should be frank and lucid about one’s own normative standpoints. As such, the difference we have been trying to posit between normative-prescriptive and cognitive-explanatory theories seems to collapse again. However, we should resist such unnecessary and misleading conclusion. Why can’t we have both a post-positivist outlook on social science and still differentiate between ‘is’ and ‘ought’? It is rather obvious that every scientific or analytical framework is not value-free. It is not value-free in terms of the concept-definitions used, in terms of the choices made concerning the object of research, in terms of the scientific method employed and in terms of the personal and/or cultural values of the scientist. It is of course interesting and helpful to study these value-structures inherent in scientific practice and theories, especially where it has real social consequences. However, the difference between normative and empirical theory does not concern the idea that the latter claims to be *value-free*, but rather that empirical theories are (or ought to be) *free of value-judgements* where normative theories are not.⁴ It is perfectly possible to claim that facts and values can never be separated or that

¹ I use the concept of analytical difference to oppose it with empirical difference. This means that one and the same empirical object, action or event can have different analytical qualities, while different empirical objects can be analytically the same.

² Obviously, the idea that cognitive-explanatory theories have to be revised when they encounter an empirical anomaly is more an ideal than the normal scientific practice (see Kuhn 1970).

³ I understand post-positivism as it is usually understood in the interpretative policy sciences (Fischer 1980, 1993, 1995; Yanow 2000; Rein & Schön 1993, 1996) and not as some improved form of positivism (Marsh & Furlong 2002:24-6).

⁴ The difference between value-free and value-judgment-free is sometimes also captured in the difference between neutrality and impartiality (see e.g. Lacey 1999:92). This idea that science ought to be ‘*Werturteilsfrei*’ is often credited to Weber. Weber, for sure, did not aim at a science that was value-free (*Wertfrei*) but at values and ideals that were free from science (Weber 1958b; 2012). It seems to me that Weber’s fear that science and expertise would prescribe values by disguising them as facts is still valid. We should resist all forms

every fact inherently contains values, while at the same time acknowledging the different relation between theory and practice inherent in normative- and cognitive-truth claims. If it is possible to have a sociological theory of legitimacy – i.e. an empirical theory that describes or explains socially valid norms – it is also possible to have a sociological theory of sociological theories of legitimacy. There is no need to think that the difference between normative- and cognitive-truth claims somehow points to a false pretension of scientific positivism.

A final issue that has preoccupied many is the *relation* between ‘is’ and ‘ought’.⁵ Some have claimed that an empirical value-judgement-free sociological approach towards political legitimacy is amoral or trivial, reifies the status quo and forecloses the possibility of critique (see e.g. Gouldner 1968; Gray 1968; Momin 1972). Much can be said about the (alleged) relation between ‘is’ and ‘ought’ that should not concern us right now. Here, we restrain ourselves to some tentative responses. First of all, as we will discuss later in more detail, it is true that many sociological theories of legitimacy have implicitly or explicitly championed social and political stability and as such these theories might indeed be accused of defending the status quo. All the same, this problem is not inherently caused by the aim of factual explanation, but rather by the theory or method used. However, at a more fundamental level it might be said that any theory that tries to understand the ‘is’ is biased against the ‘what could be’. Although this is right in principle, it seems to be based on a distorted understanding of the ‘is’. Social reality is not a perfect functioning machine for which a description or explanation would necessary lead to its celebration. Social reality is complex, confused, contradictory and imperfect. To describe and explain this reality is to advance critique, as Weber stated, by turning the ‘conventionally self-evident’ into a problem with ‘inconvenient facts’ (Weber 1949:13; 2004a:22). It seems to me that an empirical theory might not just aid normative theory to be more socially and politically relevant, it might also be the most solid scientific method for critique through the disclosure of factual contradictions and false beliefs.⁶ Such cognitive debunking of social and political myths is critical, but not necessarily normative.

In sum, this thesis pursues an empirical approach towards political legitimacy, which means that it aims at a cognitive-explanatory understanding of legitimacy and understands the relation between theory and practice differently from normative-prescriptive approaches. It does not claim some misconceived ideal of value-free science, but rather a science free of value-judgements. And finally, it holds at least a promise that a theory that is not normative can still be critical.

of such ‘cryptonormativism’ (Bader 1991:142). It is precisely for this reason that we should be clear about the difference between normative and empirical theory.

⁵ See for a general discussion Bhaskar 2010:81ff ; Searle 1964; Cottingham 1983; Sayer 1997a; Cruickshank 2010; Hammersley 2009; Steinmetz 1998; Putnam 1995, 2002.

⁶ This position can be associated with ‘critical realism’ (Sayer 1997a; Hammersley 2009; Steinmetz 1998; Cruickshank 2010).

1.2 The Sociological Meaning of Validity

What does it mean when we try to understand political legitimacy from an action theoretical approach? At the most general level we might say that legitimacy is a quality we ascribe to certain social norms. Although the precise meaning of social norms is problematic in itself, it may be reasonable to say that the quality we ascribe has something to do with validity. As such, I would suggest that legitimacy in a very broad and loose sense has something to do with the validity of social norms. Indeed, we are interested in the empirical validity of such norms. But what does that really mean? The sociological meaning of validity is quite tricky. This has to do with the particular quality of norms. Let us first consider an example to get familiar with this complexity.

In the Netherlands citizens are required by law to carry an identity card on them in public space at all times. We might say that carrying this card is a legally valid norm. However, if none of the citizens subsequently take their card with them the norm is not 'socially' valid. This means that the social validity of the norm differs from its legal validity. But the fact that a legal norm is not socially valid does not mean that the norm is not legally valid either. For example, a judge could still impose the norm in a judicial trial (relatively) autonomous of its social validity. As such, it is also possible that two different norms can be valid at the same time. We might find that even though the law formally requires citizens to carry an identity card, an informal social norm develops in which other documents such as bankcards, for example, are also accepted in practice by controlling police officers. In this case there are two different norms of which one is legally valid and the other is socially valid. Then again, citizens might actually conform to the law and carry around their identity card. Although, we can now say that the norm is legally and socially valid, we cannot say anything about whether the citizens actually think that these norms are valid. It may be the case that citizens conform to the law because they fear a penalty, not because they normatively agree with the law. In such case, we can say that the legal norm is *objectively* valid, but not *subjectively* valid. The same holds for socially valid norms. We might, for example, conform to social norms because of social pressures and not because we normatively agree.

What this example shows is that even if we are convinced that we want to study the empirical validity of norms in a particular social ordering, it is not too obvious which norms we want to study in the first place. In the example above we already distinguished between legally and socially valid norms. The example also shows that there is a difference between objective and subjective validity. If we want to understand what political legitimacy is in a sociological framework, then we need to get a handle upon this complexity.

1.2.1 Objective Validity

From the example above we see that there is a difference between a legal norm and a social norm. But to reduce complexity we should first try to get a grip on social norms in general before we can discuss the peculiar quality of legal or political norms. If we look at social norms, then it is crucially important to understand that when a norm is *valid*, this either means that the norm is objectively existent in a particular ordering, or that actors in this ordering normatively agree with it. An objectively valid norm is sometimes called a *factual norm*, while a subjectively valid norm is often just called a *valid norm*.

A norm is factual, i.e. objectively valid, to the extent that it actually structures social action. So for example, the custom to greet one's colleagues at the office every morning can be a factual norm. However, the sheer fact that something is regular and recurrent does not make it a *social* norm per se. The recurring fact that I take the bike and not the bus to go to office is not a social norm at all – not necessarily anyway – but the fact that I wear clothes in the bus or on the bike is. What makes the morning salute a norm is that in some way or another it is socially expected. A social norm finds its source of existence in *social expectations*. As Luhmann explains, it is not so much the social expectation I have of the action of others that is important in this regard, but what is particularly important are my 'expectations of expectations' (Luhmann 1985:26). This means that I not only expect you to act in a certain way, but I expect you to expect me to act in a certain way. Norms are able to coordinate or 'normalise' social action because of these shared expectations that reduce and control social complexity as they provide a relatively stable reduction of possibilities of interpretation, meaning, and action. These expectations of expectations normalise my action exactly because of this *objective* reduction of all possible expectations. For example, I might expect you to hold an expectation towards me that I will greet you in the office. Whether I decide to do so does not alter the *objective fact* that I cannot ignore this expectation of expectations. As such, this social norm exists objectively in the sense that I have to relate to it whether I like it or not.

However, the social norms we are interested in do not so much concern *particular* norms that exist in a particular relation between me and you, as they concern *institutionalised* social norms that in turn structure our particular relation. Indeed, the factuality of norms is not solely dependent upon the fact that you and I share expectations of each other's action. Expectations that I have of you – of both your action as well as of your expectations of my action – are not only, or even primarily, dependent upon my specific knowledge of you, rather such expectations arise in relation to a *third-party*. Such a third-party might be perceived as an 'alter-ego' or 'generalised other' (Luhmann 1985:57; Mead 2004:152). Although this third party is not directly involved in our relation, it might potentially get involved. For sure, such third-party does not have to be a particular person, it

can also be a group or an anonymous ‘generalised’ other. To the extent that expectations are formed in relation to the expectations of a third-party we can say that norms are *institutionalised*. Institutionalisation is therefore the mechanism that helps to control social complexity and contingency through the *generalisation* of expectations. As we will see later on, this reduction of social complexity by generalisation cannot only occur through institutionalisation in the ‘social dimension’, it can additionally be secured by generalisation mechanisms in the ‘temporal’ and ‘material dimension’ of social expectations (Luhmann 1985:24).

The importance of institutionalised norms is that the factuality of norms is no longer necessarily premised upon the *consensus* of the particular actors involved in the action (Luhmann 1985:55). So, the norm to greet one’s colleagues is an institutionalised norm to the extent that expectations and actions are not just formed in the relation between me and my specific colleague John, but in the relation between me and all of my office colleagues – the general group – even though they are not directly part of the situation. The group is a general, but ‘possible’ actor that might get involved, even if it is not at this moment (Luhmann 1985:50). The expectation I have towards John does not derive from my specific relation with John, but from how I expect the general other to expect me and John to act. As such, institutionalised norms can be relatively autonomous of whether John and I actually agree with these norms. This means that the factuality of norms cannot be reduced to some form of subjective consensus between the specific actors. It is in these terms that we must understand institutionalised norms to be *objective*, i.e. relatively autonomous of subjective orientations.

Norms are objective to the extent that they exist *independently* of the subjective attitude of the actor. Objective norms ‘exists’ independently of whether the actor normatively agrees with them.⁷ That institutionalised norms are objective therefore also means that institutions cannot be perceived as a mere aggregation or congruence of individual actions; they have an objective existence of their own. It is also important to emphasise that objectivity does not say anything about the *social force* or *effectiveness* of these norms, something we will discuss below.

1.2.2 Subjective Validity and Defining Legitimacy

For now, it is important to recognise that a social norm can be objectively valid (factual) *without* being subjectively valid. Although the precise meaning of subjective validity will turn out to be quite complicated, we can say in general that a norm is subjectively valid when an actor actually agrees with it – when he thinks the norm is good, just, worthy or reasonable. In other words, when a norm

⁷ Objectivity does not directly imply that the outside observer, the scientist, can easily perceive these norms. We should not mistake objectively valid norms with actual behaviour.

is subjectively valid, actors implicitly or explicitly believe or express a normative claim that this *ought to be* the norm.

This means that the fact that a norm is objectively valid does not say anything about it being subjectively valid. In our previous example we already have seen that the sheer fact that the norm of a morning salute structures the actions of an actor does not mean the actor perceives the norm as subjectively valid. Instead he might just perceive the norm to be a social fact and part of the overall social structure he has to take in to account when he strategically pursues his interests and office-career. Then again, he might not only perceive the norm to be a social fact, but also as an imposition, limiting his actions. In this case, the actor perceives the norm to be externally enforced upon him. These two *subjective meanings* of the factual norm differ from normative agreement. In that case, the actor perceives the norm not merely as a social fact, not merely as being enforced upon him, but in addition also agrees with the norm. To repeat, the sheer fact that a norm is objectively factual does not automatically mean that the norm is also subjectively valid.

When we say that a social norm – in this case the norm to greet one’s colleagues in the morning – is not only objectively factual, but in addition also subjectively valid, it seems we can say that this norm is *empirically legitimate*.

We have analysed two dimensions of the sociological validity of norms in terms of objective and subjective validity. Based on these two dimensions of validity it is possible to create a typology of validity (see fig. 1.1). In the first dimension we distinguish the objective validity or non-validity of norms, in the second we distinguish the subjective validity or non-validity of norms. As such, we can recognise four different types of norms:

- 1) An objectively and subjectively non-valid norm: this really is an empty or non-type as there is no institutionalised norm.
- 2) An objectively valid, but subjectively non-valid norm: this a *factual norm*, as discussed above.
- 3) A subjectively valid, but objectively non-valid norm: this is an *ideal norm*. This concerns norms that actors believe *ought to be* institutionalised norms.
- 4) A subjectively and objectively valid norm: a *legitimate norm*

		Objective	
		Valid	Non-Valid
Subjective	Valid	<i>Legitimate</i>	<i>Ideal</i>
	Non-Valid	<i>Factual</i>	-

Fig. 1.1 – Different perspectives of empirically valid norms

1.2.3 The Problem of Order

Aside from the different analytical understandings of the validity of norms, it is also important to separate the question of *validity* from the question of *effectiveness*. The question of effectiveness, we might say in general, tries to deal with the so-called problem of order, i.e. how social or political order can be explained or guaranteed. Clearly, the problem of order is deeply ingrained in the sociological tradition and, at times, threatens to reduce legitimacy to a mere function of order or stability. It seems to me, however, that we should clearly separate between validity and effectiveness – between legitimacy and order.

The problem of order, as we will see in the chapter that follows, has clear normative origins. When one takes a look at the classic political theories of the 16th to 19th centuries concerning political legitimacy, one can not only see that *all* these theories prescribe certain norms of legitimacy, but also that when they turn to the empirical world their main worry concerns how a legitimate political order can be stable in a less than rational world. How can a legitimate political order exist when the people do not act morally, rationally, or neither? The historical fact that this classic tradition conceived empirical questions regarding legitimacy in terms of the problem of order is at least part of the explanation why order and legitimacy can hardly be understood separately in the modern sociological tradition as well. There is a rather widespread, but analytically weak idea, that if the people rise against its political order this signals that the political system has lost its legitimacy – as we have seen once again recently in the ‘Arab spring’. Although uprisings and widespread disobedience *might* indicate that the legitimacy of the political order is stressed, this need not be the case. We might think for example of cases of civil disobedience in which the actor protests against certain policies or even politics, but does not deny the legitimacy of the political order as such. But more importantly, we should rigorously object against turning the relation between legitimacy and social instability upside down, which would mean that social stability indicates legitimacy. The reason for this rejection is evidently premised upon our action theoretical perspective, in which we not only differentiate between objective and subjective validity, but also between social action and behaviour. To put it short, mere obedient behaviour does not necessarily signal subjective validity.

This does not mean, however, that there is no relation between legitimacy and political order at all. As Weber has already argued, the fact that a political order is not only guaranteed by force, but *in addition* guaranteed by a belief in its legitimacy, makes it more stable and less conditional upon contingent circumstances (Weber 1978:213). However, we should try to disentangle the relation between legitimacy and stability as much as possible based upon two crucial observations. First, political stability might be a function of legitimacy, but legitimacy is not a

function of stability. Second, a functional relation does not add up to a causal explanation (Elster 2007:7-8).

But even if we agree to forgo functional relations between legitimacy and stability there is an additional and more fundamental relation between legitimacy and order. Until now I have implicitly argued from the perspective of the *individual* actor to explain the concept of subjective validity. As such, it might seem that subjective validity is an individual property, while the objective validity of a norm is foremost a property of the social ordering itself – a property of the group which exist independently of the subjective orientations of the actor. This would seem to cause an ontological conflict if we want to understand the legitimacy of a political order or practice. However, the real problem is that subjective validity always already implies some form of intersubjectivity and not so much individuality. Subjective orientations, we might say, are inherently social – we are not talking about the a-social man of liberal or economic theory. Subjective validity cannot and should not be reduced to autonomous individual preferences, but is less than objective validity at the same time. It is because of this intersubjective or social character of subjective validity that legitimacy can never be really separated from social order.

1.2.4 Internal and External Guarantees

A factual norm, we might assume, is not just an objectively valid norm, it must also be socially effective. The objective validity of a norm, however, does not in itself explain its social force. If we want to address the question of effectiveness – to explain social order – then we must explain why a norm is able to structure or normatise social action. There are two principled ways to explain why norms have such effective force to structure social action. A norm can be effective because it is *externally guaranteed* or because it is *internally guaranteed* (Weber 1978:33-4).

A social norm might be effective because it is externally guaranteed by *force*. For example, a speed limit might be effective because of the threat that speeding will be sanctioned. Force, or the threat of force, is an external guarantee precisely because disobedient behaviour is sanctioned, i.e. the *consequences* of deviance are autonomous of underlying subjective action orientations. Emphasis upon behaviour and consequences seems to reintroduce an outsider's perspective in our analysis. Indeed, to understand the social structures of force and threat allows us to understand social behaviour without analysing underlying subjective action orientations – allows us to approach social subjects as mere *objects*. However, and importantly, also from the perspective of an actor can force be perceived as an *external* guarantee, i.e. as expectations about consequences that exist independently from the orientations or the will of the actor. Indeed, from the perspective of the actor force treats him as an indiscriminate object, not as a subject. In short, force or the threat of

force, either present in hierarchical power relations or in horizontal social relations, can externally guarantee objective valid norms.

Next to political and social coercion, a norm might also be externally guaranteed by its sheer *social factuality*. For example, driving at the right side of the road is factual not because the norm is externally guaranteed by political force or penalty, rather the simple fact that others conform to the right side of the road makes it almost impossible to drive at the other side. In other words, norms may be externally guaranteed because they are intersubjectively factual ('conventions'). Again, norms are effective precisely because the external consequences of deviancy are independent of subjective orientations. So, I am not forced to lower the quality of my teaching at the university, but because everybody does it, it is more difficult if not impossible to hold up higher educational norms.

There is one final form of external guarantee that is slightly different in appearance. This form also concerns objective or 'externally guaranteed' consequences of breaking norms, but this time the effectiveness of norms is not guaranteed by political or social force, nor by social facts, but by factual and cognitive *truth*. For example, the factual truth that smoking is bad for your health means that the norm 'you should not smoke' is externally guaranteed, i.e. the factual consequences of smoking is guaranteed independently from subjective orientations. Now, it may be objected that smoking is bad for your health is a fact of nature and, as such, should not have a place in a sociological theory as much as there is no place for the norm that one should not jump off cliffs without a parachute. Gravity, indeed, is not a norm that is socially guaranteed. However, health, sanity, normality or happiness are not concepts that are as natural and objective as some sciences might want us to believe. Factual knowledge must also be sociologically understood as social-historical constructs – knowledge has a social quality. Still, the force of truth is exactly that it establishes norms and consequences that are objectively true independent of subjective orientations. Factual truth – *facticity* – is about knowledge considered by the actor to be objectively true, even though the critical scientist might show its social-historical origins (*Herkunft*).

To sum up, objectively valid norms can be socially effective because they are externally guaranteed by political or social force, social factuality, or objective truth (facticity), i.e. by *social* forces that, from an actor's perspective, are independent of subjective orientations. Yet, external guarantees only have real life consequences because actors are able, more or less consciously, to 'recognise' forces, conventions and facts. In other words, external guarantees do not make a subjective actor's approach redundant.

Norms can also be internally guaranteed. The social force of norms is not just explained by externally guaranteed consequences of deviance, but also because norms are guaranteed by the subjective

orientation of actors themselves. Based upon Weber's famous typology of social action (*sozialen Handelns*) we can recognise four principled ways of subjective action orientations: traditional, affective, strategic and value-rational orientations (1978:24-6).⁸ From a traditional action orientation we can explain the effectiveness of norms – their internal guarantee – in terms of sheer routine and 'ingrained habituation' (*eingelebte Gewohnheit*). From an affective orientation effectiveness is explained in terms of emotion, especially feelings of solidarity and group identity. From a strategic action orientation the actor guarantees norms based upon his strategic cognitive considerations and subjective preferences. Strategic action, it must be noted, is first and foremost about choosing between different individual preferences, i.e. making ends conditional upon secondary effects, upon the "scarcity of means" and upon "the prospective behaviour of others" (Weber 1978:65; 30). Finally, from a value-rational action perspective norms might be guaranteed in terms of subjective normative values. For Weber, this implies that norms are internally guaranteed in terms of 'conviction' of the absoluteness of an ideal-value, an ideal that "always involves 'commands' [*Geboten*] or 'demands' [*Forderungen*] which, in the actor's opinion, are binding upon him" (Weber 1978:25).

In sum, to the extent that these subjective action orientations confirm an objective norm, we can say that this norm is guaranteed independent of, or in addition to, its external guarantees, i.e. the norm is internally or subjectively guaranteed. So, for example, a norm is internally guaranteed because an actor orients himself to that norm out of routine, out of group solidarity, because of strategic interests, or because he thinks the norm is normatively valid. Even if these types of subjective action orientations are very helpful for our analysis, we should not take Weber's claims of value-rationality at face value as there might be less demanding conceptions of normative validity that stay clear of the 'absolute' or unconditional quality of legitimacy in Weber's work.

1.2.5 Normative and Cognitive Expectations

When we have argued that legitimacy concerns the subjective validity of an objectively valid norm, this might mean that all factual norms that are internally guaranteed are indeed legitimate. However, this would be a very unhelpful position. Subjective validity, it seems to me, connotes a normative quality – a form of 'oughtness'. As such, we can distinguish between internal guaranteed norms that have a *cognitive* character and internally guaranteed norms that have a *normative* character.

The framework we are developing here is based upon the idea of social action (*sozialen Handelns*) as a meaningful and subjective orientation of an actor towards objective social norms, i.e. towards institutionalised expectations of expectations. Starting from this expectational basis of

⁸ I will use the concept of strategic orientation instead of Weber's instrumental rational orientation to emphasise the role of private or individual *preferences* in this type of action (see also Bader 1989:309).

social action we can follow Luhmann's differentiation between normative and cognitive expectations (1985:31ff.).

Suppose I have a certain expectation about a friend that he will visit me on my birthday. However, as it turns out, he does not show up that particular day. I might react to such a disappointment in two fundamental ways. First, I might perceive the action of my friend as a fact which I have to *explain* or deal with cognitively. That is, I might try to explain his absence in terms of circumstantial facts or I might reflect upon my expectations and decide they were wrong or need adjustment. However I deal with it, a cognitive reaction means that I adjust my perceptions and expectations of the (social) world according to the new facts that came to light by the disappointment of expectations – it concerns learning. Secondly, I might also react in a different way. In this case I refuse to adjust my perceptions and expectations of the world in reaction to the disappointment. Instead of adjusting to the factual action of my friend, the action of my friend has to adjust to my expectations. This does not, of course, mean that he did show up after all, it does not change his behaviour, but it does mean that he *ought to* have shown up. As a result, I might blame him, retaliate his action or exclude him from my friendship. The disappointment is thus explained normatively in terms of *oughtness*.

Both reactions are ways of dealing with disappointments of social expectations, but both imply a radically different way of interpreting expectations and disappointments.⁹ For sure, between these two extremes Luhmann recognises mixed forms of dealing with disappointments, but for now this dichotomous approach suffices (1985:38-9). The social contingency and complexity in the 'temporal dimension' of expectations of social behaviour – can I expect my friends to come to my birthday or not – can be controlled by means of generalisation, i.e. by advancing *normative* expectations over *cognitive* ones: friends ought to come to birthdays.

If we understand legitimacy in terms of the subjective validity of objectively valid norms, then we must, it seems to me, understand this subjective validity in normative terms, i.e. the factual norm must possess for the actor a *normative quality of oughtness*. As such, not all subjective action orientations are an obvious basis to explain this normative quality of legitimacy. We might perceive that a strategic action orientation towards political order primarily concerns cognitive expectations, while a value-rational action orientation concerns normative expectations. This is the, often implicit, reason why strategic action orientations are almost never included in definitions of legitimacy as it

⁹ For Luhmann, the need to deal with disappointments seems to have a *function* for the psychological stability of the actor dealing with a complex and contingent world, i.e. his 'presentation of Self' (1985:40-1). I am tempted to agree with him on this point as it seems to me that understanding oneself as a stable 'ego' within understandable and meaningful relations in a contingent world is a particularly essential human need. However, as this functional relation does not so much explain the difference between cognitive and normative expectations it does not really have to concern us here.

misses the normative oughtness that legitimacy entails. But we must be very careful here. The fact that we can distinguish between cognitive and normative expectations does *not* mean that cognitive expectations might not be a basis for normative ones or vice-versa. It does not say anything about the *relation* between cognitive and normative expectations. And hence, we cannot exclude a strategic action orientation from a theory of legitimacy from the start. What is clear, however, is that an empirical theory of legitimacy has to explain this specific quality of oughtness.

Guarantee	Force	Source of Force	Social Order
External	Objective consequences	Coercion	Factual
		Social Factuality	
		Facticity (Truth)	
Internal	Subjective meaning	Traditional orientation	
		Affective orientation	
		Strategic orientation	Cognitive
		Value-Rational orientation	Normative

Fig 1.2 – The effectiveness of objectively valid norms

1.3 Politics as an Object of Analysis

So far we have argued that social norms can help us to understand social action. Furthermore, we have seen that it makes sense to separate the question of validity – discerning legitimate and factual norms – from the question of effectiveness – discerning external and internal guarantees. Finally, we have already gained a general understanding of legitimacy: legitimacy concerns the subjective validity of objectively valid norms, where this subjective validity has to have a sense of oughtness. However, we are not interested in the legitimacy of just any social norm or action we are interested in *political* legitimacy. The meaning of politics deserves our attention.

1.3.1 Power, Domination and Political Domination

It is fairly difficult to define politics or the political without preloading our analytical framework with unwanted associations. Nevertheless, we do need to analytically distinguish politics from other kinds of actions, practices, fields, systems or spheres. We do need to know what we are talking about. Politics, in the history of political theory and practice, has often been defined in terms of power. However, this is a problematic position; not because politics does not concern power, of course not, but rather because there are many forms of power that do not concern politics.

Power is not the appropriate reference for the analytical problem of differentiating politics from other forms or fields of social action. The multiple dimensions of power do not define politics. A first step towards politics as an object of analysis, therefore, is by differentiating *domination* (*Herrschaft*) from power in general. Domination concerns definitive decision-making power, or, in

other terms, the *sovereign power* to make a final decision or judgement. Domination or sovereign power is an institutionalised expectation, which means in terms of Luhmann's analysis that it does not depend on or is relatively independent of consensus. So, for example, the teacher is in a position of domination to the extent that he makes the definite decisions for the class. The teacher is not in a position of domination because of some consensual agreement and reciprocal expectations between teacher and pupil; rather, the teacher's position of domination is institutionalised in terms of expectations of both towards the general other, which might not even be present in the class itself, but rather concerns the parents or the wider 'community'. In short, the position of domination of the teacher depends – and is circumscribed – by factual institutionalised expectations. It is important to recognise that the teacher does not have sovereign power *because* he controls a source of power – he can punish or sanction the children – rather, he controls this source of power *because* he is in a position of domination. In other words, power and domination should be carefully separated.

However, to separate domination from power is not enough. We should also differentiate between political domination and domination in general. When we follow Luhmann's analysis of social expectations somewhat further, we see that expectations cannot only be secured by means of generalisation in the dimension of the *temporal* (the normative) or the *social* dimension (institutionalisation), but also in the *material dimension* (Luhmann 1985:73). In this material dimension Luhmann recognises four levels of abstraction that help individuals to stabilise expectations in the material, complex and contingent world. These levels run from the personal, to roles, to rules and offices, to the most abstract level of values.¹⁰ As such, expectations concerning domination, i.e. institutionalised sovereign power, can also be perceived in this four-levelled material dimension.

First, domination in this material dimension of social expectations can be strictly *personal*. Expectations about father's domination are prescribed by knowledge about his person – the family knows his whims and will. Second, domination may be de-personalised and institutionalised in terms of *roles*. Because a person has a certain role he is in a position of domination. As such, expectations of sovereign power are no longer dependent upon knowledge of the specific person, but of his specific role and its inherent boundaries. We might perceive that some roles are *socially* institutionalised while others are based upon some *formal* institutionalisation process. For example, father understood as a specific role can be socially expected to have a position of domination, which is limited to his family and does not concern violence. And we might also perceive that such socially institutionalised expectations are difficult to change or control intentionally, but that they do change throughout history. In contrast, other types of roles of domination can be controlled and

¹⁰ I prefer the label 'rules' to Luhmann's 'programs' (1985:66). But whatever the label, the essence of rules or programs concerns controlling complexity in terms of expectations of correctness.

intentionally changed. Such roles are formally institutionalised and clearly prescribed by rules and offices. We can think of the bureaucrat whose position in the hierarchy of domination is prescribed by rules, which, if needed, can be changed intentionally according to some correct rule-making procedure. As such, these types of roles are formal positions that imply a formalised institutionalisation processes. Such a rule-making procedure, to increase complexity further, can in itself also be socially or formally institutionalised. Finally, expectations concerning domination can also be controlled by values. This means that expectations concerning sovereign power are not prescribed by rules, roles, or the personal, but rather by values. For example, expectations concerning the judge are not only circumscribed by rules, but also by ideas of justice, in the same way that the expectation of father's domination can be prescribed by love.

From Luhmann's functional evolutionary perspective expectations change from the personal to social roles to formal positions prescribed by rules to values, each step allowing a more differentiated and more complex social organisation. Without taking-over this evolutionary perspective per se, we can learn from this analysis that, first, in order to analytically distinguish between power and domination expectations must at least be related to social roles and not solely to person. Second, if we want to delineate political domination from domination in general, expectations must at least be related to formal positions of domination.¹¹ It is only at this 'stage' that social and political expectations diverge. In other words, it is at this stage that we can differentiate between a social and *political order*. Political domination implies therefore some form of formalised institutionalisation process that differentiates 'informal' from 'formal' positions of domination.¹²

If we understand the political order *analytically* in terms of formally institutionalised sovereign decision-making powers, we might think that we have also found the definition of politics. However, defining politics in terms of domination is too broad and too limited at the same time. It is too broad as political domination can be found in many different places or orders, such as the class, the factory, the association, the commercial organisation, the territorial state or the supra-national political union. Although there is nothing intrinsically wrong with such a broad definition, it is unhelpful for analysing political legitimacy. What we need is therefore not only to *analytically* distinguish political domination from domination or political from social order, but also an *institutional* delineation of politics. On the other hand, political domination is too limited because

¹¹ This does not mean, of course, that expectations based upon the personal and upon social roles are not important to understand politics. These four-levels are not subsequent stages but rather concern increasing complexity and differentiation. These four-levels of abstraction do not cancel each other out but can work simultaneously (Luhmann 1985:69)

¹² With this definition I come close to the definition of Bader and Benschop, who state that "[p]ositions of domination are the result of formalised distributions of competencies of decision-making" (1988:144). However, unlike them, I hold that the differentiation between power and domination is not dependent upon the formal/informal divide but upon the difference between personal and role expectations.

politics is more than domination; it is more than just making the final decision. Politics also includes attempts to influence the decision-making process as well as its constitutive rules. What we need is to understand politics as a specific kind of *practice*. In short, we must both limit and broaden our conception of politics beyond mere political domination.

1.3.2 Politics as a Value-Sphere and Practice

If we understand a political order of domination in terms of formal rules and offices, we might broaden our conception of politics by increasing the level of generalisation from rules and offices to the level of values. To understand politics as a value sphere we can follow Barber, who defines the political in terms of action, autonomy and sovereignty (Barber 1988:10).

Political domination concerns *sovereign* decision-making power. As such, we already know what the political entails as a specific kind of action, it concerns making final decisions. However, the political especially concerns the *necessity* to make decisions, a necessity that arises because of the need or demand for *collective action*. This need for a sovereign decision for a collective, for a *polity*, already separates the political from other social spheres such as the economy. Indeed, decisions that do not concern the collective, but the private or intimate, are not political – although the question of where these boundaries are drawn might be part of politics itself.

Second, these decisions are political judgements that should not be confused with judgements that concern science, morality, economics or aesthetics. Indeed, the political must be understood as an *autonomously* differentiated value sphere. If morality concerns judgements about right and wrong, ethics about good and evil, science about truth and falsity, economy about profitability and non-profitability and aesthetics concerns judgments about the beautiful and the ugly, then we might wonder about the specific autonomous quality or value of political judgement. It is at this point that it becomes clear that the political cannot just be defined in terms of power. A political judgement is not just to impose one's will as one can impose any kind of will or judgement. A political judgement, we might agree, concerns a judgement over different and conflicting opinions, beliefs, or wills.

The autonomous basis of the political does not point to some kind of value consensus that is prior to the political, but it rather points to conflict. The political is making a judgment despite the lack of consensus. Indeed, where there exists consensus concerning the good, the right, the truth and the beautiful, no political judgement is necessary. "Where reason claims to speak, politics is silence" (Barber 1988:205). Politics, then, is to deal with the 'warring of the gods' (Weber 2004a:27). It is not based upon the singular, upon consensus or 'the' common good, but rather upon conflict of opinion, upon the duality of government and opposition, of hegemony and counter-hegemony. This

should not tempt us to claim that political actors do not aim for ‘the’ common good or for common solutions to shared problems and that the essence of the political is conflict, the always-luring possibility of Schmitt’s ‘friend/enemy distinction’ or Mouffe’s exclusionary ‘we/they relation’ (Mouffe 2005a:14-15). We should resist such essentialism, first, because similar to defining the essence of politics in terms of power, it leads to the unnecessary conclusion of politics as an ubiquitous ‘ontological condition’ undermining its autonomous basis (Mouffe 2005a:16; see also Rasch 1997:103-4; Wenman 2003:61). Second, conflict is not the only foundation that explains the sovereignty of political judgment. The political is also making a judgment “under conditions of uncertainty” (Barber 1988:206-7). However, we should indeed resist the idea that value consensus is the necessary basis, the necessary pre-condition of politics (Barber 1988:208-9; Rosanvalllon 2008:122, 169; Bader & Benschop 1988:158; Bader 2007:179; 2008:23; Luhmann 1985:49; Mouffe 1999:756; 2005a:1-2; 2005b:225; Halbert 2002:37; Wenman 2003:60; Rasch 1997:110).

In sum, the autonomy of politics as a value sphere rests upon the necessity to make sovereign decisions for collective action under conditions of conflict and uncertainty. It follows from this analysis that the political is not founded upon some notion of the common or general will, nor upon the certainty of reason or truth, but its autonomy rests exactly “on difference and the plurality of competing wills” and the need to make collective judgments nonetheless (Rasch 1997:110). This means that one cannot stand outside the political by denying or opposing political judgement (or supposed consensus), which is the case in morality and science where opposition means to be immoral or to be irrational. Opposing political judgement is exactly to be part of the political. One can only stand outside the political when one does not *participate* in making a political judgement, when one is neither active in agreement nor in opposition; when one is disinterested or not in any need for participation (because one has the power to ‘impose’ one’s will on all).¹³ As such, politics is inherently a form of action – *a practice*.

When politics as a value sphere concerns sovereign political judgement, *politics as a practice* concerns the attempt to influence that judgment. This means that we can understand politics in terms of actors trying to influence the political decision-making process. It is at this stage that political power re-enters our analytical framework. Politics as a practice can be analysed in terms of competing actors and effective political power based upon resources, strategies and competences (Bader 1991; Bader & Benschop 1988). As such, politics cannot be reduced to political domination,

¹³ Being part of the political is therefore more than having a subjective preference. One cannot judge politically in solitude, politics is ‘activity’. Political judgment is “what politics produces and not what produces politics” (Barber 1988:199; see also Bader 2008:4 for a ‘presupposed minimalist public orientation’).

to institutional boundaries or to political judgement, but includes *all actions* that intent to influence the political decision-making process or its constitutive rules.

An analysis of politics based upon notions of social pluralism or conflict and upon a resource-based understanding of power runs the risk of being drawn into the minefield of discussion concerning classical pluralism and the true essence of political power. It is not my intention to provide a detailed analysis of these historical debates, but something needs to be said concerning the analysis of politics and political power. A classical definition of the pluralist conception of power is provided by Dahl, who offered an 'intuitive' idea of power as "A has power over B to the extent that he can get B to do something that B would not otherwise do" (Dahl 1957: 202-3). In their effort to counter 'elitist sociological analysis' and to make political analysis 'scientific', understood as 'measurable', these classical pluralist analyses of political power were too much concerned with observable actions and political decisions, not to mention their rather normative, apologetic or naïve view of political practice. Bachrach and Baratz complained against this behaviouristic reduction of political power and claimed that 'non-decision' could also be a form of 'invisible' political power, a 'second face' of power (1962; 1975). Finally, Lukes complained that Bachrach and Baratz had not properly understood their own 'admiration' of Schattschneider's claim that "organisation is the mobilisation of bias" (Bachrach and Baratz 1962:949; Lukes 1974:21). Non-decision is still an 'intentional action' assuring that certain issues or interests remain outside the political decision-making process and therefore, and importantly, pre-supposes that issues and interests are already present, if only covertly. Lukes criticised this reduction of interests to preferences, on the one hand, and the idea that the absence of conflict means the absence of political power, on the other (Lukes 1974:22-5). Indeed, his 'third dimension' of power is not voluntaristic or intentional, but concerns the structural power of political and social institutions that either forms or shapes existing preferences or prevents objective interests from becoming conscious. Especially after the works of Foucault, the discursive turn in the analysis of power and the postmodern ridicule of objective interests, political power nowadays seems either to be analysed in terms of the liberal myth of pre-determined preferences or in terms of the unhelpful and sometimes perverse analysis in which every form of order is an act of power.

There is, however, no need to keep reproducing these two understandings of political power. We need not choose between the 'cynical' liberal myth of *voluntaristic power* and the providential understanding of *structural power*. Rather, we can follow Bader in his resource-based framework for understanding collective-action and social inequality which combines 'sociological structural analyses' and 'political science's strategy analysis' (Bader 1991:254, 278). Bader perceives political

power to be intentional, strategic, actor- and resource-based.¹⁴ Power, in the definition of Weber, is “the probability that one actor in a social relationship will be in a position to carry out his will even despite resistance, regardless of the basis on which this probability rests” (1978:53, adjusted translation).¹⁵ An analysis of political power, then, is exactly to analyse the basis of this probability, including non-decisions and structural asymmetries. As such, Bader not only distinguishes between direct and indirect resources, but also between resources one can control, possess, or manipulate and resources that remain outside of one’s control (Bader 1991:258-9; Bader & Benschop 1988:131). Indeed, asymmetric social structures – or the organisation of bias – are precisely such a resource of power that cannot be directly manipulated, but that does influence the probability of carrying out one’s will. It is more than apparent that dominant interpretative structures of facts and values not only shape one’s preferences, but also one’s chances to influence political decision-making (Bader 1991:149).¹⁶ Although Bader’s conflictive or competitive conception of political power presupposes conflicting interests, it does not mean that an actual conflict or the absence of conflict is all that should concern an analysis of power. Indeed, in line with my earlier remarks on the possibility of scientific critique, Bader argues that objective interests can be and should be an object of political analysis by providing a cognitive – not a normative – critique concerning interests, inconsistencies, and structural inequalities (Bader 1991:142-5). Such a rich understanding of political power gives us the analytical framework with which to understand and analyse politics-as-practice, without reducing politics to a competition of preferences and without dispersing politics to every form and type of social structure.

1.3.3 Politics as an Institutional Field

We have seen that our understanding of politics can be broadened beyond mere institutionalised domination when we perceive it as an autonomous value sphere and as a specific practice. However, the former is too abstract and the latter too general for an empirical analysis of politics. Both need to be *institutionally anchored*, which means that we first need to discuss institutional boundaries.

When we understand a political order in terms of institutionalised domination, we might define politics in terms of specific institutional fields. However, such an institutional definition of

¹⁴ The emphasis on ‘strategic’ should not be understood to mean that actors ought to act strategically or that all social action can be reduced to strategic action (see Bader 1991:143).

¹⁵ As such power is increasing the probability of a specific outcome by decreasing the choice for action of others involved. The English translation seems particularly detrimental by leaving out the word ‘even’, which gives the definition a much narrower connotation. Originally it states: “Macht bedeutet jede Chance, innerhalb einer sozialen Beziehung den eigenen Willen *auch* gegen Widerstreben durchzusetzen, gleichviel worauf diese Chance beruht” (my emphasis).

¹⁶ Bader points to “dominant cognitive and normative patterns of interpretation, society and worldview, dominant hierarchies of prestige, legality, [and] structures of the political system...” (1991:259).

politics may proceed from different references. We can differentiate institutional fields of political domination based upon territorial, functional-analytical or institutional-empirical references (Bader 1988:125; 2007:186-7; 2008:5). An *institutional-empirical* differentiation concerns all those public and private institutions, organisations and associations with internally organised sovereign decision-making power. The boundaries of these empirical institutions are relatively closed and depend upon formal membership. Examples concern a family, a factory, a labour-organisation, a political party, the ministry of war, etcetera. Although a parliament is also an empirically differentiated institution with its own internal rules and offices of domination, it is obvious that the decision-making power of parliament is not only internally valid, but also externally beyond these fairly restricted institutional boundaries.

Another possibility is therefore not to refer to empirical differentiation, but to *functional-analytical* differentiation. If we can analytically differentiate the political as an autonomous value sphere, then we can also differentiate the political itself in terms of functional systems or fields. The most famous functional differentiation of political fields concerns the traditional differentiation between legislative, judicial, executive and administrative functions. But other functional-analytical references are also possible. One might delineate political fields in terms of specific policy domains – e.g. neo-corporate negotiations between government, labour and employer associations, but also all kinds of governance networks concerning environmental, legal, and economic domains, to name but a few. The boundaries of these functional-analytical political fields are not drawn by formal membership per se, but rather by ‘stakeholdership’.

Finally, we can also perceive institutional fields of political domination defined by *territorial* references. Here the relatively autonomous fields of political domination are defined by territorial boundaries and by membership based upon citizenship, denizenship, and residency, in other words, polities are defined by and define boundaries. Most famously we can differentiate political domination in terms of the state or the nation state. As Bader rightly points out, the state cannot and should not be defined in terms of a territorial (claim to) monopoly of violence – although means of ‘superior violence’ is a pre-condition for the state’s claim on a monopoly of legal violence (1991:271). Rather, the state claims a territorial monopoly on sovereign decision-making power in the areas of legislation, execution and control, and judicial judgements (Bader 2008:13). However, the modern state is often internally and territorially divided in terms of cities, departments, counties, and even states in case of federations, while supra-national levels may also be present as in the case of the European Union. These different levels cannot be reduced to one single hierarchical state-centred autonomous field of domination, and as such we must perceive the modern state as a ‘multi-level polity’ (Bader 2008:13).

If we want to talk about politics beyond politics as an autonomous but abstract value sphere, and beyond politics as a power-structured but general kind of practice, then we need to be precise about the political field we are talking about. As we have seen, however, institutional boundaries can be drawn differently based upon different reference points. Even if we would choose a specific type of boundary and decide which specific and relatively autonomous political field we are studying, institutional boundaries in reality remain complex, fluid, overlapping, diverse and contested (March & Olsen 2006:14). Nevertheless, for our analysis of political legitimacy we need to gain some solid ground. In this thesis I will primarily focus on the political institutional field of the modern state defined by claims of sovereign decision-making power concerning the classical functions of the *trias politica* where its boundaries are determined by territorial and citizenship claims. But we must acknowledge, at the same time, that these sovereignty claims of the modern state are qualified, first, by the state being a 'multi-level polity' – including the supra-national – and, second, by the existence of 'multi-layered governance' arrangements, i.e. functional-analytically differentiated governance networks that tend to cross national boundaries or the functional boundaries of the *trias politica* (Bader 2008:13).

1.3.4 Politics as an Institutionally Anchored Practice

In trying to define the meaning of 'political' in political legitimacy, we have, first, distinguished domination from general power, and political order from social order. As such, we have defined *political domination* in terms of formally institutionalised sovereign decision-making powers. However, this definition of politics, I have argued, is both too broad and too limited. Subsequently, we have broadened our understanding of politics by perceiving it as an autonomous *value sphere*, where autonomy is based upon the need to make sovereign decisions for collective action despite conflict and uncertainty, and by perceiving it as a specific kind of *practice* in which competitive actors try to influence the political decision-making process, a practice that must be analysed in terms of power. We have limited our perception, in contrast, by drawing different possible institutional boundaries in order to delineate different *political fields*, ultimately opting for the – multi-levelled and multi-layered – modern state as our primary political field of interest.

In conclusion, we need to combine our broadened and limited perceptions of politics. Especially because politics as a practice, as we have seen, is not restricted by institutional boundaries, an institutional perspective of politics would seem too restrictive. Both perspectives can nevertheless be combined if we analyse politics as a specific kind of practice that is not so much institutionally restricted as *institutionally anchored*. This means, in this thesis, that politics as a practice is not limited to the institutional boundaries of the modern state, but that the practices we

are interested in are anchored in, or oriented to, the modern state and not, for example, to the family or the factory.

Does this mean that it is now clear what we mean with 'political' in political legitimacy? No, it does not. But it does provide an analytical outline from which theories of political legitimacy have to understand their object of analysis. The most encompassing theory of legitimacy would, in my opinion, not only have to explain the legitimacy of political domination or the political order, but the legitimacy of an institutionally anchored politics-as-practice. However, the relation between politics and legitimacy is more complicated than defining the political as an *object* of analysis. In the chapter that follows, I will show that the way in which we understand the *nature* of politics has inherent consequences for how we understand legitimacy. We can, however, already perceive that the natures of politics that underlie the four faces of political legitimacy we will analyse in this thesis – i.e. politics as domination, conflict, coordination and argumentation – are all part of our definition of politics as an object of analysis.

Chapter 2

An Analytical Framework between Normative and Empirical Theory

While we might have a general understanding of what legitimacy entails – the subjective validity of objectively valid norms expressing a sense of ‘oughtness’ – and might we have a general understanding of what politics is as an object of analysis, an empirical analysis of political legitimacy necessitates a more concrete foundation. We need to move beyond these abstract pro-theoretical building blocks towards analytical theory. However, at this point we encounter a further problem. It seems that the way in which we understand the nature of legitimate politics impacts on how we understand or approach political legitimacy. As we are pursuing an *analytical framework* – and not a normative or empirical theory – we are confronted with the problem of how to determine the nature of legitimate politics *a priori*.

In this chapter I will show this problem by analysing the complicated relation between normative and empirical theory present in the liberal democratic tradition of political thought that lies at the basis of modern democracy and political theory. In the first part I try to show that the peculiar quality of political legitimacy in normative theory *prescribes* how we must understand the empirical form of political legitimacy. By discussing the theories of Locke, Rousseau, Hume, Madison and John Stuart Mill we can see that despite their normative differences they are in considerable agreement where it concerns empirics. Empirically politics is about domination, while legitimacy has to explain a duty of obedience towards the political order. Legitimacy is explained as a political ‘artifice’ located somewhere between reason and force. Despite this agreement about the *empirical form of political legitimacy*, they disagree about the *empirical nature of legitimate politics*. Indeed, many normative differences can be explained as a consequence of these different understandings that lie at the basis of their arguments. In the second part of this chapter I try to show that the way in which they understand the nature of legitimate politics – and, as such, how they construct their normative theories – is a consequence of how they understood the empirical political problems and questions of their time. In other words, I analyse how empirical theory affects normative theory – how theory is historically embedded.

If normative theory prescribes our empirical understanding of political legitimacy and if empirical theory influences how we understand the nature of legitimate politics, then any analytical framework must try to deal with these dialectics. We should neither fall into the trap of cryptonormativism nor of transcendental or a-historical essentialism.

2.1 Between Normative and Empirical Theory

Even though the five classic liberal democratic theorists we will discuss in this chapter provide very different normative accounts of political legitimacy, when they turn their attention to the empirics, to political practice, their concerns are similar. They are all preoccupied with the problem of order. The reason for this is not mere coincidence, but can be explained by looking at the fabric of the traditional normative project. This normative project was first and foremost a project of morality in which political legitimacy is understood as the link between the material political order and the immaterial norms of moral justice. Morality, secondly, concerns transcending, conquering or controlling 'lower' and conflicting motives, attitudes, interests or passions. As a consequence, thirdly, political legitimacy has to deal with fundamental oppositions. Legitimacy, in this tradition, is about the paradoxical merger of opposites – of 'freedom and unfreedom', as Marcuse has already stated (2008 [1936]:7). Finally, this inherent paradoxical nature of the normative project of political legitimacy explains the primacy of the *empirical* problem of stability. Empirically, political legitimacy must foremost explain political order and stability.

Let us shortly look at how this general scheme can be perceived in the theories of Locke, Rousseau, Hume, Madison and Mill. Obviously, this will only be a general and schematic analysis of these stimulating thinkers. But the goal of this chapter does not necessitate, as well as the limited space available does not allow us, to discuss them in more detail.

2.1.1 Locke and the Political Enforcement of the Law of Nature

Locke, writing in the natural law tradition, tries to found the concept of legitimacy in the deontological origins of the political order or the 'common wealth'.¹ Locke argues how unfreedom in a legitimate political order – the 'bonds of civil society' – can be deduced from a pre-social freedom – the natural state. The only reason for abandoning one's 'natural liberty', according to Locke, "is by agreement with other men to join and unite into a community, for their comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties" (II.VIII.83).² The political order is a solution to a collective action problem, i.e. the inability to effectuate the moral law in the natural state.

The political order is necessary especially because morality is not innate in human nature. The 'innate practical principles' of human nature concerns men's "desire of happiness and an aversion to misery" (Locke 1995 [1689]:I.2.3). But these "inclinations of the appetite" are different

¹ From our modern perspective it is comforting to understand Locke's theory as a 'deontological' theory – i.e. as a hypothetical construct for a reasoned deduction of a legitimate political order – but it is clear that in Locke's work both deontological and ontological perspectives intermingle. The explicit recognition of these two perspectives is of a later date.

² All references point to Locke (1798 [1690]): book, chapter, section, unless indicated differently.

from moral principles (Yolton 1958:489). Even though Locke tries to ameliorate this classical religious duality between virtues and the vices of human passion by claiming that self-preservation is part of God's ordered moral duty ultimately leading to the right of individual freedom and property, God nevertheless also obliges us to protect his creation or humanity in general (II.II.6). From these two fundamental moral premises – self-preservation and the preservation of humanity – Locke tries to deduce the rights of individual freedom, the right of (formal) equality, the right to private property and to advance the negative moral duty of the liberal Golden Rule: “no one ought to harm another in his life, health, liberty, or possession” (II.II.5-6).³

Locke's natural state, in sharp contrast to Hobbes, is therefore not an amoral state where only self-love is significant. Morality exists prior to the political community and man in the natural state possessed the right to enforce this moral law of nature, the right to judge transgressors and to impose punishment (II.II.8). The problem with the natural state, however, is that individual man may possess these rights, but whether he is actually able to enforce them depends upon his private power. Furthermore, not only is the execution of the natural law uncertain, it is difficult and 'unreasonable' to be the judge in one's own case. 'Self-love', 'ill nature, passion and revenge' “will make men partial to themselves” (II.II.13). It is difficult to punish and 'retribute' with 'calm reason' and true to one's 'conscience' (II.II.7). In short, Locke not only points to the problem of the enforcement of natural law, but also to our weakness of will and innate human nature.

Political order, for Locke, is a *solution* for the ineffectiveness of justice. Therefore, we can be truly free when we bind ourselves to the collective bonds of the commonwealth as it guarantees the moral order already present in the state of nature. The political sovereign acquires from the community the authority to enforce, judge, and punish transgressors of the natural law, while the right of life, of liberty and property stay firmly with the individual member of community (II.VII.72). With this *contractual* transference of rights the individuals give up “the equality, liberty, and executive power they had in the state of nature into the hands of the society ...yet it being only with an intention in every one the better to preserve himself, his liberty and property” (II.IX.114). The political order enforces the natural law as well as forces us to be free against our weakness of will. In short, in a legitimate political system we find *freedom in unfreedom*.

In his normative account Locke tries to show why we ought to accept his idea of legitimate politics, by arguing how we can find freedom in unfreedom. But as soon as Locke tries to conceive of the

³ This duty is indeed *negative*: men are in “a *state of perfect freedom*, to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature” (II.II.4). On the other hand, Tuckness notes that Locke's claim that “the starving have a moral claim on the food of the rich is evidence that we have not *fully* discharged our duty to preserve others by not directly injuring them” (2002:293).

political order in empirical terms he is confronted with the problem of order. First of all, the political order is a solution in relation to the state of nature because the legitimate order is able to *enforce* the natural law – that is, to make the natural law positive. It is important to recognise that the positive (natural) law can conflict with our preferences – i.e. with our innate human motivation towards happiness – and is a limit upon our right to freedom. As such, the empirical problem of order surfaces precisely because it is unclear why we are motivated to obey positive law. Locke's main solution is the external guarantee of force, i.e. reward or punishment “that is not the natural product and consequence of the action itself” (Locke 1995:II.28.6). If man does not grasp the moral law, then he must be directed ‘to his proper interest’. But Locke cannot really hold that in political practice we are only motivated to obey positive law because we are forced to – out of fear. He cannot because he explicitly tries to justify politics upon a different foundation and not as a “product only of force and violence” (II.I.2).⁴ More importantly, as Locke is especially concerned that the power of the sovereign encroaches upon the freedom of the individual – not least upon his private property – force cannot be the ultimate answer. Indeed, Locke's theory is radical in the sense that people have a right to resist government if positive laws violate the natural law.⁵

If not by force, Locke might expect that *Reason* itself is enough to assure a moral duty to obey positive law. The duty to be moral, in Locke's work, is related to God's will. And only if we perceive God as the ultimate and, especially, rational legislator of natural law is it possible at all for reason to discover its content.⁶ Only then can we ask what ‘would be reasonable for God to enact’ (Tuckness 2002:291-292; Tuckness 1999; Yolton 1958). Although reason is necessary for the law of nature to be universal, God is necessary to provide reason with authority.⁷ However, despite this authority of reason, a political order is precisely necessary because of our weakness of will. Locke clearly recognises that Reason is not always enough and that people have to be forced to be free.

⁴ Although he is talking about a different ‘origin’ of political power here - “another rise of government, another original of political power” – it seems that if force and violence is what sustains an existing political order, Locke's project becomes somewhat paradoxical.

⁵ This does not mean that individuals can withdraw their consent at any time. Indeed we might read Locke's emphasis on force and order as an explicit assurance that the right of resistance will not lead to anarchy. This tension between the right to resist and the fear of disorder seems to confuse Locke's writings. Locke argues, for example, that the people have ‘no power to act’ – i.e., right to act – as long as government stands (II.XIII.140). While at other times this right to resistance seems to be a collective right, to begin with, as the right of resistance “operates not, till the inconvenience is so great, that the majority feel it, and are weary of it, and find a necessity to have it amended” (II.XIV.151). But then again, Locke also argues: “Those who were forced to submit to the yoke of a government by constraint, have always a right to shake it off, and free themselves from the usurpation or tyranny which the sword hath brought in upon them” (II.II.169-70).

⁶ It is this relation between the unknowable God and human reason that links Locke – and the natural right tradition in general – to Protestantism.

⁷ Reason *must* be the means towards truth, according to Locke: how would people who are not familiar with the true revelation of God – e.g. in the newly discovered continents – otherwise be able to know the law of nature? Some scholars argue that Locke derives his moral principles from the assumption of equality (see for example Forde 2001) but that, it seems to me, is a mistaken ‘modern’ reading.

But between duty arising from moral reasoning and obligation arising from political force, Locke recognises different empirical practices that explain *commitment* towards the political order. Precisely because the right to enforce justice is transferred to government Locke allows the possibility that people are not obliged to obey in terms of morality based upon reason – the philosopher’s way – but that obligation and duty is directed to positive laws only. Although there should not really be a difference between the natural and positive law, Locke is not very clear on the issue.⁸ In any case, by descending from obligations of moral reason to the more mundane obligations of positive law Locke allows other solutions for the problem of order.

Locke perceives the nature of legitimate politics in terms of a contractual relation between the individual (or society) and the political sovereign. As such, if the individual consents to this contract he has the inherent duty to obey it. For Locke, this idea of consent and obligation is on the one hand a *normative* argumentation why we ought to obey legitimate government, i.e. he argues that if you have consented explicitly or implicitly you have the duty to obey the laws of the commonwealth. But on the other hand, it entails the *empirical* argument that *because* we voluntarily consent we feel a duty to obey. Admittedly this latter argument is only latently present in Locke’s work, especially in his notion of ‘express consent’ where Locke explains how an individual becomes a full member of society through “actually entering into it by positive engagement, and express promise and compact” (II.VIII.109).⁹ This act of voluntary promise not only expresses ‘trust’ in the political power, but seems inherently to constitute feelings of duty (II.XV.152). In contrast, Locke also recognises the role of deference to patriarchal authority. Such deference concerns not so much express consent constituting a contract (II.VI.62) as a ‘voluntary submission’ that is “easy, and almost natural for children, by tacit, and scarce avoidable consent” (II.VI.65). Locke thus clearly recognises the function of tradition and inherited authority in relation to the problem of order. A final source of obligation Locke proposes is divine revelation. Locke tells us that “the greatest part of mankind, by the necessity of their condition, [is] subjected to unavoidable ignorance” (Locke 1995:IV.20.3). And

⁸ There are multiple problems, but most confusing is that the original social contract is not based upon consensus but upon majority voting as Locke thinks it unrealistic to expect that everybody would be able to consent as some may be sick or away on business, and because of “the variety of opinions, and contrariety of interests, which unavoidably happens in all collections of men” (II.VIII.87-89). Another major problem is his theory of private property as the distribution of property is more based upon convention and consent than on moral law (II.V.40). Locke emphasises more than once that without corruption the law of nature would be enough (II.IX.112). But as this corruption is in particular excessive self-interest, we might wonder, especially with the invention of money, to what extent positive laws are obliged to do more than just uphold natural law.

⁹ Locke’s notion of express consent is problematic. Not just because one can only refuse consent by leaving the commonwealth – voting with the feet – but also because consent is primarily expressed through inheritance. The right of inheritance of property is for Locke a natural right existing before the bonds of society (II.XVI.167). However, he does not provide a reasoned account of this right and it is hard to see how he could have done it. What is clear is that non-propertied classes are barred from giving express consent and as such are not genuine citizens.

because they “cannot know”, “they must believe” (Locke quoted in Forde 2001:406). In the end, the superior authority is not even that of government but of God directly. People are motivated to obey the laws that run counter to their self-interest because it is God’s will. With the help of God Locke is able to bring self-interest and ‘the perspective of the generality’ in harmony (Forde 2001:400; see also Tuckness 2002).

Legitimacy in its empirical guise has to explain why the political order remains stable, i.e. why people feel a duty towards the political order even though they might have motivations to the contrary. In other words, where Locke is able to transcend different oppositions in his normative account of morality and legitimacy – oppositions between vice and virtue, freedom and unfreedom, passion and reason – these oppositions resurface when he addresses politics in practice. It inevitably leads to an empirical understanding of political legitimacy that has to explain duty and is a function of social order. For Locke, legitimacy as an empirical phenomenon concerns those processes that explain a commitment, duty or obligation towards the political order between the extremes of pure moral reason and political violence; processes that in Locke’s account concern consent, deference to authority and a belief in divine revelation.

2.1.2 Rousseau and the Revelation of the Common Will

Rousseau’s project is to align legitimate politics with self-interest. “The problem is to find a form of association which will defend and protect with the whole common force the persons and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before” (I.6).¹⁰ The goal of his normative project is to show how oppositions between the individual and collective, between freedom and unfreedom can be transcended.

Rousseau uses the natural law tradition to explain why the collective order is in our individual interest. As with Locke the natural state is insecure and in addition unpleasant. The only way to preserve oneself and indeed the ‘human race’ is through “the formation, by aggregation, of a sum of forces great enough to overcome the resistance” (I.6). By giving up all natural freedoms – including private possession – one gains in exchange the security of the collective. By abandoning one’s private possessions only sustained by force in the natural state, one gets it back as true property defended by law (I.9).¹¹ Even the rich and powerful have an interest to give themselves and their property to the collective, because it secures their interest in the force of the collective and, more importantly, in moral obligation. Consequently Rousseau explicitly argues that the collective is

¹⁰ All references concern Rousseau 1762 *The Social Contract or Principles of Political Right*: book, chapter

¹¹ But it would be wrong to argue that Rousseau is only concerned with securing property. Indeed, we also want to leave the natural state because only in society is a man able to cultivate his higher faculties and virtues. Society makes man’s perfection possible. The constitution of society is “the happy moment which ...instead of a stupid and unimaginative animal, made him an intelligent being and a man” (I.8).

not about ‘destroying natural inequality’, but about substituting it for “an equality that is moral and legitimate” (I.9).¹² Again we find freedom in unfreedom. Man loses “his natural liberty and an unlimited right to everything”, but gains “civil liberty” and “propriety” (I.8).

Society can guarantee our freedom not just because it possesses collective force, but because moral obligations and duties only arise in society in the first place. There is no morality in the state of nature. Although justice might derive from God directly (II.6) the only law of nature, according to Rousseau, is to provide for one’s own preservation (I.2). Only with the rise of the collective can morality exist at all. “The social order is a sacred right which is the basis of all other rights”, but which rests not upon ‘nature’ but upon ‘convention’ (I.1). The reason we leave the state of nature is purely based upon self-interest, not a solution for the ineffectiveness of natural moral law as we saw in Locke. But leaving the state of nature is, unlike Locke, not the cornerstone of Rousseau’s theory, it is only the foundation for his theory of legitimate politics – merely providing “the State a basis of its own to rest on” (IV.9). The main question for Rousseau is if a community exists how does a legitimate political order look like? Morality might be based upon convention, but it is not arbitrary.

Rousseau does not propose a *substantive* understanding of what moral justice entails – as promised by Locke¹³ – but he suggests an understanding of morality in terms of, what Habermas calls, a semantic form (Habermas 1986). Kant most famously elaborates this semantic form of morality in his categorical imperative, but it is also the foundation of Rousseau’s political theory. It expresses the idea if the laws of the collective address all and if the laws express interests shared by all, the individual cannot but find his private interest in the collective (II.4). As such, we do not only have an interest in the collective relative to the state of nature, but the collective can never contrast our self-interest. “Each man, in giving himself to all, gives himself to nobody; and as there is no associate over whom he does not acquire the same right as he yields others over himself, he gains an equivalent for everything he loses” (I.6). In short, “we cannot work for others without working for ourselves” (II.4). In this semantic form of morality – captured in the concept of the general will – private interests are inherently tied to the common interest.

When Rousseau reasons how a moral law ought to look like, he has to show how the general will can surface in political practice. As such, Rousseau turns to the *institutional* character of politics and the democratic *procedures* that ought to make the revelation of the general will possible. The exact form of these procedures and how they uncomfortably relate to his natural law argument

¹² And to warn the powerful who might think that force is enough: “[t]he strongest is never strong enough to be always the master, unless he transforms strength into right, and obedience into duty” (I.3).

¹³ Locke never really fulfilled his promise of a scientific deduction of a substantive moral law. Furthermore, his liberal Golden Rule can also be understood in terms of *form* instead *substance*. However, this is not how Locke intended it to be as for Locke morality is prior to social convention and ordained by God.

should not concern us now.¹⁴ What is interesting at this point is that there are two presumptions that must be fulfilled for this general will to surface. First, the *empirical* social conditions must be such that there actually is a common interest (II.1). Rousseau's general will, in contrast with Kant's moral theory, is neither universal in the sense that every community will find it, nor that it transcends the community itself. Second, whether the ideal of the general will surface depends upon the *moral virtues* of the people. This may sound strange as Rousseau bases his project upon the idea that self-interest and collective interest cannot diverge. However, self-interest must be properly understood. The revelation of the general will depends upon the individual's ability to reflectively detach from his self-love and passions and to think of what is good for all and *therefore* good for him. This relation should not be turned around, i.e. what is good for me must be good for all.¹⁵ Although "the general will is always right and tends to the public advantage; ... it does not follow that the deliberations of the people are always equally correct" (II.3). Corruption arises if people fail "to weigh the attractions of present ... against the danger of distant and hidden evils." (II.6).

This means that the formal quality of morality might transcend the opposition between individual and collective interests, but the relation between positive law and morality depends upon the ability of the people to recognise the 'true' common interest and not to be 'deceived' into partial interests. Political legitimacy, in short, depends upon the moral virtues of the people. Legislation, according to Rousseau, would be "at the highest possible point of perfection" the more completely the individual passions and interests are "annihilated" "so that each citizen is nothing and can do nothing without the rest" (II.7). This is often, and incorrectly, read as the end of the liberal individual. Rousseau, however, just tries to argue that the more people are able to detach from their individual short-sighted passions, the more people are capable of taking on the perspective of others, the more their will approaches the general will.¹⁶ It is not about the end of individual liberty, it is about how to reach most perfectly the general will.

In Rousseau's conception of a legitimate political order there exists therefore a tension between the ideal of the general will and the practice of its constitution, between morality and politics. A tension that arises because people lack moral virtue, fail to detach from their short-sighted passions and fail to give themselves totally to the collective. The collective will might therefore not just be easily corrupted, it also causes the empirical problem of order. Only morally virtuous people perceive that

¹⁴ Particularly problematic is the constitution of the executive out of the Sovereign, necessitating 'a sudden conversion' of the latter (III.17) as well as the need for an original Machiavellian legislator to make a legitimate constitution possible (II.7).

¹⁵ Although the negative duty of the liberal Golden Rule pertains that what is *not* good for me is *not* good for all, it runs the risk of degenerating exactly to such form of narcissism.

¹⁶ These reflexive qualities can also be clearly seen in the quasi-divine 'legislator' who understands and knows the passions of the people, without experiencing these himself (II.7).

the general laws are in their true individual interest.¹⁷ Rousseau, like Locke, argues that people might, therefore, be forced to be free (III.1). “Humanly speaking, in default of natural sanctions, the laws of justice are ineffective among men” (II.6). But force, even less than for Locke, cannot be a general solution for the problem of order as legitimate law depends upon active participation and moral virtue. ‘Repressive force’ can only have a function when somebody is misguided – not as the foundation of the political order in general.

Rousseau is realist enough to recognise that people are no saints. As such, between repressive force and morality Rousseau argues that the individual should be connected to the collective through artificial arousal of morality, or better yet, of the ‘social bond’. “[W]hen in every heart the social bond is broken, and the meanest interest brazenly lays hold of the sacred name of ‘public good,’ the general will becomes mute” (IV.1). Although people might learn moral virtues through active participation as members of the sovereign (III.15), the state can also actively stimulate the moral virtuousness of the citizen. The primary means to do so is by stimulating his love of the patrie, reinforcing a collective identity, inventing public spectacles, and by providing moral education and a civil religion “that will make him love his duty” (IV.8).¹⁸ The most important social laws, as Rousseau states, are “not graven on tablets of marble or brass, but on the hearts of the citizens. This forms the real constitution of the State ... keeps people in the ways in which it was meant to go, and insensibly replaces authority by the force of habit. I am speaking of [mores], of customs, above all of public opinion” (II.12). These may be slow to arise, but “form in the end its immovable keystone”.

Rousseau’s analysis shows once again how *empirical* practices explain a form of duty – falling between the obligation of moral reason and the obligation of force – necessary to overcome the oppositions merged in the *normative* conception of legitimacy – the opposition between individual and collective, self-interest and common interest, corruption and virtue, and even positive law and morality. Notwithstanding the profound differences between Locke and Rousseau, when they turn to empirical politics their understanding of political legitimacy takes on the same form.

2.1.3 Hume and the Coordination of Mutual Benefit

The tradition known as the Scottish Enlightenment – of which Hume, but also Adam Smith, is a prominent representative – was less concerned with the de-ontological origin of a legitimate social-

¹⁷ Do notice there is a fundamental difference between the lack of morality needed to realise the general will, and the lack of morality to *recognise* the connection between the general will and one’s own interest. This difference between the problem of validity and the problem of obedience is a problem Rousseau theory cannot really address.

¹⁸ Religion does not contribute to morality as “[t]rue Christians are made to be slaves” (IV.8). This does contrast with the specific role of religion in relation to the legislator who ‘compels to divine intervention’ (II.7).

political order, but more interested in understanding how such an order functions as it does. It is often said, therefore, that the Scot's were among the first sociologists, but this is, at least in the work of Hume, a somewhat anachronistic claim as empirical and normative arguments readily merge.¹⁹ It was Smith, in any case, who famously discovered an 'invisible hand' in civil society ensuring that the public good arises as an *unintended consequence* from actions of individuals pursuing their own private ends. This 'discovery' of the social mechanism of unintended consequences allows a change of perspective to the extent that the principle question is no longer what binds individuals to a social order as a distinct object, but rather how the social order arises as an aggregate *function* of individual actions. Indeed, to the extent that this order is in the common interest, justice can be disconnected from individual moral virtue. "It is not from the benevolence of the butcher, the brewer or the baker that we expect our dinner, but from their regard to their own interest. We address ourselves not to their humanity but to their self-love and never talk to them of our own necessities but of their advantages" (Smith quoted in Berry 1997:132). Notwithstanding the invisible hand, this social or economic order does need legal coordination, which both Hume and Smith recognised (Bellamy 1990:4). A legitimate political order thus has to coordinate and uphold the economic order in the mutual benefit of all. Hume's theory can be read as an attempt to understand this kind of political legitimacy.²⁰

For Hume it was clear that neither morality nor legitimate politics was based upon self-interest. Hume mocked the natural law contract theories trying to prove just that. Such theories might be 'useful fiction', but government is not based upon contract, consent or promise (Yellin 2000:385). Anticipating Nietzsche, Hume claims that justice cannot rise from the human convention of promise as a promise is 'altogether unintelligible' in the state of nature – it is an inherent part of that justice (II.II.Appendix III:274²¹; Pack & Schliesser 2006:50).²² What explains the force of promise is what explains society and not the other way around (Hampshire-Monk 1992:134). Hume also resists the idea that moral actions are motivated by self-interest. I am not your friend *because* it gives me pleasure, being your friend *gives* me pleasure (I.I.11:155). According to Hume, we cannot deduce "morals from self-love" (II.I.5:204).

¹⁹ Scholars accused of being the 'first sociologist' are so numerous that I will not even try to begin to judge the correctness of these claims.

²⁰ For sure, Hume's work is broad and extensive and he never presented a clear and concise political theory. Nevertheless, this interpretation seems to bind together several of his most important insights.

²¹ All references point to Hume (1992) *Essays. Moral, Political, and Literary*: Volume, Part, Section, Page.

²² Furthermore, the whole idea of consent is an absurdity. Hume asks, "Can we seriously say, that a poor peasant or artisan has a free choice to leave his country"? Hume compares this idea of consent to being on a vessel where one either has to 'consent' to the authority of the master of the ship or 'leap into the ocean, and perish' (I.II.12: 451). Hume seems to be ignoring the deontological function of natural law.

But where does the feeling of moral duty arise from, then, if not from self-interest? Morality, according to Hume, is not based upon Reason. Hume famously remarked that reason is and ought to be the slave of the passions. Human action is “guided by constitution and temper” and not by reason (I.I.18: 222).²³ This does not mean that we are irrational and that reason does not matter, rather, it just means that reason does not motivate as it gives no “desire or aversion” (II.I.1:171-72). The motivation to act morally against one’s interests, then, is neither based upon interest nor reason, but upon ‘moral sentiments’, especially ‘sympathy’. Sympathy, for Hume, is an ‘internal sense of feeling’ that is universally present in the ‘human species’ and concerns the human talent to imagine the pain or injustice another person suffers, our capability to take the perspective of the other. The closer the other is to us the more our sympathy works to counter our self-interest. The problem, according to Hume, is that the sheer size and anonymity of modern society and commercial market loosens the grip sympathy has over our self-love. For a modern social order, morality will not provide us enough *passion* to act, while reason cannot replace it. Modern society therefore necessitates the establishment of a “political society, in order to administer justice” (I.I.5:113). Government has the *function* to overcome the limited capability of man’s sympathy. The political order must compensate for our lack of moral passion by effectuating justice. For Hume, it is not so much about how moral virtues can sustain legitimate government, as with Rousseau, but rather how government finds its legitimate reason in sustaining morality where “customs have instilled little humanity or justice into the tempers of men” (I.I.3:106).

Politics has the function to administer justice which, for Hume, is historically contingent and concerns utility (II.I.2:176-78). Hume understands utility in terms of mutual benefit and especially in terms of *impartial solutions to coordination problems*. Hume gives the example of two men rowing a boat, each having one peddle. When they just start rowing the boat will probably make circles until, upon reflection and experience, a *convention* will arise that coordinates their mutual efforts.²⁴ For Hume, this mutual benefit argument concerns first and foremost the Hobbessian “necessity of justice to maintain peace and order” (I.I.5:114; see also II.I.4:197). “*Salus populi suprema Lex*” (I.II.13:461).²⁵ But it also, and importantly, concerns the mutual benefit of private property and commercial society. Indeed, “the *pleasures* of luxury and the *profits* of commerce” give men an interest in justice in terms of a stable market, the ultimate coordination problem government has to solve (I.II.1:294).

²³ Furthermore, “objects have absolutely no worth or value in themselves. They derive their worth merely from the passion” (ibid: 219).

²⁴ Of course, as Hampsher-Monk rightly argues, such coordination is only impartial if we assume the two men want to go in the same direction in the first place (1992:135).

²⁵ The safety (or health) of the people is the supreme law.

The primacy of utility does mean that justice is contingent. Through reflection upon utility moral rules change, are lost or invented. Hume, for example, complains that Christian religious morality – “the whole train of monkish virtues” – is no longer useful for modern society: “they serve to no manner of purpose” and must be “rejected by men of sense” (II.I.6:246-47). Although morality is historically contingent, its development is not irrational as human history, according to Hume, is progressive. We might understand the rational development of morality anachronistically in terms of social functional evolution.

When legitimate politics is to provide peace and order, the ‘ambition’ of government has to be checked and tied to the necessities of progressing society (I.I.2:97). Especially public opinion serves this function. Political power, Hume claims, is founded upon opinion in the first place (I.I.3:107). Without public support political power is not effective as “force is always on the side of the governed” (ibid.).²⁶ But the role of public opinion and the ‘free press’ is especially important because it unveils and arouses sympathy for humanity (II.I.9:251). In order to argue in public man must “[choose] a point of view, common to him with others: He must move some universal principle of the human frame, and to touch a string, to which all mankind have an accord and symphony” (II.I.9:248).²⁷ Indeed, Hume argues that language itself is geared to universal morality and that, as a consequence, public opinion is the objective standard of justice.²⁸ Hume recognises that public opinion and free press can become the tool of demagogues but sees no ‘suitable remedy’ for it (I.II.1:97-8).²⁹ Hume also acknowledges that “an appeal to the general opinion” may “be deemed unfair and inconclusive ..[but] there is really no other standard” (I.II.12:460). It is from social intercourse and experience that we are able to learn justice at all (II.I.4:197). Hume, as such, is a realist and a sceptic.³⁰ He readily admits that his analysis will not convince the ‘sensible knave’, but

²⁶ This seems quite a modern idea as it relates to the system theoretical idea that legitimate power is a symbolic media founded in confidence and trust (see chapter 5). For Hume, however, the three opinions upon which “all governments [are] founded, and all authority of the few over the many” concern authority (tradition), interest (general utility) and property rights (I.I.4:111).

²⁷ Next to public discourse, ‘love of fame’ also renders the view point of the other (II.I.9:251). Vanity and virtue are so closely connected that they almost presuppose each other (I.I.11:156).

²⁸ Morality, according to Hume, is both universal and present in ‘the very nature of language’ and we should find its system ‘on fact and observation’, not on hypotheses or general abstract principles” (II.I.1:173-74). It is tempting to read into Hume the whole contemporary debate on public discourse and Habermas’ communicative rationality (see chapter 7 of this book).

²⁹ Hume does think that demagogues have less chance in printed media because “a man reads a book or pamphlet alone and coolly. There is none present from whom he can catch the passion by contagion” (I.I.2:97-8). Furthermore, Hume concludes – a conclusion removed from later editions – that human experience shows that “the *people* are no such dangerous monster as they have been represented, and that it is in every respect better to guide them, like rational creatures, than to lead or drive them, like brute beasts” (ibid.).

³⁰ But he is no radical sceptic as not just any rule suffices. Justice has to connect to our moral passions. Morality or justice “cannot be wilfully created by shadowy politicians and implanted into the citizens’ mind” (Church 2007:171). What the specific rules are depends upon circumstances, ‘some constant, some arbitrary’, but ultimately it is about ‘the interest and happiness of human society’ (II.I.3:190)

philosophy alone cannot solve the problem of legitimacy. For the true sceptic, for someone “born of so perverse a frame of mind” there will be “no remedy in philosophy” (I.I.18:222).

Although Hume claims that legitimate rules and laws that coordinate society are, or ought to be, for the impartial benefit for all, the problem of order resurfaces with full strength. As justice is no longer tied to individual moral virtues, but merely a function of aggregated self-interested actions, social progress and social learning mechanisms, we must wonder why people accept legitimate government. The basis of government can neither be force nor self-interest. Not only does modern economy not function properly upon force alone, political force also depends upon opinion in the first place. And even though private interest and public interest are closely tied in the concept of mutual advantage, justice is not based upon self-love and can conflict with it.³¹ Reason, as we have seen, also does not stir up these passions. Reason, furthermore, “is so uncertain a guide that it will always be exposed to doubt and controversy” (I.II.14: 466). For Hume, the basis of government is therefore “not pure reason, but authority and precedent. Dissolve these ties, you break all the bonds of civil society” (I.II.14:466). When Hume claims that freedom is perfection, but authority essential (I.I.5:117), we once again find the paradoxical merger of freedom in unfreedom. Authority enables degrees of freedom into ever larger circles of the unfamiliar where our reason and moral sentiments break down (II.I.3:186).

What ultimately binds the people passionately to the legitimate order is the *artifice* of authority. “Obedience is a new duty that must be invented to support that of Justice” (I.I.5:114). Hume recognises three processes that account for such duty: socialisation, deference and tradition. First, man is not so much born free, as Rousseau and Locke argued, as “born in a family-society” (II.I.3:185). From birth we are acquainted with its moral rules and conventions that reverberate with our natural moral sentiments. Following these rules gives a pleasure in and of itself as it is coherent with our upbringing giving an “inward peace of mind”, a “consciousness of integrity” (II.II:257). Second, people obey authority out of sheer deference as “the love of dominion is so strong in the breast of man”.³² Finally, people attach to authority through habit and tradition (I.I.5:115). Especially tradition is the true sources of authority as “[t]he bulk of mankind never [attributes] authority to anything that has not the recommendation of antiquity” (I.II.16:480; see also I.I.4:110). Authority, Hume claims, is not founded upon consent; consent is founded upon the tradition of authority

³¹ Also Smith recognises that there is no necessary ‘harmony’ between “the people and the Sovereign” (quoted in Robertson 1990:15). Hume does claim that through ‘reflection and experience’ we might learn “that the interests of society are not ...entirely indifferent to us” engaging us to ‘sacrifice’ our passions to ‘the interests of public order’, (I.II.12:454-5; II.I.5:206; II.I.3:182). The ‘artifice’ of education in particular can enhance this reflection as it has a ‘powerful influence’ on moral sentiments (II.I.5:203; I.I.8:127).

³² It is interesting to note that also Smith emphasises this “habitual state of deference” as the principle of authority (quoted in Berry 1997:106).

(I.II.12:451).³³ Philosophical critiques and social experiments, Hume concludes, are quite dangerous as without these artificial ties, which can be easily destroyed by reason, people are not motivated towards justice. ‘Improvements for the public good’ must be adjusted to the ‘ancient fabric’ and preserve ‘the chief pillars of the constitution’ (I.II.16:480).³⁴

Hume’s normative account of political legitimacy, we can conclude, differs profoundly from Locke or Rousseau, as his normative conception of legitimacy is inherently oriented towards empirical and contingent social conditions – to utility – and not to some deontological state of nature. He is able to do this because he replaces the problem of the genesis of a legitimate political order with a notion of social-functional historical development. Indeed, justice functionally arises as an unintended consequence from social development, learning and public opinion. The individual no longer has to be capable of being moral as social processes and history itself suffice to develop rational rules functional of justice. As such, the oppositions transcended in justice – oppositions between private and public interests and between freedom and unfreedom – no longer plague the individual conscience, but are transposed to the relation between individual and politics. This implies, however, that the empirical problem of order only becomes more problematic and has to be solved entirely with an *artificial tie* of traditional authority.

2.1.4 Madison and Countervailing Ambition

For Hume legitimate politics has the function of coordinating the social and economic order from which justice would unintentionally surface. Madison takes this idea another step forward by welcoming the invisible hand directly in politics itself. But Madison also presupposes many of the arguments that preoccupied Locke and Rousseau.³⁵ It is taken as a given that the goal of government is to secure life and freedom, and especially individual property rights (Kramnick 1987:73-74). Legitimate law, furthermore, is accepted to take the semantic form of moral law and to express the

³³ Similarly, Smith mocked Locke’s theory of obligation and consent. For Smith, such account where “Kings are the servants of the people” is about “the doctrine of reason and philosophy” “not the doctrine of nature” (quoted in Berry 1997:106). Indeed, Smith argued that “it is natural to submit to kings for their own sake, ‘to tremble and bow down before their exalted station’”.

³⁴ By separating a normative account of justice and a sociological account of authority, Hume creates the problem that if justice is based upon reflection and utility, but authority is artificially upheld by passions, how are we to know what is utility and what passion; what is justice and what only artifice? Or, as Krause puts it, what if our artificial attachment run counter to utility? (Krause 2004:629).

³⁵ As *the Federalist Papers* were written as polemic essays in newspapers to ensure that the newly drafted constitution would be ratified, Madison, Hamilton and Jay could build upon ideas and truths that were already widespread among the public they intended to address. The papers deliberately tried to incorporate and transform different popular discourses to arouse enthusiasm. It carefully changed, for example, the “the true principles of republicanism” for it to incorporate representation and the idea that republicanism is also, or in particular, suitable for large countries (Hamilton 1:89). The other main concept that was carefully transformed was federalism allowing it to replace the mistrusted notion of the central state. For an excellent account of this transformative discourse see Hampsher-Monk 1992, chapter V.

common good. Together with the notion that the people are sovereign, these suppositions form the basis from which Madison poses the question of how a legitimate government should be *institutionally organised*, i.e. how it is possible to secure a stable, non-arbitrary rule of law expressing the moral justice of the common good. The argument focuses especially on human nature and the complexity of society. Rousseau could uphold his legitimate republic only to the extent that citizens were morally virtuous and to the extent that social conditions did not obstruct a general interest. Madison's starting point, in contrast, is exactly what Rousseau feared: a passionate self-interested people inherently characterised by interest conflicts. Madison starts from a different *social condition*.

The 'mortal disease' of popular governments, Madison admits, is caused by the passionate nature of man (X:122).³⁶ Just as in Rousseau a duality is supposed between passion and reason.³⁷ "As long as the reason of man continues fallible" we must, according to Madison, expect differences of opinion especially as 'reason and self-love' have 'reciprocal influence' on each other and as 'passion' tends to attach itself to 'opinion' (X:123-124). What is to be feared the most is the passion of the majority as it can "sacrifice to its ruling passion or interest both the public good and the rights of other citizens" (X:125). This passion is especially problematic in relation to private property. Distributive conflicts are inherent to any society, Madison argues, because unequal distribution of private property reflects unequal distribution of talents and faculties.³⁸ Natural inequality will always form "an insuperable obstacle to a uniformity of interests" and the "first object of government" should be "the protection of these faculties" (X:124). But given these *pluralistic* and *passionate* social conditions Madison wonders how a legitimate politics can be possible without giving up 'liberty' and 'popular government' (X:123, 125).

When the people are not rational, government ought to be. "The principal task of modern legislation" should be the regulation of the "various and interfering interests" by "controlling its effects" and not, as with Rousseau, its causes (X:124-5). The quest is for an institutional organisation where not 'the *passions*' but where the "*reason* of the public would sit in judgment" (XLIX:315). The main institute for this purpose is representation. As Rousseau has already noted, elections produce a form of 'aristocracy' (Rousseau 1762:III.5) as it assures the rule of "men who possess most wisdom

³⁶ All references concern *The Federalist Papers* 1987 [1787-8]: author, article, page. If not indicated specifically the author is Madison.

³⁷ Passion is generally related to short-sightedness, self-interest, 'irregularity', 'illicit advantage', being 'mislead', and mutual animosity obstructing 'cooperation', while reason concerns reflection, 'exact impartiality', 'cool' detachment, wisdom, sacrifice, 'sense of community' and 'love for justice'.

³⁸ Madison argues that theorists proposing pure democracy mistakenly "supposed that by reducing mankind to a perfect equality in their political rights, they would at the same time be perfectly equalised and assimilated in their possessions, their opinions, and their passions" (X:126).

to discern, and most virtue to pursue, the common good” (LVII:343).³⁹ Representation forms a ‘filter’ – the favourite metaphor of the Federalists (Kramnick 1987:41) – between the passion of the people and justice based upon reason. Representation is ‘the cure’ of human nature (X:126).⁴⁰ The ‘true distinction’ between direct and representative government, Madison argues, lies “*in the total exclusion of the people in their collective capacity*” from any share in government (LXIII:373, original emphasis).⁴¹

Next to representation Madison emphasises the institutional design of politics in which “ambition must be made to counteract ambition” (LI:319). Based upon the republican tradition of mixed government – enlarged by the insights of de Montesquieu and the ‘improvements of political science’ (Hamilton IX:119) – the Federalist propose their famous institutional design of *checks and balances*. Mixed government, for the Federalists, becomes mixed electoral authorization.⁴² And like de Montesquieu, the three functions of political power must be constitutionally separated, but unlike de Montesquieu this separation is not exclusive as jurisdictions deliberately overlap (XLVII:303). It is not only about separating powers and institutionalising relations of accountability to avoid mutual usurpations of power (Madison LI:319). It is about institutionalising ‘countervailing passions’ (Hirschman 1977:29) – to guarantee a political process of institutional interest competition from which the common good arises as an *unintended consequence* (XLVIII: 308, 312). Even when the representatives are not virtuous and are not geared to ‘love justice’ as a motive in itself, the countervailing ambitions and ‘private interests’ prohibit anything but the common interest to rise from this process of mutual checks and institutional veto points (LI:320).

This idea of interest competition is also expected in society at large. When Rousseau emphasised homogeneous social conditions to ensure that interests are not too diverse to prevent a common interest, Madison argues that individualisation and interest fragmentation is constitutive of the common good. In exact opposition to Rousseau Madison writes: “Society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority” (LI:321). Indeed, if a democratic

³⁹ The relation between elections and the rise of the most capable and wise – and not ‘men of factious temper, of local prejudices, or of sinister designs’ – rests upon the claim that the people will “centre on men who possess the most attractive merit”, chances of which are enlarged by the scale of the American republic (X:126-7; see also Jay III:95).

⁴⁰ Representation will “refine and enlarge the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation it may well happen that the public voice, pronounced by the representative of the people, will be more consonant to the public good than if pronounced by the people themselves” (Madison X:126).

⁴¹ It should be noted that if Rousseau claimed that the sovereign cannot be represented he also claimed, just as Madison, that the sovereign should not govern.

⁴² As the new world lacked the traditional estates of Europe and as all authority springs from the people, the separated executive and legislative institutions gain their authority through separate elections.

majority can be mobilised under such prohibitive conditions of interest plurality and social fragmentation it likely represents “justice and the general good” (LI:322). Where Rousseau thinks that reflection upon collective interests ensures the common will to surface in majority voting, the Federalists think, in contrast, that fragmented non-reflexive interests ensure that the common good emerges as an unintended consequence. The majority vote will be more aligned to justice, the more interests are fragmented and the more difficult to mobilise these interests into a political faction.

With the right institutional design and the proper social conditions interest counters interest in horizontal political competition between citizens and between institutions from which justice surfaces as an unintended consequence, while additionally vertical representation functions as a filter between popular passions and the reason of justice. The Federalists were so convinced of this institutional design that they deemed a substantive liberal doctrine of individual rights to be unnecessary (Hamilton LXXXIV:476).

When Madison addresses one of the difficulties of Rousseau – how the general interest can be known if moral virtues are declining and conflicts of interests are rising in a complex society – this actually seems to aggravate the problem of order. Even in the normative account moral virtues are only presumed in the aristocracy of representatives but no longer in the republic at large. There, ambitions, passions and interests should reign in mutual competition from which justice arises unintentionally. This means that an inherent conflict between self-interest and legitimate politics is presupposed – a conflict not just between private and collective interests, but also between conscious passions and an unconscious justice. Nevertheless, the Federalists hardly address the problem of order explicitly. Part of the reason seems to be that the essays were a public argument to sell the newly drafted constitution and not a full-blown political theory. But partly the problem of order is also less prominent as interest or class fragmentation assures a lack of political efficacy. The problem of order seems to disappear because of the sheer *factuality* of the political system and the *powerlessness* of the isolated individual.

Nevertheless, the Federalists do implicitly address the problem of order. If force is once more a possible answer, moral reason is less so for obvious reasons.⁴³ However, between force and moral reason they point to other social processes. One of the most crucial relationships in representative democracy is between the electors and the elected. It is after all the representative that because of his superior qualities and talents can reason coolly and rationally about the ‘real’ interests of the electors. The representatives “feel all the passions” of the electorate but at the same

⁴³ To be fair, the metaphor of the ‘filter’ of representation is also thought of as a *temporary* mitigation: “to suspend the blow meditated by the people against themselves, until reason, justice, and truth can regain their authority over the public mind” (LXIII: 370).

time pursue “the objects of its passions by means which reason prescribes” (XLVIII: 309- 310). For the Federalists, the bond between the elected and the electors, a bond in which passion and reason are paradoxically merged, has no enforcement other than the motivations of the elected in terms of their interest in re-election, their sensibility of honour and their patriotism, while the electors are motivated only by the ‘personal influence’ of the elected (LII:323; LVII:344; Hamilton XXXV:235). It is, in short, foremost loyalty and trust that binds the people to their representatives.⁴⁴ Indeed, the legislative body “implies a personal influence among the people” through “connections of blood, of friendship, and of acquaintance” (XLIX:315).

But the Federalists were aware that this bond between representatives and citizens might not be enough. They clearly intended that the constitution itself and government in general should be a source of duty by giving it a *sacred status*. ‘In a nation of philosophers’ reason would be enough to arouse ‘a reverence for the laws’, but where “reason of man, like man himself, is timid and cautious when left alone” it “acquires firmness and confidence” in admiration (XLIX:314). It is advantageous for a ‘rational government’ “to have the prejudices of the community on its side”. Madison expects that through the veneration effect of time ‘attachment and reverence’ will fill “the hearts of the people towards a political system” (LXII: 368-9). Furthermore, notwithstanding his analysis of human nature, Madison trusted upon the ‘manly’ and ‘vigilant’ spirit of American patriotism and upon a shared “communion of interest and sympathy of sentiments” (LVII:345). Although the constitutional rules make justice possible, it ultimately depends, Madison argues, upon the virtue of the people (LV: 339). But just as for Rousseau, the virtue emphasised does not concern moral reason but its *artifice* of solidarity and patriotism.

In contrast to Locke and Rousseau, the opposition between passion and reason, between self-interest and common interest, are no longer solved through individual moral-virtues, but through institutionalised political processes. The common good arises as an unintended consequence from political competition between self-interested passionate people as long as interests are fragmented, the individual politically powerless and representatives morally responsible (or themselves caught up in interest competition). However, even Madison could not perceive a stable political order solely based upon the external guarantee of factuality and political inefficacy, but recommends practices and processes that ensure individual obligation to the political constitution and system – processes that point to trust, loyalty and the ‘prejudices’ of sanctity, reverence and patriotism.

⁴⁴ Also a kind of natural authority is presupposed between different social classes: because the merchant class is the ‘natural patron’ of the ‘mechanic and manufacturing arts’ the former will represent the latter (Hamilton XXXV:233-234).

2.1.5 John Stuart Mill and Utilitarian Administration

When Bentham is seen as the founding father of utilitarianism, J.S. Mill can be seen as the champion of modern liberalism with a somewhat complicated relation to utilitarianism. Schumpeter judged Mill's work as "stimulating discrepancies of doctrine" (quoted in Clark & Elliot 2001: 468). Indeed, tensions seem present between Mill's defence of liberty and his utilitarian beliefs. In what follows, I approach Mill's work mainly from the perspective of utilitarianism. The defining characteristic of utilitarianism in general is its inherent *consequentialism*. Just as in Hume, laws are evaluated in terms of their utility which makes legitimacy inherently contingent and historical. However, in contrast to Hume, utilitarianism is firmly rooted in the tradition of the radical enlightenment which means that everything that has no utility has to be eradicated from social and political life. Authority, duty and obligations are often nothing more than fictions, riddles, allegories, or remnants of 'feudal superstition' (Hampsher-Monk 1992:316; Kymlicka 2002:45). What counts is the utility of politics in terms of positive and empirical consequences (Clark & Elliot 2001:470).

Utilitarianism starts with the premise, similar to Locke's human nature, that human behaviour must be understood in terms of the pursuance of happiness and the avoidance of pain (U II:6).⁴⁵ Happiness is the *end* of all action. This specifically contrasts with Hume, who claims that because we are motivated to certain objects (or people) as ends in themselves these objects *consequently* give us pleasure (Hume 1992:I.I.11:155). Bentham's utilitarianism, however, claims that an object is solely a *means* to an end, i.e. to happiness (U II:6). But what makes utilitarianism a moral theory and not simply a (reductive) theory of human action is its collective perspective. Utilitarian morality is not about "the agent's own greatest happiness" but about the greatest happiness of the greatest number (U II:10).⁴⁶ Mill argues that happiness being "the end of human actions, is necessarily also the standard of morality" (U II:10). When this move from the perspective of strategic individual *action* to the perspective of a moral *legislator*, is an obvious leap of faith, Mill continues, that "to be incapable of proof by reasoning is common to all first principles" (U IV:32).

When utilitarianism formulates a standard of legitimacy in terms of the consequences of political decisions, institutions and laws, the calculability of this standard is fairly problematic. Bentham was already aware of this and proposed two solutions (Hampsher-Monk 1992:323). When it is difficult to measure, let alone increase, happiness, a solution might be to increase *generalised resources* as a proxy, resources such as money and liberty. Mill, however, problematises this 'resourcist solution' as Kymlicka calls it (2002:20). Mill argues that because an object is only a *means*

⁴⁵ All references of Mill point to Mill (1910) *Utilitarianism, Liberty, Representative Government*: Title of Original Book (U = Utilitarianism; L = On Liberty; RG = Considerations on Representative Government), Chapter, Page number.

⁴⁶ Kymlicka points out that this "common slogan is misleading" because the "double maximand" – the greatest happiness *and* the greatest number – easily leads to conflicts or an impasse (2002:50, footnote 1).

towards happiness, we cannot calculate happiness by looking at *objects* like money or property (UII:6). According to Mill we have to understand how people actually perceive those objects in relation to their subjective feelings of happiness.⁴⁷ Furthermore, Mill argues that not only the *quantity* of happiness but also its *quality* motivates people, as “some *kinds* of pleasure are more desirable and more valuable than others” (U II:6, original emphasis). If it is just about quantity, people would be satisfied to live as animals. However, people – or at least Mill – would rather choose to be an unhappy Socrates than ‘a fool satisfied’ (U II:9). Utility, we might say, is for Mill neither the hedonistic utilitarianism of Bentham in which only the experience of happiness counts, nor utility understood as subjective preference-satisfaction which can be served with money. Mill seems to claim that utility concerns preferences *worth* satisfying or *rational* preferences, i.e. the preferences we would have if we were fully informed (U II:8).⁴⁸

If money is a difficult proxy of utility, Mill does agree with the function of liberty.⁴⁹ Individuals know best how to pursue their interests. Indeed, government should not interfere with the individual because it is often wrong (OL IV:140). Furthermore, Mill claims that if individuals attend to their own private interests and the interests of the few people that are close to them this will be good for the collective most of the time (U II:17). Here we find an almost ‘natural’ connection between Smith’s invisible hand and Bentham’s utilitarianism, a connection which forms the foundation of modern welfare economics. Based upon this relation between utility, liberty and unintended consequences utilitarians tend to view democratic competition as a *means* towards utility (Bellamy 1990:5; Clark & Elliot 2001:470). Such understanding of competitive democracy differs from Madison, because where he understands the common good as a *shared* interest, the utilitarians perceive the common good as *aggregated* interests. Mill, however, seems to emphasise the *epistemic* dimension of liberty, especially in public debate. Free argumentative competition

⁴⁷ The subjective character of happiness points to the measurement problem known as the “interpersonal comparability of utility” (Kymlicka 2002:18).

⁴⁸ In contemporary debate preference satisfaction is likewise problematised to the extent that a) it does not always imply an increase in well-being; b) there is a conflict between current preferences and tomorrow’s disappointments; and c) there is a distorting relation between the preferences we desire and those we can achieve (the ‘sour grapes’ problem) (Kymlicka 2002:15).

⁴⁹ It would be inaccurate to argue that liberty was only a means for Mill. Indeed, it can be argued that liberty has a moral value in and of itself. Mill provides a defence of liberalism based upon human autonomy. Where Kant uses human autonomy as a deductive foundation for a substantive morality, Mill uses a ‘weak variant of autonomy’. This variant sees “the absence of external direction as good” while the Kantian strong version derives its principles from “the core value of autonomy” itself (Kelly 2002:119). The valuation of liberty as an object in itself and as a means to utility is therefore not necessarily contradictory and explains the attractiveness of Mill’s theory for liberals of all kinds. It does necessitate a delicate balance between private and public spheres (OL II 73-83).

forces one to reflect upon one's opinion and assures that public opinion approaches the rational truth as an unintended consequence (OL II:79-83).⁵⁰

Bentham committed to democracy only when the political elite, motivated by 'sinister interests', refused to listen to his rational ideas (Schofield 2009:91). It is fair to say that the utilitarianism of both Bentham and Mill also includes strong elitist notions – it is a scientific method suited for experts. In Bentham's famous proposals for the *Panopticum* as the most rational incarceration of delinquents it is easy to see that his expert knowledge is not based upon the happiness-principle but upon efficiency and effectiveness (Bentham 1995 [1787]:43-5). Utilitarianism collapses into mere instrumental rationality – a rationality *independent* of the goal (Bentham 1995:34). Mill's understanding of expert knowledge, however, is less instrumental and more geared towards 'human perfection' (Gibbins 1990:96). Mill argues, for example, that in order to improve the lives of the unfortunates and the 'least fitted' government ought to teach them a 'rational conduct' reaching deep into their private lives (OL:137-8; V:163). What a rational life entails, what a better or *happier* life is, is not left to the judgement of the unfortunates themselves but to elites, who have developed their faculties and who mastered their 'animal desires' (U II:8; Gibbins 1990:96). Utility should foremost be a consideration of legislators not of the masses (U II:17; V:58-9).⁵¹

However the problem of utility measurement is solved and independent of whether utilitarianism takes a democratic or expert perspective, the question surfaces why individuals would feel an obligation towards the legitimate political order. Bentham does not seem to care much about this question, focusing upon utilitarian laws to which people are obliged through the penal system (Hampsher-Monk 1992:317). Mill, however, does see the problem. Mill is foremost promoting a *political* and not a *personal* utilitarian morality. Indeed, personal "comprehensive moral utilitarianism" tends to be so 'alienating' that most utilitarians opt, like Mill, for political or 'rule-utilitarianism' (Kymlicka 2002:21-5).⁵² In other words, individuals do not have to act morally but

⁵⁰ Different from Hume, public argument is not so much about understanding the other, but rather about testing the factuality of argument in competition. It must be noted that Mill claims additional benefits of public argumentation as: a) people have an inherent need for an opinion as they are 'terrified at scepticism'; b) competition protects the meaning and vitality of ideas against the drudge and routine of daily life; and c) competing opinions ensure political moderation of natural antagonisms (OL II:99-100).

⁵¹ Mill's belief in truth, facts and expert knowledge may seem to contradict his famous warning for the 'fallibility' of reason, but this is only a contradiction in appearance in light of the epistemic dimension of public argumentation (OL II:79).

⁵² Rule-utilitarianism also allows for a more credible defence of minority rights. Nevertheless Mill, at times, does argue for a personal version of utilitarianism (see e.g. U II:16).

rules and laws have to ensure morality.⁵³ But if utility is only *indirectly* ensured, a conflict seems to rise between non-moral actions and moral-rules, between the people and government.

Mill tries to ameliorate the problem of order in two ways. First, differing from Hume, order is a necessary condition for any government, but not its object (RG:186). The object of government is 'progress' – the increase in 'the amount of good' – where order is merely "the preservation of all kinds and amounts of good which already exist" (RG:187). Mill argues that the conditions for order and progress "are not opposite, but the same." Government ought to increase happiness (progress) without losing what already exists (order). Mill, then, seems to restrict utilitarian legitimacy to win-win situations – or, anachronistically, Pareto-efficiency. It takes the sting out of utilitarianism as justice is not mere *aggregation* of preferences with winners and losers, but concerns a *shared interest* in increasing happiness, in 'social improvement' (U V:59).

This win-win interpretation of utilitarianism, obviously, does not solve the conflict between individual and collective interests. So, secondly, Mill hopefully states that there is no "inherent necessity that any human being should be a selfish egotist, devoid of every feeling or care" (U II: 14). "Genuine private affections, and a sincere interest in the public good, are possible ...to every rightly brought up human being" (ibid.). But Mill, who criticises Kant for providing only moral rules based upon their reasoned consequences and not upon motivation, is not convinced that this benevolence is enough (U: I:4). Between force and morality Mill therefore tries to solve the problem of order by means of *the authority of opinion*. Mill almost literally turns Kant's famous definition of the Enlightenment upside-down. Where Kant tried to escape the 'nonage' or 'tutelage' of authority, Mill wants to close the gap between individual and collective perspectives by "the authority of a received opinion" (OL:139).⁵⁴ Society has "absolute power" over 'human character' during "the whole period of childhood and nonage" in which a 'rational conduct in life' can be taught (U II:16; OL:139).

Finally, even the authority of opinion is not enough. The happiness of all should be 'consecrated' in a 'halo of custom', it should be enforced by the fear of God, by sympathy, fear of disapproval, by hope of favour of our fellow-creatures and by status and authority (U III:25). These social forces create our 'conscience', which ultimately explains the 'internal sanction of duty' (U III:26). And just as Hume, Mill is aware that these "moral associations which are wholly of *artificial creation* ... yield by degrees to the dissolving force of analysis" (U III:28-9, my emphasis). In short,

⁵³ Indeed, personal utilitarian morality, it can be shown, can decrease utility in general (Kymlicka 2002:28). In other words, utilitarian justice prescribes non-utilitarian action.

⁵⁴ This emphasis on the authority of opinion might be confusing as Mill famously discusses the relation between the authority of public opinion and the rationality of public debate (OL II). As we will discuss below, Mill explicitly takes over de Tocqueville's fear that public opinion is the most dominant power towering above the masses threatening to annul individuality. Mill's discussion of public opinion, then, must be read in this dual understanding of opinion as friend and foe – an understanding that is not without its contradictions.

utilitarian justice cannot cope without artificial 'social ties' that create 'collective identification' and obligation towards legitimate politics.

2.1.6 Conclusion – The Paradoxical Nature of Legitimacy

When the theorists discussed turn their attention from normative theories of moral justice and of legitimate politics towards empirical political theory, they are all confronted with one single problem: the problem of order. As their normative theories do not allow them to solve this problem in terms of force nor human moral virtue, all try to solve the problem with *artificial* ties that explain why subjects feel a duty to obey legitimate politics and law. In short, despite all the theoretical and normative differences, where it concerns empirical theory legitimate politics is explained in terms of *domination* – i.e. command-obedience relations – and legitimacy is explained in terms of internal *feelings of duty* as a function of order.

The problem we are confronted with, at this point, is the fact that this empirical understanding of political legitimacy is a consequence of the normative project itself. All theories formulate a notion of moral justice in which morality entails the transcendence of 'lower' motives, attitudes, interests or passions. Morality concerns the universal, the general, the collective the unconditional. Political legitimacy, subsequently, concerns the link between these *ideals* of morality and the *positive* political order. In political legitimacy the lower passions must not so much be transcended, the lower and higher virtues must merge. Legitimacy is the 'riddle of history' (Marx quoted in Hampsher-Monk 1992:510). Political legitimacy must merge fundamental oppositions between passion and reason, individual and collective, between present and future, history and truth, between private and public or self and other. In general we might say that legitimacy concerns the paradoxical merger of 'freedom and unfreedom' (Marcuse 2008:7). Although for Marcuse this liberal tradition of political legitimacy is inherently fraught, his depiction is insightful.⁵⁵ Legitimacy does not only concern freedom. The whole point of the classic normative theorists is to show that we are free *because* we are not. But if legitimacy is not only about freedom, it neither solely concerns unfreedom. The whole point of these classics is to determine, as Locke states, a different foundation of government not merely based upon coercion and violence. In the normative concept of political legitimacy freedom and unfreedom paradoxically find each other. Political legitimacy explains why we are free by binding ourselves.

⁵⁵ Marcuse, who addresses legitimacy in terms of authority, claims that this paradox between freedom and unfreedom in 'bourgeois theory' transposes the 'realm of freedom' to the inner life of the individual, while unfreedom concerns the 'external world' (2008:7-8). Marcuse traces this tradition back to Protestant and ascetic theories and tries to turn classic liberal thought upside down: not freedom is the basis for legitimate unfreedom, but *because* one is internally free, one can (and must) be externally unfree.

If we leave aside whether an answer to this 'riddle' can be found and, if so, whether it requires a notion of universal morality, then we can see how this paradoxical nature of political legitimacy in its *normative* form defines how we perceive political legitimacy in its *empirical* form. Because of this paradoxical nature of political legitimacy these theorists are preoccupied with the problem of order. As soon as they turn to empirical theory the oppositions so neatly merged in normative theory resurface with full force. The paradoxical nature of normative legitimacy forces the theorists to explain a citizen's obligation to the legitimate political order anywhere between sheer force and moral reason. Moral reason cannot be the answer as individuals are not expected to be moral, either because of their weakness of will (*Akrasia*) or because morality arises as public virtue out of private vices. Force, on the other hand, can be part of the answer, but it cannot be the sole answer as that defies the whole project of enlightened liberal democracy. As such, between force and moral reason social processes and practices have to explain *artificial* feelings of duty, obligation or commitment to the legitimate order *despite* conflicting passions and interests. In other words, from the normative tradition a specific empirical conception of political legitimacy emerges that tries to explain the feeling of duty to obey political rule despite motivations towards the contrary. Legitimacy concerns the inner-sanctioned duty to obey political domination.

The point is not so much that political legitimacy should *not* be understood in terms of an empirical theory of duty and obedience. Weber famously tried to provide such a theory of political legitimacy which proves, as we will see in the chapter that follows, to be very insightful. Rather, the normative tradition provides a solid mould which can only produce one particular form of empirical political legitimacy. The paradoxical nature of the normative tradition preloads the empirical project toward the problem of order and *therefore* towards legitimate political domination. The problem for an analytical theory of political legitimacy is that it should try to avoid such *cryptonormativism*.

2.2 Between Empirical and Normative Theory

If we want to avoid this cryptonormativism in our analytical framework it might be worth noticing that political domination and the duty to obey might explain the stability of political order, yet it remains – for all theorists discussed – an artificial form of legitimacy. This means that legitimate domination might be important to explain the stability of politics, legitimate politics cannot simply be reduced to domination. The classics discussed have distinct albeit different understandings of the *empirical nature of legitimate politics* that remain essential and independent of political domination. As such, there exists a profound rift between the empirical form of political legitimacy and the empirical nature of legitimate politics that is not bridged in classical theory.

The classics do not only suggest a specific empirical, but artificial form of political legitimacy, but they also, and independently, have distinct claims about the empirical nature of legitimate politics. These claims are important as this nature provides a *focus* on those social and political processes that are constitutive of legitimacy. With the risk of oversimplifying we can say that in Locke's theory the nature of legitimate politics concerns politics as a *contractual* relation; a specific understanding that explains his focus upon political consent, political output effectiveness (substantive rights), trust and reciprocity. The nature of legitimate politics in Rousseau's work, however, is profoundly different if we disregard his natural law foundation for a moment. For Rousseau, legitimate politics concerns processes and conditions that ensure consensus. It is this *consensual* perception of politics that explains his focus upon the epistemic quality of political practices of decision-making as well as its social preconditions in terms of solidarity and civic virtue. Hume's *coordinative* perception of legitimate politics explains his focus on social systems and their constitutive rules, his functional evolutionary perspective on social-economic necessities and social learning, and his functional perspective of politics in terms of output effectiveness (mutual benefit) and collective action problems. Madison, in distinction, entertains a *conflictive* perception of the nature of legitimate politics that explains his focus on the rationality of institutional processes in terms of competition, mutual accountability and control, on the one hand, and democratic-representation in terms of elections, trust and loyalty, on the other. For Mill, finally, the nature of legitimate politics is foremost *instrumental* which explains his focus upon political output effectiveness in terms of utility, expert knowledge, social welfare and interest aggregation.

The point is not, of course, that everything that Locke, Rousseau, Hume, Madison and Mill wrote fits neatly into these shorthand models. The point is neither that these different foci on legitimate politics are mutually exclusive. Rather, the way we understand the nature of legitimate politics matters, as it focuses our attention on specific empirical political processes, practices or objects above others – it *determines* empirical theory. The problem for our analytical perspective, then, is that if the empirical nature of legitimate politics matters and if we can understand this nature at least in terms of contract, consensus, coordination, conflict or exchange, it seems that we have to find the *essential* nature of legitimate politics.

In the remainder of the chapter, however, I will show that such essentialism is problematic by analysing the different normative theories in their historical social-political context. At one level we can say that the normative theories we have discussed are part of a larger cumulative history of thought. Indeed, up till today, theorists react on each other's work and errors with the hope of proposing new or improved theories. Without taking over the latent teleological assumptions of such position, it is more than reasonable to argue that we cannot understand contemporary

empirical theory without understanding its historical and normative origins. At another level, however, we can analyse these normative theories as attempts to *legitimise* specific historical social-political practices. From such a ‘Marxist’ position we might explain the legitimising function of normative theory in intentional, functional or structural terms. Gramsci, for example, proposed the term ‘organic intellectuals’ to underscore the functional (organic) relation between normative theory and the hegemonic social order (Gramsci 2006:87; V.d. Pijl 1992:2). Without a doubt, normative theory can often be (and has to be) unmasked as an intellectual apology for the status quo and its underlying social-political inequalities. However, it seems to me that we should not reduce normative theory to a mere function of class and hegemonic order. Although there is a strong relation between social conditions and normative theory, I rather want to understand this relation in terms of how politics is perceived *as a solution to specific social problems in specific historical contexts*.

Normative theories of legitimacy, I will argue, can be understood as answers to specific historical problems. More specifically, I argue that the way the theorist comprehends the nature of legitimate politics is inherently dependent upon what he perceives to be the principle social problem of his time. A complex interplay between political solutions and social fears is what drives the normative project. In what follows, I will sketch this relation between society and theory, threat and solution or *between empirical and normative theory* in the theories we have discussed. It must, however, remain a brief and, even more importantly, a rough sketch. I am well aware that its bluntness does not do justice to the complexities and subtleties of history.

2.2.1 The Rise of the Modern ‘Secular’ State

In general, 17th century natural law theories can be considered as a response to the scepticism that reigned during the Renaissance (Hampshire-Monk 1992:4; Haakonssen 1996:24). As the famous sceptic Michel de Montaigne wrote: “there is no desire more natural than that of knowledge (...) but truth is no great thing. (...) Reason has so many forms” (de Montaigne 1575: chapter XXI). Scepticism seemed almost inevitable as new worlds were discovered that refuted the scholastic idea of a universal natural order ordained by God with Europe as the centre of the world, while at the same time the European continent was characterised by the intense religious strife of the Reformation. Modern natural law can be perceived as an answer to both these problems as it tried to rescue reason from scepticism as well as from religious conflict.

Grotius – considered to be the founding father of modern natural law⁵⁶ – tried to formulate a moral order as an explicit response against scepticism, which could in principle also be valid for

⁵⁶ The *modern* natural law tradition is juxtaposed to the *scholastic* natural law tradition of Augustine.

atheists or heretics (Haakonsson 1996:24; Hampshire-Monk 1992:5). Likewise Hobbes famously searched for the normative foundations of politics that would not necessitate the authority of religion. The point is not that Grotius or Hobbes were atheists, the point was that they wanted to establish a legitimate social order that would not be threatened by the religious conflict of their days. The problem of social order and the need for religious toleration were the principle problems of this historical period. Hobbes explicitly states that his theory was “occasioned by the disorder of present time” (1985 [1651]:728 [395]). Especially Hobbes did not necessarily need the authority of any god because he founded his theory upon *human nature*, which at the same time allowed him to negate epistemic scepticism. If human nature – self-love – was universal, as Hobbes argued, it allowed the possibility of a genuine political science. Inspired by the modern science of Galileo – as Locke was inspired by Newton – the ‘nature of man’ allowed the idea that laws of human action might be discovered (Hirschman 1977:13).⁵⁷ As such, Hobbes is often seen as the first modern philosopher, not burdening his deductive science with any human sentiments save self-love and as the first “to give an account of politics within in a detailed and unified secular world” (Hampshire-Monk 1992: xii). However, this is somewhat anachronistic as he did not aim to justify a modern secular order based upon (economic) self-interest – something that pre-occupied Hume and Smith – rather he tried to solve the *historical problem* of a political and social order threatened by religious conflict which *forced* him to found his theory not upon religion but upon universal human nature.

Locke might seem less-modern than Hobbes as his theory is explicitly relying upon the authority of God. Locke, however, tried to address different social problems as the worries of his day concerned the security of private property against the power of the sovereign within in the context of religious strife. His political theory can therefore be seen as coping with the authority of “the emergent modern state” (Hampshire-Monk 1992:5). In Locke’s words: “what security, *what fence* is there, in such a state, *against the violence and oppression of this absolute ruler?*” (II.VII:79). In contrast to Hobbes, Locke had to argue that the power of the Sovereign has moral limits and can be *resisted* in certain circumstances. At the same time, Locke has to assure that such right of resistance does not end up in anarchy and the loss of order.

Both this radicalism vis-à-vis the power of the sovereign, as well as the assurance of order nonetheless, was solved through divine authority. Locke endowed reason with divine authority in order to establish a different basis of authority than of violence, tradition *or* religion, while chaos

⁵⁷ Hirschman argues that this ‘positivism’ was not just a reaction to modern science but also a reaction to the claims of Machiavelli, who argued that political theory should not be about “imaginary republics and monarchies that have never been seen nor have been known to exist” but rather be based upon “the effective truth of things” (Machiavelli quoted in Hirschman 1977:13). Spinoza, Hobbes, but also Rousseau took up this argument, to take man ‘as he really is’ - “men being taken as they are and law as they might be” (Rousseau 1762: book I).

and disorder was kept at bay by appealing to a supra-social authority to which one has to justify one's actions (II.XV:150). In other words, Hobbes *could* be 'modern' because his aim was rather conservative or counter-revolutionary, i.e. the justification of the absolute king. Locke, furthermore, did not appeal to the authority of religion but only to the authority of a rational God.⁵⁸ Such Deism gave historical breathing space for secular reason.⁵⁹ As Thomas Paine wrote, "in Deism our reason and our belief become happily united" (1795). On the other hand, precisely because the sovereign had moral limits and the people a right to resistance, Locke understands politics as a contractual relation. Locke therefore also appealed to a supra-social authority because without it he could not explain why one would feel an obligation to keep one's contractual promises. Indeed, "promises, covenants, and oaths, which are the bonds of human society, can have no hold upon an atheist. The taking away of God ... dissolves all" (Locke 1689). Paradoxically, without the *existence* of God religious tolerance was impossible as atheism fails to provide a foundation "whereupon to challenge the privilege of a toleration".⁶⁰

In sum, although Locke gave an influential justification of private property, it seems to me, that he should not so much be seen as an apologist for the rise of a new bourgeois economic order. This is the interpretation of those who are influenced by him in different ages, notably Smith and Marx (Hampshire-Monk 1992:93). Locke, on the other hand, was dealing with the rise of the modern central state and trying to define the limits of its powers within the context of religious strife. The rise of a new economic order was the topic of the next century.⁶¹

2.2.2 The Rise of Modern Capitalism

Much of 18th and early 19th century political theory can be seen as an attempt to come to grips with the rise of a new social order based upon commercial exchange – the rise of a social order based upon *interests* over against the traditional order based upon aristocratic or republican *virtue*

⁵⁸ Voltaire writes: "it was loudly exclaimed that Mr. Locke intended to destroy religion; nevertheless, religion had nothing to do in the affair, it being a question purely philosophical, altogether independent of faith and revelation" (Voltaire 1778).

⁵⁹ At the turn of the 18th century, for example, a dominant discussion concerned the question of whether morality was solely a natural order willed by God or whether people had moral obligations independent – but not contrary of course – of that divine will (Haakonssen 1996:6).

⁶⁰ Voltaire argued for religious toleration on similar grounds: "are we not all children of the same father and creatures of the same God?" (Voltaire 1763:chap.22). As an interesting side-note, even for Voltaire religion was a pragmatic necessity for social order. He called out to the 'logicians': "Alas! let's leave intact human belief in fear and hope". Indeed, "If God did not exist, it would be necessary to invent him" (Voltaire 1768).

⁶¹ Hardin, as such, separates between two kinds of liberalism: political and economic liberalism (1999a:41-2). The first concerns the attempt beginning in the 17th century to create a secular state tolerant of religious differences, while the second concerns the attempt to describe and justify capitalist society.

(Hirschman 1977:4; Pocock 1985:67-8).⁶² We might understand Rousseau's work as an early attempt to come to grips with this new commercial society he saw developing in the 18th century. For Rousseau, this modern society was foremost corrupt. But if morality only arises with society itself, as discussed, moral corruption must be due to society itself (Mautner 1997:491). Not human sin, but human history and human society have created the 'evils of the world'. Rousseau's celebration of the 'savage' man in his natural state was to show how civilized man lives in a state of slavery. As Rousseau writes, if one perceives "multitudes of entirely naked savages despising European pleasures and enduring hunger, fire, sword, and death merely to preserve their independence, I feel that it is not appropriate for slaves to reason about freedom" (1754). Civilized men "call the most miserable slavery peace" and no longer possess the *moral virtue* to fight for their freedom. Without doubt Rousseau perceived Europe as the highest stage of civilisation, but – not unlike Weber – this highest stage is also the end of freedom.⁶³ The only thing left under this new form of 'despotism' was the "virtue which remains for slaves" (Rousseau 1754).

This emphasis on corruption clearly reverberates with the republican tradition of citizenship and civic virtue (Berry 1997:136). The manners of modern commercial man, Rousseau worries, conflict with the virtues of active republican citizenship and political participation. Rousseau sketches how freedom decayed through the invention of money and commerce - "through the hustle of commerce and the arts, through the greedy self-interest of profit, and through softness and love of amenities" (III.15) – towards a corrupted and unequal society. Rousseau especially abhorred the idea that citizens pay off their public duties and 'personal services' with money and taxes. For Rousseau, it is not commercial exchange per se that contradicts the republican ideals of virtue, but the ability to buy off one's duties – not the rise of exchange relations, but *financial* relations corrupts society (Pocock 1985:110).⁶⁴ If men do not actively participate in the public cause, if they think "what does it matter to me?", Rousseau claims, "the State may be given up for lost" and they "will not be long without chains" (III.15, IV:7). The problem with commercial society, then, was that people were merely 'passive spectators of political dramas' (Mautner 1997:491).⁶⁵

⁶² Hirschman rightly argues that this does not mean we should see this rise of a new order necessarily in terms of its 'class character'. Indeed, we can question "the class character of the French Revolution" (Hirschman 1977:4; and see especially Doyle 1999:3-42; 2001: 1-43).

⁶³ Rousseau perceives a linear progressive development of mankind in relation to its industries with Europe at the highest level. In this development the agricultural and metallurgic revolutions in particular tend towards despotism – "lifting by degrees its hideous head and devouring everything which it had perceived as good and healthy in all sections of the state (...) establishing itself on the ruins of the republic" (Rousseau 1754).

⁶⁴ Rousseau even held that "enforced labour is less opposed to liberty than taxes" (III.15).

⁶⁵ Interestingly, Rousseau also points out that this new order geared towards self-interest is ultimately self-defeating. Different from self-love in the natural state (*amour de soi*) self-love in society (*amour propre*) is inherently dependent upon *social recognition* (Froese 2001:584). Where the savage 'breathes nothing but peace and liberty', civilized man is subjected to a 'multitude of new needs' and "above all, to his fellow men, to

Rousseau's normative project therefore can be understood as an attempt to explain how corruption in modern society ought to be solved. It clarifies his search for the social preconditions of political legitimacy – social conditions that are favourable to the rise of the common will and the moral virtue of man. Rousseau recommended a small community where “every member may be known by every other” (II.10), with fairly egalitarian social-economic conditions (III.4) and which consists of self-sufficient people with ‘simplicity of manners’ “bound by some unity of origin, interest, or convention”, but without ‘deeply ingrained customs or superstitions’ (II.10). Rousseau was sceptical whether such social conditions were possible at all in modern society – he thought Poland and Corsica had a fair chance – but also whether these conditions could be maintained. He grimly states that “the body politic, as well as the human body, begins to die as soon as it is born, and carries in itself the causes of its destruction” (III.11). Rousseau, as we have seen, tried to solve this problem through the artificial arousal of moral and public virtue. But Rousseau also advanced a different solution: an *individual escape* from corrupt society.

In *Emile, ou l'Education* Rousseau argues how it is possible to lead a virtuous and authentic life within modern corrupt society (Rousseau 1762-a). Emile is neither Saint nor Savage, neither social man nor citizen, rather Emile is a natural man, where “natural man is a whole for himself” (Rousseau quoted in Keohane 1978:473). Rousseau is therefore often considered to be the father of Romanticism, searching for unspoiled and authentic meaning as can also be seen in his use of the image of the *Noble Savage*. Romanticism emphasises uniqueness and distinction as opposed to the modernist notions of universal laws, generalisation and similarity. Rousseau's romanticism expresses that one has to be conscious of one's unique self with a unique destiny.⁶⁶

Rousseau tried to rescue morality and social virtue from corruption associated with the rise of a new commercial order – an attempt that asked for a transformation of society itself or else a flight into Romantic authenticity. Rousseau addressed a common worry of those days, the worry that “virtue is threatened” (Berry 1997:132). But 18th century worries were not limited to the relation between moral virtue and commercial society, it also included worries about the stability of this new order. After the Dutch Tulip crisis of 1637, the English Bank crisis of 1710, the French Mississippi Bubble and the South Sea Bubble of 1720 – accompanied by ‘widespread political corruption’ – the stability of the social and political order seemed to be “undermined by money” and “at the mercy of passion, fantasy and appetite”, but no longer limited by any moral sanction (Hirschman 1977:57; Pocock

whom he has, in a sense, become a slave, even in becoming their master’ (Rousseau 1754). If self-interest defeats self-interest this points to Rousseau's solution to find self-interest in the collective interest.

⁶⁶ This search for authentic individuality can be clearly seen in Rousseau's opening statement in *The Confessions*: “I know my heart, and have studied mankind; I am not made like any one I have been acquainted with, perhaps like no one in existence; if not better, I at least claim originality” (Rousseau 1782).

1985:112; Berry 1997:140). Both Smith and Hume recognised that the stability of an economic system depends upon confidence, upon *opinions* and *beliefs*. Indeed, the value of money “lies in the fact that *others believe* it to have value” (Smith quoted in Berry 1997:126). The commercial order requires ‘predictability and confidence’ while its core inherently entails ‘uncertainty and risks’. But a social order founded upon uncertainty and opinion seemed especially worrisome to many (Hirschman 1977:53). As Berry concludes, many “thought a commercial society fundamentally unsound since it seemingly rests on nothing more substantial than a tissue of beliefs” (1997:126).

What worried theorists like Rousseau was not ‘the cold rationality of economic man’, but rather the ‘hysteria’ of his uncontrolled passions. The traditional order based upon the aristocratic masculine virtues of commitment, steadfastness, and courage seemed increasingly to be ruled by unreliable “female goddesses of disorder as Fortune, Luxury, and ... Credit herself” (Pocock 1985:114; see also Berry 1997:140).⁶⁷ This celebration of ‘luxury’ not only clashed with traditional Christian ethics – Augustine taught that the ‘lust for money’ is one of the three sources of sin and that the fall of man is related to ‘self-indulgence and greed’ – but also with republican ethics – luxury is corruption, promoting ‘softness’ ‘unmanliness’ and uncourageousness, as Rousseau has already told us (Rousseau 1762 III:15; Hirschman 1977:9-10; Berry 1997:140). In short, this clash between feminine passions and manly virtues confirmed the frailty of the commercial order and was the historical background in which both Hume and Smith tried to understand and justify the new commercial social order.

If the new commercial order was not to be denounced, as in Rousseau, two main issues needed to be addressed. The first question concerned whether a social order based upon passion, self-love and uncertainty can be stable at all, and the second whether this new order inevitably leads to the corruption of man. Hume and Smith tried to address these problems not by explaining the moral man of Rousseau, but by explaining man as a social being, as a ‘social man’ (Pocock 1985:120; Berry 1997:24). The discovery of self-love and interests as the dominant motivation of social man allowed the possibility of a stable foundation of society as well as a genuine social science (Hirschman 1977:48-9). Different from Hobbes, it was not just about the universal essence of human nature, but about the motivation of man in his social context – social man allowed for *theories of society*. As such, social order could and should be established exactly by ‘harnessing the passions’ of social man (Hirschman 1977:20-23).

As we have seen, for Smith and Hume order and public interest rise as an unintended consequence in accordance with Mandeville’s dictum ‘private vice, public benefit’. Hume’s claim that government ought to provide justice means it should assure the institutional framework

⁶⁷ “Economic man as a masculine conquering hero is a fantasy of nineteenth-century industrialization” (Pocock 1985:114).

through which individual passions were harnessed for the public good – a stable framework of impartial rule of law making contracts between strangers possible. As Smith stated, if this justice is removed “the great, the immense fabric of human society ... must in a moment crumble into atoms” (quoted in Berry 1997:130). The ‘systems of rational egotism’ advanced by Smith and Hume therefore are not so much about *legitimizing* the self-love of commercial man, as rather “means of controlling his impulses” (Pocock 1985:112).⁶⁸

The Scots, however, not only had to show how the new commercial order could be stable, but also had to address the worrisome decline of moral and manly virtue. As such, they tried to show how commerce is inherently tied up with the historical *progress of civilization* and how it produces mild manners and politeness (Pocock 1985:115). De Montesquieu had already shown this relation between social manners and commerce in his *l'Esprit de Lois*: “it is almost a general rule that wherever the ways of man are gentle (*moeurs douces*) there is commerce; and wherever there is commerce, there the ways of men are gentle” (de Montesquieu 1748). This idea of the *commerce doux* was also present in the *natural history* of Smith. Smith claimed that the driving force of the ‘natural progress’ of humankind – passing through the four distinct states of “hunting, pasturage, farming and commerce” – was not the will of government, but underlying social changes such as manners and behaviour or human cognition and emotions (Bellamy 1990:3; Berry 1997:93-4).⁶⁹ For both Hume and Smith, morality and history were inherently intertwined, which made the claim possible that the rise of commercial society should be understood in terms of natural progress and civilisation (Haakonssen 1996:7). The progressive rise of commerce conversed “passion into opinion” and, in the words of contemporary Millar, stimulated virtues like “honesty and fair-dealing” (Pocock 1985:121, 138). The age of commerce, as a consequence, was not the era where moral virtue was lost, but it was, Hume claimed, the ‘happiest and most virtuous’ ‘age of refinement’, where ‘industry, knowledge and humanity are linked together by an indissoluble chain’ (Berry 1997:138-9).

Although the Scots judged the rise of the progressive evolutionary stage of commercial society better ‘on balance’ not all worries disappeared (Berry 1997:120). Where it concerned its stability they were especially worried about the increase in public debt. Public or governmental debt was seen as a *negative* unintended consequence of commercial society. Smith worried it to be the “probable ruin of all the great nations of Europe”, while Hume emphasised that “either the nation must destroy public credit or public credit will destroy the nation” (both quoted in Berry 1997:149).

⁶⁸ Smith often wrote dismissively about the passions that create the public good, labelling them as “vain and insatiable” based upon “natural selfishness and rapacity” (Berry 1997:45). Real happiness, for Smith, did not concern these ‘imagined satisfactions’ that drive “the industry of mankind” but rather the Stoic ideal of ‘peace of mind’ (Berry 1997:44).

⁶⁹ Smith did recognise that the rise of civil government in this historical process was motivated by the rich to protect themselves against the poor, but considered the whole process as ‘improvement’ as it developed towards ‘regular’ and ‘impartial’ government (Berry 1997: 105-6).

Furthermore, as already discussed, if stability depends upon justice provided by government, the idea of countervailing passions cannot really explain individual obligation towards legitimate government. The civility of the *commerce doux* did not take away all the worries concerning moral virtue. Commercial man “might be a social but he could never be a wholly political being” (Pocock 1985:121). Indeed, if Hume separated *private* sympathy and *public* justice it meant that political participation and involvement was no longer expected. His contemporary Ferguson especially worried about this devaluation of “active public life” (Berry 1997:135). Furthermore, emphasising *interdependent* social man, civilised or not, kept contrasting with the republican ideal of *autonomous* citizenship based upon material independence (Robertson 1990:16).⁷⁰ This worry of the loss of autonomy, only aggravated by the problems created by the modern division of labour (Hirschman 1977:105-6). Smith explicitly worried about man “whose whole life is spent in performing a few simple operations” to become “as stupid and ignorant as it is possible for a human creature to become” making him incapable “of forming any just judgement concerning many even of the ordinary duties of private life.” (Smith quoted in Berry 1997:144). As Berry argues, Smith worries about “the (sick) condition into which the ‘labouring part, that is, the great body of the people’ necessarily falls ‘unless government takes some pains to prevent it’” (Berry 1997:145).

The Federalists, as we have seen, incorporated many ideas of the Scots directly into politics itself. As Hamilton argued, modern political science provided the principles of perfect government – the principle of countervailing passions (Hamilton IX:119) and the public good as an unintended consequences. The institutional design argued for by Madison can itself be understood as a *solution* to the social-political situation that arose after American independence. The constitution written at the Philadelphia convention was foremost intended to counter specific problems in the post-war independent states. The Articles preceding the constitution were written in an anti-British and anti-imperial spirit and clearly assigned political power in the hands of the states, leaving the overarching federal structure rather powerless. At the same time, as the idea of representation was especially contested due to the war with Britain, political power within the states was, in traditional republican spirit, located in the legislative and thus in the hands of the people. This practice, according to the Federalists, was disastrous for individual (property) rights. There was no separation of powers, debts were annulled by majority vote, judiciary judgements were overruled, private property was not respected and there was a general spirit of ‘aggressive egalitarianism’ (Kramnick 1987:23). The main

⁷⁰ Smith and Hume argued in contrast that in commercial society autonomy actually increases. Instead of being personally dependent upon someone’s economic surplus, like subjects of an ‘African King’ are dependent upon his wealth, in a commercial society economic surplus is separated from personal dependency (Berry 1997:122-4). As such, economic *interdependency* also means *independency*.

problem for the Federalists was thus not the arbitrary power of the Prince, as in the tradition of European political theory, but rather the arbitrary power of the majority of the people. Individual rights, based upon reason and truth had to be defended against the passions and unreasonableness of the people. The solution of the new political science was to counter passion with passion.

It might be argued that the Federalists were more concerned about the traditional republican spirit which irrationality threatened the stability and coordination needed for a viable and rational commercial society – turning the worries of Rousseau and the Scots upside down. Furthermore, the Federalists addressed a whole different question that was only latently present in Smith's worry about the mental condition of the labour force and that especially seemed relevant in a society without traditional estates: the *class question*. Although the class question was more consciously elaborated in the next century, it did seem to threaten commercial society and the Federalists did propose a clear solution: interest fragmentation and, indeed, the fragmentation of *class consciousness*.

2.2.3 The Rise of Mass Society

Finally, if we turn to the 19th century the old order had definitely crumbled in the American and French Revolutions. Different issues and problems presented itself in this age – issues that J.S. Mill tried to address in his work. Mill was deeply influenced by the work of de Tocqueville stating that de Tocqueville had “changed the face of political philosophy” (quoted in Lakoff 1998:436). De Tocqueville had tried to analyse the consequences of the new democratic order, on the one hand, and the social problems that signalled the end of the comforting idea of the *commerce doux*, on the other. The problem with the French Revolution, according to de Tocqueville, was that citizens were perceived as an abstract “entity independent of any particular social order” and that its champions determined the “rights and duties of men in general” (AR Foreword:168).⁷¹ The Enlightenment writers wanted “to replace the complex of traditional customs governing the social order of the day by simple, elementary rules deriving from the exercise of the human reason and natural law” (AR III.1:216). Such universal reasoning, ‘*l'esprit de systeme*’, explains, according to de Tocqueville, its inherent appeal, but says nothing about its success. The actual empirical results are not determined by reasoning and cleverly designed constitutions, but by social conditions. Indeed, politics is not about ‘paper liberties’ it is about the social practices, habits, and traditions that actually ensure freedom (Stone & Mennell 1980:37). The primary worry of de Tocqueville, then, is that the *practice* of the modern democratic order produces a centralised and all-powerful state as a *new form of despotism* (DIA 4.3-5:361).

⁷¹ All references to Tocqueville are to de Tocqueville (1980): Work (DiA = *Democracy in America* (1840); AR = *L' Ancien Régime et la Révolution* (1865), Part, Chapter, Page.

De Tocqueville's argument of democratic despotism is quite complex and varied, but we might recognise four main arguments. First of all, de Tocqueville argues that the love for equality of democratic man can have perverse tendencies as it not only engenders the wish "to elevate the humble to the rank of the great", but also a 'depraved taste of equality' to lower 'the powerful' to the level of the weak (DIA I.3:52). This, it is argued, threatens the taste for liberty because the advantages of liberty are not equally distributed (DIA II.2.1:352). Democratic men, de Tocqueville claims, "prefer equality in slavery to inequality with freedom" (DIA I.3:52).

Second, the rise of democratic despotism is possible because of the decline of countervailing powers. As equality and the commercial order promotes a *middle class* that possesses some property and as meritocratic social mobility fills their minds, this class has an increasing interest in the stability the state provides (DIA II.3.21:355). This middle class, de Tocqueville argues, suffocates any passion for revolution. Its material ambition is the safeguard for despotism (OR Foreword:377) and explains why citizens are 'naturally disposed' to constantly "surrender additional rights to the central power" (DIA II.4.3,4 & 5:361).⁷² Furthermore, he claims, the democratic revolution not only demolished the injustice of the traditional institutions in the name of liberty and equality, but destroyed in the process also those institutions that were the traditional countervailing powers of central authority, i.e. it destroyed the aristocracy which is just not compatible with the idea of uniformity of universal law (DIA II.4.2:86; AR III.3:226).). But, de Tocqueville claims, in making everybody equal, individuals become impotent and powerless, while there is nothing that can really resist the tyranny of government (DIA I.5:64). Central government was not only resurrected after the revolution, it was 'more shockproof' and more pervasive.

Third, de Tocqueville argues that the democratic order has dislodged man from his traditional ties. The individualism that arises with democracy should therefore not be confused with self-love, but rather concerns man's withdrawal from society and from his 'fellow-creature' (DIA II.2.2:293). De Tocqueville recognises that equality makes sympathy for humanity possible in the first place – one only has to look at oneself and know the pain and suffering of everybody else (DIA II.3.1:105) – but at the same time such humanity becomes possible it loses strength because, in Humean fashion, it has become impersonal and thereby weaker. Separated from his traditional ties, the individual, de Tocqueville argues, withdraws from society into a 'little circle of his own' in an attempt to cope with the indistinctive mass (OR Foreword: 377). Modern democracy is no longer the age of the individual, but of the masses.

Finally, the main characteristic of such mass society for de Tocqueville is that beyond the crowd there is no authority than the collective itself – nothing "but the great and imposing image of

⁷² De Tocqueville recognises that democracies are not so much 'stationary' but that its 'perpetual stir' remains within the limits of 'what is fundamental', that is, of order (DIA II.3.21:385).

the people at large” (DIA II.4.2:86). This collective authority can especially be felt in public opinion.⁷³ The overwhelming authority of public opinion not even persuades the individual, but ‘enforces’ ‘ready-made opinions’ which relieve him from thinking for himself (DIA II.1.2:135-7).⁷⁴ But this tremendous force of collective authority, de Tocqueville argues, can also be government itself. Although their equality and independence fill citizens with pride, their sense of powerlessness together with a fear of downward mobility (OR Foreword:377) and the lack of moral obligations for mutual support (DIA II.2.5:112) causes them to look up to the state for assistance. Government therefore feels “responsible for the actions and private condition” of its subjects and easily invades the ‘domain of private independence’ (DIA II.4.3,4,5:367). Above all, such state assistance is increasingly necessary as democratic society champions equality, but mystifies its inherent *class relations* (DIA II.2.20:302).⁷⁵ Servants, de Tocqueville claims, might think of themselves as “the equals of their master” and might think that the relation with their master is based upon voluntary contract and consent, this does not correspond to the “real inequality of their condition” (DIA II.3.5:119-120). As such, equality is also perverse because in thinking that they are equal – an “imaginary equality” – servants no longer feel the need to resist the interests of the masters that are contrary to their own interests. It is a passion that ‘subdues their will’.

In sum, de Tocqueville describes how this new *democratic mass society* – characterised by dislodged individualism, a distorted belief of equality and lacking countervailing powers – threatens to create a new form of despotism. Democratic nations, he claims, are “most exposed to fall beneath the yoke of a central administration” (DIA I.5:65), an “all-powerful bureaucracy” (AR III.3: 226). Traditional tyranny, de Tocqueville argues, ruled by being seen in its most naked and horrendous power – it crushed the few to install its authority in the neglected rest. Modern administration, however, is more gentle, but more pervasive – it “degrade[s] men without tormenting them” (DIA II.4.6:374). As to deny the promise of Enlightenment and Kant’s dictum de Tocqueville writes that “[a]bove this race of men stands an immense and *tutelary power*, which takes upon itself alone to secure their gratifications, and to watch over their fate. That power is absolute, minute, regular, provident, and mild” (ibid.:375, my emphasis). The disturbing point is that it concerns a *democratic*

⁷³ Democratic man thinks himself equal to all others, which means he has ‘no faith’ in the opinion of another man, more than in his own (DIA II.1.2:135; II.4.2:86). But “when he comes to survey the totality of his fellows, and to place himself in contrast to so huge a body, he is instantly overwhelmed by the sense of his own insignificance and weakness.” (DIA II.1.2:137).

⁷⁴ De Tocqueville recognises, however, that this ‘enslavement of the mind’ is not totally negative, as it might also force the individual to think novel thoughts.

⁷⁵ Although de Tocqueville is aware that commercialism creates new forms of inequality, a new form of aristocracy, and although he sees how the labour force is degraded, he is adverse to any form of public relief. De Tocqueville states in *Memoire sur le Paupérisme* (1835) that public relief would only degrade and humiliate the paupers more, be a recognition of their inferiority, lower their public moral, create a disincentive to work and would only encourage class conflict (Goldberg 2001:298-300).

despotism. The people think “government *ought* perpetually to act and interfere in everything that is done” while they do not think they are giving up their freedom (DIA II.4.2:87).

It might be argued that Mill tried to address some of the social problems that de Tocqueville signalled. Therefore we can understand Mill’s theory against the background of a nascent *mass society* characterised by central bureaucratic administration and industrial class-society. Mill worried, in almost similar terms as de Tocqueville, how both the increasing power of the administrative state and public opinion repress every form of individual autonomy, creativity and liberty (OL:131).⁷⁶ And without any countervailing power to champion non-conformity, Mill fears “a social tyranny more formidable than many kinds of political oppression, ... penetrating much more deeply into the details of life, and enslaving the soul itself” (OL I:68). Paradoxically, the utilitarian Mill claims that “the evil would be greater, the more efficiently and scientifically the administrative machinery was constructed” (OL V:165). The ‘more perfect’ the bureaucratic organisation, the better the organisation “of the nation into a disciplined body for the purpose of governing” (OL V:167).

To address this democratic despotism and to save the liberty and autonomy of *republican man* Mill proposes public opinion as a solution. Free competitive argumentation in public debate at least offered the possibility of new thoughts and reflection – a possibility of escaping the suffocating opinion of mediocrity and the pressures of conformity. Competition, Mill argued, was not so much the answer to revive as to protect human virtue – a defence of autonomy and individuality.⁷⁷ Not republican, but *liberal man* was his more modest goal. The individual, shielded from the oppression of public opinion, provides him the opportunity of ‘non-conformity’ – the possibility to avoid becoming a person with “no character, no more than a steam-engine has a character” (OL III:117).

Mill, however, not only tried to protect individual liberty and autonomy of liberal man against the bureaucratic state and public opinion in public argumentative competition, but also by trying to raise a solid legal boundary between *public and private spheres*; a boundary based upon a differentiation between self-regarding and other-regarding actions (OL I:74). Unfortunately for Mill, this boundary was not that solid in relation to that other 19th century problem: the living conditions of the masses. The seeds of class interest and class conflict that de Tocqueville signalled grew more and more to full stature in the 19th century. The gentle order of *commerce doux* increasingly conflicted with the harsh social conditions of the industrial order. The utilitarian project can be seen

⁷⁶ Mill favourably quotes de Tocqueville that “the faith in opinion becomes ... a species of religion and the majority is the prophet” (quoted in Hampsher-Monk 1992:352). This also means that the relation between government and public opinion is tightly knit (OL:131).

⁷⁷ Indeed, Mill often echoes the traditional republican fear of the loss of virtue as he claims that mass society produces ‘moral effeminacy’, ‘torpidity and cowardice’ and citizens that are ‘less heroic’ but obsessed with ‘money-getting’ (Bellamy 1990:6). Individuality, not to be confused with individualism, concerns the expression of the individual’s own nature “as it has been developed and modified by his own culture” (OL:118).

as an early answer to this hardship – the need for social improvement provided by the state. If England witnessed a ‘revolution in government’ by providing all kinds of social and public law, the influence of utilitarianism in this revolution concerned the dismantling of inefficient traditional institutions and the creation of rational ones under central authority (Conway 1990:71-3). It also means that Mill could hardly uphold the legal-moral boundary between public and private spheres. Indeed, for Mill the state ought to socially intervene in cases of gambling and drugs in order to protect ‘family’ and ‘creditors’ (OL:137-8) and even argued that in certain cases marriage and parenthood fall under the interests of society and state (OL V:163). Mill’s theory therefore remains utterly and ambivalently torn between protecting individual autonomy *against* the administrative state and raising the unfortunate *through* the state.

19th century social conditions stressed liberal theory. The blossoming of class conflict, *the rise of faction*, was a fear shared unanimously by the authors we have discussed. It is a fear deeply imbedded in the liberal tradition as faction and common interest can hardly be combined. Rousseau argued that factions are most detrimental for the general will as there should be “no partial society within the State” (II.3).⁷⁸ Madison’s whole institutional design was geared “to break and control the violence of faction”, “this dangerous vice” (Madison X:122).⁷⁹ Hume wrote about the ‘madness’ of factions that the founders of ideological political parties ‘must be hated’ as “the influence of a faction is directly contrary to that of laws” (I.I.8:127). De Tocqueville denounced political parties organised in military fashion aimed at fighting not at debating or persuading and which were centralised around “a small number of leaders” while the bulk of the members “profess the doctrine of passive obedience” (DIA I.12:84). Indeed, in the long classic tradition of democratic-liberal thought only Burke seemed to champion the rise of political parties, but merely as a means to fight parliamentary corruption (Burke 2007 [1770]). Even Burke made a difference between factions and parties, where factions possess a “narrow, bigoted, and proscriptive spirit” and “are apt to sink the idea of the general good in this circumscribed and partial interest”.

However, by the 1880s traditional liberalism emphasising a harmonious relation between individual and public interests and championing negative liberty was no longer feasible: depression, foreign competition, poverty, inequity, the rise professional bureaucratic corporations, all undermined the ideal of the liberal *commerce doux* (Bellamy 1990:10; Hirschman 1977:126). It became clear to many observers that the impoverished and the uprooted might become

⁷⁸ Rousseau writes: “when particular interests begin to make themselves felt and smaller societies to exercise an influence over the larger, the common interest changes and finds opponents: opinion is no longer unanimous; the general will ceases to be the will of all; contradictory views and debates arise; and the best advice is not taken without question” (IV.1).

⁷⁹ Madison defined a faction as “a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or the permanent and aggregate interests of the community” (X:123).

“passionately angry, fearful [and] resentful” (Hirschman 1977:126). Factions and class interests seemed to become a political reality in the 19th century. This rise of interest conflicts, in the true meaning of conflict, necessitated some form of compromise. As Chamberlain asked in 1885: “what ransom will property pay for the security it enjoys?” (quoted in Brebner 1948:67). The *commerce doux* and the liberal state turned out not to be the end of history, not the final ‘unfolding’ of the universal ‘World spirit’ as Hegel envisioned, but were increasingly ‘haunted’ by a ‘ghost’ (*Gespenst*) of interest conflict and opposition (Engels & Marx 2008 [1848]:20).⁸⁰ The 20th century needed to cope with a different social reality, with different conflicts and oppositions that had to be unified with different notions of legitimate politics. Mill’s utilitarian project of social progression and indeed social emancipation must be understood as a first answer to the class problem and the harsh social condition of industrial England while trying, at the same time, to protect individual liberty against the rise of the tutelary administrative state and mass opinion.

2.2.4 Conclusion – The historical dialectic

If, according to Kant, the whole project of the Enlightenment is “man’s emergence from his self-imposed tutelage (*Unmündigkeit*)”, i.e. the ability “to use one’s own faculties (*Verstandes*) without another’s guidance” (1784) – this emergence from traditional authority does seem to burden man’s moral talents. Indeed, the scholars discussed, seemed to perceive the rise of this new society – from the rise of the central ‘secular’ state in the 17th century, to the rise of modern capitalism in the 18th century, to the rise of industrial and mass society in the 19th century – with explicit ambivalence.

What must be clear from this all too short analysis is the direct link between perceived historical social conditions and problems, on the one hand, and the nature of legitimate politics, on the other. Locke’s contractual perspective seems directly tied to his fear of the arbitrary power of the sovereign secular state. Rousseau’s emphasis on consensus and political participation seems a direct consequence of his fear that commercial society would corrupt man’s moral and republican virtues. Hume’s perception of legitimate politics as coordination springs from fears concerning the stability of a feminine commercial society solely based upon opinions and passions. Madison’s conflictive perception of legitimate politics seems inherently tied to his fear of majority and class-interests threatening a rational commercial society. And finally, Mill’s ambivalent relation to the state seems to be a response to the social problems of industrial society in which legitimate politics is perceived as an instrument for both the protection of liberty as the emancipation of the masses.

⁸⁰ Hegel did recognise the class contradiction to be an irrational contradiction that threatened liberal civil society. However, he did not really have an answer to this problem except migration and colonization (Hampsher-Monk 1992:457-8).

We might say, then, that the way these theorists perceive the nature of legitimate politics is inherently tied to how they perceive the empirical social-political problems of their time. What legitimate politics *is*, is inherently caught up in empirical theories of society or, we might say, in modernity. Notwithstanding the fact that the normative theorist is trying to convince us that his conception of legitimacy is transcending history, aiming for universal morality, his theory is addressing specific historical problems. Between theory and history, then, there seems to exist a *dialectic* that problematises any attempt to formulate the *essential* nature of legitimate politics. Finally, if we agree that the way we understand the nature of legitimate politics matters to the extent that it *affects* any empirical (and normative) theory of political legitimacy, we must conclude that this historical dialectics forces us to give up any pretensions of *essentialism*.

2.3 Conclusion: Faces of Political Legitimacy

In this chapter I have tried to analyse the complex relations between normative and empirical theory. In the first part of the chapter we have seen how the *paradoxical nature* of legitimacy in normative theory forces us to a *singular empirical form* of political legitimacy, i.e. it forces us to analyse political legitimacy in terms of political domination and the duty of obedience. In the second part we have seen how an *historical dialectic* between theory and society explains *plural* understandings of the *empirical nature* of legitimate politics – understandings that structure any theory of political legitimacy as it provides a focus on those social and political processes that are constitutive of legitimacy.

When this thesis aims for an analytical framework of political legitimacy, we must forgo the *cryptonormativism* originating in the normative paradox and simultaneously forgo any presumption of *essentialism* as the historical dialectic shows us. It seems to me that an analytical framework cannot reduce its understanding of political legitimacy to one singular form *a priori*. As Edelman wrote: “There is no one ‘real’ political system. To people in different situations one or another facet is real, for the time being and for the issues that concern them. To define the system, all these perspectives must be taken into account” (1964:21). Empirically one perspective might be more relevant than another, but we cannot discard different analytical perspectives in advance. There is no one singular essential nature of legitimate politics and yet we cannot empirically perceive practices of legitimacy without some prior position on the nature of legitimate politics. An empirical theory of legitimacy needs to focus beyond the pro-theoretical claim that legitimacy concerns subjective validity and normative ‘oughtness’.

In the second part of this book, then, I will analyse different *faces of political legitimacy* depending upon the underlying nature of legitimate politics. In chapter 3, I analyse politics as

domination as understood by Weber. In chapter 4, I analyse politics as conflict especially as understood by post-war democratic realists. In chapter 5 and 6, I will analyse politics as coordination as understood by Luhmann, while in chapter 7 and 8 I discuss politics as argumentation as developed especially by Habermas. As such, by departing from different natures of legitimate politics I will analyse how we can understand political legitimacy empirically.

The fact that political legitimacy might have multiple faces, however, does not mean that the difference between normative and empirical theory collapses again. Of course, if a scholar only emphasises one particular form of legitimate politics above others this choice might be normatively inspired (as it often is). Nevertheless, although this theory is not value free it might still be free of value judgments to the extent that it tries to explain political legitimacy from a specific perspective. More importantly, the specific nature of legitimate politics is not just a normative choice of the scholar. It is, as I have tried to argue, inherently tied up with an analysis of the social order and its problems. This means that every empirical theory of legitimacy is not so much normative as it is historical, caught up in the perceived problems, worries and political discussions of the time, on the one hand, and caught up in empirical processes of modernity, on the other. We must acknowledge that to a certain extent the prominence and importance of order is inevitable in any theory of legitimacy.

It is therefore easy to perceive that by moving from Weber, to post-war democratic realists, to Luhmann's system theory, to Habermas' lifeworld theory, we are still and inevitably caught up in the historical dialectic between theory and practice. It is reasonable to claim that where Weber wanted to understand the rise of *modern society*, the democratic realists wanted to understand *democratic stability* in face of the threats of Fascism and Communism, Luhmann's theory seems to be tied up with the rise of the *risk society* and Habermas tries to face the complexities of *late-modernity*. However, it would be wrong to argue that these historically situated theories cannot help us to understand political legitimacy in our own day and age or in the society of tomorrow. For that end, I will analyse in the remainder of the book *four faces of political legitimacy*.

PART II

Four Faces of Political Legitimacy

Chapter 3

Politics as Domination: Weber's World of Duty

Max Weber is the sociologist who most famously analysed legitimacy in political relations of domination. His work is often described as a *sociology of belief* as it tries to understand the sociological and historical processes that generate a belief in legitimacy – feelings of obligation and duty. Not only is Weber's work still relevant in itself, it also structures much of the contemporary debate as its theoretical framework forms the background – implicitly or explicitly – of many of the theories we will discuss in the succeeding chapters.

Weber's work is impressive in its scope and depth, but his main work *Economy and Society* (*Wirtschaft und Gesellschaft*) has one major flaw: it is not finished.¹ The unfinished, fragmentary character of the book has fuelled its interpretation with many controversies. In a sympathetic mood, we might find an explanation for the fact that many scholars have lamented Weber's concept of legitimacy in the unresolved tensions in his work and not simply as a result of sloppy reading.² We must admit that Weber, driving us at times to intellectual despair, is not always that coherent and that the 'conceptual' first part and the 'sociological' second part of the book are not fully integrated. Given this character of Weber's main work it seems to me that there are two possible ways to proceed. Either we aim for an exegesis in order to capture the full richness of the works or we aim at a coherent reconstruction in order to gain a robust analytical framework, but which, by necessity, loses some of its interesting details. This chapter aims at such latter reconstruction.

A few introductory comments are called for if we want to reconstruct Weber's work. First, Weber is famous for his *social action theoretical perspective* of social order. From this perspective

¹ After Weber's death in 1920, his wife Marianne wrote to the publisher that the chapters are 'unfortunately unfinished' and she apparently felt the need to add ('dictate') some pages (Andrini 2004:143). Even the intended order of the chapters is severely doubted. Others have claimed that Weber lacked the 'ambition' to finalise his work (Radkau 2011:96, 99). Particularly unfortunate, for us, is the fact that Weber never finished his promised *Sociology of State* (Roth 1978:lxvi; Weber 1978:286). To fill this significant gap some scholars turn to Weber's political writings. This, it seems to me, is not the way to go. Not only did Weber himself try to distinguish clearly between politics and science (see Weber 2012) it also ties his ideas too much to the problematic political context of Germany of those days as well as to Weber's own problematic life-story. Indeed, German nationalism after WOI and the myth of Weber's ingenious resurrection after his psychological breakdown are intimately related, generating the senseless scholarly discussion whether Weber would have approved of Hitler.

² Beetham argues that Weber's influence has been "disastrous" (1991a:6). Weber's "amoral" understanding of legitimacy, his emphasis upon elites and his failure to found legitimacy upon the consent of the people is "fundamentally flawed" (Beetham 1991b:34; 1991a:11). Some accuse him of "intellectual or moral schizophrenia" (quoted in Ewing 1987:487), while others claim that Weber's influence is based upon the failure of scholars to really understand his work (Berman 1987:859) and even the young Habermas accused Weber of being an "arch-positivist" content to produce 'technical knowledge' (quoted in Hennis et al. 1994:125).

Weber tries to understand political legitimacy in terms of a value-rational sense of duty towards orders of domination. Weber's social action perspective is predominantly present in the first part of *Economy and Society* (E&S). This part, consisting of conceptual definitions, has received much attention of scholars and has contributed to the categorisation of Weber's work as social action theory. However, this part is not only the most confusing and multi-interpretable part of his work, it also shifts the attention away from a different perspective which is connected to, but independent of action theory. This second perspective, which is mostly present in the substantive second part of E&S, does not so much concern a social action perspective, but rather the relation between *man and the world*. It is not about social action (*Handeln*) but about being-in-the-world (*Existenz*). Within this perspective Weber locates the *sources of normative validity*, the sources of legitimate domination, as well as other seminal notions, such as discipline, self-justification and intellectualisation.

Second, Weber's sociology additionally holds three different levels of analysis. The first level of analysis concerns his famous or infamous *ideal-types*. At this level he analyses legitimate domination in terms of charismatic, traditional or legal-rational ideal-types. The second level of analysis concerns a general model of institutionalisation and institutional development. Especially in his sociology of religion we can see a *circular* social dynamic of institutionalisation and rationalisation running from charismatic revelation, to traditional sanctity and faith, back to a new revelation – a dynamic that is driven by material and immaterial forces, by economic and intellectual needs. At this level we can see how the different ideal-typical forms and sources of legitimacy are related, combined and in tension. Finally, at the third level of analysis Weber takes a *linear* historical perspective from which he proposes his modernisation thesis: the progressive rationalisation and disenchantment of the world. It is at this level – breaking the circularity of the institutionalisation perspective – that he analyses modern society and its politics.

The complexity of a reconstruction of Weber's work on legitimacy, then, must be apparent. Not only is his work not a coherent whole, we must especially be aware of the two different theoretical perspectives of *Handeln* and *Existenz*, and of the three analytical levels of ideal-type, institutionalisation and modernisation. In this chapter I try to reconstruct Weber's work by, first, analysing political legitimacy from the perspective of social action and, second, by analysing it from the perspective of 'being-in-the-world'.

3.1 Social Action and Social Order

Weber's principle sociological interest concerns the explanation of social order and regularity in terms of social action. What we need to analyse is not only how social action explains social order,

we also need to grasp how Weber understand social order in the first place. Only then can we proceed to examine Weber's notion of legitimate domination.

3.1.1 Subjective Orientations of Social Action

"Action [*Handeln*] is 'social' insofar as its subjective meaning takes into account the behaviour of others and is thereby oriented in its course" (4).³ The two principle concepts of social action that help to explain social order, then, concern subjective meaning and other-oriented action. Weber recognises four 'pure types' of social action or meaningful subjective action orientations (24). The first, *instrumental rationality* (*Zweckrationalität*), concerns a "rational consideration of alternative means to the end, of the relations of the end to the secondary consequences, and finally of the relative importance of different possible ends" (26). Instrumental rationality, then, is first and foremost about choosing between different ends which are perceived as a given hierarchy of wants, making the choice *conditional* upon secondary effects, upon the "scarcity of means" and upon "the prospective behaviour of others" (65-7; 30). Instrumental rational action therefore always considers the 'material' context, the expected actions of others and the social interest configuration (*Interessenlage*) (26). It is because of this conditional character of 'ends' that we have redefined this type of orientation as *strategic* action orientation and not just as a 'means-to-end' instrumental orientation (see chapter 1).⁴ The more an end is perceived as an 'absolute value', the more an end becomes 'unconditional' and the more this end becomes independent of the contextual circumstances, the more such action becomes 'irrational' from the perspective of strategic rationality. The essence of strategic rationality, then, is its conditionality and consequentialism.

A value-rational action orientation (*Wertrationalität*), in contrast, is not about evaluating different ends, but in pursuing one particular end whatever the costs. It concerns non-consequentialism – "[t]he meaning of the action does not lie in the achievement of a result ulterior to it, but in carrying out the specific type of action for its own sake" (25) – and unconditionality – action "independently of its prospects of success" (24). Value-rationality concerns the self-conscious 'conviction' – an 'inner bond' (30) – of the absoluteness of an ideal-value – "unconditional demands" which may concern "duty, dignity, the pursuit of beauty, a religious call, piety, or the importance of

³ All references concerning Weber are from the 1978 edition of *Economy and Society*, edited by Guenther Roth and Claus Wittich unless noted differently. Original German texts or adjusted translations by me are based upon the 1964 edition of *Wirtschaft und Gesellschaft*, edited by Johannes Winckelmann.

⁴ As such, strategic rationality should be clearly distinguished from what Weber sometimes calls 'technical rationality' (67). Such technical rationality is about achieving a given end most efficiently and effectively (65). Note, however, that Weber does not use these latter concepts that are nowadays so commonly ascribed to instrumental rationality. He states more diffusely that a 'technical question' is to choose the 'most rational means' to a given end, leaving aside what this rationality entails (65).

some ‘cause’” (25, adjusted translation).⁵ The essence of a value-rational action orientation, in sum, concerns the unconditionality of a given end and its inner-sanctioned conviction.⁶

The third type of subjective action orientation is *affective-rationality*. Affectively oriented action is determined by present (and not future) “affects and feelings states” (25). Therefore, affective-rationality is not so much about a choice among ends as in strategic action, it is not a conscious commitment to an absolute end as in value-rational action, it is about direct emotional gratification.⁷ Weber adds that this ‘uncontrolled reaction’ is oriented towards exceptional or extraordinary (*ausseralltäglich*) stimuli. This seems to suggest that affective-rational action contrasts with everyday social order. Indeed, as we will discuss later, affective-rationality seems to be the basis of the rule-breaking force of charisma which is ‘irrational’ from the point of view of order.⁸ On the other hand, Weber also recognises social orders based upon emotional solidarity, e.g. the love of the family. Weber seems to call these kinds of bonds ‘affectual ties’ (213). Weber, then, is not particularly careful in recognising the difference between actions based upon immediate, irrational emotional gratification and upon more durable affective bonds of solidarity and love. In our attempt to understand the relation between social action and social order it seems more reasonable and coherent to understand affective rationality in terms of solidarity, which is neither conditional nor unconditional.

Finally, Weber discerns *traditional-rational* action orientation. The term ‘traditional’ is unfortunate as routine-rationality would have been more appropriate. Traditional-rationality action is “determined by ingrained habituation” (*eingelebte Gewohnheit*) (25). This type of orientation is, for Weber, a ‘borderline’ of meaningful social action as “it is very often a matter of almost automatic reaction to habitual stimuli” (Weber:25). As such, the meaning of this action orientation must be perceived in terms of unconscious inner-oriented psychological needs and attachments to routines and everyday stability.⁹ Like affective-orientations such routine-orientations are immediate, but in contrast, actors are unconscious of them most of the time.

⁵ ‘*Pietät*’ is consequently translated with ‘personal loyalty’ where ‘piety’ seems more accurate.

⁶ Even though Weber claims that this inner-orientation of value-rational action means, in contrast to strategic rationality, that the meaning of value-rational action lies in the action itself, it is nevertheless possible to separate means and end to approach a value-rational goal with ‘technical rationality’. Value-rationality, Weber claims, can be a “clearly self-conscious formulation of the ultimate values governing the action and the consistently planned orientation of its detailed course to these values” (25).

⁷ Weber mentions emotions such as “revenge, sensual gratification pleasure, submission, contemplative bliss, or for working off emotional tensions” (25, adjusted translation). ‘Genuß’ is translated with ‘sensual gratification’ where ‘pleasure’ would do, but more importantly, ‘Hingabe’ is translated with ‘devotion’ which makes it difficult to separate affection from religious ideal-values. A more suitable translation, it seems to me, would be ‘submission’ as in a *submission to passions*.

⁸ Weber constantly repeats that ‘affectual determined’ actions are ‘irrational’ (see e.g. 6,8,9).

⁹ This means that routine or traditional action can hardly be called *social* – something Weber was well aware of: “The line between meaningful action and merely reactive behaviour to which no subjective meaning is

3.1.2 Social Order: Aggregation and Institutionalisation

These four types of subjective action orientations help Weber to explain social order to the extent that they explain *social* action, that is, action “oriented to the past, present, or expected future behaviour of others” (22). Subjective orientations to the expected actions of others explain the stability of “certain empirical uniformities” (29). However it is important to notice that Weber distinguishes – although not explicitly – between *social regularity*, i.e. the aggregation of other-oriented actions, and *social order*, i.e. the institutionalisation of social expectations.

Because social regularity or uniformity arises as actors orient their actions to the expected actions of others, Weber recognises different types of regularity based upon the typical underlying action orientations. If actors orient their actions to each other in terms of routine, the social regularity that arises can be called custom. Custom is explained by the fact that actors ‘adapt’ their habits to that of others to avoid ‘inconveniences and annoyances’ (30).¹⁰ Similarly, strategic orientation can produce social ‘uniformity, regularity and continuity’ in terms of an interest-configuration (*Interessenlage*). When actors strategically pursue “their own typical economic interests” they will orient their action towards the ‘expectations’ of the “prospective behaviour of others”, i.e. they will orient to the social situation in terms of “pure self-interest and the interest-configuration of others” (30, adjusted translation). Weber is less clear about the social regularities that arise from affective- and value-rational orientations. Nevertheless, we can reconstruct from his work that the former can give rise to *solidarity* and the latter to *value patterns*. In discussing religious and military communism Weber notes, for example, that actors orient to each other not in terms of strategic expedience, but in terms of ‘mutual solidarity’ and ‘love’ (154). Similarly, he states that “a charismatic community ... is based on an emotional form of communal relationship [*emotionale Vergemeinschaftung*]” (243). It seems reasonable therefore that mutual orientations based upon affective-rationality may produce a social regularity of solidarity. Weber likewise argues that an actor can orient himself to others not in terms of love, but in terms of ‘ethical values’ - a “specific type of value-rational belief” that govern social action because one feels an inner-sanctioned duty to do so (36).¹¹ As such, we might conclude that to the extent that actors relate to each other in value-rational terms, social regularity might be explained in terms of normative value-patterns.

attached, cannot be sharply drawn empirically” and “especially purely traditional behaviour, is marginal between the two” (4, see also 25).

¹⁰ Weber is slightly confusing as his definition of custom can also be read as actors adjusting their actions to custom as a social institution (30). However, custom arises in the first instance because actors mutually adjust their routines to each other.

¹¹ It must be noted that Weber probably talks at this particular point about institutionalised ethical values: “*Ethische Normvorstellungen*” (36).

In table 3.1 we can see the different analytical types of social regularities based upon underlying subjective action orientations (based upon Bader 1989). However, empirically these regularities do not have to be limited to such typical underlying *symmetry* of social actions. For example, one might orient strategically to expectations that others act affectually.

		Subjective Orientation			
		Traditional	Affectual	Strategic	Value-Rational
Subjective Orientation	Traditional	<i>Custom</i>			
	Affectual		<i>Solidarity</i>		
	Strategic			<i>Interest Configuration</i>	
	Value-Rational				<i>Normative Value-Pattern</i>

Table 3.1 – Types of social regularity between actors

However, this aggregative understanding of social ordering is not what primarily interests Weber. Weber is interested in social orders that are more than just the aggregation of action orientations; he is interested in *social orders* that derive their structure from *institutionalised expectations*.¹² As discussed in chapter 1, social institutionalisation means that an actor does not just orient his action towards the expected actions of a particular other (or to the expectations of expectations of that other), but rather, the actor orients his actions to expectations of the *general other*. The social situation is described and prescribed by social expectations that are relatively independent of the actual underlying subjective orientations of the actors involved and, as such, can be said to be *objectively valid*. Unfortunately Weber is less than explicit about this institutional dimension of social order. But without it, it seems to me, his theory of legitimate order and, even more important, legitimate domination cannot be grasped.

This does not mean that this notion of institutionalised expectations is not present in Weber's work. For example, Weber argues that if actors orient their action towards others, these others might be specific persons but "may also constitute an indefinite plurality" of anonymous individuals (22).¹³ In addition, when Weber discusses the state, he remarks that "a modern state, precisely as a complex of social interaction of individual persons, consists in the fact that the action of various individuals is oriented to the conception [*Vorstellung*] that it exists or should exist" (14,

¹² If Weber claims that a social order entails 'conduct' that is "oriented toward determinable 'maxims'" (31), we might interpret that a social order concerns the *institutionalisation* of social expectations.

¹³ Weber gives the example of 'money' in relation to which an actor "orients his action to the expectation that a large but unknown number of individuals he is personally unacquainted with will be ready to accept it in exchange on some future occasion" (22).

adjusted translation).¹⁴ Both examples seem to point to orientations towards the general other as something that objectively exists which is the core of social institutionalisation. Without a doubt Weber recognises that a social order can be objectively valid. In the most general terms Weber argues that he wants to draw “a sharp distinction between subjectively intended and objectively valid ‘meanings’” (4). When Weber gives the example of the thief who orients his actions to the law, Weber implies that the legal order is not subjectively but objectively valid for the thief. The order is “‘valid’ precisely to the extent that there is a probability that action will in fact be oriented to it”, i.e. action is oriented to the objective ‘conception’ of order (32-3).¹⁵ The problem, however, is that Weber is frustratingly careless in distinguishing these two types of validity (see also Bader 1989).

When we agree that a social order concerns socially institutionalised – or objectively valid – expectations, we can recognise – based upon the typical social orderings of table 2.1 – four types of *institutionalised expectations*: custom, solidarity, interest-configuration, and value-patterns. And because these expectations are objectively valid individual actors might position themselves towards them from different action orientations. For example, we might conform to the institutionalised custom to wear black clothes at a funeral not out of a typical routine action orientation, but because it is in our strategic interest to do so – maybe to avoid social sanction. Then again, we might conform to the custom because we value-rationally agree with it, i.e. we believe we ought to wear black clothes as other colours would be disrespectful and unethical. Or, finally, we might wear black clothes out of solidarity or loyalty to the group as they have to wear black clothes too. Additionally, we might perceive that a funeral – as a social order – is not only structured or coordinated by institutionalised expectations of custom, but also by institutionalised expectations of interest, solidarity and normative values.¹⁶

The final question, then, is how Weber understands the *legitimacy of a social order*. When, in our example, is the funeral as an institutionalised social order also a legitimate order? Institutionalised expectations might not just exist objectively for an actor, but he might also partly perceive the order as something that ‘ought to exist’. A social order is both descriptive of social action (exemplary or *Vorbildlich*) and prescriptive of social action (obligatory or *Verbindlich*). In other words, for Weber socially institutionalised expectations do not only concern cognitive facts – it is the

¹⁴ It must be noted that the English translation is less than helpful because it often translates ‘*Vorstellung*’ with ‘belief’ instead of ‘notion’ or ‘conception’. The ‘belief in order’ has a whole different connotation than the ‘conception of order’ (see e.g. 31).

¹⁵ “Für die Soziologie aber ‚ist‘ eben lediglich jene Chance der Orientierung an dieser *Vorstellung* ‚die‘ geltende Ordnung“ (33, my emphasis).

¹⁶ For sure, different social orders emphasise different institutionalised expectations or mechanisms of social coordination. We might say that the social order of friendship is pre-dominantly oriented to solidarity, while the market is foremost oriented to interest-configurations. But despite such functional differentiation, every social order also incorporates the other types of social expectations. The market, for example, at least also includes normative expectations and customs, and even expectations of solidarity.

custom to wear black clothes – but also normative demands – one ought to conform to the custom to wear black clothes. But as soon as the institutionalised custom is no longer just a cognitive fact to which one can orient one’s actions, but also a normative demand, it belongs to the institutionalised normative value-patterns that coordinate social actions. The *objective normative structure* of the funeral, then, demands that we ought to wear black clothes, be quiet, not be self-interested, pray, and be or appear to be mourning. As is the case for other types of objective expectations, we might orient to these normative demands in terms of routine, solidarity, or expedience. Only to the extent that we value-rationally agree with these objective normative demands can we say, according to Weber, that the social order is legitimate, i.e. its normative structure is not only objectively but also subjectively valid, constituting a ‘value-rational sense of duty’ (*‘Pflichtgefühl’ wertrational*) towards the social order (31; see table 3.2 based upon Bader 1989).

		Institutionalised Expectations			
		<i>Descriptive</i>			<i>Prescriptive</i>
		Custom	Solidarity	Interest Configuration	Normative Value-Pattern
Subjective Orientation	Routine	<i>Typical</i>			
	Affective		<i>Typical</i>		
	Strategic			<i>Typical</i>	
	Value-Rational	<i>Agreement</i>	<i>Agreement</i>	<i>Agreement</i>	<i>Legitimate Order</i>

Table 3.2 – Legitimate order from a social action perspective

Weber’s understanding of (institutionalised) social order implies that we should not so much differentiate between a social order and a legitimate social order, but we should differentiate between an *objective* legitimate order and a *subjective* legitimate order.¹⁷ Or as Weber states it, “[a]ction ... may be guided by the conception of the existence of a legitimate order” (31, adjusted translation).¹⁸ But only to the extent that actors feels ‘a value-rational sense of duty’ (*Pflichtgefühl wertrational*) to conform to its maxims is the objective legitimate order also subjectively valid.

¹⁷ This is not to say, of course, that all social order is automatically objectively legitimate. Not only can a *factual* order be solely guaranteed through external guarantees (see chapter 1), a social order can also be *objective* without or even despite normative demands. In general, Weber, unfortunately, does not distinguish clearly enough between institutionalisation and external guarantees, between validity and factuality (see e.g. his discussion of custom and convention). If different types of orders emphasise different types of expectations the normative expectations may not always be predominant (as in the market) or stable (in unfamiliar contexts). Nevertheless, if not drowned out by external guarantees, social expectations of normativity are almost always present implicitly.

¹⁸ “Handeln, ... können von seiten der Beteiligten an der *Vorstellung* vom Bestehen einer *legitimen Ordnung* orientiert werden.” It must be noted that Weber continues with: “The probability that action will actually be so governed will be called the ‘validity’ (*Geltung*) of the order in question” (31). From my interpretation we must read ‘validity’ as ‘objective validity’. This also holds for the next quote: “Only then will an order be called ‘valid’

In sum, legitimacy of a social order, for Weber, concerns the subjective validity – in terms of value-rational agreement – of objectively valid normative social expectations that constitute – among other types of objective expectations – the social order.

3.2 Legitimate Domination: Objective and Subjective Validity

After this reconstruction of Weber's understanding of (legitimate) social order in terms of his social action perspective, we can turn to his understanding of domination (*Herrschaft*) as the main form of *political order*.¹⁹ Unfortunately, his work on (legitimate) domination is even more difficult to interpret.

First of all, Weber fails to adequately distinguish between domination and power in general. Weber defines power (*Macht*) as “the probability that one actor within a social relationship will be in a position to carry out his own will despite resistance, regardless of the basis on which this probability rests” (53). Domination, on the other hand is defined as “the probability that certain specific commands (or all commands) will be obeyed by a given group of persons” (212, 53). Weber, then, understands domination as a command-obedience relation, but fails to define it in terms of socially institutionalised expectations which makes the difference between power and domination rather problematic. For Weber, the only difference between power and domination seems to be that domination does not include force. Domination implies “a minimum of voluntary compliance, that is, an interest ...in obedience” (212). Voluntary obedience, however, is a rather limited standard indicating merely some form of internal guarantee, however much restricted externally.²⁰ Weber is aware that domination easily shades over into power with ‘absolutely involuntary slavery’ as its boundary case (214).

if the orientation towards these maxims occurs, among other reasons, minimally also [*mindestens auch*] because it is in some appreciable way regarded by the actor as in some way obligatory or exemplary for him.” (31, adjusted translation).

¹⁹ I am aware of the scholarly debate how best to translate *Herrschaft* (see Parsons 1960a:752; Beetham 1991b:35; Roth 1978:62). It is a rather trivial debate as the word *Herrschaft* has multiple meanings in the German language as well (see for a genealogy Brunner et al. 1982). Parsons dismisses ‘domination’ as it gives too much emphasis upon power of the leader over his subjects and less upon “the integration of the collectivity” (Parsons1960a:752). Parsons also decided to translate ‘legitimate Herrschaft’ with ‘authority’. Roth agrees with Parson on the latter, but translates *Herrschaft* in its most general sense with ‘domination’, because “*Herrschaft* is a structure of superordination and subordination” (Roth footnote 31 in: Weber:62). Translation seems so difficult that Beetham decided not to translate it at all (see Beetham 1991b:35). I use ‘domination’ where Weber uses ‘Herrschaft’ and ‘legitimate domination’ where Weber uses ‘legitimate Herrschaft’. I try to avoid the concept of ‘authority’ as Weber himself uses the German concept of ‘Autorität’ inconsistently (see especially the crucial and often quoted passage concerning the definition of Herrschaft: 212-215; see also Uphoff 1989:300).

²⁰ The difference between involuntary and voluntary obedience might be quite clear from the subjective perspective of the actor, however, that is not the approach of Weber at this point.

Weber's definition of domination is confusing.²¹ As I have argued in chapter 1, only when domination is socially institutionalised can it be analytically distinguished from power in general. I would argue that, in the end, this is also Weber's position. The reason why he overcomplicates things at this time, it seems to me, is that Weber wants to include all kinds of domination, i.e. all possible forms of command-obedience relationships – and second that he did not explicitly recognise that he understands social order both in terms of institutionalised as in terms of aggregative order. This latter difficulty explains why Weber tries to distinguish between two typical forms of domination: the domination of the economic monopolist and the domination of the (political) ruler. Weber first tries to distinguish between mere economic power and economic domination of someone in a monopolist position (214). The reason why Weber, secondly, tries to separate domination of the economic monopolist from domination of the political ruler, it seems to me, is that the domination of the latter is not just based upon the probability of voluntary obedience (*aggregative social order*) but upon his institutionalised position as a ruler (*institutionalised order*).²²

With this problematic definition of domination at the backdrop, we can analyse Weber's definition of *legitimate domination*, which is one of the most confusing and often (mis-)interpreted parts of his work. To understand the confusion let us first consider his definition in some detail. Weber wants to explain domination, as we have seen, in terms of the social probability that commands of the ruler are obeyed. Although 'external guarantees', especially force, are important to explain the stability of order, 'genuine domination' implies voluntary obedience, i.e. 'internal guarantees' (34-6). This means that the relation between the ruler and the ruled is 'governed ordinarily' not by force, but "by custom and material calculation of advantage" and in 'extraordinary circumstances' by affectual and ideal orientations (213). As such, the internal guarantee of domination concerns an 'interest in obedience' based upon strategic, affective-, traditional-, and value-rational subjective action orientations. And if we expect that a value-rational orientation towards commands connotes legitimate of domination we might be surprised and confused when Weber continues: "custom, personal advantage, purely affectual or ideal motives of connectedness [*Motive der Verbundenheit*], do not form a sufficiently reliable basis for a given domination. In addition there is normally a further

²¹ Weber's definition is even more complicated because in addition domination is internally differentiated in relations between the ruler and his administration, on the one hand, and between the ruler and his general subjects, on the other (212-3).

²² Indeed, Weber argues elsewhere that the power of the monopolist is not a genuine form of domination in terms of "an authoritarian power of command" (946).

element, the belief in *legitimacy*" (213, adjusted translation).²³ This, then, is a bit of a puzzle as legitimacy is something *additional* to value-rational orientation to obedience.

The puzzle solves itself partly when Weber points out that "domination [does not] voluntarily limit itself to the appeal to material or affectual or ideal motives as a basis for its continuance. In addition every such system attempts to establish and to cultivate the belief in its legitimacy" (213). What Weber seems to imply, then, is that legitimacy does not concern a value-rational orientation towards the command-obedience relation, but rather the value-rational orientation towards this 'cultivated belief' in legitimacy. What is so confusing is that Weber fails to explicate that with this additional 'established' belief in legitimacy, domination changes from a mere aggregative order to a *socially institutionalised order of legitimate domination*. This means that legitimate domination is an objectively valid order that is coordinated, like all institutionalised orders, in terms of the four types of social expectations, i.e. custom, solidarity, interest configuration and normative value-patterns. Legitimate domination specifically concerns the normative expectation that one ought to recognise the validity of the ruler and that one ought to obey his commands. Only to the extent that actors subjectively orient themselves to these objective normative expectations in a value-rational manner can we say that the factual order of legitimate domination is indeed legitimate.

This is, in my opinion, how we should interpret Weber's social action theoretical perspective of political legitimacy. An interpretation that is validated when Weber states: what is important for the 'legitimacy of a system of domination' is not that "every case of submissiveness ... is primarily (or even at all) oriented to this belief [in legitimacy]", rather that "the particular claim to legitimacy is to a significant degree ... treated as 'valid'; that this *fact* confirms the position of the persons claiming authority" (214, my emphasis). Weber, in his typical careless way, separates the objective validity of legitimacy from the question of the subjective validity or belief of this social 'fact'. Furthermore, it is precisely because legitimate domination is objectively valid (factual) that we can understand Weber's confusing claim that an order "which enjoys the prestige of being considered exemplary or obligatory, or, as it may be expressed, of 'legitimacy'" is much more stable than domination based upon mere voluntary compliance (31, adjusted translation). Not only does this statement show that Weber shares the preoccupation of classic normative theory – the relation between domination and the problem of order – but especially that he does not so much explain the stability of a legitimate order in terms of voluntary obedience – in which conditional strategic compliance is less stable than unconditional value-rationality – but that because legitimacy is *objectively valid* it is relatively

²³ 'Motive der Verbundenheit' is translated with 'motives of solidarity'. Solidarity, however, is a form of social coordination specifically belonging to affectual orientation. Motives of 'connectedness' seems a better translation to underscore Weber's emphasis of value-rational orientation.

independent of subjective value-rational agreement. An objectively valid order of legitimate domination might also be internally guaranteed on strategic, traditional or affective grounds.²⁴

It is important to recognise that legitimacy in Weber's account is not an individual affair. Weber is not interested in the subjective validity of domination, but he is interested in *the subjective validity of objectively valid legitimate domination*. It is not about a relation of domination it is about the socially institutionalised order of legitimate domination. Weber, however, is not always aware of the implications of this inherently *social* understanding of legitimacy.

To understand these implications, let us consider the fictive example of the relation of domination between the teacher and his students. To understand the legitimacy of the teacher we should not so much look at the individual motives the students have for obeying his orders, as we should perceive that the legitimacy of the teacher is objectively valid among the students or even beyond this group. As soon as the students enter the classroom they orient their actions to institutionalised expectations, expectations that concern custom, solidarity, interest configurations and normative values. Among these expectations that make up the *social order of the class* are the normative expectations that one ought to recognise the teacher's right to rule and that the students ought to obey. And because not only the teacher's domination but also its legitimacy is socially institutionalised, we can agree that individual students might orient differently to it. A student might, for example, conform to the normative social expectations of obedience out of strategic considerations when he wants to pass his exam and therefore act *as if* he normatively accepts the rule of the teacher – or, as Weber puts it, 'hypocritically simulates loyalty' (214). He might, on the other hand, also conform in terms of traditional orientations, i.e. he conforms to the social norm of obedience out of sheer unthinking routine. Then again, the student might also conform to the norm in terms of affectual action orientations. This does not mean that obedience must be explained by his love for the teacher – although this might be the case – but rather that he conforms to the social norm out of solidarity for the group, i.e. he obeys the teacher because the class expects it of him.²⁵ Finally, the student might conform to the social normative expectations of obedience because he value-rationally agrees with it, i.e. he *believes* that the teacher has the right to rule and feels an 'internally-sanctioned duty' to obey the teacher. In all four instances legitimate domination is objectively valid, but only in the last instance is domination also subjectively valid, i.e. legitimate.

²⁴ However, this presumed stability of objectively valid legitimate power is problematised by Luhmann (see chapter 5).

²⁵ Weber has difficulty in explicitly recognising such *horizontal* solidarity as ground for accepting *vertical* domination.

Legitimate domination, then, is objectively valid when expectations of domination are socially institutionalised in the normative structure of a social order, i.e. when legitimacy is socially expected. Legitimate domination it is subjectively valid – legitimate proper – when the ruled actually value-rationally orient to these objective normative expectations, i.e. they *believe* in the validity of the right to rule. This is how Weber, never mind all the confusing statements, understands political legitimacy if he is true to his own action theoretical premises. To repeat our earlier conclusion, when it concerns legitimacy, Weber is only interested in socially institutionalised orders of domination and not simply in any command-obedience relationship.

3.3 A Claim to Legitimacy: Validity as Truth

Legitimate domination concerns the socially institutionalised expectations that the ruler has the right to rule and the ruled the duty to obey. To the extent that actors actually value-rationally agree with these social expectations, Weber claims the political rule should be considered as legitimate. The main part of Weber's sociology of legitimate domination, however, focuses on the *claim to legitimacy* of the ruler or ruling party. It focuses on the validity of this claim, i.e. on its truth-claim. It is important to stress that validity in this perspective does not concern, in the first instance, expectations of *social validity* but rather expectations of *truth*.

A claim to legitimacy can analytically be perceived as an argument, justifying *why* one has the duty to recognise the validity (truth) of domination.²⁶ Weber recognises four typical sources upon which such justification can be validated. One has the duty to recognise the validity (truth) of the claim to legitimacy because it is god's wish, because it is tradition, because it is logical or because it is the law (36). Based upon these sources Weber identifies three ideal-types of legitimate domination: charismatic, traditional, and legal domination (36, 215, 915). It is interesting to note that Weber discards the possible fourth ideal-type of legitimate domination based upon "value-rational faith: valid is that which has been deduced as an absolute" (36). Weber drops this form of

²⁶ Do notice, however, that in practice such arguments might not be explicit at all. It is important to recognise that what follows is purely an analytical framework with which to understand empirical complexities. It must also be noticed that Weber is often perceived as an elitist because, among other reasons, his analysis gives the impression that a ruler can just use any argument which the subjects have the duty to recognise as true. However, this is not the case. Weber explicitly states: "Domination (*Herrschaft*) does not mean that a superior elementary force asserts itself in one way or another; it refers to a meaningful interrelationship between those giving orders and those obeying, to the effect that the expectations towards which action is oriented on both sides can be reckoned upon" (1378). Weber's emphasis upon elites' interest in legitimacy and their attempt to "cultivate the belief in legitimacy" does not negate this position (953; 213). The most fundamental mistake in interpreting Weber, in my view, is to think that Weber's concept of legitimacy is just about the claim of the ruler *regardless* whether that claim is acknowledged by the ruled (see e.g. Beetham 1991b:36; Matheson 1987).

domination because he claims its historical relevance can be neglected (37).²⁷ More needs to be said on this issue, but let us first consider the three forms of validity he did think were relevant.

Weber tries to analyse the “ultimate grounds of the *validity* of a domination” because such ‘justification of legitimacy’ is sociologically relevant (953). It is sociologically relevant because the specific social structure of a legitimate domination depends upon it (947).²⁸ Without a doubt, it matters for the way political order is organised and for its internal social dynamics whether it claims legitimacy upon a democratic constitution, upon traditional hereditary status or upon religious revelation. The relevance of the ‘ultimate’ source of validity then, is not about an increased understanding why specific persons obey, its relevance lies in the specific social and political structure it makes possible (947). As such, Weber wants to analyse and classify the organisational structures and processes of domination based upon the underlying type of claim to legitimacy (*Legitimitätsanspruch*) (213).²⁹

The type of validity (truth) that is claimed by the ruler, first of all, has consequences for the *types of proof* the ruler must present in order to validate his argument. The ruler that claims legitimacy upon charisma has to prove his divine ‘gift of grace’, the traditional ruler has to prove his claims in terms of tradition and traditional laws, while the legal ruler has to prove the validity of his claim of legitimacy upon the ‘rational’ rules of law. Three features are important to emphasise at this point. First, it is important to recognise that the validity of the claim to legitimacy is *normally expected* to be true by the subjects.³⁰ However, these normal expectations of validity must occasionally be proven, especially in times of doubt (242). Proof is something that is ‘extraordinary’, i.e. separated from ordinary or normal life, and something that re-establishes the truth of the claim to legitimacy normally expected to be valid.

Second, proof concerns a *process of truth-finding*, which is more often than not a socially institutionalised procedure. Processes of truth-finding concern extraordinary rituals and symbols

²⁷ “The purest type of legitimacy based on value-rationality is *natural law*. The influence of its logically deduced propositions upon actual conduct has lagged far behind its ideal claims; that they have had some influence cannot be denied, however. Its propositions must be distinguished from those of revealed, enacted, and traditional law” (37).

²⁸ Weber is not interested in legitimacy as “a matter of theoretical or philosophical speculation” but rather in the “very real differences in the empirical structure of domination” (953).

²⁹ Weber of course acknowledges that in practice claims to legitimacy might appeal to several sources and different types of validity. Legitimate domination, then, might be organised in different “combinations, mixtures, adaptations, or modifications” of the ideal (954, 37).

³⁰ As such expectations can be socially institutionalised as well, our analysis becomes more complex. Legitimate domination can be objectively valid, i.e. the right to rule is socially expected to be valid, and the validity (truth) can be objectively valid, i.e. it is socially expected that the truth-claim of legitimacy is valid. However, the notion ‘objectively valid’ in relation with ‘truth’ often has different connotations.

that proof the validity of a claim on rational, traditional or charismatic grounds.³¹ Based upon these institutionalised expectations what is proven as valid is true. Truth, furthermore, is always *objective*, which means that actors have to accept a claim which is proven to be true whether they like it or not. Truth is independent of what they wish to be true – it is *externally* guaranteed. As such, Weber claims that one has the duty to recognise what is proven to be true – “recognition is a duty” (244). This holds as much for mathematical proof as for truth revealed by an oracle or the truth established by the legal accountability or methods of science.

Third, proof can establish both *cognitive* and *normative* truths. Proof can secure the belief that a claim *is* true and the belief it *ought to be* true. This difference, as we will see, is important to understand Weber’s analysis of processes of validation. Weber focuses in case of traditional and charismatic domination especially on their *normative* validation, while in case of legal domination he focuses on its *cognitive* validity. The problem, which we will discuss, is that he does not explicate the normative validation of legality and, vice versa, overlooks the importance of cognitive expectations for traditional and charismatic rule. A reconstruction, it seems, should try to resolve these omissions.

3.4 Normative Validation in Extraordinary Processes of Truth-Finding

Let us first understand how traditional and charismatic claims to legitimacy can be proven and how this secures *normative* validity. In general Weber claims, it seems to me, that extraordinary procedures of proof – procedures outside everyday life and its normal concerns – are able to establish normatively valid truth because in some way the *experience* of the truth-finding procedure moves the inner subjective orientations of the witness.³²

3.4.1 Charismatic Validation

Charisma is proven ideal typically through miracles or heroic deeds (1114). The ethical-prophet, for example, proves his divine mission and the truth of his revelations by performing miracles. Other forms of charismatic proof might be the “fighting frenzy” and “spells of maniac passion” of the warrior-leader (the ‘berserk’) or the “epileptoid seizures” and ‘trances’ of the magician (‘shaman’ or ‘necromancer’) (242, 401, 536, 1112). When rituals of proof by means of ‘ecstasy’ and ‘orgiastic

³¹ It is true that Weber claims that pure charisma is alien to institutionalised procedure. However charisma can be institutionalised, for example, in terms of acclamation (see Weber on the ‘problem of succession’: 246ff.), but also in terms of institutional dogma (see Weber on the church as an ‘institution of grace’: 454ff, 1122, 1135ff).

³² Weber seems to suggest that the different types of proof and sources of validity are related to the four typical action orientations. Tradition as a source of validity is related to a traditional orientation, charisma to an affective, deductive reason to value-rational and ‘positive enactment’ to a strategic orientation (36-7). However, this is not true to the extent that all sources that are capable of providing normative validation produce a value-rational orientation.

intoxication' are already more or less institutionalised in the 'enterprise' of the magician (401, 536), this is even more so for "charismatic adjudication" by oracle (1115) and for the quasi-democratic procedure of charismatic acclamation. The charismatic quality of acclamation lies in the fact that validity (truth) is assumed to be *prior* to the election itself and merely has to be *revealed* through democratic elections – a 'ceremonial' form of charisma (1124).³³ There can only be one right answer "and it is a matter of duty to arrive at this" (267). Once the truth is revealed the minority has a 'moral duty' to yield to the 'right cause' proven by the majority (1126; 215). In other words, the minority does not have a different opinion, its opinion is wrong.

Through such processes of truth-finding – based upon 'calling and trial' – the subjects have the duty to 'recognise' the validity of the claim to charisma (242). But this recognition, according to Weber, is not the foundation of legitimacy (*Legitimitätsgrund*).³⁴ In our own analytical terms we might say that this recognition of proof only secures *cognitive validity*, similarly to the duty we have to recognise the truth yielded by scientific method. Proof yields cognitive knowledge. The recognition of *normative validity* as the genuine basis of legitimacy is rather explained in psychological and emotional terms: "This 'recognition' is psychologically a matter of faithful, complete personal submission, born out of inspiration or out of despair and hope" (242, adjusted translation).³⁵

The claim to legitimacy is normatively validated in charismatic proofs because the witness emotionally surrenders to the revealed truth (1117). Weber tries to find an explanation for this submission in the 'extraordinary needs' of the subjects, needs that "transcend the sphere of everyday economic routines" and which are related to feelings of distress "whether psychic, physical, economic, ethical, religious, or political" (1111-2). We might say, then, that the normative validation of charismatically revealed truth is explained by the *need for existential meaning* that transcends the dread and suffering of ordinary life. A charismatic revelation, according to Weber, must be understood as "a subjective or *internal* reorientation born out of suffering or enthusiasm" which "demands *new* obligations" and a whole new worldview – "a completely new orientation of all attitudes towards the meaning of ways of life and the 'world'" (342-4, 245). The essential characteristic of charismatic revelation, then, concerns the fact that "charisma ... manifests its revolutionary power from within, from a central *metanoia* of the follower's attitudes" (1117). A

³³ The plebiscite "is not an ordinary vote or election, but a profession of faith in the calling of him who demands these acclamations" (1451).

³⁴ "If those to whom he feels sent do not recognise him, his claim collapses; if they recognise it, he is their master as long as he 'proves' himself. However, he does not derive his claims from the will of his followers, in the manner of an election; rather it is their *duty* to recognize his charisma" (1112-3).

³⁵ The translation of this entire part (page 242) is rather unfortunate and gives a distorted impression. For this sentence the original reads: „Diese 'Anerkennung' ist psychologisch eine aus Begeisterung oder Not und Hoffnung geborene gläubige, ganz persönliche Hingabe.“

claim to charismatic domination, then, can be normatively validated because the experience of charismatic proof changes the value-rational orientation of the subjects.

3.4.2 Traditional Validation

In traditional domination legitimacy is founded upon the validity (truth) of tradition “resting on an ordinary belief (*Alltagsglauben*) in the sanctity of immemorial traditions” (215). The difficulty of traditional domination is that it entails both ordinary and extraordinary elements which Weber has difficulty to separate. The extraordinary or ‘magical’ element of tradition concerns its ‘sacredness’: “The belief in the inviolability of that which has existed from time out of mind” (1006). Tradition, as charisma, “always has a religious aura” (1122). Different from charisma, however, tradition builds upon an already socially institutionalised normative worldview. We might recognise three types of normative worldview in Weber’s general sociology.

First, a traditional worldview might contain the idea that society is a valid *organic order* with “natural differences among men” whether ‘providentially ordained’ or “determined by the impersonal world order” (598). Such worldview is normative to the extent that this stratified society is organised in different status groups (estates) which all are expected to have different functions and ‘ethical obligations’ (598). It may be clear that normatively valid status differences are potential sources of legitimacy for rulers.

Second, a traditional normative worldview may not so much be about hierarchical and functional status differences, as about the *sanctity of the community*. Communities (*Gemeinschaft*), according to Weber, are primarily based upon “subjective feelings, whether affectual or traditional, that they belong together” and specifically upon feelings of *piety* (*Pietät*) – Weber’s core concept for traditional authority (41). Such communal order is the ‘antithesis of conflict’ exactly because the internal sense of belonging arises through “the emergence of a consciousness of difference from third persons”, from outsiders (42-43). What starts as pure routine might culminate in a “community of memories” (903) containing normative perceptions of a ‘common descent’ or shared destiny or ‘fate’ (923). A ‘communal consciousness’ might be a source for “a specific consecration” of the collective (903), a “sense of ethnic honour” or a shared feeling to be the ‘chosen people’ (391), “anchored in the superiority ... of the culture values that are to be preserved” (925) or in the ‘particular pathos’ of a community for which “the individual is expected ultimately to face death in the group interest” (903).³⁶ It holds for all forms of communal solidarity that they are a potential

³⁶ Weber claims that nationalism should be considered as a kind of ‘pathos’ towards a ‘national identity’ which entails the “pathetic pride in the power of one’s own community, or its longing for it” (398), i.e. “the glory of power over other communities” (911).

source of legitimacy for power holders, as these rulers can become the 'bearers' of communal prestige, commanding 'unqualified devotion' (922, 903).

Finally, Weber gives the example of how in a traditional church the original charisma of a revealed religious ethic can be combined with the sanctity of tradition. The two 'antagonistic forces' of tradition and charisma can merge in *dogma*, according to Weber, because they both depend upon 'the belief in sanctity' (1122). Traditional sanctity refers to the unalterable – "the belief in the inviolability of what has always been (*des 'ewigen Gestrigen'*)" (1008) – which also possesses a 'depersonalised' charismatic quality, "an extraordinary quality which is not accessible to everyone and which typically overshadows the charismatic subjects" (1135). Precisely because of the absoluteness and unalterability of dogma it possesses the 'grace of god' (1162). The domination of the church, then, claims legitimacy upon the sanctity of its dogma, which is at least partly traditional.

Legitimacy in traditional domination can be claimed upon organic 'natural' status differences, the consecration of the community or the sanctity of unalterable dogma. What unites these claims is that they are based upon a normative worldview that is already expected in everyday life, i.e. the normative worldview is not revealed as in genuine charisma, it is already *socially institutionalised*. The subsequent question, first, is how these claims to legitimacy are proven and, second, why such proof procures subjective validity.

Proof of traditional legitimacy, it turns out, is a 'symbolic activity' (1139). Indeed, proof *can* be purely symbolic because the normative world view is already expected. For example, in case of the church Weber argues that symbols and rites are means of linking the grace of its dogma to its office (1139). Through rituals such as 'anointing, consecration, or the laying on of hands' (249) a religious mood with redemptory qualities is established "by the sheer sacredness of the manipulation" (530-1). Rituals create a symbolic setting wherein the sanctity of the church is directly experienced by the subjects. Not only do they find salvation through these rituals, but it also revalidates the normative expectations of the validity of the church that were already present. According to Weber, the whole 'pastoral care' must be understood as a "religious cultivation of the individual" (464). Importantly, the original charismatic revelation that provided a meaningful, personal and total relationship towards god is now reduced by the priests to the mere 'external appearance' of symbolic and ritual acts (466).

However, the church might be considered a special case as it is related to the extraordinary need for salvation. But also in case of traditional domination based upon status differences normative expectations are proven symbolically. Indeed, Weber seems to argue that also the 'prestige of ruling groups' (*Herren-Prestiges*) and the 'divine right' of the monarch (*von Gottes Gnaden*) retain a kind of 'charismatic status honour' (*ständischen Ehre*) acquired by heredity (251-2),

which requires “the nurturing of right attitudes ... which approximates the character of pastoral care of souls” (846). Status is proven foremost in terms of symbolic *lifestyles* as well as through “artificial and magical means” as in “episcopal ordination” or the ‘kings coronation’ (1139). Elite lifestyles might, of course, differ historically, but all concern ‘a way of life’ as “means of self-glorification ... [that] establish and preserve the nimbus of the dominant stratum vis-à-vis the ruled” (1090). As later echoed by Elias (Elias 2000), Weber tries to analyse how traditional status groups cultivate ‘a code of honour’, ‘etiquette’ and ‘dignity’ (1090). This might, for example, be ‘an artistic style of life’, i.e. “[t]he need for ‘ostentation’, glamour and imposing splendour, for surrounding one’s life with utensils which are not justified by utility but ... useless in the meaning of ‘beautiful’” (1105-6).³⁷ In such lifestyle ‘luxury’ is a means of social self-assertion and therefore “an important power instrument for the sake of maintaining one’s own dominance through mass suggestion.”

The symbols and rituals proving traditional status and prestige, as in the church, are also about symbolic appearance.³⁸ Through these symbols and rituals the normative and hierarchical social order is proven that was already expected to be true. Likewise, we might suspect that ‘bearers’ of *communal* prestige can also symbolically prove themselves but Weber is not very outspoken on the issue. However, we might argue that national symbols and rituals such as flag and anthem are important in order to symbolically prove what was already expected. And we might suspect that nationalism or patriotism also requires the ‘cultivation’ of the proper attitudes as for example through national festivals, sports, the glorification of history, but especially through the ‘glory and honour’ of war (269).

Claims to traditional legitimate domination are based upon objective normative worldviews which are proven in terms of symbols and rituals that validate what was already expected to be true. The final question, then, is why this proof not only yields cognitive but also secures subjective normative validity, i.e. the fact that I might recognise the legitimate king because he is dressed with symbols of power does not inherently mean that because I recognise the king I feel an inner duty to obey his rule. Weber argues that “[t]he mere fact of the regular recurrence of certain events somehow confers on the dignity of oughtness” (326). The ‘organically conditioned regularities’ of the traditional world are a kind of ‘psychophysical reality’, an ‘inner orientation’ that “contains in itself

³⁷ Elite lifestyles might also be less artistic and glamorous and rather, according to Weber, based upon the dignity expected in a more ‘patrimonial’ or patriarchal relation between the lord and his subjects (1104-8).

³⁸ Or, as Weber writes: “Here we find that peculiar transformation of charisma into an institution: as permanent structures and traditions replace the belief in the revelation and heroism of charismatic personalities, charisma becomes part of an established social structure” (1139).

very tangible inhibitions against ‘innovations’” (321). Weber, it seems, tries to explain the subjective normativity of tradition in terms of an inner psychological orientation that inhibits change.³⁹

However, we can also recognise a different kind of explanation in Weber’s work. The sanctity of tradition is foremost *experienced* in terms of symbolic rituals outside everyday life where the presence of the *unalterable* ‘overshadows’ the witnesses. Unlike charisma it does not reveal a new worldview, but one does feel the magnitude of what always has been there, a worldview in which the witness feels he is part of something larger than life. He has a specific role or function in the organic hierarchical society and he is a part of a sanctified nation or a sacred congregation. In short, through the ritual the witness feels part of a permanent truth to which he belongs, however insignificant his specific part. As such, extraordinary symbolic rituals revalidate a hierarchical social order in which the individual finds *existential meaning*. He *belongs* to a powerful nation and to the organic society. Likewise, rituals and symbols in the church cultivate and uphold ‘the zeal of membership’ (461;464). In ordinary life, on the other hand, the normative validity of the traditional order is objectively expected and the subjects find dignity and honour in doing their part (1104). Traditional domination, then, consists both of ordinary and extraordinary elements. It consists of “tradition-determined relationships as well as of the belief in their sacredness” (337). It is this latter belief that is validated and cultivated in extraordinary symbolic rituals of proof.

3.4.3 Normative Validation and Self-Justification

The importance of these extraordinary processes of proof for legitimate domination is apparent. These processes validate claims to legitimate domination not only cognitively but also normatively. Extraordinary rituals of truth-finding explain the subjective ‘belief’ in legitimacy, “a belief by virtue of which persons exercising authority are lent prestige”(263). In addition we can see that this subjective validation of truth-claims is for Weber inherently related to ‘transcending meanings of life’. In extraordinary proof by ritual the witness *experiences* the sanctity of the traditional order or community he belongs to, or he *experiences* the truth of a charismatically revealed divine mission to which he cannot but submit. In both the witness experiences that he is part of something that is bigger and more important than his own petty life – that his life has a *purpose*. Indeed, Weber claims that the “quest for the transcendental meaning of existence” (1178) “produces the strongest tensions in man’s inner life as well as in his external relationship to the world” (451).⁴⁰ As such, there

³⁹ He also argues that “fear of magical disadvantages reinforces the general psychological inhibitions against any sort of change in customary modes of action” (37, adjusted translation).

⁴⁰ For Weber, this inner-tension is especially problematic for intellectuals and explains the need for ‘priestly wisdom’ but also ‘secular philosophy’ (451). Intellectuals and the fortunate search for ‘psychic comfort’ – a form of self-legitimation to deal with their good fortune. But existential needs may also be non-intellectual: for

is a direct relation between the *existential need* for a meaningful being-in-the-world (*Existenz*) and the normative validation of claims to legitimacy in *extraordinary rituals of truth-experience*.

On a more fundamental level we can agree with Luhmann's argument that normative expectations allow a stabilised self-perception in relation to a contingent factual world and in face of disappointments, while, vice-versa, cognitive expectations enable one to adjust one's self-perception to the contingent world; it enables learning (Luhmann 1985:31ff). In Weber's analysis this relation also becomes visible. Under extraordinary circumstances, claims to legitimacy are normatively validated *because* they enable and stabilise 'self-justification' and fulfil the need for existential meaning. Normativity and meaningful perceptions of self are fundamentally linked.

Weber's analysis of types of legitimate domination based upon different claims to legitimacy, then, reveals a whole different social world than is present in his action theoretical analysis. Instead of meaningful *Handeln* (social action) he is more concerned with meaningful *Existenz* (being-in-the-world). In the former analysis focuses upon social validity (institutionalisation) and in the latter upon validity as truth. A reconstructed framework of this latter perspective, it seems to me, needs to distinguish analytically between cognitive and normative expectations of validity (truth), between ordinary expectations and extraordinary proof, and between claims to legitimacy and the existential need for self-justification. In most general terms we might say that if the right to rule is firmly established in social expectations of how the world ought to be, moreover, if the right to rule is inherently related to how subjects perceive themselves meaningfully in the world, then actors will agree value-rationally with an institutionalised order of domination which is normally expected to possess that right. The ruler might occasionally feel the need to proof these expectations in extraordinary rituals of proof. These rituals *cognitively* prove objectively valid expectations that he possesses the right to rule and, at the same time, secure *subjective normative* beliefs by the sheer *experience* of existential meaning – securing validity (social) and validity (truth).⁴¹

3.5 The Problem of Legal-Rational Domination

This general reconstructed model of legitimacy concerns charismatic and traditional domination. We have, until now, left out legal-rational legitimate domination. Legal truth-claims are neither based upon the charismatically revealed truth nor upon the sanctity of tradition, but upon its '*rational character*' (215). Legitimacy is claimed to be valid in legal domination because domination is valid (true) according to rational, positive and enacted rules. Unlike charismatic and traditional

the masses the "need for salvation is an expression of some distress" which holds for all 'ideas of justice' as mass religion (491-2).

⁴¹ In his social action theory *truth* is an *external* guarantee, while in this context Weber tries to explain the *inner sanctioning* of truth.

domination, however, legality does not seem to provide a transcendental meaning of life. Legal processes of truth-finding such as procedures of legal accountability and judicial hearings, do not seem to provide us with the *experience* of existential truth. Many have therefore commented that where it concerns legality, Weber fails to explicate how subjective normative validity is secured.

Weber states that the validity of the claim to legitimacy rests upon “the belief in the legality of enacted rules (*Ordnungen*) and the right of those elevated to authority under such rules to issue commands” (215). But this does not help us very much as we are interested in what this ‘belief in legality’ actually entails. Weber points out that in a legal order of domination, validity (truth) is ideally claimed upon the ‘formally correct’ character of the enactments that “have been made in the usual manner” (37 adjusted translation). The idea that the ‘correctness’ of rules can explain the normative validity of legal domination – in other words that legality (legal validity) can explain legitimacy (normative validity) – is a claim that is difficult to grasp. As Beetham cries out: “That individuals derive their legitimacy from a system of law cannot be sufficient *on its own*”; “the so-called legal form of ‘Herrschaft’ is left suspended without any set of beliefs about the rightful source of authority to underpin it” (Beetham 1991b:39). Also Habermas claims that Weber did not recognise that law needs a ‘principle of justification’ and that he therefore “shaded out in favour of sheer positivism” (Habermas quoted in Ewing 1987:503; see also Habermas 1996:169). Even Luhmann, who tries to explain how a system of law can be ‘self-legitimizing’ – i.e. how a system of law does not need a principle of justification that lies beyond itself – agrees that the legitimacy of legality is “sociological the weakest” analysis of Weber despite the centrality in his work (Luhmann 1983:28-9).

The legitimacy of legality and whether a system of law is in need of an *external* justification has been a huge battle ground in the sociology and theory of law, which I will not try to reproduce.⁴² Instead, I will try to reconstruct Weber’s argument. What must be emphasised from the start, however, is that Weber indeed is *in dubio* how to explain the normative validity of legality but that he was convinced that legal domination was a new and inherently modern phenomenon.

Let us first address the confusion, which, in my opinion, concerns two mistakes. First, according to Weber, ‘positive enactments’ are believed to be legitimate because “it is imposed (*kraft Oktroyierung*) by an authority which is held to be legitimate and therefore meets with compliance” (36, 50-1).⁴³ It looks as if Weber argues that the belief in the validity of legality depends upon the

⁴² The most famous debate concerned those between Hart and Fuller in the Anglo-Saxon community, and Luhmann and Habermas in the German context (Hart 1958; Fuller 1958; Luhmann 1983; Habermas 1996; Dyzenhaus 1996). For an overview of the first debate see Ketchen 2003, for the latter debate see Přebáň 1997.

⁴³ Weber also argues that legitimacy can derive “from a voluntary agreement of the interested parties” (*Paktierung*) (36). Voluntary agreement and promise in some way or another produces an inner-duty to uphold one’s end of the deal (28,41). Here Weber seems to point to voluntary associations and legal contract. But it

validity of another authority situated beyond or above the legal rule. Indeed, Weber states that “there are very important types of rational domination which, with respect to the ultimate source of authority, belong to other categories” (219). Weber admits, for example, that “at the top of a bureaucratic organisation, there is necessarily an element which is at least not purely bureaucratic” (222, 1123). Although the ruler at the top must relate to the “sphere of legal ‘competence’” – i.e. he cannot arbitrarily intervene in the rational cosmos of bureaucratic rule – it seems that at the top domination is claimed upon other sources than legality (220). Weber seems to agree with Habermas that a legal order is in need of some external justification. Although this might often be true *empirically*, this cannot, however, be the case for Weber’s *ideal-type* form of legitimate domination. He either has to explain how legality can be legitimate on its own account or his entire approach of ideal-typical legitimate domination has to collapse.

Weber, it seems to me, confuses *rules* with *legality*, which is not one and the same thing. Rules concern generalised expectations. As discussed in chapter 1, expectations might be generalised in the ‘material’ dimension from person, to social role, to rule or office and to ideal-values (Luhmann 1985:73).⁴⁴ A rule can be a legal rule, but also a traditional or charismatically revealed rule. The point is that legality does not claim legitimacy upon *rules* but upon the *rationality* of rules. This, then, points to the second confusion that is present in Weber’s work. When Weber claims, as we have seen, that a rule (or office) is valid if it is created *correctly* according to the usual procedures, we might confuse validity in terms of *truth* with validity in terms of *social expectations*.

Without a doubt, social objective validity and the procedures of law are intimately related. For example, in modern democracy we might expect that the law represents the will of the people. But this does not mean, for sure, that what is the will of the people is also the law. A law is only a valid law if it is made according to the *correct* legal procedures. Similarly, we normally expect the decision of judge to be just, but this does not mean that if we think that the decision is unjust, we can ignore it at will. The decision of the judge, within certain boundaries, is *socially valid* regardless of its substance. In other words, Weber’s definition of legality in terms of the correctness of procedure can be understood in terms of objective validity, i.e. institutionalised expectations of what is and ought to be considered as law. Correctness in this case points to what Hart calls a ‘rule of

seems to have limited value for the legal state and even for ‘formally free’ contracts of employment (730) – although, Weber admits, the ‘contract theory’ of natural law has had its historical usefulness (868).

⁴⁴ It is interesting to note that for Weber charismatic domination seems tied to the person, traditional domination to social roles – a ‘double sphere’ of the personal and social (227) – and legal domination to rules and office. Indeed, it is an important element for Weber’s ‘rationalisation thesis’ that domination is historically increasingly disappropriated from person and tied to office. However, when it comes to the validity of claims to legitimacy this simple classification does not hold as Weber’s own analysis shows over and over again. The type of generalised expectations and the type of domination mix in complex ways. A final observation at this point is that Weber, like Luhmann, does not think that the generalised expectation of ideal-values has been historically relevant.

recognition' –institutionalised expectations of how to recognise law as law that enables us to separate law making from other forms of human action and speech (Ketchen 2003:7).

However important such objective validity is from the perspective of action theory, what should concern us here is not the social validity of law and legal decisions but rather the validity of its *truth-claim* – the validity of its claim to legitimacy. For Weber, the truth-claim of legality concerns expectations of rationality. This is best grasped by continuing our last example. If the judge makes a decision of which we consider the content to be just, we not only expect his decision to be *socially* valid but also consider it to be *normatively* valid – it is the right decision. But suppose we later find out that the judge made his decision by tossing a coin or that he made his decision while he was heavily drinking or that he was bribed, our feelings of the *validity of the decision* are shaken – justice, we expect, is not about chance, luck or power. Even when we feel that the substance of the decision is right, the decision-procedure matters, i.e. the procedure is expected to be *rational*. This rational validity of law must be analytically separated from its social validity.

In other words, legal domination claims it has the right to rule because it is rational. This claim of rationality distinguishes it from traditional and charismatic domination, not rules and legal procedures per se.⁴⁵ The important thing is not so much the fact that legal domination is rule-based as that it concerns *rational* domination. What should concern us, then, is what this rationality entails.

3.5.1 Legal Positivism: The Materialisation of Formal Law

In Weber's rather extensive sociology of law he tries to show how the inherent validity of *formal* law collapsed into a *materialised* positive law devoid of this kind of inherent validity. At first sight, this seems even more confusing as we are analysing the inherent validity of law, which, as it turns out, already collapsed. Nevertheless, a short analysis of Weber's sociology of law is needed to understand the meaning of rationality in legal domination.

For Weber the origin of the modern legal order was an *intellectual need* to create for the first time in history a 'purely rational law' "free from all historical 'prejudice'" (866). Moreover this intellectual attempt took the form of natural law which tries to deduce a valid social order based upon *formal rationality* instead upon 'religious revelation' or 'authoritarian sacredness'. "Natural law has thus been the specific form of legitimacy of a revolutionary created order" (867). Nevertheless, Weber considered this the revolution itself – the French revolution – a charismatic revolution: the "charismatic glorification of 'Reason', which found a characteristic expression in its apotheosis by Robespierre, is the last form that charisma has adopted in its fateful historical course" (1209). The newly revealed order, we might observe, does not concern the *personal* charisma of the prophet but

⁴⁵ Weber, it seems to me, focusses too much on legality in terms of socially valid rules and procedures, while the real emphasis should be upon this expectation of rationality and how this expectation is proven.

rather an impersonal charismatic revelation based upon deductive reason itself.⁴⁶ Deductive reason, then, was historically relevant after all. However, according to Weber, the attempt to install after the revolution an order of domination upon such type of validity claim almost immediately failed (874, 37). It is this failure that Weber tries to analyse. It is an account of how legal experts and intellectuals tried to found legal domination upon formal and deductive reasoning and how this formal structure collapsed under the pressure of material and ethical concerns. But before we can really appreciate it, we must understand what Weber means with formal rationality in contrast to substantive or material rationality.

Weber understands formal rationality as a form of abstraction or *generalisation*. Economic action, for example, can be formalised in terms of money. The value or 'meaning' of money transcends any *particular* economic action or want. Money as a form of formalisation is especially rational in the sense that it allows us to calculate all kinds of particular actions under the same general premise. What holds for economic action in terms of money, also holds for law in terms of formalised abstract rules. Either based upon induction or deduction, formalised laws express an abstract and *internally logical* system to which empirical reality is subsumed. It consists of the creation of a consistent, gapless, integrated system of legal rules and continuous elaboration of "specification and delimitation of the potentially relevant characteristics of the facts" (655). "[W]hat the lawyer cannot 'think' or 'construe' cannot be admitted as having legal reality" (854). What formalism points at, then, is how the particular can be understood in terms of the general (887). However, this does not make such formal rules valid *per se*.

What makes formal law valid is the inherent connection between *formality* and *morality*. As we have already seen in chapter 2, the classic philosophers explicitly understand moral justice in terms of general or universal interests. Indeed, especially after Kant's categorical imperative, morality is understood precisely in terms of its *semantic form* rather than its substance (888). Moral are those values or interests that hold for all, that are general and universal. Formal law, then, points to the intellectual attempt to create a *legal language* which describes and understands the world in terms of this semantic form of universality and therefore claims to be morally valid. Such formal

⁴⁶ Weber states that all "'ideas' have essentially the same psychological roots ... The decisive difference... is not inherent in the *creator* of ideas or of 'works', or in his inner experience; rather the difference is rooted in the manner in which the ruled and led experience and internalise these ideas. ..." (1116). Reason, then, possessed charisma. Although science is anti-magical, its extraordinary achievements (or promises) take the place of the miracle of the prophet. Science is 'a way to God' (1958b:142; 1978:49). It denounces the traditional order and reveals universal laws and promises this worldly salvation – social justice. Reason is not sanctified by tradition – to the contrary – but by its revelation of absolute truth. It is about "a charisma of self-evident rights that no longer needs a charismatic personification" (Roth 1975:153). Other charismatic elements, according to Weber, are Rousseau's insistence upon the *volunté générale* and the social contract ideology in general, both "influenced by the element of revelation implied in all law, according to which only *one* law could be right" (706).

legal language consists of principles such as equality before the law or that the law must apply to all including the rulers. By describing the contingent world in this formal legal language, by subsuming the particular under the general, substance under form, the world is understood in morally valid terms. This is what the intellectual attempt to create a valid legal order was all about: legal norms “owe their legitimacy not to their origin from a legitimate lawgiver, but to their immanent and teleological qualities” (867).⁴⁷

In contrast to formal law Weber distinguishes material or substantive law (‘Khadi-justice’), which allows for *particular* cases to intervene in general laws or rulings. Substantive law and judgements are “influenced by concrete factors of the particular case as evaluated upon an ethical, emotional, or political basis rather than by general norms” as well as “utilitarian and other expediential rules” (656-7). Material law can also be codified and can be considered stable and calculable, i.e. rational. It is important to note, in this context, that common law can be both formal or material law. Even if Weber emphasises the *deductive* tradition of German formal law, he does not deny that formal law might have an *inductive* nature.⁴⁸ The main difference between formal and substantive law is that in the latter there are substantive values – on grounds of expediency or ethical ideals – that are ‘absolutely binding’ *beyond* the rule, while formal law is ‘self-contained’ and separated from ethics (810-1). It points to a difference between the general and specific, form and substance or object and means.

The dialectical relation between formal and substantive justice is for Weber one of the main driving forces of the historical development of law, explaining the rise and fall of the former (see also Treiber 1985:815). Where it concerns the demise of formal law, first, “there simply does not exist a completely formal natural law” which would be ‘devoid of content’ (868). This means that intellectual scepticism is already present in the foundations of formal law – foundations that cannot be proven upon deductive reason. As such, when *reason turns upon reason* scepticism must rise.

⁴⁷ Weber traces the origin of modern law in the *intellectual* development of thought contrary to more Marxist approaches that emphasise the importance of bourgeois economic interests. Habermas argues that Weber does not appreciate enough that formal law has a ‘legitimizing function’ of bourgeois interests (Habermas 1986:224; see also Ewing 1987:490). Weber, however, does not deny the relation between formal law and bourgeois interests, to the contrary (811, 813, 846). Weber was not trying to ignore that fact but was trying to debunk the ‘simple’ Marxist approach that economic interests explain everything. Just as the Protestant ethic developed through intellectual and religious needs but still made a capitalist ethic possible, so should we consider the inherent intellectual need for rational law (312). This need was not a function of capitalism but did make it possible – although capitalism functions quite as well in ‘irrational’ material law (814). The relation between intellectual and economic needs in formal law is only *indirect* through the shared interest in calculability against arbitrariness, an interest that was shared as much by nobility as by the bourgeois (see e.g. Doyle 1999, 2002). For Weber, the French Revolution was not imaginable without “the spirit of the jurists” (1958a:94).

⁴⁸ Much has been said about the so-called ‘England-problem’, i.e. the historical fact that legal formalisation was more present in ‘Germany’ and France than in England, while it was in the latter that capitalism boomed. However, this is not a problem for Weber’s legal theory as there is no direct link between economic interests and formal law (see preceding footnote; Treiber 1985:841ff.).

Formal law, according to Weber, is a “self-defeating scientific rationalisation” (889). Second, the formalism of natural law “easily slipped into utilitarian thinking” (870). This ‘slippage’, Weber claims, can be seen in the “the change of the meaning of the concept ‘reasonableness’”. Instead of originating in “the eternal order of nature and logic” the concept from the beginning “contained by implication the meaning of ‘rational’ in the sense of ‘practically appropriate’” (870). This orientation towards practical rationality, according to Weber, was especially true for English thinkers – the utilitarians. Third, the fact that utilitarian and practical concerns invaded the legal system has a direct ‘class implication’. The materialisation of law due to bourgeois interests, Weber claims, would only be strengthened by socialist counter-theories and actions. It only increases the economisation of law (871) in search for ethical and ‘substantive justice’ (886). Finally, the disintegration of formal law is in no small part due to the fact that formalised laws are ‘*lebensfremd*’ – mere “consequences of the intrinsic intellectual needs” (855). “[F]ormal justice, due to its necessarily abstract character, infringes upon the ideals of substantive justice” and vice versa (813).

As soon as formal law opens up to substantive interests and ideals of justice it must collapse – in fact, according to Weber, historically it did almost at the moment of origin (874, 37). This means that due to its materialisation and “modern intellectual scepticism in general” formal law has “lost all capacity to provide the fundamental basis of a legal system” (874). The materialisation of formal law means that law is no longer validated by its semantic form but by what it *does*. In other words, the materialisation of law concerns the transformation of law as an inherently valid *object* to law as a valid *means*. It concerns an ‘increasing particularism’ (880) where legal meaning no longer derives from the deductive logic of rules but from the ‘intended meaning’ of concrete situations (881), the evaluation of attitudes (884) and from social function and expedience. For material law, only the economic and utilitarian ‘meaning’ of the law counts (885). As Weber concludes, “*legal positivism* has ... advanced irresistibly. The disappearance of the old natural law conceptions has destroyed all possibility of providing the law with a metaphysical dignity by virtue of its immanent qualities. ... it has been unmasked all too visibly, indeed, as the product or the technical means of a compromise between conflicting interests” (874-5, my emphasis). Due to the collapse of the metaphysical dignity of formal law, modern law is “now viewed solely from an instrumentalist standpoint” (875). We can safely conclude that the rationality of modern positive law as in bureaucracy concerns *instrumental rationality*.

We would expect, then, that if the *rationality* of legality is *instrumental*, successful claims to legal domination must relate to the goals and ends it pursues. However, this is not the case. Not only because these goals have to do with non-sacred and profane *utility*, with interest competition and pragmatic compromises or with material profit and organisational stability – with profane, pragmatic

and material goals that do not provide the dignity of normative validity; not only because Weber discards the possibility of a value consensus that might externally validate instrumental law, as politics is inherently strategic and conflictive; but foremost because external goals just cannot explain the normative validity of legality without destroying legal domination as an *ideal-type*.

3.5.2 Instrumental Rational Validity

The puzzle that Weber's analysis provides, is how to understand that legal domination can validate its claim to legitimacy upon *instrumental rationality*. A first important insight is that a legal order, in contrast to traditional and charismatic orders, is a social order that can rationally adjust to historical, social, economic and political circumstances. A legal order is a *cognitive* order that is able to adapt to and learn from the factual contingencies of the world. A legal order does not establish a normative worldview but a cognitive 'disenchanted' worldview. A legal order is, in Luhmann's terms, a 'reflexive' order (1989:141). This means, secondly, that in normal life we expect that the rules of law or of the bureaucracy we work for are instrumental rational, that they have utility. This expectation is independent of the specific end or goal of the rule in question. Indeed, often we do not even know what the precise goal is but we nevertheless expect the rule to be rational. Useless, arbitrary or irrational rules are anathema in legal domination. Thirdly, this also means that our expectation of rationality is partly cognitive – I expect the rule to be rational – and partly *normative* – the rule ought to be rational. Imagine, for example, that one has a job to fill in reports that by the end of the day are thrown away without anybody looking at it. Most people would have difficulty with such a 'useless' job. Although they might keep it because it pays good money, the job in itself does not make sense. It is even probable that one starts to reason why it *could* make sense; indeed, it *has* to make sense! It is this normative expectation of rational validity that is the key to understand legal domination.

Many writers have tried to show that Weber mistakenly claimed that bureaucracy with its hierarchical organisations of rules and offices is the most rational organisation. But this critique misses the point. Anybody that has ever worked in a bureaucracy knows that it is not that efficient and never works as it is *supposed* to.⁴⁹ The point is not that bureaucracy is efficient but that we *expect* it to be and, moreover, that we think it *ought to be* (Hilbert 1987:71). If bureaucracy fails it, is often fixed not with less but with more rules.⁵⁰

⁴⁹ Weber was well aware of the 'red tape' of bureaucracy (223).

⁵⁰ Weber notes: "When those subject to bureaucratic control seek to escape the influence of the existing bureaucratic apparatus, this is normally possible only by creating an organisation of their own which is equally subject to bureaucratisation" (224).

However, if we want to understand the source of these normative expectations, we fail to find it in extraordinary rituals of proof. Legal domination is therefore inherently different from traditional and charismatic domination. But a ruler who claims the right to rule based upon rational rules for sure has to prove this claim occasionally. Weber, it must be said, does not really discuss processes of legal truth-finding, but we might propose that in his view such processes concern the *symbolic* procedures of accountability.

Although procedures of accountability are complicated affairs in their own account, we might recognise that political actions or decisions must occasionally be accounted before a *forum*. For example, the prime minister has to account for his actions in parliament or the manager in court or in some collegial body.⁵¹ However, not all procedures of accountability necessarily concern a form of legal accountability where actions or decisions are judged according to positive law. Which norms are appropriate depends on the *type of forum* in which accountability is demanded (Bovens & Schillemans 2009:26-7; see also Bovens 2005). Instead of the norm of legality, a forum might base its judgments on ethical norms, democratic norms or norms of efficiency or effectiveness (see Elzinga 1989:70). As such, it is not about legal accountability per se, but about *legal procedures* of accountability which, we might say, are 'symbols of controllability' (Bovens 1990:129). Indeed, whatever the norm, accountability concerns a symbolic 'incantation of control' (*bezweringsformule*) that proves *expectations of rationality* for the entire legal or bureaucratic order (Van Gunsteren 1989:106).⁵² It is a process of truth-finding that proves that legal domination can be expected to be rational and not *arbitrary*. This is why it is disturbing when a judge makes his decision with irrational means, quite independent from whether his decision was right.

Symbolic procedures of accountability prove claims of legal rationality which the witness has the duty to recognise. The problem is that cognitive expectations might be proven – i.e. rules are not arbitrary but rational – but that accountability procedures do not prove normative validity, i.e. because rules are instrumental rational one feels a duty to obey. Unlike the procedures of proof of charismatic and traditional domination, legal proof does not *move the soul* as when one feels the sanctity of unalterable tradition or as when a whole new meaningful worldview is 'suddenly awoken through drastic means' (322). Legal-rational proof remains a cognitive rational affair. The legal-rational order of domination is *disenchanted*. It does not serve our extraordinary or existential needs.

⁵¹ It is interesting to note that Weber does not consider democratic elections as a form of accountability, but rather a ritual that re-establishes the charismatic component of democratic dogma (1146).

⁵² It is possible that legal-rational proof becomes purely symbolic and presentational as for example the badge and uniform of the police shows. In social psychology this phenomenon received quite some attention, especially due to the Milgram-experiments (Milgram 1963; Blass 1999, 2009; Blass & Schmitt 2001; Miller 2009; Burger 2009). Other experiments showed how 'symbols of authority' – especially uniforms – are cultured symbols that activate obedience (Bickman 1974; Bell 1982; Bushman 1984) or how obedience in hierarchical organisations becomes sheer unthinking routine (Hofling et al. 1966).

Although the legal system no longer claims legitimacy upon the inherent validity of law itself as law is increasingly materialised through social, political and economic conflicts, we are still dependent upon it as there is nothing to replace it. Weber argues that we cannot fall back upon traditional or religious worldviews, which “the postulates of formal legal equality and economic mobility” helped destroy (1209).⁵³ We are dependent in our modern culture upon bureaucracy and legal rule (975, 223). The only thing left is the ‘logic’ of legalism itself, even if that logic does not have any inherent validity (885). Modern man, for Weber, is stuck in an ‘iron cage’ (2001:123).⁵⁴ In a Hegelian mood Weber argues that just as “an inanimate machine is mind objectified”, providing it “with the power to force men into its service and to dominate their everyday working life” this also holds for that other machine, ‘the bureaucratic organisation’ (1402). Both machines are “busy fabricating the shell of bondage which men will perhaps be forced to inhabit someday” (1402).⁵⁵ In this cage modern men “crave not only religious experiences, but experience as such” as “precisely the ultimate and most sublime values have retreated from public life” (1958b:143, 155). “As intellectualism suppresses a belief in magic, the world’s processes become disenchanting, lose their magical significance, and henceforth simply ‘are’ and ‘happen’ but no longer signify anything” (506).

Here we finally come to the core problem of the legitimacy of legality. Where in traditional and charismatic domination the extraordinary processes of truth-finding and truth-experience are able to explain subjective normative validity (truth), processes of legal accountability seem only to yield cognitive factual knowledge. The question, obviously, is why legal domination is legitimate if its normative validity cannot be explained. According to Luhmann, the ‘unsupported readiness’ to accept the legitimacy of law, an “acceptation, almost without motivation, similar as in cases of [factual] truths, is the sociological problem” (Luhmann 1983:28). Yet it is exactly this ‘unquestioned’ and ‘unmotivated acceptance’ of legal legitimacy that is “a character of the modern political system” (ibid.: 32, 29). The acceptance of legitimacy as a ‘self-evident’ *fact* depends, according to Luhmann, upon a specific form of ‘consensus’ (*Grundkonsens*) or ‘social climate’ (*sozialen Klima*) (Luhmann

⁵³ This analysis is echoed by Habermas. However, where Weber thought that legal formalism collapsed under pressure of materialisation and intellectual scepticism, Habermas thinks it collapsed because the legitimacy of law ultimately shifted from public reason to the justice of the free market, which it could not autonomously bear as it is crisis ridden and often unjust. Notwithstanding these differences, both Weber and Habermas point out that with the destruction of tradition and religion as a source of legitimacy, modern legal authority could not fall back on it (Habermas 1975:34-40).

⁵⁴ The famous concept ‘*Stahlhartes Gehäuse*’ was translated by Parsons with ‘iron cage’. Baehr (2001) eloquently traces how this metaphor was used by the Protestant Bunyan, and that if Weber wanted to refer to this metaphor explicitly he could have used Nietzsche’s ‘*eiserner Käfig*’. The crucial differences between an ‘iron cage’ and a ‘casing as hard as steal’ are: 1. steel is man-made and therefore, in contrast to iron, a symbol of modernity; 2. a cage can be opened to free those inside, while a casing cannot (Baehr 2001). The metaphor therefore holds the transformation of humanity due to modernity, not the imprisonment of it. Nevertheless, due to its widespread currency, I will also translate it with ‘iron cage’ in this dissertation.

⁵⁵ Weber adds: “This might happen *if* a technically superior administration *were to be the ultimate and sole value* in the ordering of their affairs” (1402).

1983:29, 34). But this, it seems to me, is an unsatisfactory explanation.⁵⁶ Although Weber would probably agree with Luhmann that the validity of legality is about factual cognitive truths, the core question is why this would in any sense secure subjective normative validity.

To understand the normative validity of legal domination from a Weberian perspective, it seems to me that we should not look at the *extraordinary* procedures of truth-finding, but change our perspective to the *normal expectations* of validity. It is from this perspective that Weber tries to explain why the bureaucrat feels an inner-sanctioned duty to obey the hierarchical rules of office – why the bureaucrat feels a duty to obey out of duty's sake. The core concept which with to explain normative validity of legality is *self-discipline* in ordinary life.

3.6 Cognitive Validity and Self-Discipline

Extraordinary rituals of proof in traditional and charismatic orders move the soul of witnesses and inherently validate subjective normative expectations. These rituals explain the ideal-values of subjects and, as a consequence, their value-rationally orientations to the objective normative order. However, quite separate from such normative validation, rituals of truth-finding also proof cognitive expectations; these processes not only yield subjective normative but also cognitive factual knowledge. Such cognitive knowledge contains normal expectations that the ruler *is* divine, the ruler *holds* an elevated status or that the hierarchical legal order *is* rational. When we analyse these everyday cognitive expectations, Weber is able to explain feelings of duty upon a different social mechanism. Duty is not explained by normative validity (truth) and extraordinary rituals of proof, but rather by *cognitive* validity (truth) and mechanisms of *self-discipline*.

3.6.1 Mechanisms of Self-Discipline

Weber defines discipline as a form of power: “the probability that by virtue of habituation a command will receive prompt, automatic and schematic obedience” (53, adjusted translation). Weber's principle example of ‘rational discipline’ is the mass army in which ‘blind obedience’ and the ‘unconditional suspension of all personal criticism’ is secured by drill, training and education in a context of ‘compulsory integration’ (1149-50). According to Weber “military discipline is the ideal model for the modern capitalist factory” and, of course, also for “the bureaucratic state machine” (1156). It is safe to conclude that Weber understands discipline in a context of rational bureaucratic domination and considers it a power instrument to ‘uniformly condition the masses’ (1150). However, Weber's definition is unsatisfactory. First, Weber unnecessarily limits the notion of discipline to legal domination. As I will claim, it is also present in charismatic and traditional

⁵⁶ To be fair, Luhmann does recognise that the ‘inner consistency’ of the legal system and ‘symbolic-ceremonial’ actions are important factors of legitimacy (*Legitimierungsfaktoren*) (Luhmann 1983:36).

domination even in Weber's own work. Second, Weber's rather crude top-down 'Taylorist' approach contradicts his own much more subtle theories of ascetic *self-discipline*. In what follows I will combine these two insights and show how self-discipline can be a source of *subjective normativity*.

Self-discipline, in most general terms, concerns the inner-self sanctioning of an actor, i.e. the actor commands himself that he *ought to* do A even if he feels an urge to do B. From the start, then, it is clear that self-discipline is closely related to subjective normative validity. Secondly, we have to understand self-discipline within a social order that is *externally guaranteed*. This is what Weber means when he points to the context of 'compulsory integration' in the mass army. As discussed in chapter 1, a social order might be externally guaranteed through force, social factuality or factual truth.⁵⁷ Especially factual truth should interest us at this moment. Indeed, we can say that if an actor normally expects the order of domination to be cognitively valid – i.e. to be divine, traditional, or rational – this order is externally guaranteed by factual truth. What self-discipline points at, I try to argue, is that an actor might *meaningfully* relate to a *externally guaranteed factual order* and this relation might be a *source of normativity*.

When we reconstruct Weber's work, we can distinguish three types of self-discipline depending on the type of cognitive validity (truth) that is normally expected. First, in a charismatic order of legitimate domination the actor normally expects the ruler to possess extraordinary and even divine qualities. In relation to this *omnipotent power* the individual actor might obey because he fears vengeance. Obedience out of fear, however, is not about some strategic rational calculation of cost and benefit; it is an irrational fear as vengeance is expected to be terrible and total. Fear explains why the actor disciplines himself to the will of the ruler. However slight the chances might be that the ruler will notice his transgressions, the consequences are unthinkable. We might say that the actor internalises *the terrifying gaze of the omnipotent*. The disciplinary effect of fear is not that articulate in Weber's work. However, Weber does recognise how the supreme power of the Prince has a charismatic quality, especially "the power to dispose over life and death" (904, see also 922).⁵⁸ We are also reminded of Foucault's work when he describes how the Prince proves his terrifying power by obliterating the body of the condemned upon the scaffold (Foucault 1995:32-69).⁵⁹

However, the supra-human or divine power of the ruler might not only inspire fear but also hope – hope for salvation. In Weber's framework the need for this-worldly or other-worldly salvation is especially important for charismatic domination. Salvation is born out of "promises of

⁵⁷ It must be noted that Weber does not explicitly recognise these three different forms. Of course he does recognise 'physical and psychological coercion' (34), but the other two forms are more implicit. However, Weber constantly emphasises the force of 'social dependency' (*Sachzwang*) and also the duty to recognise objective truth.

⁵⁸ In his sociology of religion a similar argument can be found when Weber discusses the 'amoral' god of the peasant in comparison to the 'ethical' rationalised god of the bourgeoisie (1179).

⁵⁹ Indeed Foucault is heavily indebted to Weber's work (Foucault in Rabinow 1984b:248; Foucault 1991:79).

redemption from oppression and suffering” and out of “liberation from the senseless treadmill and transitoriness of life as such”, that is, out of meaninglessness (527-8). However, the *factual expectations* that the ruler has the power of salvation might explain obedience, but does not necessarily seem to explain an inner-sanctioned duty to obey. We might obey the rules of the casino, for example, because we *hope* to win a large sum of money but such obedience can solely be explained in strategic terms. What we should recognise, however, is that hope can also be about *faith*, which allows the individual actor to give meaning to his own life. Disciplining oneself in terms of sheer faith in the capabilities of the leader allows a form of *self-justification*. Weber argues, for example, that the authoritative relation between the church and the laity is based upon such faith – “an attitude of utter trust” (569, 1201). This faith must be understood as an unconditional surrender and confidence in the authority of the church to guarantee the salvation of souls - ‘*fides implicata*’ (566). This ‘unlimited trust’ may result, according to Weber, in a “proud virtuosity of faith” (567, 522). In other words, because the actor proves himself in terms of unconditional surrender and utter faith, he finds dignity and pride. Through self-discipline the actor finds existential meaning. Ultimately, the basis of self-justification through self-discipline, in Weber’s work, rests upon the ‘demonstration’ that one can ‘transcend’ human nature, the temptations of the flesh and the world (539-40). Self-justification is based upon *self-denial*.

Second, we can trace this same mechanism of self-discipline in relation to the normal expectations of a traditional order. As we have seen, traditional domination is based upon status differences. If an actor expects this distribution of status to be factually true – either socially or in terms of traditional truth – we might argue that he obeys this order out of feelings of shame. Shame accounts for a form of self-discipline to avoid the public humiliation of transgression. We might say that the actor internalises *the gaze of the public*. The actor sanctions his own actions in light of what is socially expected of him. Weber is not overtly concerned with the disciplinary mechanisms of shame, but it is the basic mechanism he uses to explain convention. Convention, Weber argues, is not based upon ‘coercion’ or “any direct reaction other than the expression of approval or disapproval on the part of those persons who constitute the environment of the actor” (320). He further mentions how one of the disciplinary aspects of Protestant sects concerns the ‘mutual control’ of the public gaze in which “a man must hold his own under the watchful eye of his peers” (1206). Even bureaucratic discipline is partly explained by the sheer “possibility of public criticism” (968).

Weber is, however, much more outspoken when it comes to the positive side of shame: honour. Indeed, holding one's own under public scrutiny is a "basis for self-respect" (1206).⁶⁰ In Weber's framework 'the integrating component' of traditional domination is status honour (1105). Status is that "typical component of the life of men that is determined by a specific, positive or negative, social estimation of *honour*" (932). An actor might find dignity by sanctioning himself in light of a lifestyle and a positive 'ethos or code of honour' – whether this concerns his social *role* (function) or more an artistic 'cult of the personal' (1075, 1105, 1107). Importantly, 'men of honour' are able to prove themselves, precisely because they commit to this ethos even when it is strategically irrational.⁶¹ The ideal concerns the man who rather faces death than to dishonour himself (and his family) by breaking a promise. Again, self-justification is based upon self-denial.

Thirdly, a subject of legal domination cognitively expects this social order to be *rational*. For sure, this does not mean that society consists of one single type of rational knowledge as Weber specifically tries to argue that society consists of different value spheres, all with their own rationales and objectives. But in general we can say that an actor might discipline himself in relation to such rationalities out of feelings of *guilt*. Guilt relates not to what is normal in terms of social expectations but in terms of factual truth. We must remember that the rationality of legality concerns expectations of rational *knowledge* (expertise). As Weber states, "bureaucratic administration means fundamentally domination through knowledge" (225).⁶² The point is not so much that legal rules prescribe what normal conduct *ought to be*, as that it describes what normal conduct *is*. Rational rules describe, for example, the normal conduct of a dutiful bureaucrat, of an eager student, of a law-abiding citizen, or describe hygienic sexual relationships, wholesome diets and healthy exercises.⁶³ An actor sanctions himself to this factual knowledge out of feeling of guilt because he knows that his transgressions or urges are abnormal and irrational. We might say that the actor sees himself as an object and even a project of rational knowledge. The internalised *gaze* is that of himself, of his *conscience*. We are clearly reminded of Foucault, who argued that as our subject becomes an object of 'observation' and 'examination' of external institutions, it also turns into an object of knowledge for ourselves (Foucault 1995:188-9, 304). The actor examines his own actions and thoughts with a body of knowledge he expects is rationally true. The core of this type of

⁶⁰ Weber argues that "this [public] basis for self-respect spread within increasing secularisation from the sects into all walks of American life" (1206).

⁶¹ All men of honour 'abhor the acquisitive drive', Weber claims (1008). Status is a market distortion as "the market ... knows no personal distinctions: 'functional' interests dominate it. It knows nothing of honour." (936).

⁶² Or again: "The primary source of the superiority of bureaucratic administration lies in the role of technical knowledge which ... has become completely indispensable" (223).

⁶³ As such, there are different rationalities – different knowledges – depending upon the specific value sphere or social system.

self-discipline is that normal conduct is no longer about social *appearance* – the symbolic presentation of self – but about *being* normal.

Weber traces this type of self-discipline based upon guilt especially in his sociology of religion. Without giving a full analysis of Weber's sociology of religion, I will point out some of the social mechanisms that Weber thought to be foundational for the rise of the notion of guilt. The historical development of guilt, according to Weber, must foremost be understood as an offshoot of the *intellectual* attempt to understand religion in non-magical terms. The intellectual – priests and lay-intellectuals – opposed the superficial 'external appearance' of the symbolic rituals in the church and faith as the "the death of intellectual pride" (465,567). He tried to recapture the original charismatic meaning of the prophetic revelation that necessarily had undergone a 'recession' when it was institutionalised in the church (465-6). The intellectual longs for 'individual salvation' (1166) and embarks on a "quest for the transcendental meaning of existence" (1178).⁶⁴ This intellectual quest is driven "by an inner compulsion to understand the world as a meaningful cosmos", to recapture the original charismatic meaning not contaminated by material needs of daily life (499).⁶⁵ The *paradox of the intellectual*, however, is that he tries to find a charismatically meaningful world and his relation towards it but that his rational method destroys the magic needed (505). In Weber's work this intellectual paradox is the force that explains religious and institutional change: how religion increasingly becomes a rationalised ethic in which God changes from an amoral to a rational being (1179);⁶⁶ how the meaning of piety changes from the importance of appearance in 'good works' to the importance of being good (533);⁶⁷ how the rituals of church change from something outside normal life (the magic of sacrament) to rituals that probe into normal life (confession) (531); how the meaning of sin changes from something that can be forgiven through magical rituals to the unforgiving knowledge of predestination (409, 461, 575);⁶⁸ and how the church changes from an

⁶⁴ Maybe the most important question that drives the intellectual religious quest is the 'problem of theodicy': how to reconcile good and evil, the material and the immaterial world (519; see also Treiber 1985:815). A question that only became possible with the rise of sin and evil.

⁶⁵ Where for the masses the "need for salvation is an expression of some distress" – which holds for all 'ideas of justice' as mass religion – the fortunate, Weber claims, search for a 'psychic comfort', a self-legitimation of their good fortune (491-2). When the fortunate turns to religion, it is for a justification of "the *right* to this happiness, the consciousness that he has earned his good fortune" (491, my emphasis).

⁶⁶ Weber understands the 'rationalisation of religiosity' especially as a 'bourgeois' effort. They transfigure the a-moral gods of the peasant into "ethical powers which will rewards good and punish evil" (1179). These ethical needs rise not just from intellectual needs for self-justification, but also, according to Weber, from the material need for calculation and obligation – the growing "importance of the reliability of the given word" (430).

⁶⁷ 'Good works', Weber argues, concern the 'concrete intent' of a particular action, without the view that there is some general "uniform quality of personality" behind it in contrast to "individual actions as symptoms and expressions of an underlying ethical total personality" (533, 1199).

⁶⁸ The doctrine of predestination, according to Weber, is the intellectual answer to the problem of theodicy in that the world is rational and just from the viewpoint of God, but it may be irrational from the viewpoint of human beings (572). As such, we see that the intellectual quest turns out to be *irrational*, in the sense of

universal institution into a 'community of saints' from which one can be rejected (1204-7). The intellectual search for true religion, then, is what explains why symbolic appearances and magic sufficed less and less and why, in contrast, true knowledge of the relation between oneself and a rational God is what really matters. What really matters is who we truly *are* in relation to goodness and sin.

Guilt is born with the factual truth of a rational God. One is not just guilty when one behaves unethical but also when one has impure thoughts or inclinations. Sin is no longer about what you do, but who you are. This type of guilt, Weber argues, is also present in 'modern secular man' (576). In the direct analogy to rationalised religion, we might say that the knowledge of a rational God is replaced with the knowledge of a rational social order. "Not that he has *done* a particular deed, but that by the virtue of his unalterable qualities ...he 'is' such that he *could* commit the deed – this is the secret anguish borne by modern man" (576).

The intellectual attempt to recapture the original charismatic meaning of religion also explains how individuals find existential meaning in terms of self-discipline. By submitting oneself to rigorous rational rules an individual can prove himself and find dignity in terms of his *vocation*. Weber traces such self-discipline and self-justification from the '*world-fleeing*' bodily suffering of the ascetic (1143, 538) to the rationalised total-order of the monastery (1172-3)⁶⁹; from the monastery to the '*inner-worldly*' rationalised ethic of the Protestant (543)⁷⁰; and from the Protestant ethic to the *secular* rationalised vocation of modern man, especially the bureaucrat (1200, 2001:124-5).⁷¹ In

undercutting its own understanding as God becomes incomprehensible. Furthermore, Weber claims "[i]t is a 'merciless' attitude because there is no significant 'forgiveness'" (576).

⁶⁹ The ascetic monk, notably the Jesuit, who subjects himself to a rational asceticism in the form of "an exclusively disciplinary method" is for Weber the "first *professional*" (1172). He "lived in a methodical fashion, he scheduled his time, practiced conscious self-control, rejected all spontaneous enjoyments and all personal obligations that did not serve the purposes of his vocation." (1172-3). Nevertheless, monastic asceticism does not necessarily have to become methodically rational, that is acquiring charisma through 'methodical practices'. Weber sees also their artistic and scientific non-economic achievements as having a different charismatic foundation by being extraordinary (1169).

⁷⁰ Where the world-rejecting ascetic tries to transcend the temptations of the world and the body by withdrawing from it, in a literal sense, the inner-worldly ascetic sees the sinful world as a place in which he has to prove himself – the realm in which he has to prove his 'religious charisma' "by means of rational ethical conduct" (543). The Protestant ethic is rational in the sense of systematic conduct and of a "rejection of everything that is ethically irrational, aesthetic, or dependent upon his own emotional reactions" (544). It produces a religion devoid of magic and life as a 'vocation', i.e. a self-conscious duty found in a calling (1199). It is possible to read Foucault's work as a critique on Weber's preoccupation with Protestantism. Foucault argues that the counter-reformation of the Catholic Church yielded the same kind of self-disciplinary mechanisms (1978; see also Taylor 1984).

⁷¹ Weber famously traced the historical origins of the modern 'capitalist spirit' – but not capitalism itself – to the rise of this Protestant ethic (Weber 2001 [1920]). Much has been said about this thesis, even in Weber's own days (Radkau 2011:96; see also Giddens 2001:xviiiiff.). The Protestant ethic, for sure, is not the cause of capitalism nor is capitalism the source of this religious ethic. Both religious and economic spheres have their autonomous dynamics. Weber's main point is that the "rigorous ethics of bourgeois rationalism" (1194) – an ethic favourable to capitalism – has a religious origin that disintegrated in modern capitalism but not the ethic

other words, individuals can find meaning and dignity by disciplining themselves in terms of rules prescribed by a rational order or rational God. Weber signals the rise of disciplined modern man with an inherent “sense of duty and conscientiousness” (1149-50) and a sense of calling (958). Self-justification is once again based upon self-denial. Actors find dignity in a calling and the *knowledge* that they *are* virtuous, that they *are* a dutiful bureaucrat or a law-abiding citizen and that they possess a healthy sexual relationship and lifestyle. It is not what others might think of them, it is what they know to be true about themselves. Important, however, is that one expects the knowledge to which one disciplines oneself is rational. One does not find dignity by submitting to useless or irrational rules – one would rather feel stupid or embarrassed.⁷² And as such, we can see the important difference with honour, for which the demand of usefulness is rather unimportant.⁷³

The dignity of vocation explains why the bureaucrat does his *duty out of duty sake*. It is a form of self-justification in a rationalised cognitive world. Self-justification by ascetic self-discipline spreads from the monastery into general society with the rise of a cognitive rational order and the intellectual need for meaning. It is in these terms that we can understand Weber’s disenchantment thesis as the *bureaucratisation of society*. Foucault argues along similar lines how disciplinary techniques leave the confines of specific institutions and “spread throughout the whole social body, the formation of what might be called in general the disciplinary society” (Foucault 1995:209). For sure, Weber is aware that finding meaning in individual vocation does not come easy as the intellectual paradox remains present in secular life and easily slips into scepticism or despair.⁷⁴ The ‘need for meaning and experience’ can therefore also result in different means to cope with a disenchanted reality. However, these methods are ‘world-fleeing’ or necessitate intellectual death.⁷⁵

of duty itself (2001:124, 259, see also Ewing 1987:502). Indeed, the bourgeois reformers did not conflict with the church because of the church’s difficulty for coping with the needs of capitalism, rather the reformers thought that “the religious penetration of worldly life ...did *not go far enough*” (1194, 1197). For Weber, this means that Protestantism “produced a capitalistic ethics, although unintentionally” (587). “[T]he specific discipline of the sects bred the capitalist spirit and the rational ‘professional’ who was needed by capitalism.” (1210)

⁷² The ascetic “will always demand of the world an ethically rational order and discipline, corresponding to his own methodical self-discipline” (549).

⁷³ Weber opposes modern ‘men of conscience’ to traditional ‘men of honour’ in terms of a struggle that “affects the most intimate aspects of personal culture” (1002).

⁷⁴ Modern men “crave not only religious experiences, but experience as such”, Weber argues, while their “method of emancipation from intellectualism may well bring about the very opposite of what those who take to it conceive as its goals” as “the spheres of the irrational, the only spheres that intellectualism has not yet touched, are now raised into consciousness and put under its lens” (1958b:143). Also in Foucault the intellectual paradox holds that our emancipation from dominant discourses often leads to its opposite (1978:5-7).

⁷⁵ Besides the meaning of duty for duty’s sake Weber discerns: 1) *escaping from the world* in forms of mysticism, especially the “tendency toward flight into the irrationalities of apolitical emotionalism” (600). This escape tries to recapture magic in terms of *private experience* – the celebration of the ‘intimate’ – which can be religious, sexual or concern experiences of brotherhood and solidary love (1958a:128; 1958b:155). We are readily reminded here, of the contemporary debate concerning the importance of ‘authenticity’ in modern life

Only when existential meaning is found in a conscientious performance of one's duties can we explain the normativity of legal rationality.

In conclusion, for all *forms of discipline* it holds that because the actor *proves himself* in relation to what is cognitively expected to be true he is able to justify himself and finds personal dignity and meaning. A proof that concerns a form of *self-denial*. And because the actor perceives himself meaningfully in terms of an order that is expected to be factually true, the actor claims that this order *ought to be true*. Because the bureaucrat finds meaning in vocation he does not only expect the rules to be rational, they ought to be rational. Subjective validity, then, does not so much arise from extraordinary emotional rituals and truth-experience, as from the actor's own meaningful perception of Self in externally guaranteed relations. The normative expectations of the social order are based upon *self-justification*. Whereas charismatic revelation is a "revolutionary power from within" changing our worldview, the logic of legality and bureaucracy is for Weber a 'revolution from without' changing the 'inside', i.e. changing who we are (1117; 1002; 1116). Modern bureaucracy, Weber confirms, developed a "moral discipline and self-denial, in the highest sense", without which "the whole apparatus would fall to pieces" (1958a:88,95). What Weber failed to address explicitly, however, is that this external revolution in terms of self-discipline holds for all ideal-typical forms of legitimate domination.

The gaze of the omnipotent	The public gaze	Conscience
Fear	Shame	Guilt
Faith	Honour	Vocation

Table 3.3 – Different types of self-discipline

3.7 Conclusion: Weber's Sociology of Legitimate Domination

In conclusion, how should we understand political legitimacy in Weber's sociology? First, legitimacy from the perspective of social action (*Handeln*) concerns subjective value-rational commitment towards a socially objective valid order of legitimate domination. Such value-rational agreement explains the inner-sanctioned duty to obey socially institutionalised normative expectations. Second,

(Guignon 2004; Lindholm 2008); 2) giving up one's intellectual needs altogether. This '*intellectual sacrifice*' is not so much about the *faith* of the masses, but rather about 'acceptance' and material happiness for its own sake (2001:124). Weber invokes Nietzsche's 'last man', which in Nietzsche's account 'invented happiness' (1958b:143; Baehr: 2001:160). The 'last men' have given up their inherent humanity characterised by the inner-tension between 'beast' and '*Übermensch*' (Tanner 2000:58). It seems that also for Weber the essence and beauty of humanity is exactly this inner-tension, man as *Mangelwesen* (1958b:148). Finding comfort in material satisfaction, then, is giving up the essence of being human; 3) Weber points out that the intellectual might not solve the problem of meaning in modernity. For this intellectual, and maybe for Weber himself, all that is left is *despair* and 'bitterness' (1958a:128).

we have seen that from the perspective of a meaningful 'being-in-the-world' (*Existenz*) a legitimate order might validate these normative expectations in extraordinary rituals of proof which explains subjective normative validity (truth) by the sheer experience of the eternal or the absolute. Finally, subjective ideal-values, I have argued, cannot only be explained by extraordinary experiences in rituals of truth-finding, but also by mechanisms of self-discipline and self-justification in relation to externally guaranteed cognitive factual truth. We might say that in the former the source of normativity is outside the actor (moving his inside), while in the latter the source of normativity is internal to the actor (disciplined to the factual outside).

Subjective ideal-values, then, can be explained differently from the perspective of *Existenz* but this different explanation does not matter for legitimacy in the perspective of *Handeln*. The disturbing conclusion must be that social practices of discipline explain, at least partly, political legitimacy even if we can analytically distinguish between objective external guarantees (force, social factuality and factual knowledge) and subjective self-justification (self-discipline and proof by self-denial), on the one hand, and between the negative form of self-discipline (fear, shame and guilt) and its positive form (faith, honour and vocation), on the other. This conclusion, it seems to me, is precisely Weber's worry. Legal domination is characterised by a "careful avoidance of the use of authoritarian forms" (730). Although coercion does not disappear, all 'normal sentimental content' is drained from authoritarian relations (731). Such sentiments – which at least hold the possibility of emancipation – seem to disappear in the rational system as such, which means for Weber, that "the resulting system of domination is practically indestructible" (987).⁷⁶ This is the essence of his 'iron cage' or modernity-thesis. "For the last stage in this cultural development, it might well be truly said: 'Specialists without spirit, sensualists without a heart; this nullity imagines that it has attained a level of civilisation never before achieved'" (2001:124).

However, before we accept Weber's pessimistic conclusions we should make two final observations. First, we have to distinguish carefully between, on the one hand, charismatic, traditional and legal *types of social orders* as part of a larger modernisation process – i.e. of a historical rationalisation and disenchantment process – and between charismatic, traditional and legal *sources of legitimacy* that explain the normative validity of a specific empirical order of legitimate domination, on the other (263). Weber readily admits that tradition still plays a role in modern society even if it is no longer a traditional order (337). In his fragmented comments on modern democracy we also readily recognise the role of charisma – e.g. the charismatic origin of democracy (867, 1209), charismatic revelations in elections or acclamations (706, 1124, 1146, 1451)

⁷⁶ Weber warns: "A legal order which contains ever so few mandatory and prohibitory norms and ever so many 'freedoms' and 'empowerments' can nonetheless in its practical effects facilitate a quantitative and qualitative increase ...of authoritarian coercion." (731).

and the charismatic political leader who gains emotional ‘devotion’ by acclamation and “the charisma of the tongue” (268-9, 1126, 1314).⁷⁷ When we move beyond Weber’s modernisation and disenchantment thesis, move beyond his ideal-type methodology, it seems to me that Weber provides a multi-dimensional *analytical framework* for understanding political legitimacy in political relations of domination.

The three sources of validity (truth) – revealed, traditional and rational truth – counterpose on some analytical dimensions but re-enforce each other on others. We can see, for example, how traditional and rational validity align where it concerns the *ordinary* expectations of everyday life, while charismatic validity, in opposition, implicates the *extraordinary*. Similarly, charisma and tradition both have a *magical* quality opposing the disenchanted *rationality* of legality, while legal and charismatic validity allow for *social change* as opposed to the *status-quo* of tradition. These counterpositions explain tensions and dynamics within an empirical order of legitimate domination based upon different and multiple sources of validity. Furthermore, Weber’s framework also describes the relation between these sources of validity in terms of specific human *needs* or motives. The relation between revealed and rational truth, as we have seen, is where he locates *intellectual needs* to understand the meaning of life. The relation between legal rationality and tradition is, in contrast, grasped in terms of *material needs* – securing material stability and calculability (253).⁷⁸ Finally, Weber analyses the relation between traditional and revealed truth, as we have seen, in terms of institutional dogma or institutional grace. It might not be too farfetched to understand this relation in terms of a need for some form of normative security – the need for a ‘permanent habitus’ or *normative worldview* (536). The full force of Weber’s analytical model of the sources of legitimacy is depicted in *figure 3.1*.

⁷⁷ Others have pointed out how the Movement and the ‘counter-culture’ of the 60s and 70s can be analysed as an intellectual attempt to recapture the original charisma and meaning of democracy (e.g. Roth 1975). This counter-cultural revolution can be understood as the spread of the *problem of meaning* through society (see Anderson 1995 for an excellent description of this period). This problem seems no longer just a problem of intellectual elites but of citizens at large. Inglehart famously traces this post-materialist culture and personality to the rise in education, welfare, and media (1977; 1990; 1999a; 1999b). For sure, many citizens are still materialists in Inglehart’s terms but the rise of post-materialism explains the modern emphasis upon ‘the quality of life’, upon “belonging, esteem, and self-realisation”, and upon ‘aesthetic’, ‘intellectual’ and humane values. For Inglehart, this culture explains why deference to authority has declined – “a decline in the legitimacy of hierarchical institutions” (Inglehart 1977:3-5, 42). From a Weberian point of view, however, this is not necessarily the case.

⁷⁸ According to Weber charisma does not deal with ‘want satisfaction’, with needs of stability and calculability, but only with “extraordinary need, i.e. those which transcend the sphere of everyday economic routines” (1111). This ‘anti-material’ character of genuine charisma, means for Weber that charisma only exists in its birth – ‘*in statu nascendi*’ – destined to succumb to processes of ‘routinization’ (*Veralltäglicung*) (246, 1120).

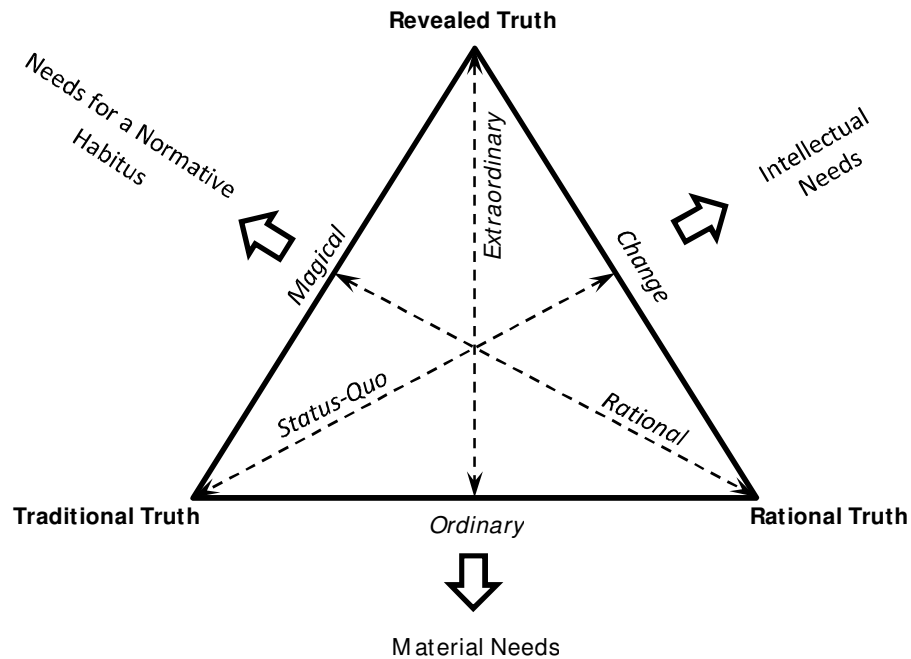


Fig. 3.1 – Weber's multidimensional analytical framework of *Existenz*

Weber, then, provides us with an analytical framework of understanding legitimate political domination that is more complex, dynamic and multifaceted than his pessimistic modernisation thesis wants us to believe. This does not mean that this thesis is incorrect, it means that if we want to understand legitimate domination in modern society legality is not necessarily the sole answer.

The second observation we should make concerns the fact that Weber solely understands politics in terms of domination – at least with regard to questions of legitimacy. There is no reason why we should accept this reductive perception of politics. When we analyse different *natures of legitimate politics*, we might find different *faces of political legitimacy* – faces that might yield more optimistic conclusions. Although Weber's sociology, in this reconstructed model, provides us with a very potent and compelling analytical framework for understanding political legitimacy, it is not the sole or the final answer. Weber's framework needs to be enlarged with difference faces of political legitimacy.

Finally, in figure 3.2 we can see the full reconstructed analytical framework of Weber's sociology. The figure is subdivided in four quadrants constructed by the two fundamental differentiations in Weber's work: subjective/objective validity and *Handeln/Existenz*. In the *lower-left* quadrant we analyse how actors subjectively orient to generalised expectations of legitimate domination, while in the *upper-left* quadrant we analyse the stability of a political order in terms of internal guarantees. In the *upper-right* quadrant we also try to explain stability but now by analysing how an objectively valid order is externally guaranteed and how it proves its claims to legitimacy.

Here we are not so much interested in the social validity of legitimate domination, as in its validity (truth). Finally, in the *lower-right* quadrant we analyse how externally guaranteed cognitive truths or extraordinary rituals of proof explain subjective ideal-values as a form of self-justification. This, it seems to me, is what our attempt to reconstruct Weber's theory amounts to.

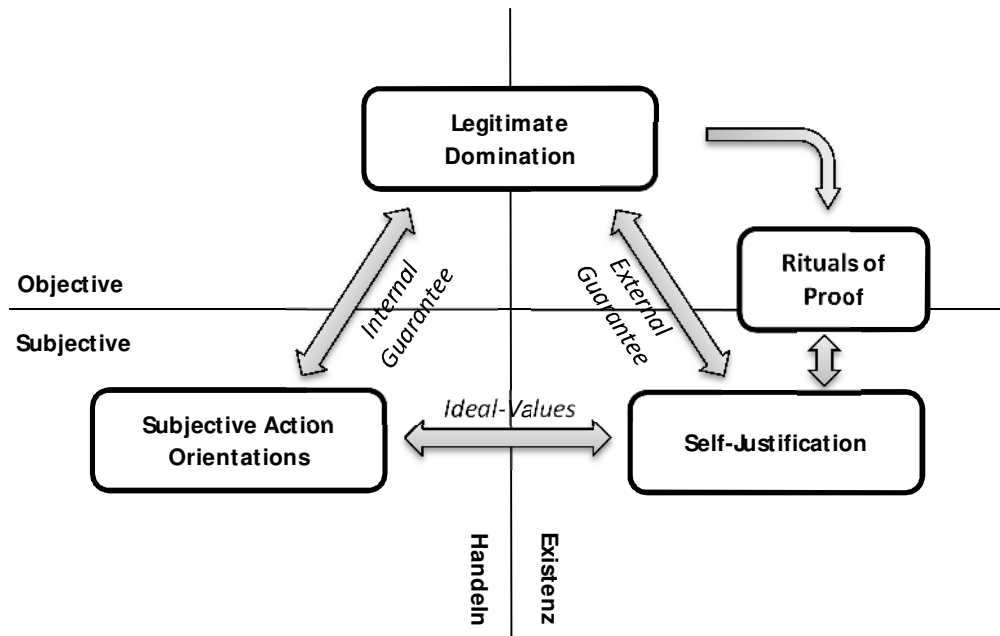


Fig 3.2 – A reconstructed model of Weber's sociology of legitimate domination

Chapter 4

Politics as Conflict: Support and Dramaturgy

Politics is not only about domination, but also about conflict. As an object of analysis we already defined politics, in most general terms, as being intrinsically conflictive (see chapter 1). We also claimed that the autonomy of politics as a value sphere rests upon the necessity to make sovereign decisions for collective action under conditions of conflict and uncertainty. To this extent, the nature of politics as conflict and as domination – sovereignty – are not inherently in opposition. Indeed, in our discussion of the classic liberal normative theorists these concepts are intrinsically related. Especially in the natural law tradition of Rousseau and Hobbes, the legitimate sovereign is a solution to the ‘war of every man against every man’ in the state of nature (Hobbes 1985 [1651]:184). At the same time, we have also seen that this creates what we have called ‘the problem of order’. Legitimate domination as a solution for the conflictive *nature of man*, might therefore be interpreted as a shift from horizontal social conflict to vertical political conflict, i.e. to a conflict between ‘state’ and ‘society’, which preoccupied Locke among others.

When politics as domination and as conflict are not necessarily exclusive, it can nevertheless be argued that emphasising the conflictive nature of *legitimate politics* might yield a different understanding of political legitimacy. In the contemporary normative debate this seems to be exactly the claim of scholars like Mouffe (1989, 1999, 2005a, 2005b). Mouffe tries to criticise the liberal tradition that might not deny the conflictive nature of politics as such, but does deny the legitimacy of conflict.¹ Liberalism invalidates conflict and faction in favour of consensus and the common good. Outside this normative debate, however, there does not seem to be one general or dominant empirical theory that tries to understand political legitimacy on the basis of the conflictive nature of legitimate politics. The empirical debate is very diverse and fragmented. Nevertheless, we might perceive the general contours of a tradition that we label as *democratic realism* – a tradition that includes pluralism, neo-pluralism, neo-Marxism, cybernetic system theory, as well as welfare-economics and the contemporary debates concerning ‘output-legitimacy’. In this chapter I will analyse this tradition with the main goal of understanding what political legitimacy means if we start from the presumption that the nature of legitimate politics is conflict.

¹ This justified critique on the liberal normative project seems to explain the contemporary interest in the works of Carl Schmitt, but, in my opinion, hardly the importance of these works themselves.

4.1 Democratic Realism: Dealing with Weber's legacy

We can understand democratic realism as a theoretical tradition that tries to deal with the problematic legacy of Weber where it concerns modern democracy. This legacy, I argue, contains: 1) the inevitability of conflict in modern society; 2) the problem of rational politics; and 3) the problem of democratic stability.

First, if we have claimed in the previous chapter that legal domination is based upon expectations of *instrumental* rationality, this does not deny the fact that Weber also perceives different social 'value spheres', which all have their own specific *logics* and *values*. To this extent, the primacy of instrumental rationality does not mean that there is only one type of reason. Weber at least discerns the value spheres of science, religion, law (or 'jurisprudence'), aesthetics, art, religion and, indeed, of politics (2004a:9-10, 18-9, 29). For Weber, the *internal* demands, rules and methods of each social sphere are *instrumental* to their specific value – their specific 'god' – while at the same time these ultimate values are disenchanting, i.e. have lost their magic or inherent validity (2004a:23). While this might generate problems of validity, we have seen in the former chapter that processes of 'self-discipline and self-denial' can explain the subjective validity of instrumental rules for 'their own sake' (2004b:54; 2004a:12). A different problem, however, is that there is no longer a single value or truth that transcends these different value spheres, these different logics and different gods. Modernity, according to Weber, is not only disenchanting, it is also inherently conflictive – "the conflict between these gods is never-ending" (2004a:27).

Second, modernity understood as "this conflict between the gods" has direct implications for the political value sphere. When politics makes binding decision or 'value judgments' for the collective, it is inherently confronted with this 'insoluble struggle' between 'different value-systems' (2004a:22-3). For Weber, this means, on the one hand, that politics is itself conflictive, i.e. politics is "to strive for a share of power or to influence the distribution of power" (2004b:33). According to Weber this is especially the case for modern 'mass-democracy' with its characteristic political 'party machines' 'pursuing interests' and 'fighting' for votes, funds and power (1978:284-5,1396; 2004b:54,58,62).² On the other hand, this means that the rationality of the political value sphere itself seems threatened. Although it is not true, as Habermas states, that Weber's vision of positivist

² Weber explicitly contrasts mass-democracy or 'plebiscitary democracy' with genuine *herrschaftsfremde* democracy which concerns the levelling of relations of domination, while the 'decisive aspect' of modern democracy is "the *levelling of the governed* in face of the governing" (1978:266-7,985; 2004b:62). Mass democracy, for Weber, 'inevitably' entails bureaucracy (1978:983), while genuine democracy is opposed to the 'rule' of bureaucracy (991). Besides, the 'free mandate' of representation (293) is for Weber a form of domination as the representative is no longer the 'servant' but the 'chosen master' (1128). Representation does not mean democracy but rather 'aristocracy' (1978:296, see also Manin 1997). Finally, the inevitability of the party machine in modern democracy explains, for Weber, a further kind of disenchantment: the "spiritual proletarianization" of its followers – the 'loss of their souls' (2004b:74).

law must “feed on legitimate lawmaking” we could argue that the ‘rationality’ of legality is threatened when politics itself is an irrational process of decision-making (Habermas 1996:169). For Weber, the two ‘mortal sins’ of politics are “the lack of commitment to a cause and the lack of a sense of responsibility” (2004b:78). Weber fears the ‘emotional exploitation’ by the ‘demagogue’ who ‘woos the masses’ and strives for ‘power for its own sake’ reducing politics to meaningless theatre (2004b:61,67,78).³ Politics, then, needs a ‘purpose’ – a ‘cause’ which, to this extent, reduces politics to an *instrument*, a means.⁴ When politics is meaningless without commitment, Weber also fears a ‘pure ethics of conviction’ in which actors “take no responsibility for the *consequences* of their actions” and remain “ignorant of the satanic powers that are at work” in the real world (2004b:91). Without an ethic of conviction and without an ethic of responsibility politics, for Weber, becomes meaningless or irrational. To solve this problem of political rationality Weber puts his hope upon “the ‘strength’ of a political ‘personality’” to combine the two ‘antitheses’ (2004b:78). A rational political leader is a leader “who acts in harmony with an ethics of responsibility”, but who upon reaching a certain point will say: “Here I stand, I can do no other” (2004b:92).⁵

Finally, mass-democracy, according to Weber, inherently “means the division of all enfranchised citizens into politically active and politically passive segments” (2004b:54). The passive supporters, moreover, are hoping to obtain ‘rewards’ from politics (2004b:62). This instrumentalisation of politics problematises the stability of democracy. As already discussed, Weber argues that a political order might be internally guaranteed by strategic actions, but that such guarantee is based upon *cognitive* and *conditional* interests. Weber argues therefore that the stability of a political order must ‘in addition’ be guaranteed by *normative* and *unconditional beliefs* (1978:213). Although Weber is able to explain such beliefs in relation to politics as domination, he fails to explain them directly in relation to politics as conflict.⁶

³ Interestingly, Weber seems to argue that striving for power for power’s sake makes politics a ‘meaningless activity’ (2004b:78) whereas “science for its own sake” is precisely what explains science as a vocation (2004a:12).

⁴ Weber seems to hint that this purpose might also concern ‘canonised reasons of state’ especially understood as a general cultured belief in *progress* (1978:979). However, the meaning of progress is inherently paradoxical since the life of the individual is “placed into an infinite ‘progress’” which means that “true meaning is always one step ahead” (1958b:139-40).

⁵ In addition it seems that Weber thought that a *critical science* could force politicians towards “clarity and a sense of responsibility” (2004b:27).

⁶ As such, Habermas is only partly right when he claims that because Weber emphasises “the rationally irresolvable pluralism of competing value systems and beliefs” he cannot provide a justification for the “rational value-oriented foundations of the belief in legitimacy” (1975:100). Weber can explain it, but not upon conflict itself. In case of democracy, indeed, Weber not only mentions the hopes for instrumental ‘rewards’ but also the intrinsic rewards of ‘personal devotion’ to a charismatic leader (2004b:62).

The tradition of democratic realism, tries to deal – implicitly or explicitly – with this legacy of Weber. What foremost binds this tradition together, however, is that it tries to find solutions for the problems of democracy – the problems of conflict, rationality and stability – by a general *economisation of political theory*. Indeed, the market and economic theory seem to promise answers of how interest conflicts can still yield a rational and stable social system. Democratic realism, to this extent, is a continuation of the classic liberal tradition we found in Madison, Smith, Hume, Bentham and Mill. We might say that the democratic realists construct a general economic model of democratic politics along the following idealised lines: (1) politics concerns the allocation of value, i.e. politics, in Lasswell’s famous definition, concerns ‘who gets what, when, and how’ (1958 [1936]); (2) this implies democratic politics is about interest conflicts and struggles for power; (3) the dynamics of political interest competition is organised by the institutional structure of representative democracy; (4) this institutional structure at least consists of a political labour differentiation between the political active and political passive; and (5) rational political output results as an unintended consequence from this political process – as a function of democratic competition and strategic-interest maximisation. The concepts of value allocation, interest competition, labour differentiation, unintended consequences and output-rationality readily testify the economic nature of this tradition.

If this is the general political model of democratic realism, we might in addition discern three analytical approaches within this tradition, each based upon a different notion of political conflict (see table 4.1). For sure, these approaches are often combined within a single theory, but they do allow us to organise the presentation of the broad tradition of democratic realism. This means, we can first discuss theories that perceive political conflict as interest competition in the direct analogy to the market. The main question of this approach concerns the rationality of the democratic process, while legitimacy is equalled with output-efficiency. Second, we can discern pluralist theories that understand political conflict foremost in terms of horizontal social conflict, i.e. in terms of social cleavages. The main concern is the stability and viability of democratic politics, while democratic legitimacy is understood in relation to output-effectiveness. The final analytical approach foremost centres on cybernetic system theory, in which political conflict is understood in terms of a vertical political conflict between ‘state’ and ‘society’. The primary question is the stability of the political system, while political output-effectiveness is thought to explain political support.

In what follows, I will examine these three analytical approaches of democratic realism and evaluate these understandings of political legitimacy. I conclude that this tradition fails to come up with a credible notion of political legitimacy (in terms of the analytical framework of this thesis), but that it does provide us the analytical tools to understand political legitimacy in terms of dramaturgy.

	The Market Analogy	Pluralism	Cybernetics
Type of Conflict	Interest Competition	Horizontal Conflict	Vertical Conflict
Main Concern	Rationality	Democratic Stability	Democratic Stability
Political Legitimacy	Output efficiency equals legitimacy	Output effectiveness allows legitimacy	Output effectiveness explains support

Table 4.1 – The three analytical approaches of democratic realism

4.2 The Market Analogy: Conflict as Interest Competition

The main thrust of the democratic realist tradition, incorporating many different schools of thought, is the explicit or implicit analogy between the economic and the political system. The market analogy seems promising where it concerns the relation between strategic interests and the public good and the relation between interest competition and market stability. Economic theory, then, seems to hold the answers that are so problematic for democratic theory: rationality, stability and validity despite inherent conflict. Modern welfare-economics merges the ‘private vice and public good’-mechanism of Smith and Hume with Bentham’s and Mill’s objective norm of utility. Market-actors are perceived as strategic-rational actors trying to maximise utility, while the public good arises as an unintended consequence from the competition between these actors. This public good, furthermore, is understood in welfare-utilitarian terms. Although there are many different utilitarian norms to judge the public good, the most potent of them seems to be Pareto-efficiency (Sen 1979:488-9).⁷ As such, with the risk of over-simplifying, we might say that the normative project of welfare-economics is to organise and regulate economic competition in such a way that the market is *rational*, i.e. the market is in Pareto-optimal equilibrium (Beckert 1996:806).

If this is the basic simplified model of modern welfare-economics, we recognise four facts that seem to problematise any direct analogy between politics and market. First, welfare economics perceives economic behaviour as a ‘revealed preference’ (Sen 1973:241;; 1977:322; 1992:495-8). This behaviouristic understanding must be explicitly separated from our action theoretical perspective. We should not so much object to the reduction of human action to strategic-action, as to the fact that in economic analysis behaviour is thought to ‘reveal’ strategic-rational action orientations of economic actors. The problem is not that people do not act strategically – they often do – the problem is rather that other subjective action orientations are dismissed *a priori* as irrelevant (Beckert 1996:804). Revealed preference theory, furthermore, is a tautological argument and therefore ‘normatively empty’ (Hubin 2001:451). Economic actors are pre-defined to be rational

⁷ The Pareto-rule states that if everybody prefers one social state above the other, it must be considered socially better (Sen 1976:217; 1977:319). The Pareto-rule not only includes the factual preferences of all but also a weak claim about moral-equality, i.e. nobody has the moral right to win at the cost of someone else.

utility-maximisers, which means that all behaviour *is* rational per definition and that only the market can be irrational.⁸ While such simplified understanding of human action might be a tool – although not a particularly successful one – for predicting market *behaviour*, it should caution us with respect to political *action*.⁹

Second, the public good arising as an unintended consequence is perceived in terms of the utilitarian norm of Pareto-efficiency. This objective norm as the legitimate goal of politics has been severely criticised in normative political theory. Rawls most famously criticised utilitarian justice because its distributional indifference fails to deal with social inequality (Kymlicka 2002:10).¹⁰ Indeed, equality of utility and preferences in a context of social inequality seems perverse from a normative standpoint. Social justice therefore often entails distributive claims implying zero-sum solutions instead of win-win solutions. On an even more fundamental level, Sen has shown in a thought-experiment that Pareto-efficiency and liberal values are not always compatible. From this ‘Liberal-paradox’ he concludes that Pareto-efficiency, and all other norms of utilitarian justice for that matter, cannot be the sole normative standard of social justice and political legitimacy in a liberal democracy (Sen 1970; 1976; 1974; 1979; 1992; 1993).¹¹ These fundamental attacks on Pareto-efficiency as a normative standard of validity have not resulted in a decline of its popularity in scholarly, political and public debate, to the contrary. These normative critiques therefore do not necessarily mean that Pareto-efficiency has no empirical value for political legitimacy, but we should at least be cautious that it is not normatively valid at face value.

Third, the objective norm of Pareto-efficiency concerns the validity of the market from an *outsiders-perspective*. The *internal validity* of the market is a far more complicated affair. A common explanation is that individuals accept the validity of the market because they perceive it to be in

⁸ Actors cannot escape rationality except through inconsistency as revealed preference theory must rely upon the idea of ‘internal consistency’ (Sen 1977:322-3). Internal consistency is nothing else than stating that if a person would choose X out of a set of (X,Y) then it is *inconsistent* that the same person would choose Y out of a set of (X,Y,Z). Sen provides several reasons why this idea of internal consistency at the core of traditional economics does not hold from which he subsequently argues that we must return to the original utilitarian idea of *subjective* utility-preferences (Sen 1992:495-502; 1973:247-252; 1977:322-5).

⁹ As Weber already tried to show, strategic-rational economic action is *not* a natural given but rather a cultural phenomenon (2001). Strategic-rational assumptions are not only descriptive of human behaviour but also prescriptive. Interesting, in this regard, is the on-going discussion whether students of economic science act differently in game-theoretical experiments than other types of students (e.g. Marwell & Ames 1981; Frank et al. 1993; Yezer et al. 1996; Haucap & Just 2010; Bauman & Rose 2011).

¹⁰ Sen additionally points out that the distributional questions are not only inter-personal, as in the work of Rawls, but also intra-personal, i.e. Sen points to the importance of time (1979:471).

¹¹ It sounds counterintuitive as *unanimity* or *win-win* sounds as a powerful reason to accept validity, but the problem lies in the distinction between just looking at preferences and looking at *why* people have these preferences and whether they should count (Sen 1976:239). The Pareto-rule is *context insensitive* and if justice demands us to be sensitive it forces us to consider additional *non-utilitarian information*. So, for example, from the perspective of the much analysed Prisoners’ Dilemma a Pareto-optimal solution hardly relates to intuitions of justice if we assume that one of the prisoners is innocent. Context matters.

their interest. However, this explanation does not hold. When market actors are said to act strategic-rational, they calculate the best action based upon (secondary) costs and benefits. In order to do so, they must perceive the market as a social-empirical *fact*. As such, they do not evaluate *the market* in terms of their preferences, rather, they evaluate their *actions* in terms of preferences and factually given interest-configurations. In short, from within the market questions of market validity are not 'thematized', in Habermas' words (1975:5, 19). When actors do thematize the normative validity of the market, they no longer act as economic-actors, but rather as political-actors. Again, this makes any simple analogy between market and politics problematic as the validity of the market is already a political judgement.

Fourth, it may, however, be argued that faced with a collective action dilemma Pareto-efficient solutions may also be an *internal* standard of validity. In Rational Action Theory (RAT) actors are not merely perceived as utility-maximisers in a factual interest-configuration, but as rationally reflecting upon this structure itself – taking a 'second order' perspective. As such, actors may agree that a solution in which everybody is better-off and which avoids the so-called *tragedy of the commons* is rationally valid. This solution, however, must be externally guaranteed as it is vulnerable to 'free riders', to disintegrating forces. In classical RAT, especially where it concerns anonymous markets, this external guarantee is transposed to political and legal domination. Ostrom argues therefore that "the theory of collective action is *the* central subject of political science. It is the core of the justification for the state" (1998:1, emphasis in original). In other words, the centrifugal tendencies of an efficient market are *contained* by the political system. This obviously makes an analogy to the political system problematic as there is no external authority upon which politics can rely. Modern forms of RAT, it might be objected, rely less upon external guarantees of political domination, but rather emphasise the role of social institutions and cultural contexts (Ostrom 1998) or even reintroduce moral commitments separate from subjective utility-preferences (Sen 1977:337; 1996:62; 1985:188). These theories resonate readily with the neo-institutional approach in economics that claims that we must perceive markets as being 'socially embedded' (Granovetter 1985; Beckert 1996, 2003; Kripner 2001). As Sen puts it, traditional economic theory "has too little structure" (1977:335). Modern forms of RAT therefore often assume that social and political institutions rise in functional evolutionary terms as effective solutions to collective action problems, uncertainty, complexity and information problems (Ostrom 1998:8; Beckert 1996:814). These institutions are themselves the result of unintended consequences, of 'trial and error', and not constituted by conscious agreement among rational actors. However, by now we might wonder whether the market is still a useful analogy or has itself become a very complex theoretical and empirical sociological problem.

In conclusion, if the analogy between market and politics has the potential of providing us with new insights into political legitimacy, we must acknowledge from the start that all too simple and direct analogies are unsatisfactory. Nevertheless, the Pareto-norm and the explicit economic analysis of politics has been, and still is popular in political theory. In what follows, I want shortly to examine the types of political analysis this approach yields.

4.2.1 The Economisation of Political Theory

The norm of Pareto-efficiency is clearly visible in the contemporary works of Scharpf and Majone. Their works might be labelled as 'post-democratic theory' as Habermas calls it (2012:12). Political 'output' is not valid *because* it derives from a democratic process, but the democratic process ought to produce rational efficient output, regardless of whether this process emphasises democratic 'input' or post-democratic expert rule (Scharpf 1996:6). 'Input' and 'output' perspectives upon democratic legitimacy, according to Scharpf, are two 'complementary perspectives' of the same "normative premise that legitimate government must serve the 'common good' of the respective constituency" (1999:6; 2006:2).¹² Despite the normative problems of Pareto-efficiency Scharpf understands this 'common good' in Pareto-efficient terms, i.e. 'win-win solutions' for collective action problems have 'intrinsic legitimacy' (1997:7,21; 1999:11; 2000b:103; 2006:3).

With Pareto-efficiency as an intrinsic legitimate norm the primary theoretical question of this democratic realist approach, analogue to the economic sciences, concerns the *rationalisation* of the political decision-making process. The fear of irrational politics, as we have seen, has a long tradition in liberal democratic theory, but this has not necessarily generated agreement about the underlying problems. In what follows, I shortly want to discuss different theories of democratic realists in which they formulate and try to deal with rationality problems of modern democracy.

The early democratic realists, following Weber, especially feared the irrationality of the *mass-democracy* and the irrationality of a *politics of conviction*. In his explicitly economised political theory Schumpeter, for example, tried to address the irrationality of mass-democracy. The 'extra-rationality' or 'irrationality' of the masses, Schumpeter claims, obstructs any rational political output as the masses "are terrible easy to work up into a psychological crowd and into a state of frenzy in which attempt at rational argument only spurs the animal spirits" (1976 [1943]:257). As such, representative democracy, he states, is "simply the response to the fact that the electoral mass is incapable of action other than a stampede" (1976:283). Schumpeter argues that we must therefore

¹² Scharpf also argues that the normative core of democracy is 'collective self-determination' (1996:6; 1997:19). Although this does play a significant role in his theory where it concerns empirical *legitimation* processes, collective welfare is the normative core of his concept of *legitimacy*. Nevertheless, Scharpf's work cannot simply be reduced to the market-analogy approach or simplistic notions of scientific expertise. In fact, as we will see, also pluralist and cybernetic approaches of democratic realism are simultaneously present in his work.

acknowledge that democracy in reality is not about 'government by the people' but 'government for the people' (1976:256). Democratic decisions are "not conform to 'what the people really want'" as decisions express not "a genuine but a manufactured will" (1976:251,263). Democracy is "the rule of the politician" in which "the will of the people is the product and not the motive power of the political process" (1976:285,263).

In Schumpeter's theory the rationality of democratic decisions is safeguarded by this 'division of labour' between 'voters outside parliament' and the 'politicians elect'. The 'primary function' of voters is to elect and to get rid of governments while the career politicians and political parties are in a "competitive struggle for power and office" – a competition for votes which 'fulfils its social function' "in the same sense as production is incidental to the making of profits" (1976:273,269,282). Schumpeter, then, defines the 'democratic method' as a rational response to the irrationality of the masses in which rational decisions rise as an unintended consequence from the competitive struggle between politicians. In Schumpeter's analysis, finally, political rationality can only be safeguarded to the extent that voters 'respect' the division of labour and "refrain from instructing" the elected representatives and to the extent that those "interests and ideals" are excluded from the political process "on which people refuse to compromise" (1976:295-6).¹³

That democracy is the "the institutionalised art of compromise" and that ideology and conviction are politically irrational was a claim widely shared in the 1940s (Smith 1942:2). Especially in the Anglo-Saxon world many scholars acknowledged the reign of 'philosophical scepticism' and 'political realism' (Pennock 1944:856). The popular English philosopher Joad, for example, concluded that democracy is "the least objectionable form of government ... accepted less for its own merits than for fear that worse may befall if it be rejected" (Joad 1938:770). The 'democratic procedure' at least promised 'reasonable compromise' (Hallowell 1944:157). But democracy as compromise was more than merely an expression of scepticism and realism. Compromise, others claimed, is not just a 'necessity of life', but any political system that does not rely on compromise is 'dictatorship' (Smith 1942:1-2). Without a doubt, the pressing need in these days to defend and validate the less-than-perfect reality of democracy against rivalling ideologies such as fascism and communism can be seen as an explicit or implicit backdrop of many of these theories. When some concluded that "no

¹³ We should, however, be careful not to reproduce the usual accusations of Schumpeter as an uncompromising elitist. Schumpeter's work on democracy has been too eagerly appropriated by American political sciences to represent a 'value-free' model of democracy without taking notice of the accompanying sociological theory (Medearis 1997:819). The democratic model Schumpeter provided can only be properly understood in relation to how he perceived capitalist development. Indeed, Schumpeter foremost tried to debunk the 'classic' notions of a rational common good, an informed, equal and independent electorate and democracy as rule by the people, in a complex society ravished by corporate capitalism (Medearis 1997; Elliott 1994). As such, he was not so much claiming that 'the people' are irrational as that the traditional notion of rationality in a complex society is naive, if not mere myth.

systematic defence of democracy is possible" (Joad 1938:770), others argued that if there is no common interest, then compromise is not only second-best but 'desirable' in itself (Smith 1942:1).

While post-war democratic realists readily agreed with these early democratic realists, that the essence of democracy concerns compromise between conflicting interests, they were less inclined to take over Schumpeter's realist standpoints. Schumpeter argued that professional politicians are expected to make rational compromises, but that the distribution of political power (votes) does *not* reflect the 'genuine' preferences of the electorate as those preferences are manufactured by "psycho-technics of party management and party advertising, slogans and marching tunes" (Schumpeter 1976:283). These, Schumpeter warned, are not mere 'accessories', but "the essence of politics". Post-war theory, in contrast, perceived democratic politics as a *neutral* means to maximise *pre-political* preferences as can clearly be seen, for example, in Downs' market model of political party competition (1957), which is still widely used as the basic model for electoral analysis.

Downs wondered that if democracy is to 'maximise social welfare' "what reason is there to believe that the men who run the government would be motivated to maximise it?" (1957:136).¹⁴ To answer this question, Downs claims that we must understand democratic politics in the direct analogy to the market model. Just as the driving force of economic 'efficiency' is man's "desire to earn income, not by any desire to benefit others", political efficiency must be based upon such motivational force as well (1957:136). Therefore, he presents a formal economic model of representative democracy – 'a general equilibrium theory' – that assumes that party competition and a self-interested electorate would result in actual political representation of the most commonly felt interests. Downs agrees with Schumpeter that 'government' is "an entrepreneur selling policies for votes", but disagrees about the irrationality of the voter (Schumpeter 1976:285; Downs 1957:137). The voter, for Downs, is a rational utility-maximiser who "estimates the utility income from government action he expects each party would provide him if it were in power in the forthcoming election period" (1957:138).¹⁵ What ensures a *rational representation of interests*, then, are two processes perceived in the direct analogy to the market: the competitive struggle of political parties for 'income, prestige and power', on the one hand, and a strategic-rational exchange between voters and politicians or between votes and influence, on the other.

Downs' attempt to provide an economic model of democratic politics should, in my opinion, not so much be understood as some naïve idealisation of democracy. His aim is to model the

¹⁴ Downs explicitly acknowledges that Schumpeter was one of the few who actually addressed this problem (1957:136). He also admits that 'social welfare' is a controversial standard for rational politics: "it is not clear what is meant by 'social welfare', nor is there any agreement about how to 'maximize' it" (1957:136).

¹⁵ Which means, according to Downs, that the voter must evaluate political parties *retrospectively* (1957:138).

irrationalities of democratic politics. He tries to show that in conditions of ‘imperfect knowledge’ “inequality of political influence is a necessary result” as it allows ‘specialists’ to bias opinion and that this political inequality explains why subsequent political decisions are less than optimal in social welfare terms (1957:137,139-41). Furthermore, Downs argues that it is not rational for voters ‘to acquire political information’ as “the trivial costs of procuring information outweighs its return” (1957:147).¹⁶ The less than optimal output of the democratic process, Downs concludes, is a *collective action problem* in itself as it is rational for the individual voters to be collectively irrational (1957:148).

Notwithstanding these rationality problems of democracy, Downs provides the dominant welfare-economic model of democratic politics – a model in which rational output is evaluated by norms of welfare efficiency and in which the democratic process is subsequently evaluated by its ability to produce rational output. This general model also informs the theories of Scharpf and Majone. But where Downs tries to rationalise the ‘input-side’ of democracy, they directly try to rationalise the ‘output-side’. Indeed, Scharpf claims that democratic input understood as ‘majority rule’ is “generally not welfare-efficient” (1997:20). He argues that a majority-rule only yields welfare-efficient output if voters are not strictly ‘rational self-interest maximisers’ (1997:20), but are “at least in part, oriented towards a notion of the ‘common good’” (1999:20). As a consequence, Scharpf argues, democratic input-processes will only yield rational output if a “pre-existing sense of community” exists – a form of solidarity that explains the taming of strategic self-interest. If such solidarity is not available, different solutions must be found to rationalise democracy.

Disregarding the question of whether we think this argument is compelling – it is not – for Scharpf it means that to ensure output-rationality democratic institutions must be rationalised.¹⁷ He takes the Madisonian model of checks and balances as the primary example of how procedural and institutional rules – mixed constitutions – limit majoritarian will formation and enlarge the possibility that political decisions will be welfare-efficient (1999:6; 1970:21; 2006:3). An open pluralistic political process with many veto-points ensures, according to Scharpf, that political conflict will yield Pareto-efficient solutions as an unintended consequence (1999:19-20). Veto-points assure that the

¹⁶ Also the economic argument that it is ‘irrational’ to vote, seems to resurface time and again. We might wonder what it means for the economic model of politics that people continue to vote nevertheless. Does it indicate that the economic model is not an accurate description of voting behaviour, i.e. voters are not utility-maximisers? Or does economic theory reduce strategic-rationality too much towards material self-interested preferences? In any case, we should at least admit that voting might not just be understood in future-oriented instrumental-preferences, but also in terms of present-time expressive-preferences (see below).

¹⁷ If strategic utilitarian action is presumed, this traditionally begs the question of why people would not be *self-interested*. It forces us to explain why the interests of others are inherent to the preference function of the strategic individual. Not only might we criticise the tautological presumptions concerning strategic action underlying this model from our action theoretical perspective or that other-regarding action can solely be explained by pre-political solidarity, but more importantly, even model-intrinsic it can be shown that between self-interested and other-regarding ‘games’ strategic actors might play an ‘assurance-game’ (Sen 1996).

final decision will at least not make the actors involved worse-off as long as actors are willing to find a compromise.¹⁸ However, such decision-making process of ‘power-constraining’ checks and balances comes into conflict with another norm of output rationality: problem-solving effectiveness necessitating ‘action-enabling’ institutional arrangements (Scharpf 1970:24; 1999:13; 2006:3-4).¹⁹ The demand, not only for welfare efficient but also effective institutional arrangements, pushes Scharpf’s argument towards post-democratic expert rule, an argument in which he is indebted to the works of Majone.

Majone claims that traditional democracy is not a rational mode of government in the complex conditions of late-modernity as it can neither produce credibility nor effectiveness (Majone 1999:5). Democratic accountable politicians fail to produce the credibility and effectiveness demanded by the market and society as they cannot credibly commit to long-term policies. Democratic rule, according to Majone, is ‘government *pro tempore*’, i.e. majoritarian rule cannot guarantee ‘policy continuity’ as government cannot bind the will of future governments let alone of the future majority (Majone 1997:153; 1999:4; 2000:288). In addition, as politicians cannot be shielded from the short-term preferences of their electorate they have “few incentives to develop policies whose success, if at all, will come after the next election” (Majone 1997:153; 2000:288). “‘Short-termism’ and poor credibility”, according to Majone, are the irrational and ‘intrinsic problems’ of democracy (1999:4). If democracy cannot effectively solve long-term collective problems, it must be *rationalised*, according to Majone, by insulating “policy-making power” from the democratic process (Majone 2000:289; 1997:153). Decision-making power should be transferred to the experts in bureaucratic agencies and policy networks.

For this normative argument to hold, however, a “normative consensus on the validity of certain norms, or the desirability of certain outcomes” must be presumed (Scharpf 1997:21, 1999:16; Majone 1997:161). Output-rationality, Scharpf argues, is not about ‘technical rationality’ but about ‘political-democratic rationality’, which means it must be intrinsically related to the common interest (1970:26). Expert-rule, then, is a type of *exchange relation* – a ‘contractual arrangement’ (Majone 1997:147) – between the people (or their representatives) and non-democratic institutions. To counter the danger of ‘technocratic paternalism’ (Scharpf 2000:116) this contract, Majone argues, must have its own “forms of control and accountability”, i.e. ‘accountability by results’ (Majone 1997:147,157; 1999:10). Through monitoring mechanisms such as “ongoing legislative and executive oversight, the budgetary process, judicial review, citizens’ complaints, and peer review” these expert

¹⁸ As such we should clearly differentiate between Pareto-efficient and Pareto-optimal output. The latter is in no way guaranteed by a decision-making process characterised by veto-points.

¹⁹ Majority-decision procedures, then, can be defended after all upon output-oriented arguments as it breaks with power-constraining demands of consensus (and the ‘*volenti non fit iniuria*’ principle) (Scharpf 2000b:103).

institutions, it is claimed, acquire ‘*ex post*’ democratic legitimacy (Majone:1999:14). Even if we accept this dubious normative argument, it is clear that a *contract* between society and politics based upon consensus, no longer seems to deal with political conflict.²⁰ In their attempt to rationalise democratic decision-making, political conflict seems to have disappeared altogether. We might say, conflict is no longer perceived as the *essential nature* of legitimate politics but as an *irrationality*. Rational, valid or legitimate politics is based upon consensus after all.

This emphasis upon consensus does not mean that Scharpf or Majone hold on to some archaic ideal of science or expertise. The idea that policy expresses maximised utility calculated by ordering all preferences and subsequently calculating optimal utility functions is an obvious myth. However, as late as the 1950s such *realism* still needed to be introduced into the policy sciences. Lindblom argued, for example, that policy formation is better described as ‘muddling through’, i.e. as incremental policy adjustments (1959; 1979). The idea that expertise yields unquestionable *optimal* welfare-efficient policy is not an accurate description of reality. Instead, both Scharpf and Majone understand expert rule more realistically in terms of ‘policy networks’ (Scharpf 1999:20; Majone 2000:297). Rationality, then, is not so much anchored in scientific method per se, as in the learning capabilities of the network itself, i.e. in the decision-making process. For Majone, this implies that these expert networks should be coordinated by ‘a common regulatory philosophy’, ‘mutual trust’ and some shared identity instead of a “bargaining style of decision-making” (Majone 1997:162). Also Scharpf points to the contemporary discussion that policy networks might enhance the possibility of rational decisions by consensual norms of deliberation (Scharpf 1999:20; see also Cohen & Sabel 1997; Héritier 2003; Papadopoulos 2003; Skogstad 2003). But if this means that policy networks are no longer about interest bargaining and compromise, but rather about argumentation that will ideally reveal the common good, conflict once again seems to have disappeared. Conflict only seems to be a temporary aberration until rational consensus reveals itself again. However, we need to be careful not to reproduce the dichotomy or dualism of conflict and consensus. What Majone and Scharpf try to show, is that we need not reduce politics *in practice* to outright conflict or to non-political consensus on values. Furthermore, there is also nothing wrong with ‘expertising’ democracy

²⁰ Scharpf argues that *ex-post* public accountability implies ‘electoral accountability’ because “the central mechanism for assuring output legitimacy” “reinforces the normative orientation of office holders toward the public interest” (Scharpf 1999:14). For Scharpf, this means that “if the flow of decisions should clearly violate the intense preferences of broad majorities, electorally accountable office holders would still be able to override the expert judgement” (1999:15). The *empirical* argument then follows that “the lack of intervention can be interpreted as tacit acceptance” and as “popular support for – and hence as input-oriented legitimization of – the independence of these counter-majoritarian institutions” (1999:21). The whole argument is dubious, in my opinion, because non-majoritarian institutions can only address credibility-problems because they are relatively independent of the democratic process. “If interference with agency decisions entails only negligible costs, the agency is not independent” (Majone 1999:16). This means that the costs of democratic intervention might be prohibitive for strategic actors; passivity does not equal support. Postdemocratic theory cannot borrow from democratic theory at will.

and not just ‘democratising’ expertise. Nevertheless, there remains an inherent tension in these theories between presumed consensual normative standards and ‘realist’ claims about interest conflicts. When we want to move beyond the conflict/consensus dichotomy and cryptonormativism, it seems more appropriate to start with a purely empirical theory of legitimacy and one that is neither based upon conflict or consensus (see chapter 5 and 8).

This short discussion of economised political theories might not do justice to the individual arguments and theories, but does show four general problems of this approach. First, even when we would accept the normative argument that political legitimacy must be understood as welfare-efficiency, these theories remain committed to an *outsider's perspective* of legitimacy. Second, even when these models are based upon the idea of inherent and necessary political conflict, the conflictive nature of legitimate politics tends to disappear. This is related, third, to the dual tendency to exclude certain types of conflict from politics and to exclude politics from conflict. Concerning the exclusion of conflict from politics, if democracy must lead to rational compromise, this implies that all politics of conviction, all non-negotiable identity- or ideological politics must necessarily be excluded (Scharpf 1999:12,77). Furthermore, if rational output concerns Pareto-efficiency, *redistributive* conflicts or demands for justice must be excluded as well (Majone 1997:162, Scharpf 1997:21, 1999:71). Concerning the exclusion of politics from conflict, we have seen that where Schumpeter explicitly acknowledges the ‘manufactured’ quality of political interests, the economic model forces others to take over the rather problematic, if not naïve, notion that preferences are *pre-political* and politics merely the impartial means to aggregate these preferences. Finally, this economic approach of democratic realism remains utterly *cryptonormative*. Sometimes the normative intentions are made explicit, for example when Scharpf writes that his aim is to provide “an empirically informed, normative democratic theory” (1970:92, my translation). However, more often than not, the normative nature of these theories disappears behind the empirical analyses also provided. In sum, it is safe to say that the market analogy approach of democratic realism does not provide us with new insights into political legitimacy as we are trying to develop it in this thesis.

4.3 Pluralism: Conflict as Social Cleavage

The second approach of democratic realism is pluralism. The label pluralism, for sure, points to a broad school of democratic theory and my aim in this part is not to provide a full description of (neo-) pluralism. Rather, I discuss the works of Dahl, Lipset and Scharpf, with the more modest aim to illustrate the principle claims and arguments of pluralism where it concerns political legitimacy.

What is clear from the start, is that for the pluralists politics is inherently about conflict. Dahl warns that it might be 'attractive' to get rid of political conflict by proposing some 'harmony of interests', but that this is a 'dangerous illusion' (1982:186). This illusion urges people to be 'enlightened' and to discard their petty preferences in light of the general interest, but, as Dahl rightly argues, "on some questions, 'objective' conflicts of interest are sharp and real". As such, the pluralists differ from welfare political theories. Conflict is real – i.e. conflict is often a zero-sum game – and, still more, political conflict is "an inevitable and entirely *appropriate* aspect of political life" (Dahl 1982:187, my emphasis). Conflict, Lipset likewise argues, is 'the life-blood of the democratic system' (1959:91).

The main reason why political conflict is inevitable, according to Lipset, is that democracy is unable to categorically exclude group-interests to enter the political arena (1960:ix ff.). If political influence is, at least partly, an expression of the mobilisation of support, then political organisations and parties, according to Dahl, try to capitalise on latent interests of 'political groups or sub-cultures' (1978:196). This emphasis upon the mobilising function of democratic politics leaves open the question of whether political conflicts are strategically 'manufactured' in a Schumpeterian sense or reflect 'objective' interests in a critical sense. What is clear, though, is that political conflict is not about a competition of individual preferences, but about conflicting group interests – about *social cleavages*. Social and collective conflict, it must be clear, have destabilising and disintegrating tendencies precisely because collective conflict not only concerns material interests, but often also entails identity issues, questions of moral justice and diverging goals of alternative (economic, social and political) orders. The main question of the pluralists, then, is how to explain democratic stability despite the destabilising force of politically mobilised social cleavages. They must explain how democracy moderates conflict without suppressing it (Lipset 1960:1).

It seems to me that the pluralists propose three general answers to the problem of democratic stability: 1) stability is explained in terms of structural conditions; 2) stability is explained directly by legitimacy itself; and 3) stability is explained by the political process of decision-making. Even if we are not principally interested in the 'problem of order' that is so central to the pluralist tradition, these answers do directly or indirectly imply specific conceptions of political legitimacy. Therefore, let us consider these arguments shortly to assess the role and nature of political legitimacy in each.

4.3.1 Structural Conditions and Crises of Legitimacy

The disintegrating force of political conflict depends, at least partly, upon the structure of the conflict, especially upon the 'cleavage pattern' (Dahl 1978:192).²¹ When such a pattern is strictly 'bi-polar', Dahl claims, it will not lead to a stable democracy. When Dahl argues that such radical destabilising pattern is 'comparatively rare' (1978:192), Lipset is less complacent.²² This difference, it seems to me, can be attributed foremost to the fact that Lipset embraces a more historical perspective. Democracy has not only been historically unsettled by major social conflicts, especially the 'class struggle', it has been threatened by counter-ideologies such as Communism, Fascism and traditional dictatorship (Lipset 1959:75,83,95). Even for Lipset, who claimed the 'end of ideology' in post-war modern democracy, the pull of 'totalitarianism' is not something to be contented about (1960:233).

Lipset recognises four 'critical cleavages' in the history of Western democracy, inherently related to the 'national revolution' (state-building) and the 'industrial revolution' – the former producing centre/periphery and church/state cleavages and the latter landed/commercial and capital/labour cleavages (1985:128; see also Dahl 1978:196).²³ Lipset claims that the way these fundamental *conflicts of modernity* were historically settled – either by compromise, revolution or suppression – explains the viability and stability of a political regime (1960:64-5). Democratic stability, in short, depends on the ways the interests of new cleavages were dealt with. According to Lipset, it is destabilizing when, on the one hand, new politically mobilised groups are denied political access, become politically isolated and in reaction develop extremist political ideologies, and, on the other, when the loss of status of the established traditional groups is not symbolically compensated (1959:87). It is easy to see how a downward spiral might ensue: the more access is denied, the more radical opposition becomes and the less symbolic compensation can be offered to the dominant strata. Suppression of conflict also increases instability to the extent that unsolved cleavages tend to accumulate upon new ones. Such 'accumulation' or 'superimposition' of cleavages and 'key-issues' "from one historical period to another makes for a political atmosphere characterised by bitterness and frustration" (Lipset 1960:79; 1959:92).

²¹ Lipset famously also tried to find cross-national comparative associations between democratic viability or stability and social-cultural preconditions – conditions concerning national wealth and distribution, industrialisation and urbanisation, education and literacy, or, in general, modernisation (1959:69; 1960:27-63). However, this analysis is less relevant for our main question.

²² Dahl argues that most interest conflicts are neither 'perfectly harmonious' win-win situations nor exclusive 'zero-sum conflicts' (1982:188). Rather, he argues, most conflicts are 'imperfectly complementary', i.e. "for each actor the gains from cooperation with others outweighs the costs on balance" (*ibid.*).

²³ In earlier writing Lipset distinguished between three critical questions: (1) the role of religion within the nation; (2) universal suffrage and citizenship; and (3) distribution of national income (1959:92).

Suppressing new social cleavages or denying political access leads to instability precisely because it tends to lead to political extremism and the impossibility of compromise, i.e. it leads to *politics of conviction* (Lipset 1959:92). The more interest groups are denied political access and the more they are politically and socially isolated, the more they are prone, Lipset claims, to “a non-reflective habit of mind” while their political views are characterised by “rigid fundamentalism and dogmatism” (1960:98,100).²⁴ Social groups not just come to differ “on ways of settling current problems, but rather by fundamental and opposed Weltanschauungen” and come to perceive “the political victory of their opponents as a major moral threat” (1959:92). It is clear that in such circumstances ‘political issues’ can no longer be ‘easily compromised’ (1959:95).

How rising conflicts of modernity are historically settled, then, explains the structural conditions of political stability. What is more interesting to us, however, is that Lipset understands such “crisis of change” that occurs “during a transition to a new social structure” as a *crisis of legitimacy* (1960:64-5). This does not mean, however, that Lipset reduces legitimacy to a function of stability. Rather, Lipset tries to argue that the ‘symbols of legitimacy’ of the former regime are questioned with “the rise of sharp cleavages among groups which have been able ... to organise around different values than those previously considered to be the only legitimate ones for the total society” (1959:87). Avoiding political extremism and making compromise possible, then, not only seems to explain political stability, but also relates to political legitimacy in Lipset’s argument. Compromise allows traditional symbols of legitimacy, at least partly, to be incorporated in the new regime. ‘Gradual reformism’ allows the preservation of legitimacy and allows the ‘value-integration’ of traditional and contending groups (Lipset 1959:92-3).²⁵

Finally, not only the suppression of change, but also revolutionary change, according to Lipset, is prone to instability to the extent that the revolutionaries are politically mobilised upon ‘over-exaggerated millennial hopes’ which will prove difficult for the new revolutionary regime to live up to (1959:89). In other words, revolution easily leads to political disappointment, dissatisfaction and to new crises (Lipset 1959:87). This lack of ‘*political effectiveness*’ of the new regime, according to Lipset, might also lead to a *legitimacy crisis* to the extent that the new regime does not have enough time “to develop legitimacy upon the new basis”, to develop its own symbols and rituals (1959:87). To this extent, political legitimacy and political effectiveness are in a *compensatory relation*. Legitimacy, according to Lipset, allows the political system “to survive the crises

²⁴ Cross-pressures, for Lipset, are intrinsically related to cognitive ‘sophistication’: the unsophisticated are prone to “greater suggestibility, absence of a sense of past and future ..., inability to take a complex view, greater difficulty in abstracting from concrete experience, and lack of imagination” (1960:108).

²⁵ Lipset points to the fact that many successful democratic transitions in Europe preserved the monarchy and the ‘loyalty’ related to that conservative institution (1959: 85). “Thus, one main source of legitimacy lies in the continuity of primary conservative and integrative institutions during a transitional period in which new social institutions are emerging” (1959:88).

of effectiveness” and, vice-versa, if a political system is effective over a long period it might “develop new strong symbols of legitimacy” ‘over a number of generations’(1959:86,91; 1960:69).

In sum, Lipset understands social cleavages and political conflicts as an expression of progressing modernity and tries to understand political stability in terms of the historical settlements of these conflicts. Stability is again explained in terms of compromise, i.e. the avoidance of extremism and politics of conviction. Finally, these crises of change are simultaneously also crises of legitimacy posing the question of how the process of conflict and change provides *structural opportunities* for new political regimes to obtain and develop their own symbols and rituals of legitimation. However interesting these questions, this perspective does not in itself provide us with a different understanding of political legitimacy. Indeed, Lipset understands legitimacy in this context in terms of the traditional ‘veneration’ of the political institutions (1959:89) – in short, in terms of a belief in the legitimacy of institutions of domination.

4.3.2 Political Legitimacy as a Constraint upon Conflict

When Lipset understands political legitimacy in Weberian-terms as legitimate domination, he can at least claim that political legitimacy “requires the manifestation of conflict” (1960:1). This does not mean that political conflict explains political legitimacy, but that suppression of conflict is the breeding ground of political extremisms and of possible crises of legitimacy. However, both Lipset and Dahl also explain democratic stability as directly founded upon political legitimacy itself. Political legitimacy, they claim, is a constraint upon political conflict because it expresses a *value consensus*. “[W]ithout consensus ... there can be no democracy”, Lipset argues (1960:1), while Dahl claims that democratic stability calls for a specific ‘political culture’ – for ‘beliefs and presupposition’ supporting ‘democratic ideas, values and practices’ ‘transmitted from one generation to the next’ (1998:157; see also 1961:316-7; 1982:62). Political legitimacy, then, is an *integrating* force where the disintegrative forces of political conflict is ‘a constant threat’ (Lipset 1959:1). A stable democracy, according to Scharpf, requires a stable ‘consensus’ on ‘regulative structures and principles’ distinguished from “political conflicts over particular issues” (Dahl 1982:160-1).

In short, political legitimacy is a normative consensual constraint upon political conflict. It, of course, makes sense to analytically distinguish between ‘issues’ and ‘regulative structures’. However, instead of acknowledging that regulatory structures are also continuously contested and only agreed to *for the time being*, legitimacy for the pluralists explains why citizens are not only motivated by ‘egoism’, but also by “‘moral’ judgements about what would be best for the collectivity” (Dahl 1982:161). Just as Weber, they try to understand political stability in terms of the belief in legitimacy. But, in contrast to Weber, they specifically understand such beliefs in terms of a *value consensus*.

This, it seems to me, is a definitive step back as the pluralists do not make the important analytical distinction between objective and subjective validity that Weber introduced. Separating between objective democratic norms and subjective beliefs at least opens up political legitimacy to value plurality and heterogeneity. But more important in this context, when political legitimacy is considered to be a normative consensual constraint upon political conflict, this implies that, first, conflict threatens to be delegitimised and, second, that if politics is inherently about conflict then legitimacy is depoliticised. Indeed, legitimacy seems to be an *a-political* boundary upon political conflict. In either case, it does not yield a different understanding of political legitimacy. What we can learn, though, is that if we separate between political contest on issues and contests on regulative structures, we might be able to keep politics *and* legitimacy open to contestation without necessary disintegrating tendencies. This, however, calls for a different approach emphasising politics as coordination or as argumentation (see chapter 5 and 8).

4.3.3. Political Mobilisation and Influence: Cap and Filter

The third and final answer to the problem of order is the answer that pluralism is most known and renowned for – it concerns the analysis of political interest organisations and their influence in the democratic decision-making process. Especially Dahl explicitly argues against both the simplistic idea that the people indirectly govern through political representation and party competition, and the pessimistic idea that democracy is in reality rule by the elite (1961:5-6; 1966:296). As such, the pluralists argue against the elitism of scholars like Schumpeter as well as the formalism of scholars like Downs. Instead, the answer to the question of ‘who actually governs’ is thought to be more complicated (Dahl 1961).

According to the pluralists neither the people nor the elite govern, but rather political interest organisations. This does not mean that pluralism denies the importance of political representation or general elections. Instead, democratic politics for the pluralists is not only about the *political theatre* of electoral mobilisation and party competition, but also about the *political game* of backstage strategic negotiations between professional politicians and organised interest (Dahl 1961:1). Nor does pluralism deny political inequality – “political resources other than the vote are unequally distributed” (Dahl 1982:170). And precisely because the vote is only one and often an ‘insufficient’ political resource to influence the political decision-making process, this implies that not every interest of preference counts equally in a democracy. The idea that political output is justified in norms of Pareto-optimality is therefore naïve – democracy is neither rule by the people nor for the people. However, as Dahl rightly argues, this inequality does not necessarily lead to elite-

rule as long as nobody is entirely without politically relevant resources and no single resource distribution dominates all others (1961:228).²⁶

Political influence on the decision-making process, the pluralists claim, is a function of control over political resources. Vice-versa, political resources are those resources that can be used to influence the political process (Dahl 1998:177; 1961:226). Political resources include “physical force, weapons, money, wealth, goods and services, productive resources, income, status, honour, respect, affiliation, charisma, prestige, information, knowledge, education, communication, communications media, organisations, position, legal standing, control over doctrine and belief, votes, and many others” (Dahl 1998:177). Much can be said about this resource-based understanding of political influence, but for our argument we might limit ourselves to three important insights based upon the work of Bader (Bader 1991; Bader & Benschop 1988).

First, political influence is not only a function of (a) control over resources, but also of (b) the willingness to employ these resources, (c) the competence to use these resources strategically, and (d) the symbolic presentation and credibility of a threat or promise. This means that the sheer possession of a political resource does not directly indicate political influence. Resources are only *potential resources*. Second, which type of resources is effective very much depends upon the specific policy field, the specific political arena and the specific stage in the policy-making process in which influence is sought. Third, control over political resources can be effective in the policy-making process because it allows one to make *direct* promises or threats or because it enables one to influence the policy process *indirectly* by setting the cognitive and normative boundaries of solutions or problems. The first type of resources, for example, allows the wealthy political influence by financing political campaigns, business organisations by threatening to leave the country and labour unions by threatening with strikes or promises of wage-restraint. The second type of resources points to knowledge, prestige or credibility which allow actors to influence the cognitive and normative facts of a certain policy or problem. Such actors might be (pseudo-)scientific think tanks, expert organisations, professional organisations, publicists and scientists, charismatic politicians, but also the famous and the successful.

Although effective political resources might be controlled by a single private actor, more commonly *organisation* allows the combination and coordination of the relatively ineffective resources of the many into a single effective political resource. Organisation is one of the few resources that even the powerless have in a democracy. Although Dahl warns it is ‘witless’ to argue that this implies they “can always escape domination”, it does mean that by cooperation and organising the few resources they have, “however pitiful they may be”, they “can sometimes push

²⁶ It does problematize the belief in democratic values if “the moral foundation of democracy, political equality among citizens, is seriously violated” (Dahl 1998:178).

the costs of control” and influence the political decision-making process (1982:34-5). The importance of this process in Dahl’s theory cannot be underestimated. Precisely these emancipatory processes – processes through which the powerless and the marginalised organise themselves and ‘struggle for autonomy’ – explains the historical rise of pluralism (Dahl 1978:191). Democratic pluralism points to “the existence of a plurality of relatively autonomous (independent) organisations ...within the domain of the state” (Dahl 1982:5).

What explains stability in a pluralist democratic system is not some necessary value consensus, but overlapping memberships and the existence of cross-cutting cleavages (Lipset 1985:151). Interest heterogeneity avoids destabilising cleavage patterns as interest fragmentation leads to ‘cross-pressures’ (Lipset 1960).²⁷ The less groups are socially isolated, the more they are integrated into mainstream society because their demands are partially met, the more they are exposed to cross-pressures, the less ‘committed’ they are to one political cause or ‘historic truth’ (Lipset 1995:83,95). But the argument is not just that a stable democracy needs interest heterogeneity as a structural pre-condition, but that the democratic decision-making process *explains* interest fragmentation and stability. The democratic decision-making process, we might say, is both a *filter* on interests as it is a *cap* on conflict.

To appreciate the democracy as cap and filter, let us shortly take a look at what Dahl calls ‘ethnic politics’. Dahl depicts immigrants as being ‘at the bottom of the pile’ and frustrated with the dominant values of society (the American creed) and the unequal status of their culture (Dahl 1961:33). To overcome the ‘handicaps and humiliations’ Dahl describes how the *political entrepreneur*, in a strategic search for a loyal electorate, tries to politically mobilise this latent social cleavage on an ethnic political platform. This type of politics, then, mobilises ethnic interests and conflict even if the ultimate goal might be recognition and acceptance (Dahl 1961:33). The political leaders and their ethnic electorate, Dahl claims, are not demanding the equalization of the distribution of socio-economic or political resources, but are demanding the end of discrimination within this unequal distribution (1961:33-4). Whether we accept this claim, the most important mechanism, at this point, is that the very *success* of ethnic politics in terms of increased political influence and, hence, in favourable political *output*, ultimately destroys the very foundation of ethnic politics. The socio-economic homogeneity of the ethnic group, which allowed political mobilisation and organisation of group interests is destroyed by the very success of political action. Political success translates into increased interest heterogeneity – i.e. cross-pressures – making

²⁷ The social integrative mechanism of ‘cross-pressures’ is, without a doubt, something that Lipset emphasises most often in his work. He credits Smmel to be the first to have discovered this mechanism but that ‘social research’ neglected it (1959:96, 1985:117). We have, of course, also perceived similar arguments in the work of Madison.

political mobilisation more difficult. From this it follows that ethnic politics is a transitional phenomenon (Dahl 1961:34).

The very nature of the democratic decision-making process, characterised by *influence* and *resources*, explains that the very success of political mobilisation based upon social cleavages ultimately undermines its. Democracy is a *cap* on conflict. Lipset also argues along similar lines that the “compromising character of political power” is “self-destructive because politicians in office necessarily must alienate support in deciding among conflicting interests” (1960:295-6). However, Lipset is less confident and in addition emphasises, like Weber, the *responsibility* of political leaders.²⁸ Responsible leadership, according to Lipset, has to deal with the dialectic of political mobilisation and influence, on the one hand, and the willingness to negotiate and compromise, on the other – a dialectic between representation and integration (Lipset 1960:74,391; see also Dahl 1982:44). We might say, that political leaders have to deal with the dialectic between *political theatre* and the *political game*.

When democratic decision-making is a cap on social-political conflict, it is, according to Dahl, also a filter as not every interest or every interest conflict is equally capable of entering the political arena. It is at this point, however, that Dahl’s work tends to become *cryptonormative*. Dahl claims that to the extent that political inequality is ‘dispersed’ throughout society, i.e. political power is not in the hand of the few (1961:227-8, 277) – and to the extent that people have reasonable opportunities to organise themselves politically, a pluralist democratic system always address those problems which are most salient and pressing. The fact that political resources are not equally distributed is less problematic if one understands that “a political resource is only a *potential* source of influence” (1961:271). What really matters, according to Dahl, are someone’s ‘subjective reasons’ and his ‘objective situation’ (Dahl 1961:274-275). The former points to whether someone is willing to use his resources not for his private or civic life, but for political action, while this subjective willingness, according to Dahl, is a function of someone’s ‘objective condition’, i.e. his social-economic situation.

Dahl uses the social situation of Afro-Americans to proof this claim. He sees Afro-Americans in the U.S. as being still in the transitional stage of ethnic politics, and without many resources besides political ones (Dahl 1961:293). Dahl therefore expects that they will “employ their resources more in political action than the average white person does” (Dahl 1961:294). Seeing this hypothesis neatly confirmed in his data, Dahl concludes that even though African-Americans have limited

²⁸ Even if Lipset claims that this stabilising process does not denote some social law, it is nevertheless the main mechanism that explains for Lipset the ‘end of ideology’ (1985:81ff.;1960:439). It could be argued that the end of ideology thesis, if not a necessity, is for Lipset an inherent consequence of successful and stable democracies.

general resources they do have some political resources and are able to use them. Indeed, because of their 'objective situation' they have a greater tendency to deploy these resources. In other words, the more socially marginalised, discriminated or frustrated the higher the chance that one will spend resources for political action. According to Dahl, whether one is 'Homo politicus' instead of 'Homo civicus', whether one will spend one's resources for a political cause instead for private goals depends upon one's objective social condition and must be seen in terms of some strategic utility calculation (see also Krouse 1982:448-9).²⁹ For *Homo civicus*, political action "as a strategy to achieve his gratification indirectly ... will seem considerably less *efficient* than working his job, earning more money, ... planning a vacation, moving to another neighbourhood or city, or coping with an uncertain future in manifold other ways" (1961:224, my emphasis).

To understand the democratic decision-making process as a *filter* on the kinds of interest that are able to enter the political arena is, it seems to me, a reasonable claim. More problematic, however, is when we turn this relation up-side down: those interests that enter the political process are the interest that ought to matter. Especially disastrous would be a behavioural account in which the *lack of political action* or protest is seen as an indicator of satisfaction with democratic politics. But we should not make a straw man of Dahl. His project of formulating a normative model to 'maximise' democracy without denying real and existing political inequality is laudable (1966:302). Dahl is quite aware – or increasingly became aware – that there might be structural and organisational biases in existing democratic regimes that counter his normative argument.³⁰ Democratic pluralism, in short, does not deny the possibility of a critical theory in which more attention might be paid to depoliticisation processes and 'manufactured' and objective interests.³¹

Despite this critical possibility, however, there is a strong tendency in pluralist theory to understand *political apathy* as an indicator of political legitimacy. Lipset, for example, explicitly argues that low levels of political participation might be interpreted as a sign of political satisfaction

²⁹ Although Dahl states that "*Homo civicus* is not, by nature, a political animal", it seems to me that we should not read this as if *Homo civicus* and *politicus* are essentially different by nature (1961:225). In Dahl's theory, citizens might not be political animals by nature but given certain objective conditions they can *temporarily* become political because it is more efficient to do so. This means that *Homo civicus* and *Homo politicus* are conditioned by objective circumstances.

³⁰ Dahl is aware that "major public problems go unsolved" (1978:199). Dahl recognised at least "four problems of democratic pluralism: they [i.e. political organisations] may help to stabilize injustices, deform civic consciousness, distort the public agenda, and alienate final control over the agenda" (1982:40). It is also worthwhile to note that Dahl also worries about the immense resources available to non-democratic capitalist corporations with their clear and distinct interests (as opposed to the diffuse interests of the majority): "On the landscape of a democratic country great corporations loom like mountain principalities ruled by princes whose decisions lie beyond the reach of the democratic process" (1982:194)

³¹ Dahl recognises the validity of concepts such as 'false consciousness' and 'objective interests' (1982:163-164).

(1960:185,227).³² Indeed, a low voter-turnout, he claims, points to the ‘end of ideology’ in modern democracy in which “the fundamental political problems of the industrial revolution have been solved” (1960:442). However, if we rightly object to such cryptonormativism, a more interesting relation between political legitimacy and mechanisms of political pluralism presents itself. Political legitimacy is neither indicated by political apathy nor a function of democratic stability, rather political apathy and *depoliticisation* processes explains democratic stability and *decreases the need for political legitimation*.

This latter argument, it seems to me, can be seen both in the works of Lipset and Scharpf. Both argue that there is an inherent relation between *political effectiveness* and *political legitimacy*. Lipset defines political legitimacy as “the *capacity of the system* to engender and maintain the belief that the existing political institutions are the most appropriate ones for the society” (1960:64, my emphasis). It shows that legitimacy is a characteristic of the political system. Political effectiveness, on the other hand, is defined in terms of output-satisfaction – “the extent to which the system satisfies the basic functions of government as defined by the expectations of most members of a society” – and problem-solving effectiveness – the extent to which social problems and conflict can be effectively solved before they transform into sources of major instability (1959: 86; 1960:64).³³

Political effectiveness, so much is clear, is a *depoliticising* force as it undermines the need for and the possibility of political mobilisation by interest satisfaction and fragmentation. Lipset argues that output effectiveness increases ‘political tolerance’ as “it does not matter greatly which side rules” (1959:84). Political tolerance, it seems, must be understood in terms of political satisfaction and indifference. For Scharpf, it means that political effectiveness – political output – decreases demands for legitimation.³⁴ Indeed, what is at stake is not political *legitimacy* so much as political *legitimation* – it is about political argumentation (Scharpf1997:21; 2006:11). Indeed, Scharpf’s theory is not just a normative account of output- or input-legitimacy, his empirical theory concerns “input- and output-oriented legitimating arguments [which] only come into play if a policy violates political salient constituency interests” (2006:3). The need for legitimation is a function of saliency

³² For sure, Lipset also argues that “lack of participation and representation also reflects lack of effective citizenship and consequent lack of loyalty to the system as a whole” and “always means under-representation of socially disadvantaged groups” (1960:227).

³³ Lipset differentiates political effectiveness from the “efficiency of the total system” – i.e. economic prosperity – although that does increase the possibility of political effectiveness by enlarging its resources and easing political compromise (1959:86). Lipset is aware, however, that the economy can also be “disruptive and centrifugal” (1960:23).

³⁴ Scharpf explicitly claims that the ‘positive interpretation of political apathy’ by the pluralists is not something that can be ‘model immanently’ proven (1970:43). Instead, he argues that increased electoral participation would require a normative defence of pluralism ‘on better grounds’ (1970:66ff.). Nevertheless, Scharpf also claims that a “lack of [public] intervention can be interpreted as ‘tacit acceptance’” or as ‘popular support’ (1999:21).

and depoliticisation. In other words, *legitimation problems* are “not a general problem”, but depend upon a ‘permissive consensus’ or the saliency of interests (Scharpf 1997:21-2, 2000b:120, 2006:11).

In conclusion, we might analyse the democratic decision-making processes as caps and filters on interests and conflicts. These processes might explain political stability, but if we stay clear of cryptonormativism, they do not explain political legitimacy.³⁵ If nothing else, pluralism and output-effectiveness might explain different *needs of political legitimation*. This, however, does not point to the political game of strategic interest bargaining and compromise, so much as the political theatre in which political actions and decisions have to be justified. If anything, it points to the dramaturgy of politics – to the ‘plebiscitary’ basis of democratic legitimation (Scharpf 1970:75-6) or to politics as argumentation (see chapter 7 and 8).

4.3.4. Conclusion on Pluralism

The pluralist branch of democratic realism provides us with interesting analyses of politics as conflict and political legitimacy. However, the principle question of pluralists is the problem of democratic stability in face of social conflicts and cleavages. The dominance of this question threatens to reduce political legitimacy to a mere function of stability – an argument in which political apathy is understood as political support – or it conceptualises legitimacy as an apolitical consensus that binds political conflict. Both arguments do not seem to help our analysis. On the other hand, pluralist theory does provide interesting analyses of the *opportunity structures* of political legitimacy and differing *legitimation needs*. Such analyses, it seems to me, are helpful and important because, as stated before, questions of political legitimacy cannot be separated from social and political order. The pluralist tradition, especially in a critical variant, is able to provide us with a realistic description of democratic politics in which conflict, inequality and influence, as well as politics as theatre and politics as game play crucial conceptual roles. However, the pluralist tradition does not seem to provide us with any new understanding of political legitimacy.

³⁵ One could argue that Lipset also claims that pluralist politics not only leads to cross-pressures and stability, but that such integrative force also connotes ‘value-integration’. It seems, at times, that Lipset’s understanding of value-integration is inspired by Durkheim (1985:20ff.). Famously, Durkheim does not understand society as the sum of its part, not even as more than the sum of its parts – as is the case for Weber’s objectively valid institutions – but rather that *the parts express the whole*. For Durkheim, the mere existence of society seems to indicate the value integration of individuals into the ‘conscience collective’ (Durkheim 2004:60). Society is the moral force that binds the ‘bottomless abyss’ of individual self-interest (Durkheim 2004:70). Society, it seems, *is* legitimacy. Durkheim’s sociology, in comparison to Weber’s, belongs to the other side of the so-called ‘neo-Kantian divide’ and is so far removed from the social action perspective I am trying to develop here, that I will not discuss this reading at this point (see Zaret 1980:1181; Coutou 2009: 566; Rose 1995).

4.4 Cybernetics: Conflict as Political Dissatisfaction

Already in the pluralist branch of democratic realism have we seen that political output or political effectiveness is analysed in relation to political legitimacy. However, as discussed, this relation must be understood in terms of opportunity structures or mutual compensation. In contrast in the cybernetic branch, specifically in the works of Easton, the relation between output-effectiveness and political legitimacy is formally analysed and, more importantly, understood in *causal* terms. Easton claims that political effectiveness can ‘spill-over’ into political legitimacy (1965:275,320,343,403,465; 1975:446; 1976:436).

Easton introduced his formal model of politics in his book *A System Analysis of Political Life* (1965), which even today still has a significant impact on political science, especially on quasi-behaviouristic empirical studies (see e.g. Dalton 1999; Dalton 2004; Norris 1999; Klingeman 1999). Nevertheless, this model is more complicated and, at times, confused, than these contemporary studies usually want us to believe. It can be claimed on good grounds that contemporary models ignore many of the assumptions and analytical goals that preoccupied Easton without providing the necessary theoretical justifications.³⁶ In other words, Easton’s model is often misused, something he himself already complained about (1976:444ff.). Easton, however, contributed to the confusion, when he changed in the 1970s some of the core concepts of his 1965 theory without explicitly acknowledging this. In my opinion, these changes were required as the original work under-theorised many of the fundamental concepts that draw scholarly attention. In the following analysis I will not address all these issues – although they deserve attention – but will limit myself to an understanding of Easton theory regarding the relation between political legitimacy and effectiveness – a relation, as we will see, that is complex enough.

4.4.1 Political Survival and the Cybernetic Method

Easton develops his system approach, in contrast to the economic models, by clear and acknowledged biological analogies. Perhaps the most expressive analogy is that of the body (Easton 1957:386).³⁷ The goal of the body is to survive. To do so it must receive *inputs* from the environment, e.g. food. At the same time, this environment can also *stress* the body, e.g. as food runs scarce. There is a *critical range* where input-stress threatens the core function of the body, its survival. The body, we might say, is in crisis. However, input is also a form of communication as input gives

³⁶ For one thing, Easton stresses that he aims for a “general theory” or “united theory of politics” – we might say an analytical theory – and not a genuine theory that “explain the observable lower-order structures of a specific system” (1957:400; 1990:122; 1965:488). If anything, his model awaits empirical validation and *not*, as is common nowadays, a theory with which to interpret empirical data.

³⁷ Although cybernetic system analysis is inspired especially by ecological systems, the biological body is a more apt analogy. Ecological systems, after all, are foremost reactive and not reflexive or pro-reactive – a quality that the political system does possess.

information about stress and the environment. So, if food is scarce and input low, the body knows its survival is threatened and can therefore *act* to alleviate the stress. Its actions are *outputs* through which the body tries to deal *effectively* with stress. So, in our example, the body might search for food elsewhere. The more reflexive the body – it has intelligence – the more such stress will be dealt with in advance, maybe by prospective behaviour (e.g. by keeping food in stock) or by manipulating the environment (e.g. through cultivation). To the extent that these outputs, these actions, are successful stress will decrease.

This very simple example shows the core of system equilibrium theories: by perceiving the relation between the system and the environment in terms of input and output exchanges one could analyse how this system tries to hold its core functions outside their critical range. If successful, the system remains in a dynamic equilibrium with its environment.³⁸ Easton's object of analysis, then, is nothing less than the "life processes of a political system" – an analysis of politics from the perspective that the ultimate goal of a political system is 'survival' (1965:vii,15-8).³⁹ If the ultimate goal is survival, then the defining functions of a political system – of 'political life' – according to Easton, are "those interactions through which values are authoritatively allocated for a society" (1965:21; see also 1957:383; 1953:129). This definition sets the analytical boundaries of the political system and is consciously echoing Lasswell's definition of 'who gets what, when, and how' (Easton 1965:474-5; 1976:435; 1953:131). The explicit addition – besides the explicit framing in terms of 'values' – is the emphasis on *authoritative* allocation. Based upon this emphasis we might assume that Easton perceives politics in terms of legitimate domination. However, also for Easton the nature of politics is inherently about conflict as "conflicts over demands constitute the flesh and blood of all political systems", without it there is no need for a political system (1965:48). Indeed, Easton considers the 'centrifugal tendencies' created by political conflict and social cleavages to be the

³⁸ It must be noted that Easton considered his own theory *not* as an equilibrium theory. He claims that : (1) such theories take a normative stance where he does not (1965:13); (2) he claims that self-adjusting systems are 'unlikely' (1965:364, 20); and (3) he understands equilibrium in limited terms of 'stability' or status-quo (1965:21; 1956:98). Yet, he does argue that a specific form of system equilibrium based upon biological life, i.e. an 'equifinal' equilibrium, holds the possibility to develop a 'formal model of equilibrium' (1956:97-9). It seems that this is exactly the aim of Easton's 1965 formal model of political life. The undefined status of this model attracted some critique as Easton does not explicate a motivational force that propels the 'political invisible hand', and neither some kind of generalising media that enables system equilibrium, i.e. the political equivalent of money (see Sorzano 1975; Lewis 1974). This critique is relevant especially in comparison with Parsons, who explicitly tried to found such symbolic form of communication in the guise of 'influence' (Lewis 1974:674; see also chapter 5). However, I think that Easton understands system equilibrium in terms of some kind of evolutionary approach where successful systems adjust to historical changes and survive, while unsuccessful systems perish (see e.g. 1965:123).

³⁹ Easton later admitted that this emphasis on stability or survival seems to limit his ideas about legitimacy to those that only reify the factual system. He argued that there should be more room for 'change' and contest – 'new ideals and new visions' – without making change a 'residual category' (1976:447).

primary sources of system stress (1965:233,250). Political survival might also be defined by the political ability to deal with conflict.

As such, it is fairly easy to perceive Easton's affinities with pluralism. However, according to Easton, where pluralism "draws attention to those interactions in a political system through which members use their power to maximise political benefits and minimise losses", it is systems theory that draws attention to conditions under which this allocation is possible at all (Easton 1976:435; also 1965:474-5). Cybernetic system theory therefore tries to analyse a political system as an open system embedded in an environment between which "flows a constant stream of events and influences that shape the conditions under which the members of the system must act" and to which the system must 'adapt' and 'respond' in order to survive (Easton 1965:18). Inputs for the political system concern political *demands* and political *support* deriving from the environment, while outputs concern political *actions*, especially the "decisions and actions of the authorities" (Easton 1965:26-8).

Obviously, we will have to look at the precise meanings of these concepts. For now, we can say that political demands increase system stress – not least because they often express social cleavage and interest conflicts – while support alleviates stress. Political actions, then, are the means through which the system tries to "grapple actively, aggressively, and constructively with its environment" "to modify the supportive conditions under which the system is operating" (Easton 1965:467-8). If these are the core concepts of Easton's political model, then the basic question is how a political system can survive in an environment characterised by social conflict. Part of the answer concerns the function of political legitimacy, political effectiveness and, especially, the relation between the two. In what follows I will analyse and, if needed, reconstruct these answers.

4.4.2 Political Input: Demands, Conflict and Stress

A demand, for Easton, is part of the political input and concerns "an expression of opinion" from the environment that the political system "should or should not" make a binding decision (Easton 1965:38). It expresses in words or action that the government ought to implement or discard a specific policy or more general ought to solve some social problem. Demands "constitute one of the major sources of stress" (1965:37). However, private preferences or wants only become political demands to the extent that citizens publicly express "expectations or desires that binding decisions should be taken" (1965:73). Even more importantly, a political demand is not very stressful until it transforms into a *political issue* (1965:76). This conversion of wants into demands and finally into issues, according to Easton, is regulated by mediating institutions – political parties, interest

organisations and opinion leaders – and the ‘political culture’ which determines what is appropriate for ‘governmental intervention’ (1965:95,84,100).

Demands stress the political system in two different but related ways. First, demands are stressful when they are expressive of social cleavages and allocative issues which the political system has difficulty to satisfy. Second, demands may be too demanding, too complicated or just unrealistic, on the one hand, or the authorities ignorant, incompetent or unwilling, on the other. In this case, there is not so much the stress of social conflict as the stress of political dissatisfaction through perceived political ineffectiveness. Instead of horizontal social conflict between groups there is vertical conflict between (part of) society and the authorities.

Where it concerns horizontal social conflict, Easton takes over a clear pluralist analysis. He emphasises the function of responsible political leaders, who should avoid ‘totems and taboos’, i.e. subjects with “socially disruptive potential” threatening “to generate considerable cleavage among the members” (1965:106). However, Easton does not argue that political elites should not be responsive. In analogy to Lipset, Easton acknowledges that unsatisfied demands and ignored conflicts may lead to a “build-up of a backlog of latent demands” as possible “violent modes of expressing demands” (1965:122). If anything, elites should be pre-emptive, i.e. satisfying wants before they become demands or issues (1965:230,363,404). Conflicts of interest, then, are ideally dealt with through *non-salient* compromise by political mediators, ‘anticipating’ wants and demands of citizens and alleviating “cleavage stress” by reducing demands or ‘atomizing’ interests through “cross-pressures” (1965:257,266,225). When cleavage conflicts do become salient, Easton argues that authorities must appeal to political *legitimacy* (diffuse support). Legitimacy, again, is the integrative boundary upon disintegrative conflicts.

In short, Easton clearly recognises social cleavages as potential sources of political stress and his theory is clearly inspired by pluralists models. However, I claim that his cybernetic method nevertheless seems to stress a different kind of political conflict: the conflict between system and environment or between ‘state’ and ‘society’. First of all, demands are not stressful *per se*, only *unfulfilled demands* are stressful as they might lead to political dissatisfaction (1965:57). Political stress, for Easton, is a function of “the volume and content of demands” and “the responses available to a system for meeting and handling such demands” (1965:70). This means that horizontal social conflict might explain political dissatisfaction, but not all political dissatisfaction is caused by social cleavages. More importantly, in Easton’s model political stress *per definition* expresses itself in vertical political dissatisfaction.

Secondly, when Easton analyses the contemporary crisis of democracy he is not so much worried about social cleavages, but about ‘demand overload’ and the “revolution of rising

expectations" (1965:58,68,90,110,466). Easton fears that rising demands and not so much social conflict undermine the effectiveness of the political system, i.e. the ability to address, solve or satisfy demands (1965:38). Easton, then, seems to worry about rising demands in a 'post-ideological' or 'post-industrial' liberal democracy – a worry that was readily shared by other political theorists (see Huntington 1975; Crozier et al. 1975; Bell 1977).

Finally, Easton seems to claim that citizens are generally passive spectators outside the political system that is guarded by 'gatekeepers' (1965:88). Citizens are only inside the political system when they are politically active and express their support and demands 'unmediated'. Citizens, then, are partly inside and partly outside the political system moving between "political and non-political roles" which seems to parallel Dahl's distinction between *Homo politicus* and *Homo civicus* (Easton 1965:53).⁴⁰ In short, emphasising the stressful relation between a political system and its environment seems inherently to imply that the primary conflict analysed concerns the *vertical relation* between the active and the passive or between 'state' and 'society'.

4.4.3 Political Support: Functional Behaviour or Subjective Evaluation

A political system, to recapitulate, is stressed according to Easton when it no longer manages "to induce most members to accept ... [its] allocations as binding" (1965:22). Political demands, furthermore, are stressful for the political system because unsatisfied demands can lead to a decline in political support (1965:57). Political support, then, can best be understood in relation to stress. Support, this cannot be emphasised enough, concerns for Easton the acceptance of binding decisions on whatever grounds. Support, in the first instance, concerns *functional behaviour*.⁴¹ Acceptance, as such, may be based upon force, fear, strategic interests, political apathy or upon

⁴⁰ At this point especially, however, Easton's rather sloppy treatment of the analytical boundaries of a political system is confusing. Easton on the one hand differentiates a political system between two institutional sub-systems: 1) the formal system making and executing binding decisions; and 2) a sub-system consisting of mediators between society and government, especially including political parties and interest organisations (1965:374,95). On the other hand, Easton also distinguishes in his general analysis between three 'political objects' within the political system: the political community *which includes citizens*, the regime and the authorities (1965:157;1957:391). Contemporary research especially took over these three objects (Dalton 2004; Norris 1999). I would argue, however, that Easton is better grasped by taking over the pluralist analysis of politics as theatre and game, to which the formal decision-making system is added as a third sub-system. Similarly, we should also criticize Easton's simplistic treatment of 'environment'. Although he admits it is possible to differentiate this general environment into all kinds of different functional sub-systems (see e.g. diagram 1, 1965:30), it is also clear that Easton thinks that this will overcomplicate his model (1976:441).

⁴¹ Easton also treats support sometimes as a system variable or 'summary variable', i.e. not as a form of behaviour or attitude, but as an 'explanatory variable of stress' at the level of the system (157). This means, for example, that the *absence* of stress is an indicator of support.

feelings of value-rational duty. Only in second instance does political support denote subjective 'evaluative attitudes' of actors.⁴²

When the political system tries to alleviate stress and increase support through political actions, this foremost means it tries to satisfy either demands or wants in order to prevent future demands (1965:402). In other words, Easton assumes that as long as citizens are satisfied they will accept the decisions of the political system. From a behavioural point of view, this does not necessarily mean that they have a favourable attitude towards it, but rather that the utility of political action or even resistance is too low in comparison to other goals in life. Just as for Dahl, political apathy does not necessarily signal content, but is "an indication that the politically relevant groups have not moved beyond the point of indifference" (1965:224).

Nevertheless, political actions, according to Easton, may also encourage a more stable subjective evaluative support. Easton famously separates between two fundamentally different forms of political evaluation. *Diffuse support* explains why political support is relatively independent of political output and demand satisfaction, while *specific support* explains how authorities can organise and accrue support through their specific actions and outputs. However, Easton has great difficulty of clearly formulating the differences between the two – a difficulty that is, in my opinion, the core problem of his work. Easton appeals to our political intuition that political discontent sometimes leads to fundamental political change while sometimes it does not (1975:436). What we would like to know, however, is how such intuition translates into careful analytical concepts.

When we run through Easton's work it seems that the differentiation between specific and diffuse support is based upon different *sources* of political evaluation and the fact that different forms of system stress are addressed, i.e. they have a different *function*.⁴³ Diffuse support concerns the evaluation of the political system as an *object-in-itself* – the 'being' of the system quite separately from output effectiveness – while specific support, concerns evaluation of the system as a *means* in terms of its output effectiveness. Subsequently, as already stated, if specific support addresses stress caused by political dissatisfaction diffuse support is relatively autonomous of output and can address stress caused by social conflict. Or, related to the core definition of political life, specific support concerns *satisfaction* with the allocated values, while diffuse support concerns the *authoritative* part of this allocation.

⁴² Easton labels these two types of support 'overt' and 'covert' support perceived in terms of a dimension running from dysfunctional to functional behaviour and from attitudes of 'deepest hostility' to 'blind faith' respectively (1965:159, 163-4). It does seem that in his later work Easton de-emphasised the functional (overt) understanding of support (1975:1976).

⁴³ Many have separated specific and diffuse support based on the idea that the former is evaluative and the latter is about attachment (see e.g. Dalton 1999; 2004). Although this certainly has its merits, it denies Easton's claim that "the key attitude associated with support would be of an evaluative sort" (Easton 1975:436).

When Easton argues that political output-effectiveness can explain political legitimacy, this means in Easton's model that specific instrumental support can 'spill-over' into value-rational support for politics as legitimate domination. In what follows, I will show that Easton's analysis ultimately cannot justify such spill-over while simultaneously upholding strict analytical boundaries between specific and diffuse support. However, even if Easton's explanation fails, it seems to me that he does provide us with a different insight into the relation between effectiveness and legitimacy, between strategic-interests and normativity.

4.4.4 Specific Support: Satisfaction of Symbolic Interests or Symbolic Satisfaction?

Specific support, Easton argues, is about the "connection between wants or demands and the activities of the authorities" (1965:267).⁴⁴ Or, as Easton briefly puts it, specific support can be constructed as an "index of political contentment", which is the "ratio between outputs and demands" (1965:406). However, and importantly, specific support appeals to interests and not directly to demands. Specific support concerns a "*quid pro quo*" exchange relation and "the favourable attitudes that stem from offering the members of a system some felt or perceived returns and that accordingly appeal to their sense of self-interest" (1965:343). In short, if citizens perceive that they 'benefit' from political outputs "they can be expected to offer support" to the political authorities (1965:382).

Put in these terms, it is clear that the concept of 'demand' is no longer an intrinsic part of the definition of specific support. Indeed, Easton later clearly acknowledges that "[t]he uniqueness of specific support lies in its relationship to the satisfactions that the members of a system feel they obtain from the perceived outputs and performances of the political authorities" (1975:437). Indeed, when Easton talks about evaluating political output he explicitly means the evaluation of the *actions of authorities* (1975:438). Specific support, it seems, is foremost about output satisfaction, and its relation with demands is only derivative. From this we can conclude that citizens are not expected to be politically active, but that political satisfaction or specific support concerns the relation between *active* authorities and a *passive* audience evaluating these actors. In short, specific support is not guaranteed in what we have called the *political game*, but rather in the *political theatre*.

Given the allocative and conflictive nature of politics it is of course unlikely that every political output (action) is evaluated favourably. Easton therefore argues that to generate specific support it is important "to satisfy some of the members ... some of the time" (1965:409,231). Specific support, then, includes "satisfaction with outputs on the average" or "perceived *general* performance" (1976:436; 1975:438, my emphasis). In Easton's account, then, we can see that

⁴⁴ Interestingly, Easton formerly called specific support, akin to Parsons, 'contingent support', clearly expressing its more contingent and conditional character (footnote 2, 1965:268).

specific support entails a *generalising* mechanism which makes it already relatively independent of specific output. But specific support not only generalises in the time-dimension (average), but also in terms of content, the material-dimension. As Easton acknowledges, it is fairly difficult to evaluate the performance of authorities in terms interests and preferences (1975:439). The causal relation between their actions and between the final result – the difference between output and outcome – is difficult to perceive in a complex society even for a ‘professional social scientist’ (1975:439). As such, it seems to me, evaluations are often based upon *symbolic shortcuts* or heuristics. So, for example, the support for authorities might be linked to the state of the economy expressed in symbolic figures like the BNP or unemployment rates. On the other hand, symbolic shortcuts might also concern mediated public opinion or the opinion of public intellectuals. Easton seems to acknowledge this when he claims that what counts as successful political output is a function of ‘cultural expectations’ in the first place (404-6).

The point is that these generalising tendencies explain that specific support no longer concerns the evaluation of authorities in terms of specific output or in terms of direct personal experience, knowledge or interests. Specific support, we must acknowledge, is already quite diffuse. It cannot simply be reduced to interest satisfaction through political action. The political authorities must foremost be ‘*perceived*’ as satisfying interests (1975:439). Given the emphasis on perception and given the fact that the most stressful and important demands concern *salient issues*, it seems, that specific support does not depend upon the evaluation of all political output – implying some kind of utilitarian bookkeeping model – but upon the evaluation of particular salient issues that are symbolic of effective performance. In other words, what seems to matter the most is the satisfaction of *symbolic interests*, i.e. interests that are symbolic of government effectiveness.

A further complexity concerns the fact that political demands not only concern preferences and interests, but also *expectations* of what authorities ought to do. As such, I might unfavourably evaluate the authorities not because they hurt my interests, but because they failed to live up to my expectations. It can be argued that satisfaction, different from utility, inherently entails subjective expectations and that evaluation is often related to perceptions of decline or progress.⁴⁵ When satisfaction also concerns expectations it seems that I might evaluate a political leader positively because I *expect* him to address certain issues. If anything, this is the basis of support mobilisation by political leaders and parties (1957:396). Political leaders mobilise support and loyalty by *committing*

⁴⁵ Easton seems to recognise this relation between satisfaction and expectations as he claims that specific support not only arises from ‘direct’ interest satisfaction, but also from “the patterns of outputs as they emerge over time” that “generate the feeling of being well governed” (1975:441).

themselves to a cause or demand in *exchange* for 'loyalty' from his supporters (1965:205,216,226).⁴⁶ Specific support, we might say, concerns a contractual relation between supporters and the political leader. As such, specific support is not about an evaluation of *effective results*, but of political actions that show the leader's *commitment to results*. Output satisfaction, we can conclude, is *symbolic* of the implicit contractual relation between leader and followers not about the actual fulfilment of preferences or interests. Indeed, Easton clearly acknowledges this type of '*symbolic satisfaction*' (1975:447).⁴⁷

Easton's understanding of specific support, then, is already quite complicated. Any simple relations between support and interest satisfaction must immediately be qualified. Not only is such satisfaction already quite generalised or diffuse as it concerns the *satisfaction of symbolic interests*, specific support also seems to entail contractual expectations, which provide the possibility of a *symbolic satisfaction of interests*. Although the difference between the two is analytically clear, we might wonder whether this distinction can reasonably be drawn at all in practice as symbolic interest satisfaction often includes notions of expectations.⁴⁸

4.4.5 Diffuse Support: Legitimacy and Trust

Diffuse support, in Easton's framework, explains why people accept binding political decisions despite political or social conflict, despite political dissatisfaction and despite the fact that the decision may be contrary to their interests. In contrast to specific support, diffuse support is 'unconditional', which means it is 'independent of output' (1965:273). In short, Easton understands diffuse support foremost in terms of a Weberian kind of subjective belief in legitimate domination – "the strong bonds of loyalty to the objects of a system as ends in themselves" (1965:273).⁴⁹ However, in his early work Easton additionally distinguishes between 'structural' and 'ideological' legitimacy (1965:286)⁵⁰, while in his later work he distinguishes diffuse support between political legitimacy and

⁴⁶ Despite Easton's criticism of Parsons, he seems to take over Parsons' general idea of 'leadership support' (1976:432).

⁴⁷ Other concepts in Easton's theory that denote the same mechanism include: 'symbolic stimulation' (1965:354), 'symbolic gratification' (1965:390), and 'symbolic political behaviour' (1965:442).

⁴⁸ The differentiation is akin to Edelman's distinction between 'referential' and 'condensation' symbols (Edelman 1985 [1964]:6). But also Edelman later doubted whether "there are any referential symbols" as "anything that serves as a symbol is bound to condense a range of ideas, feelings and sentiments" (1985:198).

⁴⁹ Easton criticises Weber on several accounts but these critiques, it seems to me, are mostly unfounded (1965:281,301-2).

⁵⁰ It must be admitted his earlier work is more complex as Easton distinguishes between different kinds of diffuse support: legitimacy, the ideology of the common interest and identification with the political community, while legitimacy in itself is divided between ideological principles, structural attachment and personal devotions (1965:286). It can be shown that this framework fundamentally confuses objects and sources of legitimacy. But we might interpret Easton's later work as admitting that the framework was not very clarifying. However, it does have consequences for all those Easton inspired researches that constantly

trust (1975:453). Although it would be wrong to claim that these two distinctions are identical, they do seem to connote the same essence: legitimacy or structural legitimacy seems to connote an *unconditional* value-rational belief in the validity of the political system, while trust or ideological legitimacy seems to connote a *conditional* value-rational belief in political validity.

Legitimacy or structural legitimacy, for Easton, connotes “the presence of an ingrained belief, usually transmitted across the generations in the socialization process” (1965:208). This kind of structural legitimacy differs from ideological legitimacy because of this traditional and socialised origin. And especially “rituals, ceremonies, and physical representations ...serve to bolster an aura of sanctity, respect, and reverence for the existing political institutions” (1965:308-9). Ideological legitimacy, on the other hand, points to ideological values and goals inherent in a political regime.⁵¹ These values are ‘articulated’ as a “set of ideals, ends, and purposes” (1965:290). Crucial for ideological legitimacy, according to Easton, is “whether *the outputs of the system* are perceived to be consistent and harmonious with the expectations roused by the ideological promises and commitments” (1965:294, my emphasis). In my view, this means that, first, ideological legitimacy is *conditional* upon outputs and, second, that concepts such as expectation, promise and commitment, also seems to connote an underlying *contract*. Indeed, concerning the first point, Easton states that ideologies “provide a context within which the authorities as well as the political structure and related norms may themselves be *tested* for their legitimacy” (1965:289, my emphasis). Concerning the second point, Easton explicitly hints at the ‘basic truths’ of social contract theories (1965:318).⁵² The most important form of legitimating ideology, according to Easton, is the belief in the common good: “the conviction that there is a general good, that it can be determined or defined, ...and that the authorities ...ought to pursue and promote this general good” (1965:312).

This conditional kind of legitimacy means that political authorities are believed to be legitimate because people *expect* them to effectuate, and *belief* them to be committed to, the common good, which inherently means that political output is accepted – sometimes contrary to subjective interests (316) – as an *expression* of that common good. When Easton later emphasised political trust as a separate dimension of diffuse support, it seems that we should understand trust especially in terms of this social contract relation. Political trust, according to Easton, means “that members would feel that their own interests would be attended to even if the authorities were exposed to little supervision or scrutiny” (1975:447). In other words, the members feel that the authorities are committed to their, but especially, the common interests (1975:448). Political trust, it

draw the same conclusion: the citizen is critical or dissatisfied with politics but supports the ideal values of democracy (Dalton 1999; 2004; Norris 1999; Klingeman 1999; Crozier 1975).

⁵¹ Easton separates these regime ideologies from ‘partisan ideologies’ (1965:292).

⁵² Easton criticises Weber for ignoring principles of ‘social contract’ that “have served as central validating principles in the history of Western political thought” (1965:301-2).

seems to me, points to underlying contractual expectations and, as Easton clearly states, “such trust would reveal itself as *symbolic satisfaction* with the processes by which the country is run” (1975:447, my emphasis). In short, it is not about the satisfaction of interests per se, but about the satisfaction of contractual expectations.

The problem, then, is not that we disagree that contractual expectations mobilised by explicit promise or public commitment are both *normative* and *conditional*, the problem is rather that the analytical differentiation between specific and diffuse support seems to have collapsed.

4.4.6 Three Analytical Arenas: Game, Theatre and System

When Easton claims that political ‘output failure’ can explain a decline of *specific support* that eventually spills-over into a decline of *diffuse support*, then we are not surprised as the two kinds of support can hardly be separated at all. It is telling that when Easton provides examples of such output failure in post-war United States he mentions solely actions of authorities that breach people’s expectations of what is right and proper – “outputs that affront human and legal norms” (1976:440). In short, Easton made specific support quite diffuse and on the other hand he made diffuse support quite conditional.

Easton therefore rightly wonders if it is possible to separate between diffuse and specific support at all (1975:448). When Easton answers affirmative, this is because he no longer tries to separate between the two upon the dimensions of conditional/unconditional, means/object or strategic/normative, but tries to rescue the analytical difference by separating between political *objects* of evaluation, between person and office (1975:449).⁵³ Although can we readily admit that expectations concerning office and person are not identical, it seems to me that this solution is unsatisfying, and above all uninteresting. Instead, Easton’s analysis opens up to a different analytical possibility, which becomes clear if we hold on to our differentiation between the political game, theatre and, in addition, system understood as legitimate domination.

When Easton analyses the legitimacy of the political system in general he is, just as Weber, concerned with *unconditional* belief in the *normative* validity of legitimate domination. However, in Easton’s more pluralist analysis of the political game – i.e. of resource-based political influence and backstage negotiations and bargaining – he is concerned with *conditional* support of the *strategic-rational* actors for the ‘rules of the game’, which depends upon how they evaluate the utility of this game over time. Just as in the pluralist model, we can say that to the extent that such negotiations

⁵³ This also seems to be the solution of modern empirical research that uses Easton’s model to measure the trust of different political objects. Dalton argues, for example, that specific support explains the rise and fall of political incumbents independent of the regime (2004:58). Norris claims a kind of continuum between specific- and diffuse-support that parallels the hierarchy of different objects (Norris 1999; see also Linde & Ekman:393).

satisfy and fragment wants and interests of the general public, political stress or social conflict is alleviated. Specific support, in this instance, points especially to functional behaviour, political apathy and the “distribution of satisfactions” to reduce system stress (1965:407). Finally, in politics as theatre Easton analyses how politics mobilises *normative* expectations among a passive audience – either by specific politicians making public promises or by expectations already present in regime and office – and how these *conditional* expectations are symbolically satisfied.

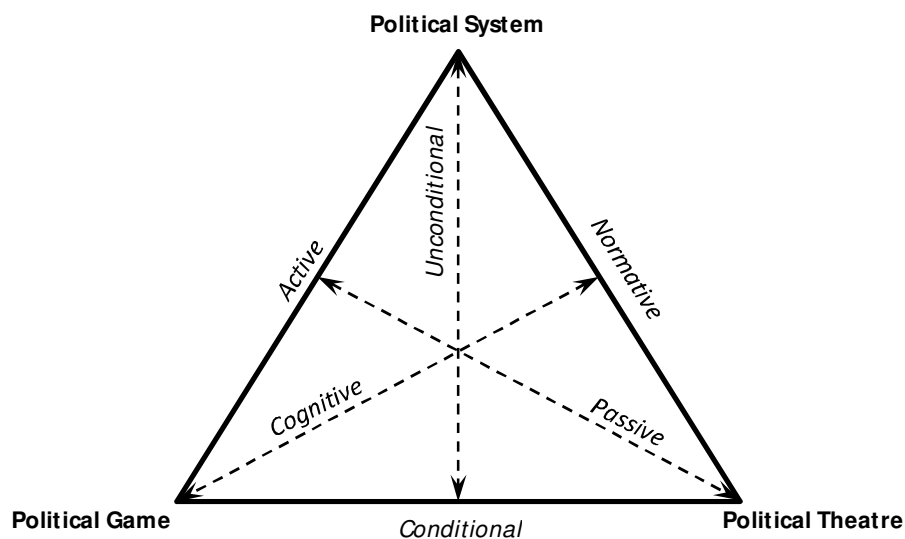


Fig.4.1 – The three political arenas in Easton’s theory

This theatre model of politics becomes apparent when we take a closer look at Easton’s understanding of political output. Political output is not just about effective ‘performance’ satisfying interests and demands, output is especially about *symbolic actions*, i.e. about ‘statements’. “The importance of all statements”, Easton writes, “derives from the fact that persons obtain some satisfaction from symbols” (1965:354). Political output, then, also includes statements expressing “rationales and commitments” that aim to “create a general sense of good will” (1965:353,465). Scharpf, who admits of being influenced by Easton’s work, also seems to emphasise this side of political output.⁵⁴ Indeed, when Scharpf talks about ‘output-legitimacy’ in his empirical theory he often means ‘output-oriented’ legitimation by symbolic action, by argumentation, which emphasises the ‘plebiscitary’ basis of such legitimation (1970:75; 1997:28; 2006:4). Output-evaluation, then, is not about effectiveness, system performance or the actual result of political decisions, even if these

⁵⁴ Just as Easton, Scharpf understands the need for legitimation as a function of democratic ‘viability’ and ‘survival’ (2006:1;1997:22,29;1999:28-9). Legitimacy is understood as a *capability* of the political system.

are not unimportant, but about effective *symbolic actions* of politicians – it is not about interests satisfaction but about symbolic satisfaction (Scharpf 2006:3).

4.4.7 Conclusion: Conditional Legitimacy

Easton, it seems to me, opens up the possibility of understanding political legitimacy on different grounds. Intentionally or not, he opens a new analytical space between cognitive and conditional strategic action, on the one hand, and normative unconditional feelings of duty, on the other. Instead, the theatre model allows us to understand normative but conditional support for politics. Although we need to analyse this model further, we can already concede that such an understanding of conditional political legitimacy is inherently differencing from Weber's unconditional beliefs. However, we might wonder the extent to which both Easton and Scharpf discarded the conflictive nature of politics in the meantime. Where Easton flirts with the 'ideology of the common good' he at least leaves open the question of whether a genuine consensus exists about the common good or that it merely connotes 'expectations' that politics ought to pursue the common good, whatever that may entail (1965:294,312). Scharpf, in contrast, claims that the 'social contract' actually entails a general and substantive consensus, which in Europe, he claims, concerns expectations about the welfare state (1999:122; 1970:24; 1997:28). This means that political conflict is solely perceived *vertically* and understood in terms of political dissatisfaction. It seems to me, however, that we can also explain political dissatisfaction without presuming some social consensus serving as a 'benchmark for legitimacy' (Scharpf 1970:24). We cannot discard the conflictive nature of politics at will and must be careful of cryptonormativism.

Secondly, the idea of a 'spill-over' between specific and diffuse support or a causal relation between political effectiveness and legitimacy remains problematic, to say the least. For sure, the three political arena's we distinguished are related. Political compromises must be symbolically legitimated and output-effectiveness is related to the salience of political issues which also relate to legitimation-needs. The relation between political output – symbolic or effective – and legitimate domination, on the other hand, remains difficult. We might readily agree with Lipset that this relation can be understood in terms of compensation or structural opportunity, but not in terms of causality. There seems to remain a divide between conditional strategic action and unconditional value-rationality that is not easily bridged.⁵⁵ It is precisely for this reason conditional normativity is so interesting. Unfortunately, contemporary discussions about output-legitimacy remain analytically

⁵⁵ This does not mean, of course, that there might not be *psychological* mechanisms in which interests and values are intimately related. Also in Weber's work the need for *self-justification* might have a material basis. Indeed, Weber commented that the rich and powerful feel an inherent need to justify their fortune in face of social inequality (1978:953-4). As such, my argument here does not mean that we need to deny Marxist analyses of relations between political legitimacy and ruling-classes.

too confused to really appreciate this point. The discussion might benefit from differentiating between the three political arenas⁵⁶ or, at least, by distinguishing more clearly between political output and political throughput – between preference satisfaction and symbolic satisfaction.⁵⁷

4.5 Conclusion: Political Support and Dramaturgy

The three branches of democratic realism discussed, grapple in their own specific ways with Weber's legacy, a legacy that problematises democratic conflict, rationality and stability. Democratic realism in general, we might conclude, fails to come up with a different, analytically robust notion of political legitimacy. Worse, this tradition easily seems to slip into cryptonormativist claims – instead of realism it often remains quite normative. Many claims, especially concerning the relation between political effectiveness and political legitimacy, remain intuitive and poorly analysed. And, finally, where it concerns political legitimacy this tradition tends to let consensus in through the backdoor. It seems that democratic realists eagerly point out that politics is inherently conflictive, but deny the conflictive nature of *legitimate* politics – a tendency that delegitimises conflict and depoliticises legitimacy. Democratic realists tend to emphasise a strong dichotomy between interest conflict and value consensus that is not only empirically questionable, but which theoretically forces them in a quandary. Theories that perceive politics in terms of coordination or argumentation seem to be in a better position to overcome this sharp duality.

Despite these problematic tendencies – which continue up till today – democratic realism also provides us with interesting insights. Especially the pluralist branch provides democratic theory with much needed realism. Political influence is based upon unequal distributions of political resources and the political decision-making process is structured by this inequality. Political decisions, then, are the result of power and conflicts between organised interests – results of the *political game*. At the same time, the tradition of democratic realism also provides some analysis of the symbolic nature of democratic politics. Political leaders and representatives not only mobilise interests and conflicts, they summon expectations by publically making promises or by committing

⁵⁶ Unfortunately, contemporary debate rather takes over Easton's analytical levels of political objects, which is understood as a 'hierarchy of stability' (Offe 1998:38). This hierarchy of stability must be understood in terms of a spill-over of social conflict and not of legitimacy. Social cleavages, it is claimed, can only be contained if both sides of the cleavage commit to the authorities, if not to the authorities then to the regime, and if not to the regime then at least to the political community (Easton 1965:320). In this sense, 'ascending' and 'descending' 'causal factors' of mutual confirmation exist between the different political objects (Offe 1998:38-9). While this idea is quite dominant in current empirical and theoretical research, there is no solid analytical basis for this kind of hierarchy of support, not even in Easton's own theory.

⁵⁷ Easton does identify what he calls 'withinputs' but these connote a different phenomenon: the idea that an "event occurring within a system may also have some share in influencing the nature of the outputs" (1965:31). These events especially concern demands that do not rise in the environment but are "internally generated" and "formed through experiences and activities in strictly political roles" (1965:55). Easton later acknowledged that his system theory is a "so-called black box model" (1990:ix).

to a cause, normative expectations that can subsequently be symbolically satisfied. In short, the dramaturgy of *political theatre* seems to open the possibility of a different kind of political legitimacy, the possibility of conditional normative political support. It is this latter claim that I want address in the final pages of this chapter.

The democratic realists perceive politics in instrumental terms which means that they emphasise political output and democratic politics as an effective process. Although it would be witless to argue that political output is irrelevant, it seems that especially Easton's analysis points out that such instrumental reading of the political process is not enough. We might perceive that politics not only has instrumental but also *expressive* functions (Luhmann 1983:223ff.; Edelman 1985:2, 1988:10). The reason, furthermore, that we can analytically separate between these two functions or perspectives is because of the *time* dimension. If a politician commits himself in the present to a goal he will realise in the future, it is clear that we cannot equal the present *symbolic action* of promise with the *binding decision* or *outcome* in the future.

A dramaturgical analysis emphasises symbolic actions over the actual output or outcome of a political process. Politics is most of the time not about taking final and binding decisions, let alone about the outcome of such decisions, politics most of the time is about mediated political talk and events – about symbols. This does not mean that output does not matter, but that because utility or interest satisfaction lies in the indeterminate future, it is expressive action that gives meaning to the immediate present (Luhmann 1983:226). Expressive and instrumental political actions, then, are not only different because they are distinguished in time, but also because as a consequence they have a different *meaning*. Indeed, when we have analytically separated between the political game and the political theatre, we are actually arguing that the instrumental and expressive functions of the democratic process are *differentiated* (Luhmann 1983:228; Edelman 2001:19-20). Dramaturgical analysis, in any case, holds that there exists no necessary 'harmony' or symmetry between the instrumental and expressive functions of politics (Luhmann 1983:227). Symbolic action or political theatre is relatively independent of actual outcome – relatively independent from the actual results of the political process on the conditions of everyday life. Not only does politically effective output lie in the indeterminate future, as stated before, we often also do not have a clue how political decisions play out in reality. Outputs need interpretation.

Dramaturgical legitimation, it seems to me, concerns both the dramaturgical arousal of normative expectations about future political actions and outputs as well as the symbolic satisfaction of these expectations. The key, then, is that both normative expectations and fulfilments are produced by symbolic actions, not by 'real' output (Edelman 1988:106). The political process, we

might follow Luhmann, is therefore *self-legitimizing* to the extent that the process can prove its own validity, i.e. it can answer the questions it raises itself (1983:252-3). A different way to understand this type of legitimacy, which I would like to label *political support*, is to emphasise the mobilisation mechanism that is so important in the tradition of democratic realists. The political leader, it is claimed, tries to mobilise support by committing himself to some goal or interest he wants to realise in the future. To the extent that the supporter strategically agrees with this goal – it is in his interest – he also commits to the political leader, either by vote, acclamation or by internal attachment, emotional identification or, in general, by support or loyalty.⁵⁸ Furthermore, the supporter in exchange for his loyalty now has normative expectations of what the political leader ought to do. From a dramaturgical perspective we might define political support or loyalty as the *constant suspension of judgment*. By use of symbolic actions, by dramaturgy, the leader tries to continuously postpone into the future the ultimate strategic and utilitarian judgment of whether support was worth it – the cost-benefit analysis. Dramaturgy is the constant “reconstruction of the past and its evocation of unobservables in the present and of potentialities in the future” (Edelman 1988:108). In short, the utilitarian evaluation and day of reckoning never comes as long as the political process is kept open (Luhmann 1983:38, 51-3).

Time and the ‘indeterminacy’ it implies, without exaggeration, is the core concept of this kind of political legitimacy, of political support (Luhmann 1983:116). It is telling that time is not a crucial concept in Weber’s analysis of legitimacy (see also Luhmann 1983:226).⁵⁹ In contrast to Weber, we might therefore explain why support is neither about conditional strategic interests (utility) nor unconditional belief in validity (truth). Time allows us to perceive political legitimacy as conditional normativity. It is conditional upon future interests, but not upon their actual realisation or satisfaction. Rather it is conditional upon the capacity of the political process to continuously symbolically raise and satisfy normative expectations – upon its dramaturgical force. It is this force we need to understand.

A dramaturgical perspective lends its analytical power from a direct analogy to theatre. In theatre there is, in general, a clear differentiation between the actors performing a play and the audience watching the play. This differentiation between actors and audience is essential for a dramaturgical perspective. The actors perform a play through active use of all kinds of symbols – ranging from scene to clothes, to gestures, tone, style and image and, especially, to language. The audience, on

⁵⁸ Luhmann uses the concept of ‘credit’ instead of support or loyalty (1983:47).

⁵⁹ It is not true, of course, that Weber was not aware of the importance of time especially where it concerns the ideology of progress in modernity (Weber 2004:13). However, when it comes to his analysis of political legitimacy, time hardly plays a role.

the other hand, is passive, i.e. spectators are not part of the play, even if they are part of the theatrical setting. The audience, furthermore, does not see actors performing, they see roles and characters, they see a meaningful story unfolding. They do not see the cardboard props and the bare stage, they see a castle, a battlefield or a dungeon. In short, a theatrical performance opens up a meaningful reality that is disconnected from 'real' life – it is a symbolic reality. The performance, furthermore, draws the audience into this meaningful symbolic world to the extent that the audience can *identify* with the story and the actors are competent (Luhmann 1983:224). The audience gets caught up in the unfolding narrative, in its plots and turns. The passive audience, to this extent, co-experiences (*miterleben*) crises and defeats, challenges and solutions, threats and hopes, conflict and harmony, enmity and friendship, heroism and cowardice, fear and love – in general, it experiences the *drama* of anxiety and reassurance (Luhmann 1983:195; Edelman 1988:123). The audience, then, might be passive but it is also 'drawn into the story'. We might therefore speak of a kind of '*uninvolved involvement*' (Luhmann 1983:123). Importantly, despite the symbolic nature of the play, the audience experiences real emotions, excitements and opinions. The people in the audience experience real meaning, it seems, because they either recognise themselves – their own life-experiences – in the symbolic play performed or the play shows them how life could be. As Jameson argues, symbols rouse real meaning either by *sentiment* or by *utopia* (1979:142, 1982:153). Importantly, this implies that people in the audience do not necessarily experience similar meaning – there is no consensus implied. Furthermore, the dramaturgical force does not depend merely upon positive sentiment or hopeful utopias, to the contrary, it often depends upon summoning aversions or fearful dystopias. A final characteristic of an audience is that it shows appreciation by applauding or booing. However, in a theatre the applause at the end of the performance when the script reached its conclusion and the curtains come down, if it is not mere ritual, usually concerns the appreciations of the actual actors, not of their characters. More interesting for us, however, is the cheering and booing we do when we lose ourselves in the narrative itself. When we hail the hero and jeer the villain.

A dramaturgical analysis of politics tries to analyse how a political process is able to sustain the same dramaturgical pre-conditions as can be found in theatre.⁶⁰ Politics, then, is first and foremost about performing dramatic stories which rouse anxieties and reassurances before an audience. "Politics", Edelman argues, "is a spectator sport" (1985:81). The symbolic narratives must mobilise real meaning by arousing sentiments and offering utopias so as to draw the public into

⁶⁰ The importance of 'drama' and 'theatre' in politics has, obviously, occupied more scholars, see, e.g. Luhmann 1983; Edelman 1960, 1985, 1985a, 1988, 1993, 1998, 2001; Bennett & Edelman 1985; Burke 1941, 1951, 1963; Manin 1997; de Beus 2001; Hajer 2005a, 2005b; Schechner 1973; Goffman 1959, 1974; Geertz 1980.

politics. To this extent, politics has to be *entertainment* in order to avoid that the public stands outside politics, i.e. to avoid that the public perceives the cardboard stage (Luhmann 1983:196). To assure the public's involvement politics is *dramatised* – for example by romanticising the political vocation, highlighting the importance of leadership, by personalising politics, by scandal, conflict and competition, or by arousing fear and hope. At the same time, this dramatization of politics only holds to the extent that the public – the audience – does not get too involved. The people must remain in a state of uninvolved involvement. But precisely to the extent that political 'spectacle' opens up a symbolic reality over and beyond the worries and drags of everyday life the passivity of the audience is guaranteed (Edelman 1985:9). Politics as theatre, then, must simultaneously uphold this disconnection from 'reality' and assure a connection to 'real' emotions and fears. This, for sure, is not a simple accomplishment as can be seen when politics has to deal with too concrete issues, as for example in NIMBY-cases (Luhmann 1983:102). Finally, this kind of analysis tries to understand how through dramatization, the political process organises its own support by *acclamation*.

Dramaturgical analysis, described as such, seems almost inherently to be inclined to *functionalist* and *critical* analyses. Functionalism, it seems, is almost inevitable to the extent that without it politics as theatre is difficult to perceive. As long as analysis remains connected to subjective action orientations there is nothing intrinsically wrong with functionalism. So, for example, we must make clear why the political parties or interest organisations are motivated to dramatise their actions or the actions of their opponents. Something that might be explained by the fact that many issues compete for public attention and that the 'attention-span' of the audience is fairly limited (Downs 1972; Edelman 1988:28ff.). Drama, for sure, sells. We can even agree with Luhmann that the use of drama has the function to decrease social complexity and to absorb political conflict (1983:39,171). This means that we might understand political theatre as a necessary result of social conflict and interest plurality.

We need to be more careful, however, if we combine functionalism and critical analysis to avoid making broad sweeping claims. Habermas, for example, claims that 'diffuse mass loyalty' in 'advanced capitalism' rests upon acclamation and consumption (1975:36-7; also Offe 1984:60). As long as the system is able to guarantee 'civil privatism' by providing the masses with leisure, consumption goods and career opportunities, he claims, the system remains legitimated (1975:75). Such claims, however, are analytically fairly poor, confusing stability and legitimacy or expressive and instrumental functions of politics. We can, of course, be critical of the political theatre. Dramaturgical analysis can provide the basis for neo-Marxist analyses in which drama is perceived as a kind of 'fetishism' 'mystifying' social inequalities (Edelman 1988:11, 1985:2). Politics, we readily admit, often concerns the creation of 'pseudo-events' and 'non-issues' (Edelman 1988:34, 2001:66).

One can also be critical of the fact that what attracts political and public attention is not a function of the severity of a problem, as pluralism wants us to believe, but rather of its dramatic appeal (Downs 1972; Edelman 1988:28). Finally, we can also critically analyse how political drama is a *depoliticising* force, i.e. how it keeps the public passive or 'docile', why the public accepts the differentiation of political labour or how politics distracts attention from the concrete to 'remote and the symbolic' (Edelman 1988:98, 1985:117; Luhmann 1983:116-8,121-2,195).

However, we need to be cautious. Recognising the dramaturgical force of politics – and its importance for legitimation – does not mean that sinister elites are capable of manufacturing the emotions and interests of the malleable mass at will. First of all, we have already discussed that symbols must remain connected to real experiences (Edelman 1988:8). Politics is not merely a 'text' that no longer needs to connect to real life, as Edelman sometimes seems to imply (1988:36, 2001:6). As such, there are certain boundaries upon the flexibility of political dramaturgy – not everything is possible. Second, as Luhmann rightly points out, political drama not only decreases complexity for the passive audience, but also for the political actors (1983:40). They are also 'drawn-in' to the dramatic narrative, from which they cannot step out at will as 'the scene carries itself' (Luhmann 1983:39). They are committed to the story they perform through their own symbolic actions and 'presentation of self' (Luhmann 1983:47; Goffman 1959). I will address both issues further in chapter 8, but we should at least concede, in my opinion, that both postmodern fantasies that everything is possible as well as elitist theories that testify of the omnipotence of elites must be qualified. This also means that we should be careful about drawing strong boundaries between 'real' and 'deceptive' politics, between the political game and political theatre. If anything, political theatre *is* real politics (Edelman 1988:104).

The final question we need to address is how we should understand political support as a form of political legitimacy. We usually do not say that a play performed in theatre generates legitimacy. The main difference between theatre and politics concerns the fact that politics *also* has an instrumental function. The specific dramaturgical qualities of politics relate to the fact that we do expect politics to 'determine' the future - that politics *does matter* for future conditions and interest satisfaction. Without the instrumental function expressive political actions seem to lose their specific dramatic force. To this extent, the contractual notions in the theories of Easton and Scharpf do make sense. Political support means that we normatively agree in the present that politics ought to realise an interest in the future. However, such contractual perspective often seems to connote some underlying social consensus – which is not necessary at all in a dramaturgical perspective. Furthermore, a contract seems to emphasise future output, while normative support is especially

guaranteed in the present. A dramaturgical perspective explains how normative expectations are aroused and symbolically satisfied or confirmed quite independent from political output. The fact that expressive symbolic actions are about 'immediate satisfaction' (Luhmann 1983:225) also means, in my opinion, that dramaturgy must not be understood in terms of *trust*. I will discuss the normative dimensions of trust in chapter 6, but we might agree that trust concerns both *uncertainty* and risk-taking *actions*. In contrast, dramaturgical political support concerns the certainty of immediate emotions and is not about action as the public remains passive, i.e. without "immediate action commitments" (Luhmann 1983:194). This latter fact of passivity, finally, also means that dramaturgy must not be confused with political argumentation, which we will discuss in chapter 7 and 8. Finally, we already discussed that support is also not about legitimate domination because the time perspective allows us to understand normativity between conditional interests and unconditional validity (truth).

Political support, then, is not about contract, trust, argumentation or domination, but, in my opinion, it is about a continuous arousal and satisfaction of normative expectations through dramaturgical actions. As such, political support is about *subjective normativity* and therefore, it seems to me, is a form of political legitimacy. However, the object of this normativity is less definite. Support might be directed to 'particular actors or political parties', but it might also concern the 'political drama' in its totality – its 'history' (Luhmann 1983:194-5). Political support, it seems to me, is fairly dynamic, fluid, diffuse and fragmented. It is inherently caught up in multiple and on-going political narratives. This means that this kind of political legitimacy might not so much explain subjective duties to obey, but it does consist of normative support for political actions and actors, however fluctuating.

Even more importantly, this kind of legitimacy is highly tolerant of *political conflict*. Narratives are often ambiguous, abstract and not necessarily coherent, which means that symbols can have multiple meanings and cater different interests (Edelman 1988:71, 2001:96; Luhmann 1983:116,195). This means for Luhmann that drama both reduces complexity and simultaneously preserves complexity (1983:112). Furthermore, the self-legitimizing character of politics as theatre does not, of course, mean that expectations are never disappointed. They often are. But especially the expressive function of politics might explain how such disappointments can be 'absorbed'. Disappointed expectation can be dealt with, for example, by the displacement of political leaders, the dramaturgical satisfaction of the fall of the mighty, the appointment of responsibility, blame and punishment, therapeutic repentance by leaders, by isolating the failure as an unique affair or, obviously, by emphasising 'plausible explanations'. That is, expectations can be transformed through learning and 'relearning' processes (Luhmann 1983:235). Indeed, political support can be

understood as the ability to process disappointment (Luhmann 1983:119). To this extent, political disappointment and dissatisfaction does not deny political legitimacy, but rather provides new dramatic sources of normative expectations. As long as the people remain 'involved', as long as politics is entertaining and as long as people do not withdraw from politics all together, disappointment is part of the dramaturgical legitimation process. Furthermore, as long as the narrative remains open-ended it always remains open for different plots and turns. Postponing the final decision absorbs conflict (Luhmann 1983:102). Finally, social and political conflict has specific strong dramatic qualities. The friend/enemy opposition is not only expressive of shared interests and identities, but also the basis upon which fear and anxiety is mobilised (Edelman 1988:66, 2001:7). Cheering for the protagonists and booing the antagonist is the essence of political dramaturgy.

In conclusion, when the democratic realists emphasise the importance of political effectiveness their analyses of political legitimacy remain caught in the separation between unconditional beliefs and conditional strategic interests. When, however, we introduce the concept of time this enables us to distinguish between the instrumental and expressive functions of the political process. Finally, this expressive function not only allows a dramaturgical analysis of politics, but also to understand political legitimacy in terms of conditional subjective normative support without denying the conflictive nature of legitimate politics.

Chapter 5

Politics as Coordination: Luhmann's World of Contingency

Politics is not only about domination or conflict; it can also be understood as a specific form of social coordination. In chapter 2, we have already seen that for Hume and Smith, the principle foundation of legitimate politics is its coordinating function. Politics, they argue, ought to coordinate the economic order to ensure its efficiency for the mutual benefit of all. Political legitimacy, as a consequence, is a derivative of market justice and rationality. The core problem, especially for Hume, is the question of why *homo economicus* would obey such political coordination. Hume tried to find the answer in the artifices of political domination, separating questions of obedience from questions of justice. In this chapter, I also want to pursue this coordinative nature of legitimate politics, but without either reducing legitimacy to an outsider's perspective or reducing politics again to domination, i.e. to the question of obedience.

The coordinative force of politics is a central topic of *symbolic media theory*. Media theory belongs to the 'third generation' of system theory, where the first generation concerns Durkheimian societal functionalism and the second the cybernetic system theory we already encountered in Easton in chapter 4 (Teubner 1984:292). Luhmann explains that this third generation of system theory, in comparison to cybernetic system theory, emphasises the 'problem of self-reference' of systems and subsequent problems of 'reflexive system identity' and 'autonomy and self-organisation' (1984:310). In other words, it is more inward looking, rather than understanding a system's outward exchange relations with its environment. When media theory tries to understand how a political system is internally organised and how it coordinates social action, its main insight is that such organisation is coordinated by a specific language or symbolic medium: *legitimate power*. Political coordination, according to media theory, must be understood as a specific kind of *communication*.

It can be argued that this generation of system theory, especially as developed by Parsons and Luhmann, both continues and dismisses Weber's legacy simultaneously. First of all, system theory readily continues Weber's idea that 'society' consists of different value spheres with their own internal and self-referential logics. Furthermore, it agrees with Weber's insight that between these different value spheres, each serving their own 'god', communication is difficult, if not impossible. Finally, if we argued in chapter 3 that Weber's analysis can be approached from two perspectives – the perspective of social action (*Handeln*) and 'meaningful being-in-the-world' (*Existenz*) – then symbolic media theory continues in particular the first perspective.

This latter claim must be immediately qualified, however. System theory in general is fairly hostile to Weber's action theoretical approach. To the extent that Weber's theory points to the relation between social action and social order, and differentiates between subjective and objective

validity, it poses many similar questions as media theory. However, media theory explicitly discards Weber's interests in subjective action orientations as well as the subject in general. Furthermore, symbolic media theory discards Weber's preoccupation with the question of obedience – it is not political obedience but coordination that must be explained – and the idea that legitimacy must be understood in terms of *Existenz* and unconditional duty. Finally, if Weber's claim of the 'warring of the gods' emphasises the problem of political conflict – the concern of the democratic realists discussed in chapter 4 – then media theory does not deny conflict but tries to understand how conflict can be absorbed within the political process. Although we should not make a caricature of Weber, his ideal-typical description of political or bureaucratic organisation seems especially to highlight its *machine*-like features – its rationality, coherency and predictability. Media theory, on the other hand, especially emphasises the ambiguity, indeterminacy and contingency of political organisation, which makes it more tolerant of conflict.

In what follows, I analyse the extent to which this third generation system theory provides us with different insights into political legitimacy. It is clear from the start that we will not find theories of *subjective normativity* in system theory. My intentions are not to make some straw man of symbolic media theory, but rather to open up this interesting approach to the subjective dimension that is central to this thesis. This, then, will be the general aim of this chapter, while in the next chapter I will argue how we could understand political legitimacy as subjective normativity within the analytical framework of symbolic media theory.

5.1. Symbolic Media Theory: Coordination and Communication

The general claim of media theory is that "[s]ociety consists of communication, it consists only of communication, it consists of all communications" (Luhmann 1984:311). Importantly, 'society' consists of differentiated social systems in which social action is *coordinated* by different rationales, values or expectations, captured and communicated by different symbolic media. This means that most media theorists claim that social action in 'the' political system is coordinated by the medium of *legitimate power*, 'the' economic system by *money*, 'the' legal system by *law* and 'the' scientific system by *truth*, though disputes remain.¹ The main undisputed claim, however, is that political, economic, legal and scientific actions can be both analytically and empirically differentiated *because*

¹ Luhmann perceives, in addition, the social system of marriage coordinated by the language of love (Luhmann 1975:43). Luhmann also claims that other systems (such as the 'school system' or 'family') might have their own 'identity' and meaningful 'boundaries', but that they are not completely 'differentiated', i.e. they do not possess an exclusive language (Luhmann 1984:311). Parsons' categorisation is considerably more complicated. He perceives per definition only four *functional* systems at the level of society: the economic, political, integrative and 'pattern maintenance' (Parsons 1963b:236). However, in between these systems are often a plurality of 'sub-systems' that organise the coordination between the systems. One important sub-system, for instance, is the (electoral) influence system coordinated by support/leadership (Parsons 1963a).

they are coordinated by different symbolic media. Symbolic media, furthermore, can be perceived as 'specialised languages' (Parsons 1963a:38-9), and just as language proper, they allow *communication*.

We might say in very general terms that communication consists of the following analytical parts. First, communication concerns the *transfer* of meaning from one person to another. Meaning is a *selection* of all possible possibilities; communicated meaning is thus a reduction of social complexity (Luhmann 1975:5). Second, communication only *coordinates* or structures social action if meaning is effectively transferred; that is, if persons accept the meaningful selection that is offered as the basis for their own understandings and actions (Parsons 1963b:242). Expectations of meaning thus have to be shared by both actors (Luhmann 1964:16-7). Third, this implies that the inherent problem of all communication is *double contingency* (Luhmann 1973:33; 1975:5; 1974:238; Parsons 1953:621). Contingency means that expectations of what is real or meaningful can differ from one another – contingency denotes the presence of alternatives – while double contingency means that these expectations are in themselves dependent upon the contingent expectations of others (Luhmann 1974:238). Fourth, this inherent contingency can only be solved if expectations are *generalised*, i.e. when reciprocal expectations of meaning become non-contingent or objectively valid in space and time. Finally, this means that communication is especially possible by means of a shared code – a language – that *symbolises* these generalised expectations of meaning (Parsons 1963a:38). When the communication of meaning is made possible by this shared 'symbolic code', the code in itself does not have 'intrinsic' meaning (Parsons 1963a:38); or as Luhmann puts it, the code is the structure, communication the process (1973:43). In sum, "[t]he general function of generalised communication [is] to make reduced complexity transferable" (Luhmann 1974:240). Such a process is 'contingent', but nevertheless 'non-arbitrary'.

If this is how we can understand communication in the most general terms, a media theoretical analysis has to explain how legitimate power as a special language enables communication and, more importantly, what is communicated in the first place. We will address these questions in the first part of this chapter. In the second part of the chapter, we will discuss what such communicative perception of legitimate politics means for social coordination at different levels of analysis, especially where it concerns the *question of validity*. However, we are confronted from the start with the problem that there is no singular, general media theory of legitimate power. Every theorist seems to develop his own, and often very technical, version of media system theory, which might be the reason why so few scholars today still try to understand it. In what follows, I will

not try to provide the final theory. Instead, I will concentrate my analysis of media theory upon the early work of Luhmann, with helpful supporting references to Parsons.²

5.2 Legitimate Power as a Specific Language

All types of symbolic media structure or 'influence' expectations and subsequently behaviour (Luhmann 1975:8; Parsons 1963b:232). One could argue, therefore, that all media concern *power*. This seems to be Foucault's argument when he claims that the type of 'symbolic medium' through which power is communicated is less relevant for the study of power (Foucault 1982:786). For Foucault, power is an *effect* (or relationship) of all media, while for media theory, power is a specific *medium*, a specific language in its own right. The question is how we should understand power as a specific language and what meaning or selection of reality is actually communicated.

In the case of money, many theorists build their formal understanding of money upon some notion of exchange or barter as the most elementary economic relation (see e.g. Parsons 1963b). In the case of power, however, such an analytical starting point already seems problematic. We could follow Blau's attempt to understand power likewise upon an exchange relation, but this would ultimately lead to the conclusion that power, like money, is a form of capital (Blau 2004 [1964]). More promising would be to follow Parsons' lead. Although Parsons also tries to understand power in the direct analogy to money, the specificity of money is not about an exchange relation as such, but that money enables a specific intentional attempt to influence the behaviour of another. Power, then, is a different type of influence: the intentional attempt of someone (Ego) to get another person (Alter) to do something under the threat of negative sanction (Parsons 1963a, b). However, if we start our analysis at this point, not only do we seem to overemphasise the instrumental quality of power in relation to its expressive or communicative features, but in particular we steer our analysis back to the question of command and obedience instead of symbolic coordination. In other words, we steer our analysis to questions concerning the *effectiveness* of the use of power, not to its communicative or linguistic qualities. Although questions of effectiveness are of course important, it seems sensible to first try to understand power as a language.

² Parsons' work is extensive and often extremely technical. Indeed, some scholars even question its internal coherency (Ritzer 2000:432). Parsons excuses himself, claiming that rapid theoretical development is "a source of difficulty and sometimes confusion because it makes it so difficult to maintain consistency of terminology. But that it is definite *development*, not aimless wandering" (1953:631). In order to get a grip on his work, I will concentrate on two articles written in 1963 where he specifically addresses the political system (Parsons 1963a, b). Luhmann's work seems more coherent and often more lucid. Yet, his work can be divided into two general periods, with the turning point somewhere in the 1980s (Lange & Schimank 2001:61). The second period is a full and technical elaboration of media system theory, concentrating in particular on his theory of self-reference or 'autopoiesis'. These later developments notwithstanding, I will concentrate on his earlier period, because in that period the relationship between his media system theory and his theory of social expectations is analytically more lucid. It seems to me that upholding this relationship at least leaves open the possibility to incorporate a (subjective) action perspective in media theory.

5.2.1 From Force to Power

Luhmann starts his analysis with the claim that what makes power possible at all, in whatever rudimentary form, is the duality between 'to will' and 'not to will' (Luhmann 1975:34).³ Power only becomes relevant where a "natural-situational congruity of interests" can no longer be presumed, situations where a consensus of will becomes *contingent* (Luhmann 1975:14). A conflict of will, for Luhmann, forms the analytical basis for understanding power as a symbolic medium – "it is power in raw condition" (Luhmann 1975:34). So, for example, we might perceive a conflict of will when Ego wants Alter's apple and Alter does not want to give it. In this situation, Ego might decide to take the apple from Alter against his will. Taking the apple *by force*, however, entails a risk, as it might lead to a "dangerous test of power", i.e. a test to see who possesses superior force (Luhmann 1975:50). At this rudimentary level, power is purely understood as the possession of superior force, which enables one to pursue one's will despite resistance. Whether Ego will take the apple by force depends upon his *subjective* evaluation of the situation. Ego might take the apple if he believes himself to be stronger than Alter; but even in this case, he might nevertheless decide not to enforce his will in order to avoid the risk and cost of possible violence. "The intention of Ego ... is not to punish but to secure performance" (Parsons 1963a:44). Whether Ego acts depends upon his (strategic) evaluation of benefits and possible costs. If Ego concludes that the risk is too high, he will not pursue his will.

We might agree that this situation changes when Ego does not simply expect to be stronger, but also expects that Alter expects him to be stronger. This is a crucial step as it changes Ego's evaluation, because Ego can now expect that Alter has more interest in avoiding violence than he does, i.e. Ego has expectations of 'asymmetric interests' (Luhmann 1975:65). This expectation of asymmetry opens up new possibilities for Ego, as he can now try to pursue his will *and* avoid a contest of force based upon the expectation that Alter has more interest in avoiding force than he has (Luhmann 1975:22). Ego gains the possibility to make threats. Whether these threats are successful – i.e. whether Alter will *obey* Ego – is a different question. The crucial point is that because Ego expects asymmetric interests, he gains the possibility to pursue his will in face of resistance and without the use of force. Luhmann thus defines power as different from mere force (Luhmann 1975:9).⁴ Power, furthermore, exists independently of whether it is 'used' or not – power is a *possibility* to pursue one's will without force (Luhmann 1975:25). Power is a possibility because it

³ Luhmann claims that the fundamental duality underlying money is the 'dual coding' of the world in 'to have' and 'not to have' (1975:35). For law, this would concern the duality right/wrong (*Recht/Unrecht*), for truth the duality true/untrue and for love the duality private/public (Luhmann 1975:42-3; 1989:140).

⁴ The point is not to exclude force and violence from power, as both are all too real. Rather, Luhmann stresses that force and violence are not genuine forms of social communication as they do not give the other any serious choice for action (Luhmann 1975:9,64).

depends upon *expectations*, and expectations of expectations of asymmetry. This also means that power is independent of actual possession of sources of force. For example, if Ego expects that he is actually weaker than Alter, but he nevertheless expects that Alter expects him to be stronger, he still has the possibility of power.

In our example, however, things are still quite complicated and confusing, as each actor *subjectively* evaluates the situation in his own terms. The social situation, the conflict of will, remains vulnerable and insecure. Any misunderstanding threatens to turn an attempt to use power – to pursue one's will without force – or even to avoid the use of power into a test of force, with all the risks and costs involved. The inherent social complexity of 'double contingency' and the always present 'possibility of conflict' is precisely what *all* symbolic media have to resolve (Luhmann 1975:5,8). This means that if we want to understand legitimate power as a type of language, we must understand how it is able to *reduce* the complexity of social situations by *generalising* expectations beyond the subjective, specific and contextual. As already discussed in chapter 1, Luhmann perceives three dimensions of generalisation: the social, the material and the temporal (1964:17, 1975:237, 1977:46, 1985:24).

A first form of generalisation might be the step from subjective to intersubjective expectations in the social dimension. For example, Alter and Ego might share a history in which a test of power proved for both that Ego is stronger. We can assume that this means that expectations of asymmetric interests to avoid force are now intersubjectively validated. Such *consensual* expectations of asymmetry, according to Luhmann, structure the social relation into 'binary' expectations of strong/weak (1975:65). The importance of this consensus is that Alter does not have the possibility to pursue his will against the will of Ego by force of threat. This does not mean that Alter no longer has any choice of action; rather, it means that if Alter chooses to pursue his will, he must be willing to challenge Ego's will in a test of force. Alter still has the freedom to choose his own actions, but he must expect that certain choices might have serious consequences. Ego, on the other hand, can try to pursue his will, not by using force but by threat of sanction. In other words, intersubjectively valid expectations of asymmetric interests to avoid sanction give Ego the possibility to use power over Alter and not vice versa. As power is now generalised into the social dimensions and is no longer a function of subjective knowledge, power has become a *social property* (Luhmann 1975:15). This also means that power becomes independent of the subjective will, i.e. power structures expectations independent of whether or not Ego wants to use his power, wants to pursue his will (Luhmann 1975:11). To understand power as the effective difference between the actual result and 'what one would have done otherwise' therefore seems hopelessly flawed (see Luhmann 1975:11). Power as communication structures expectations and possibilities, which forecloses any

genuine understanding of meaningful expectations of what one 'would have had otherwise'. In other words, one can only act meaningfully *because* one's expectations are a selection of infinite possibilities.

5.2.2 From Power to Formal Power

To recount, power is, in principle, independent of force, of sources of force, of use, of will and of effectiveness. Power-as-medium, we might say, merely communicates socially valid expectations of *domination* (Luhmann 1973:26). However, if we continue our analysis, the social situation remains up till now rather complex and contextual, especially in relation to anonymous actors. In order for power to coordinate anonymous relations, it has to be generalised to socially institutionalised expectations of domination, i.e. expectations of domination have to become *objectively* valid and no longer dependent upon intersubjective consensus. This is only possible if expectations of domination are somehow symbolised in socially institutionalised codes. Institutionalised power needs *symbols* that are 'functional equivalents' or 'substitutes' for an actual contest or 'test of force' (Luhmann 1975:10). The symbolic code of power, however, is not as clear as words in relation to language or as gold or currency in relation to money. Socially institutionalised symbols of power, in the first instance, might concern actual sources of force symbolising some kind of comparative hierarchy (Luhmann 1975:10). However, except for relatively simple situations, such symbolic code still leaves many uncertainties and complexities that easily lead to miscommunication, an actual test of force or the avoidance of power altogether.

For power to be a genuine symbolic medium, it must be able to generalise 'meaningful orientations', which means that these orientations remain "identical in different situations with different actors" (Luhmann 1975:31). For power to communicate valid expectations of domination in general – i.e. beyond the specific context and social contingency – objective expectations of domination might, in addition, be generalised in the *material* dimension. As such, we can say that a 'next' step of generalisation would be that social expectations of power are generalised from persons to social roles and, especially, to a socially institutionalised *formal hierarchy* of social roles in 'generalised rules' (Luhmann 1975:37). Power, then, might be socially institutionalised in terms of status hierarchies and codes of honour (Luhmann 1975:10). These socially institutionalised codes *symbolise* objective expectations of domination, not in terms of specific persons but rather roles. In other words, if one does not know a person personally, his social position and status symbolise objective expectations of domination. Expectations of domination are no longer dependent upon knowledge of specific persons or a specific context, but are only dependent upon their its institutionalised *code*, i.e. the social rules of hierarchy (Luhmann 1975:37).

When expectations of power are no longer symbolised by sources of force but by social rules, these symbols only communicate expectations of *asymmetry*, i.e. of strong/weak. Actors can only assume that this asymmetry is indeed 'really' based upon underlying differences in strength. In other words, it might be possible to differentiate between the decontextualised expectations of *formal* power and contextualised expectations of *informal* power. Indeed, formal power might be completely ceremonial, while informal power is actually coordinating social practice. As such, when expectations of power are generalised into hierarchies of social roles, power is no longer just about the duality strong/weak, but also about the duality formal/informal. Where formal expectations of power concern expectations of domination generalised beyond a specific material context, informal power remains contingent and sensitive to the complexities of contextual knowledge, shared histories and personal trust. Luhmann perceives informal power as a contingent 'substitute code' (*Neben-Code*), just as 'reputation' is a substitute code in relation to scientific truth, or the 'cigarette trade' or black market is substitute code in relation to money (1975:250). A substitute code might be more 'concrete' but also more 'context dependent', which means, according to Luhmann, that it has "less societal legitimation capability" (1975:41).

5.2.3 From Power to Legitimate Power

The problem of power is that a power holder cannot afford a 'single defeat', as expectations of asymmetry remain contingent upon expectations of superior strength (Luhmann 1975:26). A further form of generalisation would be to generalise expectations in the temporal dimension. This means that expectations of power are no longer cognitively valid but are normative or *counterfactually* valid. Symbolic codes of social roles and formal hierarchy no longer communicate expectations of power, but rather legitimate power, no longer domination, but rather legitimate domination. A social role therefore does not symbolise formal expectations of asymmetry, but symbolises expectations that such asymmetry *ought to be* valid, independent of whether this is factually and cognitively the case. Symbols of power, then, not only structure expectations in terms of formal/informal, but in terms of right/wrong (*Recht/Unrecht*) (Luhmann 1975:34). Social role and social hierarchy symbolise the *right* to domination, which is no longer dependent upon actual (cognitive) expectations of asymmetries of interest or upon underlying superior strength. This type of generalisation is therefore more difficult to understand.

Luhmann and Parsons claim that counterfactual expectations of power are 'second coded' (*Zweit-Codiert*) in social norms or in the 'normative order' of society (Luhmann 1975:34; Parsons 1963b:242). Both compare this normative coding of power into right and wrong with the institution of property in the economic system. The social institution of property, they claim, is the *normative*

foundation of the economic system and, as such, of money as a symbolic medium. At the same time, however, property is also coded in law. Just like property, the normative code of power (right/wrong) can be 'firmly institutionalised' in a 'legal framework' (Parsons 1963b:242). As such, it can be argued that law relates to legitimate power as legal property to money (Luhmann 1975:43-5).⁵ What is important is that the 'institutional code' of legitimate power – e.g. status and social roles – is embedded in a socially valid normative order (right/wrong), which, in addition, may be symbolically coded in law (legal/illegal) (Parsons 1963b:243; Luhmann 1975:43-4). To the extent that this is actually the case, legitimate power symbolised in social roles and norms communicates socially valid counterfactual expectations of formal/informal and legal/illegal power (Luhmann 1975:46). Informal power connotes how someone has power contrary to formal expectations of social hierarchy – e.g. when the 'weak' have effective power over the 'strong'. Illegal power connotes how a person uses his formal, legitimate powers outside of legal boundaries. Finally, illegitimate power connotes formal and legal power that comes into conflict with its underlying normative social order.

In a *stratified society*, Luhmann claims, legitimate power is communicated in terms of social roles and status that remain firmly embedded in the normative order of society. In other words, a 'generalised morality' not only 'moralises' power or domination but also law, religion, history – indeed, the total cosmos of the stratified society – into good and bad (Luhmann 1973:27). To this extent, there really can be no difference between the dualities legal/illegal and legitimate/illegitimate. Or, as Luhmann puts it, legitimate domination in a stratified society is not so much second coded in law as in the 'perfection' of a general morality (1975:54). For Luhmann, this means that a stratified society must be analytically separated from the social organisation of modernity, which is characterised by social differentiation. Stratification or differentiation, in Luhmann's analysis, are foremost different historical 'solutions' for the reduction of social complexity and contingency (1977:32-3).⁶ If we want to understand how symbolic power coordinates a socially differentiated *political system*, we need to understand how symbolic expectations can be disembedded from social norms and roles or from a generalised morality.

5.2.4 From Segmented to Differentiated Societies

The final 'step' we need to make is to generalise expectations of legitimate domination in the material dimension from social rules and roles to legal rules and office. If legitimate power is

⁵ We can also say that legitimate power relates to law as scientific truth relates to method (Luhmann 1975:37).

⁶ Luhmann argues that social stratification remains complex and unstable because it is based upon 'symbolic differentiation' in terms of formal social roles and status, but *also* upon informal or actual unequal distribution of sources of power (Luhmann 1977:33-4). Social stratification, according to Luhmann, not only leaves the problem of communication of power between equals unresolved, but also becomes further unstable with the increase of wealth (and power) among those in the lower strata.

symbolically coded in rules, it opens up the possibility of the organisation of power by will, which we might, in the first instance, best understand in terms of bureaucratic organisation. In a bureaucratic organisation of power, as Weber has already taught us, legitimate domination is coded in bureaucratic rules. If we 'translate' Weber's analysis of bureaucracy in media theoretical terms, we might propose four characteristics of idealised bureaucracies.

First, especially in contrast to stratified societies, bureaucratic organisation presupposes the *centralisation* of power (Weber 2004b:37). This must not so much be understood as the centralisation of sources of force but rather as the centralisation of will. It is not force that is centralised in leadership, but the *decision* of how to use and organise collective force (Luhmann 1975:8), and it is precisely when power becomes *decision-making power* that we can speak of political power proper. Second, bureaucratic organisation presupposes the disappropriation of sources of power (Weber 1978:219, 2004b:37). Although generalisation in social roles means that the formal hierarchy of domination is independent of persons, roles and status nevertheless symbolise *personal* power. Disappropriation of sources of power means that valid expectations of domination shift in the material dimension from *person to office* – “the de-personalisation of the medium” (Luhmann 1975:37). Office, most importantly, does not symbolise personal power but *organisational* power. Third, the sovereign at the top of the bureaucratic organisation ideally no longer rules by command but *rules by rule making* (Parsons 1963b:242). In a bureaucracy, this means that political domination is no longer about the sovereign giving commands to his subordinates, but about 'programming' the bureaucratic organisation by giving subordinates the right to make their own binding decisions within the competency of their office (Parsons 1963b:242).⁷ The consequence, fourth, is that even if a bureaucracy presupposes a centralisation of will, it does not presuppose centralised decision-making.

In system theory, this is often grasped in terms of *liquidity*. For Luhmann, this means we should understand the circulation or the 'flow' of power as 'chains of decision-making', in which multiple decisions are taken after one another – it concerns decision-making power as a *process* (1975:29). Bureaucratic, hierarchical rules do not so much designate that A dominates B who dominates C, etc., as that A decides how B decides how C decides, etc. In other words, we might understand liquidity as the 'circulation' of decisions (Parsons 1963b:244).⁸ As a consequence, the

⁷ It concerns the “establishing of the premises of decision-making (not decisions!)” (Luhmann 1975:6, footnote 13).

⁸ Parsons overstretches the analogy between the liquidity of power and the liquidity of money, which makes the concept difficult and contested (see also Giddens 1990:23ff. on the issue). In particular, understanding the liquidity of legitimate power in terms of *inflation* and *deflation* or in terms of *banking* and *investment* seems analytically weak (1963a:60-62). Even a direct analogy between the circularity of money (currency) and of legitimate power (rules) does not hold *prima facie*, as it is not power but decisions that circulate.

'final' decision becomes a property of the political organisation as a whole (Luhmann 1966:293). It can no longer be located in one single act but only in the process of decision-making itself.

Together, these presumptions allow us to understand bureaucracy as hierarchically organised decision-making power and to analyse the most curious characteristic of bureaucracies: the fact that organisational rules that symbolise formal decision-making power are themselves the result of decision-making. It means, firstly, that political power is inherently tied up with the bureaucratic organisation. Political power can thus only be expected to be valid *internally* within the bureaucratic organisation. In system theoretical terms, this means that we must differentiate between the organisation and its environment. Secondly, coding power in organisational rules means that the internal organisation of power can be 'rationalised', but also that expectations of power become inherently *contingent*, to the extent that rules can be changed from one moment to the next (Luhmann 1975:99). Thirdly, precisely because the bureaucratic organisation is differentiated from its environment, we not only encounter the problem of contingency but also the problem of order. We might expect, however, that because the disappropriated individual only has formal *and* informal power because he is an officeholder, he is structurally dependent upon the formal organisation. A bureaucracy, we might say, *organises* its own constitutive motivations, to the extent that each member can validly be expected to have a motive to uphold the formal hierarchical structures of domination.

In short, when expectations generalise from role to office, we might perceive an ideal bureaucratic organisation as *socially differentiated* from its environment. This also seems to imply that a totally differentiated bureaucratic organisation is also disembedded from the societal normative order or 'generalised morality'. Although legitimate power remains 'second coded' in bureaucratic rules, the political organisation itself is disembedded from its social environment. The question, then, is how we can understand the normative nature of legitimate power. The shift from rule by command to rule by rule making, we might argue, means that subordinates gain legitimate political power – the *right* to make binding decisions – *because* the sovereign at the top of the hierarchy uses his political power, i.e. makes a binding decision. Legitimate power, then, is coded in power.

Expectations of legitimate power become possible because power both creates and limits power – power becomes 'reflexive' (Luhmann 1975:40). Reflexivity, for Luhmann, concerns in most general terms "the selection of selections", i.e. when a medium turns upon itself (1973:24; 1989:141). More specifically, in the economic system it means the "exchange of means of exchange", and in the political system it means turning 'power upon the power holder' (Luhmann 1966:273; 1984:314). The normative order of a reflexively organised bureaucracy, then, is symbolically coded in

rules that are themselves the result of binding decisions of legitimate power. This *self-reference* of legitimate power obviously comes to a halt in the power of the sovereign at the top of the bureaucratic hierarchy. To this extent, we can say that the normative order symbolically coded in the rules of bureaucracy does not concern some general morality but indivisible *sovereign power*.

5.2.5 From Bureaucracy to Political System

The sovereign position of the ruler (or rulers) at the top of a bureaucracy coordinated by legitimate – or self-referential – power obviously remains difficult; a difficulty that Weber, as we have seen, struggled with and Luhmann calls ‘the power question’ (Weber 1978:222; Luhmann 1975:38). This question, in the first instance, connotes the problematic relation between the arbitrary will of the sovereign and the (counterfactual) rationality of the bureaucracy. The sovereign – whether a political, religious or economic ruler – might in theory pursue his arbitrary will. However, his will is also forced into organisational ‘consistency’ by the ‘normative form’ of bureaucratic domination (Luhmann 1975:28,47). The power questions that are not solved are those of the power relation between different bureaucracies or sovereigns – which remains segmented – and the power relation between the ruler and his subjects outside the bureaucracy – which remains about ‘rule by command’ and is embedded in social morality. In other words, to solve these questions, other than in the validity (truth) of an absolute ruler, *legitimate power* as a medium must be generalised beyond a specific bureaucratic organisation and gain societal relevance (Luhmann 1975:30).

The solution for both problems, it seems, is *law*. Law, according to Luhmann, symbolically codes normative expectations of justice/injustice and can itself be understood as a socially differentiated system – the end result of a process that we might schematically understand, as discussed before, running from traditional to natural to formal to positive law (Luhmann 1989:140). As with Weber, positive law connotes that the legal system is socially differentiated and “defined by its own code” (Luhmann 1989:148). The validity of law, in other words, is self-referential to the extent that the validity of law is defined by law. The importance of positive, self-referential law for the political system is that it allows legitimate power also to become self-referential. To the extent that legitimate power is symbolically coded in law, which is itself a product of legitimate political power, power validates power. This self-referentiality explains why the political system is a socially differentiated *and* normative system, no longer tied to force, asymmetry or, for that matter, morality. Power and truth become socially differentiated as the system becomes ‘reflexive’, i.e. as “[i]t can regulate its own regulation” (Luhmann 1975:29; 1989:141). As such, to the extent that the ruler binds his will to the law, and to the extent that his power shifts from person to office – what

Weber called the ‘expropriation of the expropriator’ (2004b:38) – the self-referentiality of the legally coded legitimate power solves one of the problems of the ‘power question’.

Law might also explain how legitimate power can become a societally relevant medium beyond the organisational boundaries of a bureaucratic organisation. Law allows us to perceive the nature of politics beyond a mere relation of *command-obedience*; rather, we can see it as a *coordinative* relation in which laws as final decisions of the political system coordinate and integrate society. To understand the integrative force of legitimate power second coded in law, we might compare its *boundary problems* with that of money. Money, in media theory, is also a ‘specialised language’ that symbolises expectations of objective market value (Parsons 1963a:39; 1963b:234; Luhmann 1984:313). Money can be seen as a ‘universal language’ to the extent that every object for which there is a (potential) market can in principle be objectified in terms of money.⁹ If a society wants to exclude certain goods or services from the market or economic rationality, the economic system must be *bounded* in terms of power and law, if not by social norms. Indeed, in practice not every good – let alone service – is allowed into the formal market, either because it is considered to be public property, inalienable property (especially life, liberty and the human body) or because certain goods are thought of as morally or ethically wrong (e.g. narcotics). Where this boundary is drawn, however, cannot be explained by the logic of the economic system itself. The inherent boundary of money only concerns the possibility of market value, which in itself is a function of scarcity. This explains, according to Luhmann, the colonial tendency and ‘functional primacy’ of the economic system – even if it might undermine its own social foundations (1975:102). We might say, more critically in line with Marxist analyses, that precisely this monetary objectification (*Verdinglichung*) has a tendency to obscure or mystify deeper lying social relations and inequalities. The language of money, as Luhmann claims, has inherent *depoliticising* force (Luhmann 1974:245; 1984:319).¹⁰

Legitimate power, in contrast, rests upon *counter factual* expectations that inherently seem to limit its colonising tendency. Indeed, legitimate power in the family, the factory, the organisation or the state does not symbolise the same ‘objective value’. One cannot understand the legitimate power in the family in terms of legitimate state power. This is not just a question of different symbols necessitating some form of ‘translation’, as in the case of money in relation to different currencies. Different monetary symbols are expected to symbolise the same economic value, i.e. the

⁹ This does not mean, of course, that capitalist market logic is, in some sense, a *natural* human orientation. As Weber has already shown, economic rationalities are historical and cultural products that must be learned and acquired.

¹⁰ Parsons seems to make a similar argument when he states that the typical ‘acting unit’ cannot ‘judge’ “whether the money involved in the transaction is or is not ‘good’” (1963b:241). However, Parsons seems to relate this factualising character of money not to the medium itself but to its ‘legal tender’.

value of money is expected to be objective and universal. In the case of legitimate power, however, different codes of legitimate power symbolise *different normative orders* (Parsons 1963b:241). Of course, legitimate state power might also try to colonise the legitimate power of the private family or factory; but in contrast to money, the external environment must be drawn *into* the value sphere, rather than the environment protected *from* its value sphere. This easily leads to conflict between normative orders, which cannot be settled by legitimate power itself, but only by threat or force. The *use* of legitimate political power, with its inherent claims of *inequality*, in spheres of life which power codes symbolise different normative orders, would easily lead to *normative* questions, politicisation and conflict (Luhmann 1983:203).

This might seem counter-intuitive, as countless theorists have warned for the power of the omnipotent state. But what makes legitimate state power so powerful, according to media theory, is not that it directly governs or ‘colonises’ other social spheres, organisations or systems through the use of legitimate power in terms of commands, but can ‘export’ its legitimate power through law to all spheres of life *without* ‘politicising’ those spheres (Luhmann 1975:95-6; Parsons 1963b:244).¹¹ What integrates the family, the factory and the organisation into legitimate state power is *law*, as it allows the symbolic codification of different normative orders. As such, the state or the ruler does not so much rule by legitimate command as rule by legitimate law making (Luhmann 1975:49). Law is a symbolic code through which politics can *integrate* and *coordinate* social life and prevent the use of legitimate political power leading to its politicisation. Of course, conflicts might still arise, but conflict does not, at least in the first instance, challenge the *normative* right of political power – a conflict that cannot be settled by legitimate power – but rather its legal correctness or alignment with notions of justice (Luhmann 1975:44).¹² Law allows the integration of different political organisations and institutions, different normative orders, into one single political system coordinated by legitimate power.

In sum, the second coding of legitimate power in positive law, and the export of legitimate political decisions through law, seem to solve the ‘power question’ and allow a socially differentiated and integrated political system in which expectations are *coordinated* by the medium of legitimate power, generalised in the social, material and temporal dimension.

¹¹ It is therefore not surprising that where legitimate political power – especially in comparison to money – is very difficult to globalise or even to regionalise – as in the case of the European Union – political globalisation tends to take the form of international law, if not outright force and threat.

¹² When Luhmann claims that challenging legitimate domination remains purely ‘ideological’ as long as it cannot develop a ‘functional equivalent’ for the duality between legal/illegal, it seems to me that he does away too easily with the existence of different *segmented* normative orders (Luhmann 1975:44); we should not, of course, mistake the model for empirical reality. Furthermore, Luhmann does away too easily with the possibility and necessity of normative critique (see Bader 2001).

5.2.6 Conclusion: Communicating Legitimate Power

Understanding legitimate power as a language forces our analysis to research the question of how expectations of asymmetry are generalised in the social, material and temporal dimensions, on the one hand, and how such expectations can be communicated, on the other. In the work of Luhmann, this analysis points towards the idea that media '*reduce* social complexity' by means of generalisation and, simultaneously, allow an *increase* in complexity of social organisation (Luhmann 1975:31; also Parsons 1963a:40). In Luhmann's analysis, possibilities of communication and the development of modernity go hand in hand. However, some caution is needed. The relation between generalisations, special languages and social progression – from segmented to stratified to functionally differentiated societies – might provide an interesting analytical model to interpret history and society, but it should not, in my opinion, be confused with an empirical theory, let alone social reality.¹³ It remains an empirical question the extent to which the political system is socially differentiated or to which different normative orders of domination are integrated into the political system. In other words, it remains an empirical question the extent to which we can speak empirically of 'the' political system; it is not something that can be conveniently assumed by the sociological theorist or normative philosopher.

Media theory does, however, provide us with a promising coordinative perspective on politics. Legitimate power as a language generalises expectations of asymmetry in time and space, which is to say that it decreases social complexity as expectations transcend the contingency of the subjective, the contextual and the irregular. Furthermore, we might readily perceive that, to the extent that such expectations are successfully communicated, they structure or *coordinate* subsequent social action. Nevertheless, to really grasp politics as coordination, we need to move beyond legitimate power as a language and understand how this language not only enables successful processes of communication but also political organisation and social action.

5.3 Legitimate Power as Coordination: Four Levels of Analysis

Legitimate power as a language, a symbolic medium, concerns the communication of counterfactual valid expectations of asymmetry second coded in law. The communicative or symbolic nature of legitimate power, as we have seen, explains the reduction of social complexity by generalising expectations over social contingency. At the same time, this reduction also allows the increase in political complexity. In what follows, I aim to understand politics as coordination in a complex differentiated society, and foremost to comprehend what this means for the *validity* of legitimate

¹³ Luhmann, indeed, claims that this model might foremost help us to understand and compare historical 'functional equivalents' for similar problems of complexity and communication (1964:7). Luhmann's theory is, in this sense, not a *causal* but a *comparative* theory.

power. To do so, it can be argued that media theory allows for analysis on *four different analytical levels*: the value sphere, social action system, social interaction and personal system (Luhmann 1989:137-8). In what follows, I provide a brief analysis of the validity and validity problems of legitimate power at these four levels.

5.3.1 The Level of Value Sphere: the Abschlussproblematik and the Problem of Vulnerability

At the highest and most abstract analytical level, legitimate power is purely perceived as a symbolic medium that allows communication of meaning. At this level, we cannot analyse questions of social validity but only of validity (truth). As discussed, legitimate power truly becomes socially relevant as a symbolic medium if power turns upon power, i.e. when the sovereign is source and object of power. The validity (truth) of legitimate power, then, seems to be a reflexive or self-referential quality: *legitimate power validates legitimate power*. The truth, value or validity of legitimate power is legitimate power, just as the value of money is money, the validity of law is law and the truth of scientific truth is scientific truth.¹⁴ We might therefore say that legitimate power symbolises or 'reproduces' the political system as a whole. It has no value or validity outside of the political system; it *is* the political system. This also means, as Weber describes for the legal system, that a political system can only understand the world in terms of itself, in terms of legitimate power. The question of the validity (truth) of legitimate political power is self-referentially closed at this highest level of analysis; and just as in the case of positive law, this problematises any search for 'real' legitimacy or validity (truth).

At this analytical level, we can situate what Luhmann calls the *Abschlussproblematik*, the problem of closure (1975:55). Neither Parsons nor Luhmann tries to find a solid foundation for the validity (truth) of legitimate power in subjective belief, as was the approach of Weber. However, they do nevertheless fundamentally differ in their approach of dealing with the symbolic or self-referential nature of legitimate power. For Parsons, the political system is not only a socially differentiated system coordinated by self-referential legitimate power, but a functional societal subsystem. Inspired by Durkheim, Parsons perceives that every society is organised around four fundamental functions that it must uphold: adaptation (A), goal-attainment (G), integration (I) and 'pattern-maintenance or 'latency' (L) (Parsons 1953:625; Luhmann 1978:300). The complexity of Parsons' work, however, is that this 'AGIL scheme' is reproduced at *all* levels of analysis – what

¹⁴ This self-referential nature of symbolic media, specifically of money, does not mean, of course, that media theory answers all the questions concerning the origin, history or nature of money (Ganßmann 2011). More importantly, analysing money as a medium runs the risk to reduce the nature of the economic system merely to *symbolic* coordination as it obscures the *material* inequalities present in economic systems and economic forms of *domination* as domination only seems to be part of the political system (Ganßmann 1986). In other words, just as politics we cannot reduce economic action to a single essential nature.

Parsons calls the 'Chinese box' relation (1963b:245). The four functions are not only a necessity of society, but are necessarily present in the political system itself, as well as in every political organisation and, indeed, in the individual personal system (Luhmann 1978:300; Parsons 1960b). This means that any analysis of a system itself automatically becomes an analysis of 'intersystem relations' at a lower analytical level (Luhmann 1977:30). As such, Parsons' functional system theory, despite its debt to media theory, remains part of the cybernetic system theory where systems must functionally communicate through input and output exchange.¹⁵

The question of validity (truth), however, runs in the opposite direction, as the parts are functional for the whole. Precisely because legitimate power cannot validate its own validity claim without becoming self-referential, it must, according to Parsons, be thematised and validated by a different (and higher) social system with its own particular symbolic medium. This means, in Parsons' scheme, that the political system is legitimate to the extent that it is validated in the societal 'normative system' or the 'functional integrative system', which in turn is validated in the 'pattern maintenance system' (or value system) that is coordinated by 'solidarity'. In other words, validity claims are continually thematised and transposed to higher social levels of analysis – "a cybernetic hierarchy of control" – where they are continually transposed to other functional systems, which come to an end in solidarity or, we might say, in society as the final encompassing 'Chinese box' (Parsons 1960b:477). For Parsons, "the famous concept of solidarity as formulated by Durkheim" is the ultimate *consensual value* that validates society as a whole, including the political system (Parsons 1963b:248). Solidarity has this quality, not least because it seems to allow a leap between the analytical levels of society and individual membership – between the highest and lowest levels – as it 'integrates' individual and collective interests through the belief that individual members 'belong together' (Parsons 1963b:247-8).¹⁶

This solution of Parsons seems more about 'solving the problem of order', in his words, than about solving the problem of (political) legitimacy (1963b:248). It seems that order and legitimacy are again firmly fused. Political validity (truth) "rests on some sort of consensus among the members of the collectivity" (Parsons 1963b:250). This solution, however, is dissatisfying to the extent that the validity of society ultimately seems to rest upon non-contingent consensual values, which clash – if not outright conflict – with historical experiences of "contingency and changeability" (Luhmann

¹⁵ The reason why Parsons' theory is overly complicated is not just the result of these functional 'Chinese box relations' but also result from his insistence to define the political system in terms of its societal function as well as its symbolic value (legitimate power) simultaneously.

¹⁶ In terms of media theory, Parsons claims that '*Gemeinschaft*-type solidarity' – 'fundamental diffuse solidarity' – has the same intrinsic force for the value system as force and gold have for the political and economic systems respectively (1963a:49). This seems to imply that for Parsons, more symbolic forms of solidarity are also possible, i.e. membership in more abstract and generalised groups.

1975:55).¹⁷ If one does not want to take over Durkheim's functionalism, in which society almost automatically and magically expresses itself in the individual, we cannot but acknowledge that feelings of solidarity are part and parcel of the political process itself as a source of legitimation. It might be possible to interpret Parsons as saying that political power is validated to the extent that it can 'mobilise commitments' to fulfil its societal function. This seems more realistic, in the sense that social value consensus is not something that is out there for the unproblematic foundation of society and politics, but is an inherent *political project*. It is thematised in politics and, as such, an object of political and social conflict. Indeed, the endpoint of political evolution is not necessarily the classical nation state. Current processes of internationalisation, globalisation, immigration and individualisation all point to political systems that cannot be founded upon unproblematised notions of solidarity. Solidarity might still be important for political *legitimation*, but it seems to be increasingly fragmented and particularised, in need of constant political attention.

Instead of solving the *Abschlussproblematik* with some form of unproblematised social consensus or conscience collective, Luhmann proposes a different solution. His theory is also functionalistic, but in a different guise than Parsons' functionalism. Parsons, as we have seen, defines systems not just in terms of their value – as value spheres – but also in terms of their function for society as a whole. Luhmann, on the other hand, perceives the function of all systems in terms of the reduction of social complexity, i.e. a system's capacity to overcome social contingency by generalising social expectations. Luhmann understands social history, then, in *functional evolutionary* terms (1975:14; 1977:48).¹⁸ Social development is understood as the consequence of the problem of complexity and contingency. Through 'unplanned', 'non-coordinated', 'contingent' and 'coincidental' processes, structures develop that have the function to reduce complexity and generalise expectations (Luhmann 1989:146; 1977:48).¹⁹ We might say that Luhmann tries to give a functional evolutionary explanation of Weber's rationalisation thesis. The main difference, however, is that where Weber emphasises the meaning-searching human actor as the *causal* motor of this historical process – ultimately leading to the intellectual paradox – Luhmann perceives this process in *non-causal* terms, as one where coincidence and unintentionality are functions of social complexity and contingency.²⁰

¹⁷ Luhmann claims that the continuing transportation of validity claims to other media, ending in an ultimate foundation of all validity claims, begs the question of how one can communicate over the highest and final medium (Luhmann 1975:55). We might say, therefore, that if solidarity can be 'thematized', then it already incorporates its own negation and cannot be the final medium; or, on the other hand, if solidarity cannot be thematized, then society rests upon 'non-contingent foundations' it cannot understand and reflect upon.

¹⁸ This is not to say that media theory itself is inherently an evolutionary theory (Luhmann 1978:238).

¹⁹ Luhmann defines 'change' as "[t]he contingent coincidence of contingencies" (1977:48-9).

²⁰ Weber, of course, also readily acknowledges the importance of material and structural necessities for explaining social development.

If this evolution for Luhmann is neither teleological nor progressive, modernity is nevertheless characterised by social differentiation, i.e. by different reflexive social systems coordinated by their own symbolic codes (Luhmann 1975:248; 1977:32). Whether we accept this functional evolutionism or not, just as in Weber the result seems to be that society consists of differentiated social systems that understand the world self-referentially.²¹ For Luhmann, this means that the whole concept of society has to be reconsidered (Bader 2001:132). The political system does not functionally relate to society as if it was a fixed and stable external social system; the political system can only understand the whole social world in terms of itself. The famous and problematised relation between politics and society, in Luhmann's account, is non-existent as the political system is a specific or 'special version' of society (1977:31; 1989:138). This also means that, differing from Easton, a political system cannot be perceived as a collectivity nor its boundaries understood in terms of geography, institutions or specific persons (Luhmann 1973:29). The political system is defined by the type of meaning or value that is *communicated*. "Social systems consist of expectation-coordinated actions, not of people" (Luhmann 1964:20).

Just as for Weber, the end result is that the existence of multiple self-referential value spheres *fragmentises* social reality. The whole concept of society seems to become problematic, not least because the boundaries of these different systems do not neatly coincide at the level of the nation state. Society can no longer be presented as a unified whole but only as 'world society' (Luhmann 1973:39, 1977:43, 1995:138).²² The fragmentation of social reality and the problematic nature of society seem to discard the idea that there exists something of a transcendent reality, a value sphere where all different meanings, realities and rationalities are coherently united, opening up the possibility for social consensus and ultimate validity. For Luhmann, there is no solution to the Chinese box problem. All value spheres or systems are self-referentially closed – or what Luhmann calls 'autopoietic' (1984; 1989:137) – which means that there cannot be genuine communication between these different spheres as they cannot 'understand' each other;²³ just as in Weber, 'society' is characterised by the 'warring of the gods'.

²¹ We must, if anything, perceive that Luhmann's system theory, as a 'general theory of evolution', is an analytical model and not an 'empirical generalisation' (Laermans & Verschraegen 2001:116).

²² Even if we can agree with Luhmann that society should be conceptualised differently – i.e. it cannot be presented as a unified whole or reduced to the nation state – the empirical reality of a 'world society', in particular where it concerns the political system and of which Luhmann is aware, can be questioned (see Bader 2001:134-5).

²³ The importance of autopoiesis in Luhmann's work also seems to indicate that his evolutionary perspective is less about "'adaptation' to the environment" but rather that "possibilities are often restricted more by the demands of internal consistency than by problems of survival in the environment" (Luhmann 1989:146). Evolution is more about 'self-thematisation' than about adaptation – coming close to a Weberian spirited theory of social development (1973:34). It is autopoiesis in particular that sets apart this generation of system theory from cybernetics.

This conflict, however, only becomes problematic at the 'lower' levels of analysis, i.e. at the level of social organisation and interaction (Luhmann 1989:139). At these levels, different kinds of communication can conflict and interact (Luhmann 1975:101; 1974:248). Indeed, while a bureaucratic organisation might be coordinated by legitimate power, it is also coordinated by money, scientific expertise and, in particular, the legal system. Social organisation and interaction cannot be understood solely from the perspective of legitimate power (Teubner 1991:129; Bader 2001:143). The curious result, then, is that social action can only be understood in terms of different meanings and rationales that sometimes collaborate and at other times conflict, never leading to a singular comprehensive meaning. Underlying Luhmann's thesis of increasing differentiation lies the claim that social systems – especially the political system – must increasingly absorb social complexity and social conflict in particular. This is in no sense an historical automatism – especially compared to Parsons' foundation of solidarity – but rather a very 'improbable' result of social evolution (Luhmann 1977:31). In other words, symbolic media arise precisely where consensus or "certainty (*Selbstverständlichkeit*) and likelihood is unlikely and contingent" (Luhmann 1975:14). It is an improbable result because "[a]ll social systems are potential conflicts", as communication always entails double contingency as a basis of rejection, misunderstanding or deceit (Luhmann 1975:5).

In other words, the *Abschlussproblematik* cannot so much be solved in an ultimate truth but rather points to the inherent risk of value conflict and the risk of the contingency of communication. In general, it points to the *vulnerability of the validity of legitimate power*. Luhmann, therefore, in contrast to Parsons, no longer founds validity (truth) upon some foundational consensus, but tries to analyse "structures and processes, that enable and control the becoming-contingent of the [power] code" (1975:58-9). Communication and contingency control necessitate processes of legitimation, though they do not necessitate a solid non-contingent source of legitimacy. It is not validity (truth) that must be explained, but social validity, despite social contingency and complexity. The social validity of symbolic media is part of a continuous process of communication at the intermediate levels of analysis and, as such, "completely temporal" (Luhmann 1989:148). To understand these processes, we must 'descend' to lower levels of analysis.

5.3.2 The Level of Social Action System: The Problem of Conflict and Ambiguity

If legitimate power as a symbolic medium is relatively clear at the highest analytical level of value spheres, this is mostly because problems of vulnerability or questions of validity are passed on to lower levels of analysis. It is no coincidence that Luhmann's and Parsons' analyses are less univocal at the level of the political system. In general, we can say that they analyse the political system in three different ways (Luhmann 1977:35-6). First, one can analyse the political system in terms of its

function for the societal system as a whole – this seems to be the main goal of *functional system theory* in both Durkheim or Parsons' version. Second, one can analyse how the political system 'communicates' with other socially differentiated systems or its general environment in terms of input and output exchanges – this seems to be the goal of *cybernetic system theory* in both Easton or Parsons' version. Finally, one can analyse the internal organisation of the political system in terms of itself, i.e. in terms of its defining symbolic medium – this seems to be Luhmann's main goal in his *autopoietic system theory*. In what follows, I pursue the last form of analysis, not only because we have already discussed cybernetic system theory in chapter 4, but precisely because autopoietic system theory seems most promising for understanding politics as coordination.²⁴

As already discussed, what differentiates a system from other systems is precisely that it can only understand the world in terms of itself, i.e. in terms of a specific symbolic medium. At the same time, these reflexive systems are not just *value* spheres but also *action* systems. For both Luhmann and Parsons, this means that they try to analyse a system from the point of view of the most characteristic action – the 'unit act'. The act that is argued to be specific for the economic system, for example, is the choice to spend or not to spend money (Luhmann 1984:312; Parsons 1963a:41).²⁵ However, the most intrinsic economic social action is not simply to spend money on consumption goods, but to spend money to make more money. When Luhmann claims that at this analytical level "[t]he meaning of money lies in spending money", he comes close to Weber's historical analysis in which the 'spirit of capitalism' culminates in 'making money for money's sake' (Luhmann 1984:318; Weber 2001:259). Indeed, Weber's fundamental interest in explaining 'duty for duty's sake' has an obvious self-referential character.

Luhmann understands this self-reference foremost as the expression of 'reflexivity' of the economic system, in which 'profit' becomes the 'reference point' for coordinating the economic system (1984:314). This means that how in the economy is communicated over the economy does not depend upon subjective or private motives but upon the 'de-privatised' motive of profit. In contrast to Weber, Luhmann is not interested in explaining the curious subjective orientation of 'duty for duty's sake' (in analogy), but how such reflexivity makes possible a *body of economic knowledge* and expertise that allows the *rationalisation* of the economic action system independent of actual persons and motives. Although Luhmann seems to explain this reflexivity in terms of functional system necessities, the end result is not that different from Weber's conclusion: it

²⁴ This is not to say that Parsons does not pursue this type of analysis as well or that Luhmann does not pursue cybernetic analysis at times. Indeed, in his earlier years, Luhmann was still clearly influenced by all three types of system theory (see e.g. Luhmann 1977).

²⁵ Parsons defines a 'unit act' as "the relationship of an actor to a situation composed of objects, and it is conceived as a choice ...among alternative ways of defining the situation" (1960:467).

emphasises the role of expert knowledge and explains the modern iron cage independent of subjective will or orientation.²⁶

The unit act and its related reflexive version in any case form the analytical basis for Luhmann and Parsons to analyse the *functional necessities* of a social action system to become or to remain a differentiated and unified social action system – not unlike Easton’s approach.²⁷ Without wanting to get lost in the overly technical or functional analyses of system theory, such an analysis might nevertheless allow us to understand how a political action system is able to deal with the inherent *vulnerability* of the validity of its symbolic medium, especially in the face of social plurality and conflict. It is this question that I now want to pursue.

If for the economic system the ‘unit act’ is spending or not spending money, we might say in analogy, that the ‘unit act’ of the political system is to spend or not to spend power (Parsons 1963b:246). To spend power is ‘committing’ power by making a binding decision, foreclosing other future possibilities (Luhmann 1975:28).²⁸ Its reflexive-rational expression is, to a large extent, already institutionalised in a political system. Indeed, spending power to make power, to rule by rule making, is the core of bureaucratic organisation as well as of the self-legitimising character of legitimate power. This type of analysis thus seems to force us to analyse how ‘the’ political system reflexively organises its decision-making process.

We might say that the decision-making process in a modern liberal democratic state is separated into three distinct organisational realms: the administrative bureaucracy, politics and electoral democracy.²⁹ However, such an organisational approach entails inherent boundary problems, problems that are not easily solved. Why is the binding decision of the voter different from the binding decision of the professional politician, and both different from that of the bureaucrat or even the judge? Such analytical difficulties are of course traditionally addressed in legal normative theories of the *institutional separation of powers*. The organisation of the political decision-making process in that tradition is understood in terms of different functions: the

²⁶ For example, Luhmann argues that spending money for money’s sake is *necessary* because without money circulating the economy ceases to be a functionally differentiated system (1984:312). Analytically this might be the case, but it should not be mistaken for empirical theory, let alone *causal* theory.

²⁷ The main difference here is that Easton has no media theory. His point of departure for understanding the essence of the political system is *system survival* and the *societal function* of authoritatively allocating value. This function is not so much internal to the system as about the system’s relationship to its external ‘environment’. It must also be noted that Parsons not only takes the specific ‘unit act’ of a social system as its point of reference, but simultaneously holds on to the cybernetic version of system theory, with the importance of ‘adaptation’ (Parsons 1963b:236).

²⁸ However, Parsons seems to take this analogy too far when he suggests that spending power also means the loss of power (Parsons 1963b:244; see also Luhmann 1975:26, footnote 57 on this issue).

²⁹ This is not to say that the political system and the state are necessarily analytical equals. But the *normative order* of the nation state is still a very important political system, despite trans- and supra-national developments. Furthermore, starting our analysis of decision-making at the level of the state does not mean that we cannot perceive transnational organisation – to the contrary.

administrative execution, the political formation and the legal control of political will. Without dismissing such normative ideas as irrelevant – to the contrary – it does not seem to provide us an accurate understanding of the empirical processes of political decision-making, let alone of analytical boundaries. A more promising approach would be to understand boundaries not in terms of normative institutional differences but of different *types of communication*. We have to analyse how the political decision-making process consists of different “spheres of communication” (Luhmann 1966:272). In other words, although bureaucracy, politics and elections are all coordinated by *legitimate power* as a symbolic medium, they are *additionally coordinated* by other forms of symbolic communication, indeed, with other demands of rationality.

In sum, to understand the internal organisation of a political action system, we should not look so much at the organisational or legal normative institutional boundaries of politics, but understand politics in terms of cross-institutional communicative processes. In what follows, I will not provide an in depth analysis of the complicated processes involved in modern day politics. Instead, I will show how the political decision-making processes at the level of organisation can be understood in terms of (at least) three additional forms of symbolic communication and rationality, which can be grasped as forms of *legitimation* of the use of legitimate political power: expertise, party and support. Such an understanding will allow us to address the question of the vulnerability of social validity.

Administrative Organisation and Expertise

Bureaucratic organisation, as discussed, is characterised as rule by rule making. We can understand this as a ‘reflexive’ organisation of political power, to the extent that ‘spending power’ creates more power. Because the sovereign no longer rules by command but by rule making, his power is freed from his cognitive and temporal limitations, allowing him to increase the scope of his power (Luhmann 1975:41; Parsons 1963b:235). The ruler no longer has to ‘know’ everything but he can rather ‘program’ the bureaucracy in terms of conditional rules and office competencies (Luhmann 1975:29). Through such ‘conditional programming’, the ruler, from a *temporal and spatial perspective*, increases his power, as what subordinates must do under specified conditions can be programmed before they occur and without the ruler having to be present.

If this reflexive organisation of legitimate power increases the power of the ruler, the inherent *risk* concerns the limits of its rationality. Reflexively organised power in general increases informational demands about (future) social conditions and necessitates that ‘society’ and the organisation become ‘visible’ or ‘legible’ for the power holder (Luhmann 1975:50; Scott 1995, 1998). The problem of conditional programming, according to Luhmann, is that it is relatively inflexible and

rigid, which makes it difficult for the bureaucracy to adjust and learn from the contingencies of actual and concrete situations, and as such increases demands of detailed knowledge about social conditions in advance, running against inherent epistemological limitations of rational knowledge (Luhmann 1966:276-7; 1983:210). Indeed, it is precisely the counterfactual nature of legitimate power that seems to make such organisation relatively immune to factual learning.

A more flexible organisation of bureaucracy open to rational learning processes might be what Luhmann calls 'political planning' (1966; 1983:206). Planning is no longer about programming the bureaucracy in rules but rather about making "decisions over decisions" (Luhmann 1966:286). Making decisions about decisions without actually making a final decision 'buys' the organisation time (Luhmann 1966:289; 1975:27). The longer the final decision is postponed, Luhmann argues, the more time the organisation has to adjust and learn, the less it has to know everything in advance and the more its informational limitations can be addressed.³⁰ The simplest way to achieve such a reflexive decision-making process is to program the organisation in terms of functional goals instead of rules. Chains of decision-making are no longer inflexibly 'standardised' but integrated in terms of functional 'themes' and accompanying 'identity' (Luhmann 1983:207-9). The ruler only decides on the goals of specific agencies, not which decisions they have to make to realise these goals. More often than not, however, such goal programming is accompanied by conditional rules that prescribe how efficient and effective solutions can be found, as, for example, in the current ideology of 'new public management' (Luhmann 1966:292; Pierre & Peters 2000:64-5). Such conditional programming of goal programming – making decisions over decision-making – seemingly allows the ruler not only to rule by goal setting, but to rule by budgetary control, setting the boundaries within which the bureaucratic agencies have to operate.

Although 'goal programming' might be more suitable for learning and may soften rationality problems, it *increases* organisational complexity and contingency as autonomous decision-making powers are delegated to administrative agencies or policy networks (Luhmann 1966:276-8). The bureaucracy, to an extent, is 'de-bureaucratized'. This, for sure, is a double-edged process, in which organisational complexity allows an increase in political power at the cost or risk of a decrease in direct political supervision. If administration is characterised by such complexity, we can no longer uphold the myth that bureaucracy is some kind of *instrumental machine* in the hands of power holders, in which bureaucrats merely follow pre-programmed rules. Modern bureaucracy, for sure, can only be grasped as an inherent part of political decision-making understood as a *process*. If we want to analytically differentiate between the political and the bureaucratic organisation of decision-

³⁰ This delay is bought at a price, according to Luhmann, as some problems require immediate action incompatible with the slow process of political decision-making (Luhmann 1975:85). Put differently, political time might be incongruous with economic, legal or scientific time.

making, symbols of legitimate power are no longer sufficient – or so it seems – and neither is the institutional differentiation between political will formation and political will execution. Instead, we may perceive that the decision process is not simply coordinated by symbols of legitimate power, but is in addition coordinated and integrated along functional themes and goals – a “differentiation of power-code and power-themes” (Luhmann 1975:41).

Modern bureaucratic administration can be seen as chains of decision-making processes coordinated by legitimate power; hierarchical chains that allow the transfer of “reduced complexity of decisions upon decisions” (Luhmann 1975:29). However, such chains do not solely depend upon legitimate domination for their ‘consistency’. They are *additionally* integrated by ‘identity’ or the ‘self-thematisation’ of the decision-making process in terms of ‘functional specification’ (Luhmann 1975:40,47,29; 1973:24; 1983:208). Modern bureaucratic agencies, it seems, are also integrated by specific functions, themes and goals. Hence, the *normative foundation* of a rational bureaucracy is not solely the self-referentiality of legitimate power symbolised in rules and office (or more generally in law) but *in addition* concerns the functional rationality of the organisation itself.³¹

For Parsons, this means that the bureaucratic or ‘technical’ organisation of the decision-making process is not “in the analytical sense political” but rather that legitimate power is ‘interpenetrated’ by other systems (1963b:236, 244). Indeed, goal programming leaves open many possibilities that are left to the administration to decide with ‘different methods’ (Luhmann 1966:294). The other ‘system’ through which the bureaucracy is organised, and which separates the bureaucracy from politics proper, it seems, is *expertise*. Reflexive self-thematisation of bureaucratic rationality means understanding the bureaucratic process of decision-making in terms of a body of (economic) knowledge and methods, which does not thematise the given (political) goal as such, but how efficiency and effectiveness can be attained and balanced (Luhmann 1966:278). In other words, the *right decision* is not so much communicated by hierarchical structures of legitimate power as by *expertise*. Expertise, then, can be seen as a symbolic medium of its own, symbolised in specific scientific methods, which communicates meaning not in the duality of legal/illegal but rather of rational/irrational. Although expertise might be considered part of the scientific system and, as such, to organise meaning in terms of the duality true/untrue, it seems to me that we should differentiate between scientific practices coordinated by truth and practices coordinated by expertise. This would mean that some scientific methods and techniques – e.g. positivism, behaviouralism or statistics – and some scientific disciplines – e.g. political science and economics – are more about expertise than

³¹ Luhmann draws a nice parallel between the medium power and truth (1975:38). While scientific truth is symbolically coded in terms of ‘method’ (structuring knowledge in terms of true/untrue), it does not prescribe either theory or the subject of interest. Indeed, scientific disciplines and research communities are often integrated through additional *identities* in terms of theory or research subject, besides method and informal economic and political interests.

about truth, more about public administration than about science. The difference here is that, in contrast to science proper, expert knowledge is positive knowledge that does not necessitate explanation beyond valid description.

Although the empirical processes and organisation of administrative bureaucracy of a modern state are complex and diverse, it seems that what separates 'administration' from 'politics' is not the legitimate power of decision-making but different processes of *additional legitimation* (Luhmann 1983:209; 1966:276). What makes a binding decision – the use of legitimate power – a bureaucratic binding decision is that the decision is additionally legitimated in terms of expertise. As such, it makes sense to differentiate between the *legitimacy* of decisions symbolically coordinated by legitimate power and the *legitimation* of decisions coordinated by expertise (Luhmann 1975:29; 1983:152).

A bureaucracy, we might conclude, consists of *two normative orders* coordinated by different media: legitimate power and expertise. These two rationales for decision-making might reinforce each other, but they are not necessarily harmonious, as Weber has already discussed (2004b:75). This conflict is softened to a large extent by the ideal that the rules of bureaucracy can themselves be rationally organised by rational expertise – the dream of modernism. However, an inherent tension in bureaucracy, it seems, is the conflict between expertise, which is expected to be universally valid, and political decisions, which from the viewpoint of the bureaucrat seem to express contingent will. The parallel in Weber's work between the Protestant confronted with a rational but incomprehensible God and the duty of the bureaucrat and the 'nebulous reasons' of the state is no coincidence. From Weber's work, we might expect that the conflicting demands of the 'two gods' of bureaucracy are left for the individual bureaucrat to deal with – to reconcile this inner conflict in duty for duty's sake.

In Luhmann's work, however, this conflict is understood differently. It seems important to emphasise that the reduction of social complexity through symbols of legitimate power is, to an extent, *reversed* in the modern organisation of political decision-making. Indeed, the 'de-bureaucratized' decision-making process is 'indeterminately structured', as it is structured by different and sometimes conflicting legitimating rationales and expectations (Luhmann 1983:173). For Luhmann, the benefit of this additional complexity is increased system rationality understood as flexibility, the ability to learn and to innovate (Luhmann 1983:173, 207-9; 1966:289-90). More importantly, Luhmann argues that precisely because organisation becomes more *indeterminate* and expectations more *ambiguous*, politics is able to *absorb* conflict and, as such, address the problem of vulnerability. By absorbing conflict, the normative order underlying legitimate power is protected from direct thematisation. In other words, absorbing conflict increases the probability of the social

validity of legitimate power. On the one hand, conflict can be absorbed because political decision-making becomes rather *abstract*, enabling politics to vary the 'coherence' of bureaucracy (Luhmann 1966:290) and therefore to pursue conflicting goals simultaneously – e.g. stimulating industry and fighting pollution, or trading with dictatorial regimes and promoting international democracy. This it does in order to cater to different constituencies and interest groups simultaneously, to present decisions as solutions without really changing anything or to present ideological conflict in different budgetary distributions. We can conclude that *indeterminacy* enables what I have called politics as theatre. The point, in my view, is not that no 'real' or relevant decisions are made but rather that such decisions can cater to many different interests and expectations, and can thus avoid conflict over the legitimacy of legitimate power. On the other hand, this also holds for the internal organisation of bureaucracy, where the decision of the superior simultaneously communicates legitimate power and expertise. This ambiguity can absorb conflict to the extent that disagreement does not, in the first instance, thematise the power code but rather truth or expert knowledge (Luhmann 1983:152). In fact, the power code might even be presented as a temporary solution for deciding between conflicting knowledge until rationality reveals itself to all.

In other words, the problem of the vulnerability of the social validity of symbolic media decreasing social complexity can be dealt with at the organisational level precisely by increasing complexity, by opening up the action system to 'contradictory expectations'. This, Luhmann argues, is a "difficult social performance" as it is difficult to continually keep open 'the illusion' that problems can be definitely solved; this form of 'high complexity' does, however, give room to conflict *and* stability (Luhmann 1983:161). The point is that precisely because this structural indeterminacy leaves open many (contradictory) alternatives, the political system can adjust, learn and absorb conflict (Luhmann 1983:173). The bureaucratic decision-making process is, to an extent, autonomous from the political process, giving *both* processes more freedom of action and possibilities to legitimise actions and decisions. Because it is indeterminate, the decision-making process leaves open so many alternative expectations that it can legitimise its decisions through *symbolic actions* rather than only through its power structure (Luhmann 1983:173, 183).

Democratic Decision-Making and Public Support

If bureaucratic decision-making processes are additionally coordinated and legitimated by expertise, we might also try to understand the political process of decision-making in similar terms. The legitimate power of the sovereign ruler, as discussed, depends upon its self-referential symbolic coding in law. As such, the sovereign can be expected to make legitimate political decisions in terms of general law or political planning. However, the organisation of the democratic, legal modern state

is considerably more complex, not least because the sovereign is no longer a singular ruler formulating his bounded political will, but itself consists of a political process of will formation coordinated by legitimate power. We might perceive two processes in liberal democracy that are important for the political decision-making process aside from the *rule of law*. The first concerns the *liberal* normative idea that the will of the sovereign ruler must not only be bounded by law but also by the common good. The second concerns the equally normative *democratic* idea that the people are the true sovereigns and rule themselves – the people legitimately decide their own laws. We might say that if legitimate power in a liberal democracy is normatively and self-referentially coded in law, this rule of law is *additionally legitimated* in the common good and the will of the sovereign people. These two legitimations are not identical but are simultaneously institutionalised in liberal democracy.

The democratic counterfactual expectation of the people as sovereign decision makers, it can be argued, is institutionalised in terms of general elections. The *legal* expression of the sovereign will is primarily organised in terms of recurring elections. This means that democratic citizens not only have legal rights but also *political rights*. All citizens with political membership have equal ‘marginal’ legitimate power, which they can use in the legally organised vote (Parsons 1963b:245; 1963a:52). For Parsons, this electoral system not only assures that citizens are part of the political decision-making process but that this process is coordinated, on the one hand, by *legitimate power* and, on the other, by *public support* (1963a,b). If legitimate political power concerns the right to pursue one’s will within legal boundaries, the *will* of voters is not so much bounded but can (as a necessary consequence) only be expressed, according to Luhmann, in the highly abstract and generalised dichotomous form of voting/non-voting (1983:165). Although one can of course choose between different candidates, between opposition and government or left and right, we can agree that the single vote *symbolises* the complex political will of the individual in dichotomous terms and the aggregate vote *symbolises* the will of the people, no longer dichotomous but linear.³² The voting mechanism thus sets the relative political ‘value’ of the candidates and – based upon whatever decision rule – *legitimately decides* on the new ruler or, in general, on the distribution of opposition and government. As in Weber, the vote concerns the marginal legitimate power of the people to ‘recruit for public offices’ (Luhmann 1983:155; 1975:39; Parsons 1963b:245).

The vote, however, is not only, or not even primarily, understood in terms of a collective legitimate political decision on who is to rule, but is commonly interpreted in terms of a symbolic expression of *public support*. For Parsons, this means that the vote is not only coordinated by the

³² Linearity does not mean that legitimate power *increases* with the increase of votes. The linear quality of voting is in itself ‘artificially’ translated – under the premise of the constancy of the sum of legitimate power – to the *distribution* of legitimate power (Luhmann 1983:176-7).

medium of legitimate power, but must also be understood as an 'exchange' between support and 'leadership responsibility' coordinated by the 'medium of influence' (Parsons 1963b:235,246; 1963a:38). Without getting lost in Parsons' formalisations, we can agree that political leaders in general try to gain office by mobilising (influencing) public support on an ideological platform of some sort, the success of which is thought to find expression in the vote.³³ The leader who 'wins' the office, in other words, not only gains the symbols of legitimate power but is *additionally legitimated* by public (majority) support symbolically expressed in the vote (Parsons 1963a:47,53). The legitimate ruler does not only claim that he has the right to make binding decisions, but that a particular decision – the use of his legitimate power – has the support of the people. In other words, it is not only a legitimate decision, it is the democratically *right* decision to make.

From the perspective of democratic normative ideals of self-government, the electoral majority vote may easily be dismissed as mere *fiction* (see e.g. Scharpf 1970:25-7, 1997:7, 1999:9; 2000b:104). From the perspective of Luhmann's system theory, however, the electoral vote might explain how the political action system can cope with social complexity and problems of vulnerability. We might say that general elections allow for an increase in 'structural indeterminacy', which provides politics more degrees of freedom to absorb social complexity and conflict. Consensus, as the foundation of binding political decisions – whether in the general or parliamentary vote – only seems possible for "very simple systems" and, as Weber has already argued, presumes that "truth manifests itself" (Luhmann 1983:185). As soon as complexity arises – because opinion is structured by different interests and different truths – consensual organisation of will formation seems to run into trouble. Not only might the requirement of consensus, as Scharpf argues, come into conflict with problem solving effectiveness (1970:24; 1999:13; 2006:3), but more importantly, it easily leads to conflicts about truth, questions of legitimacy and problems of order (Bader 2001:150). As such, Luhmann argues that in order to cope with complexity, the will formation process needs to open up to different alternatives, for 'dissensus and consensus', for 'cooperation and conflict' (Luhmann 1983:186).

³³ Parsons' analysis of the electoral sub-system as existing between the political system coordinated by power and the integrative or normative system coordinated by law is so overly complicated that it hardly increases our understanding of the political system. The "capacity to assume leadership responsibility", Parsons argues in cybernetic terms, is not a 'form of power' but of influence, and is the 'real output' of the political system in the integrative system (Parsons 1963b:235,246). Parsons' analysis is confusing to the extent that leadership is 'input' for the normative system, which subsequently must be divided between the "sector of the 'public'" and the legal system, the inter-relations among which remain unclear. To increase complexity, the relationship is also characterised in Eastonian terms as an exchange relation between 'demands' and binding decision as political output (1963b:236, 246). Indeed, his 'double interchange system' seems to mirror Easton's analysis by distinguishing between 'particularised' and 'generalised' support (Parsons 1963b:247). Furthermore, as Parsons seems to (wrongly) think that the 'spending of power' actually means the loss of power, he claims that the power lost in the demand-decision exchange is 'replenished' by leadership-support exchange (1963b:244).

The general vote, in Luhmann's account, is an *organisational means* to deal with social complexity by increasing indeterminacy. The vote increases ambiguity to the extent that the sovereign will of the individual voter, with all its complexities and contingencies, can only be expressed in a very generalised code of voting (Luhmann 1983:166). Although the voting mechanism decreases complexity by being able to symbolise the popular will, its 'actual' meaning remains fairly ambiguous. So, for example, even if two citizens vote for the same candidate for office, they might do so for very different reasons, although this is not reflected in their votes. The electoral vote allows for social conflict to be symbolically expressed in an abstract, depersonalised, decontextualised and generalised distribution of votes. For Luhmann, this means that the vote allows political will formation to become relatively 'autonomous and indifferent' from other social domains (1975:39). The political vote, with its abstract, symbolic and secret nature, in Luhmann's account, partly explains why the political system is able to differentiate itself from other social domains, on the one hand, and why the different 'gods' from all the differentiated systems can nevertheless find political expression, on the other (1983:160,169). Although this is analytically possible, the democratic realists show us that this is in no sense an empirical necessity (see chapter 4). Where the vote is not relatively separated from social roles or social cleavage, social antagonisms are likely to spill over into politics, reducing the possibility of keeping alternatives open (Luhmann 1983:162).³⁴

The ambiguity or indeterminacy of the general vote symbolising public support or the public will allows politics to make *legitimate* binding decisions that are *additionally legitimated* by public support, which, in itself, remains open to interpretation. The vote is, in contrast to Easton and Parsons, not an unequivocal and indisputable input expressing demand or support; rather, it must be interpreted within the political process itself, increasing its possibility to absorb political conflict (Luhmann 1983:165-6). Political conflict is absorbed, it seems, in two respects. First, indeterminacy allows the domestication of the radical potency of democracy, as "the political system can orient itself upon its own storyline" and "sanctions itself" in terms of the popular will (Luhmann 1983:170). Indeterminacy allows elected political actors to *legitimise* binding decisions in terms of democratic norms of popular will and not as a mere expression of power, while at the same time keeping alternatives open. Second, ambiguity about public support – about the will of 'the people' – allows a depoliticisation of social conflicts. Because the political decision-making process is coordinated by two *normative orders*, it means that political conflict over specific decisions, in the first instance, is not about the *legitimacy* of the code of power, but rather concerns disputes about the will of the people – about *legitimation* issues. Ambiguity, in sum, opens up a space for symbolic political actions

³⁴ As an historical example, we might think of the Dutch 'polarisation'. Even in this specific case, however, alternative routes were found – especially through elite consensus – to keep political alternatives open.

interpreting the vote, which allow the *expression* and *performance* of social conflict in abstract and 'distant political domains' instead of in concrete everyday life (Luhmann 1975:95; 1983:171). In other words, indeterminacy allows social conflict to be absorbed into a general *political dramaturgy*.

What separates politics from bureaucracy, then, is that where bureaucratic decisions are additionally legitimated by expertise, politics is additionally legitimated by popular support in the *political theatre*. It is precisely the indeterminacy of this support, expressed in the general vote, which opens up space for political symbolic actions, for dramaturgy. For Luhmann, this means that decisions are especially 'political' if they do not concern setting *goals* for the bureaucracy, but rather that decisions are *means* to gain public support (Luhmann 1966:285). Politics, then, is not just coordinated by legitimate power but also by *democratic rationality*. This does not mean, of course, that politicians do not also try to legitimise their actions and decisions in terms of *expertise*. It does mean, however, that decisions and actions can sometimes be 'political' and at other times 'bureaucratic', if not just an expression of legitimate political power. The boundary between bureaucracy and politics is, as Weber already feared, not an institutional boundary.

Political Will Formation and Party

Political decisions are not simply additionally legitimated in terms of public support but also of the common good. Of course, many normative political theories try to show why the common good should be equalled either with democratic rationality or with expert rationality. In classic liberal representative political models, however, the common good is not expressed by the 'irrationality' of democracy or by bureaucratic experts lacking 'leadership', but rather, the common good is left to the wisdom of representative parliaments. More generally, the common good is supposed to be the result of a rational procedure of political will formation, whether this concerns rational deliberation or institutional checks and balances. These procedures are thought to be rational *filters* upon the tyranny of both sovereigns – the People and the Prince.

The liberal ideal of parliamentarism is based upon the idea that political will formation is structured, on the one hand, by legitimate power – i.e. by procedural rules that bind *collective* will formation but not hierarchical rules that bind the *individual* will – and, on the other, that this process is structured by the morality of the common good.³⁵ To reach a binding decision, the process of will formation is formally concluded by a parliamentary vote. Again, the problem seems to be the demand for consensus, and again the procedure can be opened to social complexity by introducing

³⁵ It might be noted that in Parsons' functional system analysis, he already assumes that legitimate power is legitimated in terms of collective effectiveness, i.e. that forms of power are "legitimised with reference to their bearing on collective goals" (Parsons 1963b:237). This is, however, not a result of media theory but of his functional system theory.

the majority vote in parliament. For sure, this means that it becomes even more difficult to uphold the *liberal myth* that parliament is the locus of political will formation. The binding decision of parliament might rather be perceived as the final “manifestation of the production” (*Darstellung der Herstellung*) of will formation, but not as the actual production itself (Luhmann 1983:175). Will formation can be better grasped in terms of the *political game* in which political actors, within and beyond parliament, try to strategically influence the decision-making process within the given rules of the game (see chapter 4). The game is partly coordinated by legitimate power, but foremost it is a process of bargaining and compromise coordinated by *political influence* based on distributions of power resources (including public support). Although the final decision in parliament is no longer limited by consensual demands and is therefore able to absorb social plurality and cater to different and conflicting organised interests, it seems that it can hardly be legitimated in terms of the common good. It merely seems an expression of *non-legitimate political power* in negotiations behind closed doors, expressing factional rather than common interests. Opening up to complexity, then, makes the will formation process vulnerable, as we normally expect that this process should not merely make legitimate decisions but also yield morally right decisions (Luhmann 1983:184). In my own words, the complexity attained by letting go of the consensus requirement might open up the political process to the *political theatre* – it seems to problematise the politics of the *political game*.

It can be argued that the *will* of an individual member of parliament is not simply expected to be an expression of opportunistic and contingent strategic interests, but is also expected to be generalised and bound by a specific articulation of the common good as it is *symbolically coded in a party*. Parties reduce political contingency. A political party is an extra-parliamentary organisation that, as Weber has already claimed, bureaucratically organises political will formation, gets political candidates into office and demands party discipline in parliament. Legitimate power organised in the party bureaucracy, however, is not the same kind of legitimate power as in the political system in general, even if they might both be integrated by the rule of law. The former’s bureaucratic rules symbolically code their own specific *normative order*, which normally – but not always – includes a more or less coherent and stable party ideology that constitutes a *particular* understanding of the *common good*.³⁶ Every political issue can, in principle, be meaningfully understood in terms of this party ideology; indeed, in terms of right and wrong (Luhmann 1975:57).³⁷ As such, the binding

³⁶ This is not to deny the multi-functionality of political parties (see e.g. Bader 2014).

³⁷ Luhmann claims that these ideologies are themselves a ‘political second coding’ of legitimate power, allowing every ‘political theme’ to be structured in terms of the dichotomy progressive/conservative, which, according to him, is itself not accidentally structured by time (1975:57-8). Although I take over this ‘coding’ of the use and goals of legitimate power in terms of party – and party ideology – it seems that Luhmann falls

decisions of the party leader are not just an expression of bureaucratic legitimate power but are also expected to be the *right* decisions in terms of party ideology. Power holders – both in parliament and government – who are presented as party politicians are expected to be ‘obligated’ to consistency of action in terms of this additional normative legitimation in *party* (Luhmann 1983:187). Party, then, seems to simplify expectations about political actions and to “make the decision-making praxis understandable”, even if it includes interest organisations and takes place behind closed doors (Luhmann 1983:183). As a result, legitimate decisions are not simply expected to be expressive of non-legitimate strategic political power, but also to be additionally legitimated by *party*, i.e. by a specific codification of the common good.

In short, party decreases complexity, on the one hand, as it binds the will of individual politicians, but on the other hand, party also holds the decision-making process open to complexity, to the extent that the political game – the political will formation process – is indeterminately coordinated by both political influence and ideologies of the common good. This additional, if ambiguous, legitimation allows politics to justify its decisions in terms of ideologies of the common good and not as the mere expression of legitimate and non-legitimate power. Party allows the separation between theatre and the game (in my terms), or between ‘public and non-public’ political processes (Luhmann 1983:188). Social conflict is absorbed to the extent that the final decision translates non-legitimate influence in legitimate and legitimated power, and political conflict is absorbed to the extent that opposition, in the first instance, concerns disputes about ideology and not about political power itself. Party, then, not only differentiates the *political game* from political theatre and administration; its indeterminacy also allows the political organisation to absorb social complexity in the guise of political conflict, social plurality and non-legitimate political power. It might be argued that the role of the political party, and especially of ideology in contemporary democracy, is changing or declining (Offe 1984:68,169ff.; Dalton 1996; Katz & Mair 1995; Koole 1996). Based upon the analysis above, it is interesting to question whether this means that collective will formation will lose some of its indeterminacy and ability to absorb social complexity, whether expectations of the common good will be replaced either by democracy or expertise, or whether, instead of party, a different ‘symbolic code’ can be found for the common good (Weber’s proposed leadership qualities may be a possible substitute).³⁸

victim to theoretical aesthetics when he forces party into a duality of progressive/conservative. As many have showed, historically there have been different types of cleavages in party systems

³⁸ Increasing calls for transparency as a moral right might also be interpreted in relation to party.

Conclusion: Indeterminacy and the Problem of Ambiguity

This analysis of the organisation of the political decision-making process in the modern legal democratic state shows how political action at the analytical level of political systems is not solely coordinated by legitimate power but also by expertise, vote and party. These additional legitimations increase the indeterminacy of political decisions. One expects the bureaucrat to make the *right* decisions based upon his expertise and one expects that his actions will be prescribed by hierarchical rules and controlled by his superior. One expects political decisions to be the *right* decisions based upon notions of the common good and one expects that such decisions are the result of political influence, negotiations and bargaining. One further expects political decisions to be the *right* decisions based upon the common will and one expects them to be the expression of legitimate political power. Indeed, we might expect that political decisions are legitimate *and* rational *and* democratic *and* moral.

The political organisation of legitimate decision-making processes is therefore 'indeterminately structured'. It is precisely because a binding political decision is not only expected to be valid in terms of legitimate power, but in addition is expected to be *legitimated* in counterfactual expectations of expertise, vote and party, that the decision-making system can be a flexible indeterminate process that can deal with social complexity, contradiction and conflict. Political decisions are less about legitimate domination and more about making the *right* decision. As such, these additional legitimations allow and necessitate a shift from a focus on the structure of legitimate power to the symbolic legitimation of decisions through argumentation and dramaturgy (Luhmann 1983:152-4).³⁹ Indeterminacy, then, addresses problems of the vulnerability of validity, of legitimate power as a symbolic medium, first, because processes of symbolic legitimation make it easier – though not easy – to satisfy different counterfactual and even conflicting expectations simultaneously or to use different legitimating arguments for different publics, different times and different places. Conflict might be absorbed, second, by distracting conflicts about legitimate power to arguments about the legitimation of power. It forces opposition to argue why the decision is *not* the right one or what would be the right decision, not why power is legitimate or not.

Indeterminacy, then, might solve some of the problems of the vulnerability of legitimate power as a symbolic medium, but it seems that these problems are exchanged for the risk of disappointed expectations and lack of 'security' (*Sicherheit*) (Luhmann 1983:192; see also Parsons 1963a:47). Although we might expect legitimate decisions to be rational, democratic and moral, indeterminacy assures us that we can never be sure. The political decision-making process must continuously uphold counterfactual expectations of expertise and hierarchical control, of specific

³⁹ We are reminded of Weber, who also argues that bureaucracy 'drains' all 'normal sentimental content' from relations of domination (1978:731).

interests and the common interest, of legality and democracy. This is a remarkable achievement indeed and ‘a permanent problem’, especially as these expectations often *contradict* each other (Luhmann 1983:152).⁴⁰ We might conclude that the problem of conflict is exchanged at the level of social organisation for problems of ambiguity, which cannot be countered by validity (truth) but only by the continuous political *organisation of trust* (Luhmann 1983:193).

5.3.3 The Level of Social Interaction: The Problem of Contingency and Effectiveness

We can also analyse the symbolic medium of legitimate power at the level of social interaction. Symbolic communication structures social interaction in many different ways. One could easily incorporate Goffman’s theory of *frame analysis* or *presentation of self*, in which he studies face-to-face encounters in daily life, where not only actors but also the social context communicate normal expectations of social meaning and role differentiation through symbols, signs and artefacts (Goffman 1974; also Manning 1992). Goffman tries to show how, in everyday practices such as walking on crowded sidewalks, we communicate normal expectations through body language that coordinate an otherwise very complex social situation, as it allows strangers to pass each other without much friction or conflict and without much need for specific information (Goffman 1971). Goffman shows that in much day-to-day social interaction, communication of normal expectations is an unconscious process of which we only become aware in situations of *abnormality* or *ambiguity*.

In similar ways, we might try to understand how more specialised languages such as money, law and power not only allow communication, but foremost enable *efficient coordination* of social actions. What makes communication so effective, just as in Goffman’s analysis of the sidewalk, is that we *expect* what others will do, without having to know them personally, without having to know their histories and beliefs. In short, communication in these specialised languages is effective because expectations are generalised in the social, material and temporal dimension. Precisely because social complexity is decreased in these dimensions, communication allows actors more ‘degrees of freedom’ as they are freed from contextual, particular and contingent *knowledge* (Parsons 1963a:40). In media theory, then, the coordinative effectiveness of money, law and power is explained by the fact that it decreases complexity and increases freedom.

We have already discussed how the reflexive organisation of legitimate power increases the ‘degrees of freedom’ of the sovereign, i.e. that it increases his power in space and time. We can now also perceive that legitimate power likewise increases the freedom of the sovereign’s subordinates – bureaucrats or citizens – in general. First, freedom of citizens is increased to the extent that legitimate power binds arbitrary and contingent political will in law. Legitimate power coded in law

⁴⁰ Luhmann, somewhat disappointingly, argues that therefore “ignorance and apathy are the most important conditions” for the functioning of the political system (1983:191).

replaces the 'omnipresence' of violence by 'a regulated present', in which 'future conditions' that initiate violence are known (Luhmann 1975:65). To a certain extent, legitimate power makes the *future* intelligible and makes it possible to avoid force and explicit commands (Luhmann 1975:36). Legitimate power as a symbolic medium does not coordinate social action in terms of command and obedience, but rather by making it possible to avoid power (as force) altogether. Second, the increased freedom of the citizen not only concerns the consistency and reliability of legitimate power, but he actually *gains* power. As the legitimate leader binds his will to legality, we might say that subordinates also gain counterfactual legitimate power – not, in the first instance, political but rather *legal* rights. Law gives "the powerless a share of societal power" (Luhmann 1975:49). Through the legal system and legal judgement, political power can be 'summoned' to act. Law, then, becomes an instrument for the citizens, which allows them to use public power for private use without the need to act politically (Luhmann 1975:95). So, for example, a private economic transaction might be 'secured' in a legal contract that functions both as an *assurance* for the contractual commitment of both parties as well as an *insurance* in case the other party defaults, precisely because a legal contract allows one to summon political power through legal procedure. Through the legal system, the powerless have legitimate power at their disposal.⁴¹ Finally, in a fully rationalised and reflexive political system, citizens and subordinated bureaucrats can also summon power upon power (Parsons 1963b:242). A subject of legitimate domination can claim that a specific decision of the ruler, or even the ruler himself, is not legitimate, i.e. is illegal. Different from domination, such a challenge does not lead to a contest of force, but to a judicial contest of legal truth. In other words, the subordinate can challenge legitimate domination even in the face of superior force.

In general, symbolic media function to *conquer time* and function as *assurances* and *insurances*.⁴² Legitimate power allows the citizen to understand the social world in terms of stable expectations of power generalised in space and time. Subordinates can act meaningfully or rationally in a consistent non-contingent world of power, and, just as with coordination on the crowded sidewalk, *effective coordination* by legitimate power is based upon the communication of non-contingent expectations in the face of social contingencies and complexities (Luhmann 1975:68).

If the coordinative force of legitimate power increases freedom – or decreases social complexity – it seems to come at the expense of two problems: the *problem of contingency* and the *problem of effectiveness*. First, although legitimate power is forced to be consistent, self-referential or socially

⁴¹ This example also shows how autonomous organised power in private organisations is integrated in the political system through the system of law (Luhmann 1975:104).

⁴² This does not mean that different media function in similar ways at this level. For example, if legitimate power conquers time by making the future intelligible, money conquers time by making it possible to postpone decision-making (but compare our discussion of bureaucratic organisation above).

disembedded, it is also inherently contingent, as it can prescribe its own legitimating rules, its own normative code. As such, legal power is both consistent *and* contingent, as tomorrow all rules can be different. Without a doubt, the ability for legitimate power to remain reliable and flexible is the improbable achievement of the modern legal state, in which the contingency of politics is bound to the non-contingent conditions of law (Luhmann 1975:50). Thus, while modern legitimate power might allow us to know the future, it also makes this future inherently contingent.

Second, to depend upon the coordinative effectiveness of legitimate power seems inherently risky precisely because it is merely self-referentially valid (true) and precisely because expectations of legitimate power have become independent from force or actual asymmetric interests to avoid force (Parsons 1963b:237).⁴³ If expectations of power are solely *symbolic* and *counter factual*, there is nothing, it seems, that guarantees its effectiveness. Legitimate power might reduce social complexity, but it seems to come at the cost of its 'intrinsic effectiveness' (Parsons 1963b:250).

This problem of effectiveness must be treated carefully. The effectiveness of power in media theory should not be seen as successfully securing *obedience*, but rather in terms of successful *communication*. It can be argued that Parsons emphasises the former and Luhmann the latter. Parsons tries to explain how the uses of symbolic media "are ways of structuring intentional attempts to bring about results" through inducement, deterrence, 'activation of commitments' or persuasion (Parsons 1963a:42-4; see also 1963b:238). It is about 'getting results', about instrumental 'control' and 'exchange', and not just about 'conveying information' (Parsons 1963a:40).⁴⁴ Media, for Parsons, always have an 'imperative mood' (1963a:42). Luhmann, on the other hand, explicitly tries to free media theory from Parsons' bias for instrumental exchange over communication (Luhmann 1984:319). He understands the effectiveness of legitimate power in terms of successful communication (Luhmann 1975:5). Although communication does not *secure* performance or obedience, successful communication does *structure* actions by limiting "the space of possibilities" (Luhmann 1995:149). Communication concerns the "transfer of reduced complexity" – or the "reproduction of selective performances" – which mutually structures normal expectations upon

⁴³ For Parsons, this is the reason why legitimate power is 'symbolic power' (1963b:238). This might be true, but is nevertheless analytically confusing. It seems better to separate between how expectations of power can be coded in symbols and how expectations of power might be counter factual.

⁴⁴ It is not true that Parsons ignores the idea that media communicate expectations or "the definition of the situation" (Parsons 1963a:40). It might be argued that Parsons' somewhat confusing reading can be explained by the fact that he uses money as the primary example of a symbolic medium and develops other media in direct analogy. The complexity of money, however, is that it is simultaneously a *language* communicating expectations of economic value and a *private property* symbolising expectations of future generalised reciprocity. As Parsons states, money is both a symbolic 'measure of value' and a 'medium of exchange' (1963b:236). To this extent, it can be argued that money as a symbolic medium is rather an exception (Luhmann 1974:238). Luhmann, in any case, warns for 'degeneration' as the result of a too strict method of analogy (1975:64).

which both actors involved can act meaningfully (Luhmann 1975:8,31; but also Parsons 1963b:242). Power as language communicates the ‘definition of the situation’ or the ‘concrete context of departure’ in which social action subsequently takes place – it structures but does not determine the result (Parsons 1963b:242, 1953:626; Luhmann 1975:8). Media, to sum up, “must make explicit and plausible that one must act and experience in a specific way, although ... it can also be different” (Luhmann 1975:250). Media can do this “not by validating (*Begründung*) the selection itself” but by replacing contingency with generalised expectations.

The force of coordination does not lie in the fact that communication limits or determines social action, but in the fact that generalised expectations *make social action possible* in the first place. The communication of legitimate power not only reduces social complexity by defining a situation in terms of counterfactual asymmetry, but foremost by defining it in terms of *motivation*. Motivation should not be understood as subjective action orientations – the subjective cannot be communicated – but rather that shared expectations of power make it possible to ascribe motivations to others – socially valid expectations and expectations of expectations of their motives – which makes it possible to expect and even predict others’ actions (Luhmann 1975:7). Motivations do not explain why people act but rather how they are normally expected to act if they act. The force of ‘normal expectations’ can be understood as the ‘probability’ of normal expectations reinforcing themselves (Luhmann 1975:12; compare Weber 1978:31). Communication is not just about enabling the ‘experience’ (*Erleben*) of shared meaning but also ‘induces action’ (*löst Handeln aus*) (1975:74).

If legitimate power only communicates mutual expectations, then the actual coordinating force of power remains inherently *vulnerable*. To put it differently, legitimate power loses its force in case of miscommunication, if an actor refuses to take over the communicated reduced complexity or refuses to communicate at all. Both Parsons and Luhmann are aware of this inherent vulnerability of symbolic media. Parsons, however, refuses to accept the radical consequences of it. In discussing the medium of money, he argues that the *real value* of money ultimately remains tied to the value of gold (Parsons 1963b:240). However generalised and symbolic money becomes, he argues, the intrinsic motivator ultimately remains gold. In direct analogy, this means that the real value of legitimate power remains tied to *force* – force is the ‘ultimate deterrent’ in the case of communication breakdown (1963b:238). For Parsons, then, force, power and legitimate power are positioned on one single dimension of “means of gaining compliance” (1963b:238).⁴⁵ In Luhmann’s

⁴⁵ Parsons’ analysis of the effectiveness of legitimate power at the interactional level is somewhat confused. Parsons seems, on the one hand, to limit the use of power to the ‘strategy’ of coercion, based upon the ‘intrinsic’ motivation of ‘situational’ negative sanction (1963b:238-9). Indeed, as Parsons notes, “[t]here is a sense in which power may be regarded as the generalized medium of coercion” (1963b:240; see also

analysis, in contrast, force, power and legitimate power are no longer posited in one single dimension as they communicate different meanings. For Luhmann, the 'real value' of money lies in its capacity to communicate expectations and motivations. It depends upon expectations that anonymous others accept its value, i.e. that they understand the language and accept its meaning. It does not matter whether money has 'real' value; what matters is that it allows us to act *as if* it has value. Value, then, depends upon mutual confidence or trust (Parsons 1963b:237, 1963a:47). This is not different for the 'value' of legitimate power— it is purely symbolic.⁴⁶

The coordinative force of symbolic media is thus inherently vulnerable. For Luhmann, this means that to understand the coordinative force of legitimate power we must not merely analyse how we should understand communication of legitimate power as a language, but foremost analyse how this inherent vulnerability of communication and symbolic media is *organisationally* dealt with (Luhmann 1975:85). In other words, because expectations of legitimate power are no longer dependent upon contextual contingencies, its effectiveness becomes contingent. Precisely because expectations of legitimate power are generalised, power can be used to *control* the risk of ineffectiveness through organisational *techniques*. Ineffectiveness becomes a 'risk', but a risk that becomes visible and, as such, controllable but not solvable (Luhmann 1975:83).

To understand the effectiveness of symbolically communicated expectations of legitimate power, we should not so much explain command and obedience, as in Weber, but rather the institutional organisation of communication and *trust* (Parsons 1963b:237). Force as the 'ultimate deterrent' or organisational structures of bureaucratic control and accountability, in this regard, do not so much explain effective obedience by 'intrinsic motivation' as they explain confidence that others are motivated to accept the validity of counterfactual power. They must be understood as *sources of assurance* through which we can expect that legitimate power also motivates others, including the sovereign himself, increasing *for all* the freedom to act meaningfully in non-contingent space and time. The point is that obedience is *normally expected*, while disobedience becomes an *abnormal* act, which can be expected to be organisationally controlled and forced to face justice (Luhmann 1974:251). Threat and force are not so much used to motivate obedience by limiting the

1963a:44). On the other hand, Parsons is also aware that the effectiveness of legitimate power cannot be reduced to threats and force, and as such rests upon the mobilisation of commitments (1963b:250; 1963a:42). Parsons, we might conclude, remains tied to a Weberian social action perspective of politics as domination.

⁴⁶ It might be noted that Parsons, again, overstretches the analogy between money and power, though also misunderstands it. In terms of the former, Parsons claims that 'symbolic power' can "be exchanged for something intrinsically valuable ... namely compliance with an obligation" (1963b:238). Although that leaves the 'recipient' with "nothing of value", he can expect that in another context "he can invoke obligations" from others. In terms of the latter, Parsons seems to claim that confidence in money parallels legitimacy in power. Rather, a direct analogy would yield that the effectiveness of counterfactual power also depends upon confidence.

alternative actions of subordinates, but to sanction illegality and reassure the normative order. In other words, disobedience, not obedience, is the act that has to be explained.

The coordinative force of legitimate power is not so much about the *use* of power – i.e. not about command and obedience – as about structuring the expectations that enable social interaction, i.e. about communication. Nevertheless, legitimate power is, of course, especially in a bureaucracy, also about legitimate domination. Power is being used. In contrast to money, legitimate power inherently entails asymmetric expectations, a fact which seems to make its actual ‘use’ especially vulnerable.⁴⁷ We might now perceive that the additional legitimization of legitimate power through expertise, but also through vote and party, counters expectations of *unequal asymmetric interest* with expectations of *equal symmetric interests* present in rationality, public support and the common good. Increased indeterminacy also increases the probability of the effectiveness of the use of power by absorbing its inherent conflictive or unequal nature. Indeterminacy increases effectiveness.

In conclusion, at the level of social interaction, we foremost try to understand the coordinative force of legitimate power in terms of increased freedoms by successful communication and how political organisation must address the accompanying risks of contingency and ineffectiveness. It seems that these risks must be kept in check by the *organisation of trust*.

5.3.4 The Level of Personal System: The Problem of Individuality and Risk

Finally, we can discuss the analytical level of the individual person. It must be noted that where we discussed ‘meaning’ and ‘motive’, these are all objective social expectations communicated and organised in terms of symbolic media. They do not concern *subjective action orientations*. Luhmann is outright hostile and dismissive about the ‘subjective’ and wonders why it ought to be included in theory at all (1973:21). In light of our general aim to understand the subjective normativity of political legitimacy, we might wonder why Luhmann is so keen to do away with the subjective altogether.

The problem of sociology, according to Luhmann, is that it never really produced a theory of *individuality* but only a theory of *individualism* (1995:129). Sociology foremost analyses the problem of individualisation in relation to modernisation processes such as detraditionalisation or increasing social differentiation. This analysis yields two kinds of theoretical problem, as the problem of individualism is foremost understood as a problem of order and the problem of social differentiation is thought to problematise individuality (Luhmann 1995:132). Concerning the latter, if the individual is to perform all kinds of differentiated roles, his individuality can no longer be expected to be

⁴⁷ But we should not deny that the use of money also entails expectations of different and competing interests.

prescribed by a stable social position or status, as seemed to be the case in segmented or stratified societies. With the rise of social differentiation, then, Luhmann signals the rise of the 'semantic of the subject' in the history of thought, i.e. the idea that if individuality can no longer be found in the social, it must be found outside the social in the individual himself, in his subject (1995:127). In short, behind the 'masks' put on in different social roles, it is expected that a 'real' identity is hiding (Sennett 1977:264). For Luhmann, this idea of a true *subject* is a 'fiction' (Learmans & Verschraegen 2001:112). The individual will fail to find true meaning by understanding himself in terms of himself. Such reflexivity, as always, does not find a true core but merely constitutes a self-referential – or autopoietic – process (Luhmann 1995:136). Luhmann, therefore, dismisses sociological theories that not only try to understand the subject in terms of 'originality', but especially those that aim to understand it as something that can and ought to be 'emancipated' from the chains of society (Luhmann 1973:21-3; 1977:32).

Luhmann is, of course, not the only sociologist to unmask the myth of unmasked identity. His problem with sociology therefore also concerns that other *theoretical* problem of individualisation: the problem of order, stability or solidarity. He foremost dismisses theories that, inspired by Kant's idea of 'transcendental subjectivity', claim that the self-reflexive individual will not so much find a true and individual identity, but that *universal humanity* can serve as the moral basis of society (1995:128,157-9). For Luhmann, society or communication is based upon the idea of double contingency and the non-communicable nature of 'subjective' meaning. To find the universal – the perspective of the other – inside the subjective is to deny the contingency and complexity of the social altogether. Luhmann, in general, scorns all theories that use the subjective realm as a kind of theoretical 'escape', i.e. use the subject as a 'utopian' realm in which *non-social* freedom and autonomy explain what the theorists cannot explain (1973:21; 1995:162).

Instead of finding the solution for the problem of order in the subjective or trying to emancipate the subject from the social, Luhmann argues that we should understand the relation between the social and the individual not as a 'zero-sum relation', but rather perceive that societal complexity increases individual freedom (Learmans & Verschraegen 2001:114). In fact, he argues that only Durkheim seemed to be sensitive to this solution by turning this relation 'upside down', i.e. the individual does not explain the social but the social explains the individual (1995:129). What sociology needs, according to Luhmann, is not a theory of individualism but a *theory of individuality*.

An individual human, according to Luhmann, should be perceived in terms of two self-referential systems – the psychic and the organic – that are not genuinely communicating but only 'structurally coupled' (Luhmann 1995:144,152; 1974:252; Learmans & Verschraegen 2001:116). Both systems are autopoietic, which means that they are coordinated by self-reference. The psychic

system, we might recognise, concerns the realm of ‘consciousness’ or, in our Weberian framework, subjectivity (Luhmann 1973:23). Precisely because the individual consists of self-referential systems, this means that it is *excluded* per definition from society (Luhmann 1995:167). This seems to be the reason why Luhmann thinks that Weber’s action theory cannot yield a genuine sociological theory, as the *subject* is both outside society and “too concrete for sociological theory” (1975:5). In Luhmann’s theory, the subjective is non-communicable, non-social and belongs to an actual concrete individual.

Luhmann must, of course, explain how the individual outside society is nevertheless included in the social. Symbolic media at some point must relate to the organic psychological individual. In his early work, Luhmann tried to understand this relation in terms of ‘symbiotic mechanisms’ and the ‘prohibition of self-gratification’ (1974). The former concept points to the relation that must exist between social media and the organic system.⁴⁸ Force, in this contexts, remains important as it ‘mediates’ between the symbolic level of social interaction and the ‘material level’ of human existence (1975:61).⁴⁹ The latter concepts connotes the idea that the individual must be forced into society by assuring gratification only through the ‘detour of social communication’.⁵⁰ However, even if these two mechanisms explain why the individual cannot escape the social entirely, it hardly amounts to a theory of individuality in modern society.

In later work, when Luhmann more clearly developed his theory of autopoiesis, he claimed that if the individual or the subjective cannot really be included in the social – as no genuine communication is possible between the subject and social systems or between two subjects – it can nevertheless be included to the extent that we can communicate in the social realm *about* subjects (Luhmann & Verschraegen 2001:121). This seems to allow two kinds of mechanism: the social presentation of self and understanding oneself in terms of social knowledge. Luhmann first differentiates between the *person* and the *subject*. The person, based upon the work of Goffman, concerns the social presentation of self (*Selbstdarstellung*). Person or ‘identity’, then, is something the individual must constantly manage and uphold in social interaction, despite all his different roles

⁴⁸ This means for Luhmann that truth is related to the organic process through ‘observation’, love through sexuality, money through ‘satisfaction of needs’ and power through ‘physical violence’ (1974:247). A similar idea is also present in Parsons, who sees the person as “a system of four basic need-disposition units” (1953:628).

⁴⁹ Both Luhmann and Parsons point out that in the analogy to money, the means of motivation can be subject to ‘inflation’, as in the case of the ‘empty threat’ (Luhmann 1975:89; Parsons 1963a:62; 1963b:256). However, this must be correctly understood. Threat is not the foundation of legitimate power. Luhmann rather claims that as violence ‘cannot be ignored’ by humans based upon their ‘physical organic existence’, this ‘shared symbiotic foundation’ explains why we can ascribe valid expectations of motivation to others (Luhmann 1975:61-3).

⁵⁰ In relation to truth, love, money and power this concerns the prohibition of respectively ‘subjective evidence’ or ‘introspective certainty’, ‘masturbation’, autarky and the direct use of violence to pursue one’s will or feelings of justice (Luhmann 1974:247).

in different social situations. Person, for Luhmann, is a social claim of being 'different', of being an individual, which must constantly be communicated and accepted in the social realm (1995:148). Being an individual person, then, is an *intersubjective* achievement, communicating meaning and motive (Goffman 1974:58; Luhmann 1964:20). Self-presentation not only achieves individuality but also assures that the individual commits to his self-presentation, making communication possible in the first place (Luhmann 1995:152; Parsons 1963a:40-2, 1963b:240). Secondly, person relates to the subjective self-referential system to the extent that the subject can only understand itself in terms of itself – in terms of its own (fragmented) *experiences* (Luhmann 1995:135,153). To put it differently, self-reference means being conscious of one's history of consciousness (Luhmann 1995:135; Learmans & Verschraegen 2001:117). The importance of personal history and subjective experience seems to open up Luhmann's theory to a Foucauldian analysis in which social practices provide the knowledge for the subject to use for processes of 'self-formation' and 'subjectification' – reflexive processes in which the subject makes itself an object of investigation (Rabinow 1984a:11-2). Indeed, Luhmann argues that without these social components – without social 'resistance' – a self-referential system would become highly contingent (1995:133). However, differing from Foucault, Luhmann seems to stress the importance of societal structures beyond practices, and foremost the *plurality* of modes of self-management (Learmans & Verschraegen 2001:115,125). Nevertheless, Luhmann seems to agree with Foucault's claim that subjectivity should be understood as reflexive 'self-knowledge' (Foucault 1982:781; Rabinow 1984c:387).

Is Luhmann's hostility towards the subjective justified on these grounds? The mere fact that the subjective is self-referential or merely symbolic does not justify, it seems to me, the ironic dismissal of the problem of individual meaning. We might agree that modern quasi-religious attempts to find one's true self are destined to fail – as Weber has already taught us – but it does not justify denying the individual need for meaning altogether, the need for some form of self-justification in Weber's words (Luhmann 1995:136). It does not suffice that Luhmann points out the social constructivist nature of subjectivity and *therefore* dismisses it as irrelevant. The need for subjective meaning and validity (truth) is all too real for *theory* to dismiss its *empirical* relevance. Furthermore, if Luhmann argues that the subjective cannot exist per definition in his analytical framework of autopoiesis because every system – including the psychological – is a form of communication, and as a consequence is not subjective but intersubjective (between Ego and I?), we seem to get caught in theory for theory's sake (1995:170). It implies that every self-referential system – whether social or individual, psychological or organic – is a subject. In that case, we might agree that the concept of subject no longer makes sense or is intelligible. However, it is one thing to criticise the sociological

use of the subjective as some realm of universal morality, and quite another to dismiss the moral notion that the individual subject is a *special kind* of system (Luhmann 1995:148,164). Not only does this deny our own experiences and make the world rather unintelligible, but its normative consequences seem to deny the possibility of any genuine critical theory. Luhmann's hostility towards the subjective, in this regard, might be explained by his misunderstanding of morality, as if morality only connotes some universal and 'thick' ethics conflicting with his notion of social differentiation – a form of demodernisation (Bader 2001:148).

Luhmann's analysis can, however, also be read as a welcome addition to Weber's work. Luhmann shows why the problem of validity (truth) or the *Abschlussproblematik* can neither be solved at the most abstract level of value sphere nor at the level of the subjective. Both are self-referential processes that only *symbolise* validity. This, of course, does not deny Weber's work. Weber did not try to find validity in the subjective, but rather tried to explain the relation between subjective beliefs and social practices. Subjective validity is a social process. Furthermore, Weber was more than aware of the self-referentiality of subjective meaning – of duty for duty's sake. What Weber did not problematise, and what Luhmann continues, is not just the problem of validity (truth) in an increasingly reflexive and rationalised world, but also the problem of validity (truth) in an increasingly differentiated world. Although Weber is, of course, aware of the existence of different value spheres and how this might lead to political conflict, he is less concerned with the conflicts this brings at the individual level. Luhmann is more open to *the complexity of personal self-management in a differentiated society*. This complexity cannot be solved in one single social form of self-discipline. As such, Luhmann's analysis is more open to plurality and social complexity, which cannot be solved through individual subjective validity but only at the level of social organisation.

This means that Luhmann – at the analytical level of individuals – is less concerned with the origin of subjective orientations, and more with the relation between the individual and the social. Luhmann tries to show how individualism, individuality, plurality and conflict is not in inherent opposition to society, but rather a consequence and precondition of social complexity (Bader 2001:133-4). Analysis on this level therefore points out individual risks in relation to processes of social communication, rather than social risks in relation to processes of individualisation.

I cannot provide a detailed analysis of individual risks in complex differentiated societies at this point. We might, however, perceive that the problems identified so far at the other three analytical levels provide a general starting point. At the level of value sphere, the main risk concerns the problem of validity (truth), which translates at the individual level to the problem of meaninglessness. For Luhmann, this 'burden of reflexive self-determination' must be solved by society providing meaningful 'templates' for individuals to copy (1995:133,140-1). It seems to me,

however, that Weber's analysis of self-justification might be more fruitful at this point. At the level of social action systems, we identified how the problem of conflict is absorbed by increased ambiguity. This ambiguity, however, not only absorbs social conflict, but also seems to *individualise* actual conflict as well as risk. The former points to the general tendency of depoliticisation, which transforms potential social conflict into an individual and isolated conflict (Luhmann 1983:112). The latter points out that ambiguous expectations might absorb conflict or contradictions, but also burden the individual with the decision of whether or not to trust decisions – e.g. whether or not a certificate of food safety expresses expertise or mere bureaucratic power. Ambiguity increases feelings of insecurity. Finally, at the level of social interaction, we can say that the problem of contingency and the effectiveness of social media increase individual uncertainty. Indeed, the risks involved often do not concern the social validity of legitimate power but rather individualised risks – it is the risk that others will act in contrast to communicated expectations (Luhmann 1974:251). This becomes even more apparent in the inherent risk of contingency of legitimate power, i.e. the risk that tomorrow the rules might be different. Finally, at the level of social interaction, we might also situate the risk of inappropriateness and the risk of social commitment, i.e. all those risks associated with problems of self-management in complex everyday life.⁵¹

What Luhmann's analysis points at is therefore not how the validity of legitimate power might be grounded in the subject, but how individual risks in a complex society must somehow be dealt with, either by the individual himself or at the levels of social organisation. The individualisation of risks, we might perceive, is only a *social* problem to the extent that a lack of *trust* in the social validity of symbolic media threatens social organisation, threatens the reduction of complexity. The social problem of individual risks thus once again points to the *social organisation of trust*.

5.4 Conclusion: Risk and Trust

In this chapter, we have tried to understand how politics as coordination might be grasped in terms of symbolic media theory, i.e. in terms of communication in a specialised language. The conclusion of this analysis must be that the political system is *suspended in mid-air*. The validity (truth) of legitimate power can neither be solved at the highest level of analysis with some absolute truth, nor at the lowest level through subjective validity. At both extremes, validity (truth) can only be

⁵¹ To speak the 'right' language is context appropriate. One cannot buy love or friendship, for example, because these relations are not coordinated by money. Such inappropriateness breaks *normative expectations*, which are not communicated by the symbolic media themselves but depend, according to Luhmann, upon a 'process of meta-communication', founded in 'tacit understanding' (1975:249). It seems, then, that to understand social action, our analysis must go beyond symbolic media and include lifeworld communication (see chapters 7 and 8). The risk of inappropriateness, in any case, increases with the increase in ambiguity and indeterminacy.

understood in terms of symbolic self-reference. The problem of validity must therefore be dealt with at the 'middle levels' of social organisation and interaction (Luhmann 1977:46).

Validity in Luhmann's media theory is no longer about validity (truth) but about social validity, and the question of how this social validity can be *organised*. This seems to be the reason why Luhmann ultimately dismisses *action theory*, as it is not subjective orientations that explain social action but rather the successful communication of objective motives (1983:29-32). Luhmann, in other words, tries to explain how legitimate power – or any symbolic medium – can effectively coordinate social action *independently* of subjective orientations. It is to this extent that we can understand social systems as the essence of Weber's 'iron cage'. Validity (truth) is no longer important, as the political system has become entirely symbolic. It does not matter whether or not subjects believe in the validity (truth) of legitimate power, it only matters whether people can coordinate their social actions *as if* legitimate power is valid (true). Validity of legitimate power is thus reduced to social validity.

As a conclusion, we might ask ourselves two final questions. First, to what extent is this dismissal of validity (truth) empirically sensible? Even Luhmann wonders whether 'totalisation of reflexivity' can sustain motivation (1974:253). He seems hesitant to give up a 'meaningful life' altogether and argues that it must at least always be held open as a possibility, "as an indeterminate horizon of further explorations" (1995:141, 1977:32). The problem of Luhmann's theory, in this regard, is that he not only *separates communication from action*, but also treats this model of communication as an empirical reality. This means that when Luhmann speaks of 'the' political system or 'the' market, we might empirically perceive different *kinds* of democracy, bureaucracy and capitalism (Bader 2001:143; Offe 1984:182). In this regard, the contemporary fact that 'the' political system is still characterised by segmentation in nation states, despite forces of globalisation, should also temper firm beliefs in the functional and universal force of social evolution. More importantly, precisely because persons, but also organisations, are *acting* in multiple systems simultaneously, an action perspective allows more analytical room for interactions and even coordination *between* systems, without denying the self-referential nature of symbolic media as such. Actions, it is important to acknowledge, are not as differentiated as communication (Bader 2001:142). Moreover, we can seriously question whether social systems coordinated by money, law, power and truth cover the whole scale of meaningful social actions. In chapter 8, I will argue that, in addition to system communication, we might also understand social action in terms of lifeworld communication. In sum, Luhmann's separation of communication and action opens up interesting possibilities for analysis, but an action perspective seems to allow more plurality and variation that seems empirically relevant.

The second question concerns the consequence of the dismissal of *subjective validity* for the general question of this dissertation. The difference between politics as domination and politics as coordination, as we have seen, is that the latter does not aim to determine social action but merely to coordinate it by communicating expectations and motivations and “condition[ing] the probabilities of acceptance and rejection” (Bader 2001:140). The core question becomes the social or objective validity of legitimate power and not its subjective validity (truth). However, we have also seen that coordination, understood as the reduction of complexity, is inherently *risky and vulnerable*. The risks of ambiguity, contingency and ineffectiveness, at the intermediate levels of analysis – at the levels where validity must be organised – must be addressed. These risks cannot be solved but must be countered, it seems, with the *social organisation of trust*. In other words, Luhmann replaces the problem of validity (truth) with the general problem of trust. In the chapter that follows, I argue that it is precisely the notion of trust that entails a *subjective normative quality*. Even if legitimacy is purely understood as objective social validity and not in terms of truth, complexity, risks and vulnerability might nevertheless explain subjective normativity.

Chapter 6

Politics as Coordination: Trust and Its Normative Dimensions

Understanding politics as a type of social coordination – as a system coordinated by the ‘language’ of legitimate power – allows us to see that the problem of validity (truth) that occupied Weber is replaced by the question of social validity. Furthermore, we have also analysed how legitimate power as a symbolic medium might overcome problems of social complexity and organisational rationality, but that it replaces these problems with problems of vulnerability. Part of this vulnerability might be politically absorbed but is replaced with problems of indeterminacy, ambiguity and contradiction. Consequently, the question of social validity must be explained by processes that both decrease social complexity, while simultaneously keeping social complexity open. This means, first, that especially political theorists cannot (normatively) regard the political system as some kind of well-oiled *machine*. Political processes must constantly deal with plural and conflicting expectations without ever finding a final solution. Instead, theory must open up to social complexity. Second, it means that many of these problems of vulnerability – to the extent that they are not externalised as *individual risks* – cannot so much be solved but must be constantly *processed* by the political system. As we already discussed, understanding the nature of legitimate politics as vulnerable coordination seems to replace the problem of validity (truth) foremost with *the problem of trust*, i.e. the constant ongoing production of political assurance that despite the vulnerable, ambiguous, contradictory and contingent nature of political coordination, legitimate power nevertheless remains socially valid.

Although the concept of trust has a long tradition – especially in political theory – the debate really started to blossom at the end of the last century. It was the ‘buzz-word’ and the ‘obsession’ of the 90s (Koehn 1996: 183; Cleary & Stokes 2009:308). Despite this intensive attention there is no general agreement on what trust is, let alone how to explain it (Newton 2007:343; Misztal 2001:372). Nevertheless, most scholars would probably agree with the claim that trust has something to do with a commitment to uncertain social expectations, where this commitment involves a risk.¹ Trust, we might say, is to take-over uncertain social expectations for one’s own actions or understandings *as if* one is certain about them. Beyond this general idea the whole trust debate is unfortunately riddled with difficulties and contradictions. Before we discuss the role of trust in *politics as coordination* and, especially, its role in explaining the subjective normative validity of coordinative politics, we have to get some grip on the concept despite the current state of the literature. I will try

¹ Compare e.g. with Misztal 1996:18; 2001:372; Dasgupta 1988:51; Dunn 1988:73; Gambetta 1988:217; Warren 1999a:1; Sztompka 1999:25-6; Newton 1999:170; Mayer *et al.* 1995:712; Lewis & Weigert 1985a:968; Luhmann 1968:27-9.

to do so by dealing with ten of the most pressing issues and questions without claiming to develop a general theory of trust.

6.1. Ten Issues Facing a Theory of Trust

6.1.1 *Objective or Subjective?*

One of the most pressing questions, obviously, is how to define trust. However, it is equally important to define what trust is *not*, especially as the literature has a tendency to include so many other social or political phenomena as forms of trust.² One of the main issues regarding this question of boundary is whether trust is a subjective or an objective phenomenon.

Trust is often perceived as a subjective attitude. Trust is not a commitment to others, but especially to one's own expectations about others (Luhmann 1968:1). Furthermore, if people are not somehow subjectively aware of uncertainty and risk, their 'commitment' is hardly one of trust but rather of 'belief' or 'fate' (Offe 1999:78; Giddens 1990:111). At the same time, trust must also be 'warranted'. When trust is not founded upon some source of evidence, commitment no longer concerns trust but 'hope' or 'faith' (Misztal 1996:15; Hart 1988:186-7; Hardin 1999b:35; Sztompka 1999:24; Lewis & Weigert 1985a:972; Luhmann 1968:28). As such, it seems reasonable to assume that trust is a subjective attitude. This subjective understanding of trust implies that trust cannot be communicated. If trust is subjective, it is not inter-subjective, let alone objective. This means that I might try to convince you that you can trust me, but trust itself remains incommunicable. Although this seems right, defining trust purely in subjective terms makes a sociological *theory of trust* rather complicated.³ Many scholars struggle to define trust as something that lies somewhere between the extremes of faith and hope or belief and fate, without much success.

In contrast, others try to perceive trust from an *outsider's perspective* as an objective phenomenon. This kind of objectivism, in my view, should be discarded. Either we get stuck in futile economic-technical attempts that try to calculate when trust is objectively rational, or, more commonly and problematic in the trust-literature, *everything* seems to involve trust. As Luhmann writes: 'without trust one cannot get out of bed in the morning' (1968:1). Indeed, of what can we be really certain? In the former chapter we already argued that the whole social world is suspended in mid-air. There is no such thing as an immovable, non-contingent, transcendent foundation of truth. Furthermore, how can one ever be sure about the future? The future seems inherently contingent. Without certainty *every* social action seems to require trust. This outsider objectivity, then, is not the

² Eg. legitimacy, political support, habitus, solidarity, cooperation, toleration, reputation, or citizenship, to name but a few (Newton 2007; Misztal 1996; Seligman 1997; Tyler 1998; Dalton 2004; Hawdon 2008; Fennema & Tillie 1999:705; Grimes 2006:292).

³ Typically trust, in this perspective, is understood in terms of childhood, life experiences, optimism or general psychological make-up (Newton 2007:349; Uslaner 1999:138; Sztompka 1999:65; Giddens 1990:94; 1991:38).

way to go as it leads to everything and therefore to nothing. Also Luhmann eventually warns that “trust is not the only fundament of the world” (1968:126). The warning is right – but how to deal with it? The solution is a return either to the subjective or, I would argue, to perceive uncertainty and risk as social expectations in themselves.

Between the subjective and the objective perspectives we might try to conceive a third sociological perspective. The basic idea is not that trust is an objective social phenomenon but only the *problem* of trust (Luhmann 1993b:3; Misztal 1996:3; Sztompka 1999:11-2). What counts as certain or trustworthy or what counts as uncertain and risky is not a universal non-contingent phenomenon. We might follow Luhmann in this respect, who claims that the historical rise of modernity – understood as increasing societal differentiation – is accompanied by the rise of risk (1988:96ff.; 1993b:5). Subsequently, we might suspect that the rise of risk connotes the rise of the problem of trust. Of course, it would be ridiculous to say that pre-modern or early-modern societies can be characterised by certainty and safety. However, we can say that a pre-modern worldview is based upon the duality between the known and unknown or between the familiar and unfamiliar.⁴ Outside the unknown and unfamiliar world *danger* lures; dangers such as diseases, violence or natural disasters that one cannot understand, let alone control; dangers from which one can hardly protect oneself or to which one cannot commit *oneself* as they are unknown. If anything, religion is the social structure which can deal with unknown and unfamiliar dangers as religion explains the unexplainable (Luhmann 1975:79; Giddens 1991:195). Religion ‘controls’ the unknown by making it meaningful, not by making danger any less immanent or the unknown any more knowable.

The traditional familiar world, meanwhile, is relatively small and limited, on the one hand, and stable, on the other. Indeed, social complexity and contingency is ‘controlled’ by both spatial and temporal limits on social action. Social action in daily life concerns interaction with others who are personally known or at least familiar. Familiarity ‘absorbs risk’ because its structure is not based upon social uncertainty (actions) but concerns a ‘self-evident structure of existence’ (Luhmann 1968:22-4).⁵ Of course, just as in modernity, the actions of others are inherently contingent and uncertain. An outside observer might therefore say that familiar actors still have to trust each other. Yet, we might hypothesise that in such restricted and familiar communities trust is not a *social* problem as the inherent contingent, symbolic or inter-subjective nature of the social world remains imperceptible and unthematized (Luhmann 1968:26; 1993b:9). Trust is at most an individual problem. Finally, pre-modernity seems especially to be oriented towards the past as a means to

⁴ We should be careful with strong dichotomous thinking in sociology, neatly dividing history in pre-modern, modern, late-modern or postmodern eras. Human history, global human history especially, resists such universal reductionism. These schemes might be analytical useful, but never historically correct.

⁵ As such, familiarity and trust are two functionally complementary social mechanisms to absorb uncertainty or, in Luhmann’s terms, complexity (1968:24).

organise the present (Luhmann 1968:23; Giddens 1990:104-5; 1991:48). Where in modernity the meaning of the present is related to the contingent future one is trying to control or realise, in pre-modernity – somewhat exaggerated of course – the meaning of the present is inherently related to the past, which is (or at least seems) to be stable and non-contingent.⁶ In other words, the familiar/unfamiliar distinction coincides with the safety/danger and with the past/future distinctions.

In modernity trust does become a social problem. Modernity, in Luhmann's terms, is the increase in social complexity by the simultaneous decrease in social complexity or, as Giddens understands it, as the disembedding from time and space (Giddens 1990:16-7; 1991:16-7). The social structure of modernity is not self-evident but based upon social action – indeed upon action systems. These systems increase our degrees of freedom in space and time, but *not* security, certainty or stability per se. Indeed, as discussed in the previous chapter, modern society is inherently *ambiguous* to the extent that it is both stable *and* vulnerable; both reducing *and* increasing contingency; both decreasing *and* increasing indeterminacy. We might say that these ambiguities are no longer about *danger* but about *risks* that are inherent of modern society itself. Risks are not unfamiliar dangers that lie outside society in an unknown world, but risks emerge in modern society by the awareness that its social structures are “contingent” and “can be changed” by “decision and action” (Luhmann 1988:100,102; 1993b:46). The opposite of risk is not safety but danger (Luhmann 1993a:135; Beck 1992:21). In other words, traditional safety is dangerous, modern safety is risky. To bridge these modern ambiguities, to commit oneself to the inherent riskiness of modernity – trust is needed (Seligman 1997:13; Offe 1999:66). In sum, not trust but the *problem of trust* is a social phenomenon.⁷ Trust itself remains a subjective phenomenon.

6.1.2 Risk-Taking or Risk-Coping?

Objective social risks are a consequence of modernity, but this does not mean that individual awareness of those risks must necessarily be presumed. Until the Great War, the ‘disorienting speed’ of modernity might have been ‘exhilarating and liberating’ (Scott 1998:93), today we seem to be more conscious of risks and possible disasters even if the social structure has not radically changed. The difference seems to be the rise of some kind of ‘societal awareness’ of risks. Does that mean that trust was not a problem before or that people did not trust? To put it differently, is late-modern

⁶ It is not so much about the ‘discovery’ of the future in early modernity, as about the discovery that there can be a “discrepancy between past and future states” (Luhmann 1993b:39; 1993a:158).

⁷ This does not mean that the problem of trust in modernity concerns a shift from ‘personal trust’ to ‘depersonalised trust’ (Miztal 1996:20) or from ‘emotional personal trust’ to ‘presentational system trust’ (Luhmann 1968:27). Rather, it concerns the shift from danger to risk. At most we can say that because trust becomes a *social* problem it might be useful to divide modern society into ‘abstract’ and ‘intimate’ society (Giddens 1990:113; Luhmann 1988:102).

politics more dependable upon conditional trust, where modern politics in Weber's time concerned unconditional duty? These are difficult questions.

It might be helpful to perceive risk and trust from an individual point of view. In the literature it is claimed that trust is only trust if one voluntarily and consciously chooses to commit oneself to uncertain expectations (Luhmann 1988:97; Sztompka 1999:30). According to this dominant voice in the trust-literature, risk is something that is therefore a *consequence* of trust. *Because* I commit myself to uncertain expectations I subsequently run a risk. The proto-typical relation for such conception of risk seems to be an exchange relation. In an exchange relation Ego commits himself to future expectations concerning the promised actions of Alter, or not. Ego voluntarily chooses to run a risk, i.e. the risk that Alter will disappoint him generating negative consequences for Ego. If Ego does not trust Alter – if there is 'insufficient' evidence – he will not commit himself and *avoid* the risk.

Socially objective risks present in modern social structures, however, are not risks we *choose* to run and often risks we cannot *avoid* to run. Risk is not a consequence of action, but action is a means of coping with risk (Wisner *et al.* 2004:113ff). From this perspective trust might be a specific type of *coping-mechanism* to deal with social risks (Giddens 1991:46). Ego is not choosing whether he commits himself to a risk or not, he is rather searching for evidence that allows him to absorb it, i.e. he is searching for 'evidence' that allows him to fool himself. This, importantly, also means that *trust is not the only way to cope with risk*. Faith, fate, optimism and hope are functionally equivalent *psychological* mechanisms, just as cynicism, scepticism, apathy or hedonism (see e.g. Giddens 1990:134ff; 1991:131).⁸ Trust, then, is foremost 'functional' (Luhmann 1988:95; Misztal 1996:96ff.). Furthermore, we are not constantly aware of the risks of modern society, but routinely 'commit' to them. We normally only become aware of risks if we are explicitly confronted with them – as in the case of disappointment, crisis or (political) conflict. It is especially in those instances of risk consciousness that we try to rationalise our fears or anxieties. More importantly, society itself, or rather the social systems, are trying to rationalise and control disappointment and crisis. This means that the becoming-aware-of-risks in late-modernity is foremost to be understood as the problematisation of the rationalisation of risks and not necessarily the rise of risks themselves (Hardin 2000:49).⁹ This also means it is not necessarily a *trust* problem, as trust is not the only

⁸ Hedonism understood as prioritising the meaning of the present over the meaning of the future.

⁹ This is not the same argument as mainstream cryptonormative arguments in political science which claim that what is 'troubling' established democracies is not the rise of risk and not even the rising awareness of risk, but the fact that citizens are more demanding and "become increasingly critical" and less tolerant of disappointments (Norris 1999:26; Dalton 2004:195,199; 2000:253; Pharr & Putnam 2000:xviii). The central tenet seems to be that there is nothing intrinsically wrong with the liberal democratic system and accompanying neo-liberal capitalism, only the people are becoming more and more irrational – or post-materialistic (Inglehart 1999a:243-4).

functional means to deal with risk. Again, the relevance of trust is more limited than many theorists want it to be.

In sum, the difference between understanding trust as 'risk-seeking' and as 'risk-coping', generates different theories of trust. The trust-literature – always dominated by pseudo-economic models of individual utility (Luhmann 1993a:131) – is predominantly trying to understand trust as risk-choosing. We need not deny this risk-choosing model, but rather limit its relevance to the analytical level of social interaction. We should strongly resist, however, the tendency to elevate the risk-choosing model as the basis of all theories on trust. I would say that the 'risk-coping' model provides us more room to understand trust as a sociological phenomenon.

A related discussion, in this context, is the idea that trust cannot be 'enforced', but has to be 'voluntary'. To be sure, as trust is subjective one cannot be forced to trust. Indeed, one cannot even consciously force oneself to trust (Blackburn 1998:40). Trust eludes *control*. Of course, the *need* to trust might be lessened through mechanism of control, but trust itself remains elusive. Trust, then, is *always* 'voluntary', if this concept makes any sense at all in this context. Relations, on the other hand, can be involuntarily imposed. But a relation or behaviour cannot be equated with trust. We obviously have to dismiss such rude behaviouralism. Trust is not behaviour that can be perceived in cooperation over conflict (as in Deutsch 1958:270; Newton 2001:202). As such, there is nothing contradictory to the claim that a relation can be 'enforced', but trust is 'voluntary' (Pettit 1998:299-300). For sure, this implies that risk is not a consequence of trust, but trust foremost a means to cope with (imposed) risk.

6.1.3 Rational or Irrational?

If this approach of 'risk-coping' seems to psychologise trust, the same can be said about 'risk-taking'. One cannot calculate trust. There is no rational rule when trust is warranted – although there maybe social rules of thumb. Trust is always a leap of faith (Mansbridge 1999:291; Sztompka 1999:69; Lagenspetz 1992:5; Lewis & Weigert 1985a:970; Giddens 1990:27; 1991:19). Trust *itself* is contingent (Newton 2007:345). The core of trust, we might say, is irrational as it rests upon 'self-deception' (Luhmann 1968:38). In a philosophical mood we could claim that trust is the last refuge of *magic* in our disenchanted world. However, Luhmann rightly points out that this does not mean that not-trusting is rational (1993b:21). Trust allows more degrees of freedom – and as such more room to deal with risk and disappointment – and trust allows gains that are not possible without trust (Luhmann 1968:8-9). When one did not trust a business proposal and later it turned out that one has missed out on a good deal, was it rational or irrational to distrust? Indeed, it is rational to trust actors that can be trusted and irrational to distrust trustworthy actors. The inherent problem of trust,

of course, is that one cannot know this in advance. As long as the future remains the contingent future notions of rationality and irrationality remain elusive.¹⁰

But even in hindsight things are complicated. When distrust or trust proved 'unfounded', this does not necessarily mean we would evaluate with hindsight our past decision as irrational. Vice versa, we can also recognise stupid luck when things turned out all right despite our trust. We might follow Luhmann, who differentiates between regret and bad-luck, i.e. we may internalise disappointment by regretting our earlier action or externalise disappointment as 'bad luck' (1988:97-8). However, there is nothing straightforward in such post-hoc judgements. Luhmann's claim that this distinction helps us to differentiate between risk and danger, or between trust and confidence, is therefore surprisingly unhelpful (1968:4; 1993b:21-2; see also Offe 1999:44).

It seems more reasonable to claim that judgements about when to trust, who is to blame in case of disappointment or which risk is reasonable or excessive is to a large extent determined by society or sub-groups. For example, we might recognise generational differences where the young are expected to be foolish (and learning), while the old are expected to be thoughtful. We might also recognise gender-based stereotypes where foolish-trust for girls is thought to be based upon naiveté and innocence and for boys to be based upon risk-seeking and recklessness. The same holds for social roles. A second-hand car salesman is socially recognised (stereo-typed) as untrustworthy. If one buys a car from him nevertheless – as many people do – then the judgement of fool or victim depends upon the pre-cautionary measures they have taken. Similarly, the roles of entrepreneur and bank-director are differently stereo-typed. The entrepreneur is expected to be manly, heroic, innovative and admirable as he takes risks in which he might take it all or lose it all. The bank-director also deals with risks but is expected to be cautious, thoughtful and, above all, to act according to expertise as he takes 'controllable' risks.¹¹ Finally, formal rules are normally expected to be rational and communicating reasonable risk. Although this normal expectation is problematised by the awareness of modern ambiguity and indeterminacy, formal rules are human decisions, which still implies that we expect that risks are evaluated, judged, controlled and managed. As such, when blind rule-following goes awry the person involved is often judged to be stupid but not as irrational or as an excessive risk-taker.

In sum, what counts as a 'normal' risk and warranted trust and what are excessive risks and 'irresponsible' behaviour is a social affair which can be quite pluralistic. As such, the 'rationality' of trust and risks is a complicated affair. In its essence trust is not rational because it is unfindable.

¹⁰ Luhmann ultimately perceives the rationality of trust in terms of its system functionality (1968:116).

¹¹ An argument could be made that this social foundation of the evaluation of risk and trust seeps through in the trust literature as similar words have different connotations in different languages and cultures or different languages have different words altogether.

However, how one evaluates – with hindsight – trusting actions really depends upon social norms and one's own reflexivity.

6.1.4 What is Risk?

Trust, we have said, concerns a commitment to risk. The obvious question to ask, then, is what risk is. This question, again, is not easy to answer. In the literature risks is often defined as 'vulnerability X hazard', or 'costs X probability' (Wisner *et al.* 2004:49; Sztompka 1999:29). This is true to the extent that the more uncertain or improbable a specific expectation is, the riskier the commitment to it. If this commitment, however, only involves marginal 'costs' when disappointed, the risk remains very low.¹² Vice versa, even if the expectation is very improbable but the costs of disappointment are severe or even unthinkable, the risk might still be very high. In other words, risk is not just about probability but also about vulnerability. Furthermore, if trust is a means to cope with or commit to risks, we can say that the higher the risk the more trust is needed. Vice versa, commitment to risk is easier if probabilities are increased and the vulnerability decreased. This does not mean, importantly, that trust is in any way 'easier' but rather that less trust is needed.

It seems that the formula 'risk = vulnerability X probability' provides us some analytical leverage on how risk and trust are related. But this formula should not be over-extended. First, it is quite obvious that this formula does not imply that we can somehow calculate the exact 'value' of risk. We might, of course, try to do that, but often such models are as much methods of enchantment to rationalise risk as methods of science to provide certainty about risk (Luhmann 1968:116). Second, and more important, this notion of risk clashes to a certain extent with the notion of risk as an inherent modern phenomenon. The risk-formula – especially when used in economic models – seems to imply that risks are an *individual* or context specific matter which one can choose to take on or not and that people are – or should be – *risk-averse*. The modernity approach, on the other hand, implies that risk is a *social condition* with which individuals have to deal with but cannot voluntarily select and that modernity is inherently *ambiguous*, i.e. risk is liberating and threatening at the same time. However, as stated before, this clash must not be overemphasised either. The former approach seems to emphasise risk *within* a social system, while the latter emphasises risk *of* a social system.

6.1.5 The Problem of Uncertainty and Contingency

When risk can be pragmatically defined in relation to probability and vulnerability, the real problem seems to be that not all commitment to risk involves trust (Mayer *et al.* 1995:725). It seems useful to

¹² Sztompka speaks of 'weak' and 'strong' commitments and understands vulnerability as including possible costs, duration and degree of irrevocability (1999:28)

differentiate between risks involving probability and risks involving uncertainty. Let us examine this claim for a moment.

When we throw dice – and put money on the number 6 – we run a risk as success or disappointment is inherently *contingent*. To put it differently, what number the die rolls is an inherent contingent and ontological condition. We can only change this condition by manipulating the game – e.g. by rigging the die. However, we might also want to gain knowledge of this contingent condition, i.e. we might want to understand contingency in terms of *probability*. So, we can calculate that success in the dice game is 1 out of 6. It is important for our argument to stress that probability is an *epistemological* claim, which does not alter the contingent ontological condition as such. Furthermore, it evokes the additional question of the *certainty* of this knowledge – which, we will disregard for the moment. Finally, if I commit myself to the certain probability that success is 1 out of 6, I take a risk which we normally understand as a *gamble*.¹³ It is a gamble not just because the ontological condition remains contingent, but because even our epistemological understanding of this condition in terms of probabilities forces us to co-expect disappointment (in 5 out of 6).

Social relations, however, are often not like a game of dice. What makes social relations different is that actors in a relation are also agents who have a will and can make *decisions*. The die, in contrast, is an object who cannot decide to role in a certain manner.¹⁴ This does not mean that we cannot gain knowledge about human behaviour *as if* they are objects, as in economic risk-calculation or behaviouralism in general. We can calculate, for example, what the probability is for loan-defection for a certain area, group or class. If we subsequently provide loans – commit ourselves to these epistemic probabilities – we take a gamble as we have to co-expect disappointment.

Most social relations – including market relations – are not about committing to humans as objects for which we calculate probable outcomes, but concern a commitment to humans as *agents*. The difference of committing to an agent instead of an object is that in principle there is no ontological condition of contingency. This must be qualified immediately as contingency does not disappear. Yet, if the die in the dice game would *decide* to turn up 6, the outcome is no longer inherently contingent. The qualification, of course, is that contingency can still intrude as there is a difference between *intention* and *outcome*. But if we ignore this for the moment – something that cannot be ignored in reality – then the core problem of *risk* is no longer about the *ontological* problem of contingency but rather about the *epistemological* problem of knowing what the die will

¹³ Probability, then, does not necessarily amount to ‘a margin of uncertainty’ as Sztompka claims (1999:18).

¹⁴ This does not deny that even a dice-game is often ‘rationalised’ in terms of ‘Lady Luck’, a ‘good feeling’ or even by personalising the dice (Deutsch 1958:266). The boundary between ontological probability and ontological uncertainty is in itself a social construct, i.e. it is not a natural given.

decide to do. To put it differently, there would be no *objective risk* if we knew the future outcome, while there would be no *agentic risk* if we knew the decisions, intentions or motivations of agents in the present – if we knew their subjective orientations.

The point, then, is that we can differentiate between objective risks and probabilities, on the one hand, and agentic risks and uncertainties, on the other. Trust *only* concerns these latter risks. Trust concerns a commitment to *freedom* – to agentic risks, not to objective risks (Seligman 1997:55; Luhmann 1988:100; 1968:48; Sztompka 1999:19). In other words, trust is not a gamble.¹⁵

6.1.6 Internally and Externally Sanctioned Assurances

Unfortunately, things are even more complicated as not all commitment to agentic risks involves trust. Let us consider this complication for the moment. The problem of agentic risks is in essence an epistemological problem. If only we could look inside the heads of the agents we commit ourselves to, there would be no agentic risk at all. We should notice the difference with objective risks where knowledge of probability does not solve the inherent problem of contingency. It is however our inherent social condition that the subjective realm of others always remains unknown to us. We can only understand each other in terms of intersubjective *communication*. To commit to an agent to make the right *decision* – and not simply to commit to probable outcomes – is therefore always uncertain. As such, we have replaced inherent ontological *contingency* for inherent ontological *uncertainty*.

However, communication can also help us to deal with this uncertainty, as discussed in the former chapter. Uncertainty about the intentions of others can be reduced by communication, precisely because it allows us to ascribe socially valid expectations of motivation. Communication provides us *assurance* about intentions. Importantly, there are two types of assurance – assurance that is *externally* and assurance that is *internally* sanctioned. In what follows, I try to carefully differentiate between these two types of assurance.

First, we might reduce our lack of knowledge of the subjective intentions of others through the communication of socially valid (i.e. objective) expectations that are *external* to the relation itself. These socially valid expectations increase our knowledge of probable motivations of others. Indeed, as discussed, symbolic media and social systems allow us to expect, for example, that an economic actor will act strategically rational. Whether we will commit ourselves to an exchange relation with him – whether we will take a risk – depends upon our knowledge of the social interest-configuration. Indeed, if based upon this knowledge we expect his interests to be aligned with ours, we might take the risk. Commitment and risk-taking, then, depends upon the assurance that our

¹⁵ Some scholars are particularly confusing in this regard. Offe, for example, defines trust as a ‘belief in probabilities’ or a “guess based upon the assessment of others” (1999:46; see also Giddens 1990:27).

interests are aligned. This assurance, it must be emphasised, concerns socially valid expectations about 'incentive structures' and 'rationality'. Even if we never know someone's 'real' intentions, uncertainty can be addressed by externally sanctioned assurances. External sanction, then, points to the mechanism that interests and motivations are communicatively structured and assured by the *social context* of a relationship, not by the relationship itself.

The first way of dealing with agentic risk, then, is through externally sanctioned assurance. External structures (symbolic media) reduce but not take away uncertainty. Whether the other is indeed 'rational', i.e. whether he understands his own structural interests or whether he understands the context in a similar way, remains uncertain. Although, this remaining uncertainty might be further assured through some Goffmanian symbolic communications of 'normality' – assured commitment always necessitates a leap of faith because of the *inherent vulnerability* of social communication. To put it more formally, such leap is necessary because the subjective and inter-subjective realms always remain separated. However, and importantly, such leap of faith no longer constitutes a *gamble* as we are assured of success, i.e. we do not co-expect disappointment, but we act *as if* we are certain even if we *cannot* be. This means that in case of disappointment assurance necessitates that blame must be attributed, which does not hold for a gamble (Luhmann 1968:104).

There is one particularly difficult issue with this kind of external assurance which we need to address. Assurance does not mean guarantee or outcome control. Especially where sanction, threat and force are involved we run the risk of over-emphasising the imperative mood of communication (see chapter 5). For sure, communicating a (credible) threat *changes* incentive structures. This means that we not only gain assurance but actually also change objective outcome probability. At point blank the probability of disappointment tends to be fairly low and uncertainty does not seem an issue at all.¹⁶ However, we already discussed that the effectiveness (probability) of symbolic media is not based upon force and violence, but upon assurance and communication. If we normally say that structures of accountability and sanction increase the probability of success, we could also say that they decrease uncertainty or increase assurance. The difficulty, of course, is that both statements are true at the same time depending on the object/ agentic perspective. However, trust is not about increasing objective probabilities but about increasing 'indifference' to or the 'absorption' of uncertainty (Luhmann 1968:30). It is not about objective outcome success but about expectations of agentic intentions.

¹⁶ Although 'irrationality' – including heroism – always remains an inherent problem. Trust, in any case, needs the possibility of 'exit, betrayal or defection' (Gambetta 1988:219). It is unhelpful, in my opinion, to try to formulate some dimension from 'certainty to chance to helplessness' as it confuses probability and uncertainty (see Sztompka 1999:20-1).

Second, if agentic-risks or ontological uncertainty can be addressed by externally sanctioned assurances, it can also be addressed by *internally* sanctioned assurances. We can also ascribe motivations to others not because their interests are structured and sanctioned by the external context, but by their 'interests' in the relationship itself. To paraphrase Hume, the difference between external and internal sanctions concerns the difference between 'I love you because it is my interest' and 'because I love you, you are my interest'. Indeed, we normally do not expect our friends or loved-ones to do something for us because of their externally-sanctioned strategic interest or conditionally structured incentive to do so, rather we expect them to do so out of an internally-sanctioned obligation to our relationship. In such relations we normally do not expect strategic rational motivations but value-rational motivations such as honour, benevolence, honesty, duty or responsibility (Dasgupta 1988:53; Seligman 1997:6; Offe 1999:50; Mansbridge 1999:292-3; Sztompka 1999:5; Blackburn 1998:36; Pettit 1998:307; J. Braithwaite 1998:344; Mayer et al. 1995:718; Lagenspetz 1992:16).¹⁷ For sure, such expectations of friendship, love or honour are also *social* expectations, but they arise only from a mutual *intersubjective* commitment to the (socially prescribed) *normative order* of the relationship. We mutually ascribe expectations of a shared duty and responsibility towards the relationship itself. As such, motivations are not sanctioned and structured by the external social context, but by this mutual commitment itself. The assurance does not consist of the perception that interests are strategically *aligned*, but rather that the other *feels a duty* to take care of our interests, quite independent from other interests or incentives he might have. "Trust obliges the trusted" (Offe 1999:50; Gambetta 1988:234; Pettit 1998:308). But just like external assurances, internally sanctioned assurances increase our knowledge about ascribed intentions and motivations.

In sum, both externally and internally sanctioned assurances *communicate* expectations about the intentions or motivations of the other. The former communicates intentions in terms of strategic incentives, the latter in terms of value-rational commitments.

6.1.7 Trust or Confidence?

As we have seen, agentic risks or the social condition of ontological uncertainty can be dealt with by gaining internal or external sanctioned assurances. In both cases there is no absolute guarantee about the intentions of others. For *both types* of assurance, then, risky commitments necessitate some kind of leap of faith. Commitment in both cases of assurance differs from a *gamble*, as we do

¹⁷ Some scholars argue that this concerns an 'affective' or 'emotional base' as opposed to cognitive foundations (Lewis & Weigert 1985a:971). Although emotions might very well be involved, the opposite of cognitive is normative. As such, *ascriptions* of strategic versus value-rational *motivations* seems more appropriate.

not co-expect disappointment, but act *as if* we are certain. Nevertheless, only commitment based upon internally-sanctioned assurance, it seems to me, should be considered as an act of *trust*. It is only in this form that we trust the freedom of others to do what is right. Indeed, in case of externally sanctioned assurance we might even *distrust* the ‘real’ intentions of the actor but nevertheless be assured that his structured strategic interests will prevent him from defecting.¹⁸ It seems analytically – and empirically – most satisfying to label a commitment based upon externally sanctioned assurances an act of ‘confidence’, and a commitment based upon internally sanctioned assurances an act of ‘trust’ (compare Seligman 1997:24-5; Offe 1999:53; Pettit 1998:297; Tonkiss & Passey 1999:258; Tyler 1998:269).¹⁹

Unfortunately, this is not always how it is perceived in the trust literature. Externally assured commitment is often regarded as an act of *trust* because it entails a leap of faith. I will not trace the origin of this confusion in any detailed way but it seems to me that the trust literature is especially problematic on three accounts. First, a strong current of rational choice oriented literature perceives every action as strategic rational – implying that others must *always* be distrusted – and, as such, cannot differentiate between internal and external sanctioned assurances (Hardin 1998:12; 1999:26; Levi 1998:78). Second, if such strategic approach seems to empty internal sanctions from being much of an assurance at all, many scholars try to solve this by differentiating between affective personal trust and strategic impersonal trust (Hardin 2000:34; Luhmann 1968). Although there is a difference between personal and impersonal *relations*, this should not mean that *trust* is a different substance altogether. This approach is particularly unhelpful if we want to understand trust in (quasi-) impersonal political systems. Finally, despite strong denials, many scholars implicitly equal trust to cooperative behaviour (Levi 1998:78).²⁰ Because cooperation can be explained both by confidence and by trust the difference is blurred.²¹

If this strand of literature lumps together confidence and trust, many more understand the concept of confidence differently. Confidence, often based upon the work of Simmel, is understood as ‘inductive knowledge’ or ‘habitual expectations’ (Misztal 1996:16; Luhmann 1988:97; Giddens; Hardin 1998:11; 1999b:30; 2000:33; Offe 1999:45; Farrell 2009:130; Giddens 1990:29).²² This means

¹⁸ This does *not* mean, of course, that confidence or externally sanctioned assurances are necessarily grounded in distrust, as some scholars seem to argue (see e.g. Misztal 1996:26-7).

¹⁹ Some of these scholars make a similar distinction but unfortunately label it as a difference between ‘impersonal’ and ‘personal’ trust (Pettit 1998:297) or between ‘instrumental’ and ‘social’ trust (Tyler 1998:269).

²⁰ See e.g. Walker & Ostrom 2009:91 or V. Braithwaite 1998:47.

²¹ There is, of course, no empirical rule that states that trust and confidence cannot be present in one and the same relationship. Empirical reality is more complex than such dichotomy allows. Even if I am *confident* that our deal is in the interest of us both, it does not mean that I do not also *trust* you to be committed our relation or to be honest about your interests.

²² Luhmann’s concept of confidence might be most confusing as confidence concerns those commitments in which disappointment is externalized as bad luck – hence, confidence concerns probability – and trust can only

that based upon one's prior experiences one expects the future to be the continuation of the past and present. Such inductive knowledge, then, is nothing else but gaining *certainty about probability*, reliability or predictability, i.e. it is probable that tomorrow will be the same as yesterday and today. It concerns objective, not agentic risks. It seems, however, more useful to use confidence in relation to agentic-risks and use the terms like chance or probability for objective risks.²³

In short, whether or not we agree with the different labels, we should agree that we can differentiate between at least three different, but not necessarily separate, phenomena in which we commit ourselves: 1) to objective probability (chance); 2) to agentic uncertainty assured by external sanctions (confidence); and/or 3) to agentic uncertainty assured through internal sanctions (trust).

6.1.8 Sources and Objects of Trust

Trust must be warranted. As such, the literature tries to categorise different sources that warrant trust (Sztompka 1999:70ff.). However, there is something paradoxical about the concept of 'sources of trust'. It seems to connote that such sources increase trust while in reality they rather decrease the need for trust. The more such sources are able to reduce uncertainty the *less* trust is needed as the leap of faith becomes smaller. To this extent, it would be more accurate to talk about sources of assurance. But, as we have seen, there are different kinds of assurance that *all* reduce the need for trust, while for trust to be trust a commitment to risk must be based upon internally sanctioned assurances. As such, it seems appropriate to pragmatically label these specific kinds of assurance as sources of trust.

In general, these sources concern actions or codes that are *symbolic* of a commitment to the normative order of the relationship itself. Trustworthiness concerns a form of self-presentation in terms of 'symbol complexes of trustworthiness' that must be socially learned (Luhmann 1968:48,36). Such communication of trustworthiness, however, can concern the communication of *norm conformity* or *ethical personality*. When we go to our doctor he normally presents himself in terms of socially valid expectations – he conforms to role expectations by wearing a white coat and by hanging a stethoscope around his neck and his diploma's on the wall. Depending on this role- or office-expectations we might commit ourselves to the doctor in *confidence*. For trust, on the other hand, his actions "must appear and proof itself as the expression of personality" (Luhmann 1968:51). His actions must not communicate that he is strategically 'enforced' by the structural circumstances (role, rules and interests) but must communicate his 'true personality' *independent* of the structural

concern relations in which risk can be avoided – hence, according to Luhmann, all enforced social structures concern confidence (Luhmann 1988:97-99ff.) This, it seems to me, is an unfortunate and unfruitful analysis.

²³ Others have tried to differentiate between confidence and trust in terms of 'established' and 'spontaneous' trust (Patterson 1999:154), 'passive' and 'active' involvement (Sztompka 1999:24); or 'low' and 'high' risks (Levi 1998:79).

context. The doctor, for example, might present himself as thoughtful, caring, and attentive. He communicates that he feels a genuine responsibility for us and commits himself to the normative order of the doctor-patient relationship.

In other words, sources of confidence concern the presentation of self in terms of norm conformity, while sources of trust concern the presentation of self in terms of personality. The former communicates the lack of choice or agency, while the latter communicates free or autonomous agency. However, there is nothing straightforward about this differentiation. As Luhmann points out, it depends in turn upon socially valid expectations whether an action is “institutionalised as ‘free’” or not (Luhmann 1968:51-2). As such, the boundary between action as a symbolic expression of personality and conformity is also *role* dependent. Politicians, for example, are expected to have greater autonomy than mid-level bureaucrats. Also Goffmanian ‘highly standardised tests of normality’ in daily life in which strangers communicate through ‘norms of tact’ and ‘rituals of politeness’ that everything is *normal* are most of the time symbolic of confidence but sometimes of trust (Luhmann 1968:59; Giddens 1990:82). There is a difference between communicating norm conformity in a busy café and in an elevator where two persons are temporarily isolated from social control.²⁴

Modern society cannot function on internally sanctioned assurances alone. ‘Pure’ trust relations are vulnerable and take time to grow and mature. Instead, as Luhmann claims, society has developed many social mechanisms that are *functional equivalents* of trust of which symbolic media are the most prominent ones (1968:65-6). These sources decrease or even replace the need for trust. To complicate things, however, functional equivalents of trust can function as external assurance, as insurance or as postponement (see also chapter 5). Let us consider these mechanisms for a moment.

Externally sanctioned assurances are, as already explained above, functional equivalents of trust to the extent that they allow us to ascribe motivations and interests on others. So, for example, even if I do not trust this salesman, I know it is in his interest to protect his reputation and, as such, have confidence in our exchange relation (Sztompka 1999:71; Pettit 1998:306). Social reputation or social sanctions in general are functional equivalents of trust. Of course these are precisely less effective in anonymous market relations, creating a ‘trust’ problem. A different solution, then, is law backed-up with legitimate power or any other organised structure of control and accountability. If we seal our exchange in a legal contract, it communicates *assurance* about our interests. In addition, it also gives us an *insurance* that, if need be, we can force the other to comply or to compensate our losses. In both the case of assurance and insurance we do not necessarily have to trust our exchange partner. Insurances decrease the risk we commit ourselves to (Luhmann 1968:44) – not so much in

²⁴ Luhmann ignores this problem by perceiving both as instances of ‘system trust’ as opposed to ‘personal trust’ (1965:59ff.).

terms of increased objective probability or agentic certainty, but especially in terms of lessened vulnerability. As such, other sources of insurance are personal resources such as money, power, reputation, social networks, as well as self-confidence which allow us to compensate, absorb or isolate the consequential costs of disappointments (Offe 1999:53; Luhmann 1968:33).²⁵ Finally, symbolic media also allow us to 'conquer time', i.e. media allow us to postpone our commitment until we gained more assurance or certainty (Luhmann 1968:19). As long as we do not have to commit ourselves, we do not have to trust others.

The fact that functional equivalents of trust make trust less necessary does not mean that trust does not play a role at all in modern society. Many scholars rightly perceive trust as a *social lubricant* saving the costs of monitoring or searching information (Offe 1999:48; Sztompka 1999:62). Yet this does not mean that trust is a *collective* characteristic. Instead we might say that the *problem of trust* is more or less prominent in certain groups, organisations, communities or even societies based upon their objective structures. It seems plausible that groups possessing more functional equivalents of trust have less problems of trust because the need for trust is substituted by other social mechanisms and resources. In contrast, groups that are ravaged by informal power and corruption actually need *more* trust (J. Braithwaite 1998:349; della Porta 2000:227; Manzetti & Wilson 2007:953). However, whether trust is actually present in either type of group is an empirical question. Finally, the extent to which formal organisation necessitate forms of *informalisation*, i.e. informal trust relations, to function efficiently especially in contemporary complex 'society' is not only an empirical question but a question that is normatively double-edged.

If the difference between sources of trust and sources that are functional equivalents of trust is relatively clear a subsequent difficult problem concerns the *object of trust*. The crucial question concerns whether one can trust social mechanisms that function as equivalents of trust itself. So, for example, if I do not so much trust the official but am confident that because he is monitored in organised structures of accountability he will do what he is supposed to, does this mean that the need for trust is merely transposed from person to organisation or even its symbolic medium of legitimate power? Or can one only trust people and only have confidence in institutions, as many scholars claim (Hardin 1998:10, 2000:31; Newton 2007:344; Cleary & Stokes 2009:314)?

Trust, it seems to me, is not so much about committing to a specific person as committing to specific expectations. Indeed, one can trust a person for one thing but not for another. Most importantly, both trust and confidence concern uncertainty arising from the fact that an actor can make autonomous *decisions*. The question, then, is whether an organisation can make agentic

²⁵ Self-confidence reduces vulnerability to the extent that one is internally assured that even in the case of disappointment one will find a way out (Luhmann 1968:105).

decisions. I am inclined to say it can. We usually perceive organisations as if they are proper actors (Harré 1999:259). Organisations act, communicate and understand the world in their own specific ways – indeed, we can even speak of organisational self-understanding, ‘personality’ or brand. In principle, then, organisations can be objects of trust. Beyond the level of organisation things get more complicated. It seems to me that differentiated social systems cannot be perceived as actors or as an expression of decisions (Luhmann 1993b:161).²⁶ As such, if we blame ‘politics’ for not making the right decision we are usually thinking in abstract terms about political *organisation* not about politics as a value system. Finally, symbolic media neither take nor are decisions. As such, value systems or symbolic media cannot be an object of trust.²⁷ This does not mean, however, that trust does not play a role at these analytical levels. We will discuss this issue in the second part of this chapter.

A different but related question is whether one can trust material objects. The over-used example is that one does not and cannot trust the sun to rise in the morning (Hardin 1998:22; 1999b:25; 2000:33 Sztompka 1999:19). This seems true enough as the expectation that the sun will rise tomorrow is normally considered to be highly probable. More importantly, being uncertain about whether the sun will rise is socially considered to be abnormal – it is not something one is expected to worry about. The sun, in our age at least, is not expected to be an agent but an object subject not to social but to natural law which nobody can decide to change as even God is rational these days. However, it could be that the core of the sun is growing critically instable or that a giant meteor is heading its way. I have no clue whether this is true and as a consequence I might have to trust scientists to monitor such things. The example of the sun is not so self-evident after all. And even if material objects do not have agency – and neither do these objects have ‘an obligation to their material reliability’ (Harré 1999:258) – things are different for manufactured material objects. We do not so much trust the object itself, but we often trust its manufactures to have made the right decisions.²⁸ Manufactured objects, then, are like formal rules or rule-based organisations – they are *consequences* of a decision-making process. They are embodied decisions. While these material or immaterial objects are not direct objects of trust, they can be *indirect* objects of trust to the extent that we trust or are confident of the decision-making processes that have produced them.

²⁶ I therefore disagree with the claim that social action systems are “reducible to human actions” and therefore possible objects of trust (Sztompka 1999:46). A market system might have certain logic but hardly agency.

²⁷ Giddens in particular seems to claim that one can trust the ‘abstract capacities’ of money (1990:26). But what does it mean to trust the “authenticity of expert knowledge” (ibid:28)?

²⁸ As a mountaineer I am often aware that I ‘trust’ manufactured objects. For example, when I use some belaying device in a slightly stressing context I often control my fears by saying to myself that this device will hold because otherwise its designers would have felt the duty to warn me upfront or to design it differently.

The fact that one can in principle trust an organisation does not mean such trust comes easy. As such, it is helpful to 'reembed' abstract systems in interpersonal relations in so-called 'access points' (the front-stage) or in quasi-interpersonal mediated relations (Giddens 1990:87). In other words, it helps when an organisation has a 'face'. However, it is often objected that even in this case one cannot trust an organisation if this organisation or its face does not know me (Hardin 1998:16; 2000:34). Trust, we have already seen, concerns the expectation that the other feels a duty of responsibility towards our relationship. Trust does not concern something that the other would have done anyway (reliance) or because he is externally sanctioned to (confidence) but because he feels a responsibility and obligation to do so for *our* sake. How can we expect that if the other does not even know us? In an impersonal or quasi-personal relation this is indeed difficult except when we let go of the all too individualistic economic conception of trust. An organisation might be trusted based upon its expressed responsibility to its relation with consumers, the poor, patients, the elderly, to citizens, party members, the people, etc. In other words, the relation itself might be more abstract and depersonalised (Farell 2009:132). Indeed, even in personal relations the *normative order* is non-personal, i.e. socially valid. What counts in trust is the communication of the commitment to the socially valid normative order of a relation, not to each other as individual persons.

6.1.9 Dimensions of Social Relations: Value, Time and Uncertainty

We have already drawn quite some contours of trust. Though we have seen that the problem of trust is a modern phenomenon and that trust is related to agentic risk, we have not yet thematised one of its fundamental dimensions: time. To trust is "to act as if is the future is certain" (Luhmann 1968:9). Indeed, we might say that what differentiates Luhmann's media theory from Weber's sociology is its clear incorporation of time; not just any time, but future-time. Indeed, where Weber analyses unconditional duties, absolute beliefs and the problem of truth, the incorporation of future-time evokes an analysis of conditional commitment, uncertainty and the problem of trust.²⁹ It is not surprising, then, that time occupies a central place in the trust-literature. Notwithstanding the importance of the time dimension, it is often fairly poorly analysed. The underlying analytical problems can be clarified with the help of Luhmann's account of two perspectives of time.

Luhmann differentiates between time as 'continuity' (*Bestand*) and time as 'event' (*Ereignis*) (1968:11). In the former, the future is the continuity of the present or, we might say, the present is the continuity of the past. In the latter, the future is a specific event that will happen tomorrow and

²⁹ It is not true, of course, that Weber ignored the importance of future-time in the modernisation process. However, Weber did not feel the need to incorporate the time-dimensions as a sociological problem. Furthermore, it does not disqualify Weber's analysis at all. As such, we should resist attempts to show that Weber's work is actually about trust (see e.g. Sztompka 1999:45).

not yet today and we might understand the past in terms of specific events that have happened before but not today. Continuities are always experienced in the present and events only in the past and future. In other words, events need the *change of time* to realise themselves, while continuities are 'independent' of time (Luhmann 1968:11). If time is therefore a defining dimension for trust, we have to assume that expectations of specific future events to become present – the *future-present* – are central. Indeed, trust as inherently oriented to future events seems to be the dominant position in the literature. In contrast, expectations of the continuity of the present into the future – the *present-future* – is perceived as a *source* of trust in terms of experience-based probabilities and expectations of normality.³⁰ Such analysis, however, is unhelpful on two accounts.

First, it underestimates the radical notion of modern risks. Modern risks surface not just because modernity is inherently future-oriented, but because of possible discontinuity between past and future. As such, what makes modernity so risky is that the future in the present is radically open and the past of little help. Committing in the present to expectations of continuity (present-future) might just as well be understood as expecting certain future events *not* to become the present. In other words, commitments to future-present and present-future are both risky and might both involve trust or confidence.

Second, trust relations are not inherently future-oriented. Indeed, trust can only be given and sustained in the present, not in the past or future (Luhmann 1968:13). It seems better to say that trust (and confidence) concern a *present* commitment to uncertain expectations which proof lies in the *future*.³¹ The idea that trust is inherently future-oriented must therefore be strongly qualified. Trust is not so much future-oriented, but rather proof of present trust is only possible in the future.³² Trust allows us to act in the *present* despite an uncertain future; it is not about instrumental orientation towards the *future* (Luhmann 1968:15). It seems to me that the trust literature misses this basic point because it is too preoccupied with future-oriented instrumental exchange relations. In this relation Ego is uncertain whether Alter will act in the future as promised in the present. Because this instrumental relation is sanctified as the essence of social action and social science, it seems as if trust (or confidence) is always future-oriented. However, if we take a different type of *uncertainty relation* as our starting point, e.g. the truth-act or the communicative-act things are different. In the truth-act, Ego is uncertain whether to take over the information Alter provides in the present, which validity can only proof itself in the future. The fundamental question is whether Alter is telling or capable of knowing the truth *in the present*. Similarly, in case of (de-

³⁰ I use the concepts present-future and future-present slightly different than Luhmann (see 1993b:73).

³¹ Luhmann rightly points out that not only sources but also proof of trust tend to be *symbolic* (1968:36-7).

³² Again, trust and confidence differ from probability and ontological contingency as for the latter it is not proof that lies in the future but rather its realisation, i.e. the 'becoming present of possible future', as Luhmann calls it.

institutionalised) communication Ego is uncertain whether he rightly understands the communicated meaning of the present context, relation, or intentions of Alter, which can only prove itself in the future (Seligman 1997:28ff). The fundamental question is whether Ego understands Alter as intended *in the present*. In short, trust is not inherently future-oriented, but its proof is. In different words, risks are inherently future-oriented (Luhmann 1993a:140).

Although time is an important dimension to understand trust, it is not the main organising principle to analyse social trust relations. Instead, it might be analytically more lucid to first differentiate between the expressive and instrumental dimension, not only of trust but of all social relations (see also chapter 4). Both instrumental and expressive values are experienced in the present, but both have a different relation with time. A social relation, we can say, is instrumental when its inherent meaning or value is related to an external goal. So, I only 'value' our relation as a means for satisfying my exogenous preferences. On the other hand, a social relation is expressive to the extent that the relation is not valued as a means to a goal, but as a goal in itself – indeed, especially in relation to how I understand my 'meaningful being-in-the-world'. We can see that not just the exchange relation, but also the truth-act or the communicative-act can be instrumental. If true, it holds for all types of uncertainty-relations that the 'real' meaning or value of the relation is exogenous to this relation. However, we can also perceive all these relations in terms of an expressive dimension. Indeed, all kinds of *symbolic actions* can be expressive of the relation in question: the promise in an exchange relation, the pledge in a truth-act or other-regardingness in communication. These acts are expressive of expectations concerning the relationship itself – of endogenous expectations.

When we subsequently introduce time, we can see that both dimensions have a different time-perspective. The instrumental dimension is inherently future-oriented and, as a consequence, is emptying the present of 'meaning', i.e. of expressive meaning (Luhmann 1968:16). This, of course, is part of Weber's critique of modernity in which death itself becomes meaningless (2004a:13). Modernity, with its symbolic media, is precisely what makes such future orientations possible but also *necessary*.³³ 'Real' meaning or value lies as a promise in the future, not in the present. When one longs for a specific future event in the instrumental dimension (future-present), this is different for the expressive dimension in which one longs for a future that is a continuation of today's meaning and Self-understanding (present-future).

³³ The inherent paradox, however, is that this does not mean that modernity produces things that *last* in the future. Modernity might be future-oriented but also aware of the contingency of the future – tomorrow everything we know today might already be outdated. As such, the present is not only instrumentalised but is also the only thing 'tangible'.

The point is that a social relation might possibly contain instrumental and expressive dimensions *simultaneously* and that both these instrumental and expressive dimensions have a different relationship with time. The instrumental dimension concerns the future-present and the expressive dimension the present-future. The next step, then, is not just to introduce the dimension of time, but also of *uncertainty* or agentic-risk. We have already discussed how we can commit to such risk 'as if' we are certain. Indeed, the differentiation between trust and confidence or between internally sanctioned and externally sanctioned assurance seems to parallel the differentiation between the instrumental and expressive dimension. This is true to the extent that trust is based upon the expressive dimension of a social relation – trust expresses the expressive dimension.³⁴ In other words, a relation that is *purely* instrumental can never be a trust relation. Similarly, confidence is expressive of the instrumental dimension. However, and importantly, it does not hold the other way around. An instrumental relation is not necessarily a relation of confidence nor is an expressive relation necessarily a relation of trust.

6.1.10 Dimensions of Social Relations: Normative/ Cognitive

The final and most crucial step is to introduce the normative/cognitive dimension. This dimension becomes most visible if we study how actors deal with disappointment. In trust and confidence we commit ourselves to agentic risks *as if* we are certain, which means that in case of disappointment *blame* has to be appointed. The way in which this is done might or might not lead to an adjusting learning process. In other words, in light of some disappointments we cognitively adjust expectations, while in other cases we counter factually hold on to them. The way we process disappointments, then, discloses possible normative dimensions of trust.

For both trust and confidence it holds that the blame for disappointment might be internalised, i.e. we blame our own judgement. We should not have trusted him or should not have been so confident. Disappointed expectations might be due to the fact that we had the 'wrong' expectations and now we feel like a 'fool'. This, as discussed before, is partly dependent on social expectations of rationality. For sure, self-blame eats away at one's self-confidence and seems to warrant a more cautious approach the next time, i.e. one needs more assurance.

In case of *confidence* a specific interesting way to deal with disappointment is to blame Alter for being *irrational*. Although Ego might be astonished by the irrational action of Alter it does not lead him to perceive the world or himself any differently. He might try to convince Alter to act rationally or he might avoid Alter altogether, but it does not necessitate Ego to change his

³⁴ As such, we should refuse the tendency in the literature to use the instrumental/expressive dimension to differentiate between 'exchange' and 'communal' trust or between 'instrumental' and 'social' trust (V. Braithwaite 1998:53; Tyler 1998:269).

understanding of Self or world as the disappointment was an irrational act. Alter does not harm Ego's understanding as he is clearly insane or stupid. In other words, Ego only has to cognitively adjust his expectations of Alter. For sure, insanity or irrationality itself might be threatening as it threatens rational expectations and all forms of communication. Precisely because irrationality lies outside the rational world – because insanity is situated in the unknown – it is more of a danger than a risk. We might hypothesise that with the rise of modernity and risk we should expect a change in the social perception of the insane and the irrational. We would expect the removal of the insane from public life (Giddens 1991:160).

In case of trust we deal differently with disappointment. Just as in the case of confidence, Ego might blame Alter for the disappointment. However, in the case of trust Alter is not irrational, but he is *immoral*. This kind of blame shows the *subjective* normative dimension of trust. We can explain this subjective normativity because trust is based upon internally-sanctioned assurances. This means that Ego trusts Alter because they both feel a duty of responsibility to the normative order of their relationship – e.g. to friendship. If Ego trusts Alter to do something and he deflects, the disappointment is not so much about the consequential costs, but how it affects the meaning of their relationship. Disappointment forces Ego not simply to adjust his understanding of Alter (as a friend), but also of the meaning of their relationship (of friendship) and, indeed, of his self-understanding (of being a friend). Different from the irrational act, this is a more profound and encompassing necessity, because the immoral act is not an irrational act, but a rational and depraved act that takes advantage of the vulnerability of the relation, i.e. of the fact that trust is only internally-sanctioned (Lagenspetz 1992:10). Alter is *responsible* for hurting Ego, which cannot be blamed on insanity. The fact that someone can hurt our interests in a situation in which we show our vulnerability and dependence because we committed ourselves to the responsibility of the other is the core foundation of the subjective normativity of trust. In other words, to paraphrase Wolfe, we are not social because we are moral, but we are moral because we are social (Misztal 1996:19; Wolfe 1989).

An immoral act, then, deeply hurts our understanding of the other, the relation and our being-in-the-world (Luhmann 1968:33). We feel betrayed. Without a doubt, then, most disappointments are counter factually absorbed. This means, on the one hand, that Ego holds on to his expectations of friendship with Alter, despite disappointments. This might be achieved by some form of 'cognitive dissonance' or by externalising blame to outsiders. In the latter case, Alter was not so much immoral as that he showed weakness in his conflict with external immoral forces. It resonates with the old traditions of the 'weakness of the flesh' or 'akrasia'. In a society of trust we would expect less emphasis on insanity but on 'delinquency', i.e. on explaining immorality not in

terms of nature but nurture. On the other hand, when the friendship cannot be sustained or rationalised in face of too traumatic disappointments, we tend not to adjust our expectations of what it means for us to be a friend or of our own judgements but counterfactually hold on to them: Alter *ought to* have acted differently.

However, we need to differentiate such subjective normativity from the objective kind. Indeed, when Alter commits himself by means of a promise to the normative order of an economic or political relation and subsequently breaks this promise, he is breaking the *socially valid* normative expectations (Offe: 1999:52; Kaina 2008:514). However, if Ego *did not trust* Alter anyway, his subsequent normative indignation is of a rather superficial kind.³⁵ Ego does not have to adjust his understanding of Alter, of the relation or of himself to this disappointment. Alter is at most impolite, 'offending' or 'inappropriate' (Misztal 1996:21), but he proves what Ego already expected. In other words, an act of promise might signal objective normative expectations, it does not necessarily signal trust or subjective normativity. As such, in contrast to Luhmann, we must look beyond the mere external appearances of symbolic acts of trust – *the subjective world does matter*.

When we return to confidence, we might also perceive a different form of coping with disappointment. Instead of blaming the irrationality of Alter, Ego might blame the *external sanctions* that provided him with assurance in the first place. Indeed, Ego expected Alter to act in a certain way because he was 'forced' to by structures of accountability and control. It is not irrational for Alter, then, to try to circumvent these structures if rationally possible – if he can get away with it. If Ego cannot blame Alter, he can be disappointed in the external assurances. Ego might deal with this external disappointment in two ways.

First, the defection of Alter tells Ego something about apparent *effectiveness* (probability) of the external structures of assurance. In this guise of probability, then, the single disappointment, then, might just be *bad luck*. It does not necessarily change Ego's course of action for the next time. In other words, just as irrationality, bad luck does neither force Ego to cognitively adjust his expectations nor to counter factually hold on to them. Continued disappointment, however, must lead to a *cognitive* adjustment of the effectiveness of socially valid expectations. In other words, Ego must adjust his *knowledge* about objective probability. Decreasing probability leads to increased *contingency*. In the literature, this increased contingency is foremost translated to the rising awareness of the 'individualisation of risk'. Instead of emphasising irrationality or insanity, such

³⁵ A broken promise is often strategically used by veining normative outrage. However, complex psychological mechanisms often seem at work as this artificial outrage might transform in genuine (subjective) normative outrage. It might turn in to 'real' indignation when one's initial faked reaction is not taken seriously. The argument, then, goes something like this: although I was not really hurt, you could not have known that and the fact that you subsequently ignored my fake-feelings was indeed hurtful. In other words, it seems to fall into that category where offenders transfigure into victims.

awareness will lead to an emphasis on anxiety, *Angst* or alienation (Luhmann 1988:99, 1968:77; Sztompka 1999:116; Giddens 1990:50). In a non-confident society we would not expect the social exclusion of the insane, but the rise of 'therapy' in order 'to keep going' (Giddens 1991:179).

Second, the disappointment of rational Alter might not signify a decrease in probability, but Ego might *blame* others for the apparent ineffectiveness of the external assurances. It is not Alter that is to blame as he acted rational, but others for not controlling Alter, holding him accountable or, indeed, for not making the right rules. In short, not Alter is to blame, but the 'controllers'. By confidently committing to Alter, Ego has to depend upon these controllers to do what he expects them to do. As such, confidence often implies a second relation not between Ego and Alter, but between Ego and a 'third-party'. How this relation is perceived, whether in terms of confidence, probability or, indeed, *trust* really depends on the circumstances. However, it does mean that in this secondary relation confidence might be related after all to trust and normativity.

Finally, if Ego can cope with disappointment by blaming himself, Alter or Third-parties, this process is additionally complicated by the fact that Alter or Third-parties can also *react* to Ego's disappointment. If anything, the social processes and mechanisms open for processing disappointments are especially important for trust. The literature seems more occupied with the search for sources of trust – i.e. the answer to the question of *why* we trust – instead of searching for sources that can process disappointment, i.e. the answer to the question of *how* we continue to trust despite disappointments (Luhmann 1988:95). Trust might be continued despite disappointment if the other *communicates* self-reflexivity (learning) and new assurances; if he shows guilt, shame or repentance; or if he shows resipiscence or rebirth through (self-)punishment. Such *symbolic actions*, it seems to me, are especially important to understand the continuity of trust in political organisations or systems. The most prominent one being abdication of the leader or replacement of government by opposition.

6.1.11 Conclusion on Trust

I have tried to get some grip on the concept of trust, not so much to provide a general theory of trust, but foremost to understand its normative dimension and to provide some boundaries of trust – trust is not everything. However, if trust plays a role in politics this might explain its *subjective normative validity* even when political legitimacy is inherently *symbolic*. We might explain subjective normativity without a need to ground political legitimacy in unconditional truth or self-discipline. As such, I will end this chapter by analysing the possible role of trust at the four analytical levels of the coordinative political system. If there is one thing, however that we should learn from our exploration of trust and confidence, it is that all these dimensions and perceptions can be

simultaneously present in one and the same social relation (see figure 6.1). To study trust-relations empirically means that one has to be open and sensitive to its multi-dimensional, complex, shifting and plural character. There are no easy answers.

	Value	Time	Uncertainty	Cognitive/ Normative
Social Relation	Instrumental	Future-present	Confidence	Bad Luck Irrational Ineffective <i>Self-blame</i>
	Expressive	Present-future	Trust	Akrasia Impolite Immoral

Fig. 6.1 – Different analytical dimensions of a social relation

6.2. Trust and Politics as Coordination

We have seen that trust can be a possible explanation of subjective normative validity. Analysing the possible role of trust in politics as coordination is no easy matter. Luhmann, for one, argues that he finds it difficult to perceive if and where trust might play a role in politics (1968:70). In what follows, I emphasise the *possible* role of trust in politics by analysing specific *risks* that surface at each of the four analytical levels we have distinguished before: politics as legitimate power or symbolic value (value sphere), as social system (social organisation), as social interaction (social relations) and politics in relation to personal system (individuals). These risks concern the risks of contingency, ineffectiveness, indeterminacy, dependency and the risk of self-disappointment.

6.2.1 Symbolic Media and the Risk of Contingency

All symbolic media entail a truth-claim which makes it possible to understand the world in a specific sense and, as a consequence, makes it possible to act and to understand oneself in that world. In the former chapter we have argued that validity (truth) is self-referential and symbolic only. The problem of this symbolic nature of media, as we have seen, is that there is no way to validate the validity of symbolic media by the sheer fact that a medium cannot validate its own validity. One cannot proof reason with reason, truth with truth, law with law, money with money or legitimate power with legitimate power. Weber problematises this symbolic foundation of social systems primarily in terms of the difficulty it presents for the 'meaning of life'. His 'solution' is that one has to face this modern fate, to face the inherent symbolic nature of validity, and to choose one's 'demon' and obey it (2004a:31). Meaning is a choice. One can find meaning in choosing to be a dutiful politician, scientist, economic entrepreneur, lawyer or bureaucrat despite the lack of transcendent truth. If there is any risk involved in this choice, it is the always looming threat of meaninglessness.

However, we might also say that the inherent problem of symbolic media is not so much the problem of meaning as the *problem of contingency* – a problem that seems to be central in the strand of literature organised around the concept of ‘risk-society’ (Beck 1992; Giddens 1990:36ff.; Sztompka 1999:38ff; Luhmann 1993b). The problem of contingency points to the risk that what is valid today might be invalid tomorrow (Luhmann 1968:79; Giddens 1990:39). It is not about validity (truth) per se, but about the shifting boundaries between validity and invalidity in *time*. This literature is foremost concerned with the symbolic medium of truth or expertise and defines the risk-society not in opposition to a security-society but in terms of ‘high intensity risks’ (Giddens 1990:125). High-risks are related to ‘high technologies’ (Luhmann 1993b:89) and connote the situation that *if* things go wrong because truth turned out to be untruth – however improbable – the disaster is so inconceivable it threatens the very existence of society (Beck 1992:22). Society itself is the ‘laboratory’ of a science that creates risks that are ‘de-bounded’ from time, space and social responsibility by the sheer scale and ‘irreversibility’ of possible disasters foreclosing any scientific *learning* process or social mechanism of *insurance* (Luhmann 1993b:89, 95; Beck 1992:22-3,69; 2002:41). In other words, high risks threaten to destroy the very social system that produces them. In contrast, normal ‘low-risks’ are ‘individualised’ risks that can be absorbed by the social system – although not necessarily by the individual (Luhmann 1968:76; Giddens 1990:114-5). However, and importantly, *both* types of risk are inherent to truth or expertise itself because contingency cannot be controlled by truth or expertise. “Truth is ...no criterion for truth” (Luhmann 1993b:78). Indeed, Popper’s concept of *post hoc* falsification is an affirmation of this condition in the positivist sciences (Luhmann 1968:25; 1993b:81; Beck 1992:166).

The world, then, is not only disenchanted but also inherently contingent and risky (Giddens 1991:28). As such, it is not just the discovery of the symbolic nature of validity and the problem of meaning, as in the work of Weber, but also the discovery of the inherent contingency of validity (truth) that makes modern life problematic. The problem of truth is taken to its extreme in the literature that emphasises the ‘postmodern condition’ (Eliot 2002:309; Lyotard 1984; Bauman 1994), while literature dealing with the latter problem of risk emphasises reflexive or late modernity (Luhmann 1993b:12; Giddens: 1990:48; 1991:3; Beck 1992:9ff.). It concerns the difference between the irrationality of rationality and the limitations of rationality. Despite the polemics the root cause is the same: the symbolic nature of truth.

Late-modernity, then, concerns the inherent awareness of the contingency of symbolic media in the time-dimension. Yet, this risk of contingency must especially be understood in terms of *incommunicability* or *uncontrollability* (Beck 2002:40). This becomes apparent if we look at the medium of law or legitimate power. Both are counter factual media, which means that in principle

they are non-contingent in time. That the boundary between legal/illegal or political/non-political are contingent nevertheless is due to the fact that they can be changed by decision-making processes. The risk of contingency in politics and law, then, has more to do with the *risk of the tyrannous sovereign* (Luhmann 1975:81). Indeed, the whole history of liberal political thought can be understood as an attempt to rationally control and domesticate the sovereign in terms of law and the *institutionalisation of distrust* (Warren 1999a:1; Sztompka 1999:140; 2001:374; Ruscio 1999:640; Oskarsson 2010:423).³⁶ Although the boundaries between truth and un-truth of power and law might still shift, these shifts can be more or less controlled at the level of political *organisation*, i.e. they might be system internally absorbed (Luhmann 1968:71-2).

The problem of contingency at the level of symbolic media, however, does not concern risks that can be system internally be absorbed and controlled – i.e. individualised – but risks that are left for the environment or other systems to absorb.³⁷ It concerns what is known in economics as *externalities*. When we look at the economic value sphere, it is quite obvious that even if money, like expert truth, is a factual medium, the shifting boundary of value/valueless is part and parcel of the economic self-understanding. There is nothing exceptionally risky in the fact that what may be valuable today might be worthless tomorrow. These are normal and individualised economic risks. Externalities, however, are costs that are exported to the environment because they cannot be expressed in terms of symbolic money. Externalities are economically *uncontrollable* costs because money ‘cannot see what it cannot see’ (Luhmann 1993b:76). As such, to the extent that such uncontrolled costs constitute high-risks that threaten the economic system or ‘society’ in general – e.g. through environmental depletion, social deprivation or by mortgaging future generations – they always come as a surprise. In the same vain, the risk of scientific truth can also be understood in terms of uncontrollable contingent truth *externalised* by means of technology to its environment where costs have to be absorbed.³⁸

This should enable us to understand the risk of uncontrollable contingency at the level of legitimate power and law. These risks concern the uncontrolled ‘costs’ of legal and political coordination left for the environment to absorb. Most literature perceives these kind of legal-political externalities in terms of the relation between the national state and the international

³⁶ Pettit argues convincingly that what makes republican thought distinctive is that it acknowledges that only control is not enough and that ‘virtue’ and ‘trustworthiness’ are as important (1998:302). In this line it might also be argued that because the domesticated sovereign is a decision-making agent, individuals can cope with these *agentic*-risks through confidence or even trust. Claims that a sovereign can never be trusted are ill-founded, although it is a different matter whether one *should* trust a sovereign.

³⁷ As discussed in the former chapter, in Luhmann’s account individuals are analytically outside social systems and, as such, individualisation of risks should also be considered as a form of externalisation. The point, then, is that this kind of externalisation does not threaten the social system as such.

³⁸ With respect to expertise we might argue that social systems at the organisational level can be grasped as expert *technologies* themselves.

community or global society.³⁹ However interesting and important, these kinds of externalities are not inherent to the symbolic medium of law or legitimate power, but concern *spatial* boundaries of legal-political organisation, which, in principle, can be solved, i.e. controlled.⁴⁰

The risk of contingency of law at the level of symbolic medium seems to concern two mechanisms. First, precisely because law is counterfactual and therefore non-contingent in time, it can hardly deal with externalities and contingencies that are inherently caught up in time. Law has great difficulty to appoint responsibility in relation to externalities (Beck 1992:63) or liability in relation to contingency (Luhmann 1993b:61). In face of these kinds of risk, the risk of law concerns 'organised irresponsibility' (Beck 1992:33 footnote 3). Organised irresponsibility should, in contrast to Beck, not only be understood as the difficulty for law to locate responsibility for contingency, but also as the risk that law ascribes responsibility for contingency where none can be taken. When this risk is paradoxically due to the *non-contingent* nature of law, a second risk of law concerns its own validity claim. Law coordinates social action in terms of generalised formal rules. The externalised 'cost' of regulation concerns its 'parasitic' relation to informal, particular and diverse practices. Many examples can be provided of how law changes social practices but not in the way desired, necessitating more rules and rules about rules or more controllers and controllers of controllers. Once law has touched a social practice, it seems as if there is no way back to the old 'unregulated' situation. As such, "an 'inflationary spiral' of increasingly formal relations" (Sitkin & Roth 1993:367) externalises costs to informal social practices which might destroy social meaning and practical wisdom (Scott 1998:309ff.). In short, the survival of the legal system "rests on social processes that it cannot reproduce" (Scott 1999:274).

Although this latter risk of law cannot be denied, precisely because its function is to reduce social complexity, when it comes to the associated debate about the relation between trust and organised distrust we must not draw overhasty conclusions. It is often claimed that the more we rely upon organised distrust – control and accountability – the less trust there will be (Peel 1998:316; Misztal 2001:375). However, it seems as if trust and organised distrust or trust and confidence are not conflictive so much as *asymmetrical*. This means that problems with confidence can be compensated by trust, but not vice versa. Indeed, trust is vulnerable to suspicion of strategic action. But at the same time, trust is also dependent upon a shared normative order which might just as well be formalised in rules or law (Sitkin & Roth 1993:374). Sanctions might not communicate

³⁹ At this level we might analyse how nation states externalise diverse social, political and economic risks to the international environment, but also vice-versa, how globalised markets or transnational governance externalise risks to national states.

⁴⁰ As a general critique of Beck's analysis of risk society (1992; 2002) we might say that he is analytically sloppy in differentiating between the level of symbolic media (from modernity to reflexive modernity) and the level of social organisation (from industrial society to risk-society) (see also Eliot 2002:309).

motivation or strategic interests but might rather symbolise the normative order. Furthermore, trust is also 'easier' in an institutionalised context that reduces risks (Ruscio 1999:652). As such, the relation between confidence and trust or between organised distrust and trust is complicated and context dependent.

Where it comes to externalities of legitimate power its specific problem is not so much its second coding in law, but rather its relation to decision-making. Decision-making, as we have seen, is inherently risky; or, vice versa, risks are inherently related to decision-making. As such, we might say that political decision-making concerns taking risks which either have to be internally or externally absorbed. Although legitimate power coordinates this decision-making process this does not mean that the *final* binding decision by the sovereign is the sole decision in which risks are taken. Legitimate power coordinates a whole chain of decision-making in which every single decision is a risky one. Although the final decision receives the 'seal of legitimacy' this hardly reflects the process of 'selectivity' present in the decision-making process (Luhmann 1968:70). The risk consciously committed to in the final legitimate decision, then, can never include the sum of all these risks taken. In other words, the risk of political power concerns *uncontrolled risk-taking* or 'organised irresponsibility'. The political system comes close to Giddens' description of modernity as "a runaway engine of enormous power" (1990:139) as legitimate power cannot control the risks taken in the decision-making processes it makes possible, let alone in society at large (Luhmann 1993b:81).

In conclusion, at the level of symbolic value or value sphere we should analyse trust in relation to the specific risks at this level: the risk of contingency or uncontrollable externalities. Each medium – including legitimate power – seems to include such uncontrolled risks that have to be dealt with by other systems allowing the possibility of high-risks threatening society itself. Systemic risks threaten the *security* – the reduction of complexity and contingency – the different systems provide. In other words, systemic risks concern the threat that the contingency and complexity of the 'environment' invades the systems. Another word for disaster, then, is *meaninglessness*. These risks, however, are not consequences of agentic-decisions, they are an inherent part of symbolic media – they are uncontrollable *systemic risks* perceived in terms of contingency and (im)probability. This means that at this analytical level trust does not play a role.

It does not mean that these risks are not politically relevant. The awareness of uncontrollable systemic risk at the core of modern social systems might be very unsettling as these risks seem to dislodge modern society from notions of 'security'. The problem is not so much that modern society is heading towards meaningless disaster as it might well find ways to avoid it. The problem is not even that expert knowledge is necessary irrational – truth remains more probable than untruth as long as science can learn. The political problem of the 'risk society', rather, is that if

we are aware that systemic-risks are a *normal* part of modern society – that they are normal abnormal risks – we cannot go back to a belief in security (Beck 1992:79). Even if disaster is improbable “it can nevertheless happen tomorrow, and tomorrow it can happen once again tomorrow” (Luhmann 1993b:49). We are dispelled from a world in which things can be genuinely true or reliable. The point of the risk society is not so much, as Beck seems to argue, that it connotes a ‘speculative age’ in which every possible disaster *could* become true – almost taking a postmodern turn – as that the possibility of disasters cannot be denied (Beck 1992:73). This must have political consequences.

It is especially unclear how the political system should present itself when it cannot claim to rationally control high risks, but neither can it “present its decisions for what they are – risky” (Luhmann 1993b:155-6). If there is one potent source of politicisation, it must be safety issues. Furthermore, politics can no longer present itself as the sole locus of collective ‘risk-taking’ (Beck 1992:24). Such presentation problems likely lead to legitimation problems (Luhmann 1993a:165). Whether these problems will constitute the fragmentation of truth and the loss of the legitimating force of expertise in politics (Giddens 1991:141; Beck 1992:173), let alone whether it will lead to a decentralisation of politics and the politicisation of the unpolitical (Beck 1992:186) remains to be seen (Elliot 2002:304).⁴¹ For now, it seems more likely that instead of looking our late-modern fate straight in the eye, to paraphrase Weber, we try to find psychological comfort in all kinds of social and psychological coping mechanisms, including political trust at lower levels of analysis (Giddens 1991:19).⁴² As such, it might be hypothesised that the risk of contingency *and* its awareness might explain the paradoxical phenomenon that people are disillusioned by politics but nevertheless expect much from it; or, vice versa, that politics, science or the market try to capitalise on ‘safety-issues’ and risk-anxieties they themselves create (Beck 1992:156, 23; Luhman 1993b:145-6).

⁴¹ Any genuine agenda for the solution or prevention of the risk society must be correctly understood. The risk society-literature seems to be the culmination of a much longer tradition – triggered by Weber – that tries to grapple with the ‘instrumental rationality’ of the systems of modernity (see e.g. Beck 1992:22). However, the inherent risk of expert knowledge has nothing to do with instrumental rationality *per se*. That would imply that we can actually have knowledge – based upon a different rationality – that is not risky but provides ‘security’. This seems to deny the radical character of risk or the radical claims of media theory. At most, one might try to replace high systemic risks with individualised risk – the goal of collective ‘self-limitation’ – in order to preserve the *possibility to learn* (Beck 1992:49, 177).

⁴² The analytical danger lurking here is that such a psychological turn allows a plethora of possible ‘coping mechanisms’ ranging from denial, apathy to radical engagement or, as already discussed, from trust, hope, and fatalism, to distrust, *Angst*, anxiety and alienation (Giddens 1990, 1991; Beck 1992). Although the basic idea of psychological coping mechanisms for ineradicable high risks seems to make analytical and empirical sense, theoretically there are so many possible functional equivalents, it seems to lose all analytical power. We should proceed with caution.

6.2.2 The Political System and the Risk of Ineffectiveness and Indeterminacy

We can also analyse trust at the level of political organisation – at the level of politics as a social action systems coordinated by legitimate power. The question whether trust has any analytical clout at the level of the political system is either denied in the trust-literature (Warren 1999a:19; Hardin 1999b:23) or remains hidden in nebulous concepts like ‘systemic trust’ (Sztompka 1999:45). This is not surprising when we consider the difficulties of perceiving what politics is in the first place. Instead, I will analyse political trust in relation to two of the most important risks at this level: the *risk of ineffectiveness* and the *risk of indeterminacy*.⁴³

Legitimate Power and the Risk of Ineffectiveness

We have analysed the risk of contingency or uncontrollable externalities inherent to the validity (truth) of symbolic media, a risk that is more commonly analysed is related to the social validity of these media, i.e. the risk of ineffectiveness. In the former chapter we analysed the problem of ineffectiveness at the level of social interaction and concluded that this risk is something that must be countered by trust organised at the level of social organisation. It is this latter claim that I further analyse in this section. The risk of ineffectiveness at the level of social organisation can also be perceived as a high-risk as it threatens to destroy the social validity of social systems upon which our understanding of world and Self, of past and future depends. Different from the high-risks of contingency, however, these risks are not consequences of uncontrollable externalities and the inability of the environment to absorb them, but they are *internal* to the social systems themselves. In the former, high-risks concern the intrusion of the environment into the social system, in the latter, high-risks concern the collapse of the system into its environment. The high-risk of political and legal ineffectiveness, then, concerns anarchy and lawlessness.

In the previous chapter, we already discussed that the effectiveness of symbolic media depends upon the successful communication of normal, probable and valid expectations. Self-referential or symbolic media are not about validity (truth) but about social validity which explains its inherent vulnerability. The common claim, then, is that effectiveness despite this vulnerability necessitates trust or confidence (Parsons 1963b:237, 1963a:47). However, a more careful analysis is called for. For one thing, in day-to-day life we normally do not trust money to be effective. Rather, we expect that the ineffectiveness of money is highly improbable and, hence, we routinely gamble and take a risk. Indeed, as symbolic media do not have agency, the risk of their ineffectiveness concerns probability and contingency and therefore there is no role for trust or confidence. However,

⁴³ At least one other important risk can be recognised and labelled as the ‘risk of sovereignty’ or the ‘risk of tyranny’. Because I have shortly discussed this risk above (and more historical-theoretical in chapter 2) and because the risk of indeterminacy encompasses this risk of sovereignty, I will not discuss it separately here.

this is only one side of the story as the problem of effectiveness is ultimately a problem of communication, of the *mutual acceptance* of social validity. As such, we have to commit ourselves to expectations about actions and decisions of other *agents*. In short, the effectiveness of symbolic media, including legitimate power, is a public good constituting a 'collective action dilemma' (Olson 1971:10; Ostrom 1998:1). In what follows, I analyse the role of trust and confidence in relation to the social validity of legitimate power perceived as a collective action problem.⁴⁴

From a rational action theoretical perspective (RAT), we know we ought to cooperate, not because we feel an inner-sanctioned duty to obey – as in Weber – but because we cognitively know it is in the collective interest if everybody obeyed this norm and it is against our individual interest if nobody does. The basic tenet RAT concerning collective action problems, however, is that strategically rational actors will *unconditionally* ensure a less than optimal outcome, as for example in the famous Prisoner's Dilemma.⁴⁵ The outcome is not only non-optimal for the collective but also for the individual 'players'. Man, it seems, is a 'rational fool' (Sen 1977:336). Because of this unconditionality the only solution for collective action problems seems to be an external third-party authority that sanctions free-riding and organises "incentives for internalising group gains or losses" (Walker & Ostrom 2009:92). Sanctions must motivate or force rational actors to cooperate. The free-riding deviant, then, is not irrational man but rational man capable of finding a loop-hole.

In contrast, if we assume that actors are purely 'other-regarding' – e.g. in terms of Hume's sympathy – the result will *unconditionally* be a social optimal outcome (Sen 1996:60; 1977:326).⁴⁶ Even if such other-regarding 'preference-function' is theoretically not contradicting strategic rational action, it does seem to contradict the self-understanding of economic man. This self-understanding, then, says nothing about rationality but rather about his understanding of human nature.⁴⁷ But we might agree that most people are no saints beyond their social sphere of intimacy.

⁴⁴ The obvious question is when the risk of ineffectiveness is perceived in terms of objective risks and when in terms of agentic-risk. There is no reason why they cannot be analytically valid simultaneously. However, we might say that the less these risks worry us the more we can *take* them on as objective-risks and gamble. Vice versa, the more these risks worry us, the more we need to *cope* with them as agentic-risks allowing trust and confidence. The answer, then, seems to lie in (social or personal) feelings of crisis and degrees of salience.

⁴⁵ This is not so much a consequence of actors being irrational or short-sighted, but because there remains a contradiction between 'cognitive rationality' and 'instrumental rationality' (Walliser 1989:9), between 'epistemic' and 'instrumental' rationality (Kelly 2003:612) or between 'independent choices' and 'interdependent situations' (Ostrom 1998:3).

⁴⁶ These are sometimes called 'Kantian-actors' (Walker & Ostrom 2009:101).

⁴⁷ This is of course a fairly problematic claim as preferences are per definition exogenous to all economic theory as economics – at least in its mainstream orientation – is a behavioural science for which the subject is a black box. Many have already commented on its problematic and tautological assumptions of 'revealed preferences' (Sen 1973:241,258; 1977:322; 1992:495-8; Hubin 2001:451). This problematic foundation, however, does not deny the heuristic analytical quality of RAT but rather denies its claims of causal social explanation.

In any case, if political power is a solution to collective action problems at all, the difficulty is the fact that legitimate power and law are in itself problematic public goods. Traditional RAT cannot provide a solution for this problem. Between the self-regarding egoist and the other-regarding saint we might, however, conceive of a different type of preference, something Sen has analysed in the 'assurance-game function' (Sen 1996:59). This means that actors are aware of the social dilemma and are willing to cooperate *if* they are *assured* others will do so as well. Cooperation or, in the political case, obedience becomes a *conditional* act. It means that we are willing to cooperate, but that we are neither saint nor fool: others must cooperate as well.

If actors have conditional other-regarding preferences, the only thing needed for collective cooperation is assurance. They do not have to be *motivated*, but their motivations must be *communicated*. In that sense, sanctions might still be particularly helpful as symbolically communicating socially valid motivations or interests (Walker & Ostrom 2009:104ff.). Sanctions communicate that all actors are objectively expected to have an *interest* in cooperation (Ruscio:1999:642; Ostrom 1999:8-10). This, of course, is no actual guarantee, but if everybody would have conditional other-regarding preferences these externally sanctioned assurance might be enough for collective action – enough to take a 'leap of faith'. As such, cooperation might be explained in terms of *confidence*. Sanctions, then, are no longer perceived as a source of motivation but only as a means to punish the *irrational* deviant in order to communicatively restore assurance.

There is, unfortunately, one fundamental problem with this account. Sanctions communicate objective expectations of strategic-rational *self-regarding* motives, which conflict with the presumption that all actors have conditional *other-regarding* preferences. This is no problem at the analytical level of social inter-action – whether the other is conditionally other-regarding, external sanctions might provide enough assurance to commit to him – but is a problem at the level of collective action systems. We cannot communicate strategic self-regarding motives and expect all others to be conditionally other-regarding at the same time. The core problem, then, is not explaining why externally-sanctioned assurances might be enough for conditionally other-regarding actors to cooperate in confidence; the core problem is *why we expect others to be conditionally other-regarding* in the first place

The crucial question, then, is how we can explain *expectations* that others are conditional other-regarding and not self-regarding interest maximisers (Ruscio 1996:464). Some scholars explain this motivation as an innate consequence of human social evolution (Ostrom 1997: 2,10; Walker & Ostrom 2009:91; Scholz 1998:159; Scholz & Lubell 1998a:905). In other words, conditional other-regarding and not unconditional egoism is our *genuine* human nature. Sen, on the other hand, explains this conditional social orientation in terms of a *moral* commitment autonomously from

types of utility-functions (Sen 1985:188; 1973:256; 1996:56).⁴⁸ However, both arguments miss the crucial point. We do not only have to explain why we *feel* a conditional duty towards others, but also why we *expect* others to feel this conditional duty as well. This is the core problem and the core problem is communication. The answer, it seems to me, is that we *expect* others to be conditionally other-regarding because we *trust* them to be committed to the vulnerable normative collective order. Indeed, precisely because we expect that others also trust us, we feel committed to the normative order and the conditional prohibition of free-riding. In other words, we do not trust or commit ourselves to others *because* our human nature is inherently conditional other-regarding or because we are inherently moral beings; rather, *because* we trust each other, we feel and expect others to feel an obligation to the collective normative order. Indeed, we often *have* to trust each other. Trust as risk-taking is as much an explanation of collective action as collective action is an explanation for trust as risk-coping. In any case, conditional-other-regarding motivations are not a precondition for trust (Ruscio 1999:650) but its consequence. In other words, preferences are not exogenously given but depend on the social context.⁴⁹

If trust explains why we expect conditional other-regardingness, we might perceive that sanctions are neither sources of motivation nor sources of confidence communicating objective interests, but sources that objectively express the collective normative order. The deviant is no longer rational or irrational man, but he is immoral man. The sanctions do not guarantee or assure cooperation, but express socially valid *normative* order (Walker & Ostrom 2009:107). They are the 'presentational base' that everything is 'in proper order' (Lewis & Weigert 1985a:973). Collective action crumbles if *trust* fails, not necessarily when sanctions fail. This trust, furthermore, is not geared towards the third-party enforcer but to the collectivity itself. It is not *vertical trust* that explains the effectiveness of legitimate power or law but *horizontal trust* (Offe 1999:81).⁵⁰ Horizontal trust, then, is internally-sanctioned mutual commitment of the group to its collective normative order (Lagenspetz 1992:13).

To cooperate or to obey counterfactual legitimate power or law in a modern state or in a bureaucratic organisation, then, means to commit to the risk of ineffectiveness – the risk of being a fool – and is expressive of trust in one's fellow citizens or colleagues. Of course, we do not know our

⁴⁸ Sen cannot explain, however, how we are to compromise between these two incommensurable values.

⁴⁹ That economic theories have too little 'structure' has been claimed many times before (Sen 1977:335; Granovetter 1985; Beckert 1996; 2003; Krippner 2001).

⁵⁰ Some scholars use this separation between vertical and horizontal trust to distinguish between 'political' and 'social' trust (Newton 1999:170ff.; 2007:344; Newton & Norris 2000; Pharr 2000:199; Zmerli & Newton 2008:707). Social trust, in its turn, is often perceived as 'generalised' trust distinguished from 'specific' trust (Sztompka 1999:63; Oskarsson 2010:424). The latter distinction often implies a link with Easton's two-typed political support. I will not analyse this confusion in detail, but do want to make a clear statement: the relation between political trust and political output is complex. To perceive it as a simple causal model is to misunderstand the essence of trust (Cleary & Stokes 2009:316; Levi 1998:88).

fellow citizens personally. Yet, we can nevertheless trust our fellow citizens to feel responsible for the collective counterfactual order of law and power because we share a commitment to a shared and vulnerable fate, whether we like it or not (Offe 1999:46). Often such horizontal trust is linked to 'solidarity' (Sztompka 1999:5; Segall 2005:362). Horizontal trust, then, is expressive of a shared normative space and is not an instrumental kind of trust-relation. This trust, of course, does not come easy. The communication of internal-sanctioned assurances is based upon symbols (including sanctions) that communicate some shared collective normative order, fate or worldview, especially in terms of boundaries of *distrust*, i.e. boundaries between insiders and outsiders (Sennett 1977:265-6; Luhmann 1968:121). Horizontal trust – or 'categorical trust' (Offe 1999:63) – is therefore often based upon national, ethnic, occupational, sub-/counter-cultural *membership* or, in short, upon symbols of shared (political) identity, history or ideology that communicate socially valid *expectations* of a shared normative worldview.⁵¹

The importance of this analysis is not to claim that the social validity of legitimate power or law can solely be explained in terms of horizontal trust.⁵² Rather, the importance is that if the risk of ineffectiveness inherent in counterfactual expectations of legitimate power is coped with through horizontal trust, it allows a radically different explanation of both obedience to legitimate power and of its subjective normativity than in the work of Weber.⁵³ Obedience to law or legitimate power is no longer an unconditional duty based upon the belief in an absolute truth or based upon some form of ascetic self-discipline, rather obedience or cooperation can be explained in terms of a *conditional* duty based upon horizontal *trust*, i.e. based upon a mutual commitment to a vulnerable normative order (see also Offe 1999:69). This means that to explain subjective normative validity we no longer have to explain a belief in some ultimate truth or value, but we have to explain horizontal trust at the level of social system. Subjective valid political legitimacy is still possible even if the political system is symbolically 'suspended in mid-air'.

Trust at the level of social systems, then, gives us a radically different outlook on subjective normativity. There are, however, three disclaimers that should be stressed. First, this analysis only

⁵¹ Solidarity should therefore *not* be understood in terms of some form of value consensus, as in Durkheim or Parsons, or in terms of some emotional 'instinctive embeddedness' (Luhmann 1968:107). It concerns horizontal trust based upon *symbolically* communicated *expectations* of a shared commitment or 'group membership'; a crucial difference (Foddy and Yamagishi 2009:18). It seems likely that this kind of horizontal trust also plays a role in relation to the *risk of the tyrannous sovereign*, i.e. in relation to the vulnerability of democracy and the risk of the tyranny of the majority (Inglehart 1999b:101; Misztal 2001:374).

⁵² Indeed, we discussed in the previous chapter the importance of the social distribution of legitimate power (rights) for explaining the social validity of legitimate power – something we can now understand in terms of *confidence*. The effectiveness of legitimate power is not solely dependent – if at all – on horizontal trust but also on vertically assured confidence.

⁵³ Indeed, this coping perspective is important. Much of the literature is too preoccupied with explaining cooperation in a de-socialised context. Trust is considered to be an explanation of cooperation. But in reality – and not just in strategic games – we often do not cooperate because we trust, but trust because we cooperate.

holds for the symbolic media of legitimate power and law and not for money or truth, precisely because the former two are counterfactual media. Trust does not play a role or explain the social validity (effectiveness) of money.⁵⁴ For sure, the effectiveness of money is often understood in terms of a collective action problem. This problem looms large, for example, in times of crises when the fear of money losing its value (inflation) becomes a self-fulfilling prophecy. However, in the economic system we normally do not *trust* others to hold on to their money in order to prevent a collective economic collapse.⁵⁵ Here we are talking about the social validity of money as a *factual* means of exchange. We are not talking about the social validity of money as a symbolic value that expresses the *counterfactual* economic order, i.e. the normative order of private property. Where it concerns the social validity of property, for sure, horizontal trust does play an important role (see also Lewis & Weigert 1985a:979, 1985b:466).⁵⁶

Second, this kind of subjective normativity is vulnerable. Indeed, vulnerability explains part of this normativity (Luhmann 1968:55). But it does create a paradox in modern society. Its vulnerable character poses a problem for modern society with its abstract, anonymous and 'disembedding' character. As horizontal trust cannot be enforced, collective failure – e.g. tax evasion, corruption or just slacking at one's job – always seems to forward the single response available for law and political power: more hierarchical structures of control and accountability. It concerns a shift of responsibility from horizontal relations to vertical relations. Vertical control is not expressive of trust but of distrust. As such, if control cannot enforce horizontal trust it can undermine the normativity associated with horizontal responsibility.⁵⁷ The paradoxical conclusion, then, must be that over-extensive use of law and power *undermines their own legitimacy*. It is inherently related to what we called the uncontrolled externality of law and politics, but, as it turns out, it is also an uncontrolled internal risk.

Third, this paradox has led many scholars to idealise pre-modern small-scale market-based reciprocal communities, especially in the 'social capital' debate (Warren 1999b:318ff.; Sztompka 1999:123; Ostrom 1998). However, we must be aware of at least the following problems. First, the

⁵⁴ If Luhmann claims the opposite, this is because he perceives such 'trust' as experience based probability (1968:64, 73).

⁵⁵ It seems to me that we neither trust money nor our fellow economic actors, but we normally expect that the economic system is *rational* and can, in principle, be *comprehended*. We normally expect that the economic system structures incentives in such a way that it does not contradict its own existence. An economic crisis, then, is always perceived as *irrational* – something that could (and should) have been prevented. This is possible precisely because of the system's self-understanding and self-knowledge (expertise), which is not only describing or explaining the economic system – as in the (natural) sciences – but also prescribing it.

⁵⁶ See also Beckert for a critique on Parsons' neglect of the role of normative integration in his analysis of money and economic systems (2006:175).

⁵⁷ In a field study of day-care centres Gneezy & Rustichini (2000) showed, for example, that introducing a fine for parents picking up their children too late only increased the number of parents breaking the rule while non-compliance remained at the increased level after the fine was removed.

fact that we can explain normativity in relation to collective action problems does not mean that collective optimality – e.g. Pareto-efficiency – is an *objective standard* for justice as utilitarian or economic welfare-theories want us to believe (see chapter 3). Second, especially regarding RAT's emphasis on human nature and evolutionary explanations we should be careful not to succumb to some Rousseauian idea that our true human nature is somehow corrupted by modern social systems, especially by political power. Evolutionary functional theories are always tricky, but if we want to talk evolution we can counter with Luhmann's claim that social functional differentiation was in itself a social evolutionary necessity, apparently despite our good human nature (see also Cohen 1999). Third, grounding legitimacy in terms of horizontal trust should not automatically lead to easy conclusions that the 'nation' is a prerequisite for political legitimacy as horizontal trust can be based upon different kinds of solidarity or shared normative orders.⁵⁸ In my opinion, the paradox of control has definite explanatory force, but should not lead us to long automatically for simpler times or as a justification of market over politics and the nation state over trans-national governance – to the contrary.

The Decision-Making Process and the Risk of Indeterminacy

Legitimate power at the level of political system is not only about organising the effectiveness of counterfactual expectations of power, but also 'spending power', i.e. making binding decisions. We have discussed how the decision-making process is not only coordinated by the symbolic medium of power, but additionally by a legitimation process expressive of a secondary normative order. Additional legitimations – expertise, vote and party – make the decision-making process more *indeterminate* which, as we also discussed, reduces and absorbs the specific political *risk of conflict* as it detaches, to a certain extent, binding decisions from power. Indeed, decisions are not just legitimate in terms of power, they are the *right* decisions to make. Power remains hidden in the dark, defusing possible conflict between superior and subordinate or conflict between subordinates. However, this reduction of risk comes at the cost of possible contradictions. These contradictions can concern the conflict between two normative orders, e.g. between legitimate power and expert legitimation, on the one hand, and between different legitimations on the other, e.g. between expertise and public support. The *risk of indeterminacy* – which might also be related to the presentational problems of a risk-society – concerns the risk of normative contradictions and disappointment at the level of decision-making, which must be constantly managed and countered

⁵⁸ This seems relevant especially for the problematic discussion of the legitimacy-deficits of the EU and the 'no-demos' problematic in specific (e.g. Weiler 1996, 1997; Scharpf 1997, 2006; Offe 1998; Horeth 1999; Moravcsik 2002; Follesdal & Hix 2006; Bader 2007a; Habermas 2012).

by *symbolic actions*. To analyse the role of trust in the political system, it seems to me, we must analyse the structural presence of indeterminacy in the political process of decision-making.

The decision-making process in a public administration or bureaucracy, we have argued, is coordinated by hierarchical structures of legitimate power and by the self-understanding of a bureaucracy coordinated by expertise. As such, a binding decision is not just expressive of legitimate power, it is also legitimated – is the ‘right’ decision – in terms of expert knowledge. In bureaucratic chains of decision-making actors have to take over decisions of others *as if* it were their own decision, which means that they have to commit themselves to actions of others (Murphy 1997:115). The risks involved, obviously, is the uncertainty about whether these others made the *right* decisions. This uncertainty or *agentic-risk* is non-hierarchical in a bureaucracy as it holds for both superiors and subordinates. The difficulty is that legitimate power and expertise are both socially valid in the bureaucracy and, at the same time, might conflict. The risk of a ‘wrong’ decision is therefore a structural and real probability. This difficulty expresses itself in two different ways. First, power and expertise are expected to be *normatively* separated, i.e. power ought not to dictate expert-truth (and vice versa). When it does, the two different orders or media are no longer socially differentiated. Second, in a chain of decision-making legitimate power and expertise do not necessarily share the same kind of hierarchy, i.e. the superior does not necessarily have more or similar expertise as his subordinate.

To take over the decision of someone else as if it is your own, then, is inherently risky. There are two ways of coping with this risk. First, structures of control and accountability – coordinated by legitimate power – function as externally sanctioned assurances which allow us to have *confidence* that the interests of the other are parallel to our own. This does not mean that power coordinates expertise, but power increases assurance that actors have a strategic incentive to make the right decisions. Second, instead of such strategic *organisation of distrust* bureaucrats might *trust* the decisions of others to be right based upon their mutual dependability and responsibility for their shared normative institutional space, i.e. the bureaucratic order *legitimated* by expertise (Offe 1999:70). Indeed, too much organised distrust may undermine the subjective feelings of duty and responsibility enabled by trust (O’Neil 2002:19; Sztompka 1999:145). In other words, we also have to trust trust (Lewis & Weigert 1985a:970; Gambetta 1988:213; Peel 1998:316).

In sum, in a bureaucracy coordinated by legitimate power and expertise, the risk of a wrong decision is normally coped with through confidence – based upon organised legitimate power – and trust – based upon legitimating expertise. But we should be wary of a too idealised picture of bureaucracy. For sure, most bureaucrats know – or ought to know – that many decisions are an expression of power play (the political game) and other legitimations (vote and party) and not

necessarily the 'right' decision in terms of expertise. Indeed, it would also be wrong to claim that expertise always leads to consensus. We need only to think about the constantly reoccurring conflicts between management and professionals (Realin 1986; Barley & Tolbert 1991; Abernethy & Stoelwinder 1995). *Organisational trust* understood as a mutual commitment to the normative order of decision-making, in other words, seems a very difficult accomplishment and bound to be disappointed. Does this mean that trust and the accompanying normative feelings of duty do not play a role? Does this mean that bureaucrats are acting strategic rationally only? It seems more likely that at the level of the political organisation of decision-making processes the risk of normative disappointment of trust is a constant threat that must be continuously managed, not just by rules but by symbolic actions.

At the level of the political decision-making process in general, we might generalise, *the risk of indeterminacy* threatens *political trust* based upon mutual commitment to the normative order expressed by additional legitimations. When a governmental agency decides, for example, that a certain drug is safe, we normally expect this claim to be *true* in terms of expertise. The problem here is not the fact that expert or scientific truth is objectively risky, but that at the level of political organisation decisions are also coordinated by legitimate power and other rationales such as the common good or public support. To put it more generally, it is difficult to know whether a binding political decision is the 'right' decision as it is coordinated by different and sometimes conflicting symbolic media and legitimations. We all feel uneasy when our doctor also owns a funeral company or, less dramatic, when he is also paid by a commercial pharmaceutical company (Stepanikova et al. 2009:164ff.). Such 'role conflicts' can also be present at the level of political decision-making and will formation in terms of conflicting rationales between legitimate power and additional legitimations as well as between these legitimations themselves (Seligman 1997:29ff.).⁵⁹ Is the binding decision expressive of legitimate (or illegitimate) power, of expert rationality, of an attempt to mobilise support or of a particular common good? In other words, the inherent *paradox* seems to be that indeterminacy increases the need for trust, but the awareness of indeterminacy makes such trust more problematic.

This paradox of indeterminacy might be solved partly by substituting political trust for confidence based upon structures of accountability – upon the organisation of institutional distrust. Majone, as already discussed (see chapter 4) tries to solve the problem of political trust by placing functional bureaucratic agencies outside structures of 'democratic legitimation' (2000:289;

⁵⁹ Misztal points out that confidence is not only problematised by role conflicts but by a more cultural phenomenon that "individuals become more autonomous" from their roles (2001:376).

1997:153).⁶⁰ Such ‘horizontalisation’ of government can be understood as an attempt to raise institutional boundaries between different kinds of legitimations or different kinds of normative orders in order to reduce the risk of indeterminacy. Another contemporary proposal to solve political trust problems is to increase the *transparency* of decision-making processes (see e.g. Fung 2007; Sztompka 1999:123). However, both proposals, it seems to me, fall short of acknowledging and addressing the inherent problem of indeterminacy. In both cases the implicit assumption remains that all the different legitimations are in principle coherent and aligned. In Majone’s case, they can be separated precisely because they are coherent and in the case for transparency the idea is that more information reveals (or enforces) coherency.⁶¹ Not only would a reduction of indeterminacy reintroduce the risk of social and political conflict, these models remain inherently modernistic by denying the radical notion of complexity, indeterminacy and incoherency: there is no reason to suspect that coherency is the ‘true’ nature of politics. Structures of accountability, we must acknowledge, cannot solve inherent political trust problems created by the problem of indeterminacy. That does not, of course, mean that the organisation of accountability and confidence is not important. If anything we should not ignore or deny complexity and conflict but rather embrace it by designing decision-making process and accountability structures that are open to constant learning and adjustment as for example in ‘experimentalist’ or ‘iterative’ designs (Sabel & Zeitlin 2008; Zeitlin 2011; Bader 2001b; Engelen 2001; Bader & Engelen 2003).⁶²

Instead political risks of indeterminacy might be managed by *symbolic actions*. Symbolic actions that are negotiating and expressing shared normative orders even in the face of factual disappointments. We must think in particular of *discourses* and *dramaturgies* that express shared counterfactual frameworks while simultaneously absorbing factual disappointments, discrepancies between legitimate power and legitimations, and possible conflicts between legitimations.⁶³ Most common, it seems to me, is to present disappointments as a ‘necessary evil’ imposed by the outside world perceived as some natural force or to present disappointments as a ‘temporary aberration’

⁶⁰ For sure, Majone perceives the political trust problem to be somewhat different than the risk of indeterminacy. For Majone, as discussed, this risk is foremost one of unreliability (1997:153; 1999:4; 2000:288). However, this unreliability is in Majone’s account due to inherent conflicts between democratic and expert rationalities.

⁶¹ The idea that more transparency can remedy the problem of political trust seems to argue wrongly that all trust problems can basically be solved with more information. Transparency might help, however, to the extent that *accountability of transparency* – i.e. proving that one is transparent – might be a source of assurance, decreasing the trust-problem. It is not about transparency as such, but about being perceived as transparent. See for an empirical analysis of the political virtues of transparency Naurin 2007 and for a review of this work Netelenbos 2009.

⁶² Bader argues that such complexity-embracing designs (should) allow us to go beyond the traditional trade-off between design-by-blueprint and ‘practical learning-by-doing’ – a trade-off that is inherently related to that other unfruitful opposition between positivism and relativist scepticism (2013:3-4). They are able to do so, precisely because they are designed as processes of ‘meta-learning’ between different practices.

⁶³ This seems to parallel what Warren calls the ‘deliberative approach’ to trust (1999b:337ff.)

which can be and will be solved in the future. However framed, such discourses allow both the continuity of the mutual commitment to a normative order into the *future* and the acceptance of disappointment in the *present*. In other words, discourses allow *trust* in the decision-making process despite its indeterminacy. For sure, the (communicated) *self-perception* of the political system is that making a right decision is possible, if only as an ideal – the belief that, in principle, expertise, democratic support and the common good should all point to the same decision. If anything, all social systems understand and portray themselves as *coherent* and *rational*.⁶⁴ It seems, then, that the political system must constantly manage the risk of disappointment *and* conflict by upholding determinacy and indeterminacy, coherency and incoherency, simultaneously.

It seems, then, that for the problem of political trust an ‘authentic’ or trustworthy actor seems particularly effective for mobilising the necessary discourses and to manage the risk of indeterminacy at the level of political organisation (Offe 1999:61; Luhmann 1968:68). Indeterminacy and role conflicts make expectations of agency socially relevant in the first place and seem to point to the importance of political leadership. The relation between political leadership and trust, however, is complicated on two accounts. First, to what extent is it possible to trust a political leader at all? Second, the emphasis on leadership seems to blur the distinctions between charismatic domination, dramaturgical political theatre and political trust.

First, many scholars argue that one cannot trust ‘anonymous’ politics and therefore confine trust to face-to-face inter-personal relations. Others, however, argue that it is possible to trust politics, precisely because we have quasi-personal relations with visible political leaders that function as the symbolic ‘face’ of politics (Harré 1999:259; Pettit 1998:304; Luhmann 1968:71). It seems that if one perceives political representation purely in terms of an individual and instrumental relationship, political trust will indeed be difficult. First of all, you cannot trust the political representatives to take care of your individual interest as the representative does not know you or your interests. Second, if anything, the tension between campaign promises and actual political decisions looms large although not necessarily due to bad intentions. At most we might be confident about future actions or rely upon experienced-based probabilities of output-satisfaction. However, as we already discussed, the political relation might not only be instrumental but also *expressive* of interests and values. This part of the relation is not about future results (political output) but about expressing one’s support for a specific normative worldview in the present independent of the consequences. These symbolic expressions of a shared normative worldview might be the internally

⁶⁴ We might say that this problem of political coherency is similar to the problem of theodicy in religion as analysed by Weber. Although the historical solutions are different, both explain much of the dynamics of religion and politics.

sanctioned basis of political trust.⁶⁵ Even if the political leader does not know my personal interests, or precisely because I do not know my personal interests in every political issue, this shared normative space allows me to trust the leader to make the 'right' decision despite indeterminacy.

Importantly, a leader cannot only express, through his mediated actions, a shared normative commitment – something rituals and material symbols can also do – but he can also communicate *trustworthiness*. It is this specific possibility in particular that makes political leadership an effective means to manage the risk of indeterminacy *at the level of the political system*. A trustworthy leader, we might follow Weber, should not be confused with the convinced ideologist or narcissist populist. The trustworthy leader is thought to be responsible *and* dutiful, i.e. he combines the ethics of responsibility and conviction in one person (Weber 2004b). Although he might be reliable, one cannot really trust the zealous 'saint' as he does not take responsibility for the consequences of his actions – his actions are always right. Neither can one really trust a populist, who will always shift his will depending on the mood of the day.⁶⁶ A trustworthy leader must be able to oppose the will of the (party) majority if they are 'wrong' – indeed, this often seems a proof of trustworthiness. Obviously, a trustworthy leader is less difficult to trust – even for his political opponents, who might not share his political convictions but do trust his *ethical personality*.

We might recognise that such ethical leadership is inherently indeterminate itself – posited between two conflicting ethics. Communicating trustworthiness, as such, cannot be understood in simple terms and seems culturally dependent, i.e. there may be many different styles to communicate trustworthiness (Kim 2005:621ff.). But in general we might say that leadership trustworthiness seems to be caught between showing that one is 'normal' – i.e. not alienated from the concerns of daily life of ordinary citizens – and that one is 'abnormal', i.e. that one has an extraordinary sense of ethics or great 'wisdom'. Even more important, a trustworthy personality must be 'authentic', i.e. it is not a mask one can put on and off, but one's 'true' personality. Precisely at this point, trustworthiness is wedged between communicating 'conviction' and 'responsibility'.⁶⁷

Political decisions are not made by political leaders only or even primarily. As such, we should not over-emphasise the importance of political leadership in relation to the process of decision-making. However, leadership seems important to the extent that the problem of

⁶⁵ Bader rightly points out that such shared normative worldview is not some kind of consensus 'out there' or 'natural a priori', hierarchically ordering 'issues and problems' (Bader 2104). A shared normative worldview, at least partly, the result of political articulation.

⁶⁶ This means the too simple relations between populism and contemporary 'problems of trust' must be avoided (see e.g. Offe 1999:77). It also means, vice versa, that Weber's idealised responsible leader *necessitates* trust. Without trust a responsible ethical leadership style is hardly possible as one cannot control which decision he will take. Without trust one can only hope.

⁶⁷ The difference between the external assurance of masks and the internal assurance of authenticity seems also socially and historically dependent and related to the difference between cultures of shame and guilt, which we have discussed in chapter 3.

indeterminacy becomes more apparent and political trust, as a consequence, more problematic. Symbolic political leadership, it seems, is a particular solution to the risk of risk-management of social-political conflict. However, the importance of symbolic actions and discourses should indicate that this structural ‘trust-management’ is anything but a well organised, controlled, flawless and coherent practice. It is not, despite the growing importance of ‘loyalty marketing’, ‘strategic communication’ or ‘corporate branding’ consultancies. If anything, all too visible attempts to express mutual values do not activate trust as the underlying strategic interests are too obvious.

At the level of the political decision-making processes trust can play a role and explain subjective normativity. But it is also clear that because of political indeterminacy, this trust is a complex, plural, shifting and precarious phenomenon, in need of constant attention. Reductive and simplified accounts of trust at this level, as in much of the trust literature and empirical studies, seem to miss its complicated nature. In conclusion we might wonder how this emphasis on leadership and the importance of symbolic actions allows us to distinguish between charisma, dramaturgy and trust at all. In *table 6.1*, I have tried to summarise the main analytical differences. Charisma, in Weber’s account, concerns submission to extraordinary truth, whereas for trust not the notion of validity (truth) but of social validity is central. Just as any symbolic medium, the additional legitimations are also not ‘true’ in any inherent sense. The subjective normativity arises from trust, from the symbolic expression of a shared normative commitment and vulnerability *independent* of whether the additional legitimations are ‘true’. Dramaturgy, despite its symbolic character, also remains connected to (expressive) truth but, in contrast to charisma, normative support is inherently conditional. This conditionality is explained by the introduction of time which enables us to separate the political relation between an instrumental and expressive dimension. However, and here dramaturgy really differs from trust, its conditionality rests purely upon the future-oriented quality of an instrumental relation, while the expressive relation in the present is characterised by certainty and truth. The conditionality of trust is, in contrast, based upon inherent uncertainty *in the present*. Finally, trust entails the notion of action and risk-taking, while dramaturgy emphasises passivity. The political theatre constitutes an entirely symbolic realm ‘disconnected’ from daily life.

	Truth	Time	Conditional	Action
Charisma	x			x
Dramaturgy	x	x	(instrumental)	
Trust		x	(uncertainty)	x

Table 6.1 – Difference between charisma, dramaturgy and trust

6.2.3 Social Interaction and the Risk of Dependency

The trust literature is much more elaborate when we consider horizontal social interactions. But we are not interested in these horizontal social relations so much as in vertical political relations. If anything, the political and legal systems are forms of externally sanctioned *assurances* that allow us to have confidence in day-to-day social relations. They allow us to commit ourselves to others without the need for trust. They are functional equivalents of trust. Although vertically organised external assurances deproblematise interactional trust-relations, it seems that in modern life we become increasingly dependent upon these organisations, structures or systems of accountability and control, precisely because they *substitute* the need for trust. These *sources* of confidence, then, might become *objects* of trust themselves (Sztompka 1999:46); especially as we cannot ‘opt out’ from these systems (Giddens 1991:22). The question at this level of analysis, then, is not how we cope with inter-relational risks in day-to-day life, but how we deal with the *risk of dependency* – our dependence and vulnerability to abstract, anonymous, risk-taking and difficult to control social systems under the ‘perception of compulsion’ (Offe 1999:57; Luhmann 1968:64).⁶⁸ In short, can we trust organised distrust?⁶⁹

We might buy, for example, industrially processed food at the local supermarket with the expectation that its safety is controlled by some opaque agency. The question, then, is not whether we trust the supermarket, but how we relate to these anonymous controllers. We might expect them to be politically controlled as well, constituting an infinite system of controls disappearing in abstractness and simultaneously allowing us to be confident in normal life (Luhmann 1968:67, 77). Similarly, in our day-to-day dependence on legal, political, market or expert systems we expect these systems to be coordinated by their respective symbolic medium. For these systems to be functional equivalents of trust in normal life, it is important that different symbolic media are normatively differentiated (Luhmann 1975:103). Based upon organised systems of control we might be *confident* that truth, expertise or legal justice is not bought with money or enforced with power.⁷⁰

It seems to me, however, that we might also trust these anonymous controllers and controllers of controllers precisely because they must know that we depend upon them – precisely because they *ought to* know our vulnerability. We can cope with the risk of dependency in normal life not just through confidence but also through trust, *even if we do not know these organisations of*

⁶⁸ For sure, at this level we can also analyse political inter-relations, for example between officials and citizens in so-called ‘front-stages’ or practices of ‘re-embedding’ (Giddens 1990:83ff.). Although these relations are interesting – especially in ‘de-institutionalised’ settings – I feel that such analysis would be a repetition of much of what we already discussed in this chapter.

⁶⁹ Associative democracy with its experimental designs might be an institutional answer in its attempt to combine (but not unite) goals of rational learning, effectiveness and social inclusion (Bader 2013).

⁷⁰ If Luhmann seems to agree when he states that “participation in functional systems ... requires confidence, but not trust” we must be weary because Luhmann has a probabilistic understanding of confidence (1988:102).

control. The trust-literature seems to argue that this cannot be the case as it would be irrational. But not only is trust irrational in its core anyway, the literature seems once again too preoccupied with risk-taking instead of risk-coping. It is not about *knowing* but about *coping*. We often cope with the inescapable risk of dependency by trusting that the 'powers that be' take care of our interests because they are aware of our structural vulnerability and dependency and ought to feel responsible. Whether this kind of trust is rational or not, it does count as political trust and explains much of the normative outrage in case of disappointment.⁷¹ Furthermore, also for confidence it holds that we often have no real information or genuine knowledge about how systems of control actually function. We often have no clue of whether or not our confidence is warranted except for very basic assumptions. Both trust and confidence seems to be grounded upon counterfactual self-descriptions of the political-legal system, upon heuristic 'rules of thumb', 'proxies' or mimesis – not upon factual knowledge (Warren 1999c:349; Montinola 2009:286; Scholz 1998:157; Scholz & Lubell 1998b:411; Grimes 2008:530; Ostrom 1997:9; Beckert 2006:173; Keynes 2003:12.V).

In sum, the risk of dependency on abstract systems that are functional equivalents of trust in our day-to-day interactions, our enforced dependency upon pluralistic and abstract structures of control, is often *coped* with by confidence or trust. As before, this trust might constitute the foundation of the subjective validity of legitimate political power.

6.2.4 Personal System and the Risk of Self-Disappointment

Self-confidence can be a functional equivalent of trust to the extent that it lowers expectations of vulnerability. It is a form of internal assurance that absorbs uncertainty. However, we might also perceive that *self-presentation* in social relations can be a source of trust in and of itself. This means that I do not so much trust others, as I trust that others will trust me. I do not trust others, but I trust in the normative or obligatory force of trust by presenting myself 'as I am' in all its vulnerability. Hence, trust in trust – or reflexive trust (Luhmann 1968:80ff.) – is not an instrumental use of the gullibility of others so much as a possibility of instigating trust relations in a social world that is inherently contingent or indeterminate. Trust, in this case, is not based upon internal or external sanctioned *social* expectations but rather upon our individual commitment to our *own* presentations of self; to our own biographical project of 'self-realisation' that does not communicate *social* expectations, but who we 'truly' are or *want to be* (Giddens 1990:122, 1991:6; Luhmann 1968:80).

On the one hand, reflexive trust comes relatively easy as it is not based upon others or upon social relations, but it is based upon self-presentation and trust as a 'means of obligation' (Luhmann

⁷¹ Hardin claims that citizens cannot trust politics because they "cannot know enough" (1998:22). However, not only does trust always connote a lack of knowledge, 'cannot' is not the same thing as 'should not'. Hardin's work is specifically cryptonormative.

1968:84). On the other hand, reflexive trust ‘chains’ us to social relations by our own identity. Social relations that are based upon trust in trust or upon communicative “mutual processes of self-disclosure” are stable, precisely because one can only disappoint expectations by leaving behind a part of one’s self-identity (Luhmann 1968:82; Giddens 1990:121; 1991:6). Reflexive trust, then, is a process of self-isolation and self-binding.

Whether reflexive trust relations become more frequent in a risk-society and whether this means that people are more and more obsessed with authenticity – not of others but of their own – which might lead to a culture of narcissism, is an empirical question (Giddens 1991:78; Sennett 1977:324ff.). The political relevance, it seems, is that we do not so much commit ourselves to the normative order of a social or political relation, as to the normative project of an authentic Self. In fact, the social no longer has to be meaningful or stable. It is merely the lake in which Narcissus rejoices his reflection. As we do not so much commit ourselves to others, but rather to self-presentation and self-disclosure reflexive trust does entail the inherent risk of self-disappointment. The risk of self-disappointment might be understood, on the one hand, as the risk of getting socially stuck in an ‘inauthentic’ presentation of self and, on the other hand, as the risk of being disappointed by our ‘true’ disclosed self. Especially the former risk can have political consequences as social structures might be blamed. The latter risk must be absorbed by the individual himself.

6.3 Conclusion: Trust and Legitimacy

In this chapter I have analysed, first, the complicated dimensions of trust that are often confused in the trust-literature. Second, I have tried to situate the possibilities of political trust by analysing the different risks that are possible at the different levels of *politics as coordination*. The general conclusion must be that political trust at the middle levels of analysis – i.e. organisation and interaction – could explain *subjective normative validity*. However, what must be clear is that political trust as a possible source of subjective political legitimacy is not a simple matter. Not only is trust ultimately a *subjective* leap of faith, it is also plural, fragmented and contextually dependent. The benefit of including political trust, however, is that it provides us with means to explain political legitimacy independently from an (unconditional) belief in truth. This is the radical and important conclusion we must draw: we can explain political legitimacy without the notion of truth.

Chapter 7

Politics as Argumentation: Habermas' Lifeworld

Politics is not just about the communication of legitimate power, it is also about a specific form of communication: argumentation or reasoning. Already in the classical normative theories it is argued that the common good, common interest or morality can be found and revealed through rational deliberation. In Madison this function was attributed to wise men of property representing the public in parliament (see chapter 2). Their deliberation should not be seen as the aggregation of specific interests through the art of compromise, but rather as a search for common ground; a search for rational consensus that prescribed that representatives ought to be relatively shielded but not isolated from the pressures and demands of their emotional electorate. Parliament did not represent different *factions* but the *public* as a whole. Argumentation among public representatives was supposed to make room for a different kind of rationality as opposed to the strategic rationality of the market – a different kind of political rationality with inherent validity. Rousseau, of course dismissing representation, similarly tried to validate political decisions in the common will revealed through deliberation. His form of deliberation by the sovereign people, as we have seen, was not so much *in public* as a solitary deliberation with the *public in mind* after which the genuine common will was revealed through majority voting. Deliberation is to take the perspective of the public. Although his model burdens the moral and rational capacities of individuals, it is clear that he also tried to find a different political rationality isolated from corrupting *private* strategic interests. Finally, in Kant's theory of morality this specific kind of rationality was formalised as *public reason*. But in Kant's work public reason was no longer a political action but politics had to be subjugated by means of formal law to a universal morality revealed by public reason. In other words, public reason had to be isolated from political strategic action.

We might point to many more theorists concerned with public reason or argumentation and we might agree that some claim public reason to be an accomplishment of individual moral reasoning while others claim it to be an achievement of the political process of public argumentation itself – a difference between public reasoning and reasoning in public. But altogether political legitimacy seems to be based upon a specific kind of public rationality that seems vulnerable and in need for shelter over and against individual or factional strategic interests that threaten to dominate it. Public reason, in this regard, is a principal prodigy of the Enlightenment which aimed to organise a just society upon universal Reason over and against the *private* interests of traditional and *irrational* powers of Prince and Church. Weber has taught us, however (see chapter 3) that the end result is not just the emancipation of politics from irrational tradition but also the emancipation of *politics from*

morality. Politics is the endless ‘warring of the gods’. Politics is strategic conflict, not reasoned consensus. Modern organisation of representative democracy, it seems, is not about the rationality of public reason but about the rationality of the market place – about strategic rational conflicts between competing factions. Political legitimacy, then, is not based upon a rational consensus arrived at by public reasoning, but organised and mobilised in a political theatre of emotional public acclamation (see chapter 4). If anything, political argumentation seems to be a strategic instrument for appealing to the audience, to mobilise support through symbolic actions expressive of legitimizing meaning. There seems little room in political action for a validating rationality of public reason.

Yet, despite this bleak Weberian picture in which modern man is stuck in a disenchanting rational cage, the promise of a different kind of rationality to be found in public argumentation nevertheless has continued to attract immense scholarly attention. One reason for this attention, it is safe to say, is the work of Habermas. His work is generally perceived as standing in the tradition of the *Critical School* or the *Frankfurter Schule*. His famous predecessors, such as Benjamin, Horkheimer and Adorno, clearly struggled with the legacy of Weber. The central question they pursued is how Weber’s discovery of the rationalisation process of modernity – understood as the instrumentalisation of society – related *historically* with the promise of emancipation and freedom inherited either from the Enlightenment, modernity or Marxism. The ‘*Leitmotif*’ of Critical Theory is the ideal of a “community of free men” (Horkheimer 1972:217; Honneth 2005: 344). It seemed that with the demise of the class conflict there was no longer any historical carrier of a different counter-rationality, commanding a search for a different socially viable form of critique (Horkheimer 1972:213-4). However, in the process – and in the shadow cast by the terror of Fascism – reason itself was unmasked as mere myth (Adorno & Horkheimer 1997 [1944]; Boomkens 2009). Even culture or ‘autonomous’ art no longer seemed to provide an alternative rationality – let alone politics (Adorno 1975:13; Benjamin 1999:732; 2002:103). Indeed, the ‘cultural industry’ coordinated by techniques and ‘economic and administrative concentration’ diminished culture to mere depoliticised mass consumption and a means of ‘anti-enlightenment’ reifying the status quo (Adorno 1975:12,18). As Weber already concluded, there is no longer any escape possible from the iron cage. Culture becomes a ‘commodity’ and social action merely *instrumental for system maintenance* or, in Easton’s terms, system survival. If even resistance itself becomes functional of system maintenance, then society, in Marcuse’s words, has become ‘one-dimensional’ (Marcuse 1964). Indeed, if rational critique is no longer historically present in social action itself, it can only take the form of abstract and politically irrelevant philosophy (Marcuse 1964:xii). The future promises a “relapse into darkest barbarism” (Horkheimer 1972:241).

This intellectual pessimism of the philosophical wing of the First Generation of Critical Theory is the background from which Habermas has built his work. Habermas, on the one hand, shares with his predecessors their worry about the dominance of political and economic system-rationality and the pathological social consequences thereof (Habermas 1975, 1984, 1987, 1989, 1996). But where his predecessors could no longer find a solid point of reference with which to understand or critique this 'social pathology of reason', Habermas tries to provide exactly that (Honneth 2005:338). The alternative rationality might no longer be historically appropriated by an emancipatory class – either the bourgeois public or the labour movement – it is nevertheless still historically present in a specific type of social action: *communicative action* (Habermas 1984, 1987). Communicative action and public argumentation hold the kernel of an alternative rationality that could – and for Habermas *ought to* – provide the foundation for a critical project to 'rationalise' modern society in order to 'finish the unfinished project of modernity' (Habermas 1997). The political system is legitimate to the extent that its norms and validity claims can be 'discursively redeemed' (Habermas 1975:10; 1984:19; 1996:135), i.e. when the instrumental rationality of systems is validated in communicative rationality.

The attention Habermas' work has received in the field of politics-as-argumentation confronts us, however, with some serious complexities. In this chapter I will understand this field from the analytical framework I have been developing in this thesis. This means that I understand political argumentation from a sociological point of view in order to analyse how and where political argumentation might yield subjective normativity. However, Habermas' critical sociology – as is all critical theory – is a mixture of normative, empirical and analytical claims. Not only must we be attentive to the boundary between how it *is* and how it *ought to be* – i.e. between empirical and normative claims – but also to the boundary between how it *is* and how it *could be*, i.e. between empirical and analytical claims. This is not an easy matter as critical theory precisely tries to do away with the rigidity of these boundaries. Indeed, the literature on political argumentation in general is so inherently normative that even many empirical studies seem of little help. What we need, then, is a *sociology of political argumentation*. What I present in this chapter and the next is a preliminary attempt to offer some important analytical building blocks for such a sociology. With it we can analyse a final face of political legitimacy – the legitimacy of politics as argumentation.

7.1 The Deliberative Model of Political Argumentation

If we are in need of a sociology of political argumentation, we need to gain an understanding of what political argumentation *is*; how politics and argumentation relate. A first obvious starting point would be the theory of *deliberative democracy*. Despite the 'coming of age' of deliberative

democratic theory the field is still very much divided (Bohman 1998:401). Indeed, it might be difficult to speak of a single theory at all (Marti 2006:27). Nevertheless, what all deliberative theories seems to share is the idea that argumentation – or deliberation – should be the basis of a specific form of *political decision-making* that is more rational and legitimate than other opposing democratic decision-making procedures.

Deliberative theory, then, makes a specific *epistemic claim* that politics as argumentation is a superior *means* to arrive at rational and legitimate binding decisions (Bohman 1998:401; Bohman & Rehg 1997:ix; Marti 2006:42). Although some deliberative theorists argue for non-epistemic models of deliberative democracy, it seems to me that this epistemic claim is inherent to deliberative theory because it explicitly understands itself in critical opposition to instrumental, strategic, objectivist or utilitarian means of decision-making (Bohman 1998:400; Dryzek 1990:3-4, Marti 2006:28).¹ Deliberative theory claims that argumentation is epistemically superior to voting – where decisions are structured by the aggregation of private preferences and the market force of number – and bargaining – where decisions are structured by the distribution of interests, power and resources (Bohman & Reg 1997:xi; Elster 1997:12-3; Habermas 1996:140).

The epistemic superiority of argumentation – i.e. of deliberation as a decision-making process – is sometimes described in terms of ‘problem-solving capacity’ (see e.g. Dryzek 1987, 1990:57ff.) but more often it is understood in terms of legitimacy.² Deliberation is superior because in ideal circumstances it yields *binding decisions* that are, and are seen to be, in the *common interest* and which are, as a consequence, inherently legitimate. Importantly, legitimacy or the common interest is not so much *revealed* in an argumentative process – i.e. the right decision is already metaphysically present merely awaiting recognition as in the theories of Rousseau or Rawls (see Manin 1987:348) – rather this common interest is formed and produced through the process of argumentation itself; ideally expressed in the form of a rational consensus (Cohen 1997:75,83; Cooke 2000:948; Habermas 1984:392). Deliberation is transformative as it can change *private* preferences, opinions and beliefs towards the public good in the process of argumentation. Politics as argumentation, then, is epistemically opposed to input- and output-legitimacy based upon utilitarian standards of justifications or ‘epistemic populism’ (Cohen 1986:34; see also chapter 4). As such, we might call deliberation a form of ‘throughput-legitimacy’.³

¹ In proceduralism the source of legitimacy is the procedure itself (Cooke 2000:950). Pure proceduralism, as Estlund forcefully argues, is difficult to rime with this critical position as a coin-flip might be procedurally valid and fair but hardly satisfying for claiming *superior* political decisions (1997:176). Epistemic models, then, appeal to something more than mere procedure.

² Next to legitimacy and the ‘quality of decisions’ deliberative democracy is supposed to increase ‘public-spiritedness’ and ‘mutual respect’ (Papadopoulos & Warin 2007:454).

³ Throughput-legitimacy, in this context, is *not* merely understood as procedural fairness (Papadopoulos & Warin 2007:450). Procedural-legitimacy connotes the idea that we must accept the outcome of a procedure as

The complexity of deliberative theory, it seems to me, is that, on the one hand it lumps together deliberation as political opinion-formation and deliberation as political decision-making⁴, while on the other hand, its epistemic claims forces a differentiation between the actual process of deliberation – deliberative action – and the legitimacy of that process – deliberative rationality. In what follows, I will first show how these two positions are unhelpful for building a sociology of political argumentation and, second, how our understanding of political argumentation broadens if we let go of both these positions.

7.1.1 The Problem of Epistemic Rationality

Political decisions are legitimate “if and only if they could be the object of a free and reasoned agreement among equals” (Cohen 1997:73). Legitimacy, validity or ‘truth’, then, concerns the common interest or *rational consensus*. Legitimate politics is, similar to classical moral theory, domination-free if decisions are based upon rational consent or at least if no one can ‘reasonably reject’ these decisions (Bohman 1998:402; Habermas 1984:19). The process of deliberation is needed in order to: a) guarantee that a consensus is *reasoned* – not ‘false’ – and b) in order to *produce* consensus, i.e. to transform preferences and opinions. According to Habermas such epistemic procedure is at least possible in a counterfactual ‘ideal speech situation’ where only the ‘forceless force of the better argument’ structures deliberation (Habermas 1984:25, 1999:332; Cohen 1997:73; Outhwaite 1994:40). Political argumentation can take on this epistemic function precisely because it forces actors to take a ‘public perspective’ and to argue in terms of collective interests in order to be persuasive for all (Cohen 1997:76; Dryzek 1990:15; Marti 2006:31; Rawls 1997:766; Habermas 1987:72, 1984:19).⁵ Nevertheless, it demands not only ideal procedural norms – such as formal and substantive equalities and freedom or autonomy – but also that the actors are willing to reflexively examine their own beliefs and opinions – willing to exclude “all motives expect that of cooperatively seeking truth” – and that they are willing and sincere to enter into

legitimate because of the procedural norms that structure the process – e.g. freedom, equality or accessibility. Deliberative-legitimacy, however, (additionally) claims that the outcome of the process is true, rational or legitimate (Risse & Klein 2007:73). We should be careful, however, to equal this difference with a difference between *form* and *substance* as some deliberative theorists seem to argue (e.g. Cooke 2000:952). Not only might we perceive that deliberative legitimacy is often a combination of throughput- and output-legitimacy and ‘democratic legitimacy’ a combination of input and throughput (Bader 2010:263), also the idea of pure procedure is untenable. The idea of ‘morally neutral’ procedure, as is the goal of many liberal theories, is often ‘a dangerous myth’ (Bader 2007:82). As such, there are more options than merely choosing between ‘neutral’ and ‘epistemic’ procedure, or between form and substance, as, for example, Bader’s defence of “minimalist morality of decent and liberal democratic practices” (2009:111; 2007:110).

⁴ Indeed, in Rousseau’s account deliberation *means* decision (Manin 1987:45).

⁵ For Habermas, rational consensus is “inherent in the telos of human speech” (Habermas 1987:287; 1996:4; Outhwaite 1994:28-9; Alford 1996:754).

argumentation with the “presupposition that a grounded consensus could in principle be achieved” (Habermas 1984:19; see also McCarthy 1992:60; Dahlberg 2005:127).

Much has been said about this normative ideal of reasoned consensus which I will not try to repeat here. I just want to show that this specific norm of rational consensus is unlikely to structure political argumentation perceived from an action theoretical perspective. The point, then, is not to debunk the epistemic claim of deliberative democracy on normative grounds, not even to claim that its norms cannot be socially valid, but merely to show that it unnecessarily limits our perspective on the meaning of political argumentation.

First, models of public reason tend to be fairly hostile to *politics in general*, to political conflict, partisanship and political parties (Bader 1999:617-8, 2009:130-32; Muirhead & Rosenblum 2006:100; Rosenblum 2007:26, 2003:44). Especially Rawls’ model of public reason can be charged with this accusation. In contrast to Habermas, Rawls’ starting point is not reasonable agreement but reasonable disagreement. His well-known concept of ‘overlapping consensus’ does not so much connote some category of values we can all agree upon but rather a shared ‘category of reasons’ (Muirhead & Rosenblum 2006:100). Politics, for Rawls, must remain within the bounds of such public reason, which means that certain types of conflict – especially conflicts based upon religious and secular worldviews or ‘comprehensive doctrines’ – must be excluded from public reason. “[I]t would not leave much to talk about in the public political forum” (Bader 2009:130). Second, this also shows the elitist and conservative notions of this model as, on the one hand, it tends to strengthen ‘predominant particularistic (and rationalist) interpretations’ of public reason (Bader 2009:126ff.) and, on the other, it presupposes that fundamental questions about how to organise society are already settled (Muirhead & Rosenblum 2006:101). Public reason, to this extent, is the ‘end of history’ in different guise.

But not only Rawls’ also Habermas’ model might be accused of restricting politics by its narrow rationalist bias which “largely ignores other forms of reasons” (Bader 2009:133). His consensual notion of legitimacy demands generalizable and universal norms or values that are able to go beyond political conflict, i.e. Weber’s warring of the gods must be transcended by ever more universal norms (Habermas 1987:146; McCarthy 1992:59).⁶ The demand for consensus, in general, is

⁶ It might be argued that Habermas distinguishes between moral discourse necessitating universality, and democratic or law-making discourse only necessitating acceptance of those involved and as such is proposing different *epistemic standards* (Cooke 2000:953). However, this has more to do with Habermas’ own unfolding insight that politics cannot (and should not) be subdued to morality, than really connoting a different model (Habermas 1996:108-9; Mouffe 1999:748). Furthermore, morality remains the hierarchical boundary for all ethical life (Habermas 1987:110; 1992:448; see also Benhabib 1992:88ff.).

reifying the status-quo and delegitimising opposition (Fraser 1990:72; Bader 2007:601).⁷ It seems that if one wants to enter into political deliberation one is forced to accept liberal universal norms and even the constitutional state as its logical outcome. To this extent, morality must merely be discovered and not formed in deliberation – or, to put it differently, the universal solution is already present in the deliberative rules from the outset and not the result of will formation (Manin 1987:349; Mouffe 1999:746).⁸ It also means that, like Rawls, political conflict itself is delegitimised (Mouffe 1999:752; Fraser 1990:65ff.). At most argumentative conflict is an epistemic means to arrive at a transcending legitimate consensus, at its worst it is irrational, unreasoned, self-interested or a misunderstanding.⁹ Third, and related, if only a decision made under condition of universal consensus is valid then political argumentation demands that I lay down my specific political, historical and social identity if we are ever going to reach legitimate agreement. It demands of me to cast away my subjective experiences and to become a universal rational man (Mouffe 1999:748). But this unduly restricts the meaning of politics and seems especially problematic in an age of ‘identity politics’. Indeed, politics and political argumentation might be a principle means to form and express identity (Fraser 1990:68; Conover & Searing 2005:279; Mouffe 1999:749; Calhoun 1992:35; 1993:275; Arendt 1998:176). Habermas, as Bader pointedly summarises, “takes a homogenous view of political arguments, postulates a culturally unmediated or ‘pure intersubjectivity’ and a language ‘purified’ of history, concentrates on ‘what is said’ and ignores ‘who’ said it” (2009:133).

In conclusion, it seems to me that to understand political argument in such depoliticised, elitist, conservative, ahistorical, non-social and decontextualised form is, if not normatively, at least empirically flawed. There is no reason to suppose that any political opposition – historically and socially situated – would agree *in advance* to consensus as the sole norm of political legitimacy or to universal rationalist arguments as the only legitimate form of argumentation, but that does not stop them from trying to persuade others of their views through argumentation. Such opposition is not so much about the search of consensus as about arguing why others are wrong and should agree with their position. Indeed, if only consensus connotes legitimacy than both majority but especially minority interests or political goals are not. This seems to contradict empirical reality in which most

⁷ This is also true in an ideal situation, it seems to me, because of the informational asymmetry between an unknown future and a known history. Furthermore, political institutions are historical products to begin with, which becomes problematic for deliberative democracy with its fusion of deliberation and (institutionalised) decision-making. It is for good reason that Madison thought that parliamentary deliberation would protect the propertied minority against the irrationality of the masses.

⁸ Manin, then, takes a more procedural stance in which “argumentation does not result in a necessary conclusion that the listener cannot reject” (1987:353). Argumentation is *persuasion* not an *epistemic* procedure that determines true or false arguments.

⁹ If some empirical research finds that most people consider political conflict to be a form of corruption caused by special interests at the demise of the common interest – implying that the common interest is glaringly apparent and ought to be governing politics – this only underlines why conflict is delegitimised and why the epistemic ideal of the common good leads to political conflict (Hibbing & Theiss-Morse 2002).

political *factions* claim to hold the truth over others who are thought to be wrong. Indeed, for most people truth is something that should be independent of opinion and agreement.¹⁰ Furthermore, we might easily perceive that political arguments are not only, or even primarily, moral arguments. Practical reason and judgment not just demand moral arguments, but also ‘ethical-political, prudential and realistic’ *normative* arguments (Bader 2007:90; Bader & Engelen 2003:381). The normative demand that all these additional arguments can be neatly, coherently and hierarchically ordered in a complex world under the non-contextual demands of universal morality is not just normatively dubious but seems to mistake political discourse with “an idealised model of philosophical discourse” (Bader 2009:133). We cannot – and should not – reduce politics to moral reasoning.

In short, we might accept that actors try to convince, persuade or influence each other with different kinds of arguments, that actors expect public-oriented reasons to be more appealing than self-interested ones and even that actors agree that consensual agreement is inherently valid, but this does not mean that actors will agree that only consensual, let alone universal, agreement is legitimate or that political argumentation is about the goal to reach such a consensus. We might all agree that what we all agree upon is valid but that does not mean that vice versa we all agree that only what we agree upon is valid.¹¹ *Consensus is not what necessarily coordinates political argumentation as a form of social action.*

Deliberative theorists, however, might not disagree with this claim. The norm of legitimacy might not necessarily be coordinating deliberative *action* but the epistemic claims of deliberative democracy must rather be found at the level of the *rationality of the process* itself – a process which must be institutionally guaranteed (Bohman 1998:401; Cohen 1997:79; Dryzek 2001:657,661). It is not about whether or not actors actually agree with the goal of consensus or even whether or not they agree with the actual outcome of the decision-making process, the process itself is epistemically rational (Manin 1987:341). Rationality, then, takes on an *outsider’s perspective*. This claim of deliberative rationality, however, is fairly problematic for a sociology of political argumentation.

First of all, with the move from deliberative action to deliberate rationality we move from an actor’s perspective towards an outsider’s perspective on legitimate politics. Indeed, Habermas is fairly clear that he provides a ‘decentred’, ‘anonymous’ or ‘subjectless’ model of validity or

¹⁰ This is not to claim that people are necessarily ignorant. It seems that even social scientists, who would agree that truth is a social phenomenon, cannot lay down the subjective feeling of truth as a non-social quality.

¹¹ Lyotard rightly points out that Habermas sees it exactly the other way around: “Not every consensus is a sign of truth; but it is presumed that the truth of a statement necessarily draws a consensus” (1984:24).

legitimacy (Habermas 1997:58; 1996:4,184). For him, this is a necessity as the only way to rescue the critical project is to 'leave the philosophy of consciousness', i.e. if one views validity in terms of an actor's 'subjective' perspective, as did Weber, one cannot but fall into pessimism about reason, truth and validity, as the *Frankfurter Schule* clearly showed (Habermas 1984:141,279,366; 1987:333,387). The critical project, for Habermas, can only be saved by making validity an 'intersubjectively dissolved' quality as legitimacy withdraws into the *structures* of political procedures (Habermas 1997:59; 2001:110). This means that legitimacy is not consciously accessible by the subjects themselves but only surfaces from rational processes of argumentation *between* subjects.¹² Or, as Habermas admits, he does not aim to provide a 'theory of motivation' (1996:5). Although, this outsider's perspective of legitimacy obviously clashes with the analytical goals of this thesis, it does not necessarily disqualify deliberative rationality as a sociological perspective on political argumentation.

However, secondly, if such deliberative rationality cannot be expected to arise empirically there seems no reason why this perspective should inform an argumentative sociology. As we have seen, media theory makes a plausible case that conflicts are often insoluble because of incommensurable system rationalities which resist transcendence. If a decision can be understood differently in terms of legitimate power, law, money, science and expertise, there is no transcending value or medium that tells us which understanding is 'right' because *all* can be right simultaneously.¹³ At the same time, unrestricted argumentation will also show that *none* of these understandings are right as all systems are ultimately symbolic. Furthermore, *uncontrollable contingencies* inherent in social systems might give rise to what Beck calls an 'age of speculation' (Beck 1992:73). As the future becomes unimaginable, many futures become rationally possible and any binding decision inherently risky. In short, media theory shows the complexities, uncertainties and ambiguities inherent in social life, which especially means that the idea of a single right decision cannot be rationally expected. Or, as Luhmann states, "the fact that one can do many things the wrong way is no guarantee that one can also do them the right way" (1993a:155). But if we cannot expect conflict to be inherently solvable, if facts are also values and if reason becomes speculative, it is not clear why deliberation could live up to its epistemic expectations and, if not, why this would nevertheless have to structure our understanding of deliberation. It is not clear why we would have

¹² Of course, the discursive procedural and epistemic ideals are accessible – as this discussion shows – but in political practice legitimacy can only be assumed. This surely provides serious problems for Habermas' project to *change* and *transform* society towards a more legitimate one (Elster 1997:18). We might wonder whether Habermas does away too easily with Marxist preoccupations with consciousness – especially Gramsci's 'hegemonic consciousness' understood in terms of 'natural order' (Cox 1999:15-6).

¹³ A case might be made that Habermas overemphasises the harmony between differentiated 'systems'. Indeed, for Weber conflicts *between* systems were the principle reason for the 'materialisation' of politics and law, not the conflict between system and 'society' – a thesis that Habermas seems to ignore.

to subjugate our sociological understanding of political argumentation to a universal morality or collective ethics even in the face of improbability.¹⁴ As such, even in normative theory, it seems better to follow Bader's argument that we should acknowledge "moral pluralism, underdeterminacy of principles and the complexity of practical reason" instead of claims of *universal foundationalism* – at least if normative theory wants to be empirically relevant (Bader 2007:89; Bader & Engelen 2003:379).

Thirdly, deliberative rationality necessitates attempts to rationalise and design institutions of rational political decision-making. Deliberative democracy is *not* solely or necessarily an appeal for direct democracy, it is an appeal for rational political institutions in general (Bohman 1998:413; Cohen 1997:84-5).¹⁵ However, with the move from deliberative action towards deliberative rationality this threatens to produce 'elististic' or 'anti-democratic' tendencies (Palumbo 2010:320; Marti 2006:48). When epistemic claims are used to 'rationalise' democratic *representative* decision-making institutions – e.g. parliament, interactive policy practices or governance policy networks – into 'epistemic communities' their decisions are claimed to be legitimate because the decision-making process is more likely to yield valid and rational decisions (Bohman 1998:404ff.; Dryzek 1990:15; Héritier 2003:818; Sabel & Zeitlin 2008:272). Non-participants, who are nevertheless subject to these decisions, have no choice but to accept this claim at face value (Dryzek 2001:656). They are excluded from the transformative process of deliberation and cannot control nor protest the validity of the substance of the decision. Protest or disagreement is a sign of irrationality or ignorance. Institutional outsiders do not so much lack knowledge or information, they lack deliberative participation.

In other words, deliberative political institutions represent not so much the general public but represent its *rationalised essence*. The general public becomes an *objective fiction* – an ideology – as it is neither understood in terms of its actual preference distributions as in utilitarian theories nor as an actually deliberating public as in theories of participatory democracy. Indeed, Cohen defines legitimacy as those decisions to which reasonable people *could* consent (Cohen 1997:73; see also Habermas 1996:30). Deliberative political institutions, then, reduce non-participants to mere subjects and exclude the 'real public' from participating in deliberation. It confines rational deliberation to *institutional boundaries*, i.e. it is limited to politics as a decision-making process. The paradoxical situation is that deliberative decision-making institutions imply a clear relation of

¹⁴ This argument of improbability is something else than claiming that consensus is unrealistic. We might agree that even if something is unrealistic it might nevertheless be true or something to strive for (Manin 1987:340). However, as the possibility of consensus is *constitutive* of discursive theory it must be probable (McCarthy 1992:65).

¹⁵ This fact is sometimes obscured because of its intellectual roots in theories of participatory democracy.

domination over non-participants that urgently asks for a legitimation deliberative theory cannot provide.¹⁶

A further problem of using deliberative theory to justify representative political institutions is the lack of clarity of how different representative institutions relate to each other, and on what grounds they may be considered to be representative at all. Whether and, if so, how argumentation can cross institutional boundaries becomes difficult to grasp. Is cross-institutional communication only limited to disputes over what procedure is more epistemic rational, i.e. only about procedural form and not about substance? The strong epistemic claims of deliberative rationality (throughput-legitimacy) *institutionally fragments* politics both because it excludes non-participants from rational argumentation and because it is unclear how different deliberative institutions relate and communicate.¹⁷ When legitimacy becomes inaccessible to subjects then an institutional understanding of legitimate politics becomes problematic.

In sum, precisely because deliberative politics fuses argumentation with legitimate decision-making it is forced to hold and develop strong epistemic claims. However, these claims severely limit a possible sociology of political argumentation to the extent that: a) there is no reason to assume that the goal of value consensus is coordinating political argumentation as social action; b) there is no reason to assume that the foundationalist epistemic ideals of argumentative rationality are probable in complex society; and c) it obscures a clear understanding of politics at the level of institutions.

7.1.2 Liberating Political Argumentation from Deliberative Decision-Making

Deliberative democratic theory, we can say, is an obvious but not the best starting point for developing a sociology of political argumentation. It seems to me that we should liberate political argumentation from strong epistemic claims. A first step is to analytically separate between politics as argumentation – i.e. politics as opinion-formation – and politics as decision-making. I will make clear how this frees our understanding of political argumentation by opposing, as an informative example, the deliberative model with an *accountability model of politics*.

Deliberative and accountability models of politics are not identical (Bovens 2007:453; Erkillä 2007:26) especially because in the latter political decision-making is institutionally separated from

¹⁶ Habermas admits when he states that if political will formation is an epistemic process “the democratic procedure no longer draws its legitimizing force only, indeed not even predominantly, from political participation and the expression of political will, but rather from the general accessibility of a deliberative process whose *structure grounds an expectation* of rationally acceptable results” (Habermas 2001:110, my emphasis).

¹⁷ Empirically this problem of communication between different institutions is often the principle problem in so-called interactive or deliberative policy-making (Klijn & Koppenjan 2000; Edelenbos & Klein 2006; Mayer et al. 2005; Edelenbos & Monnikhof 1998).

argumentation. Accountability views politics as a form of *domination* that must account for its actions and decisions before a 'forum' (Bovens 2007:450; Manin 1997:237). Precisely because politics as decision-making is about domination it can be *wrong*. Whether it is wrong or right is up to the forum to decide – the forum, then, is neither part of the decision-making process nor isolated from it as it can ask decision makers to account for their actions. It concerns a process *normatively coordinated* by public argumentation and not by money or power. The forum can ask critical questions and the politician tries to convince the forum of the rightness of his actions. The politician does so not because he is interested in arriving at some consensus, but foremost because he is institutionally *forced* to (Bovens 2007:451). At the same time, this process has an 'epistemic' function to the extent that the forum must come to a reasonable judgment of whether or not political actions were right – how they will be *sanctioned*. However, because politics as decision-making and politics as argumentation are not just analytically but also institutionally separated we can perceive that these epistemic claims are much less demanding and more realistic than in the deliberative model.

First of all, accountability procedures between an agent and a forum are in principle retrospective judgements about decisions and actions of others (Bovens 2007:453). These judgements are not about whether the decision was the only right decision to take, but whether the decision was reasonable *considering the circumstances* and alternatives. Second, this means that the forum does not need to come to a consensual agreement on the ultimate norm applicable, but rather the forum must come to some broad agreement over which multiple and even conflictive norms were *ideally* to be considered in this particular decision and decision-making process. Third, in light of these norms the forum must commence a process of normative fact-finding, i.e. to discover how and if these *general* norms were applied to the *specific* context. However, precisely because of its retrospective character, facts are not truths as in most cases a process of public examination and argumentation paints a conflicting, ambiguous and indeterminate picture of affairs. There is therefore no reason to expect that ideal unrestrained argumentation will reveal more relevant facts or truths – to the contrary – while at the same time, there is also no reason to expect that there will be an *ultimate final decision* – new information or perspectives can always continue the process of opinion formation. In other words, a judgement arrived at in a process of accountability is always provisional and cannot claim to be the truth. The forum does however have to come to a judgment which means that the participants of the forum have to talk to each other. Yet, under these plural, ambiguous, contextual and temporal circumstances – i.e. under conditions of complexity – an epistemic ideal of consensus or truth is too demanding. At most we might hope that judgements structured by argumentation are *reasonable and plausible*.

Habermas, however, refuses to recognise the *political condition* and to give up epistemic foundationalism because he fears we get lost in the irrational, contingent and capricious ‘maelstrom of history’ (Bader 1994:114; Habermas 1996:282). But if we want to open up normative theory to politics, pluralism and complexity, *nonfoundational* theories seem more interesting and empirically relevant (Bader 1999:619, 2009:113). Giving up foundationalism does not mean that we have to give up rationality – it does not imply postmodern scepticism or relativism. Rather, we must give up the idea that there is always only one rational answer possible (Bader 2009:126, 2007:91; 1995:230). Instead of frenetically trying to control rationality in philosophical abstractions, we might better turn our attention to *reasonable institutional practices*. First, the different epistemic ideals of public reason and political reasonableness point towards the difference between Aristotle’s *episteme* and *phronesis* – the difference between universal truth and practical wisdom (Flyvbjerg 2001:56-7; Loeber 2003:54ff., 2007:393ff.; Mouffe 1989:36; Fischer 2009:117; Dryzek 1990:9; Beiner 1983). It is important to note that the weak epistemic ideal of reasonableness allows for disagreement without endangering its claim to rationality – as for example judicial practices show. Expectations of reasonableness, then, do not delegitimise politics, opposition and conflict and even make agreement more likely, precisely because actors do not necessarily have to agree on the same grounds. Second, if we want to let go of foundationalism and, at the same time, not get lost in the irrationality of postmodern relativism, normative theory must take an *institutional turn* while acknowledging “non-ideal conditions of structural inequalities” (Bader 2009:135, 2007:92; Bader & Engelen 2003:376). The core principle of such institutional experimentalist models is to guarantee *reiterative practical learning processes* between goals and practices, between past, present and future conditions, between principles and agents, between multiple levels of governance, between uniformity and localism and between insiders and outsiders (Bader 2007:91, 2009:135; Bader & Engelen 2003:377,394; Cohen & Sabel 1997; Sabel & Zeitlin 2008; Zeitlin 2011; Walzer 1989:532; Börzel 2012; Burca 2010; Fossum 2012; Erikson & Fossum 2012; Kumm 2012).¹⁸

My goal, however, is not to develop a normative counter-model of political argumentation at this point but to argue that *non-foundationalist* models of political deliberation seem to have more realistic expectations of the rationality of political argumentation. Minimally, we have to admit that there is no reason why a sociology of political argumentation has to be structured by the strong epistemic demands of deliberative democracy. Letting go of the strict demands of deliberative democracy does not mean that political argumentation suddenly becomes a strategic conflict or a process of bargaining. The opposition between deliberative rationality and instrumental rationality –

¹⁸ Different from accountability model these experimentalist models need not be restricted to retrospective judgments (without denying the future-oriented qualities of accountability processes altogether).

or between consensus and conflict, for that matter – is overdrawn.¹⁹ Indeed, for actors involved in accountability procedures it is clear that the process *ought to be* coordinated by the ‘force of the better argument’ and not by money, power or expertise, on the one hand, or the goal of consensus, on the other. This *normative social expectation* is realistic, precisely because the strong epistemic claims of argumentation have been dropped which enables us to understand *argumentation as a specific type of social action*. Furthermore, political argumentation can no longer be institutionally imprisoned. In the accountability example, the forum does not represent a rationalised public but a reasonable, informed and *deliberating* public. Indeed, to the extent that such accountability processes are transparent and information and knowledge is available, the ‘real’ public might form their own *political opinion* about the political decision. The public is not institutionally excluded from argumentation. Political argumentation might escape accountability institutions (e.g. parliament) and travel to what is known as the ‘public sphere’.

Although, freeing political argumentation from the strong epistemic demands of deliberative democracy is promising for our sociology of political argumentation, it does make the notion of political legitimacy more complicated. If legitimacy is no longer about truth, morality or, in sum, no longer about *non-domination*, how does politics as decision-making relate to politics as argumentation – or how does the political system relate to the public sphere – and how does legitimacy rise from it? It seems that we should take a look at a second model of political argumentation: the public sphere model.

7.2 The Public Sphere Model of Political Argumentation

The public sphere model of argumentation has got its most dominant and famous expression in Habermas’ early work *The Structural Transformation of the Public Sphere* (1989 [1962]). In this work the model is not purely normative as in classical liberal theory but rather an idealisation of the historical bourgeois public sphere in early modern Europe (Habermas 1992:422; 1989:84).²⁰ Although the model has been extensively criticised on normative, historical and analytical grounds (see e.g. Calhoun 1992; Fraser 1990; Hohendahl 1979, Cowans 1999), my goal is merely to assess the extent to which the public sphere model can be the analytical building block of a sociology of political argumentation.

¹⁹ This also means that voting as majoritarian decision-making cannot automatically be reduced to mere competitive interest aggregation, nor can consensual decision-making be seen as reaching a genuine value-consensus.

²⁰ Although the public sphere model of politics clearly reverberates with liberal normative theory, it is surprising how little public sphere and public opinion plays a role in traditional normative theoretical theories. It seems as if public opinion only received explicit attention when it started to lose its idealised nature as, for example, in the theories of de Tocqueville and J.S. Mill that decried the perversion of rational public opinion into the conformity and authority of mass opinion (see chapter 2).

The separation of politics as decision-making and political argumentation as opinion-formation is central to the political model of public sphere. In this model the public sphere concerns the 'formation of public opinion' in critical opposition to the political state (Habermas 1974:49). The historical role of the bourgeois public sphere changed, according to Habermas, the 'nature' of political power, from a power that 're-presented' itself *before* an acclaiming public to a power that *represented the public* (1989:7; 1974:50-1) – a change from feudalism to a bourgeois *Rechststaat*. With that change public and private spheres arose as important social categories. In the first place, this public/private divide signifies the boundary between the public power of the state and the private self-organisation of civil society (1989:11-2). This divide is institutionally grounded in a 'limited' non-active state but especially in the private autonomy of property holders (1989:83,222). Secondly, to the extent that the state regulates the private sphere of the economy, political regulation is in the *general interest* of private autonomous individuals (1989:19,24). These private individuals coming together as a *public* to critically and rationally discuss these public regulations, common interests, is what Habermas understands the public sphere to be. According to Habermas, the public sphere, as a consequence, can be analytically situated as existing in between the private and public spheres: *a public of private individuals in critical opposition to the public power of the state* (1974:52). The state has to justify its laws before a critical public forum – a relation that was institutionally guaranteed in parliamentarism (1989:60,81). On the other hand, the public sphere itself was *publically* institutionalised through constitutional guarantees – Habermas convincingly shows that the early declarations of human rights especially concerned the rights of an autonomous public sphere (1974:52-3; 1989:83)²¹ – and in specific *private* institutions such as reading clubs, coffeehouses, salons or journals. This private institutional basis of the public sphere is what particularly interested de Tocqueville and what gave rise to civil society as a political category.

Finally, political power, in this public sphere model, is claimed to be legitimate to the extent that the public power of the state is compelled "to legitimate itself before public opinion" (1989:25). The 'medium of this confrontation', according to Habermas, was the "people's public use of their reason" (1989:27). More specifically, legitimacy is "the rationalisation of political power through the medium of discussion among private people" (1974:55; 1989:210). As autonomous individuals argue in the public sphere as equals – i.e. only the force of the better argument counts – about issues that are in the public interest, it enforces, as before, a public reason ideally leading to public consensus of what is 'correct and right' (1989:82-3,178). Political domination that has to 'expose' itself before 'the public use of reason', Habermas argues, is 'rationalised' towards *non-domination* expressed in its 'generality of laws' (1989:28,82,178,195). Just as in deliberative democracy, then, political

²¹ This universal right-based organisation of the public sphere ultimately also meant that private property could no longer be the institutional basis of 'private autonomy' (Habermas 1992:434).

argumentation in the public sphere acquires an epistemic function expressed in ‘consensus’ and ‘general interest’ (1974:53-4). As Habermas sum it up: “Neutralisation of social power and rationalisation of political domination presuppose now as they did in the past a possible consensus, that is, the possibility of an objective agreement among competing interests in accord with universal and binding criteria” (1989:234).

If this is the basic model of the *bourgeois public sphere*, Habermas continues his work to show how this model is perverted; to show the pathological condition of the public sphere in modern society in which the *nature of political power* has undergone a further transformation – a form of ‘refeudalisation’ (1989:142). The *result* of this perversion, according to Habermas, is: a) the collapse of the public/private divide – which understood as the politicisation of the private and the privatisation of the public seems to restate Weber’s materialisation thesis of formal law (1975:70-2; 1989:142,151; 1986:221); b) the demise of private autonomy resulting from a dependency on the welfare state, i.e. private autonomy becomes a function of consumption not of political control (1989:156,249); and c) the legitimisation of politics through public relations – the ‘engineering of consent’ and public ‘acclamation’ – which we might understand in our own terms as politics as theatre (1989:179,194; 1975:37). This theatre model of politics is the prime reason why Habermas considers modern political power to be a form of ‘refeudalisation’ – it no longer represents the public as critical forum but presents its power before a public as audience (1974:54). The *cause* of this perversion has, according to Habermas, to do with: a) the commodification of the public sphere – especially the ‘media logic’ of capitalist mass media (1989:164),²² b) the rise of economic interest conflicts, antagonisms and contradictions within civil society necessitating an interventionist state (1989:142,146; 1974:54; 1975:33); and c) the rise of mass-democracy and the end of parliamentarism, which increased “plurality of competing interests”, policy complexities and foremost party politics (1989:145,177,202-5,234). Precisely, because of these developments the public sphere is ‘disorganised’, ‘colonised’ by strategic interests and no longer capable of disclosing rational opinion or political domination (1989:177; 1987:196). The public is no longer the critical and rational forum before which power has to legitimise itself, but rather the passive and privately *consuming* object of strategic and staged political and economic powers (1989:156). The public becomes an object of ‘public relations’ – the manipulation, ‘engineering’ and ‘exploitation’ of public opinion – and a ‘mediatised public’ or audience used for ‘plebiscitary acclamation’ (1989:176-

²² Habermas does not deny the private commercial origins of mass media, but claims that there is a difference between a commercial foundation and the commercialisation of media turning critical debate itself in a commodity (1974:53; 1989:164, 182ff.).

9,193).²³ In short, political domination still ‘lives off publicity’ but no longer ‘subjects itself’ to the scrutiny of a critical public (1989:209).

Habermas, to conclude, falls into the same pessimism as Weber and the Critical School. Indeed, his refeudalisation thesis comes fairly close to the critique of mass-society as captured by the ‘cultural industry’ in which culture is lowered to that of the consuming masses and no longer constitutes a means of a critical public but rather the instrument of ‘tutelage’, ‘illusion’ and ‘psychological facilitation’ (1989:166-175,216,246; 1992:438). But at least Habermas is able to make clear what humanity has *lost*: critical reason and a critical public sphere able to ‘rationalise power through the medium of public discussion’ (1974:55; 1984:398).

7.2.1 The Analytical Contours of a Public Sphere

If there no longer is a critical public sphere capable of rationalising and validating political power in modern society, we might wonder what this political model has to offer us in our attempt to understand political argumentation. However, we have already discussed why the strong epistemic ideal inherent in this model need not inform our sociology of political argumentation. Especially as the model describes the relation between state and public sphere in terms of accountability it inherently seems to hold room for plurality and complexity in public argumentation.²⁴ It can be fairly easily shown that Habermas’ pessimism is a consequence of the strong epistemic demands he ascribes to a rationalised public sphere. For Habermas, the “plurality of competing interests ... makes it doubtful whether there can ever emerge a general interest of the kind to which a public opinion could refer as a criterion” (1989:234). The main problem of Habermas’ theory of public sphere, then, is not so much whether his idealisation of the bourgeois public sphere withstands historical examination, as that the strong epistemic ideals of this model inherently imply a perverted public sphere in any complex society – there is no escape possible (Calhoun 1992:29-30; Habermas 1992:440).²⁵

That does not mean that without these strong epistemic ideals the public sphere model provides us with an unproblematic understanding of politics as argumentation. The public sphere

²³ Habermas seems to claim that public relations relates to critical argument as advertisement relates to price competition (1989:189).

²⁴ Habermas readily confuses political accountability with democratic will-formation as if they are one and the same. Although these two perspectives cannot be totally analytically separated, we might say that in an accountability model laws are sanctioned by public opinion, while in the democratic model laws are an expression of the public will. If Habermas claims that the state is the “executor of the political public sphere” (1974:49) this difference is blurred. In later works it is clear, in any case, that Habermas emphasises especially the democratic perspective by arguing that in a democracy the people must be able to see themselves as the author of legal norms (1996:33).

²⁵ Habermas is not the first to decry modernity’s complexity – Dewey already bemoaned the ‘lost or bewildered’ public in the ‘machine age’: “There is too much public, a public too diffused and scattered and too intricate in composition” (quoted in Asen 2003:175).

model liberates political argumentation from political decision-making, while political decision-making in turn is legitimated in public argumentation – the political state legitimated in the public sphere, political power in public opinion. However, this opposition between the state, decision-making and legitimate power, on the one hand, and argumentation, the public sphere and public opinion, on the other, is not easily grasped in analytical terms. Many questions remain unanswered despite the general attractiveness and currency of this model. If we want to assess the usefulness of a non-epistemic public sphere model of political legitimacy, we might want to know first what a public sphere is in an analytical sense. Unfortunately, it is notoriously difficult to define the analytical contours of a public sphere (Bader 2008:1).

In Habermas' account the public sphere is defined in terms of a value sphere structured by a public/private opposition, in terms of institutional structures and boundaries and in terms of a social system coordinated by argument. In what follows shortly discuss these approaches in order to be able to propose a general understanding of the public sphere after which we might be able to better analyse its relation to political legitimacy.

Public Sphere as a Value Sphere

The most obvious structuring value for understanding a public sphere as a value sphere is 'publicness' or 'publicity'. Although the concept of 'public' has many different connotations, Habermas, as we have seen, understands publicity in terms of a classical liberal opposition between public and private realms and issues. The public sphere concerns itself with public matters, with *public power*, and not with private matters – including private economic or familial powers. This boundary, however, is notoriously difficult to uphold – as can already be perceived in the fact that the public sphere is grounded in both private *and* public institutions²⁶ – and has suffered under the sustained criticism of feminist theory (Fraser 1990:70ff.; Calhoun 1993:274, 2002:167; Bader 2008:3; Habermas 1992:427). If anything, the boundary between public and private is an object of political struggle and power and, as such, an issue that might be addressed within the public sphere but not something that constitutes its analytical boundary in advance. Habermas' analysis that modern day pathology concerns the collapse of the private and the public – or the materialisation of law – is therefore not that obvious. The public/private divide, however, might still be relevant in terms of public and private *reasons*, i.e. in terms of the argumentative force of common and self-interests. Publicity means giving public reasons (Rawls 1997:767).

A quite different approach, however, is to analyse publicity not in opposition to privacy but in opposition to secrecy (Bader 2008:3). To act in the public sphere is to show oneself and one's

²⁶ Normative difficulties can already be clearly perceived in Mill's liberalism (see chapter 2).

ideas in public. Publicity, in this sense, means *to publicise* or *self-exposure* for which one needs courage; courage to step out into the public and to risk public judgment (Arendt 1998:186). Also in the realms of intimacy and privacy we need courage to thematise sensitive topics – taboos – among familiars and intimates; the courage to challenge settled beliefs and traditions for all to see. The opposition to publicity, then, is not privacy and not even intimacy, but shielding oneself from public judgment – to hide from “the scrutinising gaze of the public eye” (Esmark 2007:352). Publicity opposes anonymity and secrecy. It concerns being *transparent* to the scrutiny of the public eye or the judgment of public opinion. As such, publicity also connotes the notion of *a public* in terms of an audience (*Publikum*) that judges and acclaims. This means that, in contrast to Habermas’ claims, the public sphere is *both* argumentation and dramaturgy – that is, both an argumentation *between* active participants giving public reasons and argumentation *before* the gaze of a passive audience. Furthermore, where Habermas emphasises how public opinion is formed by public argument this understanding of publicity also emphasises how argument is formed by the disciplining force of public opinion. Indeed, public opinion as a disciplining force is, as de Tocqueville and J.S. Mill showed us, also part of the liberal tradition (see chapter 2).²⁷ Habermas fails to see that in the concept of publicity dramaturgy and argumentation are not so much opposed but simultaneously implied. It can be shown that instead of the public/private divide, there are two meanings of publicity that run parallel through Habermas’ theory. A publicity that emphasises argumentation, public will formation, and the public as the sovereign author of legitimate laws, on the one hand, and a publicity that emphasises dramaturgy, the disciplining force of the public gaze and the public as a forum of political accountability, on the other. As such, in the modern state public argumentation did not succumb to dramaturgy as some foreign element, it was already present from the beginning, as Habermas later seems to admit (1992:438-9).

Public Sphere as a Social System

Second, Habermas also seems to hint at a parallel between the public sphere and social systems. For example, Habermas argues that public argumentation or ‘public reason’ is the ‘medium’ of a rational public sphere (Habermas 1974:52; 1989:27).²⁸ However, I think it is doubtful whether this parallel makes sense and whether we should understand the public sphere as a genuine action system in

²⁷ Habermas seems to claim that this liberal conception of ‘mass opinion’ as an attribute of psychological group processes misses “all essential sociological and politological [*sic*] elements” (1989:240ff.). This seems to be a gross and unfounded denial of the sociological relevance of the public gaze or the social mechanisms of ‘preference laundering’ (Goodin 1995:143).

²⁸ In later work, Habermas explicitly denies that one can understand the public sphere as a ‘social order’, ‘institution’ or ‘framework of norms’ (1996:360). Less clear is whether this also includes the public sphere as a social system coordinated by a medium as in this later work he seems to emphasise Parsons’ ‘medium of influence’ (see e.g. 1996:363).

media theoretical terms (Bader 2008:3). First of all, public argumentation is not a symbolic medium that can be 'coded' in some way or another. Language or speech, as a possible alternative, cannot – even analytically – be exclusively appropriated for defining a public sphere. Not only is it questionable to limit public argumentation in the public sphere to language only, it is certain that speech also plays a role *outside* the public sphere – it is a 'meta-language' (Parsons 1963a:39; Luhmann 1975:6). Only if we understand system theory in cybernetic functional terms can we say that the public sphere is that social system that 'forms' public opinion through political argumentation (Habermas 1974:1). But that really does not help us at all as the answer is merely repeating the question.

It is fairly difficult, in any case, to understand how argumentation as a medium can coordinate social action as argumentation *is* a social action. Instead, we might try to grasp a public sphere in terms of a specific *type* of social action, i.e. as a sphere of public argumentation. From our discussion of publicity, argumentation might be understood as a specific type of social action, coordinated by the *normative* expectation that it ought to be structured by the *force of the better argument*.²⁹ Again, this norm cannot be symbolically coded in media theoretical terms. Yet, it might nevertheless be argued that from an actor's perspective this norm distinguishes argumentation from other types of social actions – what distinguishes the 'forum' from the 'market' (Elster 1997; Habermas 1974:53). The norm implies a form of social action among actors *as if* they are equals – a 'suspension of power and prestige' (Habermas 1989:36).

This 'bracketing of inequality' has attracted a lot of normative critique (Fraser 1990:63ff.; Dahlberg 2005:115). However, the implied formal equality in argumentation or the public sphere foremost means that other symbolic media as power and money *ought not to* play a role in public argumentation, but only the force of the better argument. The same holds for the exclusion of tradition, status and reputation as sources of authority. The public sphere can normatively be seen as an 'emancipatory' or 'anarchic' sphere in which every authority can *in principle* be questioned and criticised.³⁰ Obviously, this does not mean that the public sphere is 'power free' – especially when one perceives power not in terms of domination but in terms of a productive or constitutive power (Foucault 1982:781). There is a clear difference between the argumentative norm that only the force of the better argument ought to play a role and the argumentative (cultural) practice which determines which arguments actually have a *persuasive force*. Nevertheless, it is analytically relevant

²⁹ There is a subtle difference, Cohen seems to ignore, between claiming that actors "share a commitment to the resolution of problems of collective choice through public reasoning" and actors committed to "coordinating their activities ... according to norms that they arrive at through their deliberation" (1997:72).

³⁰ Which does not mean, of course, that this is the *goal* of social action. In functional terms we might agree with Bader, who states that public communications *aim* at "problems of coordination and collective decisions" (Bader 2008:4).

that the public sphere might be perceived by actors themselves as a type of social action which *ought to be* structured by the force of argumentation and not by mere *domination*. The public sphere, it seems, must be understood as a sphere of non-domination – a sphere where actors expect that the force of the better argument holds. From an actor perspective it is perverse not to distinguish between domination and ‘discursive’, cultural or productive power.

Public Sphere as an Institutional Boundary

From these two approaches we might understand the public sphere as: 1) a domination-free social sphere – if not power free – coordinated by normative expectations of the better argument; 2) in which argument is public, i.e. transparent before the gaze of an active or passive public.³¹ What we need to understand, finally, is the *institutional* basis of this public. In his institutional approach Habermas understands the public sphere in critical opposition to the state, on the one hand, and the ‘conjugal family’, on the other (1989:30). Furthermore, he perceives the bourgeois public sphere as institutionally organised in ‘clubs’, ‘coffee houses’ and journals, on the one hand, and in parliament, on the other (1989:32). However, Habermas’ historical institutional analysis sustained fairly extensive critique because it ignores competing plebeian or feminist ‘counter-publics’, i.e. public spheres other than the dominant bourgeois sphere (Calhoun 1992:36-7; Fraser 1990:61). One reason for this neglect, as Habermas admits, is that these public were politically *irrelevant* as they were not able to present themselves – or being conscious of themselves – as the historical ‘carriers’ of public opinion (Habermas 1989:23, 88).³² The relevant public, indeed, is ‘addressed’ and ‘evoked’ by state authorities (1989:22-3). In other words, Habermas’ institutional approach is rather state-centred; a top-down approach that threatens to reduce the public sphere to a normative category and to over-emphasise the harmony and unity of the public sphere. A state centred-view implies a single *public* in terms of its own institutional foundations, i.e. in terms of legal-political membership (citizenship), geographical boundaries and the constitutional boundaries that guarantee a public sphere. The implied normative model is that the state as the carrier of public power derives its legitimacy from *the public* as a collective subject. Not only does this top-down approach threaten to confound the public with nation and public opinion with nationalism, it normatively implies a *unified singular public* that is ‘conscious of itself as a public’ and therefore capable of legitimation (Habermas 1989: 37; Calhoun 1993:276, 1992:37; Esmark 2007:330ff.; Bader 2008:1). Such restricted understanding of

³¹ We do not have to understand publicity in terms of public reason as that is already captured by the expectation of the better argument, although it leaves open which kinds of argument are compelling.

³² For Mah, the essential question concerning the public sphere is precisely which public is able (and how?) to present itself as a universal public (2000:168).

a public sphere is not only normatively dubious, it is empirically questionable in an age of globalisation and social plurality.

In contrast, a more a bottom-up approach provides more room for plurality and multiplicity. Many have emphasised the importance of 'civil society' as the institutional basis of a politically relevant public sphere (Habermas:1989:30; Calhoun 1993:269; Castells 2008:78; Cox 1999:10). Without an active civil society, they claim, there will not be a vibrant public sphere. Civil society can be understood as the *self-organisation* of society in voluntary associations (Habermas 1992:453). In most contemporary readings such civil society is not just analytically opposed to state organisation but also to market organisation (Cox 1999:10). For many scholars, following de Tocqueville, this self-organisation in reading clubs, choirs or community organisations is a 'training ground for democratic values' (Habermas 1989:29, 1992:424; Putnam 1993, 1995). As a consequence, an active civil society, somewhat schizophrenic, is supposed to make democratic government more *efficient*, on the one hand, and to make citizens more political active and holding governmental or corporate powers accountable, on the other. This celebration of civil society as an autonomous and self-organising sphere outside the political and economic – if not an idealised history lost – has met fairly extensive critique. Especially the relation between a non-political or autonomous civil society and political power is often nothing more than a normative restatement of the public/private divide.

What we may take over from the civil society literature, however, is, first, that individual citizens might be *organised* in a plurality of different *publics* with their own collective goals, identities and memberships as 'the public' is no longer a normative concept of state organisation. But this does not mean that these publics are necessarily autonomous or separated from state (or economic) institutions. The public sphere – public argument – we might say, transcends the institutional boundaries of state and civil society. Deliberation in parliament is not isolated but "part of the public deliberation of the public in general" and, vice versa, parliament is a public sphere within the state (Habermas 1989:100; Fraser 1990:75). We might follow Fraser not to separate between state and civil society, but merely to distinguish between strong publics – publics with legitimate decision-making power such as parliament or a corporate board – and weak publics – publics that are solely about opinion formation (1990:74; Eriksen & Fossum 2002:402). Although this begs the question of how these publics are communicatively related, it does make clear that the public sphere cannot be limited to a self-organising autonomous civil society as it transcends the institutional boundaries of state and society.

These 'permeable boundaries' between state and public are also present in the second lesson we can take over from the civil society literature, i.e. the state as *shaping* public discourse (Stob 2005:227; Habermas 1996:374). Civil society scholars are fairly conscious of the dialectic

inherent in the concept of civil society which was so forcefully argued by Gramsci. Gramsci claims that civil society is both an institutional basis for the reproduction of the hegemony of the state and its dominant classes, as well as an institutional basis for possible counter-hegemonic consciousness and political action (Cox 1999:4; Fraser 1990:62). This means that the public sphere is partly also a battle ground in which the idea of a single public with a consensual common interest is elusive. But, and this important, this does not mean that the idea of a common interest or a single public opinion is not empirically important for shaping politics. The public sphere is hegemonic *and* counter-hegemonic, harmonious *and* conflictive. However, an harmonious public with a consensual public opinion is not so much a 'reality' as a 'fiction' – an ideology.

A bottom-up civil society perspective, in sum, means that there is no single public sphere but a multiplicity of public spheres (Erisken & Fossum 2002:405; Esmark 2007:333; Fraser 1990:61; Stob 2005:227). Furthermore, breaking open the public sphere as a normative category of state power means that the multiplicity of public spheres can be perceived as a 'battle ground' – a struggle for hegemony – and not necessarily as an harmonious sphere. The down-side of this bottom-up institutional approach is its institutional fragmentation, which threatens to make the public sphere an elusive concept for political analysis, if not mere ideology.

A final institutional approach is to equal the public sphere with 'the media' in which public argumentation takes place – e.g. newspapers, television or internet (Habermas 1974:49). If the public sphere is fragmented in many different civil publics of all sorts, these publics can be seen as 'actors' in a public sphere unified by mass media. As Habermas points out, the institutional foundations of mass media are particularly political relevant – not only to the extent that its 'logic' partly determines the quality of public argumentation, but also because it determines *accessibility* to the public sphere. The mass media can be seen as the 'arena' in which different actors strife for public *attention* in order to form public opinion, to influence politics and to mobilise support (Habermas 1992:437). To perceive the public sphere as a media-based arena of political conflict has the benefit of emphasising the material, strategic, power-structured organisation of public argumentation. Civil society organisations as well as political and corporate organisations have to strife for public attention which depends upon the available *resources* and *strategies* (Bader 2008:12, 1991; Bader & Benschop 1988; Castells 2008:85). For Habermas, such a strategic, power-ridden and conflictive perspective foremost means the transformation of a public sphere of rational argumentation into a public sphere of 'public relations' and strategic action. Indeed, this media-based approach seems unable to distinguish between politics as argumentation and politics as theatre and game (see chapter 4). Politics as argumentation threatens to be reduced to support mobilisation and acclamation. Furthermore, a media-based institutional approach rather arbitrarily

differentiates between active participants and a passive audience. Although there is no need to restrict public argumentation to face-to-face interaction, it seems also unnecessary to exclude 'private' day-to-day public argumentation or argumentation in voluntary organisations, corporate boards, policy networks or, indeed, in political parliaments and committees. Nevertheless, such a media-based neo-pluralistic approach does show how a domination-free public sphere is structured by all kinds of power resources and inequalities.

In sum, the institutional approach to the public sphere threatens to reify it as a normative category of state, to fragmentise it into multiple and conflictive publics or to restrict the meaning of political argumentation. Instead, we might perceive the institutional foundation of the public sphere in terms of *networks of public argumentation that are 'institutionally anchored'* (Bader 2008:3; Esmark 2007:230; Castells 2008:79; Eriksen & Fossum 2002:405; Calhoun 2002:162).³³ This means that we perceive public spheres as (mediated) networks of individual and collective actors engaged in public argumentation, on the one hand, and that these networks – or publics – are analytically integrated in terms of a specific institutional orientation. This means that we might perceive networks of public argumentation 'anchored' in decision-making institutions, policy domains, specific issue-fields, legal, social or professional identities, formal memberships or in specific (mass) media (Bader 2008:8ff.). Such a network approach, then, enables us to analytically perceive 'the public sphere' as multiple and multi-layered public spheres depending upon the functional institutional focus point of analysis.³⁴

A network approach of the public sphere has some considerable advantage. First, it enables – in principle – an empirical inquiry into the structure of a public sphere, which allows us to make use of all the typical descriptives of network theory – e.g. network density, integration, scope and dynamics as well as potential broker-positions. Second, its institutional emphasis allows us not to lose sight of public spheres as power-structured in terms of resources, strategies and accessibility, and as possible arenas of conflict and struggle. It is less helpful, however, for separating between political and non-political public spheres – between 'literary' publics and political publics or, in general, between politics and culture. Political publics, for Habermas, take 'official interventions' of the state as the 'target' of their critique (1989:24, 1974:49). As such, we might understand the political public sphere to concern all public spheres institutionally anchored anywhere in the so-called 'policy cycle' ranging from agenda-setting, to problem formulation, to solution-finding, to

³³ In later works Habermas seems to acknowledge such network understanding of public sphere (Habermas 1996:360).

³⁴ Hohendahl shows that this also seems to be the standpoint of Luhmann as he claims that "[t]he public sphere can no longer be recognized by its generality, rationality and capability of consensus, 'but by the form of the themes for political communication, by its suitability as a structure for the communication process' ... Translated into everyday language, this means that public opinion grows around and follows 'issues.' (1979:100).

decision-making, to policy implementation, to political accountability (Bader 2008:4). But such approach not only 'hides' many political publics from view that are oriented to 'private strong publics' (Bader 2008:2), it also begs the more fundamental question whether culture and politics can be separated at all. In Habermas' account the cultural origins of the political public sphere are extremely important (1989:29, 39, 51). Indeed, a critical public sphere not only needs institutional support but also the 'supportive spirit of cultural traditions' (Habermas 1992:452). In any case, it comes into conflict with the general tradition of Critical Theory that explicitly did away with any sharp divides between politics and culture. Like Luhmann we might agree that the public sphere encompasses both political and non-political publics which cannot be sharply separated (Hohendahl 1979:89).

In conclusion, I think this understanding of public spheres as institutionally anchored networks of publics and public argumentation – i.e. of non-secretive argumentation governed by social expectations of the norm of the better argument – gives us enough leverage to understand the analytical contours of 'the public sphere'. The downside of this network solution is that the sheer complexity, multiplicity and fragmentation of public spheres makes the original public sphere model of political legitimacy rather problematic. As already discussed, for Habermas the public sphere model runs up against its *epistemic* limits as it cannot deal with 'pluralism of irreconcilable interests' (1992:440). But even if we let go of these epistemic problems the model still runs up to inherent limits. In my view, the model is based upon a host of conceptual differentiations or oppositions that empirically and analytically cannot be sustained. Indeed, Habermas later stated that public opinion is a 'fictitious construct' – a 'counter factual harmonious entity' – over and against the 'empirical' reality of public opinion characterised by plurality and fragmentation, but nevertheless argued that we need both conceptions to understand political legitimacy (1992:439-40). However, as discussed, besides fiction/reality other oppositions are problematic as well: public/private, argumentation/dramaturgy, non-domination/power, harmony/conflict, state/society and politics/culture. The problem is that the boundaries between these oppositions are all permeable. Complex reality threatens to make the public sphere model itself a fiction, an ideology. The point is not so much that one side of these oppositions is true and the other wrong. Rather, we need to go beyond these oppositions, to find a different analytical basis for understanding legitimacy and politics as argumentation. Instead of trying to understand what the public sphere *is* in terms of its boundaries, it might be more helpful to understand what the public sphere *does* in terms of dynamics (Stob 2005:234).

7.3 The Lifeworld Model of Political Argumentation

To overcome the analytical problems of the public sphere model and to escape seemingly inevitable pessimistic conclusions, Habermas has tried to move beyond an idealised historical analysis of the transformation of the public sphere (Habermas 1992:444; Calhoun 1992:30; Dahlberg 2005:112). In later works Habermas denies that modern society can be “adequately grasped by holistic concepts of society” (1992:436; 1996:80). Analysis, as a consequence, has to move to a ‘deeper level’ that includes “everyday communicative practices” (1992:442; 1984:337).

In his new model Habermas replaces the public/private opposition with the opposition *system and lifeworld* (Habermas 1975, 1984, 1987, 1996). System, in Habermas’ sociology, especially concerns political and economic action systems integrated and coordinated through the medium of power and money. In system theoretical terms, Habermas’ provides an evolutionary model in which action systems are progressively rationalised and functionally differentiated from ‘lifeworld’ (1987:154). This development is foremost explained by the functional necessities of the ‘material reproduction’ of a society (1987:148, 168).

Lifeworld, on the other hand, concerns a form of ‘social integration’ through “values, norms and consensus formation” (1987:372; 1996:39). Lifeworld integration is, on the one hand, based upon *presupposed* ‘culturally ingrained’ background consensus which normally remains unthematized and, on the other, upon *achieved* consensus based upon explicit thematisation, argumentation and understanding (1984:100,287). Lifeworld consensus, according to Habermas, explains how social action in everyday life is possible as we normally have to take many social expectations for granted. These unthematized background values and knowledge can only be thematized when actors in everyday practices make validity claims about how to interpret the specific context. Only then, Habermas argues, can we potentially become aware of lifeworld ‘at our back’ and only then can we accept, problematize or refuse those validity claims (1984:308; 1987:132). In case of refusal, actors must try to find an interpretation they can all agree on – they must come to an ‘understanding’ or a ‘common definition’ (1984:94,119; 1987:121-2; 1996:18). In short, communication in the form of argumentation is needed to come to an agreement of how to interpret a specific situation, while unproblematized facts and values remain unthematized in the background in the meantime (1984:100). Habermas, then, understands lifeworld practices and argumentation as a type of *social coordination* performed in specific social situations, practices or contexts (1984:94,101,124,288). Lifeworld understood as both presupposed and achieved consensus allows social coordination. Finally, precisely because lifeworld can be thematized and achieved through argumentation, ‘everyday communicative practices’ not only *reproduce* but also *produce* ‘intersubjectively shared’ background knowledge of social norms and values (1984:13,337; 1987:56;

1996:22). Lifeworld, for Habermas, can therefore also be understood in terms of the functional necessities of the 'symbolic reproduction' of a society (1987:137).

Habermas, in short, proposes a 'two-level concept of society' emphasising material and symbolic reproductive and integrative functions (1987:305). In this system/lifeworld scheme the political system is legitimate, according to Habermas, to the extent that its validity claims – present in the medium of power itself as well as in the substance of binding decisions and non-decisions – are validated in the lifeworld, in the values of the background consensus. It is surely *pathological* when the system 'colonises' the lifeworld, i.e. when administration or market intrudes in lifeworld practices with *dysfunctional* or destructive consequences (1987:196,285,372).³⁵ A situation where the system instrumentalises, reifies, technicises or exploits lifeworld for the mere "purposes of system maintenance" (1987:187,283,309,345,386). A legitimate situation, rather, exists when the system is *functional* for the reproductive needs of lifeworld, when the system is instrumental for lifeworld integrity (1987:345). Legitimacy, for Habermas, is the value-integration of socially differentiated systems back into the lifeworld (1987:307).

However, Habermas is less clear about how system and lifeworld are related, how they interact or communicate. Indeed, in his eagerness to show the pathology of a colonising system he emphasises how system is 'detached', 'uncoupled' and 'unleashed' from lifeworld (1987:154-5, 305, 318; Baxter 1987:66). Nevertheless, we might perceive two possible connections between system and lifeworld crucial for political legitimacy – a *direct* connection perceived in cybernetic and pluralist terms, on the one hand, and an *indirect* connection through lifeworld rationalisation, on the other. I will shortly discuss these different models and argue that the latter model of *legitimacy by detour* is most promising for the understanding of politics as argumentation.

Firstly, where lifeworld is about social coordination in specific everyday contexts, Habermas argues that communicative coordination and argumentation can escape spatial, temporal and social restrictions, especially through 'technologies of communication' such as the 'mass media' (1987:123,184,281). These technologies allow the rise of *public spheres* in which background knowledge can be explicitly thematised and discussed detached from specific lifeworld practices and coordinative demands (1987:390). In his earlier work, Habermas subsequently describes the *direct* connection between the political system and this public sphere in cybernetic terms. Habermas perceives a relation between the public sphere and the political system in terms of 'generalised

³⁵ However, this contrast between 'ideal' and empirical 'reality' is not just something that comes at the end of Habermas' analysis. It is already present at the very *beginning* when the social norm is purified of the empirical – the idea that a 'linguistic abstraction' over and above social and institutional contexts is possible – and *during* his sociological analysis in which analytical claims are often confused with empirical ones (Bader 1994:113).

communication' freed but not disconnected from specific lifeworld contexts (1987:276,281). Although Habermas criticises Parsons for perceiving 'influence' and 'value commitment' as symbolic media effective in differentiated systems, he nevertheless perceives a kind of cybernetic *exchange* between the political system and the public sphere in terms of 'mass loyalty and influence' (1987:185,273,322; 1996:363).³⁶ Not only is this Parsonian cybernetic system theory less than convincing in itself (see chapter 5), Habermas' cybernetic solution is even less convincing precisely *because* he denies that influence and value commitments are symbolic media themselves.

Secondly and more interesting, then, is another *direct* relation he describes in his later work.³⁷ In this work he emphasises law as the principle institution able to 'transform' or 'translate' lifeworld values into facts that are relevant for political power and money (1996:56,81). As law, according to Habermas, is both present in lifeworld and system, it is the primary institution that connects both (1987:365-6). Only through law can lifeworld produce facts that the system can understand (1996:56). Law, Habermas claims, is a lifeworld institution that in the course of social evolution differentiated into institutionalised positive law – making political and economic systems possible, in the first place – and into deinstitutionalised morality (1987:174,180; 1996:40).³⁸ The specific status of law, however, is quite difficult to understand in Habermas' lifeworld/system scheme. Indeed, as he often treats positive law as a steering media, it remains unclear why law is a lifeworld institution to begin with, and not a social system in itself in addition to politics and economics (1987:365). Nevertheless, if law is the crucial 'translator' that can integrate system and system, this implies that especially processes of *democratic law-making* are crucial for guaranteeing legitimacy (1996:356).

Instead of perceiving the political system as detached and uncoupled from lifeworld, Habermas now proposes a 'two stage model' in which the first stage concerns how *communicative power* arising in conflictive public spheres forces the political system to react to issues and to justify decisions and the second stage concerns deliberation among political decision-makers structured by *communicative rationality* (1996:357; Baxter 2002:578; Flynn 2004:434; Dahlberg 2005:127; Dryzek 2001:656). Subsequently, this means that the function of the public sphere is not so much about

³⁶ The criticism is built upon the idea that influence and value-commitment – in contrast to money and power – do not have an "underlying *empirically* motivating power" grounded in 'real value and reserve backings' (1987:276). From our Luhmannian understanding of symbolic media, this critique makes little sense.

³⁷ This is not to say that this line of thought was not already present in earlier works. Indeed, in *Legitimation Crisis* Habermas wrote that democracy has "the goal of rationalising authority through the participation of citizens in discursive processes of will formation" (1975:123). However, in *Theory of Communicative Action* his 'therapy' was foremost to 'protect' the lifeworld from the system. This not just shows that Habermas thinks that communicative action is not an ideal norm but is already actually empirically *realised*, but it also threatens to reduce democratic practices to "nibbling at the edge" (*gerommel in de marge*) (Bader 1983:351, 1994:113).

³⁸ Law and morality, Habermas argues, are not so much related 'hierarchically' as through 'internal coherence' (Bader 1984:116). Habermas, however, is rather cryptonormativistic at this point as such differentiation of law "[i]s neither empirically nor theoretically founded" (Bader 1983:341, 1994:131).

producing a common interest – a consensual public opinion – as about enforcing lifeworld, its ‘communicative power’, upon system. The public sphere is where lifeworld and system imperatives clash (1987:346). The function of the public sphere is to *thematise*, to *politicise* and to *force* politics to justify its decisions in terms of argumentation. The core function of the public sphere is less about its *epistemic* function and more about sheer political *influence*; less about consensus and harmony and more about politicisation and conflict (1987:396; 1996:357). This change allows Habermas to cope with the problem of complexity and plurality – albeit in a very abstract way – as it allows him to understand the public sphere as a ‘spontaneous’, ‘non-organised’ ‘networks of communication’ in which “streams of communication are ... filtered and synthesised in such a way that they coalesce into bundles of topically specified public opinions” (1992:425,451; 1996:360).³⁹

When the public sphere in relation to the political system is one of politicisation and influence – to enforce the ‘communicative power’ of the lifeworld upon the system through the process of democratic law-making – it does not mean that Habermas has given up on the epistemic function of communicative rationality. Rather, this function is reserved for the political decision-making publics – e.g. for parliament. The “institutionalised *procedures* of democratic opinion and will formation” become the rational *filter* of public power (1996:371). The model, then, is based upon the differentiation between strong and weak publics, where formal decision-making is the focus of communicative rationality, while the communicative power is a reformulation of ‘popular sovereignty’ (Flynn 2004:434).

However, the model is fairly problematic, aside from the fact that we seemed to have returned to a deliberative democratic model of politics. First, if Habermas emphasises how political parties and new social movements struggle in the public sphere to mobilise support and influence, indeed, if he argues that legitimacy can be measured in terms of “the influence that public opinion has on the political system”, we seem to have returned to some neo-pluralist analysis of politics (1996:362; see chapter 4).⁴⁰ This might make us wonder why we need the lifeworld concept at all (Baxter 2002:585). Second, and related, as Habermas emphasises the ‘interplay’ of an informal public sphere based in ‘civil society’ and a formally institutionalised public sphere in ‘parliamentary bodies’ we might wonder whether the analytical divide between system and lifeworld makes any sense at all (1996:371; Baxter 2002:598). Indeed, where the boundaries between system and lifeworld were strict and fundamental in his earlier work, they seem to have become blurred as the

³⁹ “What makes such ‘bundled’ opinion into *public opinion* is both the controversial way it comes about and the amount of approval that ‘carries’ it” (1996:362).

⁴⁰ Habermas, of course, is interested in the rationalisation of democratic law-making processes: “not influence per se, but influence transformed into communicative power legitimates political decisions” (1996:371). However, this ‘transformation’ process is transposed to the “procedures” of democratic will- and decision-formation above the heads of the actors in the public sphere who are struggling and competing for attention and influence. Indeed, these actors “can only exert influence” which is based upon persuasion (Flynn 2004:447).

boundaries between weak and strong publics are 'porous' and 'permeable' (1996:374). In any case, whether we have returned to deliberative democracy, to neo-pluralism or to the public sphere model, there seems absolutely no need to complicate our analysis with a 'lifeworld' concept. Indeed, Baxter proposes to discard the concept all together (1987:78).

The public sphere from the *indirect* perspective, however, is not so much oriented to the political system as to lifeworld. The public sphere is foremost the driving force of the *communicative rationalisation* of the background facts and values of lifeworld itself. Habermas is well aware that lifeworld knowledge might contain anti-democratic or bigoted values, might keep interest conflicts below the level of consciousness and might naturalise or 'conceal' relations of domination (1984:332, 1987:87,145). It is only when these background values are thematised that they can be discussed, produced and reproduced through public argumentation. The important addition of this lifeworld model is that political argumentation is no longer *directly* related to political legitimacy but only through a *detour* via the lifeworld. The benefit of this lifeworld detour is that it is no longer necessary – not even on the strong epistemic claims still present in Habermas work – to expect some agreement or consensual public opinion arising from political argumentation in the public sphere. The function of political argumentation is not to come to some rational agreement or decision, but rather to *rationalise* or, at least, *change* the background assumptions of lifeworld.

Indeed, we might fairly easily see that a heated argument that does not lead to consensus, might nevertheless in the process have changed the background expectations, facts and values of both parties – indeed, may have changed *social reality*. For example, we can say that women's equality 'thematized' in the public sphere by feminist movements has not led to a consensual conclusion. Indeed, there is no reason to expect it ever will – not least because 'the movement' itself is rather fragmented (Randall 2010). Yet, it would be ridiculous to say that this long public strife has not led to different background expectations about gender (in)equality – there is a difference between the 19th century and the 21st which is not simply a material difference. When politics is subsequently forced to justify its decisions it has to relate to this *rationalised* – or more moderately, to this more reasonable – lifeworld reality.

The benefit of a lifeworld detour-model, then, is that we might be able to understand the relation between political legitimacy and political argumentation without denying the plurality and multiplicity of public spheres and 'public opinion', on the one hand, and without reducing this relation to deliberative rational decision-making. It is this detour model I will analyse further.

7.3.1 Lifeworld – A problematic concept

Unfortunately, this lifeworld model as described by Habermas also has some serious drawbacks as well. The first complex of problems has to do with Habermas' epistemic ideal of argumentation still present in his understanding of both legitimacy and rationality. The second complex of problems has more to do with Habermas' sociological or analytical understanding of lifeworld. Let us consider these difficulties for a moment, beginning with lifeworld as a sociological concept.

The concept of lifeworld is notoriously difficult to understand. Habermas' analysis of the lifeworld threatens to strand in a Parsonian-like complexity and symmetric formality. In the end, it seems to me, we can understand the concept of lifeworld in Habermas' work in three ways: as social coordination, as societal integration and in opposition to system.

Lifeworld as *social coordination* or, as Habermas calls it, the 'ethnomethodological' perspective, concerns the basic idea already explained in which social action necessitates that actors need to come to some interpretative agreement concerning the specific social context – actors need some shared understanding of the situation to pursue their individual goals (1984:129). In daily life, such mutual understanding is most of the time unproblematically communicated. Large parts of social situations in everyday life do not need explicit linguistic thematisation and argument but also concern other forms of symbolic communication. Lifeworld, in this perspective, consists of the totality of "a culturally transmitted and linguistically organised stock of interpretative patterns" that actors *share* in order to come to a mutual understanding of the situation – to make themselves and others comprehensible (1984:13, 392; 1987:124). Social action in lifeworld is *communicative action* and a shared lifeworld makes such communication possible.

Habermas makes a lot of fuss about the concept of 'communicative action' – claiming a 'paradigm shift' in sociology from *subjective* action theory to *intersubjective* communicative theory paralleling the philosophical shift away from the 'monological philosophy of consciousness' (1984:280,336, 386, 390; 1987:115). But in light of our analysis of Luhmann our understanding of action theory is hardly shifting at all.⁴¹ More importantly, even if lifeworld is implied in social coordination there is no inherent necessity to understand it as some form of intersubjective *consensus*. Agreement about how to *interpret the situation* necessary to pursue individual goals does not mean that the actors involved have reached or have to reach a genuine value consensus. However, this is what Habermas seems to be implying. According to Habermas, every 'expression' or

⁴¹ Habermas, in contrast to Luhmann, does emphasise agreement. "[T]he concept of *communicative action* refers to the interaction of at least two subjects capable of speech and action who establish interpersonal relations ... The actors seek to reach an understanding about the action situation and their plans of action in order to coordinate their actions by way of agreement" (1984:86). Nevertheless, agreement is a function of – and, as such, subordinated to – social coordination: "Reaching an understanding functions as a mechanism for coordinating actions" (1984:99).

speech-act implies three validity claims relating to the objective world (truth), the social world (normative rightness) and the subject world (sincerity) (1984:75-6,99-100,307; 1987:126; 1996:5). Subsequently, agreement about how to interpret the situation *implies* an affirmation of these validity claims and consensus about ‘truth’ and ‘rightness’ (1984:95,99,106).⁴² “Agreement rests upon common convictions” – it concerns a ‘normative accord’, ‘shared knowledge’ and ‘mutual trust’ (1984:287,308). However, we should refuse this reading. Luhmann, as we have seen, points out that social coordination and communication is about expectations and expectations of expectations (see chapter 5). As a consequence, social action can function quite effectively in a world where we act *as if* we agree about truth and normative validity and where we can distinguish between confidence and trust. Habermas might be quite right that we can question validity claims implied in *communicative action*, it does not automatically imply that *social coordination* implies consensual validity.⁴³

Second, if lifeworld as social coordination can be fairly comfortably incorporated into the action framework of this thesis, Habermas himself explicitly argues that this ethnographic conception of lifeworld does not suffice. As Baxter rightly notices, Habermas provides no good reasons why we have to leave this action theoretical approach (2002:529). Habermas ultimately wants to leave the ‘performative attitude’ of actors and specific practices in order to be able address the epistemic issue of differentiating between genuine undistorted consensus and ‘pseudo-consensus’ (1987:150). The ethnographic approach does not suffice for the unconvincing reason that it does not allow a theory of lifeworld ‘as a whole’ (1987:136-7). Instead Habermas wants to develop lifeworld as *societal integration*. The change in perspective is dramatic. Where social coordination concerns the question of how lifeworld enable actors to coordinate expectations and communicate interpretations of a specific context, societal integration concerns how lifeworld *integrates groups, communities or societies* (1987:137). The principle ‘object of investigation’ changes from lifeworld as social action to lifeworld as ‘society’ (Baxter 2002:594).⁴⁴

Discussing Durkheim, Habermas understands lifeworld in ‘tribal communities’ as a totalising ‘normative consensus’ embodied in the ‘sacred’ and enacted through ‘rituals and signs’, which attains its *moral force* because it *is* the collective (1987:45ff.). Lifeworld, then, is Durkheim’s *conscience collective*. However, neither Durkheim nor Habermas claims that modern ‘functionally differentiated’ society can be understood in these terms. According to Durkheim modern society is

⁴² Sincerity cannot be ‘validated’ in yes or no positions but only in subsequent action itself. Agreement with ‘sincerity’ claims might be translated as *trust* (1984:308). A fourth validity claim inherent in speech of communication in general is ‘comprehensibility’ (1984:42).

⁴³ In this regard, Habermas would have to accept the idea that war is consensual if both parties interpret the situation as armed conflict. I doubt that this is how we should understand a valid consensus.

⁴⁴ Baxter makes a convincing case that this shift is necessary for Habermas if he wants to hold on to the idea that system and lifeworld are uncoupled (1987:73).

no longer *integrated* through such ‘mechanical’ solidarity but through a more complicated and cooperatively secured ‘organic’ solidarity. According to Habermas we must understand this shift in types of solidarity (and types of society) in terms of the *rationalisation* of lifeworld (1987:91).⁴⁵ Where in primitive communities the lifeworld was a total and, above all, sacred normative consensus embodied, produced and reproduced in totemistic rituals, the ‘linguistification’ of this symbolic reproduction of society allowed its evolutionary and progressive rationalisation, i.e. the sacred is progressively exposed to rational thematisation of the three validity claims inherent in communication (truth, rightfulness and sincerity) (1987:77,81-2). This ‘unfettering’ of validity claims from a totalising normative-consensus means that the weight of social integration must more and more be carried by communicative action, by ‘achieved and not merely reproduced consensus’ (1987:77,89). “The more communicative action takes over ... the burdens of social integration, the more the ideal of an unlimited and undistorted communication community gains empirical influence” (1987:96). The rationalisation of lifeworld, then, concerns the “release of the rational potential of communicative action” (1987:77).

This rationalisation leads, according to Habermas, also to a *functional differentiation* of lifeworld (1987:134, 137). Lifeworld as societal integration means that lifeworld is understood as a *function* of the symbolic reproduction of society. This reproduction must be especially accomplished in three ‘lifeworld domains’ or ‘structural components’ that are inherently related to the three validity claims and the three worlds present in communication: culture, society and person (1987:107,115; 1984:5).⁴⁶ Culture concerns *knowledge*, society concerns *normative institutions* and person concerns the *socialisation* of individuals (1987:63).⁴⁷ Lifeworld, then, is “reproduced by way of the continuation of valid knowledge, stabilisation of group solidarity and socialisation of responsible actors” (1987:137). Finally, to make things even more complicated, these lifeworld domains, functional for the symbolic reproduction of society, can be *institutionalised* in different *value spheres*, especially in science (knowledge), law and morality (society) and art (culture) (1987:91,107).⁴⁸

The point here is not to analyse these claims in much detail, but rather to spell out that with the shift of lifeworld as social coordination towards lifeworld as social integration Habermas

⁴⁵ As such, Habermas wants to differentiate between a theory of communicative action and ‘normative theories of action’ – like that of Durkheim and Parsons – in which action actors solely “orient their action to common values” and where “collective identity” and “normative consensus” are inseparable (1984:85; 1987:53).

⁴⁶ These three domains, according to Habermas, also point to the three functions of communication: understanding, coordination and socialisation (1987:63, 137).

⁴⁷ Such socialisation is, in Durkheimian fashion, particularly about *individualisation* and about the development of individual *moral consciousness* (1987:84,174).

⁴⁸ To complicate things further science, law and art appear as ‘professionalised’ domains of culture organised by ‘cognitive-instrumental, moral-practical and aesthetic-expressive rationality’ (Habermas 1981:8).

analyses lifeworld in *functional* and *institutional* terms. Despite Habermas' explicit 'critique of functionalist reason' the shift from lifeworld as social coordination to lifeworld as societal integration is remarkably functionalist in nature (1987:334). Habermas is ultimately interested in legitimate *social order* – indeed, even the democratic nation state remains the implicit object of analysis. It might be argued that Habermas perceives the lifeworld to be what in Parsons' work belonged to the societal sub-systems of 'pattern maintenance' and 'social integration' (1987:273ff.).⁴⁹ With this functionalist shift, Habermas moves away from an action theoretical understanding of lifeworld or legitimacy. More generally, it might also be argued that Habermas' *sociological* analysis suffers from 'cryptonormativist empiricalisation', i.e. many claims are not so much empirically grounded as normatively inspired, and many analytical claims are taken for empirical facts (Bader 1983:336, 1984:84, 1994:112).⁵⁰ Habermas' sociology suffers from a slippage from ought to is.

Finally, Habermas foremost understands lifeworld in opposition to system. This opposition is crucial for his critical theory, the understanding of present-day 'pathological social conditions' and for his conception of legitimacy. When lifeworld and the institutional domains that symbolically reproduce society are founded upon communicative action and hold the potential for communicative rationality, system is the primary source of social pathology by its tendency to 'colonise' lifeworld reproduction and communicative rationality with the 'material reproduction' of society and instrumental reason (1984:399).⁵¹ Habermas, however, has a particularly unhelpful notion of system and system theory.⁵²

System, for Habermas, is in the first instance a specific *analytical perspective* of how to perceive society. The primary model of system, then, is traditional economic theory in which the

⁴⁹ This reading is strengthened by the fact that Habermas especially critiques Parsons for not perceiving the inherent difference between 'inducement' (money) and 'deterrence' (power), on the one hand, and 'persuasion' (influence) and 'moral appeal' (value-commitment), on the other (1987:279; see also chapter 5). What differentiates the latter, according to Habermas, is its communicative and linguistic foundation based upon 'rationally motivated' mutual understanding and not upon success-oriented 'empirically motivating punishments and rewards' (1987:279). As a consequence, influence and value commitment are part of lifeworld and not system. Yet, Habermas does consider them to be "forms of generalised communication", i.e. 'abstractions' or 'simplifications' ultimately dependent on respectively "the intersubjective recognition of cognitive and normative validity claims" (1987:276-7).

⁵⁰ Especially Habermas' claim that separating between empirical validity and ideal-normative validity would lead to coarse 'empiricism', 'objectivism' or 'positivism' seems to explain part of Habermas' confusion (Bader 1984:76). Weber is not a 'positivist' as Habermas seems to think but rather has an 'empirical' orientation (ibid.:87).

⁵¹ Or, in any case, to destroy "traditional forms of solidarity without at the same time producing normative orientations capable of securing an organic form of solidarity" (1987:116).

⁵² Habermas tends to use the concept of 'system' connected to everyday negative associations, such as 'unfreedom, coercion and uncontrollability' (Bader 1983:334). The dichotomisation between system and lifeworld is less analytically and more normatively inspired. The duality material/symbolic, it might be argued in this context, seems to reproduce the Marxist differentiations between 'base' and 'superstructure' (Bader 1983:337).

'invisible hand' is an 'objective force' that structures and coordinates society 'behind the backs', intentions and consciousness of the individual actors involved (1984:398; 1987:115, 150; 1996:39-40).⁵³ Where the 'social integration' of lifeworld means that "the action system is integrated through consensus, whether normatively guaranteed or communicatively achieved", 'system integration' concerns integration through "the nonnormative steering of individual decisions not subjectively coordinated" (1987:150).⁵⁴ System is an *outsiders' perspective*. But at the same time, system is not only a perspective, according to Habermas, but also a specific social sphere that evolutionary differentiated from the lifeworld itself to deal with the 'overloaded integrative capacity' of a rationalised lifeworld (1987:111,155; Baxter 2002:548; Calhoun 1988:222). This is confusing, to say the least (Bader 1983:331).

System as a functionalist outsider *perspective* and as a *social sphere* come together to the extent that Habermas understands system theory solely in functionalist Parsonian and cybernetic terms. The main functionalist perspective concerns, as in Easton, *system survival* or "the functional reason of system maintenance", emphasising *objective* or *structural imperatives* of social differentiation, functionality and cybernetic inter-systemic communication (1984:399; 1987:117, 150). At the same time a system, for Habermas, is also a social sphere in which actions are coordinated by power and money understood as 'delinguistified steering media' that have the *imperative* capacity to steer social action through "symbolic generalisation of rewards and punishment" institutionally backed-up by reserves of 'real value', i.e. by gold and violence (1987:154,171,272).⁵⁵ Because money and power, according to Habermas, are *steering mechanisms* based upon sanctions "they have empirically motivating power and can *replace* rational motivation through reasons" (1987:272,280). As such, whether system is understood as a perspective or as a social sphere, system integration operates beyond the rational will of the actor's involved.

It must be emphasised that this cybernetic version of system theory is profoundly different from the media theoretical perspective as we understand it (see chapter 5). System is about success-oriented *objective calculable knowledge* and not about ambiguous, vulnerable symbolic social

⁵³ The idea that action theory is solely oriented to "the subjective meaning of individual action" and not to social structures over and above individual action is, of course, a coarse simplification we must deny (Baxter 1987:53; Bader 1983:334-5).

⁵⁴ The claim that system is 'nonnormative' must of course be denied. The market is not a norm-free sphere. To claim that *politics* is nonnormative is just wrong (Bader 1983:340).

⁵⁵ In Habermas' evolutionary account society can only differentiate and increase in complexity to the extent that lifeworld rationalisation allows it – system must be 'institutionally anchored' in lifeworld (1987:173). Indeed, the rise of system media (power and money) is explained especially as functional means to reduce social conflicts that rise from increasing lifeworld rationalisation. As such, they are also "mechanisms for coordinating action" but these media, in contrast to language, 'replace understanding' "uncoupling action orientations from the lifeworld" (1984:372). The 'paradox', then, is that lifeworld rationalisation both allows the potential for social learning *and* its colonisation (1987:186).

coordination (1987:183, 272).⁵⁶ Habermas, despite all polemics, never really seemed to understand the analytical consequences of Luhmann's version of system theory.⁵⁷ The inherent analytical contradictions that Habermas' analysis confronts us with are threefold.

First, our understanding of social systems is already based upon *communication* and is also understandable from an *actor's perspective*. Communication, then, cannot be the foundational difference between lifeworld and system. Second, in Habermas' analysis *both* lifeworld and system are *functionalist* perspectives concerning the symbolic and material reproduction of society respectively, or simply the 'reproduction' of lifeworld and system (1987:137). Both lifeworld and system are, third, perceived as *institutional* spheres – system consist of the administrative state and the market, while lifeworld consists of science, art and the public sphere. This institutionally based differentiation threatens either to reify system/lifeworld opposition in terms of state/society opposition – throwing us back at the difficulties of the public sphere model – or to reduce and simplify it to the opposition of formal/informal social institutionalisation (1987:309-10, 369).⁵⁸

This institutional differentiation clearly contradicts media theory and simplifies the complexity and ambiguity of social action at the level of multi-functional institutions, organisations and interactions. The direct costs for this simplification is that Habermas must now add a third perspective of society as he not only has to analyse the relation between lifeworld and system but also between 'everyday lifeworld' and 'lifeworld institutions'. Indeed, social pathology, according to Habermas, is not just about colonisation of the lifeworld by system but also about a 'cultural impoverishment' consisting of the segmentation, expertisation and autonomy of lifeworld institutions themselves (1987:326-7, 331; 1981:9).⁵⁹ In short, the opposition of lifeworld and system is not as straightforward as Habermas wants it to be – not in terms of his own functionalist account and certainly not in terms of our media-based understanding of system theory.

Habermas' sociological analysis, we can conclude, overemphasises the consensual notion of lifeworld, gives it a too strong functionalist reading and misunderstands the nature of social systems. The second complex of problems concerns Habermas' normative project. First of all, where in the

⁵⁶ Situated in our discussion of trust (see chapter 6), Habermas perceives system in terms of objective *probabilities* and not in terms of vulnerable *agentic expectations* – in terms of external *force* and not in terms of communication necessitating *confidence and trust*.

⁵⁷ It can be argued that Habermas exaggerates the incommensurability problem between Action Theory and System Theory – i.e. the Neo-Kantian divide in sociology he wants to solve – precisely because he has a distorted perception of both (Bader 1983:337ff.).

⁵⁸ To claim that system is purely formal organisation not only denies the importance of informal relations and knowledge in the political and economic system, but the market is "the classic contra-principle to formal organisation" (Bader 1983:340).

⁵⁹ Indeed, Habermas comes close to an autopoietic reading of these institutions – especially in terms of 'art for art's sake' (1981:9).

'direct' relation between lifeworld and system, or between public sphere and politics, the epistemic dimension is transposed from the public – relieved “of the burden of decision making” (1996:362) – to democratic decision-making procedures and processes, epistemic claims have not disappeared in the 'detour' model. For Habermas, the rationalisation of lifeworld means, as we have seen, that social integration can less and less be carried by *presupposed* normative consensus, but must be more and more carried by *achieved* consensus as more and more presumptions are explicitly being thematised or politicised. Based upon Habermas' epistemic model of 'universal discourse' *progressive* rationalisation of lifeworld means that the “vanishing point” of an “idealised lifeworld” ultimately would be a lifeworld “detached from normative contexts” and solely integrated through postconventional universal morality (1987:145-6,174). If we do not want to take over such universalising epistemic notions, Habermas' detour-model of political argumentation nevertheless demands some form of rationality. Habermas provides a possible alternative solution if he understands the rationalisation of lifeworld foremost in terms of rational 'learning potential', i.e. in freeing the rational potential of argumentation (1987:375,403).⁶⁰ As already argued, non-foundationalist models precisely try to understand rationality as a learning process without presuming some teleological universal horizon or one final coherent answer.

The second problem is more fundamental. Rationality, for Habermas, concerns a form of reason that despite the “confusing complexity” of everyday communication, despite its 'fragmented and distorted' nature, as it “has to rely on being symbolically embodied” and “historically situated”, can nevertheless surface in the *structures* of communication, argument and lifeworld (1984:331,xli). Rationality is not so much expressed in actual consensus or present in the action orientations of the actors but is situated in “the general structures of the lifeworld to which acting subjects belong” (1984:328,337). It is precisely upon this structural rationality that Habermas builds his understanding of legitimacy. But this outsider's perspective of political legitimacy remains rather impervious to action and the action theoretical framework of this thesis. Indeed, actors do not have access to legitimacy. Legitimacy is no longer based upon agreement but upon a rationality inherent in *intersubjective* communication flows, structures and processes (1996:5). Public opinion as well as public sovereignty are understood by Habermas as 'subjectless' – while rationality is 'decentred' into 'structural conditions' (1996:184,4).

⁶⁰ Communicative rationality, in Habermas' work, is a tricky concept. It points, first, towards communicative action in lifeworld, i.e. one's action must be understandable and intelligible for others in a specific context. Second, it points towards the 'rationalisation' of the lifeworld, i.e. making lifeworld assumptions thematisable by taking validity claims out of spheres of taboo and the normative 'sacred'. And, finally, it also points towards the rationality of public argumentation itself, i.e. in terms of epistemic ideals.

We might wonder what legitimacy as system-lifeworld integration means from an actor's perspective.⁶¹ Concepts as 'objective' or 'subjective' validity – central to our analysis – start to lose analytical meaning, in particular when Habermas claims that the background values of lifeworld are a 'fusion of facticity and validity' (1996:23). It seems as if the political system is legitimate as long as domination or decisions are not thematised or as long as the system is not 'meaningless' 'alienating' or 'anomic' (1987:140-1,386). Indeed, it threatens to reduce subjective legitimacy to mere acceptance of social order.

Furthermore, Habermas normative understanding of legitimacy remains overtly consensual and harmonious. From an analytical point of view, the legitimacy of modern institutions ultimately remains founded upon a 'common interest' and a "common will anchored in the communicative practice of all individuals" (1984:398; 1987:80). Even though politicisation and conflict play an important role in rationalisation processes, legitimacy itself remains closely tied to a social order which itself is based upon social consensus. When lifeworld cannot simply be equated with 'value consensus', it contains strong consensual notions nevertheless. Lifeworld concerns a communicatively based societal integration in terms of *shared* cultural knowledge, *shared* normative institutions and a *socialised* personality. It is "based ultimately on ... the unconstrained, unifying, consensus-bringing force of argumentative speech, in which different participants overcome their mere subjective views" (1984:10). Although conflict might rise, precisely because the traditionally sacred is no longer outside the profane realms of thematisation and critique, conflict and social fragmentation nevertheless are *dysfunctional* for the symbolic reproduction of society – or, as Habermas states it, the main threat for lifeworld is not its invalidity but its disintegration (1987:130, 400).⁶² The resource most 'endangered', according to Habermas, is 'social solidarity' (1996:xliv).

7.4 Conclusion: Lifeworld beyond Habermas

In conclusion, if the lifeworld model of politics as argumentation is going to be of any use to us, we need to reconstruct the lifeworld concept. First, we need to get rid of the profound functionalism in Habermas' work. Legitimacy, rationality or social action must be meaningful and understandable from an actor's perspective. Second, Habermas' distorted understanding of system must be discarded in favour of Luhmann's media theory. This also means that we will have to discard the lifeworld as an institutional sphere functional for the symbolic integration of society. Third, if we free

⁶¹ How does this rime with Habermas claim that "it must remain possible for everyone to obey the law not on coercion but upon insight" (1996:121)? Indeed, if Habermas perceives the main problem of modern societies to be "how the validity and acceptance of a social order can be stabilised ... in the view of the actors themselves" once lifeworld and system 'clearly begin to differ', how does his theory explain this (1996:25)?

⁶² Indeed, if the rationalisation of lifeworld inherently entails a drive towards 'universalisation' (1987:84), social fragmentation can easily be seen as anti-modern or conservative. It is in this regard telling that Habermas calls postmodernists 'neo-conservatives' (1987:45; 1981:13; Lyotard 1984:72).

the lifeworld concept from functions of societal reproduction and of strong epistemic notions, we must also free it from overtly consensual, harmonious and solidaristic presumptions. This does not mean that we have to make an exaggerated choice between either consensus or conflict, but rather that we have to open analysis for the *political condition*, i.e. for non-foundationalist practical reason, for pluralism, complexity and contradiction. Finally, if we discard Habermas' universalistic-teleological version of rationality, if we want to go beyond his foundationalism, we still want to replace it with some other notion of rationality if we do not want to get lost in some postmodern fantasy. In short, I propose to give Habermas' lifeworld concept a *critical realist re-reading* – a re-reading that opens up lifeworld to an action theoretical understanding of political argumentation and legitimacy.

Chapter 8

Politics as Argumentation: Symbolic Space of Authority

Habermas' understanding of lifeworld has to be opened up to the 'political condition'. Instead of subordinating politics and political argumentation to truth in a foundational epistemological sense, we need to understand politics and argumentation as a complex, conflictive, ambiguous, contextual and non-conclusive practice in which actions and decisions need to be taken nonetheless. At the same time, if we want to understand the specific quality of argumentation or public reasoning, we should not reduce it to mere interest conflicts and power-structured bargaining. Political argumentation is more than Weber's *warring of the gods*. In other words, we should try to understand political argumentation – and the lifeworld model – as situated between politics as consensus and politics as conflict, between the foundationalism of Habermas and the postmodernism of scholars like Mouffe. To do so, I propose to give Habermas' lifeworld model a *critical realist re-reading*.

I will first make clear what a critical realist's philosophical and sociological positions entails – or minimally aspires. Second, based upon this position I will propose a different understanding of lifeworld and its connection to political argumentation and political legitimacy based upon a *performative perspective*. This analytical framework, moreover, tries to avoid the functionalism of Habermas in favour of an action theoretical standpoint. Finally, I will argue that this reading provides us a different understanding of political legitimacy understood in subjective normative terms.

8.1 A Critical Realist Re-Reading

Habermas, I argued in the former chapter, provides an epistemological and foundationalist reading of argumentation because he fears that politics would otherwise be swept away in the 'maelstrom of history' and postmodern fantasies. Politics therefore has to be subordinated to universal morality – however counterfactual or teleological – differentiated from historically and contextually situated ethics. The postmodern or sceptical standpoint, on the other hand, has been developed as a criticism of the fact/value dichotomy as proposed by traditional empiricism or logical positivism. Positivists claim that we should separate between facts that can be scientifically understood, on the one hand, and values that are beyond the realm of reason, on the other (Putnam 2002:1; Sayer 2009:768). Values, they claim, are *subjective* and outside reason and beyond *objective truth*. This dichotomy, many have claimed, is intolerable not least because science as a practice is itself *valued*. Scientific action is itself structured by norms and values, especially by so-called epistemic values such as 'coherency, simplicity, plausibility or beauty' (Putnam 2002:31). Science, it is safe to say, is

also historically situated. There is no such thing as a non-value-loaded observation or experience – an Archimedean ‘point from nowhere’. The positivist ideal of a value-free science purely geared towards facts is not only unachievable, it is also the wrong ideal.

The collapse of the fact/value dichotomy, then, problematises the whole notion of truth. But this collapse also takes an ontological turn. The privileged relation between science and reality (or theory and fact) is problematised as soon as we acknowledge it is mediated by language – by theories, paradigms, frames or discourses. Our concepts are not direct ‘natural’ representations of reality but structure how we perceive reality in the first place. We cannot, therefore, understand ‘reality as it is in itself’. Postmodernists, then, claim that reality is inherently *socially constructed*. So far, the reader of this dissertation might not be overtly alarmed. If anything, we have seen how different perspectives on politics change our understanding of legitimacy, and how different value spheres, including science, ‘construct’ different social realities. Furthermore, the ‘social construction’ of reality and the problematisation of a single objective truth precisely seems to open up analysis to the political condition. However, strong-versions of postmodernism tend to overstretch their epistemological critique and warranted scepticism into an ontological argument against realism and essentialism. The ‘social production of knowledge by means of knowledge’ is not the same thing as the ‘social construction of reality’ (Bader unpublished). It is this ‘epistemological fallacy’ that explains its value relativism or judgment-relativism; it explains why politics must necessarily be a power-ridden conflict of the gods. Let us shortly examine these arguments.

The collapse of the epistemological fact/value dichotomy, as we have seen, also problematises the theory/fact dichotomy as our relation with reality is mediated through language. For postmodernists, this seems enough ground to be suspicious of any form of essentialism and causal determinism, especially in the social sciences. Again, their object of critique concerns positivist scientists to the extent that they understand the essence of certain objects in terms of fixed or *naturalised characteristics* and to the extent that they understand causality in terms of *observational regularity* across different contexts, i.e. in terms of universal social laws. Instead of invariant essences and instead of universal causality postmodernist emphasise the contextuality of reality. The postmodern world is not homogeneous, but inherently contextual and fragmented. Instead of illuminating causality as the objective of science, they claim we should rather try to understand and interpret contexts, without, of course, claiming that only one single interpretation can be right. Instead of essentialism, then, postmodernism tends to drift towards forms of nominalism – to emphasise the unique and the distinct. Between contexts, as a consequence, there is no longer any necessary common ground. Reality is not only inherently fragmented but, it seems, is no longer separable from language itself. If language no longer *mediates* between our knowledge

and reality, then we seem to move to some form of ‘idealism’ in which reality loses all of its everyday connotations – reality becomes a ‘text’. Postmodernists ‘have lost the world’ (Putnam 1995:64).

It is easy to see that when language no longer mediates between us and reality but when language *is* reality, postmodernism drifts away to judgemental relativism. Not only truth becomes a problematic concept but reality itself no longer provides grounds to differentiate between better and worse interpretations or theories. In short, postmodernism’s epistemological non-foundationalism and ontological idealism explain its inherent judgment-relativism but also its normative perversion. It takes away all possibilities for critique (Bader & Benschop 1988:153; Putnam 1990:1680). It is therefore unsurprising that Habermas and other discursive democrats are right-out hostile towards such ‘anti-modernist’ celebration of value relativism described as the ‘horror of unreason’ or the ‘normalisation of evil’ (Habermas 1981:13; 1996:xli; Dryzek 1990:21-2; Calhoun 1992:41). Habermas rather wants to ‘finish the unfinished project of modernity’ (Habermas 1997, 1981). Habermas’ antidote to postmodernism, however, is not *ontological* but *epistemological*. Habermas and most liberal normative theories try to reinstall the fact/value dichotomy – not, obviously, to claim that values are merely subjective beyond the realm of reason but precisely for opposite reasons – by forcing a dichotomy between morality (truth) and ethics (values).¹ Putnam argues that this modernist view fails precisely because morality is also mediated by language; in other words, we need ‘thick ethical concepts’ to be able to understand or to give meaning to morality in the first place (2002:34-5, 118ff.). Morality cannot be form only, it must have substance. Moreover, this epistemological antidote, Barber argues, suppresses a genuine understanding of the political condition as it tries to explain the political in terms of the non-political (2003:48).²

We might be sympathetic of Habermas’ attempt to stay clear of profound value relativism but his modernistic approach seems to deny also the strength of postmodernism. Instead, critical realism offers us a different antidote without denying the contributions of postmodernism. First of all, critical realists readily agree that the fact/value dichotomy – of both positive science and of liberal moral theory – is untenable. However, this does not mean that the *distinction* between facts and value loses all meaning (Putnam 2002:9). As I already argued in chapter 1, we might admit that science is inherently *valued* but this does not mean that we can no longer make a distinction between science making value judgments and being (or trying to be) value judgment-free. It still makes sense to make a distinction between the cognitive and the normative even if this distinction is not a dichotomy or duality. What postmodernists seem to forget all too easily is that we can still

¹ Putnam therefore claims that Habermas’ ‘desires and reasons’ ultimately remain ‘positivistic’ (2002:133).

² Barber makes an elaborate argument to show that liberal theory tends to be “reductionist, genetic, dualistic, speculative and solipsistic” (2003:51).

make a distinction between subjective and objective social validity. It is simply not true that the individual scientist can make just about any normative claim he fancies and pass it off as a fact. The *actions* of scientists are normalised by the objective norms of 'the' scientific practice.³

Second, and related, if we accept the anti-foundationalism of postmodernism there is no inherent need also to accept its idealism. Critical realists agree that there is no direct relation between theory and reality and that this relation is indeed mediated by language but this does not mean that reality no longer matters at all. As Peirce, one of the founding fathers of American pragmatism, already argued, radical doubt or scepticism does not come that easy in everyday life (1877:IV).⁴ Radical scepticism is only easy for armchair philosophers, who searched in vain for the foundation of all truths. But in real life "we cannot begin with complete doubt ... we must begin with all the prejudices we actually have" (Peirce quoted in Barber 2003:164). As many have noted, the irony of postmodernism is that it fails to step out of the modernist trap of foundationalism (Bader 1988:154; Putnam 1995:39). To put it differently, postmodernism remains awkwardly modernistic. In real life, Peirce argues, doubt originates as the result of some kind of 'irritation' between our understanding of reality and reality itself (1877:IV,V; 1878). Indeed, why would a postmodernist doubt at all? If reality is merely a text it could be perfectly coherent, transparent and agreeable by the force of our mere will and imagination (Sayer 1997b:466). A 'recalcitrant experience' or 'anomalous observation' – or fallibilism in general – no longer seems possible (Bader unpublished). Peirce subsequently argues that if doubt is caused by 'irritation' then 'truth' is the opposite of doubt, i.e. truth is the lack of 'irritation' (1877:IV). Truth, then, is not some metaphysical entity but rather 'satisfied doubt' settled by 'opinion' and, we might add, not *subjective* opinion but *socially valid* or *objective opinion*.⁵ In short, this pragmatist standpoint does not try to deny the social construction of knowledge but claims that we should neither deny the social conditions of doubt. Indeed, we should try to understand truth and reality not in metaphysical terms but in terms of *social relevance* or in terms of *action*, i.e. when should we trust or distrust judgments? (Putnam 1995:47,74, 2002:110). Social and political knowledge "is defined by its somewhereness, its concrete history in the real world of human beings" and not 'grounded in nowhere' (Barber 2003:64).

³ The fact that knowledge produced by the social sciences might change society and, hence, its object of inquiry, does not disprove this claim. Social reality is more than its construction by science (Sayer 1997b:468)

⁴ Also Hume already mocked the 'genuine sceptic': "we shall then see whether you go out at the door or the window; and whether you really doubt, if your body has gravity or can be injured by its fall, according to popular opinion derived from our fallacious senses and more fallacious experience" (quoted in Barber 2003:164). In short, in daily life we cannot live 'without making judgments of what is more or less true' (Sayer 2009:771).

⁵ Peirce rightly argued that we should not look down upon man's 'need for a fixed certainty' – as postmodernism tends to forget – but we should be cautious of the consequences of this need (Peirce 1877:V; also Barber 2003:47).

Even if we cannot know reality as it is 'in itself', critical realists claim that this does not mean everything is possible by merely changing our language (Bader 1991:151; Putnam 2002:100). Reality, then, has certain invariant essences that transcend contexts and defies extreme nominalism and idealism. Realism allows us to distinguish between theories or knowledge that are 'better' or 'worse' or that are more or less 'reasonable' without the need to uphold the fact/value dichotomy or to chase after some form of foundationalism. The mere fact that all of our observations and experiences are inherently valued does not mean that our observations and experiences cannot be used to discriminate between more or less reasonable theories, facts or normative claims (Bader 1988:140, 1991:151). Postmodernism just seems to deny the human condition. Realism, obviously, entails specific notions of essentialism and causality but these notions do not have to be as strong as in classical positivism. We need not choose between some naturalised and fixed form of essentialism and an 'ephemeral' notion of reality (Sayer 1997b:463). We merely should acknowledge that reality has more or less invariant characteristics as our everyday understanding of reality confirms which allow us to make an analytical difference between 'intransitive objects' and 'transitive objects of knowledge' (Bader unpublished). This also does not necessarily imply that we should hold on to notions of universal social laws based upon observational regularity. It is perfectly possible to claim that certain (ideal and material) objects have certain invariant 'generative powers' (Sayer 1997b:466) without discarding the importance of contextuality if only we admit of the complexity of social phenomena, i.e. that there exist multiple causes (against reductionism), that causes are potentialities (against determinism) and that causes interfere with one another (against universalism).

Critical realists, then, combine epistemological non-foundationalism with ontological realism – consisting of weak versions of essentialism and causality. Although such position makes science more complex it allows the possibility of value judgments. As long as reality matters – however mediated by language – and as long as reality, experience and observation have invariant qualities – even if these are not fixed forever – we need not fall into the trap of judgment-relativism and extreme versions of incommensurability. Even if there is no single 'true' or 'final' answer, some claims are more reasonable than others (Putnam 1990:1682, 2002:108). The fact that there is no single answer, then, allows for conflict over consensus, but the fact that not everything is equally reasonable assures that reason (without the capital 'R') is not only about power conflict. Importantly, for critical realists 'truth' is not so much an epistemological quality as an ontological quality (Bader unpublished). 'Truth' is about ontological 'reasonableness'.

Finally, what makes critical realists 'critical' is that they try to open up both science and politics to this form of reasonableness. This means that they will not 'speak truth' but rather take an

'institutional turn', i.e. reasonableness seems best safeguarded if we are willing to 'learn' (however, fallible), if we try to 'learn about learning' and if we institutionalise both types of learning processes. Only through learning, Dewey argues, can we make a distinction between *valued* knowledge and *valuable* knowledge (Putnam 2002:103). As such, critical theorists take over the pragmatist standpoint that we should address problems at the level at which they arise – and therefore not escape in abstract notions of consensus – by way of learning, inquiry and experimentalist practices (Bader 1994:143; Putnam 1990:1679, 1995:69ff., 2002:110).⁶ Indeed, as Putnam argues, Habermas' discourse ethics – stripped from its foundationalism – might be a valuable insight in this respect (2002:105). Learning and reasonableness do not deny the political condition, but neither do they make politics *irrational* or reduce it to *power conflicts*. Instead of formulating foundationalist ideal norms to which empirical political practice more or less confirms, critical realists are forced to understand and learn from empirical political practices. The goal is not to study to what extent politics confirms to some 'truth' "untainted by the political world in which men are condemned to live" and neither to 'predict' political behaviour by universal laws, but to study what is and what is not reasonably possible (Barber 2003:xxxii; Bader unpublished). Normative and sociological theory ought to be inherently related (Sayer 1997a:474) not for "the application of Truth to the problem of human relations, but [for] the application of human relations to the problem of truth" (Barber 2003:64-5).

What does all this philosophical argumentation mean for our sociological framework? First, the whole concept of postmodernism in sociology seems rather problematic and suffering from inflation as some sociologists want to make a distinction between a 'sociology of postmodernity' and a 'postmodern sociology' (Bauman 1994:203; Owen 2004:73). What is at stake in the 'sociology of postmodernity' is often not value relativism but the 'discovery' of the unfounded foundation of the values we cherish (Bauman 1994:189; Mouffe 1989:34; Lyotard 1984:39). Hence, the transformation of modernity to postmodernity is therefore understood as the point at which reason turned upon reason to discover its own *symbolic nature*. Sociology of postmodernity in this epistemic guise is an intellectual affair that necessitates the *re-writing of history*. It is not that we have lost 'truth' but we discovered that truth has always already been symbolic (Bauman 1994:195). The discovery of symbolic truth 'leaves everything as it is', as Wittgenstein has put it (Mouffe 1989:38; Putnam 2002:45).

⁶ Barber makes a convincing argument that 'fallible' and 'sceptical' liberal models, as that of Popper, do not take an ontological or realist turn but tend to argue that "if we cannot know anything for certain, we should not do anything", which translates into a minimalist model of legitimate politics (Barber 2003:58-62).

However, postmodernity in sociology might secondly be understood as a specific transformation of society. On the one hand, epistemic postmodernity might have social consequences to the extent that it leads to a 'crisis of intellectualism' (Bauman 1994:189).⁷ Not only has this crisis led to the demise of the specific modern charisma or 'aura' of 'high-art' and 'avant-gardism' (Adorno 1975:12; Benjamin: 1999:731ff., 2002:103-4; Habermas 1981:4-6), also the social status of the intellect as well as his own self-understanding seem strained (Bauman 1994).⁸ Postmodernism in this guise connotes a "pervasive sense of cultural disorientation" (Elliot 2002:309). On the other hand, postmodernism in sociology is not just about some epistemic disorientation. Where the sociology of the risk-society (chapter 6) problematises the inherent risks and irrationalities in modernity and its institutions, the sociology of the 'postmodern society' seems to problematise value plurality, discontinuity and multiplicity underlying the institutions of modernity. In this guise, postmodernity connotes the increase in social complexity and interconnectedness due to globalisation and individualisation processes and the consequences for politics in terms of decentred 'multi-levelled polities' and 'multi-layered governance networks' (Bauman 1994:198; Pakulski 2004; Lyotard 1984; Villa 1992:717). The complex, decentred, ambiguous, fragmented, dynamic and often conflictive nature of 'postmodern society' forces us to problematise any assumption of (universal) value consensus (Bauman 1994:203; Mouffe 1989:36; Owen 2004:72). However, if this is how postmodernity is understood in sociology, if postmodernity merely signals the *complexity of modernity*, the whole concept is empty. It would force us to characterise both Weber and Luhmann, amongst many others, as postmodernists. We should neither be 'modernists' nor 'postmodernists'. Instead we should merely accept *the complexity of our late modern-condition*.

Second, if instead 'postmodern sociology' means the invention of a whole new nomenclature consisting of fuzzy, ambiguous, and nebulous concepts – indeed, the scholarly withdrawal into sects of narcissist believers that exclude outsiders who do not speak the language – then postmodern sociology should be discarded in favour of critical realism. However, we might acknowledge that strong versions of postmodernism which slip into idealism are fairly rare in the social sciences, not least because postmodern sociologists tend to emphasise the constructivist nature of social *reality*. Discourses are often understood as forms of 'productive power' precisely because they create a reality that matters for the way in which people *act*. Discourses have *real* consequences. When in the social sciences, however, weak-postmodernism tends to (implicitly)

⁷ Bauman claims that in contemporary societies intellectuals are also becoming politically irrelevant as legitimacy is no longer based upon intellectual arguments but upon 'seduction and repression' administered by experts of public relations and social management (1994:192).

⁸ Postmodernity, as such, might also be understood as an intellectual preoccupation with the question: 'who are we?' (Foucault 1982:781). As this question is a crucial driving force in Weber's theory, it shows that *modernity* already fails to provide satisfying answers.

acknowledge causality and reality, it tends to focus almost exclusively upon language, upon discourse, while downplaying underlying material structures. In short, the weaker versions of postmodernism in sociology tend to create a dichotomy not so much between realism and idealism as between idealism and materialism. This, it seems to me, is unfortunate. Even if one merely wants to understand discourses one should also understand the underlying material conditions, inequalities and constraints. Nevertheless, if such weak forms of postmodern sociology are critical attempts to understand how social action is *discursively structured and coordinated* in specific social and historical contexts or practices without claiming or presuming some form of transcendent truth or value consensus, it might be a valuable approach for understanding lifeworld. As such, the analytical tools developed in 'postmodern sociology' – in particular what I would like to call its *performative perspective* – might be very helpful for understanding a non-consensual lifeworld.

In sum, in what follows I will provide a critical realist understanding of Habermas' lifeworld perspective, which means that I try to discard his foundationalism, his consensual notions of lifeworld and his neglect of the political condition, in favour of an anti-foundationalist realist perspective in which 1) we acknowledge that 'truth' is an *ontological* condition better grasped as reasonableness; 2) we acknowledge the structuring powers of discourses without disregarding material structures; and in which 3) we are aware of the complexities of late-modernity.

8.2 Lifeworld and System: Two Types of Social Coordination

Like Habermas we might start to understand the contours of lifeworld in opposition to our analysis of media coordinated social systems. From such a comparison we can rather confidently conclude what lifeworld is *not*. First, we might agree with Habermas that lifeworld is not a social system in itself. The main reason is that lifeworld action is not coordinated by a codified symbolic medium. Although *speech* as a 'linguistic medium' might be an obvious suspect (Habermas 1984:94), it seems to me that 1) lifeworld coordination is not necessarily coordinated by speech, but also by all kinds of symbols and signs present in behaviour, appearances, gestures, diction, clothes, bodies or objects; and 2) speech is a 'meta-medium' to the extent that it can hardly be excluded from system coordination as well. Speech consists of many different languages.

Second, the lifeworld/system opposition cannot be understood in terms of institutional or organisational boundaries.⁹ If lifeworld is about unthematized background assumptions that make social action possible in daily life, it would be ridiculous to assume that those background resources

⁹ As already analysed in the previous chapter, Habermas draws 'rough and ready' institutional boundaries akin to his public sphere model. System concerns "the economy and the bureaucratic state" and lifeworld the "private spheres of life" and "public spheres" (1987:310).

were not present or relevant in interactions within bureaucratic organisations or political institutions (Baxter 2002:551). Habermas actually acknowledges this but claims that in these institutions lifeworld coordination is 'disempowered' or 'neutralised' by symbolic media (1987:310-1). However, this not only contradicts every empirical evidence about the complexity of bureaucratic organisation, it also overlooks the analytical ambiguities and contradictions of formal organisation (McCarthy 1985:32). We should not confuse institutions and bureaucracy as ideal types with empirical or analytical analysis. Vice versa, media such as money, power and law obviously also coordinate 'practices of daily life'. In sum, lifeworld and system cannot be differentiated in some kind of *spatial metaphor*. Lifeworld is *not* everyday practice, not a specific institution, not society and not system or system environment.

Third, lifeworld is *neither* a specific type of *action orientation* nor a specific *type of action*. To begin with the former, if lifeworld is about the coordination of social action it would be ridiculous to exclude 'strategic-action' from lifeworld. Again, Habermas acknowledges this as he claims that strategic action orientations are the presumption of all social action models (1984:101).¹⁰ But Habermas confusingly excludes strategic action from lifeworld. The confusion concerns the fact that for Habermas system and lifeworld indicate different action orientations *and* different analytical perspectives. Qua perspective, system is an 'objectivist', instrumental, non-social and 'outsider's' perspective and lifeworld an action theoretical, social, 'actor's' perspective (1987:117,374; McCarthy 1985:29). Indeed, we might say that lifeworld coordination excludes such objectivism. However, system is at the same time also an action theoretical perspective. In that case, the difference concerns social coordination based upon 'ego-centric', strategic and 'success-oriented' action in system versus 'harmonious' and 'understanding-oriented' actions in lifeworld (1984:285-6).¹¹ However, in our analysis of media theory we have seen that within systems this difference between strategic action and cooperation or social understanding is not a solid boundary under conditions of uncertainty and complexity. The same ambiguity seems to hold for social coordination in lifeworld practices.¹² There is also no reason at all to exclude normative action orientations from system as Habermas seems to claim by labelling system as a 'norm-free' form of social integration vis-à-vis the

¹⁰ The other two models Habermas differentiates – in addition to communicative action – are the 'normative' model and the dramaturgical model (1984:85-6).

¹¹ Habermas commented on this confusion and acknowledges a difference between a system integrated through mechanisms that are 'external to the structures of action' and system *coordinated* by 'steering media' that do concern action orientations (1991:252). However, according to Habermas, the 'special languages' of money and power have a "specific de-worlding effect" and an 'empirically motivating' power, which enables him to differentiate between actors with an 'objectivating' strategic and a 'performative' communicating attitude nonetheless (1987:76).

¹² Only when Habermas shifts from lifeworld as coordination to lifeworld as understanding – i.e. only when lifeworld is (functionally) decoupled from action and practices – could it be argued that lifeworld is not about strategic action. But such shift seems to discard the essence of lifeworld altogether.

lifeworld as integrated through “a normatively secured or communicatively achieved consensus” (1987:117).

Next to action orientations, Habermas also differentiates system and lifeworld upon two different types of social action: communicative action and strategic action (1984:333).¹³ However, our understanding of systems discounts the possibility to understand lifeworld as the exclusive realm of communicative action as social systems are also communicatively coordinated.¹⁴ In short, both system and lifeworld include strategic and normative action orientations and are coordinated by communicative action.

Finally, this also means that lifeworld is not a specific kind of *rationality*. This must be understood quite carefully as it is Habermas’ goal to “reconstruct the modern concept of rationality” (1984:391). Indeed, Habermas wants to counter Weber’s modernisation thesis in so far that we should not only analyse rationality “under the cognitive-instrumental aspect”, but we should bring in “moral-practical and aesthetic-expressive aspects” captured in communicative rationality (1987:303). Precisely because early critical theory could only perceive rationality in terms of *instrumental reason* – influenced as they were by both Marx and Weber (or the Marxist interpretation of Weber) – it could no longer find solid ground for saving rationality or reason from itself (1987:333). However, in this critical tradition instrumental rationality is foremost understood in terms of *functionalism*. It includes all social mechanisms functional for the reproduction of social systems or the status quo. Yet, we might perceive that from an outsider perspective *both* lifeworld and system can be understood in terms of such functional rationality. Indeed, even Habermas understands both as functional for societal reproduction. Similarly, from an insider or action theoretical perspective *both* system and lifeworld can be understood in terms of the communication of specific expectations. The ‘rationality’ in this perspective concerns the specific *logic* inherent in the different social systems – in specific *worldviews*, as Weber explained. Indeed, the complexity and ambiguity at the level of social organisation and interaction concerns precisely these different and at times conflicting logics. Similarly, we might expect that the *logic* of lifeworld communication is structured by shared lifeworld expectations or, in Habermas’ words, ‘worldviews’ (1987:56). To put it differently,

¹³ We might wonder the extent to which strategic rationality is an action orientation or a type of social action. Obviously, communicative action is not an action orientation by the sheer fact that it is an intersubjective and not a *subjective* orientation. However, Habermas differentiates between the two types of social action in terms of *action orientation*: oriented to success or towards understanding (1984:285). This would mean that communicative social action could never be strategically oriented. Precisely because Habermas fuses action orientations with types of action he leaves little room for the richness and complexity of social life.

¹⁴ Habermas has commented that he never meant to differentiate system and lifeworld in terms of different types of social action and that many of his critics are misled (1991:254). But he immediately adds to the confusion by stating that system, in contrast to lifeworld, demands a “strategic stance on part of the actors”.

communicative logic or *instrumental rationality* can be present in both system and lifeworld depending on one's perspective.¹⁵

When the analytical opposition between lifeworld and system is neither based upon institutional or spatial boundaries, upon different action orientations or action types, upon the presence or absence of communication nor upon different types of rationality, it seems to me that we can only understand system and lifeworld as two different *types of social coordination*.¹⁶ Systems are social action systems, Luhmann style, in which social action is coordinated through specific codified symbolic medium. Lifeworld, on the other hand, is a form of social coordination not based upon a specific symbolic medium but upon a symbolic complex that, for the time being – and against all anthropological resistance – we might call *culture*.

Lifeworld, then, is not just another social system with its own specific medium – it has none. What differentiates system and lifeworld integration is the *type of symbols* used for communication, i.e. for social coordination. This means that at lower levels of social analysis – the level of institutions, organisation and interaction – *both types of coordination can exist side by side*. This is all too obvious. Social coordination in any bureaucratic organisation is not solely coordinated by legitimate power, money, or law but also by identities, customs, routines, histories, values, solidarity, friendship, respect, status, reputation, etcetera. Furthermore, if genuine 'communication' between the different systems with their specific symbolic media, logics and meaningful understandings of the world, is problematic, if not impossible, this is not necessarily the case for the relation between system and lifeworld coordination. For example, one has to pay the judge his salary, but his salary cannot determine his legal judgment without the collapse of legal and economic system as normatively and empirically differentiated systems. In contrast, the fact that the judge wears a black robe or even a wig, sits behind an elevated bench that towers above the accused, who has to swear to tell the 'truth or help me God', while looking at the mural image of a blindfolded Lady Justice – or, in short, the fact that *cultural symbols* present in the judicial practice are *communicating* meanings that accentuate the meanings that are communicated in terms of law and legitimate power, is telling in this regard. This does not mean that lifeworld and system can 'communicate' with each other – one cannot 'decide' or 'buy' the meaning of cultural symbols directly – but it does mean that they might communicate meanings that are *similar*, although that, of course, is not necessarily the case.

¹⁵ Social systems might of course also be understood from an *actor's perspective* in terms of *objective probabilities*. We might even agree with Habermas that media such as legitimate power, money and expertise make such probabilities more 'calculable' and that because of this calculability system imperatives might substantially dominate political and organisational decision-making processes. Nevertheless, even lifeworld can be understood by actors in terms of probabilities, even if it might be less calculable.

¹⁶ As such, I do not agree with either Baxter or Calhoun, who want to see the difference solely in terms of analytical *perspective* (Baxter 1987:78; Calhoun 1988:222).

Cultural symbols, in short, can also communicate expectations of domination, truth, justice, social norms or material value.

What is clear, so far, is that lifeworld integration concerns a specific form of social coordination enabled through the communication of cultural symbols. For these cultural symbols to have social meaning, actors must share some kind of background knowledge; some kind of familiarity with the cultural 'stock of interpretative patterns' in Habermas' terms (1987:124). For Habermas, this implies that actors share a 'massive background consensus', a 'horizon of shared unproblematic beliefs' (1996:22). His lifeworld points to consensual structures to which 'acting subjects *belong*' (1984:328). The question that lies before us is how we can explain lifeworld as a specific form of social coordination without assuming automatically some form of cultural consensus or solidarity, i.e. how we can make lifeworld coordination analytically relevant for complex late-modern society without being forced into an foundationalist epistemic ideal of universal morality and postconventional solidarity.

Based upon a rather loosely integrated scholarly tradition sharing what I would like to call a *performative perspective*, I think we are able to understand lifeworld coordination as a form of *contextual performances* that produce and reproduce *generalised narratives* which in turn allow *decontextualised forms of storytelling*. This analysis, ultimately, enables us to analyse the relation between public spheres, political argumentation and political legitimacy. But let us first try to understand lifeworld coordination as a form of *social performance*.

8.3 Lifeworld Practices as Performances

An everyday practice can be understood and analysed in terms of system coordination – i.e. in terms of social coordination through symbolic media – but also in terms of lifeworld coordination. A lifeworld analysis of practice, I will argue, can be grasped in terms of a performative perspective. This perspective – like a dramaturgical perspective – makes use of the theatre metaphor. However, instead of emphasising the relation between staged actors and acclaiming public – between the active and the passive – a performative perspective emphasises the interaction between the actors themselves. Indeed, social actors are viewed as actors in the most literal sense: as performers, players or artists. Such performative analysis of social practices, for sure, is very complicated but for our purpose we might simplify such analysis by emphasising *four layers of symbolic communication*: scene, role, character and script.¹⁷

¹⁷ The performative perspective, again, is a rather loose scholarly tradition I'm drawing on in this chapter. I consider performance theory to be a specific kind of perspective on social action, which can be found in diverse theories. For this part of the analysis, I am inspired and informed by diverse scholars which cannot, for sure, all be considered to part of the critical realist tradition. These scholars include: Burke 1951, 1963, 1985;

In theatre the props on stage symbolise *the scene* in which the play takes place (Burke 1969:7). For example, a blackboard and some school benches as artefacts almost immediately communicate *expectations* – general expectations about education or school. In real life this is not different. The school building itself or the classroom architecture immediately makes clear to us what is expected. We might say, then, that the setting or *scene* is communicating or *staging* expectations of education (Edelman 1964:95; Hajer 2005b:630, 2006:44). However, this does not mean, of course, that a classroom cannot be used for different practices and purposes. Scene expectations are not only communicated by space, objects, and architecture but also by social action or language itself (Yanow 1995; 1998, 2000:17; Goodsell 1988:288; Burke 1969:9). Importantly, if a classroom is used for a different scene – a different practice – the staged educational symbols either get a different meaning or even become meaningless. The performative perspective, then, is *dialectical* as meaning depends upon the scene performed and the scene performed depends upon meaning communicated.

Second, we might also analyse different *roles* actors perform. When we stay in the educational practice, we can differentiate between the role of the teacher and the role of the student. This (hierarchical) role differentiation is, on the one hand, part and parcel of our general expectations of education and, on the other, *performing* the role of teacher communicates expectations of education. Again *dialectics* is inherent to performances. The teacher can perform his role by symbolically communicating role expectations for example by his age difference, clothes, position in the class or by his command that the students – clearly marked out as students as they sit as an indiscriminate collective behind their benches – must be quiet.¹⁸ The students on their part, for sure, also perform their role by communicating role expectations – for example by raising their hand when they want to ask or say something. For all actors, it is clear what raising one's hand objectively means as it is part of educational expectations. But this symbolic meaning is not identical, or the symbol even meaningful, in other social practices (Yanow 2000:11). Raising one's hand in public transport might just be weird, i.e. incomprehensible. We might say, then, that lifeworld symbols are in essence *empty symbols*, which means that their meaning depends on the performed context.¹⁹ Furthermore, symbolic meaning can be *subjectively* different depending on role differentiation

Geertz 1980; Goffman 1974, Turner 1975, Austin 1955; Searle 1964, 1976, 2005; Butler 1999; Bourdieu 1987, 1994; Foucault 1982; Lyotard 1984; Alexander 2004; Bauman & Briggs 1990; and Hajer 2005a, 2005b, 2006.

¹⁸ As an experiment I have once sat among a group of new students without taking any initiative that would indicate me as the teacher of the class. Confusion, awkwardness and jokes to deal with this awkwardness seem to be the result.

¹⁹ For sure, some lifeworld symbols do not appear to be empty at all as their meaning seems identical across different social practices. An example might be Lady Justice I mentioned earlier or a national flag. Such symbols are almost like proper names. Proper names, including individual persons, as we will see, differ from other symbols to the extent that they are tied to a *biographical narrative* instead of general narratives. Yet analytically, they remain empty symbols that get their meaning from the context.

(Yanow 2000:14). For the teacher, a student raising his hand might connote disturbance, eagerness as well as obedience, while for the student it might connote courage, need or submission. This also shows that symbols can mean different things even for one specific role.

This points towards a third layer of analysis: *character*. Indeed, there are many ways of performing the role of teacher or student. One can perform the authoritative teacher, the pedagogical teacher, the caring teacher, the cynical teacher, the enthusiastic teacher, etc. The students, on the other hand, might perform the interested, the disinterested, the ambitious, the sycophant, the rebel, the cool or the problematic student. Claiming that character is a performance means that we separate it from some kind of authentic core of 'real' personality.²⁰ The relation between character and personality is a complicated relation we will discuss shortly. But even if we emphasise the performative aspect of character, this does not mean, of course, that characters or roles can be 'chosen' at will. It depends upon one's resources as well as upon the characters and roles that are already taken by others. Not all students can be the smart one or the cool one. Precisely by emphasising performance over authenticity and truth we are, in my view, able to see the underlying *material* and potentially conflictive nature of lifeworld coordination.

Characters, in any case, must also be symbolically communicated through a whole plethora of empty symbols. But the complexity of meaning now increases substantially. The cool student is performing a different character than the ambitious student, yet we might assume that both recognise each other's performed characters. As such, the class knows that when the ambitious student is raising his hand slowly he is communicating hesitance or doubt; but when the cool student raises his hand slowly it is to show his coolness; when the rebel student raises his hand, expectations are raised as it promises a good laugh. The teacher as role and character might recognise these different characters as well, but hardly recognises every symbol of 'youth culture'. *Secret languages of resistance* among students might be his worst nightmare.

From this blatantly simplified clarification of a performative analysis of social practices, we might nevertheless gain four important characteristics for understanding lifeworld coordination. First, lifeworld coordination through symbolic communication is inherently *dialectical*, i.e. the symbols used are *empty* and only meaningful in the contextual and specific performance itself, while, vice versa, these contexts become meaningful practices only through the use of these symbols.²¹

²⁰ Indeed, we can also include gender as being performed "through a stylised repetition of acts" (Butler 1999:179)

²¹ This dialectic is present in the hermeneutical tradition as well where the meaning of a text does not reside in the words and sentences used, but in the context in which the story is told (Fischer 2009:195).

Second, lifeworld coordination does *not* rest upon some stable consensus or foundational agreement. Lifeworld coordination is inherently *dynamic* – it concerns symbolic action acting upon symbolic action, both between actors as between the different symbolic layers (stage, role, character). It is about making ‘moves and countermoves’ (Lyotard 1984:16). Lifeworld coordination will never reach some *consensual conclusion* but, at most, will arrive at some *stable equilibrium* which can always be disturbed (Lyotard 1984:61). Meaning and expectations are never conclusively fixed, they are continuously performed. The dialectical nature of performance, then, should not so much be perceived as being *circular*, static and stationary but rather as a *helix* dynamically moving onwards in time.

Third, lifeworld coordination achieves coordination precisely by the *rationality of an unfolding script* – beside more mundane material constraints.²² Only through the logic and internal coherency of an unfolding script do symbols and performances make more or less sense (Alexander 2004:529; Hajer 2005a:448). Rationality, in this context, should be understood in terms of a certain logic and coherency, not in terms of some rational truth. Furthermore, a performance remains open to different interpretations while not every interpretation is equally ‘reasonable’ from the experiences and observations of the actors involved. Irrationality, then, is to break with this internal logic – to be *incomprehensible* or *unreasonable*.²³ The logic of script ties the actors together as ‘the scene carries itself’ (Luhmann 1983:39). Breaking radically with the script will end social communication and coordination. Actors are more or less ‘stuck’ in the logic of their roles and characters, which they cannot leave behind without leaving something of themselves behind (Luhmann 1983:94). Yet ultimately, just as in symbolic coordination through system media, lifeworld coordination is inherently *vulnerable*.

Finally, such performative analysis of lifeworld coordination allows for *plurality* and *conflict*. Empty symbols mean different things for different roles and different characters but nevertheless coordinate social action because they make sense in the logic of the unfolding script. Conflict between the *logics* of roles and characters, indeed, even forms of resistance, are not necessarily denying the integrative aspect of lifeworld coordination. Only non-communication or incomprehensibility ends lifeworld coordination – not conflict. To that extent, we might say that

²² Here our theatre metaphor becomes slightly problematic as a script in theatre is known in advance. But I do not understand a script in terms of a ‘blueprint’ that ‘pre-exists a performance’ (Schechner 1973:6). All actors may have different scripts they want to enact, but only one actual script unfolds. Performance is not a ritual.

²³ For sure, irrationality might be a performance in itself or even a character or role expectation making irrationality rational.

'scripted conflict' is not a contradiction of lifeworld coordination.²⁴ Indeed, characters and roles might just be dependent for meaning and self-understanding upon performed conflict or resistance.

We might now be in a better position to contrast lifeworld and system social coordination. If we would analyse an educational practice in terms of system, we could analyse it in *generalised* and *formal* terms of legal rules and norms, the distribution of legitimate power, the knowledge of educational expertise and may be even in terms of money, on the one hand, and how these media communicatively coordinate social interactions, on the other. However, the difference between lifeworld and system is not reducible to a divide between informal and formal coordination, as Habermas often seems to imply. The difference lies in the different forms of *generalisation* or *rationality*. In this thesis, so far, we have understood socially valid norms in terms of rules of the game – valid norms that structure expectations and actions. These norms, we have also claimed, can be progressively *generalised* into expectations no longer grounded in specific practices and persons but in roles, offices and rules, and can be *formalised* and eventually even *controlled* and *prescribed* by an external authority. Such form of generalisation, formalisation and positivation, for sure, is the basis of Weber's understanding of the rationalisation of society and of Luhmann's media theory.

Lifeworld, in contrast, is not about *rules of the game* but more about *rules of art*, i.e. its rationality is dependent upon the logic of performance itself, upon the unfolding of the script.²⁵ The meaning of a specific symbolic action is not dependent upon generalised rules that divide expectations in dualities of legal/illegal, valid/non-valid, true/untrue or value/valueless, but upon the dialectical logic of *action as reaction* upon specific symbolic actions of other actors (Alexander 2004:541). Just as genuine actors in a play, one can improvise, respond and influence the mutual performance but only within certain logical limits, certain 'rules', that make up the *art of a performance*. Rationality must be understood in terms of such *art*, as comprehensibility in relation to the internal logic of a performance.

We might say, to sum up, that the difference between social norms as generalised rules of the game and social norms as contextual dialectical rules of art, or the difference between system and lifeworld, concerns their different type of social coordination.²⁶ With this statement we seem to

²⁴ Mouffe tries to organise such scripted conflict into an agonistic democratic *system* based upon a 'conflictual consensus' (1999:756).

²⁵ Here lies the difference between performance and ritual – a ritual is a formalised, ruled-prescribed practice, while performance is an open-ended and dynamic form of social coordination. Ritual is system, performance is lifeworld. The difference, then, is analytically fundamental (see in contrast Alexander 2004:534).

²⁶ This difference parallels, it seems, the two perspectives of 'power' that Foucault discerns, i.e. a difference between studying power from the perspective of domination or studying power as practice (1982:780). It is no coincidence that many of the disputes between Habermas and Foucault have centred around this difference between dominating and productive power.

have arrived back at Habermas' analysis of communicative rationality as opposed to system rationality. However, not only are we now able to hang on to Luhmann's more sophisticated version of system theory, we also have freed lifeworld coordination from the need for consensus. As such, we have replaced Habermas' 'formal pragmatics' of communicative speech acts with a far less formal 'performative perspective'. For both system and lifeworld coordination, it implies that the communicative symbolic basis of social coordination remains inherently vulnerable.

8.4 Narratives as Lifeworld Generalisation

The rules of art – the logic of lifeworld coordination – refuse generalisation, formalisation, and positivation.²⁷ Performative logic is inherently dialectic, contextual, temporal and dynamic. Nevertheless, I argue that lifeworld coordination allows for a different kind of generalisation. Instead of generalising expectation and meaning in terms of rules and values, lifeworld allows for generalisation in the form of *narratives*. I will argue that lifeworld expectations can be generalised from lifeworld practices in terms of cultural narratives, ontological narratives and discourses. Cultural narratives are generalised meaningful experiences (scene, role, character), ontological narratives are generalised histories (script) and discourses are generalised coordination (the logic or art of performance). All three types of generalisation allow different kinds of *storytelling*: the telling of fictional stories, of factual histories or of public argumentation. This, for sure, requires some explanation.

8.4.1 Cultural Narratives and the Symbolic World of Fiction

The first form of generalisation concerns the generalisation of meaningful experiences actors have in lifeworld practices where it concerns scene, role and character. Such generalisations of experiences are not about formal rules or norms but come in the form of narratives that are detached from specific practices. These narratives are not precise, fixed and formalised, nor do they concern specific contexts or histories, they are generalised or decontextualised lifeworld experiences. Precisely these generalised narratives provide the '*interpretative schemes*', in Habermas' account, detached from a particular practice that enable us to *interpret* scenes, roles and characters in different or new practices. When these generalised narratives are subsequently contextualised, when they are *performed* in a specific practice, they attribute expectations and meanings to symbolic actions allowing social coordination. As such, symbols or signs that communicate 'education' mobilise a narrative of expectations and meanings and it probably makes a difference whether they communicate generalised narratives of 'university', 'high school' or 'kindergarten'.

²⁷ As such, there seems to be a close affinity with Polanyi's concept of 'tacit knowledge' or Scott's idea of 'metis' (Fischer 2009:223; Scott 1998:350ff.).

In lifeworld practices we are able to recognise expectations communicated at the analytical levels of scene, role and character not because we possess some form of *symbolic code* or *special language* that prescribes generalised and socially valid expectations. Rather, *empty symbols* become meaningful because we recognise them to be part of generalised lifeworld narratives. Which means, first, that meanings would differ for alternative narratives and, second, it also means that meaning is never limited to an isolated singular event – meaning is always *also* general (Somers 1994:616). Generalised lifeworld narratives, then, are the ‘art’ which allow actors to coordinate lifeworld through symbolic performances. But, as we have seen, practice is a multi-layered complex of different narratives or interpretative schemes – there is no single ‘right’ interpretative scheme, let alone a single meaning. These generalised narratives are neither norm nor value. Where a moral value – let’s say honesty – demands that we ought to be honest, narratives tell us stories when honesty is a relevant value in the first place. So, if some narratives tell us that honesty is the basis of true love, other stories tell us that if one cares for the other one might have to tell a lie once in a while. There is no single universal moral rule – all depends upon how a specific situation is interpreted; how empty symbols become meaningful and how the script of the social practice unfolds in the social performance.

In short, these narratives as generalised experiences – which I would like to call *cultural narratives* – allow expectations and meanings to travel between practices, making social coordination in different and changing situations possible. If these cultural narratives are what Habermas’ understands as ‘background knowledge’, we can agree as long as this does not imply a consensual understanding or a single right way to interpret social actions and contexts. The actual practice depends upon social *performance* and not upon some presupposed or achieved consensual *agreement*. What integrates lifeworld practices is the contextual dialectic logic of symbolic, meaningful and comprehensible performances not a generalised background consensus.

Lifeworld generalisation, then, stand in clear contrast to Luhmann’s and Weber’s account of generalisation in which expectations progressively attach to person, role, rule and office. Lifeworld generalisation, in the first instance, concerns the generalisation of *experiences* in specific practices into *cultural narratives*. Cultural narratives, then, are more or less *detached* from specific practices which enable us to interpret different or novel practices, i.e. they allow us to interpret practice in terms of *expectations*. However, this dialectic between experiences and expectations still remains a rather subjective affair, complicating lifeworld coordination. Just as Luhmann, we need to explain how expectations might also be generalised from the subjective, to intersubjective to objective expectations, i.e. we need to explain the social institutionalisation of cultural narratives. We might

perceive that lifeworld generalisation contains a second kind of mechanism. Precisely because narratives are generalised experiences detached from a specific practice, they can be accessed in a different mode than merely through lifeworld performances (Bauman & Briggs 1990:73). Cultural narratives are – in contrast to Habermas' background knowledge – accessible through *practices of storytelling*. Precisely because narratives are detached from actual practices they can be the building blocks with which we can tell stories not only to ourselves but especially to others allowing us to grasp institutionalisation processes of cultural narratives.

Thirdly, we might also perceive that cultural storytelling opens up a *symbolic world of fiction* over and above the practices of daily life.²⁸ Storytelling, of course, is a practice in its own account and, as such, may come in many different forms. We might say in analytical and general terms that the *material foundation* of this symbolic world – the actual practices of storytelling – can be understood as the *cultural public sphere*. What all practices of storytelling share, however, is that they presume a storyteller and an audience. Storytelling, then, differs from lifeworld performance to the extent that it differentiates between active performers and passive audiences. One can be passive foremost because one is not involved in the story or the performance – the story is not about us as we are listening to the story, not about our immediate context, not about the practice we are involved in. Storytelling is *dramaturgy*.

Lifeworld generalisation, I argue, should be understood in these three terms of *generalised narratives, storytelling* and *dramaturgy*. Furthermore, these three processes are inherently related and can hardly be separately understood. Storytelling allows one to become detached from one's direct surroundings – detached from the reality of everyday practices – and to enter a symbolic but *meaningful* world of fiction. Indeed, fictional stories can be quite meaningful as they 'move' the audience. The passivity of the audience might therefore be better understood as *uninvolved involvement* (Luhmann 1983:123). This peculiar accomplishment is possible, it seems to me, precisely because the storyteller can 'use' cultural narratives available to tell his fictional story. Through these narratives the audience can identify with the hero of the story, the bravery of his actions, the fairness of his fight, the evil of his adversaries, the excitement and distress when things threaten to go wrong, the gratification when evil is slain and the fulfilment when the hero deservedly gets the girl – or, vice versa, the horror when evil triumphs. When we close the book, when the curtains fall or the lights go on, we are back in our normal life, yet, we have experienced many *real* emotions and thoughts.²⁹

²⁸ For Adorno, this symbolic world has become an escape of 'fleeting gratification' answering to the 'desire to be deceived' because otherwise life would be 'completely intolerable' (1975:16). Mickey Mouse as "a dream for contemporary man" (Benjamin 1999:734-5)

²⁹ Indeed, symbols or rituals often make clear when storytelling starts and ends – to separate it from 'reality'.

We can analyse this process in terms of sentiments and utopias. *Sentiments* concern the identification with the story, roles or characters based upon one's own experiences and observations in life (Jameson 1979:147; Adorno 1975:15; Hariman & Lucaites 2003:38). The fact that we cry when an impossible love is answered despite all odds is not because we really care about these (fictitious) characters but because we complement the story with meanings from our actual life. We (unconsciously) recognise our own life experiences and emotions in the story told. *Utopias* function somewhat differently to the extent that we do not so much complement the story with meanings from our own life experiences, but the story relates to dreams and nightmares about what our own life *could be* – either in terms of utopia or dystopia (Jameson 1979:142, 1982:153). The story not only mobilises hopes and fears, but – like religion – provides us with 'knowledge of the unknowable'.³⁰ Both sentiment and utopia explain uninvolved involvement in terms of a relation between everyday practices and the practice of storytelling, but in opposite directions.

In other words, despite the fact that these stories are fictional – they relate to real life, they are comprehensible and they are meaningful because they make use of cultural narratives (generalised experiences). Yet, vice-versa, this also means that through listening to meaningful and moving stories we can actually gain new 'experiences'. Through fictional stories I can experience, if only symbolically, what it is to be a soldier, the president, to be poor, to be rich, etc. In other words, fictional story telling reproduces but also produces cultural narratives. As such, I might recognise in reality what I have only experienced in fiction and recognise in fiction what I have experienced in reality. Storytelling is not merely reproducing but also producing new cultural narratives. As such, we can understand that our *subjective* experiences in real life partly depend upon the *social production* of cultural narratives and, vice versa, that the social production of narratives depends upon our experiences in reality. This dialectic, then, explains the social character of lifeworld narratives – i.e. why our experiences and observations are inherently 'valued' – but also why not just any fiction is meaningful as it has to relate to real situated experiences.

In *figure 8.1* I have depicted schematically the relations we have discussed so far between lifeworld practices and fiction: 1) the *generalisation* of lifeworld experiences and the interpretation of lifeworld practices in terms of cultural narratives; 2) the practice of *storytelling* which opens up a symbolic world of fiction and a material world of the cultural sphere, both through which cultural narratives are produced and reproduced; and 3) the relation between this symbolic world of fiction and our real lifeworld experiences in term of *dramaturgy*.

³⁰ As such, cultural storytelling can also be a means of propaganda or of social criticism (Alexander 2004:544).

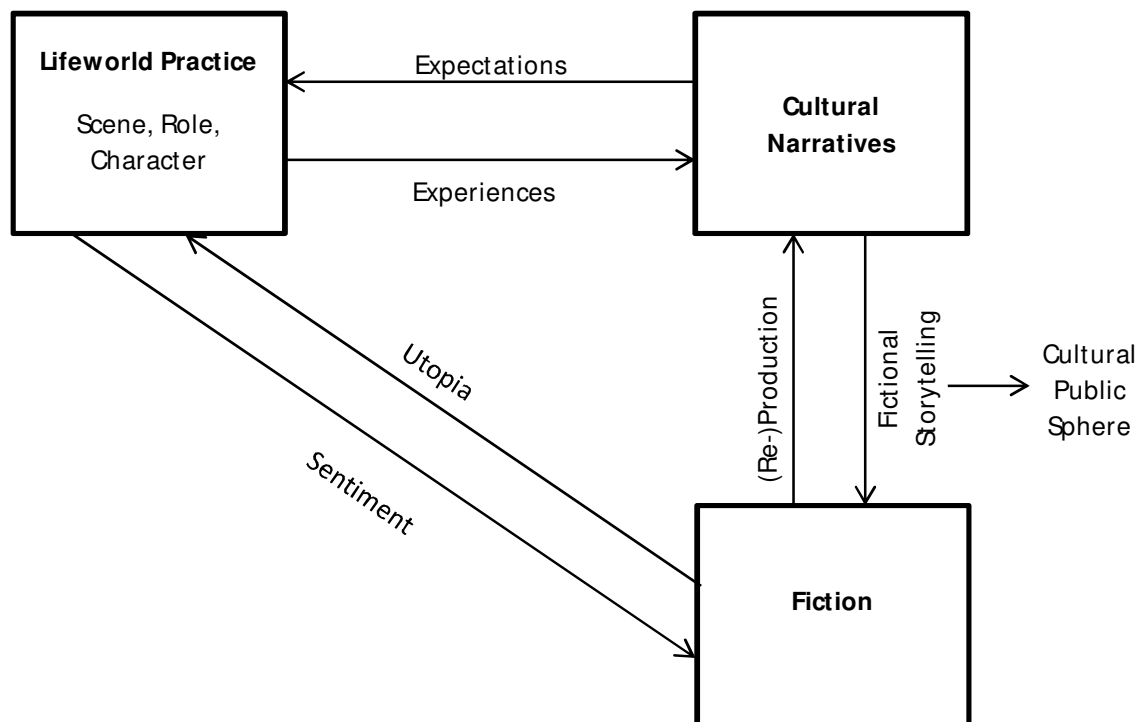


Fig. 8.1 – A performative model of the cultural public sphere. The horizontal lines concern the mechanism of *generalised narratives* in everyday practices; the vertical lines concern the practice of *storytelling*; and the diagonal lines concern the *dramaturgical* part of fiction.

8.4.2 Ontological Narratives and the Symbolic Reality of Worldviews

Cultural narratives allow actors to interpret actions in terms of meaningful expectations. However, what coordinates social action is not only the communication of meaning, but what we have called the logic and internal coherence of the performance, or the *unfolding script*. It is the unfolded script – the social history – that determines the current situation of a practice and which moves are rationally expected to be possible and which acts are comprehensible. As such, for any actor involved in a specific practice, it is not only important to understand the meanings of acts and objects, but to understand the *facts* of the situation – the current *state of affairs*. To understand the facts, an actor must know the past; know how the script has unfolded up to this moment. Practices have a history which determines the current state of affairs.

In principle, actors *share* this factual understanding of reality as they share a history. This must be understood carefully, however. We are not bringing back consensus through the backdoor. First, a shared history, of course, does not mean that the actors share the same meaning of present day reality. We are talking about the factual state of affairs here. Second, when we say that actors share a history or reality we are primarily stating the obvious: an individual cannot make up facts at will. Reality or the state of affairs is an inherent social reality. To understand the unfolded script is to understand the *intersubjective constitution* of reality. For social coordination, as before, it is not

important whether this reality is *true*, in any sense, but whether one expects others to expect this reality to be true. As such, the performed script points out the social construction of the present state of affairs. In this sense, facts are not about epistemological truth but about social validity. However, social validity cannot be understood in terms of generalised norms or rules (system) – what is socially valid is constantly performed (lifeworld). Social validity *is* the unfolding script. Facts do neither depend upon social consensus nor upon epistemic rules, but upon a continuous performance and communication of expectations. In social practice, then, the factual state of affairs is both socially performed and historically informed.

Just as scene, role and character allow a form of generalisation that we have analysed in terms of cultural narratives, fictional storytelling and dramaturgy, we can analyse script in a similar way. A script can be generalised in terms of ontological narratives; produced and reproduced by telling biographical and historical narratives; and from this storytelling symbolic worldviews and personalities are emerging that dramaturgically and dialectically structure the way we understand ourselves in real practices. Let us examine these claims.

Generalisation – The unfolded script, the history of a practice, determines the current state of affairs. It is this history that allows for a different type of generalisation. If the script, in principle, encompasses all history and all social action of a specific practice, we can generalise our factual experience in terms of a *historical narrative*. Historical narratives recount a chronology of factual events that have happened in a specific practice (Alexander 2004:530). And through these narratives we interpret the current state of affairs. Such historical narratives – or generalised scripts – therefore remain tied to specific practices and experiences. However, they are also simplifications at the same time. A historical narrative is not merely a chronology; by necessity it categorises and classifies history. As such, historical narratives always encompass a second type of generalisation: *ontological narratives* (Somers 1994:618). These are narratives of ‘representation’ that recount the nature of things (Bourdieu 1989:839). Ontological narratives allow detachment from a specific practice altogether. They concern the categories and classifications through which we perceive (social) reality and, as such, they can ‘travel’ between different practices. When we enter a new practice we can understand and interpret social reality in terms of these ontological narratives.

Story-telling – Just as cultural narratives allow a form of storytelling, ontological narratives also allow a form of storytelling. Ontological narratives provide the possibility of *combining* and *simplifying* different historical narratives into a more or less coherent history beyond one specific practice; the possibility of understanding different histories and practices in terms of one ontological narrative.

Ontological narratives, then, allow a form of storytelling that opens up a 'symbolic reality' over and above the practices of daily life. There seem to be two important strands of such storytelling: recounting individual and collective histories (Bourdieu 1994:14) subsequently generating the *symbolic realities* of personality and worldview.

Biographical or individual narratives are not about recounting the historical narrative of a particular practice, but of recounting one's life experiences and events within and across different practices. Through telling a biographical story we tell a story of who we are as an individual person in the present – we tell our present 'state of affairs'. Through telling such factual stories one creates a *symbolic* and *coherent* reality beyond particular practices, beyond all the different roles and characters we perform in daily life – a symbolic reality that we can call individual personality. Although we constantly have to perform different roles and characters in different scenes, this symbolic narrative provides a univocal, continuous and coherent sense of reality despite the plurality and fragmentation of everyday practices.³¹ Telling our biography, then, is not just giving factual information about our past experiences in different practices, but also generates persons as an ontological and symbolic reality.

Collective narratives, in contrast, combine historical narratives of *different practices* into a generalised and more or less coherent story. Through telling collective narratives we tell a factual story of how we are as a *collective* in the present, how different practices are coherently related and how we understand our place in this general history. Through telling collective histories we create a *symbolic* and *coherent* reality over and above all the different and isolated practices of daily life – a symbolic reality that we can call *worldview*. Telling collective histories, then, is not just about factual information on what is happening in other social practices beyond our involvement, but generates *worldviews* as an ontological and symbolic reality – it gives rise to the *nature of the world*.

When we understand how scripts might be generalised in terms of ontological narratives, and how these narratives allow telling biographical and collective histories that create symbolic realities of personality and worldview, we might wonder how such storytelling takes shape. As always, storytelling is a social practice, which means that we should be able to identify the material foundations of worldview and personality. In comparison with cultural narratives that allowed distinct practices of storytelling – giving rise to a cultural public sphere – ontological narratives, however, seem to constitute less distinct practices. Both personality and worldview are symbolic realities that rise from telling individual and collective histories through which we understand the current state of affairs; through which we understand the *objective* world beneath and beyond the

³¹ This does not mean, of course, that such narrative is unitary or singular; it probably is a 'multi-layered' story (Prins 2006:282; Somer 1994:612). Furthermore, narratives are never finished, despite our desire for 'closure' or truth.

particular practice in which we are involved. However, these histories are not ontological narratives in themselves. Worldviews as a symbolic reality arise from telling *factual histories*.

Histories recount facts. It is important to notice that biographical and collective histories are not about *meaningful* facts. If worldviews and personalities become meaningful narratives – discourses – we might understand them as normative ideologies and identities (Somers 1994:605; Prins 2006:281). Whether ideology and worldview or personality and identity can be empirically separated is quite a different and difficult matter. Analytically, however, it is important to differentiate between historical narratives and discourses – for the sheer fact that *facts* matter on their own account. If worldviews as a symbolic reality, then, arise from telling factual histories, it seems to me that the underlying material practices concern different forms of *everyday talk* performed in the interstices of lifeworld practices. Such talk concerns the exchange of histories or ‘narrative forms of knowing’ (Fischer 2009:193). We constantly tell others (as well as ourselves) what happened – we constantly tell factual stories. Indeed, just as for any kind of storytelling practice we must presume a narrator and an audience. In case of biographies the audience is as much other people to whom we tell our life histories as it is ourselves. Personality is a story individuals tell themselves. In case of collective stories, it seems to me, we tell factual stories to two kind of audiences. We tell ‘outsiders’ what happened in a specific practice or we tell ‘insiders’ how this specific practice relates to the world beyond.

Personality and worldviews, in conclusion, arise as symbolic realities from all social practices in which we tell factual histories. The material foundation of a symbolic worldview is not only everyday talk but especially also what we might loosely call the *news media system*, i.e. the public sphere that consists of news coverage and report (Hallin & Mancini 2004). We might presume that the mass media are specifically important forms of narrating collective stories and realities, but we should also include the *educational system*. Although histories consists of factual knowledge and information that can always be disputed, these systems especially open up a symbolic space in which worldviews can take shape.

Histories are factual stories we tell to audiences from which symbolic realities – worldviews – arise. This relation between facts and reality, however, is a very complicated one as telling factual stories can give rise to argument and dispute. Facts can be *untrue*. The crucial difference between cultural and historical storytelling, then, is that the former consists of *fictional* stories and the latter of *factual* stories. In fictional stories the meanings experienced do not derive from the authority of the storyteller. A storyteller does not claim to tell the *truth* and as such he is not claiming *authority* even though he might be the author of the story (Lyotard 1984:20). The audience might criticise the

storyteller for telling the story poorly, for telling a boring story, for unconvincing plot changes or even for the immorality of the story – but the storyteller cannot be criticised for the meaning – sentiments and utopias – we each experience on our own account through narration. It simply does not make sense to question the validity of our own experiences as there is no authority to appeal to, they are mere ‘facts’.³² This might be what Habermas means when he claims that lifeworld represents the ‘fusion of validity and facticity’ (1996:23). In storytelling there are no facts as the story is fictional while the meanings experienced are nevertheless factual.

Telling factual stories is inherently different from telling fictional ones in one crucial aspect: factual stories contain *truth-claims*. Telling factual stories, then, is not about authorship so much as about *authority*. One does not claim to have written a story, one claims that what one tells is *true* and that others *ought to* recognise this truth. The opposite of telling a fictional story is telling the audience how they ought to interpret reality. Precisely because truth-claims compel us to interpret a practice, event or action in a specific manner, it opens up, as Habermas also recognises, the tight fusion between facticity and validity. Authority opens up social reality to questions of validity or legitimation (Lyotard 1984:23). Authoritative claims must be proven and questions redeemed.

However, the symbolic reality of worldview that arises from telling factual histories does not give rise to questions of validity – it does not have this *epistemic* notion. When someone tells you his biography – an individual history – you might question some of his factual claims. You might wonder, for example, whether he really did finish his PhD. As such, epistemic questions or questions of validity might arise. However, these questions have nothing to do with the ontological story he is also telling ‘in between the lines’ that creates a symbolic reality – worldview and personality – beyond this specific moment. In other words, we might question the facts narrated but we do not question reality presented and presumed in the ‘pragmatics of narration’ (Lyotard 1984:27). The crucial point, then, is that worldviews arise from within the factual story narrated. It is not *what* is told, but *how* it is told.

We can say, then, that the peculiar feature of worldviews – i.e. their structuring force without questions of legitimation or proof – lies in their *unauthoredness* (Arendt 1998:186). This means that there is no *author*, no *origin*, no *original*, no *first time* (Jameson 1979:137; Butler 1999:175; Foucault 1984b:77; Lyotard 1984:22).³³ Social reality is not based upon author or authority, the key mechanism is *repetition* and *imitation*. The narrator claims to be the author of the factual history he tells, but he does not claim to be the author of the ‘world as it is’ – he is not the

³² This, it seems to me, explains the fact that cultural products are sometimes condemned as immoral or perverted as we can experience thoughts and meanings that are quite real and disturbing.

³³ Even if there is an original – for example an image, painting or picture – its mere reproduction, repetition and circulation, made possible by the technologies of modern society, makes it a convention, a ‘banality’, which can no longer represent some ‘original’ meaning (Hariman & Lucaites 2003; Lucaites & Hariman 2001).

author of the ontological story that is necessary to tell his story. He does not claim that this reality is 'true' because he claims it to be, but he expects this reality to be socially comprehensible. Worldviews are not true but socially constructed. To understand the social construction of reality is not to look for the epistemic truth of affairs, but to understand its social history – the production and reproduction of reality through everyday factual storytelling. Social reality can only be understood in terms of its genealogy – in terms of *Herkunft* not in terms of *Ursprung* (Foucault 1984:46a; 1984a:80). Worldviews, then, might be understood as ontological narratives of representation “adapted to the structures of the world which produces them” (Bourdieu 1989:839). Worldview is an *unauthored reality* that does not need to be *proven* as it is socially produced and reproduced – it is inherent in how we tell factual stories. There is no authority to appeal to.

Dramaturgy – Telling factual histories before an audience opening up a symbolic worldview has inherent dialectical consequences. Worldview structures how we understand reality, while how we understand reality also confirms our worldview. This inherent dialectic of knowledge is the basis of what is sometimes called 'post-empirical' or 'post-positivist' science (Fisher 1993:333, 2009:4; Hajer 1993:44; 2005a:447). The idea that factual reality is about telling or performing historical narratives seems to clash with mainstream ideas about science. Science tells us what the facts are and this, surely, has nothing to do with storytelling? However, it is important to separate a lifeworld perspective of science from science as a social system formally coordinated by *epistemic rules* – rules that tell scientists what valid knowledge is (truth/untruth). Knowledge is true, the formal story of empiricist science goes, when it is *coherent with observations of reality*. Indeed, this epistemic idea of truth as being coherent with reality is also widely shared in most if not all lifeworld practices. Someone either did or did not do something; I gave you either 20 or 30 euros. And it makes no sense denying this experiential basis of truth. Post-empirical critique of this perception of scientific episteme, however, has less to do with the rule of coherency, the problem is what constitutes reality (Horkheimer 1972:240; Fischer 2009:112, 1993:334).

Many have pointed out that science coordinated by its formal episteme cannot account for its actual practices (Kuhn 1970:52; Horkheimer 1972:195-6; Fischer 2009:114; Lyotard 1984:54; Yankelovich 1990:231). Science as a lifeworld practice also needs historical narratives that tell it what its present day reality is, what it knows better today than yesterday and what the current problems, questions and puzzles are that still have to be solved. Such historical narratives, worldviews or paradigms, in Kuhn's words, explain scientific practices and their understanding of reality (1970:43). Every scientist making a factual truth-claim has to relate to this historical narrative which makes his claim comprehensible (rational) – but not necessarily valid (true) – for the scientific

public that he must presume shares this worldview. Indeed, almost every scientific publication begins with a description of ‘the field’, its main problematic and the research question that follows from it – narrating and reproducing the scientific worldview and its state of affairs (see also Adorno 1976:73). The scientist, in a sense, creates his own symbolic collective reality. The public must accept this worldview if they want to understand his argument (Putnam 2002:39).

Scientific practice is coordinated and the scientific public is integrated through telling collective histories. Breaking with its paradigm makes scientific claims incomprehensible. Science, then, is also a *dramaturgical practice* in which scientists tell collective stories and produce and reproduce a symbolic worldviews which they expect to be socially valid for the scientific public. Only within this *unauthored* worldview can their *authored* truth-claims make sense – be more or less *reasonable*. Kuhn pointed out that the relation between unauthored paradigms and authored truth-claims tends to be counterfactual in ‘normal’ scientific practice as anomalies or critiques are put aside as irrational (Kuhn 1970:77; Horkheimer 1972:232).³⁴ Post-empiricists often claim that this counterfactuality shows that *facts and values* cannot be separated (Fischer 2009:112; 1995:13). However, as I have demonstrated above, we must be careful not to confuse truth and reality – episteme and ontology. Indeed, paradigms or worldviews are not about *truth* and *untruth* but about *real* and *unreal*.³⁵

Paradigms are narrated and unauthored histories creating a symbolic scientific worldview which makes scientific practice possible in the first place. It allows the scientist to perceive the world in terms of scientific problems and questions, which structures his research and determines the relevance of his findings. As stated before, science is therefore historically situated and inherently valued. However, this does not mean that science is a normative affair – that the paradigm *ought to be true*. A paradigm or a collective worldview is not an ideology. Rather, in science as in real life we tend not to discard our understanding of reality by a single anomaly but rather classify it as incomprehensible, irrational or a mistake. In this context it seems better, then, not to talk about the counterfactual nature of science which often slips into epistemological arguments, but of the dialectic between facts and reality. *Worldview is dramaturgy*: we recognise the symbolic worldview as it aligns with our lifeworld experiences and observations – it proofs itself in *facts* – while at the same time, how we understand and perceive these experiences, how we understand the world and our place in it, is structured by symbolic worldviews. It is this dialectic between two ontologies,

³⁴ Just ask a group of statisticians whether their method is really the most appropriate one to solve a complex social question. Most of the time they will answer – with a slight sigh – that this is the method and data they’ve got, that they are relating to other claims made in their field and that if it does not say everything it must say something. This is the reality of *all* scientific practice. However, some practices are more institutionalised than others.

³⁵ That does not deny that also scientific *episteme* has its own historical narrative (see e.g. Kwa 2005; Foucault 1971).

reality experienced and symbolic reality narrated that tends to have counterfactual tendencies, but worldviews or paradigms are not fixed *normative* structures. The material institutionalisation of scientific paradigms, of course, is a completely different affair.

The dialectic between real facts and symbolic reality, we might notice, is akin to the dramaturgical dialectic between real and fictional experiences in fictional story telling. Ultimately, this dialectic explains why symbolic worldviews do not give rise to questions of legitimacy.³⁶ Scientific practice is not about a shared consensus or epistemic rules, but about telling collective histories which makes present-day scientific arguments comprehensible and more or less reasonable.³⁷ Whether these arguments are true in an epistemological sense is quite a different matter. This example of science shows in general that we must not so much understand *when* something is true (system episteme) but *how* something is true (lifeworld experiences and storytelling). A performative perspective tries to understand the *ontology of society* – how we make sense of what and who we are through social action and storytelling (Somers 1994:61:614).

Finally, the fact that historical narrations produce unauthored symbolic worldviews with its inherent dialectic and counterfactual tendencies leads some scholars to claim that ontological narratives *legitimate* social order. Ontological stories – symbolic worldviews – might not be about epistemic facts, they are about facts nonetheless. Worldview is not an empty story. It tells us how the world is; it presents itself as natural. Indeed, such ontological realities might be buried deep in social practices and narrations producing and reproducing power relations through their unauthored quality. Social order and its hierarchical relations and divisions are *naturalised* as ‘doxic’ knowledge (Bourdieu 1989:839-40; 1994:2,15). Legitimacy, in this guise, is understood as naturalisation; not a form of normativity but of facticity. The social order is not necessarily right or valid, not how the world ought to be, but the way the world *is*. Worldview ‘confirms the established order’ and prevent the rise of questions of validity or legitimacy (Bourdieu 1989:839; 1994:15). Although I would not call this a form of legitimation, but rather a form of naturalisation, historical narrations do seem to have this effect of *non-legitimation*. However, it should not mean that there is only one single ontological worldview present in ‘society’ – or even a form of consensus – capable of naturalising social order or the political system in its totality (Bader 1991:103). There are many worldviews narrated in late-

³⁶ Indeed, when paradigm shifts do occur we understand them in terms of a *discovery* not in terms of some kind of *emancipation* from scientific authority.

³⁷ That mere episteme does not suffice – or that epistemic problems always presuppose ontological narratives – becomes clear in the famous example in which we wonder whether the discovery of a black swan logically means that not all swans are white or that the black swan is not a swan. Ontological problems do explain why natural science has a tendency to move to its two *universal* extremes: the elementary and the universe – a tendency that Habermas seems to take over. However, these universals do not explain the material and social world that exists in between. The world that matters.

modern society that often conflict. In other words, worldviews must always be socially performed and symbolically narrated in specific practices.

In *figure 8.2* I have depicted schematically the relations we have discussed between lifeworld practices and worldview: 1) the *generalisation* of lifeworld experiences and the interpretation of lifeworld practices in terms of historical and ontological narratives; 2) the practice of *storytelling* which opens up a symbolic world of worldview and a material world of the media and educational system, both through which ontological narratives are produced and reproduced; and 3) the relation between this symbolic reality and our real lifeworld experiences in term of *dramaturgy*.

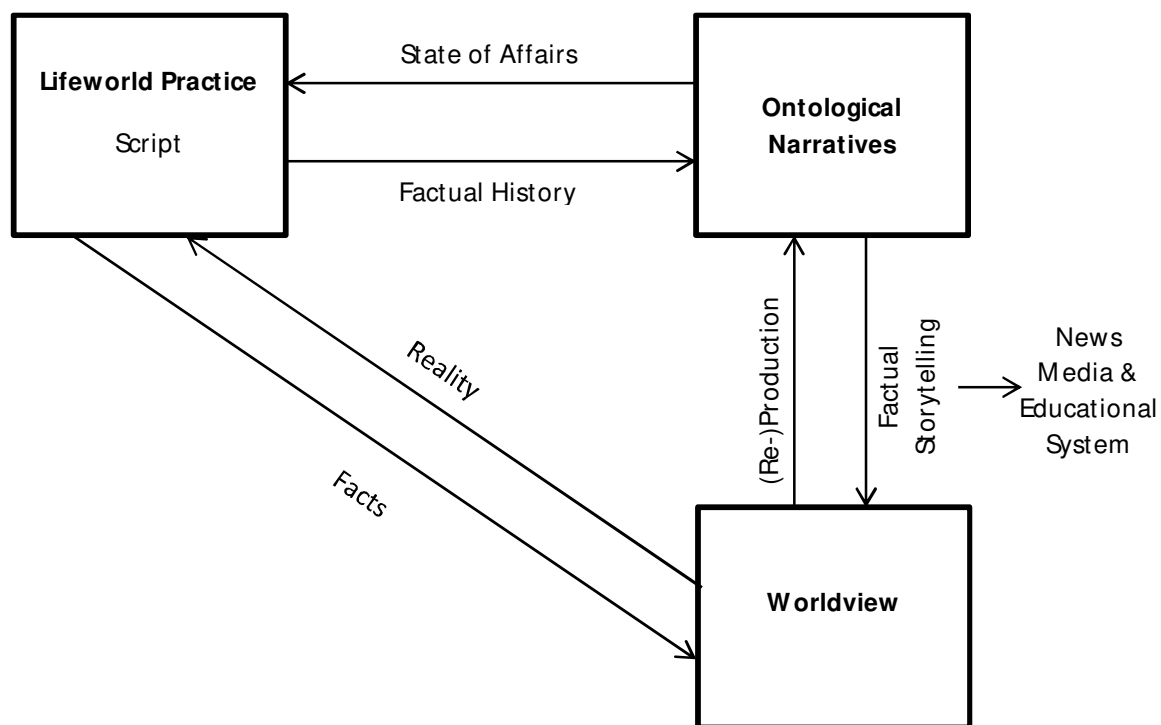


Fig. 8.2 – A performative model of the news media and educational systems. The horizontal lines concern the mechanism of *generalised narratives* in everyday practices; the vertical lines concern the practice of *storytelling*; and the diagonal lines concern the *dramaturgical* part of worldview.

8.4.3 Discourses and the Symbolic Space of Authority

Cultural and ontological forms of storytelling produce the symbolic reality of fictions and worldviews, but do not evoke claims of authority. Both ontological and cultural narratives are *unauthored* schemes of interpretation and representation that allow the individual actor to understand a social situation in terms of facts and meanings. But such analysis is still *static*. Social practice is an open-ended and dynamic social performance that continuously determines meaning and facts of the practice. In this dynamic perspective every action communicates a validity claim, i.e. an *authored* interpretation of how others ought to understand the practice. It is this ‘authoredness’ that requires

questions of validity and authority, which I will analyse in terms of the by now familiar categories *generalisation*, *storytelling* and *dramaturgy*.

Generalisation – Social coordination, in the performative or lifeworld perspective, means to act upon the actions of others. What integrates and coordinates these actions is the logic of the social script unfolding. It is practical, then, to differentiate between history as the *unfolded* script – making sense of the present state of affairs – and social coordination as the *unfolding* script. Every act, as Habermas points out, makes validity claims as every act communicates an interpretation of the *meaning* and the *facts* of the present situation. Through actions every actor symbolically communicates to the other actors how they *ought to* interpret the situation. Social coordination, then, is a normative affair through which ‘validity and facticity split apart’ (Habermas 1996:27). If other actors do not agree with a normative interpretation – with the facts and meanings claimed – they might accept it for strategic reasons, quit the social relation all together or make a counter-move. Indeed, social performance itself can be perceived as a form of argumentation of how a situation ought to be understood. We often stay clear from open conflict and linguistic argument, while we try to re-interpret the situation through counter-moves, through symbolic actions.

Nevertheless, it is clear that social coordination in a specific lifeworld practice might also be continued in terms of *linguistic argumentation*. In the first instance, a speech act can be interpreted like any other symbolic action. It merely communicates one’s interpretation of scene, role and character and it must be comprehensible in relation to script.³⁸ So, if we return to our educational example, we can see that a speech-act is similar to any other symbolic act if one states: ‘I am your teacher’. Just as any other symbolic action this act entails a *validity claim* to the extent that it communicates how the situation *ought to be* interpreted. However, in second instance, language allows us to demand explanation or clarification if we ask ‘what do you mean?’ Now we might perceive that the performative coordination takes a linguistic turn as we start to *explain* and *justify* what we mean. We subsequently not only communicate an explanation of our interpretation of the current state of affairs, we also simultaneously argue why the other ought to take over this interpretation. We expect our clarification or argument to be persuasive. In its most rudimentary guise our argument concerns a clarification of our train of thoughts that lead us to this particular interpretation. As such, we tell *meaningful histories* that communicate our interpretations of meaning, fact and, above all, the rationality or *logic* of this history. Finally, if the other disagrees with

³⁸ As speech act-theory tries to show, we normally mean more with language than what we actually say (Searle 1964, 1976, 2005). As such, speech acts must not merely be analysed in terms of the meaning of words but especially in terms of a performative perspective.

this argument he might make a counter-argument, a counter-move that provides a different interpretation of (a part of) their shared history.

So, for example, when two lovers argue about the interpretation of an event or the state of their relation they might try to convince each other of the *meaning of facts* and the *factuality of meanings* by telling meaningful histories. According to Habermas a *good argument* would be the argument that forcefully persuades the other of its validity. But this is often not how an argument works. Often an argument does not lead to consensus or agreement at all – often nothing is ‘resolved’ although grievances are expressed, misunderstandings clarified, disagreement better understood and disagreement not further thematised *for the moment*.³⁹ But for sure, things have changed. The argument has given new meaning to the state of affairs of their relation and subsequent actions and events might be interpreted differently than before. The lover’s argument has changed their lifeworld practice as it has changed their history and therefore the meaning and facts of the current state of affairs. Argumentation in this explanatory mode, then, is foremost about social *coordination* – not about searching for truth or proving validity. Indeed, the reason our two lovers are arguing and why they accept certain arguments in order to make a subsequent argument is not because they are necessarily oriented to truth-finding or because they are genuinely persuaded by argumentative proof, but because they are interested in social coordination, which might demand mutual understanding but not agreement. They are *forced* into argument because the alternative is conflict or disintegration.

Linguistic argumentation, in this guise, is lifeworld coordination with different means. Argumentation is an inherent part of lifeworld coordination and no consensus is presumed or necessary. Even more importantly, to understand argumentation is *not* to analyse mechanisms of persuasion, let alone its epistemic rules, but to understand argumentation as a lifeworld practice in itself – as a performance (van Stokkum 2005:400; Hajer 2005a). Argumentation is itself a lifeworld performance in which the unfolding of the argument – its script – determines its internal logic and coherency; the ‘appropriateness’, comprehensibility and reasonableness of speech acts (Turner 1975:150). But this argumentative performance has *real life* consequences.

However, argumentative coordination differs from performative coordination in two respects. First, because coordination is linguistic we are no longer limited to the interpretation of actions, facts and histories inherent in the specific practice only. We can also explicitly relate the history of the specific practice to collective or personal histories, indeed to worldviews and personalities. As such, the two lovers might not only talk about the facts, meanings and logic of their shared history but also how

³⁹ The downside of language, it seems, is that, precisely because of its relative preciseness, conflicts can less easily be avoided or ignored as ‘misinterpretations’. A solution, of course, is fuzzy language.

this history relates to how the world is – how we understand the nature of relationships, gender roles, sexuality or love – or how it relates to who we are as a person – to our ‘character’, our whims and wants. Secondly, language not only enables us to communicate how we meaningfully understand the current state of affairs but also opens it up to the *future*. Language not only allows us to specify how we interpret the current state of affairs in light of our history, but also in light of our common future. This means that the argument can also include how we think we *ought to act* collectively separate from how we actually act. Although symbolic acts including speech acts always make validity claims, this future-orientation make argument explicitly normative as it allows us, as stated before, to make moral, ethical, prudential and realist arguments about what we ought to do. Argumentation no longer is merely explanatory but explicitly *authoritative*.

In sum, we can see that linguistic argumentation easily *generalises* beyond performative coordination with different means, to an argumentative coordination that mobilises general cultural and ontological narratives beyond the particular practice and makes authoritative claims into the future – a generalisation in ‘space’ and ‘time’. In the former, the coordinative logic arises from speech acts acting upon speech acts, while in the latter this logic is generalised into an explicit normative argumentation. The lovers might now argue about what love and their relation ought to be. Such generalisation of coordinative logic produces what we can call *discourses*. Discourses, I will argue, are the analytical building blocks for analysing a specific type of storytelling: *public argumentation*.

Like all forms of storytelling, public argumentation implies a storyteller and a passive audience. This dramaturgical perspective ‘frees’ argument from the inherent force of social coordination. Where the two lovers are forced into argumentation by their mutual need for coordination, public argument can be easily ignored by the audience without immediate consequences for their lifeworld practices. If the coordinative logic of an argument arises from speech-act upon speech act, we need not wonder whether the validity claims made are true or persuasive – what counts is comprehensibility, the force of social coordination and how argumentation subsequently changes the social reality of the practice. When this coordinative logic, however, is generalised into a discourse that allows for the storytelling practice of public argumentation *detached* from our immediate contexts and before a *passive* audience, it seems that we do need to understand how an argument can be persuasive, how it can justify its validity claims, its authority. It seems to me that we, in order to understand the nature of public argumentation, need to address two fundamental questions. First, if public argumentation is no longer directly about social coordination but about telling stories before an audience what explains the force of the better argument? Second, making a public argument is to claim *authority* – to make a truth-claim that the

public ought to acknowledge. The question is why a passive public would agree with that claim. What *legitimizes* this authority?

Dramaturgy – Let us start with the latter question. Authority is to make truth-claims. Authority is to claim to be the author of factual truths, which differs from telling authored fictional stories or unauthored worldviews. Truth-claims might give rise to *argumentation*, to questions and critique, on the one hand, and to justification or *legitimation*, on the other. The question is how authority can be legitimated. How are truth-claims justified?

The answer to these questions, it seems, is provided by *discourse theory* – in particular as understood in the policy sciences in the aftermath of the ‘argumentative turn’ (Fischer & Forester 1993; Fischer 2009:120; Hajer 1993:45). Discourses are narratives or storylines that symbolically frame facts as meaningful precisely because *facts do not speak for themselves* (Hajer 1993:45; Yanow 2000:11).⁴⁰ Discourses supply a ‘conceptual scheme’, a ‘lens’, a ‘frame’ or a ‘generic diagnostic or prescriptive story’ through which to understand the world, the issue, the problem at hand, its solution and the alternatives (Rein & Schön 1993: 146; 1996:87-9; Dryzek 1997:8). In a discourse, we might say, fictional and factual storytelling come together. The factual part concerns a factual history that mobilises worldviews and produces and reproduces the *objective* state of affairs (Edelman 1993:232). The fictional part of discourses concerns the mobilisation of cultural narratives especially by making use of *metaphors* and *analogies* (Yanow 1996, 2000:41, Stone 2012:157-60; Rein & Schön 1996:89; Edelman 1998:134). By mobilising cultural narratives through discursive frames we accomplish two things: 1) the mobilisation of *subjective* lifeworld meanings based upon sentiment and utopia, upon real and symbolic experiences; and 2) as interpretative stories, discursive frames mobilise expectations, i.e. it mobilises a specific storyline or *frame logic*. Discourses, then, bring together the factual and the fictional and the objective and the subjective. The most important insight, however, is that if a discourse is able to *frame reality in a meaningful way*, its frame logic is transferred upon the state of affairs, which means that some actions, decision or arguments are more or less logical, more or less *reasonable* than others (Fischer 2009:120; Bennett & Edelman 1985:163).⁴¹

Rein and Schön give the example of the metaphor of ‘disease’ (1996:89). We might imagine that a politician, who has to justify a decision as the *right* decision – a truth-claim – can frame the issue in terms of this metaphor by using words (symbols) such as sick, weak, pale, parasitic, healthy,

⁴⁰ It is interesting to note that Rein and Schön differentiate between ‘rhetorical frames’ and ‘action frames’, which seems to parallel the difference between symbolic storytelling and coordinative practices (1996:90).

⁴¹ Discourses are sometimes understood in the terms of Bachrach and Baratz (1962:949) as the ‘mobilisation of bias’ (see e.g. Hajer 1993:45). However, this gives the impression there can be an *unbiased* form of discourse or rationality, immediately pushing us into an epistemic debate.

strong, body, virus, decay, recovery, etcetera. Such metaphors mobilise cultural available narratives of 'disease' which provide expectations through which facts are interpreted. As such, it might frame the situation underlying the decision as a situation of seriousness, crisis, or of life and death. It might also frame the politician as responsible, caring or as an expert or doctor, while others might be framed as patients, as sick or as intruding pathogens. We also 'know' that 'the greatest wealth is health', that 'desperate diseases must have desperate remedies', that 'good medicine often has a bitter taste', that 'there is no medicine for a fool' and that 'the cure might be worse than the disease'. The crucial point, therefore, is that the frame not only provides a meaningful interpretation of the state of affairs it also gives reality a certain *frame logic* (Rein & Schön 1996:89, 92). The disease-frame *demand*s surgery, treatment, quarantine, a cure, recovery or prevention. Thus, the legitimating force of a discourse is not that it provides *proofs* for the truth claim made by the politician, but provides a frame with an inherent logic that provides the decision with *rationality*: it is the only reasonable decision to take.

Framing does not only occur in explicit normative or political arguments. Lyotard, for example, claims that scientific authority legitimated itself in terms of *grand narratives*: science is discursively framed as the driving force of social progress, as an epic or heroic struggle of brilliant minds against ignorance or as the servant of the people (1984:28-31,37). This does not mean, of course, that scientists directly claim their work to be epic or democratic. Rather, by using symbols and metaphors they frame their accomplishments in these terms.⁴² The *internal logic* of this frame derives from meaningful cultural narratives and mobilised sentiments and utopias, which forcefully impose that denying the authority of science, denying its truth-claim, would be to oppose progress, to be on the side of the ignorant and to deny the needs of the people.

Discourse, then, is not so much about truth-claiming as it is about framing. By framing facts authoritative truth-claims are not so much proven to be *true* as framed to be *rational*. To say it more directly, discourses do not validate truth-claims or authority in terms of epistemic *truth* but in terms of a narrative and performative *rationality* (Fischer 2009:198). Frame logic itself is independent of facts as it is based upon meaningful storytelling. Similar to fictional stories, it mobilises subjective meanings and expectations – sentiments, hopes and fears – that are inherently factual and, as we have seen, also inherently social. But this does not, of course, mean that facts can be ignored altogether. Discourses must relate to worldviews present in the public and to our factual experiences. Indeed, discourses are *meaningfully framed* historical narratives: histories that interpret the present state of affairs in a broader meaningful history and, importantly, *implied future*. While histories are merely factual interpretations of the present, this future orientation present in

⁴² Scientific discourse use words such as discovery, progress, new, future, solution, better, improved, etc.

discourses – in frame logic – makes discourses inherently *normative*. In short, discursive frames prescribe which facts are meaningful and which meanings are factual. Again, we are confronted with a dialectic – a dialectic between facts and meanings – or, as most discourse theorists claim, between fact and value.

This dialectic between facts and meanings problematises the whole concept of valid authority or truth-claims. Authority is accepted not because its claims are *epistemically true* but because discourses provide the claim with an inherent logic, with *rationality*. The justification or legitimation of authoritative truth-claims, then, concerns discursive validation. The dialectic between facts and values does not mean that truth disappears into thin air and that everything becomes possible. *Authority is not fiction*. Discourses must relate to cultural narratives and ontological narratives socially present; authority must relate to fictions and worldviews. In other words, public argumentation is not the only form of storytelling present in a society and storytelling is not the only kind of practice present in a society – i.e. stories must relate to our actual experiences in everyday practices. What it does mean is that truth or authority – just as in system theory – is inherently *symbolic*. But as critical realism already showed us, letting go of epistemic standards of proof is actually saving truth from fiction. That is to say, precisely when we understand truth in terms of episteme the dialectic between facts and values threatens to undermine the whole concept. The rationality of truth, however, can be validated in terms of subjective lifeworld experiences that, as discussed before, are at least partly also social or objective. As such, not every authoritative claim is equally reasonable.

The three lifeworld dialectics that we have found – between real and symbolic meaningful experiences (fiction), between experienced reality and symbolic reality (facticity), and between facts and meanings (epistemic truth) – show that in the analogy to system media, lifeworld *validity* is inherently symbolic. However, in contrast, validity is not circular or *self-referential*. The symbolic foundation of lifeworld is inherently dynamic, caught up in lifeworld practices – in social performances and storytelling. Validity is not circular but helical. Finally, it might also be noted that we might now better understand the legitimating force of Luhmann's 'additional legitimations' in terms of vote, party and expertise because democracy, the common good and competence are very potent discursive frames in our times.

Storytelling – We might now understand public argumentation as a specific *practice* in which actors try to challenge claims and persuade others by *framing facts differently* or by *framing different facts*

before a passive audience.⁴³ Public argumentation is political argumentation to the extent that it questions, thematises, challenges and critiques authoritative truth-claims. Public argumentation, we might say, consist of discourse conflicts (Hajer 1993). Indeed, if we want to understand politics as argumentation we must not merely understand its dramaturgical aspect, i.e. how an argument validates a truth-claim. Politics is not an argument, it is argumentation – a specific practice of storytelling from which, I will claim, authority or truth arises as a *symbolic space*. Furthermore, we might recognise that the material basis of this symbolic space is the *political public sphere*.

How does such practice of public argumentation work? Indeed, what is the *better* argument in this perspective and, more importantly, what is the *force* of the better argument? The better argument, from our dramaturgical perspective is the more reasonable one, i.e. the one that best fits with our meaningful and factual experiences. But facts and meanings, as we have seen, cannot be separated to the extent that they dialectically imply each other in discourse. As such, the *force* of the better argument seems to be reduced to *rhetorical force* – to classic *logos*, *pathos* and *ethos*.⁴⁴

It can be said that “effective rhetoric *persuades* rather than *proves*” (Dryzek 2010:322, my emphasis; Manin 1987:353).⁴⁵ Nevertheless, this persuasive *force* of argumentation is also present in Habermas’ work. Argumentation or communicative action, for Habermas, is about ‘reason-giving’ until others are persuaded – convinced – by the argument. If rhetoric plays a role in this process, however, it is judged from the perspective of truth (Dryzek 2010:322). Persuasion is functional for or subordinated to truth which presents itself in consensus. Such epistemic and foundational understanding of argumentation forces Habermas and others to differentiate between good and ‘healthy rhetoric’, between real consensus and ‘pseudo-consensus’ (Habermas 1987:150; Dryzek 2010). To overcome this difficulty, Habermas demands that the arguing actors are genuinely motivated towards truth-finding. Actors are not trying to persuade each other, they are searching for consensus, for truth. This means, that actors have to become *disinterested* actors – no longer strategically acting. They only have one interest and that is truth. Although empirically we might expect that actors commence in argumentation for the sake of understanding each other and to search for agreement, most of the time there is more at stake in political argumentation than mere truth-finding. Political actors are not disinterested and impartial judges. Aristotle has already claimed that where the judge must be ‘impartial and disinterested’, the political actor must be

⁴³ One might also, of course, simply try to show that an argument is inherently contradictory or self-refuting and should therefore be discarded.

⁴⁴ It might be questioned whether Aristotle’s categorisation of rhetoric is analytically the most suitable for analysing the moving power of discourses (Dryzek 2010:320). Nevertheless, Aristotle’s question still stands firmly: rhetoric is to identify “the available means of persuasion” (Yack 2006:418).

⁴⁵ Feminists have argued that we can differentiate between ‘paternalistic rhetoric’ and ‘invitational rhetoric’ – the former geared towards domination, the latter towards understanding (Foss & Griffin 1995). We can agree, beyond the gender categories, that there is no need to perceive rhetoric as instrumental for control only.

involved and committed (Yack 2006:422). The politician is not an outsider but part of the public and as such interested in collective action and binding decisions.

The problem with Habermas' account is that rhetoric and public argumentation is understood in terms of epistemic standards. Also many post-empirical theories seem afraid of letting go of epistemic criteria – as if we are suddenly drawn into an irrational postmodern fantasy. Such position enforces a problematic analysis of the relation between *the different epistemic standards* of science, expertise, politics and public argumentation – which, almost per definition, yields a normative theory of politics as argumentation (Fischer 2009:144; Yankelovich 1991:91ff.). It seems to me that our lifeworld analysis shows that episteme is a concept that belongs to a system perspective – episteme is about rules, norms and universal morality. It would be a mistake, even as a counterfactual ideal, to claim that actors must be committed to truth-finding only. Actors are motivated to commence in argument because they have a strategic (ideal) interest to do so. Their interest is to *persuade* and to *influence* others; an interest constrained by public argumentation itself. We should get rid of the epistemic reading of argumentation. Let me provide a different reading.

Where Habermas explains the function of rhetoric and persuasion in relation to an argumentative process of truth-finding subordinate to truth itself (consensus), we must turn this relation upside down. The rhetorical, dramaturgical or discursive validation of truth-claims or authority is independent of the process of argumentation itself. This, however, seems to make the practice of public argumentation redundant. Argumentation is reduced to mere dramaturgy. Hence, we must understand the independent force of public argumentation – its separate logic. In other words, in contrast to Habermas, who explains how rhetorical argumentation is subordinated to truth, we must explain *how discursive truth can be subordinated to the rational force of argumentation*.

Where the coordinative form of argumentation, as we have seen in our example of the two lovers, is integrated through the force of coordination itself, this is inherently different for public argumentation. The first form of argument, we discussed, is able to change reality not because actors are persuaded by truth or even by rhetoric; the force of argumentation depends upon the need for coordination, i.e. upon (strategic) action orientations. However, this loses its explanatory force in terms of public argumentation before a passive audience. Why would, for example, politicians or public intellectuals even listen to each other's arguments? If politicians are strategic, why would they not turn to the public directly and discursively try to validate truth-claims? The crucial point, it seems to me, is that public argumentation precisely concerns argumentation before an audience. This audience might be the class in an argument between teacher and student or the TV-audience in a presidential debate. The point is that such a *public witness* explains the rational

force of argumentation. So, for example, if a student challenges the teacher's curriculum as being old-fashioned before a class-as-audience, the teacher is almost forced to respond in order not to lose his *authority* – whether or not he finds the argument persuading. One cannot ignore a reasonable argument in public without losing face. The actors, then, do not have to be oriented to truth-finding, they do not have to be persuaded by the argument, they are forced to argumentation and to the better argument through the *force of public opinion*.

However, we must proceed carefully here. We have seen that the *validity* of an argument – its truth – depends upon discursive and dramaturgical validation. And now it seems that public opinion explains the force of the better argument. This emphasis on rhetoric and public opinion, it has been argued over and over, threatens to reduce argumentation to mere dramaturgy and irrationality (Dryzek 2010:319). However, it seems to me that we must differentiate analytically between a public judging the validity or reasonableness of a truth-claim (discursive dramaturgy) and a public that judges the reasonableness of an argumentative move, i.e. whether such a move makes sense in the logic of the unfolding argumentation itself.⁴⁶ The better argument, then, is not just the argument that is valid *independent* of argumentation, but that is valid *within* argumentation as practice. In other words, a public argumentation is a storytelling practice in itself that has its own internal logic – its own unfolding script in which acts or arguments are judged as more or less comprehensible and reasonable.

These two roles of the public – as *judge* and as *arbiter* – might interrelate in practice, but this might change if we consider that public argumentation does not require that an actual public is present.⁴⁷ An imagined public gaze might be enough to force the actors to the logic of an argumentative script. Although, the actors might have different publics in mind, imagined publics are always rationalised publics through which actors discipline themselves – through which they enforce public rationality upon their own arguments and the unfolding argumentation. As Aristotle has already perceived, public reason draws its force from 'reputable opinion' (Yack 2006:417). It is the imagined and disciplinary gaze of a *rational public opinion* that assures the force of the better argument among the participants. Public opinion, then, 'does not exist' (Bourdieu 1979) – it *is* the force of the better argument. Indeed, writing this thesis, you, the readers, are my imagined rationalised public which forces me to justify my claims in terms that I think you will find convincing. Indeed, your gaze regularly deprives me of my sleep!

⁴⁶ Post-empirical analysis tends only to perceive the epistemic dimension of 'public judgment' or else lumps rationality and episteme together (Yankelovich 1990; Fischer 2009:164).

⁴⁷ And also not that the present public is the relevant public – think, for example, about a press-conference where the relevant public is not the journalists but the 'general' public.

Now, precisely because actors are forced to the *performative* practice of argumentation through the public gaze, the *logic* of the unfolding script of the argument – the argumentative moves and counter-moves – does not necessarily lead to a consensus but does lead to a different state of affairs concerning the argumentative practice – a different *argumentative reality*.⁴⁸ Argumentation leads to a different state of affairs concerning the *argument* – i.e. the facts, the meanings, the issues, the questions, the problems and solutions – but also concerning *public opinion*, i.e. the perceived state of affairs of public opinion as consensual, mixed or conflictive. In this regard, the practice of argumentation is both *disciplined* by public opinion and it *produces* public opinion (or the rational public) – once again a form of performative dialectic. Argumentation changes *reality* and, as such, shapes and limits the *rational* actions, moves and arguments one can make (Bourdieu 1987:816; Foucault 1982:790; Fischer 2009:164). Argumentation, indeed, changes the ‘discursive space’ in which an authoritative claim can be discursively validated (Hajer 1993:48).⁴⁹ Public argumentation and dramaturgical validation, then, are inherently connected. In short, the *rational force* of argumentation produces authority as a *symbolic space*, which means that truth (discursive validity) is subordinated to argumentation and not argumentation to truth.

Authority is a symbolic space structured by the practices of public argumentation. This symbolic space structures which facts are meaningful and which meanings are factual. As such it is inherently related to cultural and ontological narratives, to fiction and worldview. However, authority is not a ‘grand narrative’ or a single harmonious discourse. There is no single truth. Symbolic authority resides in the structures and practices of public argumentation itself and merely shapes the discursive or normative arguments one can reasonably make (Dryzek 2001:658). Whether or not this argument will also be accepted as valid by the public is a different matter; it also depends upon its ‘fit’ with their everyday experiences. To the extent that the ‘grand narratives’ or ideologies are no longer present in *all publics*, to the extent that we have to understand the social distribution of ‘petit récits’ instead, the complexity of the symbolic space of authority has only increased in a late-modern society (Lyotard 1984:60). Although I think that ideologies – especially as dystopias – are still quite widely distributed, we might indeed have to analyse how cultural narratives, collective (and biographical) histories and discourses *move* through different lifeworld practices, publics and institutions; how they are continuously *produced and reproduced* in cultural public spheres, media and educational systems and the political public sphere. Indeed, the crucial contribution of this

⁴⁸ Again, this also holds for this thesis – I can no longer claim that political legitimacy is a function of order without making myself completely incomprehensible.

⁴⁹ Which does not mean that the actual results and outcomes are in any way ‘intended’ by the actors involved (Rein & Schön 1996:93).

lifeworld perspective, it seems to me, is that we can understand that cultural, media and everyday life practices are inherently, but in complex ways, connected to political argumentation and to institutionalised politics. Political change and transformation, the rise and fall of political issues, the meaning of discourses and the *validity of authority* demands a more cultural and bottom-up understanding, instead of the scholarly analyses that constantly reify the importance of centralised politics and mass media. Indeed, political analysis cannot ignore the “omnipresence of culture” in contemporary society (Jameson 1979:139).

The frustration of many scholars might not be that they fear the irrationality of discursive legitimation – of rhetoric – but that the relation between argumentation and dramaturgy is easily distorted. The publics might just be ignorant of the history of the argument – the symbolic space of authority – or the populist politician might simply ignore it (Stone 2012:320ff.). In those instances truth is no longer subordinated to the logic of argumentation and the rational gaze of public opinion (although it remains bound to real experiences). Secondly, argumentation itself might be distorted by the sheer fact that reasonable arguments are excluded or not listened to. Both distortions seem to point to the *material* organisation of the political public sphere. As such, neo-pluralists political analyses remain particularly relevant. When the lifeworld model emphasises the symbolic production and reproduction of ‘authority’, this does not mean, of course, that processes of material (re-)production would not be relevant. The *symbolic* world is inherently related to *material* practices or ‘fields’ (Bourdieu 1987:816; Hajer 1993:45; Dryzek 1997:10-1). As Weber has already taught us, the social world is not only about ideas, beliefs and values, it is also about interest conflicts and structures of domination. To analyse discourses or discursive legitimations is to analyse “how interests are played out” (Hajer 1993:48). If our lifeworld perspective has anything to say about it, it is that we must try to understand this relation in a dialectical manner: material structures reproduce symbolic narratives, while symbolic narratives reproduce material structures (Bourdieu 1989:839).

Most importantly ‘individual voice is noise’ (Bader 2008:5). This means that actors and their arguments must first be *noticed* to force political or other actors into public argumentation – to be able to influence the discursive space of authority. As many issues, problems and solutions fight for public and political attention, this is not that easy. It is even more difficult to *sustain* such public attention through time – to become more than an event, to become an issue, a narrative and a public discourse. It points to the fact that political argumentation is not just structured by arguments but also by material resources and the *unequal distribution* thereof – resources as organisation, money, office, status, reputation and knowledge. It explains why social movements tend to use the dramaturgy of unconventional and unorthodox tactical repertoires (Taylor & van Dyke 2004:263). Aside from institutional problems of *public access*, we might also notice the institutionalisation of

narratives into dominant or hegemonic discourses (Fischer 2009:164; Hajer 1993:46). For example, the very institutional structures of contemporary social sciences in terms of curriculum, status, funding, journals and career opportunities asymmetrically reproduce empiricist and neo-classical economic discourses pre-occupied with behaviour, calculability, universal laws, status-quo and short-term production targets. Its institutional structure marginalises the discourse of a critical science and quells a genuine productive argumentation.

Institutions, in short, also structure discursive space. Institutionalisation, however, also assures that not every discussion each time has to start all over again. So, for example, when discussing women equality as a general *issue*, we normally do not have to start all over to argue that women and men are morally equal – most of the time we can take the historical narrative of the feminist struggle as a presumed institutionalised discourse. But institutionalised discourses – especially as ideologies and identities – also have counterfactual tendencies. Dominant and institutionalised discourses not only marginalise counter-discourses, they also exclude other voices as irrational, unrealistic (idealistic), extreme or immoral. Dominance eliminates the necessity to commence in argumentation in the first place. It forces counter-discourses and arguments to adjust to this institutional rationality. It forces outsiders that want to gain influence to let go of ‘radical’ arguments explaining, at least partly, political co-optation processes and the so-called ‘protest cycle’ (Hajer 1993:64; Tarrow 1993:283; Meyer 1993; Meyer 2004).

Most significant in this regard is the almost unquestioned dominance of expertise and ‘evidence-based’ administrative policymaking (Fischer 2009:145). The discourse of expertise forces all political argumentation into an *epistemic* argument – an argument about the *value* of knowledge and the *utility* of practices. It explains the situation in which all kinds of cultural, social and scientific institutions must prove their utility or else be excluded as irrational. In a Weberian spirit, this mechanism shows the ‘cultural’ source – the lifeworld foundation – of the instrumentalisation of society. As such, we must resist Habermas’ analysis that society’s rationalisation and instrumentalisation is purely about the system perspective. Lifeworld is not some innocent *antidote* – some ‘intact form of social life’ (Honneth 2005:340). In short, to understand political argumentation and authority one must also analyse the material structures that produce and reproduce discourses. Political argumentation and legitimation do not take place in a purely symbolic space.

In conclusion, in *figure 8.3* I have depicted schematically the relations we have discussed between lifeworld practices and authority: 1) the *generalisation* of lifeworld coordinative logic and the normative interpretation of lifeworld practices into discourses; 2) the practice of public argument as

storytelling which opens up a symbolic space of authority and a material world of public sphere, both through which discourses are produced and reproduced; and 3) the relation between this symbolic space of authority and our real lifeworld experiences in term of *dramaturgy*.

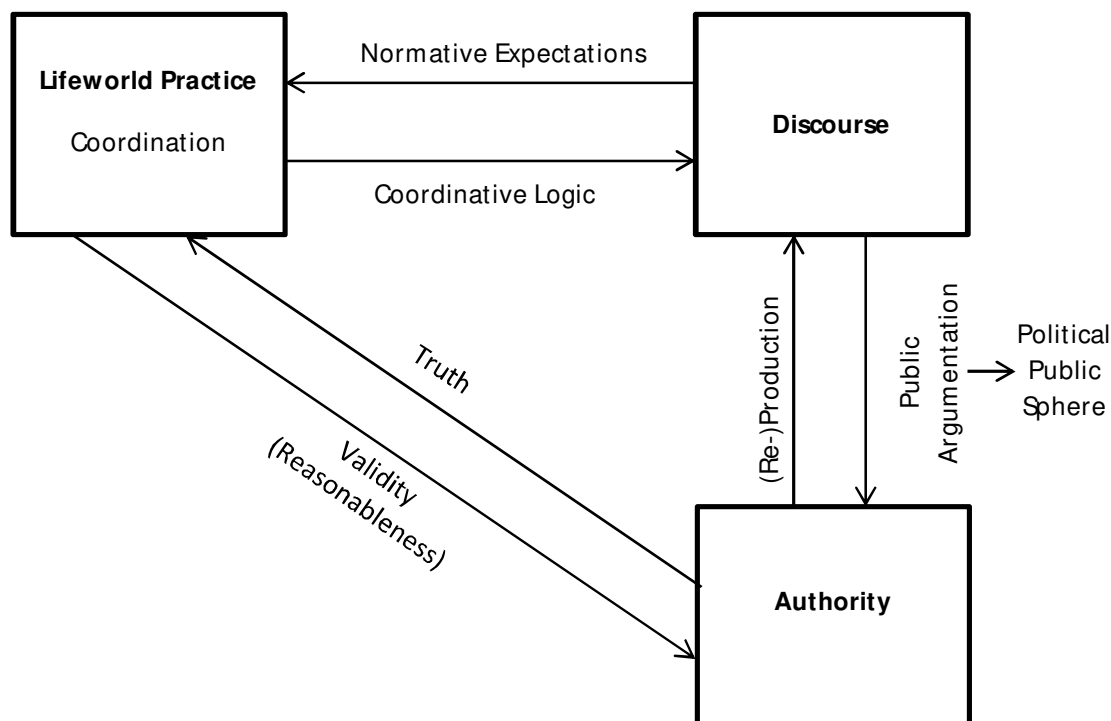


Fig. 8.3 – A performative model of the political public sphere. The horizontal lines concern the mechanism of *generalised narratives* in everyday practices; the vertical lines concern the practice of *storytelling*; and the diagonal lines concern the *dramaturgical* part of authority.

8.5 Conclusion: Argumentation, Legitimacy and Critique

Now that we defined public argumentation, public opinion and valid authority, it seems to me that we finished our critical realist re-reading of Habermas' lifeworld concept. The most important discoveries concern, first, that lifeworld practices are inherently dialectically structured and that lifeworld generalisations are not norm or rule based but narrative. Second, public spheres consist of cultural narratives, ontological narratives and discourses that are constantly produced and reproduced in practices of storytelling, giving rise to symbolic worlds of fiction, worldviews and authority, which in their dramaturgical guise provide meaningful, factual and normative understandings. Finally, we have also discussed how we should perceive the practice of public argumentation, how public opinion is the disciplinary force of the better argument and how the rational force of argumentation shapes truth or authority as a symbolic or discursive space. *Table 8.1* summarises the most important aspects of the three lifeworld domains we discovered.

	Practice	Generalisation	Symbolic world	Material Basis
Meaningful	Scene, Role, Character	Cultural Narrative	Fiction	Cultural Public Sphere
Factual	Script	Ontological Narrative	Worldview Person	Media & Educational System
Normative	Coordination	Discourse	Authority	Political Public Sphere

Table 8.1 – The three lifeworld domains

In conclusion, we might wonder whether this critical realist rereading of lifeworld addresses the problems we have ascribed to Habermas' theory. I think we successfully did away with either functional or consensual conceptualisations of lifeworld. By introducing a performative perspective of social coordination we can understand social integration or order without having to introduce consensus as a necessary presumption. As such, we are able to overcome the deeply ingrained bias in sociology that without consensus there can be no social order. Furthermore, such performative and coordinative understanding allows us to stay comfortably within action theoretical premises without the need to introduce unwanted forms of cybernetic functionalism. Finally, our lifeworld analysis shows how symbolic actions can be rational without implying or necessitating epistemic notions. Episteme, I have claimed, belongs to a system perspective. It leaves room for the political condition because political argument is not subordinated to foundational truth, but 'truth' is subordinated to politics. In short, I see no need to succumb to solidaristic notions of society (however rationalised), to leave behind action theoretical premises or to impose or presuppose strong epistemic rules upon lifeworld or argumentation.

We might be less satisfied, however, with the fact that the lifeworld concept remains rather complex. Nevertheless, things did gain more clarity – especially in analytical opposition to our Luhmannian understanding of social systems. Just as system, lifeworld concerns social coordination and opens up symbolic realms above the level of social interaction – realms we labelled as fiction, worldview and authority. The problem of our critical realist rereading of lifeworld is not that we do not have the tools to analyse specific lifeworld and argumentative practices, or that we do not have the tools to differentiate between lifeworld and system coordination, the problem is the difficulty to provide a generalised, stable, non-moving conception of lifeworld practices. This, obviously, is precisely the point. It does mean that we cannot simply answer the question of whether or when politics is legitimate.

The first difficulty concerns the meaning of politics in a lifeworld perspective. If politics is about authority or truth-claiming, we must acknowledge a proliferation of politics beyond political institutions and organisations coordinated by legitimate power. Politics is not only about making

binding legitimate decisions, but about making truth-claims anywhere in the policy-cycle – ranging from agenda setting, to problem formulation, to solution seeking, to policy implementation, to political accountability. Indeed, such understanding of politics as authority inherently *politicises* our daily practices giving attention to how authority takes shape in the workplace, family or classroom, as well as overt and covert forms of *resistance*. As the feminist slogan goes, ‘the personal is political’. So the first question is which politics do we want to understand?

But even if we understand – like Habermas – politics in terms of the political system, the relationship between the political system and the public sphere remains utterly complex. There is no sense in asking whether or not politics *is* legitimate. There is no single, coherent public or public sphere that serves as the analytical basis of political legitimacy. Politics does not simply legitimise itself in ‘public opinion’. Public opinion is not only plural, but it merely symbolises the rationalising force of public argumentation and is dialectically constructed by it. We must not so much ask whether politics *is* legitimate but rather how politics *acts* to legitimise itself in, and in front of different and fragmented publics. We must understand the legitimising performances of politics. Indeed, it is fairly easy to see that political actors constantly struggle with this ongoing demand for legitimation. Often arguments are tailor-made for specific publics and frequently such publics are even aware of this (Dryzek 2010:325). And, if not, politicians often mobilise ambiguous or fuzzy meanings to “blur or hide problematic implications or controversial decisions” (Fischer 2009:175; Bennett & Edelman 1985:165). Politics is “to sharpen the pointless and to blunt the too sharply pointed” (Burke 1969:393).

Analysing the abstract and dynamic relation between the political system and public spheres in terms of legitimation processes and political argumentation forces us to understand authority as a symbolic space arising from all kinds of practices and narratives. Just as in Habermas’ account, authority resides in the structures of the public sphere – in the organisation of discursive space (Dryzek 2001:658). However, and importantly, authority in this framework is not closed off from a *subjective understanding*. Lifeworld analysis shows how authoritative political claims must be discursively validated. Most interestingly, such discursive and dramaturgical form of *legitimation* differs from the forms of political legitimacy we have discussed before.

An authoritative truth-claim is valid when the addressee finds it *reasonable*. Political legitimation, then, is not about proving the epistemological truth of the claim but rather its ontological reasonableness given the current state of affairs, i.e. whether it fits with our experiences as well as with other discourses, cultural and ontological narratives. If a discursive argument is successful, it forces us to agree that the decision is the right one to make, i.e. given these circumstances we *ought to agree whether we like it or not*. Discursive validation therefore differs

from the other forms of legitimacy to the extent that it is a *cognitive* affair despite the mixture of facts and meanings. Indeed, when the ‘facts’ change we want to take a different decision and not counter factually hold on to it. Yet, proving the rationality or reasonableness of a decision – its cognitive validity – has also a distinct *normative* quality: given the ‘facts’ I cannot but agree that the decision is reasonable. If I am rational, then I *ought to* recognise its validity. The normativity of cognitive agreement, then, rests upon the objective and subjective norm that one ought to be rational or reasonable even when it comes into conflict with one’s interests and values. Only then can we explain the leap from ‘is’ to ‘ought’. Politics as argumentation, then, can explain the subjective normativity of political claims and decisions. And just as in the case of trust, we do not need the notion of epistemic *truth*: ontological *reasonableness* suffices.

What we find reasonable is, of course, related to our experiences, values, knowledge, interests and identities – that is the whole point of discursive framing, there is no final truth – but this does not mean it is pre-determined and fixed by these qualities. Argumentation has its own independent force. As such, we should not mistake the dramaturgy of discursive legitimation for the dramaturgy of political support discussed in chapter 4. In that chapter we argued that dramaturgy consisted of the cheering for our political champions, a form of acclamation in the face of truth presented before the supporters and a form of immediate symbolic satisfaction of aroused normative expectations. The dramaturgy of discursive validation, on the other hand, asks the public to make a *judgment* about the rationality of the argument or decision. Obviously, a judgment might be better or worse but it is not sheer acclamation.

In conclusion, our critical realist reconstruction of lifeworld addresses many of the problems inherent in Habermas’ model. As a final note, we might wonder whether we have also destroyed his critical project in the meanwhile. Although critical theory is not our primary interest this seems a justified question at the end of this chapter.

It appears to me that our understanding of political argumentation allows a form of critique that addresses the material structures and inequalities underlying public argument. Indeed, just as Habermas, we might still point out how the system imperatives of mass media skew public information, public argumentation and public access.⁵⁰ We might still point out, as do Habermas and Adorno, that opinion- or survey-research mistakes public opinion for the aggregation of individual opinions which undermines the rational force of the better argument (Habermas 1987:346; Adorno 1976:85).⁵¹ We might still point out how institutional structures and practices reproduce discourses,

⁵⁰ The so-called ‘media logic’ (Altheide 2004; Brants & Van Praag 2006).

⁵¹ Just as the disciplinary gaze in Bentham’s panopticum does not function if we can see whether the prisoner guard is looking, so political argumentation malfunctions if actors *know* the actual opinions of the public. The

authority and the status-quo. Indeed, we might still point out how public argument is replaced by acclamation. However, what our reading of lifeworld *cannot* do is to provide such critical project with an epistemic foundational validity. Critical theory is still viable, but it cannot stand outside of society – it is an intrinsic part of it. An outsiders' perspective does not exist.

However, a critical realist conclusion might not be all that different from that of Habermas: to open up politics to the rationalising force of public argumentation and not simply to acclamative dramaturgy. However, rationality as an 'environmental fit' instead of a universal 'vanishing point' has more to do with the *good life* than with universal *moral rules*. When Habermas wants to finish the project of modernity, it seems that we have to step out of its 'linear' thinking while not falling into the 'circular' thought of postmodernism or the "rationality of the revolving door" (Foucault in Rabinow 1984b:249; Lash 2003). In this regard, we might follow Kuhn's cautious suggestions that progress must be understood in the same way that biological evolution progresses (1970:170ff.). The progress of evolution is not that the present state of a specific life form is in any sense *better* than its former state – evolution is not teleological or cumulative – rather, this life form is *better* suited or adapted to the present state of its environment, its opportunities and problems. My intention is not to reintroduce cybernetic concepts, let alone social-Darwinism, the point, rather is that learning processes might be *rational* but not *progressive* or *teleological*. Critical realism shows that critical theory should make an institutional turn in which the *rationality of social learning* is the main objective. The rationality of learning differs from Weber's linear rationalisation thesis, which historically ends in an 'iron cage'. If Habermas wants to escape this cage, it seems that lifeworld learning processes at least hold open the possibility of a *re-enchantment of society*. Our lifeworld is an inherently *meaningful* world as it remains upon to dreams, nightmares and utopias.

Foucault argued that the promise of modernity is not the rule of reason, but a specific kind of 'attitude' that does not aim to find something 'eternal' beyond or behind the present, but perceives 'the heroic aspect' of the present with an 'eagerness to imagine it otherwise' (1984a:39-41; compare Habermas 1981:5ff.).⁵² Modernity, according to Foucault, is neither a quest for truth nor merely subjective experience, but to manifest the necessities of our time. It seems to me that this modern attitude is still alive in critical realism and suitable for late-modernity. Critical scholars should not waste time finding the ultimate foundation of moral truth and political legitimacy – they should engage in public debate and ask the critical questions that need to be asked. At the same time, intellectuals should refrain from using the 'philosophy of the hammer' merely to show that

more public opinion is known and measured as an aggregation of opinions, the more public argumentation is about dramaturgical action between actor and public and less about rational argumentation between actors. The paradoxical nature of opinion research that tries to address 'fact free politics' is apparent.

⁵² "The identification ... of men of critical mind with their society is marked by tension, and the tension characterises all the concepts of the critical way of thinking" (Horkheimer 1972:208).

nothing is 'true' or truth is symbolic – we know that already for a long time. Intellectuals, rather, have to acknowledge the fact there is no linear or foundational truth. It would be a mistake if intellectuals, because of the absence of such foundations, are hesitant to enter the public stage and leave it to anti-intellectuals, experts or the 'market'. *Rationality is argumentation*, not mere dramaturgy, statistics or consumerism. Freedom will not be found in epistemic rules, freedom is a praxis (Flyvbjerg 2001:128).

Conclusion

An Analytical Framework

In this dissertation I have analysed *four faces of political legitimacy* based upon three premises: 1) we need to understand what political legitimacy means empirically not just for the sake of empirical research, but also for the sake of critical normative theory; 2) we need to understand political legitimacy from an action theoretical standpoint because a concept of legitimacy cleared from an actor's perspective not only steers our analysis inevitably to (crypto-)normative theory or reduces it to mere social order, but in particular because without it, it makes the concept rather meaningless in real life political action; and 3) we need to come to grips with the fact that politics has many different faces, which means that how we understand the 'essence' of politics directly influences our understanding of political legitimacy. Based upon these premises I have tried to provide four analytical accounts of an empirical understanding of political legitimacy.

First, I have provided a reconstruction of Weber's theory of legitimate domination. To a large extent I have taken over Weber's analytical framework that separates between subjective and objective validity, between action and behaviour, and between legitimacy and order. Both his threefold ideal-typical account of legitimate domination – charisma, tradition and legality – as well as his fourfold account of action orientations remain analytically reasonable. Nevertheless, we have seen that particularly his understanding of legality needed reinterpretation and such a reinterpretation should distinguish between Weber's theory of action (*Handeln*) and his theory of meaningful being-in-the-world (*Existenz*). From the latter perspective we can understand the subjective normativity of modern legal domination in terms of the 'pianissimo' of self-justification. Legitimacy is not about some foundational validity (truth) and can also not be reduced to social validity only: it is carried by mechanisms of rational self-justification, charismatic revelation or traditional sanctity. To the extent that the first becomes dominant in modern society, Weber could not envision anything other than an 'iron cage' as the human telos.

Without a doubt, Weber's theory remains as inspiring and relevant as ever, but society did change since the days of Weber and sociology, often written in different theoretical 'languages' of system theory and functionalism, did change accordingly. But most importantly, Weber tended to reduce legitimate politics to legitimate domination only, to command-obedience relations. Although Weber did perceive that with the loss of charismatic Reason (with capital 'R') politics became a 'conflict of the gods' he did not particularly analyse politics-as-conflict in relation to legitimacy. Instead, he put his normative hopes upon a political leadership that could strike the delicate balance between a politics of conviction and a politics of responsibility. I have, instead, tried to analyse the

relation between politics-as-conflict and political legitimacy directly by taking a closer look at the loosely integrated tradition of 'democratic realism', which, if anything, takes political conflicts of interest as its core assumption. Taken as a whole, this tradition, which is still dominant in many sections of political science, is interspersed with cryptonormative claims. Nevertheless, the pluralist version of democratic realism provides us with a realist account of resource-based power inequalities and the political relevance of social cleavages and it provides the clarifying analytical distinctions between politics as domination, the political game and political theatre. Easton's output-oriented cybernetic system theory, finally, paved the way for analysing the possibility of symbolic normative satisfaction. Taken together and emphasising the core notion of time – something Weber hardly problematised – we can understand how politics-as-conflict allows a dramaturgical perspective of political support in which subjective normativity is explained by the expressive function of politics, i.e. the symbolic arousal and symbolic satisfaction of normative expectations quite independent of the 'real' political outputs or the 'political game' in backstage bargaining. It explains how legitimacy might overcome Weber's sharp dichotomy between unconditional beliefs and conditional interests.

Third, where Weber's sociology already contained a basic analysis of multiple social value spheres with their own specific internal logics, I tried to show that Luhmann's sociological media theory further developed these insights. Luhmann, however, not only formalised them by introducing the pivotal role of symbolic media that simultaneously allow a reduction and an increase in social complexity, he also deemphasised value conflicts – or the necessary conflict of the gods – by analysing the complexity, ambiguity and indeterminacy of social organisation and action coordinated by symbolic media. Legitimacy, in Luhmann's account, must neither be understood in terms of the validity (truth) of political legitimacy nor in terms of subjective validation of legitimate domination. Rather, legitimacy must be understood as continuous processes of legitimation that makes political and social coordination possible in the first place. I have tried to show that Luhmann's system theoretical account of politics-as-coordination is not necessarily cut off from an action theoretical understanding. Luhmann's account of a political system 'suspended in mid-air', however, does problematise a subjective understanding of political legitimacy. Yet, based upon the risks inherent in the vulnerability and ambiguity of social coordination, I have tried to argue that the concept of trust could explain subjective normativity nonetheless. This forced me to provide a sociological account of trust and especially to distinguish it from overstretched liberal economic understandings and from the concept of confidence. Finally, I have tried to show how and where trust might actually play a role in politics, especially in the context of a late-modern risk-society. Taken together, this account

of politics-as-coordination provides an understanding of political legitimacy that entails subjective normativity without requiring the notion of truth.

Finally, I have analysed how we can understand legitimacy in politics-as-argumentation. Weber was not overtly concerned with such politics and hardly provided room for public reason and reasoning in his theory of legitimacy after charismatic Reason historically faded. Habermas, on the other hand, tries to provide a theory of public reason and argumentation because he, and the critical tradition in general, took up Weber's challenge to escape the 'iron cage'. I have discussed three models of Habermas – discursive democracy, the public sphere and lifeworld – to conclude that the lifeworld model, particularly in its 'indirect' guise, proves to be promising, but should be freed from its cybernetic perceptions of system theory and particularly from its foundationalist epistemic claims in order to stay open for the empirical complexities of the political condition. Therefore, I have provided a critical realist re-reading of Habermas' lifeworld model in which I argue that lifeworld should be analysed from a performative perspective which allows us to understand mechanisms of generalisation in terms of narratives, storytelling and dramaturgy. Such performative perspective provides a dialectical understanding of fact, meanings and normative truth, of the dialectic between the 'real' and the 'symbolic', and, importantly, of the relation between public argumentation and political authority understood as a symbolic discursive space. It allows us to replace Habermas' epistemological notion of truth with an ontological notion of reasonableness and to make 'truth' subordinate to political argumentation and not the other way around. Finally, if such politics-as-argumentation remains a primarily cognitive affair – without disregarding its inherent counterfactual processes – subjective normativity can nevertheless arise from the imperative to agree with what is most reasonable.

In sum, where it concerns the second premise – the need for a subjective action perspective – this thesis provides a *four-faced analytical framework of political legitimacy* that not only reconstructs Weber's own work, but shows that his work is not the final answer for understanding political legitimacy from an action theoretical perspective. Politics is not only about domination, it is also about conflict, coordination and argumentation, while legitimacy is not only about value-rational belief, it is also about dramaturgy, trust and discourse. Seen from a different perspective, this thesis has 'updated' Weber's sociology by introducing concepts such as time, ambiguity, vulnerability, plurality, risk, uncertainty and contingency, which signal phenomena that were not so much absent in the modern society Weber tried to understand, but that have become increasingly prominent in the social-political complexity of late-modernity.

It seems reasonable to end with a short examination of the other two premises that make up the foundation of my analytical framework. These premises – the normative need for an empirical understanding of legitimacy and the inherent multiplicity of the latter – are related to the extent that both *normative theory and empirical science need to take social and political complexity more seriously*, not just for science's sake but especially for society's sake. If normative theory wants to be socially relevant by taking a critical turn, as I think it ought to, then it must include realistic notions of empirical complexities. To reduce the complexity of real-life politics to a few non-political foundational normative claims based upon blatantly simplified understandings of the human social condition, as in most liberal theories of political legitimacy, not only ignores the political condition but is itself also easily ignored by politics – except, of course, when normative theory provides what politics already knows to be 'true'. Such status-quo normative theory may be a nice way to pass time, but society and politics will be left unchanged.

Normative theory is important, even in its liberal non-political guise, to the extent that it forces us to think about morality, ethics, justice and rights. However, normative theory castrates itself when its insights merely remain in the realm of thought and not in the realm of action, and it castrates political action when legitimate politics is restricted by foundationalist notions of consensus or universal morality or, even worse, when it discourages political action until a definitive truth is found. As Peirce (1877) has already said, we should not mock man's need for certainty. But if normative theory wants to understand and influence real life politics it must come to grips with the inherent complexity of it, which means it must drop all pretences of foundationalism and relate more directly to the empirical social sciences.

However, empirical theory also needs to come to grips with complexity. The social sciences are still dominated by quasi-behaviouralist empiricism looking for universal social laws based on reductionist assumptions. Of course, I readily admit that my multi-faced analytical framework of political legitimacy will not always easily translate into the 'muddiness' of empirical research. There will always remain a difference between analytical and empirical research. Yet, that does not mean that the empirical social sciences should not at least try to introduce complexity by opening up to multiple methods and techniques. The dominance of statistics tends to blur even the more obvious analytical differences in multi-interpretable survey-questions. Again, quasi-behaviouralist comparative research could be quite informative, especially in debunking (its own) myths, but it's agenda should not be ruled *only* by the demands of method and the availability of databases. One only has to look at the multi-faced framework of this dissertation and compare this with the ways in which political legitimacy or trust are usually measured in mainstream political sciences to understand how these are still worlds apart. But that does not mean that this is an intrinsic necessity.

If we criticise liberal normative theory and quasi-behavioural empirical sciences for lack of complexity, then we should also criticise postmodern theory and purely contextual qualitative social sciences for failing to come up with normative or decontextualised social theory at all. However, these are not the mainstream dominant sciences and not the sciences that tend to have the most political influence. Simplicity sells. Fortunately, there is a great amount of social research that does try to break free of these constraints – I do not want to over-simplify myself. I just want to claim that both normative and empirical theory should open up to complex reality without falling into the trap of either judgmental-relativism or fear of generalised analytical theory. As such, I think we can learn much from critical realism.

If anything, I think science can learn three things from the critical realist tradition. First, it does not demand that all of science becomes a critical science, but rather that both normative and empirical social sciences at least have to become *realistic*. Second, it does not mean that all sciences have to use the same method or that all disciplinary differences have to be blurred. To the contrary, there is no single and final ‘right’ way to do science (or politics, for that matter). It rather means that the social sciences should be more open to mutual *learning* instead of withdrawing into niches of self-indulgence. As science is remarkably slow in learning about itself, this would, for sure, require institutional change at the level of decision-making, funding, career opportunities, journals, intellectual self-awareness and, especially, the curriculum. Finally, critical normative theory or critical social science does not demand that we share a clear normative foundation, research methodology and ontological reality – as in neo-classical economics – to the contrary. Critical realism shows that the objective of *social learning* might be the only shared objective we need. Working out what ‘reasonable’ means in such learning processes readily allows different normative interpretations. Social learning does demand an institutional turn and therefore a realistic understanding of the complexities of the empirical social-political conditions, including political legitimacy understood in empirical and subjective terms, but it does not demand a single method.

My criticism of science is not particularly novel. Most has been said many times before and already many years ago. That, of course, is the disturbing thing justifying me to repeat it. But the real significance of a realistic science open to social complexity is not the relevance for science itself, but its societal relevance. In this dissertation I have tried to provide an analytical perspective, not an empirical or normative theory. It would be misplaced, then, to contribute to the already inflated debate about *legitimacy crises* of contemporary politics. A few final remarks can be made, though, without falling into the trap of cryptonormativism or quasi-empiricism.

First, a complex understanding of political legitimacy rather makes the notion of crisis a problematic *empirical* concept. A crisis of legitimacy, in any case, is not a crisis of political stability, nor, vice versa, a crisis of stability necessarily a crisis of legitimacy. Not only is the whole concept of 'politics' already quite complicated – as we have seen – but a subjective understanding of legitimacy disaggregates and fragments the whole notion of a crisis of 'the' legitimacy of 'the' political system. More realistic, then, is to research the increase and decrease in the feasibility of specific objective legitimation practices in specific political contexts and domains. Crises, in that perspective, are crisis *tendencies*: processes that “violate the ‘grammar’ of social processes” (Offe 1984:37). But maybe we should acknowledge that an empirical concept of crisis inherently tends towards cryptonormativism. Avoided, in any case, has to be any a-priori norm that supposedly indicates legitimacy – e.g. transparency, elections, representation, inclusiveness or Pareto-efficient output. One can, of course, take a normative-critical perspective on the preferability of certain types of political institutions – e.g. in terms of learning capabilities, democratic participation or norms of political and social equality – but this says nothing about the empirical legitimacy of these institutions. Normative theory does not stand outside society. The point for (critical) normative theory, then, is to *learn* from social reality and not to make social reality subordinate to normative idealism.

Second, this also means that there is nothing intrinsically *good* about political legitimacy in an empirical sense. Political legitimacy can favour the most non-democratic institutions, consist of myths masking grave social inequalities or stand in the way of necessary institutional change. This must not be read as a call to disregard legitimacy all together or to justify illegitimate political action, but rather that normative theory needs to learn from the empirical socio-political complexity if it wants to provide realistic propositions for institutional change. Such understanding would stay clear of institutional blueprints, but rather appreciate social complexity and attempt to increase institutional learning and learning about learning.

Finally, a critical social science that aims for social and political institutional change through the voice of reasonableness will have to come to grips with Weber's disenchantment thesis. Although I have tried to show that such disenchantment is not inevitable, it seems empirically plausible to claim that the hope for charismatic collective action is traded in late-modernity for a misplaced faith in popular leadership or for submission to the 'contemporary deity' TINA (*There is No Alternative*, Cox 1999:27). There are no easy answers for those who struggle for change. It is my belief that an action theoretical understanding of politics at least provides us with the tools to understand the *causes* that contribute to unwanted status quo and, as such, indicates some concrete objectives for change and critique. Merely searching for some abstract ideology in the hope for a charismatic revival without understanding the complexities of late-modern society seems not

only self-defeating, but utterly naïve. The message of reasonableness, for sure, is not a banner under which politically inspired masses will gather to conquer present Bastilles. Yet, the force of reasonableness is difficult to ignore in the long run. Whoever aspires political change in complex societies must not sacrifice his ambitions just because 'society' turns a cold shoulder, the force of reasonableness is more like the force of the tides slowly pounding the shores to change its course. I can only hope that this dissertation contributes to that change however small the force of its current.

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Summary

This dissertation shows how the mainstream sociological and philosophical approaches to political legitimacy are limiting and distorting our understanding. It claims that we need an empirically oriented and subject-centred approach not unlike the one presented in Weber's canonical work of almost a century ago. Weber's understanding of politics, however, is too limited. By engaging in a critical discussion with leading sociologists and political theorists, this thesis provides a novel conceptualisation of political legitimacy more appropriate for understanding contemporary, 'late modern' politics and its crises. The aim, therefore, is to provide an analytical framework which updates Weber's work for the 21st century and captures the distinct ways in which political legitimacy can be empirically analysed. The key insight structuring the main argument is that the way in which scholars perceive the nature of politics determines how they understand political legitimacy. Analysing politics respectively in terms of domination, conflict, coordination and argumentation, this dissertation provides 'four faces' of political legitimacy and presents a innovative, integrative approach.

The analysis is restrained from the beginning by three premises. First, this thesis aims for an empirical and not a normative understanding of political legitimacy. Second, it claims that political legitimacy should be understood from a subjective and actor-centred approach without denying, of course, its social essence. Third, a conception of political legitimacy needs to deal with the fact that there is no single essence of politics.

In the first introductory chapter some analytical building blocks necessary for analysing political legitimacy are introduced. It is important to make clear and careful distinctions between normative and explanatory theories, legitimacy and order, validity and effectiveness, objective and subjective validity, and between normative and cognitive expectations. This leads to the conclusion that, in most general terms, we can define legitimacy as the subjective validity of objectively valid expectations, where this subjective validity possesses some 'quality of oughtness'. It is this specific quality that must be explained, an explanation that occupies the main part of the thesis.

This chapter subsequently sketches the analytical contours of politics. This chapter argues that we should at least differentiate domination from power and political order from social order. However, as this yield a conception of politics that is both too broad and too limited, we should simultaneously limit the concept by drawing institutional boundaries and broaden it by perceiving politics as a specific value-sphere and practice. To combine these seemingly contradictory demands,

this chapter argues that we should perceive politics as a specific practice that is not institutionally bounded but institutionally anchored.

The second introductory chapter explains the problematic relation between normative and empirical theory by looking at the liberal democratic tradition of political thought that lies at the basis of modern democracy and political theory. Discussing the theories of Locke, Rousseau, Hume, Madison and John Stuart Mill, it is argued that despite their normative differences they are in considerable agreement where it concerns empirics. Empirically, politics concerns domination, while legitimacy has to explain a duty of obedience towards the political order. Legitimacy is explained as a political 'artifice' located somewhere between reason and force. Despite their agreement on the empirical form of political legitimacy, they disagree on the empirical nature of legitimate politics. This chapter argues that the way in which they understand the nature of legitimate politics – and, as such, how they construct their normative theories – is a consequence of how they understand the empirical political problems and questions of their time.

In short, there exists a complicated dialectic between normative and empirical theory which any analytical theory has to deal with. We should neither fall into the trap of cryptonormativism nor into some form of a-historical essentialism. This means that an analytical framework cannot reduce its analysis of political legitimacy to one singular empirical understanding *a priori*, nor claim that there exists only one essential nature of legitimate politics. The problem, however, is that we cannot empirically perceive practices of legitimacy without some prior position on the nature of legitimate politics. An analytical theory of legitimacy needs focus beyond the pro-theoretical claim that legitimacy concerns subjective validity and normative 'oughtness'. The solution that this thesis provides is to analyse different faces of political legitimacy in relation to different conceptions of the nature of politics. In the remainder of the dissertation this is the central question: how can we empirically understand political legitimacy if we conceive the nature of politics respectively as domination, conflict, coordination and argumentation?

In the second part of the dissertation the four faces of political legitimacy are developed. The third chapter argues how we can understand political legitimacy if we understand politics as domination. It does so by discussing Weber's famous analysis of political legitimacy. Weber's analysis is complicated to interpret because his work is unfinished and at times confused, and because it combines three levels of analysis: an analysis of ideal-types, of a circular institutional dynamic and of a linear modernisation thesis. This chapter, then, tries to reconstruct Weber's work in order to extract a robust analytical framework of political legitimacy in relation to politics as domination.

To do so, the chapter first explains and clarifies Weber's action theoretical approach to social order, political order and legitimate domination. For Weber, it is concluded, legitimate domination is objectively valid when expectations of domination are socially institutionalised in the normative structure of a social order. Legitimate domination is subjectively valid – legitimate proper – when the ruled value-rationally orient themselves to these objective normative expectations, i.e. they believe in the validity of the right to rule.

The second part of the chapter argues that when Weber tries to explain the sources of these beliefs, he moves from the perspective of *Handeln* to the perspective of *Existenz*, 'being-meaningful-in-the-world'. In this perspective Weber proposes the well-known ideal-types of charismatic, traditional and legal domination. He argues that in the first two ideal-types, experiences of extraordinary processes of proof explain the subjective belief in claims of legitimacy. The experience of transcending truth moves the soul, fulfils man's existential needs and explains subjective normative validity.

However, these soul-moving experiences of absolute and unalterable truths are absent in disenchanting legal domination. Its rational processes of accountability only provide cognitive and not normative validity, while a positivist legal system is inherently contingent. The problem of Weber's work is that he seems to fail to explain the subjective belief in legality. This problem has occupied many scholars ever since. This thesis claims that we should not so much try to understand normative validity in extra-ordinary processes of truth-finding, but that we should change our perspective to normal and externally guaranteed expectations of validity. The core concepts to explain subjective normative validity in this perspective, it is argued, are self-discipline and self-justification. This chapter explains three types of self-discipline related to the gaze of the omnipotent, the gaze of the public and to the inner-gaze of conscience, the latter of which is able to explain the legitimacy of legality. Having solved this long-standing puzzle, this chapter ends with an integrated analytical framework of legitimate domination that carefully distinguishes between objective and subjective validity and between the perspectives of *Handeln* and *Existenz*.

The fourth chapter analyses how we can understand political legitimacy if we perceive the nature of politics as conflict. To develop this argument the chapter explores the democratic realist tradition in political theory. This broad tradition tries to deal with the problematic legacy of Weber where it concerns modern democracy. Modern mass democracy, according to Weber, constitutes a never-ending conflict between ultimate values – the warring of the gods. Weber's legacy, then, poses questions about the rationality, stability and legitimacy of modern democracy that democratic realists try to solve.

This chapter discusses how three approaches within the democratic realist tradition – welfare economics, pluralism and output-oriented cybernetics – deal with these questions. The general conclusion is that neither of these approaches is able to provide a robust understanding of political legitimacy. These approaches tend to be cryptonormative, to emphasise an outsider's perspective, to confuse stability and legitimacy, to depoliticise legitimacy, or tend to suffer from general conceptual confusion. Despite these limitations, the tradition does provide some interesting possibilities. Foremost, it makes sense to take over the analytical differentiation between three political arenas: political system, political game and political theatre. The political system provides an analysis of legitimate domination in the tradition of Weber. The political game provides an analysis of political influence structured by interests, strategies and power resources, and of the relation between political effectiveness and instrumental support. It is the political theatre, however, that provides the most interesting analysis of politics as it allows an understanding of political legitimacy based upon normative but conditional expectations, different from Weber's emphasis on unconditional beliefs.

To understand this novel conceptualisation the chapter incorporates a dramaturgical perspective of politics, emphasising the expressive function of politics, the dimension of time, and the importance of symbolic political actions. Dramaturgical legitimation concerns both the dramaturgical arousal of normative expectations about future political actions and outputs, as the symbolic satisfaction of these expectations. Politics as theatre, therefore, is a self-legitimising process to the extent that it can prove its own validity by constantly suspending instrumental judgement into the future. This dramaturgical perspective provides a novel understanding of political legitimacy without denying the conflictive nature of politics.

Chapter five and six analyse how we can comprehend political legitimacy if we understand the nature of politics in terms of coordination. This face of legitimacy is developed by looking at the work of Luhmann and especially his understanding of media theory. Luhmann builds upon Weber's insight that society consists of different value spheres, each coordinated by its own internal logic. For Luhmann this means that we can understand the political system as an action system coordinated by a special language or medium: legitimate power. Chapter five provides a thorough analysis of how to understand legitimate power as a coordinating medium, without losing the connection to an action theoretical perspective. This is accomplished by analysing Luhmann's earlier work in which the connection to Goffman's work on the presentational basis of social action is still present, in contrast to his later more system theoretical work. Understanding legitimate power as a medium of coordination forces analysis to the question of how contingent expectations of

asymmetry – the essence of power – are generalised in the social, material and temporal dimensions, how such expectations can be communicated, and how such communication coordinates social action. Luhmann's analysis points to the idea that media are able to reduce social complexity through the communication of generalised expectations, which simultaneously allows an increase in the complexity of social organisation.

If the first part of this chapter shows how legitimate power is able to coordinate social action, the second part tries to understand how this shapes late-modern political organisation and, foremost, what this means for its validity. It is argued that Luhmann's approach provides us with four analytical levels from which to answer these questions. At the highest level of analysis, the value-sphere, Luhmann argues that the problem of validity (truth) of legitimate power cannot be solved at the level of the subjective, as Weber claims, nor in some form of solidarity, as Parsons claims, nor in some foundational normative sense, as Habermas claims. The political system is suspended in mid-air: it is inherently symbolic. The problem of validity (truth), then, is replaced with the problem of social validity and vulnerability. The problem of vulnerability is analysed at the level of political organisation in terms of the problem of conflict, or Weber's warring of the gods. This problem is solved to the extent that political organisation is inherently indeterminate and ambiguous due to the use of additional legitimations: vote, expertise and party. However, this means that the problem of conflict is replaced with the problem of ambiguity which can only be dealt with by a continuous organisation of trust. At the analytical level of political interaction, the problem of vulnerability is analysed as a problem of effectiveness, which can also only be addressed by the organisation and communication of trust. Finally, at the level of person, analysis concerns processes of individual self-management in relation to the problem of validity (truth), vulnerability, ambiguity and effectiveness.

Luhmann provides a promising and comprehensive analysis of politics as coordination and of legitimate power without the notion of truth. The main problem, however, is that he is dismissive of the subject altogether, problematising a subjective understanding of political legitimacy. Chapter six addresses this problem by the insight that the problems of vulnerability, ambiguity and effectiveness must all be countered by the social and political organisation of trust. Trust, for sure, is a complex and contested concept in itself. Chapter six, then, provides a general sociological account of trust. This account carefully distinguishes between contingency and uncertainty, between external and internal assurances, between trust and confidence, and between normative and cognitive ways to deal with disappointments. The conclusion of this analysis is that trust entails a normative dimension. If trust plays a role in politics this might explain its subjective normative validity even if politics is inherently symbolic. The remainder of the chapter, therefore, analyses the possible role of trust in

politics by analysing specific risks that emerge at the four analytical levels of politics. These risks concern the risk of contingency, ineffectiveness, indeterminacy, dependency and self-disappointment. The role of trust in politics, in conclusion, explains how we can understand political legitimacy when the nature of politics concerns coordination.

Chapter seven and eight analyse the final face of political legitimacy in which politics is understood in terms of argumentation. In Weber's work there is little room for a validating rationality of argumentation. However, the importance of public argumentation or reason has attracted immense scholarly attention. In chapter seven the work of Habermas is discussed to analyse the possible relation between political legitimacy and public argumentation. It is argued that Habermas provides three possible models for understanding this relation: discursive democracy, the public sphere model and the lifeworld model. A careful analysis shows, however, that discursive democracy severely limits a sociology of political argumentation because there is no reason to assume that the goal of value consensus is coordinating political argumentation, there is no reason to assume that the foundationalist epistemic ideals of argumentative rationality are probable in a complex society, and because this model obscures a clear understanding of politics at the level of institutions. The public sphere model, it is argued, suffers from the problematic notion of public sphere and from the unspecified relations between politics as decision-making and politics as public argumentation. The first problem can be solved to the extent that the public sphere can be conceptualised as institutionally anchored networks of publics and public argumentation – i.e. of non-secretive argumentation governed by social expectations of the norm of the better argument. The second, however, remains problematic as complex reality threatens to reduce the public sphere model to mere fiction or ideology.

Habermas' lifeworld model, on the other hand, seems more promising. In the remainder of this chapter this model is discussed. Habermas develops the notion of lifeworld in direct opposition to system and, over time, provides two accounts of the relation between legitimate politics and lifeworld, a direct and an indirect relation. It is argued that the indirect relation between politics and lifeworld, constituting legitimacy by detour, provides the most promising prospect for a sociology of political argumentation. In this indirect account the public sphere is perceived as the driving force of the communicative rationalisation of lifeworld itself. It provides the opportunity to analyse the relation between political legitimacy and political argumentation without denying the plurality and multiplicity of public spheres and 'public opinion' and without reducing this relation to deliberative rational decision-making. Unfortunately, Habermas' analysis of lifeworld and systems is severely distorted. He overemphasises the consensual notion of lifeworld, gives it a too strong functionalist

reading and misunderstands the nature of social systems, on the one hand, and obscures, on the other, a general sociological understanding of lifeworld because of his aim to formulate a foundationalist normative theory simultaneously.

If Habermas' lifeworld model is going to provide a basis for understanding political legitimacy and politics as argumentation, these distortions need to be addressed. This, then, is the aim of chapter eight. To do so, this chapter first of all gives Habermas' theory a critical realist's re-reading. Critical realism shows that an understanding of legitimate politics as argumentation does not need foundationalist notions. Instead of epistemic rationality, an ontological notion of reasonableness suffices. This insight echoes Weber's aim of scientific and political reasonability over truth. Furthermore, it allows a sociology that recognises the structuring powers of discourses without disregarding material structures, and a sociology that is aware of the social complexities of late-modernity.

In the remainder of the chapter these insights are used to reconstruct a lifeworld-model of political argumentation. This means, first of all, that lifeworld and system must be grasped as two types of social coordination existing side by side. Second, to grasp the specific coordinative nature of lifeworld, it needs to be analysed from a performative perspective, discarding coarse functionalism. This perspective allows an understanding of lifeworld practices in terms of four layers of symbolic communication: scene, role, character and script. Where a system perspective of social action and coordination emphasises rules of the game that can be generalised, formalised, controlled and prescribed, a lifeworld perspective emphasises social action coordinated by rules of art that seem to deny such forms of generalisation.

The final section of the chapter, however, offers an innovative conception of how lifeworld expectations coordinated by rules of art might be generalised after all. The crucial insight is that these expectations can be generalised in the form of narratives. Lifeworld expectations can be generalised beyond everyday lifeworld practices in terms of cultural narratives, ontological narratives and discourses. Cultural narratives are generalised meaningful experiences (scene, role, character), ontological narratives are generalised histories (script) and discourses are generalised coordination (the logic or art of performance). All three types of generalisation allow an analysis of different kinds of more or less institutionalised practices of storytelling that open up symbolic spaces of respectively fiction, worldview and authority above and beyond everyday life. Finally, this account of lifeworld generalisation offers the possibility to analyse the dramaturgical relation between these symbolic spaces, storytelling and everyday life in terms of meanings, facts and normative truths.

This understanding of lifeworld offers a complex but analytically clear perspective upon the nature of public argumentation, public opinion, and the relation between the rational force of argumentation and authority or truth. A lifeworld analysis of politics shows how authoritative political claims must be discursively validated, but even more importantly, how everyday practices, political actions and different forms and types of story-telling – especially public argumentation – continuously shape the discursive space in which politics must legitimate itself. And because these processes of discursive legitimation are not merely a cognitive affair but also entail a normative quality, this analysis of politics as argumentation offers a final face of political legitimacy in accordance with the premises of this dissertation.

The final and concluding chapter provides a short summary of the different faces of political legitimacy analysed in this dissertation based upon four different notions of the nature of politics. Political legitimacy not only concerns value-rational belief but also dramaturgical support, trust and discursive validity. Seen from a different perspective, this thesis updates Weber's sociology by introducing concepts such as time, ambiguity, vulnerability, plurality, risk, uncertainty and contingency, which signal phenomena that were not so much absent in modern society Weber tried to understand, but that have become increasingly prominent in the social-political complexity of late-modernity.

Nederlandse Lekensamenvatting

Niet alleen veel wetenschappers, maar ook politici, journalisten en burgers, houden zich bezig met de vraag of en wanneer de politiek legitiem is. Sommigen vragen zich ook af of de huidige politiek niet in een legitimiteitscrisis is verzeild. Dit zijn belangrijke vragen, niet in de laatste plaats omdat politiek over macht gaat en de staat haar macht zelfs met geweld kan realiseren. Dat we onderhevig zijn aan politieke macht is misschien onvermijdelijk, maar dan kunnen we beter streven naar een machtsuitoefening die legitiem is.

Er zijn in het algemeen twee benaderingen om de legitimiteit van de politiek te begrijpen. De eerste, de normatieve benadering, probeert te begrijpen hoe een legitieme politiek er uit zou moeten zien. In deze benadering wordt legitimiteit vaak begrepen in termen van rechtvaardigheid gebaseerd op vrijheid, gelijkheid of democratie. De tweede benadering, de empirische benadering, kijkt niet naar wat een legitieme politiek zou moeten zijn, maar of de politiek legitiem is – een verschil tussen ‘zou moeten zijn’ en ‘zijn’. Dit proefschrift benadert politieke legitimiteit vanuit de tweede benadering, met name vanuit het idee dat als we niet weten wat legitimiteit is in de werkelijkheid, we ook niet goed kunnen bedenken hoe een ideale politiek er uit zou moeten zien.

Het grote probleem, echter, is dat het heel moeilijk blijkt om te begrijpen wat politieke legitimiteit is. Hoe herken je politieke legitimiteit wanneer je haar tegenkomt? Dit is de vraag die dit proefschrift probeert te beantwoorden door een analytisch kader te ontwerpen waarmee politieke legitimiteit in de werkelijkheid geanalyseerd kan worden. Deze analytische benadering gaat dus niet over ‘zou moeten zijn’ of ‘zijn’, maar over ‘zou kunnen zijn’. Wat ‘zou kunnen zijn’ wordt duidelijk als we het ‘zijn’ begrijpen en proberen te verklaren vanuit een breder historisch of vergelijkend perspectief. Er zal dus niet onderzocht worden of bijvoorbeeld de Nederlandse democratie legitiem is. Het doel is te analyseren hoe we legitimiteit zouden kunnen begrijpen en onderzoeken.

Om dit analytische kader te ontdekken, gaat dit proefschrift uit van drie basisassumpties. Ten eerste, zoals reeds uitgelegd, richt het zich op een empirisch begrip van legitimiteit. Ten tweede is het belangrijk om legitimiteit te begrijpen vanuit het perspectief van mensen onderworpen aan politieke macht. Dit lijkt vanzelfsprekend, maar het is verbazingwekkend hoe vaak dit perspectief als irrelevant wordt beschouwd. Het gaat er echter om te verklaren wanneer burgers, of actoren in het algemeen, de politiek legitiem vinden – wanneer beschouwen zij in hun dagelijks leven de politiek als normatief valide? Dat betekent niet dat we legitimiteit psychologisch moeten verklaren, maar als een wisselwerking tussen de subjectieve beleving van actoren en objectieve sociale en politieke structuren. Ten slotte kunnen we er niet vanuit gaan dat er maar één manier bestaat om de politiek te begrijpen. Wat politiek is, is op zichzelf al een hele moeilijke vraag. De assumptie is dat er niet

zoiets bestaat als 'de' politiek. Om toch grip op politiek te krijgen, wordt in dit proefschrift beargumenteerd dat we de aard van politieke relaties op vier verschillende manieren kunnen benaderen: als gezag, als conflict, als coördinatie en als argumentatie. Dat is uiteraard nog redelijk abstract en doet geen recht aan de institutionele complexiteit van lokale, nationale, internationale en supranationale politiek, maar het voldoet om inzicht te geven in politieke legitimiteit. Het organiserend principe in deze dissertatie is het inzicht dat hoe de aard van politieke relaties begrepen wordt, bepaalt hoe we politieke legitimiteit kunnen begrijpen. Zodoende bestaat het analytisch kader uit 'vier gezichten' van politieke legitimiteit, gebaseerd op vier verschillende karakters van politiek.

Om deze vier gezichten van politieke legitimiteit te onderzoeken, is dit proefschrift opgedeeld in twee delen. Het eerste deel bevat twee introducerende hoofdstukken. Het eerste hoofdstuk heeft tot doel om een paar basis concepten duidelijk uit te leggen. Het is vooral belangrijk om duidelijk te maken wat bedoeld wordt met het idee dat legitimiteit impliceert dat actoren de politiek normatief valide vinden. Wat betekent 'normatieve validiteit'? Wat is dan die relatie tussen het 'subjectieve' en het 'objectieve', waarvan hierboven al sprake was? En, ook belangrijk, wat is politiek als we het concreter maken dan alleen de vier abstracte karakters van politiek? Deze vragen worden allemaal zo nauwkeurig mogelijk beantwoord in het eerste hoofdstuk.

Het tweede introducerende hoofdstuk heeft tot doel om het specifieke karakter van een analytische benadering uit te leggen. Dit wordt bereikt door de ingewikkelde en moeizame relatie tussen normatieve en empirische theorie te bestuderen, zoals die tot uiting komt in de lange liberale en democratische traditie die ten grond slag ligt aan de moderne democratie en politieke theorie. Het probleem in deze traditie is dat normatieve en empirische theorie elkaar vaak wederzijds veronderstellen. Deze dialectische relatie werkt niet alleen nog steeds door in huidige wetenschappelijke theorieën, door impliciete 'crypto-normatieve' en 'quasi-empirische' assumpties belemmert ze ook een helder begrip van politieke legitimiteit. Het analytisch kader dat in dit proefschrift ontwikkeld wordt, probeert dit te voorkomen.

Het tweede deel van dit proefschrift vormt het daadwerkelijke onderzoek naar de vier gezichten van politieke legitimiteit. De methode die gehanteerd wordt, is die van de kritische discussie. Dat betekent dat er steeds in discussie gegaan wordt met verschillende sociologische en politicologische theoretici om tot een beter begrip van politieke legitimiteit te komen. Daarbij is het belangrijk dat hun theorieën niet alleen toonaangevend zijn binnen de politieke wetenschap, maar ook dat zij

steeds een andere aard van politieke relaties benadrukken. Zodoende verschaffen deze discussies tezamen de vier verschillende gezichten van politieke legitimiteit.

In hoofdstuk drie staat de theorie van de socioloog Max Weber centraal, die de aard van politieke relaties vooral beschouwt als gezag. Dit proefschrift deelt met Weber het idee dat legitimiteit begrepen moet worden vanuit de subjectieve beleving van actoren en verklaard vanuit een wisselwerking met objectieve politieke structuren. Toch is zijn sociologie niet op alle punten even duidelijk. Vooral de vraag wat de subjectieve validiteit van legaal gezag verklaart, blijft onduidelijk en is nog steeds – bijna honderd jaar later – een onderwerp van debat. In dit hoofdstuk wordt deze onduidelijkheid weggenomen met een plausibele reconstructie van Weber's theorie. Hieruit volgt dat als we de aard van politiek als gezag beschouwen, we legitimiteit vooral moeten begrijpen in termen van plichtsgevoel – een normatief plichtsgevoel om te gehoorzamen. Dit plichtsgevoel is te verklaren, volgens Weber, in termen van buitengewone rituelen die getuigen van waarheid, maar ook, zo wordt beargumenteerd in dit hoofdstuk, in termen van alledaagse vormen van zelfdiscipline.

In hoofdstuk vier wordt de traditie van het democratisch realisme besproken, die de aard van politieke relaties vooral beschouwt in termen van conflict. Vaak wordt legitimiteit beschouwd als demper op politiek conflict, maar de vraag die in dit hoofdstuk centraal staat, is of politiek conflict ook legitimiteit kan verklaren. Dat blijkt geen eenvoudige vraag te zijn. Er worden verschillende theorieën binnen de democratisch realistische traditie besproken, maar de conclusie luidt dat hier geen helder analytisch concept van politieke legitimiteit uit voortkomt. Desondanks betoogt dit hoofdstuk dat deze traditie een ander legitimiteitsbegrip mogelijk maakt. Belangrijk daarbij is dat deze traditie de politiek analyseert vanuit drie te onderscheiden arena's: het politieke systeem van legaal gezag, het politieke spel waarin belangenconflicten strategisch worden uitgespeeld, en het politieke theater waarin actoren politieke steun proberen te mobiliseren. Dit hoofdstuk beargumenteert dat de laatste, het politiek theater, de mogelijkheid geeft om politieke legitimiteit te begrijpen zonder politiek conflict te negeren. Om dat te begrijpen moeten we inzicht krijgen in de dramaturgie van politiek. Dit betekent dat we politiek kunnen zien als het gelijktijdig mobiliseren van normatieve verwachtingen over de toekomst, en als het symbolisch bevredigen van die verwachtingen in het hier en nu. Juist het bestaan van conflicten, van tegenstrijdige belangen, van voor- en tegenstanders, helden en vijanden, geeft de politiek zijn specifiek dramatische karakter. Politieke legitimiteit is dus ook te begrijpen als normatieve politieke steun gemobiliseerd en bevredigd in politiek als theater.

In hoofdstuk vijf en zes staat de discussie met de socioloog Niklas Luhmann centraal, die de aard van politieke relaties vooral begrijpt in termen van coördinatie. In Luhmann's sociologie

moeten we legitieme macht begrijpen als een soort taal, een medium, waarmee we bepaalde verwachtingen communiceren die sociaal handelen mogelijk maken en coördineren. Legitieme macht is de taal van het politieke systeem, net zoals geld de taal is van het economische systeem of de wet de taal van het rechtssysteem. Het doel van hoofdstuk vijf is in eerste instantie vooral te analyseren wat dit nu precies betekent en wat voor begrip van de politiek dit oplevert. Het grootste probleem van Luhmann's benadering is dat hij het subject – de subjectieve beleving van actoren – als sociologisch irrelevant beschouwt. Dat is vooral een probleem omdat de relevantie van het subject nu juist één van de basisassumpties is van dit proefschrift.

In hoofdstuk zes wordt echter beargumenteerd dat Luhmann's sociologie desondanks toch een derde legitimitetsbegrip kan opleveren. Omdat politieke coördinatie berust op communicatieprocessen is het duidelijk dat coördinatie kwetsbaar is. Communicatieve coördinatie biedt weliswaar veel voordelen – meer vrijheid – maar brengt inherent ook meer risico's met zich mee. Politieke coördinatie, zo kunnen we stellen, vraagt veel vertrouwen. Nu bestaat er helaas weinig wetenschappelijke overeenstemming over wat vertrouwen precies is. Dit hoofdstuk schetst daarom de analytische contouren van een theorie van vertrouwen en maakt duidelijk dat vertrouwen een subjectieve normatieve component bevat. Dat betekent dat als vertrouwen een rol speelt in politiek als coördinatie, dit een derde 'gezicht' van legitimiteit oplevert. Het hoofdstuk eindigt dan ook met een analyse van hoe en waar vertrouwen een rol kan spelen in politiek.

In hoofdstuk zeven en acht wordt het vierde en laatste 'gezicht' van politieke legitimiteit geanalyseerd door de aard van politieke relaties te beschouwen in termen van argumentatie. Hiervoor wordt de discussie aangegaan met Jürgen Habermas. Habermas is niet alleen socioloog maar ook filosoof. Dit maakt een discussie met hem lastig omdat hij tegelijkertijd een normatieve en empirische politieke theorie nastreeft. Desalniettemin, Habermas probeert politiek, en vooral legitieme politiek, te begrijpen in termen van publieke argumentatie. De politiek legitimeert zich, volgens Habermas, in de publieke opinie die gevormd wordt door middel van publieke argumentatie in de publieke ruimte. Hoewel een dergelijke visie misschien goed aansluit bij een alledaags politieke intuïtie, is het niet eenvoudig dit proces analytisch helder te begrijpen. In hoofdstuk zeven worden drie modellen besproken die Habermas, meer of minder expliciet, aandraagt om dit proces te begrijpen. Alle drie hebben zo hun analytische problemen, maar er wordt geconcludeerd dat één model, het zogenaamde 'leefwereld-model', de meeste aanknopingspunten biedt om de relatie tussen politiek, argumentatie en legitimiteit te begrijpen. Maar voor een echt helder analytisch begrip moet Habermas' model vanuit een kritisch realistische benadering herlezen en aangepast worden.

Hoofdstuk acht laat zien hoe een dergelijk aangepast leefwereld-model er uit zou moeten zien. Waar Luhmann sociale coördinatie vooral begrijpt in termen van communicatie binnen systemen en organisaties met formele regels en normen, kunnen we coördinatie ook anders begrijpen. In de leefwereld wordt sociaal handelen weliswaar ook gecoördineerd door communicatie, maar door communicatie zonder formele 'taal'. In het dagelijks leven weten we vaak precies wat iemand anders bedoelt, suggereert of probeert uit te stralen, zonder dat dit terug te voeren is op formele regels en normen. We communiceren verwachtingen via 'culturele' symbolen, zoals onze houding, kleding, de toon van onze stem, gedrag en, niet in de laatste plaats, via taaluitingen. Kortom, we kunnen sociale coördinatie ook begrijpen vanuit een zogenaamd 'performatief perspectief', waarin sociale verwachtingen constant gecommuniceerd worden door allerlei cultuurafhankelijke symbolen en handelingen.

Deze vorm van coördinatie is echter wel gebonden aan specifieke contexten en praktijken. Toch, zo wordt beargumenteerd, kunnen de zo gecommuniceerde verwachtingen ook context overstijgend gegeneraliseerd worden. Dat kan in de vorm van narratieven. Dit hoofdstuk probeert de relatie tussen politiek, argumentatie en publieke opinie te begrijpen, door naar de aard van die narratieven te kijken. Met behulp van verschillende typen narratieven zijn we in staat verhalen te vertellen die symbolische ruimten creëren boven en voorbij onze dagelijkse leefwereld, de symbolische ruimte van fictie, wereldbeeld en van autoriteit. Maar als die verhalen iets voor ons betekenen, als ze betekenisvol, feitelijk of normatief juist zijn, dan moeten ze op de een of andere manier gegrond zijn in onze dagelijkse ervaringen. Kortom, door te analyseren hoe dit complex samenhangt, kunnen we begrijpen hoe politieke autoriteitsclaims normatief gevalideerd kunnen worden in onze dagelijkse ervaringen. Dit, dan, is het vierde en laatste 'gezicht' van politieke legitimiteit. Bovendien wordt zo ook duidelijk hoe alledaagse, culturele, wetenschappelijke en politieke handelingen en argumentaties continue de symbolische ruimte van autoriteit vormen en veranderen.

In conclusie, aangezien we de aard van politieke relaties analytisch op verschillende manieren kunnen benaderen, presenteert dit proefschrift vier verschillende gezichten van politieke legitimiteit – vier verschillende manieren waarop we politieke legitimiteit empirisch kunnen begrijpen en verklaren.